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# The Structure and Effectiveness of the Baltimore City Office of Inspector General: Lessons Learned and the Path Forward

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## Executive Summary

Baltimore City's Office of Inspector General (OIG) was created in 2005 an executive order by then-Mayor Martin O'Malley, with the goal of increasing government accountability. Over the past 12 years, however, the Baltimore OIG has experienced ups and downs that have negatively impacted its continuity of operations and prevented it from achieving its desired goals.

Hundreds of OIGs are currently serving state and local governments across the country with a mission similar to that of the one in Baltimore. OIGs are intended to serve as an independent and objective unit that is free from political influence. They conduct audits and investigations to promote economy and efficiency and to detect fraud, waste, and abuse. In addition, they provide information to policymakers about problems and deficiencies and recommend corrective action. All of these activities are geared toward improving practices, ensuring government effectiveness,

saving money, and promoting transparency and trust in government.

In 1996, the Association of Inspectors General (AIG) was formed to support, strengthen, and assist the work of state and local OIGs. In 2001, the AIG published a compilation of principles and standards for OIGs, which became known as the "Green Book." Laying out quality standards for offices, investigations, inspections, and audits, the Green Book became the archetype upon which many OIGs frame their work. It also provides the accepted benchmark for comparison: adherence to the Green Book standards will result in an empowered OIG. When jurisdictions fall short of the Green Book, a weakened OIG will result.

This report compares the current structure of Baltimore's OIG against the Green Book archetype and recommends changing the structure to strengthen the OIG, increase its autonomy, and improve its ability to effectively execute its mission.

## Introduction

The Baltimore City Office of Inspector General (OIG) was established in July 2005, within the City's Law Department, pursuant to an executive order (EO) penned by then-Mayor Martin O'Malley. Through that EO, Baltimore joined the increasing trend of OIG creation that had been moving across the nation at the state and local levels, loosely emulating the federal OIG model. Although the inspector general (IG) concept had previously existed for centuries within the military, the civilian federal OIG model began with the enactment of the IG Act of 1978. That initial legislation created politically independent statutory IGs within 12 of the larger, more important federal agencies.

In the four decades since the passage of the federal IG Act, the model has been expanded, honed, and strengthened by additional legislation, resulting in today's 72 federal IGs and the Council of the Inspectors General on Integrity and Efficiency (CIGIE), an executive branch umbrella organization that addresses crosscutting issues. As the concept spread at the federal level, it also began to take root at the state and local levels. In 1980, Massachusetts became the first state to create a statewide IG office, and in the ensuing years, the number of state and local IG offices has steadily increased. A 2014 study identified 159 state and local OIGs.<sup>1</sup>

The evolution of federal OIGs is marked with significant struggle between legislative branch forces seeking additional oversight in the wake of major scandals and executive branch forces seeking autonomy and the privilege of control. The legislative history leading up to the federal IG Act—and surrounding its subsequent amendments—has been the subject of extensive studies, publications, and debate. A detailed legislative history of federal OIGs, included as Appendix A, is instructive as a benchmark against which to measure state and local OIGs.

As the concept has matured, an OIG has come to be known as an independent and objective unit that is free from political influence; conducts audits and investigations to promote economy and efficiency and detect fraud, waste, and abuse; provides information to policymakers about problems and deficiencies, and recommends corrective action. All of these activities are geared toward improving practices and procedures and overall government effectiveness.

The existence of OIGs is generally seen as bringing a number of benefits to government. Probably the most visible benefits are the return of funds to the treasury through restitution and recoveries, and the efficiencies gained through implemented recommendations. According to the Center for Effective Public Management at the Brookings Institution, between 2010 and 2014, the mean annual return on investment of the 19 federal OIGs examined was more than 13:1.<sup>2</sup> Recovered funds can be used for the original intended benefit of economic development and social health, safety, and welfare.

Savings at the level of billions of dollars over the decades-long federal experience—or in the millions of dollars at the state and local levels—are eye catching, but there is a broader purpose.

An effective OIG will promote public confidence in all agencies through the transparency with which it operates and the realization by citizens that their leaders are committed to the values of honest and effective government. The citizens' confidence in the important work done by their government is better served when the government polices itself by ferreting out those who perpetrate fraud, waste, or abuse, and initiating improvements in the efficiency with which it operates.

Less visible than dollars saved—but potentially greater in significance, albeit impossible to measure—is the deterrent effect created by the existence of an effective OIG. Much of

the workplace fraud committed by government employees consists of crimes of opportunity, often based on employees' knowledge of weak internal controls and a lack of oversight. An active IG office greatly increases the likelihood of detecting employee crime, and, as a result, fewer employees will risk engaging in fraudulent activities.

Federal OIGs are products of common legislation and—with few exceptions—are highly uniform in structure, authorities, and operations. However, there is no common genesis across most of the state and local OIGs, and although they share a common name, there is little uniformity. In the words of an officer of the Association of Inspectors General (AIG), "If you've seen one OIG, you've seen just one OIG." There is, in fact, great variability in the structure, powers, and degree of independence among these OIGs, and, as a result, great variability in effectiveness.

During the 12 years of its existence, the Baltimore City OIG has had a series of fits and starts. Four IGs have served the City during the terms of three mayors. The selection of Baltimore's two most recent IGs was made by the city solicitor (with concurrence of the mayor) following a thorough outreach and group interview process. Departures of the four IGs have been, for varying reasons and under varying circumstances, instructive but confidential. The office has been marked by higher-than-ideal turnover, modest budget growth, a mixture of warm reception and resistance in some quarters, and uncertainties/disagreements over jurisdiction and powers. All of these factors have negatively impacted investigations and reduced the effectiveness of the OIGs. As of the date of this report, the Baltimore OIG has not published an investigative or evaluative report nor issued a press release in over a year, and the position of IG remains vacant.

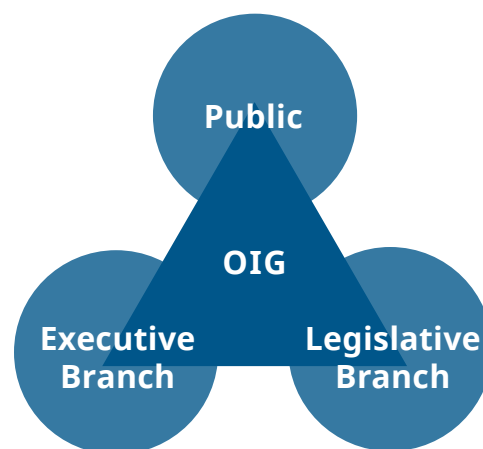
It is time for Baltimore to take a step back and fix the underlying structure of its OIG before proceeding. During four decades of OIG experience, a common cognitive framework has emerged among OIG practitioners and stakeholders. The purpose of this report is to

compare the Baltimore City OIG with this paradigm and formulate recommendations that will serve Baltimore and its citizens in the future.

