



**EMPOWERING INSPECTORS GENERAL:
SUPPORTING THE IG COMMUNITY COULD SAVE BILLIONS
FOR AMERICAN TAXPAYERS**

Joint Majority Staff Report to

**Senator Ron Johnson, Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate**

&

**Senator Charles E. Grassley, Chairman
Committee on the Judiciary
United States Senate**

**114th Congress
October 17, 2016**



EXECUTIVE SUMMARY

Each day, the community of inspectors general (IGs) works to oversee the Federal bureaucracy and make recommendations for improvements across government—improvements that could save the American taxpayers billions of dollars. The IGs are watchdogs, continuously guarding against waste, fraud, and mismanagement in government. They are accountable to Congress and the American people. Recognizing that IGs complete work that too often goes unnoticed, the Chairmen of the Senate Committee on Homeland Security and Governmental Affairs and the Senate Committee on the Judiciary sought information about the important work undertaken by IGs. This report presents the findings of this outreach, including the number of open and unimplemented IG recommendations, the aggregated potential cost saving of these recommendations, and the challenges that IGs face as they try to do their job.

In February 2015, Chairman Ron Johnson of the Committee on Homeland Security and Governmental Affairs and Chairman Charles Grassley of the Committee on the Judiciary wrote to 72 IGs located in departments and agencies across the Executive Branch, requesting information about the work of their offices.¹ The Chairmen sent these letters to gather aggregate data about the work carried out by the IG community and to ensure that IGs have ready access to all information they need to complete their oversight.²

The Chairmen requested an accounting of all outstanding IG recommendations that have been unimplemented by the Executive Branch, as well as the aggregate potential cost savings of these open recommendations.³ In particular, the Chairmen requested: (a) the current number of open and unimplemented recommendations; (b) the dates on which the open and unimplemented recommendations were initially made; (c) whether agency management has agreed or disagreed with the recommendations; and (d) the total potential cost savings to the agency of the current open and unimplemented recommendations.⁴ The Chairmen also requested a detailed description of any agency attempts to interfere with IG independence and “any incident where the Federal agency or department, as applicable, has resisted or objected to oversight activities of the IG office or restricted or significantly delayed access to information.”⁵

The Chairmen received responses from all 72 Offices of Inspectors General (OIGs). From these responses, staff aggregated the data and information to understand the cumulative state of unimplemented OIG recommendations, see Appendix I. According to the IG community reports, there are a total of 15,222 open and unimplemented recommendations across the federal

¹ Letters from Hon. Ron Johnson, Chairman, S. Comm. on Homeland Security & Governmental Affairs & Hon. Charles Grassley, Chairman, S. Comm. on the Judiciary (Feb. 27, 2015) [hereinafter “Letter, Feb. 27, 2015”].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*



government, which total over \$87 billion in potential cost savings to American taxpayers. The Department of Housing and Urban Development (HUD) OIG reported over 2,000 recommendations that its agency has not addressed, some of which have been unimplemented for as many as 15 years. The Department of Defense (DoD) OIG reported that the taxpayers could save \$33 billion if its agency implemented all open IG recommendations. These numbers show that the Executive Branch would likely improve the effectiveness of its operations—and save taxpayer money—by implementing recommendations made by the IG community.

Despite a Congressional mandate that the IG community must have access to all agency records, eight of the 72 IGs⁶ described significant challenges in accessing documents held by the agency.⁷ As reported by the IGs, agency obstruction tactics ranged from months-long drawn out delays to blatant refusals to provide certain categories of documents.⁸ In one case, due to the agency’s noncooperation, an IG was forced to use subpoenas and threats of subpoenas to obtain documents it needed for oversight.⁹ The use of compulsion to access documents, which the IGs are statutorily entitled to obtain, causes delays in reporting important information and decreases transparency for American taxpayers.

The IG community needs support from Congress—urging departments and agencies to adopt OIG recommendations, highlighting instances where OIGs face obstruction, and ensuring OIGs have prompt and unfettered access to all information necessary to complete their important

⁶ (1) The Department of Justice Office of Inspector General (DOJ OIG); (2) The Department of State Office of Inspector General (DOS OIG); (3) The Special Inspector General for the Troubled Asset Relief Program (SIGTARP); (4) The Treasury Inspector General for Tax Administration (TIGTA); (5) The Peace Corps Office of Inspector General (Peace Corps OIG); (6) The Environmental Protection Agency Office of Inspector General (EPA OIG); (7) The Department of Commerce Office of Inspector General (Commerce OIG); (8) The United States Postal Service Office of Inspector General (USPS OIG).

⁷ 5 U.S.C. App. § 6; After a 2015 opinion by the Department of Justice Office of Legal Counsel called into question the breadth of the IG Act’s language, Congress provided further clarity. *See e.g.*, Letter from Members of Congress, to Hon. Sally Quillian Yates, Deputy Attorney Gen., U.S. Dep’t of Justice (Aug. 13, 2015) (clarifying that IGs need complete and immediate access to all records and highlighting that other agencies have relied on the legal rationale outlined in the DOJ Office of Legal Council (OLC) opinion); *see also* Letter from Hon. Richard Shelby, Chairman, S. Subcomm. on Commerce, Justice, Science and Related Agencies, Comm. on Appropriations and Hon. Barbara Mikulski, Vice Chairwoman, S. Subcomm. on Commerce, Justice, Science and Related Agencies, Comm. on Appropriations, to Hon. Sally Quillian Yates, Deputy Attorney Gen., U.S. Dept. of Justice (July 30, 2015) (clarifying that the DOJ statutory interpretation restricting the IG’s access to certain records is wrong).

⁸ *See* Letter from Hon. Russell George, Treasury Inspector Gen., for Tax Admin., U.S. Treasury Dep’t, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on the Judiciary (Dec. 4, 2015) (on file with the Committees) (finding agency delayed turning over documents for months) [hereinafter “TIGTA Response , Dec. 4, 2015”]; *see also* Letter from Hon. Kathy Buller, Inspector Gen., U.S. Peace Corps, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on the Judiciary (Dec. 14, 2015) (on file with the Committees) (finding agency determined certain categories of documents should be withheld from the IG) [hereinafter “Peace Corp OIG Response, Dec. 14, 2015”].

⁹ Letter from Hon. Christy Goldsmith Romero, Special Inspector Gen., Troubled Asset Relief Fund, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on the Judiciary (Mar. 10, 2016) (on file with the Committees) [hereinafter “SIGTARP Response, Mar. 10, 2016”]



role in our system of government. This report details how the Executive Branch may improve its efficiency and save taxpayer money by supporting the existing work of the IG community.



**Joint Majority Staff Report
Committee on Homeland Security and Governmental Affairs
Committee on the Judiciary
United States Senate**

FINDINGS

- According to the IG community reports, there are 15, 222 open IG recommendations that the Executive Branch departments and agencies have failed to implement.
- IGs reported over \$87 billion in aggregate potential cost savings associated with open and unimplemented recommendations.
- Many of the open recommendations were made several years ago, and some agencies have failed to take action to implement them. For example, the Department of State (State) OIG and Department of Housing and Urban Development (HUD) OIG identified unimplemented recommendations dating back to 2006 and 2001, respectively—representing more than a decade of potential unrecovered cost savings to the American taxpayer.¹⁰
- The HUD OIG reported the most open and unimplemented recommendations, with a total of 2,106.¹¹ These open recommendations date back more than fifteen years, and total nearly \$5.4 billion in aggregate potential cost savings.¹²
- The OIG for the Department of Veterans Affairs (VA) reported a significant amount of open and unimplemented recommendations—1,078 total—representing over \$3.3 billion in potential cost savings.¹³
- The Department of Defense (DoD) OIG reported the largest potential cost savings associated with open and unimplemented recommendations—identifying over \$33 billion in aggregate potential cost savings from its 829 open recommendations.¹⁴

¹⁰ Letter from Karen Ouzts, Assistant Inspector Gen. for Management, U.S. Dep’t of State, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Security & Governmental Affairs & Hon. Charles Grassley, Chairman, S. Comm. on the Judiciary, at 14 (July 8, 2016) (reporting one outstanding recommendation to the Committees that dates back to February 24, 2006) [hereinafter “DOS OIG Response, July 8, 2016”].

¹¹ Office of Inspector Gen., U.S. Dep’t of Housing & Urban Dev., to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affairs & Hon. Charles Grassley, Chairman, S. Comm. on the Judiciary (Feb. 18, 2016) (attachment to letter contains open recommendations dating back to 1989, 1995, and 1999) [hereinafter “HUD OIG Response, Feb. 18, 2016”].

¹² *Id.*

¹³ Office of Inspector Gen., U.S. Dep’t of Veterans Affairs, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affairs (May 13, 2016) (attachment to letter contains open recommendations dating back to July 2006)[hereinafter “VA OIG Response, May 13, 2016”].

¹⁴ Letter from Hon. Jon T. Rymer, Inspector Gen., U.S. Dep’t of Defense, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affairs & Hon. Charles Grassley, Chairman, S. Comm. on the Judiciary, at 1 (Dec. 29, 2015) [hereinafter “DOD OIG Response, Dec. 29, 2015”].



- The Department of Health and Human Services (HHS) OIG reported the second largest potential cost savings figure, reporting over \$23 billion in aggregate potential cost savings from its 1,016 open recommendations.¹⁵
- IGs encounter agency resistance in accessing agency information, despite a requirement in the Inspector General Act of 1978 (the “IG Act”) that IGs have access to “all agency records.”¹⁶ In at least two cases, agencies have interpreted the clear language in the IG Act as insufficient to permit IG access to agency records.¹⁷ Both the Department of Justice (DOJ) OIG and the Peace Corps OIG reported an agency policy that restricted the OIG’s access to certain categories of information, supported by a legal opinion from the agency’s office of general counsel.¹⁸
- In total, eight of the 72 IGs reported difficulty accessing documents from agencies.¹⁹
- For example, the Environmental Protection Agency (EPA) OIG reported restricted access to agency records concerning internal investigations of employee misconduct.²⁰
- The State OIG reported repeated and extensive delays receiving documents that were requested as part of an audit as well as to records associated with internal agency investigations.²¹
- In the case of the Special Inspector General for the Troubled Asset Relief Fund (SIGTARP), the SIGTARP had to resort to subpoenas and threats of subpoenas to obtain information about the use of Federal Troubled Asset Relief Funds.²²

¹⁵ Letter from Daniel R. Levinson, Inspector Gen., U.S. Dep’t of Health & Human Serv., to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affairs & Hon. Charles Grassley, Chairman, S. Comm. on the Judiciary, at 1–2 (Mar. 15, 2016) [hereinafter “HHS OIG Response, Mar. 15, 2016”].

¹⁶ 5 U.S.C. App. § 6.

¹⁷ Letter from Hon. Michael Horowitz, Inspector Gen., Dep’t of Justice, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on Judiciary, Oct. 29, 2015 [hereinafter “DOJ-OIG Response, Oct. 29, 2015”]; Letter from Hon. Kathy A. Buller, Inspector Gen. Peace Corps, to Hon. Ron Johnson, Chairman S. Comm. on Homeland Sec. and Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on Judiciary, Dec. 14, 2015 [hereinafter “Peace Corps OIG Response, Dec. 14, 2015”].

¹⁸ *Id.*

¹⁹ *See supra* note 6.

²⁰ Letter from Hon. Arthur Elkins Jr., Inspector Gen., Environmental Protection Agency, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on Judiciary, (Jan. 6, 2016) [hereinafter “EPA OIG Response, Jan. 6, 2016”].

²¹ DOS OIG Response, July 8, 2016, at 23; Letter from Karen Ouzts, Assistant Inspector Gen. for Management, U.S. Dep’t of State, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Security & Governmental Affairs & Hon. Charles Grassley, Chairman, S. Comm. on the Judiciary, at 13 (Jan. 29, 2016) (reporting one outstanding recommendation to the Committees that dates back to February 24, 2006) [hereinafter “DOS OIG Response, Jan. 29, 2016”].

