

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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February 26, 2013

Mr. Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office (GAO)
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Dodaro:

The Department of Commerce oversees an annual budget of approximately \$8 billion in discretionary appropriations funding and employs nearly 47,000 people. A key role of the department is to create jobs, advance economic growth and enhance U.S. international trade. The department also promotes and implements many key science and technology programs in the telecommunications arena; helps to set federal standards in forensic science, cyber-security and electronic health-care records; and develops weather forecasting tools and technologies that are vital in warning U.S. citizens of severe storms, coastal flooding and other potentially hazardous weather conditions.¹ The Department also manages the radio spectrum, a critically important resource and a potential source of billions of dollars in government revenue.

The Department of Commerce's Office of Inspector General (OIG) has oversight of the agency, and endeavors to detect and deter waste, fraud and abuse by conducting audits, inspections, evaluations and investigations. The taxpayer provides approximately \$26 million a year to fund the work of this important accountability office. The Commerce OIG has been headed by Todd J. Zinser since December 2007 and has oversight responsibility for all Department of Commerce agencies, including many that the Science, Space, & Technology Committee has oversight jurisdiction over as well, including the National Institute of Standards and Technology (NIST), National Oceanic and Atmospheric Administration (NOAA), and other Department of Commerce offices and programs.²

Considering the vast array of oversight responsibilities the OIG has for multi-billion dollar projects currently underway within Commerce on weather satellite development, weather

¹ "Mission Statement," U.S. Department of Commerce, available here: <http://www.commerce.gov/about-department-commerce>.

² Department of Commerce, Office of Inspector General (OIG) home-page, available here: <http://www.oig.doc.gov/Pages/default.aspx>.

forecasting technologies and other endeavors, and the large number of employees and offices the Commerce Department comprises, carrying out these oversight responsibilities effectively, efficiently and thoroughly is extremely important. The taxpayers' investments in the Department can only be protected if the OIG is well organized, focused on their mission, and professional in their conduct.

Unfortunately, through both the Committee's own oversight of NOAA and recent news accounts regarding serious allegations of wrong-doing in the Commerce Department's Office of Inspector General, it seems clear there are many problems within the IG's office. That is why we are writing to you. We believe the Government Accountability Office (GAO) is well positioned to carry out a thorough review of the organization, management, policies and procedures of this office. The GAO has a long history of investigating the professional standards, alleged misconduct and efficiency of federal Offices of Inspector Generals. We ask that you carefully document any problems within the Commerce IG's office that you identify and provide Congress with recommendations regarding improvements to the structure, policies and procedures of that office.

Last September, our Committee held a hearing into the unauthorized reprogramming of millions of dollars within the National Weather Service (NWS), part of the National Oceanic Atmospheric Administration (NOAA), and the agency's failure to inform Congress of this unlawful reprogramming. In November 2012 the Department of Commerce officially acknowledged that this unauthorized reprogramming of funds in 2010 and 2011 violated the Anti-deficiency Act (ADA), which is a federal crime. As part of the preparation for this hearing, it became clear that the Commerce OIG failed to adequately pursue multiple allegations regarding these ADA violations beginning in 2010. The reasons for this failure remain unclear and the explanations provided to the Committee have been inconsistent. What does seem clear is that the IG's office received credible allegations of financial misconduct involving millions of dollars and yet did nothing with them. Moreover, after finally launching a preliminary review that concluded the available evidence pointed to a violation of law, the IG turned the investigation back over to the agency—essentially allowing the agency to investigate itself. Both steps are inexplicable and inconsistent with our expectations for an Inspector General.

In December, adding to our concerns about the conduct of the Commerce IG's office, *The Washington Post* published a story citing an ongoing investigation of this office by the Office of Special Counsel (OSC). The OSC is the office in the Federal government that acts to protect whistleblowers—a function that IGs are also expected to perform. The Post reported on allegations of coercive tactics used by the Inspector General Todd Zinser and two of his most senior deputies—including his General Counsel and the official who had formerly been in charge of Whistle Blower Protections—against at least four senior Commerce OIG law enforcement officers. The allegations detail how those four former employees were forced to sign non-disclosure agreements barring them from providing information about the Commerce OIG's conduct to both the Office of Special Counsel and to Congress.³ The employees were reportedly told by senior OIG management that if they failed to sign the non-disclosure agreements that

