



## Office of Inspector General

U.S. International Development Finance Corporation

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### MEMORANDUM

**DATE:** April 6, 2026

**TO:** Board of Directors, U.S. International Development Finance Corporation  
Committee on Foreign Affairs, United States House of Representatives  
Committee on Foreign Relations, United States Senate  
Committee on Appropriations, United States House of Representatives  
Committee on Appropriations, United States Senate

**FROM:** Daniel A. Loveland, Jr., Inspector General

**SUBJECT:** Potential Consolidation of DFC's Independent Accountability Mechanism and the Office of Inspector General

Congress requested that DFC's Board of Directors (the Board) assess "any efficiencies that may be gained through the consolidation of functions of the independent accountability mechanism under the authorities of the Office of the Inspector General."<sup>1</sup> In turn, the Board and Congressional committee staff asked the DFC Office of Inspector General (the OIG) for its opinion. In addition to conducting interviews and receiving input from many stakeholders, we analyzed the relevant statutes and policies, reviewed a memorandum prepared by the DFC Office of the General Counsel (OGC),<sup>2</sup> and considered the functions of the two offices.

*First*, we believe a consolidation likely violates the law. Placing the independent accountability mechanism (the IAM) under the supervision of the Inspector General would probably violate the Inspector General Act's (IG Act) prohibition against transferring any "program operating responsibilities" to an Inspector General.<sup>3</sup> Case law holds that core functions specifically delegated to an agency by Congress are program operating responsibilities.<sup>4</sup> And the BUILD Act's text is such a Congressional delegation because it assigns the creation of the IAM to the Board and sets the IAM and its delineated functions apart from the amendments to the IG Act that created our office.<sup>5</sup> Additionally, the IAM's statutorily mandated function of "provid[ing] a forum for resolving concerns"<sup>6</sup> is analogous to an ombudsman's function of informally resolving disagreements. This

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<sup>1</sup> DFC Modernization and Reauthorization Act of 2025, Pub. L. No. 119-60, § 8733.

<sup>2</sup> Memorandum from DFC OGC to DFC Inspector General (Mar. 18, 2026) (Hereinafter, "OGC memo").

<sup>3</sup> 5 U.S.C. § 415(b); *see also* § 422(a)(2) (same prohibition for "establishment" Inspectors General).

<sup>4</sup> *See Burlington N. R.R. Co. v. Off. Inspector Gen., R.R. Ret. Bd.*, 983 F.2d 631 (5th Cir. 1993); *Truckers United for Safety v. Mead*, 251 F.3d 183 (D.C. Cir. 2001).

<sup>5</sup> BUILD Act of 2018, Pub. L. No. 115-254, codified at 22 U.S.C. §§ 9601 *et seq.*; 22 U.S.C. § 9614(a).

<sup>6</sup> 22 U.S.C. § 9614(b)(2).

mediation function was viewed as a program operating responsibility by the EPA, EPA OIG, and the Government Accountability Office (GAO) when considering whether to place the EPA's Ombudsman under that agency's Inspector General.<sup>7</sup> To avoid violating the IG Act, the EPA Ombudsman's mediation role was not transferred to the EPA Inspector General.

*Second*, the nature of the IAM's functions conflicts with the way the OIG conducts its neutral and detached audits and investigations. Put simply, engaging with stakeholders with an eye towards mediating disagreements is at odds with the OIG's neutral fact finding and best practices for audits and investigations.<sup>8</sup> This conflict in functions is related to the different purposes of the two offices. OIGs evaluate waste, fraud, and abuse within an agency and—per Congressional mandate—are separate from an agency's policymaking and operative missions. In contrast, the IAM is external facing with a particular focus on problem solving, conflict resolution, community engagement, and “enhancing information flows between locally impacted communities and their representatives, project sponsors and decision-makers.”<sup>9</sup> We found no example of another Inspector General who supervises functions analogous to the IAM.

There would be some efficiencies created from consolidation, but these efficiencies would be outweighed by the problems a consolidation would create. Per Board Resolution and the IAM's Terms of Reference, the IAM yields to the OIG's jurisdiction and so there should be no significant overlap in the two offices' operations.<sup>10</sup> But when oversight inputs come to leadership from multiple locations within an organization, it makes it difficult to effectively assimilate information and act upon it. Moreover, as OGC's memo notes, the IAM's independence would be increased by placing it under the Inspector General, thus providing it with the structural protections Congress mandated in the IG Act—though doing so would limit its ability to effectively exchange information between DFC leadership and stakeholders. Ultimately, many of the key efficiencies suggested by OGC's memo would create potential conflicts of interest that would require additional resources to manage.

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<sup>7</sup> U.S. Gov't Accountability Off., [GAO-03-92, Environmental Protection: Issues Raised by the Reorganization of EPA's Ombudsman Function](#) 12 (Oct. 2002).

<sup>8</sup> See Council of the Inspectors General on Integrity and Efficiency, [Quality Standards for Investigations](#), 6–7 (Jul. 15, 2025); Gov't Accountability Off., [Government Auditing Standards](#), §§ 3.11, 3.64, 3.73–3.78 (Feb. 2024); Council of the Inspectors General on Integrity and Efficiency, [Quality Standards for Federal Offices of Inspector General](#), 7 (Aug. 2012); Council of the Inspectors General on Integrity and Efficiency, [Quality Standards for Inspection and Evaluation](#), 3-4 (Dec. 2020).

<sup>9</sup> [Terms of Reference for the Independent Accountability Mechanism of the U.S. International Development Finance Corporation](#), 5 (Dec. 4, 2024) (Hereinafter, “IAM TOR”); [Implementation Document for the Independent Accountability Mechanism for the U.S. International Development Finance Corporation](#), §§ 1, 3 (Sept. 9, 2020) (Hereinafter, “Board Resolution”).

