



**COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY**

CIGIE Guide for Reports That Identify Non-Governmental Organizations or Business Entities

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Note: The following guide was developed to assist Offices of Inspectors General (OIGs) with forming their internal policies to address certain requirements for audit, evaluation, inspection, or other non-investigative reports that specifically identify non-governmental organizations or business entities contained in § 5274 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263, 136 Stat. 2395). Each OIG should use its professional judgment regarding compliance with the statute's requirements.

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Background

The James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023, Pub. L. No. 117-263, § 5274 (See Appendix B), amended the Inspector General Act of 1978¹ to establish new requirements for Offices of Inspectors General (OIGs) that specifically identify non-governmental organizations (NGOs) or business entities (BEs) in audit, evaluation, inspection, or other non-investigative reports. In essence, the new requirements provide that NGOs or BEs identified in OIG audit, evaluation, inspection, or non-investigative reports (whether or not they are subjects of the report) must be notified of the report and given 30 days after publication to review the subject report and provide written, clarifying information or context “as it directly relates to each instance” in which the report specifically identifies the NGO or BE. OIGs must attach written responses provided by specifically identified NGOs or BEs to the report.

To assist OIGs with addressing these new requirements, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) formed an NDAA Working Group to create this guide. This guide is designed to assist OIGs in complying with the new requirements and is not binding on any OIG. The guide incorporates feedback and suggestions from participating OIGs across the CIGIE community and is not intended to be a comprehensive presentation of all reasonable methods of compliance with the statute. Each OIG should make its own independent assessment of how to address the NDAA’s requirements.

¹ Pub. L. 95-452, 5 U.S.C. App. 3, recently recodified at 5 U.S.C. §§ 401–424.

Reasonable Interpretations of Terms for OIG Consideration

The following table offers some approaches to interpreting undefined terms in § 5274. This list is not exhaustive of potential methods of implementation, nor does it represent CIGIE’s (or any CIGIE member’s) official legal interpretation or preferred practice. These approaches are based on reasonable interpretations that may assist OIGs in establishing their processes for implementation of § 5274’s requirements. There is no presumption of adoption within the Inspector General (IG) community of the interpretations represented below.

TERM	INTERPRETIVE APPROACHES FOR CONSIDERATION
<p>Publication § 5274(a)(6)(A)(ii)(I) § 405(g)(6)(A)(ii)(I) of the IG Act</p> <p>For additional information, consult <u>Operational Approaches – Circumstances That Require IGs to Notify NGOs and BEs</u></p>	<p>Publication refers only to reports that are released to the general public, including, but not limited to posting to the OIG’s external website, posting to Oversight.gov, or providing to the media.</p>
<p>Notify § 5274(a)(6)(A)(i) 5 U.S.C. § 405(g)(6)(A)(i)</p> <p>For additional information, consult <u>Operational Approaches – Notifying Specifically Identified NGOs or Business Entities</u></p>	<p>Upon publication, OIGs must provide notice to an NGO or BE informing it that it is specifically identified in an OIG report and has the opportunity to submit a written response within 30 days of the publication date. OIGs may consider including language in published reports and on their websites that provides a general notice to NGOs and BEs that they may submit a response if they were specifically identified in a report and were not otherwise notified.</p> <p>OIGs may want to consider seeking to enter into agreements with NGOs or BEs for how the NGO or BE receives notice, including blanket or partial waivers of notice. NGOs or BEs, that may be routinely specifically identified in OIG reports and do not want to be notified in any or every instance, may specify such in an agreement with an OIG.</p>

