



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

John F. Sopko
Special Inspector General

June 22, 2022

The Honorable Patrick Leahy, Chairman
The Honorable Richard Shelby, Vice Chairman
Committee on Appropriations
United States Senate

The Honorable Rosa L. DeLauro, Chair
The Honorable Kay Granger, Ranking Member
Committee on Appropriations
U.S. House of Representatives

The Honorable Jack Reed, Chairman
The Honorable James Inhofe, Ranking Member
Committee on Armed Services
United States Senate

The Honorable Adam Smith, Chairman
The Honorable Mike Rogers, Ranking Member
Committee on Armed Services
U.S. House of Representatives

The Honorable Bob Menendez, Chairman
The Honorable James E. Risch, Ranking Member
Committee on Foreign Relations
United States Senate

The Honorable Gregory Meeks, Chairman
The Honorable Michael McCaul, Ranking
Member
Committee on Foreign Affairs
U.S. House of Representatives

The Honorable Gary C. Peters, Chairman
The Honorable Rob Portman, Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate

The Honorable Carolyn Maloney, Chairwoman
The Honorable James Comer, Ranking Member
Committee on Oversight and Reform
U.S. House of Representatives

Dear Committee Chairs and Ranking Members:

As required by Section 1229(h)(5)(B) of the National Defense Authorization Act for Fiscal Year 2008 ("NDAA for FY 2008"), Pub. L. No. 110-181, it is my duty to report that the Department of State and the U.S. Agency for International Development ("USAID") are unreasonably refusing to provide information and assistance requested by SIGAR, in direct violation of Section 1229(h)(5)(A) of the NDAA for FY 2008 (requiring the agency to provide information and assistance upon request) and Section 6(c)(1) of the Inspector General Act of 1978, as amended.¹

¹ Section 1229(h)(5)(A) provides that, "Upon request of the Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Inspector General, or an authorized designee." Section 6(c)(1) of the IG Act contains a nearly identical provision.

This matter is discussed in more detail in the letter I sent today to the Secretary of State and the USAID Administrator informing them of their respective agencies' repeated and continuing refusal to provide information and assistance requested by my office, a copy of which is attached. Also attached is a copy of a second letter, which was previously provided to State and USAID legal counsel, providing a detailed explanation of SIGAR's jurisdiction.

State and USAID's sudden refusal to cooperate is particularly surprising. After more than a decade of cooperation with my office, the agencies have now refused to provide information and assistance needed for several audits and Congressionally mandated reviews pertaining to, among other things: (1) the collapse of the U.S.-backed government in Afghanistan; (2) State and USAID compliance with laws and regulations prohibiting the transfer of funds to the Taliban; and (3) ongoing humanitarian and development programs supporting the Afghan people.

Congress was clear when it granted SIGAR jurisdiction over all reconstruction spending in Afghanistan, including development and humanitarian aid.¹ Accordingly, since 2008 SIGAR has published numerous reports concerning those very subjects.² Congress was also clear when it required State and USAID to provide SIGAR with information and assistance upon request, and when it unambiguously prohibited agency officials from refusing to cooperate with SIGAR's work.³ Three prior administrations understood and abided by these legal certainties. It is shocking that State and USAID officials are choosing at this particular juncture to violate the law, obstruct SIGAR's oversight work, and refuse to cooperate with our oversight requests.

Billions of dollars have been spent in Afghanistan and billions more continue to be spent. Congress and American taxpayers deserve to know why the Afghan government collapsed after all that assistance, where the money went, and how taxpayer money is now being spent in Afghanistan. It is my hope that the Secretary and the Administrator will follow the example of their predecessors across administrations and resume cooperating with SIGAR so that my staff can continue to audit and review these activities. The letter of the law and *the rule of law* require nothing less.

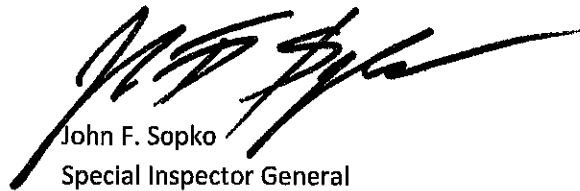
¹ SIGAR has jurisdiction to audit, investigate, and report on projects and programs using: "any . . . funding mechanism" that supports "any of the following purposes: (A) To build or rebuild physical infrastructure of Afghanistan. (B) To establish or reestablish a political or societal institution of Afghanistan. [and] (C) To provide products or services to the people of Afghanistan." National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1229(i)(2).

² See, e.g., SIGAR, Quarterly Report to the United States Congress (October 2008); SIGAR, Quarterly Report to the United States Congress (July 2009); SIGAR, Quarterly Report to the United States Congress (October 2010); SIGAR, *Rule of Law in Afghanistan: U.S. Agencies Lack a Strategy and Cannot Fully Determine the Effectiveness of Programs Costing More Than \$1 Billion*, SIGAR Audit 15-68 (July 2015); SIGAR, *Afghan Refugees and Returnees: Corruption and Lack of Afghan Ministerial Capacity Have Prevented Implementation of a Long-term Refugee Strategy*, SIGAR Audit 15-83 (August 2015); SIGAR, *Private Sector Development and Economic Growth: Lessons from the U.S. Experience in Afghanistan* (April 2018); SIGAR, *Reintegration of Ex-Combatants: Lessons from the U.S. Experience in Afghanistan* (September 2019); SIGAR, *Afghanistan's Anti-Corruption Efforts: Corruption Remained a Serious Problem in the Afghan Government and More Tangible Action was Required to Root It Out*, SIGAR Audit 21-47 (August 2021).

