

# United States Senate

WASHINGTON, DC 20510

October 6, 2010

## Via Electronic Transmission

The Honorable Timothy F. Geithner  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Secretary Geithner:

As senior members of the United States Senate, we have a duty to conduct oversight into the actions of executive branch agencies. Integral to this effort is ensuring that the Office of Inspectors General (OIG) have the independence necessary to carry out audits, evaluations, and investigations within their respective agencies.

As Ranking Members of the Senate Committee on Finance, and the Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, we sent a letter on April 8, 2010, to 69 Inspectors General, asking among other things, about any agency interference or resistance to the OIG's oversight work.

The OIGs replied, indicating varying degrees of cooperation with their agencies. We were disappointed to learn that the Department of the Treasury is among those that have not fully cooperated with the OIG. A copy of the Inspector General's letter is attached for your reference. The OIG is being denied unrestricted and unfettered access to information from the Office of the Comptroller of the Currency (OCC) for use in investigations of possible fraud upon the OCC by failed financial institutions regulated by the OCC. The OCC has refused to comply with requests from the OIG for bank examination-related information, citing the Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3401 et seq.

However, §3413(d) of RFPA clearly states that nothing in the law authorizes "the withholding of financial records or information required to be reported in accordance with any Federal statute." As you know, the Inspector General Act requires that the OIG have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the agency. Inspectors General throughout government routinely have access to confidential, and even classified national security information. Moreover, they have a need for access to such information in order to do the job that the law requires them to do.

The Inspector General has met with the Chief Counsel of the OCC and members of her staff seeking an informal resolution. However, these efforts have resulted in no cooperation and no success. In light of these problems, please provide written answers to the following questions:

- 1) Prior to this letter, were you aware of this interference with the OIG's oversight function?
- 2) If so, when and how did you become aware of the issue and what steps have you taken to correct the problem?
- 3) If not, what steps do you intend to take to correct the problem?

Thank you for your cooperation and attention to this important matter. Please provide the request set forth in this letter no later than October 20, 2010. Should there be any questions, please contact Jason Foster on Senator Grassley's staff at (202) 224-4515, or Keith Ashdown on Senator Coburn's staff at (202) 224-3721. All formal correspondence should be sent electronically in PDF format to [Brian\\_Downey@finance-rep.senate.gov](mailto:Brian_Downey@finance-rep.senate.gov) or via facsimile to (202) 228-2131.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on Finance



Tom Coburn  
Ranking Member  
Permanent Subcommittee on Investigations  
Homeland Security and Governmental Affairs Committee

Attachment



OFFICE OF  
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 10, 2010

The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Tom Coburn  
Ranking Member  
Permanent Subcommittee on Investigations  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
199 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Grassley and Senator Coburn:

As you requested in your letter of April 8, 2010, I am providing an updated report regarding an instance where the Treasury Office of Inspector General (OIG) believes that it is being denied the assistance and cooperation of a bureau within the Department of the Treasury in connection with our investigative and audit responsibilities. I appreciate your concerns with this subject and your strong support for the independence of Inspectors General. The support of the Congress is vital to my ability to successfully accomplish my obligations under the Inspector General Act to provide vigorous oversight of Treasury programs and operations under the jurisdiction of my office.

In your letter, you asked for, inter alia., continuing notice of instances when the Department or any of its offices or bureaus resisted and/or objected to our oversight activities and/or restricted our access to information. You noted that even temporary delays in granting access to information can be unnecessary and frustrate the mission of Inspectors General.

I am writing to report that the OIG is being denied unrestricted and unfettered access to information from the Office of the Comptroller of the Currency (OCC) for use in investigations of possible fraud upon the OCC by failed financial institutions regulated by the OCC. These requests for information are made pursuant to the OIG's obligation to investigate issues relating to Treasury's programs and operations, which include the national bank safety and soundness examinations conducted by the OCC, and attempts to interfere with or defraud those

examinations. A recent request to the OCC for bank examination-related information was met with the assertion that

The Right to Financial Privacy Act (RFPA), [12 U.S.C. § 3401 et seq.] precludes the OCC from transferring such information unless the OCC determines that it has reason to believe the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency. To comply with the RFPA, the OCC's standard practice is to request that agencies submit written communication that includes sufficient relevant information.... This includes a statement that the information is requested as part of a lawful criminal investigation, the names of the agencies involved in the investigation, the name of the United States Attorney's Office involved in the investigation, and the specific documents being requested. Receipt of a written request containing this information enables the OCC to make the determination required by the RFPA. Once such a determination is made, OCC employees are authorized to transfer the information.

