

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

March 2, 2017

The Honorable Peggy E. Gustafson
Inspector General
US Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Ms. Gustafson:

The Government Accountability Office (GAO) recently released a mandated report on its review of implementation of the contractor whistleblower protections pilot program.¹ The pilot program provides the employees of contractors, subcontractors and grantees at civilian agencies with enhanced protection against retaliation for disclosing waste, fraud, and abuse.² Federal agencies spend significant taxpayer dollars on contracts and grants. In 2015, the federal government spent \$438 billion on contracts and \$624 billion on grants. It is essential that employees on the front lines are empowered and protected when they disclose concerns about how those dollars are being overseen, managed, and spent. Congress recognizes the importance of these protections and recently enacted legislation to make the pilot permanent and to include subgrantee employees as a protected group.³

GAO's review of implementation found that the efforts of inspectors general and agencies have been varied and, in some instances, incomplete. GAO identified opportunities at the Department of Commerce Office the Inspector General (IG) to improve internal guidance to ensure that intake and investigations meet the requirements under the pilot.

Given that the protections are now permanent, it will be imperative that inspectors general ensure robust internal compliance and also engage in oversight of ongoing implementation by the agency. GAO's finding that agencies are failing to implement the pilot at the most basic level was particularly troubling. Contracting officers should be including the appropriate clauses in all new contracts above the simplified acquisition threshold awarded after September 30, 2013. Yet, at the four agencies reviewed by GAO, including at the Department of the Interior, this was not happening as a matter of course and there was no department-wide review to ensure that inclusion of the clauses was occurring.

¹ Government Accountability Office, *Contractor Whistleblower Protections Pilot Program: Improvement Needed to Ensure Effective Implementation* (GAO-17-227) (Mar. 2, 2017).

² 41 USC § 4712.

³ Pub. L. 114-261 (2016).

The Honorable Peggy E. Gustafson

March 2, 2017

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I understand that the IG has concurred with GAO's recommendations. I request that you provide information specific information about how the IG has enhanced existing guidance. I also request that you provide additional information on the efforts your office has made to engage the Department and its employees on implementation through oversight and training. I request that you respond on or before March 30, 2017.

Thank you for your assistance with this matter. Please contact Sarah Garcia with my committee staff with any questions at (202) 224-2627. Please send any official correspondence related to this request to Amanda_Trosen@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

RON JOHNSON, WISCONSIN, CHAIRMAN

JOHN McCAIN, ARIZONA
ROB PORTMAN, OHIO
RAND PAUL, KENTUCKY
JAMES LANKFORD, OKLAHOMA
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CLAIRE McCASKILL, MISSOURI
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CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

March 2, 2017

The Honorable Ellen Herbst
Acting Secretary
US Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Ms. Herbst:

The Government Accountability Office (GAO) recently released a mandated report on its review of implementation of the contractor whistleblower protections pilot program.¹ The pilot program provides the employees of contractors, subcontractors and grantees at civilian agencies with enhanced protection against retaliation for disclosing waste, fraud, and abuse.² Federal agencies spend significant taxpayer dollars on contracts and grants. In 2015, the federal government spent \$438 billion on contracts and \$624 billion on grants. It is essential that employees on the front lines are empowered and protected when they disclose concerns about how those dollars are being overseen, managed, and spent. Congress recognizes the importance of these protections and recently enacted legislation to make the pilot permanent and to include subgrantee employees as a protected group.³

GAO's review of implementation found that the efforts of agencies, including the Commerce Department, have been varied and, in some instances, incomplete. GAO found three key problems with agency implementation. First, is that agencies are failing to implement the pilot at the most basic level, which requires inclusion of the appropriate clauses in all new contracts, above the simplified acquisition threshold, awarded after September 30, 2013. Failure to include these clauses can be detrimental to whistleblowers and are contrary to law. Second, agencies need to ensure that when existing contracts are being modified that the clauses are included. Third, agencies need to do a better job at communicating with contractors and grantees to ensure that employers are aware of and in compliance with their responsibilities and that employees are informed of their rights.

GAO recommended that the Commerce Department develop policies and processes to ensure compliance with contract clause inclusion and external communication efforts. I

¹ Government Accountability Office, *Contractor Whistleblower Protections Pilot Program: Improvement Needed to Ensure Effective Implementation* (GAO-17-227) (Mar. 2, 2017).

² 41 USC § 4712.

³ Pub. L. 114-261 (2016).

The Honorable Ellen Herbst
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understand that the Department has concurred with the recommendations. I request that you provide detailed information on how the recommendations will be implemented and how the Department plans to ensure robust compliance with contractor and grantee whistleblower protections moving forward. I request that you respond on or before March 30, 2017.

