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Quis Custodiet Ipsos Custodes? Operational Risk within the GAO

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Abstract: The Government Accountability Office (GAO) has the heavy burden of auditing all use of government funds, that is to say, the entire U.S. Federal Government. But its unique position within the legislative branch leads to some specific, and hard-to-address, operational risks. How can the government both preserve the GAO's independence and ensure its accuracy and reliability?

About the GAO

The Budget and Accounting Act of 1921 established the General Accounting Office (GAO)[i], with an original mission to provide financial oversight over the Treasury Department. The GAO is independent of the executive branch and serves as an investigative arm of the legislative branch of the U.S. Government. Over the last 94 years, the GAO purview has expanded to provide a critical audit and oversight function to all government expenditures, and in 2004 its name was updated to the Government Accountability Office to reflect this expanded mandate. In practice, the GAO serves as an independent auditor for all government agencies through a combination of regular reports and specific investigations undertaken at the behest of Congress or particular Congressional committees[ii]. The GAO is headed up by the U.S. Comptroller General, who is selected for a one-time 15-year term by the President from a list of candidates assembled by a 'bipartisan, bicameral congressional commission'. The eighth and current Comptroller General, Eugene L. Dodaro, took office in 2010 after his selection by President Obama.

The GAO and the Sixteen Critical Infrastructure Sectors

Because of its unique oversight role in the U.S. Government, the GAO is directly responsible for none of the sixteen critical infrastructure sectors as laid out by the Department of Homeland Security (DHS)[iii], but indirectly responsible for all of them. The DHS calls out eight specific agencies as responsible for one or more of the sectors, as follows: the DHS is responsible for ten sectors[iv]; the Environmental Protection Agency (EPA) is responsible for one (Water and Wastewater); the Department of Transportation (DOT) is responsible for one along with DHS (Transportation); the Department of Health and Human Services (HHS) is responsible for two; the Department of Agriculture (USDA) is responsible, with HHS, for the

Food and Agriculture Sector; the Department of Defense (DOD) is responsible for the Defense Industrial Base Sector; the Department of Energy (DOE) is responsible for the Energy Sector; the Department of the Treasury (Treasury) is responsible for the Financial Services Sector.

The GAO, as the congressional watchdog for all government spending and efficiency auditing, effectively serves as oversight for the government agencies overseeing all sixteen critical infrastructure sectors. As such, it occupies a unique position in the U.S. Government. Taking its marching orders from its standing mandate and specific Congressional requests, the GAO has broad investigative and audit powers over the entirety of the federal government. On the other hand, it does not have the authority to act on any risks or inconsistencies that it discovers; rather, it must report on them and rely on the legislative branch to act on its findings.

While the GAO produces more than 900 reports per year, a good summary of the major risk findings in various government agencies can be found in the periodic High Risk Report[v]. The latest report as of this research note, published in February 2015, details risk findings in all but one (the exception is the DOE) of the government agencies responsible for the sixteen critical infrastructure sectors.

By way of example, the GAO provided two specific DHS-related risk reports in the latest High Risk Report. The first is a series of recommendations regarding improving the management functions at DHS:

> "DHS's efforts to strengthen and integrate its acquisition, IT, financial and human capital management functions have resulted in progress addressing our criteria for removal from the high-risk list. In particular, DHS has met two criteria (leadership commitment and a corrective action plan) and partially met the remaining three criteria (capacity; a framework to monitor progress; and demonstrated, sustained progress)."[vi]

The second looks at risks around the management of terrorism-related data, concluding that the DHS has met two of five long-term goals in this category as well, while still needing improvement in a proper action plan, demonstrated progress and proper monitoring of these initiatives[vii]. Both of these high-level overviews, in turn, rely upon multiple in-depth research reports that monitor and track DHS progress in meeting these defined goals.

Similarly, detailed reports exist for the remaining agencies covered in the High Risk Report. By regularly researching and compiling these and other risk factors, the GAO is able to provide a valuable auditing function, as well as follow the risk trends over time.

Who Audits the Auditors?

However, this leads to a simple, but difficult to answer, question: if the GAO monitors the federal government, who monitors the GAO? The answer appears to be: nobody, at least not directly. As described above, the GAO depends for its funding and its authority on the Budget and Accounting Act of 1921, as well as the more recent GAO Human Capital Reform Act of 2004. The Comptroller General, once appointed, can only be removed by impeachment or a joint resolution of Congress, leaving him or her entirely independent of the appointing President. In the 94-year history of the GAO, no Comptroller General has been removed from office. However, should Congress choose to do so, it could remove the Comptroller General or even cut funding entirely to the GAO.