This position was predicated on a reading of RFPA Section 3412(a), which provides

Financial records originally obtained pursuant to this chapter shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry... within the jurisdiction of the receiving agency or department.

However, RFPA also makes exceptions to this rule, including Section 3413(d), which provides that

Nothing in this chapter shall authorize the withholding of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder.

The Inspector General Act, 5 U.S.C. App.3 is such a statute. It states in Section 6(a)(1) that

In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized 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.

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My office has consistently held this position, and continues to do so. I reiterated it in a memo I wrote to former Comptroller Dugan on July 19, in which I stated that our request for bank examination records in connection with investigations of OCC regulated institutions is reasonable, proper, and not governed by the requirements and limitations of the RFA. I asked him to direct OCC divisions and employees to respond to OIG information requests consistently with the requirements of Section 6(a)(1) of the Inspector General Act. Members of my staff met with the Chief Counsel of the OCC and members of her staff to discuss this issue and seek a resolution; however, OCC remains of the view that it can determine the instances in which my office has investigative jurisdiction of matters affecting OCC programs and operations. Further discussions, and a possible meeting with the Treasury General Counsel, will follow.

A copy of this letter will be sent to the Honorable Max Baucus, Chairman, Senate Finance Committee, and the Honorable Carl Levin, Chairman, Permanent Subcommittee on Investigations.

If you have any questions, please call me (202) 622-1090 or a member of your staff may call Rich Delmar, Counsel to the Inspector General, at (202) 927-3973.

Sincerely,

A handwritten signature in blue ink, appearing to read 'EMT', with a long horizontal flourish extending to the right.

Eric M. Thorson  
Inspector General



OFFICE OF  
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

June 15, 2010

The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Tom Coburn  
Ranking Member  
Permanent Subcommittee on Investigations  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
199 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Grassley and Senator Coburn:

In response to your letter of April 8, 2010, I am providing the information you requested regarding the assistance and cooperation of the Department of the Treasury (and by extension, its component offices and bureaus) with investigations, evaluations, and audits conducted by my office. I appreciate your concerns with this subject and your strong support for the independence of Inspectors General. The support of the Congress is vital to my ability to successfully accomplish my obligations under the Inspector General Act to provide vigorous oversight of Treasury programs and operations under the jurisdiction of my office.

Before I address the specific items in your request, I do want to state that Secretary Geithner and Deputy Secretary Wolin have been fully accessible and responsive to me whenever I have needed to bring a matter of concern to their attention.

My response to the specific items that you requested follows. Please note that the information I am providing does not include matters related to the Internal Revenue Service which is under the jurisdictional oversight of the Treasury Inspector General for Tax Administration or matters related to the Troubled Asset Relief Program (TARP) which is under the jurisdictional oversight of the Special Inspector General for TARP.

1. In an effort to monitor agency cooperation, we request that your office list and describe any instances when the Department/Agency resisted and/or objected

to oversight activities and/or restricted your access to information. Even temporary delays in granting access to information can be unnecessary and frustrate the mission of Inspectors General, so please include descriptions of instances where information was ultimately provided but only after a substantial delay. Where possible, please include the Department/Agency's reasoning for its actions, if any. When responding to this request, please include all applicable information from October 1, 2008, to the date of this letter.

**Answer** We have no such instances to report at this time.

2. We are requesting that you provide our staff with biannual reports on all closed investigations, evaluations, and audits conducted by your office that were not disclosed to the public. For example, this may include findings that resulted in an internal Management Implication Report. We would appreciate this non-public information for the period of January 1, 2009, through April 30, 2010.

**Answer** Enclosure I to this letter identifies the closed investigative cases and internal Management Implication Reports issued by our **Office of Investigations** that were not disclosed to the public. We are reporting 138 closed investigative cases and 2 Management Implication Reports for the period of January 1, 2009, through April 30, 2010.

Our **Office of Audit** has issued the following evaluation and audit reports that were not disclosed to the public for the period of January 1, 2009, through April 30, 2010.

***Contract Audit: VSE Corporation's Incurred and Billed Cost through September 30, 2007 under Contract TOS-06-052***, Report No. OIG-09-030 (issued Jan. 29, 2009) -- this report is **Sensitive But Unclassified**  
Auditors questioned \$426,331 of indirect costs billed at higher rates than agreed.

