



May 12, 2016

The Honorable Mitch McConnell  
Majority Leader  
United States Senate

The Honorable Harry Reid  
Democratic Leader  
United States Senate

Dear Majority Leader McConnell and Senator Reid,

As the representatives of the 72 federal Inspectors General, we appreciate Congress's strong bipartisan commitment to independent oversight of federal programs and operations. Inspectors General prevent and detect waste, fraud, abuse, and mismanagement in federal agencies and hold officials accountable for their use of taxpayer funds. We work closely with whistleblowers to identify wrongdoing and, because of our work, federal agencies are more effective and efficient. However, a July 2015 decision by the Department of Justice's (DOJ) Office of Legal Counsel (OLC)<sup>1</sup> has seriously impaired our ability to perform this watchdog role by restricting our independent access to agency records and hampering whistleblowers' ability to bring us evidence of waste and misconduct. To address the July 2015 OLC decision and ensure that Inspectors General have the authority to do their jobs, a bipartisan group of 20 Senators are supporting Senate bill S.579, the "Inspector General Empowerment Act of 2015" (S.579). We appreciate your prior support for legislative initiatives during your tenures in the Senate, and urge the Senate to promptly consider S.579. The longer Congress waits to act, the greater the risk to the integrity of federal programs and to our ability to serve as independent watchdogs for taxpayers.

A bedrock principle of the Inspector General Act of 1978 (IG Act) is that an Inspector General must have access to "all" agency records and information "which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act."<sup>2</sup> This language had been seen as clear and unqualified. However, since 2010 a number of federal agencies, including the DOJ, Peace Corps, Department of Commerce, and Chemical Safety and Hazard Investigation Board, have challenged their IGs' right to access "all" such agency information. This issue came to a head in July 2015, when the OLC issued the abovementioned opinion concluding that the IG Act does not actually entitle the DOJ Inspector General (DOJ-IG) to obtain independent access to "all records" in the DOJ's possession that are necessary to DOJ-

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<sup>1</sup> "The Department of Justice Inspector General's Access to Information Protected by the Federal Wiretap Act, Rule 6(e) of the Federal Rules of Criminal Procedure, and Section 626 of the Fair Credit Reporting Act" (July 20, 2015), <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/07/23/2015-07-20-doj-oig-access.pdf>.

<sup>2</sup> 5 U.S.C. app. § 6(a)(1).

IG's oversight. The OLC's restrictive reading of the IG Act represents a threat to the independence of all Inspectors General and creates a serious challenge to our collective ability to have timely and independent access to agency records—access that is central to our ability to engage in the oversight that is at the core of the IG Act. As Senator McCaskill noted in a 2015 floor speech supporting the legislation, “[f]or the last 37 years [since passage of the IG Act in 1978], we lived in a world where ‘all’ meant all. ... There is no universe in which the Inspector General Act should be interpreted to mean anything less than what it says.”

Following the OLC opinion in July 2015, a bipartisan group of Senators amended S.579 to expressly address the OLC opinion. Since then, over a dozen Senators, both Republican and Democrat, have become co-sponsors. The bill is currently awaiting consideration by the entire Senate. In addition, in December 2015, Congress included unambiguous language in Section 540 of Division B, Title V, of the Fiscal Year (FY) 2016 Consolidated Appropriations Act (the Commerce, Justice, Science, and Related Agencies Appropriations Act), which was specifically drafted to reverse the effect of the July 2015 OLC opinion and generally prohibits agencies covered by the Commerce, Justice, Science, and Related Agencies Appropriations Act from denying, preventing, or impeding Inspector General access to agency records or materials.<sup>3</sup> Days ago, the OLC issued an opinion stating that Section 540 has the effect of prohibiting DOJ, for the remainder of FY 2016, from denying or impeding the DOJ-OIG’s timely access to grand jury, wiretap, and credit information. However, Section 540 only impacts FY 2016 funds and only covers the six OIGs funded by the Commerce, Justice, Science, and Related Agencies Appropriations Act.<sup>4</sup> The remaining 66 federal Inspectors General are not covered by this language. Without reversing the July 2015 OLC opinion, Congress will increasingly be asked to arbitrate such disputes or to remind agencies that “all” means “all.”

