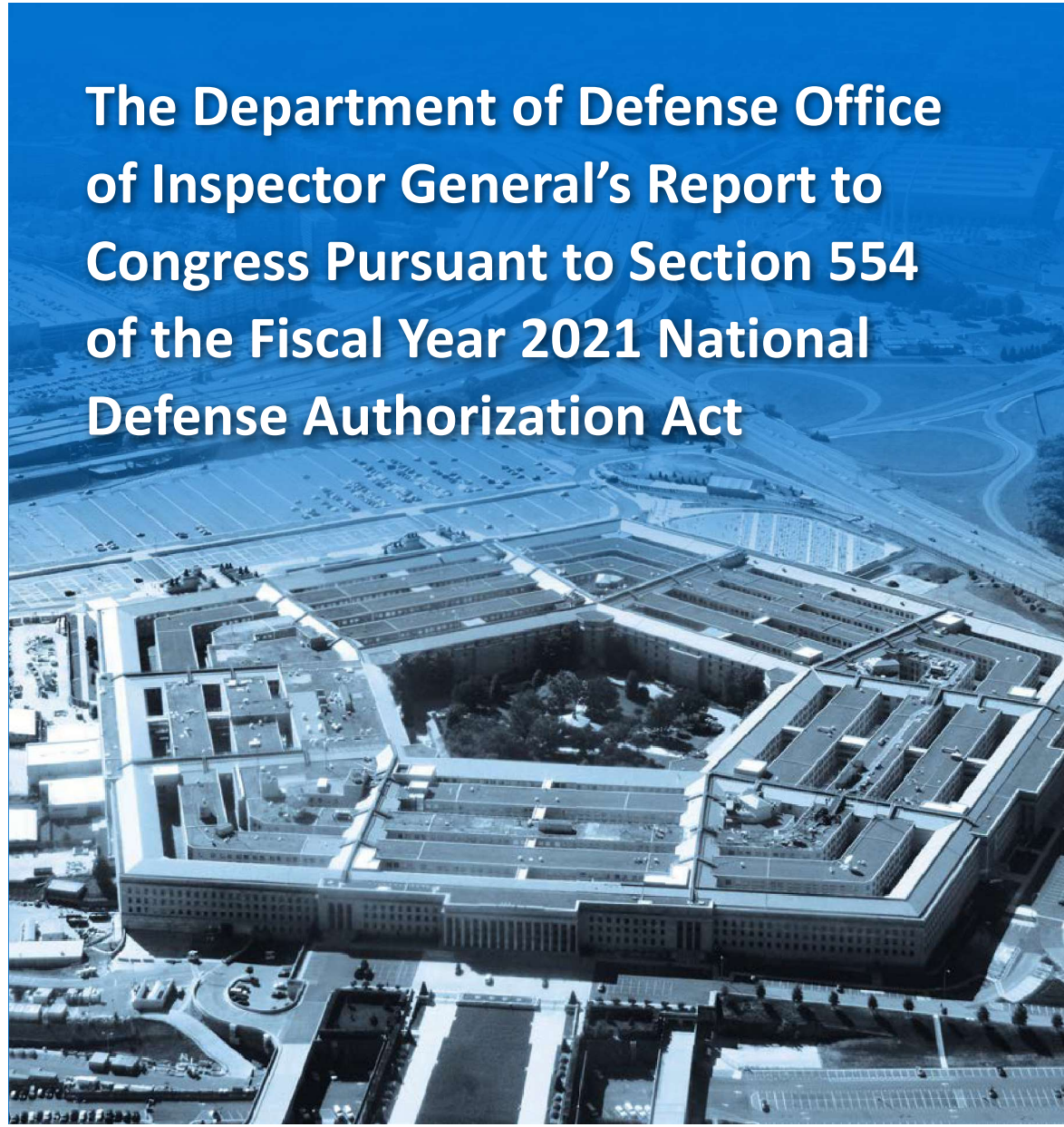




INSPECTOR GENERAL

U.S. Department of Defense

JUNE 10, 2021



The Department of Defense Office of Inspector General's Report to Congress Pursuant to Section 554 of the Fiscal Year 2021 National Defense Authorization Act

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





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Acting IG O'Donnell's Introductory Message



Acting Inspector General
Sean W. O'Donnell

I am pleased to present this report on the newly established Deputy Inspector General for Diversity and Inclusion and Extremism in the Military (DIEM) within the Department of Defense Office of Inspector General (DoD OIG), as directed by Section 554 of the FY 2021 National Defense Authorization Act (NDAA). After the enactment of the FY 2021 NDAA, I took immediate action to expand upon the current oversight efforts of the DoD OIG, develop the requirements for this new office, and identify a Deputy Inspector General. I also identified significant challenges to establishing the Office of the Deputy Inspector General – DIEM, namely, the statute's conflicts with the independence provisions

of the Inspector General Act of 1978, as amended, and the lack of funding. Without swift congressional action to address Section 554 legislative changes and additional funding, the DoD OIG is limited in its ability to fulfill the requirements of this mandate. For this reason, I engaged with Congress regarding actioned need to address these conflicts.