TERM	INTERPRETIVE APPROACHES FOR CONSIDERATION
<p>Public-Facing Website of the Inspector General § 5274(a)(6)(A)(iii)(II) 5 U.S.C. § 405(g)(6)(A)(iii)(II)</p> <p>For additional information, consult Operational Approaches – Publishing Written Responses from NGOs or BEs on Public-Facing Websites and Oversight.gov</p>	<p><u>Publishing on an OIG’s Public-Facing Website</u>: Regardless of whether an OIG is required to post a report to its public-facing website pursuant to § 420 of the IG Act, all reports posted to the OIG’s website that specifically identify an NGO or BE must include the NGO’s or BE’s response, subject to the limitations set forth in § 5274(a)(6)(A)(ii)(II).</p> <p><u>Publishing on Oversight.gov</u>: There is no express requirement to include NGO or BE responses in reports posted to Oversight.gov. However, OIGs may want to ensure that reports appear on Oversight.gov consistent with how they appear on their own public-facing websites (i.e., including NGO or BE responses), particularly if that OIG is required under § 424 of the IG Act to publish reports on Oversight.gov contemporaneously with the publication of the report on its public-facing website.</p>
<p>Refused to Provide Information or Assistance § 5274(a)(6)(B) 5 U.S.C. § 405(g)(6)(B)</p> <p>For more information, consult Operational Approaches – NGOs or BEs That Refuse to Provide Information or Assistance</p>	<p>OIGs may in good faith exercise their discretion when determining whether a particular instance constitutes a refusal to provide requested information or assistance.</p> <p>This <u>may include but is not limited to</u> when NGOs or BEs</p> <ul style="list-style-type: none"> • Fail to respond to requests, inquiries, surveys, or questionnaires, • Are less than fully cooperative with requests, or • Do not cooperate following the issuance of a subpoena and are not seeking legal relief from that subpoena. <p>This non-exhaustive list <u>may exclude</u> situations where NGOs or BEs</p> <ul style="list-style-type: none"> • Make a good faith effort to comply, • Substantially comply with requests, or • Provide sound legal or practical explanations as to why they are unable to comply.
<p>Specifically Identifies § 5274(a)(6)(A); (a)(6)(A)(ii)(II) 5 U.S.C. § 405(g)(6)(A); (g)(6)(A)(ii)(II)</p> <p>For more information, consult FAQs – Does the NGO or BE need to be named, or will the section apply when the NGO or BE is otherwise identifiable, including through a product name?</p>	<p><u>NGOs and BEs Mentioned by Name</u>: OIGs must provide notice and opportunity to respond when an OIG non-investigative report expressly and specifically mentions an NGO or BE by name. This may <u>exclude</u></p> <ul style="list-style-type: none"> • Brands/products (e.g., referencing iPhones without specifically naming Apple Inc.) and • Anonymized NGOs or BEs (e.g., Corporation X instead of Chevron Corp.).

TERM	INTERPRETIVE APPROACHES FOR CONSIDERATION
	<p><u>NGOs and BEs That Are Reasonably Identifiable</u>: If a reasonable person can identify an unnamed NGO or BE by a statement or statements included in the report or from the broader facts and circumstances provided in the report, OIGs may consider whether notice and opportunity to respond would be appropriate. OIGs may want to assess the extent to which any of the following are referenced in a report:</p> <ul style="list-style-type: none"> • Brands/products, • Other recognizable descriptions or trademarks (e.g., referring to "the bird logo social media company" instead of Twitter), or • Anonymized NGOs or BEs (e.g., Corporation X, where the NGO or business entity is otherwise reasonably identifiable).
<p>Non-Governmental Organization (NGO) or Business Entity (BE)</p> <p>For more information, consult FAQs – Are individuals covered under the terms NGO or BE?</p>	<p>NGOs and BEs are construed broadly to encompass legal organizations and entities in various forms and may include but are not limited to</p> <ul style="list-style-type: none"> • Corporations, • Sole proprietorships, • Limited liability companies, • Limited partnerships, and • Non-profits. <p>NGO or BE does <u>not include</u> the following:²</p> <ul style="list-style-type: none"> • Governmental organizations or entities, including government corporations, organizations, or other entities; • Individual persons not operating as a legal business entity or other organization distinct from the natural person; and • Individual contractors that are not operating as a legal business entity or other organization distinct from the natural person.
<p>Other Non-Investigative Report</p> <p>For more information, consult FAQs – Does “non-investigative report” include SARs and other types of IG-mandated reports?</p>	<p>OIGs can determine whether a report is a “non-investigative report” based on certain characteristics, including but not limited to whether the report: (1) does not solely or principally pertain to an investigative matter; (2) is comprised of original content prepared by the OIG; (3) is released to the general public and/or posted on the OIG’s website; (4) is titled and/or</p>

² This list is not intended to be exhaustive.