Thank you for your assistance with this matter. Please contact Sarah Garcia with my committee staff with any questions at (202) 224-2627. Please send any official correspondence related to this request to Amanda_Trosen@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

United States Senate

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WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

March 2, 2017

The Honorable John Roth
Inspector General
Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0305

Dear Mr. Roth:

The Government Accountability Office (GAO) recently released a mandated report on its review of implementation of the contractor whistleblower protections pilot program.¹ The pilot program provides the employees of contractors, subcontractors and grantees at civilian agencies with enhanced protection against retaliation for disclosing waste, fraud, and abuse.² Federal agencies spend significant taxpayer dollars on contracts and grants. In 2015, the federal government spent \$438 billion on contracts and \$624 billion on grants. It is essential that employees on the front lines are empowered and protected when they disclose concerns about how those dollars are being overseen, managed, and spent. Congress recognizes the importance of these protections and recently enacted legislation to make the pilot permanent and to include subgrantee employees as a protected group.³

GAO's review of implementation found that the efforts of inspectors general and agencies have been varied and, in some instances, incomplete. GAO found that at the Department of Homeland Security Office of Inspector General (DHS IG) there was confusion about how to transmit investigative findings to the agency head – as required by statute. GAO also identified opportunities to improve internal guidance to ensure that intake and investigations meet the requirements under the pilot.

Given that the protections are now permanent, it will be imperative that inspectors general ensure robust internal compliance and also engage in oversight of ongoing implementation by the agency. GAO's finding that agencies are failing to implement the pilot at the most basic level was particularly troubling. Contracting officers should be including the appropriate clauses in all new contracts above the simplified acquisition threshold awarded after September 30, 2013. Yet, at the four agencies reviewed by GAO, including DHS, this was not

¹ Government Accountability Office, *Contractor Whistleblower Protections Pilot Program: Improvement Needed to Ensure Effective Implementation* (GAO-17-227) (Mar. 2, 2017).

² 41 USC § 4712.

³ Pub. L. 114-261 (2016).

The Honorable John Roth
March 2, 2017
Page 2

happening as a matter of course and there was no department-wide review to ensure that inclusion of the clauses was occurring.

I understand that the IG has concurred with the recommendations. I request that you provide information about how the DHS IG has implemented GAO's recommendation to clarify and enhance existing guidance. I also request that you provide additional information on the efforts your office has made to engage the Department and its employees on implementation through oversight and training. I request that you respond on or before March 30, 2017.

Thank you for your assistance with this matter. Please contact Sarah Garcia with my committee staff with any questions at (202) 224-2627. Please send any official correspondence related to this request to Amanda_Trosen@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

United States Senate

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CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

March 2, 2017

The Honorable John Kelly
Secretary
Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20016

Dear Mr. Secretary:

The Government Accountability Office (GAO) recently released a mandated report on its review of implementation of the contractor whistleblower protections pilot program.¹ The pilot program provides the employees of contractors, subcontractors and grantees at civilian agencies with enhanced protection against retaliation for disclosing waste, fraud, and abuse.² Federal agencies spend significant taxpayer dollars on contracts and grants. In 2015, the federal government spent \$438 billion on contracts and \$624 billion on grants. It is essential that employees on the front lines are empowered and protected when they disclose concerns about how those dollars are being overseen, managed, and spent. Congress recognizes the importance of these protections and recently enacted legislation to make the pilot permanent and to include subgrantee employees as a protected group.³

GAO's review of implementation found that the efforts of agencies, including the Department of Homeland Security (DHS) have been varied and, in some instances, incomplete. GAO found three key problems with agency implementation. First, is that agencies are failing to implement the pilot at the most basic level, which requires inclusion of the appropriate clauses in all new contracts, above the simplified acquisition threshold, awarded after September 30, 2013. Failure to include these clauses can be detrimental to whistleblowers and are contrary to law. Second, agencies need to ensure that when existing contracts are being modified that the clauses are included. Third, agencies need to do a better job at communicating with contractors and grantees to ensure that employers are aware of and in compliance with their responsibilities and that employees are informed of their rights.

GAO recommended that DHS develop policies and processes to ensure compliance with contract clause inclusion and external communication efforts. I understand that DHS has

¹ Government Accountability Office, *Contractor Whistleblower Protections Pilot Program: Improvement Needed to Ensure Effective Implementation* (GAO-17-227) (Mar. 2, 2017).

² 41 USC § 4712.

³ Pub. L. 114-261 (2016).

The Honorable John Kelly

March 2, 2017

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concluded with the recommendations. I request that you provide detailed information on how DHS will implement the recommendations and how DHS plans to ensure robust compliance with contractor and grantee whistleblower protections moving forward. I request that you respond on or before March 30, 2017.

