

**INVESTIGATING CONTRACT MISCONDUCT
AT THE NATIONAL WEATHER SERVICE**

HEARING
BEFORE THE
**COMMITTEE ON SCIENCE, SPACE, AND
TECHNOLOGY**
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

July 15, 2015

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**INVESTIGATING CONTRACT MISCONDUCT
AT THE NATIONAL WEATHER SERVICE**

WEDNESDAY, JULY 15, 2015

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY,
Washington, D.C.

The Committee met, pursuant to call, at 10:04 a.m., in Room 2318 of the Rayburn House Office Building, Hon. Lamar Smith [Chairman of the Committee] presiding.

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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Full Committee

Investigating Contract Misconduct at the National Weather Service

Wednesday, July 15, 2015

10:00 a.m. – 12:00 p.m.

2318 Rayburn House Office Building

Witnesses

Mr. Mark Greenblatt, Deputy Assistant General for Compliance & Ethics, Office of
Inspector General, Department of Commerce

Mr. Robert Byrd, Former Chief Financial Officer, National Weather Service

Mr. Peter Jiron, Former Deputy Chief Financial Officer, National Weather Service

U.S. House of Representatives
Committee on Science, Space, and Technology

HEARING CHARTER

Investigating Contract Misconduct at the National Weather Service

Wednesday, July 15, 2015
10:00 a.m. – 12:00 p.m.
2318 Rayburn House Office Building

Purpose

On July 15, 2015 the Committee on Science, Space, and Technology will hold a hearing titled *Investigating Contract Misconduct at the National Weather Service*. The hearing will examine findings by the Department of Commerce Inspector General (OIG) regarding contract misconduct at the National Weather Service (NWS). Additionally, the hearing will address allegations regarding exertion of influence by a senior official to obtain employment for an immediate family member at the NWS.

Witnesses

- **Mr. Mark Greenblatt**, Deputy Assistant General for Compliance & Ethics, Office of Inspector General, Department of Commerce
- **Mr. Robert Byrd**, Former Chief Financial Officer, National Weather Service
- **Mr. Peter Jiron**, Former Deputy Chief Financial Officer, National Weather Service

Background

The primary source of information to be discussed at this hearing can be found in the OIG report *Investigation into Alleged Contracting Misconduct and Exertion of Improper Influence Involving a Senior National Weather Service Official* issued last month.¹ In 2009, then-Deputy Chief Financial Officer Peter Jiron intended to retire from the NWS. Mr. Jiron's supervisor, then-Chief Financial Officer Robert Byrd, suggested Mr. Jiron return to the NWS post-retirement as a consultant.² One month before officially retiring from the NWS, Mr. Jiron negotiated the terms of his consultancy, drafted and edited the associated Statement of Work, drafted terms and conditions of his contract with NWS as a consultant, and eventually signed the consulting agreement with NWS in April 2010.³ In total, Mr. Jiron's consulting contract lasted 21 months, costing tax payers \$471,875 including \$50,000 in post-retirement housing.⁴

¹ U.S. Dep't of Commerce, Office of Inspector General, *Investigation into Alleged Contracting Misconduct and Exertion of Improper Influence Involving a Senior National Weather Service Official* (June 2015). Found at: <http://www.oig.doc.gov/OIGPublications/OIG-12-0447-L.pdf>

² *Id.*

³ *Id.*

⁴ *Id.*

All of Mr. Jiron's alleged actions relating to post-retirement contracts were approved by his supervisor, Mr. Byrd.

In addition, the OIG found evidence that Mr. Jiron may have attempted to influence NWS officials when seeking to find employment for an immediate family member in a NWS office.⁵ According to an Administrative Official, Mr. Jiron "offered to exert influence to have the Administrative Official promoted from the GS-13 position he held at the time to a higher-paid GS-14 position if he assisted" in getting Mr. Jiron's family member hired.⁶ Ultimately, the Administrative Official alerted his supervisor, and Mr. Jiron's family member was not hired.⁷

The OIG indicated that Mr. Jiron's alleged improprieties may have violated numerous federal laws and regulations, including criminal statutes. Specifically, the criminal conflict-of-interest statute prohibits federal employees from acting in their official capacity in matters that will affect their financial interests.⁸ Additionally, federal regulations prohibit Executive Branch employees from using a government position to benefit themselves.⁹ According to the OIG, Mr. Jiron's creation of his consulting position while employed at NWS and arranging for the future payment of his housing expenses was a conflict of interest that benefited himself. Furthermore, Mr. Jiron allegedly violated 18 U.S.C. §201, which criminalizes bribing government officials, when he attempted to influence NWS employees to hire his immediate family member. Given the

Further, the OIG found the "lack of understanding about applicable laws and regulations on the part of multiple" agency officials so concerning that the OIG is "taking steps to ascertain whether this matter is indicative of a more systemic 'revolving door' contracting problem within [NOAA]."¹⁰ According to Mr. Byrd, this type of behavior is "just the way business is done" at the agency. Several people interviewed by the OIG expressed a similar belief that these practices are commonplace.¹¹ For instance, "one of the highest-ranking NWS leadership officials wondered aloud during her OIG interview 'why we have all these people that retire and then we go and hire them to come back.'"¹² Moreover, the Acquisition and Grants Office (AGO) Representative that facilitated Mr. Jiron's contract told investigators that NOAA employees returning post-retirement "happens all the time."¹³

The findings from this report prompted the OIG to conclude that some of Senior Official's conduct may have been criminal in nature, and as such referred the matter to both the Office of Government Ethics and to the Department of Justice for prosecution, but the relevant prosecutors declined to pursue charges.

⁵ See OIG Report, *supra* note 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Chairman SMITH. The Committee on Science, Space, and Technology will come to order.

Without objection, the Chair is authorized to declare recesses of the Committee at any time.

Welcome to today's hearing titled "Investigating Contract Misconduct at the National Weather Service." I'll recognize myself for an opening statement and then recognize the Ranking Member.

Today, we will hear about the Department of Commerce Inspector General's recent report on alleged contracting misconduct and improper influence at the National Weather Service. The Committee on Science, Space, and Technology has primary jurisdiction of the National Oceanic and Atmospheric Administration and the National Weather Service.

Accurate and timely forecasts help keep Americans safe from extreme weather events. But this vital work is undermined and taxpayer money is wasted when senior officials at the National Weather Service, NOAA, and the Department of Commerce are apparently complicit in granting improper contracts.

Today's hearing is an opportunity to hear from Mr. Donald Jiron, the former Deputy Chief Financial Officer at the National Weather Service; and Mr. Robert Byrd, the former Chief Financial Officer at the National Weather Service. These two individuals have the opportunity today to truthfully tell us why taxpayers picked up the tab for an allegedly improper contract worth nearly half a million dollars.

There is something fundamentally wrong with a system that allows a government employee to draft their own post-retirement contract, which increases their salary and pays for their housing, while being funded by American taxpayers. Furthermore, in this case the National Weather Service hired a replacement for Mr. Jiron who ended up duplicating the work Mr. Jiron was doing as a contractor. So after paying Mr. Jiron more money each month as a contractor and also paying a new Deputy CFO, American taxpayers essentially paid three times as much for the same work formerly done by one person.

Somehow, the National Weather Service was not aware of this issue until Mr. Jiron allegedly bribed a government employee to get a family member a job, which led the Office of Inspector General to open an investigation. Although there is no legal issue in the vast majority of cases that involve federal employees who return to work as contractors, I am concerned that this type of inappropriate revolving door problem might be common at the National Weather Service.

Mr. Jiron and Mr. Byrd were invited here today to explain what happened. Unfortunately, both former senior officials chose non-cooperation over being forthright. Both refused to speak with committee staff voluntarily and only appeared here today after the Committee had no alternative but to issue a subpoena. I still hope that Mr. Jiron and Mr. Byrd will take the opportunity today to address the charges made in the IG's report.

One of the most important functions of Congress is to conduct oversight of the executive branch. This provides the fundamental checks and balances that our founders intended. When Americans'

trust has been violated, Congress has an obligation to understand what went wrong so we can ensure that it does not happen again.

I was disappointed to learn that, despite the OIG's findings, the Obama Administration's Justice Department refused to investigate this case. In fact, the DOJ rejected the IG's recommendations to investigate. So I look forward to hearing from all three witnesses this morning to shed more light on these allegations.

[The prepared statement of Chairman Smith follows:]

PREPARED STATEMENT OF CHAIRMAN LAMAR S. SMITH

Today we will hear about the Department of Commerce Inspector General's (IG) recent report on alleged contracting misconduct and improper influence at the National Weather Service.

The Committee on Science, Space, and Technology has primary jurisdiction of the National Oceanic and Atmospheric Administration (NOAA) and the National Weather Service (NWS).

Accurate and timely forecasts help keep Americans safe from extreme weather events. But this vital work is undermined and taxpayer money is wasted when senior officials at the NWS, NOAA, and the Department of Commerce are apparently complicit in granting improper contracts.

Today's hearing is an opportunity to hear from Mr. Donald Jiron, the former Deputy Chief Financial Officer at the National Weather Service and Mr. Robert Byrd, the former Chief Financial Officer at the National Weather Service.

These two individuals have the opportunity today to truthfully tell us why taxpayers picked up the tab for an allegedly improper contract worth nearly half a million dollars.

There is something fundamentally wrong with a system that allows a government employee to draft their own post-retirement contract, which increases their salary and pays for their housing while being funded by the American taxpayers.

As a further insult to taxpayers, the National Weather Service hired a replacement for Mr. Jiron who ended up duplicating the work Mr. Jiron was doing as a contractor.

So after paying Mr. Jiron more money each month as a contractor and also paying a new Deputy CFO, American taxpayers essentially paid three times as much for the work formerly done by one person.

Somehow, the National Weather Service was not aware of this issue until Mr. Jiron allegedly bribed a government employee to get a family member a job, which led the Office of Inspector General (OIG) to open an investigation.

Although there is no legal issue in the vast majority of cases that involve federal employees who return to work as a contractors, I am concerned that this type of inappropriate revolving door problem might be common at NWS.

Mr. Jiron and Mr. Byrd were invited here today to explain what happened. Unfortunately, both former senior officials chose non-cooperation over being forthright.

Both refused to speak with Committee staff voluntarily and only appeared here today after the Committee had no alternative but to issue a subpoena. I still hope that Mr. Jiron and Mr. Byrd will take the opportunity today to address the charges made in the IG's report.

One of the most important functions of Congress is to conduct robust oversight of the Executive branch. This provides the fundamental checks and balances that our founders intended. It also ensures the American people's trust in their government.

When that trust has been violated, Congress has an obligation to understand what went wrong so we can ensure that it does not happen again.

I was disappointed to learn that despite the OIG's good work highlighting this case, the Obama Administration's Justice Department (DOJ) refused to investigate this case. In fact, the DOJ rejected the IG's recommendations to investigate.

I look forward to hearing from all three witnesses this morning to shed light on these allegations and regain the Americans' trust.

Chairman SMITH. And that concludes my opening statement, and the gentlewoman from Texas, Ms. Johnson, is recognized for hers.

Ms. JOHNSON OF TEXAS. Thank you very much, Mr. Chairman.

Today, we are holding a hearing entitled “Investigating Contract Misconduct at the National Weather Service.” I’m afraid that much of this hearing will be unfortunately theater rather than real oversight work and I regret this.

Before I touch on that again, I do want to speak to the Inspector General’s report, which is the genesis for this hearing. Now, I certainly do not support misconduct by government officials. However, it looks like the problems uncovered in this report are less about the specific conduct of one individual than the failure of judgment and oversight up and down the management chain in the National Weather Service.

It is widely known in the NWS that Mr. Jiron, the Deputy Chief Financial Officer, was going to come back as a contract—contractor after retiring. No one intervened to stop him from writing his own statement of work. They even suggested that he do it and others in the office actually helped him by reading and commenting on this statement of work. It was also common knowledge in the office that NWS was paying for his housing costs while he was a contractor and no one ever raised a question about this or attempted to revise the contract.

That no one knew to stop Jiron from doing those things is more concerning to me than his personal actions. This kind of systemic failure is disappointing and something we should hold the NWS to account for. However, we do not have any current NWS officials here today to discuss how they plan to proceed in the future or what steps they already have taken. Instead, we have two retired NWS employees who were compelled to attend this hearing by Congressional subpoena despite the fact that they have they too—they have both indicated that they plan on exercising their constitutional right to not speak here today.

I’m not sure an issue with a single post-employment contract is worthy of this spectacle, Mr. Chairman. I want to be clear that I’m not defending these gentlemen’s conduct to the degree that we understand it but I question the aggressive action of this Committee when the Chairman has been reluctant to act in other areas. The systemic failure of NWS is matched by a different systemic failure in the Commerce IG’s office. That office received allegations regarding Mr. Jiron’s action in January 2012. By August 2012 the IG was briefed on the findings and nearly 20 interviews had been completed. The report was essentially done at that point. Then it died. Nothing happened with this case for years. And then almost two years later the IG rushed to issue this report at about the same time the IG’s office was being investigated by this Committee.

While this report may be 100 percent accurate and Mr. Greenblatt may have done a public service in shepherding the report to completion, I have to look at the timing of the report’s release and some—with some skepticism. Knowing that the report was revised at a moment that saw the leadership in the office looking for sensational products to convince this Committee to drop a bipartisan investigation of the former IG Todd Zinser and his office makes me question the product.

I think it is worth reminding the Members of this Committee about that investigation of the IG’s office. The investigation began as a bipartisan effort. It included three bipartisan letters from the

Committee, including two document requests. It included a number of staff interviews of Commerce IG employees and it included the establishment of a network or whistleblowers providing information to the Committee.

This investigation bore much fruit. It uncovered a pattern of whistleblowing intimidation and retaliation by the Inspector General Todd Zinser and his Deputy Morgan Kim. It uncovered evidence of gross mismanagement of the office, some of which likely violated federal law and regulations. It uncovered possible false statements to Congress during Mr. Zinser's confirmation process. Perhaps more importantly, it uncovered extensive evidence of Todd Zinser and Morgan Kim's personal efforts to obstruct the Committee's investigation.

This evidence led me to ask the President to remove Mr. Zinser from office. I'm attaching a letter and my March Floor statement outlining the results of this investigation, as well as our past letters to my statement today.

This evidence led the Chairman down a different path. The Chairman pushed the investigation over to the Council of Inspectors General for Integrity and Efficiency, the CIGIE. However, we have it on good authority the FBI sought information to support the Chairman's letter to the CIGIE on two separate occasions and the majority staff did not respond leaving the CIGIE investigation to die a quiet death.

It is confusing to me that on the one hand the Chair quietly tolerates the most obvious and well-documented obstruction this Committee has—

Chairman SMITH. The gentlewoman's time is expired. However, she is recognized for an additional minute.

Ms. JOHNSON OF TEXAS. Thank you. I want to finish my statement.

While on the other hand the Chair has issued more subpoenas in the past year than the previous six committee Chairs combined. And last week the majority accused the EPA of obstruction based on zero supporting evidence of those claims. I wish this Committee would focus a little less on political theater and a little more on real documented wrongdoing. I'm sending the acting Commerce Inspector General a letter instructing him to retain all records in anticipation of my sending a referral to the Department of Justice regarding criminal misconduct by the former Congress Inspector General and others in the coming days. I will send that referral to the Department of Justice and I would welcome any of my colleagues who wish to engage in the real oversight to join me in that letter. Thank you and I yield back.

[The prepared statement of Ms. Johnson follows:]

STATEMENT SUBMITTED BY COMMITTEE RANKING MEMBER
EDDIE BERNICE JOHNSON

Thank you, Mr. Chairman. Today we are holding a hearing entitled, "Investigating Contract Misconduct at the National Weather Service." I'm afraid that much of this hearing will unfortunately be theater rather than real oversight work, and I regret this.

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That no one knew to stop Jiron from doing those things is more concerning to me than his personal actions. This kind of systemic failure is disappointing, and something we should hold NWS to account for. However, we do not have any current NWS officials here today to discuss how they plan to proceed in the future or what steps they have already taken.

Instead we have two retired NWS employees who were compelled to attend this hearing by Congressional subpoena despite the fact that they have both indicated they plan on exercising their Constitutional right to not speak here today. I'm not sure an issue with a single post-employment contract is worthy of this spectacle, Mr. Chairman. I want to be clear that I am not defending these gentlemen's conduct, to the degree we understand it, but I question the aggressive action of this Committee when the Chairman has been so reluctant to act in other areas.

The systemic failure at NWS is matched by a different systemic failure in the Commerce IG's office. That office received allegations regarding Mr. Jiron's actions in January of 2012. By August 2012, the IG was briefed on the findings and nearly 20 interviews had been completed. The report was essentially done at that point. Then it died. Nothing happened with this case for years. Then, almost two years later, the IG rushed to issue this report, at about the same time the IG's office was being investigated by this Committee.

While this report may be 100% accurate, and Mr. Greenblatt may have done a public service in shepherding the report to completion, I have to look at the timing of the report's release with some skepticism. Knowing that the report was revived at a moment that saw the leadership in the office looking for sensational products to convince this Committee to drop our bipartisan investigation of the former IG Todd Zinser and his office makes me question the end product.

I think it is worth reminding the Members of this Committee about that investigation of the IG's office. This investigation began as a bipartisan effort. It included three bipartisan letters from the Committee, including two document requests. It included a number of staff interviews of Commerce IG employees. And it included the establishment of a network of whistleblowers providing information to the Committee.

This investigation bore much fruit. It uncovered a pattern of whistleblower intimidation and retaliation by the Inspector General, Todd Zinser, and his deputy, Morgan Kim. It uncovered evidence of gross mismanagement of the office, some of which likely violated Federal law and regulations. It uncovered possible false statements to Congress during Mr. Zinser's confirmation process. Perhaps most importantly, it uncovered extensive evidence of Todd Zinser and Morgan Kim's personal efforts to obstruct the Committee's investigation. This evidence led me to ask the President to remove Mr. Zinser from office. I am attaching that letter and my March floor statement outlining the results of the investigation, as well as our past letters, to my statement today.

This evidence led the Chairman down a different path. The Chairman pushed the investigation over to the Council of Inspectors General for Integrity and Efficiency or CIGIE [pronounced SIG-EE]. However, we have it on good authority that the FBI sought information to support the Chairman's letter to CIGIE on two separate occasions and the Majority staff did not respond, leaving the CIGIE investigation to die a quiet death.

It is confusing to me that on the one hand the Chair quietly tolerated the most obvious and well-documented obstruction this Committee has seen in at least a quarter century, while on the other hand the Chair has issued more subpoenas in the past year than the previous six Committee chairs combined. And last week the Majority accused the EPA of obstruction based on zero supporting evidence of those claims. I wish this Committee would focus a little less on political theater and a little more on real, documented wrong-doing.

I am sending the Acting Commerce Inspector General a letter instructing him to retain all records in anticipation of my sending a referral to the Department of Justice regarding criminal misconduct by the former Commerce Inspector General and others. In coming days, I will send that referral to the Department of Justice and I would welcome any of my colleagues who wish to engage in real oversight to join me in that letter.

I yield back the balance of my time.

Chairman SMITH. Thank you, Ms. Johnson. I'll introduce our witnesses.

Mr. PERLMUTTER. Mr. Chairman, point of order.

Chairman SMITH. For what purpose does the gentleman seeks to be recognized?

Mr. PERLMUTTER. Point of order.

Chairman SMITH. And he will state his point of order.

Mr. PERLMUTTER. Point of order is the witnesses have rights pursuant to the Constitution, Fifth Amendment, Rules of the House, and the Jefferson Manual, do they not?

Chairman SMITH. They do.

Mr. PERLMUTTER. Point of order, Mr. Chairman.

Chairman SMITH. And your point of order is?

Mr. PERLMUTTER. Pardon me?

Chairman SMITH. Would you state your point of order?

Mr. PERLMUTTER. Point of order is these witnesses have—two witnesses, Mr. Byrd and Mr. Jiron, have advised this Committee

that they intend to take the Fifth Amendment against self-incrimination.

Chairman SMITH. That may well be the case.

Mr. PERLMUTTER. Is that true? Have they advised this committee—

Chairman SMITH. We will see what they decide to do momentarily and I think you will not be surprised if they do seek the Fifth Amendment.

Mr. PERLMUTTER. Okay. Point of order?

Chairman SMITH. The gentleman will continue to state his point of order.

Mr. PERLMUTTER. Point of order is that they cannot be compelled to testify against themselves by this Committee or a court of law if they have taken the Fifth Amendment.

Chairman SMITH. That's my understanding as well.

Mr. PERLMUTTER. Okay. Point of order.

Chairman SMITH. Please continue.

Mr. PERLMUTTER. Point of order is to advise the attorneys on this panel that if someone has taken the Fifth, that as an attorney we have additional responsibilities under our Rules of Professional Conduct at least in Colorado and as in the DC. bar to not embarrass, humiliate, or degrade a witness who has exercised their constitutional rights pursuant to the Fifth Amendment. Is that not true?

Chairman SMITH. That is also the case.

Mr. PERLMUTTER. Okay. I yield back.

Chairman SMITH. Okay. Thank you. And we will continue.

Our first witness, Mr. Greenblatt, is the Deputy Assistant Inspector General for Compliance and Ethics for the Department of Commerce Office of Inspector General. Prior to his tenure at the Inspector General's Office, Mr. Greenblatt held the title of Investigative Counsel, Deputy Chief Counsel, and later Minority Staff Director and Chief Counsel on the U.S. Senate Permanent Subcommittee on Senate Investigations. Mr. Greenblatt earned his bachelor's degree from Duke University and his J.D. from Columbia University School of Law. We welcome him.

Our next witness, Mr. Robert Byrd, formerly served as the Chief Financial Officer for the National Weather Service. Mr. Byrd holds an MBA with honors from Loyola College of Maryland and has completed postgraduate MBA programs at Syracuse University and Harvard Business School.

Our final witness, Mr. Jiron, is the former Deputy Chief Financial Officer for the National Weather Service, and he has not provided us with any further information.

It is not the Science Committee's practice to swear in witnesses at hearings. However, both Mr. Jiron and Mr. Byrd refused to sign the Committee's False Statements Act Certification Form so I believe administering the oath to them is necessary at this time.

And would Mr. Jiron and Mr. Byrd please rise—

Mr. PERLMUTTER. Mr. Chairman, one more point of order.

Chairman SMITH. —and raise your right hands.

Mr. PERLMUTTER. Mr. Chairman?

Chairman SMITH. The gentleman will state his point of order.

Mr. PERLMUTTER. Another point of order. Pursuant to the Constitution, these gentlemen are entitled to have counsel to assist them at this hearing, are they not?

Chairman SMITH. If they wish, they have that right and I believe they do.

Mr. PERLMUTTER. One more point of order, sir?

Chairman SMITH. Yes, state your point of order.

Mr. PERLMUTTER. Must they—having given notice to this Committee that they intend to take the Fifth Amendment, must they remain here for purposes of taking—

Chairman SMITH. No.

Mr. PERLMUTTER. —this oath?

Chairman SMITH. If they take the Fifth Amendment, they will be excused.

Mr. PERLMUTTER. Okay. I yield back.

Chairman SMITH. Okay. Thank you.

Mr. Jiron and Mr. Byrd, will you please rise and raise your right hands? Thank you.

Do you solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

Thank you. Let the record reflect that the witnesses answered in the affirmative, and please be seated.

Mr. Greenblatt, we look forward to your testimony, and please proceed.

**TESTIMONY OF MR. MARK GREENBLATT,
DEPUTY ASSISTANT GENERAL
FOR COMPLIANCE & ETHICS,
OFFICE OF INSPECTOR GENERAL,
DEPARTMENT OF COMMERCE**

Mr. GREENBLATT. Chairman Smith, Ranking Member Johnson, Members of the Committee, we appreciate the opportunity to testify today.

Last month, the Department of Commerce Office of Inspector General issued a report detailing our investigation into allegations of impropriety involving a senior National Weather Service official, who became a consultant to the agency immediately after his retirement. Our investigation identified a number of problems related to the retention of this senior official.

With regard to the senior official himself, the evidence established that he was personally and substantially involved in the procurement of his own postretirement consulting services. Specifically, the evidence established that while he was still a federal employee, this senior official 1) drafted and edited the statement of work for his consulting position; 2) participated with National Weather Service officials in setting his future rate of pay; and 3) signed the task management plan that authorized the consulting work he would later perform. Notably, he signed this task management plan while he was still a federal employee as “contractor POC,” the contractor’s point of contact. This involvement implicated several federal laws and regulations, including the Criminal Conflict of Interest Statute founded 18 USC 208.

Additionally, evidence established that this senior official took inappropriate steps to arrange for the National Weather Service to pay for his housing expenses for his postretirement consulting position, which amounted to nearly \$52,000. The evidence also established that after he became a contractor himself, this senior official contacted several National Weather Service officials in an attempt to secure another contracting position for an immediate family member.

We concluded that the senior official's actions in attempting to influence the NWS staff were improper and in one case may have implicated 18 USC 201, the criminal statute prohibiting bribery of public officials.

As a result of our investigation and our initial briefings with senior NOAA leadership, NOAA took immediate action to stop work on the senior official's task order in early 2012. In total, the senior official's postretirement work as a consultant lasted 21 months and cost the government more than \$471,000.

While the OIG's inquiry focused on this senior official because he was identified by name in multiple whistleblower complaints, we nonetheless concluded that several other government officials share responsibility for the problems we identified. In particular, evidence indicated that the subject acted at the direction and with the approval of his supervisor at all times. 2) The subject's consulting arrangement was facilitated and approved by other officials with responsibility for ensuring integrity in government contracting.

Further, statements from several witnesses indicate that it is not uncommon for National Weather Service employees to retire and then come back as contractors to perform similar duties. For example, a high-ranking official at NWS wondered aloud during her OIG interview "why we have all these people that retire and then we go and hire them to come back."

Similarly, a representative of NOAA's Acquisition and Grant Office, which is responsible for approving NWS contractor positions, indicated that federal employees returning as contractors once they retire "happens all the time." In fact, the NWS supervisor in this case told us that he did not see any problems with the arrangement because he "sort of got the sense that this is just the way business is done."

Comments such as these indicate that there may exist a revolving door practice at NWS that created an environment in which problems that we identified in our report could occur. With this in mind, the OIG is now taking steps to assess whether a revolving door practice truly exists at NWS. For example, on June 11 we initiated an audit of NWS's award and administration of procurement actions that support its workforce. The overall objective of this audit is to evaluate whether NWS has adequate controls in place to ensure compliance with applicable laws and regulations for personnel support acquired through service contracts. As part of this audit, we will assess how many former NWS employees—how many former employees NWS may have retained as contractors within the last several years. Through our investigative and audit efforts, we will examine how often such hirings occur, whether they comply with relevant contracting and ethics regulations, and

whether there are any programs, offices, and areas that may warrant closer scrutiny.

I want to thank the Committee for the opportunity to testify today and I look forward to your questions.

[The prepared statement of Mr. Greenblatt follows:]



Testimony of

Mark L. Greenblatt
Deputy Assistant Inspector General for Compliance and Ethics

U.S. Department of Commerce
Office of Inspector General

before a hearing of the

Committee on Science, Space, and Technology
U.S. House of Representatives

***Investigating Contract Misconduct
at the National Weather Service***

July 15, 2015

Chairman Smith, Ranking Member Johnson, and Members of the Committee:

We appreciate the opportunity to testify today about post-employment consulting practices at the National Oceanic and Atmospheric Administration's (NOAA's) National Weather Service (NWS).