²² SIGTARP Response, Mar. 10, 2016.



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II. BACKGROUND

Since the passage of the IG Act, the community of IGs has played a vital role in identifying and rooting out fraud, waste, abuse, and mismanagement in the Executive Branch. The IG Act created independent OIGs within most Federal agencies and departments to investigate, oversee, and recommend programmatic changes to improve the function of Federal programs and operations.²³

The IG Act also established the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to address specific integrity, economy, and effectiveness issues within the IG community.²⁴ Currently chaired by Michael Horowitz, the DOJ IG, CIGIE develops and sets government-wide policies, standards, and approaches to enhance the efficiency and effectiveness of OIGs.²⁵ A significant portion of CIGIE's role in increasing the effectiveness of OIGs involves ensuring that the OIG workforce receives appropriate training on how to best carry out its work.²⁶ CIGIE also provides a coordinated means of discussing areas of weakness and vulnerability within agency programs and operations,²⁷ as well as communicating difficulties that OIGs have encountered when carrying out their work.²⁸ CIGIE has proven to be a valuable instrument in advocating for OIGs across the Executive Branch and in informing Congress about access-to-information issues and other barriers confronting OIGs.²⁹

Under the IG Act, each IG must keep Congress, as well as the head of his or her respective department or agency, fully informed of problems and deficiencies that exist in the administration of programs and operations.³⁰ At a minimum, the IG Act requires the IGs to produce semiannual reports to Congress describing the activities of their office. In addition, some IGs testify regularly before Congress, publish their reports online, and foster collaborative information-sharing relationships with Members of Congress and staff.

A. *The role of the IG community*

The IG community plays an important role in combatting waste, fraud, abuse, and mismanagement of taxpayer dollars. The IG Act, passed by Congress in 1978, established

²³ 5 U.S.C. App. § 2.

²⁴ 5 U.S.C. App. § 11(a)(1).

²⁵ *Id.* at § 11(a)(2).

²⁶ *Id.* at § 11(c)(1); *see also* Council of the Inspectors General on Integrity and Efficiency (CIGIE), *The Inspectors General* (July 14, 2014), available at https://www.ignet.gov/sites/default/files/files/IG_Authorities_Paper_Final_6-11-14.pdf (last visited Jun. 10, 2015) [hereinafter “CIGIE, *The Inspectors General*”].

²⁷ 5 U.S.C. App. § 11(c); CIGIE, *The Inspectors General*.

²⁸ CIGIE, *The Inspectors General*, *supra* note 12, at 1-2.

²⁹ *See, e.g.*, Letter from 47 Inspectors Gen., to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, Hon. Elijah Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform, Hon. Thomas R. Carper, Chairman, S. Comm. on Homeland Security & Governmental Affairs, & Hon. Tom Coburn, S. Comm. on Homeland Security & Governmental Affairs (Aug. 5, 2014) [hereinafter “Letter from 47 Inspectors Gen.”].

³⁰ 5 U.S.C. App. § 2(3).



statutory OIGs within agencies across the Federal Government.³¹ Congress created statutory OIGs for the purpose of providing independent transparency, accountability, and policy recommendations over programs and operations of the departments and agencies that they oversee.³² The IG Act specifies that OIGs serve several purposes: (1) conducting and supervising audits and investigations relating to the programs and operations of the agency the OIG oversees; (2) providing leadership, coordination, and recommendations for activities designed to promote the economy, efficiency, and effectiveness in the administration of programs and operations; (3) preventing and detecting fraud and abuse in programs and operations of the agency that the OIG oversees; and (4) providing a means for keeping Congress and the head of the department or agency fully and currently informed about problems and the need for and progress of corrective action.³³

OIGs play a vital role in assisting and advancing Constitutional congressional oversight. The IG Act requires that each IG provide reports to Congress on a semiannual basis summarizing the activities of the OIG.³⁴ The IG Act itemizes the contents of what must be included in each semiannual report, including significant deficiencies relating to the administration of programs and operations, recommendations made for corrective action, significant open and unimplemented recommendations, and cases referred for prosecution and for which a prosecution resulted.³⁵ The IG Act also reaffirmed Congress' ultimate oversight responsibility over the IG community, specifying that Congress and congressional committees have access to all OIG information and material.³⁶

In addition to keeping Congress fully informed about problems and deficiencies uncovered within the Federal bureaucracy via semiannual reports, the IG Act includes an urgent reporting mechanism for “particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations”³⁷ The head of each agency is required to transmit any such report made by the IG to Congress within seven calendar days upon receipt from the IG.³⁸ This reporting requirement, often referred to as the “seven-day letter” allows OIGs to immediately notify Congress of any serious problems or deficiencies that an OIG encounters. Congress included this requirement in the IG Act to encourage prompt reporting by IGs to the head of their respective agency and Congress.³⁹ Although this reporting provision is not used often, Congress is particularly mindful when an IG transmits a seven-day letter to an agency, as it often raises serious concerns about the effectiveness and efficiency of an agency's programs or operations.

³¹ 5 U.S.C. App. § 2.

³² *Id.* § 2(1), (2).

³³ *Id.* § 3.

³⁴ *Id.* § 5(a).

³⁵ *Id.*

³⁶ *See id.* § 5(e)(3).

³⁷ 5 U.S.C. App. § 5(d).

³⁸ *Id.*

³⁹ S. Rep. No. 95-1071, at 33 (1978).



B. The importance of OIGs in preventing and detecting waste, fraud, abuse, and mismanagement within the Federal Government

As part of their role as watchdogs within the Federal Government, OIGs identify and make recommendations that could result in saving billions of dollars for the American taxpayers. According to the CIGIE, in fiscal year 2014, the work of the OIG community resulted in improvements to the economy and efficiency of programs governmentwide, with potential savings totaling \$46.5 billion.⁴⁰ This aggregate figure represents an \$18 return on investment for every dollar spent by Congress toward furthering the work of the OIG community.⁴¹ The Washington Examiner reported that fourteen Executive Branch departments returned nearly \$11 billion to the United States Treasury in 2014 as a direct result of the OIGs work identifying waste, fraud, abuse, and mismanagement.⁴² In addition, CIGIE reported that audit recommendations agreed to by agency management across the 72 OIGs in fiscal year 2014, would result in \$13.8 billion in potential savings.⁴³ To achieve these savings, agencies have agreed to take actions to put funds to better use, such as reducing outlays, deobligating funds, and avoiding unnecessary expenditures.⁴⁴

Given these figures—which represent just a sample of the work completed by OIGs during 2014—it is clear that the work of OIGs is essential to an efficient and responsible government. Their work not only assists in making substantial strides toward identifying and combatting waste, fraud, abuse, and mismanagement within the Federal Government, but also represents billions of dollars in potential savings to American taxpayers. Because OIG recommendations are not self-executing, Congress must ensure that it provides substantial and meaningful support to OIGs to ensure that agencies are reviewing the recommendations and implementing them to the extent practicable.

C. Congressional support of the IG community

Congress should continue supporting effective and independent IGs to help detect and deter waste, fraud, and abuse in the Federal Government. Former Senator Tom Coburn and

⁴⁰ CIGIE, *Progress Report to the President*, (Fiscal Year 2014), available at <https://www.ignet.gov/sites/default/files/files/FY14-Progress-Report-to-the-President.pdf>. (last visited Sept. 16, 2016) [hereinafter “CIGIE, *Progress Report*”].

⁴¹ *Id.* at 2.

⁴² Ethan Barton, *Here’s How Inspectors General Found \$43b Washington Could Save*, WASH. EXAMINER, (Dec. 29, 2014), available at <http://www.washingtonexaminer.com/heres-how-inspectors-found-43b-washington-could-save/article/2557914> (last visited Sept. 19, 2016). These OIGs work across the Executive Branch for the following departments: Department of Health and Human Services (HHS), Department of Defense (DOD), Department of Housing and Urban Development (HUD), Department of Transportation (DOT), Department of Veterans Affairs (VA), Department of Commerce (DOC), Department of Homeland Security (DHS), U.S. Department of Agriculture (USDA), Department of Energy (DOE), Department of Education (DoED), Department of State (DOS), Department of Labor (DOL), Department of the Interior (DOI), and Department of Justice (DOJ).

⁴³ CIGIE, *Progress Report*, *supra* note 40, at 2.

⁴⁴ *Id.*



Senator Charles Grassley partnered to support the IG community while serving in numerous capacities in the United States Senate. As part of their work, on April 8, 2010, Senator Coburn, then-Ranking Member of the Permanent Subcommittee on Investigations, and Senator Grassley, then-Ranking Member of the Senate Finance Committee, wrote to IGs across the Executive Branch seeking several categories of information designed to enhance the oversight and support of the IG community.⁴⁵

Senators Coburn and Grassley sent the letters in 2010 to better ensure that Congress has the most current and up-to-date information available about investigations that the OIG completes across the Executive Branch. The 2010 Coburn-Grassley letters also helped to enhance congressional oversight of the IG community. Because of the letters, both Senators learned on an ongoing basis about outstanding recommendations that could save taxpayer dollars. Senator Coburn continued this priority when he became Ranking Member of the Homeland Security and Governmental Affairs Committee. Upon Senator Coburn's retirement, Chairman Johnson assumed this responsibility.

Chairman Johnson convened a hearing of the Homeland Security and Governmental Affairs Committee on February 24, 2015 to examine ways to improve IG independence and effectiveness.⁴⁶ The hearing highlighted the challenges facing the IG community, including the IGs' ability to access their agency's documents and records. At the hearing, DOJ IG Horowitz testified that an IG's access to agency documents and materials is "of utmost importance," and explained that the IG community "face[s] significant issues and challenges that affect our independence and ability to conduct effective oversight."⁴⁷ State IG Steve Linick elaborated:

The principle that oversight necessarily requires complete, timely, and unfiltered access to agency information—and the fact that the IG Act entitles IGs to that information—need to be upheld whenever challenged. Unfettered and complete access to information is the lynchpin that ensures independence and objectivity for the entire OIG community.⁴⁸

On February 26, 2015, Chairman Grassley introduced the Inspector General Empowerment Act of 2015, cosponsored by Chairman Johnson.⁴⁹ The Inspector General Empowerment Act of 2015 aims to strengthen the independence of IGs by authorizing IGs to issue testimonial subpoenas to Federal Government contractors, subcontractors and grantees and

⁴⁵ Letter from Hon. Tom Coburn, Ranking Member, Comm. on Homeland Sec. & Gov't Affairs & Hon. Charles Grassley, Ranking Member, Comm. on the Judiciary, to OIGs (Apr. 8, 2010).

⁴⁶ *Improving the Efficiency, Effectiveness, and Independence of Inspectors General: Hearing Before the S. Comm. on Homeland Sec. and Gov't Affairs*, 114th Cong. (2015).

⁴⁷ *Improving the Efficiency, Effectiveness, and Independence of Inspectors General: Hearing Before the S. Comm. on Homeland Sec. and Gov't Affairs*, 114th Cong. (2015) (Statement of Michael Horowitz, Inspector Gen., U.S. Dep't of Justice).

⁴⁸ *Id.* (Statement of Steve Linick, Inspector Gen., U.S. Dep't of State).

⁴⁹ Inspector General Empowerment Act of 2015, S. 579, 114th Cong. (2015), as amended by a substitute amendment on the floor.



subgrantees, and former Federal employees; allowing OIGs to review computer matching data without having to go through the agency to gain access; improving the way misconduct by OIG officials is investigated; and promoting transparency between OIGs and Congress.⁵⁰ Chairman Grassley proposed the legislation in response to concerns from IGs about the need for greater tools to efficiently and effectively carry out their work.