³ NDAA for FY 2008, § 1229(e)(2).

Thank you for your many years of support for SIGAR and its mission. Should you have any questions with regard to this letter, please contact me at 703-545-6000 or john.f.sopko3.civ@mail.mil, or your staff may contact Robert B. Lawrence, Director of Congressional Affairs and Government Affairs, at 703-786-7539 or robert.b.lawrence14.civ@mail.mil.

Sincerely

A handwritten signature in black ink, appearing to read 'John F. Sopko', with a long horizontal flourish extending to the right.

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

Attachments: As stated



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

John F. Sopko
Special Inspector General

June 22, 2022

The Honorable Antony J. Blinken
Secretary of State

The Honorable Samantha Power
Administrator
U.S. Agency for International Development

Dear Secretary Blinken and Administrator Power:

As required by Section 1229(h)(5)(B) of the National Defense Authorization Act for FY 2008 and Section 6(c)(2) of the Inspector General Act of 1978, as amended, I am writing to report that State and USAID officials are unreasonably refusing to provide information and assistance requested by SIGAR. This information and assistance is needed for several audits and Congressionally mandated reviews pertaining to, among other things: (1) the collapse of the U.S.-backed government in Afghanistan; (2) State and USAID compliance with laws and regulations prohibiting the transfer of funds to the Taliban; and (3) ongoing humanitarian and development programs supporting the Afghan people.

Historically, State and USAID officials have supported SIGAR's mission and honored my office's requests. Where there has been confusion on the part of State and USAID concerning the extent of SIGAR's jurisdiction, forthright exchanges between our offices have consistently concluded with State and USAID correcting course and complying with SIGAR's requests. Inexplicably, this long track record of cooperation seems to have abruptly ended. Agency officials now appear to have adopted a premeditated position of obstruction.

I find this development particularly troubling in light of the clear legal prohibitions against State and USAID officials preventing SIGAR's oversight work,¹ as well as recent OMB guidance calling for cooperation with federal offices of inspectors general.² The President underscored the importance of such cooperation only a few weeks ago, when he stated unequivocally, "[I]n my administration, the watchdogs are back."³

¹ National Defense Authorization Act for Fiscal Year 2008 ("NDAA for FY2008"), Pub. L. No. 110-181, § 1229(e)(2); Inspector General Act of 1978, 5 U.S.C. app. § 3(a) ("Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation . . .").

² Memorandum from the Executive Office of the President, Office of Management and Budget, *Promoting Accountability through Cooperation among Agencies and Inspectors General* (December 3, 2021) at 1.

³ Remarks by President Biden with Inspectors General on Commitment to Oversight, Accountability, and Transparency (April 29, 2022).

As discussed below, the coordinated efforts by State and USAID officials to deny SIGAR access to information and assistance are unprecedented. However, the billions of U.S. taxpayer dollars that have been spent and continue to be spent in support of the Afghan government and the Afghan people warrant independent oversight, and the law requires it. Therefore, I respectfully request that you direct State and USAID officials to cease their illegal obstruction of SIGAR's oversight work and to provide the requested information and assistance without further delay.

Congress Has Directed SIGAR to Conduct Studies of the Collapse of the Afghan Military and the Afghan Government

The information and assistance requested by SIGAR is needed to carry out evaluations and reports required by Congress. Specifically, Congress has directed SIGAR to:

[C]onduct an evaluation of the performance of the ANDSF for the period between February 2020 and August 2021. The committee also directs the Special Inspector General for Afghanistan Reconstruction to submit a report to the Committees on Armed Services of the Senate and the House of Representatives and the Secretary of Defense by March 1, 2022, on the findings of such evaluation, including why the ANDSF proved unable to defend Afghanistan from the Taliban following the withdrawal of U.S. military personnel; the impact of the withdrawal of U.S. military personnel had on the performance of the ANDSF; elements of the U.S. military's efforts since 2001 to provide training, assistance, and advising to the ANDSF that impacted the ANDSF's performance following the U.S. military withdrawal; the current status of U.S.-provided equipment to the ANDSF; the current status of U.S.-trained ANDSF personnel; and any other matters the Special Inspector General for Afghanistan Reconstruction deems appropriate.⁴

Congress also directed SIGAR to examine:

[T]he underlying causes that may have contributed to the rapid collapse . . . of the government of Afghanistan and the Afghan National Defense and Security Forces (ANDSF), any potential loss or compromise of U.S. reconstruction assistance resulting from the Taliban's return to power, and the ramifications of the U.S. military and diplomatic withdrawal for U.S. national security and the people of Afghanistan.⁵

⁴ H. Rept. No. 117-118 at 251 (2021).