## Building an Effective Office of Inspector General

### *General Principles and Guidelines*

An effective OIG serves three key—often opposing—stakeholders, as shown in the following diagram:



For this relationship to work effectively, there must be a healthy balance of power; OIGs must possess the necessary independence; and they must operate in a fully transparent manner. Consequently, it is essential that the authorities and powers granted to an OIG by its authorizing documents be carefully constructed to ensure balance and independence. An effective OIG must have the freedom and authority to fully investigate programs and personnel within all branches of government and publish the results of those investigations for all to see—both inside and outside the government.

The early development of civilian federal OIGs in the late 1970s was marked with considerable debate between the executive branch and Congress. The executive branch strived to maintain its program management prerogative and avoid congressional "micromanagement." Congress, keenly aware of its responsibility over tax dollars—and

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concerned over the negative impact that fraud, waste, and abuse can have on the intended program benefits—strived to gain additional avenues of oversight. During hearings on the bill that created the OIG in the former Department of Health, Education, and Welfare (HEW), Congressman Benjamin Rosenthal expressed his view that, to be effective, an OIG must have an adequate and capable staff, access to information that includes the ability to subpoena, and “complete independence” from those responsible for operating programs and those in high organizational positions. In the four decades since its passing, the IG Act has been amended several times—adding agencies, increasing powers, and strengthening independence. Most recently, the passing of the IG Empowerment Act of 2016 demonstrated Congress’ continuing support of OIGs and their work. The act improved OIG access to records, expanded reporting requirements, and strengthened whistleblower provisions.

Discussions surrounding the modern OIG paradigm universally stress independence as the primary characteristic of an effective OIG.<sup>3</sup> To ensure independence, an OIG must operate outside the political realm, be free to make the necessary choices of what to investigate, have a dedicated budget free from arbitrary cuts, have access to any and all records, have the power to publish public reports free from censorship, and be free from reprisals and arbitrary removal. Restrictions in any of these areas will hamper independence and handicap the OIG’s ability to do its work and adequately serve all stakeholders.

### *State and Local Offices of Inspector General*

Many state and local governments across the nation have elected to create their own OIGs in the aftermath of embarrassing public corruption or ethics scandals that have left elected officials scrambling to restore public trust. In responding to scandal, it is common for legislators from across the aisle to work together to co-sponsor OIG legislation. Absent legislation, OIG offices may be created by an EO or the action of a board or commission.

Since Massachusetts created the first state OIG in 1980, the number of state and local OIGs has steadily increased. The AIG directory, although admittedly not comprehensive, lists 130 state and local OIGs;<sup>4</sup> in fact, a 2014 study identified 159 state and local OIGs.<sup>5</sup> Of the OIGs in the AIG directory, 14 are state OIGs with statewide jurisdiction; 73 are state OIGs with jurisdiction over a particular department or agency; and 43 are local OIGs at the city, county, or other local entity level. The AIG directory shows that 33 states plus the District of Columbia have at least one OIG within their borders.

According to Robin J. Kempf, Ph.D., of the John Jay College of Criminal Justice, “OIGs are spreading from jurisdiction to jurisdiction because they are seen as the answer to the perceived problem of government accountability, defined very broadly. The idea of an OIG has become institutionalized, embodying the ideal of accountability.”<sup>6</sup>

The early adoptions of OIGs, according to Kempf, were either to address identified deficiencies in auditing and investigations

or to respond to specific scandals. However, subsequent adoptions are frequently mimetic. Jurisdictions have multiple methods to increase monitoring and improve accountability and performance, such as increasing legislative auditing or passing “transparency laws.” Yet, a simpler, more effective path seems to be to follow the lead of other jurisdictions and create an OIG. In the interest of expediency, an OIG can be established by executive action, answering the outcry for accountability yet bypassing the potentially lengthy debate accompanying the legislative process.

### *Structure and Authority — the OIG Paradigm and the Green Book*

In 1996, as IG offices were spreading across the country, the Association of Inspectors General (AIG) was formed to:

“Foster and promote public accountability and integrity in the general areas of the prevention, examination, investigation, audit, detection, elimination and prosecution of fraud, waste, and abuse through policy research and analysis; standardization of practices, policies, and ethics; encouragement of professional development by providing and sponsoring educational programs; and the establishment of professional qualifications, certification, and licensing.”

According to its own documents, the AIG created a committee in 1999 to establish generally accepted OIG principles and standards, which were prepared following an open process that allowed for widespread participation. Drafts were developed for review by the broad range of OIG offices throughout the nation and were based on quality standards for federal OIGs issued by the president’s Council on Integrity and Efficiency and the General Accounting Office’s (GAO) Generally Accepted Government Auditing Standards, also known as the “Yellow Book.” Each of the drafts was then distributed to the federal, state, and local OIG communities for review and comment. The committee considered all comments in detail, revised the drafts as

appropriate, and presented the drafts to the AIG board of directors. On May 16, 2001, the board found that the draft documents represented generally accepted principles, quality standards, and best practices generally applicable to federal, state, and local OIGs. The result—AIG’s Principles and Standards for Offices of Inspector General, or the “Green Book”—contains the following five documents:<sup>7</sup>

- Statement of Principles
- Quality Standards for Offices
- Quality Standards for Investigations
- Quality Standards for Inspections Evaluations, and Reviews
- Quality Standards for Audits

Both the IG Act of 1978 and the Green Book call for OIGs to perform auditing work as well as investigations. At the federal level, the audit and investigative functions are fully merged under the OIGs. At the state and local levels, this is not always the case, and different entities can be responsible for different auditing functions. In Baltimore, for example, the Department of Audits is under the comptroller, an elected official, and is primarily focused on facilitating the annual independent audit, which centers on preparing and rendering an opinion on the Combined Annual Financial Report. The typical audit work performed by the Baltimore OIG is focused on assessing and strengthening specific internal controls that, because of their weakness, have allowed fraud, waste, or abuse to occur. This program evaluation, or performance audit work, examines a particular program in detail to determine its efficiency and effectiveness. For example, the Department of Audits might examine whether the total cost of laptop computers purchased during the year is reasonable, whereas the OIG might look at the controls surrounding the inventory and security of those assets.