The Committee on Homeland Security and Governmental Affairs, led by Chairman Johnson, approved the bill on March 4, 2015, and reported it favorably to the full Senate in May 2015.⁵¹ In the report accompanying the bill, the Committee reaffirmed that “IGs must be given prompt, unfettered access to agency documents for purposes of carrying out their responsibilities under the Act.”⁵² The legislation and the accompanying Committee report reiterate the intent of Congress that independent and empowered IGs are needed to oversee the Executive Branch. The legislation currently awaits consideration by the full Senate.

In support of the IG community, and to gain a greater understanding of how their work can improve government, Chairman Johnson and Chairman Grassley sent letters to 72 OIGs across the Executive Branch requesting information about the work of the IG community.⁵³ In the letters, the Chairmen requested materials to supplement the OIGs routine semiannual reports provided to Congress.⁵⁴ In part, the letter requested:

- An accounting of all outstanding unimplemented recommendations, as well as the aggregate potential cost savings of these open recommendations, including:
 - The current number of open and unimplemented recommendations;
 - The dates on which the open and unimplemented recommendations were initially made;
 - Whether agency management has agreed or disagreed with the recommendations; and

⁵⁰ *Id.*

⁵¹ Press Release, Sen. Ron Johnson, *Chairman Moves Nine Bipartisan Bills Out of Committee* (May 4, 2015), available at <http://www.ronjohnson.senate.gov/public/index.cfm/2015/3/chairman-moves-nine-bipartisan-bills-out-of-committee>.

⁵² S. Rep. 114-36, at 6 (2015).

⁵³ Letter, Feb. 27, 2015. Senators Johnson and Grassley sent the February 27, 2015 letter to IGs representing departments and agencies across the federal government, including two Special IGs (Special Inspector General for Afghanistan Reconstruction (SIGAR), Special Inspector General for the Troubled Asset Relief Program (SIGTARP)), five legislative agency IGs (Architect of the Capitol (AOC), U.S. Capitol Police (USCP), Government Accountability Office (GAO), Government Publishing Office (GPO), and Library of Congress (LOC)), and IGs representing various facets of the Intelligence Community. The IG for the District of Columbia was not included in the data set.

⁵⁴ *Id.* The February 27, 2015 letter sought information about open and unimplemented recommendations; reports provided to the agency for comment but not responded to within 60 days; investigations involving GS-15 level or above employees in which misconduct was found, but no prosecution resulted; cases of whistleblower retaliation; attempts to interfere with OIG independence; access to information delays; and details about any nonpublic investigations, evaluations, audits, or reports.



- The total potential cost savings to the agency of the current open and unimplemented recommendations.⁵⁵
- A detailed description of any incident where the Federal agency or department, as applicable, has resisted or objected to oversight activities of the IG office or restricted or significantly delayed access to information, including the justification of the Federal agency or department for such action.⁵⁶

The request is meant to provide OIGs with a means to continually keep the Committees abreast of developments relating to their oversight work. The ongoing request will provide up-to-date information about issues facing the OIGs—both individually and as the IG community as a whole, that may inhibit their work or prevent robust oversight of the Executive Branch. The Committees received a response from all 72 OIGs that received letters. Of the responses received, an overwhelming majority cited a high number of open and unimplemented recommendations, totaling billions of potential cost savings to taxpayers.⁵⁷ A number of the recommendations cited as open and unimplemented have been pending for prolonged periods of time—in some cases for 10 years or more.⁵⁸

III. OPEN RECOMMENDATIONS

FINDING: The OIGs identified a total of 15,222 recommendations that remain open and unimplemented by the Executive Branch departments and agencies they oversee. Many of the recommendations were made several years ago.

FINDING: The OIGs reported to the Committees over \$87 billion in aggregate potential cost savings associated with open and unimplemented recommendations.

A. The number of open and unimplemented recommendations

The OIGs reported a total of 15,222 recommendations that remain open and unimplemented by Executive Branch departments and agencies, as of April 1, 2016. According

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ The IGs that oversee various components of the Intelligence Community did not report open and unimplemented recommendations or total potential cost savings to the Committees. The Intelligence Community IGs referred the Committees to their semiannual reports provided to the Senate Select Committee on Intelligence, which are classified.

⁵⁸ *See, e.g.,* HUD OIG Response, Feb. 18, 2016; *see also* DOS OIG Response, July 8, 2016.

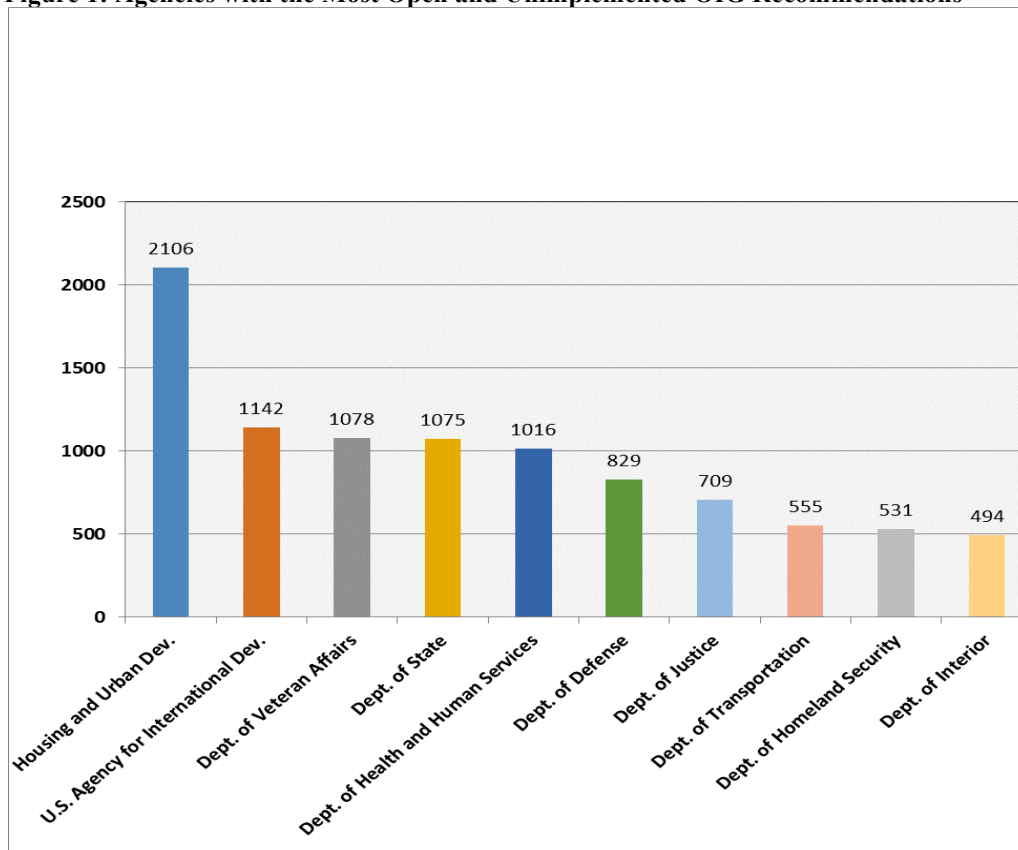


to the OIG responses the Committee received, five agencies had more than 1,000 open and unimplemented OIG recommendations:

1. HUD with 2,106 open and unimplemented recommendations;
2. USAID with 1,142 recommendations;
3. VA with 1,078 recommendations;
4. State with 1,075 recommendations; and
5. HHS with 1,016 recommendations.

Across the Federal Government, OIGs reported an average of 231 open and unimplemented recommendations per agency.

Figure 1: Agencies with the Most Open and Unimplemented OIG Recommendations



The number of open and unimplemented recommendations suggests that most OIGs are fulfilling their mission of identifying inefficiencies and waste in Federal operations, but may point to difficulties in urging agencies to implement their recommendations. This failure to implement OIG recommendations is concerning. While defining the problem is an important first step, it is equally important that agencies take remedial action to fix the problems identified



by the OIGs. Federal agencies must take action promptly to implement OIG recommendations to help ensure that agency programs and operations are as efficient and effective as possible.⁵⁹

B. The length of time that recommendations have been unimplemented

Many of the recommendations OIGs made years ago are unimplemented, and some agencies have not taken action to address them. For example, OIGs for HUD, HHS and DoD all reported hundreds of unimplemented recommendations made in 2013 or earlier.⁶⁰ Although Executive Branch departments and agencies sometimes require additional time to implement recommendations, some of the open recommendations have been unimplemented for ten years.⁶¹ Every day of delay in implementing OIG recommendations means more taxpayer dollars lost to inefficiency, waste, fraud, and abuse.

Of all the unimplemented recommendations across the IG community, HUD OIG reported the ten recommendations that have been pending the longest.⁶² Twelve of the outstanding recommendations total potential savings of \$4.3 million and were made prior to 2001.⁶³ One unimplemented recommendation made in March 2000 urged HUD to seek reimbursement from a local housing agency for \$2.5 million in fictitious training invoices.⁶⁴ Similarly, the 2002 HUD OIG audit identified nearly \$1.4 million in questioned costs or improper payments paid by the local housing authority.⁶⁵ More than a decade later, four recommendations from this audit remain open and unimplemented, with HUD forgoing the recovery or justification of millions of taxpayer dollars spent by the housing authority.⁶⁶

C. The potential cost savings of open and unimplemented recommendations

The delayed action in implementing OIG recommendations has a significant cost value. Many of the OIGs' recommendations have a monetary impact, representing billions in potential

⁵⁹ See OMB Circular A-50, Audit Follow up (Sept. 29, 1982); see also DoD Directive 7650.03 (Dec. 18, 2014) (describing responsibilities for DoD following up on GAO, IG and Internal Audit Reports).

⁶⁰ HUD OIG reported 797 open recommendations made in 2013 or earlier. HHS OIG reported 435 open recommendations made between 2011 and 2013, and the DoD OIG reported 162 open recommendations made between 2006 and 2013.

⁶¹ DOS OIG reported one open recommendation dating back to 2006. HUD OIG reported 12 open recommendations that were made prior to 2001.

⁶² HUD OIG Response, Feb. 18, 2016 (listing outstanding recommendations by year in attachment).

⁶³ *Id.*

⁶⁴ *Id.*; see also, OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HOUSING & URBAN DEV., 00-AT-201-1003 PUERTO RICO HOUSING ADMINISTRATION PROCUREMENT MANAGEMENT SAN JUAN, PUERTO RICO, 27-30 (Mar. 6, 2000), available at <http://archives.hud.gov/offices/oig/reports/files/ig041003.pdf>.

⁶⁵ OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HOUSING & URBAN DEV., 2002-AT-1002 HOUSING AUTHORITY OF THE CITY OF TUPELO, MISSISSIPPI HOUSING PROGRAM OPERATIONS (July 3, 2002), available at <http://archives.hud.gov/offices/oig/reports/files/ig241002.pdf> HUD OIG Response, Feb. 18, 2016 (listing outstanding recommendations from 2002 in attachment).

⁶⁶ HUD OIG Response, Feb. 18, 2016 (listing outstanding recommendations from 2002 in attachment).



cost savings. Typically, the total cost savings are broken down by the OIGs as so-called “questioned costs”—costs that were the result of an alleged violation of a law, regulation, contract, agreement, or document; were not supported by adequate documentation at the time of the OIG’s inquiry; or in which the expenditure of funds for the intended purpose was unnecessary or unreasonable—or funds that could be put to better use if management took actions to implement and complete the recommendation.⁶⁷

The OIGs reported over \$87 billion in aggregate cost savings associated with unimplemented recommendations. According to the information received by the Committees, the five agencies with the largest amount of potential total cost savings from open and unimplemented recommendations—more than five billion each—are as follows:

1. DOD with \$33.1 billion in total potential cost savings;⁶⁸
2. HHS with \$23.1 billion in total potential cost savings;⁶⁹
3. The United States Postal Service (USPS) with \$7 billion in total potential cost savings;⁷⁰
4. The Social Security Administration (SSA) with \$5.5 billion in total potential cost savings;⁷¹ and
5. HUD with \$5.5 billion in total potential cost savings.⁷²

The potential cost savings from these agencies alone represented over 85 percent of the total \$87.5 billion in savings identified by the IG community. Figure 2 displays the departments and agencies that reported the highest amounts of potential total costs savings from open and unimplemented recommendations. Several OIGs reported no estimated total cost savings in the recommendations made to their department or agency, or reported that the cost savings were incalculable.