However, budgetary control is not the same as effective oversight. While there is certainly oversight within the GAO, there is no independent unit that can police the analysis and reporting of the GAO. Should the GAO, or high-ranking GAO officials, release inaccurate audit or efficiency reports, there is no clear mechanism for this situation to come to light. While this would appear to be an unlikely scenario, it becomes less outlandish when one considers the vast sums of money, and of political power, involved in the operations of the large government agencies mentioned above. It is conceivable that GAO officials could conspire with officials of one of the agencies that the GAO audits and analyzes, in order to conceal incompetence or malfeasance at the agency level. This, in turn, would serve to weaken or disrupt control over one or more critical infrastructure sectors.

Audit without Authority

Beyond the potential for a corrupt or simply incompetent GAO, consider the reverse case. If the GAO describes irregularities in financial or operational procedures and reporting, it is only able to report these issues but is unable to actually compel the relevant government departments to improve their processes. Instead, it is up to the U.S. Congress to take action on the GAO's findings. What would happen if, after a scathing report, Congress chose not to act? This is a rhetorical question, since this situation has in fact continuously been the case since 1996. Starting in that year, the federal government began producing consolidated fiscal statements, and from the beginning the GAO has refused to approve these statements on several grounds:

> (1) Serious financial management problems at the Department of Defense (DOD), (2) the federal government's inability to adequately account for and reconcile intra-governmental activity and balances between federal entities, and (3) the federal government's ineffective process for preparing the consolidated financial statements. Efforts are under way to resolve these issues, but strong and sustained commitment by the DOD and other federal entities as well as continued leadership by the Department of the Treasury (Treasury) and the Office of Management and Budget (OMB) are necessary to implement needed improvements.[viii]

Notwithstanding that the GAO has regularly called out these issues since 1996, Congress has taken no action to remediate any of them and, as the GAO notes, significant further commitments are needed, from the highest levels. Considering this fact, there is a serious risk that, should the GAO uncover serious malfeasance or poor resource management in any government agency, Congress might very easily choose to ignore the GAO report if it is not politically rewarding to act. This inaction could, as above, result in the weakening or disruption of control over one or more critical infrastructure sectors.[ix]

Effectiveness of Controls

By design, the GAO is effectively out of reach of any traditional oversight. It is led by a Comptroller General who is selected by a President, but only from a pre-selected list determined by a bipartisan, bicameral congressional committee. Once the Comptroller General is selected, he or she serves one fifteen-year term, and is not eligible for re-appointment. While it is possible for Congress to impeach or legislatively remove the Comptroller General, this has never happened in the 94-year history of the office. This insulates the Comptroller General almost completely from political pressure.

As alluded to previously, the one control Congress does have over the Comptroller General, and the GAO as a whole, is budgetary authority. Should Congress choose to withhold or limit funding to the GAO, this would put pressure on its operations and possibly lead to a restructuring or complete disbanding of the GAO structure. However, as also described above, this control can only be brought to bear on issues that Congress knows (and cares) about. If a GAO report is inaccurate, it is unlikely that Congress will realize this immediately. However, a GAO report that is politically dangerous or unwelcome will be noticed immediately. The combination of these facts means that if Congress does exert budgetary control over the GAO, it is much more likely to be for political reasons rather than concerns over the accuracy or integrity of the reports themselves. And even if this situation presents itself, it is much more likely that Congress will demand the resignation of the Comptroller General than attempt to restructure or replace the GAO as a whole.

A third control, and one that is not immediately apparent, is external to both Congress and the GAO. Media attention on Congress, and on the reports produced by the GAO, serves as a strong check against both risks outlined above. Were the GAO to provide clearly misleading or inaccurate reports, media scrutiny of the published report would be likely to turn up the inaccuracy, particularly if a whistleblower at the GAO or the audited agency tipped off relevant media outlets. On the other hand, were Congress or one of its committees to deliberately bury a politically inconvenient GAO report, this would provide a juicy story for any reporter lucky enough to discover (or be tipped off to) the situation. But while the media can shine a spotlight on both of these major risks, its reach only extends so far. Consider the example described above: the GAO has refused to endorse the federal budget since 1996. Media attention, strong at the start, faded quickly as the same situation continued year over year, and the standoff has not yet been resolved.

Finally, let us consider internal GAO controls. The GAO serves a model – deliberately – for audit organizations through the Generally Accepted Government Auditing Standards (GAGAS), or the Yellow Book[x]. This set of auditing standards, created in 1972 and regularly updated (most recently in 2011) is designed for use in auditing government organizations, and is used by the GAO itself in its audits. Though they do not state so explicitly, it is reasonable to surmise that these or similarly comprehensive rules are used in internal review of GAO-sponsored research. Were an individual researcher to misstate audit results, accidentally or deliberately, standard review processes would almost certainly catch the issue. Therefore, the most likely case of inaccurate or dishonest reports would be via high-level GAO incompetence or corruption.