Last month, the Department of Commerce Office of Inspector General (OIG) issued a report detailing our investigation into allegations of impropriety involving a senior official at NWS who became a consultant to the agency immediately upon his retirement from federal service.¹ Based on evidence obtained over the course of the investigation, OIG identified a number of problems related to the retention of this senior official as a consultant that indicated several agency officials lacked an understanding of key government contracting and ethics regulations.

As for the actions of the senior official himself, OIG concluded that he was personally and substantially involved in the procurement of his own post-retirement consulting services. This involvement implicated numerous federal laws and regulations, including the criminal conflict-of-interest statute found in Title 18 of the U.S. Code (U.S.C.) § 208. Specifically, evidence obtained over the course of our investigation established that this senior official—while still holding his position as a federal employee—engaged in

- drafting and editing the applicable statement of work for his post-retirement consulting position,
- participating with NWS officials in setting what labor category and rates would be used to pay for his consulting services, and
- signing the task management plan that created the consulting position he would take upon his retirement on behalf of the contractor that would employ him.

Additionally, evidence established that this senior official took inappropriate steps to arrange for NWS to pay approximately \$50,000 worth of his post-retirement housing expenses. In particular, while still holding his government position, the official instructed his direct subordinate to facilitate his post-retirement use of a National Marine Fisheries Service housing contract intended to accommodate high-ranking government employees on temporary assignments to NOAA headquarters in Silver Spring, Maryland.

Evidence obtained by OIG also established that, after he became a contractor himself, the subject of our investigation contacted several NWS officials in an attempt to secure another contract position at the agency for one of his immediate family members. Although the senior official denied acting inappropriately in seeking employment for his family member, we found evidence—including his own e-mails, other contemporaneous documents, and consistent and credible testimony from other witnesses—that contradicted the official's version of events. Indeed, evidence indicated that this senior official may have offered to influence NWS officials to promote one particular agency employee if the employee could find a position for the senior official's family member. In our report, we concluded that the senior official's actions in

¹ DOC OIG, June 3, 2015. *Investigation into Alleged Contracting Misconduct and Exertion of Improper Influence Involving a Senior National Weather Service Official*, Report No. 12-0447. Washington, DC: DOC OIG.

attempting to influence the NWS staff were improper, and some of those actions may have implicated 18 U.S.C. § 201, the criminal statute prohibiting bribery of public officials.

As a result of our investigation and initial briefings with NOAA's senior leadership regarding the evidence, NOAA took immediate action to stop work on the senior official's task order in early 2012. In total, this senior official's post-retirement work as a consultant cost the government \$471,875.³⁴ Because of our conclusion that certain of the official's actions may have violated federal criminal law, OIG referred this matter for prosecution; however, the relevant prosecutors declined to pursue charges.

While OIG's inquiry was focused on the activities of the senior official specifically named in the complaints that prompted our investigation, we nonetheless concluded that several government officials beyond the subject of our investigation share responsibility for the events we investigated. In particular, evidence indicated that (1) the subject acted at the direction, and with the approval, of his supervisor at all times and (2) the subject's consulting arrangement was facilitated and approved by other officials with responsibility for ensuring integrity in government contracting.

Further, evidence from witness testimony during our investigation indicates that hiring former employees as consultants to do work similar to what they performed prior to retirement may well be a common practice. For example, a high-ranking official at NWS wondered aloud "why we have all these people that retire and then we go and hire them to come back."³² Similarly, a representative of NOAA's Acquisition and Grants Office—which is responsible for approving NWS contractor positions—suggested that federal employees returning as contractors once they retire "happens all the time."³³ Likewise, one NWS employee who helped the subject of our investigation become a contractor told OIG that he had no concerns about what happened because he had heard of other NWS employees becoming consultants immediately after their retirement from federal service; he viewed such a career transition as a great way for former government employees to make money from their institutional knowledge of an agency.⁴ Similarly, the NWS supervisor who urged the creation of and approved the consulting position at issue told our investigators that he did not see any problems with the arrangement because he "sort of got the sense that this is just the way business is done" at the agency.⁵

Comments such as these indicate that there may exist a "revolving-door" practice at NWS that created an environment in which the problems identified in this case could occur. This is a concern for several reasons.

First, depending upon the nature of the job duties involved, hiring former agency officials as consultants may run afoul of federal law requiring the government to perform its functions through permanently employed civil service personnel. As explained in the Code of Federal Regulations, which proscribes how the government may retain and employ contract laborers: "The Government is normally required to obtain its employees by direct hire under

² See *id.* at 15.

³ See *id.*

⁴ See *id.*

⁵ See *id.* at 6.

competitive appointment or other procedures required by the civil service laws[;] [o]btaining [employee] services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.”⁶

Second, if a former-employee contractor is compensated with pay and benefits at least comparable to what he or she received prior to retiring from federal service, the use of such contractors would invariably result in an increased cost to the government—which must also pay overhead expenses to the company that employs the contractor that it retains. And when the contractor is performing job duties similar to those he or she carried out prior to retiring from federal service, as in the case of our NWS investigation, payment of these additional overhead expenses may not be a good use of tax-payer dollars.

Third, the hiring of former federal employees as government contractors may increase the likelihood that conflicts of interest and other ethical issues will arise. Indeed, even if carried out in a completely lawful and transparent manner, such a practice—if thought to be routine—presents an appearance of impropriety capable of eroding public confidence in the integrity of government.

With this in mind, OIG is now taking steps to assess whether a revolving-door practice truly exists at NWS. For example, on June 11, 2015, we initiated an audit of NWS regarding its award and administration of procurement actions that support its workforce. The overall objective of this audit is to evaluate whether NWS has adequate controls in place to ensure compliance with applicable laws and regulations for personnel support acquired through service contracts. As part of this audit process, we will assess how many former employees NWS may have hired on as contractors within the last several years. Through our investigative and audit efforts, we will examine (a) how often such hirings occur; (b) whether they comply with relevant contracting and ethics regulations; and (c) whether there are any programs, offices, and areas that may warrant closer scrutiny.

In closing, we ask the Committee to note that, in issuing its report on this matter, OIG has intentionally refrained from naming the officials involved in our investigation. Nothing in the OIG’s written or verbal testimony is intended to circumvent recognized privacy protections afforded by the Privacy Act or any other federal statute.

I want to thank the Committee for the opportunity to testify today, and I look forward to your questions.

⁶ 48 C.F.R. § 37.104(a).

Mark L. Greenblatt
Deputy Assistant Inspector General for Compliance and Ethics
Department of Commerce Office of Inspector General

Mark L. Greenblatt serves as the Deputy Assistant Inspector General for Compliance and Ethics for the Department of Commerce Office of Inspector General (OIG). He previously served as the Director of Special Investigations for the Department of Commerce OIG and as an Investigative Counsel in the special investigations division of the Department of Justice OIG.

Prior to his service in the executive branch, Mr. Greenblatt worked for the U.S. Senate Permanent Subcommittee on Investigations as an Investigative Counsel, Deputy Chief Counsel, and later Minority Staff Director and Chief Counsel. During his tenure with the Senate subcommittee, Mr. Greenblatt led several high-profile cases, including investigations into the United Nations Oil-for-Food Program, homeland security vulnerabilities, and Medicare abuses. Mr. Greenblatt also worked at private practice as a litigation associate at both Akin Gump and Simpson Thacher & Bartlett in New York, NY, and served as a law clerk for Federal District Judge Anita B. Brody in the Eastern District of Pennsylvania.

Mr. Greenblatt received his JD from Columbia University School of Law and his undergraduate degree from Duke University. Mr. Greenblatt was also a Senior Manager in Government Fellow at Harvard University's Kennedy School of Government and received a certificate from the Experienced Leaders Program of Council of the Inspectors General on Integrity and Efficiency. Apart from his government service, Mr. Greenblatt also serves as the Vice-Chair of the Montgomery County (MD) Ethics Commission.

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

**Congress of the United States
House of Representatives**

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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Full Committee

Investigating Contract Misconduct at the National Weather Service

Wednesday, July 15, 2015

10:00 a.m. – 12:00 p.m.

2318 Rayburn House Office Building

Robert Byrd and Peter Jiron were both subpoenaed to the July 15 hearing. Both witnesses did not provide a written or oral statement as they both exercised their Fifth Amendment right not to testify.

Chairman SMITH. Thank you, Mr. Greenblatt, for your testimony. Mr. Byrd, you have not provided the Committee with a witness statement. Do you wish to make a statement at this time?

Mr. BYRD. Thank you, Mr. Chairman. My name is Robert Byrd and I've been compelled to appear before this Committee by subpoena. On advice of counsel, I respectfully exercise my Fifth Amendment right not to testify.

Chairman SMITH. Okay. I have some questions and then we'll look forward to your response.

Mr. PERLMUTTER. Point of order, Mr. Chairman.

Chairman SMITH. The gentleman will state his point of order.

Mr. PERLMUTTER. Point of order. Upon taking the Fifth, he may leave at this point in the hearing, may he not?

Chairman SMITH. The gentleman is incorrect. The witness needs to establish that he has taken the Fifth by his response to some questions that I intend to ask.

Ms. BONAMICI. Mr. Chairman? Mr. Chairman—

Chairman SMITH. Yes.

Ms. BONAMICI. —another point of order. The witness has already established that he's taken the Fifth. By your questioning him, you are putting him in a position where you're trying to set up that he will waive his right and I object to this. That's not what we're—

Chairman SMITH. Okay. To respond to the gentlewoman's point of order, the Fifth Amendment does not provide blanket immunity from all Committee questions.

And if the gentlewoman and gentleman will listen to my questions, I think they'll understand since they're both lawyers why I need to proceed to ask these questions.

Mr. PERLMUTTER. I'll do so with interest but don't be surprised if I do a point of order or two between your questions.

Chairman SMITH. The gentleman is always free to raise a point of order.

Mr. Byrd, were you the Chief Financial Officer for the National Weather Service?

Mr. BYRD. Upon advice of counsel, Mr. Chairman, I respectfully exercise my amendment right—my Fifth Amendment right—

Chairman SMITH. Okay.

Mr. BYRD. —and decline to respond.

Chairman SMITH. Let the record reflect that Mr. Byrd has asserted his Fifth Amendment right against self-incrimination.

And Mr. Byrd, please let me be very clear. Are you declining to answer the Committee's question solely on the ground that you believe the answer will incriminate you?

Mr. PERLMUTTER. Point of order, Mr. Chairman.

Chairman SMITH. You may state your—

Mr. PERLMUTTER. Under the Fifth Amendment, he does not have to answer that.

Chairman SMITH. That I am told is not a valid point of order and I'm going to direct the witness to answer the question.

Ms. BONAMICI. Mr. Chairman, point of order.

Chairman SMITH. The gentlewoman will raise a point of order.

Ms. BONAMICI. I request that if Mr. Byrd now would like to, he may consult with his attorney.

Chairman SMITH. He is always free to consult with his attorney and that's not a legitimate point of order.

Mr. Byrd, would you answer my question and let me repeat it. Are you declining to answer the Committee's question solely on the ground that you believe the answer will incriminate you?

Mr. BYRD. Upon advice of counsel, I respectfully exercise my Fifth Amendment right not to respond.

Chairman SMITH. Um-hum. And was Mr. Jiron your Deputy Chief Financial Officer at the National Weather Service?

Mr. BYRD. On advice of counsel, I respectfully exercise my Fifth Amendment right and decline to respond.

Chairman SMITH. Okay. And did you approve Mr. Jiron's post-retirement consulting contract?

Mr. PERLMUTTER. Point of order, Mr. Chairman.

Chairman SMITH. Another point of order. The gentleman will state his point of order.

Mr. PERLMUTTER. Point of order. This is a point of order that I raised initially that under the Rules of Professional Conduct for the District of Columbia, as well as Colorado—I assume Texas—that under Opinion 31 of the District of Columbia—in Colorado it's 8.4(h)—that to continue to pursue a line of questioning where a witness has taken the Fifth Amendment can be considered to be offensive, abusive, and harassing conduct not calculated to lead to admissible evidence.

Chairman SMITH. The gentleman has not taken the Fifth Amendment on every aspect of every question, and I have two more questions for him. At that point he will be allowed to be dismissed.

Mr. PERLMUTTER. Okay.

Chairman SMITH. Mr. Byrd, two more questions—or three actually. Did you approve Mr. Jiron's postretirement consulting contract?

Mr. BYRD. Upon advice of counsel, I respectfully exercise my Fifth Amendment right and decline to answer.

Chairman SMITH. And did you approve \$50,000 worth the housing benefits received by Mr. Jiron, paid for by the National Weather Service?

Mr. BYRD. Upon advice of counsel, Mr. Chairman, I respectfully exercise—

Chairman SMITH. Okay.

Mr. BYRD. —my Fifth Amendment right and decline to answer.

Chairman SMITH. And my last question is this: Is it your intention to decline to answer all questions put to you today by the Committee on the basis of the Fifth Amendment right against self-incrimination?

Mr. BYRD. Upon advice of counsel, I respectfully exercise my Fifth Amendment right and decline to answer.

Chairman SMITH. Okay. Mr. Byrd your testimony is essential to this hearing and to the Committee's Article I oversight and information-gathering functions with regard to contracting misconduct and exertion of improper influence at the National Weather Service. The Committee is entitled to probe the basis for your Fifth Amendment privilege assertion, especially as the Fifth Amendment does not provide blanket immunity from all questions by the Committee.

The Committee specifically directs you to answer the question, notwithstanding your objection. Did you approve—

Mr. PERLMUTTER. Point of order, Mr. Chairman—

Chairman SMITH. —\$50,000—

Mr. PERLMUTTER. Point of order.

Chairman SMITH. The gentleman is not recognized at this point.

Did you approve \$50,000 worth of housing benefits received by Mr. Jiron paid by the National Weather Service?

The gentleman is now recognized for his point of order.

Mr. PERLMUTTER. Point of order, Mr. Chairman. The gentleman has taken the Fifth Amendment with respect to every question that the Chair has submitted to him.

Chairman SMITH. And—

Mr. PERLMUTTER. Point of order. That he is entitled at this point to his counsel, and I guess I am to say that this is now harassment given the fact that he has said he's going to take the Fifth Amendment and that he should be—

Chairman SMITH. The—

Mr. PERLMUTTER. —allowed to leave pursuant to the rules and the Constitution—

Chairman SMITH. The response—

Mr. PERLMUTTER. —of the United States.

Chairman SMITH. My response to the gentleman's point of order is that what we are doing is under the advisement by the House General Counsel. And once again, the Fifth Amendment does not provide blanket immunity to all questions and many of the Committee's questions fall outside of subjects over which you may legitimately claim a privilege.

Mr. PERLMUTTER. Point of order.

Chairman SMITH. And the gentleman will state another point of order.

Mr. PERLMUTTER. Rule 9, Clause 2 of the Rules of the House of Representative and Jefferson's Manual 341, 342, 343 allow a witness to not answer and does not have to respond to questions—

Chairman SMITH. Yes.

Mr. PERLMUTTER. —pursuant to the Constitution—

Chairman SMITH. And that—

Mr. PERLMUTTER. —and the ethical rules that attorneys are bound by have to respect those particular rights of a witness—

Chairman SMITH. Right.

Mr. PERLMUTTER. —and to continue this line of questioning I would say to the Chairman is degrading and embarrassing and not calculated to lead to admissible evidence. And therefore, this witness should be allowed to leave at this point.

Chairman SMITH. To respond to the gentleman's point of view, the witness can answer my question any way he wants to. He can refuse to answer it; he can plead the Fifth Amendment. But in any case we are again proceeding in accordance with the recommendation and the advice of the House General Counsel.

And if it makes the gentleman feel any better, this is probably the end of my questioning, but again, there is a reason for establishing this for the record.

And once again, and finally, I want to ask the witness, did you approve \$50,000 worth of housing benefits received by Mr. Jiron paid for by the National Weather Service?

Mr. BYRD. Upon advice of counsel, Mr. Chairman, I respectfully exercise my Fifth Amendment right and decline to answer.

Chairman SMITH. Okay. Mr. Byrd, please be advised that you have a choice here between complying with the Committee's directive in answering the question or refusing to do so, which will place you at risk of a contempt citation, potentially a prosecution for contempt, and criminal liability. Do you understand this?

Mr. BYRD. Upon advice of counsel, I respectfully exercise my Fifth Amendment right and decline to answer.

Chairman SMITH. The Fifth Amendment does not provide blanket immunity from all Committee questions. Indeed, many of the Committee's questions fall outside of subjects over which you may legitimately claim privilege.

Additionally, by refusing to answer the Committee's questions, we cannot assess the legitimacy of your Fifth Amendment assertion. You are directed to answer the question and again are advised that the failure to do so may result in a contempt citation and criminal liability.

Mr. PERLMUTTER. Point of order.

Chairman SMITH. The gentleman will state his point of order.

Mr. PERLMUTTER. Point of order. The witness has rights, does he not?

Chairman SMITH. The gentleman will state a legitimate point of order.

Mr. PERLMUTTER. The point of order is the witness has rights pursuant to the Fifth Amendment, to Section—Article 11, Clause 2, sections 341, 342, 343 of Jefferson's Manual, does he not?

Chairman SMITH. Of course the gentleman and the witness has rights.

Mr. PERLMUTTER. Okay. So the gentleman has asserted his rights and the Chair's continued interrogation is probably beyond the pale of Opinion 31 and the Rules of Professional Conduct, as well as the rules of the House of Representatives. And at this point I would ask the Chair, can the witness leave?

Chairman SMITH. The gentleman has not stated a legitimate point of order but I'm still going to respond by saying I have one more question for the witness and frankly it is my responsibility to advise the witness of the consequences of his refusal to answer the questions. That is a legal responsibility on my part according to the General Counsel of the House.

I have one final question for the witness. Knowing what I've just said, will you answer the Committee's question as directed or do you refuse to answer the Committee's question?

Mr. BYRD. Upon advice of counsel, Mr. Chairman, I respectfully exercise my Fifth Amendment right and decline to answer.

Chairman SMITH. Okay. Mr. Byrd, you will be excused momentarily but I want to next address some very similar questions to Mr. Jiron and then I would expect you both to be excused.

Mr. Jiron, you have not provided the Committee with a written statement. Do you wish to make a statement at this time?

Mr. JIRON. Yes, Mr. Chairman. On the advice of counsel, I respectfully decline to answer on the basis of the Fifth Amendment, which, according to United States Supreme Court, protects everyone, even innocent people, from the need to answer questions if these answers might be used against them in a criminal prosecution.

Chairman SMITH. I understand, and you've just heard me ask some questions of Mr. Byrd. I'm going to ask you very similar questions. They are on different subjects and it's because the Fifth Amendment is not blanket immunity.

Mr. Jiron, prior to your retirement from the National Weather Service, did you hold the position of Deputy Chief Financial Officer at the end of your 38-year duration as a public employee?

Mr. JIRON. As I said before, on the advice of counsel I'm invoking my constitutional right not to answer.

Chairman SMITH. All right. Let the record reflect that Mr. Jiron has asserted his Fifth Amendment right against self-incrimination.

Mr. Jiron, please let me be very clear. Are you declining to answer the Committee's question solely on the ground that you believe the answer will incriminate you?

Mr. PERLMUTTER. Point of order.

Chairman SMITH. The gentleman will state the point of order.

Mr. PERLMUTTER. The point of order is—

Chairman SMITH. But he's likely to get the same answer I gave him a while ago, but he can still state a point of order.

Mr. PERLMUTTER. Point of order. The witness, upon having already asserted his Fifth Amendment rights, does not have to proceed in this fashion to answer any other questions and that—

Chairman SMITH. That's a legitimate point of order and I will answer it as I did a while ago, and that is taking the Fifth Amendment does not provide blanket immunity from all Committee questions. And that's why I will continue to ask about certain subjects and he is willing and able and welcome to plead the Fifth Amendment if he so desires.

Again, Mr. Jiron, are you declining to answer the Committee's question solely on the ground that you believe the answer will incriminate you?

Mr. JIRON. On advice of counsel, I'm invoking my constitutional right not to answer.

Chairman SMITH. My next question is did you return to the National Weather Service after your retirement as a consultant?

Mr. JIRON. On advice of counsel, I'm invoking my constitutional right not to answer.

Chairman SMITH. Did you draft your postretirement consulting contract while an employee of the National Weather Service?

Mr. JIRON. On advice of counsel, I'm invoking my constitutional right not to answer.

Chairman SMITH. Your attorney said that there are material inaccuracies in the Inspector General's report. Do you concur with that?

Mr. PERLMUTTER. Point of order.

Chairman SMITH. The gentleman will state his point of order.

Mr. PERLMUTTER. Point of order as to what the attorney said, the examination should be of the attorney, not of Mr. Jiron.

Chairman SMITH. I am simply saying what his attorney said. He can disagree or agree and answer the question any way he wants to.

And once again, your attorney said that there are material inaccuracies in the Inspector General's report. Do you concur with that?

Mr. JIRON. On the advice of counsel, I'm invoking my constitutional right not to answer.

Chairman SMITH. Mr. Jiron, is it your intention to decline to answer all questions put to you today by the Committee on the basis of the Fifth Amendment right against self-incrimination.

Mr. JIRON. On advice of counsel, I'm invoking my constitutional right not to answer.

Chairman SMITH. Mr. Jiron, your testimony is essential to this hearing and to the Committee's Article I oversight and information-gathering functions with regard to contracting misconduct and exertion of improper influence at the National Weather Service. The Committee is entitled to probe the basis for your Fifth Amendment privilege assertion, especially as the Fifth Amendment does not provide blanket immunity from all questions by the Committee.

The Committee specifically directs you to answer the question, notwithstanding your objection. Did you draft your postretirement consulting contract while an employee of the National Weather Service?

Mr. JIRON. On advice of counsel, I'm invoking my constitutional right not to answer.

Chairman SMITH. Mr. Jiron, please be advised that you have a choice here between complying with the Committee's directive in answering the question or refusing to do so, which will place you at risk of a contempt citation, potentially a prosecution for contempt, and criminal liability. Do you understand that?

Mr. JIRON. On advice of counsel, I'm invoking my constitutional right not to answer.

Chairman SMITH. Mr. Jiron, the Fifth Amendment does not provide blanket immunity from all Committee questions. Indeed, many of the Committee's questions fall outside of subjects over which you may legitimately claim a privilege.

Mr. PERLMUTTER. Point of—

Chairman SMITH. Additionally, by refusing to answer the Committee's questions, we cannot assess the legitimacy of your Fifth Amendment assertion. You're directed to answer the question and again are you advised—and again are advised that the failure to do so may result in a contempt citation and criminal liability. Knowing this, will you answer the Committee's question as directed or do you refuse to answer the Committee's question?

Mr. JIRON. On advice of counsel, I'm invoking my constitutional right not to answer.

Chairman SMITH. I am disappointed that two of our witnesses refuse to answer questions or provide any information to help the Committee perform its oversight function.

Mr. Jiron and Mr. Byrd, you are dismissed subject to recall. And we will now take a two minute recess in order for you all to leave the room.

[Recess.]

Chairman SMITH. The Committee's hearing will resume and I'll recognize myself for five minutes to ask questions.

Mr. Greenblatt, first of all, again I appreciate not only your testimony today but your investigation as well. You are doing a real public service and you are also helping us do our job as well.

My first question is this: From what I read, it may well be common practice at NOAA and at the National Weather Service for employees to write their own contracts as a consultant, leave the employ of the federal government, and then almost immediately begin work as a consultant, oftentimes doing the same job for more money. Do you think this is common practice, and if so, how are we going to determine whether it is common practice?

Mr. GREENBLATT. I would say that the common practice that we found, what the witnesses told us, related to folks leaving the Weather Service and then coming back as contractors. That—whether or not they wrote their own contracts or had involvement in the procurement of their own future services—

Chairman SMITH. Right.

Mr. GREENBLATT. —we did not get testimony on the extent of that. We did get a fair amount of testimony from folks saying that the retirement and then later contracting positions, that did happen.

Chairman SMITH. Right. And are you going to continue your investigation to find out whether it was commonplace for someone to write their own contract and then retire and then become a consultant?

Mr. GREENBLATT. Well, the Office of Inspector General has initiated an audit to look at the scope of the problem, and over the course of—and when I talk about the—what I'm talking about is the revolving door practice—

Chairman SMITH. Right.

Mr. GREENBLATT. —how often that happened over the last few years. Once we get our arms around the problem—

Chairman SMITH. Okay.

Mr. GREENBLATT. —then I think we'll begin to dissect and move forward—

Chairman SMITH. Just give me a rough idea as to how long you think it will take you to complete the continuing investigation?

Mr. GREENBLATT. I believe the anticipated delivery date on that particular audit is December 2015.

Chairman SMITH. Okay. So, what, six months from now roughly we'll be able to get another report on whether that practice is widespread or not?

Mr. GREENBLATT. That's my understanding, yes.

Chairman SMITH. Okay. Thank you. That's very helpful.

It's my understanding, too, that penalties associated with the types of violations that have been alleged can be up to five years in prison and up to \$50,000 for each violation. Is that correct?

Mr. GREENBLATT. That's under section 208, 18 USC 208.

Chairman SMITH. That's correct.

Mr. GREENBLATT. Yes, that has that and that's for willful engagement—

Chairman SMITH. Right.

Mr. GREENBLATT. —in those—

Chairman SMITH. The point I'm trying to make here is that these are very, very serious infractions. They may be criminal in nature and that's why you see penalties up to five years in prison. These are not light, minor types of ethical or criminal violations.

Have Mr. Jiron or Mr. Byrd faced any kind of sanctions as a result of the allegations?

Mr. GREENBLATT. Well, once the Office of Inspector General uncovered some of the activities particularly related to Mr. Jiron's efforts to secure a position for his immediate family member, we briefed NOAA senior leadership and they took action to terminate the work order on that particular contract.

Chairman SMITH. Thank you for that answer. Also, it's my understanding that you recommended that the Department of Justice investigate themselves and they declined to do so. Why did they decline to investigate and not quite frankly follow up on your own recommendations?

Mr. GREENBLATT. Well, we referred the matter pursuant to the Attorney General guidelines to the——

Chairman SMITH. Um-hum.

Mr. GREENBLATT. —Department of Justice for consideration for their own efforts. They elected to decline to prosecute. As far as the specific reasons why, I think that would be better—they would be better positioned——

Chairman SMITH. Okay.

Mr. GREENBLATT. —to provide the specific reasons as to why they declined.

Chairman SMITH. Okay. Their decline to prosecute was contrary to your recommendation that they investigate, is that correct?

Mr. GREENBLATT. Well, we're obligated to refer over cases in which we believe there's a reasonable basis to conclude that there was——

Chairman SMITH. Right.

Mr. GREENBLATT. —a criminal violation.

Chairman SMITH. Right. Who was the individual who was the decision-maker who, in your opinion, was the one who decided not to prosecute or not to continue the investigation?

Mr. GREENBLATT. Well, we referred the matter to the Department of Justice, the U.S. Attorney's office in Maryland because that is where——

Chairman SMITH. Right.

Mr. GREENBLATT. —the——

Chairman SMITH. Right.

Mr. GREENBLATT. —National Oceanic and Atmospheric Administration is located.