⁶⁷ See 5 U.S.C. App. § 5(f).

⁶⁸ DOD OIG Response, Dec. 29, 2015.

⁶⁹ HHS OIG Response, Mar. 15, 2016.

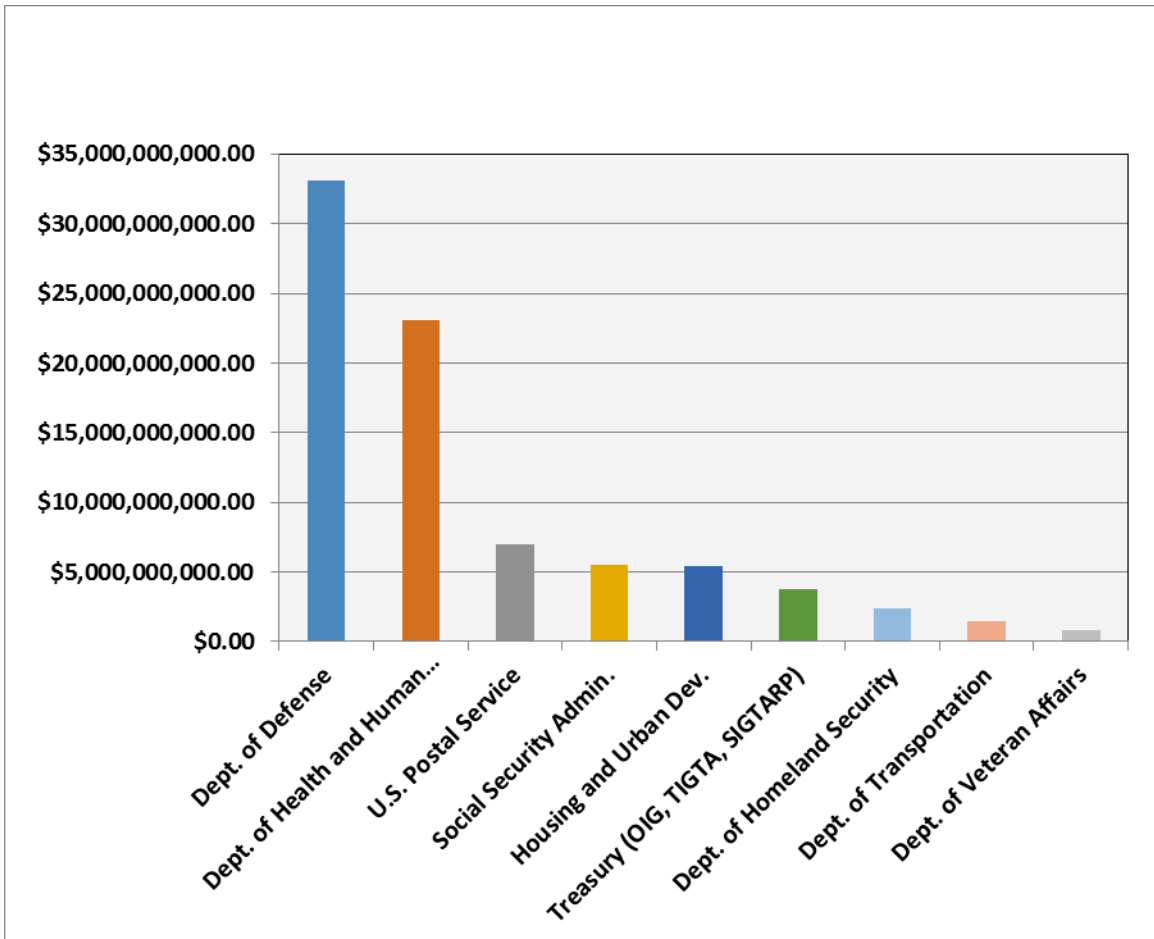
⁷⁰ Letter from Tammy Whitcomb, Deputy Inspector Gen., United States Postal Service, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on Judiciary (Apr. 20, 2016) [hereinafter “USPS OIG Response, Apr. 20, 2016”].

⁷¹ Letter from Gale Stallworth Stone, Deputy Inspector Gen., Social Security Administration, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on Judiciary (May 25, 2016) [hereinafter “SSA OIG Response, May 25, 2016”].

⁷² HUD OIG Response, Feb. 18, 2016.



Figure 2: Agencies with the Highest Total Potential Cost Savings of open and unimplemented OIG Recommendations



The data reported to the Committees show that Executive Branch agencies have a lot of work to do to improve their efficiency and effectiveness. Throughout the Executive Branch, more than 15,000 OIG recommendations remain unimplemented, with an aggregate potential cost savings to taxpayers of more than \$87 billion. Six departments and agencies, in particular, lead the pack in terms of both the number of unimplemented recommendations and the total cost savings of those recommendations. The Executive Branch as a whole, and these agencies in particular, must strive to implement all open OIG recommendations to ensure that taxpayer dollars are being spent responsibly.



IV. SIGNIFICANT OPEN RECOMMENDATIONS

FINDING: The State OIG has open recommendations that it made many years ago, including one recommendation made in 2006—representing a decade of unrealized cost savings to the American taxpayers.

FINDING: The HUD OIG reported the largest amount of open and unimplemented recommendations, with a total of 2,106. The open recommendations span back more than fifteen years, and in aggregate total over \$5.39 billion in potential cost savings. The VA OIG reported a significant amount of open and unimplemented recommendations—1,078 total—representing over \$3.3 billion in potential cost savings.

FINDING: The DoD OIG reported the largest amount of potential cost savings associated with open and unimplemented recommendations, totaling over \$33 billion in potential cost savings associated with the 829 open recommendations. The HHS OIG reported the second highest total of aggregate potential cost savings, reporting 1,016 open and unimplemented recommendations, which represent over \$23 billion in potential cost savings.

Of the Executive Branch departments and agencies with the highest number of open and unimplemented recommendations, OIGs identified many recommendations that appear to be straightforward and easy to implement.⁷³ Yet, despite this fact, these departments and agencies have failed to implement recommendations for years. In this section, the Committees highlight five departments with particularly notable examples of unimplemented recommendations.

A. The Department of Housing and Urban Development

The HUD OIG reported a total of 2,106 open and unimplemented recommendations, spanning back over fifteen years, which in aggregate represent over \$5.39 billion in potential cost savings.⁷⁴ In its response to the Committees, the OIG highlighted multiple open and unimplemented recommendations that were repeated in 2012, 2013, and 2014 reports about deficiencies in HUD's financial management practices. Combined, the outstanding

⁷³ See e.g., DOD OIG Response, Dec. 29, 2015, Enclosure (listing a recommendation that the Air Force use a written plan for time and materials contracts); See generally OFFICE OF INSPECTOR GEN., U.S. DEP'T OF DEFENSE INSPECTOR GEN., D-2010-078 AIR FORCE USE OF TIME-AND-MATERIALS CONTRACTS IN SOUTHWEST ASIA (Aug. 16, 2010), available at <http://www.dodig.mil/audit/reports/fy10/10-078.pdf> (last visited Jun. 18, 2015).

⁷⁴ HUD OIG Response, Feb. 18, 2016 (figures cited in attachment to letter).



recommendations related to thousands of expired contracts, spanning three years, represent more than \$186 million in potential cost savings.⁷⁵

The outstanding recommendations stem from an OIG report issued in November 2012 concerning HUD's contracting process.⁷⁶ Specifically, the OIG recommended that HUD: (1) recapture excess funds paid out for contracts that had expired or where extensions were not granted; (2) improve its deobligation process; and (3) review funding tied to expenses that are no longer valid or required.⁷⁷ The OIG subsequently reiterated these recommendations in reports issued in 2013 and 2014, making clear that the previous recommendations were not addressed.⁷⁸ Years later, the recommendations from all three reports remain open. The fact that HUD has yet to implement recommendations made by the OIG dating back to a November 2012 report—and then repeated in 2013 and 2014—raises concerns as to whether the agency is prioritizing efforts to recover millions of taxpayer dollars that were wrongly expended.

B. The Department of State

The State OIG reported 1,075 outstanding recommendations, totaling over \$773 million in potential cost savings.⁷⁹ The number of outstanding recommendations reported by the OIG is current as of March 31, 2016.⁸⁰ Included in the open recommendations are several recommendations that were made years ago, with one of them made over a decade ago in February 2006.⁸¹

Many of the open recommendations reported by the State OIG represent significant potential cost savings to the agency.⁸² For example, in an August 2012 audit report concerning payments for the operation and maintenance of the United States Embassy in Baghdad, Iraq, the

⁷⁵ *Id.*; see e.g., OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HOUSING & URBAN DEV., 2013-FO-0003, ADDITIONAL DETAILS TO SUPPLEMENT OUR REPORT ON HUD'S FISCAL YEARS 2012 AND 2011 FINANCIAL STATEMENTS, 46 (Nov. 15, 2012), available at https://www.hudoig.gov/sites/default/files/documents/2013-FO-0003_0.pdf.

⁷⁶ OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HOUSING & URBAN DEV., 2013-FO-0003, ADDITIONAL DETAILS TO SUPPLEMENT OUR REPORT ON HUD'S FISCAL YEARS 2012 AND 2011 FINANCIAL STATEMENTS, 46 (Nov. 15, 2012), available at https://www.hudoig.gov/sites/default/files/documents/2013-FO-0003_0.pdf.

⁷⁷ *Id.*

⁷⁸ OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HOUSING & URBAN DEV., 2015-FO-0002, INTERIM REPORT ON HUD'S INTERNAL CONTROLS OVER FINANCIAL REPORTING, 34-36 (Dec. 8, 2014), available at <https://www.hudoig.gov/sites/default/files/documents/2015-FO-%200002.pdf>; OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HOUSING & URBAN DEV., 2014-FO-0003, ADDITIONAL DETAILS TO SUPPLEMENT OUR REPORT ON HUD'S FISCAL YEARS 2013 AND 2012 FINANCIAL STATEMENTS, 56-57 (Dec. 16, 2013) available at <https://www.hudoig.gov/sites/default/files/documents/2014-FO-0003.pdf>.

⁷⁹ DOS OIG, July 8, 2016, at 2.

⁸⁰ *Id.*

⁸¹ *Id.* at 14.

⁸² *Id.* at 5–17.



OIG identified millions of unallowable and unsupported costs that the agency approved.⁸³ One of the recommendations directed State’s contracting officer to conduct a comprehensive review of all invoices before the operations and maintenance contract was closed to determine whether the contractor submitted adequate supporting documentation for costs.⁸⁴ This recommendation—representing \$1.6 million in total potential cost savings—remains open, despite being nearly four years old.⁸⁵

Similarly, in a September 2014 management assistance report concerning construction grants executed by a particular contractor, the OIG made a series of recommendations that remain open.⁸⁶ The OIG recommended that the agency’s Bureau of South and Central Asian Affairs immediately terminate two grant agreements with the contractor and deobligate over \$5 million in remaining funds.⁸⁷ The contractor could not account for Federal funds spent and did not make accurate reports to State about its financial position.⁸⁸ Further, the contractor spent more than half a million dollars on unallowable costs, such as making loans to its employees.⁸⁹ The OIG recommended that the Bureau direct the contractor to reimburse State for the over \$1.2 million in unspent funds and verify that State has received reimbursement for all unspent funds.⁹⁰ The OIG also recommended that the Bureau determine the validity of the remaining unauthorized costs and direct the contractor to refund the amount found to be unauthorized.⁹¹ These recommendations, totaling approximately \$6.8 million of potentially recoverable taxpayer money, remain open.⁹²

C. The Department of Defense

The DoD OIG reported 829 open and unimplemented recommendations, with some recommendations dating back to 2006.⁹³ The DoD OIG reported the largest amount of total potential cost savings associated with the open and unimplemented recommendations—\$33.1

⁸³ *Id.* at 13; See OFFICE OF INSPECTOR GEN., U.S. DEP’T OF STATE, AUD-MERO-12-43, EVALUATION OF INVOICES & PAYMENTS FOR THE EMBASSY BAGHDAD OPERATIONS AND MAINTENANCE CONTRACT (Aug. 9, 2012), available at <https://oig.state.gov/system/files/197280.pdf>.