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According to Kempf, the IG Act of 1978 provided the initial prototype for a civilian OIG within the federal government, and the Green Book expanded and honed the concept with special application at the state and local levels. These documents, together with the AIG's Model Legislation for the Establishment of Offices of Inspector General,<sup>8</sup> combine to form a common model of the structure and powers of an OIG. Because states and localities are bound neither by the IG Act of 1978 nor the Green Book, and are free to design an OIG tailored to their desires and comfort level, it is this "ideal" model—or archetype—that provides the baseline against which actual OIGs can be measured. In her three-part thesis, Kempf posits that although many jurisdictions may embrace the concept of an OIG, they often push back against the potential implications of an OIG having too much independence or power by adopting design changes that sometimes leave an OIG in a weakened form.

As stated in the Green Book Statement of Principles, OIGs, by the nature of their work, are held to the same—or higher—expectations as other government officials in using prudence with public resources. Because OIGs often identify and describe wasteful use of public resources by organizations under scrutiny, they have a concomitant duty to conduct their own work in an efficient and effective manner. OIG work should adhere to professional standards and include quality controls to assure that all products are of the highest possible quality. This requires an internal quality assurance program and suggests periodic external quality reviews for each OIG.

An OIG is judged by the results of its efforts and the timeliness, accuracy, objectivity, fairness, and usefulness of these results. These are the cornerstones of OIG accountability.

To determine how individual OIGs measure up against the Green Book, the AIG has a peer review process that it provides to

member OIGs. The process involves an onsite evaluation and review of an OIG against the Green Book quality standards with resulting recommendations. According to an AIG member, the peer review may include, upon request, a review of the structure of an OIG as compared to the Green Book Statement of Principles with an analysis of any shortfalls and recommendations for strengthening. This process has been requested by weakened OIGs to obtain third-party support for reforms.

Individual OIGs examined during this study revealed numerous OIG forms. Although some fall short of the AIG model, many follow its guidelines, and some OIG forms have characteristics that even exceed the Green Book template in certain areas. For example, in Florida's Palm Beach County, the IG functions are completely removed from the executive branch. Created under Article XII, Section 2 422 of the Palm Beach County Code, the statutory Inspector General Committee (IGC) consists of "the commission on ethics, the state attorney for the Fifteenth Judicial Circuit or his or her designee, and the public defender for the Fifteenth Judicial Circuit or his or her designee." The statute makes the IGC responsible for "select[ing] an IG, decid[ing] whether to renew an IG contract, and partak[ing] in the removal process of an IG in the event of neglect of duty, abuse of power or authority, discrimination, or ethical misconduct."<sup>9</sup> The statute specifically states, "The organization and administration of the [OIG] shall be independent to assure that no interference or influence external to the [OIG] affects the independence and objectivity of the [OIG]."

The organization of New Mexico's Albuquerque OIG followed a similar pattern and exceeded some of the guidelines of the Green Book. In 2010, the "Inspector General Ordinance" (Article 17 of the City of Albuquerque Code) established an Accountability in Government Oversight (AGO) Committee, which consists of five members from the community at large. The mayor and one city councilor, appointed



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annually by the city council president, must be nonvoting ex-officio members. At least one AGO committee member must be a certified public accountant, one must have a law enforcement or law background, and one must be a professional management consultant.<sup>10</sup> The committee receives applications from IG candidates, interviews them, and submits the ranking of the top-three candidates to the city council, which then must select—and adopt through resolution—the IG from that list. According to section 2-17-4 of the Code, “The [OIG] is created as an independent office of city government. The office is not part of the city’s executive branch or the City Council. The [IG] shall report to the Committee.”<sup>11</sup>

The most notable characteristic beyond the archetype encountered during the course of this study is in the structure of the OIG for the City of Montreal, Canada. According to its 2016 annual report, the office’s “overriding mandate is to detect and prevent collusion, corruption, fraud and other fraudulent tactics employed in the awarding and management of the City’s public contracts.”<sup>12</sup> The OIG is a member of the U.S.-based AIG, and its structure follows most of the provisions of the Green Book. A key power of the Montreal OIG that exceeds the archetype is reminiscent of the so-called “doomsday sanction” of the 1960s era federal IG for Foreign Assistance. The Montreal IG “may cancel any contracting process involving a contract of the City or any related legal person or rescind or suspend the carrying out of such a contract if the following two conditions are met: [1] if the IG finds that any of the requirements specified in a document of the call for tenders or a contract has not been met, or [2] that the information provided in the contracting process is false; and

if he is of the opinion that the seriousness of the breach observed justifies the cancellation, [rescission] or suspension.”

Although the structure and authorities of OIGs can vary across jurisdictions, the AIG Green Book represents the accepted benchmark for comparison and was developed by experienced IGs. Adherence to the Green Book standards during OIG formation will result in an empowered OIG. Conversely, when jurisdictions fall short of Green Book provisions, a weakened OIG will inevitably result.

### **The Inspectors General of Maryland and Baltimore**

#### *Offices of Inspector General Across Maryland*

In Maryland, single-agency IGs have been established at the state level in the State Departments of Public Safety and Correctional Services, Human Resources, and Health and Mental Hygiene. Prince George’s County also created a single-agency IG for its police department as a result of a DOJ investigation a decade ago.

In 1997, the County Council for Montgomery County passed legislation to create its IG office to “serve as a watchdog to detect and prevent fraud, waste, and abuse in County government operations.” The Montgomery County OIG ordinance spells out terms for the appointment, term, qualifications, and removal of an IG and has specific provisions for access to documents and information. The ordinance makes it a “Class A” violation to withhold information, provide false information, or retaliate against

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anyone making a complaint to the OIG. The legislation includes a unique process for appointment that goes beyond the archetype in establishing independence. An IG nominating panel, consisting of three to five Montgomery County residents, submits a list of at least three qualified nominees from which the county council makes its selection and appointment. Members of the nominating panel must not be employed by the county or any independent county agency during their service on the panel. The Montgomery County IG serves for a term of four years, a departure from the five years recommended by the Green Book. The IG term overlaps that of the county executive and council, beginning on July 1 of the third year after an election and ending on June 30 of the third year after the following election.