⁵ U.S. House of Representatives, Committee on Oversight and Reform and Subcommittee on National Security, Letter to John F. Sopko, Sep. 10, 2021. In response to this request, we initiated four evaluations to examine: (1) the circumstances surrounding the collapse of the Afghan government; (2) the continued risk to U.S.-funded reconstruction assistance in Afghanistan; (3) the Taliban's access to U.S.-provided funds and defense equipment; and (4) the risk to vulnerable Afghans resulting from the Taliban's return to power.⁶ NDAA for FY2008, § 1229(h)(5)(A).

Two SIGAR audits are also being hindered by a lack of cooperation from State and USAID. The first evaluates your agencies' compliance with the laws and regulations prohibiting transfers of funds to members of the Taliban and the Haqqani Network. The second concerns ongoing emergency food assistance to Afghanistan.

SIGAR was also informed by State that the Department would not cooperate with future financial audits conducted by SIGAR, but would from now on choose its own auditors. It should go without saying, but neither SIGAR's authorizing statute nor the Inspector General Act of 1978 contain a "choose your own auditor" provision.

State and USAID are Required by Law to Provide Information and Assistance to SIGAR Upon Request

SIGAR's authorizing statute provides that,

Upon request of the Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Inspector General, or an authorized designee.⁶

The Inspector General Act of 1978, as amended, contains a similar provision.⁷

The statute goes on to state that,

Whenever information or assistance is, in the judgment of the Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the Secretary of State or the Secretary of Defense, as appropriate, and to the appropriate congressional committees without delay.⁸

State and USAID's failure to provide information and assistance to SIGAR also violates the December 3, 2021, guidance from the Office of Management Budget regarding cooperation with federal inspectors general, which states that, "It is the President's expectation that executive departments and agencies will restore and respect the integrity and independence of their respective agency inspectors general (IGs) and work with the Congress to ensure that IG offices can exercise their vital oversight role."⁹ The OMB Guidance goes on to explain that "in

⁶ NDAA for FY2008, § 1229(h)(5)(A).

⁷ See Inspector General Act of 1978, 5 U.S.C. app. § 6(c)(1). Section 6(a)(1)(A) of the IG Act authorizes inspectors general "to have timely 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."

⁸ NDAA for FY2008, § 1229(h)(5)(B).

⁹ Memorandum from the Executive Office of the President, Office of Management and Budget, *Promoting Accountability through Cooperation among Agencies and Inspectors General* (December 3, 2021) at 1.¹⁰ *Id.* at 3.¹¹ NDAA for FY2008, § 1229(e)(2).

recent years, there have been concerns that executive branch agencies have not consistently provided their IGs with the full cooperation and access to which they are entitled under the law.” OMB then noted that the most effective agency leadership communications, “affirmed the duty of agency personnel to cooperate” and noted that the IG Act “requires IG’s timely access to all agency records.”¹⁰

State and USAID are Prohibited by Law from Preventing SIGAR from Carrying Out Its Duties

SIGAR’s authorizing statute states that:

No officer of the Department of Defense, the Department of State, or the United States Agency for International Development shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation related to amounts appropriated or otherwise made available for the reconstruction of Afghanistan . . .¹¹

The Inspector General Act of 1978, as amended, contains a similar provision.¹²

In addition, Section 7 of the Inspector General Act of 1978 authorizes SIGAR to interview government employees and prohibits the agency from retaliating against those employees:

The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.¹³

* * * *

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.¹⁴

A State official has informed SIGAR that department staff have received internal direction to not engage with or speak to SIGAR without prior clearance from State legal counsel. This

¹⁰ *Id.* at 3.¹¹ NDAA for FY2008, § 1229(e)(2).

¹¹ NDAA for FY2008, § 1229(e)(2).

¹² The Inspector General Act of 1978, 5 U.S.C. app. § 3(a) provides that “[n]either the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation”

¹³ Inspector General Act of 1978, 5 U.S.C. app. § 7(a).

¹⁴ *Id.* § 7(c).

direction is at odds with Section 7 of the Inspector General Act and other legal protections related to whistleblowers.¹⁵

State and USAID Officials Are Coordinating to Obstruct SIGAR Audits and Congressionally Mandated Reviews

As of the date of this letter, State and USAID have unreasonably failed to provide the majority of the information SIGAR requested in support of several audits and Congressionally-mandated reviews. State and USAID have, in some cases, simply ignored our communications, refused to make staff available for interviews, or refused to permit SIGAR to travel internationally to conduct research on the ground – all of which I have determined are unreasonable and in disregard of the responsibilities of my office. SIGAR's audit and evaluation teams have been completely flexible and provided many options to facilitate your department's cooperation with our mission, to little effect.

1. State and USAID Officials Were Given Several Months to Comply with SIGAR's Requests for Information

On October 1, 2021, SIGAR announced that it was beginning several evaluations pertaining to the collapse of the Afghan government. Beginning on October 26, 2021, my office sent requests for information ("RFIs") to multiple offices and bureaus involved in Afghanistan reconstruction, including the Bureau of South and Central Asian Affairs; the Bureau of International Narcotics and Law Enforcement Affairs; the Coordinator for Afghanistan Relocation Efforts; and the U.S. diplomatic interests section for Afghanistan in Qatar, among others. Over the succeeding months, we submitted more than 20 follow-up or supplemental requests.

