

United States Senate
WASHINGTON, DC 20510

November 5, 2024

VIA ELECTRONIC TRANSMISSION

Dr. Glenda Arrington
Inspector General
Library of Congress OIG

Dear Inspector General Arrington:

For decades, regardless of which political party has controlled the White House, I have worked to protect the Offices of Inspectors General (OIG) and also hold them accountable.¹ The OIG community provides a vital service to the American taxpayer by rooting out fraud, waste, and abuse of federal funds and provides agencies with recommendations on how to be better stewards of taxpayer money.² For these reasons, it is imperative that the IGs themselves conduct their business with transparency and be held accountable if necessary. I write today to better understand how you manage your own internal affairs and spend taxpayer dollars.

Specifically, I want to know how your office handles investigations and settlements of sexual harassment claims.³ The Treasury Department publishes annual data to Congress and bi-weekly data to its website showing it pays out billions of dollars annually to federal agencies to pay financial judgments and awards on a range of issues, including Title VII claims.⁴ However,

¹ Chuck Grassley, *Chuck Grassley: Why I'm Introducing a Bill to Help Protect Inspectors General*, Washington Post, (Jun 17, 2020), https://www.washingtonpost.com/opinions/chuck-grassley-why-im-introducing-a-bill-to-help-protect-inspectors-general/2020/06/17/236897f4-b0d2-11ea-8758-bfd1d045525a_story.html. See also, Press Release, *Grassley, Bipartisan Colleagues Introduce Inspector General Access Act*, (Feb. 29, 2024), <https://www.grassley.senate.gov/news/news-releases/grassley-bipartisan-colleagues-introduce-inspector-general-access-act>.

² See, e.g., Press Release, *Grassley, Hassan Urge POTUS To Fill IG Vacancies, Protect Taxpayer Dollars*, (May 11, 2023), <https://www.grassley.senate.gov/news/news-releases/grassley-hassan-urge-potus-to-fill-ig-vacancies-protect-taxpayer-dollars>.

³ The Equal Employment Opportunity Commission (EEOC) defines “sexual harassment” to include “unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.” U.S. Equal Employment Opportunity Commission, *Sexual Harassment*, <https://www.eeoc.gov/sexual-harassment#:~:text=It%20is%20unlawful%20to%20harass,harassment%20of%20a%20sexual%20nature>; see also 29 CFR § 1604.11 (a).

⁴ See Judgment Fund: Annual Report to Congress, <https://fiscaldata.treasury.gov/datasets/judgment-fund-report-to-congress/judgment-fund-annual-report-to-congress> (reports to Congress are individualized by year. In its most recent report for FY 2023, payments totaled \$2,023,549,508.); see also Andrew Restuccia et al., *How the Federal Government Hides Sexual Harassment Payouts*, POLITICO (Jan. 3, 2018), <https://www.politico.com/story/2018/01/03/sexual-harassment-executive-branch-payments-319151>; see also U.S. Equal Employment Opportunity Commission, *Fact Sheet: Sexual Harassment Discrimination*, (Jan. 15, 1997) <https://www.eeoc.gov/laws/guidance/fact-sheet-sexual-harassment-discrimination> (showing the EEOC has long provided guidance that “[s]exual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.”).

this data does not show all taxpayer money paid by OIGs for sexual harassment claims. The Treasury Department explains that “[a]n agency may only ask for payment from the Judgment Fund if the funds are not legally available to pay from the agency’s own appropriations.”⁵ Accordingly, it’s unknown what portion of these settlements the Treasury Department’s Judgment Fund is paying across the Executive Branch and the data does not indicate whether sexual harassment specifically was at issue in these claims. Instead, sexual harassment claims are grouped together with other discrimination claims and labeled “Title VII—Discrimination in Federal Employment.”⁶ The Office of Congressional Workplace Rights (OCWR) publishes annual data showing it pays out hundreds of thousands of dollars annually for awards and settlements on a range of issues.⁷ However, this data fails to provide information specific to the relevant OIGs, the number of sexual harassment settlements, and the amount of taxpayer dollars spent on those claims.⁸ Further, protected whistleblower disclosures to my office have alleged that these settlements often require nondisclosure agreements (NDAs) to be signed by the complainants.⁹ Unless the NDAs include the legally required whistleblower caveats, they effectively turn taxpayer money into hush-money to cover up sexual harassment.¹⁰

⁵ U.S. Department of Treasury, Judgment Fund, <https://fiscal.treasury.gov/judgment-fund/>.

⁶ Judgment Fund: Annual Report to Congress, <https://fiscaldata.treasury.gov/datasets/judgment-fund-report-to-congress/judgment-fund-annual-report-to-congress>.