There is, however, an unusual feature in Montgomery County. A citizen advisory council created by the IG assists in developing annual plans for executing and reporting on audits and investigations; determining position and skill needs of the office; and assessing its budgetary needs. Composed of five to seven county residents who are independent and recognized community leaders, members of the advisory group serve on an uncompensated volunteer basis. A potential weakness in the Montgomery County structure is the fact that OIG staff are term employees and each employee's term ends when the next IG takes office, unless a shorter term is specified. This characteristic could impact the ability to recruit talented staff and could disrupt continuity of investigations that span multiple years.

### *City of Baltimore Offices of Inspector General*

The City of Baltimore has had two OIGs over time. As previously mentioned, the citywide OIG was created in 2005 by an executive order (EO) penned by then-Mayor Martin O'Malley that placed the OIG in the Law Department. The purpose of O'Malley's EO was to provide an institutional mechanism

whereby fraud, waste, and abuse in City government could be independently investigated, reported both privately and publicly, and punished appropriately—to the end that such conduct would be reduced in the future and the public would have more faith in the honesty of City government. A second short-lived OIG was created in 2009 by the Housing Authority of Baltimore City (HABC) primarily to investigate fraudulent use of federal section 8 housing funds. In a controversial move, the HABC OIG was eliminated in 2014 with the firing of the IG. Its investigators were subsequently moved under the HABC Office of Legal Affairs and renamed the "Internal Audits and Investigations Unit."

The Baltimore City OIG has, during the 12 years of its existence, experienced ups and downs that have negatively impacted its continuity of operations. Sudden departure of IGs and loss of staff have resulted in periods with sizeable case backlogs, unaddressed internal control weaknesses, and declines in case statistics. The table on page 9 displays the annual accomplishments of the Baltimore City OIG over time as reported in its annual reports due by September 1 of each year.

To clarify the terminology used in the following table, "New Cases Received" is the number of incoming complaints received by various means during the fiscal year. These complaints can either be opened for investigation or referred out to other City or external agencies. Cases can be resolved through administrative action such as employee termination, civil action such as litigation, prosecutorial action, or no action due to lack of evidence. "Prosecutorial Actions" are arrests, indictments, or convictions obtained by either state or federal prosecutors based on cases brought by the OIG. "Savings" are derived from future funds not paid out by the City as a result of the discovery and termination of a certain activity. "Recoveries" are funds that return to the City as a result of civil action pursued by the



## Annual Accomplishments of the Baltimore City OIG

Fiscal year*	New cases received	Prosecutorial actions	Savings and recoveries	Investigator work years
2010	110	3	\$187,000	3.2
2011	153	3	\$1,593,496	1.8
2012	134	3	\$538,592	3.1
2013	79	3	\$65,141	2.3
2014	172	3	\$95,734	6.4
2015	182	18	\$2,359,800	6
2016	123	11	\$8,529,520	7.2
2017	103	3	\$22,086	N/A

\* Annual reports between 2006 and 2009 covered differing time periods and were inconsistent as to types of data reported. They were not utilized for this comparison.

Law Department or court-ordered restitution in criminal cases. "Investigator Work Years" is the total annual level of effort produced by OIG investigative employees and is often fractional because of employee arrivals and departures during the year that result in partial work years.

For various reasons, according to the annual reports, case activity and case results do not necessarily track linearly on a year-over-year basis. Some cases, particularly those involving criminal prosecution, span several years from initial complaint to eventual conviction and financial recovery. For example, the increased savings and recoveries in 2016 resulted from a major fraud and corruption case that began in 2012. After a period of reduced activity and staff, it can take multiple years before accomplishments begin to register.

As can be seen in the chart, FY 2013 was a year of reduced activity. According to the annual report, the incumbent IG departed in the third

quarter and only two investigative staff remained. A new IG joined the office at the end of the year and began hiring new staff. As a result, statistics began to rise in FY 2014 and FY 2015. In FY 2016, savings and recoveries provided a return on investment of 8:1 when compared to the OIG budget including reimbursements. The most recent IG departed in the first quarter of FY 2017, and, as of the date of this report, there has been no replacement. No investigative or evaluative reports have been posted to the OIG website.

There are key weaknesses in the Baltimore OIG structure and authority that, if left intact, will result in ups and downs of activity and continue to negatively impact its mission in the future. Going forward, detailed analysis of the provisions contained in the originating EO, with a comparison of those provisions to the generally accepted framework, is instructive to craft recommendations for establishing a strong and effective OIG.

## The Baltimore City Office of Inspector General Compared to the Green Book

The following table contains a clause-by-clause comparison of the provisions of the existing Baltimore OIG EO to the AIG Principles and Standards for OIGs, or the Green Book. It also includes related recommendations for the path forward. For reference, the Baltimore OIG EO is included as Appendix B.

A. Mandate	
Establishment	
<b>The Green Book</b>	An OIG should be established by statute (or ordinance) or, if necessary, by executive order.
<b>City of Baltimore Executive Order</b>	Established by executive order in July 2005.
<b>Recommendation</b>	The Baltimore OIG should be established legislatively through a City ordinance.
<b>Rationale for Recommendation</b>	<p>The Baltimore OIG's lack of legislative authority has created controversy from time to time, particularly among the city council and the comptroller's office, relative to jurisdiction and powers. The basic question arises of whether an OIG created by EO has legal jurisdiction over offices outside the executive branch, headed by the mayor.</p> <p>The key weakness of any OIG created by executive action is that it can also be dissolved by executive action. The resulting tenuous status can have a significant adverse impact on the level of cooperation received by the OIG as well as on OIG staff recruitment and retention, particularly at the executive staff levels.</p>