<sup>10</sup> Board Resolution, § 7; IAM TOR, at 6. Consistent with these policies, our interviews of relevant DFC personnel showed that there was no remembered instance where the IAM and the OIG were engaged on the same issue.

*Third*, our review led us to some suggestions related to the structure and practices of the IAM. We suggest the Board may wish to work with the new IAM Director to consider structural and policy changes, including: (1) placing the IAM within a program oversight and reporting unit, permitting the IAM to better function as an information conduit while increasing structural protections of its independence; (2) clarifying the scope of the IAM’s exclusions (instances where the IAM should cease its work); (3) improving the IAM’s institutional competencies for fact finding; and (4) clarifying how the IAM can balance its mediation function with fact finding to address conflicts of interest.

## **I. Statutory Analysis.**

The OIG was established by the Better Utilization of Investments Leading to Development Act of 2018 (BUILD Act)<sup>11</sup> and gets its authority from the IG Act.<sup>12</sup> The IG Act safeguards Inspector General independence by prohibiting the OIG from assuming agency program operating responsibilities.<sup>13</sup> For the reasons below, we conclude that placing the IAM under the Inspector General’s supervision likely violates that prohibition.<sup>14</sup>

The IG Act’s prohibition against placing a program operating responsibility under the Inspector General is based on two concerns that are aimed at safeguarding the Inspector General’s structural independence. *First*, any agency functions or activities that are supervised by an Inspector General can no longer be evaluated by an OIG as a neutral, detached, and independent body. *Second*, program operating responsibilities by their nature require the supervision of an agency’s leadership. Placing such a function under the Inspector General by necessity gives that agency more supervision and direct influence over the Inspector General than what Congress carefully prescribed in the IG Act.

Congress wanted Inspectors General to be able to independently evaluate as much of an agency’s operations as practicable. Each time a piece of an agency is relinquished to an Inspector General’s supervision, that Inspector General can no longer evaluate that piece with neutral, detached

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<sup>11</sup> BUILD Act of 2018, Pub. L. No. 115-254, codified at 22 U.S.C. §§ 9601 *et seq.*

<sup>12</sup> 5 U.S.C. §§ 401–424.

<sup>13</sup> 5 U.S.C. § 415(b).

<sup>14</sup> The OGC memo only considered placing the IAM Director and their staff under the supervision of the Inspector General and did not consider any other ways the functions could be consolidated, such as any reduction in staffing. Thus, our review is focused on the legality, feasibility, and potential efficiencies of placing the IAM under the supervision of the Inspector General. Relatedly, Congress required the Board’s report on consolidation to explain, “how the Inspector General of the Corporation would develop an internal environmental, social, and governance expertise to adequately replace the [IAM]’s.” As the only contemplated consolidation is placing the IAM with its staff under the supervision of the Inspector General, this question is answered by that structure: the Inspector General would acquire the relevant expertise by supervising the IAM as currently constituted. While the IAM Director position is currently vacant, the process to hire a new IAM Director will include a consideration of the candidates’ relevant expertise in these areas.

independence. Additionally, Congress carefully designed the Inspector General’s own operating structure—including details such as to whom they report, how much they are paid, what type of staff they may employ, what authorities they have, and the like—to remove the need for agency leadership to make those types of management decisions for an OIG. The more of a role an agency has in designing, budgeting, managing, and supervising an Inspector General, the less independent an Inspector General becomes. The loss of this independence reduces the credibility of an Inspector General to make neutral, detached recommendations to the Board and Congress.

#### **A. Case Law and Legal Opinions.**

The IG Act specifically prohibits an OIG from assuming the agency’s “program operating responsibilities.”<sup>15</sup> That phrase is not defined by the IG Act and has been addressed by courts only in the context of ruling on the enforceability of subpoenas issued by Inspectors General. These cases do not offer a general definition of “program operating responsibilities,” but they are instructive.

Most helpful concerning the general contours, the Department of Justice’s Office of Legal Counsel (OLC) has examined the issue on at least two separate occasions.<sup>16</sup> Considering the full text and scope of the IG Act as well as its legislative history, OLC explained:

Congress concluded that the existing audit and investigative units were inadequate to deal with this problem because they reported to, and were supervised by, the officials whose programs they were to audit and investigate. The Act addressed both the underlying problem and this organizational defect. The Inspector General was to deal with fraud, abuse and waste in the operations of Federal departments and agencies and in federally funded programs. The Inspector General was to be an objective official reporting directly to the head of the department and not to the program head whose operations were to be audited and investigated. This objectivity was to be fostered by a lack of conflicting policy responsibility: The legislation gives the Inspector General no conflicting policy responsibilities which could divert his attention or divide his time; his sole responsibility is to coordinate auditing and investigating efforts and other policy initiatives designed to promote the economy; efficiency and effectiveness of the programs of the establishment.<sup>17</sup>

Thus, program operating responsibilities include activities such as managing program operations, supervising program personnel, and exercising policy responsibility over the programs the OIG might otherwise audit or investigate. Congress sought to keep these conflicting responsibilities separate from the Inspector General’s oversight role.

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<sup>15</sup> 5 U.S.C. § 415(b) (“There shall not be transferred to such office any program operating responsibilities.”).

<sup>16</sup> Not all OLC opinions are publicly available, and we only sought to review those that are.

<sup>17</sup> U.S. Dep’t Just., Off. Legal Couns., [Memorandum Opinion, Inspector General Authority to Conduct Regulatory Investigations](#), 58–59 (Mar. 9, 1989) (cleaned up).