As required by Section 554, this report describes the duties and responsibilities of the Deputy Inspector General for DIEM; the organization, structure, staffing, and funding of the office established to support the Deputy Inspector General in the execution of such duties and responsibilities; challenges to the establishment of the Deputy Inspector General and the office, including any shortfalls in personnel and funding; and the date by which I expect the Office of the Deputy Inspector General to reach full operational capability.

The DoD OIG looks forward to working with Congress and the DoD to increase the level of oversight of these critical matters affecting DoD readiness.

Sean W. O'Donnell
Acting Inspector General



Background

On January 1, 2021, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 became law. The FY 2021 NDAA, Section 554, “Inspector General Oversight of Diversity and Inclusion in Department of Defense; Supremacist, Extremist, or Criminal Gang Activity in the Armed Forces,” requires the Secretary of Defense to:

Appoint, in the Office of the Inspector General of the Department of Defense, an additional Deputy who ... shall be a member of the Senior Executive Service (SES) of the Department; and ... shall report directly to and serve under the authority, direction, and control of the Inspector General.

The duties of this new Deputy Inspector General include “[c]onducting and supervising audits, investigations, and evaluations of policies, programs, systems, and process of the Department” related to “diversity and inclusion in the Department” and “supremacist, extremist, and criminal gang activity” in the Armed Forces, as well as additional duties prescribed by the Secretary of Defense or the DoD IG. The statute also requires the Deputy Inspector General be appointed within 90 days of enactment and creates multiple reporting requirements for the Secretary of Defense and the OIG.

Section 554 establishes oversight requirements for programs essential to the effectiveness of the DoD, the safety of its military and civilian personnel, and the trust in which it is held by the American people. Immediately after the enactment of the FY 2021 NDAA, the DoD OIG moved to develop the requirements for the new office, identify the new Deputy Inspector General, engage with Congress, and seek the funding required for this office.

Section 554, however, introduces several challenges that require swift congressional action. The most immediate challenges are conflicts with the DoD IG’s independence as established by the Inspector General Act of 1978, as amended. In particular, the authority of the Secretary of Defense to appoint a Deputy Inspector General in the DoD OIG and to assign additional duties to this Deputy Inspector General, as well as the placement of this Deputy Inspector General in the Senior Executive Service (SES) of the Department, as opposed to the DoD OIG. Other challenges include obtaining additional funding to support the requirements of Section 554 in FY 2022 and beyond, hiring additional staff, obtaining additional office space, enhancing existing systems and developing new systems to track and meet reporting requirements, aligning reporting requirements with pre-existing semiannual reporting, and issuing and implementing policies within the DoD and DoD OIG to support both data and reporting requirements of Section 554.

To address these challenges, the DoD OIG began immediately working with Congress and the DoD. In February 2021, the DoD OIG developed a legislative proposal that recommends revisions to remedy the impairment of the DoD OIG’s statutory independence, avoids duplication of effort and cost between the Deputy Inspector General established in

Section 554 and existing Deputy Inspectors General within the DoD OIG, and adjusts reporting requirements imposed on the new Deputy Inspector General and the DoD OIG. The DoD OIG discussed the proposal with and secured support for the proposal with senior leaders of the House Armed Services Committee, senior congressional staff of the Senate Armed Services Committee, staff for other committees of jurisdiction, and DoD officials.

On February 8, 2021, the Secretary of Defense delegated authority to the Acting DoD IG to appoint the new Deputy Inspector General and fulfill the Section 554 reporting requirements. This action enabled the Acting DoD IG to appoint the Deputy Inspector General. On March 29, 2021, the Acting DoD IG appointed an interim Deputy Inspector General for DIEM to stand up the Office of the Deputy Inspector General and, in coordination with the Deputy Inspectors General for Audit, Evaluations, Investigations, and Administrative Investigations, to analyze and implement the requirements in Section 554.

Requirements of Section 554

Section 554 requires the Secretary of Defense to appoint, in the DoD OIG, an additional Deputy Inspector General, who shall be a member of the DoD SES and shall report directly to and serve under the authority, direction, and control of the DoD IG.