<b>Mission and Jurisdiction</b>	
<b>The Green Book</b>	The statute (ordinance) should state the OIG's mission and identify the operations, programs, departments, or agencies subject to the OIG's jurisdiction.
<b>City of Baltimore Executive Order</b>	<p>The Baltimore EO is fairly specific in this regard, requiring the OIG to record and consider all complaints of fraud, waste, or abuse of office, and establish procedures for receiving such complaints that involve:</p> <ol style="list-style-type: none"> <li>1. Any municipal officer, including all heads of City departments, agencies, bureaus, and authorities, and all persons exercising comparable authority.</li> <li>2. Any member of a City board or commission.</li> <li>3. Any City employee.</li> <li>4. Any individual, organization, or business receiving City-granted funds or other benefits, including, but not limited to, loans, grants, tax credits, below market rate property transfers, or other funds.</li> <li>5. Any individual, organization, or business providing goods or services to the City pursuant to a contract, or seeking eligibility to provide goods pursuant to a contract.</li> </ol>
<b>Recommendation</b>	The Baltimore OIG ordinance should carry forward the mission language contained in the EO, and should clearly identify the departments, agencies, and programs over which the OIG has jurisdiction. The criteria for general inclusion of agencies should focus on whether they are created by state or local law, the extent to which they are funded by the City, and whether the mayor appoints their head. Those created by local law and funded 50 percent or more by the City should clearly be included. Others with a local scope could be subject to IG jurisdiction on a matter-by-matter basis, at the request of the mayor and/or agency head.
<b>Rationale for Recommendation</b>	The Baltimore OIG's jurisdiction has frequently been challenged, particularly by entities that are state authorized, even though they are funded in whole or in part by City funds. One example is the Housing Authority of Baltimore City (HABC), a state-authorized entity that receives both federal and city funds, and urges that it is a federal entity not subject to IG oversight. Other examples include the Board of Liquor License Commissioners, the component elements at the Courts, the Department of Social Services, the Baltimore Police Department, the State's Attorney's Office, operational entities under the Office of the Comptroller, and the Public Schools System. The question arises as to whether an entity created by an EO can authorize oversight of entities outside the management of the official promulgating the EO. Lack of clarity over jurisdiction can sentence the OIG to protracted negotiations with various entities over jurisdiction and scope.

## B. Authority

### Activities

<b>The Green Book</b>	The statute (ordinance) should authorize the OIG to audit, inspect, evaluate, and investigate the activities, records, and individuals affiliated with contracts and procurements undertaken by the governmental entity and any other official act or function of the governmental entity.
<b>City of Baltimore Executive Order</b>	The Baltimore EO says the IG shall be responsible for “the investigation of complaints of fraud, waste and abuse of office in City government.” It does not contain the terms audit, inspect, or evaluate. However, the first responsibility in the EO, under section 2 – “The [IG] shall be responsible for (a) the promotion of efficiency, accountability, and integrity in City government” – denotes a proactive role to examine programs and processes for weaknesses.
<b>Recommendation</b>	The Baltimore OIG ordinance should specifically authorize the OIG to audit, inspect, evaluate, and investigate. The ordinance should also grant the OIG the authority to cancel or suspend contracts (with the concurrence of the city solicitor) for nonperformance or providing false statements.
<b>Rationale for Recommendation</b>	<p>Procurement is a particularly vulnerable area for Baltimore City and has been cited in the past by the Baltimore OIG as an area of weakness. Numerous investigations have uncovered false statements made by vendors in their written proposals and instances of false billing or nonperformance.</p> <p>The Baltimore OIG has been organized in a bifurcated manner with both an Investigations and a Program Evaluation side. The audit work of the Program Evaluation side examines specific programs and processes to tighten internal controls and does not duplicate the audit work at the office of comptroller, which focuses on facilitating the Comprehensive Annual Financial Report and conducting periodic department and agency audits.</p>

Types of Investigations	
<b>The Green Book</b>	The statute (ordinance) should authorize the OIG to conduct criminal, civil, and administrative investigations.
<b>City of Baltimore Executive Order</b>	The Baltimore EO breaks investigations down into “formal and informal.” Under section 8, informal investigations can be referred to the head of the appropriate department, agency, bureau, or authority. Under section 11, the [IG] may undertake a formal investigation of any matter if it appears to the [IG] that such matter falls within the scope of [IG] responsibilities. Under section 17, “if, after formal investigation, the [IG] determines that there is reason to believe that a criminal act occurred, the [IG] shall refer such complaint to the appropriate prosecutorial authority. The EO does not specify that the OIG is authorized to continue a criminal investigation once referred to a prosecutorial authority.
<b>Recommendation</b>	The Baltimore OIG ordinance should incorporate the language from the EO but should strengthen it to authorize the OIG to participate in criminal investigations once referred to a prosecutorial authority.
<b>Rationale for Recommendation</b>	Notwithstanding the lack of express authority, the Baltimore OIG has routinely conducted criminal investigations while working with federal and state prosecutors and law enforcement. There is a need for the OIG to continue to participate in criminal investigations because of its unique internal access. This should be documented by adding ordinance language expressly authorizing the OIG to continue to participate in criminal investigations in concert with the appropriate prosecutorial authority.
Prevention Activities	
<b>The Green Book</b>	The statute (ordinance) should authorize the OIG to engage in prevention activities, including but not limited to: review of legislation; review of rules, regulations, policies, procedures, and transactions; training; and education.
<b>City of Baltimore Executive Order</b>	Section 3 of the Baltimore EO requires the OIG to “take appropriate steps to build public awareness of the [OIG] and of all procedures established by the [IG] for receiving complaints...” Section 4 of the EO says: “The [IG] shall provide information to City employees about the identification and prevention of fraud, waste, and abuse of office in City government.”
<b>Recommendation</b>	The Baltimore OIG ordinance should continue to require the OIG to build public awareness of the OIG and its procedures, and to provide information to City employees about identifying and preventing fraud, waste, and abuse. The ordinance should also authorize the OIG to review pending legislation, rules, regulations, policies, and procedures that may or will impact its work.
<b>Rationale for Recommendation</b>	In practice, the Baltimore OIG has conducted presentations and training to City employees about the work of the OIG and the types of acts that constitute fraud, waste, and abuse. The OIG has engaged in public outreach through its website, press releases, and reports. Although the EO does not require the OIG to review draft legislation, rules, regulations, and policies, the Department of Legislative Reference, in practice, has forwarded, for review and comment, draft legislation that impacts the OIG’s work.