TERM	INTERPRETIVE APPROACHES FOR CONSIDERATION
	<p>formatted as a report. This would exclude items such as audit announcements or plans, written testimony, and letters to Congress, as a non-exhaustive list of examples.</p> <p>Semiannual Reports to the Congress (SARs) can be a type of other non-investigative report. For example, if the SAR contains original, previously unpublished content that specifically identifies an NGO or BE, the OIG should ensure it provides notice and opportunity to respond in accordance with § 5274.</p>
<p>Creation § 5274(a)(6)(B) 5 U.S.C. § 405(g)(6)(B)</p>	<p>The period in which an OIG may request information or assistance from an NGO or BE for purposes of invoking the § 5274(a)(6)(B) exception runs from the date when the audit, evaluation, inspection, or work on the non-investigative report began through no later than the date when the report is finalized. Requests for information or assistance from the NGO or BE outside this time period will not authorize invoking the exception in § 5274(a)(6)(B) for that report. OIGs requesting information or assistance during the creation of the report should make such requests in good faith and allow NGOs and BEs a reasonable period of time to respond, based on the specific request for information or assistance.</p> <p>Note: The start date can either occur when work formally begins on that project or the date when the project is announced.</p>
<p>For the Purpose of Clarifying or Providing Additional Context § 5274(a)(6)(A)(ii)(II) 5 U.S.C. § 405(g)(6)(A)(ii)(II)</p>	<p>NGO and BE responses are limited to written input “for the purpose of clarifying or providing additional context as it <u>directly relates</u> to <u>each instance</u>” where the report specifically identifies an NGO or BE. Section 5274 does not require OIGs to attach or post to their public-facing website responses or portions of responses that exceed the scope of what NGOs or BEs are legally entitled to provide. If an NGO or BE response strays from the specific purpose for which it is authorized under § 5274(a)(6)(A)(ii)(II), an OIG may amend the response to limit it solely to the content that directly relates to each instance in which the NGO or BE is specifically identified in the report.</p>

Operational Approaches

Circumstances That Require IGs to Notify NGOs and BEs

Under § 5274, IGs must notify NGOs or BEs if an audit, evaluation, inspection, or other non-investigative report prepared by an IG specifically identifies an NGO or BE in that report. Notification must be provided no later than the date of publication of the report. This section discusses different approaches to interpreting when “publication” occurs, thereby triggering the notice requirement. For a discussion of ways to interpret “specifically identifies,” see FAQs, *Does the NGO or BE need to be named, or will the section apply when the NGO or BE is otherwise identifiable, including through a product brand name?*

Publicly Available Reports

Section 5274 applies to reports that an OIG releases that are accessible to the general public. The notification requirement is triggered upon “the date of publication” of the report (i.e., when a report becomes publicly available), although § 5274 does not prohibit OIGs from choosing to provide notice earlier. NGO and BE responses to OIG reports must be attached and must be included in a version of the report “in every instance where the report may appear on the public-facing website” of the OIG. Because NGO and BE responses are “for the purpose of clarifying or providing additional context” and the OIG must review and redact classified and other non-public information from responses, § 5274 can reasonably be interpreted as applying specifically to publicly available reports. The additional context or clarification is presumably for the public’s benefit, not the OIG’s. Further, the need to redact non-public information implies that the public would have access to the report. Additionally, §§ 420 and 424 of the IG Act do not describe a final report’s issuance to the head of the agency as “publication.” Rather, these sections describe the report as being “submitted in final form” to the head of the agency. Further, “publish,” as used throughout the IG Act, refers to acts of posting reports to publicly accessible sources (e.g., OIG websites, Oversight.gov, or the Federal Register). The distinction between the use of “submitted in final form” and “publish” in the IG Act indicates that Congress intended for “publication” as used in § 5274 to align with the meaning of “publish” in the IG Act, such that § 5274 applies only to publicly available reports.

Note: If a report that was not made publicly available upon the date when it was originally submitted in its final form is later declassified or otherwise subsequently intentionally made publicly available by the OIG, OIGs should consider whether providing notice and opportunity to respond to the report is appropriate under the circumstances.

Notifying Specifically Identified NGOs or BEs

Notice Requirement

When non-investigative reports specifically identify an NGO or BE, the OIG “shall notify” the NGO or BE and provide an opportunity to respond to the report. Section 5274 requires OIGs to notify NGOs or BEs upon publication of a report in which the NGO or BE is specifically identified, to make them aware of their opportunity to respond to that report within 30 days.

Precautionary General Notice

OIGs may take steps to provide notice and opportunity to respond by including language in published reports directing NGOs or BEs on how to submit a response. How OIGs provide notice may vary depending on the NGO or BE to be notified. Determining which point of contact to notify for an NGO or

BE may require different methods of notification depending on the available means for contacting NGOs and BEs. Because of the challenges this may pose to OIGs, it is possible that occasionally an OIG might provide what reasonably appears to be proper notice, but through inadvertent clerical, routing, or other error, the notice does not reach the intended party, such that notice is not given. By including the general notice language, OIGs may mitigate the likelihood of failing to provide notice and opportunity to respond to an NGO or BE that is entitled to it.

Delayed Notice

If an OIG was required to notify an NGO or BE but failed to do so upon publication of a report, OIGs may seek to remediate by notifying the NGO or BE upon discovery of the failure to notify and by providing 30 days from the date of notification to respond.