³ Josh Hicks, "Watchdog wins reprieve for Commerce Department agents under gag agreement," *The Washington Post*, December 3, 2012, available here: <http://www.washingtonpost.com/blogs/federal-eye/wp/2012/12/03/watchdog-wins-reprieve-for-commerce-department-agents-under-gag-agreement/>

negative performance appraisals would be manufactured and shared with potential new employers. The OSC, an independent federal investigative agency, is specifically chartered to safeguard federal employees from reprisals for whistleblowing, and investigates and prosecutes allegations of prohibited personnel practices.⁴

Under both 5 U.S.C. §2302 and 5 U.S.C. §7211, it is a prohibited personnel practice to interfere with federal employees' ability to communicate with or provide documentation to Congress. The law that governs the ban against "Prohibited Personnel Practices," 5 U.S.C. §2302, says in part that disclosure is permissible when the individual employee "reasonably believes that the disclosure evidences—(i) any violation of any law, rule, or regulation; or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety."⁵ U.S. Code 5 U.S.C. §7211, "Employees' Right to Petition Congress," says simply, in its entirety: "The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied."⁶

According to a document filed by OSC with the Merit Systems Protection Board (MSPB) in November, the top three employees in the Department of Commerce's Office of Inspector General (OIG) "have engaged in a pattern of prohibited personnel practices designed to chill employees and former employees from whistleblowing, cooperating with OSC, and reporting wrongdoing to Congress."⁷ Remarkably, the OIG web-site says: "OIG is certified by the U.S. Office of Special Counsel (OSC) as a 5 U.S.C. §2302(c) Whistleblower Protection Agency."⁸ Yet, the OSC filing with MSPB concludes: "The ultimate irony is that these gag agreements were coerced by an Inspector General – the very person sworn to protect a federal agency's employees from prohibited personnel practices and to uphold the merits system principles." The idea that any Inspector General would hold the threat of negative performance evaluations over the head of employees in exchange for their silence with Congress or the OSC is simply incomprehensible. IGs are supposed to be the place abused employees can go for protection, not a source of employee abuse. IGs, uniquely among Federal officials, also have a dual reporting obligation to both the Executive Branch and to Congress, so an IG that attempts to obstruct communications with Congress—communications that are protected by law—certainly fails to appreciate the IG's position as a law enforcement official.

The work environment at the OIG's office is also suggestive of a pattern of management that is not conducive to good accountability work. The 2012 Federal Employee Viewpoint Survey Results (the so-called "Best Places to Work" survey) found the DOC IG's office to be among the very worst offices to work in government. Although the survey found the Department of Commerce at large was the 4th best place to work among 19 federal agencies surveyed, of 292

⁴ "Introduction to OSC," U.S. Office of Special Counsel (OSC), <http://www.osc.gov/Intro.htm>

⁵ The text of 5 U.S.C. §2302, Prohibited Personnel Practices, is available here: <http://www.law.cornell.edu/uscode/text/5/2302>.

⁶ The text of 5 U.S.C. §7211, Employees' Right to Petition Congress, is available here: <http://www.law.cornell.edu/uscode/text/5/7211>.

⁷ "Initial Request for Stay of Personnel Action and Protective Order," U.S. Office of Special Counsel Ex Rel. John Does 1-4 (Petitioners) vs. Department of Commerce, Office of Inspector General (Respondent), November 26, 2012.

⁸ Department of Commerce, Office of Inspector General (OIG) home-page, available here: <http://www.oig.doc.gov/Pages/default.aspx>

Agency Subcomponent offices surveyed, the DOC OIG came in 291st. The office came in dead last for “employee skills/mission match; 285th for Effective Leadership-Empowerment; 280th for Teamwork; 275th for Effective Leadership-Senior Leaders and 275th for Performance Based Rewards and Advancement.⁹ Drilling down into the specific questions, several revealing responses are worth noting. Only 55% of those responding indicated that they felt safe to “disclose a suspected violation of any law, rule or regulation without fear of reprisal.” Only 38% indicated that promotions in their work unit were based on merit. On Senior Leadership, only 36.8% have a high level of respect for that leadership. The staff is almost split on the leadership’s standards of honesty and integrity. The good news is that 46.1% believe they do maintain those standards, but a plurality of employees, 53.9%, are either unsure (14.3%) or have concluded that the leaders fail to meet those standards (39.6%). Such scores in an Inspector General’s office are simply shocking. Finally, the survey found that in 2011, 17.60% of the workforce left the Commerce OIG.¹⁰