Unfortunately, after giving your agencies several months to provide the requested information and assistance, it is now evident that offices and staff who have cooperated with similar requests in the past were being silenced or overruled by officials opposed to SIGAR's independent oversight. For example, State declined to make staff available for interviews regarding the settlement of Afghan refugees and the conditions those refugees faced when fleeing Afghanistan. Similarly, USAID's Bureau of Humanitarian Assistance ("BHA") declined to provide funding information regarding its ongoing programs in Afghanistan, citing ongoing consultation with its legal counsel.

Of greatest concern, however, has been State and USAID's refusal to provide basic information relevant to SIGAR's audit concerning efforts to ensure that ongoing programs supporting the people of Afghanistan do not result in the illegal transfer of U.S. taxpayer funds to the Taliban or the Haqqani Network. This audit is simply the latest in a number of audits that SIGAR has

¹⁵ Whistleblower Protection Act of 1989, Pub. L. No. 101-12, § 4 (codified at 5 U.S.C. § 2302(b)(8), as amended).¹⁶ See, e.g., SIGAR, *Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified*, SIGAR Audit 13-14 (July 2013).

undertaken over the past decade related to the U.S. government's efforts to prevent contracting with the enemy.¹⁶ The fact that State and USAID would obstruct such oversight work, particularly after the Taliban's seizure of governmental power in Afghanistan, is unprecedented. Given the express prohibition against State and USAID officials preventing SIGAR from conducting its oversight work, it is also illegal.¹⁷

2. State and USAID Legal Counsel Falsely Claim that SIGAR Lacks Jurisdiction Over Humanitarian and Development Programs in Afghanistan

In April 2022, following more than six months of delay, the State Department's Acting Legal Adviser and USAID's General Counsel sent a letter to SIGAR requesting "clarification" of SIGAR's jurisdiction to conduct the audits and Congressionally mandated reviews noted above. The letter asserted, without basis, that "activities involving humanitarian and development assistance remain outside SIGAR's current mandate."¹⁸

SIGAR's General Counsel promptly responded to the State and USAID legal counsels' letter, explaining the broad scope of SIGAR's existing jurisdiction as stated in both the plain text of SIGAR's authorizing statute and its legislative history.¹⁹ A copy of SIGAR's letter is attached. The bottom line is that SIGAR's authorizing statute provides that SIGAR has jurisdiction to audit, investigate, and report on projects and programs using:

- "any . . . funding mechanism" that supports "any of the following purposes:
- (A) To build or rebuild physical infrastructure of Afghanistan.
 - (B) To establish or reestablish a political or societal institution of Afghanistan.
 - [and]
 - (C) To provide products or services to the people of Afghanistan."²⁰

More than a month later, SIGAR's General Counsel still has not received a response to his letter. However, two weeks ago, a State Department audit liaison sent a terse email to SIGAR's auditors stating that "the Department's position has not changed" and State would not cooperate with SIGAR's requests for information.²¹

Consistent with the plain text of SIGAR's authorizing legislation, we have since 2008 reported on humanitarian and development assistance programs in Afghanistan. For example, SIGAR's very first Quarterly Report to Congress discusses humanitarian and development assistance

¹⁶ See, e.g., SIGAR, *Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified*, SIGAR Audit 13-14 (July 2013).

¹⁷ NDAA for FY2008, § 1229(e)(2).

¹⁸ Letter from Richard C. Visek, Acting Legal Adviser, Department of State, and Margaret L. Taylor, General Counsel, USAID, to John G. Arlington, General Counsel, SIGAR (April 25, 2022).

¹⁹ Letter from John G. Arlington, General Counsel, SIGAR, to Richard C. Visek, Acting Legal Adviser, Department of State, and Margaret L. Taylor, General Counsel, USAID (May 6, 2022).

²⁰ NDAA for FY2008, § 1229(i)(2).

²¹ E-mail from State Department Audit Liaison to SIGAR Auditor (May 31, 2022).

within the broader context of Afghanistan reconstruction.²² No federal agency has challenged SIGAR's authority to conduct oversight of such programs until now. State and USAID legal counsels' claim that SIGAR's jurisdiction does not include such matters is not only contrary to the law, but a gross deviation from over 14 years of precedent set by three prior administrations.

Conclusion

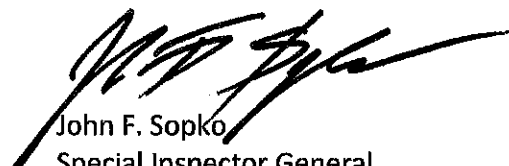
As the U.S. government continues adding to the billions of dollars that it has already spent on the Afghan government and people since 2002, U.S. taxpayers deserve objective information concerning where their money is going and to whom it is being given. It is my sincere hope that you will follow the example of your predecessors across administrations and affirm the duty of State and USAID officials to comply with SIGAR's requests for information and assistance.

I respectfully request that your office respond to this letter within 10 days and advise SIGAR of your agencies' plans to provide the requested information and assistance, and to accept our interview requests. In addition, I request that you take immediate action to rescind any written or oral direction prohibiting State or USAID staff from communicating with SIGAR.