Obtaining Waivers of Notice

OIGs may want to consider contacting frequently cited NGOs or BEs, that may be specifically identified in non-investigative reports on a regular or recurring basis, to determine whether they want to be notified of the opportunity to respond in every report or would prefer to agree to a waiver of notice under § 5274. Such agreements may specify certain circumstances under which an NGO or BE may still want to be notified, consistent with § 5274, or may waive notice entirely. NGOs and BEs have the discretion to waive notice under § 5274 if they choose to and in the manner they choose.

“Prepared by” an IG

The statute specifically applies to non-investigative reports “prepared by” an IG. If an NGO or BE response specifically identifies an NGO or BE that was not specifically identified in the report, the OIG may not be required to provide that newly identified NGO or BE with notice and opportunity to respond, because the response was not prepared by the OIG.

Many OIGs utilize contractors in the process of developing their non-investigative reports. Even if a report is created by a contractor under such circumstances, that report would be considered “prepared by” the OIG if the report was created on behalf of or at the direction of the OIG.

Note: OIGs are required to redact classified and non-public information and may edit responses if the response has gone beyond “the purpose of clarifying or providing additional context as it directly relates to each instance wherein an audit, evaluation, inspection, or non-investigative report specifically identifies” the NGO or BE. If OIGs edit NGO or BE responses in this manner, it may be prudent to clearly indicate what changes were made and the basis for doing so under the statute. Additionally, OIGs might consider including a comment explaining that the OIG’s edits were solely to ensure the response’s conformity to the statutory requirements and do not constitute new content that was “prepared by” the OIG.

Attaching Written Responses from NGOs or BEs

While the statutory language on the new notice requirement does not specify the format for displaying the NGO or BE response, it requires that the response be “attached” to the report, and when the report is on a public website, that the site be updated to “access a version of the...report that includes the written response.” Specifically, § 5274 requires that “the written response shall be attached to the audit, evaluation, inspection, or non-investigative report; and in every instance where the report may appear on the public-facing website of the Inspector General, the website shall be updated in order to access a version of the audit, evaluation, inspection, or non-investigative report that includes the written response.”

OIGs can comply with this requirement by attaching the NGO or BE response to the original report and then posting the report with the response attached to the OIG’s external website and Oversight.gov.

Note: OIGs may want to consider refraining from using language or procedures suggesting that OIGs are “amending” reports in response to NGO or BE comments or that the NGO’s or BE’s response is part of the OIG’s substantive report.

Disclaimers

When NGOs or BEs provide comments, OIGs may decide to re-publish reports with a disclaimer page between the end of the OIG’s substantive report and the required NGO or BE response attachment. This disclaimer could explain the distinction between the OIG’s report and the NGO’s or BE’s response to clarify which views belong to each agency or entity. The re-published product would include the original report, followed by a disclaimer, followed by the NGO or BE response. OIGs have discretion to craft appropriate language for the disclaimer depending on the circumstances.

Publishing Written Responses from NGOs or BEs on Public-Facing Websites and Oversight.gov

Publishing on the OIG’s Public-Facing Website

Section 420 of the IG Act requires federal agencies and designated federal entities (DFEs) to establish and maintain on their websites’ homepage a direct link to their respective OIGs’ publicly accessible websites. These OIGs are required to post reports (or portions of reports) to their public-facing websites within 3 days of submitting reports in final form to the head of the federal agency or DFE, provided disclosure of information in the reports (or portions thereof) is not prohibited by law.

When a report that specifically identifies an NGO or BE is published on the OIG’s website—whether pursuant to § 420 of the IG Act or for any other purpose—and an NGO or BE submitted a response consistent with § 5274, the OIG must update the website to provide access to a version of the report that includes the written response.

Note: If SARs are published on an OIG’s public-facing website and the SAR includes a prior non-investigative report that an NGO or BE provided a response to, OIGs must ensure that the version of the prior report included in the SAR contains the NGO’s or BE’s response.

Publishing on Oversight.gov

Section 424(e) of the IG Act requires some OIGs that publish reports (or a portion of any such reports) on their public-facing websites to contemporaneously publish the report (or a portion of any such reports) on Oversight.gov. Certain other OIGs have discretion to do so under § 424(e). While not a requirement, in both instances, OIGs may want to ensure that reports that specifically identify an NGO or BE posted to their own public-facing websites, which include any NGO or BE response(s) submitted consistent with § 5274, are posted in a consistent manner to Oversight.gov. Under this approach, when OIGs update the version of a report on their website to include any NGO or BE responses after they are received, the OIG would also need to update the version of the report appearing on Oversight.gov to include the NGO or BE responses.

OIGs that post reports to Oversight.gov but do not post reports to their public-facing websites may want to consider attaching NGO or BE responses to those reports on Oversight.gov for consistency with any other copies of the report to which the response must be attached pursuant to § 5274.

NGOs or BEs That Refuse to Provide Information or Assistance

An NGO or BE is not entitled to notice and opportunity to respond to a non-investigative report if the NGO or BE refused to provide information or assistance sought by an OIG during the creation of the non-investigative report. The following includes a set of different circumstances and approaches that may constitute an NGO's or BE's refusal to provide information or assistance pursuant to an OIG request during the creation of a non-investigative report. OIGs contemplating drafting internal policies may want to consider the documentation needs that will best support their determinations. These internal policies may be conveyed to the NGOs or BEs in advance, or the policies may be cited after publication if an NGO or BE objects to not being provided with notice and opportunity to respond to the report. OIGs may also want to consider documenting instances in which the OIG believes that an NGO or BE refused to provide requested information or assistance pursuant to § 5274.

Failure to Respond

If an OIG chooses to draft internal policies, it should consider how to address the situation when an NGO or BE does not provide any response to an OIG request for information or assistance during the oversight project and whether this constitutes a refusal to provide information or assistance. For instance, if an OIG requests information or assistance from an NGO or BE, allows for a reasonable amount of time to respond based on the scope of the request, and then needs to continue developing its report with or without the NGO's or BE's compliance, it may consider the failure to respond as a refusal under § 5274. Determining that a failure to respond constitutes a refusal may be reinforced if an OIG repeatedly follows up on its request and continues to not receive a response.³ OIGs may choose for documentation purposes to notify NGOs or BEs that failure to respond may be treated as a refusal to provide the requested information or assistance under § 5274.

Less Than Full Cooperation

Similarly, OIG internal policies could contemplate degrees of cooperation. For example, if an NGO or BE provides irrelevant, insignificant, or otherwise unresponsive information or assistance pursuant to an OIG's request, such that it cannot reasonably be said to have provided the requested information or assistance, an OIG may construe this as a refusal to provide the requested information or assistance. An OIG may also construe limited or inadequate cooperation in securing interviews with employees who are witnesses or subject-matter experts as a refusal to provide the requested information or assistance.⁴ OIGs may request that NGOs or BEs provide an explanation as to why they are unable to provide the requested information or assistance. There may be legitimate legal or practical reasons why an NGO or BE cannot comply with an OIG's request (e.g., the NGO or BE does not have the information requested or cannot practically provide the assistance requested). If an NGO or BE does not provide legal authority or a practical reason as to why it is unable to fully cooperate with the OIG's request, the OIG may choose to consider this as a refusal to provide the requested information or assistance.

Subpoenas

OIGs may want to consider developing internal policies to address situations in which the OIG seeks to obtain information or assistance during the creation of a report by issuing a subpoena to an NGO or BE,

³ Provided the OIG requests the information or assistance from an individual or system at the NGO or BE that could reasonably be able to comply with the request or be expected to relay the request to such an individual or individuals who could comply with the request.

⁴ Similarly, if the OIG receives limited or inadequate cooperation in securing interviews with employees who are witnesses or subject-matter experts and cannot compel such cooperation, the OIG may not need to provide notice and opportunity to respond.

and whether an NGO's or BE's refusal to answer the subpoena constitutes a refusal to provide the requested information or assistance. Many NGOs and BEs prefer to receive a subpoena when information or assistance is requested of them and may be fully cooperative with the request, provided the OIG issues a subpoena. Such circumstances may not necessarily constitute a refusal. Alternatively, if an NGO or BE refuses to comply after being subpoenaed and is not pursuing legal means of relief from the subpoena, an OIG may consider whether that constitutes a refusal.

Good Faith Effort / Substantial Compliance

OIGs may wish to incorporate an understanding of a good faith effort or substantial compliance into their policies. For example, if an NGO or BE provides what it reasonably can provide and can demonstrate its good faith effort to comply with a request, or if the NGO or BE has substantially complied with the request in accordance with that OIG's internal policy, the exception to providing notice and opportunity to respond to a report may not apply. OIGs may want to reflect such efforts in their internal policies as criteria for evaluating such circumstances. Factors could include considering whether an NGO's or BE's reasoning for a limited or partial response is legally sound or reasonable.

