

OIG GUIDANCE ON IRO INDEPENDENCE AND OBJECTIVITY

Introduction

As a result of the Sarbanes-Oxley Act and an increased focus on issues relating to auditor independence, the OIG issued guidance in 2004 in response to inquiries from individuals and entities subject to Corporate Integrity Agreements (CIAs) regarding circumstances that might affect the independence of an Independent Review Organization (IRO) that performs CIA reviews (e.g., claims reviews, cost report reviews, etc.) for the individual or entity. Since that guidance was issued, the Government Accountability Office (GAO) has updated its auditing standards and CIAs now include additional types of IRO reviews (e.g., arrangements reviews, promotional and product services reviews, etc.). As a result, the OIG has determined that updated guidance in this area is appropriate.

The following is a brief summary of the OIG's views on the relevant principles that should be used to assess the independence and objectivity of an IRO that performs CIA reviews, followed by some examples of situations that likely would and likely would not present independence issues.

Summary of OIG's Views on Applicable Independence and Objectivity Standards

The OIG previously determined that it is appropriate to adopt the standards for auditor independence and objectivity set forth in the GAO *Government Auditing Standards (July 2007 Revision)* (referred to here as the "Yellow Book"). The Yellow Book includes both ethical principles and general standards that apply to all types of IRO reviews performed under CIAs and form the basis of the OIG's requirements relating to the independence and objectivity of the IRO. The Yellow Book principles and standards described below should serve as the basis for determining whether an IRO can provide the required certification as to its objectivity and independence with respect to each CIA review that will be performed by the IRO.¹

Objectivity

With respect to objectivity, the Yellow Book provides that objectivity includes "being independent in fact and appearance when providing audit and attestation engagements,

¹ CIAs require that each IRO utilized by the provider must furnish a certification that the IRO has evaluated its professional independence and objectivity with respect to the review being performed for the provider and that the IRO has concluded that it is independent and objective. CIAs also give the OIG discretion to reject a provider's choice of IRO or to require a provider to retain a new IRO if the OIG determines that the IRO is not independent.

maintaining an attitude of impartiality, having intellectual honesty, and being free of conflicts of interest.”² Further, the Yellow Book states that “[a]voiding conflicts that may, in fact or appearance, impair auditors’ objectivity in performing the audit or attestation engagement is essential to retaining credibility.”³ These principles should form the basis of an IRO’s certification as to its objectivity with respect to a CIA review.

Independence

The Yellow Book standards on auditor independence require that, in all matters relating to the audit work, the audit organization and the individual auditor must be free from personal, external, and organizational impairments to independence, and must avoid the appearance of such impairments of independence.⁴ IROs must maintain independence so that their opinions, findings, conclusions, judgments, and recommendations will be impartial and viewed as impartial by the OIG.⁵ IROs should avoid situations that could lead the OIG to conclude that the auditors are not able to maintain independence and thus are not capable of exercising objective and impartial judgment on all issues associated with conducting CIA reviews and reporting on the results of those reviews.⁶ In making the certification of its independence required under a CIA, the IRO should consider whether there are personal, external, or organizational impairments to independence.⁷

With respect to organizational independence, the Yellow Book includes specific standards that apply when an audit organization agrees to perform nonaudit services for the same client.⁸ These standards would apply to IROs that perform CIA reviews and also provide other nonaudit professional services. The standards require the IRO to evaluate whether providing the services creates an independence impairment either in fact or appearance with respect to the entity for which the IRO is performing a CIA review.⁹

According to the Yellow Book, when assessing independence, the two overarching principles that must be considered are that: (i) audit organizations must not provide nonaudit services that involve performing management functions or make management decisions; and (ii) audit organizations must not audit their own work or provide nonaudit services in situations where the nonaudit services are significant or material to the subject

² See GAO-07-731G, Government Auditing Standards, paragraph 2.10.

³ Id.

⁴ See Government Auditing Standards, paragraph 3.02.

⁵ See Government Auditing Standards, paragraph 3.03.

⁶ Id.

⁷ See Government Auditing Standards, paragraphs 3.07 – 3.30.

⁸ See Government Auditing Standards, paragraphs 3.20 – 3.30.

⁹ See Government Auditing Standards, paragraph 3.20.

matter of the audits.¹⁰ The Yellow Book includes guidance regarding three categories of nonaudit services: those that do not impair the audit organization's independence, those that require the audit organization to implement supplemental safeguards in order to not impair the audit organization's independence, and those that do impair the audit organization's independence, regardless of the organization's compliance with the supplemental safeguards.¹¹

In order to facilitate an IRO's assessment of its independence and objectivity with respect to CIA reviews, the OIG has set forth below some examples of nonaudit services furnished by IRO to an entity under a CIA that likely would and likely would not present an impairment to the IRO's independence and objectivity with respect to the IRO performing a CIA review for that entity.

Services That Likely Would Not Impair the IRO's Independence and Objectivity:

- IRO personnel furnish general compliance training that addresses the requirements of the provider's CIA and introduces employees to the provider's overall compliance program.
- The IRO performs routine tasks relating to the provider's confidential disclosure program, such as answering the confidential hotline or transcribing the allegations received via the hotline.
- The IRO performs the ineligible persons screening by entering the employee names into the exclusion databases and providing the screening results back to the provider.
- The IRO evaluates the provider's existing compliance program before the provider's CIA is executed, presents its conclusions regarding the strengths and weaknesses of the provider's existing compliance program, and makes recommendations regarding areas for improvement.
- The IRO provides personnel to perform work plan procedures that are developed by the provider's internal audit department and are not related to the subject matter of the CIA reviews.
- The IRO furnishes consulting services to the provider under an engagement that is completed prior to the start of the CIA reviews and the services (1) are not related to the subject matter of the CIA reviews and (2) do not involve the performance of management functions.
- The IRO performs an assessment of the strengths and weaknesses of the provider's internal controls, even if those controls relate to the subject matter of the CIA review, as long as the IRO is not responsible for designing or implementing

¹⁰ Government Auditing Standards, paragraph 3.22.

¹¹ Government Auditing Standards, paragraph 3.25.

corrective action based on its internal controls assessment, or otherwise performing management functions.

Services That Likely Would Impair the IRO's Independence and Objectivity:

- A provider uses a billing system or coding software that was developed or designed by the IRO and the IRO is being engaged to perform a claims review (the system or software would be significant or material to the subject matter of the review).
- IRO personnel furnish specific training that addresses the subject matter of the CIA review (the specific training would be significant or material to the subject matter of the review).
- The IRO develops the provider's policies, procedures or internal control systems (this is making management decisions and may also be significant or material to the CIA review if the policies and procedures address the risk areas that are the subject of the review).
- The IRO participates in decision making relating to the confidential disclosure program, such as determining which allegations warrant further investigation or the appropriate corrective action to take in response to compliance allegations (this would be making management decisions).
- The IRO performs an assessment of the strength and weaknesses of the provider's internal controls associated with the specific risk areas that are addressed in the CIA and is engaged by the provider to design or implement new processes or internal controls that relate to the subject matter of the CIA reviews (the IRO would be involved in making management decisions or performing management functions).
- The provider outsources its internal audit function to the IRO (this would involve the IRO performing management functions).
- The IRO is engaged to provide consulting services to the provider during the term of the CIA on a matter that is related to the subject matter of the CIA reviews (these services would be significant or material to the subject matter of the CIA review).