Chairman SMITH. Right. Did you talk to any individual in the Department of Justice and give verbal recommendation?

Mr. GREENBLATT. I did.

Chairman SMITH. And who did you talk to?

Mr. GREENBLATT. The individual there was an individual named James Crowley.

Chairman SMITH. Okay.

Mr. GREENBLATT. He's the Chief in the southern division of the U.S. Attorney's office in Maryland.

Chairman SMITH. So presumably he would have been the one or one of the individuals making the decision not to prosecute, is that right?

Mr. GREENBLATT. I don't know exactly again who made, you know, any sort of final decision but that was the individual that I spoke with.

Chairman SMITH. Is he the individual who told you that DOJ was not going to prosecute?

Mr. GREENBLATT. Yes.

Chairman SMITH. Okay. Thank you, Mr. Greenblatt. That concludes my questions.

And the gentlewoman from Texas is recognized for hers.

Ms. JOHNSON OF TEXAS. Thank you, Mr. Chairman.

I'd like to personally thank all of the whistleblowers from the Commerce IG's office who cooperated with our investigation. They risked their careers by bringing information of misconduct by the leadership of that office to this Committee. I believe stepping forward to inform us of these issues took real courage and strong ethical principles.

While I have faith in the new leadership in Commerce's IG office to move in a much more positive direction, I also believe that this Committee has an obligation to those whistleblowers who risked their careers informing us of Mr. Zinser's misdeeds and that we continue to follow through.

Mr. Greenblatt, your office has had a fairly terrible reputation regarding whistleblowers because of the conduct by the former IG and his closest aides, and I hope that the acting IG Mr. Smith takes stronger steps to restore the reputation of this office as a safe haven for whistleblowers.

Tell me what you see that's happened to improve the situation and would you comment on the progress?

Mr. GREENBLATT. Well, I can speak to my experience. I have been with the IG for a little bit more than a year now and I believe my staff, we have a very healthy, productive environment. I think folks are happy; folks are given the opportunities to stretch their legs. We're doing sophisticated work, challenging work. I think people are fulfilled. That's something I actually take great pride in. I hope that's a reflection of the office as a whole. But in my experience and my perspective we have a good thing going and I hope that it continues in the future.

Ms. JOHNSON OF TEXAS. Thank you. I'm not dismissing wrongdoing by anyone, but in reviewing this case it seems more as if we have an institutional failure rather than individual wrongdoing. If any of the half-dozen officials had known better, they could have stopped Mr. Jiron for making the mistakes that he took in regards to this postemployment agreement. Do you agree that this is more of an institutional failure rather than individual misconduct?

Mr. GREENBLATT. What I would say is that it is certainly more than just an individual certainly. There were a number of people who were responsible for stopping any kind of problems of this sort and they just didn't catch it. Gatekeepers didn't act as gatekeepers, supervisors didn't supervise properly. And so that's the problem.

Now institutionally, I don't know about the entire institution; I don't want to go too broad in the answer, but yes, it was certainly

more than one individual. There's no doubt about that and I think our report is very clear about that.

Ms. JOHNSON OF TEXAS. Thank you. Last week, the Government Accountability Office, the GAO, released a report that I requested along with my colleagues on the Energy and Commerce Committee. It examined the effectiveness of the Commerce IG's office. The most disturbing finding of that report was the fact that the Commerce IG's office conducted no performance audits of the—of eight of the agency's 13 bureaus and offices from 2011 to 2013 and that the OIG had not conducted a Federal Information Security Management Act audit for seven of the agency's 13 bureaus in the same period of time. I hope that the new leadership in your office will be much more effective, efficient, and aggressive in the oversight work. Would you like to respond to that?

Mr. GREENBLATT. Well, I appreciate your concern. I know that we have concurred with the GAO report and are working actively to address the recommendations. I should say I'm on the investigations' side of the House so I'm not well-positioned to talk about the audit side of the House but I'm sure we can get back to you with further information if you would like on that specific angle.

Ms. JOHNSON OF TEXAS. Thank you very much. I would like to say that I have faith that the new leadership in the Commerce's IG office takes your oversight responsibilities seriously and will strive to correct the mismanagement issues that have crippled the effectiveness of this office in the past and I thank you. I yield back.

Chairman SMITH. Thank you, Ms. Johnson.

The gentleman from California, Mr. Rohrabacher, is recognized for his questions.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman. And I want to compliment you for trying to do something that is important, and whenever you do things that are important, you're going to get some people mad at you and/or jumping in. And let me just say that I think that you have handled yourself very well in this hearing and I am disappointed that people felt compelled to jump on your case considering how important what we're examining is.

We are talking about today the actual, well, I wouldn't call it embezzlement but at the very least a waste of hundreds of thousands of dollars—of taxpayer dollars, isn't that correct?

Mr. GREENBLATT. The amount that the senior official was paid pursuant to the contract and his housing was over \$471,000.

Mr. ROHRABACHER. Right. \$471,000. However, if he would have stayed in government service, he would have been paid a certain amount of money than less than that. I mean so the actual loss to the government isn't the 471,000 but it's hundreds of thousands of dollars anyway.

Mr. GREENBLATT. Well, and if you also add on to the fact that he was getting full retirement at that point as well on top of the wages—

Mr. ROHRABACHER. Correct.

Mr. GREENBLATT. —from the—under the contract, yes, it was much more than \$471,000 in that regard.

Mr. ROHRABACHER. Okay. So if we allow things like this to go on—well, let me ask this. Is this a loophole in the law? Do you see this as a loophole that someone was able to do something legally

that provided them with hundreds of thousands of dollars of personal benefit even though the government was not receiving any added service or benefit from the expenditure of that money? Is that a loophole or is this a violation of law?

Mr. GREENBLATT. Well, there are certainly colorable reasons to have someone come back after they retire. Sometimes they do have specialized knowledge, institutional knowledge that may warrant bringing them back. So I don't want to make any blanket statements that, you know, bringing someone back is inappropriate. That in and of itself is not a problem. It may set the stage for problems as in this case where the individual was involved in drafting his own statement of work for his future consulting services. That's where the problem lies on that particular topic.

Mr. ROHRABACHER. I actually would disagree with the last points that you made a. I think that we have a serious problem in the federal government, throughout the government—it's not just this one case but—where we have people who are making decisions that would benefit themselves based on senior people who will be retiring soon are making decisions, whether the Department of Defense or elsewhere, that are—have dramatically bad impact on the taxpayers getting their money's worth. And sometimes it's disastrous for generals, for example, who makes decisions on certain types of weapons systems that we will use and then going to work as soon as they retire for the company that's producing that weapon system.

So we—I would hope that, number one, that what we're doing today, and as Chairman Smith is trying to do is sending the message that we—if we have an institutional mindset that sort of doesn't confront that problem, we're going to confront it now. If we are going to bring down the budget deficit, I would say the most laudatory way of bringing down the deficit is getting rid of things like this.

And so if there is a mindset among government that they—that this is an okay thing to do even though it's costing the taxpayers an enormous amount more money, well, let's go on the record now, all of us, to say that is not acceptable. And the best way we can do that is to take cases like this and unfortunately individuals will have to be confronted with this, and once they're confronted, the message will go out to the rest of government employees. This could save—not could—this will save the American taxpayer perhaps billions of dollars if we do this and eliminate this mindset that I see as pervasive throughout the federal government.

So I thank you, Mr. Chairman, and thank you for your testimony today.

Chairman SMITH. Thank you, Mr. Rohrabacher.

The gentleman from New York, Mr. Tonko, is recognized for his questions.

Mr. TONKO. Thank you, Mr. Chair.

And Mr. Greenblatt, welcome. Mr. Greenblatt, our Committee first started investigating the conduct of the former Commerce IG Todd Zinser in September of 2012. This was soon after he testified before a Subcommittee on Investigation and Oversight hearing we held on the Antideficiency Act, or the ADA, violation at the National Weather Service. I at that time was the Ranking Member of

the Oversight Subcommittee. At that hearing almost three years ago Mr. Zinser referenced the case you are testifying about. Mr. Zinser said “while our investigation is ongoing, we have determined that NOAA provided the contractor housing valued at more than \$52,000 and spent more than \$336,000 in wages for this consultant’s services over a period of 1–1/2 years. We promptly notified NOAA of our preliminary findings concerning the consultant’s efforts to secure a job for the family member. NOAA took swift action to terminate the consultant’s employment with the agency,” said Mr. Zinser.

So Mr. Zinser mentioned the case you finally released in June of 2015; all of the elements were there. Staff tell me that all the work was largely done. And I realize you just came to the Commerce IG’s office last year but can you explain to us why a case the IG’s office believed was potentially criminal in nature and was largely finished by August of 2012 sat unfinished for some 3 years?

Mr. GREENBLATT. I don’t have a good answer for you. The delay is not good, and when we make mistakes, I’ll own up to it. When I came on in May of 2014, we had an extensive backlog of cases. This was one of those cases. I was given a directive to clear out that backlog and we put considerable effort into doing just that. We’ve released a number of reports of significant value and—both internally and some that were issued publicly. And this was one of those reports.

Part of the reason this was structured as it was in the priority list is that the behavior was not ongoing. It had stopped. The contract had stopped and so I think that was a factor in it. But at the end of the day it should have come out sooner and it was out effectively one year after I arrived at the office.

Mr. TONKO. Well, the delay pattern, is this something that was a common pattern?

Mr. GREENBLATT. No, I don’t think it was intentional in any way. I think—

Mr. TONKO. Was it a common pattern?

Mr. GREENBLATT. I think we—as I said, we had a backlog of cases when I arrived. A number of them were older cases. We had major staffing issues and as part of our growth and as part of our revitalization in the Office of Investigations, we have knocked down that backlog. When I came on, there were cases from 2011 on the backlog and now we’re only—we have cases that are only as old as 2014. So I think we’ve done a good job on that. I don’t think we’re all the way there yet but we have made fantastic progress in my view.

Mr. TONKO. Okay. Well, frankly, we came away from our examination of the Antideficiency Act work with the impression that the office was badly managed. Hotline tips were lost or misassigned. We were aware of work that was started and then abruptly abandoned. GAO did a review of the office that found real problems in policies, in procedures, and in the scope of work undertaken by the IG. Ms. Johnson deserves credit for continuing to push for change in the office leadership. I want to reiterate her comments that we want to see the office moving out and doing a good, solid job going forward. Please take that message back from this hearing and good luck to you as you work through your backlog.

And with that, Mr. Chair, I yield back.

Chairman SMITH. Thank you, Mr. Tonko.

The gentleman from Oklahoma, Mr. Bridenstine, is recognized for his questions.

Mr. BRIDENSTINE. Thank you, Mr. Chairman.

I just wanted to kind of drill down a little bit on the gentleman's pay when he was a contractor. Your report says it was \$471,875, is that correct?

Mr. GREENBLATT. That was not his—the wages that he took home. That includes housing—

Mr. BRIDENSTINE. Okay.

Mr. GREENBLATT. —which was not paid to him.

Mr. BRIDENSTINE. Okay. So if you take what he was actually paid and if you were to compare it to what he got paid as a government official but then you also added what he got paid as a government official if you added that to his health care benefits, his life insurance, his, you know, FICA, you know, payments, all those kind of things, how does it compare?

Mr. GREENBLATT. Well, he started out—this is according to his own information to us, what he told us, that he started out making effectively \$72 an hour and he added in—he monetized all of the benefits that you mentioned, including retirement, payroll taxes, annual leave, holiday time.

Mr. BRIDENSTINE. So was it equivalent?

Mr. GREENBLATT. Then it became 102—\$105 an hour, a difference of about \$33 an hour.

Mr. BRIDENSTINE. Was his pay as a contractor equivalent, greater than, or less than his pay as a government employee?

Mr. GREENBLATT. \$33 higher.

Mr. BRIDENSTINE. Per hour?

Mr. GREENBLATT. Correct.

Mr. BRIDENSTINE. And that includes—

Mr. GREENBLATT. I'm sorry. I'm sorry. Yes, per hour.

Mr. BRIDENSTINE. And that includes the housing that he had, right?

Mr. GREENBLATT. No, that does not.

Mr. BRIDENSTINE. Okay. So on top of that there was housing?

Mr. GREENBLATT. Correct, which did not go to him personally.

Mr. BRIDENSTINE. Okay. So tell me about the housing. What were the housing arrangements like?

Mr. GREENBLATT. So the housing arrangement went through the Fisheries Service the National Marine Fisheries Service. They had a contract called BOQ contract that went with a number of residential buildings in the neighborhood near their office where senior executives who were on temporary detail to their headquarters would stay.

Mr. BRIDENSTINE. So he did not own this housing?

Mr. GREENBLATT. Correct.

Mr. BRIDENSTINE. And would the housing have been empty had he not been in there?

Mr. GREENBLATT. I assume so.

Mr. BRIDENSTINE. So it really didn't cost the government anything for him to use—it was probably a good—I'm just asking out

of curiosity. Is that a good use of the government's resources to put him in open housing?

Mr. GREENBLATT. I think they would not have had to pay for that particular housing. I don't know but—

Mr. BRIDENSTINE. Okay.

Mr. GREENBLATT. I don't know whether they would have had to pay for that particular unit if he had not used it.

Mr. BRIDENSTINE. That would be very useful for us to know.

Out of curiosity the Deputy CFO's supervisor, the CFO, was aware of these arrangements, correct?

Mr. GREENBLATT. Well, we believe so. We heard witness testimony and there is some evidence to suggest that he did approve it. He told us—

Mr. BRIDENSTINE. You don't have any paperwork that he approved it?

Mr. GREENBLATT. I am not aware of specific—a specific document that he signed approving it. I do not know of that.

Mr. BRIDENSTINE. But his testimony indicated that he approved it?

Mr. GREENBLATT. His testimony said that he did not approve it and that he would not have if—

Mr. BRIDENSTINE. So he didn't—

Mr. GREENBLATT. —he'd known about it.

Mr. BRIDENSTINE. He didn't approve it but he must have known it was going on if this guy shows up the day after he retires as a consultant.

Mr. GREENBLATT. He knew about the consulting arrangement. He says he did not know about the housing part.

Mr. BRIDENSTINE. Okay.

Mr. GREENBLATT. But other witnesses told us that he did know, including the senior official himself.

Mr. BRIDENSTINE. Well, the senior official—not—the senior official—the deputy CFO was working with the CFO to make sure that he could come back as an employee immediately following his retirement—as a contractor immediately following his retirement, is that correct?

Mr. GREENBLATT. Correct. It was at the request of his supervisor, yes.

Mr. BRIDENSTINE. Now, what about the supervisor's supervisor? If we go up to say Chief of Resources and Operations Management at NOAA, Mary Wiley, was she aware of it?

Mr. GREENBLATT. I do not know. We—I do not think it went up higher than—we don't have evidence it went up higher than the supervisor.

Mr. BRIDENSTINE. Did you ask that question?

Mr. GREENBLATT. I—I'll have to get back to you on that. I believe we did. I will get back to you on that.

Mr. BRIDENSTINE. Okay. So that—this is very relevant to us because, you know, the gentleman clearly, according to your case here, he wrote a contract that he then benefited from. I think we're all in agreement that that's problematic. But if the people above his chain of command, how high up did they all know about this, then we're talking about systemic problems and, you know, that's a whole other level of issue that we have to deal with as a govern-

ment, not just within NOAA but as a government. This is an issue probably governmentwide.

I'm about out of time. Mr. Chairman, I'll yield back.

Chairman SMITH. Thank you, Mr. Bridenstine.

The gentlewoman from Oregon, Ms. Bonamici, is recognized for her questions.

Ms. BONAMICI. Thank you very much, Mr. Chairman.

I want to start by making a statement that I certainly don't condone misconduct or violation of rules or laws or misuse of government resources, and I doubt that anyone on this Committee would disagree with that. People should be held accountable, no question, but I have to say I'm disappointed in the way this hearing started this morning. The two attorneys or the—excuse me, the attorneys for the two gentlemen who were here earlier, Mr. Byrd and Mr. Jiron, had notified the Committee that they would be asserting their constitutional rights under the Fifth Amendment and that compelling their attendance would be to simply embarrass them.

This all could have been put on record with this statement and the point made but instead unfortunately these people were subpoenaed here to make this hearing into unfortunately what turned into political theater and I—that's unnecessary and unfortunate. Again, the point could have been made without what happened this morning.

Mr. Greenblatt, I'm glad you're here this morning.

Chairman SMITH. Would the gentlewoman yield just for a second?

Ms. BONAMICI. Yes, Mr. Chairman.

Chairman SMITH. In regard to her comments that she just finished, I hope she will check with the House General Counsel, and if she does, she will find out that we proceeded exactly as was recommended, and if she disagrees with the way we started our hearing today, then she disagrees with the House General Counsel and I hope she'll take up her comments with him.

Ms. BONAMICI. Thank you, Mr. Chairman.

Mr. Greenblatt, the IG's findings on this matter were referred to the Department of Justice; I believe you said the U.S. Attorney in Maryland. How was that referral made?

Mr. GREENBLATT. By—

Ms. BONAMICI. Is there a form letter or—

Mr. GREENBLATT. By phone.

Ms. BONAMICI. By phone. So is there a record of that somewhere?

Mr. GREENBLATT. I documented it in an email to my—the rest of my team and my supervisor at the time.

Ms. BONAMICI. Okay. And how was—what was the response of the U.S. Attorney in Maryland?

Mr. GREENBLATT. They declined to prosecute the matter—

Ms. BONAMICI. And—

Mr. GREENBLATT. —to pursue it.

Ms. BONAMICI. And did they send that in writing?

Mr. GREENBLATT. No.

Ms. BONAMICI. Is that typical that something like this is done over the phone?

Mr. GREENBLATT. Yes.

Ms. BONAMICI. And did they indicate a reason why they were declining to pursue this?

Mr. GREENBLATT. I think there were a number of reasons. I do not want to speak for them. I think if you want their answer, I would suggest you go to them. But what I understand is that part of it is the delay that we had talked about earlier on when the events occurred and when the referral was made, but also the involvement of the supervisor. I believe in their view it affected the—whether they would pursue it or not. That’s—again, that’s me talking.

Ms. BONAMICI. Okay. And so was that—what was said to you in the email or the response—there was no email coming back from them did you say?

Mr. GREENBLATT. No, it was—

Ms. BONAMICI. Just a phone conversation?

Mr. GREENBLATT. —a phone call. Yes. That’s—

Ms. BONAMICI. Is that what they told you in the phone conversation or is that what you think—

Mr. GREENBLATT. I remember discussing those things and that was reflected in my email as well.

Ms. BONAMICI. Thank you. Another—there may be some confusion about whether Mr. Jiron acted by himself to write his statement of work and receive temporary housing as part of his post-retirement contract or whether he was assisted in these acts, which very well may be wholly inappropriate, by others at NWS. My understanding is that another NWS official told him to write his own statement of work and another helped edit it and there were multiple meetings with his supervisor Mr. Byrd and others while working out the details while he was a government employee. Is that your understanding?

Mr. GREENBLATT. Yes. And we reflected that in our report.

Ms. BONAMICI. And is there any evidence that Mr. Jiron did not do the work he was paid to do?

Mr. GREENBLATT. No.

Ms. BONAMICI. So he actually did? He worked as a consultant?

Mr. GREENBLATT. We believe he was there when he said he was there. We have no reason to believe he wasn’t doing things while he was there.

Ms. BONAMICI. And is it your understanding that Mr. Jiron told multiple NWS officials that he would only come back as a consultant if his temporary housing costs were paid because by the time he retired, he had moved to Williamsburg, Virginia, with his then-ill wife?

Mr. GREENBLATT. Yes.

Ms. BONAMICI. Okay. So I also understand that Mr. Jiron’s initial short-term contracting agreement was revised at least six separate times over a 19-month period. So in correspondence with the IG’s office, Mr. Jiron apparently has stated that NWS could have modified or not renewed his contract at any time but—any of those times but chose not to. Is that your understanding as well?

Mr. GREENBLATT. It was modified eight times. It was initially I think a 3-month contract and it was extended overall those modifications to 21 months until he was terminated.

Ms. BONAMICI. And is there any evidence to suggest that either Mr. Jiron or Mr. Byrd were covering up or trying to cover up the fact that Mr. Jiron was working as a contractor?

Mr. GREENBLATT. No.

Ms. BONAMICI. And were—was there any indication that they were trying to cover up the fact that Mr. Jiron's housing allowance was being paid by NWS while he was a contractor?

Mr. GREENBLATT. Well, with regard to his supervisor, his supervisor at least told us that he viewed that to be inappropriate and would not have approved it, so he would have had concerns about it. Others also told us that they had concerns about it. For example, the Fisheries Service that ran the housing contract said that they would not have approved it. They thought he was a government employee at the time and so because that housing was reserved for government employees, they thought he was eligible for it in that regard and they would not have approved it. This is the one individual who was responsible for that contract would not have approved that had she known that he was a contractor, not an employee.

Ms. BONAMICI. But did you see any evidence that Mr. Jiron or Mr. Byrd were trying to cover up the fact that he was a contractor?

Mr. GREENBLATT. No.

Ms. BONAMICI. Thank you. I'm out of time. I yield back. Thank you, Mr. Chairman.

Chairman SMITH. I thank the gentlewoman for her questions and we will now go to the gentleman from Ohio, Mr. Johnson, for his.

Mr. JOHNSON OF OHIO. Thank you, Mr. Chairman. I appreciate the opportunity to ask questions. And, Mr. Greenblatt, thanks for being with us today.

You know, Mr. Chairman, I've heard questions and comments related to is this an institutional failure versus individual wrongdoing. You know, I—yes, I serve in Congress now but I served in the U.S. Department of Defense and the Air Force for 26-1/2 years and one of the things that—the core values of the United States Air Force was integrity first. That means you tell the truth. That means you don't cheat. That means you don't lie. And that means you don't take things that don't belong to you.

You know, there's a basic sense of right and wrong that I think the American people have a reasonable expectation that people within our federal government are going to adhere to. So I'm very concerned about what we're talking about today.

Can I have the first slide, please?

[Slide.]

Mr. JOHNSON OF OHIO. Mr. Greenblatt, this slide is an email from Donald Jiron to Robert Byrd. The subject is the SOW and proposed hourly rate dated March 26, 2010. In this email Mr. Jiron is informing his superior Mr. Byrd that he had edited the initial contract for his employment as a consultant. In the email Mr. Jiron suggested that he proposed an hourly rate of pay for himself. Were you surprised to see this email?

Mr. GREENBLATT. Well, this is the problem that we found with the contracting process certainly was someone engaged in writing their own future contract that would involve their own wages.

Yeah, I mean that's federal service 101. You don't get involved in matters that will involve cash going to your bank account.

Mr. JOHNSON OF OHIO. That affect you financially, absolutely. Should Mr. Jiron in your opinion have known that it was inappropriate to draft a contract for his unemployment, establish his own hourly rate? Should he have known this?

Mr. GREENBLATT. Well, we believe so. I believe that was the conclusion of the report that that's a basic tenet of federal service. Like I said, you don't take part in matters that affect your own bank account. And he was a longtime federal employee, 38 years. I would be hard-pressed to believe that there was no training, no ethics guidance at any point along the way.

Mr. JOHNSON OF OHIO. Well, do you know of the specific legal or ethical violations that are implicated by this email? Are you prepared to tell us that?

Mr. GREENBLATT. Well, it certainly implicates 18 USC 208, which is the Criminal Conflict of Interest statute—and we discussed that in the report—which says you can't have—you can't personally substantially participate in a matter that has a direct and predictable effect on your financial interests.

Mr. JOHNSON OF OHIO. Okay.

Mr. GREENBLATT. And so this I think meets that standard.

Mr. JOHNSON OF OHIO. All right. According to the email, Mr. Jiron's superior Mr. Byrd wrote—he said, "Don, looks good in general." So based on this email, do you believe that Mr. Byrd facilitated in putting this contract together?

Mr. GREENBLATT. Absolutely. He certainly approved it. He requested that Mr. Jiron take these actions, so—and we say as much in the report.

Mr. JOHNSON OF OHIO. How concerning is it—and you've already answered it a little bit—but how concerning is it to you that this exchange occurred between the CFO and the Deputy CFO of the agency, the two that are responsible for the agency's finances? How concerning is that to you?

Mr. GREENBLATT. Well, I think, as we said, these are folks that should have an awareness of the ethics issues at play. And this at a minimum reflects poor judgment with respect to that.

Mr. JOHNSON OF OHIO. Could I have the next slide, please?

[Slide.]

Mr. JOHNSON OF OHIO. According to Mr. Byrd's transcribed interview with the IG, he had ethical concerns with bringing Mr. Jiron back so quickly as a contractor. So do you have any idea if Mr. Byrd had concerns about this, why he didn't raise those concerns earlier?

Mr. GREENBLATT. Well, according to what the supervisor told us, he said that you clear it, you—he said to his subordinate, the senior official, you know, clear it with the contracting folks and I'll sign off—

Mr. JOHNSON OF OHIO. Um-hum.

Mr. GREENBLATT. —effectively is what he told us.

Mr. JOHNSON OF OHIO. As the CFO of the agency, does he have an obligation to notify management that he has concerns about a contract that he personally authorized? Are there any rules in the agency that require that?

Mr. GREENBLATT. I don't know the answer to that question. I think what he told us is that he was reliant on his subordinate and what he believed the contracting officer was telling him that it was okay.

Mr. JOHNSON OF OHIO. Okay.

Mr. GREENBLATT. So that was my understanding of what he would say but I don't know the answer to that question.

Mr. JOHNSON OF OHIO. Very concerning. Mr. Chairman, I yield back.

Chairman SMITH. Thank you, Mr. Johnson.

The gentleman from Virginia, Mr. Beyer, is recognized for his questions.

Mr. BEYER. Thank you, Mr. Chairman. And, Mr. Chairman, I respect your leadership and our friendship but I, too, am disappointed by today's hearing. I've learned nothing new and nothing that was not already clear in the Inspector General's report. And I look forward to when our Science, Space, and Technology Committee actually gets back to spending more time on science, space, and technology rather than trying to embarrass NOAA and its many excellent employees over a single instance already handled by the Inspector General.

Mr. Greenblatt, we work very hard to encourage companies to hire our veterans, and since so many of these veterans have substantial experience in technology, weapons, war-planning, logistics, and more, are we inadvertently creating a revolving door, former federal employees acting as federal contractors? Do you have any idea how many retired military officers and enlisted now work for federal contractors doing DOD work?

Mr. GREENBLATT. I have no idea. I would imagine it's a large number.

Mr. BEYER. It's a really large number. This is rhetorical but thank you for trying to answer it.

Mr. Greenblatt, you graduated from Columbia Law and I understand you're not the House General Counsel and your—focus on the House General Counsel. Wasn't it a waste of time, taxpayer dollars, 37 minutes of this Committee's time to insist that two former National Weather Service employees who had specifically declared their intent to invoke the Fifth Amendment show up? I was just sort of baffled by what purpose was served by this low theater.

Understanding that the Department of Justice has already declined to pursue any criminal charges against Mr. Jiron, do you believe that this was—they were forced to appear in order to create a contempt of Congress charge against them?

As a lawyer, does it make any sense to pursue a contempt citation for the legitimate exercise of one's constitutional rights?

Mr. GREENBLATT. The last thing I'm going to do is challenge the Chairman of a Committee that I'm testifying before at the time.