Pursuant to my duty under Section 1229(h)(5)(B) of the National Defense Authorization Act for FY 2008, I am providing a copy of this letter to the appropriate Congressional committees.

Thank you for your assistance in this matter. Should you have any questions with regard to this letter, please contact me at 703-545-6000, or john.f.sopko3.civ@mail.mil, or your staff may contact Jaryd M. Bern, Chief of Staff, at 703-861-1269 or jaryd.m.bern.civ@mail.mil.

Sincerely,



John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

cc: The Honorable Ron Klain, Chief of Staff, Executive Office of the President
The Honorable Shalanda Young, Director, Office of Management and Budget

Attachment: As stated

²² SIGAR, Quarterly Report to the United States Congress, October 2008.



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

John G. Arlington
General Counsel

May 6, 2022

Mr. Richard C. Visek
Acting Legal Advisor
Department of State

Ms. Margaret L. Taylor
General Counsel
USAID

Dear Mr. Visek and Ms. Taylor:

I am in receipt of your letter of April 25 in response to SIGAR's October 1, 2021 request for information ("RFI"). SIGAR submitted the October 1 RFI to carry out a bipartisan request by the House Committee on Oversight and Reform to examine

"... the underlying causes that may have contributed to the rapid collapse [in August 2021] of the government of Afghanistan and the Afghan National Defense and Security Forces ("ANDSF"), and potential loss or compromise of U.S. reconstruction assistance resulting from the Taliban's return to power, and the ramifications of the U.S. military and diplomatic withdrawal for U.S. national security and the people of Afghanistan."

To carry out that request, and in consultation with the requestors, SIGAR divided the task into five parts, evaluating: (1) the circumstances surrounding the collapse of the Afghan government; (2) the collapse and dissolution of the ANDSF; (3) the continued risk to U.S.-funded reconstruction assistance in Afghanistan; (4) the Taliban's access to U.S.-provided funds and military equipment; and (5) the risk to vulnerable Afghans, including women and girls, resulting from the Taliban's return to power.

Your letter asks for "clarification regarding several of SIGAR's evaluations" which you assert "appear to contain within their scope lines of inquiry that would exceed SIGAR's jurisdiction."

Specifically, you object to providing information related to "the collapse of the Afghan government in August 2021" and "the potential risk to the Afghan people and civil society since the Taliban regained control of the government in Afghanistan." You particularly object to SIGAR interviewing Afghan refugees about the collapse of the Afghan government and SIGAR's request for USAID information regarding the collapse of the Afghan government.

You also object to providing information for two SIGAR audits: Audit 152A, which examines State's and USAID's compliance with guidance issued by the Treasury Department's Office of Foreign Assets Control ("OFAC") regarding agency contracting in Afghanistan following the collapse of the Afghan government; and Audit 153A, which pertains to USAID's support for emergency food assistance in Afghanistan since FY 2020.

You also object to SIGAR's request for information pertaining to State's proposal to use \$3.5 billion of Afghan Central Bank assets now frozen in the United States "for the benefit of the Afghan people."

Finally, I note that last week, USAID's Bureau of Humanitarian Affairs ("BHA") notified SIGAR auditors that, based on your letter, it would no longer cooperate with future SIGAR financial audits of its Afghanistan programs and activities, but would "use USAID's internal process to conduct cost audits . . . via the Defense Contract Audit Agency."

In sum, you assert that SIGAR's audits and requests for information do not pertain to reconstruction and that "activities involving humanitarian and development assistance remain outside SIGAR's current mandate."

Your claim that these matters are not within SIGAR's jurisdiction is astonishing. SIGAR has been reviewing, auditing, investigating, and reporting on these and related issues for more than 12 years, including USAID humanitarian assistance (for example, food assistance programs) and support to Afghan refugees. These audits and requests for information are squarely within areas in which we have conducted oversight in the past.¹ Moreover, SIGAR has been issuing Congressionally mandated quarterly reports on security, governance, and economic and social development since 2009, incorporating large amounts of information obtained from your agencies. Prior to the collapse of the Afghan government in August 2021, State and USAID generally cooperated with our audits and requests for information.² What has changed?

There is little to no substantive difference between assistance referred to as "reconstruction" and assistance referred to as "development" or "humanitarian." It is a classic distinction without a difference. In the context of SIGAR's enabling legislation, reconstruction assistance is the broadest term, subsuming both development and humanitarian assistance. As explained below, Congress fully intended to include both development assistance and humanitarian assistance within SIGAR's jurisdiction, which only makes sense. What would be accomplished

¹ See, e.g., *Emergency Food Assistance to Afghanistan: Incomplete Reporting and Limited Site Visits Hindered USAID's Oversight of Millions of Dollars of Food Assistance*, SIGAR 20-10-AR, November 21, 2019; *SIGAR, Audit Letter: Efforts to Support Afghan IDPs*, SIGAR 16-47-AL, July 25, 2016; *Afghan Refugees and Returnees: Corruption and Lack of Afghan Ministerial Capacity Have Prevented Implementation of a Long-term Refugee Strategy*, SIGAR 15-83-AR, August 27, 2015; *Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified*, SIGAR Audit 13-14, July 24, 2013.