Thank you for your assistance with this matter. Please contact Sarah Garcia with my committee staff with any questions at (202) 224-2627. Please send any official correspondence related to this request to Amanda_Trosen@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

United States Senate

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CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

March 2, 2017

Mary L. Kendall
Deputy Inspector General
US Department of the Interior
1849 C Street NW – Mail Stop 4428
Washington, DC 20240

Dear Ms. Kendall:

The Government Accountability Office (GAO) recently released a mandated report on its review of implementation of the contractor whistleblower protections pilot program.¹ The pilot program provides the employees of contractors, subcontractors and grantees at civilian agencies with enhanced protection against retaliation for disclosing waste, fraud, and abuse.² Federal agencies spend significant taxpayer dollars on contracts and grants. In 2015, the federal government spent \$438 billion on contracts and \$624 billion on grants. It is essential that employees on the front lines are empowered and protected when they disclose concerns about how those dollars are being overseen, managed, and spent. Congress recognizes the importance of these protections and recently enacted legislation to make the pilot permanent and to include subgrantee employees as a protected group.³

GAO's review of implementation found that the efforts of inspectors general and agencies have been varied and, in some instances, incomplete. GAO identified opportunities at the Department of the Interior Office the Inspector General (IG) to improve internal guidance to ensure that intake and investigations meet the requirements under the pilot.

Given that the protections are now permanent, it will be imperative that inspectors general ensure robust internal compliance and also engage in oversight of ongoing implementation by the agency. GAO's finding that agencies are failing to implement the pilot at the most basic level was particularly troubling. Contracting officers should be including the appropriate clauses in all new contracts above the simplified acquisition threshold awarded after September 30, 2013. Yet, at the four agencies reviewed by GAO, including at the Department of the Interior, this was not happening as a matter of course and there was no department-wide review to ensure that inclusion of the clauses was occurring.

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² 41 USC § 4712.

³ Pub. L. 114-261 (2016).

Mary L. Kendall
March 2, 2017
Page 2

I understand that the IG has concurred with GAO's recommendations. I request that you provide information about how the IG has implemented the recommendation to clarify and enhance existing guidance. I also request that you provide additional information on the efforts your office has made to engage the Department and its employees on implementation through oversight and training. I request that you respond on or before March 30, 2017.

Thank you for your assistance with this matter. Please contact Sarah Garcia with my committee staff with any questions at (202) 224-2627. Please send any official correspondence related to this request to Amanda_Trosen@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

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CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

March 2, 2017

K. Jack Haugrud
Acting Secretary
US Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Mr. Haugrud:

The Government Accountability Office (GAO) recently released a mandated report on its review of implementation of the contractor whistleblower protections pilot program.¹ The pilot program provides the employees of contractors, subcontractors and grantees at civilian agencies with enhanced protection against retaliation for disclosing waste, fraud, and abuse.² Federal agencies spend significant taxpayer dollars on contracts and grants. In 2015, the federal government spent \$438 billion on contracts and \$624 billion on grants. It is essential that employees on the front lines are empowered and protected when they disclose concerns about how those dollars are being overseen, managed, and spent. Congress recognizes the importance of these protections and recently enacted legislation to make the pilot permanent and to include subgrantee employees as a protected group.³

GAO's review of implementation found that the efforts of agencies, including the Interior Department, have been varied and, in some instances, incomplete. GAO found three key problems with agency implementation. First, is that agencies are failing to implement the pilot at the most basic level, which requires inclusion of the appropriate clauses in all new contracts, above the simplified acquisition threshold, awarded after September 30, 2013. Failure to include these clauses can be detrimental to whistleblowers and are contrary to law. Second, agencies need to ensure that when existing contracts are being modified that the clauses are included. Third, agencies need to do a better job at communicating with contractors and grantees to ensure that employers are aware of and in compliance with their responsibilities and that employees are informed of their rights.

GAO recommended that the Interior Department develop policies and processes to ensure compliance with contract clause inclusion and external communication efforts. I

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² 41 USC § 4712.

³ Pub. L. 114-261 (2016).

K. Jack Haugrud

March 2, 2017

Page 2

understand that the Department has concurred with the recommendations. I request that you provide detailed information on how the Department will implement the recommendations and how it plans to ensure robust compliance with contractor and grantee whistleblower protections moving forward. I request that you respond on or before March 30, 2017.