What constitutes an agency’s program operating responsibility turns on the (1) nature of the specific function and (2) that agency’s mission as shown by the responsibilities Congress has assigned to that agency. For example, given its mission and statutory texts, “the conduct of criminal litigation is one of the Department[ of Justice’s] central program operating responsibilities” and “[t]ransferring criminal litigating responsibilities to OIG would undermine its independence.”<sup>18</sup> Some obvious DFC program operating responsibilities include selecting which applicants should be awarded a DFC-funded loan or choosing where to invest taxpayer funds to best advance national security.

Turning to case law, the through line is that the IG Act is violated whenever (1) an agency attempts to transfer a core function delegated to it by Congress to its Inspector General or (2) an Inspector General and an agency have concurrent compliance responsibilities but the Inspector General works in concert with the agency (rather than independently) to supply the agency with extra investigative tools.

In the seminal case on this issue, the Inspector General of the Railroad Retirement Board (the RRB) issued a subpoena in furtherance of a compliance audit related to that agency’s program of administering benefits for railroad employees.<sup>19</sup> The relevant statute explicitly delegated the responsibility of administering the program, and assessing compliance, to the agency’s governing board: “The Board shall have power to require all [relevant parties] to furnish such information and records as shall be necessary.”<sup>20</sup> But the RRB “never exercised this power” and instead relied on IRS investigations.<sup>21</sup> Because the RRB never undertook the responsibilities delegated to it by Congress, the court held the Inspector General had assumed program operating responsibilities in violation of the IG Act. As the court explained, “when a regulatory statute makes a federal agency responsible for ensuring compliance with its provisions,” an Inspector General cannot conduct investigations or audits “which are designed to carry out that function directly.”<sup>22</sup>

Subsequent cases have clarified that an agency and its Inspector General may properly exercise concurrent investigative or audit responsibilities.<sup>23</sup> The key question is whether an agency *relinquishes* to the Inspector General a responsibility assigned to it by Congress: “In order for a transfer of function to occur, the agency would have to relinquish its own performance of that function.”<sup>24</sup>

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<sup>18</sup> U.S. Dep’t Just., Off. Legal Couns., [Memorandum Opinion, Access of Department of Justice Inspector General to Certain Information Protected from Disclosure by Statute](#), 47 (Jul. 20, 2015).

<sup>19</sup> *Burlington N. R.R. Co. v. Off. Inspector Gen., R.R. Ret. Bd.*, 983 F.2d 631 (5th Cir. 1993).

<sup>20</sup> 45 U.S.C. § 231f(b)(6).

<sup>21</sup> *Burlington N. R.R. Co.*, 983 F.2d at 634.

<sup>22</sup> *Id.* at 642.

<sup>23</sup> *Winters Ranch P’ship v. Viadero*, 123 F.3d 327, 334 (5th Cir. 1997).

<sup>24</sup> *Id.*; see also *Univ. of Med. & Dentistry of New Jersey v. Corrigan*, 347 F.3d 57, 67 (3d Cir. 2003) (“The important issue here is not whether the inspector general is doing something that HHS itself (or its

The IG Act is also violated where an Inspector General uses authorities granted to them by the IG Act to support an agency’s programmatic responsibilities—rather than to conduct an independent investigation or audit.<sup>25</sup> This means Inspectors General cannot use their subpoena power or any law enforcement authorities to carry out responsibilities that have been directly assigned to the agency.

**B. The BUILD Act delegated and entrusted the creation and operation of the IAM to the Board, thus the IAM’s functions are program operating responsibilities.**

Placing the IAM under the supervision of the Inspector General would constitute a transfer because DFC would be relinquishing the IAM’s functions. The remaining question is whether the IAM’s functions constitute a program operating responsibility. As shown by case law and OLC opinions, the key consideration is the relevant statutory texts.<sup>26</sup> And here, the statute’s text shows that IAM’s functions were specifically delegated to DFC with the congressional expectation that DFC would be responsible for administering them.<sup>27</sup>

The BUILD Act spends fewer than 75 words creating the IAM, and the relevant section begins, “The Board shall establish a transparent and independent accountability mechanism.”<sup>28</sup> The IAM’s functions are to:

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agents) might also do, but whether the PATH audits are within the authority granted the inspector general by the Inspector General Act.”).

<sup>25</sup> *Truckers United for Safety*, 251 F.3d at 190 (When the Inspector General “merely lent his search and seizure authority to standard [] enforcement investigations” the Inspector General “involved himself in a routine agency investigation” in excess of the authorities given in the IG Act); *Corrigan*, 347 F.3d at 67.

<sup>26</sup> See *Burlington N. R.R. Co.*, 983 F.2d at 642 (“[W]hen a regulatory statute makes a federal agency responsible for ensuring compliance with its provisions, the Inspector General of that agency will lack the authority to make investigations or conduct audits which are designed to carry out that function directly.”); *Winters Ranch P’ship*, 123 F.3d at 334 (“Thus, the agency head cannot convey to the IG any of the agency’s congressionally-delegated program operating responsibility.”); U.S. Dep’t Just., Off. Legal Couns., [Memorandum Opinion, Access of Department of Justice Inspector General to Certain Information Protected from Disclosure by Statute](#), 47 (Jul. 20, 2015) (concluding that criminal litigation is a core function of DOJ, and thus a program operating responsibility, through review of relevant statutes); U.S. Dep’t Just., Off. Legal Couns., [Memorandum Opinion, Inspector General Authority to Conduct Regulatory Investigations](#), 58–59 (Mar. 9, 1989) (looking to the Wages and Fair Labor Standards Act and Occupational Safety and Health Act to determine Department of Labor’s program operating responsibilities).

<sup>27</sup> There are probably some agency functions that are common to most agencies but by their nature are “program operating responsibilities” because they require direct agency involvement or entail providing services for the agency that are unrelated to compliance. For example, providing Information Technology or Human Resources services. The IAM does not fit into these categories, so we focus instead on Congressional intent as established by the BUILD Act’s text and a historical analogue.