Mr. BEYER. Well, I was hoping you'd challenge the House General Counsel, not our distinguished Chairman so—

Mr. GREENBLATT. I don't know that I'm well-positioned to respond but I appreciate your concern.

Mr. BEYER. Okay. Well, I still have a couple of minutes left. The National Weather Service Employees' Organization filed a com-

plaint two years ago about the pervasive illegal use of personal service contracts at the National Weather Service. Apparently, they have more than 1,000 contractors, the cost of which is over \$130 million. Is there pervasive, maybe even illegal use of personal service contracts? And according to the National Weather Service Employee Organization, these personal service contracts are being paid far more on average than the civil service employees, many of whom are doing the exact same work.

Why are there so many personal service contracts being used rather than filling these jobs with actual federal employees? And the cost of the contracts to taxpayers is considerable so do you know of anything that NOAA or Commerce is doing to address this concern?

Mr. GREENBLATT. I don't. I think that would be a question better presented to the agency that in terms of what if any steps they're taking. I—sitting here right now I can't tell you whether they have taken any action.

Mr. BEYER. Okay. Thank you, Mr. Greenblatt.

Mr. Chairman, I yield back.

Chairman SMITH. Thank you, Mr. Beyer.

The gentleman from Arkansas, Mr. Westerman, is up next for his questions.

Mr. WESTERMAN. Thank you, Mr. Chairman.

Mr. Greenblatt, you are familiar with the letter Mr. Jiron's attorney wrote to the Office of Inspector General refuting claims that your office made in its recent report detailing the contract misconduct. In that letter Mr. Jiron's attorney states that Mr. Jiron "followed his boss' instructions. He had no experience with federal contracting and had to rely on the advice provided by officials who are experts."

Mr. Greenblatt, do you believe Mr. Jiron had no contracting experience given that he was the Deputy Chief Financial Officer and worked at the National Weather Service for 38 years?

Mr. GREENBLATT. What I can speak to is what I know from the evidence and the email traffic seemed to show some level of facility with the contracts but this is really not about the contracting issues and knowledge of the far which that letter gets into. It's more about the conflict of interest, the ethics of it. That is the issue here, not the procurement process but rather whether he was involved in a matter that affected his own bank account. And that's the problem here and I think that is not—I think it is reasonable to believe that he should have known that.

Mr. WESTERMAN. So following that on the conflict of interest, do you believe Mr. Jiron should have had the foresight to know the arrangement he was orchestrating was improper and he could have walked away from it at any point?

Mr. GREENBLATT. Right. I think at a minimum he could've just talked to an ethics official. I mean there are ethics folks that are available to talk to and ask. And that's what I would have—that's an easy step that he and every federal employee can do.

Mr. WESTERMAN. All right. And his attorney states that he did not take steps to ensure housing was provided for him in his post-retirement arrangement. Do you agree with that statement?

Mr. GREENBLATT. Oh, I think the evidence is quite clear that he was actively participating in securing housing for him after he returned as a consultant.

Mr. WESTERMAN. And his attorney also claims that Mr. Jiron would have obtained no contracting experience during his tenure at the National Weather Service and thus should not have been aware of applicable federal laws prohibiting his conduct related to his postretirement consulting position. Do you agree with this assertion?

Mr. GREENBLATT. Again, I don't view it as a contracting issue; I view it as an ethics issue. And that's pretty standard federal service ethics rules that you cannot get involved in a matter that involves money going to your own checking account and that's exactly what we have here.

Mr. WESTERMAN. Obviously the contracting issues create ethics issues so he should have known that the contracting issues could create ethics problems?

Mr. GREENBLATT. Well, certainly when he's talking about his own hourly rate and he's negotiating with other federal employees, including his own subordinates, about how he's going to get the housing, which would take away costs from—his own costs, yes, think that's something that it's reasonable for a senior, long-time federal employee to know that.

Mr. WESTERMAN. Thank you, Mr. Chairman. I yield back.

Chairman SMITH. Thank you, Mr. Westerman.

No minority members are here to ask questions so the gentleman, Mr. Loudermilk, is recognized for his questions.

Mr. LOUDERMILK. Thank you, Mr. Chairman. And before I begin my questions I want to thank you for this hearing. And I find myself in a very interesting position because I find myself in a rare instance that I'm agreeing with the minority on something, which was the theatrics at the beginning of this Committee. But I must say you handled yourselves with dignity, with—the theater environment was created by members of the minority by continually interrupting what you had to do according to the House Counsel by creating an atmosphere of theater. The questions to Mr. Greenblatt have gone away from the issue at hand and it's more about previous management of his office.

And in fact one that actually did address this issue that was brought up by Mr. Beyer indicated that this was one incident where in fact the allegations involved multiple incidents over a two-year period. Is that true?

Mr. GREENBLATT. This lasted for 21 months, yes.

Mr. LOUDERMILK. Okay. Were there other incidents that were maybe uncovered in your investigation? I read that there were statements such as this is a normal operating practice.

Mr. GREENBLATT. Yes. We got testimony from a number of different witnesses saying that the so-called revolving door of folks leaving the National Weather Service and then coming back was quite common or happened all the time, things along those lines, yeah.

Mr. LOUDERMILK. Do we know if it's common practice for them to write their own contracts before they leave the employment?

Mr. GREENBLATT. That we do not know so that's what—we're comfortable saying that there's testimony about the revolving door but I don't know about beyond that.

Mr. LOUDERMILK. Okay. Let me ask you a few questions about this case in particular. When Mr. Jiron left as a federal employee and he came back, did he have the same office?

Mr. GREENBLATT. I—we don't know the answer—we got some testimony that suggested he did but we don't know definitively whether he did have the same office or same computer or phone or anything like that.

Mr. LOUDERMILK. Okay.

Mr. GREENBLATT. He did have a NOAA email address.

Mr. LOUDERMILK. Okay. But he kept his same email that he had had before as an employee?

Mr. GREENBLATT. I assume so but I don't know that for—

Mr. LOUDERMILK. Okay. But we don't know if he had the same computer, the same phone. There's some testimony that says he did. What benefit did the taxpayers gain from him retiring and then coming back? Did he essentially do the same job he was doing as a federal employee?

Mr. GREENBLATT. I would say that's a question for the agency to respond, but I can give you what we found from the evidence. A number of witnesses told us that, including the folks who replaced him in that position, that they were doing different things, that there was no overlap in what they were doing. Some folks thought—at least one person, in fact one of his successors told us that they thought he was a personal services contract essentially for his supervisor doing tasks specifically for his supervisor.

The whole purpose of bringing him back, according to the witnesses, was to transfer knowledge. He had this wealth of knowledge reportedly. And so when his retirement they wanted to get that knowledge before he left. We found that there was little of that. According to the witnesses, there was little evidence that there was an actual transfer of knowledge as they had—

Mr. LOUDERMILK. Was he being forced into retirement or did he voluntarily retire?

Mr. GREENBLATT. Voluntary.

Mr. LOUDERMILK. He voluntarily retired and that we have evidence that he participated or wrote the job description. The contract was being written before he left so therefore it would leave one to understand that this was designed. It was premeditated, that this was actually in place. He knew he was going to retire so therefore we're going to write the contract for him to come back as a contractor. Is that true?

Mr. GREENBLATT. Yes. Just to add one fact is that he said he would retire and then his supervisor requested that he come back and then they engage in the process of establishing his arrangement.

Mr. LOUDERMILK. Okay. So—but it was arranged that this was going to happen. So effectively what he did was give himself, in coordination with his supervisor, a pay raise instead of just saying staying on an employment?

Mr. GREENBLATT. Yes, they monetized all of the benefits that would not otherwise be available to a contract.

Mr. LOUDERMILK. So what benefit did the taxpayers have with this arrangement?

Mr. GREENBLATT. That's something I think you'll have to ask the agency about what exactly he did on a day-to-day basis during that time.

Mr. LOUDERMILK. Was he provided housing as an employee when he was actually an employee of a federal government?

Mr. GREENBLATT. Oh, no.

Mr. LOUDERMILK. Is it standard practice for federal employees to be provided housing?

Mr. GREENBLATT. No, sir.

Mr. LOUDERMILK. So this was highly unusual for him to leave and then come back and be provided housing as a contractor. Is that to your knowledge done in any contracts? Or is it common practice?

Mr. GREENBLATT. I am not aware of it and a number of folks that we spoke with said that they found it to be inappropriate. I'm talking about the witnesses found it to be inappropriate. And like I said, the woman who was running that contract from the Fisheries Service said that she would not have approved it had she known he was a contractor.

Mr. LOUDERMILK. Okay. I think we've established some of the things we need to. Final question, should—has Mr. Jiron or anyone faced any disciplinary action as a result of any of this?

Mr. GREENBLATT. Well, when the OIG identified a number of problems, we approached senior NOAA leadership and then they terminated the contract on that—I think the day after we briefed NOAA leadership. So they terminated his contract. But in terms of discipline, I'm not aware of anything.

Mr. LOUDERMILK. Thank you. And I'm out of time. I yield back.

Chairman SMITH. Thank you, Mr. Loudermilk.

The gentleman from Florida, Mr. Posey, is recognized for his questions.

Mr. POSEY. Thank you very much, Mr. Chairman.

Mr. Greenblatt, I have a half-dozen questions so I'd appreciate it if you could answer them as quickly as possible so I can get them all in.

The testimony today here is almost bizarre. It's almost incomprehensible. I know most people back home hopefully would find it hard to believe that things could be as corrupt as they appear to be. But just to set the record straight in my mind, what was the date that Mr. Jiron officially retired from the National Weather Service?

Mr. GREENBLATT. May 2, 2010.

Mr. POSEY. Okay. What date did Mr. Jiron start as a consultant for the National Weather Service?

Mr. GREENBLATT. May 3, 2010.

Mr. POSEY. Under a contract that he essentially drew himself?

Mr. GREENBLATT. Yes, he revised and edited a statement of work that—for his own position, yes.

Mr. POSEY. So while he was with the National Weather Service he made a contract to become a consultant and come back on the date you said?

Mr. GREENBLATT. Correct.

Mr. POSEY. Okay. What was Mr. Jiron's compensation during the last month of his service as Deputy Chief Financial Officer of the National Weather Service?

Mr. GREENBLATT. He was paid—this is rough—you know, \$72 an hour roughly.

Mr. POSEY. Okay. What was Mr. Jiron's compensation for the first month of his role as a consultant under the contract that he drew up himself for the National Weather Service?

Mr. GREENBLATT. \$105 an hour.

Mr. POSEY. Okay. So Mr. Jiron retired from the National Weather Service one day and walked back in the very next day as a consultant making \$3,000 more per month with his housing being paid for, with essentially no change in his day-to-day responsibilities?

Mr. GREENBLATT. I think it's generally a fair assessment, yes. I can go into more detail if you'd like.

Mr. POSEY. Okay. No, that's good. And the taxpayers essentially took a \$457,000 hit for that bad behavior, which you have clearly documented and you've cited the laws that were broken under the conflict-of-interest laws and you took this information to the Department of Justice and the Department of Justice refused to prosecute?

Mr. GREENBLATT. It declined to pursue the matter, yes.

Mr. POSEY. Did they have any reason why they declined to prosecute?

Mr. GREENBLATT. You'll have to ask them about this—about the exact final decision as to why but from my understanding I think the involvement of the supervisor was a factor in their decision and the fact that it—the issue had happened a couple of years earlier.

Mr. POSEY. And how many employees at the National Weather Service what have their fingerprints on this? If I went back through all the gatekeepers they didn't do their job, all the checks and balances that are supposed to be in place to stop this kind of corruption, how many people had fingerprints on this if I was to go back and have everyone looked at?

Mr. GREENBLATT. Sitting here right now I would say the number is probably in the five or six range.

Mr. POSEY. Okay.

Mr. GREENBLATT. It was not extensive. It was not, you know, 20 or 30 people involved. I think it was probably about five or six.

Mr. POSEY. And the whistleblowers have indicated that this is customary behavior?

Mr. GREENBLATT. Well, the witnesses that we met with told us in our sworn interviews that folks retiring and then coming back to the Weather Service was commonplace or words of that variety.

Mr. POSEY. Okay. Mr. Chairman, I want to thank you for bringing this to our attention. For too many years this kind of behavior has been swept underneath the rug.

Mr. Greenblatt, I want to thank you for your honor and the way that you have represented the taxpayers back home, for your forthrightness, and I hope there are many more people like you out there. I'm a little bit chagrined that some people are more interested in making sure the two culprits are not embarrassed in this Committee.

Of course, we heard the same kind of comments about Lois Lerner, how unfair it was to embarrass Lois Lerner, who clearly was corrupt as the day is long, targeting political enemies. That's just not the kind of administration the people in this country expect. And whatever it is that motivates you to do the job that you're doing, I just hope and pray for the future of our country and for future generations that there's more out there like you. God bless you.

Thank you, Mr. Chairman. I yield back.

Chairman SMITH. Thank you, Mr. Posey.

The gentleman from Texas, Mr. Weber, is recognized for his questions.

Mr. WEBER. Thank you, Mr. Chairman. Mr. Chairman, thank you for holding this hearing. Thank you for the way that you've held this hearing. Thank you for the way that you've responded during this hearing. I find it pretty ironic that the minority, who have decried the amount of money that this Committee wants to authorize as we go forward, takes issue with the fact that in a period when we have \$18 trillion and we're trying to make the agency as accountable as we can, that they are spending taxpayer dollars appropriately, that they're decrying the fact that somehow we're trying to make them be better money managers.

We have a fiduciary trust from our constituents. I applaud you for wanting to do the right thing on behalf of the American people and I appreciate you holding this hearing.

To the gentleman Loudermilk, my good friend, I'll—when he asked the witness what benefit did the taxpayers get, I guess I would respond they got to say a very high and hearty thank you, good job to this guy by paying him not twice but 2-1/2 times what he was getting after he retired. I hope he feels like this sent him off with a good farewell and a job well done and a lot of money in his pocket. That's my politically incorrect statement. Thank you, Mr. Chairman.

Now, Mr. Greenblatt, you had formal training. I didn't read through your bio; I got here late. So you had formal training as a lawyer, right?

Mr. GREENBLATT. I did.

Mr. WEBER. Right. And you have mentioned a couple of times here that I think it was public service 101 or something—federal service 101, you don't get involved with the money that you're going to be getting paid. You don't get to make that decision. How long have you been on the job where you are?

Mr. GREENBLATT. In my current position?

Mr. WEBER. Um-hum.

Mr. GREENBLATT. I've been here for a little more than a year. I started May 2014.

Mr. WEBER. Okay, good. So you got trained. How many violations of this magnitude have you seen yourself?

Mr. GREENBLATT. It's hard to quantify "magnitude." I have seen other conflicts-of-interest cases. When I was at the Justice Department Inspector General, I worked on a number of conflict-of-interest cases—

Mr. WEBER. Well, let me make it easier for you. Have you ever seen somebody retire and get paid 2-1/2 times what they were getting?

Mr. GREENBLATT. No.

Mr. WEBER. Okay. That pretty well speaks for itself. Do you get training on how to recognize these violations? Did you get training?

Mr. GREENBLATT. Mostly on-the-job training—

Mr. WEBER. Mostly on-the-job training.

Mr. GREENBLATT. —but, yes, there is training on ethics guidance frequently.

Mr. WEBER. Do people in the agencies, NOAA, IE, National Weather Service, should they receive some kind of the same training?

Mr. GREENBLATT. Well, I believe everyone—you know, all federal employees receive ethics training—periodic ethics training depending on the agencies—

Mr. WEBER. Okay.

Mr. GREENBLATT. —and whatever components they're in, but that—so they get that. I don't know about ethics training in terms of investigations—

Mr. WEBER. Sure. No—but they know—I mean if you were a betting man, and I'm going to ask you a very subjective question, would you bet that this guy probably knew that, hey, this doesn't pass the smell test?

Mr. GREENBLATT. Well, I think we found as much in our report that he should have known. I mean working in the federal government for nearly four decades I'd be hard-pressed to believe—

Mr. WEBER. So he didn't get training in contracting, his lawyer said, but I mean he should have had training in common sense and right and wrong. I mean even his parents should have taught him that, wouldn't you agree?

Mr. GREENBLATT. Yes, but beyond that I would imagine there is, over the 38 years, extensive ethics training—

Mr. WEBER. So—

Mr. GREENBLATT. —especially for a senior official.

Mr. WEBER. —I don't mean to pry but you get paid a salary. Does the government collect taxes from your salary?

Mr. GREENBLATT. A wee bit, yes.

Mr. WEBER. Oh, do they? Okay. Are you appreciative of the fact that you've got a Committee here that actually looks after taxpayer dollars and doesn't want to pay retirement employees 2-1/2 times what they were making at taxpayer expense?

Mr. GREENBLATT. Yeah, I do appreciate the concern.

Mr. WEBER. Yeah, well, I wondered what your motivation for being here was, so you're a fiscal watchdog like the Chairman here is.

I noticed in your report you said that there were several government officials beyond the subject of our investigation shared responsibility you believe, several being three, four, five?

Mr. GREENBLATT. I would identify three, yes.

Mr. WEBER. You identify three? And I didn't get a chance to read your report. Did you identify them?

Mr. GREENBLATT. We identified the supervisor. Well, we didn't identify anyone. Let's just—as a threshold issue, we didn't identify

anyone for privacy reasons. And so we didn't identify them in terms of by name or—

Mr. WEBER. Okay.

Mr. GREENBLATT. —but we did identify by identifying them as an individual.

Mr. WEBER. But if you wanted to send a signal to the agency—because you also said that there's—there's a quote in here that says federal employees returning as contractors once they retire “happens all the time.” If we want to send a signal that this is unacceptable, should we subpoena those three in here? I mean I'm sure two of them have already been here in some short fashion. Should we be looking at the others that were involved and subpoenaing their testimony as well as a deterrent if nothing else?

Mr. GREENBLATT. I wouldn't want to, you know, guide the Committee on what it should do but—

Mr. WEBER. No. But as a taxpayer, we've already established you get paid and we do—and the government takes taxes out and you appreciate this kind of oversight, right?

Mr. GREENBLATT. Of course. Of course.

Mr. WEBER. So I'm going to take that as a yes.

Mr. Chairman, I yield back.

Chairman SMITH. Thank you, Mr. Weber.

There being no more Members to ask questions, I want to thank the witness for his testimony and also members on both sides for their questions.

Today's hearing was an opportunity for Mr. Jiron and Mr. Byrd to explain to us why taxpayers picked up the tab for an allegedly improper contract worth nearly half-a-million dollars. Unfortunately, both former senior officials chose a path of noncooperation and refused to speak with Committee staff voluntarily and only appeared here today under subpoena.

In order for the Committee to get the information it needs to conduct appropriate oversight of this issue, our investigation will continue. The Committee will persist in seeking answers from Mr. Jiron and Mr. Byrd and the Committee will conduct oversight to determine if these types of actions are common at the National Weather Service. The American taxpayers deserve answers and we intend to pursue this issue until we are certain that taxpayers' interests are protected.

I'm disappointed that that neither Mr. Jiron nor Mr. Byrd chose to testify today. The witnesses are subject to recall, and the Committee stands in recess. Thank you all for being here.

[Whereupon, at 11:39 a.m., the Committee was adjourned.]

Appendix I

ANSWERS TO POST-HEARING QUESTIONS

ANSWERS TO POST-HEARING QUESTIONS

Responses by Mr. Mark Greenblatt



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

March 11, 2015

The Honorable Jason Chaffetz
Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515-6143

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515-6143

Dear Chairman Chaffetz and Ranking Member Cummings:

In response to your request of February 11, 2015, we are providing current information on our office's open and unimplemented recommendations, including

- the current number of OIG recommendations that are open or unimplemented (see enclosure 1),
- the cumulative estimated cost savings associated with the current number of open and unimplemented OIG recommendations (see enclosure 2), and
- those recommendations that would result in cost savings if implemented (see enclosure 2)—for which we include
 - the recommendation,
 - the date the recommendation was made, and
 - an estimate for the cost savings that we believe would be realized if agency management implemented the recommendation.

Regarding your request to identify what we consider to be the three most important unimplemented recommendations that we have made to the Department or its bureaus, enclosure 3 lists multiple recommendations within the following three major categories:

- Departmental IT security,
- National Oceanic and Atmospheric Administration environmental satellite programs, and
- Departmental operations.

For each recommendation, we identify

- the status of the recommendation, including whether agency management has agreed or disagreed with the recommendation and the expected date of implementation, and
- the cost savings associated with the recommendation (if applicable).




Regarding your request on closed investigations, evaluations, and audits that were not disclosed to the public: please see enclosure 4 for a brief description of two nonpublic audit products and 44 investigations closed between June 18, 2014, and February 11, 2015. Information about nonpublic audits and investigations closed between January and June 2014 is enclosed separately, in the form of a letter to Senators Tom Coburn and Charles Grassley, dated June 27, 2014. Additional information about any item listed in this document will be made available upon request. At the end of enclosure 4, we have included a key to acronyms, abbreviations, and investigative terms used.

Finally, regarding your request to list and describe instances of agencies refusing to provide, or otherwise delay or restrict your access to, records or other information: please see enclosure 5 for a summary of instances highlighting issues of OIG independence and access.

If you have any questions or require additional information, you or your staff may contact me or Morgan Kim, Deputy Inspector General, at (202) 482-4661.

Sincerely,

A handwritten signature in black ink that reads "Todd J. Zinser" followed by a horizontal line.

Todd J. Zinser

Enclosures

Enclosure 1:
OIG's Open and Unimplemented Recommendations as of March 6, 2015

Calendar Year	Recommendations Made	Recommendations Still Open (Unresolved)	Recommendations Still Unimplemented
2007	187	0	0
2008	143	0	0
2009	100	0	0
2010	93	0	3
2011 ^a	77	0	19
2012 ^b	100	0	26
2013	88	0	44
2014	77	17	60
2015 ^c	0	0	0
Total	865	17	152

^a The June 2013 table included recommendations from 2011 reports issued February–September 2011 only. The current table includes recommendations from 2011 reports issued February–December 2011.

^b The June 2013 table included 25 recommendations from financial statement reports issued in November 2012. The current table does not include recommendations from financial statement reports.

^c As of March 6, 2015.

We compiled this table by reviewing all performance audit, evaluation, and inspection reports that we issued during the period of January 1, 2007, through March 6, 2015. We have not included the following in the table: classified or sensitive nonpublic recommendations, recommendations in financial statement audits, or those addressed to specific nonfederal entities in connection with audits of financial assistance awards.

After OIG issues a final report, a bureau has up to 60 days to submit a corrective action plan for OIG's approval. The 17 "open" (unresolved) recommendations from 2014 reports are due to 2 reports for which OIG and the bureaus were still working to agree on the corrective action plans to address the recommendations, as of March 6, 2015:

- OIG-14-025, *Significant Security Deficiencies in NOAA's Information Systems Create Risks in Its National Critical Mission* (issued July 15, 2014)
- OIG-15-013, *FirstNet Must Strengthen Management of Financial Disclosures and Monitoring of Contracts* (issued December 5, 2014)

"Unimplemented" recommendations have approved action plans, but the bureaus have not yet completed their implementation of the recommendations.

Enclosure 2:

OIG's Open and Unimplemented Recommendations That Have Associated Estimated Cost Savings

The cumulative estimated cost savings associated with the current number of open and unimplemented OIG recommendations exceeds \$300 million.

Reports with Unimplemented Recommendations That Have Associated Estimated Cost Savings	
Unimplemented Recommendations	Estimated Cost Savings
Report: OIG-13-001-I (Department), Quarterly Conference Reporting Processes Need Improvement (issued October 17, 2012)	
<p>We recommend that the Director of the Office of Administrative Services strengthen operating policy to ensure bureaus accurately report actual conference spending data, identify estimated costs, and provide updates to these estimates when actual costs become available.</p> <p>We recommend that the Director of the Office of Administrative Services require bureaus to maintain supporting documentation for costs incurred, planning considerations, and decision justifications.</p>	<p>\$282,637 funds to be put to better use</p>
Report: OIG-13-010-I (ITA), U.S. Export Assistance Centers Could Improve Their Delivery of Client Services and Cost Recovery Efforts (issued November 30, 2012)	
<p>We recommend the Director General of the U.S. & Foreign Commercial Service take the following actions:</p> <ul style="list-style-type: none"> • Develop strategies for minimizing the administrative duties of trade specialists • Upgrade or replace the current Client Tracking System • Determine why some USEACs are underperforming and take corrective action or explore the following options: (1) consolidate lower-producing USEACs with higher-producing USEACs located within the same Metropolitan Statistical Area (MSA), (2) close lower-producing USEACs operating in MSAs with low export potential, and (3) consider closing vacant USEACs 	<p>\$1,528,000 funds to be put to better use</p>
Report: OIG-13-016-A (NTIA), Fourth Annual Assessment of the PSIC Grant Program (issued February 22, 2013)	
<p>We recommend that the Assistant Secretary for Communications and Information pursue the return of questioned unallowable costs for each grant recipient and determine the most appropriate process to recover questioned costs in the future.</p>	<p>\$190,317 questioned costs</p>

Reports with Unimplemented Recommendations That Have Associated Estimated Cost Savings	
Unimplemented Recommendations	Estimated Cost Savings
Report: <i>OIG-13-024-A (NOAA), Audit of Geostationary Operational Environmental Satellite-R Series: Comprehensive Mitigation Approaches, Strong Systems Engineering, and Cost Controls Are Needed to Reduce Risks of Coverage Gaps</i> (issued April 25, 2013)	
<p>To limit cost overruns and improper award fees for GOES-R Flight Project contracts, we recommend that the NOAA Assistant Administrator for Satellite and Information Services ensure that NASA modifies advanced baseline imager, geostationary lightning mapper, and spacecraft contract award-fee structures to reduce award fee percentages in accordance with the current NASA FAR Supplement, as well as clearly articulates how scores should be adjusted based on the magnitude of cost overruns.</p>	<p>\$105,940,788 funds to be put to better use</p>
<p>To limit cost overruns and improper award fees for GOES-R Flight Project contracts, we recommend that the NOAA Assistant Administrator for Satellite and Information Services ensure that NASA adjusts future award fees for the ABI to be more commensurate with contractor performance and to incentivize the contractor to control costs.</p>	<p>\$8,857,750 questioned costs</p>
Report: <i>OIG-13-026-A (Department), Monitoring of Obligation Balances Needs Strengthening</i> (issued June 18, 2013)	
<p>We recommend that the Senior Advisor to the Deputy Secretary Performing the Non-Exclusive Duties of the Chief Financial Officer and Assistant Secretary for Administration develop a Department-wide initiative related to the timely liquidation, deobligation, and closure of unneeded open obligations.</p>	<p>\$159,000,000 funds to be put to better use</p>
<p>We recommend that the Senior Advisor to the Deputy Secretary Performing the Non-Exclusive Duties of the Chief Financial Officer and Assistant Secretary for Administration enhance policies and procedures to include specific, comprehensive guidance for the consistent monitoring and deobligation of unliquidated obligation balances, as well as ongoing departmental oversight.</p>	

Reports with Unimplemented Recommendations That Have Associated Estimated Cost Savings	
Unimplemented Recommendations	Estimated Cost Savings
Report: OIG-14-013-A (NIST) Manufacturing Extension Partnership Incurred Avoidable Conference Costs (issued February 21, 2014)	
We further recommend that the Director, NIST-MEP, make a determination on the recovery of \$148,000 that International Management and Consulting LLC (IMC, the NIST-MEP event planner) collected for sponsorship fees and \$88,341 that IMC retained for both registration fees and a concession refund.	\$236,341 questioned costs
Report: OIG-14-023-A (NTIA) Excess Equipment, Weaknesses in Inventory Management, and Other Issues in BTOP Infrastructure Projects (issued June 25, 2014)	
NTIA program officers should work with grant recipients to assess equipment acquisitions to ensure that (1) the justification on the use and benefit of the equipment is adequate and (2) the purchases are allowable.	\$157,000 funds to be put to better use
Report: OIG-15-012-A (USPTO) The U.S. Patent and Trademark Office's Awarding and Administering of Time-and-Materials and Labor-Hour Contracts Needs Improvement (issued December 3, 2014)	
The Director of Office of Procurement should ensure Contracting Officer Representatives and Task Order Monitors document the acceptance of all deliverables in accordance with contract requirements and USPTO policy	\$24,631,770 questioned costs

Enclosure 3:
 OIG's Top Three Open and Unimplemented Recommendations
 as of March 6, 2015

Recommendations related to the Department's IT security: The Federal Information Security Management Act of 2002 (FISMA) requires agencies to secure systems against the loss, misuse, or unauthorized access to or modification of information collected or maintained by, or on behalf of, an agency. In addition, FISMA requires inspectors general to evaluate agencies' information security programs and practices by assessing a representative subset of agency systems, with results reported to the Office of Management and Budget (OMB), Department of Homeland Security, and Congress annually. Over the years, OIG has repeatedly identified significant flaws in basic security measures protecting IT systems and information and made recommendations to correct them.

