checklist is a tool to properly review applications and funding packages and to assist GSs in identifying errors.

We found that the comprehensive administrative review checklists had inaccurate and incomplete responses in seven of the 23 grant files sampled; however, these issues did not have an impact on the related assistance agreements. For example:

- For Grant Number 00207817, the answers to questions 4 and 4a in the "Eligibility and Pre-Award Capabilities Review" section (Section 2) noted inaccurately that there were exclusions in the System for Award Management.

- For Grant Numbers 99293413 and 00213114, the GS did not complete the "Funding Recommendation" section (Section 6).

Documentation Not in Grant Files Due to Electronic Processes

Region 2 POs and GSs did not always maintain hard copy files for assistance agreements. The region stated that the vast majority of documents may be completed electronically, including grant applications and post-award documents. However, IGMS currently does not meet the EPA's requirements to qualify as an electronic record-keeping system. In addition, a document was missing from the physical grant file because the GS kept it on a computer hard drive. Some GSs stated that not including these documents in the hard copy grant files may have been an oversight, while one PO stated that, because a document was readily accessible electronically via IGMS, a hard copy was not printed.

Region 2 stated that the majority, if not all, of its grant work is handled electronically. The region also stated that its staff print and file documents in the official hard copy files but that paper files are rarely used, except to retrieve information on historical grants that may not be readily available electronically.

Region 2 stated that, in May 2017, its grants office conducted training sessions on file management with the region's GSs and POs. The grants office has also stated that it updated regional guidance on its intranet site.

Official Files Should Be Maintained to Support Grant Award Decisions

Region 2 should improve its documentation for Puerto Rico assistance agreements to establish a complete, accurate and centrally located audit trail of grant award decisions in support of the EPA's mission to protect human health and the environment. Specifically, improvement is needed in the retention of hard copy file documentation and in the accuracy and completeness of programmatic baseline reports and comprehensive administrative review checklist responses. Also, official hard copy files are needed to make sure that documentation is readily available should electronic systems fail.

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Region 2 stated that the agency is currently developing an agencywide web-based grants system. We believe an automated grants system that qualifies as an electronic record-keeping system would benefit the region by eliminating the need to print out documents for the physical grant files.

Recommendations

We recommend that the Regional Administrator, Region 2:

2. Require Project Officers and Grant Management Specialists to take specific, annual training on grant file management.

3. Require Project Officers to take specific, annual training on conducting baseline monitoring reviews, to include reviews of the EPA's financial system for drawdown information.

Agency Response and OIG Evaluation

Region 2 agreed with our recommendations and provided corrective actions with completion dates. The region provided the OIG with technical comments along with its response to the draft report. The complete agency response to the draft report is in Appendix B.

For Recommendation 2, the Region 2 stated that it maintains an online "File Content Management Training," which is available to POs, GSs and managers. Region 2 stated that it completed this training in May 2017. Additionally, the region said that an announcement of this training will be transmitted annually to staff by March 31, 2018. We consider the agency's corrective actions satisfied the intent of the recommendation. This recommendation is resolved pending completion of the announcement of the FY 2018 training.

For Recommendation 3, the agency noted that OGD will review the available programmatic baseline monitoring training and will update the content as appropriate by September 30, 2018. We consider the agency's planned corrective action to satisfy the intent of the recommendation. This recommendation is resolved pending completion of the corrective action.

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Chapter 4
EPA Needs to Assess Fringe Benefit Costs for Car Allowances

The EPA needs to determine whether a Puerto Rico nonprofit has support for the requested fringe benefit costs related to car allowances under two cooperative agreements. Federal regulations state that costs related to personal use of vehicles (including transportation to and from work) are unallowable as fringe benefits, while vehicle costs related to work conducted under federal grants are allowable. The PO for these cooperative agreements stated that the grant recipient's car use was not monitored and that the grant recipient did not maintain supporting documentation differentiating the personal and work use of vehicles. As a result of not having the required supporting documentation, the EPA should confirm that the estimated $10,000 in taxpayer funds used for this fringe benefit was proper and allowable.

Federal Procedures Specify Requirements for Fringe Benefits

Federal regulations at 2 CFR § 200.431(a), *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,* define fringe benefits:

> Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

However, 2 CFR § 200.431(f) clarifies that personal use of vehicles is unallowable as a fringe benefit:

> [The] portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect [Facilities and Administration] costs regardless of whether the cost is reported as taxable income to the employees.

In compliance with federal standards, the Corporation for the Conservation of the San Juan Bay Estuary (CCSJBE)—a nonprofit located in Puerto Rico that has

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been awarded cooperative agreements by the EPA—created a cost allocation methodology, which was approved by the EPA in April 2016. The methodology has the following objectives:

- Meet regulatory and [Office of Management and Budget] requirements.
- Accurately capture personnel time, related costs and other expenses to maximize reimbursement.
- Provide a mechanism to allow employees to charge time and other expenses to multiple programs or grants as necessary that is workable in the CCSJBE environment.

In addition, Section 5.13 of CCSJBE's cost allocation methodology states, "Cell Phone and Car Allowance expenses are budgeted in the proposals and only authorized for approved allowable and allocable expenditures."

Region 2 Paid CCSJBE for Car Allowances as Fringe Benefits

Under two cooperative agreements with CCSJBE, the EPA awarded car allowances as fringe benefits for the Executive Director and Volunteer/Outreach Coordinator in FY 2016 and FY 2017.

A project to restore this lagoon is included in the San Juan Bay Estuary Comprehensive Conservation and Management Plan. (EPA OIG photo)

The EPA awarded CCSJBE two cooperative agreements—Grant Numbers 99206921 and 99206922—to implement projects and programs included in the San Juan Bay Estuary Comprehensive Conservation and Management Plan. According to the award documents, these projects and programs were intended to "improve the water and sediment quality of the [San Juan Bay Estuary] to ensure its suitability for fishing and swimming and to promote other compatible recreational and commercial activities."

The PO informed us that, in FY 2016 under Grant Number 99206921, CCSJBE claimed $7,005 for car allowance fringe benefits for the Executive Director and Volunteer/Outreach Coordinator. In addition, as of March 29, 2017, CCSJBE claimed $3,974 in FY 2017 for the car allowance fringe benefits under Grant Number 99206922. The PO stated that the costs, estimated at over $10,000, were not monitored by the EPA to determine if they related to personal or work use.

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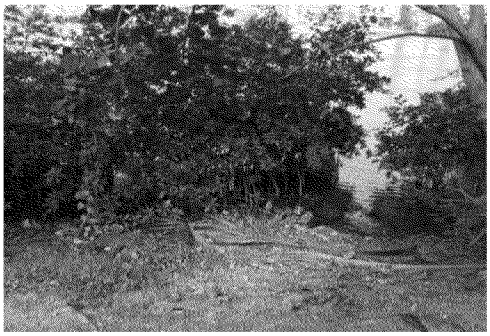
CCSJBE Should Have Support for Car Allowance Fringe Benefit Costs



Another entrance to the Lagoon in Condado, San Juan. (EPA OIG photo)

Region 2 stated that it is up to the recipient to maintain proper documentation to support charges under the cooperative agreement. In addition, Region 2 stated that it does not review supporting documentation for costs drawn down by grant recipients unless their assistance agreements are in reimbursement payment status. However, 2 CFR § 200.300 states the federal awarding agency must manage the federal award to confirm that federal funding is expended in full accordance with statutory and public policy requirements.

The PO stated that the region did not monitor or review the car use (personal versus work) for the car allowances allocated under the cooperative agreements. The PO also stated that the car allowances were approved by the CCSJBE program as flat monthly allowances, since both the Volunteer/Outreach Coordinator and the Executive Director were expected to use their personal cars extensively to attend meetings and outreach activities outside the office.

During our fieldwork, the PO stated that the two CCSJBE employees receiving the car allowances did not maintain documentation regarding mileage and use because CCSJBE policies did not require this information. In June 2017, however, Region 2 provided the OIG with Revision 3 of the CCSJBE's *Personnel Policies Handbook*, issued in October 2015, which shows that CCSJBE's internal control procedures do require the official use of vehicles to be documented. Section 8.5 of this handbook specifically states that "employees who use their own automobiles for travel on authorized business will be reimbursed for mileage" but that "[t]ravel between home and office is not reimbursable." As a result, the handbook requires that employees submit "a detailed log of all approved mileage to your manager for reimbursement at least each quarter."

As an additional oversight control, Region 2 stated it conducted advanced monitoring and transaction testing for CCSJBE and found support for the charges requested in its drawdowns. However, costs associated with fringe benefits were not included in the monitoring. Region 2 said it has followed up with CCSJBE regarding the fringe benefit costs:

> [T]o determine the correct amount associated with the vehicle use, if documentation can be produced to support the costs, and has already recommended some form of use log be developed and implemented immediately for the Executive Director and Public

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Affairs Director prior to requesting any additional funds for such costs from EPA if one is not currently used.

Region 2 Should Confirm Costs

Region 2 should confirm that the use of taxpayer funds—estimated at over $10,000—for fringe benefits for car allowances was proper. Region 2 should determine whether CCSJBE has documentation to support its requests for these costs under the FY 2016 and FY 2017 cooperative agreements.

The PO stated that Region 2 did not monitor the grant recipient's car use, and Region 2 stated that it is up to the recipient to maintain proper documentation to support charges under the cooperative agreement. Region 2 has requested documentation from CCSJBE and stated that it will "pursue the appropriate remedy based on the supporting documentation received from the recipient."

Recommendation

We recommend that the Regional Administrator, Region 2:

4. Determine whether the cooperative agreements under Grant Numbers 99206921 and 99206922 have the proper support for the fringe benefit costs requested for car allowances.

Agency Response and OIG Evaluation

Region 2 concurred with our recommendation and provided a corrective action with a completion date. The region also provided the OIG with technical comments along with its response to the draft report. The complete agency response to the draft report is in Appendix B.

In response to Recommendation 4, Region 2 stated that it "will make the appropriate determination of support" for the requested car allowance fringe benefit costs and will take necessary actions by March 31, 2018. We consider the agency's planned corrective action to satisfy the intent of the recommendation. This recommendation is resolved pending completion of the proposed corrective action.

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Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Potential Monetary Benefits (in $000s)
1	8	Train Project Officers to follow the EPA's Grants Policy Issuance-02-02 guidance, and require that programmatic baseline reviews include confirmation of equipment purchases and use during the post-award phase.	R	Regional Administrator, Region 2	9/30/18	$207
2	14	Require Project Officers and Grant Management Specialists to take specific, annual training on grant file management.	R	Regional Administrator, Region 2	3/31/18	
3	14	Require Project Officers to take specific, annual training on conducting baseline monitoring reviews, to include reviews of the EPA's financial system for drawdown information.	R	Regional Administrator, Region 2	9/30/18	
4	18	Determine whether the cooperative agreements under Grant Numbers 99206921 and 99206922 have the proper support for the fringe benefit costs requested for car allowances.	R	Regional Administrator, Region 2	3/31/18	$10

[1] C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

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Assistance Agreements Selected for Review

Grant number	Project title	EPA award amount
Open Grants		
99293412-2	PREQB Performance Partnership Grant (PPG) '12	$4,159,660
99293413-5	PREQB PPG '13	4,007,952
97235209-1	Puerto Rico Aqueduct and Sewer Authority FY 05 Special Appropriation	3,849,000
97285910-2	FY '10 PREQB Water Quality Management Planning Grant	1,342,616
00207817-0	Air Pollution Control Program	977,496
00207816-1	Air Pollution Control Program	977,494
00224314-0	FY 14 Hazardous Waste Program	889,862
99206922-0	FY 2016 San Juan Bay Estuary Program	770,000
00224315-1	Hazardous Waste Management Program '15	706,446
99206921-0	FY 2016 San Juan Bay Estuary Program	684,608
00207815-0	Air Pollution Control Program	675,000
96297112-4	FY 14 EQB State Response 128(a) Program	409,079
96274100-0	Multi-Purpose Grant Program	269,175
00213114-3	FY 14 Public Water System Supervision Program	164,837
Closed Grants		
99293411-0	2011 PPG	2,473,883
00224311-2	Hazardous Waste Program FY11	1,110,095
00224313-1	FY13 Hazardous Waste Management Program	830,140
00266308-1	PREQB- Voluntary Cleanup Program	826,507
00224312-1	Hazardous Waste Program	675,000
00207812-0	Air Pollution Control Program FFY2012	612,093
00207811-0	FFY 2011 Air Pollution Control Program	604,394
97200701-0	PREQB PM 2.5 FY-2011/2012	371,056
97210701-0	PREQB FY-2009-2010 PM 2.5	344,048

Source: OIG-generated table from EPA grant data.

Appendix B

Agency Response and OIG Evaluation

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY - REGION II
290 BROADWAY
NEW YORK, NEW YORK 10007 -1866

AUG 17 2017

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report, Project No. FY-17-0001, "Region 2 Needs to Improve its Internal Processes Over Puerto Rico's Assistance Agreements," dated July 18, 2017

FROM: Catherine R. McCabe
Acting Regional Administrator

TO: Kevin Christensen
Assistant Inspector General for Audit
Office of Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. Following is a summary of the Agency's overall position, along with its position on each of the report recommendations. EPA's Office of Grants and Debarment (OGD) also provided input for this response. For those report recommendations with which the Agency agrees, we have provided corrective actions and estimated completion dates. For your consideration, we have included a Technical Comments Attachment to supplement this response.

AGENCY'S OVERALL POSITION

Region 2 generally agrees with the four recommendations provided in the report and has begun to implement appropriate corrective actions. However, while we agree to determine support for the fringe costs as stated in Recommendation Number 4, we request that the finding leading to that recommendation be removed. Please refer to the "Technical Comments Attachment" for a detailed description of our position on the OIG's analysis of the Grant Policy (GPI) 02-02 cited throughout the report and the resulting conclusions in addition to other technical comments.

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AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS

Agreements

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Train Project Officers to follow the EPA's Grants Policy Issuance GPI-02-02 guidance, and require that programmatic baseline reviews include confirmation of equipment purchases and use during the post-award phase.	1.1 All Agency Project Officers are required to take training as part of their certification, which includes refresher training triennially and for equipment purchases and use during the post award phase. 1.2 OGD will review the existing Project Officer Training module regarding guidance for equipment purchases and will update as appropriate.	Complete 4th Quarter FY 2018
2	Require Project Officers and Grant Management Specialists to take specific, annual training on grant file management	2.1 Region 2 maintains its File Content Management Training online and available to Project Officers, Grants Specialists and Managers. Additionally, the training provides resources, such as the grant file organization structure. Region 2 updated and delivered this training to staff in May 2017. 2.2 An annual announcement of the above training will be transmitted to staff.	Completed 3rd Quarter FY2017 2nd Quarter FY 2018
3	Require Project Officers to take specific, annual training on conducting baseline monitoring reviews, to include reviews of the EPA's financial system for drawdown information.	3.1 OGD will review available training for Programmatic Baseline Monitoring and will update the content as appropriate.	4th Quarter 2018
4	Determine whether the cooperative agreements under Grant Numbers 99206921 and 99206922 have the proper support for the fringe benefit costs requested for car allowances.	4.1 Region 2 will make the appropriate determination of support for the costs and take necessary action.	2nd Quarter FY2018

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CONTACT INFORMATION

If you have any questions regarding this response, please contact John Svec, Audit Coordinator of the Grants and Audit Management Branch on (212) 637-3699 or Rudnell O'Neal, Acting Branch Chief of the Grants and Audit Management Branch on (212) 637-3427.

Attachments

cc: Michael D. Davis
Gloria Taylor-Upshaw
Rudnell O'Neal
Stephanie Montrallo
Carmen Guerrero
Jose Font

ATTACHMENT

TECHNICAL COMMENTS

Comments to specific sections to the Draft Response

At a Glance Section – Page 3

"What We Found" - The Report claims that R2 "needs to improve its internal processes over Puerto Rico's assistance agreements" yet it does not cite any instances in which the Region made an improper award or took an improper action. No significant issues were identified.

Region 2 may have inefficiently used over $207,000 in taxpayer funds by not confirming equipment use or obtaining support for requested fringe benefit costs.

We were unable to ascertain how the OIG came to this conclusion. The report cites $3,606 of computer equipment the OIG believed was not reviewed properly and approximately $10,000 of fringe benefit costs associated with vehicle usage believed to be unsupported. The $207,000 cited here is the federal share of equipment costs in the grant approved budgets reviewed by the OIG, which may include other types of equipment in addition to the five computer equipment items identified in the report. This statement also implies that Region 2 was lax in its oversight role or did not follow EPA procedures. The report does not support that conclusion or implication and we respectfully request it be reconsidered.

This section also states the following as an area needing improvement:

"*Supports car allowance fringe benefit costs.* Region 2 did not know whether the grant recipient of two cooperative agreements maintained supporting documentation for the car allowance fringe benefit costs."

While we will follow up to determine support for the costs as recommended by the OIG, we request that the above finding be removed. This statement implies that the Region should have known whether the recipient had supporting documentation for its fringe benefit costs. We disagree that there is a finding as to the Region's oversight or internal processes over Puerto Rico's assistance agreements as it pertains to this issue. As a general matter, and as previously explained in our response the discussion draft, supporting documentation is reviewed only at the time of a post-award transaction testing, or when questioned costs are identified through a single audit or other review. No Regional processes will be modified as a result of the OIG's identification of this issue. We will continue the established practices and procedures for following up on any questioned costs identified as a result of external or EPA reviews.

OIG Response: We believe our report addresses internal processes over Puerto Rico's assistance agreements that need improvement, such as the need to confirm equipment was used as intended in the post-award phase, to have better internal documents, and to know if the agency is paying unallowable car allowance fringe benefit costs.

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We did not make any changes to the "At a Glance" section of the report. We believe that the finding should remain in the report. We believe that when the agency approved the nonprofit grantee cost methodology, the EPA should have confirmed the nonprofit to be in compliance with 2 CFR § 200.431(f), which clarifies that personal use of vehicles is unallowable as a fringe benefit. Also, the agency agreed to the recommendation and provided a corrective action with completion date. The finding chapter is needed to support the facts.

We believe that, while it is the grant recipient's responsibility to maintain documentation, the agency should not wait for and rely only on external reviews for oversight.

Chapter 1

Background – Page 1

Region 2 requests paragraphs one and two be revised. EPA funds assistance agreements as a grant or a cooperative agreement. The purpose of awarding assistance agreements is expressly for public benefit. EPA Assistance Agreement programs are characterized as competitive or non-competitive, discretionary or non-discretionary, and/or are considered a Continuing Environmental Program or non-Continuing Environmental Program (i.e. project grants, fellowships). An SRF is a specific grant program authorized by statute; it is not an optional mechanism for awarding grant funds.

OIG Response: We updated the "Background" section in accordance with the suggested wording.

Responsible Offices – Page 2

We request the last paragraph to be clarified using the following language:
The Region 2 Office of Policy and Management, Grants and Audit Management Branch, also has responsibilities regarding assistance agreements with Puerto Rico. The branch is responsible for the administrative review, preparation of awards, administrative post-award management, development of grant-specific administrative terms and conditions, approval of grant payment requests for recipients on reimbursement in conjunction with the program office, closeout, and administrative oversight for all grants and cooperative agreements in Region 2. The branch also provides support, as needed, to the regional program offices, which perform similar functions from the program perspective.

OIG Response: We updated the "Responsible Offices" section in accordance with the suggested wording.

Chapter 2-

Region 2 Did Not Confirm EQB's Equipment Use - page 5
Region 2 POs did not confirm EQB's grant equipment use. The EPA's Grants Policy Issuance (GPI) GPI-02-02 states that POs have a responsibility during the post-award phase to confirm that a grant recipient purchases and uses equipment according to the approved budget and work plan. However, Region 2 POs conducted programmatic baseline reviews that were limited to specific data areas, which did not include confirming equipment use. POs need to be familiar with the use of equipment purchased under a grant to make a reasonable determination for

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future equipment requests and to confirm that taxpayer funds are being used in accordance with grant requirements.

This chapter cites the requirements of GPI-02-02, but fails to note the following provisions of this GPI, which mirror the regulations (see 2 CFR 200.313, Equipment):

> Section 4, Definitions, states the following:
>
> "States are not subject to these requirements. States will use, manage and dispose of equipment acquired under a grant by the state in accordance with state laws and procedures."
>
> Section 5, Disposition Options, states the following:
>
> "Special Cases
>
> States: State agencies may manage and dispose of equipment acquired under assistance agreements in accordance with state laws and procedures."
>
> "State agencies can manage equipment according to their state regulations."

Region 2 worked closely with EQB to develop its procedures and specific systems to be in compliance with federal regulations and Generally Accepted Accounting Principles. EPA has maintained an oversight role with EQB as it has worked to further develop internal control processes and implemented its own procedures. EQB's procedures for equipment are compliant and it is incumbent upon EQB to follow its procedures. The report does not cite any instances in which EQB inappropriately procured or managed equipment, or where its property management procedures were not followed.

OIG Response: We agree with the EPA's statement that GPI-02-02 requires states to manage equipment. However, the policy also includes a statement in Section 2 about scope: "This guidance applies to all EPA POs and GMOs awarding or administering assistance agreements." Therefore, POs are "responsible for confirming that the recipient purchases that equipment within the time frame outlined in their milestones and uses the equipment for the purposes outlined in the work plan." The regional POs did not follow this requirement for the equipment outlined in this chapter.

POs Did Not Confirm EQB's Equipment Use – page 6

The statement that POs "Did Not Confirm EQB's Equipment Use" is not correct. Project Officers review both the budget package and the workplan; they confirm the equipment and its intended use in the cost review checklist, completed as part of the Funding Recommendation process. Additionally, GPI-02-02 does not require a Project Officer to assess the equipment needs under one agreement by reviewing a recipient's complete equipment inventory and procurement history. The OIG's statement that "POs should be aware of how equipment purchased under previous grants is being used to make a reasonable determination whether additional purchases are necessary" is outside the scope of a POs responsibility, potentially beyond their expertise, and would create undue administrative burden on the recipients and EPA staff. We note that the OIG's review did not identify any unnecessary equipment, and that EQB's procedures prohibit the purchase of unneeded items.

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OIG Response: We updated the title and body of Chapter 2 to address that POs did not confirm equipment was used as outlined in the approved work plans.

Additional Equipment Purchases Without Confirmation – Page 7

We suggest revising this section to clarify the OIG's purpose for conveying the information. POs are required to complete baseline monitoring at least annually, the Project Officer Off-Site/On-Site Review Guidance and Protocol cited is used for programmatic advanced monitoring reviews for selected grant and cooperative agreements. Unless a specific grant is selected as part of a small sample of agreements for this type of additional review, a PO would not utilize this checklist to document equipment purchases and therefore, it would not be in the grant file. A review of the Grantee Compliance Database confirmed that the agreements identified in Table 1 were not selected for programmatic advanced monitoring review. Table 1 lists equipment budgeted under the agreement, all of those equipment dollars were reviewed by the PO and determined to be reasonable, allowable and necessary to complete the milestones of the workplan covered by the agreement at the time of the award. Please note that the PPGs for EQB, grant numbers 99293412 and 99293413, listed in Table 1 have not been closed or are currently active. The Project Officer has provided documentation to support her review and approval of equipment EQB purchased under each agreement.

OIG Response: We agree and deleted the subsection in the "Additional Equipment Purchased Without Confirmation" related to the above-mentioned protocol, as it would be part of the advanced monitoring reviews only. In addition, we added a column to Table 1 to show the status (open or closed) of each grant listed.

PO Reviews Were Limited to Specific Data – Page 7

The report indicates that "Region 2 stated that an equipment review is not required for EQB since they are no longer considered high-risk recipient." While it is not clear what context this statement was made, as a result of EPA lifting the High Risk designation, EQB is no longer required to submit supporting expenditure documentation that was required with its requests for payment when under the High Risk designation. As discussed previously, EQB is considered a state agency and is required to follow its own procurement policies and procedures. EPA reviewed and approved the proposed equipment purchases in the grant budgets and has extensively reviewed EQB's procurement policies and standard operating procedures. Region 2 has consulted with the Headquarters Office of Grants and Debarment, National Policy, Training & Compliance Division and that office is in agreement with the statement previously provided to the OIG by Region 2:

> *POs are not responsible for reviewing existing inventories before approving equipment purchases. Rather, POs are required to use their best professional judgment and considerations such as knowledge of the type of equipment, consistency with the recipient's procurement system, market research/market value, or a prudent person test to assess the reasonableness and necessity of proposed equipment purchases. Particularly for state governments in continuing environmental grant programs, it is expected that there will be turnover in equipment, especially computers, and that every year a fraction of the existing inventory will be replaced.*

Region 2 maintains that POs were reviewing and approving equipment in accordance with the Agency's policies and regulations.

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OIG Response: We agree that EQB is a state agency and is required to follow its own procurement policies and procedures. However, GPI-02-02 includes a statement in Section 2 about scope: "This guidance applies to all EPA POs and GMOs awarding or administering assistance agreements." Therefore, POs in the post-award phase are "responsible for confirming that the recipient purchases the equipment within the time frame outlined in their milestones and uses the equipment for the purposes outlines in the work plan." We updated the report to note that POs did not confirm EQB equipment was used as outlined in the work plans.

POs Are Unfamiliar with EQB's Equipment – Page 8

We respectfully disagree with this section and request it be revised. Region 2 was extensively involved in the development of EQB's procurement policies and standard operating procedures. We have thoroughly reviewed the implementation of those procedures and have maintained a close oversight role with EQB as they have continued to develop additional internal controls since the High Risk Designation was lifted. POs properly reviewed the equipment lists included with the proposed budgets in accordance with grant regulations and EPA policy. Each piece of equipment proposed is assessed and determined to be allowable, reasonable, and necessary for the completion of the workplan milestones. EQB's procedures require EPA approval prior to making changes in proposed equipment purchases and GPI-02-02 (as well as the EPA grant regulations) requires a state agency to follow its policies and procedures regarding equipment. Therefore, it is the Agency's position that there is no benefit for a PO to assess a state agency's complete equipment inventory prior to approving equipment for every grant nor is it within the scope of EPA's oversight responsibilities.

OIG Response: We agree that there is no benefit for a PO to assess a state agency's complete equipment inventory prior to approving equipment for every grant. We believe that, once EQB purchases equipment in accordance with the grant, it is the PO's responsibility in the post-award phase to make sure EQB uses the equipment in accordance with the approved work plan, as required by GPI-02-02.

We updated the title and body of Chapter 2 to indicate that POs did not confirm EQB equipment was used as outlined in work plans.

Chapter 3 - Page 9-13

Region 2 Needs to Improve Internal Documentation for Puerto Rico Assistance Agreements

We respectfully request the title for this chapter be reconsidered, it does not accurately reflect the contents of the chapter. The issues cited in this section are immaterial to grants management and EPA's oversight. The Comprehensive Administrative Review Checklist is a tool to assist GSs in reviewing the application packages and funding recommendations and identifying potential issues; the checklist does not constitute a final Agency determination or an official report. Additionally, due to multiple levels of internal controls and management reviews, there were no instances of improper awards being made. We contend that Region 2 has proper internal controls and procedures in place to properly oversee Puerto Rico grants. Additionally, Region 2 has already provided file content training to POs and Managers, updated its File

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Content Training available online, has provided written reminders to staff to print grant related documents and will continue to do so.

OIG Response: We agree that Region 2 has internal controls and procedures in place to oversee Puerto Rico grants. However, we believe that improvements are needed and that the title accurately reflects the need for improving controls over internal documentation.

We stated in our report that the comprehensive administrative review checklist is a tool to facilitate the proper review of applications and funding packages and to assist GSs in identifying errors; therefore, we did not make any additional changes to the body of the report.

Chapter 4 –
Region 2 Paid CCSJBE for Car Allowances as Fringe Benefits – Page 16

CCSJBE did not request "the same fringe benefits" in 2017 as it did in 2016. The periods covered were different. We request the following paragraph be clarified as follows:

The PO informed us that, in FY 2016 under Grant Number 99206921, CCSJBE claimed $7,005 for car allowance fringe benefits for the Executive Director and Volunteer/Outreach Coordinator. In addition, as of March 29, 2017, CCSJBE claimed $3,974 in FY 2017 for car allowance fringe benefits for the Executive Director and Volunteer/Outreach Coordinator under Grant Number 99206922. The PO stated that the costs, estimated at over $10,000, were not monitored by EPA to determine if they related to personal or work use.

OIG Response: We agree that the same costs were not claimed in FYs 2016 and 2017. We were referring to the car allowance fringe benefit in our report. We updated "the same fringe benefits" to "car allowance fringe benefits."

Region 2 Should Confirm Costs –

Region 2 has already begun the process of verifying that for the costs of the vehicle allowance fringe benefits for the Executive Director and Volunteer/Outreach Coordinator are properly supported. CCSJBE has met with Region 2 staff and has submitted draft revised procedures for review and comment. We maintain that we will pursue the appropriate remedy based on the supporting documentation received from the recipient.

OIG Response: We consider the agency's planned corrective action to satisfy the intent of the recommendation.

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Appendix C

Distribution

The Administrator
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Audit Follow-Up Coordinator, Office of the Administrator
Audit Follow-Up Coordinator, Region 2

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From: OIG News
Sent: Mon 8/14/2017 1:35:35 PM
Subject: OIG Report: "EPA's Fiscal Years 2016 and 2015 Hazardous Waste Electronic Manifest System Fund Financial Statements"
_epaoig_20170814-17-F-0363_cert.pdf

Attached is the EPA Office of Inspector General (OIG) report, *EPA's Fiscal Years 2016 and 2015 Hazardous Waste Electronic Manifest System Fund Financial Statements* (Report No. 17-F-0363). This report will be available to the public on the OIG's website at www.epa.gov/oig.

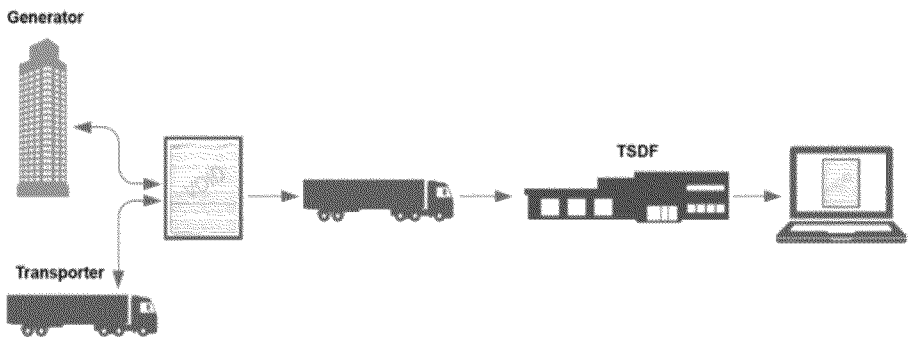
U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Financial Management

EPA's Fiscal Years 2016 and 2015 Hazardous Waste Electronic Manifest System Fund Financial Statements

Report No. 17-F-0363 **August 14, 2017**



Report Contributors:

Paul Curtis
Wanda Arrington
Mairim Lopez
Sheree James

Abbreviations

EPA	U.S. Environmental Protection Agency
FMFIA	Federal Managers' Financial Integrity Act of 1982
OIG	Office of Inspector General
OMB	Office of Management and Budget

Cover photo: Diagram illustrating manifests submission through a hybrid approach. (EPA image)

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U.S. Environmental Protection Agency
Office of Inspector General

17-F-0363
August 14, 2017

At a Glance

Why We Did This Review

We performed this audit pursuant to the Hazardous Waste Electronic Manifest Establishment Act. The act requires the U.S. Environmental Protection Agency (EPA) to prepare, and the Office of Inspector General (OIG) to audit, the Hazardous Waste Electronic Manifest System Fund financial statements each year. Our primary objectives were to determine whether:

- The financial statements were fairly stated in all material respects.
- The EPA's internal controls over financial reporting were in place.
- EPA management complied with applicable laws and regulations.

The e-Manifest system is being designed to create a means to track off-site shipments of hazardous waste from a generator's site to the site of the receipt, and disposition of the hazardous waste.

This report addresses the following EPA goal or cross-agency strategy:

- *Embracing EPA as a high-performing organization.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of OIG reports.

EPA's Fiscal Years 2016 and 2015 Hazardous Waste Electronic Manifest System Fund Financial Statements

What We Found

We rendered an unmodified opinion on the EPA's fiscal years 2016 and 2015 Hazardous Waste Electronic Manifest System Fund financial statements, meaning that the statements were fairly presented and free of material misstatement.

We found the fund's financial statements to be fairly presented and free of material misstatements.

We did not identify any matters that we consider to be material weaknesses or significant deficiencies in the fund.

We identified no significant matters involving compliance with laws and regulations that came to our attention during the course of the audit.

There are no recommendations in this report.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

August 14, 2017

MEMORANDUM

SUBJECT: EPA's Fiscal Years 2016 and 2015 Hazardous Waste Electronic Manifest System Fund Financial Statements
Report No. 17-F-0363

FROM: Paul C. Curtis, Director
Financial Statement Audits

TO: David Bloom, Acting Chief Financial Officer
Office of the Chief Financial Officer

Barry Breen, Acting Assistant Administrator
Office of Land and Emergency Management

Donna Vizian, Acting Assistant Administrator
Office of Administration and Resources Management

This is our report on the audit of the U.S. Environmental Protection Agency's (EPA's) Hazardous Waste Electronic Manifest System Fund financial statements for fiscal years 2016 and 2015, conducted by the Office of Inspector General (OIG). The project number for this audit was OA-FY17-0146.

This report contains no recommendations, and you are not required to respond to this report. However, if you submit a response, it will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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B Distribution

Inspector General's Report on EPA's Fiscal Years 2016 and 2015 Hazardous Waste Electronic Manifest System Fund Financial Statements

The Administrator
U.S. Environmental Protection Agency

Report on the Financial Statements

We have audited the accompanying financial statements of the U.S. Environmental Protection Agency's (EPA's) Hazardous Waste Electronic Manifest System Fund (known as the e-Manifest fund), which comprise the balance sheet for the fiscal year ended September 30, 2016, and September 30, 2015, and the related statements of net cost and changes in net position; the statement of budgetary resources for the years then ended; and the related notes to the financial statements.

Management's Responsibilities for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based upon our audit. We conducted our audit in accordance with generally accepted government auditing standards; the standards applicable to financial statements contained in *Government Auditing Standards,* issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin 15-02, *Audit Requirements for Federal Financial Statements.* These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatements.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the audit considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances. An audit also

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includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the Hazardous Waste Electronic Manifest System Fund financial statements, including the accompanying notes, present fairly, in all material respects, the assets, liabilities, net position, net cost, changes in net position and budgetary resources of the EPA as of September 30, 2016, and September 30, 2015, in conformity with accounting principles generally accepted in the United States of America.

Specific Audit Requirements of the Hazardous Waste Electronic Manifest Establishment Act

The Hazardous Waste Electronic Manifest Establishment Act (e-Manifest Act) requires the Office of Inspector General (OIG) to include an analysis of (1) the fees collected and disbursed, (2) the reasonableness of the fee structure in place, (3) the level of use of the system by users, and (4) the success to date of the system in operating on a self-sustaining basis and improving the efficiency of tracking waste shipments and transmitting waste shipment data. As the fund has not yet established a fee structure and started use of the system, no such analyses were performed.

Management's Discussion and Analysis

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The Management's Discussion and Analysis are presented for purposes of additional analysis and are not a required part of the basic financial statements. Such information is the responsibility of management. We obtained information from the fund's management about its methods for preparing the Management's Discussion and Analysis, and reviewed this information for consistency with the financial statements.

We did not identify any material inconsistencies between the information presented in the fund's financial statements and the information presented in the Management's Discussion and Analysis.

Our audit was not designed to express an opinion and, accordingly, we do not express an opinion on the fund's Management's Discussion and Analysis.

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Report on Internal Control Over Financial Reporting

Opinion on Internal Controls. In planning and performing our audit, we considered the fund's internal controls over financial reporting by obtaining an understanding of the agency's internal controls, determining whether internal controls had been placed in operations, assessing control risk, and performing tests of controls. We did this as a basis for designing our audit procedures for the purpose of expressing an opinion on the financial statements and to comply with OMB audit guidance, not to express an opinion on internal control. Accordingly, we do not express an opinion on internal control over financial reporting, nor on management's assertion on internal controls included in Management's Discussion and Analysis. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements.* We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982 (FMFIA).

Material Weaknesses and Significant Deficiencies. Our consideration of the internal controls over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be significant deficiencies. A deficiency in internal controls exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Because of inherent limitations in internal controls, misstatements, losses or noncompliance may nevertheless occur and not be detected.

We did not note any matters that we consider to be material weaknesses or significant deficiencies in the fund.

Comparison of EPA's FMFIA Report With Our Evaluation of Internal Controls

OMB Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements,* requires the OIG to compare material weaknesses disclosed during the audit with those material weaknesses reported in the agency's FMFIA report that relate to the financial statements, and identify material weaknesses disclosed by the audit that were not reported in the agency's FMFIA report. The agency's FMFIA report is prepared and submitted at the consolidated level, of which the e-Manifest fund is a

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component. The agency reported one material weakness in fiscal year 2016 regarding capitalized software, which may impact the fund. Capitalized software continues to be reported as a material weakness in the design and operation of internal controls. While capitalized software continues to be a material weakness for the agency, the EPA is in the process of accumulating costs in the development of software, and as a result, it is too early to determine whether the fund will be impacted.

Tests of Compliance With Laws, Regulations and Contracts

EPA management is responsible for complying with laws, regulations and contracts applicable to the agency and the fund. As part of obtaining reasonable assurance about whether the fund's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements.* The OMB guidance requires that we evaluate compliance with federal financial management system requirements, including the requirements referred to in the Federal Financial Management Improvement Act of 1996. We limited our tests of compliance to these provisions and did not test compliance with all laws and regulations applicable to the EPA's Hazardous Waste Electronic Manifest System Fund.

Opinion on Compliance With Laws and Regulations

Providing an opinion on compliance with certain provisions of laws and regulations was not an objective of our audit and, accordingly, we do not express such an opinion.

We did not identify any noncompliance that would result in a material misstatement to the audited financial statements.

Prior Audit Coverage

During our previous financial statements audit, we reported a noncompliance with the e-Manifest Act.

In fiscal year 2015, the EPA used e-Manifest appropriated funds totaling $22,294 to cover contract costs unrelated to the e-Manifest project. According to the e-Manifest Act, at Section 2, Subsection (d)(2)(C), the EPA shall take all necessary measures to ensure that amounts in the e-Manifest fund are used only to carry out the goals of establishing, operating, maintaining, upgrading, managing, supporting and overseeing the e-Manifest system. The EPA did not have adequate oversight to prevent the inappropriate use of the e-Manifest fund. As a result, the EPA was not in compliance with the e-Manifest Act.

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The agency agreed with our fiscal year 2015 audit finding and recommendations. In response to our recommendations, the agency implemented and completed all corrective actions. As part of its corrective actions, the agency:

- Refunded the e-Manifest fund for all the amounts paid for costs unrelated to the e-Manifest project during fiscal year 2015.
- Included reminders in financial reports and issued guidance affirming that e-Manifest funds may only be used for e-Manifest work.
- Added "proper invoice processing" as a performance standard to the performance agreements.

During our current audit, we identified additional contract costs covered with e-Manifest appropriated funds during fiscal year 2016 that were unrelated to the project. However, the agency is in the process of reimbursing the fund for these costs. As a result, we are not issuing any recommendations in our fiscal year 2016 audit report.

Agency Comments

There are no recommendations in this report, and the agency had no comments.

Paul C. Curtis
Certified Public Accountant
Director, Financial Statement Audits
Office of Inspector General
U.S. Environmental Protection Agency
August 11, 2017

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For the Fiscal Years Ending September 30, 2016 and 2015
Hazardous Waste Electronic Manifest System (e-Manifest) Fund
Financial Statements

Produced by the U.S. Environmental Protection Agency
Office of the Chief Financial Officer
Office of the Controller

17-F-0363

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Management's Discussion and Analysis

Introduction

The Hazardous Waste Electronic Manifest System fund (e-Manifest) was established as a result of the Hazardous Waste Manifest Establishment Act (Public Law 112-195, October 5, 2012). The e-Manifest Act requires the United States Environmental Protection Agency ('EPA' or 'the Agency') to establish and own a hazardous waste electronic manifest program information technology ('IT') system that will enable electronic manifesting as a means to augment or replace the use of paper manifests for tracking hazardous waste shipments. The e-Manifest Act requires that the e-Manifest system:

1. Meet the needs of the user community;
2. Attract sufficient user participation and service revenues to ensure the viability of the system (the e-Manifest Act authorizes EPA to collect reasonable user fees); and
3. Decrease the administrative burden on the user community.

Current EPA RCRA Manifest Program

The EPA Office of Land and Emergency Management (OLEM) provides policy, guidance and direction for the Agency's emergency response and waste programs. The Office of Resource Conservation and Recovery (ORCR) within OLEM works to protect human health and the environment by ensuring responsible national management of hazardous and nonhazardous waste. Working with delegated state waste programs, ORCR implements the 1976 Resource Conservation and Recovery Act (RCRA), and ensures that the resource conservation, recovery and waste management goals of RCRA are met. All states with the exception of Iowa and Alaska have been delegated RCRA authority, meaning that states implement many if not all aspects of RCRA policy.

The manifest program as implemented by EPA and the states ensures that hazardous waste shipments are consistently tracked, and that hazardous wastes in fact arrive at permitted waste management facilities. The manifest program is based on both RCRA and Department of Transportation (DOT) hazardous materials law (The Hazardous Materials Transportation Act (HMTA)). These laws together require uniformity in the content and use of the hazardous waste manifest form.

e-Manifest System Planning Activities

Discussion of the e-Manifest system itself has taken place over many years; beginning back in the 1990's when the concept of an electronic manifest system was first taking shape. Further activities continued over the years to envision the e-Manifest system through various stakeholder discussions and pilots. For more information on EPA's efforts prior to the passage of the e-Manifest Act in 2012, Please visit http:/www.epa.gov/osw/hazard/transportation/manifest/e-man-pastmeetings.htm.

In early calendar year 2013, EPA conducted various stakeholder requirements meetings to reengage with the user community. The purpose of these meetings was to build on past e-Manifest work to determine high level system functional requirements. Following this, a system alternatives analysis was conducted to look at various system implementation approaches, all assuming (among other things) a full electronic mobile workflow. The alternatives analysis recommended that EPA leverage cloud hosting for initial system development and system launch, and for long term operations and maintenance, consider re-negotiating the cloud contract model or potentially migrate to an on premise hosting model to keep costs down.

Also as a part of the planning work, a system Concept of Operations (CONOPS) was completed that, at a high level, outlines both what the current manifest process entails for highway and rail transporters as well as what the future system may look like. The CONOPS document provides a process and conceptual model for how data will flow from stakeholder to stakeholder and through the system during the manifest workflow.

The technical architecture for e-Manifest was completed in FY 2015. This architecture includes the specific components and data flows as currently defined to illustrate a technical solution for the e-Manifest system. In doing so, it defines the specific boundaries of the e-Manifest system and how the different parts of the system work together to provide the required services based on current requirements. For example, areas such as system Cross-Media Electronic Reporting Regulation (CROMERR) integration, paper manifest processing and manifest data quality assurance (QA) were analyzed as a part of this effort.

As a part of this technical architecture planning work, EPA conducted targeted meetings with states and industry separately in order to further flesh out current processes as well as expectations for the above areas. The meetings were more detailed than previous discussions, and provided critical information to inform system requirements.

The technical architecture work completed in FY 2015 serves as baseline for the current manifest program and provides very strong foundation for future system buildout. It meets user needs and provides flexibility for future iterations of the system.

Building on FY 2015, in FY 2016 the e-Manifest program realized significant progress while leveraging existing ORCR software applications. EPA initially conceived e-Manifest as a standalone system and allowed the system architects to consider a broad range of approaches without inherent constraints from an existing system design. However, as designs matured, it was recognized that the e-Manifest technical solution aligned closely with RCRAInfo in terms of end user functionality, data integration, and required technical infrastructure. These factors led to the decision to implement e-Manifest as a unique module of RCRAInfo.

Many of the new capabilities of e-Manifest can be implemented in RCRAInfo using the existing modular architecture present in RCRAInfo. In addition, some of the more innovative design aspects of e-Manifest could also be incorporated into RCRAInfo, improving both systems.

By leveraging e-Manifest and RCRAInfo modules, opportunities for reuse of existing technology investments were present, reducing the burden of e-Manifest implementation. These factors led to the decision to develop e-Manifest and RCRAInfo modules as distinct, but as interrelated entities which will meet the current and future needs of industry, government and the public.

Acquisition Strategy Change

The EPA's system development work is focused on ensuring user needs are met from day one of national system deployment. To accomplish this, the agency is conducting user-centered design and development, and is utilizing agile software development methodologies. This approach embodies continuous improvement through pilots and testing, using iterative processes, and continued regular engagement with users and stakeholders throughout the process to provide on-going opportunities for input.

Instead of locking in on one source, the new e-Manifest program services contract (multi-vendor indefinite delivery/indefinite quantity (IDIQ)) will utilize a variety of vehicles for the following segments of the system:

- Project management including integration services.
- Paper manifest processing.
- User help desk and user training.
- Quality assurance for manifest data amongst industry, states, and the EPA.
- Services to calculate, collect, and support reporting of user fees for paper and electronic manifest processing.
- Support for stakeholder communication, including outreach and meeting support.

Research has shown that using this type of lean start-up methodology, with agile techniques, lowers the cost of system development by addressing uncertainties promptly, and by ensuring that the work being completed brings real value to users.

The agency engaged with the U.S. General Services Agency's "18F" government IT development support group. In September 2015, the EPA completed an initial system demonstration. The EPA worked with several industry users to complete this initial system functionality, and is compiling their technical feedback/testing results on how to improve or better meet their needs.

The agency will continue to work closely with users, adding more functionality in an incremental manner, evolving to a minimum viable product, and providing continuous improvement for the lifetime of the system. By taking this iterative approach the EPA will refine remaining uncertainties from our architecture planning work in the most cost effective manner.

e-Manifest System Development

As a follow-on to the completed technical and conceptual architecture, e-Manifest embarked on a pilot to create initial system functionality with the General Service Administrations (GSA) 18F consulting shop. The 18F group provided the IT expertise to create the foundation of e-Manifest and also provided agile project management support. Specifically, 18F:

- Introduced user-centered design/development, which engages industry/state users in the early phases of development;
- Created the development platform and hosting environment for e-Manifest; and
- Leveraged open source technologies (Trello, GitHub, biweekly online meetings showcasing recent system updates) to allow users and other stakeholders to follow and participate in system development.

As part of the agile development focus, in September 2015, EPA, in partnership with 18F, completed an initial system demonstration. This focused on a key aspect of the system: the transaction at the end of the chain-of-custody when the hazardous waste arrives at the designated waste management facility and that facility signs the electronic manifest to verify that all the hazardous waste types and quantities were received. Getting the system to properly electronically execute this all-important manifest transaction was a critical first step. EPA worked with several industry users to complete this initial system functionality.

Although not as straightforward as standard government IT development projects, this course correction from traditional lifecycle system development ("waterfall") methodology to agile will ultimately deliver a better system in a quicker, more value-added method going forward.

Starting with this initial system, EPA has been adding more functionality in an incremental manner. Research has shown that using this type of lean start-up methodology with agile techniques lowers the cost of current and future system development by addressing uncertainties sooner rather than later. Therefore, EPA has been conducting user-centered design and development, starting with the small scale demonstration phase. Open source code and project engages industry and state users in the early phases of development, creation of a development platform, and a hosting environment. EPA will expand engagement efforts to all users over time (e.g., states with no systems, large and small generators, etc.).

The agile software development methodology embodies continuous improvement through iterative development and delivers software in sprints. Agile embraces change, continuous and regular feedback and improvement, value-driven delivery, full-team collaboration, and learning through discovery. Agile techniques cannot eliminate the challenges intrinsic to high-discovery software development but by focusing on continuous delivery of incremental value and shorter feedback cycles. They expose challenges as early as possible to allow for immediate correction. EPA has adopted lean start-up product development strategies with agile, user-centered software design/development methodologies, and has implemented the following:

- Two-week sprint intervals;
- Modular development practices, relying heavily on available off-the-shelf software modules, by building individual working pieces of the system and integrating them into the whole;
- Early engagement with users and stakeholders, addressing uncertainties that arose during the initial architecture planning work;
- Upfront risk management, bringing down the cost of current and future development by ensuring that the work being completed brings actual value to stakeholders and users; and
- Continuous improvement, using iterative processes, and engaging regularly with users and stakeholders throughout the life of the program.

EPA has made every effort to involve industry users in the development process to build the strongest possible system. During the system development phase, the e-Manifest team is working alongside industry, states, and other stakeholders, by focusing on issues raised and addressing the issues, including the following:

- Assessing how the national e-Manifest system will connect with state and industry systems;
- Engaging users in testing the web application; and
- Addressing state data access needs

The e-Manifest team communicates regularly with states, industry, and related stakeholders about ongoing developments (i.e., continued release and testing of system iterations), updates on e-Manifest related rules (i.e., user fees for the e-Manifest system and amendments to manifest regulations), and the national launch of the e-Manifest system.

Our primary methods of communication include the following:

- The e-Manifest website
- User testing
- Conferences
- Site visits
- Listserv (general interest and development-focused)
- Public webinars
- Blog posts
- GitHub – code repository and project management

- FACA Meetings
- Meetings with stakeholders.

Provided e-Manifest is fully-funded; we will follow this path of milestones to system launch in the spring of 2018.

- September 2015– initial system functionality completed.
- Spring of 2016 – minimal viable product development.
- Spring through fall of 2016 – early full scale development.
- Fall of 2016 through winter of 2018 – rolling iterative releases/testing of system.
- Calendar year 2018 – national deployment (collecting user fees).

Principal Financial Statements:

Environmental Protection Agency
e-Manifest
BALANCE SHEET
As of September 30, 2016 and 2015
(Dollars in Thousands)

		FY 2016		FY 2015
Assets:				
Intragovernmental:				
Fund Balance with Treasury (Note 2)	$	5,230	$	3,411
Other (Note 3)		5		7
Total Intragovernmental		5,235		3,418
Property, Plant & Equipment, Net (Note 4)		944		-
Total Assets	**$**	**6,179**	**$**	**3,418**
Liabilities:				
Intragovernmental:				
Accounts Payable and Accrued Liabilities	$	9	$	4
Other (Note 5)		20		12
Total Intragovernmental		29		16
Accounts Payable & Accrued Liabilities		39		109
Payroll & Benefits Payable (Note 6)		149		122
Total Liabilities	**$**	**217**	**$**	**247**
Net Position:				
Unexpended Appropriations	$	5,086	$	3,240
Cumulative Results of Operations		876		(69)
Total Net Position		**5,962**		**3,171**
Total Liabilities and Net Position	**$**	**6,179**	**$**	**3,418**

The accompanying footnotes are an integral part of these financial statements.

Environmental Protection Agency
e-Manifest
STATEMENT OF NET COST
For the Fiscal Years Ended September 30, 2016 and 2015
(Dollars in Thousands)

		FY 2016		FY 2015
Costs:				
Gross costs	$	962	$	2,157
Expenses from Other Appropriations (Note 7)		205		-
Less:				
Earned revenue		-		-
Net cost of operations	**$**	**1,167**	**$**	**2,157**

The accompanying footnotes are an integral part of these financial statements.

Environmental Protection Agency
e-Manifest
STATEMENT OF CHANGES IN NET POSITION
For the Fiscal Years Ended September 30, 2016 and 2015
(Dollars in Thousands)

	FY 2016	FY 2015
Cumulative Results of Operations:		
Net Position - Beginning of Period	$ (69)	$ (69)
Budgetary Financing Sources:		
Appropriations Used	$ 1,828	$ 2,090
Income from Other Appropriations (Note 7)	205	-
Total Budgetary Financing Sources	2,033	2,090
Other Financing Sources (Non-Exchange):		
Imputed Financing Sources	$ 80	$ 66
Total Other Financing Sources	80	66
Net Cost of Operations	(1,167)	(2,157)
Net Change	946	-
Cumulative Results of Operations	**$ 876**	**$ (69)**
Unexpended Appropriations:		
Net Position - Beginning of Period	$ 3,240	$ 1,656
Budgetary Financing Sources:		
Appropriations Received	$ 3,674	$ 3,674
Appropriations Used	(1,828)	(2,090)
Total Budgetary Financing Sources	1,846	1,584
Total Unexpended Appropriations	5,086	3,240
Net Position	**$ 5,962**	**$ 3,171**

The accompanying footnotes are an integral part of these financial statements.

Environmental Protection Agency
e-Manifest
STATEMENT OF BUDGETARY RESOURCES
For the Fiscal Years Ended September 30, 2016 and 2015
(Dollars in Thousands)

	FY 2016	FY 2015
Budgetary Resources:		
Unobligated balance, brought forward, October 1:	$ 3,220	$ 1,013
Recoveries of prior year unpaid obligations	37	17
Unobligated balance from prior year budget authority, net	3,257	1,030
Appropriations (discretionary and mandatory)	3,674	3,674
Total Budgetary Resources	**$ 6,931**	**$ 4,704**
Status of Budgetary Resources:		
Obligations Incurred	$ 2,965	$ 1,484
Unobligated Balance, end of year:		
Apportioned	3,966	3,220
Total Unobligated balance, end of period	3,966	3,220
Total Status of Budgetary Resources	**$ 6,931**	**$ 4,704**
Change in Obligated Balance Unpaid Obligations:		
Unpaid obligations, brought forward, October 1 (gross)	$ 191	$ 854
Obligations incurred, net	2,965	1,484
Outlays (gross)	(1,855)	(2,130)
Recoveries of prior year unpaid obligations	(37)	(17)
Unpaid obligations, end of year (gross)	1,264	191
Memorandum entries:		
Obligated balance, start of year	$ 191	$ 854
Obligated balance, end of year (net)	$ 1,264	$ 191
Budget Authority and Outlays, Net:		
Budget authority, net	$ 3,674	$ 3,674
Agency outlays, net	**$ 1,855**	**$ 2,130**

The accompanying footnotes are an integral part of these financial statements.

Environmental Protection Agency
e-Manifest
Notes to Financial Statements
For the Fiscal Years Ended September 30, 2016 and 2015
(Dollars in Thousands)

Note 1. Summary of Significant Accounting Policies

A. Reporting Entity

The U.S. Environmental Protection Agency (EPA or Agency) was created in 1970 by executive reorganization from various components of other Federal agencies in order to better marshal and coordinate Federal pollution control efforts. The Agency is generally organized around the media and substances it regulates -- air, water, land, hazardous waste, pesticides and toxic substances.

The Hazardous Waste Electronic Manifest System Fund (e-Manifest) was authorized by the establishment of the Hazardous Waste Electronic Manifest System Act. The act mandates that the Agency, within three years, establish a hazardous waste electronic manifest system that can be accessed by any user. The act authorized the administrator to impose on users' fees to pay the costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from paper manifests submitted to the system after the date on which the system enters operations.

The e-Manifest fund charges some administrative costs directly to the fund, and charges the remainder of the indirect administrative costs to Agency-wide appropriations. These amounts are included as "Income from Other Appropriations" on the Statement of Changes in Net Position and as "Expenses from Other Appropriations" on the Statement of Net Cost.

B. Basis of Presentation

These financial statements have been prepared to report the financial position and results of operations of the EPA for the e-Manifest Fund in accordance with the Chief Financial Officers Act of 1990 and the Government Management Reform Act of 1994. The reports have been prepared from the books and records of the EPA in accordance with Office of Management and Budget (OMB) Circular A-136 *Financial Reporting Requirements*, and the EPA's accounting policies which are summarized in this note. These statements are therefore different from the financial reports also prepared by the EPA pursuant to OMB directives that are used to monitor and control the EPA's use of budgetary resources. The balances in these reports have been updated from the EPA consolidated financial statements to reflect the use of FY 2016 cost factors for calculating imputed costs for Federal civilian benefits programs. These updates impact the Balance Sheet, Statement of Net Cost, and Statement of Changes in Net Position.

C. Budgets and Budgetary Accounting

Funding of the e-Manifest Fund will be provided by fees collected from users to offset costs incurred by the EPA in carrying out these programs. Since inception in October 5, 2012 through fiscal year 2016, funding for the e-Manifest fund was from appropriated funds. EPA did not collect fees from inception of the fund through FY 2016.

D. Basis of Accounting

Generally Accepted Accounting Principles (GAAP) for Federal entities is the standard prescribed by the Federal Accounting Standards Advisory Board (FASAB), which issues standards for the federal government. The financial statements are prepared in accordance with GAAP for federal entities.

Transactions are recorded on an accrual accounting basis and a budgetary basis. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. Budgetary accounting facilitates compliance with legal constraints and controls over the use of Federal funds.

E. Revenues and Other Financing Sources

In FY 2016, EPA did not collect any user fees for the e-Manifest fund, as the system is still in development.

F. Funds with the Treasury

The e-Manifest Fund did not have any receipts for fiscal year 2016.

G. Investments in U. S. Government Securities

Investments in U. S. Government securities are maintained by Treasury (Bureau of Fiscal Services) and are reported at amortized cost net of unamortized discounts. Discounts are amortized over the term of the investments and reported as interest income. E-Manifest will hold the investments to maturity, unless needed to finance operations of the fund. No provision is made for unrealized gains or losses on these securities because, in the majority of cases, they are held to maturity. Only fees collected will be invested in U.S. Government securities. As of September 30, 2016 the e-Manifest fund had not collected any fees.

H. General Property, Plant and Equipment

General property, plant and equipment for e-Manifest consists of software in development. EPA (except for the Working Capital Fund) capitalizes software if those investments are considered Capital Planning and Investment Control (CPIC) or CPIC Lite systems with the provisions of the Statement of Federal Financial Accounting Standard (SFFAS) No. 10, "*Accounting for Internal Use Software*." Once software enters the production life cycle phase, it is depreciated using the straight-line method over the specific asset's useful life ranging from two to five years.

I. Liabilities

Liabilities represent the amount of monies or other resources that are more likely than not to be paid by the Agency as the result of an Agency transaction or event that has already occurred and can be reasonably estimated. However, no liability can be paid by the Agency without an appropriation or other collections. Liabilities for which an appropriation has not been enacted are classified as unfunded liabilities, and there is no certainty that the appropriations will be enacted.

J. Accrued Unfunded Annual Leave

Annual, sick and other leave is expensed as taken during the fiscal year. Annual leave earned but not taken at the end of the fiscal year is accrued as an unfunded liability. Accrued unfunded annual leave is included in the Balance Sheet as a component of "Payroll and Benefits Payable." Sick leave earned but not taken is not accrued as a liability. It is expensed as it is used.

K. Retirement Plan

There are two primary retirement systems for Federal employees. Employees hired prior to January 1, 1987, may participate in the Civil Service Retirement System (CSRS). On January 1, 1984, the Federal Employees Retirement System (FERS) went into effect, pursuant to Public Law 99-335. Most employees hired after December 31, 1983, are automatically covered by FERS and Social Security. Employees hired prior to January 1, 1984, elected to either join FERS and Social Security or remain in CSRS. A primary feature of FERS is that it offers a savings plan to which the Agency automatically contributes one percent of pay and matches any employee contributions up to an additional four percent of pay. The Agency also contributes the employer's matching share for Social Security.

With the issuance of SFFAS No. 5, "Accounting for Liabilities of the Federal Government," accounting and reporting standards were established for liabilities relating to the federal employee benefit programs (Retirement, Health Benefits, and Life Insurance). SFFAS No. 5 requires that the employing agencies recognize the cost of pensions and other retirement benefits during their employees' active years of service. SFFAS No. 5 requires that the Office of Personnel Management (OPM), as administrator of the CSRS and FERS, the Federal Employees Health Benefits Program, and the Federal Employees Group Life Insurance Program, provide federal agencies with the actuarial cost factors to compute the liability for each program.

L. Use of Estimates

The preparation of financial statements requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and the reported amounts of revenue and expenses during the reporting period. Actual results may differ from those estimates.

Note 2. Fund Balance with Treasury

	FY 2016	FY 2015
Entity Assets	$ 5,230	$ 3,411

Note 3. Other Assets

	FY 2016	FY 2015
Other Intragovernmental Assets:		
Advance to Working Capital Fund	$ 5	$ 7

Note 4. General Property, Plant and Equipment

As of September 30, 2016, e-Manifest incurred $944 thousand in costs related to the development of information technology software associated with the Hazardous Waste Electronic Manifest System.

Note 5. Other Liabilities

The Payroll and Benefits Payable, non-Federal, are presented on a separate line of the Balance Sheet and in a separate footnote (see Note 7).

	FY 2016	FY 2015
Other Intragovernmental Liabilities:		
Covered by Budgetary Resources Employer Contribution- Payroll	$ 20	$ 12

Note 6. Payroll and Benefits Payable, non-Federal

	FY 2016	FY 2015
Covered by Budgetary Resources:		
Accrued Payroll Payable to Employees	$ 77	$ 35
Withholdings Payable	3	17
Thrift Savings Plan Benefits payable	2	1
Total	82	53
Not Covered by Budgetary Resources:		
Unfunded Annual Leave Liability	$ 67	$ 69
Total	**$ 149**	**$ 122**

Note 7. Income and Expenses from Other Appropriations

The Statement of Net Cost reports program costs that include the full costs of the program outputs and consist of the direct costs and all other costs that can be directly traced, assigned on a cause and effect basis, or reasonably allocated to program outputs.

Beginning with fiscal year 2016, the Agency began applying an indirect rate to account for administrative expenses paid through other appropriations. For FY 2016, the indirect rate was 21.38%. As illustrated below, there is no impact on e-Manifest's Statement of Changes in Net Position. Had full cost been implemented in FY 2015, the amount of expenses paid by other appropriations would have been $461 thousand.

		FY 2016
Income from Other Appropriations	$	205
Expenses from Other Appropriations		(205)
Net Effect	$	-

Note 8. Reconciliation of Net Cost of Operations to Budget

	FY 2016	FY 2015
Resources Used to Finance Activities:		
Budgetary Resources Obligated		
Obligations Incurred	$ 2,965	$ 1,484
Less: Spending Authority from Offsetting Collections and Recoveries	(37)	(17)
Obligations, Net of Offsetting Collections	2,928	1,467
Other Resources:		
Imputed Financing Sources	80	66
Income from Other Appropriations	205	-
Net Other Resources Used to Finance Activities	285	66
Total Resources Used to Finance Activities	$ 3,213	$ 1,533
Resources Used to Finance Items Not Part of the Net Cost of Operations:		
Change in Budgetary Resources Obligated	$ (1,104)	$ 624
Resources that Finance Asset Acquisition	(944)	-
Total Resources Used to Finance Items Not Part of the Net Cost of Operations	(2,048)	624
Total Resources Used to Finance the Net Cost of Operations	$ 1,165	$ 2,157

	FY 2016	FY 2015
Components of the Net Cost of Operations That Will Not Require or Generate Resources in the Current Period:		
Components Requiring or Generating Resources in Future Periods:		
Increase in Annual Leave Liability	$ 2	$ -
Total Components of Net Cost of Operations that Require or Generate Resources in Future Periods	2	-
Total Components of Net Cost of Operations That Will Not Require or Generate Resources in the Current Period	2	-
Net Cost of Operations	**$ 1,167**	**$ 2,157**

Appendix B

Distribution

The Administrator
Chief of Staff
Chief of Staff for Operations
Deputy Chief of Staff for Operations
Chief Financial Officer
Agency Follow-Up Coordinator
Assistant Administrator for Land and Emergency Management
Assistant Administrator for Administration and Resources Management
General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for Public Affairs
Controller, Office of the Controller, Office of the Chief Financial Officer
Deputy Controller, Office of the Controller, Office of the Chief Financial Officer
Director, Financial Services Division, Office of the Chief Financial Officer
Director, Accounting and Cost Analysis Division, Office of the Chief Financial Officer
Chief, General Ledger Analysis and Reporting Branch, Accounting and Cost Analysis Division, Office of the Chief Financial Officer
Principal Deputy Assistant Administrator, Office of Land and Emergency Management
Deputy Assistant Administrator, Office of Land and Emergency Management
Director, Office of Resource Conservation and Recovery, Office of Land and Emergency Management
Deputy Director, Office of Resource Conservation and Recovery, Office of Land and Emergency Management
Associate Director, Program Implementation and Information Division, Office of Resource Conservation and Recovery, Office of Land and Emergency Management
Branch Chief, Permits Branch, Office of Resource Conservation and Recovery, Office of Land and Emergency Management
Branch Chief, Information Collection and Analysis Branch, Office of Resource Conservation and Recovery, Office of Land and Emergency Management
Associate Branch Chief, Information Collection and Analysis Branch, Office of Resource Conservation and Recovery, Office of Land and Emergency Management
Chair, Fee Rule Workgroup, Permits Branch, Office of Resource Conservation and Recovery, Office of Land and Emergency Management
Deputy Assistant Administrator, Office of Administration and Resources Management
Director, Office of Acquisition Management, Office of Administration and Resources Management
Audit Follow-Up Coordinator, Office of the Administrator
Audit Follow-Up Coordinator, Office of the Chief Financial Officer
Audit Follow-Up Coordinator, Office of the Controller, Office of the Chief Financial Officer
Audit Follow-Up Coordinator, Office of Land and Emergency Management
Audit Follow-Up Coordinator, Office of Resource Conservation and Recovery, Office of Land and Emergency Management
Audit Follow-Up Coordinator, Office of Administration and Resources Management
Audit Follow-Up Coordinator, Office of Acquisition Management, Office of Administration and Resources Management

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From: OIG News
Sent: Wed 8/9/2017 1:30:46 PM
Subject: OIG Report: "Management Alert: Concerns Over Compliance, Accountability and Consistency Identified With EPA's Biweekly Pay Cap Waiver Process"
_epaoig_20170809-17-P-0355_cert.pdf

Attached is the EPA Office of Inspector General (OIG) report, *Management Alert: Concerns Over Compliance, Accountability and Consistency Identified With EPA's Biweekly Pay Cap Waiver Process* (Report No. 17-P-0355). This report will be available to the public on the OIG's website at www.epa.gov/oig.

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Hotline Report: Spending Taxpayer Dollars

Management Alert: Concerns Over Compliance, Accountability and Consistency Identified With EPA's Biweekly Pay Cap Waiver Process

Report No. 17-P-0355 **August 9, 2017**

Report Contributors: Angela Bennett
Darren Schorer

Abbreviations

EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
GS	General Schedule
HRO	Human Resources Officer
OARM	Office of Administration and Resources Management
OCFO	Office of the Chief Financial Officer
OIG	Office of Inspector General
U.S.C.	United States Code

Cover image: Image regarding pay cap waiver, prepared by EPA OIG.

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U.S. Environmental Protection Agency
Office of Inspector General

17-P-0355
August 9, 2017

At a Glance

Why We Did This Audit

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) received a hotline complaint alleging mismanagement by EPA Region 10 of its biweekly pay cap waiver process. The OIG initiated an audit to determine whether Region 10's process meets federal requirements and complies with established agency policies and procedures. The purpose of this report is to alert the agency on issues identified during our work. The issues identified pertain not only to Region 10 but also to EPA headquarters offices involved in the waiver process. Audit work is continuing.

