

Additional Questions for the Record
The Honorable Sean O'Donnell, Inspector General,
Office of Inspector General, U.S. Environmental Protection Agency

The Honorable Michael Burgess

1. What did you identify as the biggest misuse or waste of federal funds?

The EPA OIG has previously outlined potential weaknesses and gaps in the EPA's implementation of the IIJA and IRA, particularly in regard to the sheer amount of money that the EPA will award in the form of grants and other assistance. For example, we anticipate that the EPA will award many IIJA and IRA grants and contracts to first-time recipients that are unfamiliar with federal contract and grant requirements. State Revolving Funds, or SRFs, which serve as banks for infrastructure projects, will receive an additional \$50 billion on top of their normal funds via the IIJA and other appropriations, and we are reviewing whether the SRFs have the capacity to manage such an influx of funds effectively and efficiently.

Over the past year, we issued a series of "lessons learned" reports. One of these reports, [Considerations for the EPA's Implementation of Grants Awarded Pursuant to the Infrastructure Investment and Jobs Act](#) specifically addressed how the EPA administers and oversees grant awards. In this report, we identified three broad areas for improvement that repeatedly surfaced in oversight work conducted over a five-year period. First, the EPA should enhance its grants oversight workforce and strengthen its monitoring and reporting of grants. Second, the Agency needs to establish clear guidance to monitor grants appropriately, including developing detailed work plans that identify how and when the recipient will use program funds to produce specific outputs and to clearly communicate with grantees. And third, the EPA needs to implement additional or clarified controls to ensure that grant recipients submit adequate documentation to support costs incurred under their grants. Our recent oversight work identified systemic issues related to grants management that require technical solutions. We found that the EPA does not have an electronic storage system for grant files. Instead, program offices and regions are storing grant files in disparate ways—such as on local computer hard drives, in the Agency's email system, on shared drives, and as hard copies. These disparate storage locations for documentation related to contracts and grants are part of a larger challenge that the EPA has relating to data reporting. It is not surprising that in January 2023 an EPA working group found that the Agency uses 55 different databases to store data for approximately 100 grant programs. From a data analytics standpoint, the use of so many databases makes it nearly impossible to consistently and comprehensively manage and report on grants and contracts. And from our perspective, it hinders effective oversight, limiting our ability to analyze historical bid data and to identify suspicious transactions, among other things.

Our body of oversight work has also shown the need for the EPA to institute three types of best-practice provisions: antifraud, fraud reporting and whistleblower protection, and OIG access. If the EPA does not address these issues immediately, the risk of fraud, waste, and abuse will become dramatically greater as the Agency attempts not only to execute its IIJA and IRA work but also to continue its everyday work.

In a report we released in March 2023, we identified two areas in which the EPA could improve its fight against fraud, waste, and abuse. The first area relates to how the EPA can help grant applicants better understand the criminal, civil, and administrative consequences of fraudulent conduct. While all applicants and grantees must attest and certify to the accuracy of their applications, reports and payment requests, these attestations and certifications are simply "boxes to be

practices we have seen at other cabinet-level agencies, such as the U.S. Department of Justice, state explicitly in the grant terms and conditions that making false, fictitious, or fraudulent statements may result in criminal prosecution and the imposition of civil penalties and administrative remedies.

The second antifraud provision identified in our recent report was requiring the reporting of credible evidence of violations of criminal and civil law to the OIG. The EPA's terms and conditions only generally reference the regulatory requirements with which grantees must comply, including the mandatory disclosure of credible evidence of wrongdoing. As with admonitions regarding violations of criminal and civil law in the terms and conditions, best practices observed at other cabinet-level agencies explicitly mandate disclosure of this evidence to their OIGs.