⁷ See Office of Congressional Workplace Rights, Awards and Settlements Reports, <https://www.ocwr.gov/publications/reports/awards-and-settlements/> (reports are now individualized by employing offices, House offices, and Senate offices. In OCWR’s most recent reports for 2023, payments totaled \$282,800 for all awards and settlements); see also MJ Lee, et al, *Congress paid out \$17 million in settlements. Here’s why we know so little about that money*, CNN (Nov. 16, 2017), <https://www.cnn.com/2017/11/16/politics/settlements-congress-sexual-harassment/index.html>; Office of Congressional Workplace Rights, Awards and Settlements Appropriation 1997-2017, <https://www.ocwr.gov/publications/reports/awards-and-settlements/awards-and-settlements-appropriation/> (indicating payments of over \$17 million from 1997 to 2017).

⁸ OCWR’s data does not indicate whether a claim specifically pertained to sexual harassment. For certain payments, the data merely lists section 201 of the Congressional Accountability Act (CAA). Section 201 subjects offices to twelve federal labor and employment laws, including Title VII of the Civil Rights Act of 1964, which EEOC guidance indicates includes sexual harassment. See 2 U.S.C. § 1302(a). The CAA allows a Library of Congress claimant to elect a remedy under the CAA or another civil rights or labor law. 2 USC §1401(d).

⁹ On file with Comm. staff.

¹⁰ For the EEO claims that include sexual harassment against agency staff, I was proud to cosponsor the Speak Out Act, which renders NDAs agreed to before a dispute arises involving sexual assault or sexual harassment unenforceable. Speak Out Act, 42 U.S.C.S. § 19401 (2022); P. L. 117-224, § 2; S.4524 - Speak Out Act, Congress.gov, <https://www.congress.gov/bill/117th-congress/senate-bill/4524?s=2&r=1&q=%7B%22search%22%3A%22Speak+Out+Act%22%7D>. Additionally, I authored the anti-gag provision of the Whistleblower Protection Enhancement Act, which requires all federal agency nondisclosure policies, forms, or agreements to notify the employee of their rights to report wrongdoing. 5 USC § 2302(b)(13) <https://www.congress.gov/112/statute/STATUTE-126/STATUTE-126-Pg1465.pdf>. Also, each annual appropriations act contains an anti-gag provision which prohibits the use of funds to implement nondisclosure policies, forms, or agreements unless they contain the following language: “These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. See e.g. Pub. L. No. 118-47, Sec. 743, Div. B.

The OIG community should provide details to Congress about how it is using taxpayer dollars to settle cases of sexual harassment. So that Congress may conduct independent oversight, please provide the following no later than November 19, 2024:

1. Please provide the number of Equal Employment Opportunity (EEO) complaints against OIG employees your office has received in the past five years. How many of those involved an element of sexual harassment?
2. Please provide the total amount of payments used to settle all sexual harassment complaints against OIG employees within your office for the last five years and the funding sources for those payments.
3. Have you reimbursed the Judgment Fund and OCWR for all necessary payments?¹¹ If not, why not?
4. Please list all outside counsel or private law firms retained or used by your office for sexual harassment claims against OIG employees for the last five years. For each, list the amount of taxpayer money received and the services rendered.
5. Did all NDAs include the anti-gag whistleblower provision?
6. How many sexual harassment investigations into OIG employees have lasted longer than the allowed time of 180 days?¹²

¹¹ Department of Treasury, Reimbursing the Judgment Fund, <https://fiscal.treasury.gov/judgment-fund/>. According to the Department of Treasury, agencies are required to reimburse the Judgment Fund for payments subject to the No FEAR Act. *Oversight of the Office of Congressional Workplace Rights: Lessons learned from the congressional Accountability Act of 1995 Reform Act, Hearing before the Committee on House Administration U.S. House of Representatives*, 117th Cong. (2021), Statement of Teresa James, Deputy Executive Director, OCWR, (Nov. 9, 2021), <https://www.ocwr.gov/wp-content/uploads/2022/03/Testimony-HHRG-117-HA00-Wstate-JamesT-20211109.pdf>. According to OCWR, “employing offices (other than an employing office of the House or Senate) [are required] to reimburse awards and settlements paid from the Treasury account in connection with claims alleging discrimination based on race, color, religion, sex, national origin, age, or disability, genetic information, or uniformed service.” See also Public Law No: 115-397, Congressional Accountability Act of 1995 Reform Act.

¹² U.S. Equal Opportunity Commission, CHAPTER 5 AGENCY PROCESSING OF FORMAL COMPLAINTS, Management Directive 110, <https://www.eeoc.gov/federal-sector/management-directive/chapter-5-agency-processing-formal-complaints>.

Thank you for your prompt review and responses. If you have any questions, please contact Jace Pimentel on my Committee staff at (202) 224-0642.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Ranking Member
Committee on the Budget