⁸⁴ DOS OIG, July 8, 2016, at 13.

⁸⁵ *Id.*

⁸⁶ See Memorandum from Norman P. Brown, Office of Inspector Gen., U.S. Dep’t of State, to Nisha D. Biswal & Corey M. Rindner, U.S. Dep’t of State, *Management Assistance Report—Termination of Construction Grants to Omran Holding Group* (Sept. 18, 2014), available at <https://oig.state.gov/system/files/232143.pdf> (last visited Mar. 8, 2016).

⁸⁷ *Id.*; see also Letter, DOS OIG, July 8, 2016, at 11.

⁸⁸ See Memorandum from Norman P. Brown, Office of Inspector Gen., U.S. Dep’t of State, to Nisha D. Biswal & Corey M. Rindner, U.S. Dep’t of State, *Management Assistance Report—Termination of Construction Grants to Omran Holding Group 2-3, 5* (Sept. 18, 2014), available at <https://oig.state.gov/system/files/232143.pdf>.

⁸⁹ *Id.* at 3.

⁹⁰ DOS OIG Response, July 8, 2016, at 11.

⁹¹ *Id.*

⁹² *Id.*

⁹³ DOD OIG Response, Dec. 29, 2015, at 1.



billion in aggregate potential cost savings.⁹⁴ The DoD OIG provided a chart detailing the number of recommendation made each year and the number of recommendations that remain open.⁹⁵ The DoD OIG reported three recommendations that remain open from as far back as 2006.⁹⁶ DoD has yet to implement 212 recommendations for Fiscal Year 2012 and 455 recommendations for Fiscal Year 2015 (see Figure 3).⁹⁷

Figure 3: DOD OIG Open and Unimplemented Recommendations by Fiscal Year

Fiscal Year	Recommendations Opened for Followup	Recommendations Remaining Open
2006 - 2008	2,615	3
2009	838	5
2010	930	14
2011	764	11
2012	774	41
2013	994	88
2014	744	212
2015	1,097	455
TOTAL	8,756	829

The DoD OIG reported a number of open and unimplemented recommendations that appear straightforward and easy to implement, yet some recommendations have remained outstanding for years.⁹⁸ For instance, in 2010, the DoD OIG issued a report concerning the Air Force’s time and materials contracts in Southwest Asia.⁹⁹ The OIG recommended that the Air Force establish a written plan to review invoices for time and materials task orders, request assistance from the Defense Contract Audit Agency in reviewing invoices, and obtain reimbursements for incorrect charges.¹⁰⁰ The OIG reported to the Committees that this open and unimplemented recommendation represents a potential cost savings of over \$24 million.¹⁰¹ Although the DoD OIG made the recommendation nearly six years ago, the recommendation has remained unimplemented and the cost savings for taxpayers remains unrealized.¹⁰²

⁹⁴ *Id.* at 2.

⁹⁵ *Id.* at 1.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ DOD OIG Response, Dec. 29, 2015, Enclosure.

⁹⁹ See generally OFFICE OF INSPECTOR GEN., U.S. DEP’T OF DEFENSE INSPECTOR GEN., D-2010-078 AIR FORCE USE OF TIME-AND-MATERIALS CONTRACTS IN SOUTHWEST ASIA (Aug. 16, 2010), available at <http://www.dodig.mil/audit/reports/fy10/10-078.pdf> (last visited Jun. 18, 2015).

¹⁰⁰ *Id.* at 11.

¹⁰¹ DOD OIG Response, Dec. 29, 2015, Enclosure, at 1.

¹⁰² *Id.*



In 2013, the DoD OIG issued a report examining DoD efforts to minimize improper payments for third-party transportation of the household goods of military personnel.¹⁰³ The report found that DoD shipping counselors made accounting errors in overriding the accounting system and entered invalid data.¹⁰⁴ The accounting errors cost approximately \$2.6 million to correct.¹⁰⁵ To address the errors, DoD OIG recommended that DoD initiate a system change request to limit the use of system overrides.¹⁰⁶ While the DoD concurred with the OIG's recommendation, DoD has not implemented it, leaving the \$13 million in potential cost savings unrecovered for nearly three years.¹⁰⁷

D. The Department of Health and Human Services

The HHS OIG reported 1,016 open and unimplemented recommendations made during the last five calendar years, from January 2011 to December 2015.¹⁰⁸ In addition to the large amount of open recommendations, HHS OIG reported a trend of an increasing number of open recommendations for each year.¹⁰⁹ As reported by the OIG, HHS has yet to implement 103 recommendations made during the 2011 calendar year.¹¹⁰ The number increased the following year to 127 open recommendations, and continues to increase each subsequent year. For 2015, HHS has failed to implement a total of 354 OIG recommendations (see Figure 4).¹¹¹

Figure 4: Open HHS OIG Recommendations by Year

Issue Year	Number of Unimplemented or Otherwise Open Recommendations
2011	103
2012	127
2013	205
2014	227
2015	354
Total	1,016

¹⁰³ OFFICE OF INSPECTOR GEN., U.S. DEP'T OF DEFENSE, DODIG-2013-083, EFFORTS TO MINIMIZE IMPROPER PAYMENTS FOR THE SHIPMENT OF HOUSEHOLD GOODS WERE GENERALLY EFFECTIVE BUT NEED IMPROVEMENT (May 15, 2013), available at <http://www.dodig.mil/pubs/documents/DODIG-2013-083.pdf>.

¹⁰⁴ *Id.* at 1.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 19.

¹⁰⁷ *Id.* ;

Letter, DOD OIG, Dec. 29, 2015, Enclosure, at 3.

¹⁰⁸ HHS OIG Response, Mar. 15, 2016.

¹⁰⁹ *Id.* at 2.

¹¹⁰ *Id.*

¹¹¹ *Id.*



The total potential cost savings associated with the open and unimplemented recommendations reported by the HHS OIG is \$23 billion.¹¹² Of the \$23 billion, recommendations aimed at reducing certain improper hospital payment rates make up \$15 billion in potential cost savings. The HHS OIG found that HHS could save \$3.8 billion by ensuring accurate calculations for Medicaid payments for locally provided services. Another \$2 billion could be saved by preventing inappropriate payments to Medicare home health agencies, and the OIG found that HHS could save \$33 million simply by preventing Medicare payments to ineligible beneficiaries (see Figure 5).¹¹³

Figure 5: HHS OIG Projected Cost Savings of Priority Unimplemented Recommendations

Unimplemented Recommendation	Projected Savings
Reduce hospital outpatient department payment rates for ambulatory surgical center-approved procedures	\$15,000,000,000
Ensure that States calculate accurate costs for Medicaid services provided by local public providers	\$3,870,000,000
Prevent inappropriate payments to Medicare home health agencies	\$2,000,000,000
Improve oversight and management of Medicaid personal care services	\$1,300,000,000
Establish accurate and reasonable Medicare payment rates for hospital transfers	\$602,500,000
Establish accurate and reasonable Medicare payment rates for hospital inpatient services	\$308,000,000
Prevent payments to ineligible Medicare beneficiaries	\$33,600,000
Total Projected Savings	\$23,114,100,000

The significant potential cost savings of open and unimplemented recommendations reported by the HHS OIG was the second largest amount reported by OIGs in response to the Chairmen’s February 2015 letter. The HHS OIG was second only to the DoD, whose OIG reported over \$33 billion in potential cost savings associated with 829 open recommendations.¹¹⁴

E. The Peace Corps

The Peace Corps OIG reported a total of 82 open and unimplemented recommendations.¹¹⁵ Ten of those recommendations are related to the implementation of sexual assault policies and guidelines by the agency.¹¹⁶ Although there is no monetary value associated with any of the ten outstanding recommendations, there are potentially significant public health and safety implications of leaving these recommendations unimplemented. Three of the ten

¹¹² *Id.* at 3.

¹¹³ *Id.*

¹¹⁴ DOD OIG Response, Dec. 29, 2015, at 1–2.

¹¹⁵ Office of Inspector General, Peace Corps, to Hon. Ron Johnson, Chairman S. Comm. on Homeland Sec. and Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on Judiciary, May 27, 2016 [hereinafter “Peace Corps OIG Response, May 27, 2016”].

¹¹⁶ *Id.*



recommendations date back to a 2012 OIG report that reviewed protocols for volunteer victims reporting sexual assaults.¹¹⁷ Four of the unimplemented recommendations come from reports to Congress mandated by the Kate Puzy Peace Corps Volunteer Protection Act of 2011 (Kate Puzy Act).¹¹⁸ The remaining three recommendations, out of the ten reported open by Inspector General Buller, are contained in a November 2014 Management Advisory Report (MAR).¹¹⁹ The 2014 MAR identified confusion among volunteers with certain aspects of reporting sexual assaults.¹²⁰ This is particularly troubling because one of the key responsibilities placed on the Peace Corps by the Kate Puzy Act was to establish clear procedures for volunteers to be able to report sexual assaults.¹²¹ According to the unimplemented recommendations, the Peace Corps should do more to protect its volunteers from sexual assault.

The recommendations highlighted above are only a few examples of thousands of open and unimplemented recommendations reported by OIGs that are many years old. Many of the open and unimplemented recommendations appear straightforward to implement and represent significant cost savings to the American taxpayer. In addition to saving taxpayer money, some unimplemented recommendations could improve public health and safety. As years pass and recommendations remain open, the likelihood of an Executive Branch department or agency implementing years-old recommendations appears to be more and more remote. It becomes increasingly important, therefore, for departments and agencies to promptly take action in response to OIG recommendations.

¹¹⁷ OFFICE OF INSPECTOR GEN., UNITED STATES PEACE CORPS, IG-12-08-E, THE PEACE CORPS' IMPLEMENTATION OF GUIDELINES AND PROTOCOLS RELATED TO VOLUNTEER VICTIMS OF SEXUAL ASSAULT: REVIEW (Sept. 27, 2012) *available at*

http://files.peacecorps.gov/multimedia/pdf/policies/Final_Report_Review_of_the_Peace_Corps_Implementation_of_Guidelines_Related_to_Volunteer_Victims_of_Rape_and_Sexual_Assault.pdf.

¹¹⁸ OFFICE OF INSPECTOR GEN., UNITED STATES PEACE CORPS, IG-14-01-E, SEXUAL ASSAULT RISK-REDUCTION AND RESPONSE TRAINING: EVALUATION (November 2013), *available at*

http://files.peacecorps.gov/multimedia/pdf/policies/PCIG_Final_Program_Evaluation_of_Peace_Corps_SARRR_Training.pdf; OFFICE OF INSPECTOR GEN., UNITED STATES PEACE CORPS, IG-14-02-E, PEACE CORPS VOLUNTEER SEXUAL ASSAULT POLICY: EVALUATION (November 2013), *available at*

http://files.peacecorps.gov/multimedia/pdf/policies/PCIG_Final_Program_Evaluation_Volunteer_Sexual_Assault_Policy.pdf.

¹¹⁹ Memorandum from Kathy Buller, Inspector Gen., Office of Inspector Gen., U. S. Peace Corps, to Carrie Hessler-Radelet, Director and Daljit Bains, Chief Compliance Officer, U. S. Peace Corps, (Nov. 21, 2014), *available at*

http://files.peacecorps.gov/multimedia/pdf/policies/PCIG_Agency_Policies_Related_to_Volunteer_Sexual_Assault_Allegations.pdf.

¹²⁰ *Id.*

¹²¹ 22 U.S.C. § 2507(a)-(i).



V. AGENCY OBSTRUCTION OF OIG ACCESS TO INFORMATION

FINDING: Eight IGs reported difficulty accessing documents from agencies. Both the DOJ OIG and the Peace Corps OIG reported an agency policy that restricted the OIG’s access to certain categories of information, supported by a legal opinion from the agency’s office of general counsel. Both the EPA OIG and the State OIG reported denial of access to agency records concerning internal investigations of employee misconduct.

FINDING: IGs encounter agency resistance in accessing agency information, despite a requirement in the Inspector General Act that IGs have access to “all agency records.” In at least two cases, agencies have interpreted the clear language in the Inspector General Act as insufficient to permit IG access to agency records. In the case of SIGTARP, the Special IG had to resort to subpoenas and threats of subpoenas to obtain information about the use of Federal TARP funds.

Under the IG Act, IGs have a statutory right to access “all records, reports, audits, reviews, documents, papers, recommendations or other material available to the applicable establishment which relates to programs and operations with respect to which that Inspector General has responsibilities under this Act.”¹²² Despite the plain meaning of this language and the clarification provided by Congress in Section 218 of the Consolidated and Further Continuing Appropriations Act of 2015,¹²³ some agencies continue to challenge the ability of the IG to access *all* records—instead choosing to limit, redact, and delay providing certain information to the IG community.¹²⁴ Congress has recently reiterated the Section 218 language in Section 540 of the Consolidated Appropriations Act of 2016, signed into law in December 2015.¹²⁵

The Administration does not share the belief that IGs should have access to all Executive Branch materials. On July 20, 2015, the DOJ’s Office of Legal Counsel (OLC) issued a memorandum for the Deputy Attorney General concluding that non-disclosure requirements in

¹²² 5 U.S.C. App. §6(a)(1).

¹²³ Department of Justice Appropriations Act, Pub. L. No. 113-235, § 218, 128 Stat. 2130, 2200 (Dec. 16, 2014).

¹²⁴ See *Improving the Efficiency, Effectiveness, and Independence of Inspectors General: Hearing before the S. Comm. on Homeland Security and Governmental Affairs*, 114th Cong. (2015), available at <http://www.hsgac.senate.gov/hearings/improving-the-efficiency-effectiveness-and-independence-of-inspectors-general> (describing access issues by agency IGs); ‘All’ Means ‘All’: *The Justice Department’s Failure to Comply With its Legal Obligation to Ensure Inspector General Access to All Records Needed for Independent Oversight: Hearing before the S. Comm. on the Judiciary*, 114th Cong. 4 (2015) (statement of Michael E. Horowitz, Inspector General, U.S. Dep’t of Justice), available at <https://www.oig.justice.gov/testimony/t150805.pdf>.

¹²⁵ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 540 of Div. B, Title V, (Dec. 8, 2015).



some statutes could restrict an IG’s access to certain information on a case-by-case basis.¹²⁶ The OLC opinion requires the IG to get permission from the Department prior to gaining access to certain records—if they can get access at all. Congress never intended this interpretation of the IG Act. In August 2015, twelve Members of Congress of both political parties wrote to DOJ and informed the Department that OLC’s interpretation of the IG Act was incorrect.¹²⁷ Additionally, in response to the OLC opinion, Chairman Johnson and Chairman Grassley, along with a bipartisan group of Senators, filed an amendment to S. 579, the Inspector General Empowerment Act of 2015, to add a provision that IGs should have access to all agency records “notwithstanding any other provision of law.”¹²⁸ This provision aims to nullify the OLC’s opinion and explain definitively that the IG community must have access to all records.¹²⁹

On December 15, 2015, Chairman Grassley requested unanimous consent that the full Senate pass S. 579. Chairman Johnson supported this request; however, Senator Harry Reid objected without explanation and the bill was not passed.¹³⁰ It is difficult to understand why anyone could object to providing IGs with the tools they need to provide transparency and accountability in the Federal Government. Until this bill is signed into law, IGs are likely to continue encountering resistance from some agencies—like the DOJ—that interpret the IG Act incorrectly. In fact, in the responses to the Chairmen’s requests, eight OIGs reported incidents of agency obstruction.

A. The Department of Justice

The ongoing obstruction issues experienced by the DOJ OIG have the potential to affect IGs across the Executive Branch. Within a week of the DOJ Office of Legal Counsel opinion

¹²⁶ *The Department of Justice Inspector General’s Access to Information Protected by the Federal Wiretap Act, Rule 6(e) of the Federal Rules of Criminal Procedure, and Section 626 of the Fair Credit Reporting Act*, 39 Op. O.L.C. at 51 (July 20, 2015), available at <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/07/23/2015-07-20-doj-oig-access.pdf> (“[W]e believe the rule of relative specificity applies, and suggests that the nondisclosure provisions in Title III, Rule 6(e), and section 626 should prevail over the general right of access contained in section 6(a)(1) absent a clear indication of congressional intent to the contrary.”) [hereinafter “OLC Opinion”].

¹²⁷ Letter from Members of Congress, to Hon. Sally Quillian Yates, Deputy Attorney Gen., U.S. Dep’t of Justice, Aug. 13, 2015; Letter from Hon. Richard Shelby, Chairman, S. Subcomm. on Commerce, Justice, Sci. and Related Agencies, Comm. on Appropriations and Hon. Barbara Mikulski, Vice Chairwoman, S. Subcomm. on Commerce, Justice, Science and Related Agencies, Comm. on Appropriations, to Hon. Sally Quillian Yates, Deputy Attorney Gen., U.S. Dept. of Justice (July 30, 2015).

¹²⁸ Press Release, S. Comm. on Homeland Sec. and Gov’t Affairs, *Bipartisan Group of Senators File Legislative Fix to Ensure Inspectors General Have Access to All Agency Records* (Sept. 21, 2015), available at <https://www.hsgac.senate.gov/media/majority-media/bipartisan-group-of-senators-file-legislative-fix-to-ensure-inspectors-general-have-access-to-all-agency-records>.

¹²⁹ *Id.* (copy of filed substitute amendment on file with Comm. staff).

¹³⁰ 161 Cong. Rec. S8672 (daily ed. Dec. 15, 2015) (statement of Sen. Charles Grassley); see also Press Release, S. Comm. on Homeland Sec. and Gov’t Affairs, *Chairman Johnson Speaks on Senate Floor to Support Legislation Empowering Government Watchdogs* (Dec. 15, 2015), available at <https://www.hsgac.senate.gov/media/majority-media/chairman-johnson-speaks-on-senate-floor-to-support-legislation-empowering-government-watchdogs>.



supporting restricted IG access to agency documents, the Deputy Attorney General had incorporated this legal interpretation into the DOJ’s policy for responding to OIG requests.¹³¹ During an August 2015 hearing before the Senate Judiciary Committee, DOJ IG Michael Horowitz testified that the legal underpinning of the OLC opinion “represents a serious threat to the independence of not only the DOJ-OIG, but to all Inspectors General.”¹³² In addition to restricting IG access to certain categories of information, the OLC opinion also authorizes DOJ employees—and not the OIG—as the ultimate adjudicators of what information the OIG may access.¹³³ This approach is extremely troubling to IG independence. It is contrary to the intent of Congress that an agency could act as the gatekeeper of information that an IG needs to conduct its oversight duties.

In reaching the conclusion that the Department can restrict IG access to certain information, the 68 page OLC opinion considered three particular statutes that contain provisions that restrict disclosure in certain circumstances.¹³⁴ While the opinion was issued based on those three statutes, IG Horowitz worries that “agencies may object to the production to Inspectors General of other categories of records that are subject to non-disclosure provisions in other statutes.”¹³⁵ In his testimony before the Senate Judiciary Committee, IG Horowitz noted that Federal law contains *hundreds* of nondisclosure provisions that are similar to the ones analyzed by the OLC opinion, any of which could be cited in the future as a basis for denying an IG access to information.¹³⁶

In addition to the DOJ withholding information on the basis of the OLC opinion, the DOJ OIG has also experienced protracted delays in accessing information it needs for reports relating to the Federal Bureau of Investigation and the Drug Enforcement Administration.¹³⁷ In one instance, the OIG reported that DEA’s tactics resulted in a seven-month delay in obtaining highly relevant documents.¹³⁸ According to OIG, the delays were the result of “numerous instances of uncooperativeness from the DEA,” including frivolous redactions on documents and DEA’s refusal to promptly provide routine documents such as organizational charts.¹³⁹

¹³¹ DOJ-OIG Response, Oct. 29, 2015.

¹³² *Inspector General Access to All Records Needed for Independent Oversight: Hearing Before the S. Comm. on Judiciary*, 114th Congress (2015) (Testimony, Michael Horowitz, Inspector General, Dep’t of Justice).

¹³³ DOJ-OIG Response, Oct. 29, 2015; *see also* OLC Opinion, at 45 (disclosing grand jury materials to the IG is permissible “if an attorney for the government determines that such disclosure could assist her in the performance of her criminal law enforcement duties”).

¹³⁴ OLC Opinion, at 1.

¹³⁵ DOJ-OIG Letter, Oct. 29, 2015, at 4.

¹³⁶ *Inspector General Access to All Records Needed for Independent Oversight: Hearing Before the S. Comm. on Judiciary*, 114th Congress (2015).

¹³⁷ DOJ-OIG Response, Oct. 29, 2015 at 5; *see also* Letter from Hon. Michael Horowitz, Inspector Gen., Dep’t of Justice, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on Judiciary, March 25, 2015, Enclosure 4 (listing eight FBI and DEA investigations where the OIG experienced delays in access to information including two related to whistleblower regulations at the FBI).

¹³⁸ *Id.* at 5.

¹³⁹ *Id.* at 5-6.



After Congress intervened and included a provision in the 2016 appropriations law prohibiting DOJ from denying the OIG access to this information,¹⁴⁰ DOJ changed course to provide the information to the OIG.¹⁴¹ Nonetheless, the tactics employed by the DOJ to restrict and delay DOJ OIG access to information are particularly concerning given the precedent the OLC opinion has set across the Executive Branch. Indeed, the Department of Commerce relied on the OLC memorandum to justify denying its OIG access to certain agency information.¹⁴²

B. The Department of State

The State OIG has consistently experienced difficulties and delays in accessing State Department information. The OIG informed the Chairmen that the agency had limited access to information relating to an audit of the Department’s approach to the construction and commission of buildings at the U.S. Embassy in Kabul, Afghanistan.¹⁴³ Additionally, the OIG encountered challenges obtaining documents tracking contractor expenses and records related to information security reviews.¹⁴⁴ These reports follow a previous OIG notice which detailed an instance in which senior agency leadership restricted the OIG’s effort to investigate allegations of criminal or serious misconduct by agency employees.¹⁴⁵ The State OIG highlighted this obstruction regarding a 2015 report that found the appearance of undue influence and favoritism in some internal investigations conducted by the Bureau of Diplomatic Security (DS).¹⁴⁶

According to the 2015 OIG report, Patrick Kennedy, the State Department’s Under Secretary for Management, chose to handle an allegation of criminal misconduct by Former Belgian Ambassador Howard Gutman as a “management issue,” a process that is outside the normal DS investigative protocol.¹⁴⁷ Under the procedures outlined in the Foreign Affairs Manual, when there are allegations of employee misconduct regarding a Chief of Mission, the issue should be immediately referred to either DS or to the OIG.¹⁴⁸ In exceptional

¹⁴⁰ See Pub. L. 114-113, div. B, 129 Stat. 2242.

¹⁴¹ Memorandum for heads of Department Components from Sally Q. Yates, Deputy Att’y Gen. (May 2, 2016).

¹⁴² *Inspector General Access to All Records Needed for Independent Oversight: Hearing Before the S. Comm. on Judiciary*, 114th Congress (2015) (statement by David Smith, Acting Inspector Gen., U.S. Dep’t of Commerce).

¹⁴³ DOS OIG Response, July 8, 2016.

¹⁴⁴ DOS OIG Response, Jan. 29, 2016, Enclosure 6; DOS OIG Response, July 8, 2016.

¹⁴⁵ See DOS OIG Response, Jan. 29, 2016, Enclosure 6 (describing investigations of employee misconduct or criminal allegations as an area where the IG “continues to face challenges”); See also Letter from Steve Linick, Inspector Gen., Department of State, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Gov’t Affairs (Dec. 4, 2015) (describing “limited visibility” into internal investigations of State Department employees).

¹⁴⁶ OFFICE OF INSPECTOR GEN., DEPT. OF STATE, ESP-15-01, REVIEW OF SELECTED INTERNAL INVESTIGATIONS CONDUCTED BY THE BUREAU OF DIPLOMATIC SECURITY, (2015), available at <https://oig.state.gov/system/files/esp-15-01.pdf>; See also Letter from Steve Linick, Inspector Gen., Department of State, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Gov’t Affairs (Dec. 4, 2015) (describing “limited visibility” into internal investigations of State Department employees).

¹⁴⁷ *Id.* at 2.

¹⁴⁸ 3 FAM 4322.2 (“Incidents or allegations which could serve as grounds for disciplinary action and/or criminal prosecution against a chief of mission (or official in a position of comparable importance) will immediately be



circumstances, the Under Secretary for Management may assign a specific individual to conduct the investigation.¹⁴⁹ Under Secretary Kennedy cited the fact that the Ambassador was posted overseas as the “exceptional circumstance” that justified not referring the allegations to DS or the OIG.¹⁵⁰ Re-designating the investigation as a management issue permitted State to avoid opening and maintaining a case file or any other records documenting the handling of the case. The OIG report found that this action risked actual or perceived undue influence and favoritism.¹⁵¹ In addition to the actions taken by Under Secretary Kennedy regarding Ambassador Gutman, the OIG report found other instances of favoritism within the DS internal investigations process.¹⁵²

In response to this OIG report, Chairman Johnson asked IG Linick to investigate whether there were other instances in which Under Secretary Kennedy re-classified an internal investigation as a “management issue” to avoid a DS investigation.¹⁵³ The Chairman also asked whether State has taken steps to implement the OIG report’s recommendations to revise the Foreign Affairs Manual and implement protocols to ensure all internal investigations are handled fairly, regardless of seniority or rank.¹⁵⁴ State IG Steve Linick reported that the OIG had “limited visibility into such matters because the Department does not consistently inform OIG about allegations of misconduct.”¹⁵⁵ IG Linick reported that the OIG’s recommendations “remain open and unresolved.”¹⁵⁶ It is troubling that the State OIG—the agency’s chief watchdog—has such restricted access to information about how State conducts internal investigations and disciplinary matters.

C. The Department of the Treasury

Congress responded to the 2008 financial crisis by authorizing the TARP.¹⁵⁷ To ensure transparency in TARP activities, Congress also created SIGTARP, the Special Inspector

referred to the Office of Inspector General (OIG) or the Bureau of Diplomatic Security (DS), or comparable offices in other foreign affairs agencies. In exceptional circumstances, the Under Secretary for Management for State; Assistant Administrator for Management for the U.S. Agency for International Development (USAID); or responsible official in each of the other foreign affairs agencies may designate an individual or individuals to conduct the investigation.”)

¹⁴⁹ *Id.*

¹⁵⁰ OFFICE OF INSPECTOR GEN., DEPT. OF STATE, ESP-15-01, REVIEW OF SELECTED INTERNAL INVESTIGATIONS CONDUCTED BY THE BUREAU OF DIPLOMATIC SECURITY, 2 (2015), available at <https://oig.state.gov/system/files/esp-15-01.pdf>.

¹⁵¹ *Id.*

¹⁵² *Id.* at 2-3.

¹⁵³ Letter from Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Gov’t Affairs, to Hon. Steve Linick, Inspector Gen., Dep’t of State (June 11, 2015).

¹⁵⁴ *Id.*

¹⁵⁵ Letter from Hon. Steve Linick, Inspector Gen., Department of State, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Gov’t Affairs (Dec. 4, 2015).

¹⁵⁶ *Id.*

¹⁵⁷ Emergency Economic Stabilization Act of 2008, Pub. L. 110-343 (2008) (codified at 12 U.S.C. §§ 5201 *et seq.*).



General.¹⁵⁸ Federal law specifies that SIGTARP has both the authority and the duty to oversee and investigate how Treasury is using TARP funds.¹⁵⁹ Despite the clear authority and intent for SIGTARP to oversee TARP program activities, Special Inspector General Christy Goldsmith Romero reported difficulty in securing Treasury’s cooperation in accessing individualized TARP data for the Hardest Hit Fund (HHF). Without Treasury’s assistance, SIGTARP was forced to resort to subpoenas and threats of subpoenas to obtain access to information necessary to audit the HHF.¹⁶⁰

The multi-billion dollar HHF program is organized similar to a block grant. Treasury distributes Federal funds, but the program is run by the individual 18 states and the District of Columbia who receive the funding. To provide oversight of the HHF program, SIGTARP requested access to files containing individualized data about the homeowners participating in the program.¹⁶¹ This information is not currently collected by Treasury, and Treasury refused to collect it in response to a request by SIGTARP.¹⁶²

Because Treasury refused to facilitate SIGTARP’s access to this information, SIGTARP had to seek the information directly from the 19 state agencies administering the program.¹⁶³ Even then, however, Treasury imposed difficulties on SIGTARP’s access. As reported by SIGTARP, after a conference call with a senior Treasury Department official, a majority of the state agencies refused SIGTARP’s request for the information—all with nearly identical language and on the same grounds as Treasury had previously raised. SIGTARP only began receiving data from the state agencies after it issued subpoenas to five agencies and threatened subpoenas to others.¹⁶⁴ Because the information received is already outdated, Special Inspector General Romero anticipates future difficulties in obtaining additional information from the state agencies.

Chairman Johnson wrote to Treasury Secretary Jacob Lew with concerns about the difficulty encountered by SIGTARP in accessing information critical to overseeing billions of taxpayer dollars.¹⁶⁵ In its response, Treasury explained that it did not collect the information from the state agencies that SIGTARP requested and therefore the only thing it is able to do is

¹⁵⁸ Special Inspector General for the Troubled Asset Relief Program Act of 2009, Pub. L. 111-15 (2009) (codified at 12 U.S.C. § 5231)

¹⁵⁹ 12 U.S.C. § 5231(c)-(d); 5 U.S.C. App. 3, §6; *See also* Special Inspector General for the Troubled Asset Relief Program Act of 2009, Pub. L. 111-15 (2009) (codified at 12 U.S.C. § 5231) (clarifying that SIGTARP had authority to audit and investigate any TARP program).

¹⁶⁰ Letter from Christy Goldsmith Romero, Special Inspector Gen., Office of the Special Inspector Gen. for the Troubled Asset Relief Program, to Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affairs (Mar. 10, 2016).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Letter from Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affairs, to Hon. Jacob Lew, Sec’y, U.S. Dep’t of Treasury (Mar. 21, 2016).



encourage states to provide the information directly to SIGTARP.¹⁶⁶ Treasury rationalized that “SIGTARP was able to alleviate [the state-agency concerns] by issuing subpoenas.”¹⁶⁷ In a subsequent phone call with Chairman Johnson’s staff, Treasury officials confirmed that while the information could be collected by the agency, it has no plans to assist SIGTARP in the future in obtaining the individualized data it needs to oversee the HHF.

Treasury’s refusal to assist SIGTARP in obtaining information is a waste of resources. Treasury has the ability to collect the information from the state agencies without forcing SIGTARP to obtain the information directly from the state agencies using the compulsory process. Treasury’s refusal to do so delays critical oversight of the multi-billion dollar HHF program and denies taxpayers with up-to-date information about how their tax dollars are spent.

D. The Internal Revenue Service

The Treasury Inspector General for Tax Administration (TIGTA) is the specialized IG for the Internal Revenue Service (IRS). In response to the Chairmen’s requests, TIGTA identified instances in which the IRS delayed access to information necessary to two audits—one on the use of civil forfeiture authority and the other on pension fund planning.¹⁶⁸ In both cases, the agency delayed access to documents for months and then when they were produced, the IRS produced the material in a format that was not fully usable.

In the case of the civil forfeiture audit, the IRS impeded TIGTA’s work by not providing requested documents, delaying production, or heavily redacting the material that was produced.¹⁶⁹ The IRS made the redactions on the basis of assertions that the information was subject to nondisclosure laws.¹⁷⁰ TIGTA has been attempting to resolve these issues with the IRS and the DOJ to determine what information TIGTA can access. But due to DOJ’s OLC opinion, it is possible that these attempts will not result in increased access to information for TIGTA.

TIGTA initiated its audit relating to pension fund planning in July 2015, but as of December 4, 2015, it had not yet received all the documents it had requested.¹⁷¹ In fact, TIGTA had only received completed information for 38 percent of the cases needed for its audit by December 2015—nearly five months after the initial request.¹⁷² This delay in TIGTA obtaining information in both cases prevents robust oversight of a federal agency in need of it.

¹⁶⁶ Letter from Anne Wall, Assistant Sec’y for Legislative Affairs, U.S. Dep’t of Treasury, to Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affairs (April 1, 2016).

¹⁶⁷ *Id.*

¹⁶⁸ TIGTA Response, Dec. 4, 2015.

¹⁶⁹ *Id.* at 2.

¹⁷⁰ *See id.* at 2 (citing “grand jury secrecy”); *see also*, FED. R. CRIM. P. 6(e) (outlining the rules for disclosing grand jury matters).

¹⁷¹ *Id.* at 3.

¹⁷² *Id.*



E. The Peace Corps

The Kate Puzey Act requires that the Peace Corps OIG conduct a case review of how the agency has responded to allegations of sexual assault.¹⁷³ However, Peace Corp policy restricts the IG from having complete access to sexual assault cases.¹⁷⁴ The Peace Corp first established this policy in 2013 when its general counsel issued a legal opinion concluding that the nondisclosure requirements in the Kate Puzey Act preempts the IG Act, which grants IGs broad access to all agency records.¹⁷⁵ The result of this opinion was that the Peace Corps denied the OIG's access to details of incidents of sexual assault and to a victim's personally identifying information.

The Peace Corps' use of provisions within the Kate Puzey Act to restrict OIG access to certain information runs directly counter to congressional intent. The Kate Puzey Act originated after it was revealed that the Peace Corps was not appropriately addressing reports of sexual assault.¹⁷⁶ The Kate Puzey Act was intended to add protections for victims of sexual assault and to bring transparency to the agency. The law specifically tasked the Peace Corps OIG with evaluating the "effectiveness and implementation of the sexual assault risk-reduction and response training," newly required by the Kate Puzey Act, "and the sexual assault policy . . . including a case review of a statistically significant number of cases."¹⁷⁷ Fulfilling this statutory mandate requires the OIG's access to Peace Corps records.

In May 2014, the Peace Corps OIG and the agency reached an agreement under which the agency narrowed the restricted information and granted the OIG access to some details of the sexual assault incidents. Subsequently, in October 2014, the agency nullified some of its previous provisions and policies restricting OIG access to information. However, IG Buller remains "concerned that the reliability of [the OIG's] 2016 report will be compromised by not having complete access to sexual assault cases."¹⁷⁸ The Peace Corps' attempts to limit the OIG's access to records necessary to evaluate sexual assault policies at the agency are particularly troubling given that the agency has failed to implement ten IG recommendations related to sexual assault policies, some of which date back to 2012.¹⁷⁹ The Peace Corps OIG also continues to express concern that the 2013 legal opinion from the Peace Corps general counsel's office remains in place.¹⁸⁰ The existence of the Peace Corps legal opinion—even with the agency's

¹⁷³ Kate Puzey Peace Corps Volunteer Protection Act of 2011, Pub. L. 112-57 (2011) (codified at 22 U.S.C. § 2507).