This report addresses the following EPA goal or cross-agency strategy:

- *Embracing EPA as a high-performing organization.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of OIG reports.

Management Alert: *Concerns Over Compliance, Accountability and Consistency Identified With EPA's Biweekly Pay Cap Waiver Process*

What We Found

We identified issues with documentation of biweekly pay cap waivers at Region 10, as well as matters that pertained to EPA headquarters offices. This management alert is for consideration by the agency as it updates policies and procedures.

The OIG identified concerns over compliance, accountability and consistency with EPA Region 10's and headquarters' biweekly pay cap waiver process.

EPA Region 10 provided waiver requests for some but not most instances where employees exceeded the biweekly pay cap during fiscal years 2015, 2016 and 2017 (through January 7, 2017). In addition, 11 of 15 requests provided by Region 10 lacked adequate information to determine whether there was an emergency with a threat to life and property, or whether that work was critical to the mission of the agency. While all requests were approved by the Region 10 Regional Administrator as required, only one request was approved by the Region 10 Human Resources Officer as required by EPA policy. This occurred because the region did not have an internal policy or process in place to address review by the regional Human Resources Officer, the need for sufficient justification, or the retention of supporting documents. As a result, the potential exists that Region 10 employees could be overpaid or be paid for work that does not meet the intent of premium pay requirements in 5 U.S.C. § 5547.

We also identified inconsistencies and a lack of accountability over the processing of Region 10's waivers within the EPA's Office of Administration and Resources Management (OARM) and Office of the Chief Financial Officer (OCFO). Based on interviews with officials and personnel, we learned that there is no clear line of responsibility to maintain documentation for waiver requests or to track requests and approvals between the region, OARM and OCFO. Neither OARM nor OCFO could provide a list of waivers for the period requested or supporting documentation. Both offices denied responsibility for tracking the waivers and maintaining the supporting documentation.

The agency is updating the biweekly pay cap waiver policies and procedures. We are alerting the EPA to these matters for consideration as it drafts these updates. Due to the potential impact of these matters on the agency's overall biweekly waiver process, the OIG has expanded the scope of this ongoing audit to include other regional and headquarters offices.

Agency Response

We issued a discussion document on June 22, 2017, for the agency's review. The OIG considered suggestions provided by Region 10 and OARM and modified the report accordingly.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

August 9, 2017

MEMORANDUM

SUBJECT: Management Alert: Concerns Over Compliance, Accountability and Consistency Identified With EPA's Biweekly Pay Cap Waiver Process
Report No. 17-P-0355

FROM: Arthur A. Elkins Jr.

TO: Michelle L. Pirzadah, Acting Regional Administrator
Region 10

Donna J. Vizian, Acting Assistant Administrator
Office of Administration and Resources Management

David Bloom, Acting Chief Financial Officer
Office of the Chief Financial Officer

This is our report on the subject audit of a hotline complaint conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY17-0135. The purpose of this report is to alert the agency to certain issues identified. Audit work is continuing, and the OIG has expanded the scope of this ongoing audit to include other regional and headquarters offices.

This report contains no recommendations and you are not required to provide a written response. Should you choose to provide a final response, we will post your response on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Purpose

As a result of a hotline complaint, the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) is conducting an audit of EPA Region 10's biweekly pay cap waiver process. The objective of the audit is to determine whether Region 10's process meets federal requirements and complies with established agency policies and procedures.

This report alerts the agency on issues identified to date. These issues pertain to Region 10, as well as EPA headquarters offices involved in the waiver process. Our audit work is continuing, and due to the potential impact of these matters we have expanded the scope to include other regional and headquarters offices.

Background

The EPA OIG received a hotline complaint alleging mismanagement by EPA Region 10 of its biweekly pay cap waiver process. The complaint alleged that there appears to be an absence of management control for approving biweekly pay cap waivers that is contrary to agency policy. Examples cited included: approvals for non-emergencies, a lack of review by the human resources office, missing supporting documentation, and inadequate justifications.

Regulatory and Policy Requirements

Title 5 U.S.C. § 5547, *Limitation on Premium Pay*, establishes a biweekly pay cap for General Schedule (GS) employees. The biweekly basic pay cap may be waived for GS employees who are paid premium pay while conducting work designated as emergency or mission-critical.

Title 5 U.S.C. § 5547(a) states that employees may be paid premium pay, but limits basic pay plus premium pay for any pay period to the greater of the maximum rate of pay for a GS-15 employee or the rate payable for Level V of the Executive Schedule. Title 5 U.S.C. § 5547(b)(1) states the limit for basic pay plus premium pay:

> … shall not apply to an employee who is paid premium pay by reason of work in connection with an emergency (including a wildfire emergency) that involves a direct threat to life or property, including work performed in the aftermath of such an emergency.

Further, 5 U.S.C. § 5547(b)(3) states that:

> … the head of an agency may determine that subsection (a) shall not apply to an employee who is paid premium pay to perform work that is critical to the mission of the agency.

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EPA Policy and Procedures

The EPA's *Pay Administration Manual* provides policy and procedures on pay administration for employees in GS positions. Chapter 15, Section 6, states that the biweekly pay cap may be lifted for those emergencies deemed to be a natural or non-natural disaster involving direct threats to life or property. The EPA has delegated the authority to declare disaster emergencies to various management officials in the regions and at headquarters. For an emergency confined to one region, the Regional Administrator will decide whether the emergency is a disaster meriting the lifting of the biweekly cap. The Regional Administrator may redelegate the authority to declare an emergency to the Assistant Regional Administrator or Deputy Regional Administrator. The deciding official will notify the local Human Resources Officer (HRO) on a Natural Disaster Emergency Designation form. The form provides for:

- The type of natural disaster, locations and beginning date.
- Signature of the approving official.
- The HRO approval.
- The notification of the conclusion of the natural disaster emergency by the approval official.
- The effective date of termination and signature of the HRO.

Unlike the relevant Title 5 statutory provision, the EPA policy does not address procedures to waive the biweekly pay cap for work "critical to the mission of the agency."

Responsible Offices

In accordance with EPA policy, Regional Administrators approve the waivers for emergencies confined to one region. Region 10's Office of Management Programs, Human Resources and Facilities Unit is the local human resource office responsible for reviewing and processing the approved waivers. The Office of Administration and Resources Management's (OARM's) Office of Human Resources is responsible for providing overall technical guidance and direction for the EPA's policy on overtime in emergencies. The Office of Human Resources is also responsible for establishing policy and procedures. The Office of the Chief Financial Officer (OCFO) is responsible for the payroll processing of the waivers.

Scope and Methodology

We are conducting this audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and

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conclusions based on our audit objective. We believe that the evidence obtained to date provides a reasonable basis for the findings and conclusions presented in this report.

To determine whether Region 10's process meets federal requirements and complies with established agency policies and procedures, we performed the following:

- Interviewed officials and personnel in OARM's Office of Human Resources (including its Shared Service Center in Las Vegas, Nevada) and OCFO on the pay cap waiver policy and procedures.
- Obtained biweekly pay cap waiver requests for fiscal years (FYs) 2015, 2016 and 2017 through December 31, 2016.
- Reviewed waiver requests to determine whether each request:
    - Was approved by the Region 10 Regional Administrator or designee.
    - Was reviewed/approved by Region 10's HRO.
    - Meets the requirement for approval (we looked for written justification that an emergency exists and the nature and extent of the threat to life and property, or why the response was considered mission-critical).
- Obtained Region 10's internal review report on biweekly exceedances.
- Obtained payroll data that identified Region 10 employees exceeding the biweekly pay cap for FYs 2015, 2016 and 2017 through January 7, 2017.
- Reconciled the pay cap waiver requests with the payroll data to determine whether all instances of exceedance were documented.

Results of Audit

Our audit disclosed concerns over compliance, accountability and consistency with EPA Region 10's and headquarters' overall biweekly pay cap waiver process.

For Region 10, we identified 79 instances where employees exceeded the biweekly pay cap during FYs 2015, 2016 and 2017 (through January 7, 2017). Most of the 79 exceedances lacked a supporting waiver request; Region 10 provided 15 waiver requests that covered only 21 of the 79 instances. The OIG's review of the 15 waiver requests showed that requests cited both emergencies and work that was critical to the mission of the agency as justification. The OIG review also showed that requests were approved by the Region 10 Regional Administrator as required, but only one request also showed approval by the Region 10 HRO. In addition, 11 of 15 requests lacked adequate information to determine whether there was an emergency with a threat to life and property, or whether that the work was critical to the mission of the agency. This occurred because the region did not have an internal policy or process in place to address review by the regional HRO, the need for sufficient justification, or the retention

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of supporting documents. As a result, the potential exists that Region 10 employees could be overpaid or be paid for work that does not meet the intent of premium pay requirements in 5 U.S.C. § 5547.

In addition, we disclosed inconsistencies and a lack of accountability over the processing of Region 10's biweekly pay cap waivers within OARM and OCFO. Based on interviews with officials and personnel in these offices, we learned that there is no clear line of responsibility to maintain documentation for waiver requests or to track waiver requests and approvals between the region, OARM and OCFO. Neither OARM nor OCFO could provide a list of waivers processed for the period requested or supporting documentation. Both offices denied responsibility for tracking the waivers and maintaining the supporting documentation.

Also, the Shared Service Centers are not consistent in their review and processing of waiver requests. One service center stated it reviews the waiver requests to ensure requests are valid and meet policy requirements before forwarding to OCFO for payroll processing. Another service center stated it does not review the waiver request before forwarding to OCFO—it only checks for the Regional Administrator's approval.

The OIG discussed the issue of inconsistent review practices by the Shared Service Centers and the responsibility for maintaining supporting documentation with OARM. OARM confirmed the inconsistent review practices of the Shared Service Centers and suggested we contact individual Regional Administrators' offices to obtain a listing of waivers and the supporting documents. It is still undetermined as to who is responsible for official records retention.

We learned from Region 10 that OARM was in the process of updating the biweekly pay cap waiver policies and procedures at a national level. However, we do not know whether the updated policies and procedures will address the issues presented in this report.

Conclusion

The OIG has identified numerous instances of noncompliance with Region 10's biweekly pay cap waiver process, as well as inconsistencies and the lack of accountability in the processing of waiver requests by OARM and OCFO. We are alerting the EPA to these matters for consideration as the agency drafts updated policies and procedures. Due to the potential impact of these matters on the agency's overall biweekly waiver process, the OIG plans to expand the ongoing audit to include other regions as well as OARM and OCFO. No recommendations are being made at this time, but our audit work is ongoing and recommendations may be made in a subsequent report on the EPA's overall biweekly waiver process.

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EPA Response and OIG Comments

The OIG provided a discussion document to the agency for comment on June 22, 2017. We discussed our audit findings with Region 10, OARM and OCFO on June 29, 2017. Region 10 provided the OIG with comments on the discussion document via email on July 7, 2017. OARM responded via a memorandum dated July 21, 2017. OCFO provided no response.

Region 10 commented that it would be helpful if we, up front, defined "emergencies" as natural and non-natural disasters, and then used those terms consistently throughout the report. The region also commented that it does not deny responsibility for maintaining its own records. We made revisions to address the region's consistency concern, but we believe our wording referencing "emergencies" is consistent with the manual and documentation provided by the agency. We also made revisions to clarify the offices that deny responsibility for maintaining records.

Region 10 and OARM commented that the 79 instances where employees exceeded the biweekly pay cap may include instances that would not require a waiver. As part of our ongoing audit, we intend to work with Region 10 to identify which of the 79 instances do not require a waiver. We also intend to work with OARM and OCFO to determine whether the agency can identify total waiver requests and authorizations through agency systems.

OARM stated that the Office of Human Resources does not have the responsibility "for reviewing and processing the approved waivers"; rather, it is responsible for "providing overall technical guidance and direction for the EPA's policy on overtime for emergencies." OARM also said that the responsibility for maintaining documentation rests with the regional HROs, and the SSCs role is to serve as a pass-through to OCFO. We made revisions to the "Responsible Offices" section to address OARM's concerns. However, based on our discussions with the agency and as noted in the report, the SSCs are not consistent in their review and processing of waiver requests passed through to OCFO.

Both Region 10 and OARM said that the region and EPA headquarters are working to update the biweekly pay cap waiver policies and procedures. The OIG will discuss these revisions as part of the ongoing audit, and understands that the updated policies and procedures may address the issues identified in this report (e.g., the role of the SSCs).

OARM's memorandum response is included in Appendix A. Region 10's email response is not included.

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Appendix A

OARM Response to Discussion Document

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 21 2017

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Management Response to Office of Inspector General Management Alert: Concerns Over Compliance, Accountability and Consistency Identified with EPA's Biweekly Pay Cap Waiver Process (Project OA-FY17-0135)

FROM: Donna J. Vizian, Acting Assistant Administrator

TO: Arthur A. Elkins, Jr. Inspector General

Thank you for the opportunity to review and comment on the Office of the Inspector General's report titled *Management Alert: Concerns Over Compliance, Accountability and Consistency Identified With EPA Biweekly Pay Cap Waiver Process,* Project No. OA-FY17-0135. We are pleased to provide our attached comments that supplement those already provided by EPA's Region 10 Office on July 7, 2017 . The focus of our comments is to ensure the accuracy of the OIG's discussion document as well as provide updated information on the EPA's Pay Cap Waiver Process.

If you have any questions, please contact Linda Gray, director, Office of Human Resources, at (202) 564-4606 or Gray.Linda@epa.gov.

Attachment

cc: John Showman
Howard Osborne
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ATTACHMENT
OIG PROJECT NO. OA-FY17-0135

Page Number	Section & Text	OARM Comments
2	**Responsible Offices** – The Office of Administration and Resources Management's (OARM's) Office of Human Resources, through its regional human resources offices and Shared Service Centers, is responsible for reviewing and processing the approved waivers.	This statement is factually incorrect on three separate points: 1. The regional HROs report through their assistant regional administrators to the regional administrator for their respective region. They do not report to OHR or to OARM. 2. The three shared service centers report to OARM but do not report to OHR. The RTP SSC reports to the director of the Office of Administration and Resources Management–RTP, while the Cincinnati and Las Vegas SSCs report to the director of the Office of Administration and Resources Management–Cincinnati. 3. The "Responsibilities" portion of this section of the Pay Manual states that OHR is responsible for "providing overall technical guidance and direction for the EPA's policy on overtime for emergencies." Consequently, OHR does not have the responsibility "for reviewing and processing the approved waivers" as asserted in the report.

3	**Scope and Methodology** – The text in the sixth bullet of the document states: "obtained payroll data that identified Region 10 employees exceeding the biweekly pay cap for FYs 2015, 2016 and 2017 through January 7, 2017."	During an OIG conference call on June 29, 2017, OARM asked the question of whether that data included information which indicated how those employees were coded with respect to their coverage under the Fair Labor Standards Act. The reply did not provide a definitive answer. This is an important point to raise because employees who are covered by the FLSA are paid overtime authorized under that act and are not subject to the biweekly pay limitation found in Title 5 of the U.S. Code. If FLSA-covered employees are included in this audit report, then the scope of the problem could appear to be greater than it is and if included as part of a corrective action, could potentially lead to an effort to recoup funds from employees who legitimately earned them.
4	**Results of Audit** – The document raises the following concerns: 1. "Based on interviews with officials and personnel in these offices, we learned that there is no clear line of responsibility to maintain documentation for waiver requests or to track waiver requests and approvals between the region, OARM and OCFO." 2. "Also, the Shared Service Centers are not consistent in their review and processing of waiver requests." 3. "We learned from Region 10 staff that OARM was in the process of updating the biweekly pay cap waiver	1. The responsibility for maintaining the documentation rests with the regional HROs. This is documented in paragraph *f* in the "Responsibilities" portion of this section of the Pay Manual: "HROs are responsible for providing guidance to managers and supervisors on overtime in emergencies; for ensuring that requests are properly prepared; for processing requests for waivers; for ensuring that natural disasters overtime is not subject to the biweekly maximum earning limitation; and for maintaining files of requests for waivers of the biweekly maximum earning limitations." 2. The SSCs no longer have a substantive role in the review or processing of waiver requests. In the past, the list of names of employees for whom the pay cap was lifted was entered into

	policies and procedures at a national level. However, we do not know whether the updated policies and procedures will address the issues presented in this report."	the agency's personnel and payroll system through a Request for Personnel Action (SF-52.), which is no longer the case. Consequently, the SSCs do not "process" any actions nor do any other data entry to effect the lifting of the pay cap; the SSCs serve as a pass-through to the Office of the Chief Financial Officer who "flip a switch" in the computer system that provides our payroll support to lift the pay cap for the employees listed in the document approved in the region. 3. OHR has been working with staff in Region 10 to update the biweekly pay cap waiver policies and procedures. OHR has revised the forms used to request and terminate the lifting of the biweekly pay cap and has revised the text in paragraph f of this chapter of the pay manual. OHR can share and discuss the revised form and text with the OIG if needed. The revised procedures allow for the entire process to remain within a region. The RA or their designee still states that an emergency has been declared and requests the pay cap be lifted. The regional HRO still reviews and signs off on the request. However, under the proposed new approach, the ability to "flip the switch" to lift the pay cap will shift from OCFO to the region (most likely the regional comptroller's office) and enable the PeoplePlus coordinator to lift and restore the biweekly pay cap. Currently, Region 10 is working on developing local standard operating procedures and the associated training.

Appendix B

Distribution

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Regional Administrator, Region 10
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Director, Office of Resources, Operations, and Management, Office of Administration and Resources Management
Deputy Director, Office of Resources, Operations, and Management, Office of Administration and Resources Management
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From: OIG News
Sent: Tue 8/1/2017 1:30:22 PM
Subject: OIG Report: "EPA Implemented Prior OIG Recommendations, but Additional Guidance Could Strengthen the Human Subjects Research Program"
_epaoig_20170801-17-P-0350_cert.pdf

Attached is the EPA Office of Inspector General (OIG) report, *EPA Implemented Prior OIG Recommendations, but Additional Guidance Could Strengthen the Human Subjects Research Program* (Report No. 17-P-0350). This report will be available to the public on the OIG's website at www.epa.gov/oig.

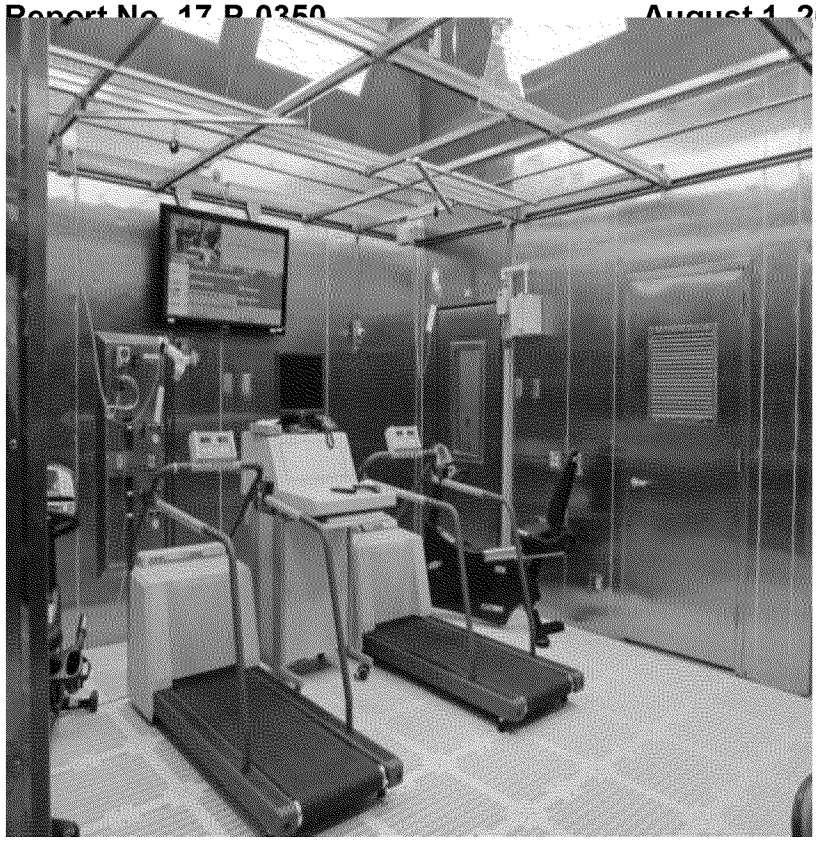
U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Science and Research

EPA Implemented Prior OIG Recommendations, but Additional Guidance Could Strengthen the Human Subjects Research Program

Report No. 17-P-0350 August 1, 2017



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Abbreviations

CFR	Code of Federal Regulations
DOE	U.S. Department of Energy
EPA	U.S. Environmental Protection Agency
HHS	U.S. Department of Health and Human Services
HSR	Human Subjects Research
HSRRO	Human Subjects Research Review Official
IRB	Institutional Review Board
NAAQS	National Ambient Air Quality Standards
NHEERL	National Health and Environmental Effects Research Laboratory
NIH	National Institutes of Health
OIG	Office of Inspector General
ORD	Office of Research and Development
PHREO	Program in Human Research Ethics and Oversight
$PM_{2.5}$	Particulate Matter
RECAP	Responses to Exposure to Low Levels of Concentrated Ambient Particles in Healthy Young Adults (study)
SOP	Standard Operating Procedure
SOZIAL	The Interaction of Social Factors With Air Pollution (study)
UNC	University of North Carolina
VHA	Veterans Health Administration (U.S. Department of Veterans Affairs)

Cover photo: Chamber used for controlled exposure ozone studies at the EPA's Human Studies Facility, which is located at the University of North Carolina at Chapel Hill. (EPA OIG photo)

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U.S. Environmental Protection Agency
Office of Inspector General

17-P-0350
August 1, 2017

At a Glance

Why We Did This Review

In response to a congressional request, we determined whether the U.S. Environmental Protection Agency (EPA) implemented the recommendations in Office of Inspector General (OIG) Report No. 14-P-0154, *Improvements to EPA Policies and Guidance Could Enhance Protection of Human Study Subjects*, issued March 31, 2014. We also determined how the EPA recruits and compensates human study subjects and whether the EPA considered the practices and policies of other federal agencies that conduct human subjects research (HSR) studies.

The EPA's HSR studies are governed by 40 CFR Part 26, including Subpart A, which is known as the Common Rule. This regulation sets the standards for conducting research involving human subjects. The EPA conducts controlled exposure HSR studies to better understand the health effects of pollution on humans.

This report addresses the following EPA goal or cross-agency strategy:

- *Addressing climate change and improving air quality.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of OIG reports.

EPA Implemented Prior OIG Recommendations, but Additional Guidance Could Strengthen the Human Subjects Research Program

What We Found

The EPA can take additional measures to track its HSR guidance and provide greater public transparency of the agency's HSR studies.

The EPA implemented the recommendations from the OIG's 2014 report, including issuing and revising HSR guidance and improving management controls for the HSR study approval process. The EPA also used this guidance and these controls, as applicable, in two HSR studies conducted after we issued our 2014 report. During this current review, however, we found that the EPA did not track revisions to its intranet guidance. The EPA could reduce risk to the program by maintaining prior versions of its guidance. In addition, we found that public transparency could be improved. While the EPA posted information about its controlled exposure HSR studies on a National Institutes of Health website and on the public website of its contractor that recruits study subjects, the agency did not post basic information about these studies on its own public website.

We also found that the EPA's practices for recruiting and compensating human study subjects are similar to those of other federal agencies. For example, the EPA and other agencies that conduct HSR may use contractors to recruit study subjects, and an Institutional Review Board approves the compensation received by study subjects. In addition, we found that interagency collaboration informs the EPA's HSR program. For instance, the EPA consults with other agencies about record retention, grant reviews and informed consent.

We found areas where the EPA could improve its procedures. For example, during our review, the EPA discussed three procedures related to its HSR program: (1) subjects participating in multiple studies must undergo waiting periods between each study to ensure that biological changes return to a baseline level, (2) the number of bronchoscopies that can be performed on a study subject in 1 year are limited, and (3) nurses and physicians who conduct the initial health exams on study subjects evaluate whether participation is in a subject's best interest. However, the EPA did not have any guidance documenting these procedures. Based on our current findings, the EPA developed guidance regarding screening and tracking HSR participation.

Recommendations and Planned Agency Corrective Actions

We recommend that the EPA track and document revisions to HSR guidance and post basic information about the agency's open and closed HSR studies since 2016. The EPA concurred with all recommendations and provided planned corrective actions and completion dates that meet the intent of the recommendations. All recommendations are resolved.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

August 1, 2017

MEMORANDUM

SUBJECT: EPA Implemented Prior OIG Recommendations, but Additional Guidance Could Strengthen the Human Subjects Research Program
Report No. 17-P-0350

FROM: Arthur A. Elkins Jr.

TO: Robert Kavlock, Acting Assistant Administrator and EPA Science Advisor
Office of Research and Development

This is our report on the subject review conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this review was OPE-FY16-0030. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The EPA offices having primary responsibility over the issues evaluated in this report are the Office of the Science Advisor and the National Health and Environmental Effects Research Laboratory, both within the Office of Research and Development.

Action Required

The agency agreed with all recommendations and provided planned corrective actions and completion dates that meet the intent of these recommendations. Therefore, the agency is not required to provide a written response to this final report. Please update the EPA's Management Audit Tracking System as you complete the planned corrective actions for the two recommendations. Please notify my staff if there is a significant change in the agreed-to corrective actions. Should you choose to provide a response to this final report, we will post your response on the OIG's public website, along with our memorandum commenting on your response. You should provide your response as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1
Introduction

Purpose

In response to a July 2016 congressional request, the Office of Inspector General (OIG) conducted a review to make the following determinations:

- Whether the U.S. Environmental Protection Agency (EPA) implemented the recommendations in OIG Report No. 14-P-0154, *Improvements to EPA Policies and Guidance Could Enhance Protection of Human Study Subjects*, issued March 31, 2014.

- How the EPA recruited and compensated human research study subjects.

- Whether the EPA considered the practices and policies of other federal agencies engaged in human subjects research (HSR) studies.

Background

The OIG previously reviewed the EPA's implementation of its HSR program in response to a 2012 congressional request. The objective of that review was to determine whether the EPA followed applicable laws, regulations, policies, procedures and guidance when it exposed human subjects to diesel exhaust emissions or concentrated airborne particles. We found that the EPA followed applicable regulations when conducting HSR. However, we also identified improvements that the EPA could make to its policies and guidance to enhance the protection of study subjects. Issued on March 31, 2014, our final report included eight recommendations, which are broadly summarized below:

- Strengthen HSR study approval procedures.
- Ensure the adequate documentation of annual ethics training for research investigators.
- Strengthen language in guidance and participant consent forms related to health risks.
- Improve guidance related to adverse event reporting and clinical follow-up responsibilities.

In an April 24, 2015, memorandum, the agency certified that it had completed the corrective actions in response to the report's recommendations.

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EPA's Controlled Exposure HSR Program

In the EPA's controlled exposure HSR studies, human subjects are intentionally exposed to pollutants under controlled conditions to determine a causal relationship between pollutant exposure and health effects. The EPA's Office of Research and Development (ORD) prepares multiyear strategic research action plans in conjunction with the Office of Air and Radiation to help determine research priorities. The National Health and Environmental Effects Research Laboratory (NHEERL) within ORD conducts the EPA's controlled exposure HSR at the agency's Human Studies Facility located at the University of North Carolina (UNC) at Chapel Hill, North Carolina.

The ORD researchers conducting controlled exposure HSR are organizationally separate from the Office of Air and Radiation personnel who use the research results to inform policymaking. According to EPA staff, this separation is important to maintain the independence of the scientific research. From fiscal year 2014 through fiscal year 2016, the agency spent about $12.4 million to support controlled exposure HSR.

Controlled Exposure HSR Helps EPA Measure Effects of Air Pollutants on Human Health

The Clean Air Act requires the EPA Administrator to establish a national research and development program for the prevention and control of air pollution. According to the Clean Air Act, the Administrator shall conduct a research program on the short- and long-term effects of air pollutants on human health. The Clean Air Act also states that the Administrator shall conduct the necessary studies—including epidemiological, clinical, laboratory and field studies—to identify and evaluate the exposure to and effects of air pollutants on human health. This research helps the EPA set National Ambient Air Quality Standards (NAAQS) for pollutants considered harmful to public health. The Clean Air Act also requires the EPA to periodically review and revise the NAAQS, as appropriate.

> In reaching a decision on the latest ozone NAAQS, the EPA Administrator placed "the most weight on information from controlled human exposure studies … [noting] that controlled human exposure studies provide the most certain evidence indicating the occurrence of health effects in humans following specific O_3 [ozone] exposures."
>
> *NAAQS for Ozone, 80 Federal Register 65291, 65362-3 (October 26, 2015)*

According to the EPA's 2009 Integrated Science Assessment for Particulate Matter,[1] the "most direct evidence of a causal relationship between pollutant exposures and human health effects comes from controlled human exposure studies."[2] These studies involve exposing individuals to various air pollutants in a controlled laboratory setting to evaluate the mechanisms by which a pollutant may affect an individual's health.

[1] Integrated science assessments provide comprehensive reviews of the policy-relevant scientific literature published since the last NAAQS review and are a critical part of the scientific basis for establishing the NAAQS.
[2] EPA, *Integrated Science Assessment (ISA) for Particulate Matter,* December 2009.

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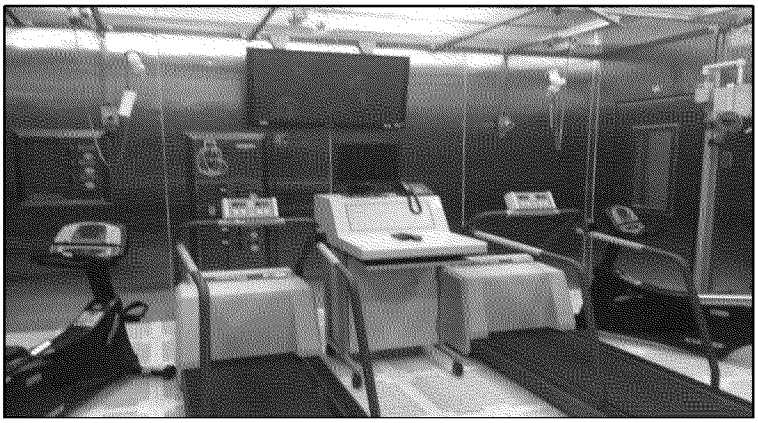

Large chamber used for controlled exposure studies. (EPA OIG photo)

Ethical considerations regarding HSR generally limit the effects that can be evaluated to those that are transient, reversible and of limited short-term consequence.

An example of an EPA HSR study related to NAAQS is the *Responses to Exposure to Low Levels of Concentrated Ambient Particles in Healthy Young Adults* study (also referred to as RECAP). The EPA also conducts controlled exposure HSR that is not directly related to the NAAQS. For example, one recently completed study, *The Interaction of Social Factors With Air Pollution* (also referred to as SOZIAL), was designed to help understand how social factors such as psychological stress may modify how people respond to air pollution. Table 1 provides an overview of the SOZIAL and RECAP studies.

Table 1: Information about the SOZIAL and RECAP studies

Study name	Pollutant and concentration exposure	Study purpose	Participants	Status *(as of June 2017)*
SOZIAL	Ozone (300 parts per billion)	To understand how social factors, such as stress, impact how people respond to air pollution	40 healthy adults, 18–33 years old with differing perceptions of stress	Study completed, now in data analysis
RECAP	Particulate matter ($PM_{2.5}$) (35–50 µg/m^3) [a]	To determine whether exposure to $PM_{2.5}$ in doses close to the EPA's current air standard will cause cardiovascular changes in healthy adults	Up to 20 healthy adults, 18–35 years old	Study in progress

Source: EPA NHEERL (modified by OIG).

[a] The concentration is in micrograms per cubic meter (µg/m^3).

Health Effects Associated With Exposure to Ozone and $PM_{2.5}$

The EPA has determined that a number of health effects are associated with exposure to ozone and $PM_{2.5}$. These determinations, which are described in the

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EPA's integrated science assessments, are based on a review of all relevant controlled human exposure, epidemiological and toxicological studies. Table 2 summarizes the health effects that the EPA has associated with exposure to ozone and $PM_{2.5}$.

Table 2: Health effects associated with exposure to ozone and $PM_{2.5}$ [a]

Pollutants	Short-term exposure health effects (hours to days)	Long-term exposure health effects (months to years)
Ozone	• Shortness of breath. • Coughing. • Inflamed airways. • Increased frequency of asthma attacks and increased susceptibility to lung infection.	• Aggravation of asthma. • Likely to be a contributor to asthma development. • May increase mortality risk from respiratory causes.
$PM_{2.5}$	• Respiratory effects. • Cardiovascular effects. • Mortality.	• Respiratory effects. • Cardiovascular effects. • Mortality. • Reproductive and developmental effects. • Cancer.

Source: OIG analysis of the EPA's integrated science assessments for ozone and $PM_{2.5}$ and of an EPA website describing the health effects of ozone and $PM_{2.5}$.

[a] The EPA's integrated science assessment applies a weight-of-evidence approach to determining the causal relationship, or association, between pollutant exposures and health effects. The weight of evidence for the causal relationship between exposure and the health effects listed in this table varies. For example, the weight of evidence supporting a causal relationship between ozone exposure and cardiovascular effects is more limited than the weight of evidence supporting a causal relationship between ozone exposure and respiratory effects.

EPA's HSR Regulation, Policy and Guidance

The two major criteria governing HSR at the EPA are 40 CFR Part 26, *Protection of Human Subjects*, and EPA Order 1000.17A, *Policy and Procedures on Protection of Human Subjects in EPA Conducted or Supported Research*.

40 CFR Part 26

The EPA is one of 15 federal departments and agencies, including the U.S. Department of Health and Human Services (HHS), that adopted rules governing the protection of human subjects participating in HSR. The federal regulation at 40 CFR Part 26—including Subpart A, which is known as the Common Rule—sets forth the regulatory framework under which the EPA conducts research involving human subjects. A revised Common Rule was issued in January 2017.

The Common Rule mandates that an Institutional Review Board (IRB) review HSR proposals. The regulation specifies IRB membership, functions and

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operations, and research approval criteria. A UNC at Chapel Hill Biomedical IRB reviews the EPA's controlled exposure studies.

Furthermore, the Common Rule requires agencies to develop procedures to ensure that unanticipated problems involving risks to subjects are reported to the IRB and other agency officials. The Common Rule also sets requirements for informed consent. According to the regulation, investigators must give prospective study subjects sufficient opportunity to consider whether to participate.

EPA Order 1000.17A

Updated in June 2016, EPA Order 1000.17A establishes the agency's procedures and responsibilities for implementing the requirements set forth in 40 CFR Part 26. The order applies to all research involving human subjects that the EPA conducts or supports, as well as to the determination of exempted research. Also included in EPA Order 1000.17A is the following key policy:

> All human subjects research conducted or supported by EPA must either be approved or be acknowledged as exempt research by the EPA Human Subjects Research Review Official (HSRRO) before any work involving human subjects research can begin.

The order describes the responsibilities of the Principal Investigator, HSRRO, Human Subjects Officer, Project Officer, program office and regional office. These stakeholders all have a role in ensuring compliance with the order.

Other Guidance Documents

In response to the OIG's 2014 report, the EPA developed guidance and posted it on ORD's intranet to provide a single location where investigators and staff can obtain the latest HSR information. The HSR intranet pages contain information and resources on how to determine whether an activity constitutes HSR, criteria for study approval, standard consent form language, and adverse event reporting. ORD's Program in Human Research Ethics and Oversight, which is located within the Office of the Science Advisor, also developed standard operating procedures (SOPs).

Responsible Offices

The EPA's Office of the Science Advisor and NHEERL, which are both within ORD, have primary responsibility for the subjects covered in this review.

Scope and Methodology

We performed our review from September 2016 through May 2017. We conducted this performance audit in accordance with generally accepted

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government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To determine whether the EPA implemented the OIG's March 2014 report recommendations for the agency's HSR program, we reviewed 40 CFR Part 26, *Protection of Human Subjects*; EPA Order 1000.17A, *Policy and Procedures on Protection of Human Subjects in EPA Conducted or Supported Research*, approved June 15, 2016; EPA guidance; and the EPA's HSR study documents. We also interviewed ORD managers, and we determined whether the EPA implemented the OIG's recommendations in the following two studies conducted after we issued our March 2014 report:

- *SOZIAL*. The EPA's HSRRO approved the SOZIAL study in June 2014.

- *RECAP*. The EPA's HSRRO approved the RECAP study in November 2016. When we began our review, RECAP was the only study to be approved after the EPA completed the corrective actions to address our prior review's recommendations in April 2015.

We reviewed SOZIAL's and RECAP's protocols, external reviews, consent forms, IRB approval documentation and other documents. We met with the EPA Principal Investigators involved with these studies, NHEERL managers, and Office of the Science Advisor staff.

We also met with scientists from ORD's National Center for Environmental Assessment and with staff from the Office of Air and Radiation's Office of Air Quality Planning and Standards who use the results of the EPA's controlled exposure HSR.

To determine how the EPA recruits and compensates human research study subjects, we reviewed the EPA's recruitment and compensation procedures, including recruitment scripts and flyers, as well as the EPA recruitment contractor's statement of work. We also reviewed numerous other documents related to the EPA's HSR, including the following materials:

- Documents used for the recruitment of human subjects.
- Study cards documenting the collection of demographic information from human subjects.
- HSR ethics training log.
- Study approval flowchart.

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In addition, we interviewed staff from the UNC at Chapel Hill Biomedical IRB to discuss the policies they use to review HSR, as well as the EPA's HSR policies and procedures.

To determine whether the EPA considered the practices and policies of other federal agencies engaged in human subject studies, we first interviewed an EPA manager to identify which agencies the EPA consults with regarding HSR practices. Based on that interview, we met with HSR management and staff from the U.S. Department of Energy (DOE); the U.S. Department of Veterans Affairs (the Veterans Health Administration [VHA]); and HHS, including the Office for Human Research Protections and the National Institutes of Health (NIH). We confirmed that the EPA had consulted with these agencies about HSR issues, and we reviewed relevant HSR procedures from these agencies to determine whether they and the EPA engage in similar HSR practices.

To obtain other perspectives, we interviewed an author who has written about HSR to discuss concerns regarding the EPA's HSR program. We also spoke with the EPA's former HSRRO to discuss improvements made to the EPA's HSR program operations and with a University of Michigan professor who conducted HSR funded by EPA grants.

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Chapter 2
EPA Implemented Prior OIG Recommendations

The EPA implemented the eight recommendations from the March 2014 OIG report regarding the agency's HSR program, including revising or issuing guidance and further strengthening management controls for the HSR approval process. The EPA also used this guidance and these controls, as applicable, in two studies conducted since we published that prior report. While performing this current review, however, we noted that the EPA maintained only the most current version of its HSR guidance. The EPA could reduce program risk by maintaining prior versions of its guidance. For example, if questions were raised after a study concluded, such records would be needed to determine whether the EPA followed the guidance in effect at the time the study was conducted.

EPA Implemented Prior OIG Recommendations to Improve Its HSR Program

The following table summarizes our prior report's recommendations, the corrective actions the EPA took to improve its HSR program, and whether these actions were implemented in the SOZIAL or RECAP study.

Table 3: Implementation of the 2014 OIG recommendations

Summary of 2014 OIG recommendations	EPA's corrective actions	Action implemented in SOZIAL or RECAP?
1. Revise human research guidance to include an internal review and approval process for significant study modifications.	• Defined "significant modifications." • Revised guidance to require significant study modifications to go through the same approval process as the initial study approval. • Revised flowchart of the protocol review and approval process.	Not applicable. The SOZIAL and RECAP studies did not have any significant modifications.
2. Implement a procedure for documenting HSR study investigators' continuing annual ethics education.	Developed an ethics training log to document the completion of continuing annual ethics training for its HSR investigators.	Yes.
3. Revise the human research policy to eliminate the Division Human Research Officer position.	Eliminated the Division Human Research Officer position and removed references to it in policy and guidance.	Not applicable.
4. Develop management controls to ensure management reviews and approvals are properly documented and follow guidance.	• Developed an electronic approval system to ensure the proper documentation of management reviews and approvals. • Developed a repository for documents needed for review during the HSR review process.	Yes.

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Summary of 2014 OIG recommendations	EPA's corrective actions	Action implemented in SOZIAL or RECAP?
5. Revise HSR guidance to include a definition for "reasonably foreseeable risks."	• Commissioned a National Academy of Sciences, Engineering, and Medicine task force to define "reasonably foreseeable risk." • Developed an interim definition of "reasonably foreseeable risks," pending completion of the task force, and provided examples of risk information that should be included in consent forms. • The National Academy of Sciences, Engineering, and Medicine issued a report in 2017 titled *Controlled Human Inhalation-Exposure Studies*, which concurred with the EPA's interim definition that "a risk is reasonably foreseeable if we have some credible evidence to expect that [a potential harm] may occur." The EPA has posted this definition of "reasonably foreseeable risks" on its intranet site.	Yes.
6. Revise HSR guidance to include procedures for ensuring that consent forms consistently present the risks of pollutants.	Developed standard risk language for consent forms that includes carcinogenic effects of pollutants, where applicable.	Yes.
7. Include in the HSR consent forms any known or likely carcinogenic effects of pollutants.	Developed standard language concerning carcinogenic risk from $PM_{2.5}$ and diesel exhaust.	Yes.
8. Revise HSR guidance to adopt UNC at Chapel Hill's IRB SOP definitions and reporting timeframes for adverse events and unanticipated problems. Establish the EPA's clinical follow-up responsibilities after adverse and serious adverse events. Include a summary of the agency's clinical follow-up responsibilities in study protocols and consent forms.	• Defined "adverse events" and "unanticipated problem(s)" involving risks to subjects or others. • Revised guidance to state that investigators are expected to follow IRB definitions and reporting timeframes for adverse events and unanticipated problems for their projects. • Developed standardized language for clinical follow-up responsibilities, and directed investigators to include standard language in consent forms.	Yes.

Source: OIG Report No. 14-P-0154, *Improvements to EPA Policies and Guidance Could Enhance Protection of Human Study Subjects*, March 31, 2014.

The 2016 congressional request listed specific questions concerning the EPA's implementation of the OIG's 2014 recommendations. The OIG's responses to these questions are included in Appendix A.

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EPA Needs to Track and Document Revisions to Intranet Guidance

In response to several OIG recommendations issued in the 2014 report, the EPA developed an intranet site for the Program in Human Research Ethics and Oversight (PHREO), which supports the ethical conduct and regulatory compliance of the EPA's HSR. This intranet site is accessible agencywide and contains the policy and guidance documents related to HSR. The site defines HSR and provides guidance to help EPA employees determine whether their research activities should be considered HSR. However, during this current review, we found that the EPA was not maintaining prior versions of its guidance or otherwise tracking and documenting revisions to its guidance on the intranet site.

The EPA could reduce risk to the program by maintaining prior versions of its guidance. We believe such records may be needed to determine whether the EPA followed the guidance in effect at the time a study took place—for example, to respond to questions after the conclusion of the study. The agency said it plans to incorporate the HSR guidance available on its PHREO intranet site into its SOPs and will update the SOPs whenever the HSR guidance changes. Because the EPA retains prior versions of its SOPs, this practice will also ensure that prior versions of HSR guidance remain accessible.

Conclusions

The EPA implemented the recommendations in the OIG's 2014 report on the agency's HSR program. These actions should improve the implementation of the EPA's HSR program. However, we found that the EPA does not currently track and document revisions to its intranet guidance; these actions are needed to ensure changes are archived for future oversight activity.

Recommendation

We recommend that the Assistant Administrator for Research and Development:

1. Track, document and post revisions to the EPA's human subjects research guidance on the Program in Human Research Ethics and Oversight intranet site.

Agency Comments and OIG Evaluation

The agency concurred with the recommendation and provided acceptable planned correction actions and a completion date. Recommendation 1 is resolved. Appendix B contains the agency's response to our draft report.

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Chapter 3
EPA HSR Practices Generally Align With Other Federal Agencies, but EPA Could Improve Transparency on Its Website

The EPA's practices for conducting HSR generally aligned with the practices of DOE, VHA and HHS, including the use of contractors for the recruitment of human subjects, the collection of demographic data from participants, and the compensation of participants. However, the EPA could be more transparent by posting HSR study information on its public agency website.

An EPA manager informed us that the agency consults with DOE, VHA, NIH and other federal agencies regarding HSR practices. We therefore interviewed HSR staff from DOE, VHA and NIH; reviewed their HSR policies and procedures; and compared their HSR practices to the EPA's HSR practices.

EPA Contractor Recruits Human Subjects

The EPA uses a contractor, which at the time of our review was FEFA LLC, to recruit human subjects for its controlled exposure HSR. An EPA Contracting Officer's Representative provides oversight of the FEFA contract. The EPA research staff and the contractors meet to discuss the basic recruitment needs for the study. In consultation with the EPA research staff and the EPA-created study protocol and consent forms, the contractor develops draft recruitment materials, such as website announcements, newspaper and internet ads, and a script and questionnaire to use when speaking with potential human subjects. A nongovernmental website is used for recruiting because the contractor does not have access or authority to use an "epa.gov" web domain. The development of the recruitment website is included in the statement of work in the EPA's contract with FEFA.

The IRB and HSRRO review the developed recruitment materials as part of the approval process. Once the IRB and the HSRRO approve the study, the contractor begins the recruiting process. The contractor collects basic information about the potential study subjects and schedules appointments for them to participate in additional screenings and tests at the EPA's Human Studies Facility.

EPA managers said their HSR studies neither target nor exclude any particular demographic or socioeconomic group during the recruitment process. These EPA managers also stated that their studies are open to anyone who wants to participate and meets the study criteria. We found that EPA-developed study protocols provided to the recruitment contractor contained inclusion and

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exclusion criteria to guide the selection of study subjects based on the requirements of the study. In addition, the SOZIAL study protocol included these inclusionary instructions:

> Every effort will be made to include women and minorities in this research. Advertising will be placed in a variety of locations to allow widespread access to recruitment information.

DOE, VHA and NIH can also use contractors to recruit human subjects. For example, a DOE manager said that contractors are generally used to recruit human subjects.

Selected Demographic and Other Information Collected From Study Subjects

When recruiting subjects to participate in controlled exposure HSR, the EPA contractor collects demographic information from each potential subject, including name, address, phone number, email, height, weight, race, gender, age and date of birth. The contractor also asks a few basic questions about the potential subject's medical history. The contractor does not collect information about economic status.

According to the EPA, the NHEERL nurses and physicians who screen the potential study participants further assess whether each individual meets the study eligibility criteria. The NHEERL nurses and physicians also look for signs that participation may not be in an individual's best interest. However, during our review, we found that the EPA did not have any guidance on the procedures NHEERL staff should use to evaluate study participants and make this determination. As a result of our finding, the EPA developed guidance for the screening and tracking of subjects who participate in EPA controlled exposure studies.

Similar to the EPA, the DOE and NIH gather demographic information about study participants.

EPA Documents Participation but Lacked Documented Guidance for Tracking Participation

The EPA uses study subject record cards to document each subject's participation in the agency's controlled exposure studies. For example, the subject record cards for the SOZIAL study show that five out of 40 study subjects previously participated in an EPA controlled exposure study, with the time between studies ranging from 34 to 2,351 days. However, the agency did not have guidance documenting how it should track and monitor study participation, such as the waiting period between studies and the number of medical procedures per year.

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As a result of our finding, the EPA developed guidance for the screening and tracking of subjects who participate in EPA controlled exposure studies.

Other agencies track subject participation in HSR. The NIH intramural research program is able to track subject participation because the subjects are typically patients with medical record numbers. VHA tracks its HSR studies at the local VA facility level.

Study Participation Not Limited, but Waiting Periods Apply

The EPA does not limit the number of studies for which human subjects may participate, as long as the subjects are eligible for the studies. Each study has exclusion criteria included in the protocol and consent form. If a study subject meets one of the exclusion criteria, the subject would be excluded from the study. Each study has different exclusion criteria.

Examples of exclusion criteria in the SOZIAL study consent form

- Individuals with a history of acute or chronic cardiovascular disease, chronic respiratory disease, diabetes, or rheumatologic diseases.
- Individuals with asthma or a history of asthma.
- Individuals who are allergic to chemical vapors or gas.
- Females who are pregnant, attempting to become pregnant, or breastfeeding.
- Individuals who have smoked tobacco during the last 5 years, or individuals living with a smoker who smokes inside the house.
- Individuals with a body mass index greater than 35 or less than 18.

According to NHEERL managers, the EPA generally requires subjects to wait a minimum of 4 weeks before being allowed to start a new controlled exposure study, which allows biological effects in the subjects to return to a baseline level. An NHEERL manager also stated that there is a limit on the number of certain medical procedures allowed in a calendar year. For example, a study subject cannot undergo more than six bronchoscopies[3] in a calendar year. In addition, an NHEERL manager said that the NHEERL nurses and physicians who conduct the initial health exams on study subjects monitor the timeframes between studies and procedures and identify when participation in a study would not be in a subject's best interest.

While an NHEERL manager stated that participation restrictions were in place, we found that these restrictions were not documented in guidance. Guidance is necessary to ensure that NHEERL staff monitor subjects who want to participate in multiple studies. For example, one of the SOZIAL study subjects had participated in six studies since 2011, five of which were controlled exposure studies; this same subject also had four bronchoscopies in 1 calendar year.

[3] Bronchoscopy is a procedure that looks inside the lung airways. It involves inserting a tube with a light and small camera through the nose or mouth; down the throat into the trachea, which is commonly called the windpipe; and to the bronchi and bronchioles of the lungs.

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As a result of our finding, the EPA developed guidance for the screening and tracking of subjects who participate in EPA controlled exposure studies. The guidance states the time restrictions between controlled exposure studies and between bronchoscopies. It also states the restrictions on the number of bronchoscopies a subject can have in a year.

EPA Compensates Participants in Controlled Exposure Studies

The EPA compensates study subjects who participate in its controlled exposure HSR studies. The EPA does not limit the number of studies for which a study subject can be compensated. The study's Principal Investigator initially proposes the level of compensation based on two key factors: time and inconvenience. Time is calculated based on the hours of participation a study requires. Inconvenience is calculated based on multiple elements, such as the type of procedures the study involves (e.g., heart monitoring and bronchoscopy) and/or the effort required or stress induced by study activities.

SOZIAL study compensation	
Training Day	$25
Exposure Series #I	
Day 1	$450
Day 2	$250
Exposure Series #2	
Day 1	$450
Day 2	$250
Completion Bonus	$75
Total Study Compensation	**$1,500**

For example, assuming all other factors are equal, a study that requires a bronchoscopy would provide greater compensation than one that only requires heart monitoring, given the inconvenience and time associated with a bronchoscopy. A subject who begins but does not complete the study for any reason would still receive compensation for participation up to that point.

RECAP study compensation	
Training Day	$25
Exposure Series #I	
Day 1	$500
Day 2	$250
Exposure Series #2	
Day 1	$500
Day 2	$250
Completion Bonus	$75
Total Study Compensation	**$1,600**

The compensation structure undergoes review during the approval process. The UNC at Chapel Hill Biomedical IRB reviews the EPA's compensation structure for each study and evaluates it in the context of previously reviewed HSR studies. According to the EPA's acting HSRRO, the HSRRO also reviews the compensation structure.

According to the RECAP and SOZIAL research protocols, the approximate total compensation for participation in RECAP was $1,600 and in SOZIAL was $1,500. Both studies compensate the study participant for an initial training day and for each exposure day. Each study offered a bonus after the study subject had completed all of the exposure sessions.

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ORD management clarified the objective of compensating HSR participants:

> The goal of paying subjects for participating in research is to fairly compensate volunteers for their time and effort, but not at a level that would entice people to enroll in a study against their better judgement.

The federal agencies we interviewed also can compensate human subjects for participating in HSR. A VHA manager stated that human subjects are compensated for some studies but not others depending upon various factors, such as the type of study and whether the study has funds available to pay for subject participation. According to an NIH manager, NIH generally offers compensation for HSR participation to healthy volunteers or persons with diseases or disorders who participate in research that offers them little or no prospect of direct benefit. Managers from DOE, VHA and NIH stated that their agencies' IRB of record reviews the compensation structure of their studies.

EPA Consults With Other Federal Agencies to Inform Its HSR Program

The EPA contacts other federal agencies as questions regarding its HSR program arise or as HSR policies are considered. One EPA manager described consulting with the DOE, VHA and NIH as well as other federal agencies on various HSR matters, including the retention of records, the review of grants prior to funding, and Common Rule issues such as informed consent. We interviewed staff from DOE, VHA and NIH and confirmed that EPA managers had consulted with them on HSR issues. Some of these agencies also recognized the EPA's active participation in a workgroup that facilitated recent revisions to the Common Rule.

The revised Common Rule states that there are multiple efforts underway to address variation in HSR guidance across federal agencies, but no regulatory requirement exists to consult with other departments and agencies before issuing a policy.[4]

EPA Can Further Improve Oversight and Transparency

In January 2017, the Common Rule was revised. Almost all of the revisions will go into effect in January 2018.[5] The revisions will impact informed consent for human subjects and bio specimens from human subjects, establish new categories of exempt research, and affect the oversight needed for research that receives expedited reviews or that has completed study interventions. According to an ORD manager, the EPA may revise certain aspects of its HSR program as a result of the revised Common Rule.

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[4] Federal Policy for the Protection of Human Subjects, 82 Federal Register 7149, 7159 (January 19, 2017).
[5] One revision will not go into effect until 2020.

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A DOE manager told us that, to improve transparency, DOE publishes basic information about its HSR studies on a publicly available website. The manager stated that additional public data fields associated with each of the agency's HSR studies were added following an extensive inquiry sent in 2010 to all federal agencies by the Presidential Commission for the Study of Bioethical Issues. This inquiry resulted in a 2011 Presidential Commission for the Study of Bioethics report titled *Moral Science: Protecting Participants in Human Subjects Research*, which recommended that, at a minimum, the following elements be made public about each federally funded HSR study: the title, investigator, funding and location.

The EPA voluntarily posts information about its controlled exposure HSR studies on clinicaltrials.gov, which is a site operated by NIH, and on the public website of its contractor who recruits study subjects. However, the EPA does not post information about its studies on the agency's public website.

Conclusions

The EPA's HSR practices regarding the recruitment and compensation of study participants and the collection of demographic information generally align with those of other agencies. In addition, the EPA, like NIH and VHA, tracks participation in HSR studies.

We also found that, although the EPA voluntarily posts information about its HSR on clinicaltrials.gov, the agency does not post basic information about HSR studies on its public website. The EPA can strengthen its HSR program operations and improve the transparency and public knowledge of its program by posting basic study information on the agency's public website.

Recommendation

We recommend that the Assistant Administrator for Research and Development:

2. Post basic information about open and closed EPA controlled exposure human research studies conducted since 2016 to the agency's public website, such as the title of the study, the number of participants, the pollutant the study subjects are exposed to, and a general description of the study.

Agency Comments and OIG Evaluation

The agency concurred with the recommendation and provided acceptable planned corrective actions and a completion date for the recommendation. Recommendation 2 is resolved. Appendix B contains the agency's response to our draft report.

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Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Potential Monetary Benefits (in $000s)
1	10	Track, document and post revisions to the EPA's human subjects research guidance on the Program in Human Research Ethics and Oversight intranet site.	R	Assistant Administrator for Research and Development	12/31/17	
2	16	Post basic information about open and closed EPA controlled exposure human research studies conducted since 2016 to the agency's public website, such as the title of the study, the number of participants, the pollutant the study subjects are exposed to, and a general description of the study.	R	Assistant Administrator for Research and Development	12/31/17	

[1] C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

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Responses to the 2016 Congressional Request Questions

1. **Are OIG's recommendations being utilized in the SOZIAL study?**

   See Chapter 2, Table 3, pages 8–9.

   The EPA HSRRO approved the SOZIAL study in June 2014. The EPA did not implement the corrective actions to address the 2014 OIG report recommendations until April 2015. As a result, the SOZIAL study did not fully implement Recommendations 6 and 8 of the 2014 OIG report. For more information, see Questions 3 and 5 below.

2. **Have OIG's 2014 recommendations been fully implemented and adhered to? If not, why not? Given the current state of federal law, regulations, policies, procedures, and/or guidance from EPA, please assess the impact of the recommendations from the 2014 Report.**

   See Chapter 2, Table 3, pages 8–9 and Chapter 2, "Conclusions" section, page 10.

   In response to several OIG recommendations, the EPA developed an intranet site for PHREO that is accessible agencywide and contains all policy and guidance documents related to HSR. The intranet site also includes a definition of HSR and a list of questions to help EPA staff determine whether their activities qualify as HSR. The EPA also developed the Human Subjects Research Application Portal, an electronic application meant to ensure that HSR studies (including research protocols and supporting documents) go through the proper approval process. These actions should improve the implementation of the HSR program.

3. **What is the current approval process/flow chart for human subject testing study approval? Was the proper approval process followed for the SOZIAL Study?**

   See Chapter 2, Table 3, 2014 OIG Recommendation 4, page 8.

   The SOZIAL study approvals occurred before the 2014 OIG report recommendations were implemented. We found that the Branch Chief's preliminary review was not documented, but all other reviews were documented and completed in sequence.

   RECAP was the first study approved using the Human Subjects Research Application Portal. The proper reviews took place, but the preliminary Human Research Protocol Office Director review occurred after the IRB approval. This order of approval was inconsistent with NHEERL's study approval flowchart, which indicated that the Human Research Protocol Office review should take place before the IRB approval. The Director stated that he likely

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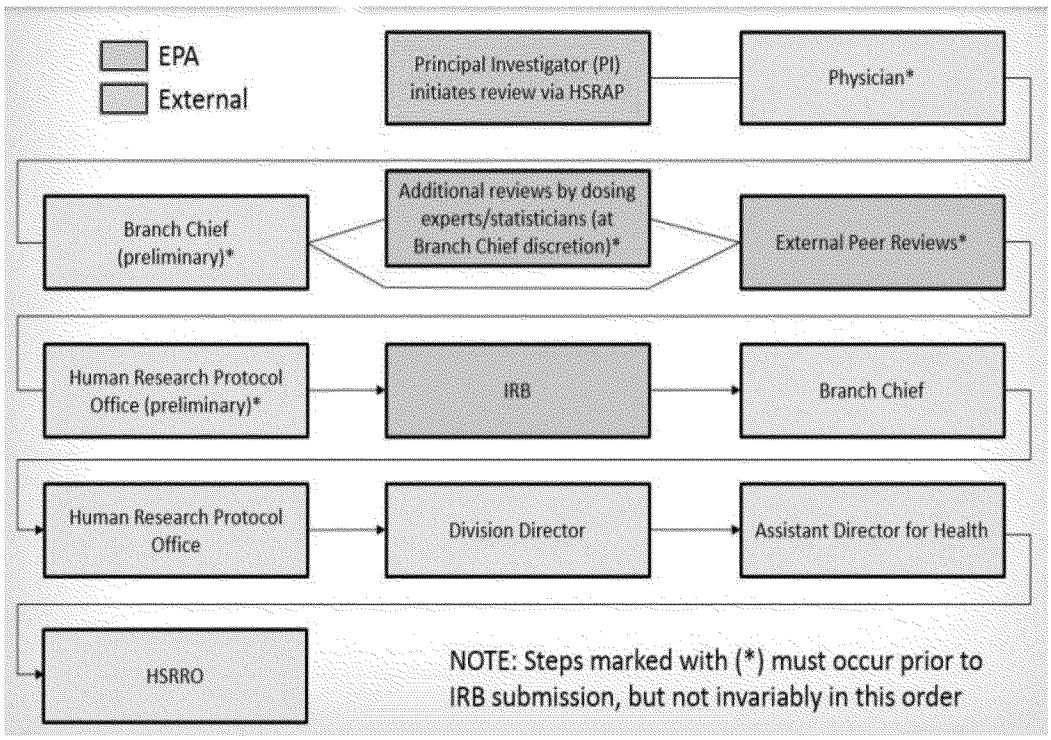
had already approved the study but had not signed off on the protocol in the Human Subjects Research Application Portal until after the protocol was sent to the IRB. NHEERL managers stated that the reviews completed prior to the IRB review can be completed in any order. The RECAP study followed the order in the NHEERL study approval chart for the reviews completed after the IRB review.

As a result of our current review, the EPA revised its HSR approval flowchart to demonstrate the flexibility in the review process for reviews completed prior to IRB approval, as shown in Figure 1.

Figure 1: HSR review process for NHEERL



Source: EPA NHEERL.

We also compared the EPA's approval process to NIH's approval process for an NIH study titled *Cytochrome P450 Epoxygenase Pathway Regulation of Macrophage Function*. The EPA's approval process is similar to NIH's approval process. Both processes have multiple layers of review, including reviews by an IRB and agency management.

4. Has EPA considered protocols and procedures from other agencies that conduct human subject testing to inform and/or improve the conduct of EPA studies? If so, what protocols and procedures have been considered?

See Chapter 3, "EPA Consults With Other Federal Agencies to Inform Its HSR Program" section, page 15.

Other sections in Chapter 3 also discuss that the EPA's HSR practices regarding the recruitment and compensation of study participants and the collection of demographic information generally align with those of DOE, HHS and VHA. In addition, the EPA, NIH and VHA track participation in HSR studies.

5. **Given a relationship between Ozone and PM2.5, what is EPA OIG's assessment of the current informed consent language regarding particulate matter, specifically Ozone / PM2.5? Does the current language accurately reflect the potential long-term health hazards posed by short-term exposure to Ozone / PM2.5 common with many EPA tests on human subjects? If not, how might the language be adjusted to ensure human subjects are provided the most accurate accounting of the risks before providing informed consent?**

   See Chapter 2, Table 3, 2014 OIG Recommendation 6, page 9.

   The EPA OIG's initial assessment was that the agency's intranet guidance adequately defined short-term health effects for investigators to include in study consent forms. However, we found that the intranet guidance did not define any long-term health effects, except for nitrogen dioxide. After meeting with ORD managers, the EPA added long-term health effects language for ozone, PM and diesel exhaust in its guidance, as well as a statement that the agency is not aware of any permanent or long-term effects from short-term exposures to the pollutants in HSR studies. We subsequently concluded that the short-term and long-term health effects for ozone, PM and diesel exhaust are sufficiently reflected in EPA's intranet guidance.

   Per Recommendation 6 of the OIG's 2014 report, the EPA revised its guidance to include short-term effects for pollutants. However, nitrogen dioxide was the only air pollutant for which the EPA provided standard language on long-term health effects. Further, EPA guidance did not direct investigators to include the upper pollutant concentration levels in consent forms. An NHEERL manager stated the belief that the agency had addressed Recommendation 6 (regarding short-term and long-term effects) by including the following statement in its guidance, which would be used in new consent forms:

   > Breathing air pollution particles in this study might cause coughing, wheezing, shortness of breath, irritation of the eyes, ears, nose, throat or lungs, heartbeat changes, or increase your chance of catching a cold. These effects typically last no more than a few hours, but could last longer if you are especially sensitive. The maximum amount of air pollution particles to which you would be exposed in this study is about the same as spending a few days in a city with poor air quality like Los Angeles or New York City. A lifetime of exposure to air pollution is known to increase your risk of developing lung cancer. However, the two hours of exposure to air pollution particles [or "diesel exhaust particles" or "wood smoke emissions"] in this study is unlikely to increase your risk in any meaningful way, just as smoking a single cigarette would carry much less risk than a lifetime of smoking.

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EPA managers and other scientists told us that there are no known long-term health effects that would result from such short-term exposures to the pollutants used in NHEERL's controlled human exposure studies. EPA staff also stated that the risk levels often publicized on the EPA's website regarding $PM_{2.5}$ and ozone reflect risks at the population level rather than the risks to one individual participating in a controlled exposure study.

Furthermore, according to an EPA manager, exposure conditions in the HSR studies differ from the exposure conditions experienced in the real world. For instance, the EPA takes various precautions—including the screening of potential subjects, the consent process, and the monitoring of subjects during the study—to help ensure subject safety. Study consent forms include a section describing the health characteristics of individuals who should not participate in the study.

The SOZIAL study consent form does not contain the standard health effects language for ozone that is on the PHREO intranet site because that study was approved before the EPA implemented its corrective actions to address the OIG's 2014 recommendations. However, the SOZIAL consent form does include language regarding short-term health effects that is similar to the language found on the intranet site, as well as language regarding long-term health effects about susceptible populations exposed to ozone. The SOZIAL consent form also includes the target pollutant concentration for the study.[6]

At the time of this current review, the RECAP study was the only HSR study that was approved after the EPA implemented its corrective actions in response to the 2014 OIG report. The RECAP consent form contained almost all of the standard $PM_{2.5}$ health effects language found on the PHREO intranet site, including the language concerning carcinogenic risk. The consent form also described the long-term health effects for susceptible populations, including respiratory and cardiovascular disease and possible death. The RECAP consent form contained the upper pollutant concentration to which study subjects would be exposed.

As a result of this current review, the EPA has posted on its intranet site a summary of long-term health effects to be included in consent forms as appropriate for ozone, PM, nitrogen dioxide and diesel exhaust exposure. The summary also includes a place to specify the expected range of pollutant exposure for each study. In addition, the EPA added a statement in its guidance that the agency is not aware of any permanent or long-term effects from short-term study exposures.

Long-term health effects language for ozone, PM, nitrogen dioxide and diesel exhaust

Air pollution in the outside environment is associated with adverse health outcomes, which is why we are doing this study. In susceptible populations like older adults (greater than 65 years of age) or people with cardiac disease, asthma or diabetes, air pollution is associated with increased death rates and increased risk of respiratory and cardiovascular disease. However, this risk in healthy young adults is rare.

Source: EPA NHEERL guidance (posted on the EPA intranet).

[6] The SOZIAL study exposed human subjects to ozone. The concentration of ozone can be more easily controlled than $PM_{2.5}$. The study provided a target concentration that study subjects would be exposed to, which could be considered the upper pollutant concentration.

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6. **How has EPA recruited subjects for their studies? What is the demographic, socio-economic, and frequency of these study participants?**

    - For recruitment efforts, see Chapter 3, "EPA Contractor Recruits Human Subjects" section, pages 11–12.
    - For demographic and socioeconomic information, see Chapter 3, "Selected Demographic and Other Information Collected From Study Subjects" section, page 12.
    - For frequency, see Chapter 3, "EPA Documents Participation but Lacked Documented Guidance for Tracking Participation" section, page 12.

7. **Is there a limitation on the number of studies human subjects may volunteer for?**

    See Chapter 3, "Study Participation Not Limited, but Waiting Periods Apply" subsection, page 13.

8. **Is there a limitation on the number of studies human subjects may be compensated for?**

    See Chapter 3, "EPA Compensates Participants in Controlled Exposure Studies" section, page 14.

9. **How often are human subjects compensated for participating in testing and how is the compensation structure determined?**

    See Chapter 3, "EPA Compensates Participants in Controlled Exposure Studies" section, pages 14–15.