***Contract Audit: VSE Corporation's Certified Indirect Cost Rate Proposal for Fiscal Year 2006 under Contract TOS-06-052***, Report No. OIG-09-031 (issued Feb. 12, 2009) -- this report is **Sensitive But Unclassified**  
Auditors questioned \$35,642 of indirect costs billed at higher rates than agreed.

**Joint Review by the Offices of Inspector General of the Office of the Director of National Intelligence, Department of the Treasury, and the Central Intelligence Agency of a Classified Program**, Report No. 2007-0013-AS (issued Jun. 30, 2009) — this report is **Secret**  
This review was requested by the Senate Committee on Intelligence and the report was provided to the Committee.

***Contract Audit: Spectra Systems Corporation's Cost Proposal in Response to Solicitation TEP-09-0007***, Report No. OIG-09-040 (issued Jul. 15, 2009) -- this report is **Sensitive But Unclassified**

Auditors questioned \$995,000 of labor, materials, travel, and indirect costs and identified other weaknesses in the proposal related to the documentation used to support direct materials costs.

***Fiscal Year 2009 Audit of Treasury's FISMA Implementation for Its Non-IRS Collateral National Security Systems***, Report No. OIG-09-051 (issued Sep. 30, 2009) -- this report is **Sensitive But Unclassified**

Our audit found eight areas in the Department's non-IRS collateral national security systems where information security programs and practices need to be improved.

***Information Requested Regarding the Office of Thrift Supervision***, Report No. OIG-CA-09-008 (issued March 17, 2009) – this memorandum is **Sensitive But Unclassified**

This internal memorandum issued to Secretary Geithner detailed the actions of the Office of Thrift Supervision (OTS) and in particular an OTS acting director with regard to the reporting of a backdated infusion of capital into BankUnited, F.S.B., before that institution failed.

We also issued a report on this backdating instance and the backdating instances at five others thrifts ***Safety and Soundness: OTS Involvement With Backdated Capital Contributions by Thrifts***, Report No. OIG-09-037 (issued May 21, 2009) -- this report is not restricted

***Fiscal Year 2009 Evaluation of Treasury's FISMA Implementation for its Intelligence Systems***, Report No. OIG-CA-09-011 (issued July 7, 2009) – this report is **Sensitive But Unclassified**

Our audit found six areas in the Department's intelligence program where information security programs and practices need to be improved.

***Management Report For Fiscal Year 2009 Audit of the Financial Management Service's Schedule of Non-Entity Assets, Non-Entity Costs and Custodial Revenue***, Report No. OIG-10-020 (issued Dec. 10, 2009) -- this report is **Sensitive But Unclassified**

Auditors identified a significant deficiency on information technology controls over systems managed by FMS and third parties.

***Management Report for Fiscal Year 2009 Audit of the Financial Management Service's Schedule of Non-Entity Government-wide Cash***, Report No. OIG-10-022 (issued Dec. 10, 2009) – this report is **Sensitive But Unclassified**

Auditors identified a significant deficiency on information technology controls over systems managed by FMS and third parties.

Going forward, we will provide your respective offices the requested biannual reports on all closed investigations, evaluations, and audits conducted by our office that are not disclosed to the public. We will time our reporting of these matters to coincide with the release of our Semiannual Reports to the Congress required by the Inspector General Act.

I also acknowledge that you requested that your respective offices be immediately notified on two matters in the future: (1) any matter involving resistance and/or objection to my oversight activities and/or restrictions to my access to information by the Treasury Department; and (2) any matter involving a federal official threatening and/or otherwise attempting to impede my office's ability to communicate with Congress, whether that communication concerns the budget or any other matter.

Finally, you asked that I provide a copy of our reply to a recent request by the Ranking Member of the House Committee on Oversight and Government Reform for any outstanding recommendations that have not been fully implemented. A copy of my letter to Representative Issa dated April 16, 2010, is provided as Enclosure II.

I am sending a similar letter to the Honorable Max Baucus, Chairman, Senate Finance Committee, and the Honorable Carl Levin, Chairman, Permanent Subcommittee on Investigations.

If you have any questions, please call me (202) 622-1090 or a member of your staff may call Rich Delmar, Counsel to the Inspector General, at (202) 927-3973.

Sincerely,

Eric M. Thorson /s/  
Inspector General

Enclosures (2)