<sup>28</sup> 22 U.S.C. § 9614(a).

- (1) annually evaluate and report to the Board and Congress regarding compliance with environmental, social, labor, human rights, and transparency standards, consistent with Corporation statutory mandates;
- (2) provide a forum for resolving concerns regarding the impacts of specific Corporation-supported projects with respect to such standards; and
- (3) provide advice regarding Corporation projects, policies, and practices.<sup>29</sup>

Congress entrusted all specifics of *how* the Board should go about creating the IAM and its three functions to the Board. And the language Congress used in this delegation to the Board is very similar to the language at issue in the RRB case discussed above. In both statutes, Congress used similarly broad, mandatory language: each provision begins with “The Board shall” and then states the general obligation, while leaving the details of implementation to the respective Boards.<sup>30</sup>

In the preceding section of the BUILD Act, Congress made minor edits to the IG Act that consisted of adding references to the DFC at various points in the statutory text so that DFC OIG would be created with the exact same authorities, responsibilities, expectations, and structure of all other designated federal entity Inspectors General.<sup>31</sup> It is noteworthy that Congress set the IAM’s creation separate and apart from the creation of our office.

In contrast to the broad, brief delegation to the Board concerning the creation of the IAM, the IG Act is highly prescriptive. It specifies in detail the duties and responsibilities of Inspectors General.<sup>32</sup> It specifies the level of pay for Inspectors General.<sup>33</sup> It specifies required positions under the Inspectors General.<sup>34</sup> It doesn’t just require an annual report, it requires semiannual reports—released not later than April 30 and October 31—and includes a 22-point list, with sub-bullets, of types of information that must be contained in the semiannual reports.<sup>35</sup> The structure of the OIGs is specified: to whom an Inspector General reports, how they can be removed, and what functions they must take and cannot take.<sup>36</sup> Indeed, the section of the IG Act concerning websites contains more than four times as many words as the BUILD Act’s discussion of the IAM.<sup>37</sup>

Moreover, the BUILD Act did not give the IAM any authorities distinct from the authorities of DFC, whereas the IG Act goes into detail about the ability of an Inspector General to subpoena

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<sup>29</sup> 22 U.S.C. § 9614(b).

<sup>30</sup> Compare 45 U.S.C. § 231f(b)(6), with 22 U.S.C. § 9614.

<sup>31</sup> BUILD Act of 2018, Pub. L. No. 115-254, § 1414.

<sup>32</sup> 5 U.S.C. § 404.

<sup>33</sup> 5 U.S.C. § 423(b).

<sup>34</sup> 5 U.S.C. § 403.

<sup>35</sup> 5 U.S.C. § 405.

<sup>36</sup> 5 U.S.C. §§ 403–06; 415.

<sup>37</sup> 5 U.S.C. § 420.

records, require under-oath statements, select and appoint officers and employees, and the like.<sup>38</sup> The IAM does not have any special compliance powers beyond those that DFC already possesses. Importantly, the BUILD Act does not contemplate that the IAM must have an ongoing compliance function, only that the IAM must provide an annual report regarding compliance on specified topics. The choice to have IAM play a role in ongoing, iterative compliance assessments is the Board’s—currently enacted through the Board’s Resolution and operative Terms of Reference.<sup>39</sup> Therefore, the text of the relevant statutes does not suggest there should be any significant overlap between the IAM and the OIG.

Congress delegated to DFC’s Board the responsibility of creating, staffing, supervising, empowering, and administrating the IAM. All the specifics about how to operationalize the IAM’s three functions were left to DFC. Thus, Congress specifically delegated the IAM to DFC as a core function and it is a program operating responsibility that cannot be placed under the supervision of the Inspector General without statutory change. Whereas the IG Act is designed to specify in detail all the duties, responsibilities, and requirements of Inspectors General so that agencies need not make those choices—the IAM’s operations were fully delegated to the Board. The IAM’s current role is much broader than what Congress requires.

**C. The historical example of the EPA’s Ombudsman further supports the conclusion that the IAM includes program operating responsibilities.**

One of the IAM’s explicit functions is to “provide a forum for resolving concerns regarding the impacts of specific Corporation-supported projects with respect to such standards.”<sup>40</sup> As discussed below in Section II, this function is very different from running investigations and audits through neutral, detached procedures. Dispute resolution benefits DFC’s programs and can help advance the aims of specific investments because it extinguishes legal claims against DFC and its partners; it fosters goodwill towards DFC and its partners; and it can help address concerns about publicity.<sup>41</sup>

In 2001, EPA consolidated its ombudsman function under its Inspector General. But it chose to omit the ombudsman’s mediation function because including it “would have conflicted with the Inspector General Act, as amended, which prohibits an agency from transferring any function, power, or duty involving program responsibilities to its OIG.”<sup>42</sup> As the GAO report explained, “the role of an ombudsman typically includes program operating responsibilities, such as helping to informally

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<sup>38</sup> 5 U.S.C. § 406.

<sup>39</sup> Board Resolution, § 6; IAM TOR, at 7.

<sup>40</sup> 22 U.S.C. § 9614.

<sup>41</sup> *See generally* Int’l Chamber of Com., [Effective Conflict Management](#) (Jul. 2023).

<sup>42</sup> U.S. Gov’t Accountability Off., [GAO-03-92, Issues Raised by the Reorganization of EPA’s Ombudsman Function](#) 12 (2002).

resolve disagreements between the agency and the public.”<sup>43</sup> The records that we could find some 24 years later did not contain a thorough analysis of *why* the mediation function was considered a program operating responsibility. But records from a Senate Hearing suggest that all parties, the EPA, the Inspector General, and the GAO, agreed that the mediation function was a program operating responsibility.<sup>44</sup> This is consistent with our other research: a mediation function involves resolving disputes in a way that is advantageous to the agency because it promotes goodwill, reduces potential costs, and helps advance a given project or objective’s aims. Therefore, a mediation function is bound up in an agency’s operations and its ability to administer its programs, consistent with a program operating responsibility.