Important recommendations from one recent FISMA audit of NOAA's Information Systems remain unresolved (i.e., OIG and NOAA are still working to agree on a corrective action plan to address the recommendations). We expect to agree on a corrective action plan by July 2015. The plan will include the expected date of implementation for each recommendation.

Report	Audit Objective(s)	Top Unresolved Recommendation(s)	Cost Savings
<p>OIG-14-025-A, <i>Significant Security Deficiencies in NOAA's Information Systems Create Risks in Its National Critical Mission</i> (issued July 15, 2014)</p>	<p>As part of an overall assessment of NOAA's IT security program, OIG evaluated information security controls and security-related documentation for four high-impact NESDIS systems to determine whether key security measures adequately protect them.</p>	<p>We recommend that the NESDIS' Assistant Administrator and NOAA's Chief Information Officer:</p> <ul style="list-style-type: none"> • Ensure that management gives appropriate priority to remediation of high-risk vulnerabilities in the required timeframe. If remediation is not feasible, ensure that vulnerabilities are documented and that compensating controls are implemented. • Ensure that appropriate attention is given to implementing required secure configuration settings in a timely manner and continue the implementation by (1) establishing and documenting mandatory configuration settings; (2) implementing these settings; (3) identifying, documenting, and approving deviations from mandatory settings; and (4) monitoring components for changes to the implemented settings. • Pursue USAF's commitment that Defense Meteorological Satellite Program meets Department of Commerce's security requirements and conduct security assessments, as outlined in a memorandum from the USAF to NOAA on May 13, 2010. • Implement security mechanisms to protect against the use of unauthorized mobile devices. • Ensure that information systems are compliant with all applicable remote access and telework policies and that two-factor authentication is implemented. • Implement the necessary security mechanisms to secure against remote access via personal computers. 	<p>Implementation of our recommendations will improve the security posture of NOAA's information systems. However, we cannot yet estimate particular cost savings associated with these improvements.</p>

Recommendations related to NOAA environmental satellite programs, including those reported in *OIG-12-038-A, Joint Polar Satellite System (JPSS): Continuing Progress in Establishing Capabilities, Schedules, and Costs Is Needed to Mitigate Data Gaps* (issued September 27, 2012), *OIG-13-024A, Geostationary Operational Environmental Satellite-R (GOES-R) Series: Comprehensive Mitigation Approaches, Strong Systems Engineering, and Cost Controls Are Needed to Reduce Risks of Coverage Gaps* (issued April 25, 2013), and *OIG-14-022-A, Audit of the Joint Polar Satellite System: To Further Mitigate Risk of Data Gaps, NOAA Must Consider Additional Missions, Determine a Strategy, and Gain Stakeholder Support* (issued June 17, 2014).

Managing risks in the acquisition and development of the next generation of environmental satellites is a continuing challenge for the Department. The most prominent programs, the Joint Polar Satellite System (JPSS), Polar Follow-On, and the Geostationary Operational Environmental Satellite-R series (GOES-R), together accounted for one-third of NOAA's FY 2016 budget request. They are also the largest investments in the Department, comprising more than 20 percent of the total budget. However, with cost overruns, schedule delays, and the aging of NOAA's current constellation of satellites, NOAA is confronting coverage gaps for these critical weather-forecasting and mission-essential assets.

Important recommendations from three of our NOAA satellite audits remain open or unimplemented (see table below):

Report	Audit Objective(s)	Top Unimplemented Recommendation(s)	Cost Savings
<i>OIG-12-038-A, Joint Polar Satellite System (JPSS): Continuing Progress in Establishing Capabilities, Schedules, and Costs Is Needed to Mitigate Data Gaps</i> (issued September 27, 2012)	(1) Assess the adequacy of JPSS formulation activities and (2) monitor the program's efforts to maintain continuity of polar satellite data	We recommend that the NOAA Deputy Secretary for Operations: <ul style="list-style-type: none"> Develop a policy that adheres to cost-estimating best practices. Ensure that an independent cost estimate adequately tests the viability of the program's funding profile.^a 	While we cannot yet project specific cost savings, implementation of our recommendations should help prevent loss of life and property by ensuring the availability of critical data needed to predict severe weather events.
<i>OIG-13-024A, Geostationary Operational Environmental Satellite-R (GOES-R) Series: Comprehensive Mitigation Approaches, Strong Systems Engineering, and Cost Controls Are Needed to Reduce Risks of Coverage Gaps</i> (issued April 25, 2013)	Assess (1) the adequacy of contract management and administration and (2) the effectiveness of management's direction, monitoring, and collaboration for development of select components of the GOES-R program	We recommend that the NOAA Assistant Administrator for Satellite and Information Services ensure that NASA: <ul style="list-style-type: none"> Modifies contract award-fee structures to reduce award fee percentages in accordance with the current NASA FAR Supplement, and clearly articulates how scores should be adjusted based on the magnitude of cost overruns.^a Adjusts future award fees to be more commensurate with contractor performance, to incentivize the contractor to control costs.^a 	Our audit report identified \$115 million in potential monetary benefits—about \$9 million in questioned costs and \$106 million in funds to be put to better use.

^a The expected date of implementation for these recommendations is December 2015.

Report	Audit Objective(s)	Top Unimplemented Recommendation(s)	Cost Savings
OIG-14-022-A, <i>Audit of the Joint Polar Satellite System: To Further Mitigate Risk of Data Gaps, NOAA Must Consider Additional Missions, Determine a Strategy, and Gain Stakeholder Support</i> (issued Jun 17, 2014)	(1) Monitor NOAA's progress toward establishing JPSS cost, schedule, and performance baselines; (2) Assess ongoing development activities; and (3) Review efforts to mitigate a potential data gap between Suomi National Polar-orbiting Partnership (Suomi NPP) and JPSS-1 satellites.	We recommend that the NOAA Administrator ensure that JPSS-2 operations and sustainment costs beyond FY 2025 are delineated in stakeholder briefing materials about plans for additional missions. ^a We recommend that the NOAA Deputy Under Secretary for Operations direct appropriate NOAA entities to explain the effects of a potential afternoon orbit data gap in terms of degraded forecast hours and extrapolated economic costs, or conversely, the contribution to forecast accuracy and the economic benefits of afternoon orbit data. ^a	While we cannot yet project specific cost savings, implementation of our recommendations should help prevent loss of life and property by ensuring the availability of critical data needed to predict severe weather events.

^a The expected date of implementation for these recommendations is December 2015.

Recommendations related to Department operations, including *OIG-13-026-A, Monitoring of Obligation Balances Needs Strengthening* (issued June 18, 2013), and *OIG-15-012-A, The U.S. Patent and Trademark Office's Awarding and Administering of Time-and-Materials and Labor-Hour Contracts Needs Improvement* (issued December 3, 2014).

As of December 31, 2011, the Department's unliquidated obligations exceeded \$9.9 billion; 70 percent of the Department's unliquidated obligations were attributable to NOAA. Grant funding accounted for 62 percent of the unliquidated obligations. Obligations must be liquidated within certain time limits. If obligated funds are not used for their original purpose within these time frames, the agency is required to release the funds for other allowable purposes or, depending on restrictions placed by Congress, return the money to the Department of the Treasury. We concluded that the Department needs stronger internal controls, as well as policies and procedures, to ensure that bureau obligations are adequately monitored and deobligated when appropriate.

For FY 2012, USPTO awarded 416 time-and-materials and labor-hour (T&M/LH) contracts and task orders with a total obligated value of approximately \$129 million. T&M/LH contracts are considered high-risk because the government assumes the risk for cost overruns. In July 2009, Office of Management and Budget directed agencies to reduce the use of high-risk contracts, including T&M/LH contracts. We determined that USPTO contracting and program officials did not follow best practices to award and administer T&M/LH contracts and task orders for work performed.

Important recommendations from two audits regarding unliquidated obligations and T&M/LH contracts remain open or unimplemented (see table, next page):

Report	Audit Objective(s)	Top Unimplemented Recommendation(s)	Cost Savings
OIG-13-026-A, <i>Monitoring of Obligations Balances Needs Strengthening</i> (issued June 18, 2013)	Assess whether the Department and bureaus have adequate controls over the management and closeout of unliquidated obligations as of December 31, 2011.	We recommend that the Chief Financial Officer and Assistant Secretary for Administration: <ul style="list-style-type: none"> • Develop a Department-wide initiative related to the timely liquidation, deobligation, and closure of unneeded open obligations.^a • Enhance policies and procedures to include specific, comprehensive guidance for the consistent monitoring and deobligation of unliquidated obligation balances, as well as ongoing departmental oversight.^a 	\$159,000,000 funds put to better use
OIG-15-012-A, <i>The U.S. Patent and Trademark Office's Awarding and Administering of Time-and-Materials and Labor-Hour Contracts Needs Improvement</i> (issued December 3, 2014)	Determine whether USPTO properly awarded and administered time-and-materials and labor-hour contracts.	We recommend that the Director of Office of Procurement: <ul style="list-style-type: none"> • Ensure Contracting Officer Representatives and Task Order Monitors document the acceptance of all deliverables in accordance with contract requirements and USPTO policy.^b 	\$24,631,770 questioned costs

^aThe expected date of implementation for these recommendations is September 2015.

^bThe expected date of implementation for this recommendations is July 2015.

**Enclosure 4:
Nonpublic Products from OIG as of March 6, 2015 (July 2014–February 2015)**

This section includes a brief description of two nonpublic audit reports and 44 investigations closed between June 18, 2014, and February 11, 2015. Information about nonpublic audits and investigations closed between January and June of 2014 is attached in the form of a letter to Senators Tom Coburn and Charles Grassley, dated June 27, 2014. Additional information about any item listed in this document will be made available upon request. A key to acronyms, abbreviations, and investigative terms is included in an appendix.

OIG Nonpublic Audit Reports

1. **Unresolved Audits and Appeals as of June 30, 2014:** On July 17, 2014, OIG issued the Inspector General's unresolved audits and appeals report as of June 30, 2014, to the Department's Chief Financial Officer/Assistant Secretary for Administration. One audit of NOAA had been unresolved for more than 6 months. If not resolved by September 30, 2014, the following audits would have been unresolved for more than 6 months: 2 of EDA, 12 of NIST, and 1 of NOAA. Of the 12 unresolved NIST audits, 5 were audits of grant awards to Massachusetts Manufacturing Extension Partnership (MEP), and 5 were audits of grant awards to Florida MEP. An attached table listed these audits, as well as 7 other unresolved audits (1 of the Census Bureau, 2 of NOAA, 3 of NTIA, and 1 of USPTO), 1 appeal from a NIST grant recipient, and appeals from 4 NTIA grant recipients.
2. **OIG Vulnerability Scanning Report: Census Bureau (issued September 29, 2014):** As part of our annual FISMA review, OIG conducted web application and database vulnerability scans on August 19, 2014, for the Census Bureau's web application and database servers. Overall, the scans identified 1 high- and 10 medium-risk vulnerabilities on the web application; and 27 critical-, 4 high- and 197 medium-risk vulnerabilities on the databases. OIG requested that the Census Bureau provide feedback, within 20 days, regarding (a) an action plan for all critical-, high- and medium-risk vulnerabilities that will be remediated and (b) supporting evidence for those that will not be fixed because of operational requirements or because they are false positives. OIG approved the action plan that the Census Bureau provided on October 27, 2014.

OIG Non-Public Investigative Reports

1. **12-0332:** On June 18, 2014, OIG closed an investigation into allegations that a BTOP grantee retaliated against a whistleblower by voting to remove the whistleblower from a board of directors for the grantee. OIG did not find sufficient evidence to support the allegations, and NTIA declined to provide the complainant with any form of relief.
2. **12-1154:** On June 18, 2014, OIG closed an investigation into allegations that USPTO employees received kickbacks in exchange for helping to award IT contracts to a certain entity. Our investigation did not find any criminal violations or unethical behavior, and the case was closed without further action.

3. **12-0669:** On June 19, 2014, OIG closed an investigation into allegations of conflicts of interest between a USPTO IT specialist and an employee of a contractor who worked in the same office at USPTO. OIG did not find evidence of a conflict or any wrongdoing, and closed the case without further action.
4. **14-0462:** On July 9, 2014, OIG closed an investigation into allegations that a NOAA employee engaged in direct lobbying related to the President's FY 2015 budget, which would have closed a certain National Centers for Coastal Ocean Science laboratory. OIG did not identify any evidence to support the allegations, and the investigation was closed without further action.
5. **11-0534:** On July 9, 2014, OIG closed an investigation into allegations of misappropriation of funds by a NOAA grantee. The allegations were found to be unsubstantiated, and the case was closed without further action.
6. **13-1007:** On July 9, 2014, OIG closed an investigation into allegations that a grantee had received two federal grants for duplicative work, from NIST and the Department of Transportation. OIG's investigation determined that there was not overlap or duplication between the grant awards, and the case was closed without further action.
7. **13-1139:** On July 18, 2014, OIG closed a case that had been opened to assist the FBI with a fraud investigation against an EDA grantee. OIG assisted with the matter, and closed the investigation after learning that the evidence on which the indictment of the grant official would be based would not involve Department of Commerce funds.
8. **14-0072:** On August 4, 2014, OIG closed an investigation into the theft of five iPads by a contractor-employee. The FBI investigated the matter, and the subject was convicted of felony theft. OIG also coordinated with the Department's Suspension and Debarment team, and the individual was debarred from participation in future procurement activities.
9. **13-0753:** On August 20, 2014, OIG closed an investigation into allegations that a patent examiner was holding himself out as a private patent litigation attorney representing private persons in matters before USPTO. The undisclosed conflict of interest was investigated. OIG found that the employee did provide private legal counsel on trademark applications before USPTO and engaged in representational service for private third parties for payment. The employee received a 30 day suspension as a result of this conduct.
10. **13-1062:** On August 21, 2014, OIG closed an investigation into allegations that a senior official had purchased a handgun using exceptions granted to law enforcement officers, despite not being a law enforcement officer. Our investigation did not find that the individual used the law enforcement exceptions—but did find that the individual was aided in this purchase by an employee while on official duty time and travelling in a government-owned vehicle. OIG provided this information to the official's supervisor, who counseled the official in conjunction with a second investigation (see 14-0228).

- 11. 13-0792:** On August 25, 2014, OIG closed an investigation into allegations that a senior NOAA employee incurred illegitimate expenses while traveling internationally on official business and may not have properly accounted for sick and annual leave. Our investigation did not substantiate the allegations of misconduct but found that NOAA overcompensated the employee by approximately \$82.26 for certain expenses incurred while abroad. OIG was informed that the employee retired.
- 12. 13-1002:** On August 25, 2014, OIG closed an investigation into allegations that a NOAA employee onboard a research vessel attempted to retaliate against a crew member who had previously reported an allegation to OIG by giving the member a new work assignment that the member could not reasonably complete. OIG found no evidence that the subject retaliated against the whistleblower.
- 13. 11-0336:** On September 9, 2014, OIG closed an investigation into fraudulent activities at ITA's Office of Trade Industry Information, including fraudulent billing, and other issues. OIG found no evidence to substantiate the allegations but, during the course of the investigation, discovered a violation of the *Commerce Acquisition Manual* related to purchase cards. An ITA employee permitted others to use his card to purchase office supplies, although the employee stopped lending his card thereafter.
- 14. 14-0256:** On September 9, 2014, OIG closed an investigation into allegations that two former OIG special agents made misrepresentations to the OIG in conducting an investigation. OIG partially substantiated the allegations. The agents previously resigned from federal service and the matter was closed without further action.
- 15. 14-0228:** On September 26, 2014, OIG closed the second investigation into a senior official (13-1062 above) who allegedly gave preferential treatment to a subordinate employee—interacting repeatedly with the employee outside of the workplace on a social basis and accepting gifts, loans, and services. OIG concluded that, in light of their personal relationship, the official's involvement in two personnel actions benefiting the employee may have created an appearance of preferential treatment. The official was counseled on appropriate interactions with subordinates.
- 16. 13-0623:** On September 26, 2014, OIG closed an investigation into an EDA grantee which allegedly failed to meet the requirements of EDA grants but continued to receive awards. Our investigation did not establish evidence which would substantiate any violations of law or unethical behavior, and the matter was closed without further action.
- 17. 14-0125:** On September 29, 2014, OIG closed an investigation into allegations that a senior BIS employee misused official time and a government e-mail account to conduct work for a political group. Based on our preliminary review of the matter, the allegations were substantiated, and the employee's excessive use of government computer, e-mail account, printer, and official time, for conducting work on political matters may implicate violations of 5 CFR §§ 2635.704 (Use of Government Property) and 2635.705 (Use of Official Time). Accordingly, we referred the matter to the Office of Special Counsel and advised BIS to coordinate with OSC to take steps to stop the

employee's excessive use of government equipment and e-mail account for nongovernmental purposes.

- 18. 14-0892:** On September 29, 2014, OIG closed an investigation into several allegations against a NIST grantee, including self-dealing, lobbying, and other issues. OIG found no evidence of wrongdoing and closed the investigation without further action.
- 19. 13-0767:** On September 29, 2014, OIG closed an investigation into allegations that a fisheries observer and contract employee had been terminated from employment for making disclosures related to official duties. Our review of the evidence established that the employee was terminated for performance and conduct reasons, not retaliatory. The investigation was closed without further action.
- 20. 11-0451:** On October 15, 2014, OIG closed an investigation into allegations of inappropriate influence and disclosure of nonpublic information by a NOAA employee to a nonprofit entity. OIG's investigation did not substantiate the allegations—although it did uncover evidence that the official received overpayment on a travel voucher and failed to disclose a personal affiliation with a vendor, creating an ethics issue. The employee was issued a counseling memorandum and ordered to return the overpayment.
- 21. 14-0450:** On October 15, 2014, OIG closed an investigation into allegations that a NIST official's beverage was tampered with. NIST determined that the beverage contained a distilled form of alcohol, although OIG's investigation did not determine who was responsible.
- 22. 14-0533:** On October 15, OIG closed an investigation into a contractor who allegedly overcharged another federal agency and was facing prosecution for those actions. OIG reviewed the Department of Commerce's contracts with that entity and, although excess charges were identified, the US Attorney's Office declined to include them in the prosecution. OIG provided information about the charges back to the Department for administrative recovery.
- 23. 13-1157:** On October 31, OIG closed an investigation into an alleged breach of a settlement agreement by the Department's Office of General Counsel, which was partially substantiated. As a result, the Department took steps to prevent a similar issue from occurring in the future.
- 24. 13-1170:** On October 31, 2014, we closed an investigation into allegations of conflicts of interest and noncompliance with federal regulations by a NOAA grantee; the allegations were found to be unsubstantiated.
- 25. 14-0446:** On November 5, OIG closed an investigation into a possible security breach by an IT contractor, which was partially substantiated. OIG determined that the matter was properly within the authority of the Department's security office to investigate, turned over the investigative records, and closed the file without further action.

- 26. 12-0674:** On November 20, 2014, OIG closed an investigation into allegations of whistleblower reprisal by a BTOP grantee; the allegations were found to be unsubstantiated.
- 27. 12-0963:** On November 20, 2014, OIG closed an investigation into allegations of a conflict of interest and other ethical issues by a NOAA official. OIG's investigation confirmed that the NOAA official was functioning as NOAA's point of contact with a contractor while having an affiliation with the contractor. The U.S. Attorney's Office declined prosecution, and NOAA issued a letter or warning to the employee.
- 28. 13-0363:** On December 1, 2014, OIG closed an investigation into alleged improprieties with EDA grant funds. The allegations were not substantiated, and the matter was closed without further action.
- 29. 14-0955:** On December 1, 2014, OIG closed an investigation into allegations of wasteful spending within USPTO's human resources office. The allegations were not substantiated, and the investigation was closed without further action.
- 30. 12-0232:** On December 15, 2014, OIG closed an investigation into allegations of grant fraud involving an MBDA grantee. The allegations were not substantiated and OIG closed the case without further action.
- 31. 13-1248:** On December 15, 2014, OIG closed an investigation into allegations of unethical conduct by a Department OCIO employee, which were not substantiated. The case was closed without further action.
- 32. 14-0346:** On December 15, 2014, OIG closed an investigation into allegations concerning a conflict of interest by a NOAA official, which were not substantiated. The case was closed without further action.
- 33. 15-0137:** On December 16, 2014, OIG closed an investigation into an OS employee who allegedly received an improper benefit while attending a conference and received personal income related to the employee's official work. OIG found that these matters had been appropriately reviewed by the Department's OGC, and closed the case without further action.
- 34. 12-1292:** On December 19, 2014, we closed an investigation into a matter involving pornography found on a NOAA employee's government computer. While OIG identified several pornographic images on the official government computer, NOAA did not conclude that the subject was responsible for placing them there and declined to take disciplinary action.
- 35. 14-0068:** On January 7, 2015, OIG closed a case involving a USPTO employee who allegedly deleted records subject to an EEO litigation hold before leaving the agency. OIG determined the files were wiped from the employee's government-issued computer while still in the individual's possession and control, approximately 1 hour before the computer was confiscated by USPTO Information Technology Security

personnel. The U.S. Attorney's Office declined to prosecute and the matter was closed, as the employee resigned.

- 36. 14-0113:** On January 7, 2015, OIG closed an investigation into an allegation that a former Department of Commerce employee helped award contracts to a contractor while employed by the Department and later improperly obtained employment with the same contractor. OIG did not substantiate the allegation and closed the investigation without further action.
- 37. 14-0971:** On January 7, 2015, OIG closed an investigation into an issue involving a USPTO official who allegedly had a spouse in the official's direct supervisory chain. USPTO had already begun a management inquiry to determine the facts related to this matter, and OIG closed its case to allow the agency to conclude its inquiry and resolve the matter.
- 38. 15-0088:** On January 7, 2015, OIG closed a case into allegations of false per diem claims by a NOAA employee; the allegations were found to be unsubstantiated. The matter was closed without further action.
- 39. 14-0819:** On January 9, 2015, OIG closed a case involving a review of travel costs associated with NIST's National Voluntary Laboratory Accreditation Program (NVLAP), and concluded that NVLAP's assessment of onsite assessment fees does not violate any laws or policies. The matter was closed without further action.
- 40. 14-0826:** On January 29, 2015, OIG closed an investigation into whether a USPTO official received unauthorized relocation expenses, along with other travel issues. While the allegations were unsubstantiated, OIG identified several instances where the agency may have paid per diem costs when not appropriate. OIG provided this information to USPTO for review and resolution.
- 41. 15-0007:** On February 9, 2015, OIG closed an investigation into the receipt of suspicious mail parcels and unusual activity on NOAA's shipping account. OIG's review identified 118 shipments charged to NOAA's account, and the fraudulent charges were removed without harm or financial loss to the government.
- 42. 14-0672:** On February 11, 2015, OIG closed an investigation into allegations that a NOAA employee suffered reprisal for making protected disclosures concerning waste and mismanagement. The employee later informed OIG that NOAA had taken steps to remedy past actions and requested to rescind the allegations. The case was closed without further action.
- 43. 14-0754:** On February 11, 2015, OIG closed an investigation into allegations that performance data had been falsified at an MBDA business center. OIG found no evidence of improper activity, and the matter was closed without further action.
- 44. 14-0151:** On February 11, 2015, OIG closed an investigation into allegations that Department officials pressured a contractor to hire recommended personnel. We found

no evidence that this took place, or that Department officials retaliated against the contractor, and the matter was closed without further action.

Definition of Investigative Terms

- *Substantiated*: This indicates that the investigation found sufficient evidence to justify a conclusion that the events and circumstances contained in the complaint occurred.
- *Unsubstantiated*: This indicates that the investigation did not find sufficient evidence to justify a conclusion that the events and circumstances contained in the complaint occurred.

Key to Acronyms and Abbreviations

- ARRA: American Recovery and Reinvestment Act
- BTOP: Broadband Technology Opportunities Program
- DAO: Departmental Administrative Order
- EDA: Economic Development Administration
- ESA: Economics and Statistics Administration
- ITA: International Trade Administration
- MBDA: Minority Business Development Agency
- NESDIS: National Environmental Satellite, Data, and Information Service, NOAA
- NIST: National Institute of Standards and Technology
- NMFS: National Marine Fisheries Service, NOAA
- NOAA: National Oceanic and Atmospheric Administration
- NTIA: National Telecommunications and Information Administration
- OIG: Office of Inspector General
- OS: Office of the Secretary of Commerce
- OSY: Office of Security, DOC
- USPTO: United States Patent and Trademark Office

Enclosure 5:
Instances of the Department Delaying or Restricting OIG's Access to Information

On August 5, 2014, the Inspector General of the Department of Commerce joined 46 other inspectors general in signing a letter to the Chairmen and Ranking Members of the House Committee on Oversight and Government Reform and Senate Homeland Security and Governmental Affairs Committee affirming the importance of access and independence to provide effective oversight. Recently, OIG has experienced several issues related to our access to records and other information. Several of the items below were also included in recent testimonies submitted to the House and Senate Appropriations Committees, regarding the Department's FY 2016 budget request.

- **Unreasonable Delays in Processing Audit Policies.** In order to update the Department's policy concerning OIG's audit processes, OIG is required to have these policies reviewed and approved by the Department's Office of General Counsel (OGC), which has delayed finalizing these policies for 2 years. The policies, which relate to OIG's processes for conducting audits and resolving audit recommendations, respectively, are now being subjected to edits that would explicitly inhibit OIG's independence and access to records needed to conduct audits, evaluations, and inspections. For example, the Department's OGC is now requiring the following changes in order to finalize the policies:
 - Deleting language requiring the Department to provide OIG with direct, full, and unrestricted access to all pertinent records and personnel necessary for conducting audits, inspections or evaluations
 - Deleting language requiring the Department to provide OIG with responsive materials in a timely manner, in the manner requested, and without the use of an intermediary
 - Deleting language stating that the Department shall not impose burdensome administrative requirements to impede OIG access to employees or materials

In addition to removing this and other language about cooperating with OIG requests, OGC has requested adding other language inserting its Office into the auditing process; this additional language would direct the OIG to specifically include OGC in the process for obtaining comments on OIG draft reports—even though audit standards require that comments on draft audit reports be obtained from the auditee, not Departmental counsel.