These kinds of attitudes may have real consequences for the productivity and integrity of the office. A standard evaluative data point used with IG’s is to look at their return on investment. In other words, one looks at the productivity of the office by comparing the taxpayer dollars spent versus the dollars saved by IG actions. According to an analysis by our Committee staff, it appears that those returns have been steadily declining since Mr. Zinser took over the office. His first year in office (2008) found the DOC OIG bringing in \$4.56. That figure has been in steady decline with figures of \$2.88 in 2009, \$1.45 in 2010 and \$1.05 in 2011. These figures can be subject to great variability across agencies and even year-to-year in the same agency, but the trend is consistent with an office that has declining capacity to carry out high-quality work as reflected in the Satisfaction Survey cited above.

The problems within the Commerce OIG’s office appear to be substantive and widespread. Apart from the most recent actions to halt the gag orders put in place by the Commerce OIG, the Office of Special Counsel (OSC) is apparently investigating other issues regarding potential misconduct in the OIG’s office, particularly questionable hiring practices by senior officials. Any of these issues would be deeply troubling in and of themselves. However, multiple and disparate management problems appear to be present in the Department of Commerce’s Office of Inspector General.

As a result of all of the disturbing information outlined above regarding the work and work atmosphere of the Commerce OIG, We request that GAO conduct a thorough review of the Department of Commerce’s Office of Inspector General. We ask that you specifically examine:

1. The conduct of the office with regards to managing the IG’s Hotline. This Hotline system was the method by which the office first received allegations of misconduct with NWS funds, according to the IG’s testimony before our Committee. The IG’s explanation of what was done

⁹ “The Best Places to Work, 2012,” the Partnership for Public Service, Agency Report: Office of the Inspector General (Commerce). See also the “2012 Federal Employee Viewpoint Survey Results; Department of Commerce Office of the Inspector General,” US Office of Personnel Management.

¹⁰ “The Best Places to Work in The Federal Government: 2012 Rankings,” Compiled by the Partnership for Public Service and the Deloitte Consulting firm, specific rankings of the Department of Commerce’s Office of Inspector General (DOC OIG) available here: <http://bestplacestowork.org/BPTW/rankings/detail/CM64>

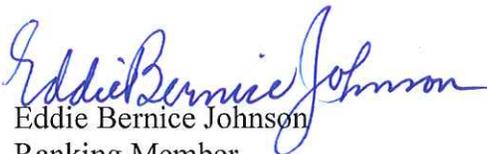
with those allegations, and how they choose to pursue or not pursue allegations has been inconsistent over time. Without a properly functioning Hotline, the IG will miss early signs of trouble in the agency, just as this IG apparently did with illegal conduct in the NWS CFO's office.

2. Whether the office engages in prohibited personnel practices. The work satisfaction survey results suggest that the four employees who were forced to sign non-disclosure agreements may not be the only ones who have witnessed misconduct. Both hiring and firing, as well as retention, pay and bonus decisions appear to be arbitrary and worth examining. If the IG has hired or promoted staff not fully qualified for their positions or staff who have used their senior positions in abusive ways, or has made hiring, firing and promotion decisions based on metrics of performance other than contributing to protecting the taxpayer and enforcing the law, the Congress needs to know this.

3. Why does productivity in the office seem to be in decline in the last few years? Are staff empowered to carry out audits and investigations of the highest value targets? Are staff free to follow leads and evidence regardless of where they lead? Is the decision-making in the Leadership effective and well-documented? This is particularly important in the one matter that the Subcommittee is aware of: the IG deciding to send back to the agency an investigation into unauthorized reprogramming at NWS. That matter has generated three different types of explanations by the Inspector General and none of them are reassuring. Other Inspector Generals we have consulted with have all indicated that they would never return such an investigation to the agency, especially since the people you are empowering to do the investigation may themselves have been involved in the misconduct.

Please coordinate with our staff regarding this project. You may contact Dr. Dan Pearson (202-225-4494), the Subcommittee on Oversight's Minority staff director, or Mr. Douglas Pasternak (202-226-8892), the Subcommittee on Oversight's Minority chief investigator to discuss this project.

Sincerely,



Eddie Bernice Johnson
Ranking Member
Committee on Science, Space & Technology



Dan Maffei
Ranking Member
Subcommittee on Oversight



Frederica Wilson
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Suzanne Bonamici
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cc: Mr. Lamar Smith
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Mr. Thomas Massie
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Mr. Todd J. Zinser
Inspector General
Department of Commerce