10. **What are the determining factors for a study using uncompensated versus compensated human subjects?**

    See Chapter 3, "EPA Compensates Participants in Controlled Exposure Studies" section, pages 14–15.

11. **Why is the EPA utilizing EPAstudies.org, a non-government website, to conduct recruiting for tests involving human subjects?**

    See Chapter 3, "EPA Contractor Recruits Human Subjects" section, pages 11–12.

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12. How should Congress effectively conduct oversight of testing involving the use of human subjects?

We plan to brief congressional staff about the responses we received from the EPA and other federal agencies regarding how Congress can more effectively conduct oversight of human subject testing. We also plan to brief congressional staff on our EPA findings and recommendations and how they might be applied across the government.

Congress could use the recent revisions of the Common Rule as a guide for future HSR oversight, which could include requiring the relevant federal agencies to report how they have incorporated the revised Common Rule into their HSR programs.

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Agency Comments on Draft Report

June 13, 2017

MEMORANDUM

SUBJECT: Response to Office of Inspector General (OIG) Draft Report No. OPE-FY16-0030 "EPA Implemented Prior OIG Recommendations, but Additional Guidance Could Strengthen the Human Subjects Research Program" dated May 16, 2017

FROM: Robert Kavlock
Acting Assistant Administrator

TO: Carolyn Copper
Assistant Inspector General
Office of Program Evaluation

The EPA's Office of Research and Development (ORD) welcomes the opportunity to review and comment on the OIG's draft report titled *"EPA Implemented Prior OIG Recommendations, but Additional Guidance Could Strengthen the Human Subjects Research Program"* (Project No. OPE-FY16-0030) (Draft Report). We appreciate the OIG's confirmation that ORD scientists, administrators and leaders have worked diligently to implement the recommendations from the OIG's 2014 report. In turn, we believe OIG staff have been diligent in working to understand the goals and operational nuances of our human subjects research (HSR) program, and that their observations are largely accurate and balanced. Accordingly, we do not take issue with the overall content of the Draft Report, and our comments and suggestions below are intended to promote accuracy and clarity in the final product.

Immediately below are the ORD's responses to the OIG's specific recommendations. In the attachment, we provide additional detailed comments, including specific language suggestions with respect to statements in the Draft Report.

Recommendation 1: "Track and document revisions to the EPA's human subjects research guidance."

Response 1: The ORD agrees with this recommendation. As the OIG has described, the EPA's guidance on HSR topics was consolidated and standardized in response to the OIG's 2014 report, moving decentralized guidance to an intranet site. A byproduct of posting guidance documents online (in HTML format), where they can be both updated and accessed more readily, is the relative difficulty of tracking, dating and archiving revisions over time. As ORD described in our response to the OIG's preliminary Discussion Document, our plan going ahead is to use the recently-posted Standard Operating Procedures (SOP) Manual as the permanent home for guidance. The PDF format of the SOP Manual will lend itself to version tracking and archiving,

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while still being accessible online. The ORD Office of Science Advisor (OSA) will review web-based guidance on the intranet to ensure that any sections that warrant tracking are incorporated in the SOP document.

Planned Completion Date: December 31, 2017

Recommendation 2: "Post basic information about open and closed EPA controlled exposure human research studies conducted since 2016 to the agency's public website, such as the title of the study, the number of participants, the pollutant the study subjects are exposed to, and a general description of the study."

Response 2: The ORD agrees with this recommendation. ORD currently provides this type of information on two websites, clinicaltrials.gov and epastudies.com. As described by OIG in the Draft Report, this latter website was created at ORD's request and its content is provided and controlled by EPA scientists. Accordingly, the Agency does post information about its studies on a public website controlled by EPA. In addition, ORD will post basic study information on epa.gov. As a result, the information will be available to the public from three websites.

Planned Completion Date: December 31, 2017

If you have any questions regarding this response, please contact Daniel Nelson, Director, Human Research Protocol Office, National Health and Environmental Effects Research Laboratory (NHEERL) at nelson.daniel@epa.gov.
Attachment
cc: Thomas Sinks
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Appendix C

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To: Beck, Nancy[Beck.Nancy@epa.gov]; Bloom, David[Bloom.David@epa.gov]
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From: OIG News
Sent: Mon 9/18/2017 1:30:58 PM
Subject: OIG Report: "EPA Needs to Manage Pesticide Funds More Efficiently"
_epaoig_20170918-17-P-0395_cert.pdf

Attached is the EPA Office of Inspector General (OIG) report, *EPA Needs to Manage Pesticide Funds More Efficiently* (Report No. 17-P-0395). This report will be available to the public on the OIG's website at www.epa.gov/oig.

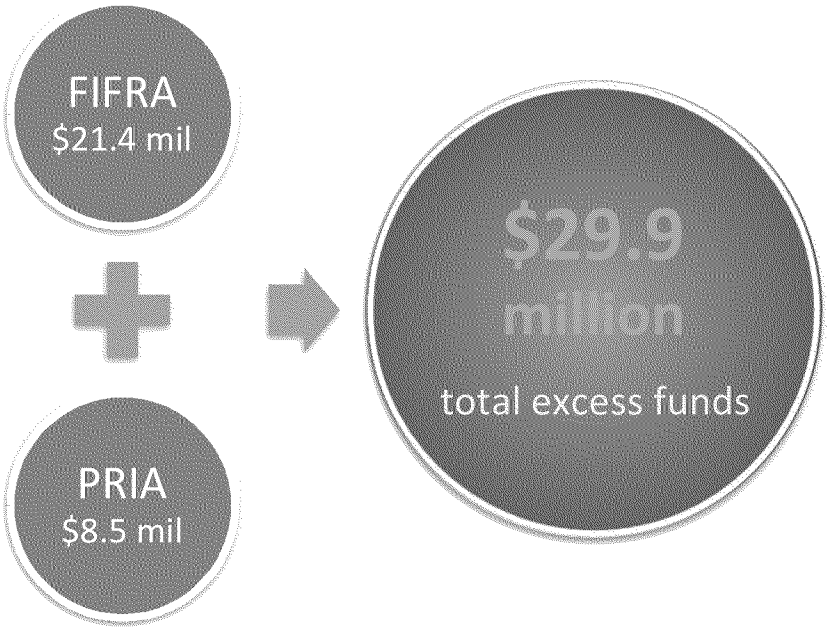
U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Operating efficiently and effectively

EPA Needs to Manage Pesticide Funds More Efficiently

Report No. 17-P-0395 **September 18, 2017**



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Abbreviations

EPA	U.S. Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FY	Fiscal Year
GAO	U.S. Government Accountability Office
JF	Journal File
OIG	Office of Inspector General
OPP	Office of Pesticide Programs
PRIA	Pesticide Registration Improvement Act

Cover image: Graphic illustrating FIFRA and PRIA excess funds as of September 30, 2016. (EPA OIG image)

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U.S. Environmental Protection Agency
Office of Inspector General

17-P-0395
September 18, 2017

At a Glance

Why We Did This Review

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), performed this audit to determine whether the EPA manages the Pesticides Reregistration and Expedited Processing Fund (known as the FIFRA Fund) and the Pesticide Registration Fund (known as the PRIA Fund) effectively to minimize reliance on appropriated funds.

The EPA is responsible for reassessing the safety of older pesticide registrations against modern health and environmental testing standards. To expedite this reregistration process, Congress authorized the EPA to collect maintenance fees from pesticide manufacturers. The fees are deposited into the FIFRA Fund. In addition, to expedite the registration of certain pesticides, Congress authorized the EPA to assess and collect pesticide registration fees, which are deposited into the PRIA Fund.

This report addresses the following:

- *Operating efficiently and effectively.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of OIG reports.

EPA Needs to Manage Pesticide Funds More Efficiently

What We Found

The EPA should manage the FIFRA and PRIA Funds more effectively by reducing excess fund balances to within a target range. As of September 30, 2016, we identified excess funds of approximately $21.4 million for FIFRA and $8.5 million for PRIA, for a total of $29.9 million. A reduction in fund balances would increase the availability of appropriated funds for other environmental purposes.

With improved funds management, the EPA may achieve maximum use of its FIFRA and PRIA Funds and will reduce the reliance on appropriated funds.

The EPA used more appropriated funds to cover operating expenses than was necessary and allowed the fund balances to trend up to levels higher than needed for current operations. According to the U.S. Government Accountability Office, it is important for entities with operating reserves to establish appropriate target amounts using a risk-based strategy to efficiently use resources. However, the EPA did not establish a target range for its FIFRA and PRIA Funds.

FIFRA and PRIA Fund balances did not agree with the corresponding liabilities from pesticide registrant fee payments because the EPA did not reconcile the accounts. The EPA records a liability for the fees collected until it completes the pesticide review. The U.S. Government Accountability Office includes reconciliations among its standard internal control activities for management to respond to internal control risks. Without performing periodic reconciliations, the EPA cannot confirm the accuracy of its FIFRA and PRIA recorded liabilities.

Recommendations and Planned Agency Corrective Actions

We recommend that the Assistant Administrator for Chemical Safety and Pollution Prevention establish a target range for its FIFRA and PRIA Fund balances and develop and implement a plan to reduce excess funds to within the target range. We also recommend that the Chief Financial Officer reconcile the FIFRA and PRIA Funds' balances to the corresponding liabilities.

The agency concurred with establishing a target range and developing a plan to reduce excess funds for FIFRA Fund balances. The agency did not agree with establishing a target range and developing a plan to reduce excess funds for PRIA Fund balances, citing the lack of predictability of PRIA collections. We still believe PRIA has excess funds that should be addressed. The agency agreed to reconcile FIFRA and PRIA balances.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 18, 2017

MEMORANDUM

SUBJECT: EPA Needs to Manage Pesticide Funds More Efficiently
Report No. 17-P-0395

FROM: Arthur A. Elkins Jr.

TO: Nancy Beck, Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention

David Bloom, Acting Chief Financial Officer
Office of the Chief Financial Officer

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY17-0125. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA management in accordance with established audit resolution procedures.

Action Required

The agency agreed with the portion of Recommendations 1 and 2 involving the Federal Insecticide, Fungicide, and Rodenticide Act Fund but did not agree with the portion involving the Pesticide Registration Improvement Act Fund. Therefore, we consider Recommendations 1 and 2 unresolved pending the agency's response to the final report. The agency agreed with Recommendation 3.

In accordance with EPA Manual 2750, the resolution process begins immediately with the issuance of this report. We are requesting a meeting within 30 days between the acting Assistant Administrator of the Office of Chemical Safety and Pollution Prevention and the OIG's Assistant Inspector General for Audit. If resolution is still not reached, the acting Assistant Administrator of the Office of Chemical Safety and Pollution Prevention is required to complete and submit the dispute resolution request to the Chief Financial Officer to continue resolution.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1
Introduction

Purpose

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), performed this audit to evaluate the EPA's funds management of the Pesticides Reregistration and Expedited Processing Fund (FIFRA Fund) and the Pesticide Registration Fund (PRIA Fund). The objective of our audit was to determine whether the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and Office of the Chief Financial Officer (OCFO) managed the FIFRA and PRIA Funds effectively to minimize reliance on appropriated funds.

Background

The EPA's Office of Pesticide Programs (OPP), within the OCSPP, regulates the manufacture and use of all pesticides in the United States and establishes maximum levels for pesticide residues in food, thereby safeguarding the nation's food supply. OPP implements the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Pesticide Registration Improvement Act (PRIA).

FIFRA and PRIA authorize the EPA to fund registration-related activities by collecting fees from pesticide registrants (i.e., manufacturers and formulators) to supplement appropriations. This funding authority allows the EPA to collect fees and obligate funds outside the annual appropriations process.

Statutory Authority

The FIFRA Fund was authorized in 1988 by amendments to FIFRA. The 1988 amendments mandated the accelerated reregistration of all products registered under FIFRA prior to November 1, 1984. Congress authorized the collection of maintenance fees to supplement appropriations to fund reregistration, and to fund expedited processing of pesticides. Maintenance fees are assessed on registrants of pesticide products. FIFRA also includes provisions for the registration of new pesticides (funded in part from the PRIA Fund). The FIFRA Fund may charge some administrative costs directly to the fund and charge the remainder of the administrative costs to agencywide appropriations.

The PRIA Fund is authorized under the Pesticide Registration Improvement Act of 2003 (which amended FIFRA), and became effective on March 23, 2004. PRIA authorized the EPA to assess and collect pesticide registration service fees on applications submitted to register pesticides covered by this act, as well as assess and collect fees to register new active ingredients not listed in OPP's Registration

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Division 2003 Work Plan. The Pesticide Registration Improvement Renewal Act (commonly referred to as PRIA 2), which became effective October 1, 2007, extended the authority to collect pesticide registration service fees through fiscal year (FY) 2012. PRIA 2 was then reauthorized with the passage of the Pesticide Registration Improvement Extension Act (referred to as PRIA 3) on September 28, 2012, and became effective a few days later on October 1, 2012. The PRIA Fund may charge some administrative costs directly to the fund and charge the remainder of the administrative costs to agencywide appropriations.

Responsible Offices

The offices with primary responsibility for the audit issues discussed are OPP within the OCSPP, and the Office of Budget and Office of the Controller within the OCFO.

Scope and Methodology

We conducted this audit from February to July 2017, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains additional details concerning our scope and methodology, including details on prior reports reviewed.

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Chapter 2
EPA Should Manage FIFRA and PRIA Funds More Effectively

The FIFRA and PRIA Fund balances were higher than the EPA needed to cover current operating expenses. Drawing on U.S. Government Accountability Office (GAO) information about managing fund balances, we identified excess balances of approximately $21.4 million for the FIFRA Fund and $8.5 million for the PRIA Fund as of September 30, 2016, for a total of $29.9 million. The EPA focused on using the appropriated funds and did not establish a target range for its FIFRA and PRIA Fund balances. Also, the EPA did not reconcile the fund balances to the liabilities. Without effective funds management, the EPA did not maximize use of the funds nor minimize reliance on appropriated funds. Improving the EPA's use of FIFRA and PRIA Fund balances would increase the availability of appropriated funds for other environmental purposes.

EPA Needs a Strategy to Manage Fund Balances

The GAO report GAO-17-59, *Permanent Funding Authorities: Some Selected Entities Should Review Financial Management, Oversight, and Transparency Policies*, December 2016, states:

> When unobligated balances are used as operating reserves, it is important for entities to establish appropriate target ranges, using a risk-based strategy, to help ensure resources are used efficiently and responsibly.[1]

The GAO report further states:

> Operating reserve targets should be set to maintain an adequate amount in case of operational needs and probable contingencies, yet not reserve an excessive amount that should be available for other purposes.

We believe a portion of the FIFRA and PRIA Fund balances represent excess operating reserves. We analyzed the FIFRA and PRIA Fund balances to determine whether the year-end balances were excessive and should be reduced to make more appropriated funds available for other purposes. We used an annual cash flow analysis approach; details on that analysis follow.

[1] Unobligated balances refer to the portion of the fund that has not yet been obligated. Operating reserves are excess fund balances carried over to a subsequent period for authorized expenses.

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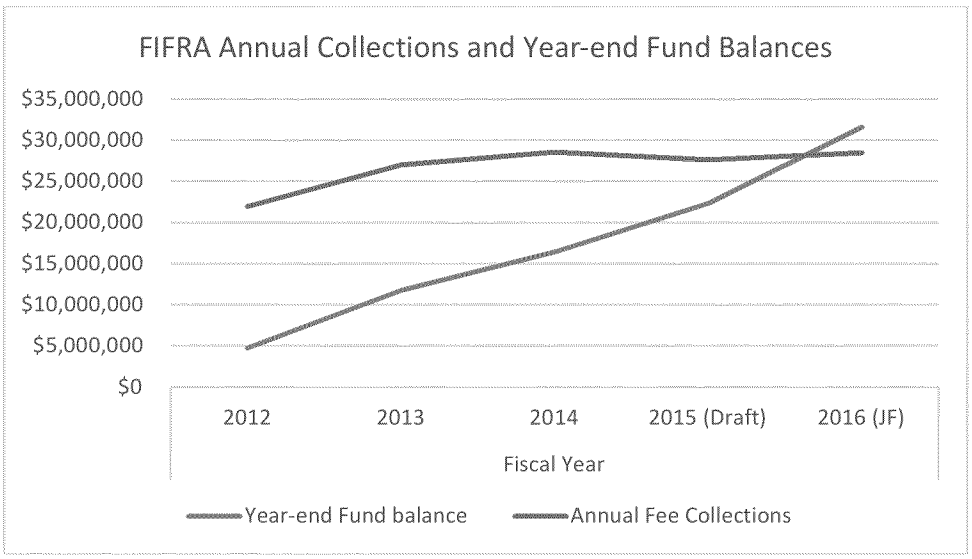
Cash Flow Analysis

We analyzed annual collections and year-end balances for the FIFRA and PRIA Funds for FYs 2012 through 2016. The FIFRA maintenance fee collections aggregate amount to be collected under FIFRA § 4(i)(1)(C) is $27.8 million for each of FYs 2013 through 2017. The PRIA fee collections, which are based on a statutory schedule of covered applications and registration service fees, rose slightly over the years we examined. The year-end balances for both funds have been trending higher. Both the FIFRA and PRIA Fund balances at September 30, 2016, exceeded their FY 2016 annual collections. We believe this indicates that the operating reserves may be higher than needed for current operations.

Figure 1 compares the FIFRA Fund's annual collections for FYs 2012 through 2016 to the year-end fund balances. The FIFRA Fund's balance increased every year while the annual collections were approximately the same since FY 2013.

Figure 1: FIFRA annual fee collections and year-end fund balances[2]



Source: OIG analysis of EPA data.

When evaluating FIFRA Fund operating reserve needs, we noted that pesticide registrants must pay their annual maintenance fees by January 15—the fourth month of the fiscal year. Our cash flow analysis indicated that the EPA collected almost all of the FY 2016 FIFRA maintenance fees by the end of January 2016. Therefore, we estimate that the FIFRA Fund needs a year-end operating reserve to cover expenses paid by the fund for the 4 months from the fiscal year-end through January, at which time the fund will have collected sufficient cash to cover expenses paid by the fund for the remainder of the fiscal year. Since FIFRA maintenance fee collections are statutorily limited to $27.8 million per year, we

[2] We obtained the FIFRA and PRIA FYs 2012 to 2015 fund balance amounts from the FIFRA and PRIA financial statement audits. We obtained the FY 2016 FIFRA and PRIA Fund balance amounts from the file of agency transactions known as the journal file (JF) because the draft report was not available.

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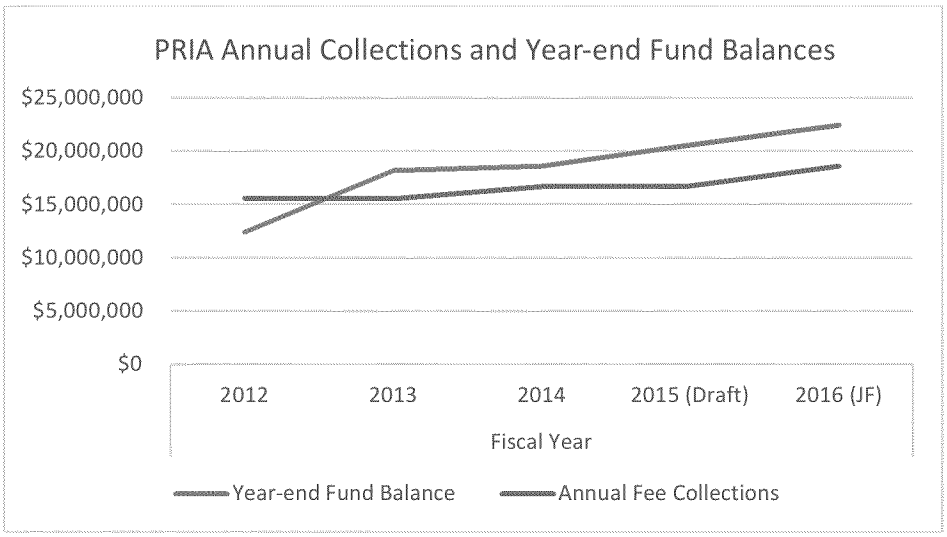
calculated that a FIFRA Fund operating reserve to cover 4 months of fund expense payments would be approximately $9.3 million. The FIFRA Fund should maintain an additional balance sufficient to cover FY 2016 year-end fund obligations of $1 million. Therefore, the total estimated FIFRA Fund balance needed would be $10.3 million. The FIFRA Fund balance as of September 30, 2016, was $31.7 million, or $21.4 million more than needed.

Figure 2 compares the PRIA Fund's annual collections for FYs 2012 through 2016 to the year-end PRIA Fund balances. The PRIA Fund's balance increased significantly after FY 2014.

Figure 2: PRIA annual fee collections and year-end fund balances



Source: OIG analysis of EPA data.

Our cash flow analysis for the PRIA Fund in FY 2016 indicated that the EPA collected fees every month of the year as it received new pesticide registration applications. If the PRIA Fund maintained a year-end operating reserve to cover expenses paid by the fund for 4 months, it should have sufficient funds available throughout the fiscal year. As the FY 2016 PRIA fee collections were $19.2 million, we calculated that a fund year-end operating reserve sufficient to cover 4 months of fund expense payments would be approximately $6.4 million. The PRIA Fund should maintain an additional balance sufficient to cover FY 2016 year-end fund obligations of $7.5 million. Therefore, the total estimated PRIA Fund balance needed would be $13.9 million. The PRIA Fund balance as of September 30, 2016, was $22.4 million, or $8.5 million more than needed.

EPA Needs to Establish a Target Range for Fund Balances

According to the GAO, management should use a risk-based strategy to set operating reserve targets to maintain an adequate amount in case of operational needs and probable contingencies, yet not reserve an excessive amount that should be available for other purposes. The FIFRA and PRIA Fund balances

trended higher because the EPA focused on using appropriated funds and did not use a risk-based strategy nor establish a target range for its year-end operating reserves. We identified the following FIFRA and PRIA Fund risks:

- The EPA had a material internal control weakness in the FIFRA and PRIA Fund payroll costs.[3] Significant payroll amounts paid from appropriations were not charged directly to the FIFRA and PRIAFunds or other pesticide programs. This resulted in the loss of the audit trail for reporting separate costs and liabilities for the FIFRA and PRIAFunds and other pesticide programs. Additionally, it reduced the EPA's ability to track FIFRA and PRIA Fund costs paid from fees and other appropriations.

- The EPA explained that the FIFRA Fund may accumulate large fund reserves that it cannot use due to the requirements of FIFRA. Under FIFRA, monies derived from fees may not be expended in any fiscal year to the extent that such monies would exceed money appropriated for use by the Administrator.

- The EPA may experience funding delays or potential fluctuations in fee collections.

Regarding the material internal control weakness in FIFRA and PRIA Fund payroll costs, the agency plans to implement a new payroll cost allocation enhancement by October 2017 that will create an audit trail to capture costs incurred by the FIFRA and PRIA Funds and other appropriations that support FIFRA and PRIA-related activities.

EPA should manage both fund balances more efficiently by considering fund risks, establishing fund balance targets, and developing a plan to reduce excess fund balances to within the target range. Without effective funds management, the EPA may not be maximizing the use of its FIFRA and PRIA Funds nor minimizing reliance on appropriated funds.

EPA Did Not Reconcile Fund Balances to Liabilities

The EPA receives fee payments from pesticide registrants to complete pesticide reviews. The EPA records a liability for the fees collected until it completes the pesticide reviews. As the EPA spends the funds collected from fees to complete the pesticide review, it reduces the recorded liability. Therefore, the fund balances[4] should equal the balances of the related liability. The FIFRA and PRIA Fund balances did not agree with the corresponding liabilities. Tables 1 and 2 compare the year-end FIFRA and PRIA Fund balances to the year-end liabilities to determine the differences for FYs 2012 through 2016. The differences—

[3] The OIG's audit reports for the FY 2014 FIFRA and PRIA financial statements each disclaimed an opinion due to a material internal control weakness that the EPA could not support the FIFRA and PRIA Fund payroll costs.
[4] Fund balance involves only fixed FIFRA and PRIA collections and not appropriations.

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especially for the FIFRA Fund—suggest that the recorded liabilities may not be accurate. For the FIFRA Fund, the liabilities exceeded fund balances in every year reviewed.

Table 1: FIFRA year-end fund balances and liabilities

FIFRA	Fiscal year				
	2012	2013	2014	2015 (Draft)	2016 (JF)
Fund balance	$4,778,000	$11,791,000	$16,480,000	$22,400,000	$31,653,813
Liabilities	9,494,000	14,787,000	20,109,000	26,382,000	38,504,918
Difference	($4,716,000)	($2,996,000)	($3,629,000)	($3,982,000)	($6,851,105)

Source: OIG analysis of EPA data.

For the PRIA Fund, the fund balance exceeded the liabilities in every year reviewed, which was the opposite of the FIFRA Fund's result. In addition, the PRIA Fund differences were not as large as the FIFRA Fund differences.

Table 2: PRIA year-end fund balances and liabilities

PRIA	Fiscal year				
	2012	2013	2014	2015 (Draft)	2016 (JF)
Fund balance	$12,443,000	$18,243,000	$18,667,000	$20,658,000	$22,471,196
Liabilities	11,277,000	17,461,000	17,307,000	19,104,000	21,779,000
Difference	$1,166,000	$782,000	$1,360,000	$1,554,000	$692,196

Source: OIG analysis of EPA data.

The year-end FIFRA and PRIA Funds and liabilities did not agree because the EPA did not reconcile the accounts to identify any differences, determine the reasons, and make any necessary corrections. Some differences may occur for a legitimate reason, such as accounting entries for accrued expenses that are reversed in the following accounting period. Other differences may indicate an accounting error that should be corrected. The GAO's *Standards for Internal Control in the Federal Government* include reconciliations among its standard internal control activities for management to respond to internal control risks. Without performing periodic reconciliations, the EPA cannot confirm the accuracy of its FIFRA and PRIA recorded liabilities.

Conclusion

The EPA should manage the FIFRA and PRIA Funds more effectively by reducing excess fund balances to within a target range and reconciling the fund balances to the advances from registrants. Management should develop a risk-based cash management strategy, establish targets for year-end fund balances, develop a plan to reduce excess fund balances to within the target range, and reconcile the funds' balances and advance accounts. These actions would maximize the use of the FIFRA and PRIA Funds and minimize reliance on appropriated funds to efficiently use resources. We identified excess FIFRA and PRIA Fund balances of

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$29.9 million that the EPA could use; this would allow $29.9 million in appropriated funds to be made available for other environmental purposes.

Recent Agency Actions Prompted by OIG Work

OPP said it met with the OCFO on February 16, 2017, to discuss approaches on spending down the current FIFRA fee balance. OPP was tasked with developing a strategic draft plan—currently under development—on how to spend down the FIFRA Fund. The OCFO stated that, by working together with OPP, they are establishing a more comprehensive plan to address FIFRA and PRIA Fund balances.

Recommendations

We recommend that the Assistant Administrator for Chemical Safety and Pollution Prevention:

1. Establish a target range for its Pesticides Reregistration and Expedited Processing Fund and Pesticide Registration Fund year-end balances.

2. Develop and implement a plan to reduce excess Pesticides Reregistration and Expedited Processing Fund and Pesticide Registration Fund balances within the established target range.

We recommend that the Chief Financial Officer:

3. Perform periodic reconciliations of the Pesticides Reregistration and Expedited Processing Fund and Pesticide Registration Fund balances to the corresponding liabilities.

Agency Comments and OIG Evaluation

OCSPP partially concurred with Recommendations 1 and 2. For FIFRA relating to Recommendations 1 and 2, OCSPP stated:

> OCSPP agrees with both recommendations as they apply to the Pesticide Reregistration and Expedited Processing Fund. OCSPP has already begun development of a four-year spend down plan, which sets end-of-year balance targets and offers specific details as to how the OCSPP will manage the carryover balance down to an appropriate level by 2020. OCSPP will complete this plan by December 31, 2017.

OCSPP provided a milestone completion date of December 31, 2017. The OIG concurs with the agency's proposed actions, and, when implemented, the

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corrective actions will satisfy the intent of Recommendations 1 and 2 relating to FIFRA.

For PRIA relating to Recommendations 1 and 2, OCSPP stated:

> OCSPP does not agree with the recommendations they apply to the Pesticide Registration Fund. The PRIA registration fees, which support the Pesticide Registration Fund, were set intentionally at levels that represent only a portion of the cost necessary for the agency to complete its review, and are meant to provide additional resources to the agency to achieve faster and more predictable registration decision time frames. Unlike the FIFRA Fund, which is relatively static within the fiscal year as far as dates for billing and collecting of fees, there is greater variability within a fiscal year and between fiscal years regarding funds collected into and spent from PRIA Fund. The agency does not have control over the number and types of applications submitted by the regulated community and, therefore, cannot accurately predict PRIA fee amounts that will be received in any given fiscal year.

We believe that since the PRIA Fund has shown consistent increases in fund balances and maintained a large excess reserve amount (estimated at $8.5 million), our recommendations should apply to PRIA as well.

The agency believed the carryover balance of $22.4 million is inaccurate and does not include funds obligated but not paid out. Our report specifically detailed our calculations of a fund balance of $22.4 million, less an estimated 4-month operating reserve of $6.4 million and outstanding obligations of $7.5 million, for a net of excess funds needed of $8.5 million. During our analysis, we identified a difference of $832,668 of PRIA unpaid obligations on March 27, 2017. We received a response from OCFO stating that the $832,668 should be included as part of our analysis. We took into account these amounts when we calculated the $8.5 million of excess PRIA funds.

Table 3: PRIA cash flow

Description	Amount
Fund Balance With Treasury (as of 09/30/16 - PRIA Financial Statements [Balance Sheet])	$22,471,196.15
Less: Amount Obligated (FY16; Quarter 4; per SF-133 - Unpaid Obligations)	$7,540,530.59
Unobligated Balance ($14,097,997.99 + $832,668)	$14,930,665.56
Amount of cash needed at 09/30/16	$6,404,111.89
Excess PRIA funds at 09/30/2016	$8,526,553.67

Source: OIG analysis of EPA data.

OCFO concurred with Recommendation 3. The OCFO stated that the initial reconciliations have been completed and quarterly reconciliations will be done quarterly going forward. The OCFO considers this recommendation as being

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addressed. The OIG concurs with the agency's corrective actions for Recommendation 3, and corrective actions have been completed.

OCFO's and OCSPP's complete response to the draft report is in Appendix B.

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Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Potential Monetary Benefits (in $000s)
1	8	Establish a target range for its Pesticides Reregistration and Expedited Processing Fund and Pesticide Registration Fund year-end balances.	U	Assistant Administrator for Chemical Safety and Pollution Prevention		
2	8	Develop and implement a plan to reduce excess Pesticides Reregistration and Expedited Processing Fund and Pesticide Registration Fund balances within the established target range.	U	Assistant Administrator for Chemical Safety and Pollution Prevention		$29,900
3	8	Perform periodic reconciliations of the Pesticides Reregistration and Expedited Processing Fund and Pesticide Registration Fund balances to the corresponding liabilities.	C	Chief Financial Officer	8/15/17	

[1] C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

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Details on Scope and Methodology

To gain an understanding of the EPA's processes for the financial management of FIFRA and PRIA Funds, we:

- Reviewed applicable laws, regulations, policies, guidance and relevant prior audit reports.
- Reviewed the EPA's procedures for managing the funds.
- Interviewed personnel involved with managing the funds in the OCSPP and OCFO.
- Reviewed the EPA's FY 2016 management integrity assurance letters from the OCSPP and OCFO for reported internal control weaknesses related to FIFRA and PRIA Funds.

We tested the effectiveness of the EPA's fund management processes by analyzing FIFRA and PRIA financial data for FYs 2012 through 2016, including the fund balances, annual collections, and advances from non-federal entities (a liability). We obtained the FIFRA and PRIA unobligated fund balances as of September 30, 2016, from EPA budget reports filed with the U.S. Department of the Treasury and verified them with Compass Financials, the EPA's accounting system.

We accessed information from the EPA's FIFRA and PRIA financial statements for FYs 2012 through 2016.[5] We accessed collection and obligation information in Compass Financials. This data materially affected our findings, conclusions and recommendations. We did not review the internal controls over Compass Financials from which we obtained financial data, but relied on the reviews conducted during the audits of the EPA's consolidated financial statements.

Prior Reports Reviewed

We researched prior EPA OIG and GAO reports related to the FIFRA and PRIA Funds. We identified and reviewed six EPA OIG and five GAO reports with information directly related to our review, listed in Table A-1. The six EPA OIG reports—of the FIFRA and PRIA financial statement audits for FYs 2012 through 2014—provided useful data on fund balances, advances from pesticide registrants, and costs paid from FIFRA and PRIA Funds and other appropriations. The FY 2014 FIFRA and PRIA audit reports each disclaimed an opinion on the financial statements due to a material weakness in that the EPA could not support the funds' payroll costs. The agency agreed with each OIG report's findings and recommendations and completed corrective actions for all 15 recommendations, except for implementing a new payroll cost allocation enhancement, which the agency plans to complete by October 2017. The five GAO reports provided useful information on designing and implementing regulatory fees and managing revenue instability with cash reserves.

[5] We obtained FIFRA and PRIA financial information from audited financial statements for FYs 2012 through 2014 and from draft financial statement information for FYs 2015 and 2016.

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Table A-1: Prior reports reviewed

Report title	Report no.	Date
Fiscal Years 2014 and 2013 Financial Statements for the Pesticide Registration Fund	EPA OIG 16-F-0323	September 22, 2016
Fiscal Years 2014 and 2013 Financial Statements for the Pesticides Reregistration and Expedited Processing Fund	EPA OIG 16-F-0322	September 22, 2016
Fiscal Years 2013 and 2012 Financial Statements for the Pesticide Registration Fund	EPA OIG 15-1-0181	July 10, 2015
Fiscal Years 2013 and 2012 Financial Statements for the Pesticides Reregistration and Expedited Processing Fund	EPA OIG 15-1-0180	July 10, 2015
Fiscal Years 2012 and 2011 (Restated) Financial Statements for the Pesticide Registration Fund	EPA OIG 14-1-0042	December 17, 2013
Fiscal Years 2012 and 2011 (Restated) Financial Statements for the Pesticides Reregistration and Expedited Processing Fund	EPA OIG 14-1-0041	December 17, 2013
Permanent Funding Authorities: Some Selected Entities Should Review Financial Management, Oversight, and Transparency Policies	GAO-17-59	December 9, 2016
Federal Fees, Fines, and Penalties: Observations on Agency Spending Authorities	GAO-17-268T	December 1, 2016
Federal User Fees: Key Considerations for Designing and Implementing Regulatory Fees	GAO-15-718	September 16, 2015
Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability	GAO-13-820	September 30, 2013
Federal User Fees: A Design Guide	GAO-08-386SP	May 29, 2008

Source: OIG analysis.

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Appendix B

Agency Response to Draft Report

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 15, 2017

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Draft Report for Project No. OA-FY17-0125 entitled, "EPA Needs to Manage Pesticide Funds More Effectively," Dated July 13, 2017.

FROM:

David A. Bloom, Acting Chief Financial Officer
Office of the Chief Financial Officer

Wendy Cleland-Hamnett, Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention

TO: Kevin Christensen, Assistant Inspector General
Office of Inspector General

Thank you for the opportunity to review and provide comments on the Office of Inspector General's Draft Report for Project No. OA-FY17-0125 dated July 13, 2017, which reflects findings of an audit conducted from February to April 2017. The Agency's response to each recommendation, including our proposed corrective actions and anticipated dates of completion for such actions, are detailed below.

Recommendation 1. We recommend that the Assistant Administrator for the Office of Chemical Safety and Pollution Prevention establish a target range for the Pesticides Reregistration and Expedited Processing Fund and Pesticide Registration Fund year-end balances.

Recommendation 2. We recommend that the Assistant Administrator for the Office of Chemical Safety and Pollution Prevention develop and implement a plan to reduce excess Pesticides Reregistration and Expedited Processing Fund and Pesticide Registration Fund balances within the established target range.

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- OCSPP Response:

FIFRA Fund:

The Office of Chemical Safety and Pollution Prevention agrees with both recommendations as they apply to the Pesticides Reregistration and Expedited Processing Fund. As mentioned in the report, the OCSPP has already begun the development of a four-year spend down plan, which sets end-of-year balance targets and offers specific details as to how the OCSPP will manage the carryover balance down to an appropriate level by FY 2020. OCSPP will complete this plan by December 31, 2017.

PRIA Fund:

The OCSPP does not agree with the recommendations they apply to the Pesticide Registration Fund.The PRIA registration fees, which support the Pesticide Registration Fund, were set intentionally at levels that represent only a portion of the cost necessary for the agency to complete its review, and are meant to provide additional resources to the agency to achieve faster and more predictable registration decision time frames. Unlike the FIFRA Fund, which is relatively static within the fiscal year as far as dates for billing and collecting of fees, there is greater variability within a fiscal year and between fiscal years regarding funds collected into and spent from PRIA Fund. The agency does not have control over the number and types of applications submitted by the regulated community and, therefore, cannot accurately predict PRIA fee amounts that will be received in any given fiscal year.

By way of correction, the OCSPP would like to inform the OIG that the carryover balance of $22.4 million for the PRIA fund (reported on page 5 of the Draft Report) is inaccurate. The balance in the Draft Report included funds obligated but not paid out, which should not be part of the carryover balance calculation. The agency's official financial management system, Compass, shows a carryover balance of $14,097,998; this figure represents the final balance on September 30, 2016, which was carried forward into FY 2017 on October 1, 2016.

Recommendation 3. We recommend that the Chief Financial Officer perform periodic reconciliations of the Pesticides Reregistration and Expedited Processing Fund and Pesticide Registration Fund balances to the corresponding liabilities.

- OCFO Response

While the Office of the Chief Financial Officer concurs with the recommendation, we performed a sample reconciliation of the FIFRA Fund from FYs 2012-2016. Our findings indicate that:

1. The reconciliation provided by the OIG did not include all the liability accounts, such as Standard General Ledger Accounts 21 10, 2120, 2140;
2. Most of the difference is from FY 2012, where the offset of cash is in SGL 3310;
3. The other differences are mostly timing differences or reversing cash adjusting entries which only impacted cash not the liabilities; and

4. Interest collections only impact cash but not liabilities.

The OCFO will review the activity of cash and liabilities in the FIFRA and PRIA accounts for the current fiscal year and will make any corrections, if needed. Initial reconciliations have been completed and quarterly reconciliations will be done going forward. The OCFO considers this recommendation as being addressed.

Thank you once again for your review of the FIFRA and PRIA funds. We appreciate the hard work and dedication of the OIG staff in achieving excellent funds management and control, which ultimately supports our mission to protect human health and the environment through registration and review of pesticides.

If you have any questions regarding this response, please contact OCFO's Bob Trent, Management Integrity and Accountability Branch, Office of the Controller, at (202) 566-0983 or Janet Weiner, Attorney/Advisor, Office of Chemical Safety and Pollution Prevention, at (202) 564-2309.

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Appendix C

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From: OIG News
Sent: Tue 9/12/2017 1:28:20 PM
Subject: OIG Report: "EPA's Alternative Dispute Resolution and Public Involvement Contract Needs Better Management"
_epaoig_20170912-17-P-0380_cert.pdf

Attached is the EPA Office of Inspector General (OIG) report, *EPA's Alternative Dispute Resolution and Public Involvement Contract Needs Better Management* (Report No. 17-P-0380). This report will be available to the public on the OIG's website at www.epa.gov/oig.

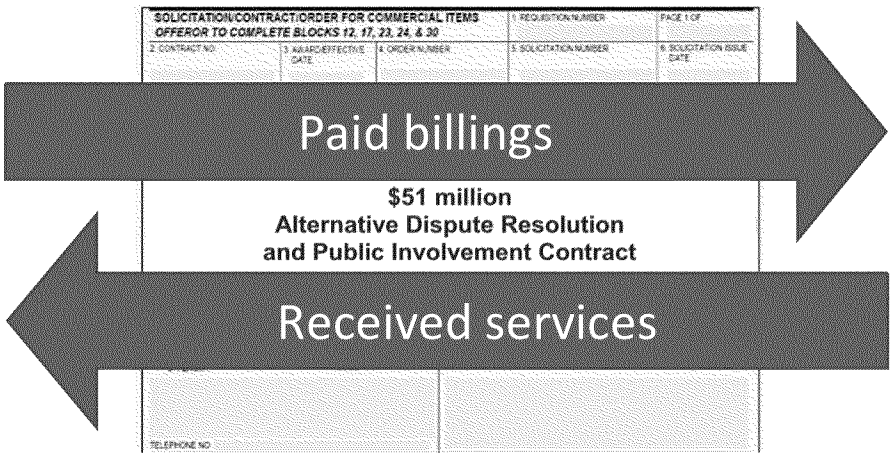
U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Operating efficiently and effectively

EPA's Alternative Dispute Resolution and Public Involvement Contract Needs Better Management

Report No. 17-P-0380 **September 12, 2017**



Report Contributors:

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Abbreviations

ADR	Alternative Dispute Resolution
CO	Contracting Officer
COR	Contracting Officer's Representative
CPARS	Contractor Performance Assessment Reporting System
EPA	U.S. Environmental Protection Agency
EPAAG	Environmental Protection Agency Acquisition Guide
EPAAR	Environmental Protection Agency Acquisition Regulation
FAR	Federal Acquisition Regulation
G&A	General and Administrative
OAM	Office of Acquisition Management
OGC	Office of General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPM	U.S. Office of Personnel Management
PPIRS	Past Performance Information Retrieval System
T&M	Time-and-Material
TOCOR	Task Order Contracting Officer's Representative

Cover photo: Image symbolizing the Alternative Dispute Resolution services contract. (U.S. General Services Administration, EPA images)

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U.S. Environmental Protection Agency
Office of Inspector General

17-P-0380
September 12, 2017

At a Glance

Why We Did This Audit

We conducted an audit of U.S. Environmental Protection Agency (EPA) Contract No. EP-W-14-020, which procures services in support of the EPA's Alternative Dispute Resolution and Public Involvement activities. The purpose of this audit was to determine whether the EPA receives services and whether costs are billed in accordance with contractual and acquisition requirements.

In June 2014, the EPA awarded Contract No. EP-W-14-020, which is valued at over $51 million and has a period of performance of 60 months. The objective of this contract is to implement the agency's Alternative Dispute Resolution Policy and Public Involvement Policy. Mediation, facilitation, outreach, coaching and training are among the services procured under this contract.

This report addresses the following:

- *Operating efficiently and effectively.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of OIG reports.

EPA's Alternative Dispute Resolution and Public Involvement Contract Needs Better Management

What We Found

The EPA must provide better assurance that it effectively receives services and correctly pays for billings under this $51 million contract.

The terms of Contract No. EP-W-14-020 were not in compliance with the Federal Acquisition Regulation (FAR) and the EPA Acquisition Regulation (EPAAR). In addition, some contract deliverables did not comply with contract requirements. Specifically, we identified the following issues during our audit:

- Several contract terms were outdated, contradictory and incomplete. Several required clauses were also missing.
- The contract did not permit firm-fixed-price task orders.
- Monthly progress reports, final reports and invoices were missing some required contract data.

Also, management of Contract No. EP-W-14-020 needs improvement to comply with contractual and acquisition requirements. Specifically, we found the following issues during our audit:

- Four Task Order Contracting Officer's Representatives did not provide written technical direction, as required by the contract and EPAAR.
- In one case, the EPA did not report contractor performance evaluation information in a timely manner, as required by the FAR.
- The Contracting Officer did not perform invoice reviews in a timely manner, as required by the EPA Acquisition Guide.
- The Contracting Officer did not issue the Contracting Officer's Representative appointment memorandum in a timely manner, as required by the FAR and the EPA Acquisition Guide.

These issues occurred due to insufficient oversight.

Recommendations and Planned Agency Corrective Actions

The EPA was proactive in responding to our findings throughout our audit fieldwork. As described in the "Actions Taken" subsections in Chapters 2 and 3, the agency completed actions to correct a majority of the issues we identified.

Consequently, this report makes only three recommendations to the Assistant Administrator for Administration and Resources Management and to the General Counsel. Our recommendations include actions to improve the contract's terms, deliverables, management, oversight and internal controls. The EPA agreed with all three recommendations and provided planned corrective actions and completion dates that meet the intent of the recommendations. As of the publication of this report, corrective actions are pending for Recommendation 1 and are completed for Recommendations 2 and 3.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 12, 2017

MEMORANDUM

SUBJECT: EPA's Alternative Dispute Resolution and Public Involvement Contract Needs Better Management
Report No. 17-P-0380

FROM: Arthur A. Elkins Jr.

TO: Kevin Minoli, Acting General Counsel

Donna Vizian, Acting Assistant Administrator
Office of Administration and Resources Management

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY16-0124. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position.

Action Required

In accordance with EPA Manual 2750, your office provided acceptable and complete planned corrective actions in response to OIG recommendations. Therefore, all recommendations are resolved pending implementation of the corrective actions. No final response to this report is required.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1
Introduction

Purpose

The Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) conducted this audit of EPA Contract No. EP-W-14-020 in order to determine whether the EPA receives services and whether costs are billed in accordance with contract and acquisition requirements.

Background

On June 13, 2014, the EPA awarded Contract No. EP-W-14-020 to Systems Research and Applications Corporation. This contract is a fixed rate for services, indefinite delivery/indefinite quantity contract[1] valued at $51,740,000, with a period of performance of 60 months (5 years). The objective of the contract is to obtain contractor support to implement the EPA's Alternative Dispute Resolution (ADR) Policy and Public Involvement Policy. As of March 2016, the contract had 71 task orders to procure nine primary types of services (see Table 1).

Table 1: Nine primary types of services purchased

Tracking Evaluation Meeting Support	Coaching Training Assessment	Mediation Facilitation Outreach

Source: OIG analysis.

EPA's Contracting Process

As part of the contracting process, the agency head or designee should clearly define requirements for services so that they will meet the agency's needs and be understood and performed in accordance with the contract's terms and conditions. Contracting officials should use "best practices" techniques to contract for services, manage contracts, and administer contracts, as well as to detect problems in the acquisition, management, and administration of service contracts. The Contracting Officer (CO) is also responsible for all acquisition planning decisions, such as determining the contract type.

Responsible Offices

The EPA's Office of Acquisition Management (OAM), within the Office of Administration and Resources Management, is responsible for issuing the policies and procedures for, managing the operations of, and supporting the agency's

[1] The contract stipulates fixed labor rates and cost-reimbursable other direct costs.

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procurement and contracts management program, from contract planning through closeout.

The EPA Conflict Prevention and Resolution Center, within the Office of General Counsel's (OGC's) ADR Law Office, provides ADR services to the entire agency. The Conflict Prevention and Resolution Center also supports the implementation of the EPA's Public Involvement Policy.

Scope and Methodology

We conducted this performance audit from March 2016 through September 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To obtain an understanding of the contractual and acquisition requirements and internal controls, we reviewed the following documentation:

- Contract terms and conditions.
- Federal Acquisition Regulation (FAR).
- EPA Acquisition Regulation (EPAAR).
- EPA Acquisition Guide (EPAAG).
- Presidential and Office of Management and Budget (OMB) memorandums on government contracting.
- Other internal OAM guidance documents related to contract management.
- Prior audit reports relevant to our audit objectives.
- ADR Law Office and Conflict Prevention and Resolution Center internal policies, procedures and tools.
- Internal control assessment reports from the Federal Managers' Financial Integrity Act and the EPA's Contracts Management Assessment Program.
- Roles and responsibilities within the EPA's contract management structure.

To determine whether the EPA receives services and whether costs are billed in accordance with contractual and acquisition requirements, we performed the following actions:

- Judgmentally selected and reviewed 10 task orders[2] based on the following criteria: high-dollar value, the potential locations affected, and

[2] As of March 2016, the contract had a total universe of 71 task orders, which collectively valued $22,170,810. The 10 task orders we reviewed collectively valued $5,287,718 (24% of the universe value).

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the service types procured. See Appendix A for more details on the task orders reviewed.

- Interviewed the CO, Contracting Officer's Representatives (CORs), Task Order Contracting Officer's Representatives (TOCORs), and other OAM and OGC staff.

- Obtained and reviewed monthly progress reports, invoices and other supporting documentation contained in the contract and task order files.

- Tested the February 2016 monthly progress reports of nine task orders for compliance with contractual requirements. ***Note:*** Of the 10 overall task orders reviewed, one did not have a monthly progress report for February 2016, so only nine task orders could be tested. (See Appendix A.)

- Tested the February 2016 invoices of nine task orders for compliance with contractual requirements. ***Note:*** Of the 10 overall task orders reviewed, one did not have an invoice for February 2016, so only nine task orders could be tested. (See Appendix A.)

- Reviewed the final reports for the six task orders—3, 16, 31, 49, 57 and 64—that were completed under this contract as of September 1, 2016.

- Quantified the magnitude of task orders under the contract that do not have written technical direction documents.

Prior Reports

EPA OIG Report No. 16-P-0078, *EPA's Background Investigation Support Contracts and OPM Billings Need Better Oversight and Internal Controls,* issued December 14, 2015, found that the EPA did not monitor the support contract for compliance with the terms and conditions of the contract. Specifically, the report identified the following findings:

- Technical direction letters were not being issued as required.
- The COs were not performing invoice reviews.
- The COR did not maintain proper contract documentation.

This report made 14 recommendations; the agency reports that the corrective actions for all of the recommendations have been completed.

EPA OIG Report No. 15-P-0215, *Internal Controls Needed to Control Costs of Superfund Technical Assessment & Response Team Contracts, as Exemplified in Region 7,* issued July 20, 2015, found that Region 7 did not adequately monitor the contractor for compliance with the contract requirements:

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- Region 7 did not sufficiently review contractor invoices.
- Monthly progress reports did not meet contract requirements.
- The region's annual invoice reviews were lacking.
- The CO did not appoint the COR for the contract in a timely manner.
- Contract clauses were incomplete, repetitive or contradictory.

This report made 26 recommendations; four of the recommendations remain open pending corrective actions.

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Chapter 2
Contract Terms and Deliverables Need Improvement

The terms of Contract No. EP-W-14-020 need improvement to provide effective management of services received and costs billed. In addition, contract deliverables need improvement to comply with contractual requirements. Specifically, we identified the following issues during the course of our audit:

- Several contract clauses were outdated, contradictory or incomplete. Several required clauses were also missing.
- The contract did not permit firm-fixed-price task orders.
- Monthly progress reports and final reports were missing required data.
- Contractor invoices did not comply with contractual requirements.

The issues identified occurred due to insufficient oversight. In addition, the agency used the prior contract as a starting point for the current contract, which resulted in some specific contract requirements not being adequately considered.

As a result, the EPA cannot provide the necessary assurance that it received services or correctly paid for billings under Contract No. EP-W-14-020, per the FAR and the terms of the contract.

Contract Terms Did Not Comply With FAR and EPAAR

FAR 52.301 provides a matrix identifying the contract clauses that are required to be included in a federal contract based on the principle type and/or purpose of the contract. EPAAR 1552 outlines additional contract clauses required for EPA contracts.

We found that the contract contained one outdated and two contradictory clauses, and one clause that was missing required information. Additionally, six required FAR clauses were not included in the contract. See Tables 2 through 5.

Table 2: Outdated contract clause

Contract clause		Existing clause	Up-to-date clause needed
G.8	Title	Government property	Government property
	Source	EPAAR 1552.245-73 (July 2004)	EPAAR 1552.245-70 (September 2009)

Source: OIG analysis.

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Table 3: Contradictory contract clauses

	Clause	Clause
Contradictory clauses	G.1	I.3
Title	Ordering by Designated Ordering Officers	Ordering
Source	EPAAR 1552.216-72 (April 1984)	FAR 52.216-18 (October 1995)
Contradiction	Talks about issuing delivery orders	Talks about issuing task orders
Explanation	Per FAR 16.501-1, delivery orders are contracts for supplies, while task orders are contracts for services. To comply with the FAR, EPAAR 1552.216-72 was revised in July 2014 to allow references to task orders. Accordingly, Clause G.1 should be modified to discuss the use of task orders rather than delivery orders.	
Contradictory clauses	G.2	I.1
Title	Subcontracting Reports – Small Business and Small Disadvantaged Business Concerns	Small Business Subcontracting Plan
Source	Not applicable	FAR 52.219-9
Contradiction	Permits nonelectronic forms of reporting for subcontracting reports	Requires subcontracting reports to be submitted via the Electronic Subcontracting Reporting System
Explanation	Pursuant to OMB guidance dated November 3, 2005, the EPA mandated the use of electronic reporting in the Electronic Subcontracting Reporting System after December 2005. Accordingly, Clause G.2 should be revised.	

Source: OIG analysis.

Table 4: Contract clause with missing information

Clause	Title	Source	Missing information
G.6	Indirect Costs	EPAAR 1552.242-70 (April 1984)	Did not identify the cost base to which the indirect cost rates are applied

Source: OIG analysis.

Table 5: Contract clauses missing but required by the FAR

Clause number	Clause title	FAR requirement
52.203-5	Covenant Against Contingent Fees	FAR 3.404
52.216-24	Limitation of Government Liability	FAR 16.603-4(b)(2)
52.216-25	Contract Definitization	FAR 16.603-4(b)(3)
52.222-50	Combating Trafficking in Persons	FAR 22.1705(a)(1)
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	FAR 23.1105
52.233-2	Service of Protest	FAR 33.106(a)

Source: OIG analysis.

In addition to the issues noted in Tables 2 through 5, the base contract and its task orders did not always provide clear and understandable contractual requirements. Specifically, there were conflicting labor rate requirements and ambiguous deliverable requirements:

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- The ordered fixed labor rates identified in the contract's optional form 347 differed from the fixed labor rates in Part 1, Section B.1, Fixed Rates for Services.

- In the task orders reviewed, optional form 347 required the contractor to submit work plans and cost estimates within 10 business days. However, the "Report and Deliverables" section of the same task orders only indicated that these deliverables must be submitted within 10 days. This ambiguous language caused confusion; the four TOCORs interviewed as part of this audit did not know whether this 10-day requirement was in terms of calendar or business days.

Better Oversight Needed for Contract Clauses

The issues with the contract clauses and other requirements occurred largely due to insufficient oversight. In addition, the CO used the predecessor contract as the basis for the new contract and did not update it as necessary for new or required clauses.

As a result, the EPA did not provide the necessary assurance that the contractor is complying with omitted FAR requirements, and the EPA may not be receiving the necessary information to determine whether the contractor is meeting agency requirements. Outdated and contradictory contract clauses and ambiguous contract language can also cause confusion and/or misinterpretation of the contract requirements between the agency and the contractor.

Actions Taken as a Result of Our Audit

The CO issued several contract modifications to correct the issues identified in this finding (Table 6). In addition, as of April 2017, the CO began modifying the "Report and Deliverables" section of new task orders to clarify that the due date for the work plan deliverable is within 10 business days of task order issuance.

Table 6: Contract modifications issued

Contract modification	Date issued	Corrective action
64	May 25, 2016	• Corrected the fixed labor rates in the base contract.
65	August 11, 2016	• Incorporated the missing FAR clauses (Table 5). • Updated the contract's EPAAR property clause (Table 2).
75	December 20, 2016	• Updated the contract's indirect costs clause (Table 4).
79	April 4, 2017	• Modified Clause G.2 to reflect FAR 52.219-9, Small Business Subcontracting Plan (Table 3). • Modified Clause G.1 to replace all references to "delivery orders" with "task orders" (Table 3).

Source: OIG analysis.

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Because these corrective actions were completed during the audit, we make no recommendation related to this finding.

Contract Should Permit Firm-Fixed-Price Task Orders

On March 4, 2009, President Obama issued the *Memorandum of Government Contracting*, which states that certain contract types create a risk that taxpayer funds will be spent on contracts that do not serve the needs of the federal government or the interests of the American taxpayer. The memorandum directs the OMB to issue guidance that would accomplish the following objectives:

- Govern the appropriate use and oversight of all contract types in full consideration of the agency's needs.
- Minimize risk and maximize the value of government contracts.

On July 29, 2009, OMB issued Memorandum M-09-25, which provides guidance to agencies to reduce high-risk contracts. The memorandum states that cost-reimbursement, time-and-material (T&M), and labor-hour contracts increase the risk of overspending because they provide no direct incentive to the contractor to control costs.

In addition, FAR 16.103(c) states that "[COs] should avoid protracted use of a cost-reimbursement or T&M contract after experience provides a basis for firmer pricing."

Contract Did Not Permit Firm-Fixed-Price Task Orders

The contract only permitted T&M task orders.[3] However, there were task orders issued under the contract that could possibly have been firm-fixed-price as opposed to T&M. These task orders were for either facilitation or training services, which have been repeatedly ordered under this contract and the predecessor contracts since 2004.

Agency Staff Believe Firm-Fixed-Price Task Orders Are Not Feasible

Based on our discussions with the CO and CORs, the contract only permitted T&M task orders because the CO and CORs believe facilitation or training services have unknown variables that make firm-fixed-price task orders infeasible. For example, the services provided for each training vary depending on the number of people attending the training, the length of the training, whether the training is customized for the audience (e.g., whether it addresses problems occurring in a particular region), and the location of the training. However, in our opinion, since this service has been repeatedly ordered under prior contracts and

[3] This contract does allow for cost-reimbursable other direct costs.

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since many other firm-fixed-price EPA contracts exist for training and facilitation services, these variables do not preclude the use of firm-fixed-price task orders.

T&M Task Orders Increase Risk to Government

Contracts that only allow T&M task orders may have the following effects:

- Taxpayer funds may be spent on task orders that are wasteful, inefficient, subject to misuse, or otherwise not well-designed to serve the needs of the federal government or the interests of the American taxpayer.

- The EPA may not be reaping the possible benefits of cost savings related to fixed-price contracting because a reliance on high-risk contracts and task orders provides little incentive for the contractor to control costs.

Reducing the reliance on high-risk T&M task orders can result in numerous benefits, including possible cost savings.

Action Taken as a Result of Our Audit

On April 4, 2017, the CO issued Contract Modification 79 to add six FAR clauses to allow for the option to have firm-fixed-price task orders.

Recommendation

We recommend that the Assistant Administrator for Administration and Resources Management:

1. Require the Contracting Officer, for future task orders, to document why firm-fixed-pricing is not used.

Agency Response and OIG Evaluation

The EPA agreed with Recommendation 1 and provided planned corrective actions that meet the intent of the recommendation. Specifically, the EPA said that COs will document in a Memorandum for the Record why the EPA did not use a firm-fixed-priced structure for task orders exceeding the simplified acquisition threshold. The agency provided an estimated completion date of December 31, 2017, for actions related to Recommendation 1.

Monthly and Final Reports Were Missing Required Data

We compared the February 2016 monthly progress reports for nine task orders to the contract requirements and found that not all of the required information was included, as shown in Table 7.

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Table 7: Monthly progress reports missing required data

Noncompliant task orders	Contract requirements	
	Information required *(but missing from the progress reports)*	**Required by section**
Five of nine (Task Orders 17, 21, 23, 28 and 44)	For the current period, display the amount claimed.	F.2(e)(1)
All nine	For the cumulative period, display the amount currently claimed, paid, suspended, disallowed and remaining approved amount.	F.2(e)(2)
All nine	A list of employees, their labor categories and the number of hours worked for the reporting period.	F.2(e)(3)(i)
All nine	For the current reporting period, display the expended direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor and each subcontractor and consultant.	F.2(e)(3)(ii)
All nine	For the current reporting period, the cumulative contract period and the cumulative contract life display: the negotiated, expended and remaining direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor and each subcontractor and consultant.	F.2(e)(3)(iii)
All nine	Display the estimates of remaining direct labor hours and costs required to complete the work assignment or delivery order.	F.2(e)(3)(v)
All nine	Unbilled allowable costs. Display the total costs incurred but unbilled for the current reporting period and cumulative for the work assignment	F.2(e)(4)
All nine	Average cost of direct labor. Display the actual average cost per hour with the cost per hour estimated in the work plan.	F.2(e)(5)
All nine	The reports shall specify progress status at the task order level as follows: The contractor shall explain any lagging costs that are not being billed and state the expected period for billing them and any difficulties in obtaining the appropriate documentation for billing. The contractor shall also provide an explanation of any previously lagging costs that will be billed during the current reporting period.	F.2(g)(4)

Source: OIG analysis.

In addition to monthly progress reports, Section F.3(B) of the contract requires the contractor to submit a final report with specific information once a task order is completed. We compared the final reports for the six task orders completed as of September 1, 2016, to the contract requirements and found that the reports did not include all requirements from Section F.3(B)(4). Specifically, the final reports did not contain a final summary budget outlining costs by labor category and direct cost categories; these costs should also be further broken down by design, implementation and evaluation phase.

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Better Oversight Needed for Report Information

The incomplete reports were accepted due to inadequate oversight of the contract. The CO stated that the reports were missing the required contract information because the CORs did not closely examine the reports. As a result, the EPA did not receive some of the required information needed to manage the task orders effectively.

Actions Taken as a Result of Our Audit

The alternate COR emailed the contractor on August 23, 2016, asking the contractor to include the missing required information in the task order final reports. The information requested included the final summary budget outlining costs by labor categories, hours and other direct costs. In addition, the CO emailed the contractor on March 8, 2017 and instructed the contractor to include all required information in the monthly progress reports.

Recommendation

We recommend that the Assistant Administrator for Administration and Resources Management:

2. Require the Contracting Officer to perform periodic spot checks to verify that the Contracting Officer's Representative is confirming that monthly progress reports and task order final reports include all required information.

Agency Response and OIG Evaluation

The EPA agreed with Recommendation 2 and provided corrective actions that meet the intent of the recommendation. The EPA responded that the CO will meet monthly with the program office (OGC's ADR Law Office) to review the contractor's progress and final reports and to confirm inclusion of all contractual terms and conditions. The agency completed this corrective action for Recommendation 2 on June 30, 2017 and provided the documented minutes of a July 28, 2017, meeting between the CO and the COR.

Contractor Invoices Did Not Comply With Contract Requirements

The contract includes invoice preparation instructions that require contractor invoices to contain specific information. The contract also includes clauses that identify the indirect cost rates and allowable other direct costs to be billed on invoices. Additionally, OAM's *Invoice Review & Approval Desk Guide* for reviewing invoices includes a checklist that TOCORs can use when reviewing contractor invoices.

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We compared the February 2016 invoices for nine task orders to the contractual requirements and found that invoices for six task orders did not comply with the contract's terms and conditions (Table 8).

Table 8: Task order invoices not compliant with contract requirements

Noncompliant task orders	Contract invoice requirements	
	Points of noncompliance	Required by
Two of nine (Task Orders 1 and 33)	General and administrative (G&A) indirect costs billed on the invoices did not identify (by cost center) the indirect cost rate, the period, and the cost base to which it is applied. Furthermore, the G&A rate billed on the invoices was 13%, but contract Section G.6 stipulated that the G&A rate should be 13.9%.	• Invoice preparation instructions for Standard Form 1035. • Contract Section G.6.
Four of nine (Task Orders 28, 27, 44 and 45)	Sub-handling billed on the invoices did not identify (by cost center) the indirect cost rate, the period, and the cost base to which it is applied. Furthermore, the sub-handling billed was 2.94%, but contract Section G.6 stipulated that the sub-handling rate should be 3.53%.	• Invoice preparation instructions for Standard Form 1035. • Contract Section G.6.
One of nine (Task Order 33)	The invoice billed training under other direct costs, which is unallowable because there was no prior CO approval.	• Contract Section B.3.

Source: OIG analysis.

Better Oversight Needed for Invoice Reviews

There was insufficient attention paid to the relevant contract requirements during invoice review and approval. Based on our interviews with TOCORs, invoice reviews were conducted mostly by comparing invoices to the monthly progress reports and not to the contract requirements.

OAM provides a checklist in its *Invoice Review & Approval Desk Guide* for TOCORs to use when reviewing invoices. Additionally, page 4 of this guide states that all CORs must document in their files that invoice reviews were performed:

> A file of all invoices, monthly progress reports, invoice review checklists, and all other documentation associated with the reviews must be maintained for the life of the contract or applicable records retention requirements, whichever is longer.

However, even though this checklist and guidance are available, TOCORs did not use this specific checklist for eight of the 10 task orders we reviewed.

Lack of Invoice Reviews Increases Risk of Improper Billings

The EPA did not have full assurance that the TOCORs were adequately reviewing the costs billed or that the costs billed were allowable. Our limited review of invoices revealed invoices that included incorrect billing rates and did not comply

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with contract requirements. In addition, a February 2016 invoice for Task Order 33 billed the EPA $1,625 for training, along with the related G&A billed of $211.25. We determined that this $1,836.25 is unallowable.

Actions Taken as a Result of Our Audit

The COR prepared a customized TOCOR invoice review checklist and, in an email dated November 29, 2016, directed that all TOCORs under the contract use this checklist during monthly invoice reviews. The email also specified that the completed checklists be retained in the task order files.

Additionally, the CO instructed the contractor to modify its invoices to comply with the contract's requirements and to bill the correct indirect rates on its invoices, in accordance with the contract. Also, an April 2017 invoice for Task Order 33 credited the unallowable training and related G&A costs that had been billed on the February 2016 invoice.

Finally, the COR confirmed in May 2017 that quarterly spot checks are being performed to verify that the TOCORs use the customized invoice review checklist during their review and approval of contractor invoices.

Recommendation

We recommend that the General Counsel:

3. Require that the Contracting Officer's Representative perform periodic spot checks to verify that all required information is included in the contractor invoices.

Agency Response and OIG Evaluation

The EPA agreed with Recommendation 3 and provided corrective actions that meet the intent of the recommendation. The EPA agreed that reviews of invoices should be comprehensive and documented appropriately. The agency also issued a memorandum, dated June 29, 2017, requiring that the COR conduct periodic reviews of invoices to confirm the inclusion of all required information. The agency completed all corrective actions for Recommendation 3 on June 29, 2017.

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Chapter 3
Contract Management Needs Improvement

The management of Contract No. EP-W-14-020 needs to be improved to strengthen controls over contract activities. Specifically, we identified the following management issues:

- Four TOCORs provided oral technical direction to the contractor but did not issue or confirm this direction in writing, as required by the contract and EPAAR.

- In one instance, the EPA did not report contractor performance evaluation information in a timely manner, as required by the FAR.

- The CO had not performed invoice reviews in a timely manner, as required by the EPAAG.

- The COR appointment memorandum was not issued at the time of contract award, as required by the FAR and EPAAG.

A majority of the contract management issues we identified occurred due to a combination of insufficient oversight and workload demands. These issues undermine the agency's internal controls and increase risk to the government.

Oral Technical Direction Given but Not Documented

Contract Section H.14(d) and EPAAR 1552.237-71(d) require that technical direction be issued in writing or confirmed in writing within 5 days after oral issuance. These documents also require that the CO be copied on any technical direction issued. Pursuant to Section H.14(b) of the contract, technical direction includes the following actions:

- Instruction that approves contractor approaches; solutions, designs, or refinements; fills in details; and the general descriptions of work shifts emphasis among work areas or tasks.