- **Unreasonable Delays by NOAA in Providing Document for Audit.** On August 27, 2014, following an entrance conference for an OIG audit on NOAA's satellite program, OIG provided the agency with a written request for the Formulation Authorization Document (FAD), detailing an agreement between NOAA and NASA on activities related to the Joint Polar Satellite System (JPSS)-3 and JPSS-4 missions. OIG's audit team was not provided with the document, and was told that it was "still in review," despite having documentation that the FAD had been signed prior to the team's August request. On November 24, the Inspector General sent a memorandum to the NOAA Administrator to escalate the issue, and the document was provided 2 days later.

Specifically, the FAD's final signature was obtained on July 25, 2014, over a month before OIG provided NOAA with the request. In the end, NOAA delayed producing this document for 91 days.

- **Blocked Access to Badging Data at the Census Bureau.** In March 2014, following several cases of employee time and attendance abuse at the Census Bureau, OIG attempted to initiate a proactive project to detect potential time and attendance abuse. OIG advised the Bureau of our intent to analyze data generated by employees when they “badge in and out” of the Census Bureau headquarters in Suitland, Maryland. Unfortunately, our attempts to obtain this badging data have been met with substantial resistance. While we have gained access to records for a certain period of time, the Bureau and the Department’s Office of General Counsel have raised legal questions about OIG’s access to these records or OIG’s use of these records for investigative and disciplinary purposes. We have been provided badging data for a specific population of Bureau employees who are the subject of a specific investigation—but our proactive project to use data analytics to examine a broader universe of badging data has been delayed for nearly a year, while the Department amends its System of Records Notice (SORN), which it claims is necessary to avoid violating the Privacy Act.
- **OIG and GAO Banned from NOAA Satellite Program Management Council Meetings.** From December 2012 to August 2013, OIG and Government Accountability Office (GAO) auditors were banned from attending monthly Program Management Council (PMC) meetings concerning NOAA’s weather satellite programs—meetings that OIG and GAO had historically attended as observers for many years. NOAA’s weather satellite programs represent nearly 20 percent of the Department’s budget; the PMC meetings include important updates on the progress and decision-making concerning the programs. Despite objections from the Inspector General and two Congressional Committees, NOAA refused to permit OIG and GAO attendance. OIG reported this matter in its April 2013 report¹ concerning its audit of the NOAA’s GOES–R Series. The matter was not resolved until the summer of 2013, after the Inspector General raised the issue directly with the Secretary soon after her confirmation.
- **OIG Denied Access to the Results of a Departmental Employee Survey.** On December 13, 2013, OIG reported serious concerns to the Deputy Secretary about the denial of access to employee survey results. The Department conducted with its employees a “Risk Clarity Survey,” which was intended to (a) gauge the extent to which employees were familiar with their obligations to report fraud, waste and abuse; (b) determine whether they were aware of how to report these issues; and (c) solicit any information concerning fraud, waste, and abuse they may have observed. Prior to the survey, the Inspector General was advised that OIG would be provided the survey results. After a more than reasonable period of time, OIG requested the results but the information was not provided. After many months of delay, caused primarily by OIG advising Department officials to not provide OIG with the information, the Inspector

¹ DOC OIG, April 25, 2013. *Audit of Geostationary Operational Environmental Satellite-R Series: Comprehensive Mitigation Approaches, Strong Systems Engineering, and Cost Controls Are Needed to Reduce Risks of Coverage Gaps.* OIG-14-024-A. Washington, DC: DOC OIG, pp. 26–27.

General informed the Department that—as a result of the Department’s failure to provide the survey results—OIG was required to notify the Secretary and Congress pursuant to Section 6 (b)(2) of the Inspector General Act of 1978 (commonly referred to as a “7-day letter”). Upon the Inspector General informing the Department of OIG’s intent, the survey results were promptly provided—notwithstanding guidance from the Office of General Counsel to the Department advising the contrary.

Enclosure 6:
Nonpublic Audits and Investigations Closed Between January and June 2014
(Letter to Senators Coburn and Grassley, June 27, 2014)



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

June 27, 2014

The Honorable Tom Coburn
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators Coburn and Grassley:

On April 8, 2010, you wrote to the Office of Inspector General (OIG) requesting biannual reports on "all closed investigations, evaluations, and audits" conducted by our office that were not disclosed to the public. To comply with this request, we have attached a report that contains a brief description of all non-public matters closed from July 1, 2013 to date, which includes 8 audit products and 63 investigations. Additional information about any item in this report will be made available upon request.

If you have any questions, please do not hesitate to contact me at (202) 482-4661.

Sincerely,

A handwritten signature in black ink that reads "Todd J. Zinser".

Todd J. Zinser

Attachment

cc: The Honorable Penny Pritzker, Secretary of Commerce



Non-Public Products from the Department of Commerce OIG

This document provides a brief description of eight non-public audit products and 63 investigations closed between July 1, 2013 and June 18, 2014. Additional information about any item listed in this document will be made available upon request. A key to acronyms, abbreviations, and investigative terms is included in an appendix.

OIG Non-Public Audit Reports

July 1, 2013–March 31, 2014

1. **FirstNet Top Management Challenges memorandum to FirstNet Board (issued February 21, 2014):** The Middle Class Tax Relief and Job Creation Act (The Act), signed by the President on February 22, 2012, allocated some existing public safety radio frequency spectrum along with the “D-Block” spectrum and authorized \$7 billion in funding for the establishment of an interoperable nationwide Public Safety Broadband Network (PSBN). To oversee the existing public safety spectrum and the deployment of the PSBN, the law required the establishment of an independent authority within the Department of Commerce’s National Telecommunications and Information Administration (NTIA) called the First Responder Network Authority (FirstNet). The initial challenge to FirstNet is establishing an organizational structure, which will be essential to meet further challenges it faces in establishing the PSBN, including (1) fostering cooperation among various state and local public safety agencies, (2) integrating existing grants to enhance public communications capabilities into FirstNet, and (3) creating a nationwide long-term evolution network. This report will be issued publicly as part of the FirstNet financial statement package expected to be issued in July.
2. **Review of Eagle-Net Alliance grant (issued December 5, 2013):** As part of our oversight of the acquisition and implementation of Broadband Technology Opportunities Program (BTOP)-funded equipment, we provided NTIA with the interim results of our site visit to the EAGLE-Net Alliance (EAGLE-Net), which was awarded a BTOP infrastructure award of approximately \$100.6 million in September 2010 to deliver a carrier-quality broadband network to more than 170 communities across the state of Colorado. We found that oversight, acquisition, and implementation of equipment for the EAGLE-Net award needed to be strengthened in four areas: (1) inventory management, (2) formal agreements with community anchor institutions (CAIs), (3) network design, and (4) sustainability of network. We recommended that the BTOP program director instruct BTOP personnel to (a) assist EAGLE-Net in developing an inventory management plan, (b) require EAGLE-Net to take appropriate steps to safeguard BTOP equipment, (c) reevaluate the design of the EAGLE-Net network, and (d) monitor cash flow. These results have been consolidated into a final report that we will issue in June 2014.
3. **Equipment review for the Florida Rural Broadband Alliance (issued September 20, 2013):** As part of our oversight of the acquisition and implementation of BTOP-funded equipment, we provided NTIA management with the interim results of our site visit to the Florida Rural Broadband Alliance (FRBA). We found that that the oversight, acquisition, and implementation of equipment for the FRBA award need to be strengthened. We issued

recommendations to the BTOP Program Director regarding (1) the purchase of equipment that could be deemed an ineligible cost and (2) the financial sustainability of the network. These results have been consolidated into a final report that we will issue in June 2014.

4. **Equipment review for the University Corporation for Advanced Internet Development (issued September 11, 2013):** As part of our oversight of the acquisition and implementation of BTOP-funded equipment, we provided NTIA management with the interim results of our site visit to the University Corporation for Advanced Internet Development (UCAID). We found that oversight, acquisition, and implementation of equipment for the UCAID award need to be strengthened. We recommended that the BTOP Program Director instruct BTOP personnel to assist the grant recipient in devising effective inventory internal controls. These results have been consolidated into a final report that we will issue in June 2014.
5. **Equipment review for the North Florida Broadband Authority (issued September 4, 2013):** As part of our oversight of the acquisition and implementation of BTOP-funded equipment, we provided NTIA management with the interim results of our site visit to the North Florida Broadband Authority (NFBA). We found that oversight, acquisition, and implementation of equipment for the NFBA award need to be strengthened. We recommended that the BTOP Program Director instruct BTOP personnel to (1) assist the grant recipient in devising effective inventory internal controls and (2) monitor cash flow. These results have been consolidated into a final report that we will issue in June 2014.
6. **OIG Vulnerability Scanning Report: Bureau of Economic Analysis (issued August 22, 2013):** As part of our annual FISMA review, OIG conducted a test of BEA's incident detection and response capabilities by performing an external vulnerability scan on August 2, 2013, for BEA's Web site. Overall, the scan identified a total of 8 critical-risk, 4 high-risk, and 13 medium-risk vulnerabilities. We requested that BEA provide feedback, within 30 days, regarding (a) an action plan for all critical-, high-, and medium-risk vulnerabilities that will be remediated and (b) supporting evidence for those that will not be fixed because of operational requirements or because they were false positives.
7. **Equipment review for the North Georgia Network Cooperative Inc. (issued July 17, 2013):** As part of our oversight of the acquisition and implementation of BTOP-funded equipment, we provided NTIA management with the interim results of our site visit to the North Georgia Network Cooperative Inc. (NGN). We found that oversight, acquisition, and implementation of equipment for the NGN award need to be strengthened. We issued recommendations to the BTOP Program Director about (1) complying with notice of funds availability requirements, (2) determining whether undeployed equipment should be considered excess inventory, and (3) addressing an awardee's concerns regarding the sufficiency of NTIA's guidance. These results have been consolidated into a final report that we will issue in June 2014.
8. **Equipment review for the District of Columbia's Community Access Network (issued July 17, 2013):** As part of our oversight of the acquisition and implementation of BTOP-funded equipment, we provided NTIA management with the interim results of our

site visit to the District of Columbia's Community Access Network (DC-CAN). We found that oversight, acquisition, and implementation of equipment for the DC-CAN award need to be strengthened. We recommend that the BTOP Program Director instruct BTOP personnel to (1) obtain from DC-CAN the justification on the use and benefit of the wireless access points, (2) encourage DC-CAN to obtain agreements with all community anchor institutions and points of presence to secure federal interests in all BTOP equipment, and (3) verify that a physical inventory was completed by DC-CAN. These results have been consolidated into a final report that we will issue in June 2014.

OIG Non-Public Investigative Reports

1. **13-0256-I:** On July 3, 2013, OIG closed an investigation into allegations that the Department of Commerce's Office of Public Affairs and the National Institute of Standards and Technology (NIST) improperly removed a scientific paper from NIST's public website for political reasons. OIG did not substantiate the allegation, and closed the investigation without further action.
2. **12-1031-I:** On July 8, 2013, OIG closed an investigation into allegations that a senior official at the National Oceanic and Atmospheric Administration (NOAA) did not properly disclose that he was under investigation by another agency prior to accepting his position. OIG found no evidence of impropriety, and the investigation was closed without further action.
3. **13-0155-I:** On July 18, 2013, OIG closed an investigation into allegations that NOAA allowed a non-governmental entity to use a research vessel to lobby state legislators. Our investigation did not substantiate that the vessel was improperly used, but we identified several internal control weaknesses regarding the use of NOAA vessels, which NOAA agreed to correct.
4. **13-0176-I:** On July 22, 2013, OIG closed an investigation into allegations that two NOAA employees who were responsible for selecting contractors to conduct work for the National Weather Service (NWS) repeatedly hired a friend's company for NOAA contracts. OIG found no evidence to support this allegation, and closed the investigation with no further action.
5. **10-1368-I:** On July 24, 2013, OIG closed an investigation into allegations that a U.S. Census Bureau 8(a) contractor billed Census for hours the contractor could not support. Furthermore, the complaint alleged that the contractor did not pay certain vendors for whom they received payment from Census. OIG did not substantiate the allegation that the contractor inflated hours billed to Census. The allegation that the contractor did not pay its vendors was substantiated. This matter was handled as a civil matter between the contractor and the vendors. Census recommended debarment proceedings against the contractor.
6. **12-1135-I:** On July 29, 2013, OIG closed an investigation into allegations from a confidential complainant who could not recall the name of a NOAA contracting officer who wanted to find a company to award contracts that would give 25% of the profits to the NOAA officer's spouse. OIG was unable to identify the unnamed NOAA contracting officer, and OIG did not substantiate the allegation. OIG closed the investigation without further action.

- 7. 10-0071-I:** On August 1, 2013, OIG closed an investigation into allegations that a U.S. Census Bureau contractor: (1) failed to comply with Federal Acquisition Regulation (FAR) limitations on subcontracting, (2) failed to obtain contracting officer approval for subcontractors, (3) applied higher labor rates than those established by the contract, (4) provided no support for labor and cost billings (invoices), (5) provided no support for direct labor hours (timesheets), and (6) applied a higher labor rate category than used to for the task. OIG's investigation resulted in a settlement between the United States Attorney's Office, acting on behalf of the United States and the Department of Commerce (DOC), and the relevant contractor's parent company. The company paid a sum to settle the civil false claims action. OIG then closed the investigation with no further action.
- 8. 13-0350-I:** On August 6, 2013, OIG closed an investigation into allegations that DOC employees used personal email accounts for official communications. OIG investigated this allegation and found that the DOC did not have a comprehensive policy prohibiting the use of personal email to conduct official government business. OIG recommended that DOC adopt such a policy and that DOC employees receive refresher IT training presentations on this issue. OIG then closed the investigation with no further action.
- 9. 10-0506-I:** On August 19, 2013, OIG closed an investigation into allegations that the Economic Development Agency (EDA) awarded grants to an entity that disbursed funds to companies in which the grantee's employees may hold a financial interest. OIG substantiated the allegations and recommended that EDA take appropriate administrative action against these grantees.
- 10. 13-1086-P:** On August 29, 2013, OIG closed an investigation into allegations that an employee from the U.S. Patent and Trademark Office's (USPTO) Trademark Law Office had an undisclosed private law practice that represented clients on patent and trademark issues. OIG did not substantiate the allegation and took no further action.
- 11. 13-0180-I:** On September 6, 2013, OIG closed an investigation into allegations that an International Trade Specialist for the International Trade Administration (ITA) provided false information to DOC about his dishonorable discharge from the U.S. Navy. OIG did not substantiate the original allegation, but other allegations materialized during the course of our investigation. OIG referred these allegations to ITA for appropriate administrative resolution.
- 12. 10-1234-I:** On September 13, 2013, OIG closed an investigation into allegations that a U.S. Census Bureau employee was committing time and attendance fraud. OIG's preliminary investigation determined that Census Bureau assistance was needed based on how part-time Census field representatives recorded their time. The Census Bureau found evidence of time and attendance fraud and moved to terminate the employee.
- 13. 13-1051-P:** On September 17, 2013, OIG closed an investigation into allegations that an individual claiming to be a NOAA employee sent pictures of his genitalia to a minor. OIG did not substantiate the claim and found no evidence confirming that the perpetrator worked for NOAA. OIG closed the investigation and took no further action.

14. **13-0584-I:** On September 18, 2013, OIG closed an investigation into allegations that an EDA attorney inappropriately used the employee's work address and telephone number to benefit the employee's personal law practice. OIG did not substantiate the allegation and took no further action.
15. **11-0207-I:** On September 24, 2013, OIG closed an investigation into allegations that a collaborative local government entity and a nonprofit development corporation misled the National Telecommunications and Information Administration (NTIA) concerning the entity's use of monies received under a Broadband Technology Opportunities Program (BTOP) grant. OIG did not substantiate the allegation and took no further action.
16. **10-0283-I:** On September 27, 2013, OIG closed an investigation into allegations that an EDA grantee retained EDA grant funds and did not pay subcontractors. OIG did not substantiate the allegation and took no further action.
17. **12-0940-I:** On September 30, 2013, OIG closed an investigation into allegations that a senior official at NOAA's Acquisition and Grants Office improperly revealed to federal contract employees the National Weather Service's target budget for a contract while the solicitation was in the Request for Quotes stage. OIG did not substantiate the allegation and took no further action.
18. **13-0762-I:** On September 30, 2013, OIG closed an investigation into allegations that DOC mishandled or delayed a former employee's claim for worker's compensation. OIG did not substantiate the allegation and took no further action.
19. **12-0104-I:** On October 23, 2013, OIG closed an investigation into allegations that employees at the National Ocean Service (NOS) facility operated by NOAA misused government credit cards at automotive stores and for tuition expenses. OIG did not substantiate the misuse of government credit cards, but found that the office did not properly maintain its purchase cards as required by DOC's Commerce Acquisition Manual. OIG recommended that NOAA institute additional internal controls.
20. **13-1184-P:** On November, 15 2013, OIG closed an investigation into allegations that a Bureau of Industry and Security (BIS) employee used an external device for a presentation and the device played an adult pornographic video. OIG determined that the device in question was a personal device that contained adult pornographic videos and that the BIS employee used the device accidentally. OIG closed the investigation and took no further action.
21. **13-0025-I:** On November 21, 2013, OIG closed an investigation into allegations that the U.S. Census Bureau misused government funds to produce a farewell video for a departing senior official. OIG identified no violation of law, regulation, or policy, and recommended that Census assess the cost-reasonableness of any similar future action. OIG then closed the investigation and took no further action.
22. **13-0249-I:** On November 22, 2013, OIG closed an investigation into allegations that a USPTO patent examiner also worked as a private patent attorney representing private

persons in USPTO matters. OIG did not substantiate this allegation, but determined that the patent examiner engaged in outside work unrelated to patents. The employee disclosed this outside employment on his annual Financial Disclosure Form.

- 23. 12-0495-I:** On November 26, 2013, OIG closed an investigation into allegations that an employee at a public corporation was terminated for refusing to circumvent procurement rules to award contracts backed by BTOP funds to another corporation owned by individuals with ties to a senior government official. The complainant withdrew the claim and OIG closed the investigation without further action.
- 24. 13-0293-I:** On January 3, 2014, OIG closed an investigation into allegations that NIST electricians in Gaithersburg, Maryland, stole unused copper wire from NIST jobs. OIG did not substantiate the allegations and closed the investigation without further action.
- 25. 12-0512-I:** On January 13, 2014, OIG closed an investigation into allegations that employees at NOAA's Office of Law Enforcement (OLE) used their government purchase cards inappropriately. OIG did not substantiate the misuse of purchase cards, but found that OLE employees did not comply with Commerce Acquisition Manual requirements to maintain purchase card files. OIG closed the investigation with no further action.
- 26. 12-0640-I:** On January 15, 2014, OIG closed an investigation into allegations that a senior official at NOAA's OLE falsely certified a former Special Agent-in-Charge's (SAC) application for retired law enforcement officer credentials. OIG did not find that the senior official made a materially false statement, but OIG recommended that DOC's Office of Security rescind the former SAC's credentials and strengthen its policy and procedures for retired law enforcement officer credentials. OIG closed the investigation and took no further action.
- 27. 12-0630-I:** On January 17, 2014, OIG closed an investigation into allegations that a NOAA senior scientist who worked at NOAA's Geophysical Fluid Dynamics Laboratory had a conflict of interest due to his part-time teaching employment with a private university. OIG found that the scientist did work as a part-time professor; however, OIG found that no ethics problem existed. OIG closed the investigation and took no further action.
- 28. 12-0767-I:** On January 22, 2014, OIG closed an investigation into allegations that officials at the EDA, Seattle Regional Office, took adverse action against an employee who previously reported misconduct to the OIG, by suspending the employee. Based on OIG's investigation, the OIG found that the proposed suspension was proper because the employee disclosed another employee's private information, and that the employee's actions did not constitute a protected disclosure. OIG closed the investigation without further action.
- 29. 13-0003-I:** On January 22, 2014, OIG closed an investigation into allegations that a NIST contracting employee subjected the reporting employee to a hostile work environment because the reporting employee expressed concern about the NIST contracting organization. OIG did not substantiate the allegation and no further action was taken.

- 30. 12-1246-I:** On January 24, 2014, OIG closed an investigation into allegations that an employee at NOAA's Acquisition Office took adverse action against an employee who previously reported an incident to the OIG. OIG did not substantiate the allegation because the employee was found to have other performance issues, which supported taking performance action against the employee. OIG closed the investigation and no further action was taken.
- 31. 11-0527-I:** On January 24, 2014, OIG closed an investigation into allegations that a patent examiner at USPTO had a financial conflict of interest because of stock ownership in a company for which the patent examiner was processing a patent application. OIG referred the matter to the U.S. Attorney's Office (USAO), Eastern District of Virginia, and the USAO declined to prosecute the matter. OIG also referred the matter to USPTO and the employee received a 45 day suspension. OIG closed the investigation and no further action was taken.
- 32. 13-0614-I:** On January 24, 2014, OIG closed an investigation into allegations that a senior official at the USPTO hired relatives who lacked the necessary education or qualifications, and that the senior official improperly assigned Senior Executive Service employees to mentor the hired relatives during their work day. OIG did not substantiate the allegation, and the senior official left work at the USPTO. OIG closed the investigation and took no further action.
- 33. 13-0149-I:** On January 27, 2014, OIG closed an investigation into allegations that a manager with DOC Building Management Division advised an employee to falsely claim overtime work to make up for the employee's lack of a bonus. OIG did not substantiate the allegation and took no further action.
- 34. 13-0223-I:** On January 29, 2014, OIG closed an investigation into allegations that NIST violated the Davis-Bacon Act by using a subcontractor that did not pay prevailing wages for work completed on an ARRA grant. OIG did not substantiate the allegation and took no further action.
- 35. 13-0981-I:** On January 31, 2014, OIG closed an investigation into allegations that an official in NOAA's Office of Commercial Remote Sensing Regulatory Affairs lied about taking a trip abroad and on a separate trip abroad, inappropriately billed NOAA for use of a rental car. OIG did not substantiate the allegation and took no further action.
- 36. 13-1285-P:** On February 03, 2014, OIG closed an investigation into allegations that NOAA NWS technicians altered another NWS employee's weather observation records. OIG was unable to substantiate the allegation due to the complainant's lack of responsiveness, and closed the case with no further action.
- 37. 14-0012-P:** On February 20, 2014, OIG closed an investigation into allegations that a contractor tried to bribe a NOAA NWS employee to obtain contracts. OIG found insufficient evidence to support the allegation and closed the case with no further action.

- 38. 13-0418-I:** On March 10, 2014, OIG closed an investigation into allegations that NOAA NWS in Anchorage, Alaska suspended an employee who did not complete an assigned task because the employee believed the task was improper. The OIG did not find any impropriety in the assigned task, and the OIG closed the investigation with no further action.
- 39. 14-0362-P:** On March 10, 2014, OIG closed an investigation into allegations that a NTIA BTOP grantee received a blackmail letter from one of its employees asking to be paid to prevent the employee from disclosing allegations about contracting improprieties by his employer, the relevant grantee. OIG found that the alleged blackmail occurred during a severance negotiation with the employee and his attorney. The U.S. Attorney's Office, District of Colorado, declined to prosecute the matter, and the OIG closed the investigation with no further action.
- 40. 13-1033-I:** On March 18, 2014, OIG closed an investigation into allegations that a company engaged in a scheme to evade the U.S. anti-dumping import duties, which gave the company an improper competitive advantage. OIG found that DOC's only connection to the matter was that the International Trade Administration (ITA) conducts anti-dumping investigations, and OIG found that DOC, as an agency, was not adversely affected in any way. Because the DOC did not have a sufficient nexus to this matter, OIG closed the investigation and took no further action.
- 41. 14-0109-P:** On March 18, 2014, OIG closed an investigation into allegations that a Bureau of Economic Analysis (BEA) employee participated in an embezzlement scheme outside the context of the employee's work with the DOC. Based on a request for assistance from the Federal Bureau of Investigation (FBI), OIG provided a copy of the employment records in question to the FBI and closed the investigation because there was no nexus with the employee's work at DOC. However, OIG is tracking the disposition of the FBI's case.
- 42. 13-1230-P:** On March 21, 2014, OIG closed an investigation into allegations that a company evaded the U.S. anti-dumping import duties, which gave the company an unfair competitive advantage. OIG determined that the matter was an issue for U.S. Customs and Border Patrol and that there was an insufficient nexus with the DOC. OIG then closed the investigation with no further action.
- 43. 13-0052-I:** On March 27, 2014, OIG closed an investigation into allegations that a NTIA grantee committed grant fraud by misusing BTOP funds to enhance its corporate endeavors. OIG did not substantiate the allegations and closed the investigation without further action.
- 44. 14-0212-P:** On March 27, 2014, OIG closed an investigation into allegations that U.S. Census Bureau officials were retaliating and harassing an employee for reporting survey data falsification. The complainant also filed this complaint with the U.S. Office of Special Counsel (OSC). As a result, OIG deferred the matter to OSC and closed the investigation without further action.

45. **12-0783-I:** On April 2, 2014, OIG closed an investigation into allegations that a former employee of a NOAA National Marine Fisheries Service (NMFS) contractor was terminated for making a lawful disclosure to NMFS regarding fishery violations and work safety requirements. OIG concluded the allegations were not substantiated and closed the investigation without further action.
46. **12-0711-I:** On April 3, 2014, OIG closed an investigation into allegations that a USPTO employee had an inappropriate relationship with USPTO contractors and accepted kickbacks from contract employees. Due to the lack of evidence of unethical behavior, OIG closed the investigation without further action.
47. **13-0596-I:** On April 3, 2014, OIG closed an investigation into allegations that a USPTO employee worked for a law firm in addition to his employment as a patent examiner. OIG did not uncover any evidence to indicate the employee violated conflict of interest laws. OIG closed the investigation without further action.
48. **13-0172-I:** On April 8, 2014, OIG closed an investigation into allegations made by a NOAA employee alleging inappropriate reprogramming of funds, food poisoning, and IT tampering. OIG concluded that the allegations were not substantiated and closed the investigation without further action. A related investigation regarding alleged reprogramming at NOAA's NWS is still pending.
49. **10-0398-I:** On April 8, 2014, OIG closed an investigation into allegations that a NOAA employee with NMFS maintained an inappropriate relationship with senior officials of a mining company and received gifts which would influence regulatory decisions. OIG concluded the allegations were not substantiated and closed the investigation without further action.
50. **13-0699-I:** On April 10, 2014, OIG closed an investigation into allegations of possible conflicts of interest related to the acquisition and management of an Autonomous Underwater Vehicle by an employee of NOAA's Northwest Fisheries Science Center. OIG concluded the allegations were not substantiated and closed the investigation without further action.
51. **14-0327-P:** On April 11, 2014, OIG closed an investigation into allegations that a BIS employee made false and misleading statements to the Department of Justice and the U.S. Postal Service (USPS) OIG, concerning a BIS export enforcement matter related to the USPS. OIG did not find any evidence to support the allegations and closed the investigation without further action.
52. **13-1203-I:** On April 21, 2014, OIG closed an investigation into allegations that a contractor submitted false claims pertaining to its contract with NOAA and the Environmental Protection Agency (EPA). Specifically, the contractor allegedly charged the NOAA contract for work performed on the EPA contract. OIG found no evidence of contract improprieties and closed the investigation without further action.