Referrals	
The Green Book	The statute (ordinance) should permit the OIG to refer matters for further civil, criminal, and administrative action to appropriate administrative and prosecutorial agencies.
City of Baltimore Executive Order	The Baltimore EO, section 17, states: "If, after formal investigation, the [IG] determines that there is reason to believe that a criminal act occurred, the [IG] shall refer such complaint to the appropriate prosecutorial authority." Under section 9 of the EO, the IG is required to refer potential ethics violations to the ethics board. Under section 8 (c) of the EO, the IG is authorized to refer "complaints suitable for informal resolution to the head of the appropriate department, agency, bureau, or authority." Section 18 of the EO provides for the referral of employee disciplinary matters to either the agency head in the case of an at-will employee or to the Civil Service Commission, if appropriate.
Recommendation	The Baltimore OIG ordinance should carry forward this language regarding the referral of civil, criminal, and administrative matters.
Rationale for Recommendation	There is no mention in the EO of referral of civil complaints, although the OIG has frequently referred civil litigation and collection matters to the City's Law Department.
Joint Investigations	
The Green Book	The statute (ordinance) should authorize the OIG to conduct joint investigations and projects with other oversight or law enforcement agencies.
City of Baltimore Executive Order	The Baltimore EO does not specifically authorize the OIG to "conduct joint investigations and projects with other oversight or law enforcement agencies."
Recommendation	The Baltimore OIG ordinance should specifically authorize the OIG to conduct joint investigations and projects with other oversight or law enforcement agencies.
Rationale for Recommendation	The Baltimore OIG has routinely conducted joint investigations with federal and state prosecutors and federal, state, and local law enforcement agencies. Cooperative efforts with other agencies have been a significant force multiplier for the OIG with successful results.
Reports	
The Green Book	The statute (ordinance) should authorize the OIG to issue public reports.
City of Baltimore Executive Order	The Baltimore EO (section 16) requires the IG to report the findings of any formal investigation to the mayor and city solicitor. Section 22 (a) of the EO does require the IG to "provide a formal report to the citizens of Baltimore of all of the activities of the [OIG] during the preceding twelve months."
Recommendation	The Baltimore OIG ordinance should require the OIG to publish its investigative and audit/evaluative reports for the public unless deemed sensitive or confidential. The OIG ordinance should also require that an annual report of activities be posted for public viewing.
Rationale for Recommendation	Although not expressly authorized by the EO, the IG has routinely furnished its reports to the city council or its president, and has also published most reports on the OIG website for public viewing. The OIG's annual report has been published annually by September 1 for the previous fiscal year ending June 30.

<b>Policies and Procedures</b>	
<b>The Green Book</b>	The statute (ordinance) should authorize the OIG to establish policies and procedures that guide functions and processes conducted by the OIG.
<b>City of Baltimore Executive Order</b>	The Baltimore EO (section 3) says that the IG should establish procedures for receiving complaints, and take appropriate steps to build public awareness of the OIG and all procedures established by the IG for receiving complaints.
<b>Recommendation</b>	The Baltimore OIG ordinance should carry this language forward, requiring the OIG to establish internal processes and build public awareness.
<b>Agency Meetings</b>	
<b>The Green Book</b>	The statute (ordinance) should authorize the OIG to attend any meetings held by agencies.
<b>City of Baltimore Executive Order</b>	The Baltimore EO does not specifically authorize the IG to attend meetings held by departments and agencies although attendance has occurred as needed and by invitation.
<b>Recommendation</b>	The Baltimore OIG ordinance should authorize the OIG to attend any and all meetings held by departments and agencies, unless discussing matters privileged or confidential by law, at any place and time without notice.
<b>Cost Recovery</b>	
<b>The Green Book</b>	The statute (ordinance) should authorize the OIG to recoup the cost of investigations from nongovernmental entities involved in willful misconduct.
<b>City of Baltimore Executive Order</b>	The Baltimore EO does not authorize the OIG to recoup the cost of investigations from nongovernmental entities involved in willful misconduct.
<b>Recommendation</b>	Due to the potential administrative burden, it is not recommended that the Baltimore OIG ordinance include cost recovery.
<b>Rationale for Recommendation</b>	Implementing this Green Book recommendation would require the OIG to have job-cost accounting capability and could potentially pose additional costs and a large administrative burden without materially adding to the OIG's work product.

## C. Powers

### Subpoena Power

<b>The Green Book</b>	The power of subpoena for persons and documents, requirements for service of the subpoena, confidentiality of subpoenaed documents and testimony, and subpoena enforcement provisions.
<b>City of Baltimore Executive Order</b>	The Baltimore EO, section 14 (a) states: "In connection with an investigation pursuant to this Article, the [IG] may, with the approval of the City Solicitor, issue a subpoena (1) to require any person to appear under oath as a witness; or (2) to require the production of any information, document, report, record, account or other material." Section 14 (b) states that the [IG] may enforce any subpoena issued pursuant to subsection (a) in any court of competent jurisdiction.
<b>Recommendation</b>	The Baltimore OIG ordinance should include the power to issue subpoenas for documents and testimony with the enforcement support of the Law Department. The authorizing ordinance should provide for the confidentiality of subpoenaed documents and testimony. Subpoena power should include commercial entities that do business with the City.
<b>Rationale for Recommendation</b>	Notwithstanding this language in the Baltimore EO, there is no legal basis for subpoena power granted administratively, and this section has not withstood challenges. Although separate legislation creating subpoena power was proposed, it was not pursued by the city council. The Green Book stresses that the OIG should have unfettered access to records and testimony. Production of records on a volunteer basis is ideal but cannot always be relied upon.
<b>Access to Records</b>	
<b>The Green Book</b>	Access to all records maintained by or available to any governmental entity relating in any way to the OIG's duties and responsibilities.
<b>City of Baltimore Executive Order</b>	The Baltimore EO, section 13, states: "All municipal officers and City employees shall promptly provide to the [IG] any information, document, report, record, account, or other material requested by the [IG] in connection with any formal investigation...."
<b>Recommendation</b>	The Baltimore OIG ordinance should carry this language forward to clearly state that the OIG has access to all records of entities under its jurisdiction. Subpoenas should not be necessary for these entities.
<b>Rationale for Recommendation</b>	Notwithstanding this section of the EO, the OIG frequently incurred difficulty obtaining documents from certain entities, particularly those outside the jurisdiction of the mayor's office.