Despite Congress’s unequivocal support for Inspector General access to records, the problems faced by the Inspector General community continue. For example, in March the Special Inspector General for the Troubled Asset Relief Program reported to Congress that the Department of the Treasury refused to provide files that contain basic data needed to oversee the Hardest Hit Fund.<sup>5</sup> Additionally, just last month the Department of Commerce General Counsel blocked its Inspector General from accessing agency records because of the July 2015 OLC opinion despite Congress’s clear statement of intent in the subsequent Commerce, Justice, Science, and Related Agencies Appropriations Act.<sup>6</sup> The Department of Commerce only reversed its decision and agreed to provide its Inspector General access to the agency records in the controversy following the Inspector General’s notification to the Congress of the decision,

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<sup>3</sup> See 2016 Consolidated Appropriations Act, Division B, Title V, Section 540, providing “*No funds provided in this Act shall be used to deny an Inspector General funded under this Act timely access to any records, documents, or other material available to the department or agency over which that Inspector General has responsibilities under the Inspector General Act of 1978, or to prevent or impede that Inspector General’s access to such records, documents, or other materials, under any provision of law, except a provision of law that expressly refers to the Inspector General and expressly limits the Inspector General’s right of access....*”

<sup>4</sup> The term “FY 2016 funds” refers to funds authorized under Division B, Title V of the FY 2016 Consolidated Appropriations Act.

<sup>5</sup> See attached letter from Special Inspector General Christy Goldsmith Romero, Troubled Asset Relief Program Inspector General, to Chairman Johnson, Committee on Homeland Security and Government Affairs, and Chairman Grassley, Committee on the Judiciary, U.S. Senate, dated March 10, 2016.

<sup>6</sup> See attached letter from Deputy Inspector General David Smith, Department of Commerce Inspector General, to Chairman Cochran and Vice Chairwoman Mikulski, Committee on Appropriations, U.S. Senate, dated April 4, 2016.

after the Chairman and Ranking Member of the House of Representatives Government Oversight and Reform Committee sent a letter to the Department of Commerce inquiring into the reasons for denying the Inspector General's request, and after the Senate Appropriations Committee included a provision in the FY 2017 Appropriations Act that would cut off funds for the Department of Commerce's Office of General Counsel if the Department of Commerce withheld information from its Inspector General.<sup>7</sup>

The only way to reverse the July 2015 OLC opinion's harmful consequences on Inspector General oversight is for Congress to adopt S.579. That is why a bipartisan group of 20 Senators supports the bill, and why numerous other organizations and individuals support it as well. For example, such support has come from the Project on Government Oversight; former Senator John Glenn, who was an author of the IG Act in 1978; and editorials in several newspapers, including *The New York Times*, *The Washington Post*, and *The Los Angeles Times*.<sup>8</sup> Even the Department of Justice publicly supported a legislative solution to this issue, although its proposal would affect only DOJ-IG.

Besides resolving these problems of access, S.579 would enhance the abilities of Inspectors General to ensure that agencies are proper stewards of taxpayer dollars. For example, the bill provides Inspectors General with testimonial subpoena authority so that we can obtain critical evidence from former agency employees and from grant and contract recipients. In far too many of our investigations the perpetrators of alleged misconduct - such as supervisors who are alleged to have engaged in retaliation against whistleblowers or employees of grant and contract recipients who are alleged to have misused federal funds - resign or retire from their positions or refuse to discuss their work with the agencies we oversee, thereby preventing us from gathering important evidence. Congress has previously given similar authority to the Inspectors General at the Department of Defense and the Department of Health and Human Services, as well as to the Recovery Accountability and Transparency Board, and their use of this authority has been judicious and limited. To ensure the continued appropriate use of this authority by Inspectors General, the bill's sponsors have put in place additional oversight mechanisms, which the Inspector General community fully supports. It also includes a provision that allows DOJ to review in advance the possible use of a testimonial subpoena and to prevent any subpoena that would interfere with an ongoing criminal investigation.

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<sup>7</sup> See Letter from Chairman Chaffetz and Ranking Member Cummings, Committee on Oversight and Government Reform, U.S. House of Representatives, to Secretary Pritzker, Department of Commerce, dated April 26, 2016. See also Section 113 of Senate bill 2837, Appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the Fiscal Year ending September 30, 2017.