Section 554(a)(2) provides that, subject to the IG Act of 1978, the Deputy Inspector General will conduct and supervise audits, investigations, and evaluations of policies, programs, systems, and processes of the DoD to:

- determine the effect of such policies, programs, systems, and processes regarding personnel on diversity and inclusion in the DoD; and
- prevent and respond to supremacist, extremist, and criminal gang activity of a member of the Armed Forces, including the duties of the Inspector General provided for in Section 554(b)

Paragraph 554(a)(2)(B) further provides that the Deputy Inspector General shall have additional duties as prescribed by the Secretary of Defense or the DoD IG. In carrying out these duties, the Deputy Inspector General is required to coordinate with and receive the cooperation of The Inspector General of the Army, The Inspector General of the Navy, The Inspector General of the Air Force, and other Deputy Inspectors General of the DoD.

Section 554(a)(4) requires the Inspector General to prepare a one-time report no later than 180 days after enactment of the law. The Section also requires the Deputy Inspector General to prepare semiannual reports, no later than 30 days after the end of the second and fourth quarters of each fiscal year beginning in FY 2022, summarizing the activities of the Deputy Inspector General in the two fiscal quarters preceding the date of the report.

Finally, Section 554(a)(4)(C) requires the Deputy Inspector General to submit, through the Secretary of Defense and the DoD IG, annual reports to the Committees on Armed Services of the Senate and the House of Representatives presenting findings and recommendations regarding the:

- effects of policies, programs, systems, and processes of the DoD, regarding personnel, on diversity and inclusion in the DoD; and
- effectiveness of such policies, programs, systems, and processes in preventing and responding to supremacist, extremist, and criminal gang activity of a member of the Armed Forces.

Section 554(b) requires the Secretary of Defense to establish policies, processes, and mechanisms across the covered Armed Forces that ensure that all allegations and related information that a member of a covered Armed Force has engaged in prohibited activity are referred to the DoD IG.¹ In addition, the DoD OIG can:

- document and track the referral, for purposes of investigation or inquiry into the allegations, that a member of a covered Armed Force has engaged in prohibited activity to (i) a military criminal investigative organization, (ii) an inspector general, (iii) a military police or security police organization, (iv) a military commander, (v) another organization or official of the DoD; or (vi) a civilian law enforcement organization or official;
- document and track the referral, to a military commander or other appropriate authority, of the final report of investigation or inquiry into the allegations of prohibited activity;
- document the determination of whether the member of the Armed Forces engaged in prohibited activity;
- document whether a member of a covered Armed Force was subject to action (including judicial, disciplinary, adverse, or corrective administrative action) or no action, as the case may be, based on the determination described above; and
- provide, or track the referral to a civilian law enforcement agency, any information described in Section 554(b).

Section 554(b) also requires the Secretary of Defense, by December 1 each year, beginning after the date of the enactment of this Act, to submit a report to appropriate congressional committees on the policies, processes, and mechanisms implemented as described above. Each annual report must include, with respect to the preceding fiscal year, the total number of:

- referrals received by the DoD IG,
- investigations and inquiries conducted pursuant to such referrals,

¹ “Covered Armed Force” means an Armed Force under the jurisdiction of the Secretary of a Military Department. U.S. Coast Guard personnel would be members of a covered Armed Force only when they are under the jurisdiction of the Secretary of the Navy.

- members subject to—and not subject to—administrative and disciplinary action following determinations that they engaged in prohibited activity,
- referrals to civilian law enforcement officials or agencies.

Duties and Responsibilities Assigned to the Deputy Inspector General

In February 2021, the Acting DoD IG established an SES position for the Deputy Inspector General for DIEM. To fulfill these responsibilities, the Deputy Inspector General for DIEM, in coordination with the Deputy Inspectors General for Audit, Evaluations, Investigations, and Administrative Investigations, will conduct audits, evaluations, and investigations to analyze and implement the requirements in Section 554 and develop a comprehensive strategic plan for oversight of policies, programs, systems, and processes affecting diversity and inclusion within the DoD, and the prevention of and response to prohibited activity in the Armed Forces. The Deputy Inspector General for DIEM will also review and develop, as needed, DoD and DoD OIG instructions, policies, and programs to support execution of oversight and reporting responsibilities and prepare semiannual and annual reports to Congress.

On March 29, 2021, the Acting DoD IG appointed a current senior executive with extensive experience within the Federal OIG community as the interim Deputy Inspector General for DIEM. The interim Deputy Inspector General is serving a temporary detail appointment to stand up the Office of the Deputy Inspector General – DIEM, which we refer to as the DIEM Component, within the DoD OIG.