- Evaluation and acceptance of reports or other deliverables.

TOCORs told us that they provided oral technical direction to the contractor for four of the 10 task orders reviewed; however, these directions were never issued or confirmed in writing with a copy to the CO. As of April 2016, we also noted that 50 out of the 71 task orders issued (70.4 percent) did not have any written technical direction documents, which raises the question about whether only oral technical direction has been given on some of those task orders, as well.

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More Awareness Needed of the Definition of Technical Direction

Some of the TOCORs did not understand the requirements related to technical direction. Our audit determined that a lack of oversight permitted the substitution of oral technical direction for written technical direction; the COR did not provide adequate oversight by monitoring whether the TOCORs issued written technical direction.

Not Documenting Technical Direction Increases Risk to the Government

By verbally managing contracts and not providing written technical direction documents, the agency increases the risk that the contract relationship is characterized as a personal services contract. FAR 37.104(a) provides the following definition of a "personal services contract":

> A personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

FAR 37.104(b) prohibits agencies from awarding personal services contracts unless specifically authorized by statute. While a variety of factors must be weighed in determining whether a contract's administration creates a personal services contract, Appendix 37.1.1-B(b) of EPAAG 37.1.1 directs that the key element is whether agency personnel exercise "continuous supervision and control over the contractor personnel performing the contract." We believe that providing only verbal direction to the contractor could easily evolve into providing continuous instructions to the contractor, as opposed to less frequent written directives. Such a practice would make the EPA vulnerable to developing improper personal services relationships.

Additionally, no written record of a TOCOR's technical direction to the contractor presents increased legal risks to the government. For example, during a legal dispute relating to a contract, written technical direction documents would provide evidence of communication between the agency and the contractor.

Actions Taken as a Result of Our Audit

The COR provided guidance and instruction to all TOCORs in an email dated February 3, 2017, clearly defining technical direction and emphasizing the

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requirement to put technical direction in writing. The emailed instructions also mandated that the CO receive copies of all written technical directions. In addition, the CO updated the TOCOR appointment memorandum to include a statement regarding the requirement for written technical directions; all new TOCORs and TOCORs with revised appointments will receive this updated memorandum. These corrective actions were completed during the audit; as a result, we make no recommendation related to this finding.

Contractor Performance Evaluation Not Completed in Timely Manner

Contract Section H.19 states that the EPA will prepare and submit past performance evaluations to the Past Performance Information Retrieval System (PPIRS). FAR 42.1502 and 42.1503 require that past performance evaluations be prepared at least annually and submitted electronically in the Contractor Performance Assessment Reporting System (CPARS). The evaluations automatically transfer to PPIRS from CPARS.

The EPA did not submit contractor performance evaluation information into CPARS in a timely manner for the first year of the contract,[4] as required by the FAR. A search of PPIRS in May 2016 did not find a performance evaluation report for this contract for the first year. The COR initiated the evaluation, but because of a technical glitch in CPARS—a system outside of the agency's control—the report did not show up in the system.

The COR did submit the contractor performance evaluation reports in PPIRS via CPARS in a timely manner for the second year of the contract. ***Note:*** The third contract year was still underway during the writing of this report.

Delayed Reporting Hinders Access to Contractor Performance Information

Delayed CPARS reporting has the following potential effects:

- Decreases the ability of source selection officials and others involved in the acquisition process to obtain access to sufficient contractor performance information.
- Decreases the availability of contractor performance information to the federal government for making future contract award decisions.
- Hinders improvement in government acquisition practices.

[4] The CPARS report for the first year assessed the period of performance from June 2014 (the time of contract award) to June 2015.

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Action Taken as a Result of Our Audit

The COR worked with the CPARS help desk to resolve the technical issues in CPARS related to the contractor performance evaluation report for the first year of the contract. This corrective action was completed during the audit; as a result, we make no recommendation related to this finding.

Contracting Officer Invoice Reviews Not Completed in Timely Manner

According to EPAAG 32.9.1 and OAM's *Invoice Review & Approval Desk Guide*, a CO's periodic monitoring must include at least one detailed review of a contract invoice for each contract year. Also, for many contract types, more frequent monitoring is required for proper invoice approval. Since COs have the ultimate responsibility and accountability for invoice processing, at least quarterly and more frequent reviews are highly recommended.

Timely Invoice Reviews Could Help Detect Noncompliance

Although the EPA awarded the contract in June 2014, the CO did not conduct an invoice review until March 2016. The CO stated that there was not enough time to do the invoice reviews because of workload demands.

Without the required CO invoice reviews, the EPA did not provide necessary assurance that costs were being billed in accordance with contract requirements. Had the CO performed the required invoice reviews, some of the noncompliant invoices (e.g., invoices missing required data or invoices with incorrect indirect rates) may have been detected. See Chapter 2 in the "Contractor Invoices Did Not Comply With Contract Requirements" section for more information.

Action Taken as a Result of Our Audit

As a result of this audit finding, the CO began performing and documenting quarterly invoice reviews, in accordance with OAM's *Invoice Review & Approval Desk Guide*. This corrective action was completed during the audit; as a result, we make no recommendation related to this finding.

COR Appointment Memorandum Not Issued in Timely Manner

FAR 1.602-2(d) requires that COs, in accordance with agency procedures, designate and authorize in writing a COR for all contracts other than firm-fixed-price contracts, unless the CO retains and executes the COR duties. EPAAG 1.6.5.10(d)(2) states that the CO will determine the level of COR needed to support a specific contract action and will advise the program office of this decision as early in the acquisition process as practical. It is highly recommended that COs issue a COR appointment memorandum before any pre-award tasks are performed, if applicable, so CORs can assist with both pre-award and post-award

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responsibilities. Issuing the memorandum early allows CORs to become familiar with the requirements of the contract under which they will support contract administration activities.

When Contract No. EP-W-14-020 was awarded on June 13, 2014, the EPA identified a COR for this contract; however, an appointment memorandum was not issued at contract award, as required by the FAR and EPAAG. Instead, the COR appointment memorandum is dated February 12, 2015, an 8-month delay. The CO said the COR appointment memorandum document was delayed because the CO inadvertently forgot to complete it due to other workload demands.

Delayed COR Appointment Memorandum Increases Risk of Unauthorized Acts

For 8 months, the COR performed contract functions without the proper authority to act on behalf of the CO. Without an appointment memorandum, the contractor and COR may not know the extent and limitations of the COR's authority and may not be familiar with the requirements of the contract. This increases the risk that the COR could be held personally liable for unauthorized acts.

The CO issued the COR appointment memorandum for this contract on February 12, 2015. The proper COR appointment memorandum was in place before the audit; as a result, we make no recommendation related to this finding.

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Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Potential Monetary Benefits (in $000s)
1	9	Require the Contracting Officer, for future task orders, to document why firm-fixed-pricing is not used.	R	Assistant Administrator for Administration and Resources Management	12/31/17	$34,800 *
2	11	Require the Contracting Officer to perform periodic spot checks to verify that the Contracting Officer's Representative is confirming that monthly progress reports and task order final reports include all required information.	C	Assistant Administrator for Administration and Resources Management	6/30/17	
3	13	Require that the Contracting Officer's Representative perform periodic spot checks to verify that all required information is included in the contractor invoices.	C	General Counsel	6/29/17	

1 C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

* The unobligated capacity remaining on the contract at the start of the audit was $34.8 million. If all recommendations are co mpleted, that entire amount can benefit from the improvements and generate better results for the agency.

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Appendix A

Sampled Task Orders Reviewed

Task order number	Service	Affected locations	Total value ceiling	Criteria for inclusion [a]	Tested for:	
					Monthly report [b]	Monthly invoice [b]
1	Tracking	Headquarters	$91,297	Highest dollar value for this primary type of service	☐	☐
17	Mediation	Multiple locations	113,555	Highest dollar value for this primary type of service	☐	☐
21	Facilitation	Region 1	51,176	Site visit observation	☐	☐
23	Evaluation	Headquarters	131,819	Highest dollar value for this primary type of service	☐	☐
27	Outreach	Region 3	1,337,477	Highest dollar value for this primary type of service	☐	☐
28	Facilitation	Multiple locations	2,008,268	Highest dollar value for this primary type of service	☐	☐
33	Training	Multiple locations	1,175,814	Highest dollar value for this primary type of service	☐	☐
36	Meeting Support	Region 8	129,250	Highest dollar value for this primary type of service		
44	Assessment	Region 3	105,980	Highest dollar value for this primary type of service	☐	☐
45	Coaching	Headquarters	143,082	Highest dollar value for this primary type of service	☐	☐
		Total	**$5,287,718**			

Source: OIG audit sample from the OGC-provided universe.

[a] A judgmental sample of 10 of the 71 task orders (as of March 2016) was primarily selected based on high-dollar value within each primary type of service provided. Task Order 21 was selected to expand regional coverage.

[b] The February 2016 monthly progress reports and invoices for the indicated task orders were tested as part of this review.

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Agency Response to Draft Report

July 28, 2017

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OA-FY16-0124 "Improvements Needed to EPA's Management of the $51 Million Contract for Alternative Dispute Resolution and Public Involvement," Dated May 10, 2017

FROM: Kevin S. Minoli, Acting General Counsel
Office of General Counsel

Donna J. Vizian, Acting Assistant Administrator
Office of Administration and Resources Management

TO: Arthur A. Elkins, Jr.
Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. The agency concurs with the findings and recommendations of this report; however, we recommend that the report focus on better documentation of existing contract management practices. Attached is the agency's response to the report recommendations and technical comments from the Office of General Counsel. We recommend the report be revised to accurately account for the prior completion of recommendation #3. In addition, we request revision of the text box in the upper right hand corner of the "At a Glance" page to more accurately reflect the findings. We have included recommended revised language in Attachment 2.

If you have any questions for the Office of General Counsel regarding this response, please contact Jeanne Briskin, Director, Alternative Dispute Resolution Law Office at (202) 564-4583 briskin.jeanne@epa.gov or Terry Fenton, Project Officer, Alternative Dispute Resolution Law Office at (202) 564-2090 fenton.terry@epa.gov.

If you have any questions for the Office of Administration and Resources Management regarding this response, please contact Celia M. Vaughn, Chief of Staff, Office of Acquisition Management at (202) 564-1047 or Keith Stewart, Director, Headquarters Operation Division, Office of Acquisition Management at (202) 564-0163.

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Finally, we would like to extend a specific note of thanks to the audit team and the leadership of the Office of Audit for their commitment to understanding the factual details regarding this contract and willingness to work with our staff to jointly improve the report.

Attachments
cc: John Showman
Kimberly Patrick
Pam Legare
Keith Stewart
Celia Vaughn
Michael Petscavage
Teren Crawford
Melinda Burks
Richard Valliere
Elise Packard
Jeanne Briskin
Terry Fenton
Marian Cooper
Lauren Lemley

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Attachment 1

AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS:

No.	Recommendation	Assigned to:	High-Level Intended Corrective Actions	Estimated Completion by Quarter and FY
1	Require the Contracting Officer, for future task orders, to document why firm-fixed pricing is not used.	OARM	For future task orders that exceed the simplified acquisition threshold under Contract # EP-W-14-020 (currently $150,000), awarded on other than a firm-fixed price basis, the Contracting Officer will document through a Memorandum for the Record, the reason why the CO did not use firm-fixed pricing for the task order.	1st Quarter of FY 2018 Starting on October 1, 2017
2	Require the Contracting Officer to perform periodic spot-checks to verify that the Contracting Officer's Representative is confirming that monthly progress reports and task order final reports include all required information.	OARM	The Contracting Officer will meet with the program office on a monthly basis to review the monthly progress reports and task order final reports to ensure all required information is provided in those reports, per the terms and conditions of the contract in sections F.2. – Monthly Reports and section F.3. – Final Reports.	3rd Quarter of FY 2017 Starting on June 1, 2017
3	Require that the Contracting Officer's Representative perform periodic spot-checks to verify that all required information is included in the contractor invoices.	OGC	OGC agrees that reviews of invoices should be comprehensive and documented appropriately.	Completed April 26, 2017, with written follow up documentation completed June 29, 2017.

COMMENTS

"At a Glance" Fact Sheet

OGC believes that the overall tone of this fact sheet comes across as more negative than the text of the full report would justify. In particular, the statement included in the shaded text box, "The EPA cannot provide the necessary assurance that it effectively receives services and correctly pays for billings under this $51 million contract," is misleading in both the substance and the scope of the concern identified in the report. Substantively, the sentence implies that the agency lacks *any* assurance that it effectively received services and correctly pays for those services under this contract. While the agency accepts the findings regarding compliance with contracting documentation requirement and has agreed with all three recommendations, as detailed below there were numerous other sources of information that demonstrates the effectiveness of the services received and the accuracy of the payment for them.

The statement's scope is also misleading in that it allows a reader to conclude that $51,000,000 was actually obligation under this contract and reviewed during the audit. That is not the case. The agency had obligated a total of $16,700,000 under this contract at the time of the audit – or just less than 1/3 of the $51,000,000 amount. Most issues identified in the report had a minor, if any, impact on actual service quality, cost, or timeliness. In particular, the only incorrect billing to the government was for a training course tuition ($1625.00) and associated general administrative expenses (G&A, $211.25) totaling $1,836.25 that has since been refunded, and has now been paid appropriately by the government to the vendor using the SF 182 Training Request form. This represents only 0.01% of the $16.7 million in total obligations to the contract and 0.03% of the $5.28 million value of the audited task orders.

As written, the statement in the text box allows readers to draw conclusions as to the substance and scope of the problems identified that are not supported by the findings in the report and could limit the value of the report. The text box would more accurately summarize the overall impact of the report if it stated: "***The EPA must make certain improvements to*** *provide better assurance that it effectively receives services and correctly pays for billings under this $51 million contract*."

Findings:

Agency Staff Believe Firm Fixed Price Task Orders Are Not Feasible (p. 8)

The draft report states that both facilitation and training services could possibly lend themselves to firm fixed price task orders. Through the many orders for facilitation services which have been placed during this contract and the predecessor contract, EPA has learned that it is important that the planning, implementation and follow up work to enable successful facilitation be customized, and that the level of effort necessary to meet EPA requirements is difficult to predict. Facilitation provided under this contract is a sophisticated process that typically requires a detailed intake by the facilitator to adequately bring participants to the meeting and to design the meetings which will ultimately be facilitated. At project initiation, the facilitator must meet with all relevant parties, and the results of these initial meetings affect the number and duration

of later needed meetings. It is not possible to predict the number of preparatory and full meetings, and what duration will be necessary in order to accomplish the goals of the assignment accurately enough to establish a firm fixed price. Therefore, it is not generally appropriate to set a firm fixed price on facilitation assignments in particular. OIG should delete "for either facilitation or" from the last sentence in the section entitled *Contract did not Permit Firm-Fixed-Price Task Orders*. In the section entitled *Agency Staff Believe that Firm-Fixed-Price Task Orders Are Not Feasible*, OIG should edit the heading and first sentence by changing the words "not feasible" and "infeasible" to "inappropriate."

Better Oversight Needed for Report Information (p. 10)

The draft report states that "As a result [of inadequate oversight of the contract] EPA is not receiving some of the required information needed to manage task orders." Although a few required elements were not available in monthly progress reports, much of this information was available in Dashboard, EPA's best practice tool that is routinely used by TOCORs and CORS in their review of progress reports and invoices. This additional data availability and practice largely ameliorates the concern stated here. The last sentence on p. 10 should be revised to read, "Although EPA did not receive all the required information in monthly progress reports, additional information available in Dashboard provided significant supplemental information needed to manage task orders effectively."

RECOMMENDATIONS

1. We recommend that the report better recognize key management systems that were reviewed during the audit and are unique to this contract: (1) two detailed and customized Task Order Contract Officer's Representative (TOCOR) Instruction Manuals, (2) the unique evaluation system for every task order, and (3) the on-line Dashboard contract and task order system. We believe that these management systems are worthy of presentation and discussion. Their limited mention in the report does not adequately depict the level and quality of historical and ongoing management and oversight performed on this contract.

    - The Conflict Prevention and Resolution Center (CPRC, in OGC's Alternative Dispute Resolution Law Office (ADRLO)) has for nearly 20 years, provided and updated detailed, customized TOCOR Instruction manuals that provide information on initiating and managing task orders under this contract, including example task orders, technical direction, and monthly review directions. The IG reviewed these documents as a part of the audit process.
    - CPRC has for nearly 10 years implemented a task order evaluation system that provides TOCOR performance evaluation on an annual basis, and at the beginning and end of every task order or technical direction project for the prime contractor, any subcontractor and the CPRC itself. These evaluation scores are used to complete performance reviews in the CPARs system. When evaluations show that contract services are below typical standards for quality and timeliness, the contract officer's representatives (CORs) together with ADRLO management review the task order or technical direction, determine whether corrective action is needed and what that action might be, and if needed, act to correct the issue. The most recent evaluation of performance of task orders completed under current contract shows ratings of 9 or greater out of 10 for all measures.

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- The contract required the creation and maintenance of an on-line information system that provides 24/7 access for the contracting officer (CO), CORs, and TOCORs who need up-to-date information on project status and project budget details. The system has been in place since the beginning of the contract. Much of the information required in the contract is maintained in this system. This system supplements information provided in invoices and progress reports. It is retained for the life of the contract and to meet the applicable records management requirements. TOCORs and CORs make routine use of this information to supplement their review of invoices and at other key points in time.

2. We suggest that the OIG recommend at the agency level, to make the Invoice Checklist a mandatory part of the EZ Lite invoice payment system. This change would require the TOCOR to complete the checklist prior to being able to submit the invoice payment recommendation in the system. This would provide a much more complete program of invoice review and documentation than the spot checks of TOCOR files being performed by the CORs. It would facilitate achievement of a higher quality review, greater compliance, and provide a more accessible verification system for OIG and CO oversight going forward. This detailed invoice review and certification process used to be part of the invoice approval system when the system operated manually in hard copy via regular mail. While implementation of this recommendation would incur a one-time system design expense, it should reduce the overall personnel costs of duplicative compliance checks and filing systems for the entire agency.

OIG Response: Overall, this audit report appropriately communicates the EPA OIG audit results, and we disagree that the OIG needs to make further changes to the report language. The EPA asserted that most issues identified in the report had a minor, if any, impact on actual service quality, cost or timeliness. We disagree with the characterization of these issues as minor. The agency response concentrates only on a few low-dollar value issues. However, there were several contract and management issues that we believe are significant. For example, the preclusion of firm-fixed price task orders and the use of verbal technical direction with no written follow-up, in our opinion, would not be considered minor issues. Accordingly, we do not believe that any changes are necessary to the report language.

Also, the EPA suggested that the OIG recommend making the invoice checklist a mandatory, agencywide requirement within the EZ Lite invoice payment system. We did not obtain sufficient audit information on the EZ Lite invoice payment system to effectively make that recommendation; however, if it is feasible, the agency does not need a recommendation from the OIG to make such a change.

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Appendix C

Distribution

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From: OIG News
Sent: Tue 8/1/2017 11:50:28 AM
Subject: OIG Report: "EPA's Voluntary WaterSense Program Demonstrated Success"
_epaoig_20170801-17-P-0352_cert.pdf

Attached is the EPA Office of Inspector General (OIG) report, *EPA's Voluntary WaterSense Program Demonstrated Success* (Report No. 17-P-0352). This report will be available to the public on the OIG's website at www.epa.gov/oig.

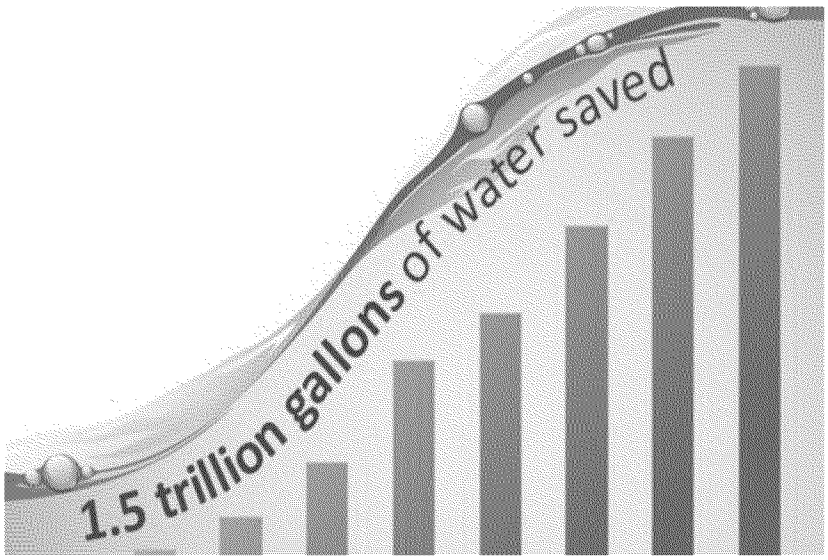
U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Protecting America's Waters

EPA's Voluntary WaterSense Program Demonstrated Success

Report No. 17-P-0352 **August 1, 2017**



Report Contributors:

Kathlene Butler
Kathryn Hess
Tiffine Johnson-Davis
Gerry Snyder

Abbreviations

EPA	U.S. Environmental Protection Agency
GAO	U.S. Government Accountability Office
OIG	Office of Inspector General
PMIAA	Program Management Improvement Accountability Act

Cover figure: Gallons of water that consumers saved over time through use of WaterSense-labeled products. (EPA OIG-created figure)

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U.S. Environmental Protection Agency
Office of Inspector General

17-P-0352
August 1, 2017

At a Glance

Why We Did This Review

The Office of Inspector General of the U.S. Environmental Protection Agency (EPA) examined whether the accomplishments reported by the EPA's WaterSense program reflected actual results. We evaluated EPA controls to assess the accuracy of WaterSense product label claims of water and energy savings, verify industry data used to estimate program accomplishments, and test the veracity of the program's annual accomplishment estimates.

WaterSense partners manufacture, distribute and sell WaterSense-labeled products and promote water efficiency. These products include faucets, showerheads, toilets, urinals, pre-rinse spray valves, and irrigation controllers.

This report addresses the following EPA goals or cross-agency strategies:

- *Protecting America's waters.*
- *Working toward a sustainable future.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of OIG reports.

EPA's Voluntary WaterSense Program Demonstrated Success

What We Found

The EPA's WaterSense program demonstrated adequate controls for ensuring that its estimated water and energy savings were reasonable. The program established goals, measured performance, and established controls for reducing program risk.

The EPA estimated that consumers saved over 1.5 trillion gallons of water through use of WaterSense-labeled products. Consumers saved an estimated $1,100 for every federal dollar spent on the program.

However, the program lacked effective control over one performance measure: the number of partners working to improve water efficiency. The EPA can improve its tracking of this measure. The EPA also can improve program accountability by adopting its tracked water savings as an agency outcome measure.

The EPA launched WaterSense in 2006, in part, to ensure the performance of water-efficient products. The EPA estimated that through 2015, the use of WaterSense-labeled products saved 1.5 trillion gallons of water and reduced the amount of energy needed to heat, pump and treat water by 212 billion kilowatt hours. As a result, consumers saved an estimated $32.6 billion. The EPA reported that more than 1,738 partners had joined the WaterSense program through 2015.

The EPA's voluntary WaterSense program adhered to good practices in program management, achieved significant returns on investment, documented its controls on water savings and product performance, and obtained broad partner and consumer support. The EPA could identify and disseminate the good management practices of the WaterSense program to support the 2016 Performance Management Improvement Accountability Act's requirement to enhance program management across the agency. In our opinion, the WaterSense program is a sound model for voluntary programs. With adjustments, the program will strengthen its potential for producing beneficial results.

Recommendations and Planned Agency Actions

We recommend that the Assistant Administrator for Water share WaterSense program management practices, evaluate the appropriateness of adopting water savings as a program measure, implement controls for partners to periodically reconfirm their commitment to the program, and revise annual partner reporting. The agency agreed with all recommendations and provided acceptable corrective actions and completion dates. All recommendations are resolved.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

August 1, 2017

MEMORANDUM

SUBJECT: EPA's Voluntary WaterSense Program Demonstrated Success
Report No. 17-P-0352

FROM: Arthur A. Elkins Jr.

TO: Michael H. Shapiro, Acting Assistant Administrator
Office of Water

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this evaluation was OPE-FY17-0001. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

In your response to our draft report, you agreed to all recommendations and provided acceptable corrective actions and completion dates. No response to this report is required. If you choose to respond, your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Purpose

The Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) examined whether the accomplishments reported by the EPA's WaterSense program reflected actual results. We evaluated EPA controls to assess the accuracy of WaterSense product label claims of water and energy savings, verify industry data used to estimate program accomplishments, and test the veracity of the program's annual accomplishment estimates.

Background

EPA's WaterSense Program

The EPA launched its WaterSense program in 2006 to raise awareness about water efficiency, ensure the performance of water-efficient products, and provide good consumer information. WaterSense is a partnership program designed to protect the nation's future water supply by, among other actions, promoting and enhancing the market for water-efficient products. WaterSense aims to help consumers and businesses use water resources more efficiently, and, in doing so, preserve water resources for future generations and reduce water and wastewater infrastructure costs by decreasing unnecessary water consumption.

Over the next decade, 80 percent of states are expected to suffer some type of water shortage under average water conditions, according to the information state water managers reported to the U.S. Government Accountability Office (GAO) in 2013.

Program Structure

Over the WaterSense program's first 10 years, the Office of Wastewater Management within the EPA's Office of Water operated the program. The program averaged seven full-time EPA employees, who worked to provide program direction and oversight, consumer outreach, partner support, maintenance of the WaterSense website, and development of specifications for WaterSense-labeled products. In addition, each EPA region had a part-time WaterSense coordinator, who provided public outreach and education, recruited partners, and worked with partners to promote the WaterSense program and water efficiency.

WaterSense Strategic Goals

- *Raise awareness about the importance of water efficiency.*
- *Develop product specifications for water-using products that improve their water efficiency and ensure product performance.*
- *Promote practices and services to reduce outdoor and commercial water use.*
- *Help consumers to differentiate among products and services that use less water.*
- *Support state and local water efficiency efforts.*

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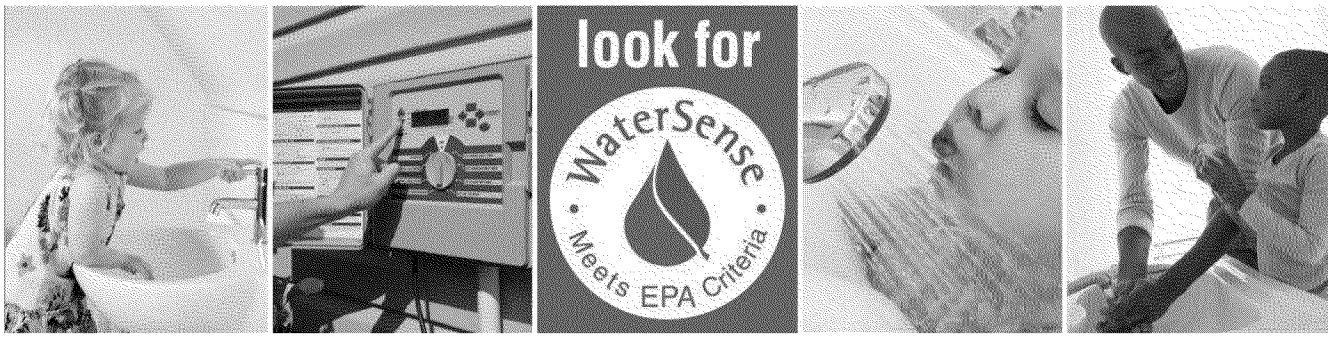

Examples of WaterSense program promotional material. (EPA photos)

The WaterSense program provided financial information that showed the EPA spent about $33 million on the program since its launch in 2006.[1] As part of that total, the Office of Water provided approximately $2 million a year for (1) a contract to provide program support, and (2) an interagency agreement with the U.S. Department of Energy's Lawrence Berkeley National Laboratory to develop and maintain the water-savings model the EPA uses to estimate its accomplishments.

WaterSense-labeled products include faucets, showerheads, toilets, urinals, pre-rinse spray valves, and irrigation controllers. The program relies on partners to manufacture, distribute and sell products, and to promote WaterSense and water efficiency. Partner categories include manufacturers, retailers and builders, as well as promotional partners. Promotional partners include water utilities, governments and advocacy groups. Partners promote WaterSense products and water efficiency by coordinating activities like toilet-rebate programs, the "Shower Better" campaign, and educating consumers on fixing water leaks.

Third-Party Certification of WaterSense-Labeled Products

The WaterSense program labels products that generally use 20 percent less water and perform as well as, or better than, conventional product models. Third-party certification demonstrates that products with the label meet the WaterSense criteria. A manufacturer cannot put the WaterSense label on a product without a third-party certification. During the certification process, a manufacturer and the third-party certifying body test the product in accordance with specifications established by the EPA. The third party then certifies that the product and manufacturing processes meet the specifications and authorizes the manufacturer to use the WaterSense label on the certified product.

[1] The President's fiscal year 2018 budget, released in May 2017, proposed to eliminate the WaterSense program. As of July 31, 2017, Congress had not passed appropriations for fiscal year 2018, and the continuity of the program remained uncertain.

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Annual Reporting

The WaterSense program describes its results through three annual reporting mechanisms:

(1) Partners report to the WaterSense program on product and promotional efforts for the year. Manufacturer partners report the quantities of WaterSense-labeled products and total products shipped, retailer and distributor partners report quantities sold, and all partners report on their water efficiency activities. The EPA depends on partner information to assess annually the impact of the WaterSense program.

(2) The WaterSense program's annual report describes the program's accomplishments to the public. The program voluntarily issues this report that, among other accomplishments, estimates water and energy savings attributed to the WaterSense program.

(3) The EPA annually reports to Congress and the public on its performance achievements. Since fiscal year 2016, the EPA has included the number of WaterSense partners as a performance measure.

Water-Savings Models

The EPA developed a set of models to estimate water savings attributable to the use of WaterSense-labeled products. These models examine water use for various sectors, including residential, commercial, institutional and outdoor uses. To determine the amount of water saved, the models compare two scenarios: (1) water used in the absence of the WaterSense program; and (2) water used with the program in place.

Each model includes various factors in calculating the total water used for each product type. For example, the residential model incorporates the marginal price of water, household size, household income, and product efficiency in the calculations of water consumption for household fixtures such as toilets. The EPA uses product shipping data reported by manufacturer partners as annual input into the model.

Energy and Monetary Savings

The EPA also estimates energy and monetary savings resulting from use of WaterSense products. Water and energy uses are interrelated (Figure 1). Pumping, treating and heating water for use, as well as treating wastewater for disposal, consume energy. As such, saving water results in saving energy. Saving water also saves money for consumers through reduced water, sewer, and energy bills. While WaterSense reports the energy savings associated with

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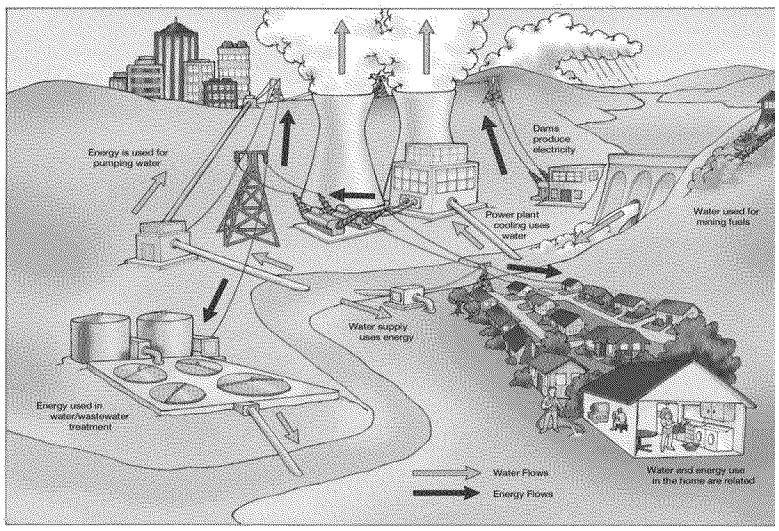
Figure 1: Examples of interrelationships between water and energy uses



Source: U.S. Department of Energy.

all phases of water delivery, use and disposal, only the cost savings associated with the heating of water are included in the program's monetary savings.

Authority for Program

The WaterSense program addresses the EPA's strategic goal to protect America's waters and the EPA's cross-agency strategy to work toward a sustainable future. The EPA operates the program voluntarily using broad authorities provided by the Clean Water Act, and the Safe Drinking Water Act.[2] The Clean Water Act allows the EPA to conduct water-efficiency activities related to reducing pollution and decreasing the flow of sewage. The Safe Drinking Water Act allows the EPA to conduct water-efficiency activities related to providing a dependably safe supply of drinking water.

As recently as 2016, congressional proposals to provide the EPA with direct authority for the WaterSense program have been unsuccessful. In May 2017, a bipartisan group of U.S. Senators introduced legislation to authorize the program. As of July 31, 2017, this legislation remains pending and the agency continues to operate its WaterSense program voluntarily.

[2] Sections 104(a), (b), and (o) of the Clean Water Act; Sections 1442(a)(1) and (2) of the Safe Drinking Water Act. In particular, Section 104(o) of the Clean Water Act states that the EPA Administrator "shall conduct research and investigations on … methods of reducing the total flow of sewage, including, but not limited to, unnecessary water consumption in order to reduce the requirements for, and the costs of, sewage and waste treatment services."

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Components of Internal Control

Internal controls help federal managers achieve their program objectives by improving program efficiency and effectiveness, enhancing information and reporting, and ensuring compliance with applicable laws and regulations. An effective internal control system helps a program adapt to shifting environments, evolving demands, changing risks, and new priorities. The GAO's *Standards for Internal Controls in the Federal Government* specifies guidance for designing internal controls and putting those controls in place. The GAO guidance identifies five components of internal controls. These components apply to staff at all organizational levels and to each of the program's objectives.

GAO's Components of Internal Control

- Control Environment
- Risk Assessment
- Control Activities
- Information and Communication
- Monitoring

Federal Program Management

Congress recognized the need for improved program management in federal agencies when it enacted the Program Management Improvement Accountability Act (PMIAA) in December 2016. The PMIAA requires that by December 2017, the federal Office of Management and Budget must establish standards and policies for executive agencies, consistent with widely accepted standards for program and project management planning and delivery.[3]

Under the PMIAA, each agency must designate a Program Management Improvement Officer to implement agency program management policies, and develop a strategy for enhancing the role of program managers within the agency. The role of the Program Management Improvement Officer, among other things, is to develop improved means for collecting and disseminating best practices and lessons learned to enhance program management across the agency.

Responsible Office

The responsible office for this report is the EPA's Office of Water. The Office of Wastewater Management within the Office of Water implements the WaterSense program.

Scope and Methodology

We conducted our work from October 2016 to May 2017. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain

[3] The Project Management Institute's *The Standard for Program Management* (2013) is an example of widely used standards.

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sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We reviewed applicable laws, policies, procedures and guidance. We collected and analyzed program documents. We interviewed the WaterSense program director and program staff at EPA headquarters, as well as in EPA Regions 1, 3 and 8. We also interviewed staff in the EPA's ENERGY STAR program, 14 WaterSense program partners, and another program stakeholder. We surveyed WaterSense coordinators in all 10 EPA regions.

We used GAO's standards of internal control in our assessment of the EPA's reporting of WaterSense program results. However, the scope of our evaluation did not include assessing the effectiveness of EPA controls.

Because the Office of Management and Budget has not yet issued the federal standards that the PMIAA required by December 2017, we used the private industry standards for program management found in the Project Management Institute's *The Standard for Program Management* in our assessment of the EPA's management of the WaterSense program.

Results of Review

The EPA's voluntary WaterSense program demonstrated success. Over the past 10 years, the program estimated substantial water and energy savings, and returns on investment. The program established adequate controls for ensuring that its saving estimates were reasonable. However, the program lacked effective control over one performance measure: the number of partners working to improve water efficiency. Therefore, the program may not accurately report the number of partners actively working to improve water use efficiency.

The program also displayed elements of a well-designed and managed program. In our opinion, the EPA's adherence to good practices resulted in consumer and industry confidence in WaterSense-labeled products, broad stakeholder support, and returns on investment. The EPA's WaterSense program demonstrated a sound model for voluntary programs. With adjustments, the program will strengthen its potential for producing beneficial results.

Program Accomplishments

The program stated in its voluntary annual report that through 2015, use of WaterSense-labeled products had saved 1.5 trillion gallons of water (Figure 2) and reduced the amount of energy needed to heat, pump and treat water by 212 billion kilowatt hours. This resulted in consumers saving $32.6 billion.

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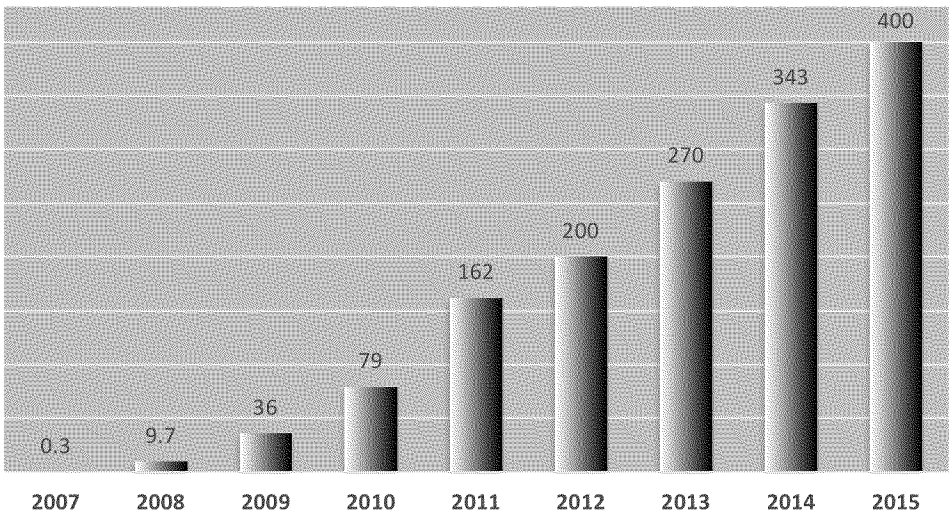
Independent third parties certified over 16,000 WaterSense-labeled products. The program also reported that 1,738 organizational partners joined through 2015.[4]

The EPA's WaterSense program estimated significant returns on investment over its first 10 years (2006–2015). For example, the program calculated the following:

- An estimated $1,100 saved by consumers on their energy and water bills for every $1 spent by the federal government on the WaterSense program.
- An estimated 51,000 gallons of water saved for every $1 spent by the federal government on the WaterSense program.

Figure 2: Billions of gallons of water saved per year



Source: OIG analysis of EPA data.

These returns on investment are based on the savings and costs reported by the program, and capture some of the water and energy savings resulting from WaterSense-labeled products. The program also contributed value to the plumbing industry by providing a unified labeling system that consumers could understand, and by providing product specifications that focused not only on water efficiency but performance. The calculated benefits also do not capture savings from additional WaterSense efforts, such as labeling homes, certifying irrigation professionals and providing educational materials.

Controls on Water and Energy Savings Are in Place

The EPA's WaterSense program had controls in place to ensure that the water and energy savings it calculated were reasonable. The program's controls conformed to GAO's five components of internal control. The EPA's implementation of these controls provided assurance that its reported water and energy saving

[4] The EPA publicly released the WaterSense program's 2016 Accomplishments Report on June 27, 2017. The agency included some of these most-recent accomplishments in its response to our draft report (Appendix A).

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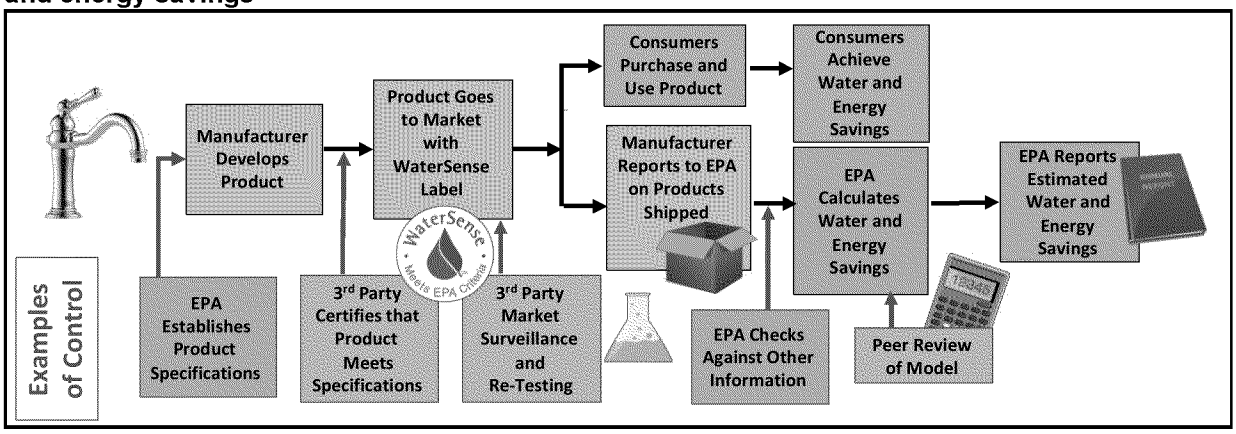
estimates were generally accurate and reflected actual results. In addition, the program used a transparent and sufficiently documented control process, which provides assurance that the program will continue its good practices.

The EPA had controls in place to assess WaterSense product claims, manufacturer shipping data, and the methodology used to calculate water and energy saving estimates (Figure 3). For example, the annual shipping data reported by manufacturer partners serve as the foundation for the savings calculations. Program staff told us that they identified the significant manufacturer partners, and estimated they receive information on 90 percent of product shipments each year. Program staff also told us that they did not estimate energy and water savings for the missing 10 percent. As a result, the program underreported energy and water savings to the public.

Figure 3: WaterSense product shipments provide information for estimating water and energy savings



Source: OIG figure created from EPA information.

Overall, the partners agreed that the program effectively saved water and energy. The promotional partners we interviewed provided several examples illustrating how the WaterSense program effectively reached the consumer, supported the partners, and saved water and energy. In one example, a partner stated that the WaterSense program informed consumer choices, brought the water efficiency community together, and improved the reputation of the program.

Table 1 presents other examples that illustrate how the EPA's WaterSense program conformed to GAO's components of internal control.

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Table 1. Examples of the WaterSense program's conformance to the five components of internal controls identified in GAO's *Standards for Internal Controls in the Federal Government*

Component of internal control	Examples of internal controls
Control Environment	Program documents outlined the program's objectives and vision, and identified program requirements. The EPA entered into partnership agreements with program participants, and the partners agreed to meet program requirements. Product certification guidelines described activities that must be performed to ensure that products meet specifications. The EPA established the WaterSense trademark to be used only on products certified to meet WaterSense performance and water-savings specifications.
Risk Assessment	Certifying bodies followed specific guidelines in certifying that products meet WaterSense specifications. Certifying bodies audited manufacturers' product testing and manufacturing processes. Certifying bodies required re-tests for product testing and changes in manufacturing processes to meet product specifications.
Control Activities	EPA contractor conducted quality assurance review of product data supplied by certifying body. Certifying bodies audited laboratory procedures, witnessed product testing and production, and oversaw product re-testing. Accreditation bodies performed annual assessments of certifying bodies.
Information and Communication	Partnership agreements required manufacturing partners to report shipping data used to estimate water and energy savings. The EPA used a peer-reviewed model and reported shipping data to calculate estimated water and energy savings. The EPA validated manufacturer data using other sources. The EPA took steps to ensure that the largest manufacturers supplied their annual shipping data for inclusion in the EPA's estimate of water savings.
Monitoring	Accreditation bodies conducted annual surveillance of certifying bodies for compliance with certification standards. Certifying bodies performed ongoing market and product labeling surveillance. Certifying bodies may suspend or withdraw a label due to a manufacturer's nonconformance with guidelines.

Source: OIG analysis of EPA information.

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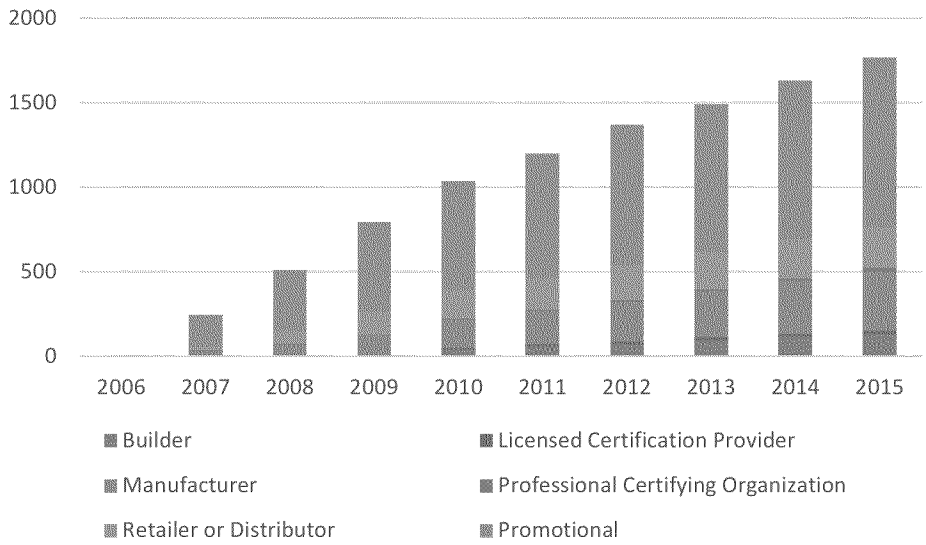
Control Over the Number of Program Partners Is Needed

The EPA lacked control over the number of WaterSense program partners identified in its annual accomplishment report and included in the EPA's annual performance report as a performance measure. The program used partners' annual reports to gather information on water-efficiency activities. Because the partner reporting rate was low, the program could not determine whether all partners were working actively to improve water use efficiency and should be included in the performance measure.

The EPA's data shows that the number of partners participating in the program has grown steadily (Figure 4). The EPA reported more than 1,738 partners at the end of 2015. The EPA elevated the importance of this accomplishment when it added "the number of WaterSense partners working to improve water use efficiency" as a national performance measure for fiscal year 2016.

Figure 4: Cumulative number of WaterSense partners over time



Source: OIG analysis of EPA data.

Potential WaterSense partners sign agreements that commit most partners to report annually on their water-efficiency activities and accomplishments. An exception is the promotional partnership agreement that limits the annual reporting requirement to utilities and governments. The agreement does not include this requirement for other promotional partners, such as trade associations and nongovernmental organizations. As such, about 12 percent of partners were not required to report.

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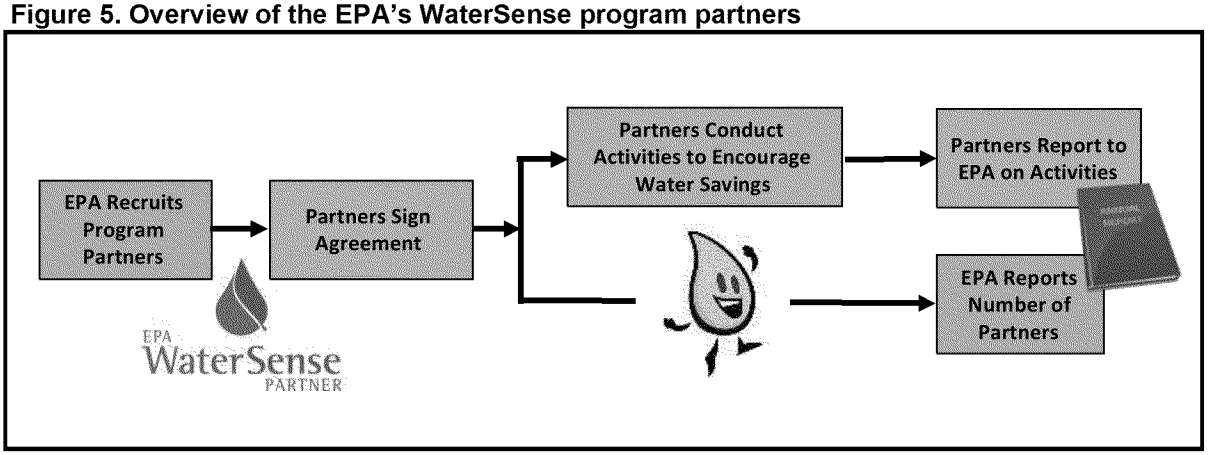
In addition, not all partners that were required to submit reports complied. The program used its annual partner reporting process to gather information on the water-efficiency activities of its partners (Figure 5). Because the partner reporting rate was low—only about 20 percent in 2015—the program could not determine whether all partners were working actively to improve water use efficiency and should be included in the EPA's performance measure. The EPA included all partners with signed agreements, regardless of whether they reported.

Figure 5. Overview of the EPA's WaterSense program partners



The EPA included partners in its performance measure, "the number of WaterSense partners working to improve water use efficiency," regardless of whether partners reported on their activities.

Source: OIG figure created from EPA information.

Over its 10-year existence, the WaterSense program had not asked partners to renew their agreements. The EPA should have a control in place for ensuring the accuracy of its performance measure. Without a control in place to periodically assess that partners continue to work to improve water use efficiency, as they pledged to do when signing their agreement, the number of partners the EPA reports may be overestimated and the program's understanding of whether all partners still work actively to improve water use efficiency will remain limited.

WaterSense Program Is Well Designed and Managed

The WaterSense program displayed elements of a well-designed and managed program. In our opinion, the EPA's adherence to these good practices resulted in consumer and industry confidence in WaterSense-labeled products, broad stakeholder support, and demonstrated returns on investment. Examples of good program management practices[5] used by the EPA's WaterSense program include the following:

- **Program Strategy Alignment.** The EPA identified the need for a program on water efficiency similar to its ENERGY STAR program to

[5] These examples of good practices are arranged by the five performance domains described in the Project Management Institute's *The Standard for Program Management* (2013).

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address the growing need to conserve water. In 2006, the EPA launched the WaterSense program to meet this need.

- **Program Benefits Management.** The WaterSense program required its manufacturing and retail partners to annually report product shipping and sales data. This provided the information needed to estimate and report water savings attributed to the program. The program clearly communicated these accomplishments to stakeholders in its annual reports.

- **Program Stakeholder Engagement.** The WaterSense program developed partnerships and relied on its partners to manufacture, distribute and sell WaterSense labeled products, and to promote the program and water efficiency. The program established expectations in agreements signed by partners. The program engaged stakeholders in the development of product specifications.

- **Program Governance.** The WaterSense program presented its vision, mission, strategic goals and portfolio plans in its business plan. The program has a well-developed set of control documents that address program risk at the appropriate level.

- **Program Life Cycle Management.** The WaterSense program is in its benefits delivery phase, as evidenced by its demonstrated returns on investment. The director and staff have managed and expanded the program over time to include not only certifying products, but also promoting other water-efficiency practices and certifying homes. In addition, the program director and some partners have discussed how the program may look in the future and how water-efficiency gains could continue if the EPA chooses to close the program.

Congress recognized the need for improved program management in federal agencies when it passed the PMIAA in 2016. But the act did not require the government to identify federal standards until December 2017. The good practices of WaterSense could be identified and disseminated as part of meeting the requirements of the PMIAA to develop improved means of collecting and disseminating best practices and lessons learned to enhance program management across the agency.

Conclusion

Well-designed and managed government programs can achieve significant outcomes. The EPA's voluntary WaterSense program demonstrated success in its estimates of returns on investment, controls on water savings and product performance, and partner support. Over its first 10 years, WaterSense achieved substantial estimated water savings of 1.5 trillion gallons. This water savings

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contributed to the EPA's strategic goal of protecting America's waters by reducing the amounts of drinking water that consumers used in homes and businesses, and of wastewater that would be treated. In addition, the program used transparent and documented controls, providing assurance that the program will continue its good practices.

The WaterSense program is a sound model for voluntary programs. With adjustments, the program will strengthen its potential for producing beneficial results. To improve performance accountability for WaterSense, the EPA should adopt water savings as an outcome measure, develop a control for identifying the number of partners, and take steps to improve partner reporting. The EPA also has an opportunity to inform good practices for program management and accountability in other EPA programs by sharing successful WaterSense practices more broadly.

Recommendations

We recommend that the Assistant Administrator for Water:

1. Share WaterSense program practices in program design, implementation and reporting with the agency's Program Management Improvement Officer.

2. Evaluate the appropriateness of adopting water savings as a program measure for WaterSense in the EPA's fiscal year 2019 National Program Guidance for the Office of Water.

3. Develop and implement controls for WaterSense partners to periodically reconfirm their commitment to the program.

4. Revise annual WaterSense program partner reporting to incorporate the following:

    a. Require all promotional partners to report.

    b. If the program continues, improve the rate of reporting for all partners.

Agency Response and OIG Evaluation

The acting Assistant Administrator for Water agreed with our recommendations and provided acceptable, planned corrective actions, and projected or actual completion dates. During a June 29, 2017, meeting, and in two follow-up emails, the program director provided additional clarification on the agency's planned corrective actions. Specifically, the director committed to sharing the WaterSense program design, implementation and reporting with the agency's Program Management Improvement Officer by the end of fiscal year 2018. In the event the

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agency has not designated an officer, the program will share this information with an appropriate alternate official. The agency also agreed that if Congress maintains funding for the WaterSense program, the Office of Water will consider a new program indicator measure for water savings and will document its evaluation of the appropriateness of adding the measure to the National Water Program Guidance for the Office of Water.

All recommendations are resolved. Appendix A contains the Office of Water's response to the draft report and our evaluation.

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Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Potential Monetary Benefits (in $000s)
1	13	Share WaterSense program practices in program design, implementation and reporting with the agency's Program Management Improvement Officer.	R	Assistant Administrator for Water	9/30/18	
2	13	Evaluate the appropriateness of adopting water savings as a program measure for WaterSense in the EPA's fiscal year 2019 National Program Guidance for the Office of Water.	R	Assistant Administrator for Water	9/30/17	
3	13	Develop and implement controls for WaterSense partners to periodically reconfirm their commitment to the program.	R	Assistant Administrator for Water	9/30/17	
4	13	Revise annual WaterSense program partner reporting to incorporate the following:		Assistant Administrator for Water		
		a. Require all promotional partners to report.	C		6/27/17	
		b. If the program continues, improve the rate of reporting for all partners.	R		3/31/18	

[1] C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

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Agency Response to Draft Report and OIG Evaluation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 27, 2017

OFFICE OF WATER

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OPE-FY17-0001—*EPA's Voluntary WaterSense Program Demonstrated Success*, dated May 30, 2017

FROM: Michael H. Shapiro /s/
Acting Assistant Administrator

TO: Carolyn Copper
Assistant Inspector General
Office of Program Evaluation

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. Following is a summary of the agency's overall position, along with its position on each of the report recommendations. For the report recommendations, we have provided high-level intended corrective actions and estimated completion dates. For your consideration, we have included a Technical Comments Attachment to supplement this response.

AGENCY'S OVERALL POSITION

The EPA appreciates being provided with the opportunity to respond to the OIG evaluation of the WaterSense program. The conclusion of the report confirms our position that the program represents an effective public-private partnership that demonstrates results and provides benefits to business, consumers, and water utilities. WaterSense management and staff have worked diligently to develop appropriate controls to ensure the credibility of the program and it is satisfying to see the OIG recognize their work.

WaterSense recently updated its program savings through 2016, which was the 10th year of the program. We provide the values here as an update to the figures included in your report. Since 2006, the program has helped save 2.1 trillion gallons of water and $46.3 billion in consumer water and energy bills. This reflects the efforts of more than 1,850 organizations that have entered into partnership agreements with the program.

As described below, we accept the recommendations made by the OIG and agree that their implementation can help to strengthen the program. We have also provided technical comments as an attachment to this memorandum. We appreciate the productive and positive interactions we had with OIG evaluators during the investigation, as well as the cooperation of the EPA staff and WaterSense partners who responded to OIG inquiries.

We request that you include the entirety of this response as an appendix to the OIG final report.

AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS

Recommendation 1: Share WaterSense program practices in program design, implementation and reporting with the agency's Program Management Improvement Officer.

Response: The EPA concurs with the goal of the recommendation. Over the past several years, program staff have met with staff in other parts of the agency to share how a third party certification program works. WaterSense has worked hard to develop both a program strategy and procedures that will ensure the credibility of the program. Staff will continue to share best practices with other interested parts of the agency and the new Program Management Improvement Officer when that person is appointed to the position.

Recommendation 2: Adopt water savings as a program measure for WaterSense in the EPA's National Program Guidance for the Office of Water.

Response: Since 2007, WaterSense has prepared an annual accomplishments report which includes the cumulative water, energy, and consumer bill savings associated with reported shipments of WaterSense labeled products. The report also highlights the number of WaterSense partners and our progress in carrying out program activities. This report is posted on the WaterSense website and its content is shared through WaterSense social media outlets as well as through agency outlets. We believe this approach has allowed us to communicate the program's success with a wide audience within and external to the agency beyond that reached by national program guidances.

The Office of Water did not have a formal program measure for WaterSense until 2016, when it added a measure that reported on the "number of WaterSense partners working to improve water use efficiency". This measure had previously been associated with the Office of Water climate strategy and associated workplans as a means to encourage regional staff to help the national program extend WaterSense program opportunities to a greater number of partners. We agree that the partner measure is an output measure and that it may be more appropriate to include an outcome-focused measure of gallons of water saved through the use of shipped products as an indicator of program success. As it considers changes to the national program guidance to respond to agency budget deliberations and the next agency Strategic Plan, the Office of Water will take the recommendation of the OIG into consideration. The next available opportunity to have this added as a measure would be during the FY 2019 addendum period of the FY 2018-2019 National Program Guidance process. Given the direction in the agency to reduce the

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number of measures, the Office may choose to replace the current measure with a new measure rather than add an additional measure.

Recommendation 3: Develop and implement controls for WaterSense partners to periodically reconfirm their commitment to the program.

Response: In order to become a WaterSense partner, eligible organizations must complete a partnership agreement. WaterSense has frequent communications with program partners during the year and annually requests information on what they have done to further their partnership. In 2016, as the program approached its 10th anniversary, WaterSense implemented a practice of sending partners an "anniversary" email – to commemorate milestones in their partnership. At 1-year, 5-year, and 10-year anniversaries, WaterSense sends an email to the partner to highlight the milestone, thank them for their engagement, and encourage them to share their outreach activities so WaterSense can help to promote and share them with other partners.

We agree with the OIG that it would be wise to periodically ask partners if they still wish to be engaged with the program. Because we have already implemented the "anniversary" email, our plan is to add a recommitment request as part of that communication. We have already started work to determine the best approach for executing the recommendation and plan to complete it during the 4th quarter of FY 2017.

Recommendation 4: Revise annual WaterSense program partner reporting to incorporate the following:

a) Require all promotional partners to report
b) Improve the rate of reporting for all partners.

Response:

(a) As described above, WaterSense asks all partners to complete an agreement to become a partner. A section of this agreement describes the partnership pledge. The promotional partner category is broad and can include utilities (water, wastewater, energy), water districts, trade associations, nonprofit organizations, and government agencies (federal, state, local). As noted in the report, the agreement for promotional partners only includes a pledge for organizations classified as a utility, government, or trade association to annually report to WaterSense.

In practice, when carrying out the annual reporting process WaterSense has asked all promotional partners, irrespective of their organizational type, to report using a consistent form and we have received annual reports from every type of organization. That said, we agree that the information in the agreement can be clarified to note that all types of organizations are asked to report annually on activities they have undertaken to promote labeled products and carry out WaterSense-related programming. We have modified our partnership agreement terms to clarify that all partners are asked to annually report on their promotional activities and incentive programs. The new document is available at https://www.epa.gov/watersense/join-watersense.

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(b) Although partners have different reasons for non-reporting which may not be linked to their level of engagement with the program, WaterSense concurs with the OIG that it would beneficial to the program to improve the rate of annual reporting. As noted in the report, we believe we have sufficient reporting from our product manufacturers to ensure the quality of our savings estimates. Other reporting results provide us with insight into how partners view the program, how they are engaging with campaigns, how they are using materials, and what program changes they would like to see in the future. We have used the results of reporting to help us determine the course of the program. As such, we would welcome additional voices to inform our actions and will look to identify new strategies to improve reporting.

As we work to do so, however, we need to balance breadth with depth. For example, we may be able to increase the rate of reporting by simplifying forms and reducing the number of questions. However, this could have the unintended effect of reducing the value of the input we receive. For some types of feedback, it may be better to have deeper, more thoughtful input than could be availed by a shorter reporting form. It has been a standard WaterSense practice to review and revise our process after each annual reporting season. We are in the process of doing that now as we complete our 2016 accomplishments report and will continue the process through this fall as we prepare for 2017 annual reporting which commences in January 2018.

Summary of Agreements

No.	Recommendation	EPA Office	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Share WaterSense program practices in program design, implementation and reporting with the agency's Program Management Improvement Officer.	OW	Share program practices upon request.	N/A, ongoing commitment
2	Adopt water savings as a program measure for WaterSense in the EPA's National Program Guidance for the Office of Water.	OW	Consider addition of new program measure as part of new EPA strategic plan and associated national program guidance.	4th quarter, FY 2017. Measure would be added during the FY 2019 addendum period of the FY 2018-2019 NPM Guidance process
3	Develop and implement controls for WaterSense partners to periodically	OWM	Develop communication mechanism to seek	4th quarter, FY 2017

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	reconfirm their commitment to the program.		partnership recommitment.	
4	Revise annual WaterSense program partner reporting to incorporate the following: • Require all promotional partners to report. • Improve the rate of reporting for all partners.	OWM	(a) Modify partnership agreement to clarify reporting requirement. (b) implement strategies to improve partner reporting rate.	(a) Completed (b) 2nd quarter, FY 2018

CONTACT INFORMATION

If you have any questions regarding this response, please contact Steven Moore, Audit Follow-up Coordinator of the Office of Water at 202-564-0992 or moore.steven@epa.gov.

Attachment

Technical Comments

CC: Benita Best-Wong, OW
Andrew Sawyers, OWM
Raffael Stein, OWM
Tim Fontaine, OW
Steven Moore, OW
Kathleen Butler, OIG
Kathryn Hess, OIG

OIG Evaluation: The acting Assistant Administrator for Water agreed with our recommendations and provided acceptable, planned corrective actions, and projected or actual completion dates. During a June 29, 2017, meeting, and in two follow-up emails, the program director provided additional clarification on the agency's planned corrective actions. Specifically, the director committed to sharing the WaterSense program design, implementation and reporting with the agency's Program Management Improvement Officer by the end of fiscal year 2018. In the event the agency has not designated an officer, the program will share this information with an appropriate alternate official. The agency agreed that if Congress maintains funding for the WaterSense program, the Office of Water will consider a new program indicator measure for water savings and will document its evaluation of the appropriateness of adding the measure to the National Water Program Guidance for the Office of Water. All recommendations are resolved.

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Appendix B

Distribution

The Administrator
Chief of Staff
Assistant Administrator for Water
Chief of Staff for Operations
Deputy Chief of Staff for Operations
Agency Follow-Up Official (the CFO)
Agency Follow-Up Coordinator
General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for Public Affairs
Principal Deputy Assistant Administrator, Office of Water
Audit Follow-Up Coordinator, Office of the Administrator
Audit Follow-Up Coordinator, Office of Water

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To: Flynn, Mike[Flynn.Mike@epa.gov]; Kavlock, Robert[Kavlock.Robert@epa.gov]
Cc: Pruitt, Scott[Pruitt.Scott@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Darwin, Henry[darwin.henry@epa.gov]; Chmielewski, Kevin[chmielewski.kevin@epa.gov]; Fine, Steven[fine.steven@epa.gov]; Bloom, David[Bloom.David@epa.gov]; Trent, Bobbie[Trent.Bobbie@epa.gov]; Anthony, Sherri[Anthony.Sherri@epa.gov]; Howard, MarkT[Howard.Markt@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Valentine, Julia[Valentine.Julia@epa.gov]; Rodan, Bruce[rodan.bruce@epa.gov]; Robbins, Chris[Robbins.Chris@epa.gov]; Yamada, Richard (Yujiro)[yamada.richard@epa.gov]; Radzikowski, Mary Ellen[Radzikowski.Maryellen@epa.gov]; Blancato, Jerry[Blancato.Jerry@epa.gov]; Orme-Zavaleta, Jennifer[Orme-Zavaleta.Jennifer@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Hingeley, Maureen[Hingeley.Maureen@epa.gov]; Hallum, Carrie[hallum.carrie@epa.gov]
From: OIG News
Sent: Thur 9/7/2017 1:31:55 PM
Subject: OIG Report: "Management Alert: EPA Should Promptly Reassess Community Risk Screening Tool"
_epaoig_20170907-17-P-0378_cert.pdf

Attached is the EPA Office of Inspector General (OIG) report, *Management Alert: EPA Should Promptly Reassess Community Risk Screening Tool* (Report No. 17-P-0378). This report will be available to the public on the OIG's website at www.epa.gov/oig.

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Hotline Report:
Improving EPA research programs
Operating efficiently and effectively

Management Alert: EPA Should Promptly Reassess Community Risk Screening Tool

Report No. 17-P-0378 **September 7, 2017**

Report Contributors:

Patrick Gilbride
Erin Barnes-Weaver
Monica Brym
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Abbreviations

CARE	Community Action for a Renewed Environment
C-FERST	Community-Focused Exposure and Risk Screening Tool
EJSCREEN	Environmental Justice Screening and Mapping Tool
EPA	U.S. Environmental Protection Agency
IT	Information Technology
NERL	National Exposure Research Laboratory
OEI	Office of Environmental Information
OIG	Office of Inspector General
ORD	Office of Research and Development
QAPP	Quality Assurance Project Plan
READ	Registry of EPA Applications and Databases
SHC	Sustainable and Healthy Communities
U.S.C.	United States Code

Cover photo: Image from the C-FERST "View Your Community" web page. (EPA photo)

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U.S. Environmental Protection Agency
Office of Inspector General

17-P-0378
September 7, 2017

At a Glance

Why We Did This Review

We received a hotline complaint alleging concerns with the U.S. Environmental Protection Agency (EPA) Office of Research and Development's (ORD's) Community-Focused Exposure and Risk Screening Tool (C-FERST). To address the hotline allegations, we evaluated how ORD planned, developed and implemented C-FERST.

C-FERST is an online information and mapping tool, launched in September 2016, that communities and the public can use to learn more about their environmental issues and exposures. According to ORD, C-FERST is intended to serve a broad range of users (e.g., general public, state/local risk assessors, public health agencies and environmental justice coordinators). The purpose of this management alert is not to raise a health concern but rather to timely notify the EPA so that it can promptly act to better manage its planned investment in C-FERST to prevent waste.

This report addresses the following:

- *Improving EPA research programs.*
- *Operating efficiently and effectively.*

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Listing of OIG reports.

Management Alert: *EPA Should Promptly Reassess Community Risk Screening Tool*

What We Found

Our review substantiates some hotline allegations about C-FERST. We found that ORD took 8 years to develop a tool that:

- Is different from its intended purpose.
- Did not have a project proposal or request for its development.
- Was outside the agency's information technology requirements.
- Overlaps with other EPA tools.
- Was not widely used in the approximately 9 months after it was publicly released, according to available user data.