On April 13, 2023 we issued another report related to the EPA's role in fighting fraud, waste, and abuse. This report shared our concerns regarding the risks that foreign gifts pose to EPA-funded grants and research. After the U.S. Department of Education identified six universities that did not report more than \$1.3 billion from foreign sources, including China, Qatar, and Russia, the EPA OIG Office of Investigations collaborated with the National Science Foundation OIG and other federal law enforcement agencies to determine whether unreported foreign gifts could be linked to the EPA's and the National Science Foundation's federally funded awards. We found that the EPA only requires grant *applicants* to report foreign support. There is not a mechanism or requirement that *grantees* report any foreign support received after the EPA issues the award. In addition, while many federal agencies like the EPA have previously focused on avoiding financial conflicts, they have not given similar attention to guarding against scientific discoveries being passed to foreign adversaries.

Regarding access, four years ago, we issued a "Seven-Day Letter" to the EPA administrator, identifying a senior Agency official's refusal to participate in investigation and audit interviews as interference with OIG independence. The administrator at that time sent the Seven-Day Letter to Congress, along with a memorandum from the EPA general counsel, adopting an unacceptably narrow interpretation of the OIG's authority to access information and to interview Agency personnel. Three committee chairs in the House of Representatives subsequently urged the Agency to withdraw the general counsel's memorandum, observing that, "if accepted, [it] would eviscerate the authority of the Inspector General and undermine the ability of EPA to function in a transparent manner." If left in place, this memorandum would have signaled to EPA employees that they do not need to fully cooperate with the OIG in the pursuit of its mission to detect and prevent fraud, waste, and abuse. The Agency withdrew the general counsel's memorandum two years later in April 2021.

To avoid another situation like what occurred in 2019, Agency leadership must provide clear direction to EPA employees on their duty to ensure timely reporting of misconduct allegations to the OIG. Agency staff must also be clear on their responsibilities to cooperate with the OIG and to provide timely and complete responses to OIG requests for information. If the Agency does not innately hold the inspector general's statutory access authority in high esteem, it is not likely to hold its grantees and contractors accountable in that regard, either.

2. What oversight mechanisms can Congress put in place to ensure this waste does not happen again?

From fiscal years 2013 and 2022, the EPA OIG's work yielded gains of over 300 percent. During the first half of fiscal year 2023, our workforce identified \$135 million in wasted spending, fraud avoidance, and

other monetary benefits. Given the historic levels of supplemental funding to the EPA through the IJA and the IRA, the OIG has renewed its focus on grants management and fraud, and over the months and years ahead, we will only amplify the return on investment that Congress has entrusted to us. Adequately funding inspector general oversight is critical to protecting taxpayer dollars, increasing the likelihood that appropriated funds will achieve their intended purpose, and ensuring the integrity of government agencies.

Congress, recognizing the need for IJA-focused oversight, provided us with dedicated funding under the IJA that is to be allocated across five years. We are grateful for this provision, and we are putting the money to good use. However, unlike other OIGs, the EPA OIG did not receive supplemental funding under the IRA to carry out its oversight mandate. There is no question that oversight must be a critical arm in ensuring the integrity of EPA expenditures of an approximately \$41.5 billion allocation. Yet, comprehensive oversight of the IRA under existing circumstances will decimate our resources. On a positive note, the Agency supports a reprogramming of funds appropriated to the EPA for the OIG to do its work properly by converting some existing IRA dollars to provide dedicated oversight funding. I am hopeful that Congress will recognize the value in doing so and take timely action.

3. I have long supported oversight at the EPA for their abuse of the HHS's Title 42 special pay authority. Mr. O'Donnell, have you evaluated the Title 42 special pay authority used by the EPA?

In March 2015, the EPA OIG issued a report on the EPA Office of Research and Development's justification for using its Title 42 hiring authority to fill positions which found that the practice is ambiguous and that ORD did not demonstrate the need to use Title 42 to fill positions that were at one time held by Title 5 employees. The report found that four Title 42 appointees converted from Title 5 positions received salary increases ranging from \$6,149 to \$17,700 after the conversion. Limited availability of Senior Executive Service positions contributed to ORD's use of Title 42 to acquire desired expertise for scientific leadership positions. The EPA agreed with the audit recommendation and provided corrective action plans with milestone dates for completion of the corrective actions. The recommendation is closed.

How many employees at the EPA are employed under this special pay authority?'

According to the EPA Project Management Office, the EPA has 42 Title 42 employees.