<b>Access to Persons</b>	
<b>The Green Book</b>	Access to the head of any public entity, when necessary for any purpose pertaining to the OIG's responsibilities.
<b>City of Baltimore Executive Order</b>	The Baltimore EO does not specifically grant the OIG access to the head of any public entity when necessary.
<b>Recommendation</b>	The Baltimore OIG ordinance should include language that grants the OIG access to the head of any department, agency, or other public entity when needed.
<b>Rationale for Recommendation</b>	In practice, the OIG has received good cooperation from department and agency heads when needed.
<b>Nongovernmental Access</b>	
<b>The Green Book</b>	Access to testimony or documents from any individual, firm, or nongovernmental entity relating to the duties and responsibilities of the OIG.
<b>City of Baltimore Executive Order</b>	The Baltimore EO, section 7, states: "Any municipal officer, member of a City board or commission, City employee, individual providing goods or services to the City, or employee of an organization or business providing goods or services to the City who has knowledge of an incident of fraud, waste, or abuse of office shall report all relevant information to the [IG]."
<b>Recommendation</b>	The Baltimore OIG ordinance should contain language that grants the OIG access to records and testimony of any entity doing business with the City. This language combined with the aforementioned subpoena power should cover all scenarios requiring access to records.
<b>Rationale for Recommendation</b>	Although section 7 is quite broad, the OIG has traditionally relied on the audit clause in procurement contracts to leverage individuals and firms doing business with the City to provide testimony or documents.
<b>Employee Reporting</b>	
<b>The Green Book</b>	Require public employees to report to the OIG information regarding fraud, waste, corruption, illegal acts, and abuse.
<b>City of Baltimore Executive Order</b>	The Baltimore EO, section 6, states: "Any municipal officer, member of a City board or commission, City employee, individual providing goods or services to the City, or employee of an organization or business providing goods or services to the City who receives a complaint [of fraud, waste, or abuse] shall immediately refer such complaint to the [IG]."
<b>Recommendation</b>	The Baltimore OIG ordinance should carry this language forward, requiring all public employees to report all relevant matters to the OIG.

## D. Confidentiality

<b>The Green Book</b>	The statute should authorize the OIG to maintain appropriate confidentiality of records and, to the extent practicable, of the identities of individuals who provide information to the OIG, unless it is necessary to make such records or identities public in the performance of his/her duties. The statute should impose penalties for breach of confidentiality.
<b>City of Baltimore Executive Order</b>	The Baltimore EO addresses confidentiality in several sections. Section 13 states that the IG must not become the custodian of any information, document, report, record, account, or other material for purposes of the Maryland Public Information Act (MPIA). Section 15 (a) states that the OIG must not disclose to any person any confidential personnel information pertaining to any municipal officer or City employee. Under sections 19(a) and 19(b), any record generated by the OIG or any record of a complaint received by the OIG must be deemed a personnel record or record of an investigation of a City attorney and thus exempt from the MPIA, cited above. Under section 19(c), any person who makes a complaint to the OIG must be deemed a confidential source for an investigation of a City attorney for purposes of the MPIA. Section 20 states that the IG must not disclose to any person the identity of any complainant without the consent of that complainant, except when required by law.
<b>Recommendation</b>	The Baltimore OIG ordinance should carry this language forward regarding confidentiality of records and the identity of individuals.

## E. Inspector General and Staff Qualifications

<b>The Green Book</b>	The statute should provide requirements for the position of inspector general and staff.  The IG should be selected without regard to political affiliation on the basis of integrity; capability for strong leadership; and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, or criminal justice administration or other appropriate fields. The IG should hold at appointment, or be required to obtain within a certain time after appointment, certification as a Certified Inspector General. The staff of the OIG should collectively possess the variety of knowledge, skills, and experience needed to accomplish the OIG mission. The OIG should ensure that staff receive appropriate training and that OIG staff attain and maintain appropriate professional licensure and certification.
<b>City of Baltimore Executive Order</b>	The Baltimore EO contains no provisions regarding the qualifications of the IG and staff.
<b>Recommendation</b>	The Baltimore OIG ordinance should adopt language in line with the Green Book, which requires qualifications in certain fields for the IG and staff positions.
<b>Rationale for Recommendation</b>	In practice, past advertisements published by the Law Department for the IG position, and advertisements published by the OIG for staff, have included typical requirements for backgrounds in law, accounting, auditing, investigations, and public administration.



<b>F. Independence</b>	
<b>The Green Book</b>	The statute should contain provisions to help establish and maintain the independence of the IG and the OIG. The statute should address four categories as follows:
<b>City of Baltimore Executive Order</b>	The Baltimore EO contains no provisions to ensure the independence of the OIG.
<b>Recommendation</b>	The Baltimore OIG ordinance should contain specific provisions to ensure the independence of the OIG.
<b>Appointment and Removal</b>	
<b>The Green Book</b>	Procedures should be established for the appointment of the IG; removal of the IG is only for cause.
<b>City of Baltimore Executive Order</b>	The Baltimore EO contains no provisions for appointment and removal of an IG.
<b>Recommendation</b>	The Baltimore OIG ordinance should require that the IG be appointed by the city solicitor with inclusion of the mayor and council president or their designees in the screening process. Position openings for an IG should be robustly advertised. IG appointments should be subject to city council confirmation. An IG should be removed only for cause and only by the city solicitor, following seven calendar days' notice to the IG and the mayor and council president. If either the mayor or the council president believes that cause for removal exists, he/she must present the alleged cause in writing to the IG and the city solicitor. OIG staff selection should be at the discretion of the IG based on the collective skill needs of the office. Staff should serve at the pleasure of the IG.
<b>Rationale for Recommendation</b>	Currently the IG is an "at will" officer serving in the Law Department. The IG does not serve any fixed term, and there are no constraints on the grounds for terminating an IG.
<b>Term</b>	
<b>The Green Book</b>	The IG should be appointed for a fixed term.
<b>City of Baltimore Executive Order</b>	The Baltimore EO contains no provisions for the term of an IG.
<b>Recommendation</b>	The Baltimore OIG ordinance should require a term of six years for the IG with no term limits.
<b>Rationale for Recommendation</b>	The term of previous Baltimore IGs has been tied to the mayoral term. Extending the term to six years supports independence and increases continuity of OIG operations.