Additional Factors to Consider

OIGs may also wish to determine whether they would like for their internal policies to include boilerplate notification language regarding failures to provide requested information or assistance or failures to respond. For example, OIGs may wish to use this language as an opportunity to outline their interpretation of what constitutes a refusal or failure to respond and how such a refusal or failure will impact actions taken by the OIG. OIGs may want to exercise caution as to whether and how such notifications are relayed to NGOs or BEs during the creation of a report to avoid implying to an NGO or BE that it is necessarily entitled to notice and opportunity to respond, when the NGO or BE may not ultimately be specifically identified in the final published report and, therefore, not entitled to notice and opportunity to respond.

OIGs may also want to develop internal policies on how refusals or failures to provide requested information or assistance will be addressed in the final report.

Referencing Refusals in Reports

OIGs may want to consider including language in published reports if the OIG requested information or assistance from an NGO or BE during the creation of the report and the NGO or BE refused to comply with the request.

Reviewing NGOs' or BEs' Responses to Prevent Improper Disclosure of Information

When receiving comments from NGOs and BEs, OIGs should develop internal policies that employ best practices that align with their internal redaction policies for non-disclosable information. OIGs may wish to proactively request that NGOs or BEs highlight or otherwise mark any sensitive material ahead of receiving comments. Once comments are received, they should be reviewed for classified, sensitive, and other non-disclosable material. Any such material should be redacted in accordance with applicable laws, rules, regulations, and the OIG's internal redaction policies before being posted to the public website, including ensuring that such comments are Section 508 compliant.

FAQs

Does the NGO or BE need to be named, or will the section apply when the NGO or BE is otherwise identifiable, including through a product or brand name?

NGOs or BEs Mentioned by Name

NGOs or BEs that are mentioned by name in a published non-investigative report are entitled to notice and opportunity to respond to that report. Prior to the passage of the NDAA, Senate Report 117-226 included language summarizing what became § 5274 in the final NDAA as requiring notice and opportunity to respond when OIG reports “mention [NGOs and BEs] by name.”⁵ The original amendment introducing § 5274 notably contained the language “specifically identifies a specific” NGO or BE, while the summary of that section provided contemporaneously in the Senate Report used the “mentions by name” language, indicating that the intended meaning of “specifically identify” was to mention by name. Accordingly, OIGs may interpret § 5274 as not applying for the following:

- Product mentions when the NGO or BE that produces the product is not named and
- Anonymized NGOs and BEs (e.g., Corporation X instead of Google), even when context provided in the report may make it clear which NGO or BE is being discussed.⁶

Unnamed NGO or BE That Is Reasonably Identifiable

OIGs may want to consider whether a reasonable person could correctly identify an unnamed NGO or BE mentioned in a non-investigative report, either directly from a statement about it or from the broader context provided in the report. If a report extensively alludes to a specific NGO or BE without mentioning it by name, OIGs may want to provide that NGO or BE with notice and opportunity to respond. When determining whether to provide notice under such circumstances, OIGs may want to consider the extent to which the following appear throughout the report:

- Product mentions when the naming of a product clearly identifies the NGO or BE that manufactures or owns it or
- References to anonymized NGOs and BEs when a reasonable person could identify the NGO or business from the report.⁷

NGOs and BEs Only Identified in Sources

Each OIG should make its own independent assessment of whether the requirement for notice and opportunity to respond extends to a non-investigative report that only specifically identifies an NGO or BE by naming it in a source cited in the report. The following guidance is provided to assist OIGs in making that determination.

Notice Required Approach

Section 5274 applies to reports that specifically identify an NGO or BE, “whether or not the non-governmental organization or business entity is the subject of that audit, evaluation, inspection, or non-investigative report.”⁸ As a precaution, OIGs may want to provide notice and opportunity to NGOs or BEs that are specifically identified in a citation to a source, even if the NGO’s or BE’s relation to the report is incidental or minor.

⁵ § 904, S. Rep. 117-226, <https://www.congress.gov/congressional-report/117th-congress/senate-report/226/1>.

⁶ This is not intended to serve as an exhaustive list.

⁷ This is not intended to serve as an exhaustive list.

⁸ Section 5274(a)(6)(A).

Notice Not Required Approach

OIGs not providing notice and opportunity to respond to NGOs and BEs that are specifically identified exclusively in references may want to develop internal policies to support such an approach and procedures that will be implemented if NGOs or BEs request an opportunity to respond when it was not provided.

Are individuals covered under the terms NGO or BE?

BE can be construed broadly, given the lack of a definition in § 5274. Placed alongside the context of NGOs within the statute, BE may include any private legal entity that is not an NGO, regardless of whether it is a for-profit business or not. State law tends to determine whether an entity is a business; therefore, if an entity is incorporated or registered as a legal BE in a state (including foreign countries), it may constitute a BE.