C-FERST overlaps with other tools and is not yet widely used, underscoring its $400,000 planned yearly investment as a risk. Efforts by the agency to cut costs, streamline activities and avoid duplication compound the need for the EPA to promptly review C-FERST and similar tools.

ORD planned and designed C-FERST internally as a research tool—outside of the agency's information technology monitoring and accountability requirements—and altered the original purpose of the tool during development without properly documenting this change. ORD also did not consider outcome measures or possible joint governance with similar EPA tools.

Without proper accountability controls, ORD creates a risk that the estimated $400,000 it plans to spend annually for maintenance, operation and enhancements of C-FERST is wasteful government spending. Without metrics to measure performance, it is unclear if C-FERST is being used for its intended purpose or meets user needs. Further, having multiple agency mapping tools that perform similar functions can confuse potential users.

Recommendations and Planned Agency Corrective Actions

We recommend that the Assistant Administrator for ORD review C-FERST and develop an action plan to address issues identified, including whether to retain the tool. If retained, we recommend that ORD develop performance metrics and a user survey. We also recommend that ORD develop certain policies and procedures, review new and existing ORD research tools to determine applicability of the EPA's information technology requirements, and work with agency offices responsible for other geospatial mapping tools to develop a decision support matrix on when to use certain tools. ORD agreed with our findings and recommendations and provided acceptable corrective actions and estimated completion dates. ORD's recommendations are resolved with corrective actions pending.

We also recommend that the Deputy Administrator examine all of the EPA's web-based risk screening and mapping tools to ensure the need for each tool. This recommendation is unresolved.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 7, 2017

MEMORANDUM

SUBJECT: Management Alert: EPA Should Promptly Reassess Community Risk Screening Tool
Report No. 17-P-0378

FROM: Arthur A. Elkins Jr.

TO: Mike Flynn, Acting Deputy Administrator

Dr. Robert Kavlock, Acting Assistant Administrator
Office of Research and Development

This is our report on the subject review conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this review was OPE-FY17-0006. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Manual 2750, the Office of Research and Development provided planned corrective actions in response to our recommendations. All recommendations to the Office of Research and Development are considered resolved. The Office of Research and Development is not required to provide a written response to this final report because it provided agreed-to corrective actions and planned completion dates for all report recommendations. The OIG may make periodic inquiries on the progress in implementing these corrective actions. The Office of Research and Development should update the EPA's Management Audit Tracking System as it completes planned corrective actions.

The recommendation to the Deputy Administrator is unresolved. In accordance with EPA Manual 2750, appropriate OIG and Deputy Administrator staff will discuss resolution within 30 days of the final report.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1
Introduction

Purpose

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) received an anonymous hotline complaint alleging concerns with the Office of Research and Development's (ORD's) Community-Focused Exposure and Risk Screening Tool (C-FERST). The hotline complaint alleged, among other concerns, that C-FERST:

- Was poorly conceived from the beginning.
- Was undertaken with little understanding of information technology (IT) and design architecture protocols.
- Is redundant with other EPA tools (specifically, the Environmental Justice Screening and Mapping Tool, also known as EJSCREEN).
- Overstates claims of usefulness in setting community priorities in response to pollution exposures.

In response to the allegations, we evaluated how ORD planned, developed and implemented C-FERST. The purpose of this management alert is not to raise a human health or environmental concern but rather to provide timely notification to the EPA so that it can promptly act to better manage its investment in C-FERST to prevent waste.

Background

C-FERST is a web-based geospatial mapping tool developed by ORD to provide users with access to resources to help identify and provide information about local environmental health issues. The tool includes fact sheets and information on 20-plus pollutants, and structured guides that can help communities assess local environmental conditions. C-FERST users are intended to be able to explore exposure and risk reduction options, and use the tool to plan community-based projects that mitigate harmful environmental exposures.

ORD's Sustainable and Healthy Communities national research program approved C-FERST and its annual budget, and the National Exposure Research Laboratory developed the tool.

ORD started developing C-FERST around 2008 and launched the tool on the EPA's public website in September 2016. ORD invested over $1.4 million during fiscal years 2010–2016 on contractor support to develop both C-FERST and

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Tribal-FERST.[1] ORD staff time on C-FERST grew over that time period, from 1.5 to 2.75 full-time equivalents per year.[2] Ongoing annual costs are projected to be nearly $400,000 for fiscal years 2017, 2018 and 2019, to include: maintenance, updates and enhancements, outreach through training and technical assistance, case studies on uses and needs, and integration/interoperability with other EPA tools.

C-FERST Impetus

EPA staff involved in C-FERST's development described its impetus in early journal articles, including the following:

> [C-FERST] was designed to support communities' environmental justice (EJ) efforts. This tool is being developed by the EPA's Office of Research and Development in the National Exposure Research laboratory, which is conducting research to provide tools that enhance community-based cumulative risk assessments. This research responded to requests from the EPA's [Community Action for a Renewed Environment] CARE program, the Office of Environmental Justice, EPA regional offices, and communities themselves, as well as recommendations from the National Academy of Sciences, National Academy of Public Administration, and other agencies.[3]

The EPA's former CARE program was intended to empower communities to develop and implement their own environmentally focused projects. C-FERST was originally envisioned as a tool that could walk communities through the various stages of the CARE Roadmap, a 10-step planning process that communities can follow in conjunction with C-FERST to learn about environmental health risks and impact; and build local consensus, partnerships, and community capacity sustainable in the long run. C-FERST provides resources for each of these steps.

CARE Roadmap Process

1) **Build a partnership.**
2) **Identify community concerns.**
3) **Identify community vulnerabilities.**
4) **Identify community assets.**
5) **Identify concerns for immediate action.**
6) **Collect and organize information.**
7) **Rank risks and impacts.**
8) **Identify potential solutions.**
9) **Set priorities for action and begin work.**
10) **Evaluate results and become self-sustaining.**

[1] Tribal-FERST is a tool similar to C-FERST targeted at tribal groups; this tool has not yet launched.
[2] These figures represent a portion of costs since the agency, with some exceptions, does not track EPA staff time by project in the agency's official timekeeping system.
[3] Zartarian et al. *The Environmental Protection Agency's Community-Focused Exposure and Risk Screening Tool (C-FERST) and Its Potential Use for Environmental Justice Efforts.* American Journal of Public Health. Supplement 1, 2011, Vol. 101, No. S1, page S286.

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C-FERST Pilot Testing and Peer Review

As a part of C-FERST's development, from 2010 to 2012, ORD conducted case studies with two pilot communities in EPA Region 1 that wanted to identify and prioritize environmental issues. The goals of these case studies included:

- Providing CARE partners with useful information to identify and prioritize issues.
- Enhancing C-FERST usability.
- Providing transferable, generalizable methods to identify and prioritize issues.
- Enhancing cumulative exposure and risk science to inform decision-making.

The pilot communities considered such environmental issues as asthma rates, air pollution, ambient and indoor air quality, lead, and water quality. The pilots identified expectations of communities, current uses of C-FERST, and needed modifications. Additionally, ORD provided 455 individuals with access to the field-testing version of C-FERST from September 2011 to December 2014. These individuals included EPA regional and program office representatives, state and local governments, non-profit organizations, academic institutions, industry, and consulting firms. From 2014 to 2016, the C-FERST team also worked closely with EPA Region 10 to conduct trial tests with regional community users.

ORD conducted a contractor-led external letter peer review of C-FERST in 2013–2014, receiving a final peer review report in February 2014. A letter peer review seeks individual written comments from independent experts. Each reviewer evaluates the draft technical work product independently without consultation from other peer reviewers. The EPA contractor selected four peer reviewers based on a list of qualifications provided by ORD. The C-FERST peer review charge included 19 questions under eight categories. Peer reviewers had about 5 weeks to conduct their review. ORD summarized its responses to peer reviewer comments in an internal report in April 2014.

EPA's Geospatial Platform and Tool Development

As noted above, C-FERST is a web-based geospatial mapping tool. The EPA's geospatial platform helps people identify and describe environmental situations in specific locations to understand local environmental health issues, and target areas with high environmental risk (see Figure 1). This platform supports multiple tools and ensures that there is a level of consistency across tools.

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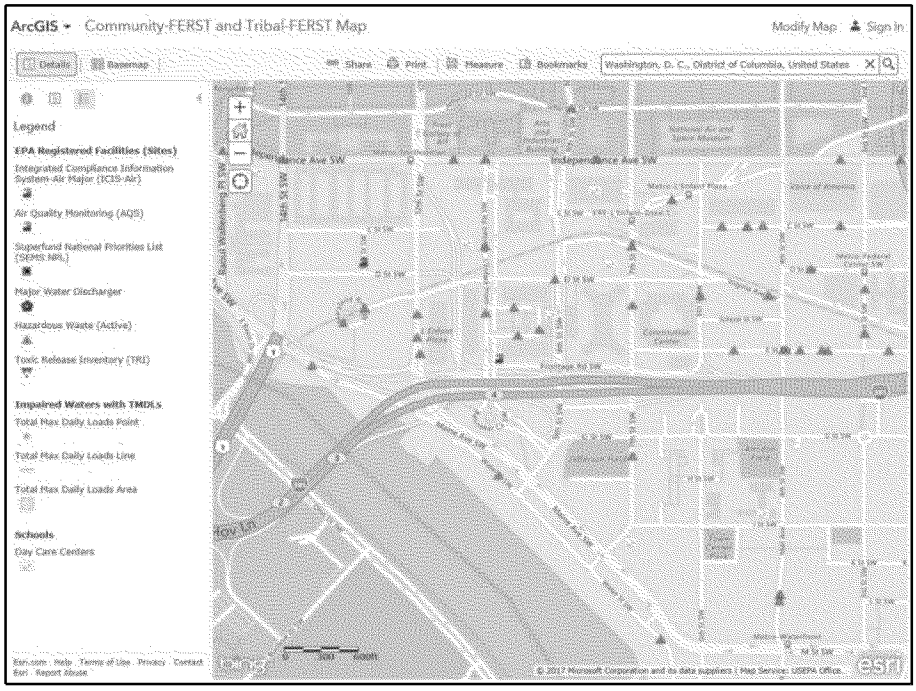
Figure 1: C-FERST facility map for a portion of Washington, D.C., area



Source: Map generated by the OIG using the C-FERST website.

The EPA maintains an application inventory of tools in its Registry of EPA Applications and Databases (READ). This system, which tracks all information resources across the agency, is maintained by the EPA's Office of Environmental Information (OEI). ORD maintains a similar system called the ORD Application Inventory. ORD's system provides a centralized repository of known IT assets (systems, databases, models and decision-making tools) that have been planned, developed/acquired or are currently under development to address specific research questions and administrative requirements. ORD's inventory feeds into READ and currently lists about 320 IT assets. C-FERST is one of the IT assets listed in both READ and ORD's Application Inventory.

Responsible Offices

ORD—which includes the Office of Science Information Management, the National Exposure Research Laboratory (NERL), and the Sustainable and Healthy Communities (SHC) national research program—has primary responsibility for the subjects covered in this review.

Scope and Methodology

We conducted our review from January to June 2017. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our work to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained

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provides a reasonable basis for the findings and conclusions in this report based on our audit objectives.

We analyzed numerous documents pertaining to research tool design, quality and peer review, including policies, procedures and guidance documents. We also reviewed journal articles on the impetus of C-FERST and contracts supporting its development.

We interviewed key ORD staff and managers responsible for the C-FERST concept/design, development, implementation and quality assurance. To compare C-FERST with other EPA tools, we interviewed staff in other agency program offices (e.g., Office of Policy and Office of Environmental Justice, on EJSCREEN). To understand coordination of C-FERST and other tools on the geospatial platform, we met with ORD's Office of Science Information Management and OEI. We also interviewed all four C-FERST external peer reviewers on the peer review process and their perspectives on the tool.

To obtain additional perspectives, we obtained information from ORD on 226 individuals—127 EPA and 99 non-EPA[4]—who either contacted the agency through accessing the site, attended a C-FERST pilot training session, or participated through a Region 10 partnership. We interviewed nearly 10 percent within the EPA and each category of non-EPA individuals for their experiences with C-FERST.[5]

[4] The 99 non-EPA employees encompassed the following categories: 44 state/local government employees, 35 individuals from organizations, 14 individuals from academic institutions, five individuals with private emails or missing contact information, and one individual from a non-EPA federal agency.

[5] We interviewed 20 individuals representing the EPA and the largest categories, as follows: 12 EPA employees, four representatives of state/local government, two representatives of organizations, and two representatives of academic institutions. We refer to these individuals as "users" throughout our report.

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Chapter 2
ORD Should Reassess C-FERST and Complete Planned Actions to Mitigate Risks

Our review substantiates some concerns raised in the hotline allegation about C-FERST. We found that ORD took 8 years[6] to develop a tool that:

- Is different from its intended purpose.
- Did not have a project proposal or request for its development.
- Was outside the agency's information technology requirements.
- Overlaps with other tools.
- Was not widely used in the approximately 9 months after it was publicly released, according to available user data.

ORD planned and designed C-FERST internally as a research tool—outside of the agency's IT monitoring and accountability requirements—and altered the original purpose of the tool during development without properly documenting this change. ORD also did not consider outcome/performance measures or explore ways to reduce overlap with similar tools through joint governance. Without proper accountability controls, ORD cannot ensure that it will spend the estimated $400,000 it plans to spend annually for maintenance, operation and enhancements of C-FERST in a manner that prevents waste. Without metrics to measure performance against goals, it is unclear if C-FERST is being used for its intended purpose or meeting user needs. Further, having multiple agency tools that perform similar functions can confuse potential users.

C-FERST Does Not Calculate Cumulative Risks as Originally Intended, and This Change Was Not Properly Documented

> ***Cumulative risk assessment is defined as an analysis, characterization, and possible quantification of the combined risks to health or the environment from multiple agents or stressors.***
>
> - EPA's Framework for Cumulative Risk Assessment, May 2003

When C-FERST was first conceived, it was included as part of Long Term Goal 2 in the ORD's Human Health Research Program (the predecessor to the SHC national research program) Multi-Year Plan for 2006–2013. The plan noted a long-term objective to produce a research framework outlining tools and approaches to characterize and assess aggregate exposures and cumulative risks. Our review of documentation related to the planning and development of C-FERST shows that a significant change occurred in the design objectives of the tool between when

[6] ORD staff noted that part of this time included reviewing the tool through pilot testing and peer review, which we described in Chapter 1, as well as awaiting updated air toxics data.

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ORD released the prototype version (circa 2008) and the official launch of the tool in September 2016. The change had to do with the claim that C-FERST would characterize cumulative risks to toxic substances. We observed a range of statements over time on the extent to which C-FERST addresses cumulative risk assessment:

2010 [C-FERST] balances innovative, high quality science with user-friendliness to characterize the cumulative impact of multiple stressors for: prioritizing environmental issues within communities; identifying communities at risk; and ultimately, assessing impact of actions (accountability).[7]

2011 C-FERST will contain exposure-based cumulative risk characterizations based on the best available information and science.[8]

2013 C-FERST is designed to help identify, prioritize, and manage community environmental and public health issues by providing various types of information related to potential exposures and cumulative risks to provide communities with a scientifically credible means for evaluating, prioritizing, and mitigating environmental health concerns.[9]

Present Although C-FERST offers multimedia environmental data and demographic data, it does not add together or otherwise calculate cumulative risks for different environmental exposures. … C-FERST does not calculate cumulative risk or impacts.[10]

ORD officials verbally acknowledged this change to the OIG and noted that early communications were more aspirational whereas later communications reflected C-FERST's actual abilities. Both the NERL Director and Deputy Director, as well as the C-FERST Principal Investigator, said that cumulative risk assessment was more complex than previously anticipated. The Principal Investigator also note that the pending issuance of the EPA's cumulative risk assessment guidelines contributed to the change in objectives.[11] One NERL scientist said C-FERST cannot rank risks—the seventh step in the CARE roadmap that C-FERST purportedly supports. ORD is developing another tool—not yet launched—called

[7] From ORD's 2010 contract with one of the C-FERST developers.
[8] Zartarian et al. *The Environmental Protection Agency's Community-Focused Exposure and Risk Screening Tool (C-FERST) and Its Potential Use for Environmental Justice Efforts.* American Journal of Public Health. Supplement 1, 2011, Vol. 101, No. S1, page S288.
[9] From ORD's 2013 contract for the external peer review.
[10] From the C-FERST website page, "Questions and Answers about C-FERST," as of December 13, 2016.
[11] The EPA issued its *Framework for Cumulative Risk Assessment* in May 2003, but the agency's cumulative risk assessment guidelines are still under development.

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the Community Cumulative Assessment Tool, which may be integrated as a module within C-FERST to address the cumulative risk assessment and risk prioritization.

This change in objectives was not reflected in any C-FERST project-specific documentation. Absent a proposal on C-FERST's objectives, which we discuss in the next section, we reviewed the tool's Quality Assurance Project Plan (QAPP). ORD has issued three QAPPs to date on C-FERST—in 2009, 2013 and 2017. However, none of these described the shift away from cumulative risk assessment, which had been articulated in strategic planning documents and research articles, such as those cited above.

> ***"This QAPP is to be reviewed regularly, and changes and new additions to the C-FERST site will be reflected in future versions."***
>
> - C-FERST QAPP, August 2009

ORD officials said that the QAPP may not be an appropriate vehicle for registering a change in the project's goals because QAPPs only address data-related issues. However, NERL's 2012 Quality Management Plan notes that QAPPs document, among other elements, background information and project goals. Additionally, the EPA's quality assurance requirements note that QAPPs integrate all technical and quality aspects of a project, including planning, implementation and assessment. The requirements mandate that QAPPs document the project description and any subsequent significant changes thereof:

> When a substantive change is warranted, the originator of the QA Project Plan shall modify the QA Project Plan to document the change and submit the revision for approval by the same authorities that performed the original review. Only after the revision has been received and approved (at least verbally with written follow-up) by project personnel, shall the change be implemented.[12]

Documenting in the QAPP the objectives of a project and any changes that may occur, such as a shift away from the cumulative risk assessment, becomes critically important as a means of tracking the evolution of a project throughout its lifecycle. Moreover, EPA quality assurance requirements specify annual reviews of the QAPP for programs or projects of long duration.[13] ORD's 2017 C-FERST QAPP revision now requires that the Principal Investigator perform annual reviews of the QAPP, which is an improvement over the prior 4-year update interval.

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[12] U.S. EPA. *EPA Requirements for Quality Assurance Project Plans.* EPA QA/R-5. March 2001.
[13] *Id.*

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ORD Developed C-FERST Absent a Project Proposal or Request for the Tool's Development

We did not see evidence that ORD developed a project proposal that outlined goals, objectives and/or performance outcomes for the C-FERST prototype (circa 2008). Instead, ORD indicated that early ORD presentations and publications, developed in 2008–2009, described the vision for C-FERST. ORD's project management controls over research tools, such as C-FERST, do not explicitly require formal project proposals before approving funding. Rather, general areas of research are approved as part of ORD's process to set Strategic Research Action Plans for each national research program. C-FERST is part of SHC's research portfolio, and SHC's predecessor—ORD's Human Health Research Program—initially approved C-FERST.

While early presentations and publications on C-FERST generally described ideas for the tool, we did not see evidence that ORD performed a systematic assessment of community needs for the tool. This was noted in 2014 by one of the peer reviewers and agreed to by ORD in its written response to peer review comments.

One peer reviewer said C-FERST is unlikely to be useful to communities unless it is redesigned to respond to specific community concerns.

In its written responses to peer review comments, ORD said the tool was developed with extensive input from EPA regional offices and communities. As noted above, a 2011 journal article said C-FERST research responded to requests from, among others, the CARE program, the Office of Environmental Justice, EPA regional offices, and communities. In interviews with our team, SHC leadership said the air program requested an electronic tool for the CARE roadmap. However, ORD has not provided clear documentation from any EPA program office or community requesting the tool.

Instead, in its 2011 journal articles ORD cited gathered input from two CARE program project officers as impetus for the tool's early development efforts. The articles also generally described the need for, and anticipated benefits of, C-FERST in helping communities understand and/or map exposures:

- In an effort to advance the science to accurately characterize and communicate community health risk, ORD is developing the Community-Focused Exposure and Risk Screening Tool. … C-FERST will automate the laborious process of generating maps of interest for community mapping projects.[14]

[14] Hammond et al. *Assessment and Application of National Environmental Databases and Mapping Tools at the Local Level to Two Community Case Studies.* Risk Analysis. Vol. 31, No. 3. 2011, page 485.

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- [C-FERST] provides regions and communities with a user-friendly tool to understand local exposure information (based on solid science) so that they can make informed, cost-effective decisions and take action. … C-FERST bridges the gap between the emerging community-based cumulative risk science and its actual use by, first, the EPA's regional offices and then community groups at large.[15]

ORD said it does not explicitly require formal project proposals and, instead, general areas of research are approved as part of ORD's process to set strategic research plans for each national research program. NERL leadership said that, early on, this amounts to more of a "concept" instead of formal plan. However, an approved project proposal or similar document—containing the objectives, justification, design approach and methodology for measuring performance—would provide a clear path and ensure accountability as the project moves forward.

ORD Developed C-FERST as a Research Tool, Outside of Requirements for an IT Application

> ***"A comprehensive approach [to system life cycle management] ensures that EPA IT systems and applications are properly planned and managed, controllable, cost-effective, and support the mission and business goals of the Agency."***
>
> - EPA Information Procedures: System Life Cycle Management Procedure, CIO 2121-P-03.0, September 21, 2012

The EPA's policy governing its IT investments defines IT to include any equipment/websites used for data management and display. According to ORD's Office of Science Information Management—the ORD office that supports IT and application development and maintenance—C-FERST and other ORD-developed web tools are not considered IT applications. Consequently, these tools are excluded from requirements in the EPA's IT policies, including system lifecycle management. Instead, C-FERST is categorized as a "research tool."

ORD designed C-FERST internally, working with an ORD contractor, and coordinated with OEI when necessary to add the mapping capabilities of the agency's geospatial platform. SHC approved and funded C-FERST as part of the SHC research plan while noting that they were not familiar with IT requirements for research tools. ORD's Office of Science Information Management said C-FERST's development was not its lane of responsibility, and it did not track or report C-FERST under the EPA's IT requirements. The Director of the Office of

[15] Zartarian et al. *The Environmental Protection Agency's Community-Focused Exposure and Risk Screening Tool (C-FERST) and Its Potential Use for Environmental Justice Efforts.* American Journal of Public Health. Supplement 1, 2011, Vol. 101, No. S1, page S293.

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Science Information Management also said that the office does not have OEI review each research tool developed by ORD. Even if it did, OEI does not coordinate agencywide management of research tools, which could prevent overlap of efforts through, for example, joint governance of similar tools.

SHC said day-to-day management of the research tool fell to NERL. One NERL scientist with experience in systems dynamics and decision science said that the tool was developed without coordination between the ecosystems and human health sides of ORD, and that C-FERST was developed before staff with spatial data experience heard about it.

A staff person within ORD's Office of Science Information Management said the recent introduction of the ORD Application Inventory (mentioned in Chapter 1) should help ORD review and monitor new applications, such as research tools. That office now checks the inventory first before approving any new application.

C-FERST Overlaps With Other Agency Tools and ORD Has Not Described C-FERST's Unique Components

As noted above, C-FERST is a geospatial mapping tool developed by ORD as an environmental screening tool for users to identify potential environmental harm in their communities. There are key similarities and differences between C-FERST and other EPA geospatial mapping tools, including EJSCREEN, EnviroAtlas, NEPAssist and MyEnvironment. Table 1 shows environmental data available in each tool.

Table 1: Environmental data in C-FERST and four other EPA geospatial mapping tools

	C-FERST	EJSCREEN	EnviroAtlas	NEPAssist	MyEnvironment
Air Toxics	Yes	Yes	No	Yes	Yes
Particulate Matter and Ozone	Yes	Yes	Yes	Yes	Yes
Demographics	Yes	Yes	Yes	Yes	No
EPA Regulated Facility	Yes	Yes	No	Yes	Yes
Ecosystem Services	No	No	Yes	No	No
Water Quality	Yes	Yes	Yes	Yes	Yes

Source: OIG summary of geospatial mapping tools.

According to the U.S. Government Accountability Office, overlap occurs when multiple programs "have similar goals, engage in similar activities or strategies to achieve them, or target similar beneficiaries."[16] Duplication occurs when two or more programs "are engaged in the same activities or provide the same services to the same beneficiaries."[17] Overlap and duplication can affect program implementation, outcomes and impact, and cost-effectiveness. Overlap might not necessarily lead to actual duplication, and some degree of overlap may be

[16] U.S. Government Accountability Office, *2016 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits*, GAO-16-375SP, April 13, 2016, page 2.
[17] *Id.*

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justified. Agencies can mitigate negative effects of overlapping programs by leveraging resources for joint activities such as training and outreach efforts. To validate the effects, the duplicative or overlapping program/activity should be assessed and compared to determine relative performance and cost-effectiveness.

EPA documentation notes that C-FERST has some similarities to other EPA web-based tools. All four C-FERST peer reviewers commented on potential overlap and the benefit of integrating C-FERST with similar tools.

While multiple EPA geospatial mapping tools draw from the EPA geospatial platform, which creates some operational efficiencies, some interviewees stated that: (1) it is challenging for users to differentiate between the various EPA geo-spatial analysis tools to determine which to use and when, and (2) the tool is not immediately intuitive and requires training to be used effectively. One of the peer reviewers said there were problems with the "usability, functionality, and navigability" of C-FERST. Some sampled users expressed confusion on when to use certain tools (a subsequent section describes the OIG's user sampling). ORD said a four-tool comparison chart provided to our team (and available via the EJSCREEN website)[18] is intended to help users differentiate among the tools. However, this chart provides broad, overview information for only four tools and does not include other similar/available EPA tools or help users determine which to use and when.[19]

Some people interviewed said that they found C-FERST challenging to use, and it would be even more so for community members without specific training.

In our assessment, based on our interviews with EPA staff and others, C-FERST overlaps most closely with EJSCREEN. EJSCREEN and C-FERST have similar functions and capabilities for identifying environmental risks in a community. Both tools provide a combination of demographic and environmental data (see Table 1), and allow users to compare the data from their local community (census tract) with state-level data. While each tool has some unique features, most users and peer reviewers that we interviewed could not clearly differentiate the tools. Following are features unique to EJSCREEN and C-FERST:

- **EJSCREEN:** Users can look at environmental justice indices (combinations of environmental and demographic information) based on percentiles, and narrow in on specific demographic information not available elsewhere (including by language, place of birth, age, etc.).

- **C-FERST:** Users can access more specific environmental data (particularly from the National Air Toxics Assessment dataset), find detailed information on potential ways to mitigate the harms of specific

[18] See the chart at https://www.epa.gov/ejscreen/epa-4-tool-comparison-chart. In addition to C-FERST, the chart includes EJSCREEN, EnviroAtlas, and the National-Scale Air Toxics Assessment.
[19] Other tools mentioned by users that are not included in this chart include the Benefits Mapping and Analysis Program (BenMAP), and the Community-LINE Source Model.

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environmental pollutants through C-FERST's Issue Profiles, and see examples and advice for how to plan a community-level project with C-FERST's CARE Roadmap.

ORD and others—such as the EPA's Office of Environmental Justice—described C-FERST and EJSCREEN as distinct and complementary tools, noting that C-FERST provides context to information that may be available from other sources (e.g., MyEnvironment or EJSCREEN). One EPA regional user remarked that the nuanced level of data C-FERST provides is useful in their work. Other users of the tool said they use EJSCREEN first as a broad screening tool and then move to C-FERST to hone in on more community-specific data.

One OEI staff person said joint governance of EJSCREEN and C-FERST would be a good idea (i.e., merging the management and resources of the two tools to make future decisions on functions, use and needed updates). While an Office of Policy staff person involved in the development of EJSCREEN said he does not believe the tools should be consolidated, he does believe all of the EPA's tools should be harmonized to avoid duplication of effort and to use shared resources. The developer further noted that documents helping users determine which tools to use would be helpful.

C-FERST's Research Plan Did Not Include Outcome Measures

The Government Performance and Results Act Modernization Act of 2010 requires agencies to use performance information in decision-making, and it holds agencies accountable for achieving results and improving government performance.[20] The act defines program evaluation as an assessment of the manner and extent to which federal programs achieve intended objectives.[21] Additionally, the U.S. Government Accountability Office notes that program performance measurement entails "the ongoing monitoring and reporting of program accomplishments, particularly progress toward pre-established goals," and is typically conducted by program or agency management.[22] Performance measures address process (type or level of activities conducted), outputs (direct products and services delivered), or outcomes (results) of "any activity, project, function, or policy that has an identifiable purpose or set of objectives."[23]

ORD did not identify performance measures during the C-FERST development process. The NERL Director told us that NERL is now exploring ideas for how to measure whether C-FERST is meeting community needs, and the SHC Director

[20] Government Performance and Results Act Modernization Act of 2010. Public Law 111-352, January 4, 2011, Sections 3 and 4. See also 31 U.S.C. §§ 1115, 1116 and 1121.
[21] Government Performance and Results Act Modernization Act of 2010. Public Law 111-352, January 4, 2011, Section 4. See also 31 U.S.C. § 1115(h)(12).
[22] U.S. Government Accountability Office. *Performance Measurement and Evaluation: Definitions and Relationships.* GAO-11-646SP. May 2011.
[23] *Id.*

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confirmed that no measures are currently available for monitoring C-FERST performance. As of April 2017, the C-FERST team acknowledged that the only metric they collect is Google Analytics use data on the website, which the SHC Director said is not a useful metric for measuring the performance of the tool. In the absence of output or outcome metrics, the Google Analytics data on webpage views provides the only input on the level of user activity for the C-FERST website. Reporting of unique webpage view data[24] for C-FERST from September 2016 to April 2017 shows spikes in viewers navigating to the site after ORD conducted outreach/training on the tool.

As noted above, during the development phase, NERL collected and incorporated user feedback from community case study pilots and field testing. This included developing additional updates, adding a community forum, developing training, improving user interface accessibility, and improving map and data functions.

Current SHC and NERL managers were unable to explain why performance measures were not included in the design or development of C-FERST, although they acknowledged that there had been changes in both ORD's structure and C-FERST management and leadership during the development period. In addition, as discussed above, the intended purpose of C-FERST changed from a cumulative risk assessment tool to focus more on risk screening and community engagement.

ORD indicated there are plans to incorporate additional monitoring measures for C-FERST. The C-FERST lead said the next steps include an effort to try to collect more quantitative data on system usage, but the first priority is providing training sessions for the tool. However, the recently updated QAPP (May 2017) under "Assessments and Oversight" only discusses planned development, training and outreach activities for C-FERST and Tribal-FERST, as well as planned reviews of data and web links. There is no mention of performance measurement of the tool going forward, except the intent to review usability through user feedback. ORD indicated that C-FERST's estimated costs cover not only maintenance, updates and enhancements for the tool, but also public health data and models, outreach in the form of training and technical assistance, case studies, and potential integration/interoperability with other tools (e.g., EJSCREEN and EnviroAtlas). The case studies will reportedly be used to gain feedback on uses and agency/community needs.

OIG Sampling Indicates Limited Use to Date

ORD asserted that C-FERST is well used by communities and has served as a tool in helping with decisions about community risks. However, we found that the four C-FERST peer reviewers and a majority of our sample of users (16 of 20) are not using the tool. We found that only four out of 20 sampled users (three EPA staff

[24] The data category "unique page views" tracks a person's usage on the entire site for a period or session of time (generally about 30 minutes).

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and one academic representative) had used the tool to either directly assist communities in identifying environmental risks or to provide C-FERST training. Cited reasons for not using the tool included:

- Forgetting about the tool.
- Not being aware that it had been made publicly available.
- Not being familiar enough with the tool.
- Using other tools to meet their needs.

Three individuals indicated they would like to use the tool in their future work now that they were reminded of it through our interviews. The four individuals who said they use C-FERST—as well as four non-users, so 40 percent of our sample—expressed enthusiasm for the tool's potential capability and what it can do for communities, though some cautioned that training to use the tool was needed. Additionally, one community non-profit user described tools like C-FERST as "tremendously useful" and added: "There is an interest in the communities but people are just not aware. ... Government agencies don't do a good enough job informing people about issues and tools." On this, we note below ORD's plans to increase C-FERST outreach. Nonetheless, for now, C-FERST remains a publicly available tool without identified performance measures or a plan for monitoring the progress against established goals. ORD has insufficient evidence to support its assertion that communities are using C-FERST as a community engagement tool. Without metrics to measure C-FERST's performance against its goals, it is unclear as to whether C-FERST is being used for its intended purpose and meeting identified user needs.

One EPA regional staff person told us the reason for not using C-FERST was because she understood the tool to be a community tool and not intended for EPA use.

Planned ORD Actions Could Mitigate Some Risks

During our review, we learned of planned ORD actions that could address some noted risks for C-FERST, as well as research tools generally.

For C-FERST, ORD plans to increase marketing and outreach via train-the-trainer and "tools ambassador" efforts, which could result in increased use. ORD's SHC launched the tools ambassador effort as an informal initiative about a year ago at the request of regional staff volunteers through the agency's Skills Marketplace program.[25] Tools ambassadors conduct training and advertise tools to colleagues and local groups. SHC's Director believes ambassadors are currently in place in less than half of the EPA's regions.

ORD also plans to issue a report summarizing C-FERST usage data sometime in 2018. ORD noted this planned report in its 2014 response to peer review

[25] Skills Marketplace is a part-time project application to bring on extra hands for a set time period (1 year or less).

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comments, specifically in response to one peer reviewer who said it would be helpful to "provide examples of how communities have used data (made more accessible by C-FERST) to influence decision making." NERL's Director added that they are working with state partners, such as the Environmental Council of States, to get inputs on community uses. Also, ORD plans to conduct user surveys—an approach suggested by one peer reviewer and twice used by the EJSCREEN team—to obtain data and feedback. We provided ORD a copy of EJSCREEN's 2016 "impact survey" as an example.

For ORD research tools generally, NERL prepared a draft guidance in March 2016 that considers the life-cycle of a web-based tool in five steps (Table 2):

Table 2: Sequence of events for web-based tools

<table>
<tr><th colspan="2">Life cycle</th><th colspan="2">Clearance</th></tr>
<tr><td>Step 1</td><td>Define concept and plan</td><td></td><td rowspan="4">Communicate: awareness and support</td></tr>
<tr><td>Step 2</td><td>Develop</td><td rowspan="2">Validate technical quality and compliance</td></tr>
<tr><td>Step 3</td><td>Clear and deploy</td></tr>
<tr><td>Step 4</td><td>Operate and maintain</td><td></td></tr>
<tr><td>Step 5</td><td>Revisit concept and plan</td><td></td><td></td></tr>
</table>

Source: Draft NERL guidance on development and release of web-based tools.

The draft guidance notes that technical quality, awareness and partnering would be accomplished through use of a launch team comprised of, among others, the lead investigator; members of the research team; and representatives from ORD's Office of Science Information Management, OEI and quality assurance. The draft guidance further notes that:

> The final organizational level and corresponding requirements for clearance depend on the breadth of use and impact. The greater the likely volume of use, potential financial impact and potential social impact, the greater the more technical review and higher organizational involvement required stringency and amount of requirements for clearance.

Aside from generally noting impact, the draft guidance does not address expected performance measures or outcomes. NERL notes that the draft guidance is for "development and approved public release of a web based tool while a more detailed guidance resource is being assembled." Finalizing this guidance could address concerns we heard in interviews on a lack of direction in this area. For example, one NERL scientist said: "I don't think we have a clear strategic plan for developing, implementing and maintaining these types of things." Another NERL scientist said ORD needs a lab-wide procedure on tool development.

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Additionally, ORD acknowledges the importance of helping users distinguish among numerous tools. ORD has discussed creating a "decision logic guide" to assist people in determining which tool to use in addressing their particular query or issue. The guide is in the concept stage and shows the relationship between ORD tools. ORD said further development of this guide is not a high priority item at this time given other budgetary priorities and limitations. ORD also said the agency is working on a "local government portal" to help get people to the right tool for their needs, and that SHC is also considering ways to help users sort through the available tools for a particular issue (e.g., green infrastructure). At this time, ORD has not developed a "wizard"-type mechanism for community-based mapping tools, but SHC's Deputy Director acknowledged it would be good to do so.

The EPA's National Environmental Justice Advisory Council recommended in 2004 that the EPA provide guidance regarding minimum criteria for selection and use of a particular tool.

All four C-FERST peer reviewers and 19 of 20 OIG-sampled users believe a "tool decision matrix" of some kind would be useful. Many users (14 of 20) were familiar with other geospatial mapping tools (e.g., EJSCREEN and EnviroAtlas). One state agency user said that having too many tools overwhelms people, and leads to confusion and tools not being used.

Conclusion

We are alerting the EPA to risks associated with C-FERST so that the agency can take steps to promptly assess and mitigate the risks. The intent of C-FERST changed during development. Further, it overlaps with other tools and there are no means to measure its performance. Anticipated EPA budget cuts and current efforts by the agency to reshape priorities and programs, streamline activities and avoid duplication further compound the need for the agency to promptly review C-FERST and similar tools in light of the risks identified.

Recommendations

We recommend that the Assistant Administrator for Research and Development:

1. Review the Community-Focused Exposure and Risk Screening Tool and develop an action plan with timeframes to address issues identified, including considerations on whether to retain the tool. If retained:

    a. Develop metrics for measuring the tool's performance and establish a regular schedule for performance evaluations.
    b. Survey users to obtain feedback on tool utilization and any needed improvements.

2. Develop policies and procedures for planning, developing, implementing and monitoring the performance of web-based research tools. Policies and procedures could build on the draft guidance for web-based tools

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developed by the National Exposure Research Laboratory, and should ensure that any new Office of Research and Development research tool stems from a clear project proposal that includes ongoing monitoring metrics and outcome measures, and vetting to ensure there is a need and no overlap with other tools.

3. Review new and existing Office of Research and Development research tools to determine the applicability of the agency's information technology requirements.

4. Work with agency offices responsible for other geospatial mapping tools to develop a decision support matrix for when to use certain tools and for what purposes.

We recommend that the Deputy Administrator:

5. Examine all of the EPA's web-based risk screening and mapping tools to ensure the need for each tool and to avoid potential overlap, duplication and waste.

Agency Comments and OIG Evaluation

Based on discussions during a June 2017 meeting with EPA managers and our review of written comments, we made changes to the report where appropriate. ORD agreed with our findings and recommendations and provided acceptable corrective actions and estimated completion dates, as well as subsequent clarification to its response to recommendation 2. Recommendations 1 through 4 are resolved with corrective actions pending.

While the Deputy Administrator's office agreed with our findings, we do not believe that the office's response fully addressed recommendation 5. In subsequent correspondence, the Deputy Administrator's office said that the EPA's program and regional offices determine the need for web-based risk screening and mapping tools as they consider how best to implement their programs. In addition, the Deputy Administrator said that he has asked OEI to reinforce with the program offices and regions that only tools addressing clearly defined needs should move forward to development. We believe that the Deputy Administrator's office has full authority to review the need for web-based tools and should not delegate these decisions to program offices. Recommendation 5 is unresolved with resolution efforts in progress.

Appendices A and B document, respectively, written comments from ORD and the Office of the Administrator.

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Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Potential Monetary Benefits (in $000s)
1	17	Review the Community-Focused Exposure and Risk Screening Tool and develop an action plan with timeframes to address issues identified, including considerations on whether to retain the tool. If retained: a. Develop metrics for measuring the tool's performance and establish a regular schedule for performance evaluations. b. Survey users to obtain feedback on tool utilization and any needed improvements.	R	Assistant Administrator for Research and Development	9/30/19	
2	17	Develop policies and procedures for planning, developing, implementing and monitoring the performance of web-based research tools. Policies and procedures could build on the draft guidance for web-based tools developed by the National Exposure Research Laboratory, and should ensure that any new Office of Research and Development research tool stems from a clear project proposal that includes ongoing monitoring metrics and outcome measures, and vetting to ensure there is a need and no overlap with other tools.	R	Assistant Administrator for Research and Development	9/30/18	
3	18	Review new and existing Office of Research and Development research tools to determine the applicability of the agency's information technology requirements.	R	Assistant Administrator for Research and Development	9/30/19	
4	18	Work with agency offices responsible for other geospatial mapping tools to develop a decision support matrix for when to use certain tools and for what purposes.	R	Assistant Administrator for Research and Development	9/30/19	
5	18	Examine all of the EPA's web-based risk screening and mapping tools to ensure the need for each tool and to avoid potential overlap, duplication and waste.	U	Deputy Administrator		

[1] C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

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Office of Research and Development's Written Comments

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
RESEARCH AND DEVELOPMENT

MEMORANDUM

SUBJECT: Response to Office of Inspector General (OIG) Draft Management Alert No. OPE-FY17-0006 "EPA Should Promptly Reassess Community Risk Screening Tool," dated June 14, 2017

FROM: Robert Kavlock
Acting Assistant Administrator
Office of Research and Development

TO: Carolyn Copper
Assistant Inspector General
Office of Program Evaluation

The EPA's Office of Research and Development (ORD) welcomes the opportunity to review and comment on the OIG's draft Management Alert titled: "*EPA Should Promptly Reassess Community Risk Screening Tool*" (Project No. OPE-FY17-0006) (Draft Management Alert). We appreciate the thorough review conducted by OIG's investigators and an opportunity to provide this feedback. This response reflects ORD's understanding of OIG's planned changes to their final Management Alert version.

Of foremost concern to ORD is the perceived misclassification of the C-FERST report as a Management Alert. The U.S. EPA Audit Evaluation Management Manual 2750 defines Management Alert as the following: "convey significant, time-critical issues to agency management before completing the ongoing project (pp. 172)." The OIG's findings do not identify any issues that neither impact, nor cause risk to the public health or environment. Further, the OIG did not find any gross mismanagement of EPA resources, nor time-critical issues. Accordingly, and in second light – if a Management Alert is issued before a project is completed, ORD notes that C-FERST as referred to in the hotline complaint was completed and released in Sept 2016. There is new work planned on C-FERST, but that is a separate and new project.

Having noted the above, ORD acknowledges there are areas for improvement, but we want to emphasize that at its core the Community-Focused Exposure and Risk Screening Tool (C-FERST) is a research tool and the nature of research can change during its course of conduct. Immediately below are responses to the OIG's specific recommendations that are directed to ORD. ORD notes that recommendation 5 is addressed to the Deputy Administrator. In the attachment, we provide additional detailed comments with respect to statements in the Draft Management Alert.

Recommendation 1: Review the Community-Focused Exposure and Risk Screening Tool and develop an action plan with timeframes to address issues identified, including considerations on whether to retain the tool. If retained:

Response: *ORD agrees and since ORD does intend to retain this tool, we have provided responses to the additional recommendations below.*

Planned Completion Date: *September 30, 2019*

a. Develop metrics for measuring the tool's performance and establish a regular schedule for performance evaluations.
   Response: *ORD agrees. ORD has already initiated the development of performance metrics for C-FERST and other tools. ORD intended to have this be the topic for discussion and review by the BOSC which is now on hold pending appointment of new BOSC members. A completion date is therefore pending when the BOSC is formed and is able to advise ORD on recommendations for appropriate metrics.*

   Planned Completion Date: *September 30, 2018*

b. Survey users to obtain feedback on tool utilization and any needed improvements.

   Response: *ORD agrees and as was mentioned in previous discussions with OIG, is partnering with ECOS (Environmental Council of States) and ASTHO (Association of State and Territorial Health Organizations) as part of an MOA established with EPA April 2016 to survey state agencies. (This survey is targeted for FY2018.)*

   Planned Completion Date: *September 30, 2019*

Recommendation 2: Develop policies and procedures for planning, developing, implementing and monitoring the performance of web-based research tools. Policies and procedures could build on the draft guidance for web-based tools developed by the National Exposure Research Laboratory, and should ensure that any new Office of Research and Development research tool stems from a clear project proposal that includes ongoing monitoring metrics and outcome measures, and vetting to ensure there is a need and no overlap with other tools.

Response 2: *ORD agrees and will work with OEI and the Chief Information Officer to develop criteria to determine when a research tool should be subject to the agency's information technology requirements. ORD will use the criteria to review its new and existing major public interface research tools to determine the applicability of the agency's information technology*

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requirements. In addition, ORD will continue improving its investment portfolio review process for IT investments as required under various laws, policies, and regulations including FITARA. ORD will expand its application development roadmap and checklist to require informing the Office of Science and Information Management (OSIM) before such projects are started and to report progress and expenditures on such development projects on a regular basis (at least annually or more frequent). OSIM will review and help the developers through the appropriate Life Cycle reviews throughout the project duration and ORD will regularly monitor performance of these web-based tools. This process is being developed and will be implemented starting FY 2018 and will be continuous.

Planned Completion Date: *September 30, 2018*

Recommendation 3: Review new and existing Office of Research and Development research tools to determine the applicability of the agency's information technology requirements.

Response 3: *ORD agrees and as stated in the response to recommendation #2: ORD will work with OEI and the Chief Information Officer to develop criteria to determine when a research tool should be subject to the agency's information technology requirements. ORD will use the criteria to review its new and major existing public interface research tools to determine the applicability of the agency's information technology requirements.*

Planned Completion Date: *September 30, 2019*

Recommendation 4: Work with agency offices responsible for other geospatial analysis tools to develop a decision support matrix for when to use certain tools and for what purposes.

Response 4: *ORD agrees that such a decision matrix is valuable and will work other offices, predominantly OEI on this effort. ORD has started to develop ORD controlled tools and will coordinate with OEI for a wider review in 2017 and 2018, with a final assessment by 3/31/2019.*

Planned Completion Date: *September 30, 2019*

Recommendation 5: Examine all of the EPA's web-based risk screening and mapping tools to ensure the need for each tool and to avoid potential overlap, duplication and waste.

Response 5: Regarding recommendation 5 addressed to the Deputy Administrator, it is ORD's opinion that the Review of C-FERST does not form a basis to recommend an agency-wide review of all risk based screening and mapping tools.

If you have any questions regarding this response, please contact Jennifer Orme-Zavaleta, PhD, Director, National Exposure Research Laboratory (NERL) at orme-zavaleta.jennifer@epa.gov .

Attachment

cc: Tim Watkins
Michael Slimak
Andrew Geller

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Jerry Blancato
David Updike
Stefan Silzer
Deborah Heckman
Beatriz Cuartas
Maureen Hingeley
Bill Ocampo

Detailed ORD Comments on Draft OIG Management Alert: Community Risk Screening Tool (C-FERST)

ORD is providing the following comments and clarifications regarding the draft management alert prepared by the OIG. The information provided is generally organized in the order issues were raised in the draft OIG Alert.

Page 1: The public version of C-FERST "is different than its intended purpose."

It is correct that the scope and implementation of C-FERST evolved during implementation to address new information, needs, and capabilities with existing resources. The impetus for developing C-FERST (circa 2008) was 2-fold: (a) to help automate the Community Action for Renewed Action (CARE) step-by-step community assessment roadmap and provide easier access to information for following the roadmap, and (b) advance the science of community-level cumulative risk assessment. C-FERST was requested by the CARE program leads and Program/Regional Office partners, and the tool, as released, did meet the first objective and even included other community assessment roadmaps. With respect to the second objective, C-FERST was envisioned as a framework for developing and communicating cumulative exposure and risk science, as described in the following two papers.

- Zartarian et al. "*The Environmental Protection Agency's Community-Focused Exposure and Risk Screening Tool (C-FERST) and Its Potential Use for Environmental Justice Efforts.*" American Journal of Public Health. 2011, Vol. 101, No. S1. http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2010.300087
- Zartarian and Schultz, 2009, "*The EPA's human exposure research program for assessing cumulative risk in communities*." Journal of Exposure Science and Environmental Epidemiology (2010) 20, 351–358; doi:10.1038/jes.2009.20; published online 15 April 2009, http://www.nature.com/jes/journal/v20/n4/full/jes200920a.html

Page 1: Without metrics to measure performance against goals, it is unclear if C-FERST is being used for its intended purpose or, importantly, meeting user needs.

We agree that formal metrics could be more robust, but argue that C-FERST is being used for its intended purpose, and that the tool will gain users as it becomes more well known. Furthermore, we identified the difficulties and costs to systematically collect quantitative information about uses and users, including the need to OMB clearance for any data collections.

Informing potential users of C-FERST's capabilities is a major purpose for doing case studies, including joint applications with EJSCREEN. In addition, we described and provided examples of working with our Regional partners and their local agency, academic, and community partners. This allowed us to test the tool with real-world users and obtain and user feedback and recommendations in the publicly released version.

We provided OIG with the current QAPP, which describes our intent to continue outreach, identify partnerships, and work with our partners to obtain information about how the tools

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(working with EJSCREEN) are used, user-feedback and recommendations for future developments.

ORD also notes that the Management Alert does indicate that some of the C-FERST users who were interviewed "expressed enthusiasm for the tool's capability and what it can do for communities." ORD views this as a positive indication of the potential for C-FERST.

Page 2: Related to this finding, ORD altered the original purpose of the tool during development without properly documenting this change" and "The change had to do with the claim that C-FERST would characterize cumulative risks to toxic substances. … While National Exposure Research Laboratory (NERL) officials verbally acknowledged this change to us, it was not documented in the C-FERST Quality Assurance Project Plan (QAPP)."

While in retrospect we agree documentation could have been better, attempts to document the evolutionary changes were made. ORD does note that Management Alert indicates that the C-FERST Quality Assurance Project Plans (QAPPS) did not document a change in purpose relating to the extent to which C-FERST addresses cumulative risk assessment. ORD also notes that the Management Alert states only the 2009 QAPP made a passing reference to cumulative risk and noted that the C-FERST prototype version did not yet include the ability to calculate cumulative risk. Therefore, the C-FERST QAPPs developed in 2009, 2013, and 2017 were actually consistent and never implied that the tool had the capability to calculate cumulative risk. For example, the purpose of the project as stated in the 2013 QAPP was "to continue development of the Community-Focused Exposure and Risk Screening Tool (C-FERST) and Tribal-Focused Environmental Risk and Sustainability Tool (Tribal-FERST), web-based GIS and information access toolkits to enhance screening-level community environmental health decision-making." This is consistent with the current version of C-FERST. The data and functions covered in the 2013 QAPP are the same as those included in the public release version. The QAPP was followed for the tool development and data updates. After the public release in 2016 and in response to new ORD guidelines for QAPPs and "laboratory notebooks" for all projects, the QAPP has been revised and an electronic notebook (OneNote) is being used to document decisions, research and products. ORD also notes that although how the tool is described has changed and how the tool is used may change, these changes do not necessarily require revision of the QAPP. Finally, ORD notes that the change from conducting cumulative risk assessment was properly documented in the responses to the peer review comments, and proposed in the SHC 2.62 Project Plan and Task 2.62.1.

Page 2: Related to this finding, "Our review of documentation related to the planning and development of C-FERST shows that a significant change occurred in the design objectives of the tool between when ORD released the prototype version (circa 2008) and the official launch of the tool in September 2016."

Both the external peer review and internal agency concerns identified the need to be clear about what was in the tool and what it could do. The earlier descriptions of C-FERST were about <u>the concept and plans</u> for the tool. However, we had to describe what was <u>actually in the tool</u> at the time of the public release.

Page 4: Related to this finding, "ORD did not develop a project proposal for the C-FERST prototype (circa 2008)."

ORD's project planning process has matured significantly since the inception of C-FERST. The proposed C-FERST project followed the ORD project/task planning review process at the time (pre- National Programs) for NERL/HEASD Task 21163. Numerous briefings on the C-FERST plan were given to ORD management, as well as briefings to solicit collaborative input from our CARE Program partners across EPA's program and regional offices (including senior leaders in OPPT and OW).

Page 4: Related to this finding, "While early presentations on C-FERST generally described ideas for the tool, we did not see evidence that ORD performed a systematic assessment of community needs for the tool."

The introductions in the following 2 publications, and references therein, document the systematic assessment.

- Zartarian et al. *The Environmental Protection Agency's Community-Focused Exposure and Risk Screening Tool (C-FERST) and Its Potential Use for Environmental Justice Efforts.* American Journal of Public Health. 2011, Vol. 101, No. S1. http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2010.300087
- Zartarian and Schultz, 2009, *The EPA's human exposure research program for assessing cumulative risk in communities.* Journal of Exposure Science and Environmental Epidemiology (2010) 20, 351–358; doi:10.1038/jes.2009.20; published online 15 April 2009, http://www.nature.com/jes/journal/v20/n4/full/jes200920a.html

Page 4: Related to this finding, "ORD said the tool was developed with extensive input from EPA regional offices and communities but has not provided clear documentation from any EPA program office requesting the tool."

CARE partners requested that ORD develop an automated version of the CARE roadmap, and CARE leads in OPPT and OW, as well as ORD managers, were briefed early on about the collaboration. We also led regular C-FERST development calls with CARE Program and Regional Office partners in 2008, and the CARE program suggested ORD conduct several pilot studies in their communities of the beta version. CARE leads at the time assisted ORD with the three pilot studies as well as with seeking internal review across Program Offices for input on the prototype version of the tool. ORD can provide names of CARE collaborators on the early tool development calls if needed.

Page 5: Related to this finding, "One NERL scientist with experience in systems dynamics and decision science said that the tool was developed without coordination between the ecosystems and human health sides of ORD, and that C-FERST was developed before staff with spatial data experience heard about it."

ORD disagrees with this one individual's assessment. There were many ongoing discussions and

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joint briefings as early as 2009 between the ecosystems and human health researchers, specifically regarding coordination of C-FERST and EnviroAtlas.

Page 5: "C-FERST Overlaps with Other Agency Tools and ORD Has Not Described C-FERST's Unique Components"

ORD disagrees with this assertion. While there may be overlap (as opposed to duplication in the Management Alert), there have been presentations, fact sheets, and Q&As describing how C-FERST is unique compared to EJSCREEN and other tools. The text in the OIG Management Alert summarizes some of the unique components:

> "In our assessment based on our interviews with EPA staff and others, C-FERST overlaps most closely with EJSCREEN. EJSCREEN and C-FERST have similar functions and capabilities for identifying environmental risks in a community. Both tools provide a combination of demographic and environmental data (see Table 1), and allow users to compare the data from their local community (census tract) with state-level data. Unique to EJSCREEN, users can look at Environmental Justice Indices (combinations of environmental and demographic information), based on percentiles, and narrow in on specific demographic information not available elsewhere (including by language, country of origin, age, etc.).
>
> Unique to C-FERST, users are able to access more specific environmental data (particularly from the National Air Toxics Assessment dataset), find detailed information on potential ways to mitigate the harms of specific environmental pollutants through C-FERST's Issue Profiles, and see examples and advice for how to plan a community-level project with C-FERST's CARE Roadmap. ORD and others, such as EPA's Office of Environmental Justice, described C-FERST and EJSCREEN as distinct and complimentary tools explaining that C-FERST provides "context to information that may be available from other sources" (*i.e.,* MyEnvironment or EJSCREEN). One EPA regional user remarked that the nuanced level of data that C-FERST provides is useful in their work. Other users of the tool explained that they use EJSCREEN first as a broad screening tool, and then move to C-FERST to hone in on more community-specific data."

One area of <u>apparent</u> overlap is with regard to maps. There are some map layers in common, since these are on EPA's GeoPlatform, and some that were developed specifically for C-FERST (e.g., the NATA service, including contribution of source categories).

ORD has worked with OEJ (EJSCREEN) and OAQPS (NATA) to communicate the similarities and differences between our tools (see attached 4 tool comparison for NATA.) These include a description of the "focus for each tool" (C-FERST, EnviroAtlas, and EJSCREEN), and complementary uses. Several agency and public presentations have included comparisons and examples for using EJSCREEN and C-FERST together.

ORD was and remains cognizant to avoid duplication and minimize overlap with similar tools. We have worked with EJSCREEN to identify opportunities for collaboration on outreach and training.

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Office of the Administrator's Written Comments

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 3, 2017

OFFICE OF THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Management Alert: EPA Should Promptly Reassess Community Risk Screening Tool

FROM: Mike Flynn
Acting Deputy Administrator

TO: Patrick Gilbride, Director, Environmental Research Programs
Office of Program Evaluation
Office of Inspector General

Thank you for the opportunity to review and comment on the Office of Inspector General's draft *Management Alert: EPA Should Promptly Reassess Community Risk Screening Tool*. I appreciate the OIG's efforts to investigate hotline complaints and the OIG's commitment to preventing waste, fraud and abuse.

The OIG's draft *Management Alert* contains the following recommendation for the Deputy Administrator:

> Examine all of the U.S. Environmental Protection Agency's web-based risk screening and mapping tools to ensure the need for each tool and to avoid potential overlap, duplication and waste.

I agree that EPA's web-based risk screening and mapping tools should be developed to meet the targeted users' needs and, where possible, build on existing tools to avoid duplication and reduce waste. The EPA's Office of Environmental Information has mechanisms in place for coordinating mapping tools and data services across the agency. For example, OEI leads the EPA Geospatial Advisory Committee, which is the advisory board for the EPA's geospatial program

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overall and has representation from almost all programs and regions. OEI also leads the GeoPlatform Change Control and Operational Management Board. Programmatic groups developing applications that use EPA's GeoPlatform shared service and/or new enterprise geodata services are invited to discuss issues like consistency and re-using shared services.

I have asked OEI and the Chief Information Officer to review their existing policies and procedures to ensure that sufficient mechanisms are in place to identify potential overlap or duplication during the development or modification of any web-based risk screening and mapping tools.

With respect to existing web-based risk screening and mapping tools, the agency has developed a 4-Tool Comparison Chart to guide users to the tool or tools that will best serve their needs. The chart includes C-FERST as well as EJSCREEN, NATA, and EnviroAtlas, and is available at https://www.epa.gov/ejscreen/epa-4-tool-comparison-chart.

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Appendix C

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From: OIG News
Sent: Wed 9/6/2017 1:30:48 PM
Subject: OIG Report: "EPA's Travel Card Program at Low Risk for Unauthorized Purchases"
_epaoig_20170906-17-P-0377_cert.pdf

Attached is the EPA Office of Inspector General (OIG) report, *EPA's Travel Card Program at Low Risk for Unauthorized Purchases* (Report No. 17-P-0377). This report will be available to the public on the OIG's website at www.epa.gov/oig.

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Compliance with the law

EPA's Travel Card Program at Low Risk for Unauthorized Purchases

Report No. 17-P-0377 **September 6, 2017**

Report Contributors:

Doug LaTessa
Patrick McIntyre
Mike Petscavage
Mary Anne Strasser

Abbreviations

EPA	U.S. Environmental Protection Agency
FMFIA	Federal Managers' Financial Integrity Act
FY	Fiscal Year
OIG	Office of Inspector General
OMB	Office of Management and Budget
U.S.C.	United States Code

Cover photo: A sample government purchase card. (U.S. General Services Administration)

Are you aware of fraud, waste or abuse in an EPA program?

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Washington, DC 20460
(888) 546-8740
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U.S. Environmental Protection Agency
Office of Inspector General

17-P-0377
September 6, 2017

At a Glance

Why We Did This Audit

The Government Charge Card Abuse Prevention Act of 2012 requires the Inspector General of each executive agency with more than $10 million in travel card spending to conduct periodic audits or reviews of travel card programs to analyze risks of illegal, improper or erroneous purchases and payments.

Our objective was to analyze the risks of illegal, improper or erroneous purchases and payments within the U.S. Environmental Protection Agency's (EPA's) travel card program.

This report addresses the following:

- *Compliance with the law.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of OIG reports.

EPA's Travel Card Program at Low Risk for Unauthorized Purchases

What We Found

The EPA travel card program is at low risk for unauthorized purchases. The EPA should continue to follow its internal controls and procedures set forth in its travel policies and Office of Management and Budget guidance governing agency travel cards.

Our assessment determined that the EPA's travel card program is at low risk for unauthorized purchases.

On the basis of the results of this risk assessment, the Office of Inspector General (OIG) will not include a full audit but will include a required risk assessment of the EPA's travel card program in the OIG's fiscal years 2017–2018 work plan.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 6, 2017

MEMORANDUM

SUBJECT: EPA's Travel Card Program at Low Risk for Unauthorized Purchases
Report No. 17-P-0377

FROM: Arthur A. Elkins Jr.

TO: David Bloom, Acting Chief Financial Officer

This is our report on the subject risk assessment conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this risk assessment was OA-FY17-0157. This report represents the opinion of the OIG and does not necessarily represent the final EPA position.

This report contains no recommendations and you are not required to respond to this report. However, if you submit a response, it will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Purpose

The Office of Inspector General (OIG) conducted a risk assessment to analyze risks of illegal, improper or erroneous purchases and payments within the U.S. Environmental Protection Agency's (EPA) travel card program.

Background

The Government Charge Card Abuse Prevention Act of 2012 (Public Law 112-194), enacted October 5, 2012, states:

> The Inspector General of each executive agency with more than $10,000,000 in travel card spending shall conduct periodic audits or reviews of travel card programs to analyze risks of illegal, improper, or erroneous purchases and payments.

OMB M-13-21, issued September 6, 2013, defined "periodic" to be annually, at a minimum.

The EPA OIG has issued several reports on travel cards, including the following two recent reports:

- On August 24, 2016, the EPA OIG issued Report No. 16-P-0282, *EPA Oversight of Travel Cards Needs to Improve.* The report found that the EPA did not check travel card bank rebates for accuracy. The report made six recommendations. Four have been implemented, and for the other two, the EPA implemented acceptable alternative corrective actions.

- On September 22, 2015, the EPA OIG issued Report No. 15-P-0294, *EPA Needs Better Management Controls for Approval of Employee Travel*. The report found inadequate or no justification being provided for certain lodging above per diem rates, a lack of trip reports for international travel, vouchers not being submitted within the required timeframe, and travel card refresher training requirements not being in compliance with OMB Circular A-123 requirements. The report made 12 recommendations, and all 12 have been implemented.

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Responsible Offices

The Office of the Chief Financial Officer is responsible for managing the EPA travel program, including compliance with federal regulations and EPA policy, and monitoring travel program effectiveness. Within the Office of the Chief Financial Officer:

- The Office of the Controller issues policies and procedures for official EPA travel (including procedures regarding travel cards), and provides guidance to program offices and regions.
- The Cincinnati Finance Center manages the EPA E-GOV Travel Service System, maintains the travel help desk, assists with the E-Gov Travel Service system training when requested; serves as the EPA travel payment office, and pays proper travel claims (e.g., allowable expenses with required receipts) within 30 calendar days of receipt of travel vouchers.

Scope and Methodology

We conducted this performance audit from March through August 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our objective.

To assess the risk of the EPA's travel card program, we performed the following:

- Reviewed applicable laws, OMB guidance, regulations, and EPA travel card policies and procedures. Further details are in Appendix A.
- Followed up on prior EPA OIG audit recommendations for the EPA travel card program.
- Reviewed the U.S. General Services Administration SmartPay2 Master Contract.
- Interviewed EPA staff involved with travel card oversight.
- Reviewed management reports that the EPA uses to manage the travel card program.
- Reviewed EPA's internal control assessments over the travel card program and the Fiscal Year (FY) 2016 Federal Managers' Financial Integrity Act (FMFIA) Assurance Letter.
- Reviewed FY 2016 travel voucher data.

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Results of Risk Assessment

The EPA travel card program is at low risk for unauthorized purchases. The EPA should continue to follow its internal controls and procedures set forth in its travel policies and OMB's guidance governing agency travel cards.

EPA Has Incorporated Required Internal Controls

The EPA incorporated the 46 internal controls for travel cards that we identified as being required by the Government Charge Card Abuse Prevention Act of 2012 and OMB Circular A-123, Appendix B – *Improving the Management of Government Charge Card Programs*. Those 46 internal controls are listed in Appendix A of this report. We noted the following processes to implement some of the 46 controls:

- The EPA requires receipts for all expenses over $75.
- The EPA runs and reviews quarterly reports for frequent travelers to the same location, and submits irregularities to the Financial Policy and Planning Staff for further review.
- The EPA performs verifications and internal reviews, as needed, to ensure that the EPA pays only valid travel expenses.
- The EPA conducts random audits on travel vouchers less than $2,500 and audits: (a) all travel vouchers that exceed $2,500, excluding the cost of the airfare; and (b) all travel vouchers prepared for Presidential appointees and employees at the Assistant or Regional Administrator level or higher.

Travel Card Contract

Per the U.S. General Services Administration Smart Pay2 contract: "Full liability for all charges and fees rests with the individual cardholder" and "The Government shall not be liable for individually billed accounts."

Internal Control Assessment and FMFIA Assurance Letter

The EPA conducted an internal control assessment of EPA travel in FYs 2014, 2015 and 2016. The FY 2014 assessment reported 15 internal control deficiencies, and recommended corrective actions. The FY 2016 assessment report, *Sensitive Payment Areas Internal Control Validation Report – Travel, Payroll, Parking and Transit,* reported 14 of 15 corrective actions from the FY 2014 report have been completed, with one corrective action (related to a lack of clarity for appropriate approvals for the EPA executives) still pending completion in FY 2017. The FY 2015 internal control assessment reviewed the following areas:

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- Reasonable Accommodations.
- Travel Approval Lists.
- International Travel.
- Above Per Diem.
- High Cost>$5,000.
- Executive Approval Framework.

The EPA's internal control assessment concluded the key travel controls were in place: travel was authorized to the approved temporary duty location, within statutory boundaries, and justified by expense receipts. That internal control assessment also identified five control deficiencies:

- Travel reports for international travel were infrequently submitted, and travelers were not held accountable for submitting those reports.
- Above per diem lodging requests were not often approved by second line supervisors.
- Receipts were not uploaded in the travel voucher.
- Second line supervisor approval was not always obtained for travel above $5,000.

As a result of internal control reviews, the EPA concluded in its August 19, 2016, FMFIA Assurance Letter that the internal controls within the Office of the Chief Financial Officer are adequate to provide reasonable assurance that the programs, operations, functions and resources are protected against fraud, waste, abuse and mismanagement.

Travel Voucher Totals

For the first half of FY 2016 (October 1, 2015, through March 31, 2016), there were 21,441 travel vouchers. 14,009 of those vouchers (65 percent) were for less than $1,000; 7,277 (34 percent) were valued between $1,000 and $4,999, and 155 (1 percent) were equal to or greater than $5,000.

Conclusion

We consider the EPA's travel card program to be of low risk based on: the 46 travel card controls in place as required by statute and OMB guidance; additional controls identified by auditors; the EPA implementation of corrective actions for most identified deficiencies and progress toward completion of those remaining; the U.S. General Services Administration contract that limits the government's liability of individually billed accounts; agency verification of the effectiveness on internal controls through the agency internal reviews and assessment for the FMFIA Assurance Letter; and the low dollar value of most of the travel vouchers.

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EPA Comments and OIG Evaluation

We held a meeting with EPA staff on August 2, 2017, to discuss the results of our review. The EPA concurred with our conclusions, and did not have any comments based on a discussion document provided to the agency on July 19, 2017.