<sup>8</sup> See Aug. 5, 2015, testimony by Danielle Brian, Executive Director, Project on Government Oversight, before the Senate Committee on the Judiciary titled "'All' Means 'All': The Justice Department's Failure to Comply with its Legal Obligation to Ensure Inspector General Access to All Records Needed for Independent Oversight," <http://www.judiciary.senate.gov/download/08-05-15-brian-testimony>; attached letter from former Senator John Glenn to Chairman Johnson, Committee on Homeland Security and Government Affairs, and Chairman Chaffetz, Committee on Oversight and Government Reform, dated July 23, 2015, [https://www.ignet.gov/sites/default/files/files/IGAccess\\_JGlennLtr\\_072315.pdf](https://www.ignet.gov/sites/default/files/files/IGAccess_JGlennLtr_072315.pdf); *Let Inspectors General Do Their Jobs*, N.Y. TIMES, Mar. 9, 2016, [http://www.nytimes.com/2016/03/09/opinion/let-inspectors-general-do-their-job.html?\\_r=0](http://www.nytimes.com/2016/03/09/opinion/let-inspectors-general-do-their-job.html?_r=0); Editorial Board, *Let Inspectors General Do Their Jobs*; WASHINGTON POST, Oct. 31, 2015, [https://www.washingtonpost.com/opinions/let-inspectors-general-do-their-jobs/2015/10/31/f03763b2-7c04-11e5-afce-2afd1d3eb896\\_story.html](https://www.washingtonpost.com/opinions/let-inspectors-general-do-their-jobs/2015/10/31/f03763b2-7c04-11e5-afce-2afd1d3eb896_story.html); Times Editorial Board, *Federal Corruption Watchdogs Are Being Denied Access To Necessary Information*, L.A. TIMES, Dec. 23, 2015, <http://www.latimes.com/opinion/editorials/la-ed-inspector-general-20151223-story.html>.

Additionally, S.579 would address several issues of concern to the Inspector General community and enhance our ability to ensure that agencies are proper stewards of taxpayer dollars. First, the bill assures the independence of Inspectors General by reaffirming existing precedent that an agency head is the “nominal” supervisor of an Inspector General. Second, S.579 would improve our ability to identify improper and duplicative government payments by exempting Inspectors General from the Computer Matching and Privacy Protection Act and provisions of the Paperwork Reduction Act. For the second year in a row, the amount of improper payments by the federal government has increased, exceeding \$100 billion annually. Further empowering Inspectors General to detect and prevent such wasteful spending through the adoption of S.579 will greatly benefit the taxpayer.

For all of these reasons, we urge the Senate to promptly consider S.579. Since the passage of the IG Act in 1978, Inspectors General have saved taxpayers billions of dollars and improved the federal government’s programs and operations. This has been possible because of strong bipartisan support for Inspectors General and for the independent oversight that they provide. However, our ability to continue to perform as the public’s watchdogs has been significantly harmed by the July 2015 OLC opinion. S.579 addresses this serious problem and allows us to provide the effective oversight that the American people deserve from the Inspector General community.

Sincerely,



Michael E. Horowitz  
Chair  
CIGIE



Kathy A. Buller  
Chair  
CIGIE Legislation Committee

**Attachments:**

1. Letter from Deputy Inspector General David Smith, Department of Commerce Inspector General, to Chairman Cochran and Vice Chairwoman Mikulski, Committee on Appropriations, U.S. Senate, dated April 4, 2016.
2. Letter from Chairman Chaffetz and Ranking Member Cummings, Committee on Oversight and Government Reform, U.S. House of Representatives, to Secretary Pritzker, Department of Commerce, dated April 26, 2016.
3. Letter from Special Inspector General Christy Goldsmith Romero, Troubled Asset Relief Program Inspector General, to Chairman Johnson, Committee on Homeland Security and Government Affairs, and Chairman Grassley, Committee on the Judiciary, U.S. Senate, dated March 10, 2016.

4. Letter from former Senator John Glenn to Chairman Johnson, Committee on Homeland Security and Government Affairs, and Chairman Grassley, Committee on the Judiciary, U.S. Senate, dated July 23, 2015.