<b>Organizational Placement</b>	
<b>The Green Book</b>	The OIG should be placed in the governmental structure to maximize independence from operations, programs, policies, and procedures over which the OIG has authority.
<b>City of Baltimore Executive Order</b>	The Baltimore EO, section 1, states: "There shall be within the Department of Law an Inspector General of the City of Baltimore." The Baltimore EO, section 11, states: "The City Solicitor shall have no authority to limit the scope of the [IG's] investigations," However, this section does not prohibit the mayor or chief of staff from so doing.
<b>Recommendation</b>	The Baltimore OIG ordinance should place the OIG within the executive branch for administrative purposes, but it should also include the city council in hiring, confirming, and potentially terminating as described herein.
<b>Rationale for Recommendation</b>	The majority of agencies under the jurisdiction of the OIG are within the executive branch and are the responsibility of the mayor. It is the mayor (and the mayor's agency heads) who possesses the power to fire or discipline individuals who run afoul of the OIG's fraud, waste, or abuse investigations, and the power to implement corrective and preventive measures proposed by the OIG. While the OIG would remain under the executive branch, there should be clear language prohibiting the mayor, city council president, city solicitor, and their staffs from attempting to direct, influence, or interfere in the OIG's operations. Although the IG should be entitled to attend cabinet meetings, the IG should not be considered a member of the mayor's cabinet.
<b>Funding</b>	
<b>The Green Book</b>	The OIG should be funded through a mechanism that will provide adequate resources to perform its mission without subjecting it to internal or external impairments of its independence.
<b>City of Baltimore Executive Order</b>	The Baltimore EO contains no provisions for funding the OIG. The funding level is determined annually as part of the mayor's budget.
<b>Recommendation</b>	The Baltimore OIG ordinance should provide a stable budget level that is directly funded, funds all of its staff and related expenses, and is earmarked within the mayor's budget.
<b>Rationale for Recommendation</b>	The OIG has a small direct budget. According to its FY 2016 annual report, the FY 2017 OIG budget represents approximately .046 percent of the City's \$2.6 billion operating plan. <sup>13</sup> According to the annual report, three out of the five OIG agent positions were funded through memoranda of understanding with, and reimbursements from, operational departments.

## G. Whistleblower Protection

<b>The Green Book</b>	The statute should provide protections to complainants who, as a result of their complaints to the OIG, might be subject to retaliation by their employers.
<b>City of Baltimore Executive Order</b>	The Baltimore EO, section 21, says: “No person shall retaliate or threaten to retaliate against any person for complaining to, submitting information to, or cooperating in any way with the [IG].”
<b>Recommendation</b>	The Baltimore OIG ordinance should include the same provisions as the recently passed Maryland State Whistleblower Law, (MD Code, State Personnel and Pensions, Secs. 5-301 through 5-314) and should also provide the same whistleblower protections for employees of contractors as contained in the Maryland False Claims Act, [MD Code Ann, General Provisions, Sec 8-107(a)].
<b>Rationale for Recommendation</b>	The existing EO provision is a step in the right direction, but it does not provide penalties for retaliation or remedies for those who are the victims of retaliation.

In addition to adopting the generally accepted provisions as set out in the Green Book template, the Baltimore OIG ordinance should authorize the OIG to establish a volunteer council consisting of several community leaders from various backgrounds to assist in formulating annual plans and guiding public outreach. The concept of a citizen advisory council—as utilized by the OIG in Montgomery County, Maryland—would go far toward improving transparency and public confidence in Baltimore.

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The report strongly recommends that the EO be replaced with an OIG ordinance to give the IG function greater status and permanence, and to support several important powers that could not be included or defended under an EO.

## Conclusion

Guided by the information summarized in this report and their own experiences, the authors emerge convinced that:

- Independence is the most critical element of an effective OIG.
- The legislative branch should be more engaged with an effective OIG.
- The OIG needs to be given meaningful powers if it is to be effective.

This report, and the work of others that has preceded it, reveals that four decades of federal, state, and local OIG experiences have formed a common framework for the functions of the office. This framework has been embodied in the Green Book, a broadly accepted publication of the AIG that promulgates principles and standards for OIGs. This report compares Baltimore's OIG structure to the Green Book and recommends areas for clarification or improvements.

Importantly, the report strongly recommends that the EO be replaced with an OIG ordinance to give the IG function greater status and permanence, and to support several important powers that could not be included or defended under an EO. While the primary jurisdiction of an OIG is over agencies in the executive branch, thus supporting the significant roles of the mayor and city solicitor, the report recommends including the city council in the hiring and termination process.

The report also recommends clarification of certain powers (regarding information

gathering and collaboration with other investigations) and addition of several new ones (suspension or cancellation of contracts under certain circumstances). Further, it recommends clarification of the scope of the IG's jurisdiction regarding agencies covered, while leaving the particulars of those clarifications to the mayor, solicitor, and city council.

The budget growth of the OIG to date has been modest and significantly dependent on "contributions" from supportive agencies by "detailing" investigative personnel. The report recommends several measures to support more robust budget growth and stability going forward to support effectiveness and independence of the OIG of the future.

Finally, and most importantly, the report strongly recommends a series of improvements designed to give the IG a critically greater degree of independence. These include:

- Strengthening and broadening the appointment process, leaving the city solicitor as the appointing authority but specifying position requirements, and including the mayor and city council, and requiring council confirmation.
- Appointing an IG for a six-year term with no term limits.
- Making the IG terminable only for cause and following a defined process.
- Broadening the prohibition against certain officials restraining or interfering with OIG investigations.

If the City follows the report’s recommendations for a statutory IG with meaningful independence—and clarified and expanded powers and jurisdiction—Baltimore and its citizens will substantially benefit from a more transparent, efficient, cost-effective, and honest government.

## About the Authors

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## Endnotes

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- 2 Hudak, John and Wallack, Grace; Sometimes cutting budgets raise deficits: The curious case of inspectors’ general return on investment; <https://www.brookings.edu/wp-content/uploads/2016/06/CEPMHudakWallackOIG.pdf>
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Baltimore City Office of Inspector General:  
Lessons Learned and the Path Forward**

by Robert Pearre and George Nilson  
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### About the Abell Foundation

The Abell Foundation is dedicated to the enhancement of the quality of life in Maryland, with a particular focus on Baltimore. The Foundation places a strong emphasis on opening the doors of opportunity to the disenfranchised, believing that no community can thrive if those who live on the margins of it are not included.

Inherent in the working philosophy of the Abell Foundation is the strong belief that a community faced with complicated, seemingly intractable challenges is well-served by thought-provoking, research-based information. To that end, the Foundation publishes background studies of selected issues on the public agenda for the benefit of government officials; leaders in business, industry and academia; and the general public.

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