² State periodically objected to our requests for information about diplomatic and consular expenditures in Afghanistan, but in the end provided the requested information.

by trying to distinguish development assistance and humanitarian assistance from reconstruction assistance?

You agree that Congress' grant of jurisdiction to SIGAR "is not limited to financial audits of the expenditure of [these] funds, but rather authorizes SIGAR to conduct oversight of the programs and activities that utilize such funds." SIGAR also has the authority to examine the effectiveness, sustainability, and outcome of those same programs and activities, which is something that we have emphasized in our work from the very beginning. Success is not measured merely by how many schools are built or how many medical supplies were delivered, but by the outcome of those and other reconstruction activities taken as a whole.

It is therefore particularly striking that you object to SIGAR examining the reasons for the collapse of the Afghan government. Congress and the American public want to know why the Afghan government and the Afghan army collapsed after the State Department, USAID, and the Department of Defense spent more than \$135 billion on reconstruction. And Congress wants to know the risks involved in continued aid to Afghanistan, and the risks to vulnerable Afghans, especially women and girls, now that the Taliban have taken over.

I would think that State and USAID would welcome SIGAR's independent and objective evaluation of these important questions. It would make no sense to argue that SIGAR may audit and investigate discrete projects and programs, but not look at the overall result of 20 years of reconstruction assistance.

Nevertheless, you have asked for clarification of SIGAR's statutory authority to conduct this work. As explained below, SIGAR's enabling statute gives it broad authority to audit, supervise, and investigate all U.S. reconstruction aid to Afghanistan, which excludes war-fighting activities by U.S. forces.³ In addition, State and USAID are required to provide information and assistance to SIGAR upon request, and it is illegal for USAID's Bureau of Humanitarian Assistance to refuse to allow SIGAR to audit its Afghanistan programs.

SIGAR Has Jurisdiction Over All Reconstruction Assistance

Congress gave SIGAR broad jurisdiction over all assistance to Afghanistan, except for the war-fighting activities of U.S. military forces.⁴ This broad grant of jurisdiction is defined by the purposes, duties, and authorities set forth in Section 1229 of SIGAR's enabling legislation.

³ While the vast majority of U.S. war-fighting activities are outside SIGAR's jurisdiction, there are some limited exceptions. For example, Section 842 of the National Defense Authorization Act for Fiscal Year 2008 authorizes SIGAR to audit and investigate logistics contracts in support of U.S. military forces in Afghanistan, and private security contracts.

⁴ SIGAR's enabling legislation is § 1229 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 3, 378-85 (Jan. 28, 2008) (codified as amended at 5 U.S.C. App. § 8G note) ("NDAA for FY 2008").

Section 1229(a) states the purposes of the law:

- "(1) To provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated or otherwise made available for the reconstruction of Afghanistan.
- (2) To provide for the independent and objective leadership and coordination of, and recommendations on, policies designed to—(A) promote economy efficiency, and effectiveness in the administration of the programs and operations described in paragraph (1); and (B) prevent and detect waste, fraud, and abuse in such programs and operations.
- (3) To provide for an independent and objective means of keeping the Secretary of State and the Secretary of Defense fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress on corrective action."

To carry out these purposes, Section 1229(f)(1) provides that,

"It shall be the duty of the Inspector General to conduct, supervise, and coordinate audits and investigations of the treatment, handling, and expenditure of *amounts appropriated or otherwise made available for the reconstruction of Afghanistan*, and of the programs, operations, and contracts carried out utilizing such funds" [emphasis added]

In addition, Section 1229(f)(3) confers on the Inspector General "the duties and responsibilities of inspectors general under the Inspector General Act of 1978." As pertinent to this discussion, this includes the duty "to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by [the relevant agency] for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations".⁵

Further, Section 1229(g)(1) confers on the Inspector General all of the authorities provided in Section 6 of the Inspector General Act of 1978. This includes authority "to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, *in the judgment of the Inspector General*, necessary or desirable" [emphasis added].

Thus SIGAR is not limited to issuing audit reports, but may issue other reports, such as lessons learned reports, evaluations, studies, reviews, and analyses. SIGAR may undertake such investigations and reports as the Inspector General judges to be "necessary or desirable."

⁵ Inspector General Act of 1978 § 4(a)(3), as amended.

While your letter does not include reference to all of the duties and authorities cited above, you agree that SIGAR's jurisdiction "is not limited to financial audits of the expenditure of the designated funds, but [SIGAR is authorized] to conduct oversight of the programs and activities that utilize such funds."

However, you assert that "activities involving humanitarian and development assistance remain outside SIGAR's current mandate." This view is directly controverted by SIGAR's enabling legislation and its legislative history.