Thank you for your assistance with this matter. Please contact Sarah Garcia with my committee staff with any questions at (202) 224-2627. Please send any official correspondence related to this request to Amanda_Trosen@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

United States Senate

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CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

March 2, 2017

The Honorable Steve A. Linick
Inspector General
US Department of State
2201 C Street NW
Washington, DC 20520

Dear Mr. Linick:

The Government Accountability Office (GAO) recently released a mandated report on its review of implementation of the contractor whistleblower protections pilot program.¹ The pilot program provides the employees of contractors, subcontractors and grantees at civilian agencies with enhanced protection against retaliation for disclosing waste, fraud, and abuse.² Federal agencies spend significant taxpayer dollars on contracts and grants. In 2015, the federal government spent \$438 billion on contracts and \$624 billion on grants. It is essential that employees on the front lines are empowered and protected when they disclose concerns about how those dollars are being overseen, managed, and spent. Congress recognizes the importance of these protections and recently enacted legislation to make the pilot permanent and to include subgrantee employees as a protected group.³

GAO's review of implementation found that the efforts of inspectors general and agencies have been varied and, in some instances, incomplete. GAO found that at the State Department Office of Inspector General (IG), investigative reports were not appropriately transmitted to the agency head for action – as required by statute. GAO also identified opportunities to improve internal guidance to ensure that intake and investigations meet the requirements under the pilot.

Given that the protections are now permanent, it will be imperative that inspectors general ensure robust internal compliance and also engage in oversight of ongoing implementation by the agency. GAO's finding that agencies are failing to implement the pilot at the most basic level was particularly troubling. Contracting officers should be including the appropriate clauses in all new contracts above the simplified acquisition threshold awarded after September 30, 2013. Yet, at the four agencies reviewed by GAO, including the State

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² 41 USC § 4712.

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The Honorable Steve A. Linick
March 2, 2017
Page 2

Department, this was not happening as a matter of course and there was no department-wide review to ensure that inclusion of the clauses was occurring.

I understand that the IG has concurred with GAO's recommendation. I request that you provide information about how the IG has clarified and enhanced existing guidance. I also request that you provide additional information on the efforts your office has made to engage the State Department and its employees on implementation through oversight and training. I request that you respond on or before March 30, 2017.

Thank you for your assistance with this matter. Please contact Sarah Garcia with my committee staff with any questions at (202) 224-2627. Please send any official correspondence related to this request to Amanda_Trosen@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

RON JOHNSON, WISCONSIN, CHAIRMAN

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CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

March 2, 2017

The Honorable Rex Tillerson
Secretary
US Department of State
2201 C Street, NW
Washington, DC 20520

Dear Mr. Secretary:

The Government Accountability Office (GAO) recently released a mandated report on its review of implementation of the contractor whistleblower protections pilot program.¹ The pilot program provides the employees of contractors, subcontractors and grantees at civilian agencies with enhanced protection against retaliation for disclosing waste, fraud, and abuse.² Federal agencies spend significant taxpayer dollars on contracts and grants. In 2015, the federal government spent \$438 billion on contracts and \$624 billion on grants. It is essential that employees on the front lines are empowered and protected when they disclose concerns about how those dollars are being overseen, managed, and spent. Congress recognizes the importance of these protections and recently enacted legislation to make the pilot permanent and to include subgrantee employees as a protected group.³

GAO's review of implementation found that the efforts of agencies, including the State Department, have been varied and, in some instances, incomplete. GAO found three key problems with agency implementation. First, is that agencies are failing to implement the pilot at the most basic level, which requires inclusion of the appropriate clauses in all new contracts, above the simplified acquisition threshold, awarded after September 30, 2013. Failure to include these clauses can be detrimental to whistleblowers and are contrary to law. Second, agencies need to ensure that when existing contracts are being modified that the clauses are included. Third, agencies need to do a better job at communicating with contractors and grantees to ensure that employers are aware of and in compliance with their responsibilities and that employees are informed of their rights.

GAO recommended that the State Department develop policies and processes to ensure compliance with contract clause inclusion and external communication efforts. I understand that

¹ Government Accountability Office, *Contractor Whistleblower Protections Pilot Program: Improvement Needed to Ensure Effective Implementation* (GAO-17-227) (Mar. 2, 2017).

² 41 USC § 4712.

³ Pub. L. 114-261 (2016).

The Honorable Rex Tillerson
March 2, 2017
Page 2

the Department has concurred with these recommendations. I request that you provide detailed information on how the Department will implement the recommendations and how it plans to ensure robust compliance with contractor and grantee whistleblower protections moving forward. I request that you respond on or before March 30, 2017.

Thank you for your assistance with this matter. Please contact Sarah Garcia with my committee staff with any questions at (202) 224-2627. Please send any official correspondence related to this request to Amanda_Trosen@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman