



June 6, 2016

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Government Affairs
344 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security and Government Affairs
340 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Carper,

We write today to reiterate our unwavering support for the substitute amendment to the "Inspector General Empowerment Act of 2015" (S. 579) and our appreciation for the strong, bipartisan backing for this effort. We are particularly encouraged that S. 579 will be included in the recent government reform package entitled the "Bolster Accountability to Drive Government Efficiency and Reform Washington Act" (S. 3011), which we understand the Majority Leader has stated he would move for full Senate consideration.

The Inspector General Empowerment Act will enhance our overall ability to provide the independent oversight that American taxpayers deserve and will also improve our ability to work effectively with whistleblowers. The benefits of this legislation are further reflected in the support expressed by key stakeholders involved in oversight over Government operations, such as the Project on Government Oversight, the Office of Special Counsel, Government Accountability Project, National Taxpayers Union, Public Citizen, and Taxpayers Protection Alliance.

Passage of this bill will also reaffirm that Inspectors General (IGs) must have access to all relevant agency records and information. This important principle was undercut by the Department of Justice's (DOJ) Office of Legal Counsel (OLC) opinion issued in July 2015 concluding that, notwithstanding the plain language of Section 6(a) of the Inspector General Act of 1978, and nearly 20 years of pre-existing practice, that provision did not authorize the DOJ IG to access grand jury, wiretap, and credit information that is necessary to the DOJ IG's work. Instead, the OLC opinion gives the authority to employees at the Justice Department itself to determine whether it will authorize the IG to have access to such records in a particular review. The OLC opinion has already been relied upon by individuals outside of DOJ to deny IGs access

to agency records (see attached letters from Acting Inspector General at the Department of Commerce and the Special Inspector General at the Troubled Asset Relief Program), thus placing the IG community's collective ability to have timely and independent access to agency records and information at risk.¹ Passage of S. 579 will reverse the ill effects of the OLC opinion on IG independence.

Since the passage of the Inspector General Act of 1978, Inspectors General have saved taxpayers billions of dollars and improved the federal government's programs and operations. This has been possible because of strong bipartisan support for Inspectors General and the independent oversight that the IGs provide. We hope that including the Inspector General Empowerment Act in S. 3011 will ensure the bill's timely passage.

Sincerely,



Michael E. Horowitz
Chair
CIGIE



Kathy A. Buller
Chair
CIGIE Legislation Committee

Attachments:

1. Letter from Deputy Inspector General David Smith, Department of Commerce, to Chairman Cochran and Vice Chairwoman Mikulski, Committee on Appropriations, U.S. Senate, dated April 4, 2016.
2. Letter from Special Inspector General Christy Goldsmith Romero, Troubled Asset Relief Program Inspector General, to Chairman Johnson, Committee on Homeland Security and Government Affairs, and Chairman Grassley, Committee on the Judiciary, U.S. Senate, dated March 10, 2016.

cc:

The Honorable Mitch McConnell
Majority Leader
United States Senate

The Honorable Harry Reid
Democratic Leader
United States Senate

¹ Following the Acting Commerce IG's notification to the Congress of the agency's action, and the decision by the Senate Appropriations Committee to include a provision in the FY 2017 Appropriations Act that would cut off funds for the Commerce Department's Office of General Counsel if the Commerce Department withheld information from its Inspector General, the Commerce Department reversed its decision and agreed to provide its Acting Inspector General with access to the agency records in controversy.

The Honorable Charles Grassley
Chairman
Committee on the Judiciary

The Honorable Thad Cochran
Chairman
Committee on Appropriations

The Honorable Richard Shelby
Chairman
Subcommittee on Commerce, Justice, Science and Related Agencies
Committee on Appropriations

The Honorable Roy Blunt
Chairman
Committee on Rules and Administration

The Honorable Michael B. Enzi
Chairman
Committee on the Budget

The Honorable Susan M. Collins
Chairman
Special Committee on Aging

The Honorable Johnny Isakson
Chairman
Committee on Veteran's Affairs

The Honorable Barbara A. Mikulski
Vice Chairwoman
Committee on Appropriations

The Honorable Claire McCaskill
Ranking Member
Special Committee on Aging

The Honorable Ron Wyden
Ranking Member
Committee on Finance

The Honorable Kelly Ayotte
U.S. Senate

The Honorable Tammy Baldwin
U.S. Senate

The Honorable John Cornyn
U.S. Senate

The Honorable Joni Ernst
U.S. Senate

The Honorable Deb Fischer
U.S. Senate

The Honorable Mark Kirk
U.S. Senate

The Honorable James Lankford
U.S. Senate

The Honorable Joe Manchin, III
U.S. Senate

The Honorable Gary C. Peters
U.S. Senate

The Honorable Rob Portman
U.S. Senate

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform

The Honorable Hal Rogers
Chairman
Committee on Appropriations

The Honorable Nita Lowey
Ranking Member
Committee on Appropriations

The Honorable John Culberson
Chairman
Subcommittee on Commerce, Justice, Science and Related Agencies
Committee on Appropriations

The Honorable Mike Honda
Acting Ranking Member
Subcommittee on Commerce, Justice, Science and Related Agencies
Committee on Appropriations

ATTACHMENT 1



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

April 4, 2016

The Honorable Thad Cochran
Chairman
Committee on Appropriations
United States Senate
S-128 The Capitol
Washington, D.C., 20510

The Honorable Barbara Mikulski
Ranking Member
Committee on Appropriations
United States Senate
S-146A The Capitol
Washington, D.C., 20510

Dear Chairman Cochran and Ranking Member Mikulski,

This letter is to report to the Committees on Appropriations, as required by the 2016 Consolidated Appropriations Act (2016 Appropriations Act), Division B, Title V, Section 540, that the Department of Commerce (DOC) has refused to provide the DOC Office of Inspector General (OIG) access to records of the Enforcement & Control division (E&C) of the International Trade Administration (ITA).

As you are aware, Section 540 of Division B, Title V, of the 2016 Appropriations Act states:

No funds provided in this Act shall be used to deny an Inspector General funded under this Act timely access to any records, documents, or other materials available to the department or agency over which that Inspector General has responsibilities under the Inspector General Act of 1978, or to prevent or impede that Inspector General's access to such records, documents, or other materials, under any provision of law, except a provision of law that expressly refers to the Inspector General and expressly limits the Inspector General's right of access. A department or agency covered by this section shall provide its Inspector General with access to all such records, documents, and other materials in a timely manner. Each Inspector General shall ensure compliance with statutory limitations on disclosure relevant to the information provided by the establishment over which that Inspector General has responsibilities under the Inspector General Act of 1978. Each Inspector General covered by this section shall report to the Committees on Appropriations of the House of Representatives and the Senate within 5 calendar days any failures to comply with this requirement.

On March 14, 2016, my staff notified ITA of OIG's intent to re-start the audit of E&C and on March 17, 2016, an entrance conference was held between OIG and ITA counterparts. The OIG submitted its official records requests for the audit to ITA staff on March 23, 2016. On March 30, 2016 the General Counsel for DOC informed me that DOC advised ITA staff to not provide the OIG with the requested records. In compliance with Section 540 of the 2016 Appropriations Act, we are reporting this matter to the Appropriations Committees by this letter.

My staff has been attempting to audit the E&C division of ITA since 2015 in order to evaluate the unit's efforts to ensure quality and timely trade remedy determinations. In spring of 2015, despite the clear right by the OIG to access DOC records under Section 6(a)(1) of the Inspector General Act of 1978, the DOC Office of General Counsel claimed ITA is prevented from disclosing documents with business proprietary information to the OIG under the Trade Secrets Act, 18 U.S.C. § 1905, and section 777 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1677f. Despite efforts by my staff to obtain the requested data, it was ultimately decided in 2015 to terminate the audit until the records access issue was resolved. OIG believed the 2016 Appropriations Act resolved the records access issue since OIG is not expressly mentioned in either the Tariff Act or the Trade Secrets Act. The General Counsel believes the OLC opinion issued last year is still controlling and will wait for a newer opinion, which OLC is currently working, before changing its advice to ITA.

We are continuing to work on resolving this issue, and will keep the Committees apprised of any progress. If you have any questions, please contact me at (202) 482-4661.

Sincerely,



David Smith
Deputy Inspector General

cc: The Honorable Richard Shelby, Chairman, Appropriations Subcommittee on
Commerce, Justice, Science and Related Agencies

The Honorable Orrin Hatch, Chairman, Committee on Finance

The Honorable Ron Wyden, Ranking Member, Committee on Finance

The Honorable Ron Johnson, Chairman, Committee on Homeland Security
and Governmental Affairs

The Honorable Thomas R. Carper, Ranking Member, Committee on Homeland
Security and Governmental Affairs

The Honorable John Thune, Chairman, Committee on Commerce, Science
and Transportation

The Honorable Bill Nelson, Ranking Member, Committee on Commerce, Science
and Transportation

ATTACHMENT 2



OFFICE OF THE SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM

1801 L STREET, NW

WASHINGTON, D.C. 20220

MAR 10 2016

The Honorable Ron Johnson
Chairman
U.S. Senate Committee on Homeland Security
and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Chairman
U.S. Senate Committee on
the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairmen Johnson and Grassley:

You have asked that I provide 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 actions.” In addition, the Emergency Economic Stabilization Act, which authorized TARP and created SIGTARP, provides, “whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress without delay.”

Since November 19, 2015, Treasury has refused to provide to SIGTARP the files that contain the identity and characteristics (such as income, age, mortgage amount, servicer, etc.) of the homeowners who applied for TARP’s \$9.6 billion Hardest Hit Fund, along with information about whether that homeowner was approved or denied TARP funds. Information on TARP recipients and those denied for TARP is the most basic information needed by SIGTARP to conduct oversight over the Hardest Hit Fund.

The homeowner information files are available to Treasury, but are not currently in Treasury’s possession. These files are in the possession of 19 state housing finance agencies that Treasury contracted with to make the decisions on homeowner HHHF applications. However, Treasury has designed this TARP program as to not mandate state agency reporting to Treasury of this basic TARP program information, even though the same information is mandated to be reported to Treasury in TARP’s housing program HAMP. On November 19, 2015, the Special Inspector General met with the Secretary of Treasury and asked that Treasury obtain this information from the state agencies and provide it to SIGTARP. Treasury refused.

This information is particularly important given the fact that Treasury recently expanded this program with an additional \$2 billion and extended the program for three years to December 2020. The Hardest Hit Fund is largely a program to provide TARP funds to unemployed or underemployed homeowners. Because Treasury requires very little reporting by the 19 state agencies, SIGTARP has faced difficulty in conducting oversight using the very limited information in Treasury’s possession. For our oversight, in my judgment, SIGTARP requires access to additional information about the program that is available to Treasury, but not in its possession.

Availability, not possession, is the standard for an Inspector General’s access rights under the Inspector General Act. The Inspector General Act states that the Inspector General, in carrying out its responsibilities, “is authorized (1) to have access to *all* records, reports, audits, reviews, documents, papers, recommendations, or

other material *available to* the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act” (emphasis added).

Treasury designed TARP housing programs so that non-federal entities make the day-to-day decisions on who receives TARP. These non-federal entities are mortgage servicers in HAMP, and state housing finance agencies/servicers in the Hardest Hit Fund. For more than six years, Treasury has provided SIGTARP access to detailed information for homeowners who applied for TARP’s largest foreclosure prevention program HAMP. It is unreasonable for Treasury to refuse to provide to SIGTARP similar information in TARP’s second largest foreclosure prevention program the Hardest Hit Fund. Although state agencies administer the program, this is not a grant program, and Treasury has a responsibility to conduct strict oversight. In February 2010, the White House announced, “the program will be under strict transparency and accountability rules,” that there would be effective oversight, and that program effectiveness would be measured. Effective oversight requires analysis of TARP recipients and applicants.

There is no dispute that the files containing information on homeowners who applied for this TARP program are available to Treasury. Treasury requires state agencies in the Hardest Hit Fund to maintain all data, books, reports, documents, audit logs or records, including electronic records related to its obligations and performance under its contract with Treasury. Under Treasury’s contract, all 19 state agencies covenant “that it will respond promptly and accurately to all search requests made by Treasury.” Further, Treasury’s contract requires the state agencies to maintain a detailed reporting system to track homeowners receiving this TARP assistance, and to provide that to Treasury compiled into a report as Treasury determines in its sole discretion.

Treasury officials told SIGTARP that Treasury sees no programmatic benefit to Treasury obtaining this information. In addition, Treasury officials told SIGTARP that they have not taken the administrative step of amending their notice in the Federal Register on how they will use this information (a System of Record Notice or SORN) and to conduct a privacy impact statement to ensure the information is adequately protected, because these steps takes time. This is not a lengthy or difficult process, and can be conducted in a timely manner. SIGTARP is willing to wait for Treasury to take these steps before providing the files to SIGTARP, but only if Treasury begins that process without delay. Treasury lost an opportunity to start that process in November, but can start it immediately.

Treasury’s justifications are wholly insufficient to deny an Inspector General access to information available to Treasury. Treasury has told SIGTARP to go to the 19 state housing finance agencies participating in the Hardest Hit Fund for the information. The fact that information may be accessible from someone else is not a reason for a Federal agency to deny an Inspector General access to information available to that agency.

Treasury’s refusal to provide to SIGTARP information available to Treasury is unacceptable, and thwarts Congress’ intent in EESA and the Inspector General Act. Through EESA, Congress created a Special Inspector General for TARP to ensure independent oversight and gave the Special Inspector General all of the authorities in Section 6 of the Inspector General Act (the access provision). In fact, because of the importance of TARP funding, Congress gave SIGTARP additional authority in EESA – not explicitly available to other Inspectors General. If Treasury’s design of TARP programs is used to thwart SIGTARP’s ability to conduct oversight over a TARP program, there is significant lost opportunity for SIGTARP to identify obstacles to the program and make recommendations to improve its effectiveness in providing assistance to unemployed and underemployed homeowners.

I am concerned that Treasury’s desire to not obtain underlying program information could significantly impede SIGTARP’s oversight in this TARP program. This would effectively thwart Congress’ intent in creating a Special Inspector General over TARP.

Moreover, I am also concerned that the actions of a senior Treasury official have made it difficult for SIGTARP to request information from the 19 state agencies. SIGTARP tried to seek this information from the state agencies, only to be met with refusals, significant delays and impediments by many, that were only resolved through subpoena, threat of subpoena, and a tremendous strain on SIGTARP's limited resources. After learning that Treasury did not have possession of the files containing homeowner information, and in an effort to obtain the information as quickly as possible in light of the urgent need to improve this program that helps unemployed and underemployed homeowners, SIGTARP made 19 separate requests of state housing finance agencies.

SIGTARP immediately faced roadblocks from the Treasury senior official in charge of TARP who took steps to question SIGTARP's right to obtain the information, SIGTARP's compliance with the law, and SIGTARP's ability to house the information safely. After all of the 19 state agencies spoke on a conference call with this Treasury official, almost all the state agencies either refused to provide the information, would only provide redacted information, or would otherwise deny or fetter SIGTARP's access. All grounds were the same concerns raised by the Treasury official to SIGTARP. These grounds are unfounded as SIGTARP is a criminal law enforcement agency that routinely protects information, and already has access to similar information in the HAMP program. These grounds also do not justify denying an IG access.

SIGTARP immediately raised to Treasury that our access had been impeded by a Treasury official. Despite Treasury subsequently sending an e-mail and letter to the state agencies about our request, many state agencies continued to refuse to provide SIGTARP the information. The Special Inspector General directly requested to the Treasury Secretary that Treasury obtain the files containing the detailed homeowner information, and give it to SIGTARP, because the files were available to Treasury, and to avoid SIGTARP litigating with 19 state agencies. Treasury denied the request. Only after subpoenas to five state agencies, threat of subpoena to others, and a laborious process that strained SIGTARP's limited resources, has SIGTARP recently received the information. This information is already outdated (as of September 30, 2015) and will require subpoenas, threat of subpoena, and corresponding with 19 separate agencies to update each quarter for the next several years. Subpoenaed state agencies insist that any future SIGTARP request will only be granted if subpoenaed.

An Inspector General should not have to subpoena or threaten to subpoena for basic program information that is available to a Federal agency. This waste of SIGTARP's limited resources to access the most basic Hardest Hit Fund information through the 19 state agencies only highlights the need for Treasury to provide SIGTARP access to this information that is available to it. Treasury can delegate the administrative decisions of a Federal program to state agencies, but should not be allowed to deny an IG access by not requesting information from the state agencies. Congress recently approved in the appropriations bill the extension of time for the Hardest Hit Fund and an additional \$2 billion in TARP funds, showing the importance of this TARP program to Congress. SIGTARP seeks the Committee's help in Treasury obtaining this basic information required for oversight and Treasury providing it to SIGTARP on a quarterly basis. SIGTARP reiterated its request to Treasury by letter on March 10, 2016.

Respectfully,



CHRISTY GOLDSMITH ROMERO
Special Inspector General

cc: The Honorable Jason Chaffetz, (Chairman, House Oversight and Government Reform Committee)
The Honorable Elijah Cummings, (Ranking Member, House Oversight and Government Reform Committee)
The Honorable Tom Carper (Ranking Member, Senate Homeland Security and Governmental Affairs Committee)
The Honorable Patrick Leahy (Ranking Member, Senate Judiciary Committee)