Subsection 1229(m)(1)(B) defines the term "amounts appropriated or otherwise made available for the reconstruction of Afghanistan" to include amounts appropriated or otherwise made available for any fiscal year for the reconstruction of Afghanistan under-

- "(i) the Economic Support Fund;
- (ii) the International Narcotics Control and Law Enforcement account; or
- (iii) *any other provision of law.*" [Emphasis added]

The catch-all phrase "any other provision of law" could not be any broader. It clearly means that any funds used for Afghanistan reconstruction are within SIGAR's jurisdiction. The legislative history of the phrase "*any other provision of law*" shows that Congress intended it to include, but not be limited to, amounts appropriated or otherwise made available to the following:

- "(i) Operating Expenses of the United States Agency for International Development.
- (ii) Economic Support Fund.
- (iii) International Narcotics Control and Law Enforcement.
- (iv) International Affairs Technical Assistance.
- (v) Peacekeeping Operations.
- (vi) Diplomatic and Consular Programs.
- (vii) Embassy Security, Construction, and Maintenance.
- (viii) Child Survival and Health.
- (ix) Development Assistance.
- (x) International Military Education and Training.

(xi) Nonproliferation, Anti-terrorism, Demining and Related Programs.

(xii) Public Law 480 Title II Grants.

(xiii) International Disaster and Famine Assistance.

(xiv) Migration and Refugee Assistance.

(xv) Operations of the Drug Enforcement Agency."⁶

In sum, the phrase "any other provision of law" means that any funds used for a reconstruction purpose are within SIGAR's jurisdiction, regardless of the fund or account from which those funds derive. That includes "development assistance" and assistance commonly referred to as humanitarian, such as "child survival and health," "international disaster and famine assistance," and "migration and refugee assistance."

Section 1229(l) of SIGAR's enabling statute provides still further clarification of the term "the reconstruction of Afghanistan" as it applies to SIGAR's jurisdiction. Under Section 1229(l)(2) SIGAR is required to report quarterly on, among other things, the following:

"any major contract, grant, agreement, or other funding mechanism that is entered into by any department or agency of the United States Government that involves the use of amounts appropriated or otherwise made available for the reconstruction of Afghanistan with any public or private sector entity for any of the following purposes:

- (A) To build or rebuild physical infrastructure of Afghanistan.
- (B) *To establish or reestablish a political or societal institution of Afghanistan.*
- (C) *To provide products or services to the people of Afghanistan.*"
[emphasis added].

Those provisions make it clear that SIGAR has the duty to examine and report on the collapse of the Afghan government and on humanitarian aid (i.e., products or services provided to the people of Afghanistan). For example, SIGAR's request for information from State and USAID regarding the proposal to use \$3.5 billion of the now-frozen assets of the Afghan Central Bank "for the benefit of the Afghan people" falls directly under these provisions.⁷

⁶ See Senator Lautenberg's amendment to Sen. Amendment No. 2011 to H.R. 1585, the Senate bill that led to the NDAA for FY 2008, 153 Cong. Rec. S11907, S11909 (Sep. 20, 2007). The Lautenberg language was later changed to "any other provision of law" [§ 1229(m)(1)(B)(iii), as enacted] so as to ensure that no form of assistance to Afghanistan was inadvertently omitted.

⁷ In your letter you assert that "SIGAR expressly sought an expansion of its statutory mandate from "reconstruction" to "reconstruction, humanitarian, and other development assistance." That is false. In fact, OMB asked SIGAR for language to clarify existing law due to OMB's concern that one or more federal agencies might

In addition, SIGAR, like all other inspectors general, has the authority to review whether agency contracting and other activities comply with Federal law. Yet your letter objects to SIGAR Audit 152A, which examines State's and USAID's compliance with OFAC guidance regarding agency contracting in Afghanistan following the collapse of the Afghan government. The OFAC guidance is intended to ensure that U.S. support provided to Afghanistan does not end up in the hands of the Taliban or other terrorist groups. Your letter is unclear about the basis for your objection to this audit. But there can be no serious argument that SIGAR does not have the authority to review whether State and USAID contracts and other support are being provided to hostile forces. SIGAR has been conducting work on contracting with the enemy for years and received the cooperation of State and USAID in the past.⁸

State and USAID are Required by Law to Provide Information to SIGAR Upon Request

State and USAID have a statutory duty to provide information to the Inspector General upon request, regardless of their interpretation of SIGAR's jurisdiction or whether the agencies judge that some of the requested information may concern matters outside SIGAR's jurisdiction.

SIGAR's authorizing statute provides that

"[u]pon the Inspector General's request for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Inspector General, or an authorized designee."⁹

This provision gives the Inspector General a broad mandate to obtain the requested information or assistance, the only exceptions to which are impracticability or contravention of existing law.¹⁰

For example, if the Inspector General were to request information or assistance in order to determine whether SIGAR should audit a particular project, program, or activity, or whether to

seek to prevent SIGAR from overseeing post-collapse assistance to Afghanistan. Unfortunately, it appears from your letter that OMB's concerns may have been justified.

⁸ See, e.g., *Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified*, SIGAR Audit 13-14, July 24, 2013.

⁹ NDAA for FY 2008, § 1229(h)(5)(A). Section 4(a) of the Inspector General Act of 1978, as amended, contains a similar provision.