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Required Internal Controls

Public Law 112-194, Government Charge Card Abuse Prevention Act of 2012, requires the head of each agency to establish and maintain nine safeguards and internal controls for travel charge cards. OMB Circular A-123, Appendix B, *Improving the Management of Government Charge Card Programs*, contains numerous internal controls related to government charge card programs, including several types of government charge cards, such as purchase, travel, fleet and integrated cards. For our review, we judgmentally selected 37 OMB internal controls related to the travel card program. Therefore, in total, we selected 46 required travel card internal controls, for which we sought to verify whether the EPA incorporated/established these controls within the agency's policies and procedures. The 46 internal controls are listed below. All 46 of the internal controls listed below are direct quotes.

Public Law 112-194, Government Charge Card Abuse Prevention Act of 2012 (nine controls):

1. There is a record in each executive agency of each holder of a travel charge card issued on behalf of the agency for official use, annotated with the limitations on amounts that are applicable to the use of each such card by that travel charge card holder.
2. Rebates and refunds based on prompt payment, sales volume, or other actions by the agency on travel charge card accounts are monitored for accuracy and properly recorded as a receipt of the agency that employs the card holder.
3. Periodic reviews are performed to determine whether each travel charge card holder has a need for the travel charge card.
4. Appropriate training is provided to each travel charge card holder and each official with responsibility for overseeing the use of travel charge cards issued by the executive agency.
5. Each executive agency has specific policies regarding travel charge cards issued for various component organizations and categories of component organizations, the credit limits authorized for various categories of card holders, and categories of employees eligible to be issued travel charge cards, and designs those policies to minimize the financial risk to the Federal Government of the issuance of the travel charge cards and to ensure the integrity of travel charge card holders.
6. Each executive agency has policies to ensure its contractual arrangement with each travel charge card issuing contractor contains a requirement that the creditworthiness of an individual be evaluated before the individual is issued a travel charge card, and that no individual be issued a travel charge card if that individual is found not creditworthy as a result of the evaluation (except that this paragraph shall not preclude issuance of a restricted use, prepaid, declining balance, controlled-spend, or stored value card when the individual lacks a credit history or has a credit score below the minimum credit score established by the Director of the Office of Management and Budget). The Director of the Office of Management and Budget shall establish a minimum credit score for determining the creditworthiness of an

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individual based on rigorous statistical analysis of the population of card holders and historical behaviors. Notwithstanding any other provision of law, such evaluation shall include an assessment of an individual's consumer report from a consumer reporting agency as those terms are defined in section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a).

7 Each executive agency uses effective systems, techniques, and technologies to prevent or identify improper purchases.

8 Each executive agency ensures that the travel charge card of each employee who ceases to be employed by the agency is invalidated immediately upon termination of the employment of the employee (or, in the case of a member of the uniformed services, upon separation or release from active duty or full-time National Guard duty).

9 Each executive agency shall ensure that, where appropriate, travel card payments are issued directly to the travel card-issuing bank for credit to the employee's individual travel card account.

OMB Circular A-123, Appendix B, *Improving the Management of Government Charge Card Programs* (37 controls):

1 Identification of key management officials and their responsibilities for travel card program. These officials will include, but are not limited to, Agency/Organization Program Coordinator (A/OPC), Approving Officials or other equivalent officials, and other accountable/billing officials.

2 Establishment of a process for formal appointment of cardholders and approving officials, where applicable.

3 Implementation of a process to ensure the credit worthiness of new charge card applicants consistent with Chapter 6 of this Guidance.

4 Description of agency training requirements.

5 Management controls, policies, and practices for ensuring appropriate travel charge card and convenience check usage and oversight of payment delinquencies, fraud, misuse, or abuse.

6 Establishment of appropriate authorization controls.

7 Explanation of how available reports and data are used for monitoring delinquency, misuse, performance metrics, spend analysis, and other relevant transactions and program management issues.

8 Documentation and record retention requirements.

9 Recovery of charge cards and other documentation when employees terminate employment, and if applicable, when an employee moves to a different organization.

10 Description of how the agency will ensure the ongoing effectiveness of the actions taken pursuant to this Guidance including, but not limited to, evaluating the effectiveness of training (Chapter 3), risk management controls (Chapters 4 and 6), refund management controls (Chapter 7), strategic sourcing policies (Chapter 8), and tax recovery efforts (Chapter 11).

11 All program participants must be trained prior to appointment.

12 All program participants must take refresher training, at a minimum, every 3 years.

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13 All program participants must certify that they have received the training, understand the regulations and procedures, and know the consequences of inappropriate actions.
14 Copies of all training certificates must be maintained pursuant to U.S. National Archives and Records Administration (NARA) requirements, General Records Schedule 1. Item 10a.
15 Implementing the appropriate controls to ensure compliance with Federal laws, agency regulations, and for monitoring program effectiveness.
16 Ensuring that any risk management policies and practices established in the agency's travel card management plan are carried out effectively and that the charge card management plan is updated with enhanced risk management policies and practices, as applicable.
17 Reviewing available data . . . to detect instances of delinquency, fraud, and misuse and identify trends and outliers in relevant indicators of charge card program performance.
18 Maintaining a policy that ensures that administrative and/or disciplinary actions are initiated in the event cardholders or other program participants fail to meet their responsibilities with respect to appropriate use and timely payment of the charge card….
19 Communicating the agency's policy with respect to administrative and/or disciplinary actions to cardholders, and other program participants, including when referral to an agency Office of Inspector General is appropriate and/or required.
20 Closely monitor delinquency reports from charge card vendors.
21 Contact the delinquent cardholder promptly to ensure payment is made or to obtain a remediation plan.
22 Formally notify the cardholder that delinquency in payment may result in disciplinary action.
23 Incorporate all controls, practices and procedures related to individually billed account delinquencies into the agency's charge card management plan, consistent with Section 2.3 of this Guidance.
24 Implement split disbursement and salary offset procedures for travel charge card programs. … Split disbursement is the process of dividing a travel voucher reimbursement between the charge card vendor and traveler. The balance owed to each is sent directly to the applicable party.
25 Develop policies and procedures to mitigate risks associated with the travel charge card programs.
26 Develop and impose disciplinary action deemed appropriate by the agency in cases of charge card misuse.
27 Implement proper training for cardholders, approving officials, and all other staff involved in using charge cards consistent with Chapter 3 of this Guidance.
28 Review charge card statements and account activity reports to identify questionable or suspicious transactions.
29 Review ATM cash withdrawals for reasonableness and association with official travel,
30 Contact employees to inquire about questionable or suspicious transactions.
31 Initiate administrative and/or disciplinary actions for each occurrence of charge card misuse . . . .

32 Incorporate all controls, practices and procedures related to charge card misuse into the agency's charge card management plan, consistent with Section 2.3 of this Guidance.

33 Implement strict internal controls that mitigate charge card risks to the great extent possible.

34 Perform periodic reviews of spending and transaction limits to ensure appropriateness.

35 Conduct internal charge card program reviews on a regular basis to ensure internal control mechanisms are adequate.

36 Deactivate travel charge cards during periods of non-travel status.

37 Keep current on new and innovative solutions to detect and prevent misuse and fraud, such as;

- Data mining;
- Blocking card use for high risk merchant category codes;
- More restrictive spending limits during expected periods of inactivity;
- Periodic review of cardholder accounts for continued necessity; and
- Establishing a control to ensure that card accounts are canceled when the employee retires or leaves the agency.

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Appendix B

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Audit Follow-Up Coordinator, Office of the Chief Financial Officer

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From: Conklin, Jeanne
Sent: Mon 8/28/2017 9:06:09 PM
Subject: Re: EPA OIG Notification Memo: Audit of EPA's Adherence to Policies, Procedures, and Oversight Controls Pertaining to the Administrator's Travel

Hi Angela
I will be the OCFO POC on this engagement. Please have Ms. Wong contact me and I will assist in any way needed.

Thank you in advance.

Jeanne Conklin, Controller
OCFO, Office of the Controller
202-564-5342

On Aug 28, 2017, at 1:28 PM, Bennett, Angela <Bennett.Angela@epa.gov> wrote:

Good Afternoon Mr. Bloom,

We plan to begin preliminary research on the subject audit (OIG Project No. OA-FY17-0382). Our objectives are to determine: 1) the frequency, cost and extent of the Administrator's travel that included trips to Oklahoma; 2) whether applicable EPA travel policies and procedures were followed; and 3) whether EPA policies and procedures are sufficiently designed to prevent fraud, waste and abuse. For the preliminary research phase of the audit, we will gather information needed to determine whether further work is warranted. The attached memorandum provides additional information on this project.

Lela Wong is the auditor-in-charge of the project. Lela will contact your office to arrange a mutually agreeable time to discuss our objectives and our plans for the preliminary research phase. In the meantime, if you have any questions or concerns, please contact John Trefry, Director, at (202) 566-2474 or myself.

Angela

Angela Bennett, **CFE**| Lead Auditor | U.S. Environmental Protection Agency

Office of Inspector General | Forensic Audit

61 Forsyth St. SW | Atlanta, GA 30303 | Tel 404.562.9844 | bennett.angela@epa.gov

<OIG Notification Memo for Audit of Administrator's Travel 8.28.17.pdf>

To: Bloom, David[Bloom.David@epa.gov]
Cc: Pruitt, Scott[Pruitt.Scott@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Darwin, Henry[darwin.henry@epa.gov]; Chmielewski, Kevin[chmielewski.kevin@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Trent, Bobbie[Trent.Bobbie@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Valentine, Julia[Valentine.Julia@epa.gov]; Osborne, Howard[Osborne.Howard@epa.gov]; Conklin, Jeanne[Conklin.Jeanne@epa.gov]; Elkins, Arthur[Elkins.Arthur@epa.gov]; Sheehan, Charles[Sheehan.Charles@epa.gov]; Larsen, Alan[Larsen.Alan@epa.gov]; Christensen, Kevin[Christensen.Kevin@epa.gov]; Copper, Carolyn[Copper.Carolyn@epa.gov]; Sullivan, Patrick F.[Sullivan.Patrick@epa.gov]; Shields, Edward[Shields.Ed@epa.gov]; Eyermann, Richard[Eyermann.Richard@epa.gov]; Kaplan, Jennifer[Kaplan.Jennifer@epa.gov]; Lagda, Jeffrey[Lagda.Jeffrey@epa.gov]; Elbaum, Kentia[elbaum.kentia@epa.gov]; Trefry, John[Trefry.John@epa.gov]; Wong, Lela[Wong.Lela@epa.gov]
From: Bennett, Angela
Sent: Mon 8/28/2017 5:28:31 PM
Subject: EPA OIG Notification Memo: Audit of EPA's Adherence to Policies, Procedures, and Oversight Controls Pertaining to the Administrator's Travel
OIG Notification Memo for Audit of Administrator's Travel 8.28.17.pdf

Good Afternoon Mr. Bloom,

We plan to begin preliminary research on the subject audit (OIG Project No. OA-FY17-0382). Our objectives are to determine: 1) the frequency, cost and extent of the Administrator's travel that included trips to Oklahoma; 2) whether applicable EPA travel policies and procedures were followed; and 3) whether EPA policies and procedures are sufficiently designed to prevent fraud, waste and abuse. For the preliminary research phase of the audit, we will gather information needed to determine whether further work is warranted. The attached memorandum provides additional information on this project.

Lela Wong is the auditor-in-charge of the project. Lela will contact your office to arrange a mutually agreeable time to discuss our objectives and our plans for the preliminary research phase. In the meantime, if you have any questions or concerns, please contact John Trefry, Director, at (202) 566-2474 or myself.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

August 28, 2017

MEMORANDUM

SUBJECT: Project Notification:
Audit of EPA's Adherence to Policies, Procedures and Oversight Controls
Pertaining to the Administrator's Travel
Project No. OA-FY17-0382

FROM: John Trefry, Director, Forensic Audits
Office of Audit

TO: David Bloom, Acting Chief Financial Officer

The Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) plans to begin preliminary research on the EPA's adherence to policies, procedures and oversight controls pertaining to the Administrator's travel to Oklahoma. This assignment is being initiated based on congressional requests and a hotline complaint, all of which expressed concerns about Administrator Pruitt's travel—primarily his frequent travel to and from his home state of Oklahoma at taxpayer expense.

Our objectives will be to determine the following:

- The frequency, cost and extent of the Administrator's travel that included trips to Oklahoma, through July 31, 2017.
- Whether applicable EPA travel policies and procedures were followed for Administrator Pruitt's travel that included trips to Oklahoma, as well as other EPA staff and security personal traveling with or in advance of Administrator Pruitt.
- Whether EPA policies and procedures are sufficiently designed to prevent fraud, waste and abuse with the Administrator's travel that included trips to Oklahoma.

To accomplish these objectives, we will review supporting documentation and conduct interviews with management and staff to determine whether the EPA followed applicable policies and practices, and complied with federal requirements. The OIG plans to work with the EPA's Cincinnati Finance Center and the Office of the Chief Financial Officer to obtain needed information. Applicable generally accepted government auditing standards will be used in conducting our work. The anticipated benefits of this project are to improve operational efficiency.

We anticipate starting our work in late August. We will contact the audit coordinator to arrange a mutually agreeable time to discuss our objectives and the purpose of the audit. We would also be particularly interested in any areas of concern that you may have. We will answer any questions you may have about the project process, reporting procedures, methods used to gather and analyze data, and what we should expect of each other during the course of the project. Throughout the project, we will provide updates on a regular basis through a monthly meeting or via email, phone or video conference.

We respectfully note that the OIG is authorized by the Inspector General Act of 1978 to have timely access to personnel and all materials necessary to complete its objectives. We will request your resolution if an agency employee or contractor refuses to provide requested records to the OIG, or otherwise fails to cooperate with the OIG. We may report unresolved access matters to the Administrator and include the incident in the Semiannual Report to Congress.

I will supervise the project, and the Project Manager will be Angela Bennett. Should you or your staff have any questions, please contact me at (202) 566-2474 or trefry.john@epa.gov, or Angela Bennett at (404) 562-9844 or bennett.angela@epa.gov.

cc: Scott Pruitt, Administrator
Ryan Jackson, Chief of Staff
Henry Darwin, Chief of Staff for Operations
Kevin Chmielewski, Deputy Chief of Staff for Operations
Kevin Minoli, Acting General Counsel
Bobbie Trent, Agency Follow-Up Coordinator
Troy Lyons, Associate Administrator, Congressional and Intergovernmental Relations
Liz Bowman, Acting Associate Administrator for Public Affairs
Julia Valentine, Acting Director, Office of Media Relations, Office of Public Affairs
Howard Osborne, Associate Chief Financial Officer
Jeanne Conklin, Controller, Office of the Controller, Office of the Chief Financial Officer
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Richard Eyermann, Deputy Inspector General for Audit
Jennifer Kaplan, Deputy Inspector General for Congressional and Public Affairs
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Tia Elbaum, Congressional and Media Liaison, Office of Inspector General

To: Vizian, Donna[Vizian.Donna@epa.gov]; Bloom, David[Bloom.David@epa.gov]
Cc: Pruitt, Scott[Pruitt.Scott@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Darwin, Henry[darwin.henry@epa.gov]; Chmielewski, Kevin[chmielewski.kevin@epa.gov]; Trent, Bobbie[Trent.Bobbie@epa.gov]; Anthony, Sherri[Anthony.Sherri@epa.gov]; Howard, MarkT[Howard.Markt@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Valentine, Julia[Valentine.Julia@epa.gov]; Osborne, Howard[Osborne.Howard@epa.gov]; Showman, John[Showman.John@epa.gov]; Gray, Linda[gray.linda@epa.gov]; Hitchens, Lynnann[hitchens.lynnann@epa.gov]; Hardy, Michael[Hardy.Michael@epa.gov]; Jones, Quentin[Jones.Quentin@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Lemley, Lauren[Lemley.Lauren@epa.gov]; Carpenter, Wesley[Carpenter.Wesley@epa.gov]; Smith-Starckey, Tracye[Smith-Starckey.Tracye@epa.gov]
From: OIG News
Sent: Mon 8/28/2017 1:30:48 PM
Subject: OIG Report: "EPA Needs to Increase Oversight of Leave Bank Program to Improve Efficiency and Reduce Risk of Misuse"
_epaoig_20170828-17-P-0374_cert.pdf

Attached is the EPA Office of Inspector General (OIG) report, *EPA Needs to Increase Oversight of Leave Bank Program to Improve Efficiency and Reduce Risk of Misuse* (Report No. 17-P-0374). This report will be available to the public on the OIG's website at www.epa.gov/oig.

U.S. ENVIRONMENTAL PROTECTION AGENCY

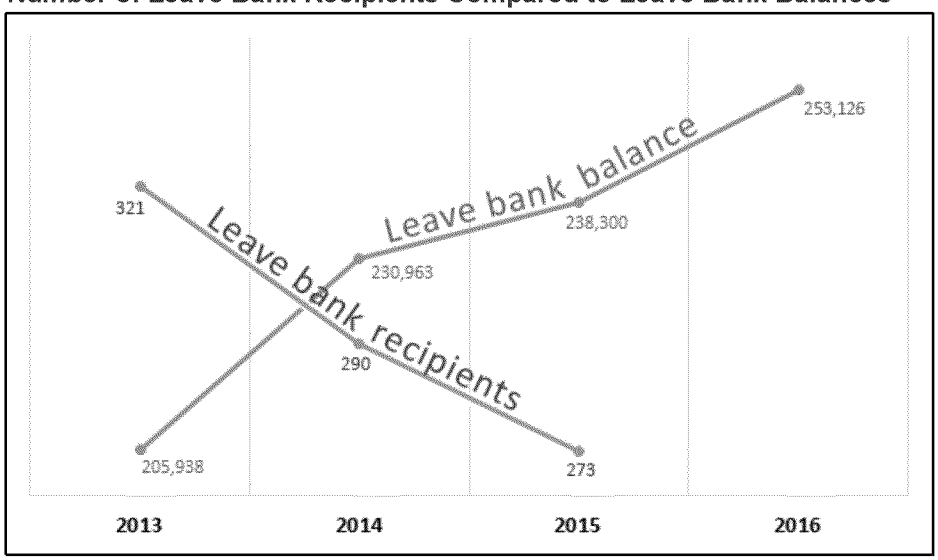
OFFICE OF INSPECTOR GENERAL

Operating efficiently and effectively

EPA Needs to Increase Oversight of Leave Bank Program to Improve Efficiency and Reduce Risk of Misuse

Report No. 17-P-0374 **August 28, 2017**

Number of Leave Bank Recipients Compared to Leave Bank Balances



Report Contributors:

Michael D. Davis
Randy Holthaus
Lisa Bergman
Alexandra Zapata-Torres

Abbreviations

CFR	Code of Federal Regulations
DOJ	Department of Justice
EOUSA	Executive Office of the U.S. Attorneys
EPA	U.S. Environmental Protection Agency
FFAS	Farm and Foreign Agricultural Services
FPPS	Federal Personnel Payroll System
LBB	Leave Bank Board
NIH	National Institutes of Health
OARM	Office of Administration and Resources Management
OHR	Office of Human Resources
OIG	Office of Inspector General
OPM	Office of Personnel Management
PPL	PeoplePlus
U.S.C.	United States Code
USDA	U.S. Department of Agriculture
VLBP	Voluntary Leave Bank Program

Cover image: OIG graphic showing the number of leave bank recipients for years 2013–2015 and leave bank starting balances in hours for years 2013–2016.

Are you aware of fraud, waste or abuse in an EPA program?

EPA Inspector General Hotline
1200 Pennsylvania Avenue, NW (2431T)
Washington, DC 20460
(888) 546-8740
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U.S. Environmental Protection Agency
Office of Inspector General

17-P-0374
August 28, 2017

At a Glance

Why We Did This Review

We conducted this audit to determine whether the U.S. Environmental Protection Agency (EPA) had established and implemented internal controls for the Voluntary Leave Bank Program to prevent and detect fraud, waste and abuse in the program.

The EPA established its Voluntary Leave Bank Program, managed by the Office of Administration and Resources Management, in 1988. The leave bank provides assistance to federal employees who would be facing a significant financial hardship due to a medical emergency. Participating employees can receive leave contributions from the leave bank when they have exhausted their accrued leave hours and are experiencing a medical emergency. As of June 30, 2016, the EPA's voluntary leave bank balance was 249,789 hours, which we valued at about $10.8 million.

This report addresses the following:

- *Operating efficiently and effectively.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of OIG reports.

EPA Needs to Increase Oversight of Leave Bank Program to Improve Efficiency and Reduce Risk of Misuse

What We Found

The stewardship of leave bank resources is vulnerable to fraud, waste and misuse because the EPA has not implemented adequate internal controls.

The EPA did not adequately manage the Voluntary Leave Bank Program to assess the solvency or efficiency of the program, adequately safeguard personal employee information, or minimize the potential for misuse. The EPA did not routinely monitor the bank balance or the bank's solvency. Further, the EPA did not periodically assess whether adjustments were needed to the maximum number of hours that employees could use, or to the minimum number of hours an employee was required to contribute annually. Also, the Leave Bank Board did not routinely assess and verify medical certifications to approve an application and determine how many hours should be provided. Inaccurate timekeeping data incorrectly showed that leave bank recipients used more than the allowed 280 hours per leave year and conflicted with the payroll system.

These conditions occurred because the EPA Office of Administration and Resources Management did not develop and implement official policies and procedures to administer the leave bank and govern the actions of the Leave Bank Board. Also, the timekeeping system did not have working controls to prevent employees from entering more than the leave bank hours allowed. As a result, the EPA cannot adequately determine whether the leave bank program is solvent; determine whether the hours in the bank exceed needs; adequately protect against fraud, waste and abuse; or provide supervisors with reliable information to properly verify employees' time.

Recommendations and Planned Agency Corrective Actions

We recommend that the Assistant Administrator for Administration and Resources Management develop and implement official policies and procedures for administering the program, conduct a risk assessment of the program, and gather and analyze the required Voluntary Leave Bank Program data and provide the results to leave bank managers for use in decision-making. In addition, we recommend that the Assistant Administrator for Administration and Resources Management and the Chief Financial Officer work together to develop and implement a method for supervisors to view real-time data of employee leave bank and leave transfer balances, and issue guidance and train supervisors on the leave bank and leave transfer programs and their roles and responsibilities for approving timesheets of employees using the leave programs.

The agency concurred with our six recommendations. The agency has completed corrective actions for three of the recommendations, and we consider the planned corrective actions for the other three recommendations to be acceptable.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

August 28, 2017

MEMORANDUM

SUBJECT: EPA Needs to Increase Oversight of Leave Bank Program to Improve Efficiency and Reduce Risk of Misuse
Report No. 17-P-0374

FROM: Arthur A. Elkins Jr.

TO: Donna J. Vizian, Acting Assistant Administrator
Office of Administration and Resources Management

David Bloom, Acting Chief Financial Officer

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY16-0063. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Manual 2750, you provided acceptable corrective actions and milestone dates for all six of our recommendations. Recommendations 2, 4 and 5 are considered completed and closed. Planned corrective actions for Recommendations 1, 3 and 6 are considered acceptable. As a result, you are not required to provide a written response to this report. However, if you choose to submit a response, it will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1
Introduction

Purpose

We conducted our audit to determine whether the U.S. Environmental Protection Agency (EPA) had established and implemented internal controls for the Voluntary Leave Bank Program (VLBP) to prevent and detect fraud, waste and abuse of the program. The audit focused on whether the EPA managed the VLBP in accordance with regulations to accomplish the program's purpose.

Background

Legal Authority and Requirements for VLBP

Title 5 U.S.C. Chapter 63, Subchapter IV, *Voluntary Leave Bank Program,* §6362, provides authority to the Office of Personnel Management (OPM) to establish a VLBP. OPM issued specific requirements for how to manage the VLBP in the Code of Federal Regulations (CFR), including that each agency participating "shall. . . [d]evelop written policies and procedures for establishing and administering leave banks and leave bank boards [LBBs]."[1]

The EPA established its VLBP in 1988. The VLBP provides assistance to federal employees who would be facing a significant financial hardship due to a medical emergency. The VLBP accumulates employee contributions of annual leave hours into its leave bank. Employees participating in the VLBP can receive leave contributions from the leave bank when they have exhausted their accrued annual and sick leave hours and are experiencing a medical emergency. As of June 30, 2016, the EPA's voluntary leave bank balance was 249,789 hours, which we valued at about $10.8 million.[2]

The VLBP law and regulation require agencies to establish an LBB for administering and managing the program. The LBB is responsible for performing the necessary functions relating to the VLBP, such as reviewing and approving employee applications, monitoring leave bank solvency, and monitoring the status of each recipient's case. The LBB must be comprised of three people, with at least one from a labor organization or employee group.

[1] Title 5 CFR, Chapter I, Subchapter B, Part 630, Subpart J, *Voluntary Leave Bank Program*, § 630.1003 (a)(1).
[2] The $10.8 million estimate is calculated by using the pay rate per hour of a federal employee in the GS-13 step 1 pay level with a duty station in Washington, D.C., during year 2015 (249,789 hours x $43.52 = $10,870,817).

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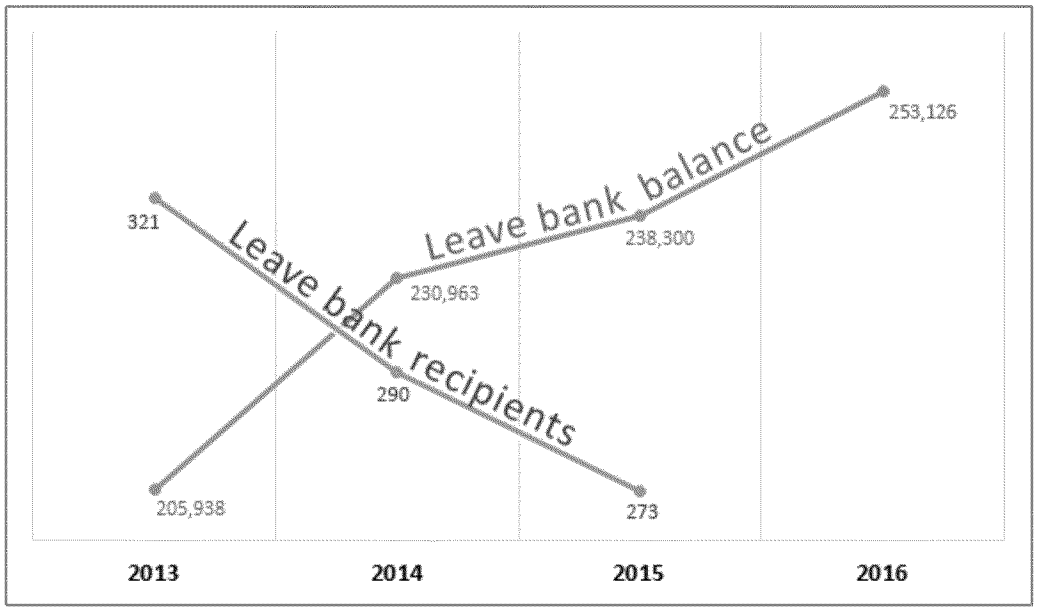
The EPA VLBP's national program manager is responsible for organizing and disseminating recipient applications to the LBB. Also, the national program manager is responsible for communicating with applicants about whether their applications for leave were approved or denied. In addition, the national program manager is responsible for maintaining VLBP records, including case files. A national program coordinator and leave bank coordinators in the regions and headquarters program offices assist the national program manager and the LBB with these responsibilities.

The leave bank balance has increased by about 23 percent over the last few years, from a leave-year starting balance of nearly 206,000 hours in 2013 to over 253,000 hours in 2016. However, while the leave bank balance of hours increased, the number of leave bank recipients[3] dropped by about 15 percent, from 321 in 2013 to 273 in 2015, as shown in Figure 1.

Figure 1: Number of leave bank recipients (2013–2015) and leave bank starting balances in hours (2013–2016)



EPA OIG graphic.

[3] We calculated the number of leave bank recipients for 2013–2015 from the EPA's LBB recipient application logs for those years. We completed gathering data before the 2016 leave year ended and, therefore, are not presenting data for 2016.

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Responsible Offices

There are two EPA offices with primary responsibility over the issues discussed in this report:

- The Office of Administration and Resources Management (OARM) provides national leadership, issues policy, and manages many essential support functions for the EPA, including human resources management. OARM's Office of Human Resources (OHR) is responsible for the VLBP and manages EPA data in its payroll system—the Federal Personnel Payroll System (FPPS).

- The Office of the Chief Financial Officer is responsible for managing and operating the EPA's timekeeping system—PeoplePlus (PPL).

Scope and Methodology

We conducted our performance audit from March 2016 to June 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We examined the VLBP's internal controls and other applicable activities for the period January 1, 2013, to December 31, 2016. Key elements of the program that we reviewed were:

- Whether the EPA monitored and maintained solvency of the leave bank.
- How the EPA approved and denied leave applications.
- Whether the EPA maintained and used leave bank records.

Appendix A contains a more detailed list of activities we conducted.

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Chapter 2
EPA's Leave Bank Not Adequately Managed to Assess Solvency, Safeguard Sensitive Records, or Minimize Potential Misuse

The EPA did not adequately manage the VLBP to assess the solvency or efficiency of the program, adequately safeguard personal employee information, or minimize potential misuse. In particular, OARM and LLB did not:

- Routinely monitor the leave bank balance or the leave bank's solvency to determine whether the amount of leave in the bank was adequate to meet future obligations or was in excess of needs.
- Periodically assess the maximum number of leave hours an employee could use each year to determine when adjustments to the threshold were necessary.
- Maintain all required records for managing the program.
- Adequately safeguard the records it did maintain.
- Assess or verify medical certifications, used as the primary basis for deciding whether to approve an application and determine how many hours should be provided to an employee.

This occurred because OARM did not develop and implement official policies and procedures to administer the leave bank and govern actions of the LBB. Also, there have not been any risk assessments or program performance reviews of the program. Without adequate policies, procedures and controls in place, the EPA did not have the necessary information to manage the program and determine whether program goals were being accomplished. Further, the EPA cannot adequately determine whether the leave bank program is solvent; the hours in the bank exceed needs; or that the program is adequately protected against fraud, waste and abuse.

EPA LBB Did Not Monitor Solvency of Leave Bank

Federal Regulations and Standards Provide for VLBP Management

OPM issued 5 CFR, Chapter I, Subchapter B, Part 630, Subpart J, *Voluntary Leave Bank Program*, to provide agencies with procedures and requirements to manage the VLBP. These requirements include that the agency shall develop

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written policies and procedures for establishing and administering leave banks and LBBs.[4] In turn, the LBB is to monitor the amount of leave in the bank and the number of recipient applications submitted, and maintain an adequate amount of annual leave in the bank.[5] According to 5 CFR § 630.1012, the agency is to maintain records concerning the VLBP administration, to include:

> (1) The number of leave bank members for each leave year;
>
> (2) The number of applications approved for medical emergencies affecting the employee, and the number of applications approved for medical emergencies affecting an employee's family member;
>
> (3) The grade or pay level of each leave contributor, and the total amount of annual leave he or she contributed to the bank;
>
> (4) The grade or pay level and gender of each recipient, and the total amount of annual leave he or she actually used. …

The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government* (November 1999 and September 2014) describes the internal control standards agencies are to use to provide reasonable assurance that the objectives of the agency are being achieved. Some of these standards include:

- Internal control should provide for an assessment of the risks the agency faces from both external and internal sources.
- Pertinent information should be identified, recorded and distributed to management and others within the entity in a form and time frame that permits people to perform their duties efficiently and enables them to carry out their internal control responsibilities.
- Activities need to be established to monitor performance measures and indicators.
- Managers need to compare actual performance to planned or expected results.

[4] 5 CFR § 630.1003 (a)(1).
[5] 5 CFR § 630.1003(d).

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LBB Did Not Monitor Leave Bank Balance and EPA Managers Did Not Maintain Required Records to Assess Performance or Solvency

The LBB did not routinely monitor the bank balance or the bank's solvency to determine whether the amount of leave was adequate to meet future obligations. Although the board informally discussed the bank's balance on an ad hoc basis, the board did not regularly monitor the balance of leave hours in the bank, document these bank balance discussions, or perform any measurements or calculations to assess the solvency or adequacy of the bank balance for future use and demands.

In addition, the program staff did not maintain the information required by 5 CFR § 630.1012 for the VLBP listed in the previous section. All the required data elements were available except for the gender of each recipient. However, the data was accessible in raw form that was not useful for assessing the current or future needs or the leave bank's solvency. For the required data elements to be useful, VLBP managers should gather the data elements, summarize and analyze the results, and present the data to the LBB for consideration.

According to two of the LBB members, the total number of hours allowable to recipients per year increased over the last several years, from 240 hours to the current 280 hours. OHR staff provided two OHR Director's memorandums announcing that the maximum leave bank hours allowed per year were increased. The first memo, issued in September 2009, announced an increase from 200 to 240. The second memo, issued in May 2011, announced the maximum hours increase from 240 to 280. However, OARM had no documentation to show why and how these decisions for change were made.

The EPA's authorized full-time employee levels decreased by nearly 2,000 (11 percent) from 17,359 in 2011 to 15,376 in 2016. Conversely, the leave bank balance increased about 23 percent from 2013 to 2016,[6] even while the maximum allowable hours provided to recipients increased to 280 hours per recipient. The leave year starting balance in 2013 was nearly 206,000 hours; in 2016, the balance had risen to over 253,000. Figure 2 provides details.

[6] OARM was unable to provide us with the leave bank starting balances for years 2011 or 2012.

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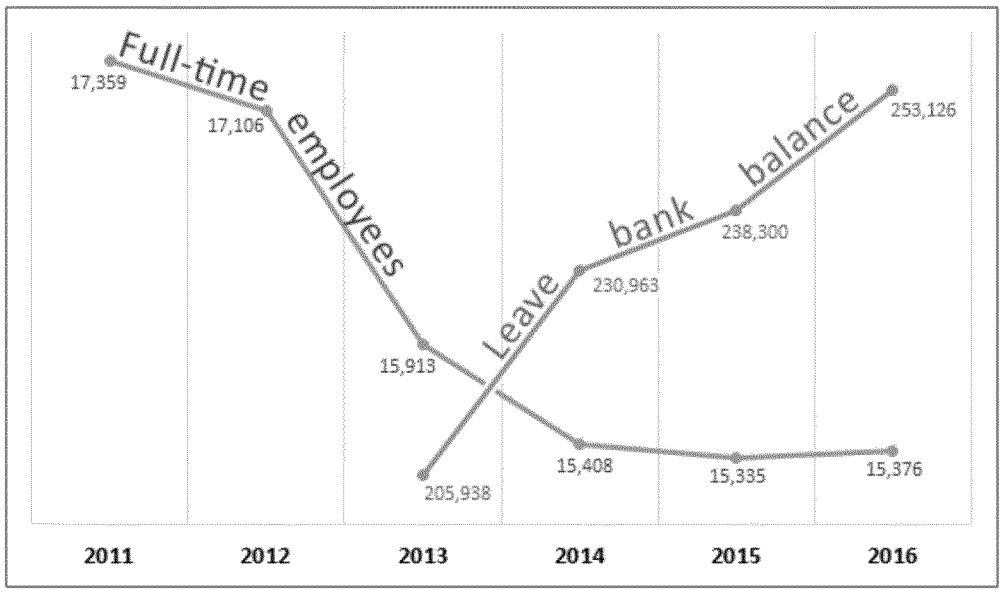
Figure 2: Number of full-time employees (2011–2016) and leave bank starting balances in hours (2013–2016)



EPA OIG graphic.

In 2016, the EPA had 15,376 authorized full-time positions and about 8,200 leave bank members. According to the LBB members, the leave bank balance has increased over recent years and, as of June 30, 2016, contained 249,789 hours of annual leave valued at about $10.8 million for possible use by leave bank recipients.

We compared the EPA VLBP practices with practices at similar federal agencies with a VLBP. According to the U.S. National Institutes of Health (NIH) VLBP Program Manager, the NIH in 2016 had about 17,500 employees and 6,100 leave bank members, yet its leave bank balance was around 110,000 hours. While the two agencies are similar in size, the EPA leave bank balance may have been disproportionately larger than necessary to support recipient needs. Further, the NIH allows up to 720 hours from the leave bank per recipient per year—480 hours for personal medical emergencies and 240 hours for family member medical emergencies. The NIH LBB also has the authority to make changes to how many hours a member must contribute to its bank each year, and how many total hours are provided per year to recipients. While the EPA LBB can recommend changes to the VLBP, the Assistant Administrator for OARM is the decision authority. See Appendix B for more information about other federal agencies' VLBP management best practices.

EPA management did not provide sufficient internal controls for the VLBP. Although basic informal guidance was posted on the OHR website, OARM did not develop and implement official policies and procedures to manage the leave bank and govern the actions of the LBB. Also, OHR managers stated that there have not been any risk assessments or program performance reviews of the VLBP.

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OHR managers and LBB members identified a lack of staff and high turnover of staff and managers as challenges to managing the VLBP. The national program coordinator is the only OHR staff member dedicated to working on the VLBP. Further, the national program coordinator and the supervisor position (Director of the OHR Diversity Recruitment & Employee Services Division) have been filled using temporarily assigned personnel from other OHR or OARM positions. The national program coordinator position was filled by temporary assignment from October 2015 through December 2016 and the director position was assigned to three managers, one permanent and two temporary, in under 2 years. On a positive note, the director position was filled with a permanently assigned manager in October 2016. However, since the director served as one of the three LBB members, the turnover in that position impacted management of the LBB and the VLBP overall. Also, one LBB member has served for more than 8 consecutive years—6 years longer than the 2-year term identified by EPA guidance on the leave bank website.

Actions Taken as a Result of Our Audit

During the course of this audit, OHR personnel assessed the adequacy of VLBP resources and staffing as we proposed in our discussion document. As a result, OHR designated one additional permanent staff member to serve as a second VLBP national program manager. This action took effect in January 2017, and OHR provided support that verified the personnel action.

Conclusion

Without policies and procedures or the data provided by risk assessments, performance reviews and other monitoring, OHR managers and LBB members do not have the information to govern the program or determine whether program goals are accomplished. These internal controls and the data provide management the tools to properly protect the leave bank assets (i.e., hours) and prevent fraud, waste or abuse. The LBB did not assess whether the bank balance was appropriate and adequate for future needs. In addition, the LBB did not consider the historical balance and use information to determine whether the contributions and allowed hours per year were appropriate. As a result, the required voluntary contribution for leave bank members and the maximum hours allowed annually for recipients may not be appropriate.

EPA Did Not Always Adequately Safeguard Sensitive Information

EPA Records Management for Leave Bank

EPA *Records Management Policy*, CIO 2155.3 (February 10, 2015), states:

> EPA records must be maintained in an appropriate manner, captured and organized to ensure timely search and retrieval for

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> internal Agency use as well as for responses to outside inquiries. Sensitive records … must be maintained with restricted access in accordance with statutory and regulatory requirements.[7]

Also, the policy requires records to be maintained "so they can be accessed [only] by staff with a need to know the information for appropriate business reasons." Records must be secured "to protect the legal and financial rights of the government and persons affected by government activities." According to the EPA's General Records Schedule 0565, leave bank records are to be destroyed 1 year after the end of the year in which the file is closed.

Leave Bank Case Files Left Unsecured

OHR cubicle with leave bank case files in EPA headquarters, April 2016. (EPA OIG photo)

According to the EPA's former VLBP national program manager, who retired in the fall of 2015, cabinets in which leave bank case files were stored were not locked. During our site visit to the OHR in April 2016, we observed about 100 recipient case files that were left outside the file cabinets and on a desk inside an unoccupied office cubicle. The case files were left out at the end of the work day on a Thursday evening and the national leave bank coordinator was not due back to the office until the following Monday. It appears that these recipient case files were left out and unlocked over a weekend period. Also, we observed multiple case files labeled 2013 among those that were out of the cabinets.

The VLBP staff stated that this instance of case files not being stored in a locked cabinet was a single occurrence and the records are now always locked up. At the time of our site visit, the national leave bank coordinator was the only staff dedicated, full-time, to the VLBP. Processing the recipient applications and preparing for the LBB meetings were the highest priorities. Regarding the 2013 case files still on hand, the national leave bank coordinator explained that she had not yet had the time to sort out the older files for disposal, as she focused on higher-priority leave bank activities.

[7] Medical information associated with individuals, such as medical conditions and medical certifications, are sensitive information.

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Conclusion

Due to sensitive information not being properly safeguarded, employees who participate in the leave bank program were at an increased risk of personal and sensitive medical information being obtained by parties that should not have access to such information.

EPA LBB Did Not Assess or Verify Medical Certifications

Federal Regulations, Standards and Best Practices for VLBP Medical Certifications

Title 5 CFR Chapter I, Subpart J, § 630.1006(c)(3), requires recipient applications to include a certification from one or more physicians, or other appropriate experts, with respect to the medical emergency, if the LBB so requires. The EPA's LBB requires this certification.

The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government* states, "Internal control should be designed to provide reasonable assurance regarding prevention of or prompt detection of unauthorized acquisition, use, or disposition of an agency's assets." It further states:

> Control activities are an integral part of ... accountability for stewardship of government resources and achieving effective results. Control activities … include a wide range of diverse activities such as approvals, ... verifications, reconciliations, ... and the creation and maintenance of related records. ...

The NIH's VLBP managers have implemented best management practices to verify the validity and reliability of recipients' medical certifications. This is done by using an independent medical advisor, relying on medical guidelines resources, and allowing NIH employees to voluntarily allow NIH VLBP managers to discuss medical information with certifying doctors. Appendix B provides more information about other federal agencies' VLBP management best practices.

Guidance and Tools Needed to Help Assess Medical Certifications

The EPA LBB relies on the medical certifications that applicants submit without assessing or verifying the validity and reliability of the certification. The medical certifications provide key information to enable the LBB to determine such matters as the length of time the emergency leave should cover and the required number of emergency leave hours to provide a recipient. The LBB members accept the medical certificate information without comparing other sources of information and do not possess the medical expertise necessary to determine whether the information is reasonable. Although LBB members stated that they have discussed unfamiliar medical situations amongst themselves and have in the

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past performed some research of specific cases, these evaluations occurred on an ad hoc basis and were not documented.

The EPA has not developed official policies and procedures to govern the LBB applicant review and approval process, including verification of medical certifications. Also, the LBB has not routinely used any mechanisms or tools to assess or verify the validity and reliability of medical certifications, such as using reliable medical guidelines resources, using an independent medical advisor, or developing forms for obtaining an employee's voluntary authorization of medical disclosure.

Conclusion

The stewardship of about $10.8 million in leave bank resources is at an increased risk of fraud, waste and abuse because the EPA has not implemented adequate internal controls to verify the validity and reliability of recipients' medical certifications. Without proper assessment or verification of certifications, the LBB could approve an application for leave bank hours that should not be approved.

Recommendations

We recommend that the Assistant Administrator for Administration and Resources Management:

1. Develop and implement official policies and procedures to administer the Voluntary Leave Bank Program, to include:

    a. Governing the Leave Bank Board's decision-making, including documenting those decisions.

    b. Requiring Office of Administration and Resources Management staff to conduct annual trend analyses of recent years' data to assess the bank's solvency and identify any appropriate adjustments to hours allowed to be drawn or minimum required to be contributed by members.

    c. Rotating the Leave Bank Board members to adequately staff the board for appropriate amounts of time.

    d. Requiring the Office of Human Resources to prepare and submit an annual report on program performance and activity.

    e. Establishing adequate controls for assessing and verifying the validity of medical certifications, to include researching best practices and tools used by other federal agencies.

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f. Requiring leave bank staff to annually assess, identify and dispose of records that meet disposal criteria.

2. Conduct a risk assessment of the Voluntary Leave Bank Program to identify program weaknesses and vulnerabilities, and develop additional internal controls as needed.

3. Starting with leave year 2016 and on an annual basis thereafter, gather and analyze the required Voluntary Leave Bank Program data and provide the results to the Leave Bank Board and leave bank managers for use in decision-making.

4. Train Voluntary Leave Bank Program staff on the records management policy and the requirements for case files and records retention.

Agency Response and OIG Evaluation

OARM agreed with our recommendations and provided corrective actions and estimated completion dates that meet the intent of the recommendations. OARM also provided additional attachments as support for the corrective actions they have completed.

To address Recommendation 2, OARM conducted a VLBP risk assessment and finalized its Risk Assessment Plan in June 2017. To address Recommendation 4, OHR trained the VLBP staff on records management in February 2017, and on June 7, 2017, issued a memorandum to VLBP managers reminding them to adhere to the EPA's records management policy for maintaining case files and records retention. As a result, Recommendations 2 and 4 are considered completed.

To address Recommendation 1, OHR completed VLBP management benchmarking with other federal agencies, and is using the results to develop and implement official policies and procedures for administering the EPA's VLBP. OARM indicated it plans to implement official policies and procedures for non-bargaining unit employees and notify the national unions regarding proposed policies and procedures for bargaining unit employees by March 15, 2018. Planned corrective actions for Recommendation 1 are considered acceptable.

To address Recommendation 3, OHR indicated it plans to gather and analyze the required data, at least annually, so that OHR VLBP managers and the EPA's LBB can use the analyses results in decision-making. OHR estimated completing these corrective actions by December 2017. Planned corrective actions for Recommendation 3 are considered acceptable.

The agency's detailed response is in Appendix C.

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Chapter 3
Reliable Timekeeping Data Needed to Determine Leave Bank Hours Used

Inaccurate timekeeping data incorrectly showed that leave bank recipients used more than the allowed 280 hours per leave year,[8] and conflicted with data in the payroll system. Federal internal control standards require that supervisors have reliable information to perform their duties efficiently. The inaccurate timekeeping occurred because the timekeeping system did not have working controls to prevent employees from entering more leave bank hours than allowed. Supervisors and other EPA staff were unable to properly manage time and attendance because the system contained conflicting data. As a result, supervisors cannot properly verify employees' time and prevent fraud.

Federal Standards Related to Timekeeping and Reporting

The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government* states, "Internal control should be designed to provide reasonable assurance regarding prevention of or prompt detection of unauthorized acquisition, use, or disposition of an agency's assets." It further states:

> Control activities are an integral part of ... accountability for stewardship of government resources and achieving effective results.
>
> Control activities ... include a wide range of diverse activities such as approvals, ... verifications, reconciliations, ... and the creation and maintenance of related records. ...
>
> . . .
>
> Information should be recorded and communicated to management and others within the entity who need it and in a form and within a time frame that enables them to carry out their internal controls and other responsibilities.
>
> For an entity to run and control its operations, it must have relevant, reliable, and timely communications relating to internal as well as external events. ... Pertinent information should be

[8] During the time period covered by our review, OARM used the leave year as the year of measure for the hours allowed annually. In January 2017, OARM revised the year of measure to the taxable year.

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identified, captured, and distributed in a form and time frame that permits people to perform their duties efficiently.

VLBP, Voluntary Leave Transfer Program, and EPA Timekeeping and Payroll Systems

The EPA VLBP website guidance allowed an employee to use up to 280 leave bank hours per leave year for qualified periods of medical emergency. Once approved by the LBB, the national program coordinator enters the approved leave bank hours into the timekeeping system and the payroll system to make the hours available to the leave bank recipient.

The EPA also has a Voluntary Leave Transfer Program that provides the opportunity for an employee who has exhausted his/her paid leave due to a medical emergency to receive annual leave donated by other federal employees. The leave transfer program is separate from, but similar to, the VLBP, as it was designed to assist employees who are or will be facing a significant financial hardship due to a medical emergency. The main differences in these separate programs are that the VLBP requires membership and provides "banked" hours, while the leave transfer program does not require membership and leave donated from employees goes directly to a specific leave recipient. VLBP members may receive leave from the leave transfer program or simultaneously with VLBP hours. We did not audit the leave transfer program, but learned about how the two programs may overlap when the VLBP recipient uses both.

PPL is the EPA timekeeping system, and the FPPS is the EPA payroll system of record. The U.S. Department of the Interior's Interior Business Center hosts FPPS and allows the EPA and other federal agencies to use it to generate payroll; the system interfaces with PPL. EPA employees enter their time and attendance data—and timekeepers review and supervisors review and approve data—in PPL. The PPL data is transmitted to FPPS, and that system generates the payroll. PPL has time reporting codes for the various types of leave that employees may use. PPL sums the types of leave hours used by these codes. OHR managers reported that when an employee receives leave from both the VLBP and the leave transfer program during the same pay periods, the FPPS will apply donated leave hours first until exhausted. Then FPPS applies the VLBP hours that are available. This occurs regardless of how the PPL time reporting codes are entered.

Timekeeping Data for Leave Bank Hours Were Inaccurate

The PPL data for 75 VLBP recipients during 2014 and 2015 (three recipients had over 280 hours in both years, for a total of 78 over-hour cases) showed that these recipients used more than the 280 hours allowed per leave year. In one case, the PPL data for a recipient showed 791.5 total hours (511.5 hours above the maximum limit). About 23 percent of the 78 leave bank over-hours cases showed

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400 or more leave bank hours used (i.e., 120 or more hours above the 280-hour limit) in a single leave year.

OHR managers stated the PPL data was incorrect and that FPPS controls prevent employees from receiving more than the allowed 280 hours per year. They pointed out that when a leave bank recipient also has received donated leave through the leave transfer program, the FPPS system draws first from the donated leave balance before using any leave bank hours. Once the donated leave is exhausted, FPPS then applies the leave bank hours up to 280 but no more. OHR further explained that manual time card corrections in PPL may result in additional differences between the two systems' data. We analyzed FPPS data for a sample of the 75 employees and confirmed that none received more than 280 leave bank hours in a leave year. OHR reinforced that FPPS is the official system of record and that system's data is to be relied upon. OHR personnel noted, however, that they cannot make improvements to PPL because the Office of the Chief Financial Officer manages that system.

Leave bank recipients' supervisors relied on PPL system controls to limit leave bank hours and could not easily track the hours that recipients input to verify that employees were not using more than the 280-hour limit. Supervisors said they could not view the number of leave bank hours or leave transfer hours an employee used. They also seemed not to know how the leave bank program works. Supervisors need training on the VLBP and leave transfer programs, and tools for how to manage or monitor the hours.

Conclusion

The PPL system did not have working controls that limit the number of leave bank hours a recipient can input or enter to the 280 hours allowed. The conflicting timekeeping and payroll data did not provide employees, their supervisors and other applicable EPA staff with accurate data to properly manage time and attendance, leave bank hours, or leave transfer hours. As a result, the supervisors cannot properly verify employees' time and prevent fraud.

Recommendations

We recommend that the Assistant Administrator for Administration and Resources Management and the Chief Financial Officer work together to:

5. Develop and implement a method for supervisors to view real-time data of employee leave bank and leave transfer balances in PeoplePlus and the Federal Personnel Payroll System.

6. Issue guidance to, and train, supervisors on the leave bank and leave transfer programs and their roles and responsibilities for approving and attesting timesheets of employees using the leave programs.

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Agency Response and OIG Evaluation

OARM and the Office of the Chief Financial Officer agreed with our recommendations and provided corrective actions and estimated completion dates that meet the intent of the recommendations.

To address Recommendation 5, the Office of the Chief Financial Officer made changes in the PPL system, and OHR changed VLBP (and leave transfer) input processes that result in the leave bank data feeding from FPPS into PPL (occurs nightly). The agency response also identified that while leave information is in PPL, supervisors and PPL coordinators may gain access to the most recent official leave balance information for their employees by requesting access to the Interior Business Center's Datamart (from OARM) to run a leave balance report. As a result of actions taken, Recommendation 5 is considered completed.

To address Recommendation 6, OARM and Office of the Chief Financial Officer indicated that they are collaborating to issue guidance and create and provide supervisory training on the leave bank and leave transfer programs, as well as roles and responsibilities for approving and attesting employees' timesheets. Completion is expected by December 2017. Planned corrective actions for Recommendation 6 are considered acceptable.

The agency's detailed response is in Appendix C.

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Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Potential Monetary Benefits (in $000s)
1	11	Develop and implement official policies and procedures to administer the Voluntary Leave Bank Program, to include: a. Governing the Leave Bank Board's decision-making, including documenting those decisions. b. Requiring Office of Administration and Resources Management staff to conduct annual trend analyses of recent years' data to assess the bank's solvency and identify any appropriate adjustments to hours allowed to be drawn or minimum to be contributed by members. c. Rotating the Leave Bank Board members to adequately staff the board for appropriate amounts of time. d. Requiring the Office of Human Resources to prepare and submit an annual report on program performance and activity. e. Establishing adequate controls for assessing and verifying the validity of medical certifications, to include researching best practices and tools used by other federal agencies. f. Requiring leave bank staff to annually assess, identify and dispose of records that meet disposal criteria.	R	Assistant Administrator for Administration and Resources Management	3/15/18	
2	12	Conduct a risk assessment of the Voluntary Leave Bank Program to identify program weaknesses and vulnerabilities, and develop additional internal controls as needed.	C	Assistant Administrator for Administration and Resources Management	6/26/17	
3	12	Starting with leave year 2016 and on an annual basis thereafter, gather and analyze the required Voluntary Leave Bank Program data and provide the results to the Leave Bank Board and leave bank managers for use in decision-making.	R	Assistant Administrator for Administration and Resources Management	12/29/17	
4	12	Train Voluntary Leave Bank Program staff on the records management policy and the requirements for case files and records retention.	C	Assistant Administrator for Administration and Resources Management	6/7/17	
5	15	Develop and implement a method for supervisors to view real-time data of employee leave bank and leave transfer balances in PeoplePlus and the Federal Personnel Payroll System.	C	Assistant Administrator for Administration and Resources Management and Chief Financial Officer	6/18/17	
6	15	Issue guidance to, and train, supervisors on the leave bank and leave transfer programs and their roles and responsibilities for approving and attesting timesheets of employees using the leave programs.	R	Assistant Administrator for Administration and Resources Management and Chief Financial Officer	12/29/17	

[1] C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

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Appendix A

Details on Scope and Methodology

To obtain an understanding of the internal controls for leave bank processes, we reviewed the following criteria documents:

- *Federal Employees Leave Sharing Act of 1988*, Subchapter IV, *Voluntary Leave Bank Program,* § 6361–6373.
- Title 5 CFR, Chapter I, Subchapter B, Part 630, Subpart J, *Voluntary Leave Bank Program.*
- Presidential Memorandum of January 15, 2015, *Modernizing Federal Leave Policies for Childbirth, Adoption, and Foster Care To Recruit and Retain Talent and Improve Productivity.*
- U.S. Office of Personnel Management Guidance:
  - Fact Sheet: Voluntary Leave Bank Program.
  - Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption, and Foster Care.
- U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government,* November 1999 (applicable to fiscal years 2000 through 2015) and September 2014 (applicable to fiscal year 2016 and forward).
- Office of Management and Budget Circular A-123, *Management's Responsibility for Internal Control,* December 21, 2004.
- Memorandum of Understanding, EPA Leave Bank Program.
- 44 U.S.C. Chapter 31, *Records Management by Federal Agencies,* 2011.
- 44 U.S.C. Chapter 33, *Disposal of Records,* 2008.
- EPA's Records Management Policy, February 10, 2015.
- EPA Records Schedule 0565, Donated Leave Program Case Files, December 31, 2013.
- EPA's Voluntary Leave Bank Program Guidance.

To determine whether the EPA managed the VLBP in accordance with applicable laws, regulations and guidance, we performed the following tasks:

- Identified, gathered and analyzed applicable criteria related to requirements for the VLBP.
- Used the criteria to evaluate the VLBP's internal and management controls for preventing and detecting fraud, waste and abuse.
- Performed a literature search to review and summarize previous audits, evaluations, other reports and articles that were relevant to this audit.
- Obtained and assessed leave bank data from the EPA time and attendance PPL and payroll FPPS systems for employees participating in the VLBP.
- Conducted a site visit to OHR offices in Washington, D.C., where we interviewed VLBP managers, staff and LBB members; performed reviews of case files for a judgmental sample of 28 leave bank recipients (based on EPA offices with a high number of leave

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bank recipients and the recipients with the most leave bank hours received); obtained PPL and FPPS walk-throughs; and observed the VLBP case files and storage location.

- Analyzed recipient data from PPL and FPPS to identify those employees who may have received leave bank hours over the maximum 280 hours allowed per leave year.
- Obtained PPL time card data for a judgmental sample of eight VLBP recipients with over 280 hours (based on high leave bank hours received) to assess leave used by pay period in 2014 and 2015 and determine the applicable supervisors/approving officials.
- Interviewed five VLBP recipients' supervisors for information on their roles, and the processes they use related to time card reporting.
- Reviewed VLBP records, including internal performance reports for the program, such as data on leave bank balances, leave bank members, and leave bank withdrawals.
- Reviewed individual VLBP recipient case files, including applications, medical certifications, leave balances, and LBB decisions. In reviewing medical certifications, we searched online for the medical practitioners' names, addresses and current licensing.
- Examined the approval process for leave bank applicants.
- Interviewed VLBP staff, including LBB members, the VLBP national program manager, and two regional coordinators, to obtain information on the processes the EPA used to manage the VLBP and safeguard resources.

To obtain information about best practices used by other federal agencies for managing VLBPs, we interviewed personnel and reviewed documentation from three other federal agencies:

- U.S. National Institutes of Health.
- U.S. Department of Justice.
- U.S. Department of Agriculture's Farm Service Agency.

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Leave Bank Best Practices of Other Federal Agencies

We contacted three other federal agencies operating VLBPs and gathered information from the managing personnel about practices and tools used to achieve efficiency and effectiveness of their respective programs. The three agencies we contacted were the:

- U.S. National Institutes of Health (NIH).
- U.S. Department of Justice's (DOJ's) Executive Office of the U.S. Attorneys (EOUSA).
- U.S. Department of Agriculture's (USDA's) Farm and Foreign Agricultural Services (FFAS).

The NIH and DOJ's EOUSA had relatively comparable numbers of employees in 2016, with about 17,500 and 16,000, respectively; the EPA had about 15,300 employees in 2016. The USDA's FFAS was much smaller, with about 1,700 employees in 2016. Although NIH seemed to have the most robust and proactive management practices, each of the three agencies used practices to manage their VLBP that EPA did not. We compared the practices of the three agencies to those the EPA uses to identify best practices at other agencies that the EPA could implement to improve how it manages its leave bank.

National Institutes of Health

The VLBP program manager provided details on how the NIH leave bank is managed. In May 2016, the NIH had about 17,500 employees, 6,100 leave bank members, and 110,000 leave hours in the bank. The NIH allows each leave bank recipient to receive up to 720 hours per year—480 hours for personal medical emergencies and 240 hours for family member medical emergencies. Below are NIH best practices regarding the program management structure and controls to process and review recipient applications and medical certifications.

- The NIH VLBP Management Structure:
  - ✓ The program has a detailed set of written procedures for managing its program.
  - ✓ The LBB consists of three permanent members and three alternate members. The LBB has the authority to determine the number of hours allowed to recipients each year, the number of hours that members must contribute, and the number of hours that can be donated.
  - ✓ The LBB delegated the daily VLBP operations, such as the review and approval of leave bank recipient applications, to the VLBP staff.
  - ✓ VLBP staff include a full-time program manager and two contractor case managers. Leave bank staff review applications daily instead of every 2 weeks as the EPA does.
  - ✓ VLBP staff use a share point site to track all recipient cases. The LBB has access to the data in the share point and can see the status of recipients at any given time. The LBB can directly pull reports from the share point, as needed or desired.

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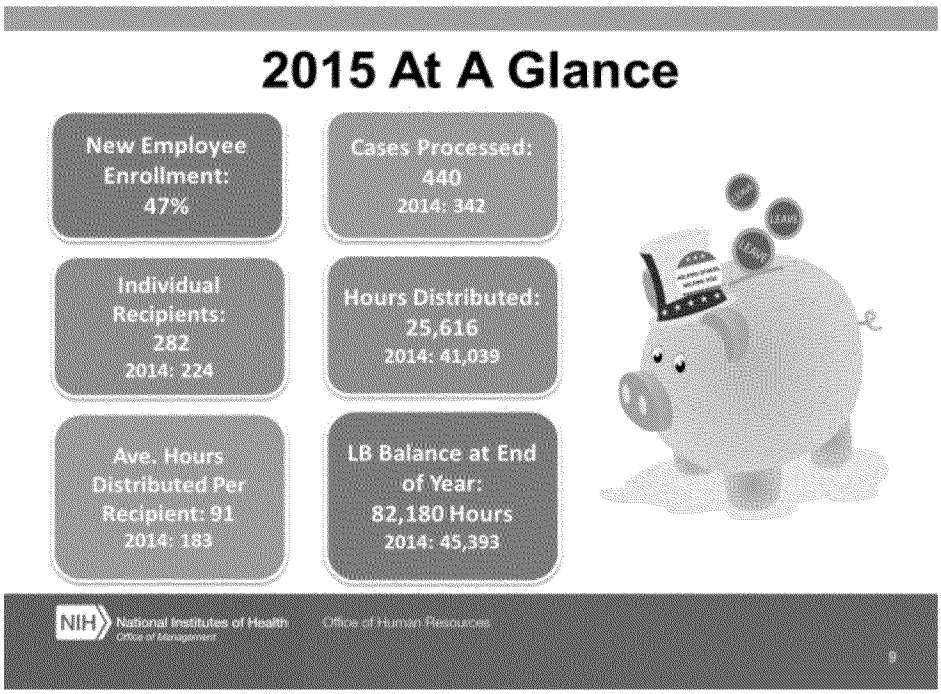
- ✓ VLBP staff evaluate program effectiveness by surveying leave bank members, tracking the timeliness of recipient application processing, and developing statistical reports about the number of members and recipients over time. (See Figure 3 for the *2015 At A Glance* slide used in February 2016 by the NIH VLBP program manager as part of a larger presentation on leave bank data and program performance information to the NIH LBB.)
- ✓ VLBP staff use the data to prepare program reports presented and discussed during quarterly meetings with the LBB.
- ✓ Although assessing the leave bank balance and solvency is not included in the detailed written procedures, VLBP staff and the LBB discuss the balance each year and consider past trends, such as the hours deposited in the bank and hours allocated to recipients. The LBB makes decisions based on those historical trends.

Figure 3: The *2015 At A Glance* slide



NIH graphic, used at the NIH LBB meeting held in February 2016.

- The NIH Leave Bank Controls to Verify Medical Certifications:
  - ✓ VLBP staff contact doctors referenced in medical certification forms to verify that they indeed completed the form and signed it.
  - ✓ VLBP staff use an *MD Guidelines* database to determine whether the information presented on the medical certification form is reasonable.
  - ✓ VLBP staff have an authorization for disclosure form that employees may sign that authorizes the NIH VLBP staff to discuss the content of the medical certification with doctors.
  - ✓ When necessary, VLBP staff use an outside Federal Occupational Health (part of the U.S. Department of Health and Human Services) consultant to gather an expert medical opinion of the medical emergency. This consultant can also contact doctors to discuss medical certifications.

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Department of Justice/Executive Office of the U.S. Attorneys

The DOJ/EOUSA's VLBP coordinator provided details on how that leave bank is managed, and on operating procedures and guidance. In 2016, the EOUSA had about 16,000 employees, the leave bank members numbered about 2,300, and leave hours fluctuated from 5,000 to 7,000. The EOUSA allows up to 160 hours from the leave bank per recipient per year for personal or family member medical emergencies. Below are DOJ best practices regarding the program management structure and controls to process and review recipient applications and medical certifications.

- DOJ procedures establish that its LBB will consist of three members, and they can designate alternate board members, when available.
- The LBB has the authority to set the maximum number of leave hours allowed to recipients per year and to adjust the maximum hours allowed when needed.
- The LBB delegated daily operations to the VLBP administrator. These routine operations included processing and approving membership applications, reviewing and approving recipient applications when all the leave bank criteria are met, and denying recipient applications when criteria are not met.
- The LBB delegated approval authority to the VLBP administrator for recipients of routine, non-elective medical emergencies such as childbirth or routine surgical procedures having a standard recuperation period, and extensions on previously-approved cases with proper medical documentation.
- VLBP staff use online resources, such as *webMD* and the Mayo Clinic website, and perform internet searches to gain an understanding of medications and medical procedures.
- DOJ VLBP staff work with their General Counsel, as needed, on cases with potentially sensitive issues, to prevent discrimination complaints.

U.S. Department of Agriculture/Farm and Foreign Agricultural Services

The USDA's FFAS VLBP manager provided details on how the FFAS leave bank is managed, and on operating procedures and guidance. FFAS consists of three smaller agencies, each having a separate balance of hours within the one leave bank. The VLBP manager has the authority to move the leave hours between the three agency banks as needed. The FFAS component is very small in comparison to the EPA. In June 2016, the VLBP manager estimated the total employees at about 1,700. The leave bank for one of the three component agencies had only 14 members and a starting balance of about 2,850 leave hours. The FFAS allows up to 160 hours from the leave bank per recipient per year for personal or family member medical emergencies. Below are FFAS best practices regarding the program management structure and controls to process and review recipient applications and medical certifications.

- The FFAS VLBP offers a new member summer enrollment period.
- The LBB has the authority to grant exceptions to donor limitations.
- The LBB may request a second opinion from a medical expert or physician. If they do, the medical charges are paid by the agency.
- The VLBP Frequently Asked Questions document contains an official "Notice" that states that falsifying or altering any government or medical document(s) can lead to disciplinary action, including suspension from work or termination of employment.

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Agency Response and OIG Evaluation

[June 30, 2017]

MEMORANDUM

SUBJECT: Management Response to Office of Inspector General Draft Report, "EPA Needs to Increase Oversight of Leave Bank Program to Improve Efficiency and Reduce Risk of Misuse" (Project OA-FY16-0063)

FROM: Donna J. Vizian, Acting Assistant Administrator//signed//
Office of Administration and Resources Management

David A. Bloom, Acting Chief Financial Officer//signed//
Office of the Chief Financial Officer

TO: Arthur A. Elkins, Jr., Inspector General

Thank you for the opportunity to review and comment on the findings and recommendations in the draft report for the subject audit. The U.S. Environmental Protection Agency's Office of Inspector General conducted this audit to determine if the EPA had established and implemented internal controls for the Voluntary Leave Bank Program to prevent and detect fraud, waste and abuse of the program.

The agency concurs with all six recommendations. Attachment 1 is our response to each recommendation, including the intended corrective action and estimated completion date for each recommendation. Also attached are the agency's Voluntary Leave Bank Program Benchmark Report (Attachment 2), a Risk Management Plan (Attachment 3), OHR's June 7, 2017, memorandum regarding EPAs records management policy for the VLBP (Attachment 4), and draft Risk Assessment Worksheet Instructions (Attachment 5).

The Office of Administration and Resources Management, which manages the VLBP, requests closure of recommendations 2, 4 and 5. OARM VLBP staff were trained on records management in February 2017, OARM completed a risk assessment of the VLBP, and the Office of the Chief Financial Officer implemented changes to PeoplePlus to improve the leave bank process in June 2017.

The EPA appreciates the work of the OIG in planning and conducting this audit. If you have questions regarding this response, please contact Ms. Linda Gray, Director, Office of Human Resources, at (202) 564-4606 or Gray.Linda@epa.gov.