This historical example provides support for our conclusion that the IAM is a program operating responsibility. In addition to text showing that Congress delegated the full operations of the IAM to DFC’s Board as a core function, this example suggests that mediation functions generally are program operating responsibilities. And the IAM’s mediation function is one of three required by Congress and cannot be separated from the IAM’s overall mission.

#### **D. The OIG cannot maintain independent oversight while carrying out program operating responsibilities.**

Congress intentionally barred Inspectors General from assuming program operating responsibilities because, in its view, doing so would compromise their ability to function independently. The IG Act embodies the view that an Inspector General cannot independently perform their core function of assessing waste, fraud, and abuse through audits and investigations if the Inspector General has some responsibility for the programs that they are supposed to be auditing and investigating.<sup>45</sup> Any function transferred to the supervision of the Inspector General can no longer be evaluated through the lens of structural independence required by the IG Act. If DFC were to relinquish the IAM’s functions to the OIG, the OIG would no longer be able to provide oversight of the IAM—including oversight over the necessary choices DFC made and continues to make in creating and supervising the IAM. Simply put, evaluations and assessments of the IAM’s organization and operations, such as those contained in Section III of this report, could not happen following a consolidation.

Additionally, program operating responsibilities are subject to management by agency leadership. Locating those responsibilities within the OIG would therefore increase agency control over the Inspector General in a manner contrary to the independence Congress sought to preserve. Because

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<sup>43</sup> *Id.*

<sup>44</sup> S. Hrg. 107-1003, [Office of the Ombudsman at the Environmental Protection Agency](#) (June 25, 2002).

<sup>45</sup> See 124 Cong. Rec. 10,405 (1978) (quoting Representative Elliott Levitas, a co-sponsor of the IG Act, “the Inspector General will first of all be independent and have no program responsibility to divide allegiances.”).

Congress fully delegated broad policy choices of how to operationalize the IAM, placing IAM within OIG would leave DFC with substantial managerial authority over a component of the office, thereby eroding the structural independence required by the IG Act.

## **II. An Assessment of the Efficiencies and Conflicts Resulting from a Consolidation of the OIG's and the IAM's Functions.**

Placing the IAM under the supervision of the Inspector General would create conflicts in their functions that outweigh any added efficiencies. The main friction points created by a potential consolidation are (1) it would foreclose the Inspector General's ability to independently evaluate the IAM; (2) it would decrease the structural independence Congress created for the Inspector General by requiring the Board to create and manage a portion of the OIG (the IAM); and (3) the IAM's required role in facilitating dispute resolution is inconsistent with the OIG's role to conduct neutral, detached, and independent investigations and audits. The first two friction points were addressed above because they were bound up in the statutory analysis. The third point will be addressed here, and it also informs our suggestions regarding the IAM's internal structure and practices in Section III.

### **A. There is a conflict between the OIG's investigation and audit functions and the IAM's mediation function.**

Congress created structural independence for Inspectors General to increase the credibility of their audits and investigations. In addition to those structural safeguards, our audits and investigations derive credibility from the rigor, objectivity, and consistency of our procedures. We find facts in a neutral and detached way and avoid conflicts of interest, including those caused by relationships with witnesses. The IAM is designed to function as a bridge between DFC leadership and locally impacted communities and has the statutory responsibility of providing "a forum for resolving concerns."<sup>46</sup> These different functions are in tension. For example, an investigator's ability to be neutral and detached is compromised if they have established relationships with the witnesses, subjects, or targets of an investigation, including if the investigator plays a role in dispute resolution.<sup>47</sup> Likewise, a mediator should not have any role in the underlying controversy, nor any other relationship with the parties seeking dispute resolution.<sup>48</sup>

Serving as an investigator or auditor is incompatible with serving as a mediator for the same matter, and vice versa. This intuitive principle reflects the understanding that mediation involves building relationships with parties in ways that are at odds with neutral, detached fact finding. This principle is embedded throughout our legal system and is explicit in the standards and policies that the OIG employs for its audits and investigations. Major guidelines for mediation or arbitration in the United States indicate that serving as an investigator or auditor and interviewing the very people you are

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<sup>46</sup> 22 U.S.C. § 9614(b)(2).

<sup>47</sup> See [Quality Standards for Investigations](#), at 6–7.

<sup>48</sup> See Am. Bar Ass'n, [Model Standards of Conduct for Mediators](#), 3–4 (Sept. 2005).

mediating would create a conflict of interest.<sup>49</sup> In our judicial system, serving as a mediator is inconsistent with serving as a judicial fact finder. For example, the U.S. District Court for the District of Columbia explicitly bars its mediators from having any case communications with the presiding judge on the case.<sup>50</sup> In the criminal system, “[t]he court must not participate” in any plea negotiations<sup>51</sup> because doing so “depreciates the image of the trial judge as a fair and neutral arbiter.”<sup>52</sup>

Viewed from the other side, such a relationship would likewise cause a conflict of interest for investigators and auditors by impairing their ability to be impartial.<sup>53</sup> GAO’s Government Auditing Standards, which are central to the OIG’s audit work, require independence in both fact and appearance.<sup>54</sup> Placing the IAM within the OIG would create conflicts of interest any time parties in a mediation are also witnesses, subjects, or targets in any audit or investigation. And while the IAM cedes responsibility when the OIG’s jurisdiction is present, this does not eliminate the risk that persons and entities the IAM interacts with through mediations will be witnesses in an OIG audit or investigation.<sup>55</sup> Many, if not most, of the improved operational efficiencies the OGC memo cites<sup>56</sup> such as shared investigative support staff, common data management systems, investigative expertise, evidence collection and analysis—would actually be sources of potential conflicts of interest that would add complexities and inefficiencies to administering an office that has both OIG and IAM functions. Put simply, the main claimed efficiencies are actually the sources of friction that counsel against a consolidation.