- 53. 14-0146-I:** On April 21, 2014, OIG closed a request for assistance from the FBI involving public corruption and a NOAA grantee. Based on the information collected and provided by OIG, the FBI required no additional assistance in this matter. OIG then closed the investigation in this matter.
- 54. 13-0700-I:** On April 28, 2014, OIG closed an investigation into allegations that proceeds from government-owned equipment or supplies were improperly diverted into the Morale, Welfare, and Recreation fund at the NOAA's Marine Operations Center. OIG substantiated the allegations and referred the matter to NOAA for appropriate administrative action. In response, NOAA implemented new policies related to the proceeds from government-owned equipment or supplies.
- 55. 14-0494-P:** On April 28, 2014, OIG closed an investigation into allegations that an unknown party was receiving worker compensation for a NOAA beneficiary after the beneficiary had passed away. OIG discovered that the Department of Labor OIG was already investigating this matter and closed the investigation to avoid duplicative efforts.
- 56. 12-0410-I:** On May 20, 2014, OIG closed an investigation into allegations that a NOAA employee downloaded pornographic images of children to his government computer. OIG did not substantiate the allegation of child pornography, but found other pornographic materials on the employee's government computer. OIG concluded the employee violated the DOC Internet Use Policy and federal regulations, and the employee was suspended for thirty calendar days.
- 57. 12-0639-I:** On May 23, 2014, OIG closed an investigation into allegations that NOAA OLE management officials inappropriately handled OIG's Report of investigation detailing official misconduct by a former Deputy SAC and SAC. OIG substantiated the allegations and referred the matter to NOAA, in consultation with DOC Office of General Counsel and the Chief Privacy Officer, to determine whether the unauthorized release of the OIG report, including witness information, constituted a breach of personally identifiable information rules and/or a violation of the Privacy Act.
- 58. 13-0712-I:** On June 6, 2014, OIG closed an investigation into allegations that a private company defrauded a private citizen by sending a fraudulent patent renewal notice concurrent with a real patent notice. The investigation was opened to determine if any USPTO employee was behind the consumer fraud scheme. OIG found no evidence of USPTO employees engaging in consumer fraud and referred this matter to the Federal Trade Commission. In addition, OIG recommended USPTO make appropriate policy changes regarding public patent information.
- 59. 12-0791-I:** On June 6, 2014, OIG closed an investigation into allegations that a DOC employee in the Office of General Counsel was ineligible to list her grandchildren for continued health benefits coverage. OIG and the DOC's Human Resources Operations Center concluded that the employee was ineligible for continued coverage of her grandchildren because foster child requirements under the Federal Employees Health Benefits Program were not satisfied. OIG referred this matter to DOC's Office of General Counsel and the employee received an Official Letter of Reprimand.

- 60. 14-0142-P:** On June 9, 2014, OIG closed an investigation into allegations that a BTOP grantee misused NTIA grant funds. A NTIA employee alleged the grantee conspired with an engineering firm to inflate costs and thus defraud the BTOP grant. In addition, there were allegations concerning reprisal. OIG did not substantiate the allegations and closed the investigation without further action.
- 61. 14-0467-P:** On June 10, 2014, OIG closed an investigation of a U.S. Census Bureau employee who was arrested and charged with possession of child pornography. OIG acquired the employee's government-owned computers and through forensic imaging of the hard drive concluded that illicit content was not present. OIG closed its investigation since no DOC-owned assets contained evidence of this violation.
- 62. 14-0202-P:** On June 12, 2014, OIG closed a request for assistance from the U.S. Small Business Administration (SBA)'s OIG to verify contract award payments from different DOC agencies to a private company. This multi-agency, multi-jurisdictional investigation resulted in the discovery in over \$30 million in bribe/kickback payments. SBA OIG advised OIG that DOC did not have any financial exposure in this matter. OIG completed the request for assistance and provided the information to the SBA OIG.
- 63. 11-0135-I:** On June 16, 2014, OIG closed an investigation into allegations that a U.S. Census Bureau manager instructed field representatives to falsify data on survey questionnaires for the Consumer Population Survey. OIG did not substantiate the allegations and closed the investigation without further action. A related case, containing new and additional allegations of data falsification was opened, and the findings and recommendations were recently issued publically. The OIG is still awaiting a response from Census management as to the OIG's recommendations and status of implementation.

APPENDIX**Definition of Investigative Terms**

- **Substantiated:** This indicates that the investigation found sufficient evidence to justify a conclusion that the events and circumstances contained in the complaint occurred.
- **Unsubstantiated:** This indicates that the investigation did not find sufficient evidence to justify a conclusion that the events and circumstances contained in the complaint occurred.
- **Unfounded:** This indicates that the issues/allegations presented in the complaint were found to be not factual or that the identified subject was not involved in the matter.

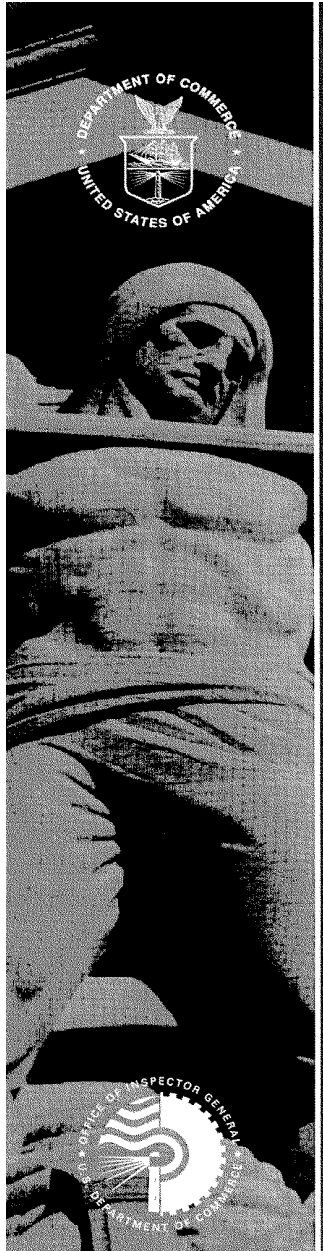
Key to Acronyms and Abbreviations

- ARRA: American Recovery and Reinvestment Act
- BTOP: Broadband Technology Opportunities Program
- DAO: Departmental Administrative Order
- EDA: Economic Development Administration
- ESA: Economics and Statistics Administration
- ITA: International Trade Administration
- MBDA: Minority Business Development Agency
- NESDIS: National Environmental Satellite, Data, and Information Service, NOAA
- NIST: National Institute of Standards and Technology
- NMFS: National Marine Fisheries Service, NOAA
- NOAA: National Oceanic and Atmospheric Administration
- NTIA: National Telecommunications and Information Administration
- OIG: Office of Inspector General
- OS: Office of the Secretary of Commerce
- OSY: Office of Security, DOC
- USPTO: United States Patent and Trademark Office

Appendix II

ADDITIONAL MATERIAL FOR THE RECORD

REPORT SUBMITTED BY CHAIRMAN LAMAR S. SMITH, CHAIRMAN



INVESTIGATIVE REPORT

National Oceanic and Atmospheric Administration

Investigation into Alleged
Contracting Misconduct and
Exertion of Improper Influence
Involving a Senior National
Weather Service Official

REPORT NUMBER 12-0447
JUNE 2015

U.S. Department of Commerce
Office of Inspector General
Office of Investigations

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Chapter I: Introduction

I. Basis for Investigation

In January 2012, the Office of Inspector General (OIG) of the United States Department of Commerce received three anonymous complaints alleging improprieties related to a Senior Official¹ in the National Weather Service (NWS), an agency within the National Oceanic and Atmospheric Administration (NOAA), being retained by NWS as a consultant immediately upon his retirement from the agency.² These complaints also alleged improprieties related to the payment by NWS of Senior Official's lodging expenses once he became a consultant.³ In addition, the complaints alleged that Senior Official had attempted to exert improper influence on NWS officials for purposes of securing a contractor position for his immediate family member.⁴

II. Investigative Methodology

To address these allegations, the OIG interviewed more than 20 witnesses, including the Senior Official who was the subject of our investigation. The OIG also obtained and reviewed relevant documents from multiple sources, including the subject, the contractor that employed the subject after his retirement from government service, and the agency for which the subject worked prior to his retirement.

III. Results of Investigation

Based on the evidence obtained over the course of our investigation, the OIG identified numerous problems related to the retention of Senior Official as a consultant for NWS that indicate a lack of understanding on the part of multiple NOAA officials regarding key government contracting and ethics regulations.

As for the actions of Senior Official himself, the OIG concluded that he was personally and substantially involved in the procurement of his own post-retirement consulting services for NWS. This involvement implicated numerous federal laws and regulations, including the criminal conflict-of-interest statute found in 18 U.S.C. § 208. Specifically, the evidence obtained over the course of our investigation establishes that Senior Official engaged in the following while still holding his position as a federal employee:

¹ The names of individuals referenced throughout the body of this report are masked to protect their privacy. The individuals are identified in Appendix A, *infra*.

² See First Complaint Intake Form, Case No. 12-0345 (Jan. 11, 2012); Second Complaint Intake Form, Case No. 12-0345 (Jan. 12, 2012); Undated Anonymous Letter to OIG, Case No. 12-0345 (rec'd Jan. 30, 2012).

³ See *id.*

⁴ See First Complaint Intake Form, Case No. 12-0345 (Jan. 11, 2012); Undated Anonymous Letter to OIG, Case No. 12-0345 (rec'd Jan. 30, 2012).

- Drafted and edited the applicable statement of work for his post-retirement consulting position;
- Participated with NWS officials in setting what labor category and rates would be used to pay for his consulting services; and
- Signed the task management plan that created the consulting position he would take upon his retirement on behalf of the contractor that would be employing him.

In addition, the evidence indicates that Senior Official took inappropriate steps to arrange for the payment by NOAA of approximately \$50,000 worth of his post-retirement housing expenses. In particular, while still holding his government position, Senior Official instructed his direct subordinate to facilitate his post-retirement use of a NOAA housing contract intended to accommodate senior executives on temporary assignments to NOAA headquarters in Silver Spring, Maryland, even though Senior Official was not eligible for housing under this contract once he became a consultant.

Evidence obtained by the OIG also establishes that, after he became a contractor himself, Senior Official contacted several NWS officials in an attempt to secure a contract position at the agency for one of his immediate family members. Although Senior Official denied acting inappropriately in seeking employment for his family member, we found that the overwhelming weight of evidence, including his own emails and consistent and credible testimony from other witnesses, contradicted Senior Official's version of events. Indeed, the evidence indicates that Senior Official may have gone so far as offering to influence NWS officials to promote one particular NWS employee if the employee could find a position for Senior Official's family member. We conclude that Senior Official's actions in attempting to influence the NWS staff were improper, and some of those actions may have implicated 18 U.S.C. § 201, the criminal statute prohibiting bribery of public officials.

While the OIG's investigation resulted in a finding that Senior Official's actions may have violated applicable federal law, the investigation also established that several other NWS officials share responsibility for the situation that took place. Indeed, the evidence indicates (1) that Senior Official acted at the direction and with the approval of his supervisor at all times and (2) that Senior Official's consulting arrangement was facilitated and approved by NOAA officials with responsibility for ensuring integrity in government contracting.

As a result of our investigation and initial briefings with NOAA's senior leadership regarding the evidence, NOAA took immediate action to terminate Senior Official's contractual arrangement in early 2012. In total, Senior Official's post-retirement work as a consultant cost the government \$471,875.34. Because of our conclusion that certain of Senior Official's actions may have violated federal criminal law, the OIG referred this matter for prosecution, but the relevant prosecutors declined to pursue charges. The OIG is also seeking the suspension and debarment of Senior Official from any future contracting work, and – because the evidence indicates an apparent lack of understanding about applicable laws and regulations on the part of multiple NOAA officials beyond Senior Official himself – the OIG is taking steps to ascertain whether this matter is indicative of more systemic “revolving door” contracting problems within the agency.

Chapter 2: Facts

A. Senior Official Participates in Creating a Post-Retirement Consulting Position for Himself with NWS

In 2009, a Senior Official in the NWS announced his plan to retire after more than 30 years with NOAA.⁵ Upon learning of this news, Senior Official's supervisor at the time (Supervisor) asked Senior Official to consider returning to the agency as a consultant once he left government employment.⁶ According to Supervisor, he made this request because Senior Official "had a wealth of knowledge" that Supervisor did not, given that Senior Official had been with their office for much longer than Supervisor himself.⁷ As Supervisor told the OIG, Senior Official's value was that he "brought to the table things I just didn't know,"⁸ and he relied on Senior Official for some things he "just wasn't on top of"⁹ in his duties. For this reason, Supervisor said, he hoped to have Senior Official remain with his staff long enough after his retirement "so that [NWS] would have the time [necessary] to transfer his knowledge" to whomever would replace him.¹⁰

According to Senior Official, he told Supervisor he would agree to return to NWS as a consultant under certain conditions, and Supervisor agreed to those conditions.¹¹ As a result, Senior Official explained, Supervisor directed him to begin coordinating with one of his subordinates (Subordinate 1), a NWS Contracting Officer Technical Representative (COTR), and a NOAA AGO Representative to create his post-retirement consulting position.¹² Specifically, Senior Official told the OIG, the AGO Representative recommended the contract overseen by the COTR as a suitable vehicle for his post-government employment.¹³ The COTR then advised on what he would need to secure a consulting position for Senior Official under the contract, including a Statement of Work (SOW) describing what Senior Official's post-retirement duties would entail, an approved hourly consulting rate, and an approved period of performance for the arrangement.¹⁴

Following this, Senior Official told the OIG, he began working with Subordinate 1 to draft the SOW for his post-retirement position.¹⁵ For example, in a late-March 2010 email, Senior Official informed Supervisor how he had "edited the initial draft SOW" with guidance from Subordinate 1, and how he "added [draft] terms and conditions" to the proposed wording of his contract, including an hourly rate for his services, which he estimated to be "[c]omparable"

⁵ See June 27, 2012 Written Statement Submitted by Senior Official to the OIG ("Written Statement"), at 1-2.

⁶ See *id.* at 2; Transcript of June 6, 2012 OIG Interview of Supervisor ("Supervisor Tr."), at 12:296-15:369.

⁷ See Supervisor Tr. at 3:62-5:103, 12:296-13:325.

⁸ See *id.* at 25:621-25.

⁹ See *id.* at 11:270-72.

¹⁰ See *id.* at 17:419-21; see also *id.* at 12:300-13:325.

¹¹ See Written Statement at 2.

¹² See *id.* at 2-3.

¹³ See *id.* at 3.

¹⁴ See *id.*

¹⁵ See *id.*; see also OIG Investigative Record Form ("IRF") on Interview of Subordinate 1 (Aug. 2, 2012), at 1-2.

to what NWS was paying him at the time.¹⁶ Specifically, Senior Official informed Supervisor, he anticipated that three months of consulting work at the rate he proposed would cost NWS “approx[imately] \$56k plus maybe 10% for [contractor] overhead.”¹⁷ While documentary evidence such as this indicates the extent to which Senior Official was personally involved in the process of creating his own consulting position, Senior Official emphasized in correspondence with the OIG how the AGO Representative, the COTR, and others were active participants in this process as well, and how it was Supervisor who first requested and ultimately approved of Senior Official’s consulting arrangement.¹⁸

B. Senior Official Coordinates with Others to Have NWS Pay for His Post-Retirement Housing Expenses

During this same March-April 2010 period, Senior Official was also working with others to have his post-retirement housing expenses paid by the government. According to Senior Official, he told Supervisor that one of the conditions for his returning to NWS as a consultant would be government-paid housing near the NWS office in Silver Spring, Maryland, where he would be required to perform his work under the terms of the contract that would be employing him.¹⁹ Senior Official made this demand, he explained to the OIG, because he had already made his permanent residence several hours away from Silver Spring in the months just prior to his retirement.²⁰

To obtain funding for his Silver Spring housing expenses, Senior Official coordinated with others to have NWS send money covering these costs to NOAA’s National Marine Fisheries Service (NMFS), which had a contractual arrangement with an apartment building near his office that NOAA used to accommodate its high-level employees during temporary details away from their permanent duty stations.²¹ Senior Official accomplished this transfer of funds by asking another of his subordinates (Subordinate 2) to inquire of NOAA’s Financial Policy Office whether the NMFS apartment contract could be used to house him once he became a contractor, and then instructing Subordinate 2 to work with a NMFS Official to set up the payment mechanism whereby NWS would reimburse NMFS for the cost of his housing.²²

¹⁶ See Email from Senior Official to Supervisor & Subordinate 1 Regarding Draft Contract Position (on file with OIG).

¹⁷ See *id.*

¹⁸ See generally May 18, 2015 Response to Chapter 2 of Draft Report on OIG Matter No. 12-0447-I Submitted by Senior Official to the OIG (“Response”). On May 11, 2015, the OIG sent Senior Official a draft copy of Chapter 2 of this Report and provided him with an opportunity to submit comments about the draft, which he did by email on May 18, 2015. The OIG has revised this Report in certain instances in light of those comments. A summary of the comments appears in Chapter 4, *infra*.

¹⁹ See Written Statement at 2.

²⁰ See *id.*

²¹ See *id.* at 4.

²² See Email Exchange Regarding Senior Official’s Instructions to Subordinate 2 (on file with OIG) (Senior Official asking Subordinate 2 to “respond to NMFS . . . with our ACCS info (use the NCWCP (CFG) O&M ACCS) to ‘reserve/fund’ this 90-day housing at the [apartment complex]”); see also Written Statement at 4.

According to both Senior Official and the COTR, Supervisor approved payment for Senior Official's post-retirement housing.²³ Indeed, the COTR recalled specifically asking Supervisor whether the contract for which he was responsible would be required to accommodate Senior Official's request for housing expenses, and Supervisor telling him that this would be unnecessary because the expenses would be paid separately by his office.²⁴ Moreover, several people within the office told the OIG that they believed Subordinate 2 would not have arranged for payment of Senior Official's housing without Supervisor's approval.²⁵

By contrast, in his interview with the OIG, Supervisor at first had difficulty recalling whether he approved payment of Senior Official's housing expenses and then doubted he would have done so because making such payments would have been unusual.²⁶ Eventually, Supervisor denied approving the payments altogether, telling the OIG that to do so would be "inappropriate" – indeed, such payments would be so inappropriate, Supervisor ultimately said, that he did not know how anyone in his office who knew of the payments would have thought they were proper.²⁷

This last sentiment – that NWS paying for Senior Official's housing would not be appropriate – was echoed by one of the agency's highest-ranking leadership officials. Although she did not learn of NWS making such payments until after Senior Official left his consulting position, this high-ranking official stated clearly to the OIG that such payments were not proper and should not have been made.²⁸

Aside from increasing the overall cost of Senior Official's consulting services, payment of Senior Official's housing expenses by NWS also ran afoul of the terms of the Blanket Purchase Agreement used to secure the apartment where Senior Official stayed, which authorized payment for the accommodation of high-level government employees only and did not permit payment for the housing of contractors like Senior Official.²⁹ But the NMFS Official who approved Senior Official's ongoing use of this contract told the OIG that she did not know he was no longer a government employee at the time, so she did not question the arrangement.³⁰

C. Senior Official Transitions from NWS Employee to NWS Contractor

In late April 2010, Senior Official signed the task management plan creating the contractor position that would provide him with his post-retirement consulting income.³¹ Despite his

²³ See Written Statement at 4; OIG IRF on Second Interview of Senior Official (June 14, 2012), at 1; OIG IRF on Interview of COTR (June 6, 2012), at 3.

²⁴ See OIG IRF on Interview of COTR (June 6, 2012), at 3.

²⁵ See, e.g., OIG IRF on Interview of High-Level Official 1 (June 20, 2012), at 3; OIG IRF on Second Interview of Senior Official (June 14, 2012), at 1-2; OIG IRF on Interview of High-Level Official 2 (June 11, 2012), at 3.

²⁶ See Supervisor Tr. at 41:1016-52:1288.

²⁷ See *id.* at 52:1289-57:1401.

²⁸ See Transcript of Feb. 7, 2013 OIG Interview of High-Ranking Leadership Official ("Leadership Official Tr."), at 44:1087-46:1140.

²⁹ See OIG IRF on Interview of NMFS Official (May 23, 2012), at 1-2; Basic Overnight Quarters, LLC Blanket Purchase Agreement (on file with OIG), at Statement of Objectives.

³⁰ See OIG IRF on Interview of NMFS Official (May 23, 2012), at 2.

³¹ See generally OIG IRF on Task Management Plan (June 6, 2012).

status as a government employee at the time, Senior Official signed this document in his capacity as a representative of the contractor for which he would work after his retirement, while Supervisor and the COTR signed as the designated representatives of NWS.³²

According to Supervisor, although he initially had concerns about whether making such an arrangement would be proper from a government-ethics standpoint, these concerns had dissipated by the time he signed off on Senior Official's consulting position.³³ The reason for this, Supervisor told the OIG, is because he "sort of got the sense that this is just the way business is done" at NWS.³⁴ Moreover, Supervisor said, NOAA AGO had been involved in creating the position, which made him feel "pretty comfortable" about it.³⁵

When interviewed by the OIG, the AGO Representative who assisted Senior Official in becoming a consultant said that he remembered very little about the process, but he did express the view that it was not really his responsibility to ensure Senior Official's consulting arrangement met government ethics requirements.³⁶ This responsibility, the AGO Representative said, was primarily the burden of Senior Official himself, who should have checked with ethics attorneys if anyone had questions about the propriety of him taking such a position or the process used to create it, which Senior Official never did.³⁷

With his consulting position and housing arrangement in place, Senior Official retired from NWS on one day in early May 2010 only to return to the agency the very next day as a consultant.³⁸ According to Supervisor, he was the person who oversaw Senior Official's work when he returned to NWS as a consultant, just as he had done prior to Senior Official's retirement.³⁹ Also according to Supervisor, Senior Official's duties as a consultant were very similar to those for which he was responsible prior to his retirement,⁴⁰ although, as Senior Official pointed out in correspondence with the OIG, he no longer performed the managerial and supervisory duties he once carried out after he became a contractor.⁴¹

Because he did not initially wish to work long-term as a consultant, the original period of performance set for Senior Official's contract was only 90 days, but Senior Official agreed to multiple NWS requests to extend this contract.⁴² When the government finally terminated the contract in early 2012, Senior Official had been a consultant for approximately 21 months.⁴³ During that time, and in addition to what he received from the federal government in retirement income, Senior Official collected more than \$330,000 in wages alone, with the monthly average of these wage payments working out to roughly \$3600 more per month than

³² See *id.*

³³ See Supervisor Tr. at 39:954-40:983.

³⁴ See *id.* at 39:970-71.

³⁵ See *id.* at 17:413-18:433; see also *id.* at 24:589-26:630, 39:972-40:983.

³⁶ See OIG IRF on Interview of AGO Representative (July 10, 2012), at 2.

³⁷ See *id.*; OIG IRF on Search of Department of Commerce Ethics Inquiry Database (Aug. 2, 2012).

³⁸ See Written Statement at 1.

³⁹ See Supervisor Tr. at 34:834-36:898.

⁴⁰ See *id.*

⁴¹ See Response at 7.

⁴² See generally OIG IRF on Contract Modifications (June 5, 2012).

⁴³ See Written Statement at 1.

what he made before retiring.⁴⁴ But Senior Official's post-retirement "raise" was in fact much greater than that, considering NWS paid for more than \$50,000 worth of his housing expenses during the consultancy phase of his employment with the agency.⁴⁵

Including all associated expenses, Senior Official's consulting services ultimately cost the government a total of \$471,875.34.⁴⁶ It is unclear how long NWS would have continued to retain Senior Official in his post-retirement years, and it is therefore unclear how long these consulting costs would have continued to grow had certain misconduct on the part of Senior Official not surfaced at the beginning of 2012 and precipitated his final departure from the agency.

D. Senior Official Exerts Influence on Others to Have NWS Employ His Immediate Family Member

During December 2011, Senior Official approached a NOAA Tsunami Program Official (TPO) stationed at NWS headquarters in Silver Spring and informed her that one of his immediate family members – a recent college graduate with a liberal arts degree and a specialization in foreign language – was looking for employment.⁴⁷ According to the TPO, Senior Official expressed the view that his family member had skills that could benefit the Tsunami Program, but the TPO told Senior Official in response that the Program had no employment vacancies at the time.⁴⁸ A short time later, Senior Official again approached the TPO about employing his family member, stating this time that Supervisor had approved use of some of the overhead in the Office of the Assistant Administrator (OAA) to help fund a position for her, and provided the TPO with a copy of his family member's resume.⁴⁹ The TPO told the OIG that Senior Official spoke in person with her on at least one additional occasion about hiring his family member, and he also sent her an email stating that her second-line supervisor (TPO Supervisor) had approved hiring the family member on a one-year contract:

[TPO Supervisor and] I had a good conversation. He will support[, at] 110%, a one-year support contract for my [family member]. . . . As we discussed[,] her interest is in [i]nternational affairs, but she (as discussed) is skilled in spreadsheets, [P]ower[P]oint, and MS Word. She is an excellent writer and a very quick learner. The optimum solution is for her to work 50% in [International Activities] in support of the international tsunami effort and 50% for you and [TPO Supervisor] in supporting the Strengthening US Tsunami [P]rogram.⁵⁰

⁴⁴ See OIG Memorandum to File on Investigative Findings Reported to the Inspector General (July 19, 2012), at 3; Voluntary Retirement Standard Form 50 Notification Regarding Senior Official (on file with OIG).

⁴⁵ See OIG Memorandum to File on Investigative Findings Reported to the Inspector General (July 19, 2012), at 1, 3.

⁴⁶ See *id.*

⁴⁷ See OIG IRF on Interview of TPO (Feb. 2, 2012), at 1; see also OIG IRF on First Interview of International Activities Office Administrative Official (Feb. 2, 2012), at Attachment 1 (the resume of Senior Official's family member).

⁴⁸ See OIG IRF on Interview of TPO (Feb. 2, 2012), at 1.

⁴⁹ See *id.* at 1-2.

⁵⁰ *Id.* at Attachment 1 (containing email exchange between Senior Official and TPO regarding the hiring of Senior Official's family member); see also *id.* at 2.