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Attachments

1. EPA Response to OIG Report
2. EPA Voluntary Leave Bank Program Benchmark Report
3. Risk Management Plan
4. OHR Memorandum to VLBP Managers, dated June 7, 2017
5. Draft Risk Assessment Worksheet Instructions

cc: John Showman
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Attachment 1, EPA Response to OIG Report

EPA Response to the OIG's Draft Report No. OA-FY16-0063 "EPA Needs to Increase Oversight of Leave Bank Program to Improve Efficiency and Reduce Risk of Misuse"

No.	OIG Recommendations	Planned Corrective Action	Estimated Completion
1	Develop and implement official policies and procedures to administer the Voluntary Leave Bank Program, to include: a. Governing the Leave Bank Board's decision making, including documenting those decisions. b. Requiring Office of Administration and Resources Management staff to conduct annual trend analysis of recent years' data to assess the bank's solvency and identify any appropriate adjustments to hours allowed to be drawn or required to be contributed by members. c. Rotating the Leave Bank Board members to adequately staff the board for appropriate amounts of time. d. Requiring the Office of Human Resources to prepare and submit an annual report on program performance and activity. e. Establishing adequate controls for assessing and verifying the validity of medical certifications, to include researching best practices and tools used by other federal agencies. f. Requiring VLBP staff to annually assess, identify and dispose of records that meet disposal criteria.	Concur. By March 15, 2018, OARM will implement official policies and procedures for non-bargaining unit employees and notify the national unions regarding proposed policies and procedures for bargaining unit employees. Unfortunately, we cannot put a timeframe on completion of union negotiations/implementation. In May 2017, the Office of Human Resources completed benchmarking with other federal agencies, including reviewing the policies and procedures for the voluntary leave bank programs of those agencies. OHR is utilizing the results of the benchmarking to develop and implement official policies and procedures for administering the U.S. Environmental Protection Agency's VLBP. The policies and procedures will: a) govern the LBB's decision making, including documenting those decisions; b) require VLBP staff to conduct annual trend analysis of VLBP data to assess the bank's solvency and to identify any appropriate adjustment to hours to be withdrawn or contributed; c) rotate the LBB; d) require VLBP staff to prepare and submit an annual report on program performance and activity; e) establish adequate controls for assessing and verifying the validity of medical certifications; and f) require VLBP staff to annually assess, identify and dispose of records that meet disposal criteria. Attachment 2 is a summary of OHR's benchmarking for the OIG's information.	March 15, 2018
2	Conduct a risk assessment of the VLBP to identify program weaknesses and vulnerabilities, and develop additional internal controls as needed.	Concur. In June 2017, OHR finalized a risk assessment of the VLBP. The risk assessment involved the identification and analysis of relevant risks, assessment of the likelihood of occurrence, and determination of what actions the VLBP has taken or will take to manage the risks to ensure the	Completed

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		effectiveness of program internal controls in addressing program risks. Attachment 3 is a copy of the completed Risk Assessment Plan.	
3	Starting with leave year 2016 and on an annual basis thereafter, gather and analyze the VLBP data and provide the results to the LBB and VLBP managers for use in decision making.	Concur. At least annually, OHR will gather and analyze the following data required by Title 5 of the Code of Federal Regulations, Section 630, Subpart J: (1) the number of leave bank members for each leave year; (2) the number of applications approved for medical emergencies affecting the employee and the number of applications approved for medical emergencies affecting an employee's family member; (3) the grade of each leave contributor and the total amount of annual leave the employee contributed to the bank; and (4) the grade and gender of each leave recipient and the total amount of annual leave employee actually used. OHR VLBP managers and the EPA's LBB will use the results of the analysis in decision making as outlined in the VLBP policies and procedures.	December 29, 2017
4	Train VLBP staff on the records management policy and the requirements for case file and records retention.	Concur. The VLBP staff received records management training on February 22, 2017. Additionally, on June 7, 2017, OHR issued a memorandum to VLBP managers reminding them to adhere to the EPA's records management policy for maintaining case files and records retention. The memorandum also includes a requirement for the VLBP managers to retain VLBP case files in a confidential manner, identifies the time frame for retaining and destroying files, and requires that all files currently retained beyond the minimum retention period be immediately destroyed after they are no longer in use. Attachment 4 is a copy of OHR's memorandum.	Completed
5	Develop and implement a method for supervisors to view real-time data of employee leave bank and leave transfer balances in PeoplePlus and the Federal Personnel and Payroll System.	Concur. Effective June 18, 2017, The Office of the Chief Financial Officer implemented changes to PeoplePlus, the agency's time and attendance system, to improve the leave bank process. The implemented changes eliminated OHR's usage of the PeoplePlus HR module and the accrual pages. Once a leave bank member's application is approved and the hours are awarded, the leave bank coordinator enrolls the leave bank recipient in a leave bank or leave share emergency/occurrence in FPPS. The leave bank coordinator inputs the employee's name, employee ID, emergency type/occurrence (IBC field), emergency start date, and leave bank hour awards. With the new process, the employee's name, employee ID, emergency start date and emergency type/occurrence is transferred to PeoplePlus on a nightly basis. The transfer information is populated into PeoplePlus and grants the leave bank recipient access to all leave bank/leave share time reporting codes. The VLBP's staff provides the leave bank recipient with detailed instructions regarding which codes to use	Completed

		for each emergency occurrence. Once the VLBP's staff is informed that the medical emergency is over, they input the end date into FPPS to close the leave bank occurrence. When the end date is inputted into FPPS, the nightly transfer will update the data and populate the same information to PeoplePlus after which all leave bank codes are deactivated for the leave bank/leave share recipient. FPPS is the official repository for all leave. Employees have access to their Leave and Earning Statements via Employee Express. While leave information is available in PeoplePlus, supervisors and PeoplePlus coordinators may gain access to the most recent official leave balance information for their employees by requesting access to the IBC Datamart (from OARM) to run a leave balance report.	
6	Issue guidance to, and train, supervisors on the leave bank and leave transfer programs and their roles and responsibilities for approving and attesting timesheets of employees using the leave programs.	Concur. OARM and OCFO are collaborating to issue guidance. Create and provide supervisory training to on the leave bank and leave transfer programs and their roles and responsibilities for approving and attesting employees' timesheets.	December 29, 2017

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Appendix D

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From: OIG News
Sent: Wed 8/23/2017 1:30:28 PM
Subject: OIG Report: "Improved Management of the Brownfields Revolving Loan Fund Program Is Required to Maximize Cleanups
_epaoig_20170823-17-P-0368_cert.pdf

Attached is the EPA Office of Inspector General (OIG) report, *Improved Management of the Brownfields Revolving Loan Fund Program Is Required to Maximize Cleanups* (Report No. 17-P-0368). This report will be available to the public on the OIG's website at www.epa.gov/oig.

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Cleaning up and revitalizing land
Operating effectively and efficiently

Improved Management of the Brownfields Revolving Loan Fund Program Is Required to Maximize Cleanups

Report No. 17-P-0368 **August 23, 2017**

Report Contributors:

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Mary Anne Strasser

Abbreviations

ACRES	Assessment, Cleanup & Redevelopment Exchange System
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
OBLR	Office of Brownfields and Land Revitalization
OIG	Office of Inspector General
OMB	Office of Management and Budget
RLF	Revolving Loan Fund
U.S.C.	United States Code

Cover photos: **Top left**—Rooftop garden of a 12,000-square-foot grocery store built on a former brownfield site in Albuquerque, New Mexico, Region 6. The site was remediated in 2008 using EPA Brownfields RLF funds. (EPA photo)

Top right—A residential building project on a former brownfield site in Sioux City, Iowa, Region 7. The site was remediated using EPA Brownfields RLF funds. (EPA OIG photo)

Bottom right—Construction of the 12,000-square-foot grocery store in Albuquerque, New Mexico, Region 6. (EPA photo)

Bottom left—A building with an office, lab and production development was built on a former brownfield site in Philadelphia, Pennsylvania, Region 3. (EPA photo)

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U.S. Environmental Protection Agency
Office of Inspector General

17-P-0368
August 23, 2017

At a Glance

Why We Did This Review

The Office of Inspector General (OIG) conducted this audit to determine whether the EPA's Brownfields Revolving Loan Fund (RLF) recipients are using program income to capitalize a revolving loan fund, and to loan and grant money for brownfield remediation after the cooperative agreements are closed.

RLF cooperative agreements provide funding for a recipient to capitalize a RLF, and to provide grants to carry out cleanup activities at brownfield sites. These activities often generate program income through various sources, which may continue after the closeout of cooperative agreements.

The EPA envisioned that money from repayment of loans would provide a community with capital to address additional brownfield remediation and cleanup.

This report addresses the following:

- *Cleaning up and revitalizing land.*
- *Operating effectively and efficiently.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of OIG reports.

Improved Management of the Brownfields Revolving Loan Fund Program Is Required to Maximize Cleanups

What We Found

Approximately $10.9 million available to clean up brownfields is not being used as intended. Contaminated brownfield properties are not being cleaned up and redeveloped for 10 of the 20 closed Brownfields RLF cooperative agreements reviewed. The recipients of the cooperative agreements have not re-loaned or spent program income collected after the closeout agreement was signed.

For 10 of the 20 closed Brownfields RLF cooperative agreements reviewed, approximately $10.9 million available to clean up brownfields is not being used as intended.

The U.S. Environmental Protection Agency's (EPA's) 2008 Revolving Loan Fund Grant Program Administrative Manual states the following: "EPA regions should encourage the recipient to maximize the amount of money loaned out for cleanup purposes at all times. RLF funds should not remain idle."

We found confusion among EPA regions and RLF recipients, and dissimilarities in terms and conditions, leading to inconsistencies in program application. Program income was not maximized by depositing funds into an interest-bearing account, and sources of program income were excluded from the terms and conditions of cooperative agreements and closeout agreements. Another source of confusion was knowing when post-closeout program income was used, and when a closeout agreement can be terminated. These issues resulted in inconsistencies that could potentially affect the long-term sustainability of the Brownfields RLF Program.

We also found that the EPA's Office of Brownfields and Land Revitalization's data management system did not meet federal standards. In addition, some regional project officers could not review annual reports for RLF recipients. We questioned over $2.7 million from three recipients.

Recommendations and Planned Agency Corrective Actions

We recommend that the Assistant Administrator for Land and Emergency Management make improvements to the Brownfields RLF Program income usage requirements, and remove confusion and dissimilarities among EPA regions and RLF recipients. We also recommend that EPA Regions 1 and 10 question Brownfields RLF funds. The EPA agreed with 22 of the 23 recommendations. We consider the agency's planned corrective actions to be acceptable for 22 recommendations. One recommendation remains unresolved pending the EPA providing clarification on the corrective actions taken.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

August 23, 2017

MEMORANDUM

SUBJECT: Improved Management of the Brownfields Revolving Loan Fund Program Is Required to Maximize Cleanups
Report No. 17-P-0368

FROM: Arthur A. Elkins Jr.

TO: Barry Breen, Acting Assistant Administrator
Office of Land and Emergency Management

Deborah Szaro, Acting Regional Administrator
Region 1

Michelle Pirzadeh, Acting Regional Administrator
Region 10

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY16-0155. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Manual 2750, your offices provided planned corrective actions and completion dates in response to OIG Recommendations 1, 3 through 17, 19, 21 and 23. These recommendations are considered open pending implementation of the corrective actions.

The EPA did not concur with Recommendation 2, and proposed an alternative corrective action. The OIG believes the alternative corrective action addresses much of the intent of the recommendation. However to resolve the remaining concerns, as instructed by EPA Manual 2750, the OIG will meet with the EPA within 30 days of the issuance of the final report to discuss resolution.

The EPA agreed with Recommendations 18, 20 and 22, and will review documentation on questioned costs. The aggregate value of the questioned costs in this report exceeds $250,000. Therefore, in accordance with EPA Manual 2750, Recommendation 22 will require the agency to submit a proposed Management Decision to the OIG for concurrence before it is issued to the recipient, and within 120 days of the final report.

Your responses will be posted on the OIG's public website, along with our memorandum commenting on your responses. The responses should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final responses should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1
Introduction

Purpose

We conducted this audit to determine whether the Brownfields Revolving Loan Fund (RLF) recipients are using program income to capitalize a RLF, and to loan and grant money for brownfields remediation after the cooperative agreements are closed.

Background

The 2002 Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law) states that a brownfield site is defined as real property, the expansion, redevelopment or reuse of which may be complicated by a hazardous substance, pollutant or contaminant. This definition can apply to a wide variety of sites, including industrial properties, former gas stations, warehouses and residential buildings.

The U.S. Environmental Protection Agency (EPA) estimates there are more than 450,000 brownfields in the United States. In designing the Brownfields Program, the EPA wanted to empower states, communities and others to work together to prevent, assess, safely clean up and reuse brownfields.

Beginning in the mid-1990s, the EPA provided money to local governments that launched hundreds of 2-year brownfields pilot projects, and developed guidance and tools to help states, communities and other stakeholders clean up and redevelop brownfields sites. The EPA determined that 40 Code of Federal Regulations (CFR) 31.25 (g)(2) permitted the funding for the Brownfields RLF Program to carry out remediation activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Section 104(d).

The Brownfields Law codified many of the EPA's practices, policies and guidance. The Brownfields Law provided new tools for the public and private sectors to promote sustainable brownfields cleanup and reuse. In addition, the Brownfields Law amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to expand potential federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, job training, research and technical assistance. The EPA began implementing RLF activities under the Brownfields Law in fiscal year (FY) 2003.

Brownfields RLF Grants awarded in the form of cooperative agreements serve as the foundation of the EPA's Brownfields Program. Cooperative agreements

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permit the EPA project officer to be substantially involved in overseeing the recipient's work.[1]

Cooperative agreements provide funding for a recipient to capitalize a RLF and to provide loans and grants to carry out remediation activities at brownfield sites. Through these cooperative agreements, the EPA seeks to strengthen the marketplace and encourage stakeholders to leverage the resources needed to clean up and redevelop brownfields. The RLFs generate program income through loan principal repayments, interest and program fees during the life of the agreements, and after the cooperative agreement is closed. When loans are repaid, the loan amount is returned to the fund and intended to be lent to other borrowers; thereby, providing an ongoing source of capital within a community.

After all applicable administrative actions and required work of the cooperative agreement award have been completed, the recipient can choose to close out its RLF cooperative agreement. The closeout process can begin as soon as final payment of funds from the EPA to the recipient is received, and all cleanup activities funded by the award are completed, unless the agreement is terminated for the convenience of the recipient or for noncompliance with EPA requirements.

Based on the terms and conditions of the cooperative agreements, the recipient must negotiate a closeout agreement with the EPA to govern the use of program income after closeout. Eligible uses include continuing to operate a RLF for brownfields cleanup and/or other brownfields activities. The EPA prefers the continued operation of a RLF for brownfields cleanup instead of other brownfields activities. Closeout agreements will terminate when either the recipient has expended all funds or wishes to discontinue their agreed-to, post-closeout activities.

Responsible Offices

The EPA's Office of Brownfields and Land Revitalization (OBLR), within the Office of Land and Emergency Management, manages the Brownfields RLF Program and issues guidance to EPA regions. The EPA's grants management offices award cooperative agreements. The grants management offices along with regional programs conduct monitoring. Regional project officers have primary responsibility for grants management and oversight.

Scope and Methodology

We conducted this performance audit from April 2016 to June 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit

[1] Brownfields RLF Grants will be referred to as cooperative agreements for the remainder of the report.

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objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

To determine whether recipients are using program income to capitalize a RLF, and to loan and grant money for brownfields remediation after the cooperative agreements are closed, we reviewed the relevant laws, regulations, guidance, and the terms and conditions of the cooperative agreements. We judgmentally selected and reviewed 20 closed Brownfields RLF cooperative agreements that cover all 10 EPA regions (Appendix A). We also judgmentally selected a second sample of 22 closed cooperative agreements that had no closeout agreements issued, to validate the information that OBLR provided to us. This information is summarized in Appendix A.

We conducted interviews with OBLR management and staff to discuss closeout policies, cooperative agreement terms and conditions, use of program income, and other areas related to our audit. We interviewed project officers and program managers from all 10 EPA regional offices to discuss closeout agreements, program income, recipient reports, etc. In addition, we interviewed all recipients to discuss use of program income, closeout agreements, and other areas related to our audit.

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Chapter 2
Unused Program Income

For 10 of the 20 Brownfields RLF cooperative agreement recipients[2] reviewed, approximately $10.9 million in funds were unused. The EPA's 2008 Revolving Loan Fund Grant Program Administrative Manual states the following: "EPA regions should encourage the recipient to maximize the amount of money loaned out for cleanup purposes at all times. RLF funds should not remain idle."

According to recipients, program income remained unused because of market conditions, economic downturn, and receiving funds from additional open Brownfields RLF cooperative agreements. The EPA envisioned that when loans are repaid, the money would be re-loaned to provide capital within a community to address brownfields remediation and cleanup. Almost $10.9 million is not being used as intended to clean up and redevelop brownfields properties.

Brownfields Revolving Loan Funds Should Not Remain Idle

The Brownfields Law was designed in part to promote the cleanup and reuse of brownfields, and to provide financial assistance for brownfields revitalization by providing grants for the capitalization of RLFs for the remediation of brownfields sites.

As noted above, the EPA's Revolving Loan Fund Grant Program Administrative Manual says EPA regions should encourage recipients to maximize the amount of money loaned out for cleanup, and RLF funds should not remain idle. In addition, 40 CFR Part 31.21, subparagraph (f) states the following:

> (f) *Effect of program income, refunds, and audit recoveries on payment.*
>
> (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.
>
> (2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

[2] Brownfields RLF cooperative agreement recipients will be referred to as "recipients" for the remainder of the report.

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However, two EPA memorandums titled, "Brownfields Revolving Loan Fund Cooperative Agreement Closeout Agreements," which were dated March 11, 2010, and June 10, 2015, stated the following:

> In certain circumstance where the recipient has both remaining EPA funding and accrued program income, the EPA regions may also want to request an exception from the grant regulation in 40 CFR 31.21 (f)(2). This regulation requires accrued program income to be used prior to drawing down the unobligated balance of RLF cooperative agreement funds.

This construction site—a former brownfield site in Albuquerque, New Mexico—later became a 12,000-square-foot grocery store. (EPA photo)

Program Income Is Not Re-Loaned or Spent After Closeout

For 10 of the 20 Brownfields RLF closed cooperative agreements reviewed, the recipient has not re-loaned or spent any program income collected after the closeout agreement was signed, which totals almost $10.9 million. For these cooperative agreements, the recipients made loans with funds originally awarded with the EPA cooperative agreement. Table 1 shows these loans have either been fully repaid or are currently being repaid and include the following highlights:

- Three recipients have collected on all loans issued and hold $2.2 million of unused program income.
- Seven recipients have an $8.7 million balance of program income not being used and continue to receive repayments.

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Table 1: Available program income not spent or re-loaned

All loans repaid				
	Recipient	**EPA Region**	**Amount of program income unused**	**Date when all loans were repaid**
1	Philadelphia, Pennsylvania	3	$657,424	December 2013
2	Nevada Department of Conservation and Natural Resources	9	835,731	December 2012
3	New Mexico Environment Department	6	731,965	December 2014
	Total of the three recipients		**$2,225,120**	
Additional loan repayments are currently being collected				
	Recipient	**EPA Region**	**Program income balance***	**Repayments began**
1	Clearwater, Florida	4	$454,179	July 2014
2	Ohio Department of Development	5	3,749,290	April 2009
3	Cuyahoga County, Ohio	5	610, 933**	July 2006
4	Michigan Department of Environmental Quality	5	390,403	December 2012
5	Sioux City, Iowa	7	794,805	June 2011
6	Colorado Department of Public Health and Environment	8	2,497,495	August 2004
7	Bridgeport, Connecticut	1	173,167	February 2014
	Total of the seven recipients		**$8,670,272**	
	Total		**$10,895,392**	

*This program income balance reflects the latest information that the recipient provided to the EPA's Office of Inspector General (OIG) as of November 16, 2016.

**Includes program income from two EPA Brownfields RLF cooperative agreements. On January 9, 2017, Cuyahoga County staff told us they had reconciled the county's account, and they believe there is a program income balance of approximately $354,000. Since our data collection and analysis was completed on November 16, 2016, we are unable to confirm this information.

Source: OIG analysis of recipient data.

For the remaining 10 recipients who have spent program income, six recipients made loans with program income totaling over $1.25 million, and four recipients spent program income but have not made any loans. Program income remains available to loan or spend for some of these 10 recipients.

Reasons for Not Spending Program Income

The 10 recipients listed in Table 1 provided varying reasons for not spending program income. Three of the explanations are described in Figure 1.

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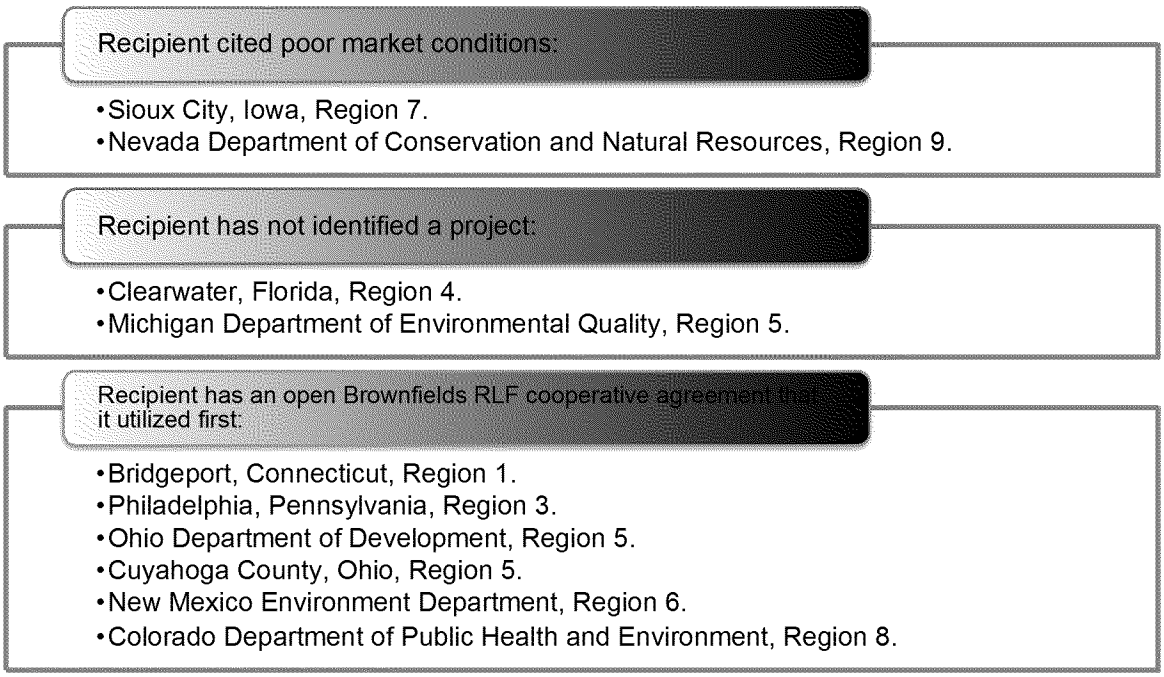
Figure 1: Explanations for not spending program income



Source: OIG interviews of recipients.

The EPA envisioned that when loans are repaid, the money would be re-loaned to provide capital within a community to address brownfields remediation and cleanup. However, the EPA has not issued a policy to this effect. Approximately $10.9 million is not being used as intended; and conceivably, contaminated brownfields properties are not being cleaned up and redeveloped.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

1. Develop a policy to reduce balances of available program income of Brownfields Revolving Loan Funds being held by recipients. The policy should establish a timeframe for recipients to use or return the funds to the EPA.

2. Develop a policy to require a recipient's balance(s) of Brownfields Revolving Loan Fund program income be used before awarding additional funds, as required by regulation.

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Agency Response and OIG Evaluation

The EPA agreed with Recommendation 1 and will work with EPA regions to develop a policy for monitoring the accumulated program income of cooperative agreements. The policy will also establish actions to be taken in certain timeframes to reduce the balance of program income or require the return of funds to the EPA as appropriate. The EPA provided an estimated completion date of March 31, 2018, for the corrective action. We consider the agency's planned corrective actions to be acceptable.

The EPA did not concur with Recommendation 2, and proposed that OBLR develop a policy to provide guidance for EPA regions negotiating terms and conditions for supplemental funding amendments, and new awards to recipients who have large balances of program income on closed-out agreements. The policy would require actions on the part of the recipient to reduce program income balances. The OIG accepts the concept of developing a policy, but the wording is missing specificity. The OIG would like more clarification on "large balances" and clarification on the types of actions that the recipient will take to reduce program income balances. Recommendation 2 remains unresolved pending the EPA clarifying the corrective actions taken.

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Chapter 3
Inconsistencies in Program Application

To promote the long-term viability of the Brownfields RLF program, it is crucial for the EPA and its recipients to maximize the amount of program income earned. It is also crucial for the EPA and its recipients to know when program income is considered expended. However, we found instances of confusion among regions and recipients, and dissimilarities in terms and conditions of the cooperative agreements and closeout agreements. This led to inconsistencies in program application.

Program income was not placed in an interest-bearing account resulting in the lost opportunity for at least $77,000 of revenue. RLF funds were also not maximized when sources of program income were excluded from the terms and conditions of cooperative agreements and closeout agreements. Another source of confusion involved not having a clear understanding of the term "expenditure," or when a closeout agreement can be terminated. These issues resulted in inconsistencies that affect the long-term sustainability of the Brownfields RLF program.

Inconsistent Terms and Conditions and Recipient Requirements

Terms and Conditions Should Require That Program Income Be Deposited Into an Interest-Bearing Account

The EPA Revolving Loan Fund Terms and Conditions for 2003, and for 2007 through 2015, say the cooperative agreement recipient must deposit advances of grant funds and *program income* (emphasis added) in an interest-bearing account. The terms and conditions also say that interest earned on program income is considered additional program income. (The EPA did not provide the EPA Revolving Loan Model Terms and Conditions for 2004 through 2006.) According to the 2007–2015 Revolving Loan Fund Model Terms and Conditions, the terms and conditions apply to Brownfields RLF capitalization grants awarded from FY 2003 onwards (after the implementation of the 2002 Brownfields Law[3]), and to those that chose to transition to the law.

Per OBLR, the model terms and conditions for Brownfields RLF cooperative agreements awarded prior to the implementation of the 2002 Brownfields Law did not include an express requirement for recipients to deposit program income into interest-bearing accounts. The May 1998 Brownfields Cleanup Revolving Loan Fund Grant Administrative Manual also did not include guidance for EPA regions to recommend that program income be deposited into interest-bearing accounts. However, the terms and conditions for cooperative agreements awarded prior to

[3] The Terms and Conditions apply to Brownfields RLF capitalization grants awarded under CERCLA 104(k) and those that chose to transition to 104(k). They do not apply to pre-FY 2003 grants subject to 104(d).

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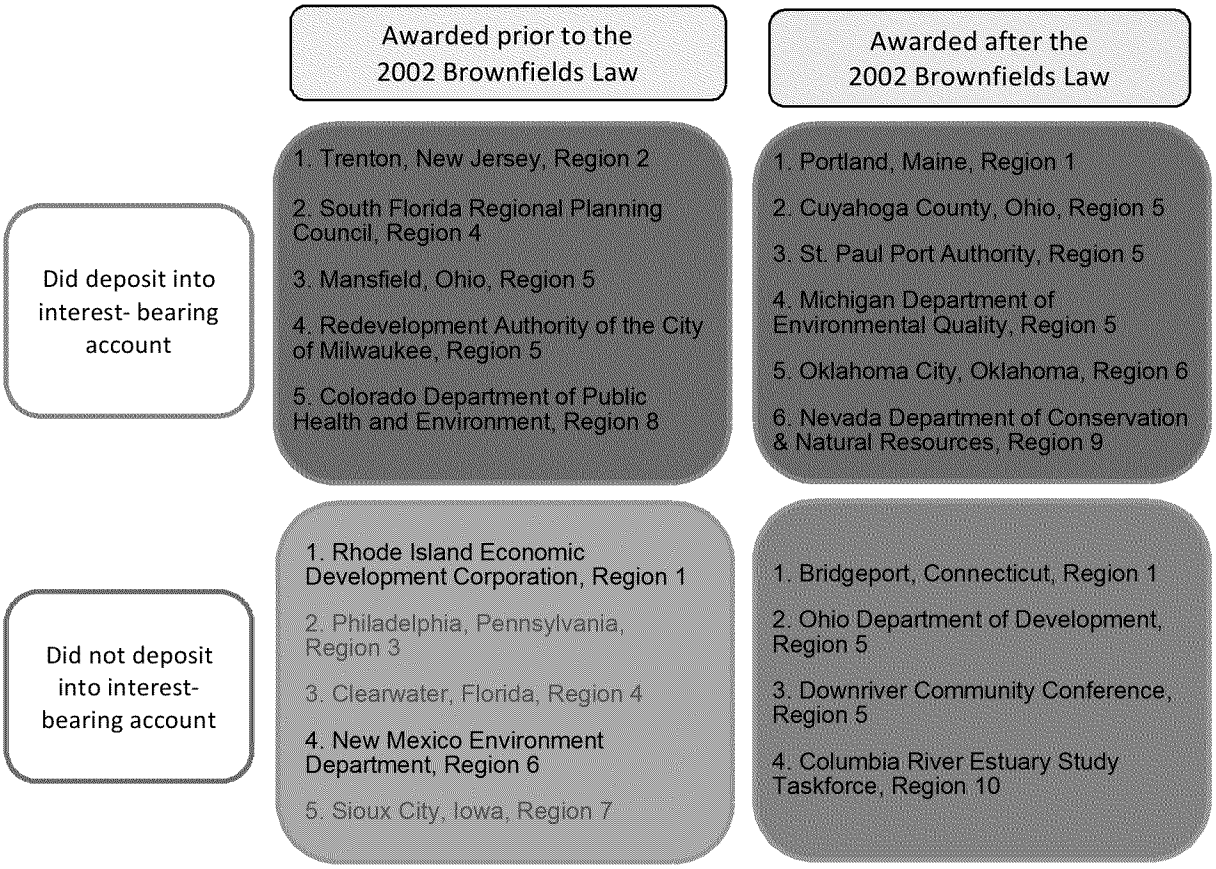
the implementation of 2002 Brownfields Law did require recipients to treat interest earned on program income as additional program income. Unless the fees or other expenses necessary for maintaining an interest-bearing account were excessive, it would have been in the recipient's best interest to deposit program income into an interest-bearing account.

Figure 2: Program income being deposited into interest-bearing accounts



Source: EPA OIG figure.

Cooperative Agreement Terms and Conditions Are Inconsistent

Of the 20 cooperative agreements in our sample, 10 were required to include terms requiring the recipient to deposit program income into an interest-bearing account because these cooperative agreements were issued after the 2002 Brownfields Law was implemented (Figure 2–two boxes on right side). However, four of the 10 recipients that were required to deposit program income into an interest-bearing account did not (Figure 2–lower right, red box), and the potential for additional revenue of at least $50,000 was missed for Brownfields RLF

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activities from July 2010 through June 2016.[4] Although the remaining 10 cooperative agreements were not required to deposit funds into an interest-bearing account because the awards were made prior to the implementation of the 2002 Brownfields Law, five recipients did (Figure 2–top left green box).

Five of the 10 recipients awarded prior to implementation of the 2002 Brownfields Law did not deposit program income into an interest-bearing account (Figure 2–lower left, yellow box). For the five recipients, we used recipient-provided interest rates from July 2010 through June 2016, and RLF monthly account balances, to estimate lost interest revenue. We found that approximately $27,000 of interest revenue was lost for the four recipients that did not deposit program income into an interest-bearing account:

- Philadelphia, Pennsylvania, Region 3.
- Clearwater, Florida, Region 4.
- New Mexico Environment Department, Region 6.
- Sioux City, Iowa, Region 7.

No estimate was calculated for the Rhode Island Economic Development Corporation due to comingling of funds.

Three recipients received supplemental funding after the implementation of the 2002 Brownfields Law, and the accompanying modifications could have added the requirement to deposit program income into an interest-bearing account (Figure 2–lower left, yellow box, red text).

Inadequate Oversight Creates an Uneven Playing Field

For the 10 cooperative agreements awarded prior to implementation of the Brownfields Law, there was no requirement for the closeout agreements to include the requirement that program income be deposited into an interest-bearing account. However, these closeout agreements were signed after the signing of the Brownfields Law, and could have included the language.

The four recipients awarded a cooperative agreement after the passing of the Brownfields Law (Figure 2–lower right, red box), and did not deposit program income into an interest-bearing account, provided varying reasons as shown in Table 2.

[4] This estimate is based on recipient-provided interest rates from July 2010 through June 2016, and RLF monthly account balances for each recipient for this timeframe. The estimate excludes Bridgeport, Connecticut, because we had insufficient information about the city to calculate an estimate.

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Table 2: Reasons program income was not deposited into an interest-bearing account

	Recipient	EPA Region	Explanation
1	Bridgeport, Connecticut	1	The recipient stated that the repayments were not in an interest-bearing account, so no interest was earned on idle funds. Region 1 confirmed the requirement was not included in the modification, and does not know the reason why the terms and conditions were not updated.
2	Ohio Department of Development	5	The recipient stated that Brownfields RLF program income was intentionally deposited into a fund that did not earn interest. Ohio's Accounting System Team would not allow a separate fund for every federal program, unless it is governed under the Cash Management Improvement Act, or if it was related to the American Recovery and Reinvestment Act. Therefore, the cooperative agreement was recorded into the Federal Special Fund, along with other federal grants.
3	Downriver Community Conference	5	The recipient said that it followed the direction of an EPA grant coordinator, who has since retired.
4	Columbia River Estuary Study Taskforce	10	The recipient stated that she thought there were issues with government funds in interest-bearing accounts. The recipient said they were careful to not open accounts that accrue interest because they knew this could be a problem.

Source: OIG analysis of recipients and EPA regional staff.

With numerous versions of cooperative agreements and closeout agreements, the agreements can be confusing to recipients and regional staff. There should be a level playing field in all documentation. By not requiring cooperative agreements and closeout agreements to include language that requires recipients to deposit program income into an interest-bearing account, opportunities are lost to maximize the amount of money that could be available for use on Brownfields RLF activities. For seven of our sample recipients, the amount of potential interest lost from July 2010 through June 2016 was approximately $77,000.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

3. Create a policy to require any new amendments to cooperative agreements include the term and condition to deposit program income into an interest-bearing account.

4. Develop a policy to require any new closeout agreements include the term and condition to deposit program income into an interest-bearing account.

5. Develop a plan, and implement a policy, that requires all recipients to maintain program income, and requires revolving loan funds to be maintained in interest-bearing accounts.

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Agency Response and OIG Evaluation

The EPA agreed with all three recommendations and provided corrective actions and completion dates. The EPA will develop policies that require (1) any new amendments to cooperative agreements include the term and condition to deposit program income into an interest-bearing account; (2) any new closeout agreements include the term and condition to deposit program income into an interest-bearing account; and (3) all recipients to maintain program income, and requires revolving loan funds to be maintained in interest-bearing accounts. The EPA provided an estimated completion date of March 31, 2018, for the corrective actions. We consider the agency's planned corrective actions to be acceptable.

Completed 12,000-square-foot grocery store sits on a former brownfield site in Albuquerque, New Mexico. (EPA photo)

Program Income Definitions Vary

Program Income Needs to Be Inclusive of All Sources

Per 40 CFR Part 31.25 (b), program income is gross income earned from a grant agreement during the grant period (between the effective date of the award and the ending date of the award reflected in the final financial report), or generated from grant-supported activities.

The Revolving Loan Fund Grant Program Administrative Manual defines program income in the following manner:

> Program income is the amount of money received by the recipient, either directly generated by the RLF award, or earned during the period of the award (defined as the time

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between the effective date of award and ending date of the cooperative agreement). RLF recipients must use program income according to the terms and conditions set forth in their cooperative agreement.

The manual also says that program income includes the following elements:

- Principal repayment.
- Interest earned on outstanding loan principal.
- Interest earned on accounts holding RLF program income not needed for immediate lending.
- Loan fees.
- Loan-related charges received from borrowers.
- Other income generated from RLF operations.
- Proceeds from the sale, collection or liquidation of a defaulted loan, up to the amount of the unpaid principal.
- Proceeds in excess of the unpaid principal.

In an August 11, 2016, response to OIG inquiries, OBLR confirmed our understanding about the long-term nature of the Brownfields RLF Program. While cooperative agreements may close, or the closeout agreement may be terminated, as long as the recipient has program income remaining and/or outstanding loans that are generating program income, the program income must be maintained in an RLF and used for Brownfields cleanup or other Brownfields activities. OBLR further clarified that program income must be maintained in an RLF and used for Brownfields cleanup or other Brownfields activities. This is consistent with the closeout agreement language outlined in the terms and conditions of the cooperative agreement or in any instructions the EPA provides to a cooperative agreement recipient. These instructions are provided when a closeout agreement is terminated with program income remaining, or if additional program income will be generated in the future.

OBLR clearly states that as long as the recipient has program income, the income must be maintained in an RLF and used for brownfields cleanup or other brownfields activities. Table 3 shows excerpts from the Brownfields Law and sections of the Code of Federal Regulations that support OBLR's statement.

Table 3: Law and regulations related to OBLR's statement

Criteria	Section related to OBLR statement
Brownfields Law	Grants and loans for Brownfield remediation: (A) Grants provided by the President - the President shall establish a program to provide grants to (i) eligible entities, to be used for **capitalization of revolving loan funds.** *(Emphasis added)*
2 CFR 1500.7(c)	Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other Brownfield purpose as outlined in their closeout agreement.

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40 CFR Part 31.25(h)	There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

Sources: Small Business Liability Relief and Brownfields Revitalization Act, and the Code of Federal Regulations.

In addition, during a meeting with Region 5 staff, an August 7, 2006, email from the EPA's Office of General Counsel was mentioned, which includes the following text: "First, the law authorizes RLF recipients to make both loans and subgrants."

The email also references U.S. Senate Report 107-2, dated March 12, 2001, p.7, which supports the idea that it is desirable for RLFs to be maintained long-term. The Office of General Counsel email stated the following in referencing the Senate report:

> …loans are generally preferred over subgrants because 'repayment of the loans will extend the life and expand the utility of Federal expenditures under this program.'

Inconsistencies in Program Income Definitions Span Multiple Regions

For five of 20 recipients in our sample, the definitions of program income varied among the cooperative agreements, modifications and closeout agreements, as shown in Table 4.

Table 4: Variance in definition of program income

	Recipient	EPA Region	Variance between agreements
1	Portland, Maine	1	The closeout agreement definition limited program income to loan repayments, interest payments and program fees.
2	Rhode Island Economic Development Corporation	1	
3	Trenton, New Jersey	2	
4	Bridgeport, Connecticut	1	The cooperative agreement and modifications did not define program income. The closeout agreement defined program income in two formats. First, accrued program income as loan principle repayments, interest payments, and program fees. Secondly, future program income as current and future loans and subgrants.
5	Philadelphia, Pennsylvania	3	The closeout agreement definition of program income did not include interest earned on program income, while the cooperative agreement definition did include interest earned.

Source: OIG analysis of EPA and recipient data.

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EPA Region 5 did not apply OBLR's definition of program income subsequent to closeout of cooperative agreements, excluding loan repayments paid after the cooperative agreement is closed. The Region 5 branch chief provided the following statement and references from 40 CFR 31.25(h) to the OIG team:

> Per paragraph (h), I believe that making closeout agreements an explicit part of the grant terms and conditions, we are going a long way to clearing up past confusion as the citation clearly allows certain grant conditions to be carried forward from the agreement (original CA). It is also just as clear that 'program income' as defined, is earned only during the original award period. Money repaid after grant closeout on loans made prior to closeout is program income. Loan repayments made on loans made subsequent to closeout and maybe made initially with program income, are—just loan repayments…*unless* we want to also add a further condition to the newly explicit close out term and condition, that for purposes of the closeout agreement *all* future loan repayments are considered 'program income.' This way, grantees are made aware, upfront, of their long-term, continuing obligations.

Six of 20 recipients in our sample provided varying answers as to when Brownfields RLF recipients no longer need to continue to operate the revolving loan fund with the program income[5], as shown in Table 5. All six recipients are located in EPA Region 5.

Table 5: Recipient responses to when funds lose restrictions on program income

	Recipient	Response
1	Mansfield, Ohio	Restrictions continue as long as there is program income.
2	Michigan Department of Environmental Quality	
3	Ohio Department of Development	Did not know when restrictions on program income ceases.
4	Cuyahoga County, Ohio	
5	St. Paul Port Authority	Restrictions cease when loans revolved once.
6	Redevelopment Authority of the City of Milwaukee	On the 3-year anniversary of the closeout agreement, all current and future funds lose their restrictions.

Source: OIG interviews of recipients.

Region 5 staff provided varying answers as to when Brownfields RLF funds lose restrictions on program income. Only one of five Region 5 project officers said something similar to OBLR's guidance regarding restrictions on the use of program income, which stated the recipient can terminate the closeout agreement, or can continue revolving that money and continue operating the program. The project officer also said that as long as there is program income, restrictions

[5] OBLR stated that while the cooperative agreements may close, or the closeout agreement may be terminated, as long as the recipient has program income remaining and/or outstanding loans that are generating program income, the program income must be maintained in an RLF and used for Brownfields cleanup or other Brownfields activities.

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apply. We received the following responses from the four remaining Region 5 project officers:

- Restrictions ceased at closeout of the cooperative agreement. This project officer is responsible for three of the seven Region 5 recipients in our sample.

- Did not know when restrictions on program income ceases.

- At termination of the closeout, program income lost its federal terms and condition, and reverted to the recipient with the EPA having no authority.

- No federal requirements are still in effect after the award closes, except for those outlined in the closeout agreement. The closeout agreement was silent on this topic.

Unclear or Inconsistent Application of Guidance Causes Confusion

OBLR headquarters staff indicated that while OBLR issues the guidance, EPA regions are responsible for closeout agreement reviews. The original cooperative agreements' terms and conditions contain rules the regions are supposed to follow when closing a cooperative agreement. The following examples are of EPA regions that do not apply the guidance, or are not including the correct cooperative agreement terms and conditions when developing agreements.

- Region 1 project officer did not know why the terms and conditions of the cooperative agreement were incomplete and said this was an administrative error.

- Regions 1 and 2 project officers said they used a template to create the closeout agreements. There is no template included in any of the guidance that OBLR provides.

- Region 3 project officer said the omission of interest earnings in the definition of program income was an oversight.

Moreover, Region 5 project officers and recipients provided varying definitions for when the federal restriction on program income ceases. OBLR has either not fully defined program income to Region 5, or has allowed Region 5 to continue to operate the program in an improper manner.

In response, Region 5 said that its "implementation and interpretation of national statute and policy regarding program income was consistent with the policies and guidance applicable at the time that the closeout agreements were negotiated." Region 5 believes that whatever the apparent differences, these differences were

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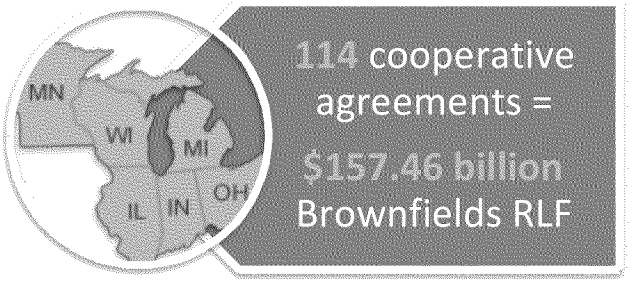
based largely upon a lack of national policy; not any unique definition or treatment of program income in the region.

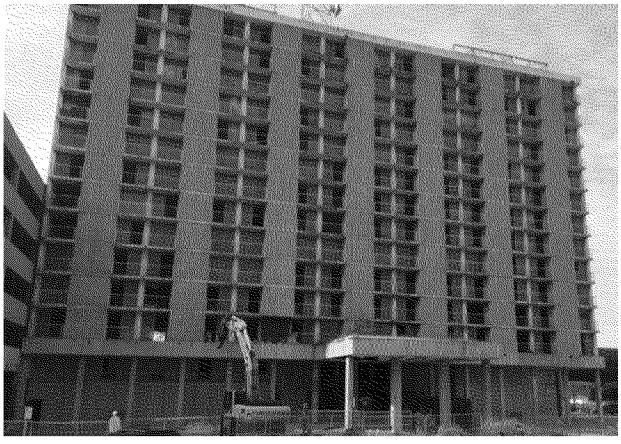
According to OBLR, Region 5 has awarded 114 cooperative agreements for a total of $157,461,967 in the Brownfields RLF Program—more than any EPA region. Region 5 has also negotiated over 40 percent of the closeout agreements nationwide.



Source: EPA OIG graphic summarizing EPA Region 5 cooperative agreements.

When program income definitions vary, this creates confusion for recipients about what should be categorized as program income. Some recipient closeout agreement definitions were limited to loan principal repayments, interest payments, and program fees from the definition. Another recipient's cooperative agreement did not provide any definition of program income. This variance effectively eliminates additional program income streams that could augment the Brownfields RLF Program, and reduces funds for future Brownfields RLF activities. In addition, the recipient may not be able to sustain a RLF without maximizing assets in the fund.

When a region applies a different definition to post-closeout loan payments, and does not define those payments as program income, there is no requirement for recipients to spend the funds on Brownfields RLF-related activities. In addition, when post-closeout program income is not used on Brownfields RLF activities, recovered funds cannot revolve, and the essence of the RLF program is lost.


EPA Brownfields grants funded asbestos removal from an abandoned building, clearing the way for its demolition in Gary, Indiana. (EPA photo)

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

6. Develop a policy to require any new closeout agreements to include a program income definition that is consistent with the Revolving Loan Fund Grant Program Administrative Manual.

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7. Develop and implement a policy that provides an explicit definition of program income for regions to distribute to existing recipients.

8. Develop and implement required training for all regional Brownfields Revolving Loan Fund staff. Have the training include all program policy and guidance relating to maintaining a Brownfields Revolving Loan Fund after the cooperative agreement is closed if program income exists.

9. Track staff completion of required training.

Agency Response and OIG Evaluation

The EPA agreed with all four recommendations and provided corrective actions and completion dates for the four recommendations. For Recommendations 6, 7 and 8, the EPA will develop policies consistent with the wording in the recommendations. For Recommendation 9, the EPA will work with regional staff to track completion of required training. For Recommendations 6 and 7, the EPA provided an estimated completion date of March 31, 2018, for the corrective actions. For Recommendations 8 and 9, the EPA provided an estimated completion date of September 30, 2018. We consider the agency's planned corrective actions to be acceptable.

Variance in Termination Clause and Expenditure Definition

Definition of Termination Needed for Closeout Agreements

According to the EPA's Office of General Counsel, closeout agreements terminate when either the recipient has expended all funds, or the recipient wishes to discontinue their agreed-to, post-closeout activities. In the latter case, if the terms of the closeout agreement are silent on post-closeout program income, then the EPA must renegotiate the closeout agreement with the recipient to provide for the return of the money to the EPA. A portion of the returned funding, up to the amount the EPA capitalized for the RLF grant, may be returned to the program's State and Tribal Assistance Grant appropriation. The remainder would go to miscellaneous receipts of the U.S. Department of the Treasury, as required by 31 U.S.C. § 3302. The EPA's Office of General Counsel also explained that RLF funds must be used for purposes outlined in the terms and conditions of the cooperative agreement and closeout agreement.

The EPA's 2007 and 2010 memorandums, titled "Brownfields Revolving Loan Fund Cooperative Agreement Closeout Agreements," do not address termination clauses, and it is unclear where the language included in some closeout agreements originated.

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According to OBLR, "expended all funds" means the recipient has used all post-closeout income for authorized purposes and is not anticipating any additional post-closeout program income to be generated, such as loan repayments, fees or interest. Under the terms and conditions of the closeout agreement, the recipient may not use program income for administrative costs. OBLR said that program income may only be used for the following:

a. Loans
b. Cleanup Subawards
c. Phase I Environmental Site Assessments at Brownfield sites performed in accordance with EPA All Appropriate Inquiries Final Rule or American Society for Testing and Materials E1527-13 (or the most current version)
d. Phase II Environmental Site Assessments and cleanup planning activities at Brownfield sites, and
e. Programmatic costs to manage and oversee the work being performed

OBLR's new FY 2016 terms and conditions address when the closeout period terminates:

> Termination of this closeout agreement occurs when all program income has been expended. The cooperative agreement recipient shall notify EPA's Award Official in writing when this occurs and certify that all funds have been expended in accordance with the terms and conditions of this closeout agreement. The notification should provide the relevant grant information specified in Section 8 a. of this closeout agreement. The Agency has 90 days from receipt of this notification to summit any objections to the termination of this closeout agreement. If the Agency does not object within that time period, then this closeout agreement will terminate with no further action.

Inconsistent Application of Termination Clauses and Expenditure Definition

For the 20 closeout agreements in our sample, there were no common uniform termination clauses. For 15 of the 20 closeout agreements, one of two predominant versions were used. Eight agreements used one version, and seven agreements used different wording (Table 6).

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Table 6: Types of termination clauses used by more than one recipient in closeout agreements

Wording of termination clause		Recipient	EPA Region
"Termination of this closeout agreement occurs when all retained program income has been expended."	1	Bridgeport, Connecticut	1
	2	Rhode Island Economic Development Corporation	1
	3	Portland, Maine	1
	4	Trenton, New Jersey	2
	5	Clearwater, Florida	4
	6	Oklahoma City, Oklahoma	6
	7	New Mexico Environment Department	6
	8	Nevada Department of Conservation & Natural Resources	9
"After three full years of the expenditure by cooperative agreement recipient of the program income subject to this agreement, cooperative agreement recipient may terminate this agreement by certifying to U.S. EPA that they have expended program income funds from Cooperative Agreement in compliance with this agreement."	1	South Florida Regional Planning Council	4
	2	Ohio Department of Development	5
	3	Downriver Community Conference	5
	4	Cuyahoga County, Ohio	5
	5	St. Paul Port Authority	5
	6	Mansfield, Ohio	5
	7	Michigan Department of Environmental Quality	5

Source: OIG analysis of EPA and recipient data.

In addition, the following four recipients each had unique wording in their termination clauses:

- Philadelphia, Pennsylvania, Region 3.
- Redevelopment Authority of the City of Milwaukee, Region 5.
- Sioux City, Iowa, Region 7.
- Columbia River Estuary Study Taskforce, Region 10.

The closeout agreement for the Colorado Department of Public Health and Environment, Region 8, did not include a termination clause.

OBLR has addressed when the closeout period terminates with the new FY 2016 terms and conditions for cooperative agreements. The FY 2016 terms and conditions are the first to include this clause. None of the previous cooperative agreements included the clause. There will be a gap that has not been addressed between the new cooperative agreements that include the new clause and the cooperative agreements that do not include the clause.

According to data provided by OBLR, there are 433 open and closed cooperative agreements. As a result, there are 433 cooperative agreements and closeout agreements that do not have clear terms and conditions concerning when the closeout period terminates.

For 17 of the 20 recipients, the closeout agreement's termination clauses include the term "expended" or "expenditure." When we interviewed 11 regional project officers, five provided a definition of "expended" or "expenditure" similar to

OBLR's definition. The remaining six project officers and one branch chief from four regions did not know the definition of "expended" as worded in the termination clause, or had a different interpretation than OBLR (Table 7).

Table 7: Regional interpretations of expended or expenditure

EPA Region	Interpretation
2	Project officer did not know the definition of "expended."
3	Staff believed that "expended" meant "once a loan or subgrant is made." Staff said a loan means "expended" as well.
5	A branch chief believed that, per the definition, program income was "expended" after it has been expended one time. Two project officers believed that program income was expended once it revolved or cycled through once. One project officer believed that "expenditure" referred to programmatic funding.
9	Staff member believed that "expended" meant it can be loaned out (e.g., loan it out, subgrant it, or activities where it never comes back like assessments).

Source: OIG analysis of the EPA responses.

Of the 20 recipients, 16 were asked for an interpretation of "expended" or "expenditure", and a mix of responses were received that fell into three categories: (1) the recipient interpretation fit the criteria; (2) the recipient did not know what "expended" explicitly meant; or (3) the recipient thought once the funds had "revolved once," meaning they had been lent one time, the funds had been expended.

Regional Staff Are Unclear When a Closeout Agreement Is Terminated or When Funds Are Considered Expended

OBLR and regions do not have the same understanding of when a closeout agreement will terminate. According to OBLR, closeout agreements will terminate when either the recipient has expended all funds, or it wishes to discontinue its agreed-to, post-closeout activities. "Expended all funds" means the recipient has used all post-closeout income for authorized purposes and is not anticipating any additional post-closeout program income to be generated, such as loan repayments, fees or interest.

Termination clauses in closeout agreements contradict the opinion of OBLR, and there is no required format or specific language for the content in closeout agreements, including the termination clauses. OBLR said the program did not have a required format or specific language for closeout agreements; therefore, closeout agreements may vary in content and wording from region to region, and from cooperative agreement to cooperative agreement.

There is a risk that recipients will not spend program money on brownfields remediation and cleanup because of the confusion that happens when there is no clear understanding of when closeout agreements close, and what should happen

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with any unexpended funds. Without a uniform termination clause for all closeout agreements, regional staff and recipients have an unclear interpretation of when a closeout agreement can be terminated. With six different versions of termination clauses in our sample, and one closeout agreement without a termination clause, it is likely that other different versions exist throughout the Brownfields RLF Program.

When regional staff and recipients do not know the definition of "expended," or have a clear understanding of the word, then regional staff and recipients do not know when all post-closeout program income has been used for authorized purposes, or when a closeout agreement can be terminated.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

10. Require any new closeout agreement to include a standard term and condition describing the requirements that need to be met to terminate the agreement, and discontinue the agreed-to, post-closeout Brownfields Revolving Loan Fund activities.

11. Develop and implement a methodology that will align recipients with the same termination terms and conditions.

12. Provide an explicit definition of "expenditure" for EPA regions to distribute to recipients.

Agency Response and OIG Evaluation

The EPA agreed with Recommendations 10 and 12. The EPA provided corrective actions consistent with the wording of the recommendations. For Recommendation 10, the completion date is March 31, 2018. For Recommendation 12, the completion date is December 31, 2017. We consider the agency's planned corrective actions to be acceptable.

The EPA partially concurred with Recommendation 11. The EPA stated that it is beyond the EPA's authority to unilaterally change the terms and conditions of older cooperative agreements. The EPA also said it will work to implement a methodology that seeks to maximize the number of agreements with consistent national model terms and conditions by working with recipients to negotiate bilateral modifications of the terms and conditions of their agreements. For Recommendation 11, the EPA provided an estimated completion date of September 30, 2018. Based on the EPA statement, the OIG removed the word "all" from Recommendation 11. We consider the agency's planned corrective actions to be acceptable.

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Chapter 4
Program Data Is Unavailable or Unused

OBLR needs more information to adequately monitor closed Brownfields RLF cooperative agreements and associated program income. OBLR required more than 2 months to provide us with information that we requested on open and closed Brownfields RLFs. The information OBLR provided contained errors and was incomplete. Eleven of the 20 recipients in our sample did not submit required annual reports regarding the use of program income, or they submitted late and multiyear summary reports. The Office of Management and Budget (OMB) Circular A-123 states that federal leaders and managers are responsible for the following:

> [E]stablishing and achieving goals and objectives, seizing opportunities to improve effectiveness and efficiency of operations, providing reliable reporting, and maintaining compliance with relevant laws and regulations.

However, OBLR does not have a data system to retain key program information, and sometimes the needed information is not being obtained. Thus, OBLR cannot provide complete and accurate information sufficient to monitor program income generated from closed Brownfields RLF cooperative agreements, or know that program goals have been achieved.

Missing or Hard-to-Retrieve Data

Regions Should Verify Data Quality

OMB Circular A-123 policy states the following:

> Federal leaders and managers are responsible for establishing goals and objectives around operating environments, ensuring compliance with relevant laws and regulations, and managing both expected and unexpected or unanticipated events.

While not mandatory, as of August 2013, the Assessment, Cleanup, and Redevelopment Exchange System (ACRES) allows a recipient to input post-closeout program income. ACRES is an online database for recipients to electronically submit data directly to the EPA. On November 11, 2014, the EPA provided "ACRES 5 Training for the EPA Project Officer," which instructed project officers that they are responsible for checking the accuracy and consistency of data being reported into ACRES. Project officers are also responsible for checking that the data meets OBLR's data quality standards.

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Cooperative Agreement Information Is Inconsistent and Not Readily Available

On April 27, 2016, the EPA OIG issued a notification memorandum that requested a listing of all open and closed cooperative agreements. OBLR provided the completed spreadsheet to the OIG on June 29, 2016. The EPA took 63 days, just over 2 months, to provide the completed data. OBLR staff said this task required a lot of effort, and retrieving the requested data was time-consuming for them and EPA regions.

Part of the data was obtained from the ACRES database by the agency's ACRES contractor. OBLR then asked EPA regional offices to verify the information from the ACRES database, and to input data not available in ACRES. After submitting the spreadsheet to the OIG, OBLR could not confirm the validity of the information in the spreadsheet because EPA regional project officers track the information.

We selected a second sample of 22 closed cooperative agreements with no closeout agreements issued, to validate the information OBLR provided to us, which is summarized in Appendix A. OBLR's spreadsheet listed 143 closed cooperative agreements with no closeout agreements issued. For six of the 22 closed cooperative agreements in our second sample, EPA regional project officers could not confirm there was not a closeout agreement. For seven of the 22 closed cooperative agreements, a closeout agreement existed. This was contrary to what OBLR reported. The spreadsheet also showed that for these 22 closed cooperative agreements, no pre- or post-program income existed. However, we found $11.6 million (rounded) in pre- or post-closeout program income for 13 of the 22 cooperative agreements reviewed (Figure 3).

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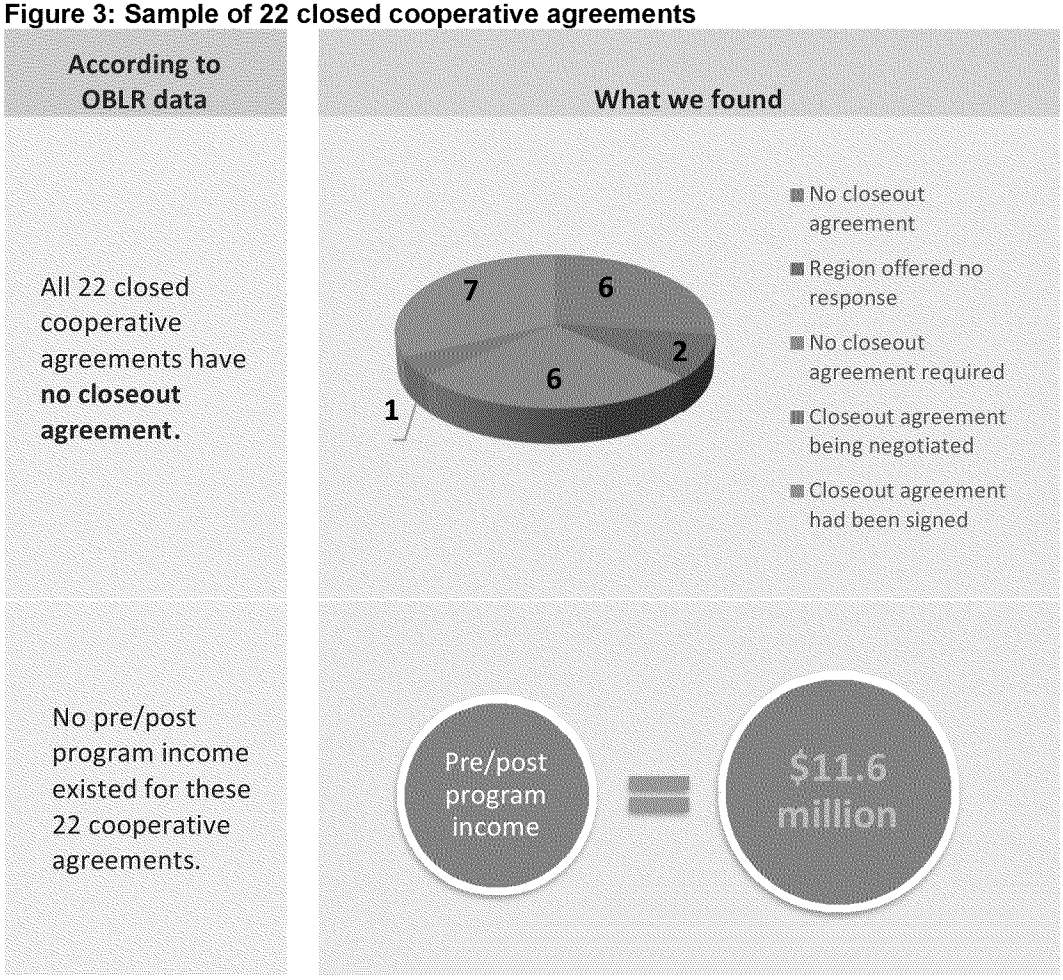
Figure 3: Sample of 22 closed cooperative agreements



Source: EPA OIG-generated figure.

Inefficient Data Collection Affects Ability to Assess Revolving Loan Fund Performance

There were a variety of reasons why it took 2 months for the EPA to provide the requested information. ACRES did not contain all the information we requested. As a result, OBLR had to ask EPA regional offices for this information. The information the regions provided was inaccurate and incomplete because the project officers could not locate the grant files, the grant files were held off-site, or the regional project officers retired and the closed cooperative agreements were not reassigned. Also, recipients are not required to report program income into ACRES, and OBLR is not able to verify a region's data because the data is held by the project officer.

OBLR's supervisory analyst informed us that it was not feasible to modify ACRES so that it could be a data source for tracking post-closeout program income. OBLR does not have the needed resources. However, OBLR managers agreed that they need to address the problem of tracking post-closeout agreement

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program income and brownfields activity, and they are looking at other options that may be feasible.

OBLR does not have efficient data collection methods relating to closed cooperative agreements with pre- or post-program income. This information is vital to OBLR so that it can have complete and accurate information about its program. Insufficient available data makes it difficult to know whether (1) programmatic goals and objectives have been achieved; (2) there are opportunities to improve effectiveness and efficiency of operations; and (3) reliable information is being used to report on the accomplishments of the program.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

13. Require regional project officers, through a policy, to be assigned and maintain information on all closed cooperative agreements with pre- and post-program income.

14. Develop and implement a method for the Office of Brownfields and Land Revitalization to track closed cooperative agreements with pre- and post-program income.

15. Develop a policy to require terms and conditions in the cooperative agreement and/or the closeout agreement to require all recipients to report program income.

Agency Response and OIG Evaluation

The EPA agreed with all three recommendations. The EPA provided corrective actions consistent with the wording of the recommendations. For Recommendations 13 and 15, the completion date is March 31, 2018. For Recommendation 14, the completion date is September 30, 2018. We consider the agency's planned corrective actions to be acceptable.

Regional Offices Should Improve Monitoring of Recipient Program Income

Regions Should Review Audit Reports and Address Problematic Findings

The EPA's Revolving Loan Fund Grant Program Administrative Manual requires EPA regions to monitor the recipient's compliance with the closeout agreement regarding disposition of program income earned after the award period. The EPA

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also has the Office of Grants and Debarment's Assistance Agreement Almanac, Chapter 4.5, titled "Compliance and Performance Issues," which is the current policy should a recipient not comply with the terms and conditions of their agreement. Also, closeout agreements for the closed cooperative agreements we reviewed required recipients to provide an annual report to the EPA on the use of the retained program income.

Annual Reports Are Not Always Submitted or Reviewed

EPA regions should improve monitoring of recipient program income via the required reports from recipients. Eleven of the 20 recipients in our sample did not submit required annual reports, or submitted them late or in a multiyear summary report. Four of the 10 recipients did not submit any annual reports:

- Rhode Island Economic Development Corporation, Region 1.
- Cuyahoga County, Ohio, Region 5.
- Mansfield, Economic Development Department, Region 5.
- Sioux City, Iowa, Region 7.

In one instance, Sioux City, Iowa, EPA staff reminded the recipient to submit annual reports as required by the closeout agreement. The Region 7 project officer reminded Sioux City, Iowa, in February 2014 and October 2015 about the lack of required reports. The recipient's staff said they did not submit any of the required reports due to an oversight. As a result of the OIG's on-site visit, the recipient provided the required report to Region 7 in June 2016.

For two recipients: Trenton, New Jersey, Region 2; and Philadelphia, Pennsylvania, Region 3; their first reports were not yet due at the time of the audit. Six recipients did submit timely reports:

- Ohio Department of Development, Region 5.
- Michigan Department of Environmental Quality, Region 5.
- St. Paul Port Authority, Region 5.
- Oklahoma City, Oklahoma, Region 6.
- Colorado Department of Public Health and Environment, Region 8.
- Columbia River Estuary Study Taskforce, Region 10.

Even when recipients submitted annual reports, in at least one case, the region missed identifying potential areas of concern. In June 2011, the Columbia River Estuary Study Taskforce submitted an annual report that stated the taskforce was borrowing $25,000 for administrative purposes, and further stated the fund is not earning interest income and is subject to sizeable bank fees. The closeout agreement between Region 10 and the Columbia River Estuary Study Taskforce stated that program income must be used for Brownfields RLF-related activities (e.g., inventorying or assessing brownfields sites, developing and evaluating site cleanup or reuse alternatives, cleaning up brownfields sites, public outreach, and

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staff time to manage and report on the funds and these activities). The cooperative agreement awarded to the taskforce also stated that program income must be deposited into an interest-bearing account, and interest earned on the program income is considered additional program income.

Monitoring receipt of the required reports is essential. The following recipients did not submit annual reports and were not aware that program income was available for Brownfields RLF activities:

- Cuyahoga County, Region 5.
- Rhode Island Economic Development Corporation, Region 1.

Regions Are Unaware of Program Income Status After Cooperative Agreement Closeout

EPA regions focus on open Brownfields RLF cooperative agreements rather than program income generated from closed cooperative agreements. The EPA acknowledges that it is not under obligation to manage closeout agreements in the same manner that it oversees open cooperative agreements. However, as mentioned above, EPA guidance requires EPA regions to monitor the recipient's compliance with the closeout agreement when it comes to the disposition of program income earned after the award period. For the EPA to understand how program income is spent, the EPA must monitor the recipient of required annual reports and familiarize itself with the types of activities funded by that program income.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

16. Create a method for the Office of Brownfields and Land Revitalization, and EPA regional managers, to track compliance with reporting requirements for closed cooperative agreements.

17. Train regional Brownfields Revolving Loan Fund project officers and managers on the Office of Grants and Debarment's Assistance Agreement Almanac, Chapter 4.5, titled "Compliance and Performance Issues," to include the roles and responsibilities of the project officer, and instruction on enforcement actions available to the EPA if a recipient does not comply.