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<sup>49</sup> *See id.* at 4 (“A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or any relationship between a mediator and any meditation participant . . .”); Am. Bar Ass’n, [Ethical Guidelines for Settlement Negotiations](#) (Aug. 2002); Int’l Ombuds Ass’n, [Standards of Practice](#) (Mar. 17, 2022).

<sup>50</sup> U.S. Court of Appeals for the District of Columbia Circuit, [USDC Mediation FAQs](#).

<sup>51</sup> Fed. R. Crim. P. 11(c)(1).

<sup>52</sup> *United States v. Bradley*, 455 F.3d 453, 460–61 (4th Cir. 2005) (quotation edited slightly for clarity).

<sup>53</sup> *See* [Quality Standards for Investigations](#), at 7; Gov’t Accountability Off., [Government Auditing Standards](#), §§ 3.11, 3.64, 3.75–3.76 (Feb. 2024); Council of the Inspectors General on Integrity and Efficiency, [Quality Standards for Federal Offices of Inspector General](#), 7 (Aug. 2012); Council of the Inspectors General on Integrity and Efficiency, [Quality Standards for Inspection and Evaluation](#), 5 (Dec. 2020).

<sup>54</sup> Government Accountability Office, [Government Auditing Standards](#) (February 2024) 3.18–3.25, pages 28–31.

<sup>55</sup> Board Resolution, § 7; IAM TOR, at 6.

<sup>56</sup> OGC Memo (suggesting there will be efficiency gains from shared investigative, audit, and inspection expertise; audit and inspection methodologies; evidence collection and analysis; reporting protocols and recommendation follow-up; and case management systems).

We also disagree that a consolidation would improve oversight best practices, at least where the OIG's functions are concerned.<sup>57</sup> As explained above, the IAM's statutorily required mediation role is inconsistent with neutral, detached fact finding and best practices of running audits and investigations. This is a principle recognized throughout our legal system. Placing the IAM under the supervision of the Inspector General would not enhance the OIG's mission. Instead, it would create conflicts of interest that require careful management that might necessitate additional personnel or management tools.

As one example, the IAM is currently seeking a mediated resolution for complaints made by local community members who are potentially affected by a DFC project. In this role, the IAM is coordinating with the project's partner and individual community members, setting up a forum for discussions, engaging a contractor from that country to serve as a mediator, and otherwise facilitating the discussions. If any of those parties were witnesses in an OIG audit or investigation, there would be a conflict of interest. We could not simultaneously interview an employee of a project partner who may have violated their obligations to DFC while sitting down with members of that organization at a mediation table to help resolve a dispute with affected community members. And attempting to explain to such a party that the OIG investigations and audit teams are mostly separate from the OIG IAM team (a partial solution addressed below) would reduce the effectiveness of both functions. Mediators connected to investigative staff would be less trusted to help resolve disputes. And investigators and auditors would be hard pressed to credibly say their only focus was obtaining facts—not attempting to push any party towards a resolution.

**B. The IAM functions cannot have access to any of the investigative authorities the Inspector General is given by the IG Act.**

As discussed in Section I, the IG Act is violated where an Inspector General uses authorities granted to them by the IG Act for purposes other than supporting its investigations and audits.<sup>58</sup> Inspectors General are given investigative tools that include subpoena power and the ability to compel under-oath statements.<sup>59</sup> Because the IAM's functions cannot have access to these tools, the efficiencies contemplated by the OGC memo are further negated for many of the same reasons discussed just above.

**C. The conflict could be partially addressed by structural mechanisms within a consolidated office, but not without creating more problems.**

The conflict and authorities issues can be partially addressed by walling off the IAM function from most of the OIG's personnel. Such an arrangement could involve certain senior leaders, such as the

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<sup>57</sup> To the extent the underlying concern in OGC's memo relates to the need to improve the IAM's fact finding practices, we agree, and offer suggestions for this in Section III.

<sup>58</sup> *Truckers United for Safety*, 251 F.3d at 190; *Corrigan*, 347 F.3d at 67.

<sup>59</sup> 5 U.S.C. § 406.

Inspector General and Deputy Inspector General, being privy to all information within the OIG while separating the audit and investigation teams from the IAM.<sup>60</sup> But we believe this would be an inefficient solution that would ultimately create more problems than it would solve.

*First*, the Inspector General and others with information from both sides of the wall would likely have to adopt policies to remove themselves from direct participation in certain investigative, audit, or IAM functions, at least when there are identifiable conflicts of interest. This is problematic in a small office such as ours, which currently has only 13 employees. For example, over the past year, the then Acting Inspector General conducted several interviews herself. The Inspector General should be available to participate directly in important investigation or audit functions. In this way, rather than increasing efficiencies, consolidating the OIG and the IAM would actually further constrain the OIG's resources by removing the ability of certain OIG employees to partake in certain activities.

*Second*, the IAM's effectiveness in conducting mediations would be reduced. Participants in a mediation may understandably have concerns about participating when they may be simultaneously subject to interviews or information requests from other parts of the same office. Likewise, the OIG's effectiveness in conducting audits and investigations would be reduced for the same reasons. We have been unable to find any Inspectors General who supervise functions analogous to the IAM. Indeed, the one historical example we found, discussed above, treated the mediation function of an ombudsman as statutorily incompatible with an OIG's functions.