Individuals vs. Sole Proprietorships

Individual natural persons are excluded from this definition. However, to the extent that an individual operates or does business as a legally distinct or registered sole proprietorship, that sole proprietorship may be considered a BE.

Individual Persons as Contractors

Individual contractors that are not legally distinct or registered entities or organizations distinct from an individual natural person operating as that contractor are not likely to be NGOs or BEs under § 5274.

NGOs, like BEs, are non-governmental organizations. NGO can be construed broadly as a legal entity in the form of an organization.

Does “non-investigative report” include SARs?

SARs are semiannual reports to Congress that include non-investigative material, such as summaries of OIG work over the past 6 months, as well as links to prior reports. SARs may be considered “other non-investigative reports” under § 5274 if novel content (i.e., previously unpublished or unreleased content) specifically identifies an NGO or BE.⁹ If an NGO or BE is specifically identified in the newly published sections of the SAR (i.e., the material not contained in any previously published report), the NGO or BE may be entitled to notice and opportunity to respond to the new instances in which they are specifically identified in the SAR.

Previously Published Reports Linked to or Contained in SARs

Previously published material included in a SAR that specifically identifies an NGO or BE would likely not require the OIG to provide notice and opportunity to respond because the OIG should have already notified and provided that opportunity to an NGO or BE when the original report was initially published. Previously published reports to which an NGO or BE submitted a response that are linked to or contained in a SAR should be the version of the report which includes the NGO or BE response in accordance with § 5274(a)(6)(A)(iii).

⁹ This could be in introductory or summary portions of the SAR, which would not have appeared in any previously published report but specifically identifies an NGO or BE.

If the report contains classified, sensitive, or redacted information, does the OIG have an obligation to share that information with the NGO or BE to obtain comments?

Reports prepared by OIGs for public release (via posting to the relevant OIG website) will have been analyzed for non-disclosable information, such as Controlled Unclassified Information or classified information. At the time of publication or posting to the OIG website, all sensitive information will be already withheld from public view. Additionally, classified reports are not published or disseminated publicly as a general matter. Therefore, OIGs would not be responsible for giving notice to NGOs or BEs that appear only in redacted material or in classified reports, because they would not be specifically identified in the published report. NGOs or BEs specifically identified in non-redacted portions of partially redacted published reports would still be entitled to notice and opportunity to respond, but only to the redacted report.

If an OIG provides an NGO or BE a chance to comment during the draft review process and no comments are submitted, is the opportunity to comment provided by the statute waived?

For an NGO or BE to waive its right to notice and opportunity to respond, an OIG must request information or assistance from the NGO or BE during the creation of the report, and the NGO or BE must refuse to provide that information or assistance. Requests for information or assistance are distinct from NGO or BE responses under § 5274, because the statute expressly separates when these events occur. Information or assistance may be requested during the creation of the report (i.e., *prior* to publication), whereas the mandatory opportunity to submit written responses to reports occurs only during the 30 days starting on the date of publication (i.e., *after* publication).

The OIG is not required to attach and include responses submitted prior to or after the 30-day post-publication period. Any information submitted by an NGO or BE pursuant to an OIG request prior to the 30-day post-publication period would be optional for the OIG to include with the report and would not affect an NGO's or BE's right to notice and the opportunity to respond starting on the date of publication. Therefore, requests for a response to an early or draft report would not waive the opportunity to respond post-publication, provided the NGO or BE did not refuse to provide information or assistance during the creation of the report.

Can an OIG dispute or provide additional comments or a response to the NGO or BE response?

While there is no statutory requirement for an OIG to provide additional comments or a response to the NGO or BE response/comment, it is always the OIG's prerogative to do so.

What are some considerations for Overseas Contingency Operations (OCO)?

OCO Overview

An OCO is a specifically designated, multiagency operation in which different Federal agencies coordinate to provide services such as security, stabilization, and humanitarian assistance tied to an overseas military response.

As required by 5 U.S.C. § 419, the Inspectors General for the U.S. Department of Defense, U.S. Department of State, and U.S. Agency for International Development (USAID) work together to develop and execute a joint strategic plan for comprehensive oversight of each OCO. A designated Lead IG for each OCO also reports quarterly to Congress on every operation's progress and corresponding oversight activities.

Section 5274 Applicability for OCO Products

For the purposes of § 5274,

- The joint strategic plan for comprehensive oversight of each OCO is not considered a “non-investigative report” and, thus, is not subject to § 5274’s requirements to provide notice and opportunity to respond to NGOs or BEs.
- The Lead IG OCO quarterly reports are considered “non-investigative reports” and are subject to § 5274’s requirements to provide notice and opportunity to respond to NGOs or BEs.