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Agency Response and OIG Evaluation

The EPA agreed with the two recommendations. The EPA provided corrective actions consistent with the wording of the recommendations. For Recommendations 16, the completion date is June 30, 2018. For Recommendation 17, the completion date is September 30, 2018. We consider the agency's planned corrective actions to be acceptable.

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Chapter 5
Financial Management Procedures Did Not Meet Federal Standards

Federal regulations require grantees to provide accurate, current and complete disclosure of financial results of financially assisted activities. The Columbia River Estuary Taskforce did not have adequate controls to make sure that costs claimed were allowable under federal cost principles. Further, the Rhode Island Economic Development Corporation, and Bridgeport, Connecticut, did not maintain separate accounting records for their Brownfields RLF; therefore, they could not show how program income was expended. These recipients did not maintain federal requirements for financial recording. We question unsupported costs of over $2.7 million from these three recipients.

Columbia River Estuary Study Taskforce, Region 10

EPA Region 10 Should Require Recipients to Maintain Proper Financial Records

The closeout agreement between the EPA and the Columbia River Estuary Study Taskforce states that the taskforce will do the following:

> …use post-closeout program income to continue to perform or fund Brownfields-related activities such as inventorying or assessing Brownfields sites, developing and evaluating site cleanup or reuse alternatives, cleaning up Brownfields sites, public outreach related to Brownfields and staff time to manage and report on the funds and these activities.

Per 40 CFR Section 31.20, Standards for Financial Management Systems, specifically 31.20(b) and 31.20(b)(1), there are requirements that grantees and subgrantees must meet in their financial reporting standards:

> Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

The regulation also states, "Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities."

According to 2 CFR 200.339 (a)(1) and (a)(2), the EPA can terminate an award for cause if the recipient fails to comply with the terms and conditions of the

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agreement. Also, when a recipient has a history of failure to comply with regulations, or the agreement terms and conditions, the EPA can require payments as reimbursements rather than advance payments[6].

Funds May Have Been Used Inappropriately

The OIG questions how the Columbia River Estuary Study Taskforce expended $103,968 in EPA Brownfields RLF program income reported in its profit and loss statements as program income generated by the EPA Cooperative Agreement BF-97070501. There is a difference of $56,166.04 between what is reported as net income in the profit and loss statement dated September 1, 2016, and the total cash balance in the QuickBooks "All Transactions" report dated August 30, 2016. In addition, the Columbia River Estuary Study Taskforce also did the following:

- Borrowed $25,000 from its RLF to pay for administrative purposes.
- Posted a charge of $8,730.26, "To bring us into balance with the QB P&L by Class which the auditor ..." Staff could not fully explain the charge and were unable to find documentation supporting the charge.

Poor Financial Records and Misuse of Funds Go Undetected

A Taskforce manager said the QuickBooks report was not correct because of the way the past Taskforce accountant made journal entries that somehow did not tie into the EPA account. The Taskforce manager said there is no way to go back and correct the journal entries, because it is unclear what the accountant was doing.

Also, Taskforce management said that it was facing financial difficulties in 2010 and 2011; therefore, it borrowed from Brownfields RLF funds to pay for overhead expenses. A Taskforce manager thought EPA Region 10 approved the loan. As of September 21, 2016, the Taskforce had repaid all but $1,500 of the loan.

The financial records were incomplete; therefore, we question the use of $103,968. When recipients use program income for costs unrelated to Brownfields RLF activities, the RLF has less money available to provide loans and subgrants to carry out cleanup activities at brownfield sites. When loans are repaid, the loan amount is returned to the fund and re-lent to other borrowers, providing an ongoing source of capital within a community.

[6] This is according to 2 CFR 200.207 and 2 CFR 200.338.

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Recommendations

We recommend that the Regional Administrator, Region 10:

18. Question the unsupported use of $103,968 in EPA Brownfields Revolving Loan Fund revenue reported by the Columbia River Estuary Study Taskforce in its profit and loss statements, and recover any remaining program income.

19. Place the Columbia River Estuary Study Taskforce on a reimbursement basis for all EPA grants and agreements.

Agency Response and OIG Evaluation

The EPA agreed with Recommendations 18, and will review documentation on questioned costs. The Region 10 RLF Lead has been in communication with the Columbia River Estuary Study Taskforce staff to resolve this issue. The aggregate value of the questioned costs in this report exceed $250,000. Therefore, in accordance with EPA Manual 2750, Recommendation 18 will require the agency to submit a proposed Management Decision to the OIG for concurrence before it is issued to the recipient, and within 120 days of the final report.

The EPA agreed with Recommendation 19, and provided corrective action and a completion date of December 31, 2017. The EPA will work with Region 10 to determine whether it is appropriate to place this recipient in reimbursement status. The EPA stated that the Columbia River Estuary Study Taskforce does not have any other grants or agreements with EPA; therefore, it is not possible to place Columbia River Estuary Study Taskforce on a reimbursement basis for EPA grants at this time. We consider the agency's planned corrective action to be acceptable.

Bridgeport, Connecticut, Region 1

EPA Region 1 Should Require Recipients to Maintain Separate Accounting

The Standards for Financial Management Systems, 40 CFR Part 31.20, requires grantees to provide accurate, current and complete disclosure of financial results, and to maintain records that adequately identify the source and application of funds. The regulation also says records must contain "information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income." In addition, accounting records must be supported by documents such as cancelled checks, paid bills, payrolls, time-and-attendance records, contract and subgrant award documents.

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The following text from the closeout agreement between the EPA and Bridgeport, Connecticut, provides additional insight:

> All retained program income must be managed separately, so it may easily be tracked, and shall be made available for continued operation of a Revolving Loan Fund for Brownfields cleanups and/or other Brownfields activities…
>
> The grant recipient must maintain adequate accounting records for how retained program income is managed and spent as well as all other appropriate records and documents related to the activities conducted using retained program income.

Per 2 CFR Section 1500.7(c) the following guidance is provided:

> Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their closeout agreement.

However, 2 CFR Section 200.339 permits the EPA to terminate the agreement for cause if the recipient fails to comply with the terms and conditions of the agreement. If a recipient has a history of failure to comply with regulations, or the agreement terms and conditions, the EPA can require reimbursed payments rather than advance payments[7].

Bridgeport, Connecticut's Financial Records Are Inadequate

The OIG questions how $1,983,198 in EPA Brownfields RLF program income generated under cooperative agreement BF-97138201 was used. The city confirmed that program transactions, such as program income and expenses, have not been recorded in the city's accounting system, and the city does not know the current fund balance. Bridgeport, Connecticut, has not provided an activity/transaction statement for the Brownfields RLF (i.e., an income/expense report) for the period from September 14, 2005, through September 12, 2016, or a current trial balance for the Brownfields RLF. Currently, the city is trying to find the files associated with the closeout agreement. Therefore, the city has not provided sufficient support to document how it spent $1,983,198 in Brownfields RLF funds.

Due to lack of accounting records, we are unable to verify how the closeout agreement's, pre- and post-closeout earned program income has been spent. Also, we cannot verify the actual current RLF fund balance.

[7] This is according to 2 CFR 200.207 and 2 CFR 200.338.

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Staffing Transitions Created Problems

Over the last 5 years, Bridgeport, Connecticut, has gone through four program directors, and the city has not had any consistent program staff. The current project manager has only been with Bridgeport, Connecticut, for over a year. The previous project manager left abruptly in 2010. The city did not have a well-managed transition, so reporting fell through the cracks. The current project manager also stated that prior to this year, he did not know the reporting requirements. The director for Bridgeport, Connecticut, stated that the closeout agreement was not on the city's radar. The director also said he did not have knowledge of the cooperative agreement's history; therefore, he did not know what was required under the closeout agreement's terms and conditions.

When the EPA cannot effectively audit and track Brownfields RLF funds because the financial records are incomplete, the agency is unable to determine whether the recipient has used those funds for brownfield site assessment(s), cleanup(s), and rehabilitation. Nor can the EPA determine whether costs were allowable, allocable and reasonable. Based on these reasons, we question the use of $1,983,198. When recipients use program funds for costs unrelated to Brownfields RLF activities, the fund has less money available to provide loans and subgrants to perform brownfield activities.

Recommendations

We recommend that the Regional Administrator, Region 1:

20. Question unsupported use of $1,983,198 in EPA Brownfields Revolving Loan Funds program income reported by Bridgeport, Connecticut, and recover remaining program income.

21. Place Bridgeport, Connecticut, on a reimbursement basis for all EPA grants and agreements.

Agency Response and OIG Evaluation

The EPA agreed with Recommendation 20, and will review documentation on questioned costs. The aggregate value of the questioned costs in this report exceed $250,000. Therefore, in accordance with EPA Manual 2750, Recommendation 20 will require the agency to submit a proposed Management Decision to the OIG for concurrence before it is issued to the recipient, and within 120 days of the final report.

The EPA agreed with Recommendation 21, and provided corrective action and a completion date of December 31, 2017. The EPA will work with Region 1 to determine whether it is appropriate to place this recipient in reimbursement status. The EPA Region 1 staff conducted an Administrative Post-Award Advanced

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Monitoring Review of the city of Bridgeport's administrative and financial management systems in September 2016, and has been working with the city to implement new policies and procedures to address issues relating to financial management and reporting. Regional program staff have met with Bridgeport staff several times in person and by telephone to help improve their understanding of program requirements. We consider the agency's planned corrective action to be acceptable.

Rhode Island Economic Development Corporation, Region 1

EPA Region 1 Should Require Recipients to Maintain Proper Financial Records

The requirements outlined in the Standards for Financial Management Systems, 40 CFR Part 31.20, establish standards for financial management including how financial records must be maintained. The regulation requires grantees to provide accurate, current and complete disclosure of financial results, and to maintain records that adequately identify the source and application of funds.

In addition, the Rhode Island Economic Development Corporation's closeout agreement states the following:

> All retained program income must be managed separately, so it may easily be tracked, and shall be made available for continued operation of a Revolving Loan Fund for Brownfields cleanups and/or other Brownfields activities…
>
> The grant recipient must maintain adequate accounting records for how retained program income is managed and spent as well as all other appropriate records and documents related to the activities conducted using retained program income…
>
> Annual Reports shall be required for the first 5 years following the effective date of the closeout agreement…

Regulation 2 CFR 1500.7(c) states the following:

> Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their closeout agreement.

However, 2 CFR 200.339 says that in the event the recipient fails to comply with the terms and conditions of the agreement, the EPA may terminate the agreement for cause. Also, when a recipient has a history of failure to comply

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with regulations, or the agreement's terms and conditions, the EPA can require payments as reimbursements rather than advance payments[8].

EPA Region 1 Project Officers Should Review Recipient Financial Records

The OIG questions how an estimated $608,712 of EPA Brownfields RLF program income generated by the EPA under cooperative agreement BL-98128501 was spent. The Rhode Island Economic Development Corporation comingled funds and program income from several grants.

The Rhode Island Economic Development Corporation has not provided adequate accounting records and/or documents for the auditor to substantiate whether the recipient has used program income in a manner consistent with the terms and conditions of the closeout agreement, or expended program income for eligible Brownfields RLF cleanup activities. The recipient has not managed all retained income separately, so that income can be easily tracked, as required by the closeout agreement. Therefore, the recipient has not provided sufficient support to document how it spent an estimated $608,712 in EPA Brownfields RLF funds.

Further, the Rhode Island Economic Development Corporation has not provided any annual reports that contain a summary of expenses incurred, and program income received, as required by the closeout agreement.

Funds Have Gone Undetected

Rhode Island Economic Development Corporation staff did not know the closeout agreement existed, and they did not know the terms and conditions. Staff said a former employee should have been submitting the annual reports, but the submissions never occurred. The Region 1 project officer has not conducted any monitoring, and he does not know why the recipient did not file the annual reports.

The EPA risks not being able to determine whether the recipient has used Brownfields RLF funds for brownfield site assessment(s), cleanup(s) and rehabilitation, when the recipient has not tracked the funds and the EPA cannot audit the Brownfields RLF account. Therefore, we question the use of an estimated $608,712 of EPA Brownfields RLF program income. If a recipient uses program funds for costs unrelated to Brownfields RLF activities, less money is available to provide loans and subgrants to perform brownfield sites assessments, cleanups and other brownfield activities.

[8] This is according to 2 CFR 200.207 and 2 CFR 200.338.

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Recommendations

We recommend that the Regional Administrator, Region 1:

22. Question unsupported use of an estimated $608,712 in EPA Brownfields Revolving Loan Funds by the Rhode Island Economic Development Corporation and recover remaining program income.

23. Place the Rhode Island Economic Development Corporation on a reimbursement basis for all EPA grants and agreements.

Agency Response and OIG Evaluation

The EPA agreed with Recommendation 22, and will review documentation on questioned costs. The aggregate value of the questioned costs in this report exceed $250,000. Therefore, in accordance with EPA Manual 2750, Recommendation 22 will require the agency to submit a proposed Management Decision to the OIG for concurrence before it is issued to the recipient, and within 120 days of the final report.

The EPA agreed with Recommendation 23, and provided corrective action and a completion date of December 31, 2017. The EPA will work with Region 1 to determine whether it is appropriate to place this recipient in reimbursement status. According to the EPA, Region 1 has taken actions to improve the issues that lead to the unsupported cost identified in Recommendation 22, and the region should improve the financial accounting of recipients going forward. We consider the agency's planned corrective action to be acceptable.

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Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Potential Monetary Benefits (in $000s)
1	7	Develop a policy to reduce balances of available program income of Brownfields Revolving Loan Funds being held by recipients. The policy should establish a timeframe for recipients to use or return the funds to the EPA.	R	Assistant Administrator for Land and Emergency Management	3/31/18	$10,900
2	7	Develop a policy to require a recipient's balance(s) of Brownfields Revolving Loan Fund program income be used before awarding additional funds, as required by regulation.	U	Assistant Administrator for Land and Emergency Management		
3	12	Create a policy to require any new amendments to cooperative agreements include the term and condition to deposit program income into an interest-bearing account.	R	Assistant Administrator for Land and Emergency Management	3/31/18	$77
4	12	Develop a policy to require any new closeout agreements include the term and condition to deposit program income into an interest-bearing account.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
5	12	Develop a plan, and implement a policy, that requires all recipients to maintain program income, and requires revolving loan funds to be maintained in interest-bearing accounts.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
6	18	Develop a policy to require any new closeout agreements to include a program income definition that is consistent with the Revolving Loan Fund Grant Program Administrative Manual.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
7	19	Develop and implement a policy that provides an explicit definition of program income for regions to distribute to existing recipients.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
8	19	Develop and implement required training for all regional Brownfields Revolving Loan Fund staff. Have the training include all program policy and guidance relating to maintaining a Brownfields Revolving Loan Fund after the cooperative agreement is closed if program income exists.	R	Assistant Administrator for Land and Emergency Management	9/30/18	
9	19	Track staff completion of required training.	R	Assistant Administrator for Land and Emergency Management	9/30/18	
10	23	Require any new closeout agreement to include a standard term and condition describing the requirements that need to be met to terminate the agreement, and discontinue the agreed-to, post-closeout Brownfields Revolving Loan Fund activities.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
11	23	Develop and implement a methodology that will align recipients with the same termination terms and conditions.	R	Assistant Administrator for Land and Emergency Management	9/30/18	

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RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Potential Monetary Benefits (in $000s)
12	23	Provide an explicit definition of "expenditure" for EPA regions to distribute to recipients.	R	Assistant Administrator for Land and Emergency Management	12/31/17	
13	27	Require regional project officers, through a policy, to be assigned and maintain information on all closed cooperative agreements with pre- and post-program income.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
14	27	Develop and implement a method for the Office of Brownfields and Land Revitalization to track closed cooperative agreements with pre- and post-program income.	R	Assistant Administrator for Land and Emergency Management	9/30/18	
15	27	Develop a policy to require terms and conditions in the cooperative agreement and/or the closeout agreement to require all recipients to report program income.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
16	29	Create a method for the Office of Brownfields and Land Revitalization, and EPA regional managers, to track compliance with reporting requirements for closed cooperative agreements.	R	Assistant Administrator for Land and Emergency Management	6/30/18	
17	29	Train regional Brownfields Revolving Loan Fund project officers and managers on the Office of Grants and Debarment's Assistance Agreement Almanac, Chapter 4.5, titled "Compliance and Performance Issues," to include the roles and responsibilities of the project officer, and instruction on enforcement actions available to the EPA if a recipient does not comply.	R	Assistant Administrator for Land and Emergency Management	9/30/18	
18	33	Question the unsupported use of $103,968 in EPA Brownfields Revolving Loan Fund revenue reported by the Columbia River Estuary Study Taskforce in its profit and loss statements, and recover remaining program income.	R	Regional Administrator, Region 10	12/31/17	$103
19	33	Place the Columbia River Estuary Study Taskforce on a reimbursement basis for all EPA grants and agreements.	R	Regional Administrator, Region 10	12/31/17	
20	35	Question unsupported use of $1,983,198 in EPA Brownfields Revolving Loan Fund program income reported by Bridgeport, Connecticut, and recover remaining program income.	R	Regional Administrator, Region 1	6/30/18	$1,983
21	35	Place Bridgeport, Connecticut, on a reimbursement basis for all EPA grants and agreements.	R	Regional Administrator, Region 1	12/31/17	
22	38	Question unsupported use of an estimated $608,712 in EPA Brownfields Revolving Loan Funds by the Rhode Island Economic Development Corporation and recover remaining program income.	R	Regional Administrator, Region 1	6/30/18	$609
23	38	Place the Rhode Island Economic Development Corporation on a reimbursement basis for all EPA grants and agreements.	R	Regional Administrator, Region 1	12/31/17	

[1] C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

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Sample of Cooperative Agreements Reviewed

For preliminary research, the team judgmentally selected a sample of three cooperative agreements to review. We selected the largest cumulative Brownfields Revolving Loan Fund cooperative agreement in Region 5 (Redevelopment Authority of the City of Milwaukee), Region 7 (Sioux City, Iowa), and Region 8 (Colorado Department of Public Health and Environment). Initially, the team selected Cooperative Agreement No. 97500701-2 (Illinois Environmental Protection Agency) for Region 5, but replaced the cooperative agreement with the Redevelopment Authority of the City of Milwaukee cooperative agreement No. 97568301-0.

For fieldwork, the team judgmentally selected 17 additional samples for a total of 20. The team judgmentally selected samples from an agency-provided spreadsheet of closed Brownfields RLF cooperative agreements based on the following criteria:

1. There is a closeout agreement, indicating there is or will be program income.
2. Award dates are both before and after the 2002 Brownfields Law.
3. There is either pre-closeout program income or post-closeout program income.
4. There is some type of Brownfields RLF projects/activities to be completed with closeout program income.
5. Project end dates and/or closeout dates are not in 2014, 2015 or 2016, providing the recipient ample time to identify projects for funding. (In one case, the project ended in 2010, but the closeout date was 2016.)
6. Award amounts are all over $1,000,000.

The team selected the number of regional recipients based on the number of closeout agreements and RLF funds awarded per EPA region.

	Cooperative agreement number	Recipient	EPA Region
1	BF97138201	Bridgeport, Connecticut	1
2	BL98128501	Rhode Island Economic Development Corporation	1
3	BF97145801	Portland, Maine	1
4	BL99275501	Trenton, New Jersey	2
5	BL99369801	Philadelphia, Pennsylvania	3
6	BL97434201	South Florida Regional Planning Council	4
7	BL98487299	Clearwater, Florida	4
8	BL97568301	Redevelopment Authority of the City of Milwaukee	5
9	BF97564102	Ohio Department of Development	5
10	BL00E01001	Downriver Community Conference	5
11	BL98574402	Cuyahoga County	5
12	BL97565101	Mansfield Economic Development Department	5
13	BL00E04401	St. Paul Port Authority	5
14	BF96522301	Michigan Department of Environmental Quality	5
15	BF96603101	Oklahoma City, Oklahoma	6
16	BL97611001	New Mexico	6
17	BL98706401	Sioux City, Iowa	7
18	BL98811601	Colorado Department of Public Health and Environment	8

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Cooperative agreement number		Recipient	EPA Region
19	BF96941701	Nevada Department of Conservation and Natural Resources	9
20	BF97070501	Columbia River Estuary Study Taskforce	10

To verify the accuracy of the data that OBLR provided, the team judgmentally selected an additional sample of 22 cooperative agreements. The team selected samples from an agency-provided spreadsheet of closed Brownfields RLF cooperative agreements, based on the following criteria:

1. The cooperative agreement does not have a closeout agreement.
2. There was not any post-closeout program income reported.
3. Award amounts greater than or equal to $1,000,000.
4. More than $100,000 expended.

The team selected the number of regional cooperative agreements based on the number of closeout agreements awarded per region.

	Cooperative agreement number	Recipient	EPA Region
1	BF97157201	Brewer, Maine	1
2	BF97357101	Roanoke, Virginia	3
3	BF97357001	Johnstown Redevelopment Authority	3
4	BL97467102	Alabama Department of Environmental Management	4
5	BL97570901	Oakland County	5
6	BL97572401	Jackson County Brownfields Redevelopment Authority	5
7	BL97572501	Saginaw County	5
8	BL97597801	Springfield, Ohio	5
9	BL97598201	Monroe, Michigan	5
10	BL97566801	Kenosha, Wisconsin	5
11	2B00F08301	Oklahoma Department of Environmental Quality	6
12	BF96662001	North Central Texas Council of Governments	6
13	RP97653901	Louisiana Department of Environmental Quality	6
14	2B97892501	Aurora, Colorado	8
15	2B97863101	Colorado Department of Public Health and Environment	8
16	2B00T31601	California Department of Toxic Substance Control	9
17	BF97955901	Emeryville, California	9
18	BF97971201	Anaheim Redevelopment Agency	9
19	BL97941601	Madera County	9
20	BL97943301	Hawaii Department of Business, Economic Development, and Tourism	9
21	BL98998401	Nevada Division of Environmental Protection	9
22	BL99988701	Sacramento, California	9

Agency Response to Draft Report

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

NOW THE
OFFICE OF LAND AND
EMERGENCY MANAGEMENT

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OA-FY-16-0155 "Consistent Management of the Brownfields Revolving Loan Fund Program is Needed Across EPA Regional Offices", dated June 23, 2017

FROM: Barry N. Breen
Acting Assistant Administrator 7/21/2017

TO: Arthur A. Elkins, Jr.
Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit draft report. Following is a summary of the Agency's overall position, along with its position on each of the draft report recommendations. EPA's Region 1 and Region 10 have contributed to and concurred with this response. For those report recommendations with which the Agency agrees, we have provided high-level intended corrective actions and estimated completion dates to the extent we can. For those report recommendations that we do not think are appropriate or supported, we have explained our position, and proposed alternatives to your recommendations. For your consideration, we have included technical comments within the draft report to supplement this response.

AGENCY'S OVERALL POSITION

EPA agrees with the OIG finding and is in agreement with 22 of 23 recommendations. EPA has already taken steps to address some of the findings and recommendations noted by the OIG (e.g., the revised model FY17 RLF terms and conditions have incorporated and addressed a number of report recommendations). EPA will work with the regions to develop policies and training material to bring consistency in implementing the RLF program across the ten regions.

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AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS

AGREEMENTS

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Develop a policy to reduce balances of available program income of Brownfields Revolving Loan Funds being held by recipients. The policy should establish a timeframe for recipients to use or return the funds to the EPA.	OBLR will work with the Regions to develop a policy regarding monitoring of accumulated program income on the cooperative agreements. The policy will also establish actions to be taken in certain timeframes to reduce balance of program income or require return of funds to EPA as appropriate.	Complete by Q2 FY2018
3	Create a policy to require any new amendments to cooperative agreements include the term and condition to deposit program income into an interest-bearing account.	OBLR will develop a policy requiring any new amendments to cooperative agreements include the term and condition to deposit program income in an interest-bearing account. OBLR has already revised the RLF terms and conditions requiring program income to be deposited into an interest bearing account. These terms and conditions will be incorporated when awarding new cooperative agreements or as new amendments are made to existing cooperative agreements.	Complete by Q2 FY2018
4	Develop a policy to require any new close-out agreements include the term and condition to deposit program income into an interest-bearing account.	OBLR will develop and issue a policy that requires any new closeout agreements include a term and condition to deposit program income in an interest bearing account. OBLR has already revised the RLF terms and conditions. The revised terms and conditions include closeout agreement requirements which require program income to be deposited into an interest bearing account.	Complete by Q2 FY2018
5	Develop a plan, and implement a policy, that requires all recipients to maintain program income, and requires revolving loan funds to be maintained in interest-bearing accounts.	OBLR will develop a plan and implement a policy that requires all recipients to maintain program income and revolving loan funds in interest bearing accounts in FY17 and going forward. The plan will also include strategies for maximizing the number of existing recipients required to maintain program income and revolving loan funds in interest bearing accounts as the Agency doesn't have authority to unilaterally modify the terms and conditions of existing agreements and will need to work with the recipients to reach	Complete by Q2 FY2018

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		bilateral agreements which change the terms and conditions of their agreements.	
6	Develop a policy to require any new close-out agreements to include a program income definition that is consistent with the Revolving Loan Fund Grant Program Administrative Manual.	OBLR will develop a policy to require any new closeout agreements to include a program income definition that is consistent with the Revolving Loan Fund Grant Program Administrative Manual. OBLR has already revised the RLF terms and conditions which includes closeout agreement requirements and it provides a clear definition of program income that is consistent with RLF Grant Administrative Manual.	Complete by Q2 FY 2018
7	Develop and implement a policy that provides an explicit definition of program income for regions to distribute to existing recipients.	OBLR will develop and implement a policy that provides an explicit definition of program income for regions to distribute to existing recipients. The policy will outline the explicit definition of program income and identify the mechanism EPA will use to distribute the definition to recipients.	Complete by Q2 FY2018
8	Develop and implement required training for all regional Brownfields Revolving Loan Fund staff. Have the training include all program policy and guidance relating to maintaining a Brownfields Revolving Loan Fund after the cooperative agreement is closed if program income exists.	OBLR will work with the Regions to develop and deliver a series of training sessions to regional Brownfields Revolving Loan Fund staff. The training will cover all program policies and guidance related to the management of Brownfields Revolving Fund after closeout with a focus on cooperative agreements that have program income after closeout. OBLR will use various formats to deliver training to project officers, e.g., during regularly scheduled meetings, webinars, sharepoint site, and in-person training etc.	Complete by Q4 FY2018
9	Track staff completion of required training.	OBLR will work with supervisors of RLF project officers to ensure all required training is completed by staff managing RLF cooperative agreements.	Complete by Q4 FY2018
10	Require any new close-out agreement to include a standard term and condition describing the requirements that need to be met to terminate the agreement, and discontinue the agreed-to, post-close-out Brownfields	OBLR will require any new close out agreements to include a standard term and condition describing the requirements that need to be met to terminate the agreement, and discontinue the agreed to, post-closeout Brownfields RLF activities. OBLR has already proactively revised the RLF terms and conditions of new cooperative to clearly	Complete by Q2 FY2018

	Revolving Loan Fund activities.	define the requirements for terminating the cooperative agreement post-closeout	
11	Develop and implement a methodology that will align all recipients with the same termination terms and conditions.	OBLR partially concurs with this recommendation. While OBLR will strive to maintain and align the same national model terms and conditions with all recipients, it is beyond EPA's authority to unilaterally change the terms and conditions of older cooperative agreements. OBLR will work to implement a methodology that seeks to maximize the number of agreements with consistent national model terms and conditions by working with recipients to negotiate bilateral modifications of the terms and conditions of their agreements.	Complete by Q4 FY2018
12	Provide an explicit definition of "expenditure" for EPA regions to distribute to recipients.	OBLR will provide an explicit definition of "expenditure" for EPA to distribute to recipients. The revised RLF terms and conditions use the term 'disbursed' instead of expenditure. The definition of 'disbursed' is included in the revised terms and conditions. For termination of the cooperative agreement, we have revised the language to reflect that funds will not be coming back to the revolving loan fund program. OBLR will provide the revised language to project officers for distribution to the cooperative agreement recipients.	Complete by Q1 FY2018
13	Require regional project officers, through a policy, to be assigned and maintain information on all closed cooperative agreements with pre- and post-program income.	OBLR will work with the Regions to develop and issue a policy regarding the assignment and maintenance of information on all closed cooperative agreements with pre- and post-program income. The policy will outline the mechanism OBLR will use to work with regional management to implement this policy.	Complete by Q2 FY2018
14	Develop and implement a method for the Office of Brownfields and Land Revitalization to track closed cooperative agreements with pre- and post- program income.	OBLR will work with the regions to develop and implement a method such as a tool, a spreadsheet or a database, to track pre- and post-close out program income until termination of the closed out cooperative agreements in accordance with the reporting requirements listed under the closeout agreement. Regional staff will be required to update and/or monitor the tool in accordance with the reporting requirements listed in the closeout agreements. OBLR will work with regional management to ensure proper use of this tool and completion of regular updates OBLR staff will have access to this tool and	Complete by Q4 FY2018

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		will monitor that information is being reported and tracked as required.	
15	Develop a policy to require terms and conditions in the cooperative agreement and/or the close-out agreement to require all recipients to report program income.	OBLR will develop a policy to require the terms and conditions in the cooperative agreement and/or the closeout agreement to require all recipients to report program income in FY17 and going forward. As mentioned for recommendations #5 and #11, OBLR will work to maximize the number of older cooperative agreement recipients who have the revised term and condition in their agreement. However, EPA cannot unilaterally modify older cooperative agreements terms and conditions and will need to work with these recipients on bilateral agreements in order to incorporate the new terms and conditions.	Complete by Q2 FY2018
16	Create a method for the Office of Brownfields and Land Revitalization, and EPA regional managers, to track compliance with reporting requirements for closed cooperative agreements.	OBLR will work with the regions to create a method to track compliance with reporting requirements for closed cooperative agreements. The tracking tool will be distributed to the regions. Regions will be responsible for tracking and making sure that the cooperative agreement recipients are complying with the reporting requirements. OBLR will monitor and discuss compliance with the regional Brownfield managers during regularly schedule conference calls.	Complete by Q3 FY2018
17	Train regional Brownfields Revolving Loan Fund project officers and managers on the Office of Grants and Debarment's Assistance Agreement Almanac, Chapter 4.5, titled "Compliance and Performance Issues," to include the roles and responsibilities of the project officer, and instruction on enforcement actions available to the EPA if a recipient does not comply.	OBLR will work with Regions to develop and provide training to RLF project officers and managers on "Compliance and Performance issues" based on current OGD policies and guidance. OBLR will use various means to deliver this training, e.g., during regularly scheduled RLF meetings with the regions, training seminars, webinars, and in-person meetings. The training material will clarify roles and responsibilities and process to take available enforcement actions.	Complete by Q4 FY2018
18	Question the unsupported use of $103,968 in EPA Brownfields Revolving Loan Fund revenue reported by the Columbia River Estuary Study Taskforce in its profit and loss statements and	OBLR will work Region 10 to review documentation on questioned costs. Region 10 RLF Lead has been in communication with the Columbia River Estuary Taskforce (CREST) staff to resolve this issue. Due to staff changes at CREST, reconstructing financial records has taken a	Complete by Q1 FY2018

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	recover any remaining program income.	little longer than expected. CREST has been given a completion target of July 2017 for providing the Profit & Loss Sheet & Transaction Log along with cancelled checks which confirms their repayment of loan with interest to themselves.	
19	Place the Columbia River Estuary Study Taskforce on a reimbursement basis for all EPA grants and agreements.	OBLR will work with Region 10 to determine whether it is appropriate to place this recipient in reimbursement status. The Columbia River Estuary Study Taskforce does not have any other grants or agreements with EPA. Therefore, it is not possible to place CREST on a reimbursement basis for EPA grants at this time.	Complete by Q1 FY2018
20	Question unsupported use of $1,983,198 in EPA Brownfields Revolving Loan Funds program income reported by Bridgeport, Connecticut and recover remaining program income.	OBLR will work Region 1 to review documentation on questioned costs. EPA Region 1 staff conducted an Administrative Post Award Advanced Monitoring Review of the City of Bridgeport administrative and financial management systems in September 2016 and has been working with City to implement new policies and procedures to address issues relating to financial management and reporting. Regional program staff have met with Bridgeport staff several times in person and via telephone to help improve their understanding of these program requirements. Bridgeport staff also attended the Region 1 RLF training workshop in April 2017, which focused on issues relating to financial management and program income.	Complete by Q3 FY2018
21	Place Bridgeport, Connecticut, on a reimbursement basis for all EPA grants and agreements.	OBLR will work with Region 1 to determine whether it is appropriate to place this recipient in reimbursement status.	Complete by Q1, 2018
22	Question unsupported use of an estimated $608,712 in EPA Brownfields Revolving Loan Funds by the Rhode Island Economic Development Corporation and recover remaining program income.	OBLR will work Region 1 to review documentation on questioned costs.	Complete by Q3 FY2018
23	Place the Rhode Island Economic Development Corporation on a reimbursement basis for all EPA grants and agreements.	OBLR will work with Region 1 to determine whether it is appropriate to place this recipient in reimbursement status.	Complete by Q1, 2018

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		The region has taken the actions to improve the issues that lead to the unsupported cost identified in recommendation #22 and should improve the financial accounting of the recipients going forward. The Region 1 project officer conducted annual Baseline Monitoring and performed a Programmatic Post Award Advanced Monitoring review in December 2013 of the open grants with the Rhode Island Economic Development Corporation. In addition, EPA Headquarters through an outside contractor (GMG Management Consulting, Inc.) conducted an onsite Administrative Post AwardMonitoring review of this recipient in 2014. Based on these monitoring efforts by EPA, the recipient made significant improvements in their overall reporting efforts for their open grants but was directed to develop procedures for improved and timely filing of financial reports.	

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DISAGREEMENT

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
2	Develop a policy to require a recipient's balance(s) of Brownfields Revolving Loan Fund program income be used before awarding additional funds, as required by regulation.	OBLR does not concur with this recommendation. The OIG's position is inconsistent with the regulatory requirements. The regulations at 40 CFR 31.21(f)(2) do not preclude EPA from "awarding additional funds" to recipients with balances of program income. Rather, that regulatory provision required that recipients disburse program income accrued under the grant that generated the program income before requesting additional payments under that grant agreement. This provision did not preclude EPA from awarding another BF RLF agreement to the recipient or providing supplemental funding to an existing agreement under the authority of CERCLA 104(k)(4)(A)(ii). As noted above, EPA's regulations at 2 CFR 1500.7(c) allow RLF recipients to use direct EPA grant funding before using PI. OIG Draft Recommendation 2 is inconsistent with the policy that underlies that regulation.	Notwithstanding our non-concurrence with OIG Draft Recommendation 2, OBLR acknowledges that EPA needs to improve its oversight of close out agreements to ensure that program income is being deployed in a timely manner to achieve the purposes of the RLFs. OBLR believes that implementing OIG's other recommendations actions relating to improved program income reporting, monitoring by EPA staff and consistent close out terms and conditions would be consistent with 2 CFR 1500.7 and our policy of encouraging recipients to accumulate program income for post award RLF sustainability. As an alternative to implementing OIG Draft Recommendation 2, we recommend that OBLR develop a policy to provide guidance to Regions on negotiating terms and conditions for supplemental funding amendments and new awards to recipients who have large balances of program income on closed out agreements. The policy would require actions on the part of the recipient to reduce the program income balances.

Attachment

cc: Michael Petscavage, OIG
Maryanne Strasser, OIG
Deborah Szaro, Region 1
Michelle Pirzadeh, Region 10
David Lloyd
Debi Morey
Pankaj Arora
Kecia Thornton

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Appendix C

Distribution

The Administrator
Chief of Staff
Assistant Administrator for Land and Emergency Management
Regional Administrator, Region 1
Regional Administrator, Region 10
Chief of Staff for Operations
Deputy Chief of Staff for Operations
Agency Follow-Up Official (the CFO)
Agency Follow-Up Coordinator
General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for Public Affairs
Principal Deputy Assistant Administrator for Land and Emergency Management
Director, Office of Brownfields and Land Revitalization, Office of Land and Emergency Management
Deputy Regional Administrator, Region 1
Deputy Regional Administrator, Region 10
Audit Follow-Up Coordinator, Office of the Administrator
Audit Follow-Up Coordinator, Office of Land and Emergency Management
Audit Follow-Up Coordinator, Region 1
Audit Follow-Up Coordinator, Region 10

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To: Wilcox, Jahan[wilcox.jahan@epa.gov]; Pruitt, Scott[Pruitt.Scott@epa.gov]
Cc: Press[Press@epa.gov]; schafer, joan[schafer.joan@epa.gov]
From: Scott Taylor
Sent: Mon 11/20/2017 9:57:57 PM
Subject: RE: ABC 7 NEWS : Administrator Scott Pruitt's Public Appearances in 2017 and 2018

Jahan,

If the EPA has a document that outlines upcoming speaking engagements or events that the Administrator will attend under FOIA laws it should be available to the public and the media. I am sure you and Administrator Pruitt want to be transparent with the public. The excuse you can't FOIA the future is ridiculous. It's apparent thru travel arrangements and calendars the EPA has a set schedule of public appearances for Administrator Pruitt and the EPA documents it and hands it out internally.

The EPA called me last month and said that it would place his future speaking engagements and events on the website and that's why they were not filling my FOIA if I agreed. I did agree and so far the EPA hasn't done what they said they would do on the website.

You are correct about my past mistake. I asked about Administrator McCarthy who I interviewed on camera as well as Administrator Jackson before her. It was my mistake which I pointed out when we first made contact via email. Guess my mind was on both of them when I emailed.

I think I even apologized for the mistake.

It doesn't give you the right to be rude or attempt at making fun of my mistake. It's very bad form on your part and to admit it and not apologize makes you look insensitive and a bully to our entire newsroom on how you believe you can treat the media in your public position paid by public tax dollars.

It's pretty simple. You are wrong and I hope you treat others with more respect in the future.

I also hope next time I have a question you will treat me with respect like I have showed you each time we corresponded.

I will wait for the FOIA.

Hope you and your Family have a wonderful Holiday.

Scott Taylor

Investigative Reporter

ABC 7 NEWS

WJLA TV

Washington, D.C.

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From: Wilcox, Jahan [mailto:wilcox.jahan@epa.gov]
Sent: Monday, November 20, 2017 4:36 PM
To: Scott Taylor <scotttaylor@sbgtv.com>
Cc: Pruitt, Scott <Pruitt.Scott@epa.gov>; Press <Press@epa.gov>; schafer, joan <schafer.joan@epa.gov>

Subject: Re: ABC 7 NEWS : Administrator Scott Pruitt's Public Appearances in 2017 and 2018

Scott -

I was referring to your inquiry in June 2017 to speak with EPA Administrator Gina McCarthy who left the agency months ago.

I answered your question again and again, which is you can't FOIA the future but every meeting that Administrator Pruitt attends is available at www.epa.gov.

I hope you have a great Thanksgiving and tell your colleague Nathan Bacca I said hi.

Best

Jahan

Sent from my iPhone

On Nov 20, 2017, at 3:26 PM, Scott Taylor <scotttaylor@sbgtv.com> wrote:

> Jahan,
>
> Being rude and not answering my questions plus taking a personal shot at me by saying "You don't know what you are talking about" during our phone call today won't stop ABC 7 News from again making a simple request.
>
> You also hung up on me. Is this how you behave with Reporters asking questions? Is this the way you want the EPA to be represented in the media and with the public?

Please forward me your Administrator's public event schedule for the remainder of the year. I understand that you will probably not honor our request so for the 2nd time we have submitted a FOIA request.

Enjoy your Holiday,

Scott Taylor

Investigative Reporter

ABC 7 NEWS

WJLA TV

Washington, D.C.

571-458-6080

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Twitter: @ScottTaylorTV

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From: Wilcox, Jahan [mailto:wilcox.jahan@epa.gov]
Sent: Monday, November 20, 2017 4:03 PM
To: Scott Taylor <scotttaylor@sbgtv.com>
Cc: Press <Press@epa.gov>; schafer, joan <schafer.joan@epa.gov>
Subject: Re: ABC 7 NEWS : Administrator Scott Pruitt's Public Appearances in 2017 and 2018

Scott -

You put the press shop on this email when you typed in press@epa.gov into the email.

Senior Comms Advisor is my title and my cell is 202.309.0934

Best

Jahan

Sent from my iPhone

On Nov 20, 2017, at 2:31 PM, Scott Taylor <scotttaylor@sbgtv.com> wrote:

> Jahan,
>
> Curious… why are you responding when I was directing my email to Joan who is the EPA rep for DC ?

Can you give me your title again and phone number? It's not in your email.

Thanks for your help!

Scott

From: Wilcox, Jahan [mailto:wilcox.jahan@epa.gov]
Sent: Monday, November 20, 2017 3:22 PM
To: Scott Taylor <scotttaylor@sbgtv.com>
Cc: schafer, joan <schafer.joan@epa.gov>; Press <Press@epa.gov>
Subject: Re: ABC 7 NEWS : Administrator Scott Pruitt's Public Appearances in 2017 and 2018

Scott -

You can't FOIA the future, because nobody knows what the future holds. All of the meetings that Administrator Pruitt has attended is available at www.epa.gov.

On Nov 20, 2017, at 2:14 PM, Scott Taylor <scotttaylor@sbgtv.com> wrote:

Joan,

I put in a FOIA request on August 8th, 2017 to get a copy of Scott Pruitt's future public speaking/event appearances for the remainder of the year. It wasn't filled but I got a call from the EPA telling me it didn't need to be filled because Pruitt's schedule would be posted on the website. That has not happened.

Can you help me? I now would like 2018 too.

Trying to obtain @EPAScottPruitt future public appearances or events. @jahanwilcox, EPA Strategic Communications Advisor just hung up on me saying the EPA doesn't have a record of the future.

Thanks!

Scott Taylor

Investigative Reporter

ABC 7 NEWS

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To: Bowman, Liz[Bowman.Liz@epa.gov]; Pruitt, Scott[Pruitt.Scott@epa.gov]
From: Sarah Manlove
Sent: Mon 10/23/2017 10:47:59 AM
Subject: Your Response to NYT: How in any way was that helpful?

Dear Ms. Bowman,

I am writing to express my displeasure and frank outrage at your response to NYT reporter Eric Lipton in the October 21st piece: 'Why has the EPA Shifted on Toxic Chemicals? An Industry Insider Helps Call the Shots'. Please hear me out- I am an American citizen living overseas who is very concerned about our hyper polarization. I am not anti-industrial rights, nor am I extreme left, nor am I an activist. I am just a U.S. citizen who reads the New York Times to find information. You can help me do that- but NOT by your response to the NYT.

In response to repeated requests for information Mr. Lipton reports that you responded in an e-mail the following:

"No matter how much information we give you, you would never write a fair piece," Liz Bowman, a spokeswoman for the E.P.A., said in an email. "The only thing inappropriate and biased is your continued fixation on writing elitist clickbait trying to attack qualified professionals committed to serving their country."

The NYT has a circulation of almost half a million people. Half a million. By refusing to share or respond to information your response denied to those people the chance to understand and hear the EPA's case about roll back of regulations. How is this helpful? Personally for me I find the continued 'no comment'/'no information' kinds of response you gave and the current administration often gives to the NYT insulting. Your response just entrenched me further in your opposing 'camp'. So again I ask- how is this helpful?

NYT Reader Circulation:

571,500 Daily 1,087,500 Sunday 2,200,000 Digital-only (as of May (Sunday) / November (daily) 2016 / (Digital-only) May 2017)

I can only assume from your response to Mr. Lipton that you in fact have no wish or intention to try and make a case for what your agency wants to do and why it's a good idea. I can only assume that you want to deny, ignore, and insult the readers of the NYT and it's reporters and so in fact are not seeking any bipartisian dialogue about what you do. So again I ask- how is your response helpful? Was it your intent to actually

further divide our country rather than helping to unify us despite what the White House does? Do you truly believe that NYT readers are that dumb?

I don't need you to censure information for me. I need you to respond thoughtfully and professionally with information about why and how what the EPA is doing is a good idea so that I can make up my own mind.

Do you understand that the NYT has an area called 'from the left and the right'? Do you understand that in most NYT pieces the opposing view of a thesis statement **is** given in a non-opinion piece? One may have to search for it, but it is always there. If it is not there, or weakly given, I as a critical reader, will go search for it. You NOT doing your job in supplying information makes it harder. The average person does not have time to do this and you made it harder with this response- simply because of your (or your agency's leadership) petty biases about 'elite clickbait' (as opposed to Fox/Breitbart/Alex Jones and conservative sources which oh my goodness are just paragons of unbiased and balanced reporting). I can only assume you and your agency live in a kind of coolaid drinking blind willful ignorance about anyone not in your sphere, and not completely on board with YOUR perspectives on the world. You have completely and utterly disregarded one of the most important and influential newspapers in our country- and it's readers.

Your response hinders the free press. So I'll remind you democracy is built on the free press and transparency so people can make up their own minds. Democracy is not taken down suddenly- it is chipped away. Your response IS one of those instances of chipping away.

Please re-think because all you accomplished with your response was to make me MORE suspect of the EPA. It made me feel further divided from what your administration's intention might be, and caused me to be more polarized. So a final time- How is a response like you gave actually helpful to your cause?

Thank you for hearing me out. I have contacted my senator about your response and I will be telling everyone I can about it. It can not stand. Do your job for all Americans, not just the press and people who you think are favorable to your agenda.

Sarah

Citizen Overseas Concerned about a polarized America

To: Vizian, Donna[Vizian.Donna@epa.gov]
Cc: Pruitt, Scott[Pruitt.Scott@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Darwin, Henry[darwin.henry@epa.gov]; Chmielewski, Kevin[chmielewski.kevin@epa.gov]; Bloom, David[Bloom.David@epa.gov]; Trent, Bobbie[Trent.Bobbie@epa.gov]; Anthony, Sherri[Anthony.Sherri@epa.gov]; Howard, MarkT[Howard.Markt@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Valentine, Julia[Valentine.Julia@epa.gov]; Treimel, Ellen[Treimel.Ellen@epa.gov]; Showman, John[Showman.John@epa.gov]; Osborne, Howard[Osborne.Howard@epa.gov]; Conklin, Jeanne[Conklin.Jeanne@epa.gov]; Hitchens, Lynnann[hitchens.lynnann@epa.gov]; Hardy, Michael[Hardy.Michael@epa.gov]; Gray, Linda[gray.linda@epa.gov]; Lemley, Lauren[Lemley.Lauren@epa.gov]
From: OIG News
Sent: Tue 9/26/2017 1:30:55 PM
Subject: OIG Report: "Follow-Up Audit: EPA Needs to Strengthen Internal Controls Over Retention Incentives"
_epaoig_20170926-17-P-0407_cert.pdf

Attached is the EPA Office of Inspector General (OIG) report, *Follow-Up Audit: EPA Needs to Strengthen Internal Controls Over Retention Incentives* (Report No. 17-P-0407). This report will be available to the public on the OIG's website at www.epa.gov/oig.

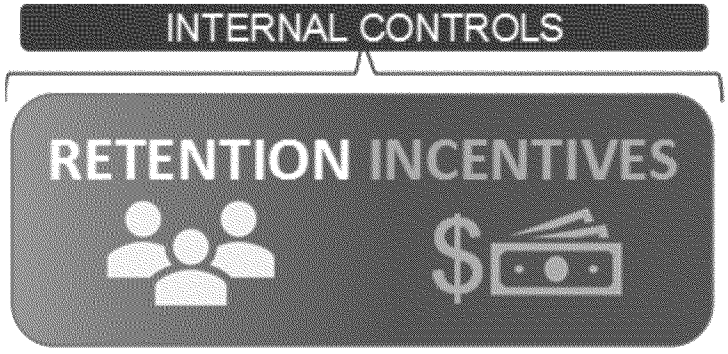
U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Operating efficiently and effectively

Follow-Up Audit: EPA Needs to Strengthen Internal Controls Over Retention Incentives

Report No. 17-P-0407 **September 26, 2017**



Report Contributors: Angela Bennett
Jan Lister

Abbreviations

CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
OARM	Office of Administration and Resources Management
OCFO	Office of the Chief Financial Officer
OIG	Office of Inspector General
OPM	U.S. Office of Personnel Management
PCA	Physician's Comparability Allowance
U.S.C.	United States Code

Cover image: Image regarding retention incentives, prepared by EPA OIG.

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U.S. Environmental Protection Agency
Office of Inspector General

17-P-0407
September 26, 2017

At a Glance

Why We Did This Audit

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) conducted this audit to follow up on corrective actions made in response to two prior OIG audits on retention incentives paid by the agency and OIG. Retention incentives are used to retain employees who are highly or uniquely qualified, or meet a special need.

The objectives of this follow-up audit were to determine whether: (1) the agency completed the corrective actions proposed in the prior audits, (2) actions taken were effective in resolving the cause of the findings, and (3) the agency and OIG complied with regulations and policies for retention incentives since the prior audits.

This report addresses the following:

- *Operating efficiently and effectively.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of OIG reports.

Follow-Up Audit: EPA Needs to Strengthen Internal Controls Over Retention Incentives

What We Found

Additional actions are needed to strengthen internal controls over monitoring and to effectively resolve the cause of the prior audit findings. We question $1,605 of irregular payments.

The agency completed its proposed corrective actions to address prior OIG audit recommendations. However, the agency has not monitored retention incentives as required by existing EPA policy and 5 CFR § 575.312(a), nor issued a new incentive policy. In response to the prior OIG audit, the agency stated it had drafted a new policy that delineates the EPA's implementation requirements and processes. These actions are needed to further strengthen internal controls and effectively resolve the cause of the prior audit findings.

The agency did not perform monitoring reviews due to a misunderstanding of oversight responsibilities. The EPA's new policy, drafted in 2014, has not been issued and is currently under review by agency officials. We also identified two requirements that should be included in the agency's new policy—quarterly reviews and performance ratings. Without an up-to-date policy, the agency has no assurance that retention incentives are authorized and activities are monitored consistent with its policy and federal requirements, or that payments are valid.

The agency complied with its existing policy and 5 CFR Part 575, Subpart C, for one of two employees receiving retention incentive payments since the prior audits. However, the agency indicated the payments for the second employee may have been the result of payroll miscoding, and we questioned the payments of $1,605 to that employee.

The OIG has not given any retention incentives since the prior audit, and therefore we performed no additional work related to the OIG.

Recommendations and Planned Agency Corrective Actions

We recommend that the Assistant Administrator for Administration and Resources Management: (1) implement quarterly monitoring of retention incentives; (2) issue new policy on retention incentives, including requirements for quarterly monitoring and performance ratings; and (3) determine the validity of the irregular payments to an employee totaling $1,605 and, if invalid, discontinue payments and recover all funds paid. The agency agreed to take sufficient corrective action for all recommendations.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 26, 2017

MEMORANDUM

SUBJECT: Follow-Up Audit: EPA Needs to Strengthen Internal Controls Over Retention Incentives
Report No. 17-P-0407

FROM: Arthur A. Elkins Jr.

TO: Donna J. Vizian, Acting Assistant Administrator
Office of Administration and Resources Management

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY17-0025. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position.

In response to our discussion document, the agency provided an intended corrective action plan that addresses the recommendations and establishes planned completion dates. Therefore, a response to the final report is not required. The audit will be closed in the OIG's tracking system; however, the agency should track unimplemented corrective actions in EPA's Management Audit Tracking System.

We will post this report to our website at www.epa.gov/oig.

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Purpose

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) conducted this audit to follow up on corrective actions to recommendations made in the following two prior OIG audits:

- *EPA Compliance With Retention Incentive Regulations and Policies* (Report No. 14-P-0245), dated May 2, 2014.
- *EPA OIG Compliance With Retention Incentive Regulations and Policies* (Report No. 14-B-0246), dated May 2, 2014.

The objectives of this follow-up audit were to determine whether:

- The agency completed the corrective actions proposed in its July 2, 2014, memorandum.
- Actions taken by the agency were effective in resolving the cause of the report findings.
- The agency and the OIG have complied with regulations and policies for retention incentives awarded since the prior audits.

Background

The U.S. Office of Personnel Management (OPM) defines a retention incentive as an incentive that an agency may pay to retain an employee who is highly or uniquely qualified, or who meets a special need of the agency. The retention incentive should be used for only those employees likely to leave federal service or take a different federal position.

Regulatory Requirements

Retention incentive regulations are codified in 5 CFR Part 575, Subpart C. These regulations require:

- An employee's rating of record must be at least "fully successful" or equivalent to be eligible for a retention incentive, and the incentive must be terminated if the employee receives a rating of less than "fully successful" or equivalent.
- Agencies must make an annual determination on whether a retention incentive payment is still warranted with written certification by an authorized official.
- Agencies must monitor retention incentives to ensure consistency with the requirements of 5 U.S.C. § 5754 and 5 CFR Part 575, Subpart C.

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EPA Guidance and Policy Requirements

On July 3, 2013, the EPA Chief of Staff issued a memorandum to all managers and supervisors, "Ensuring Accurate Employee Pay and Travel Reimbursement." The memorandum included an attachment from the Office of Administration and Resources Management (OARM) and the Office of the Chief Financial Officer (OCFO) that highlighted a number of significant changes taken to enhance internal control activities over time and attendance, including retention incentives. The attachment included the following requirements related to retention incentives:

- Periodic reviews by OCFO to monitor compliance with policy and procedures.
- Review of incentives by OARM as part of an OPM-required annual audit of each Shared Service Center.
- Development of a listing of all employees receiving incentives, to be reviewed semiannually by the Shared Service Centers and agency Senior Resource Officials.
- Production of a semiannual report for the Deputy Administrator that identifies employees with salaries exceeding the executive level II pay cap.
- Establishment of a termination date for each retention incentive granted.

On November 19, 2013, the OARM Office of Human Resources issued HR Bulletin 14-001B, "Retention Incentives: Interim Procedures, Documentation, Recertification and Oversight Requirements." Issuance of the bulletin was one of several actions taken by the agency to strengthen its internal controls. The agency stated the bulletin delineated all requirements for approval, justification, documentation and annual review of incentives. The bulletin supersedes prior policy in the EPA's "Pay Administration Manual 3155, Chapter 3."

A new policy for Recruitment, Relocations, and Retention Incentives is currently under review by agency officials. The new policy will supersede the 2013 policy in HR Bulletin 14-001B.

Prior Audits

***EPA Compliance With Retention Incentive Regulations and Policies* (Report No. 14-P-0245), dated May 2, 2014:** The audit disclosed that the EPA did not maintain documentation of the required annual recertification, and one employee was paid a retention incentive for 4 years beyond the date of the employee's promotion. The OIG recommended that the EPA: (1) determine if any additional evidence exists to justify the incentive and, if unjustified, recover the

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payments; and (2) pursue recovery of the unauthorized payments to employees receiving pay beyond their promotion date or authorized end date. The EPA addressed the recommendations and recovered $6,647 in overpayments.

***EPA OIG Compliance With Retention Incentive Regulations and Policies* (Report No. 14-B-0246), dated May 2, 2014:** The audit disclosed that two OIG employees received incentives; however, documentation of the annual recertification was not found. The report recommended that the OIG determine whether any additional evidence existed to justify the incentives and, if unjustified, refer the matter to the agency to initiate action to recover the unauthorized payments. The OIG verified that no documentation existed due to record retention policies and determined that the retention incentives were justified.

Responsible Offices

In accordance with the EPA's policy, individual program and regional offices are responsible for preparing retention incentive requests for personnel in their offices. OARM's Office of Human Resources is responsible for reviewing and preparing the final justification. The Office of Human Resources' Shared Service Centers are responsible for processing the requests. The Office of Human Resources is also responsible for establishing policy and procedures. The OCFO's Office of the Controller is responsible for payroll support of the incentives and conducting quarterly reviews of retention pay.

Scope and Methodology

We conducted this audit from March 2017 to August 2017, in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To address the objectives, we:

- Reviewed the agency's corrective actions, obtained supporting documents, and interviewed OCFO and OARM staff and managers responsible for implementation and monitoring of the actions.
- Reviewed policies, procedures and regulations pertaining to retention incentives issued since the prior audit reports.
- Obtained and reviewed OARM's Office of Human Resources and OCFO's internal review reports pertaining to retention incentives.

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- Obtained a list of retention incentive payments made during the period August 8, 2013, through February 4, 2017.

- Obtained and reviewed employee retention incentive files supporting the incentive payments.

Based on acceptance of the response to the prior OIG audit, we limited our audit of the OIG to retention incentive payments since the prior audit. Our initial work identified no new payments by the OIG; consequently, we conducted no additional work pertaining to the OIG and do not report further on the OIG.

Results of Audit

The agency completed the corrective actions in response to the prior audit recommendations. However, the agency has not conducted monitoring of retention incentives as required by the EPA's existing policy and 5 CFR § 575.312(a), or issued a new retention policy. In response to the prior OIG audit, the agency stated it had drafted a new incentive policy to clearly delineate EPA's implementation requirements and processes. These actions are needed to further strengthen internal controls and to effectively resolve the cause of the prior audit findings. We specifically noted the following:

- The monitoring reviews, including quarterly for pay and semiannually for authorization, were not performed due to a misunderstanding of oversight responsibilities between the various offices involved.

- The agency has drafted but not issued a new retention policy, as reported to the OIG.

We also identified two requirements that should be included in the EPA's new retention incentive policy—quarterly reviews and performance ratings. Without an up-to-date policy, the agency has no assurance that retention incentives are authorized and monitored consistent with its policy and federal requirements, or that payments are valid.

For one of two employees who began receiving retention incentive payments after the prior audit, the agency complied with retention incentive and recertification requirements in its existing policy and 5 CFR Part 575, Subpart C. For the other employee, the agency could not provide documentation to support approval for the payments made. OCFO indicated the payments may have been the result of payroll miscoding. As a result, we question $1,605 of retention incentive payments due to irregularities identified with the payments.

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Additional Actions Needed to Strengthen Internal Controls

In its response to the prior audit, the agency notified the OIG that it had taken actions to strengthen its internal controls over retention incentives. The OIG was unable to assess the implementation and adequacy of the controls because no EPA employees were receiving new or existing retention incentives at the time of the prior audit. The agency stated it has implemented the following:

- Quarterly reviews and reporting by OCFO to determine if any employee is receiving a retention incentive or has been paid above the applicable statutory pay cap.
- Semiannual reviews and reporting by the Office of Human Resources and its Shared Service Centers to identify possible pay-cap and similar noncompliance issues.
- Development of a new human resources incentive policy that clearly delineates the EPA's implementation requirements and processes.

Our assessment under this audit showed that the agency has not (a) implemented a quarterly or semiannual review process or (b) issued a new policy that will include retention incentives. These issues are addressed below.

Quarterly and Semiannual Reviews and Reporting Not Implemented

While the agency required quarterly reviews by the OCFO in 2013, the OCFO's own internal control assessments—conducted in 2014 and 2016—found a lack of implementation of quarterly reviews of retention incentives. In response, the agency stated that, on a quarterly basis, the OCFO was to provide a list of employees receiving retention incentives to the Shared Service Centers for review. A subsequent assessment conducted by the OCFO in 2016 found that this action was not implemented. In response, the OCFO stated that it will produce the quarterly report and provide it to the Office of Human Resources for review starting in the third quarter of 2016.

Our review showed that the OCFO did not implement the quarterly review process in 2016 as stated. We learned that while OCFO is responsible for generating quarterly reports of retention incentive activity, the reports are not reviewed by OCFO or the OARM Office of Human Resources. The reports are provided to the Shared Service Center – Cincinnati, which considers the reports as "information only" and to be used only for pay cap review.

Per OARM and OCFO officials, quarterly and semiannual reviews were not performed due to a misunderstanding of oversight responsibilities between the various offices—OCFO, OARM's Office of Human Resources (Policy Division and Executive Services Division), and the Shared Service Centers. Some of the confusion is that the Shared Service Centers no longer have a

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primary role due to the migration of the EPA's payroll to a new system in June 2014.

Based on our audit inquiries, the agency implemented a procedural change in April 2017 in which OCFO will send the quarterly reports to all three Shared Service Center Directors to review the validity of all current retention incentive payments. Unlike OCFO, OARM has not taken action to address the semiannual review process. Regulations at 5 CFR Part 575, Subpart C, require the monitoring of retention incentives at least annually. Monitoring—whether quarterly or semiannually—is needed to maintain consistency with federal requirements and to prevent the potential for unauthorized incentives and invalid payments.

New Retention Incentive Policy Not Issued

The agency developed the existing retention incentive policy in 2013, but has not yet issued a new policy. In its response to the prior audit, the agency stated it would finalize a new policy after OPM issues the new governmentwide update of a recruitment, relocation and retention incentive directive. In January 2016, OPM issued a guidance document that includes requirements for retention incentives. Based on our discussion with OARM's Office of Human Resources staff, the agency's new policy has been in draft form since 2014 and is currently under review by agency officials.

We also identified two requirements missing from the 2013 policy that should be included in the new policy. First, as discussed above, there is no policy statement that requires quarterly reviews and the reporting of retention incentives by OCFO. Second, the 2013 policy does not discuss performance rating requirements. The regulation at 5 CFR § 575.305(d) stipulates that a retention incentive may only be paid when the employee's rating of record is at least a "fully successful" or equivalent. Based on our review and discussions with OARM and OCFO officials, it is understood that these are requirements that should be followed even though they are not in the existing policy.

Incentive Payments and Compliance With Policies and Regulations

We identified two EPA employees who started receiving retention incentive payments after the prior audits. For the first employee, our review of the payment data and supporting documentation showed that the approval for the retention incentive and annual recertification complied with the requirements of 5 CFR Part 575, Subpart C, and the EPA's policy. The approval for the retention incentive was made in July 2015 and recertified in September 2016.

We are questioning payments made to the second employee because the agency did not have documentation to support an approval for the retention incentive

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payments made. Payroll data as of April 15, 2017, showed that the employee received retention incentive payments totaling $1,605 for the period January 8, 2017, through April 15, 2017. OCFO personnel said the payments may have been made in error due to miscoding, as the employee was also receiving a Physician's Comparability Allowance (PCA). A PCA may be paid to certain eligible federal physicians who enter into service agreements with their agencies. Depending on the physician's months of federal service and grade level, the allowance, with a 2-year service agreement, may include an incentive of up to $6,000.

Documentation supporting the PCA—provided by the OARM's Office of Human Resources—showed that the employee was approved for a PCA and a 2-year incentive of $6,000. The employee started receiving the PCA in June 2014. OCFO payroll data as of May 2017 showed the employee continued to receive the PCA. We were unable to determine whether the retention payments were valid or the result of miscoding related to the PCA, because there is no documentation to support a separate retention incentive payment or the basis for the payments. Nonetheless, the employee has been receiving two types of incentive payments since January 2017. As result, we are questioning the $1,605 in retention incentives paid to the employee.

Conclusion

The agency effectively implemented actions to strengthen its internal controls over the retention incentive approval and recertification process. However, while the agency's guidance requires the monitoring of retention incentives, it has not conducted these reviews as required by the EPA policy and federal requirements. The irregular payment of $1,605 demonstrates the need for the monitoring reviews. A new policy that includes all required elements would serve to reinforce existing requirements and strengthen internal controls.

Recommendations

We recommend the Assistant Administrator for Administration and Resources Management:

1. Implement a process for quarterly review of retention incentives for proper authorization and payment.

2. Issue new policy on retention incentives, including requirements for quarterly monitoring and performance ratings.

3. Determine the validity of the $1,605 in payments made to an employee and, if invalid, discontinue payments and recover the funds paid.

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EPA Response and OIG Comments

The agency agreed with the OIG's recommendations and provided corrective actions with estimated completion dates. The agency's detailed response is in Appendix A. The agency's corrective action for Recommendation 1 included implementation of a process for a quarterly review of retention incentives, but the response did not address semiannual reviews. In follow-up communications, the agency clarified that the quarterly review process will eliminate the need for semiannual reviews.

The OIG agrees with the agency's proposed corrective actions and completion dates, as well as comments on the factual accuracy of the report. The OIG modified the report to simplify Recommendation 1 and to clarify facts as appropriate.

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Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Potential Monetary Benefits (in $000s)
1	7	Implement a process for quarterly review of retention incentives for proper authorization and payment.	R	Assistant Administrator for Administration and Resources Management	12/31/17	
2	7	Issue new policy on retention incentives, including requirements for quarterly monitoring and performance ratings.	R	Assistant Administrator for Administration and Resources Management	12/31/18	
3	7	Determine the validity of the $1,605 in payments made to an employee and, if invalid, discontinue payments and recover the funds paid.	R	Assistant Administrator for Administration and Resources Management	3/31/18	$1.6

[1] C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

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Appendix A

EPA Response to Discussion Document

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP - 7 2017

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Response to the Office of Inspector General's Discussion Document: Follow-Up Audit - EPA Needs to Strengthen Internal Controls Over Retention Incentives, Project No. OA-FY17-0025

FROM: Donna J. Vizian, Acting Assistant Administrator

TO: John Trefry, Director, Forensic Audits
Office of Audit
Office of the Inspector General

Thank you for the opportunity to review and comment on the Office of Inspector General's discussion document on its follow-up review of the U.S. Environmental Protection Agency's compliance with retention incentive regulations and policies.

The OARM requests an adjustment to the first recommendation and concurs with the second and third recommendations. Our position and comments on the recommendations and on the report language are included as an attachment.

Thank you for helping us improve this agency program. If you have any questions or concerns regarding our response, please contact Ms. Linda Gray, director, Office of Human Resources at (202)564-4606 or Gray.Linda@epa.gov.

Attachment

cc: John Showman
Linda Gray
Wesley Carpenter
David Bloom
Debbi Hart
Loretta Hunt
Cheri Hembrey
Lauren Lemley
Marian Cooper

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Recommendation	Corrective Action	Estimated Completion
1. Implement a process for quarterly review of incentive payments made by the Office of the Chief Financial Officer and a semiannual review by the Office of Administration and Resources Management's Office of Human Resources for proper authorization.	The recommendation can be simplified and strengthened. OCFO has already committed to sending quarterly reports to OARM. OCFO will send the quarterly reports to points of contact in the Human Resources Shared Service Centers and OHR's Policy and Accountability Branch. PAB will work with the SSCs to identify any problems found in the reports and recommend options for their resolution. The OHR director will be responsible for ensuring that all problems are resolved.	December 31, 2017
2. Issue new policy on retention incentives, including requirements for quarterly monitoring and performance ratings.	OARM will issue a new policy that includes requirements for quarterly monitoring and performance ratings. The new policy will be a part of the agency's recruitment, relocation and retention (3Rs) policy.	December 31, 2018
3. Determine the validity of the $1,605 in payments made to an employee and, if invalid, discontinue payments and recover the funds paid.	OCFO will work with OARM to investigate the matter and will discontinue payments and recover the funds, if necessary.	March 31, 2018

The OARM does have some minor concerns about the text in the draft report. We ask that you revise the report based on the following comments:

Page	**Section**	**Comment for factual accuracy**
Page 3	Responsible Offices	**2nd Sentence**: OARM/OHR is responsible for reviewing and preparing the final justification. The servicing HR Shared Service Center processes the retention incentive.
Throughout the discussion document	See comment	**Throughout:** Please replace "retention incentive award" with *"retention incentive payment."* Incentive payments are not awards.

Appendix B

Distribution

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