*Third*, this structure would defeat the main point of consolidating the two offices—the gained efficiencies of information sharing about compliance issues and shared expertise cited in OGC's memo. If the teams are separated from each other, they will not benefit from shared insights or learn from each other as they conduct their work. And there will not be any long-term efficiencies resulting from streamlining of personnel because the teams will operate separately. Indeed, creating an internal separation might necessitate additional personnel or resources to manage conflicts of interest between the audit/investigations and IAM sides of a combined office.

#### **D. Some efficiencies would be gained by consolidating the IAM under the supervision of the Inspector General.**

Consolidating the functions of the two offices would streamline information flow to DFC leadership about compliance issues. Complaints received by the IAM currently flow to the OIG where appropriate during the regular course but housing the two offices under the same supervision would

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<sup>60</sup> At the Department of Justice, senior officials are privy to information from parallel criminal and civil investigations, including some information that cannot be shared between the separate criminal and civil teams. This requires a carefully constructed policy and often involves full time staff whose job it is to serve as a coordinator between the segregated criminal and civil teams. While the situation is only roughly analogous to the present case, it shows that separation can be achieved. But it also shows the resources required to achieve such a separation, including the implementation of policies and the commitment of personnel to the administrative tasks arising from the arrangement. See U.S. Dep't Just., [Justice Manual](#), § 1-12.000 (Nov. 2018).

allow senior members of the OIG who are “above the wall” to appropriately guide resources. Ultimately, for the reasons discussed above, we do not believe the efficiencies would outweigh the challenges posed by the conflicting functions and differing objectives.

Additionally, Congress referred to an “independent accountability mechanism” but did not provide any guidance to the Board about how to make the IAM “independent” nor did it create any structural protections for the IAM. If the IAM were placed under the supervision of the Inspector General, it would be subject to the protections Congress set forth in the IG Act and the laudable goal outlined in the OGC memo of increasing the IAM’s independence would be achieved. But, in addition to the issues already discussed, we do not believe that the functions of the IAM are best met through this structure, particularly its mediation and information conduit functions.

The IAM’s Terms of Reference lists “enhancing information flow between locally impacted communities and their representatives, project sponsors, and decision-makers” as its first purpose and objective.<sup>61</sup> The IAM needs to be placed within the organization in a way that allows it to achieve this goal. As discussed in Section III below, we believe the governing statutes provide a way to give the IAM more structural independence while empowering it to better meet its stated goals.

### **III. Suggestions for the Structure and Practices of the IAM.**

Our analysis gave us the opportunity to carefully consider the IAM’s functions at DFC, leading to some suggestions regarding the IAM’s structure and policies. And the transition to a new IAM Director provides a natural time to implement improvements, as the Board finds appropriate. As Congress delegated all details related to the IAM’s creation and management to the Board, we suggest the Board consider the following in consultation with the new IAM Director. These suggestions are not formal recommendations and are intended only to assist the Board. Some suggestions may become moot depending on other choices the Board or the new IAM Director make.

1. Consider placing the IAM as or within a “Portfolio Oversight and Reporting” unit thus enhancing the IAM’s structural safeguards for independence while simultaneously providing the IAM with more direct access to senior leadership so that it may be better positioned to provide advice and enhance information flows.
2. Clarify and refine the scope of “exclusions,” with a particular focus on instances where (a) the parties have entered litigation and (b) claims are being investigated by other IAMs involved with the project.
3. For any fact finding functions that the IAM undertakes, consider improvements to the IAM’s institutional competencies, including by working with trained investigators (contractors or FTEs) and adopting policies based on best investigative practices.

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<sup>61</sup> IAM TOR, at 5.

4. Clarify how the IAM will deal with internal conflicts of interest regarding its compliance and mediation functions, specifically, how it will ensure impartiality when it is interacting with parties as both witnesses and mediation participants.

**A. Consider placing the IAM under a Portfolio Oversight and Reporting unit.**

The BUILD Act does not provide the IAM with any structural safeguards for independence. And the functions assigned to the IAM by Congress, as well as the functions assigned to the IAM by the Board, counsel against placing the IAM outside of DFC’s normal reporting structure. A complete separation of the IAM from DFC’s chain of command reduces the IAM’s effectiveness in problem solving, dispute resolution, and information exchange—which are core purposes of the IAM as articulated by the BUILD Act, the Board’s Resolution, and the current Terms of Reference.

As Congress has shown by its different statutory approaches, independence can be operationalized in different ways depending on the function and purpose of the entity at issue. So that they could focus on assessing waste, fraud, and abuse within an agency, Congress deliberately set Inspectors General apart from their agencies and significantly limited the types of functions an Inspector General can perform. It follows that if the IAM is going to focus on external stakeholders, engage in proactive problem solving, mediate disputes, and serve as an informational conduit between DFC leadership and affected communities, it should not have the same structure.

The IAM’s ability to effectively enhance information flows between community members and decision-makers is reduced by its current placement of reporting directly to the Board, which is comprised primarily of members who have other job responsibilities. Placing the IAM under the supervision of the Inspector General would only further hamper this function. To continue the metaphor, the IAM cannot be a conduit if it is not connected to DFC.