¹⁰ Commenting on the similar provisions of Section 6 of the Inspector General Act, which also extend to SIGAR, the Senate Committee on Governmental Affairs in its report to accompany H.R. 8588 (enacted as the IG Act) stated as follows: "Access to all relevant documents available to the applicable establishment relating to programs and operations for which the [Inspector General] has responsibilities is obviously crucial. The committee intends this subsection to be a broad mandate permitting the [Inspector General] the access he needs to do an effective job, subject, of course, to the provisions of other statutes, such as the Privacy Act The committee believes that . . . denials [of requested information or assistance] are extremely serious." S. Rept. No. 95-1071 (95th Cong. 1978), 33-34, 35.

open a criminal investigation, or as background for a report, State and USAID would have a duty to provide that information or assistance, unless doing so would be impracticable or contravene existing laws. State's and USAID's views on whether the requested information might simultaneously relate to matters outside as well as within SIGAR's jurisdiction, or might duplicate other requests,¹¹ have no bearing on their duty to provide it.

The logic of this provision of the law is clear. It ensures that an audited agency cannot simply decide to opt out of oversight by SIGAR.

Your position that you can decide what information SIGAR may have access to is contrary to the statute and its purpose. It would effectively reserve to an audited agency the decision whether to provide information requested by an Inspector General, even though providing the information would not be impracticable or contravene existing law. The result would be to make audits and investigations optional, and negate the entire purpose of having an independent Inspector General.

This problem is demonstrated by USAID's Bureau of Humanitarian Assistance, which has now decided that, based on your letter, it will no longer cooperate with future SIGAR financial audits, but will "use USAID's internal process to conduct cost audits . . . via the Defense Contract Audit Agency." BHA's position is clearly contrary to its duty to cooperate with SIGAR. Moreover, I am not aware of any Federal agency that has the authority to decline oversight by an Inspector General or to pick its own auditor.

Duplication of Effort

You have also expressed concern about the possibility of duplication of effort, stating that many of SIGAR's requests for information "address topics that are currently the subject of oversight by other investigative bodies with whom we are already cooperating"

All of our audit work is coordinated with other oversight bodies prior to initiation, specifically to avoid duplication. GAO has reviewed our process for coordination and found that it successfully avoids duplication. In fact, following extensive review of SIGAR products, GAO found no instances of duplication in SIGAR work.¹²

SIGAR's request for information for our Congressional evaluations was submitted to State and USAID on October 1, 2021, over seven months ago. Neither State or USAID has informed us of any undue burden placed on them by SIGAR's RFI. In addition, as noted above, State and USAID have a duty to provide information to SIGAR regardless of whether some of it may be information requested by other oversight or investigative bodies.

¹¹ SIGAR has a process for coordinating its efforts with other oversight bodies to avoid needless duplication.

¹² See GAO, *Documented Agreement of Certain Roles and Responsibilities Could Further Enhance Coordination in Afghanistan*, GAO -18-6 (Nov. 2017).

Conclusion

As discussed above, SIGAR has a clear mandate to conduct oversight of, among other things, funding used to build or rebuild physical infrastructure in Afghanistan; to establish or reestablish a political or societal institution of Afghanistan; and to provide products or services to the people of Afghanistan. Concomitant with that is the authority to request information about those and related matters.

Shifting the funding from one bureau to another or changing the name of a fund does not change the fact that the money is still being spent for reconstruction purposes, as defined by SIGAR's enabling legislation. In short, reconstruction funding by any other name remains reconstruction funding. And changing the name from "reconstruction assistance" to "humanitarian assistance" or "development assistance" doesn't shield an agency from audits and investigations by SIGAR. It is American taxpayer money being spent in Afghanistan and Congress has given SIGAR the statutory duty to oversee it.

It is particularly disappointing to see the position taken in your letter in view of the President's emphasis on cooperating with Inspectors General. The December 3, 2021, guidance from the Office of Management Budget regarding cooperation with Federal Inspectors General states that, "It is the President's expectation that executive departments and agencies will restore and respect the integrity and independence of their respective agency Inspectors General (IGs) and work with the Congress to ensure that IG offices can exercise their vital oversight role."¹³

The OMB Guidance goes on to explain that "In recent years, there have been concerns that executive branch agencies have not consistently provided their IGs with the full cooperation and access to which they are entitled under the law." OMB then noted that the most effective agency leadership communications, "affirmed the duty of agency personnel to cooperate with their Office of the Inspector General" and noted that the IG Act "requires IG's timely access to all agency records."¹⁴

In view of the clarity of the law, and the views of the President as expressed by OMB, I recommend that you provide advice to your respective agencies acknowledging SIGAR's authority and requesting full cooperation with all of SIGAR's requests for information and assistance. You may also wish to remind agency officers and employees of their right to speak to the Inspector General with a guarantee of anonymity and protection from reprisals for doing so.¹⁵

¹³ Memorandum from the Executive Office of the President, Office of Management and Budget, *Promoting Accountability through Cooperation among Agencies and Inspectors General* (December 3, 2021) at 1.

¹⁴ *Id.* at 3.

¹⁵ See Inspector General Act of 1978, as amended, § 7(b).

Should you have any further questions about this matter, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "John G. Arlington". The signature is written in a cursive style with a prominent initial "J" and a long, sweeping underline.

John G. Arlington
General Counsel