Recommendations

As was previously mentioned, the GAO is independent of legislative or executive oversight. This is deliberate; if the GAO were accountable to Congress or to the President, this would raise questions as to its independence and to the accuracy of its reports and analyses. While Congress holds the purse strings and can reduce or cut GAO funding, budgetary control is too blunt an instrument to provide oversight of GAO operations, accuracy, and efficiency. The GAO is therefore in the unique position of providing oversight and audit functionality to the U.S. Government while being itself effectively immune to operational scrutiny. This unique situation leads to two specific risks, as detailed above. The first is the risk of the GAO itself, in the person of high-ranking GAO officials or the Comptroller General, colluding with officials of another government agency to conceal evidence of incompetence or malfeasance. The second risk is in many ways the mirror image of the first: because the GAO has the responsibility to audit government agencies, but lacks the authority to compel them to comply with audit findings, it is possible that Congress, which does have that authority, might fail to act on GAO recommendations.

The obvious recommendation, to create a new agency responsible for overseeing the GAO and ensuring that it is accurately and honestly auditing the remainder of the government, merely pushes the problem one step back. If this new agency (A) audits the GAO, then who will audit A? The same problem remains, and cannot be addressed by creating another new agency (B), which would need to be audited by C, and so on infinitely. Similarly, new legislation to make an existing agency responsible for auditing the GAO would lead to a related problem, since that agency would both audit the GAO and be audited by the GAO, as a recipient of government funds. A circular auditing relationship of this nature would also be unsatisfactory, because in the case of a discrepancy, there would be no overarching authority to determine the truth.

And that is the crux of the issue: in auditing, there must be a final authority to determine what is, and is not, an accurate accounting of a given project, or agency, or government. The GAO, in the current U.S. Government, is that authority, and any effort to subject them to outside oversight is doomed to failure for the philosophical and practical reasons outlined above. But this does not mean that the current situation is hopeless. If the GAO is compromised at a high level, the complex web of interdependencies among agencies means that an effective cover-up is only one whistleblower away from public outrage. The GAO in particular, and the federal government in general, should enforce and strengthen whistleblower protection statutes to ensure that malfeasance of this nature does not remain hidden through a culture of silence or retribution.

Regarding Congressional inaction, on the other hand, the most effective control that already exists is that of outside interest – media and public attention to GAO reports and their conclusions. As long as GAO reports are not private, there is certain to be a good deal of scrutiny on the GAO, its operations, and the congressional mandates guiding these operations. The GAO is already very good about publishing all of their reports in a timely manner on their website; beyond this it is the responsibility of the public, and the media, to read and understand the reams of information available. However, as we have already seen in the case of the GAO's continued refusal to endorse the federal government's annual financial statement, information, even when known, does not guarantee action. Instead, only sustained interest and public pressure can lead to action on GAO findings that Congress has chosen not to address.

While there is no way to force this kind of pressure, the GAO can make its case to the U.S. public more directly. While they already produce hundreds of reports annually, there is little welcoming, public-facing information available on the GAO website. Articles summarizing the conclusions of the GAO technical reports, written for a popular audience, might go a long way to reaching a wider audience and helping the public understand the work that the GAO does and the findings that it has produced.

The GAO occupies a unique and complex place within the U.S. Government. Though there is little chance of significant changes in GAO practices – and little likelihood that such changes would be beneficial – the foregoing recommendations will strengthen the GAO's effectiveness and authority.

[i] "The History of GAO - GAO's Start." *U.S. Government Accountability Office.* n.d. Accessed Mar. 2015 <www.gao.gov>.

[ii] "About GAO." *U.S. Government Accountability Office.* n.d. Accessed Mar. 2015 <www.gao.gov>.

[iii] "Critical Infrastructure Sectors." *Department of Homeland Security.* n.d. Accessed Mar. 2015 <www.dhs.gov>.

[iv] Interested parties can look at the URL in Footnote "iii" for specific sectors.

[v] "High Risk Report 2015." *U.S. Government Accountability Office.* 11 Feb. 2015. Accessed Mar. 2015 <www.gao.gov>.

[vi] "Strengthening Department of Homeland Security Management Functions." *U.S. Government Accountability Office.* 2015. Accessed Mar. 2015 <www.gao.gov>.

[vii] "Establishing Effective Mechanisms for Sharing and Managing Terrorism-Related Information to Protect the Homeland." *U.S. Government Accountability Office.* 2015. Accessed Mar. 2015 <www.gao.gov>.

[viii] "U.S. Government's Fiscal Years 2014 and 2013 Consolidated Financial Statements." *U.S. Government Accountability Office.* 26 Feb. 2015. Accessed Mar. 2015 <www.gao.gov>.

[ix] A closely related risk is that of Congress using the GAO as a political tool, to investigate enemies of (members of) Congress that are subject to GAO scrutiny.

[x] "The Yellow Book." *U.S. Government Accountability Office.* 1 Dec. 2011. Accessed Mar. 2015 <www.gao.gov>.