To balance these competing interests, we suggest that the Board consider placing the IAM as or within a “Portfolio Oversight and Reporting” unit as set forth in the DFC Modernization and Reauthorization Act of 2025.<sup>62</sup> The IAM’s role is consistent with one of the listed functions, “monitoring for compliance with all applicable laws and ethics requirements.”<sup>63</sup> Congress required that these units:

- (1) be functionally independent from investment origination teams;
- (2) be managed by senior staff who report to the Chief Executive Officer or Deputy Chief Executive Officer; and
- (3) be allocated resources sufficient to fulfill the Corporation’s obligations under this section and to support transparency and accountability to Congress and to the public.<sup>64</sup>

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<sup>62</sup> See Pub. L. No. 119-60, § 8754(4) (amending 22 U.S.C. § 9652).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

And Congress also required that these units not have their staffing reduced unless the CEO explains the reasons for reductions in writing and DFC explains the reductions in its annual report.<sup>65</sup>

Therefore, placing the IAM as or within a Portfolio Oversight and Reporting unit serves the dual purposes of (1) increasing structural safeguards of the IAM's independence by insulating it from unexplained staffing reductions and (2) improving the IAM's access to senior leadership, as necessary for its function of enhancing information flow, by requiring the IAM to be within a unit that is "managed by senior staff who report to the Chief Executive Officer or Deputy Chief Executive Officer."<sup>66</sup>

### **B. Clarify and refine the scope of the IAM's exclusions.**

The Board's September 2020 Resolution explained, "some types of claims may need to be specifically excluded" from the IAM's purview, and went on to list a number of categories, including for example, when the Inspector General has jurisdiction.<sup>67</sup>

We suggest the Board consider adding a partial exclusion for instances where the affected parties enter litigation. We believe the IAM's problem solving process should cease when the parties have decided to litigate the case. In the past, the IAM has maintained contact with parties who are within litigation proceedings, including to inquire whether the parties wish to re-enter the IAM's problem solving process. We believe such contact should be avoided. We also believe there are potential problems created by the IAM conducting compliance reviews and contacting witnesses to ongoing litigation. We suggest the Board consult with OGC and the new IAM Director to determine whether a pending litigation exclusion should be instituted for the IAM and what the scope of that exclusion should be.

The Board's resolution also has an exclusion for "claims being investigated by other IAMs involved with the project." But the IAM omitted this exclusion from its current Terms of Reference. We believe that it would be wise to reconsider this exclusion consistent with the Board's intent. In instances where DFC is not the primary financier of a project, and another government financial institution has a larger stake, it would be best for the IAM to yield to the other institution's IAM—particularly if, as we believe is typical, the same environmental and social standards apply. We suggest the Board consult with OGC and the new IAM Director to determine whether to reinstitute this exclusion and what the scope of the exclusion should be.

There may be further exclusions that might be helpful, such as an exclusion where the IAM withdraws in certain circumstances following DFC's decision to terminate its involvement in a project. We encourage consideration of these issues during this time of transition to a new IAM Director.

### **C. Consider improvements to the IAM's fact finding competencies.**

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<sup>65</sup> *Id.*

<sup>66</sup> Pub. L. No. 119-60, § 8754(4) (amending 22 U.S.C. § 9652).

<sup>67</sup> Board Resolution, § 7 (cleaned up).

The BUILD Act’s text does not suggest that the IAM conduct any investigations, only that it submit an annual report on compliance with environmental and social standards to the Board and Congress.<sup>68</sup> But the IAM’s current Terms of Reference articulates a complex, multi-step fact finding process including a “Compliance Investigation Process.” However, the institutional competencies of the former IAM Director and staff have been primarily rooted in familiarity with international compliance and environmental and social standards.<sup>69</sup> The Terms of Reference and the IAM Handbook do not contain any standards or policies for investigative practices, such as how to properly conduct interviews, gather evidence, assess the credibility of information, etc.<sup>70</sup> Accordingly, we suggest that the Board consider, in consultation with OGC and the new IAM Director, implementing policies for best practices for IAM fact finding, and seeking personnel or contractors who have relevant skills and experience.

**D. Clarify how the IAM will handle conflicts of interest between its mediation and fact finding functions.**

The IAM’s Terms of Reference identifies independence and impartiality as its first core principle.<sup>71</sup> However, it focuses only on its independence from private interests and DFC management. The IAM’s Terms of Reference and policies do not identify the conflict between serving as a mediator and finding facts discussed in Section II. We believe that, within the framework of United States law, mediating with persons who are also fact witnesses is a conflict that affects the IAM’s ability to be impartial.

Currently, if the IAM’s problem solving process (mediation function) fails or reaches only a partial agreement between the parties, the IAM initiates its compliance function.<sup>72</sup> But the IAM and its personnel can have direct involvement in different parts of its problem solving process, including the different types of problem solving approaches, and even in instances where the IAM engages a third-party mediator.<sup>73</sup> As the Terms of Reference explain, the “IAM seeks to work directly with Project-affected people” during the problem solving process.<sup>74</sup> But the IAM’s Terms of Reference do not grapple with the conflict created by its direct engagement in dispute resolution and its potential later role of conducting compliance assessments. Accordingly, the new IAM Director should consider how

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<sup>68</sup> 22 U.S.C. § 9614(b)(1).

<sup>69</sup> See IAM TOR, at 9.

<sup>70</sup> See generally IAM TOR; Overseas Priv. Inv. Corp., Off. Accountability, [Operational Guidelines Handbook for Problem-Solving and Compliance Review Services](#) (2014).

<sup>71</sup> IAM TOR, at 7.

<sup>72</sup> IAM TOR, at 20.

<sup>73</sup> *Id.* at 18–20.

<sup>74</sup> *Id.* at 18.

to separate the IAM's problem solving and compliance processes. We suggest that IAM personnel involved in problem solving should not be involved in assessing compliance.

#### **IV. Conclusion.**

Placing the IAM under the supervision of the Inspector General would likely violate the IG Act and therefore would require statutory change. The OIG's and the IAM's functions are in tension in a way that would cause conflict of interest problems and inefficiencies if the offices were merged. The transition to a new IAM Director offers a natural place to consider improvements to the IAM's structure and policies. We hope that the Board finds our suggestions in this regard helpful.