

United States Senate
WASHINGTON, DC 20510

November 5, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Phyllis Fong
Inspector General
Department of Agriculture OIG

Dear Inspector General Fong:

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 Further, protected whistleblower disclosures to my office have alleged that these settlements often require nondisclosure agreements (NDAs) to be signed by the complainants.⁷ Unless the NDAs include the legally required whistleblower caveats, they effectively turn taxpayer money into hush-money to cover up sexual harassment.⁸

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 for all necessary payments?⁹ If not, why not?

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 On file with Comm. staff.

⁸ 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.

⁹ 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.

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?¹⁰

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,



Charles E. Grassley
Ranking Member
Committee on the Budget

¹⁰ 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>.