¹⁷⁴ Peace Corp OIG Response, Dec. 14, 2015.

¹⁷⁵ *Id.*

¹⁷⁶ Sheryl Gay Stolberg, *Peace Corps Volunteers Speak Out on Rape*, NY TIMES (May 10, 2011), available at http://www.nytimes.com/2011/05/11/us/11corps.html?_r=0.

¹⁷⁷ 22 U.S.C. § 2507e(d)(B).

¹⁷⁸ Peace Corps OIG Response, Dec. 14, 2015.

¹⁷⁹ *See id.* (listing open recommendations in Attachment A).

¹⁸⁰ *Id.*



informal nullification of some provisions—creates a risk that the agency could elect to refer to it in future circumstances.

F. The Environmental Protection Agency

The EPA Office of Homeland Security (OHS) has delayed the EPA OIG’s access to information necessary to investigate threats against EPA employees and facilities, misconduct, and computer intrusions.¹⁸¹ This obstruction has been occurring for years.¹⁸² During this time, IG Arthur Elkins has testified about the EPA’s restriction of his access to information many times before congressional committees.¹⁸³ This restriction was highlighted in the August 2014 letter signed by 47 IGs to leaders of the congressional oversight committees.¹⁸⁴ The EPA OIG also has detailed the restricted access to information in several of its semiannual reports to Congress, including both 2015 reports.¹⁸⁵ According to IG Elkins’ most recent response to the Chairmen, the EPA obstruction issue has not yet been resolved.¹⁸⁶

In July 2015, EPA Administrator Gina McCarthy reassured IG Elkins that the OIG would have access to the documents it requested from OHS.¹⁸⁷ A few weeks later, OHS produced a subset of the documents that were responsive to OIG’s longstanding request.¹⁸⁸ Despite this production, OHS continues to resist and delay access to all responsive documents, arguing that a non-disclosure agreement with the Federal Bureau of Investigations (FBI) precludes the OIG

¹⁸¹ EPA OIG Response, Jan. 6, 2016.

¹⁸² See *Obstructing Oversight: Concerns From Inspectors General: Hearing Before the H. Comm. on Oversight and Gov’t Reform*, 114th Cong. (2014) (Testimony by Inspector Gen. Arthur A. Elkins Jr.) (“This impairment was ongoing when I arrived four years ago, and is still not resolved to this day.”).

¹⁸³ *Obstructing Oversight: Concerns From Inspectors General: Hearing Before the H. Comm. on Oversight and Gov’t Reform*, 114th Cong. (2014) (Testimony by Inspector Gen. Arthur A. Elkins Jr.); *Oversight of the Management of the Federal Environmental Protection, Chemical Safety, and Fish and Wildlife Agencies: Hearing Before the S. Subcomm. on Superfund, Waste Management, and Regulatory Oversight, Comm. on Environment and Public Works*, 114th Cong. (2015) (Testimony by Inspector Gen. Arthur A. Elkins Jr.); *EPA Mismanagement: Hearing Before the H. Comm. on Oversight and Gov’t Reform*, 114th Cong. (2015) (Testimony by Inspector Gen. Arthur A. Elkins Jr.); *Inspectors General: Independence, Access and Authority: Hearing Before the H. Comm. on Oversight and Gov’t Reform*, 114th Cong. (2015) (Testimony by Inspector Gen. Arthur A. Elkins Jr.).

¹⁸⁴ Letter from 47 Inspectors Gen.

¹⁸⁵ See e.g., OFFICE OF INSPECTOR GENERAL, ENVIRONMENTAL PROTECTION AGENCY, EPA-350-R-15-001, SEMIANNUAL REPORT TO CONGRESS, OCTOBER 1 2014-MARCH 31, 2015, (May 2015), available at https://www.epa.gov/sites/production/files/2015-09/documents/semiannual_report_to_congress-march_2015_0.pdf; OFFICE OF INSPECTOR GENERAL, ENVIRONMENTAL PROTECTION AGENCY, EPA-350-R-15-002, SEMIANNUAL REPORT TO CONGRESS, APRIL 1 2015-SEPT.30, 2015, (Nov 2015), available at <https://www.epa.gov/office-inspector-general/semiannual-report-apr-1-2015-sept-30-2015>.

¹⁸⁶ EPA OIG Response, Jan. 6, 2016, at 3-4.

¹⁸⁷ OFFICE OF INSPECTOR GENERAL, ENVIRONMENTAL PROTECTION AGENCY, EPA-350-R-15-002, SEMIANNUAL REPORT TO CONGRESS, APRIL 1 2015-SEPT.30, 2015, 11 (Nov 2015), available at <https://www.epa.gov/office-inspector-general/semiannual-report-apr-1-2015-sept-30-2015>.

¹⁸⁸ *Id.*



from receiving the material.¹⁸⁹ Similar to the DOJ’s reasoning for denying access of information to its OIG, the EPA’s reliance on a non-disclosure provision contravenes congressional intent in the IG Act and inhibits prompt and effective oversight of the EPA.

G. The Department of Commerce

The Department of Commerce (Commerce) OIG has also experienced difficulties in attempting to access agency records. In August 2015, Acting IG David Smith testified before the Senate Committee on the Judiciary about problems the office was having in accessing certain agency records.¹⁹⁰ Acting IG Smith explained that Commerce relied on the DOJ’s OLC opinion to deny OIG access to information from the International Trade Administration.¹⁹¹ Because the OIG could not obtain the information it needed, the OIG had to terminate its work on the audit.¹⁹² Ultimately, after Congress passed a law prohibiting Commerce from denying access to this information,¹⁹³ Commerce OIG was able to resume its work.

Further, in the OIG’s response to the Chairmen, Acting IG David Smith cited a total of six other incidents in which Commerce attempted to interfere with the OIG’s work by restricting access to information.¹⁹⁴ Three out of the six incidents are ongoing. Of the three incidents that have been closed, Commerce completely withheld the requested documents, delayed their production, and in case of a FISMA compliance review, Acting IG Smith was informed that “requested documents do not exist.”¹⁹⁵ The lack of documents necessary to review Commerce IT systems for FISMA compliance is problematic because, according to federal law and agency policy, those documents are required prior to the systems being put into operation.¹⁹⁶ These incidents are contrary to the IG Act and impede the work of the Commerce Department OIG.

¹⁸⁹ EPA OIG Response, Jan. 6, 2016, at 3-4.

¹⁹⁰ *‘All’ Means ‘All’: The Justice Department’s failure to Comply With It’s Legal Obligation to Ensure Inspector General Access to All Records Needed For Independent Oversight*, Hearing Before the S. Comm. on the Judiciary, (Aug. 5, 2015), available at <http://www.judiciary.senate.gov/meetings/all-means-all-the-justice-departments-failure-to-comply-with-its-legal-obligation-to-ensure-inspector-general-access-to-all-records-needed-for-independent-oversight>.

¹⁹¹ *Id.* (Testimony by David Smith, Acting Inspector Gen., Dept. of Commerce).

¹⁹² *Id.* (Testimony by David Smith, Acting Inspector Gen., Dept. of Commerce).

¹⁹³ See Pub. L. 114-113, div. B, 129 Stat. 2242.

¹⁹⁴ See Letter from Hon. David Smith, Acting Inspector Gen., U.S. Dep’t of Commerce, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on the Judiciary 21-22 (Nov. 20, 2015) (on file with the Committees) (listing the incidents as the following: “1. Blocked access to video footage from the Office of the Secretary; 2. Blocked access to Commerce badging data for Census Bureau headquarters; 3. Delay and monitoring of access by NOAA Acquisition and Grants Office; 4. International Trade Administration (ITA) interpretations regarding OIG access to business proprietary information; 5. Difficulties with access to information related to audit of the Office of the Secretary Federal Information Security Modernization Act (FISMA) compliance; 6. Multiple issues with USPTO regarding audits of Trademark’s Activity-Based Information System (ABIS) and Intellectual Property (IP) Rights Attaché Program”) [hereinafter “Commerce Response, Nov. 20, 2015”].

¹⁹⁵ Commerce OIG Response, Nov. 20, 2015, at 21-22.

¹⁹⁶ *Id.* at 22.



The denial of information to an OIG—even for a short period—can hamper the OIG’s ability to conduct prompt and relevant oversight.

H. The United States Postal Service

The United States Postal Service (USPS) OIG encountered hurdles imposed by the USPS in attempting to complete work requested by Congress. The USPS OIG requested reports on financial services research that was managed by Postal employees and ultimately resulted in a loss of at least \$2.4 million.¹⁹⁷ The USPS OIG had to resort to an official demand letter in order to elicit any records from the USPS.¹⁹⁸ After the OIG received the material and issued its report, it learned that USPS had withheld some key documents that were highly relevant to the work and were available at the time of the OIG’s investigation.¹⁹⁹

USPS OIG conducted an investigation to determine why the documents were withheld.²⁰⁰ The investigation found that the documents were withheld due to “a willful indifference and negligent performance” of the postal employee’s duties.²⁰¹ After reviewing the findings of the USPS OIG investigation, the Postmaster General justified the obstruction on the basis that it was a result of “a failure of communication and of process” and was not willful or negligent.²⁰² Whether the material was withheld intentionally or in error, it does not change the fact that the omission of these documents led to redundant costs and a less-focused and less-useful OIG product. However, unlike some other agencies, the USPS recognized that the incident impeded the agency’s obligation to cooperate with the OIG, and the agency required employees to undergo training to ensure that they understand their obligation to work with the OIG.

¹⁹⁷ Letter from Tammy Whitcomb, Deputy Inspector Gen., United States Postal Service, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Gov’t Affairs and Hon. Charles Grassley, Chairman, S. Comm. on Judiciary (Sept. 11, 2015) [hereinafter “USPS OIG Response, Sept. 11, 2015”].

¹⁹⁸ USPS OIG Response, Sept. 11, 2015.

¹⁹⁹ USPS OIG Response, Sept. 11, 2015.

²⁰⁰ Office of Inspector Gen., U. S. Postal Serv., Report of Investigation, (Oct. 29, 2015).

²⁰¹ *Id.* at 3.

²⁰² Letter from Hon. Megan Brennan, Postmaster Gen., U. S. Postal Serv., to Curtis Lembke, Area Special Agent In Charge, Office of Inspector Gen., U. S. Postal Serv. (Dec. 23, 2015).



VI. CONCLUSION

The community of IGs works tirelessly to carry out its important work aimed at combatting waste, fraud, abuse, and mismanagement within Executive Branch departments and agencies. Across Government, IGs dive deep into Federal programs and operations, making recommendations that could generate significant cost savings for American taxpayers and improve the efficiency of Federal agencies. From information received from the IG community, the Committees have identified 15,222 open and unimplemented recommendations totaling over \$87 billion in potential cost savings. Many of the recommendations reviewed by the Committees have remained open and unimplemented for years, despite appearing straightforward and uncomplicated to implement. Too often, Executive Branch departments and agencies continuously delay or otherwise ignore recommendations made by the OIGs. These figures make clear that the Federal departments and agencies must fully implement the recommendations made by their watchdogs, not only to improve their operations but also to save billions of potentially wasted dollars.

The work of OIGs should receive wholehearted support from the Executive Branch toward improving the operations and effectiveness of federal departments and agencies. Often times, however, some agencies see the OIG as a problem or a nuisance—rather than a partner in building a better government. In those cases, agency attempts to obstruct OIG work, deny or delay access to information, and impose restrictions on OIG work, generally make it difficult for the OIG to function. Such obstructionist tactics are illegal, and Congress ought to continue to empower IGs for the benefit of American taxpayers. Congress should continue supporting the IG community, encouraging Executive Branch departments and agencies to implement OIG recommendations, and ensuring that the IG community has the tools and resources it needs to carry out its duty.