Office of the Deputy Inspector General – DIEM and Other DoD OIG Staff Supporting Section 554 Requirements

The DoD OIG intends to hire a permanent core staff for the DIEM Component to coordinate and plan oversight; conduct strategic outreach; develop DoD and DoD OIG instructions, policies and programs, and planning efforts; analyze data to track supremacist, extremist, and criminal gang activity in the Armed Forces; and prepare the semiannual and annual reports. This core staff will coordinate with key stakeholders—such as Military Departments, Service OIGs, and Military Criminal Investigative Organizations—in the DoD and within the DoD OIG. External coordination is critical to ensure consistent reporting of information to the DoD OIG, to maintain real-time awareness of the programs and operations of the DoD related to diversity and inclusion, and to prevent and respond to supremacist, extremist, and criminal gang activity within the Armed Forces. Internal coordination with the DoD OIG's Deputy Inspectors General for Audit, Evaluations, Investigations, and Administrative Investigations

will help avoid duplications of effort, shape the planning for and timely completion of relevant oversight projects, and collect data for reporting purposes. The responsibilities of the DIEM Component core staff will include the following.

- **Strategic Planning.** Developing, in coordination with the DoD OIG's Deputy Inspectors General for Audit, Evaluations, Investigations, and Administrative Investigations, a plan to evaluate and oversee DoD programs and operations to diversity and inclusion, and prevent of and respond to supremacist, extremist, and criminal gang activity of a member of the Armed Forces.
- **Coordination With Military Department IG Offices and Other Stakeholders.** Conducting liaison and coordination activities with Congress, the Office of the Secretary of Defense, the Military Department Inspectors General, the Military Criminal Investigative Organizations, and other DoD entities whose responsibilities are related to the areas identified in Section 554. This coordination will be critical to ensuring timely notifications, and complete and accurate reporting.
- **Policy and Program Development.** Developing instructions, policies, and programs necessary to fulfill Section 554 requirements, in coordination with the DoD and other DoD OIG stakeholders as required.
- **Data Management.** Coordinating with the DoD Hotline and using DoD information systems to access DoD information and records management systems, processes, and procedures to obtain, document, and track:
 - allegations of prohibited activity against members of the Armed Forces;
 - referrals to a military criminal investigative organization, an inspector general, a military commander, and other officials and organizations provided for in Section 554;
 - reports resulting from such referrals; and
 - actions taken with respect to such referrals.
- **Communications.** Providing reports and information to Congress, DoD leaders, and the public about DoD OIG oversight, referral, and tracking work related to Section 554. This communication will be done in coordination with the Military Department Inspectors General and DoD OIG personnel, and with the assistance of the DoD OIG Office of Legislative Affairs and Communications.

The DoD OIG intends to hire 55 additional personnel in other DoD OIG Components for audits, evaluations, and investigations (criminal and administrative). These newly created teams, located within the existing DoD OIG Component structure, will be hired, trained, and managed independently from the core staff for the DIEM Component. This approach ensures consistency of oversight products and compliance with professional standards. Modest staffing increases within the DoD OIG for legal, information technology, and human resources services are also necessary to support the Section 554 requirements.

Section 554 Oversight

The DoD OIG's current oversight work includes projects that directly address many of the concerns covered by Section 554, and reflects the DoD OIG's oversight in this important area. A representative sample of current projects is listed below.

- Audit of the Military Services Actions for Improving Diversity and Inclusion in the DoD (Project No. D2021-D000RL-0122.000, Announced May 24, 2021)
- Evaluation of Department of Defense Efforts to Develop and Implement Policy and Procedures Addressing Ideological Extremism Within the U.S. Armed Forces (Project No. D2021-DEV0PB-0079.000, Announced January 14, 2021)
- Evaluation of the DoD's Implementation of the Military Leadership Diversity Commission's 2011 Report Recommendations and the DoD Diversity and Inclusion Strategic Plan for 2012 to 2017 (Project No. D2021-DEV0PA-0005.000, Announced October 5, 2020)
- Evaluation of DoD's Handling of Incidents of Sexual Assault Against (or Involving) Midshipmen at the United States Naval Academy (D2020-DEV0SV-126.000, Announced June 3, 2020)

These projects will serve as building blocks for understanding the current policies, initiatives, and data that the DoD tracks. The DoD OIG also developed a broad list of potential Section 554 oversight projects that could be conducted in FY 2022 and beyond. The list below covers some of the most significant projects that the DoD OIG is contemplating. However, some of these projects will not be possible if the DoD OIG does not obtain additional resources to support this critical mandated oversight work.

- Audit of the DoD's Implementation of Recommendations Made by the Independent Review Commission on Sexual Assault
- Audit of the Military Entrance Processing Stations' Efforts to Identify Supremacist, Extremist, or Criminal Gang Members During the Recruitment Process
- Audit of DoD Security Clearance Controls and Definitions to Identify Affiliation with Supremacist, Extremist, or Criminal Gangs

DoD OIG Resource Requirements

The Office of Personnel Management authorized three additional SES positions to support Section 554 requirements for the DoD OIG, including the Deputy Inspector General for DIEM. Beginning in FY 2022, the DoD OIG requires additional funding to support an end state of 80 additional positions, hired over a 2-year period, along with associated facilities, equipment, and operational expenses. The additional funding will also accelerate deployment of the DoD OIG administrative investigations case management system to the Service, DoD agency, and command OIGs to enable the collection, management, and analysis of data related to

Section 554 requirements. The DoD OIG and the DoD must also develop new capabilities to track and report extremist, supremacist, and criminal gang activity by members of the Armed Forces to fulfill the requirements of Section 554.

Initial Operational Capability

To establish an initial operational capability, the DoD OIG intends to hire 10 to 12 core staff for the DIEM Component in FY 2021, using current appropriations. Subject to funding, hiring of the remaining core staff will occur in FY 2022. The office will achieve initial operational capability upon Congress appropriating sufficient funding to resource the additional DoD OIG requirements established in Section 554.

The Deputy Inspector General for DIEM and a portion of the office core staff will immediately begin the necessary routine administrative, budgetary, and policy actions necessary to achieve full operational capability. To reinforce this effort, the DoD OIG assigned a senior military officer to assist the Deputy Inspector General for DIEM with office establishment and outreach, and identified key positions needed to support initial engagement with the Office of the Secretary of Defense, Military Departments, and Military Criminal Investigative Organizations. The DoD OIG will fill these positions through 120-day detail assignments from other DoD OIG Components. This initial staff will identify stakeholders in the DoD and communicate the key reporting requirements of Section 554; identify existing DoD programs and operations designed to prevent and respond to supremacist, extremist, and criminal gang activity of a member of the Armed Forces; and begin drafting written policies and procedures to facilitate the timely collection of data to meet annual and semiannual reporting requirements.

Further, the Deputy Inspector General for DIEM met with the Senior Advisor to the Secretary of Defense for Human Capital, and Diversity, Equity, and Inclusion; the Director for Diversity, Equity, and Inclusion; and the Director for the Diversity Management Operations Center to discuss the newly established DIEM Component and Section 554 requirements. These and future meetings establish the framework for communicating Section 554 reporting requirements with DoD Components and stakeholders.

Full Operational Capability

The DoD OIG anticipates reaching full operational capability when the:

- DoD OIG initial operating capability is established;
- DoD OIG appropriation includes sufficient funding to support Section 554 requirements;
- DoD policies establish Section 554 roles and responsibilities and enable the fulfillment of Section 554 reporting requirements;

- a fully automated system or application to efficiently and effectively manage notifications/referrals, investigations, and the results of investigations for all reporting entities mentioned in the law is in place for DoD and DoD OIG; and
- the DoD OIG has hired 90 percent of the full complement of staff dedicated to supporting the requirements of Section 554.

Upon obtaining necessary funding, the DoD OIG anticipates it will take 2 years to fully staff the DIEM Component. Achieving full operational capability in the DoD will depend on the Secretary of Defense publishing guidance directing the organizations identified in Section 554 to cooperate with the DoD OIG, develop programs that raise awareness of diversity and inclusion issues, encourage reporting of prohibited activities, and respond to allegations in a timely manner.

Challenges to Achieving Full Operational Capability

There are several significant challenges to achieving full operational capability, and the DoD OIG is working to address these issues. First, Section 554, as written, infringes on the DoD OIG's independence. Second, the effectiveness of the DoD's diversity and inclusion programs requires the DoD leadership to prioritize policy development and enforcement of the new requirements of Section 554. Lastly, the DoD OIG and the DoD must enhance existing reporting systems and develop new capabilities to track and report extremist, supremacist, and criminal gang activity by members of the Armed Forces (for example, command investigations, military police, local law enforcement). Fully addressing these three challenges and effectively integrating the new personnel dedicated to Section 554, once funded and hired, will help ensure that the DoD OIG can meet the intent of the law.

IG Independence

Section 554 contains provisions that significantly challenge the independence of the DoD OIG and duplicate existing reporting established by the IG Act. The most immediate challenges to the DoD IG's independence stem from the authority of the Secretary of Defense to appoint a Deputy Inspector General in the DoD OIG and to assign additional duties to this Deputy Inspector General. Another challenge to the DoD IG's independence is the placement of this new Deputy Inspector General in the DoD SES and the Deputy Inspector General's direct reporting relationship to the Secretary of Defense.

The IG Act establishes offices of inspectors general for the express purpose of creating independent and objective units to conduct and supervise audits and investigations relating to the programs and operations of specified Federal Departments and agencies listed. One of the statutory duties of an OIG is to keep "the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress

of corrective action.”² As such, OIGs are authorized, pursuant to the IG Act, to make such investigations and reports relating to the administration of programs and operations of the establishment as are, in the judgment of the Inspector General, necessary or desirable.³ To protect the independent judgment of the OIG in its role as an oversight body, the IG Act states that neither the head of the establishment nor the officer next in rank below such head “shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.”⁴

One of the most important independence protections of the IG Act is the authority of inspectors general to select, appoint, and employ officers and employees as may be necessary to carry out the functions, powers, and duties of the office.⁵ Additionally, the IG Act provides that, with respect to all provisions relating to the SES, the OIG shall be considered a separate agency, and the Inspector General of such office shall have all the functions, powers, and duties of any agency head or appointing official under such provisions.⁶

Section 554 creates a leadership position whose incumbent is required to simultaneously serve two leaders with distinct and often divergent interests. The Deputy Inspector General’s authority under Section 554 flows from the Secretary of Defense, not the DoD IG, and the Deputy Inspector General is a senior leader within the Office of the Secretary of Defense, not the DoD OIG. In practical effect, the Deputy Inspector General is a DoD employee detailed to duties in the DoD OIG, which undermines the independence of the DoD OIG from the DoD and the Secretary of Defense in fact and appearance. Section 554 establishes a structure that creates challenges concerning lines of authority and communication in the execution of the duties. If complainants do not believe their complaints will go to an independent, objective organization, they might not be willing to bring issues of extremist, supremacist, or criminal gang activity by members of the Armed Forces to the attention of their supervisors or the DoD IG.

Further, Section 554 requires the Deputy Inspector General—not the DoD IG—to submit semiannual reports, which include a summary of activities for the two fiscal quarters preceding the date of the report, to the Secretary of Defense and to the DoD IG. The statute also requires the Deputy Inspector General to submit, through the Secretary of Defense and the DoD IG, an annual report to the Committees on Armed Services of the Senate and the House of Representatives. Furthermore, the Secretary of Defense or the DoD IG may direct the Deputy Inspector General to submit additional reports from time to time. These reporting requirements are redundant to the semiannual reporting requirement established under the IG Act and the Secretary of Defense’s authority to direct reporting compromises the DoD OIG’s independence.

² 5 U.S.C. Appendix § 2.

³ 5 U.S.C. Appendix § 6(a)(2).

⁴ 5 U.S.C. Appendix § 3.

⁵ 5 U.S.C. Appendix § 6(a)(7).

⁶ 5 U.S.C. Appendix § 6(e)(1). The Inspector General’s authority with respect to awards for senior executives is subject to the authority of the Council of the Inspectors General on Integrity and Efficiency, as provided for in Section 11 of the IG Act.

In an effort to minimize the adverse implications associated with the requirements of Section 554, the DoD IG obtained the Secretary of Defense's delegation of authority to the DoD IG to appoint the Deputy Inspector General as a member of the SES program within the DoD OIG and clarify the reporting chain. The Secretary of Defense's action ensures that the incumbent in the position will be a member of the DoD IG's leadership team and subject to the DoD IG's direction and guidance. While the delegation of authority to the DoD IG addresses the independence concerns in the near term, the law still contains provisions that conflict with the independence of the DoD IG. Although unlikely, it is possible that a future Secretary of Defense could rescind this delegation.

To achieve a more permanent solution, the DoD OIG worked with appropriate Defense committees and the DoD Office of Legislative Affairs to propose an amendment to Section 554 necessary to remedy the independence issues, clarify roles and responsibilities, and align reporting with the existing reporting under the IG Act.

See Appendix for a detailed list of Section 554 provisions that conflict with the IG Act.

DoD Implementing Guidance

The DoD OIG anticipates the Secretary of Defense will issue broad guidance to establish responsibilities for DoD Components and procedures to meet the DoD's requirements under Section 554. The DoD OIG intends to augment this guidance with more detailed policies to ensure timely, complete, and efficient reporting.

The Secretary of Defense's endorsement and issuance of comprehensive guidance related to statutory responsibilities under Section 554 will be essential to ensuring the DoD OIG receives timely responses to requests for information and records related to prohibited activities. A whole-of-DoD effort will be required to ensure compliance with existing laws and guidance governing privacy interests, controlled unclassified information, law enforcement-sensitive information, and personally identifiable information of victims and witnesses, civilian and covered Armed Forces members, involved in incidents.

Section 554 Referral, Tracking, and Reporting Requirements

Section 554(b) requires the Secretary of Defense to establish standard policies, processes, and mechanisms for tracking prohibited activity in the Armed Forces for referral to the DoD OIG. Statute requires the DoD OIG to track, document, and report referrals of prohibited activities by members of the Armed Forces. The referral, documentation, tracking, and reporting of prohibited activities creates significant medium- and long-term challenges to the DoD OIG's fulfillment of its statutory mission. Section 554 requires the Secretary of Defense to establish policies, processes, and mechanisms to ensure the DoD IG:

- receives referrals by DoD Components to the DoD Hotline of "all allegations (and related information) that a member of a covered Armed Force" engaged in a prohibited activity;

- documents and tracks the DoD Component referral, for purposes of an investigation or inquiry, to a Military Criminal Investigative Organization, an inspector general, a military or security police organization, a military commander, or another DoD or civilian law enforcement organization or official;
- documents and tracks the referral by DoD Components to a military commander or other appropriate authority, of the final report of an investigation or inquiry into the allegation(s);
- documents the determination by DoD Components of whether a member of a covered Armed Force engaged in prohibited activity;
- documents whether a member of a covered Armed Force was subject to action by a DoD Component based on the determination made by a Military Criminal Investigative Organization, an inspector general, a military or security police organization, a military commander, or another DoD or civilian law enforcement organization or official regarding the alleged prohibited activity; and
- provides a record of, or tracks the referral to a civilian law enforcement agency of, any information described above.

Section 554(b)(2) also requires the Secretary of Defense to report the total number of referrals to the DoD IG of instances in which members of a covered Armed Force engaged in prohibited activity, as well as the total number of investigations by DoD Components or DoD OIG and inquiries conducted pursuant to referrals made to law enforcement organizations. Section 554 does not limit such law enforcement organizations to military organizations.

The DoD OIG's ability to manage the referral, documentation, tracking, and reporting of activities relating to allegations of prohibited activities by members of the Armed Forces is a challenge. The challenges associated with the data collection and tracking requirements of Section 554 are due, in large measure, to the absence or lack of interoperability of systems within the DoD to capture and track required information at command and local law enforcement organizations. The DoD OIG is not aware of a current DoD-wide application or database to effectively track administrative, nonjudicial, and judicial action taken regarding prohibited activities. Accordingly, Section 554's requirement that the Secretary report referrals and investigations or inquiries not later than December 1 of each year could create significant challenges to the DoD, as well as hinder the DoD OIG's ability to ensure accurate tracking and documentation of all such referrals, investigations, and inquiries.

The DoD IG plans to address these systems-related challenges by leveraging the DoD OIG's existing case-management system. The DoD OIG previously obtained approval to further develop and deploy the Defense Case Activity Tracking System–Enterprise (D-CATSe) to the inspectors general in the DoD to perform hotline functions and manage administrative investigations involving DoD senior officials and investigations of whistleblower reprisal. This system would be ideal to track referrals; obtain and process related documentation;

track the subsequent reports of investigation; and track command, law enforcement organizations, and judicial determinations regarding the alleged prohibited activity and action taken in response the reports. However, the DoD OIG will require additional resources to accelerate deployment of the case-management system to the Service Inspectors General and other DoD Components required to track and refer prohibited activity to ensure its long-term sustainment.

Further, the DoD OIG will require the Secretary's support to ensure that DoD Components, particularly at the command and law-enforcement-organization level, have sufficiently robust information and records management systems to provide the data and information to the DoD OIG as required under Section 554. Ideally, the Secretary of Defense would direct that DoD Components use the system identified by DoD OIG (currently D-CATSe) to report, track, and manage allegations and actions involving prohibited activity by members of the Armed Forces.

Conclusion

The DoD IG is acting with deliberation and dispatch to implement the requirements of Section 554 and address the challenges outlined above. We request that Congress address the provisions of Section 554 that conflict with the independence of the DoD OIG, and authorize and appropriate the resources to hire 80 additional personnel over 2 years and accelerate the deployment of D-CATSe to ensure the DoD can meet the requirements under the law. Without swift congressional action to address Section 554 legislative changes and funding, the DoD OIG is limited in its ability to execute the requirements of this statute.

Appendix

Section 554 Conflicts With the IG Act

The Table below summarizes several provisions of Section 554 that directly or indirectly impair the DoD’s IG independence and the DoD’s prescribed powers, duties, and responsibilities under the IG Act.

Table. Section 554 Conflicts With the IG Act

Section 554 Requirement	IG Act Requirements	Conflict Discussion
<p>(a)(1) Secretary shall appoint the Deputy IG (Deputy Inspector General).</p>	<p>§ 3(d) The IG shall appoint “Assistant Inspectors General” for audits and for investigations responsible for supervising auditing and investigative activities relating to programs and operations of the establishment.</p> <p>§ 6(a) The IG is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of the IG.</p>	<p>The IG’s authority to appoint such persons as the IG believes necessary and best suited to carry out the duties and responsibilities of the DoD Office of Inspector General (OIG) is an essential element to the IG’s independence from the DoD because OIG employees act on the behalf of the IG. If the Secretary appoints the Deputy Inspector General, that person will have an obligation to the appointing authority, regardless of whether the IG supervises, directs, and controls the duties of the Deputy Inspector General. Moreover, members of Congress, the public, and even other OIG employees might question the Deputy Inspector General’s decisions, objectivity, and independence with respect to audits, evaluations, or investigations that could result in findings that are unfavorable to the DoD.</p>
<p>(a)(1)(A) The Deputy Inspector General shall be a member of the Senior Executive Service (SES) of the DoD.</p>	<p>§§ 6(e), 6(g) The IG has the functions, powers, and duties of an agency head, including appointing authority for SES personnel. The DoD OIG’s SES program is separate and distinct from the DoD SES program and independently certified by the Office of Personnel Management. DoD OIG senior executives occupy DoD OIG SES billets.</p>	<p>If the Deputy Inspector General is a member of the SES of the DoD, that Deputy Inspector General is a DoD employee who is detailed to the DoD OIG. The Deputy Inspector General’s livelihood, evaluations, and authority would flow from the Secretary of Defense, regardless of whether the IG DoD has supervisory authority and control over the Deputy Inspector General. Because the SES is a performance-based pay system, performance awards (5-20% of base pay) made by the agency head depend in great measure on the executive’s performance in carrying out the mission as defined by the agency head. Additional Presidential Rank Awards, offering payment of 20-35% of an executive’s pay could present additional incentives to a DoD SES by rewarding particular action—or inaction—based on DoD interests. DoD OIG SES leaders are separate from the DoD SES program precisely to preserve their independence of thought, judgment, and action from the DoD. Requiring the Deputy Inspector General to be a member of the SES of the DoD directly impairs that independence.</p>

Table. Section 554 Conflicts With the IG Act (cont'd)

Section 554 Requirement	IG Act Requirements	Conflict Discussion
(a)(2)(B) The Deputy Inspector General shall perform additional duties prescribed by the Secretary or Inspector General.	§ 6(a) The IG initiates and carries out such investigations and audits relating to the DoD's programs and operations as are, in the IG's judgment, necessary and desirable. The IG selects, appoints, and employs personnel to carry out the OIG's mission.	The provision conflicts with and impairs the IG's independent authority to direct and control the conduct of audits, investigations, and evaluations into DoD programs and operations determined to be appropriate by the IG, the work conducted by OIG employees in carrying out such actions, and the priority assigned to any particular oversight project.
(a)(2)(B) The Deputy Inspector General shall perform additional duties prescribed by the Secretary or Inspector General.	§ 4(a) The IG has the duty and responsibility to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the DoD.	Authorizing the Secretary of Defense to prescribe additional duties conflicts with the IG's independence in investigations, audits, and evaluations. For example, the Secretary could direct the Deputy Inspector General, as an additional duty, to provide advance notice of any plan to investigate extremism in the military services, or to coordinate all records requests in advance. Section 554 could affect the limitations in § 3(a) and § 8 of the IG Act on the Secretary's authority over the IG; specifically, under the IG Act, the Secretary may only prohibit or prevent IG activity relating to specific national security, intelligence, and counterintelligence matters.
(a)(4)(B) Not later than 30 days after March 31 and September 30, respectively, the Deputy Inspector General shall submit to the Secretary and the IG a semiannual report including a summary of the Deputy Inspector General's activities during the preceding two fiscal quarters.	<p>§ 4(e) The IG must submit to the Secretary and Congress each document making a recommendation for corrective action. The IG must post the document to the IG's website within 3 day after submission of the recommendation to the Secretary.</p> <p>§ 5 The IG must, not later than April 30 and October 31, submit to the Secretary and the Congress semiannual reports summarizing the activities of the OIG in the preceding 6-month periods ending March 31 and September 30 and providing expressly mandated detailed information.</p>	Section 554 is duplicative of the IG's existing reporting responsibilities under the IG Act. It creates a separate reporting requirement for the Deputy Inspector General to report (to the IG and the Secretary of Defense) information that the IG is already required to report to the Secretary of Defense in the Semiannual Report (SAR). There are potential ramifications for IG independence in circumstances in which the Deputy Inspector General includes activity under the authority and control granted to the IG, even if the IG legitimately determines the SAR should not include such activity. If the Deputy Inspector General is required to include such activity in the semiannual report of Section 554 activity, but the IG reasonably determines it should not be reported, the IG and the Deputy Inspector General remain at risk of being accused of deliberately violating the law. Further, the submission of the report—to the Secretary of Defense and the DoD IG—creates a less transparent reporting requirement than the current reporting requirements for the IG under the IG Act of 1978.

Source: Section 554.

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