Additional Definitions for OCO

The Inspectors General for the U.S. Department of Defense, U.S. Department of State, and USAID work together to meet the intent of § 5274’s requirements to provide notice and opportunity to respond for Lead IG OCO quarterly reports.

Lead IG OCO quarterly reports primarily include information from public sources (e.g., media) and data calls from Federal agencies and implementers. For the purposes of § 5274, the following information sources and entities are not subject to § 5274 notification requirements:

- Public international organizations (also called multilateral organizations) are comprised of government entities and, thus, are not considered NGOs or BEs.
- Media and research sources (e.g., the New York Times, Pew Research Center), are excluded when quoted/sources for background and/or contextual information from a previously published, public source and footnoted in the OCO quarterly report. Exceptions include rare instances in which the media or research source is the prevalent subject of discussion.
- Entities on the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) sanctions list. OFAC provides a list of companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists groups and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. These sanctioned entities are excluded from the requirements of § 5274 by virtue of presumed “non-cooperation” with the United States.

Appendices

Appendix A: Optional NGO or BE Notification Template

<Date of Publication>

<NGO or BE Point of Contact>

<Title>

<Organization>

<Address>

<City, State Zip Code>

Dear <Name>:

On [date], the [agency name] Office of the Inspector General (OIG) publicly posted to its website [report name with hyperlink], which specifically identifies [non-governmental organization/business entity] within the body of the report. Pursuant to the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 5274, which amends the Inspector General Act of 1978, the OIG is providing you with this notice that you have 30 days from the date of report publication to review the final report and if you choose, submit a written response to the OIG that clarifies or provides additional context for each instance within the report in which [non-governmental organization/business entity] is specifically identified.

If you choose to provide a clarification or additional context to the above referenced report as permitted by statute, please provide it to the OIG no later than [date- 30 days starting from the date when the report was posted]. Any response you provide for that purpose will be attached to the final, published report. Please note, a response that does not satisfy the purpose set forth by statute may be returned to you and not appended to the final report.

Please send your response via email to [OIG point of contact name and email] or to [OIG point of contact mailing address]. If you have any questions, please contact me at [OIG point of contact phone number].

Sincerely,

Name

Title

Appendix B: NDAA Section 5274

Sec. 5274. Submission of reports that specifically identify non-governmental organizations or business entities.

(a) IN GENERAL. —Section 5(g) of the Inspector General Act of 1978 (5 U.S.C. App.), as so redesignated by section 5625 of this title, is amended by adding at the end the following:

“(6)(A) Except as provided in subparagraph (B), if an audit, evaluation, inspection, or other non-investigative report prepared by an Inspector General specifically identifies a specific non-governmental organization or business entity, whether or not the non-governmental organization or business entity is the subject of that audit, evaluation, inspection, or non-investigative report—

“(i) the Inspector General shall notify the non-governmental organization or business entity;

“(ii) the non-governmental organization or business entity shall have—

“(I) 30 days to review the audit, evaluation, inspection, or non-investigative report beginning on the date of publication of the audit, evaluation, inspection, or non-investigative report; and

“(II) the opportunity to submit a written response for the purpose of clarifying or providing additional context as it directly relates to each instance wherein an audit, evaluation, inspection, or non-investigative report specifically identifies that non-governmental organization or business entity; and

“(iii) if a written response is submitted under clause (ii)(II) within the 30-day period described in clause (ii)(I)—

“(I) the written response shall be attached to the audit, evaluation, inspection, or non-investigative report; and

“(II) in every instance where the report may appear on the public-facing website of the Inspector General, the website shall be updated in order to access a version of the audit, evaluation, inspection, or non-investigative report that includes the written response.

“(B) Subparagraph (A) shall not apply with respect to a non-governmental organization or business entity that refused to provide information or assistance sought by an Inspector General during the creation of the audit, evaluation, inspection, or non-investigative report.

“(C) An Inspector General shall review any written response received under subparagraph (A) for the purpose of preventing the improper disclosure of classified information or other non-public information, consistent with applicable laws, rules, and regulations, and, if necessary, redact such information.”

(b) RETROACTIVE APPLICABILITY. — During the 30-day period beginning on the date of enactment of this Act—

(1) the amendment made by subsection (a) shall apply upon the request of a non-governmental organization or business entity named in an audit, evaluation, inspection, or other non-investigative report prepared on or after January 1, 2019; and

(2) any written response submitted under clause (iii) of section 5(g)(6)(A) of the Inspector General Act of 1978 (5 U.S.C. App.), as added by subsection (a), with respect to such an audit, evaluation, inspection, or other non-investigative report shall attach to the original report in the manner described in that clause.