CC:

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

The Honorable Charles Grassley  
Chairman  
Committee on the Judiciary

The Honorable Thad Cochran  
Chairman  
Committee on Appropriations

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

The Honorable Roy Blunt  
Chairman  
Committee on Rules and Administration

The Honorable Michael B. Enzi  
Chairman  
Committee on the Budget

The Honorable Susan M. Collins  
Chairman  
Special Committee on Aging

The Honorable Johnny Isakson  
Chairman  
Committee on Veterans' Affairs

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

The Honorable Barbara A. Mikulski  
Vice Chairwoman  
Committee on Appropriations

The Honorable Claire McCaskill  
Ranking Member  
Special Committee on Aging  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance

The Honorable Kelly Ayotte  
U.S. Senate

The Honorable Tammy Baldwin  
U.S. Senate

The Honorable John Cornyn  
U.S. Senate

The Honorable Joni Ernst  
U.S. Senate

The Honorable Deb Fischer  
U.S. Senate

The Honorable Mark Kirk  
U.S. Senate

The Honorable James Lankford  
U.S. Senate

The Honorable Joe Manchin, III  
U.S. Senate

The Honorable Gary C. Peters  
U.S. Senate

The Honorable Rob Portman  
U.S. Senate

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform

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

The Honorable Hal Rogers  
Chairman  
Committee on Appropriations

The Honorable Nita Lowey  
Ranking Member  
Committee on Appropriations

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

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

# **ATTACHMENT 1**



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

April 4, 2016

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

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

Dear Chairman Cochran and Ranking Member Mikulski,

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

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

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

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

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

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

Sincerely,



David Smith  
Deputy Inspector General

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

The Honorable Orrin Hatch, Chairman, Committee on Finance

The Honorable Ron Wyden, Ranking Member, Committee on Finance

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

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

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

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

# **ATTACHMENT 2**

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

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

April 26, 2016

The Honorable Penny Pritzker  
Secretary  
U.S. Department of Commerce  
1401 Constitution Avenue NW  
Washington, D.C. 20230

Dear Madam Secretary:

It has come to our attention that Department of Commerce officials have refused to provide access to records from the International Trade Administration's Enforcement and Compliance (E&C) division to the Office of Inspector General (OIG).<sup>1</sup> The OIG reported to Congress that it requested access to the records during an audit of the E&C division.<sup>2</sup>

The Consolidated Appropriations Act of 2016 explicitly states that the only "records, documents, or other materials" that federal entities may withhold from their inspectors general are those subject to "a provision of law that expressly refers to the Inspector General and expressly limits the Inspector General's right of access."<sup>3</sup> In this case, it is not clear what, if any, provision of law would apply to the documents in question. In fact, the Department did not cite such a provision when it notified the OIG that the records in question would be withheld, according to the OIG.<sup>4</sup>

Deputy Inspector General David Smith wrote that the Department's General Counsel refused to provide access to the records in question on the basis of an Office of Legal Counsel (OLC) opinion issued before the Consolidated Appropriations Act of 2016 was passed.<sup>5</sup> The Department's position is also inconsistent with the Inspector General Act. Section 6(a)(1) of the Inspector General Act authorizes every inspector general "to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that

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<sup>1</sup> Letter from David Smith, Deputy Inspector General, Dep't of Commerce, to Harold Rogers, Chairman, H. Comm. on Appropriations, and Nita Lowey, Ranking Member, H. Comm. on Appropriations (Apr. 4, 2016). [hereinafter Smith Letter].

<sup>2</sup> *Id.*

<sup>3</sup> Appropriations Act of 2016, Pub. L. No. 114-113, Title V, Div. B, Sec. 540 (2016).

<sup>4</sup> Smith Letter, *supra* note 1.

<sup>5</sup> *Id.*

The Honorable Penny Pritzker

April 26, 2016

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Inspector General has responsibilities under this Act.”<sup>6</sup> The inspectors general provide helpful and necessary oversight, and they cannot perform their statutory functions if agencies do not allow them access to records.