According to the TPO, she informed Senior Official each time he approached her on the subject that she had no available employment positions to offer his family member, and she ultimately went to her first-line supervisor to express the view that Senior Official had been acting unethically by repeatedly advocating that the Tsunami Program should hire his family member.⁵¹

According to TPO Supervisor, Senior Official also approached him about the Tsunami Program hiring his immediate family member and informed him that Supervisor had agreed to NWS finding her employment.⁵² Contrary to what Senior Official wrote in his email to TPO, TPO Supervisor did not recall any discussion about how a position for the family member would be funded, but he did recall being concerned about whether the Tsunami Program actually needed the services Senior Official's family member would supposedly provide, and also about whether hiring the family member would violate the law.⁵³ For these reasons, TPO Supervisor told the OIG, he did not approve hiring Senior Official's family member as a contractor.⁵⁴

In conjunction with his lobbying effort to get the Tsunami Program to find employment for his family member, Senior Official was also approaching other NWS officials to advocate for her hiring into an OAA component called the International Activities Office (IAO).⁵⁵ Specifically, Senior Official spoke with an IAO Administrative Official in December 2011 about hiring his family member as a travel manager on the IAO's international travel support contract beginning the following month.⁵⁶ According to the Administrative Official, Senior Official offered to provide him with a copy of his family member's resume, told the Administrative Official that he would appreciate it if he could get his family member an interview with the IAO, and offered to exert influence to have the Administrative Official promoted from the GS-13 position he held at the time to a higher-paid GS-14 position if he assisted Senior Official in getting his family member hired.⁵⁷ The Administrative Official reported to the OIG that Senior Official approached him again about hiring his family member in January 2012, and when the Administrative Official informed Senior Official that the IAO did not have any travel manager openings at that time, Senior Official reportedly told him that he would arrange to have two positions added to the Administrative Official's area of oversight so that he could hire Senior Official's family member.⁵⁸ Later, Senior Official provided the Administrative Official with a copy of his family member's resume and requested to speak with him again about the two new positions Senior Official had mentioned.⁵⁹ According to the Administrative Official, there was nothing in the resume of Senior Official's family member to suggest she had the necessary skills to serve as a competent travel manager for NWS, he felt very uncomfortable about Senior Official's offer to exert influence to get him a promotion in exchange for the Administrative

⁵¹ See *id.*

⁵² See OIG IRF on Interview of TPO Supervisor (Feb. 2, 2012), at 1.

⁵³ See *id.*

⁵⁴ See *id.* at 1-2.

⁵⁵ See, e.g., OIG IRF on Interview of IAO Supervisor (Feb. 2, 2012), at 1.

⁵⁶ See OIG IRF on First Interview of IAO Administrative Official (Feb. 2, 2012), at 1-2.

⁵⁷ See *id.* at 2; OIG IRF on Second Interview of IAO Administrative Official (Aug. 5, 2014), at 1-2.

⁵⁸ See OIG IRF on First Interview of IAO Administrative Official (Feb. 2, 2012), at 2.

⁵⁹ See *id.*

Official's assistance in hiring the family member, and, accordingly, he reported all of this to his supervisor (IAO Supervisor).⁶⁰

The IAO Supervisor corroborated what the Administrative Official told the OIG about their conversations, and she also noted that Senior Official had approached her directly about the IAO hiring his family member.⁶¹ Specifically, the IAO Supervisor explained, Senior Official came to her in December 2011 and proposed an arrangement whereby her office and the Tsunami Program would jointly fund a contract position for his family member, who could then provide support to both offices.⁶² The IAO Supervisor reported this proposition to a high-ranking NWS official, and later reported Senior Official's discussion with the Administrative Official about adding two new positions so that his family member could be hired.⁶³ According to the IAO Supervisor, the high-ranking official with whom she spoke expressed the view that what Senior Official was doing to get his family member hired was unethical and beyond the bounds of what a contractor should be permitted to do.⁶⁴

In his interview with the OIG, Senior Official acknowledged providing his family member's resume to the TPO and TPO Supervisor, but expressed uncertainty about whether he had provided the resume to the IAO Administrative Official.⁶⁵ Moreover, Senior Official denied that he ever advocated that NWS should create a position for his family member, denied that he ever suggested to anyone that Supervisor had agreed that his family member should be hired, and denied that he attempted to exert influence on anyone at NWS for purposes of securing employment for his family member.⁶⁶ Senior Official did state, however, that a high-ranking NWS official told him in January 2012 that she had received complaints about him attempting to exert influence to get his family member hired and admonished him to refrain from seeking employment for his family member at NWS from that point forward.⁶⁷

As a result of the OIG's investigation and reporting of Senior Official's actions – particularly his effort to influence agency employees to hire his immediate family member – NOAA terminated Senior Official's consulting contract in early 2012, and he has not been employed by the agency since that time.⁶⁸

⁶⁰ See *id.*

⁶¹ See OIG IRF on Interview of IAO Supervisor (Feb. 2, 2012), at 1-2.

⁶² See *id.*

⁶³ See *id.* at 2.

⁶⁴ See *id.*

⁶⁵ See OIG IRF on First Interview of Senior Official (Feb. 2, 2012), at 2-3.

⁶⁶ See *id.* at 3-4.

⁶⁷ See *id.* at 3.

⁶⁸ See, e.g., Email from NOAA AGO Official to Contractor Representative Regarding Termination of Senior Official's Consulting Contract (on file with OIG).

Chapter 3: Analysis

I. Legal Framework

The OIG has identified the following federal laws and regulations as being implicated by the facts of this case:

A. 18 U.S.C. § 208: Acts Affecting a Personal Financial Interest

18 U.S.C. § 208 is a criminal statute that prohibits federal employees from acting in an official capacity in matters that will affect their financial interests. The text of this law that is most pertinent here reads as follows:

[W]hoever, being an officer or employee of the executive branch of the United States Government, . . . participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a . . . contract . . . or other particular matter in which, to his knowledge, he . . . has a financial interest – [s]hall be subject to the penalties set forth in section 216 of this title.⁶⁹

B. 5 C.F.R. § 2635.402: Disqualifying Financial Interests

The same activity criminalized by 18 U.S.C. § 208 is also prohibited by the Code of Federal Regulations:

An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he . . . has a financial interest, if the particular matter will have a direct and predictable effect on that interest.⁷⁰

C. 5 C.F.R. § 2635.702: Use of Public Office for Private Gain

Similarly, the Code of Federal Regulations also prohibits executive branch employees from using their government positions to benefit themselves personally. According to 5 C.F.R. § 2635.702: “An employee shall not use his public office for his own private gain,” nor shall any federal employee “use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself”⁷¹

⁶⁹ 18 U.S.C. § 208(a).

⁷⁰ 5 C.F.R. § 2635.402(a).

⁷¹ 5 C.F.R. § 2635.702; *id.* at § 2635.702(a).

D. 18 U.S.C. § 201: Bribery of Government Officials and Witnesses

Federal law also criminalizes the bribery of government officials pursuant to 18 U.S.C. § 201, which states in pertinent part:

Whoever . . . directly or indirectly, corruptly gives, offers or promises anything of value to any public official . . . with intent . . . to influence any official act . . . shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.⁷²

E. 48 C.F.R. § 37.104: Personal Services Contracts

Finally, Section 37.104 of the Federal Acquisition Regulation (FAR) prohibits the government from entering into what are known as “personal services contracts” unless an agency is “specifically authorized by statute . . . to do so.” According to the FAR:

A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor’s personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.⁷³

II. Investigative Findings**A. Senior Official's Participation in the Process of Creating His Own Consulting Position and of Arranging Payment for His Post-Retirement Housing Expenses Implicated the Prohibitions Against Conflicts of Interest Found in 18 U.S.C. § 208, 5 C.F.R. § 2635.402, and 5 C.F.R. § 2635.702**

The OIG determined that Senior Official's involvement in procuring his own post-retirement consulting services for NWS while still serving as a government official implicated several federal laws and regulations prohibiting conflicts of interest, the most notable being 18 U.S.C. § 208, which bars federal employees from participating personally and substantially in an official capacity in any particular matter in which they have a financial interest if the particular matter will have a direct and predictable effect on that interest.

The evidence establishes that Senior Official was significantly involved in the process of creating the consulting position he would occupy after his retirement from NWS. In particular, Senior Official and Subordinate I jointly drafted the SOW outlining the services he would provide as a

⁷² 18 U.S.C. § 201(b).

⁷³ 48 C.F.R. § 37.104(a).

consultant, Senior Official participated in discussions establishing the rate of pay he would receive as a consultant, and he even signed (on behalf of the chosen contractor) the task management plan approving the creation of the consulting position that would guarantee him his post-retirement income, all while still holding his government position. Further, Senior Official's instructions to Subordinate 2 resulted in the government paying his post-retirement housing expenses. All told, and in addition to whatever he collected in retirement income, Senior Official's actions in his official capacity as a government employee contributed directly to his receiving nearly \$390,000 in salary and housing expenses from NWS once he left the agency. And while Senior Official may not have known just how much he stood to gain from these actions at the time he took them, the fact that he would benefit financially from his actions was not only predictable, but it was also certain.

These facts also establish that Senior Official may have run afoul of the Standards of Ethical Conduct for Employees of the Executive Branch – particularly, 5 C.F.R. § 2635.402, which imposes regulatory restrictions against employees of federal agencies like NWS engaging in the conduct prohibited by 18 U.S.C. § 208, and 5 C.F.R. § 2635.702, which prohibits federal employees from using their position for their own private gain.⁷⁴

While the record shows that Senior Official likely would not have engaged in this conflict of interest had it not been requested and approved by Supervisor and facilitated by others at NWS, including officials with greater contracting knowledge and experience than himself (such as the AGO Representative and the COTR), that fact does not exonerate Senior Official, who had several decades of government experience at the time he involved himself in arranging for his own post-retirement consulting income. Similarly, we believe that it reflected poor judgment for Senior Official to task one of his subordinates to assess the propriety of his using the NMFS housing contract and then direct that same subordinate to make arrangements for the payment of his housing expenses. Senior Official's use of Subordinate 2 for these tasks, as opposed to seeking the advice and assistance of someone without an incentive to please him, was not an appropriate way to handle an issue so fraught with ethical implications as this one. Indeed, according to Subordinate 2, he did not even contemplate questioning the propriety of Senior Official directing him to provide NMFS with the NWS accounting codes used to pay for his housing because, Subordinate 2 told the OIG, Senior Official "was so close to us" that he "wasn't even thinking it [could be] inappropriate" for him to follow Senior Official's instructions in this regard.⁷⁵ Overall, we believe that, due to his long government career and extensive knowledge about government procedures, Senior Official should have been aware of applicable federal law and totally removed himself from the process of creating his consulting position and arranging for the payment of his housing expenses to avoid any appearance of impropriety. At the very least, we believe that Senior Official should have exercised more caution under the circumstances and sought ethics advice from appropriate Department of Commerce officials before taking the actions that he did.

⁷⁴ Because the OIG concluded that Senior Official's actions implicated criminal law and ethics regulations, it referred this matter to the Office of Government Ethics (OGE) and to the Department of Justice (DOJ) for prosecution. See OGE Form 202 Regarding OIG Matter No. 12-0447-1 (on file with OIG). But the relevant prosecutors declined to pursue charges. See *id.*

⁷⁵ See OIG IRF on Interview of Subordinate 2 (May 30, 2012), at 2.

In sum, the evidence shows that, while multiple government officials share responsibility for the situation that developed, Senior Official's involvement in the process of creating his own consulting position and of arranging for the payment of his housing expenses was improper and may have been prohibited by applicable federal law.

B. Senior Official's Exertion of Influence to Obtain Employment for His Immediate Family Member at NWS Was Improper and Implicated the Prohibition Against Bribery of Government Officials Found in 18 U.S.C. § 201

Although Senior Official denied that he did anything improper when seeking a contract position for his immediate family member, we found other evidence, including contemporaneous emails and the testimony of other witnesses contradicting that of Senior Official, to be more consistent and credible. In contrast with what Senior Official told the OIG, this other evidence supports the view that Senior Official attempted to use his standing as a former high-ranking official at NWS to influence official hiring actions within the agency. We found that, while most of his actions in this regard were not prohibited by federal law because he was not a federal employee at the time, Senior Official's actions certainly reflected poor judgment and also an attempt to circumvent federal hiring and contracting procedures.

Indeed, it is also quite plain from the resume of Senior Official's family member, focused as it is on liberal arts and foreign language training, that she was ill-suited for the Tsunami Program and the IAO travel support positions that Senior Official sought out for her, which highlights the fact that his actions reflected poor judgment on his part.⁶⁶

Most significantly, the evidence indicates that Senior Official may have offered to help upgrade the position of one particular NWS employee from the GS-13 level to the GS-14 level in exchange for hiring Senior Official's family member. When addressing this issue, Senior Official denied that he ever made such an offer and, in any event, Senior Official argued, he had no power as a contractor to accomplish such an upgrade.⁷⁷ But the Administrative Official who reported the offer was unequivocal in his assertions about it during not one but two in-person interviews with the OIG.⁷⁸ Moreover, the Administrative Official contemporaneously reported the alleged offer to his supervisor, who confirmed as much during her OIG interview.⁷⁹ If it was indeed made, the OIG concludes that Senior Official's offer to exert influence to upgrade the Administrative Official's position in exchange for the hiring of his family member would implicate 18 U.S.C. § 201, the federal prohibition against bribery of public officials.⁸⁰

Ultimately, Senior Official was unsuccessful in obtaining employment at NWS for his family member, but that does not excuse the improper tactics he used to seek such employment during his tenure as a contractor for the agency.

⁶⁶ See generally OIG IRF on First Interview of IAO Administrative Official (Feb. 2, 2012), at Attachment 1 (the resume of Senior Official's family member).

⁶⁷ See Response at 8-10.

⁶⁸ See OIG IRF on First Interview of IAO Administrative Official (Feb. 2, 2012), at 2; OIG IRF on Second Interview of IAO Administrative Official (Aug. 5, 2014), at 1-2.

⁶⁹ See OIG IRF on Interview of IAO Supervisor (Feb. 2, 2012), at 1.

⁸⁰ This potential violation was included in the OIG's referral of this matter to the OGE and DOJ. See *supra* note 74.

C. The Hiring of Senior Official Was Contrary to the Federal Acquisition Regulation and May Indicate Troubling “Revolving Door” Issues within NOAA

Finally, the OIG determined that Senior Official’s consulting arrangement as a whole was in violation of the Federal Acquisition Regulation because it amounted to a prohibited “personal services contract” as defined by FAR § 37.104, and that this contract may be indicative of a routine and troubling practice at NOAA of hiring former employees as contractors for purposes of carrying out similar duties to those they performed prior to leaving federal service.

The FAR provides guidance on how to ascertain whether a government contract is for the retention of personal services, with the following factors being of particular relevance: (1) performance of the contracted services is carried out on site for the government agency, (2) the equipment used for the services is furnished by the government, (3) the services are applied directly to the integral effort of the agency in furtherance of its assigned function or mission, (4) comparable services meeting comparable needs are performed in the same or similar agencies using civil service personnel, (5) the need for the type of service provided can reasonably be expected to last beyond one year, and (6) the inherent nature of the service or the manner in which it is provided reasonably requires government direction or supervision of the contractor employee in order to (i) adequately protect the government’s interest, (ii) retain control of the function involved, or (iii) retain full personal responsibility for the function supported in a duly authorized federal officer.⁸¹

Here, the evidence establishes that NWS used a personal services contract to retain Senior Official after his retirement without any apparent statutory authorization for doing so. Indeed, all of the factors listed in FAR § 37.104 for purposes of identifying a personal services contract are evident in this case. For example, Senior Official performed most of his consulting work “on site” at NWS headquarters, meaning the first factor is met here.⁸² Similarly, because Senior Official performed this consulting work in the very same office he occupied prior to leaving government service, it is apparent that the “equipment” he used to perform this work was furnished to him by the government, meaning the second factor is met too.⁸³ Moreover, it is plain that Senior Official’s consulting services were in furtherance of the “assigned mission or function” of NWS and that “comparable services meeting comparable needs” are performed by civil service personnel – in fact, as Supervisor acknowledged to the OIG, Senior Official performed very similar duties in his consulting role as he did prior to retiring as a federal employee – which means the third and fourth factors are easily met.⁸⁴ Further, the evidence indicates that NWS should have anticipated that Senior Official’s consulting contract would “last beyond one year,” given that Senior Official took on duties he performed while holding a permanent position with the government, and given the fact that Senior Official ended up working as a consultant for almost two years (and might have worked in that capacity even

⁸¹ See 48 C.F.R. § 37.104(d).

⁸² See, e.g., Supervisor Tr. at 34:847-35:851.

⁸³ See, e.g., *id.*; Leadership Official Tr. at 44:1093-45:1112 (high-ranking NWS leadership official explaining her understanding that Senior Official retired and then “the next day [he] was already back . . . in the same cubicle doing the same thing”).

⁸⁴ See Supervisor Tr. at 35:875-36:898 (Supervisor explaining that Senior Official did not “take on any new duties as a consultant outside of his former . . . type [of] duties”).

longer had his effort to obtain employment for his family member not surfaced), which means the fifth factor is met.⁸⁵ Finally, the sixth factor is also met because the inherent nature of Senior Official's consulting services – which Supervisor described as having “overlap” with those provided by one of his deputies – required supervision and direction by government officials to protect the government's interests.⁸⁶

Perhaps the most troubling aspect of Senior Official's personal services contract with NWS is that the agency appears to have paid him to do many of the same things as a consultant that it had been paying him a lower salary to do while he was still a federal employee. In his interview with the OIG, Supervisor rationalized this fact by explaining that, throughout the initial period Senior Official worked as a contractor, his office was “trying to hire people who would come in and join the Weather Service because of the vacancy that [Senior Official] created,” but, he said:

[T]he reality of it is, is that [many months into Senior Official's consulting contract,] we still needed him. We were – you know, we weren't weaning our way off as much as his value was something that, well, just a little longer or something. . . . Even though we were trying to wean him off – wean ourselves off – his value still remained relatively high. So I knew there was a time when we would have to just bite the bullet and just say we're going to have to figure out how to make it without [Senior Official] because the longer he stayed it wasn't really helping [the office make the necessary adjustments after his retirement].⁸⁷

Whatever justification NWS may have had for retaining Senior Official's services as a contractor, it is troubling that the agency was willing to “hire back” one of its former employees at what amounted to an increased rate of pay so quickly after his departure from federal employment, and that NOAA contract control measures apparently did not cause anyone to question or at least more closely scrutinize this arrangement. Even more alarming is the fact that several people with whom the OIG spoke during our investigation expressed the view that this practice is commonplace at NOAA. For example, one of the highest-ranking NWS leadership officials wondered aloud during her OIG interview “why we have all these people that retire and then we go and hire them to come back.”⁸⁸ Similarly, in his interview with the OIG, the AGO Representative who facilitated Senior Official's consulting arrangement opined that NOAA employees returning as contractors once they retire “happens all the time.”⁸⁹ Likewise, the COTR who helped Senior Official become a contractor told the OIG that he had no concerns about Senior Official becoming a consultant immediately after his retirement because he had heard of other NWS employees doing the same thing, and he viewed such a career transition as a great way for retiring federal employees to make money from their institutional knowledge of an agency.⁹⁰

⁸⁵ See *id.*; OIG IRF on Contract Modifications (June 5, 2012); Written Statement at 1.

⁸⁶ See Supervisor Tr. at 35:875-36:898.

⁸⁷ See *id.* at 36:899-38:927.

⁸⁸ See Leadership Official Tr. at 44:1095-97.

⁸⁹ See OIG IRF on Interview of AGO Representative (July 10, 2012), at 2.

⁹⁰ See OIG IRF on Interview of COTR (June 6, 2012), at 1.

Comments such as these indicate that NOAA may have a systemic “revolving door” problem that created conditions encouraging the abuses committed in this case. While that fact would not excuse the improprieties identified by the OIG during this investigation, it may help explain why NOAA officials so readily permitted these improprieties to take place.

Chapter 4: Response

On May 11, 2015, the OIG sent Senior Official a draft version of Chapter 2 of this Report and invited him to submit comments about the draft, which he did by email on May 18, 2015. The OIG has revised this Report in certain instances as a result of Senior Official's comments, which are broadly grouped by topic and summarized below:

Comments on Senior Official's Participation in Creating His Own Consulting Position:

- Senior Official argued that the OIG is incorrect to suggest he engaged in improprieties of any kind and pointed out that he contributed value to NWS both as an employee and as a consultant.
- Senior Official emphasized that it was NWS officials – primarily Supervisor – who wanted him to become a consultant to the agency; this was not a position he sought for himself.
- Senior Official only involved himself in the process of creating his consulting position because Supervisor wanted him to start working as a contractor immediately upon his retirement, which necessarily required him to participate in this process while he was still a federal employee. If Senior Official had been informed that participating in this process could raise ethical concerns, he would have simply retired and postponed discussion about his return to NWS as a consultant until after the agency deemed it appropriate.
- The creation of Senior Official's consulting position was a collaborative effort undertaken at the direction of Supervisor, and several NOAA officials reviewed and approved the arrangement that resulted from this effort. Senior Official believes everyone who participated in the process acted in good faith, and he argued that, to the extent there was anything improper about this process, blame for the situation must be shared.
- Senior Official argued that the hourly rate he charged as a consultant was fair because it corresponded to the amount the government paid him while he was still a federal employee plus what the government paid to cover several expenses that it would no longer take care of upon his retirement, including health benefits, life insurance, holiday pay, annual leave, sick leave, retirement contributions, and FICA contributions. Senior Official's rate also accounted for the self-employment tax that he would be required to pay as a consultant.
- Senior Official pointed out that he had initially proposed an hourly rate including an amount intended to cover his post-retirement housing costs, but he agreed to eliminate this additional amount when NWS told him that doing so would benefit the agency by putting him in a more economical labor category under the contract vehicle that would be used to employ him.

Comments on NWS Paying for Senior Official's Housing Expenses:

- Senior Official emphasized that NWS had always been aware that payment of his housing costs would be a condition required for the agency to retain his consulting services.
- Rather than seeking reimbursement for these expenses through the materials portion of the contract vehicle used to employ him as a consultant, Senior Official advocated that NWS look into whether he could use the agency's existing NMFS housing arrangement instead because Senior Official believed this would save NOAA money.
- Senior Official assumed he was eligible to use the NMFS housing arrangement because it was meant to provide lodging for NOAA officials on temporary duty travel, and he believed the fact that he had made his permanent residence several hours away from where he was required to work meant he was eligible for temporary duty housing.
- Senior Official argued that payment of his housing expenses did not increase the overall cost of his consulting services because he would never have agreed to consult for NWS in the first place if the agency did not cover these expenses somehow.
- Senior Official had no knowledge that there was anything improper about NWS using its NMFS housing arrangement to cover the cost of his post-retirement lodging expenses; he relied in good faith on the reports he received from others, including Subordinate 2, that his use of the housing arrangement was permissible.

Comments on Senior Official's Transition from NWS Employee to NWS Contractor:

- Senior Official reiterated that he relied on the advice, direction, and approval of other NOAA officials when transitioning into his role as a consultant for NWS, so he had no reason to believe that there was anything improper about the way this transition took place.
- Senior Official took issue with the OIG characterizing his consulting duties as identical to those he performed while a federal employee, stating that his core duties were primarily managerial and supervisory in nature before he retired and emphasizing that he had no such managerial or supervisory duties once he became a consultant.
- Senior Official pointed out that he had no intention of becoming a long-term consultant for NWS, and that he only agreed to have his consulting arrangement extended beyond the original 90-day period of performance at the request of NWS. He emphasized that, each time NWS extended the contract, NOAA officials reviewed and approved the necessary amendments. He argued that, if there were anything improper about this arrangement, NOAA officials could have rescinded it at any time, and the fact that NOAA did not rescind the arrangement indicated to him that there was nothing improper about it.

- Senior Official reiterated that he brought value to NWS as a consultant and stated that it would be incorrect to assume that he only obtained and kept his consulting position due to some influence he may have had over agency officials.

Comments on Senior Official's Effort to Obtain Employment for His Family Member:

- Senior Official expressed regret about approaching NWS officials about hiring his family member, not because he believes there was anything improper about doing this, but instead because he understands from the OIG's Report that his actions had made others feel uncomfortable.
- Senior Official's recollection about the conversations he had with NWS officials concerning the hiring of his family member differs somewhat from the witnesses whose accounts are included in the OIG's Report, but Senior Official believes any discrepancies are for the most part due to misunderstandings and the passage of time.
- By contrast, Senior Official characterized the account given to the OIG by the IAO Administrative Official about how Senior Official offered to exert influence to upgrade the Administrative Official's position in exchange for hiring his family member as "patently false and malicious." Senior Official provided his own version of what happened when he spoke with the Administrative Official and then characterized the Administrative Official's version of events as "uncorroborated" and "untrue." Senior Official concluded by arguing that his version of events is more credible because it would make little sense for him to have put his reputation and career in jeopardy by offering a "bribe" to the Administrative Official simply for the sake of securing a low-level contractor position for his family member.

Chapter 5: Conclusion

Senior Official's participation in creating his own consulting contract, his actions to arrange for payment of his post-retirement housing expenses, and his exertion of influence to obtain government-paid employment for his immediate family member implicated multiple legal and regulatory restrictions meant to ensure integrity in government. Indeed, because the OIG concluded that some of Senior Official's conduct may have been criminal in nature, it referred this matter to both the Office of Government Ethics and to the Department of Justice for prosecution, but the relevant prosecutors declined to pursue charges. To its credit, NOAA acted quickly to terminate Senior Official's contractual association with NWS once the OIG reported our initial findings in this matter, which prevented any additional improprieties from taking place.

As a result of this investigation, the OIG is seeking the suspension and debarment of Senior Official from any future contracting work. Further, to evaluate whether this matter is indicative of more widespread problems within the agency, the OIG is taking steps to ascertain how common it is for NOAA employees to return as contractors after leaving full-time employment to determine (1) whether existing contract control measures are functioning properly and (2) whether the agency should implement additional safeguards to prevent abuses such as those that took place here.

Appendix A: Identification Table

Identity of People Referenced in Office of Inspector General Report on Investigation into Alleged Contracting Misconduct and Exertion of Improper Influence Involving a Senior National Weather Service Official (OIG Case 12-0447-1)

Report Pseudonym	Name ⁹¹	Title / Office ⁹²
Senior Official	Peter Donald Jiron	Former NWS Deputy CFO
Supervisor	Robert Byrd	NWS CFO
Subordinate 1	David Murray	NWS Management and Organization Division Director
COTR	Mark Miller	NWS Office of Operational Systems, Engineering and Acquisition Branch, Program Analyst
AGO Representative	Edward Tenant	NOAA Acquisition and Grants Office Contracting Officer
Subordinate 2	Herb Callands	NWS Budget Execution and Accountability Director
High-Level Official 1	Gary Reisner	Acting NWS CFO
High-Level Official 2	Barbara McNeill	NWS Deputy CFO
High-Ranking Leadership Official	Laura Furgione	NWS Deputy Assistant Administrator
NMFS Official	Jan Charity	NMFS Management Analyst

⁹¹

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⁹² The titles listed here were accurate at the time of the individual's interview with the OIG; some or all of these titles may no longer be accurate.

Report Pseudonym	Name ⁹³	Title / Office ⁹⁴
TPO	Jane Hollingsworth	NWS Tsunami Program Manager
TPO Supervisor	David Caldwell	NWS Office of Climate, Water, and Weather Services Director
IAO Administrative Official	Joe Mroz	NWS International Activities Office Administrative Officer
IAO Supervisor	Courtney Draggon	NWS International Activities Office Acting Director
AGO Official	Anthony Kram	NOAA Acquisition and Grants Office Chief of Acquisitions
Contractor	Earth Resources Technology, Inc.	--

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