To help the Committee understand how and why the Department is refusing to comply with the intent of Congress with respect to providing records to inspectors general, please provide the following documents and information as soon as possible, but by no later than noon on May 10, 2016:

1. Documents and communications referring or relating to the legal basis, or any other reason, for the Department’s decision to withhold E&C records from the Office of Inspector General.
2. Documents and communications referring or relating to Title V, Division B, Section 540 of the Consolidated Appropriations Act of 2016.
3. Documents and communications referring or relating to any refusal by the Department to provide access to records to the Office of Inspector General since January 1, 2014.

When producing documents to the Committee, please deliver production sets to the Majority staff in Room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional information about responding to the Committee’s request.

Please contact Alexa Armstrong of the Majority staff at (202) 225-5074 or Mark Stephenson of the Minority Staff at (202) 225-5051 with any questions about this request. Thank you for your prompt attention to this important matter.

Sincerely,



Jason Chaffetz  
Chairman



Elijah E. Cummings  
Ranking Member

Enclosure

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<sup>6</sup> 5 U.S.C. App. §6(a)(1).

## Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document:  
  
BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,  
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,  
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,  
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

# **ATTACHMENT 3**



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

1801 L STREET, NW

WASHINGTON, D.C. 20220

MAR 10 2016

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

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

Dear Chairmen Johnson and Grassley:

You have asked that I provide a “detailed description of any incident where the Federal agency or department, as applicable, has resisted or objected to oversight activities of the IG office or restricted or significantly delayed access to information, including the justification of the Federal agency or department for such actions.” In addition, the Emergency Economic Stabilization Act, which authorized TARP and created SIGTARP, provides, “whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress without delay.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully,



CHRISTY GOLDSMITH ROMERO  
Special Inspector General

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

# **ATTACHMENT 4**



UNITED STATES SENATOR (Ret.)

JOHN GLENN  
OHIO

July 23, 2015

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

The Honorable Jason Chaffetz, Chairman  
Committee on Oversight and Government Reform

Dear Senator Johnson and Representative Chaffetz:

Since the enactment of the Inspector General Act in 1978, the Inspectors General have provided independent oversight of government programs and operations and pursued prosecution of criminal activity against the government's interests. Recommendations from IG audits have led to improvements in the economy and efficiency of government programs that have resulted in better delivery of needed services to countless citizens. Investigations of those who violate the public trust to enrich themselves at the expense of honest taxpayers, of contractors who skirt the rules to illegally inflate their profits, and of others who devise criminal schemes to defraud the government have led to billions of dollars being returned to the U.S. Treasury.

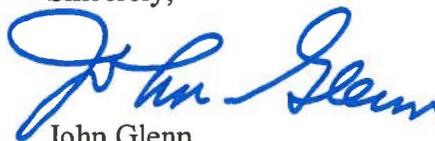
The success of the IG Act is rooted in the principles on which the Act is grounded—independence, direct reporting to Congress, dedicated staff and resources, unrestricted access to agency records, subpoena power, special protections for agency employees who cooperate with the IG, and the ability to refer criminal matters to the Department of Justice without clearing such referrals through the agency. We considered these safeguards to be vital when we developed the Act and they remain essential today. No other entity within government has the unique role and responsibility of Inspectors General, and their ability to accomplish their critical mission depends on the preservation of the principles underlying the Inspector General Act.

In recent years, IGs have experienced challenges to their ability to have independent access to records and information in their host agencies. Broad independent access to such records is a fundamental tenet in the IG Act and to compromise or in any way erode such access would strike at the heart of important law. In short, full and unfettered access is vital to an IG's ability to effectively prevent and detect fraud, waste, and abuse in agency programs and activities.

The Honorable Ron Johnson  
The Honorable Jason Chaffetz  
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The Inspector General Act has stood the test of time. The billions of dollars recovered for the government and the increased efficiency and effectiveness of government programs and operations are a testament to the Act's continued success. Any action that would impair the IG's ability to achieve their mission—particularly the denial of full and independent access to agency records and information – would have an immeasurable adverse impact and severely damage their critical oversight function. For this reason, I urge you to take action to protect the independent access rights of Inspectors General.

Sincerely,



John Glenn  
United States Senator (Ret.)

CC: The Honorable Thomas R. Carper  
Ranking Minority Member

The Honorable Elijah Cummings  
Ranking Minority Member