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MERIT SYSTEMS PROTECTION BOARD, OFFICE OF
GOVERNMENT ETHICS, AND OFFICE OF SPECIAL
COUNSEL REAUTHORIZATION

Wednesday, December 16, 2015

House of Representatives,
Subcommittee on Government Operations,
Committee on Oversight and Government Reform,
Washington, D.C.

The subcommittee met, pursuant to call, at 11:10 a.m., in
Room 2154, Rayburn House Office Building, Hon. Mark Meadows
[chairman of the subcommittee] presiding.

Present: Representatives Meadows, Jordan, Walberg, Buck,
Carter, Grothman, Chaffetz, Connolly, and Norton.

Mr. Meadows. The Subcommittee on Government Operations will come to order. Without objection, the chair is authorized to declare a recess at any time.

Today's hearing will examine the reauthorization of three important agencies for our Federal workforce, specifically the Merit Systems Protection Board, the Office of Government Ethics, and the Office of Special Counsel. The authorizations of the MSPB and the OGE and the OSC all expired at the end of fiscal year 2007. However, given the important work that each of these agencies perform, their funding has continued.

Still, in the nearly 10 years since their authorizations have expired, there has been little opportunity for even the most basic and needed reforms at these agencies. So, today, we will begin to have this conversation about reform and reauthorization for these agencies.

I'd like to highlight that as we go into a different type of appropriations season next year, this becomes even more critical and thus the reason for this hearing today. During this hearing, we'll have the opportunity to learn more about the MSPB and its efforts in overseeing the Federal Merit System; obviously, the OGE and its oversight role of the executive branch ethics program; and OSC and its efforts to protect Federal workers and applicants from prohibited personnel practices, especially the retaliation for whistleblowing. All three organizations have a very important role for the executive branch agencies and Federal

employees.

As part of the reauthorization of these agencies, we will also examine and discuss the agencies' proposals for changes in some of their procedures and operations. We will hear testimony from the Chair of the MSPB, Susan Tsui Grundmann. Chairman Grundmann can provide information on the current state of the MSPB accomplishments made by the agency and the challenges ahead.

And the Director of OGE, Walter Shaub, will update us on the OGE's oversight and leadership role of the executive branch ethics program and prevention of the conflict of interest. In addition, Director Shaub, on the outline of OGE's preparation for the upcoming Presidential transition.

From OSC, Special Counsel Carolyn Lerner joins us today. Special Counsel Lerner can provide us with information on OSC's role in protecting Federal employees from prohibited personnel practices and its efforts at investigating allegations of whistleblower retaliation, evaluating disclosure cases, enforcing and evaluating complaints under the Hatch Act, and protecting members of the armed services under the Uniformed Service Employment and Reemployment Rights Act.

We look forward to hearing from all of our witnesses and obtaining a better understanding of the proposed reauthorization language.

So I now recognize Mr. Connolly, the ranking member of the Subcommittee on Government Operations, for his opening statement.

[Prepared statement of Mr. Meadows follows:]

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Mr. Connolly. Thank you, Mr. Chairman.

And thank you for holding this hearing in the last 2-1/2 days of the first session of the 114th Congress.

I have three hearings today. I belong to two committees that passionately believe no human challenge, no human problem cannot be improved with another hearing. So we are glad we are getting around to this one.

These three agencies in front of us, the Merit Systems Protection Board, the Office of Government Ethics, and the Office of Special Counsel, are among the smallest agencies in the Federal Government, but their work has a tremendous impact on the Federal workforce.

The authorizations for each of these agencies unbelievably expired 8 years ago, in 2007, Mr. Chairman. And they have been sustained by annual appropriations, so congressional action, including by this committee, is long overdue. It's especially important given the critical work that these agencies perform.

I want to thank our witnesses for being here today. Particularly, I want to commend them for the vitally important work they do and their staffs perform to ensure that the Federal civil service is merit-based, not subject to political influence or ethical conflicts of interest, and free of prohibited personnel practices, such as retaliation for whistleblowers, as you pointed out, Mr. Chairman.

MSPB's 200-person staff is charged with adjudicating appeals

relating to adverse employment actions, such as removals and suspensions over 14 days, veterans' and whistleblowers' rights, and Federal disability and retirement claims.

MSPB is seeking 5-year reauthorization through fiscal year 2020 and is proposing that the Office of Personnel Management and other agencies assist it in conducting employee surveys. I look forward to a discussion of this as we proceed.

I also would like to hear about MSPB's efforts to address recent challenges, including adjudication of 32,000 appeals filed by Federal employees who were furloughed in the shutdown in 2013 due to sequestration, budget cuts, and implementation of 2014 Veterans Access, Choice and Accountability Act.

The Office of Government Ethics employs 80 individuals who prepare and issue standards of ethical conduct for the fellow workforce and oversee agency ethics programs. OGE seeks its 7-year reauthorization, which follows previous congressional practice to avoid the need to seek reauthorization during the first and last year of Presidential terms. I'd like to better understand the steps that the agency has taken to implement the 2012 Stop Trading on Congressional Knowledge Act, or STOCK Act. I would also like to hear about the agency's preparations for the next Presidential transition.

The Office of Special Counsel's primary mission is to protect Federal employees from prohibited practices. It serves as the frontline of defense and protection for whistleblowers who

disclose government wrongdoing, something particularly important to this committee and our subcommittee. The agency seeks a 5-year reauthorization. It is proposing several legislative changes that would, among other things, enhance its access to Federal agency information, increase agency accountability and whistleblower disclosure cases, and modify procedural requirements for certain prohibited personnel practices.

I am pleased that OSC has achieved settlements in numerous cases on behalf of Veterans Administration employees who were retaliated against because they stepped forward to blow the whistle on both the backlog and the lack of quality of care for some of our veterans.

OSC was also instrumental in drawing congressional attention to the disclosures by Department of Homeland Security employees regarding the abuse of administratively uncontrollable overtime. Those disclosures caused DHS to stop the improper use of these payments and resulted in the passage of legislation establishing a new pay system for Customs and Border Patrol agencies.

Mr. Chairman, the fact that these agencies have now gone 8 years without being reauthorized is a terrible abrogation of our responsibility, congressional responsibility. And I certainly pledge to work with you in trying to rectify that situation.

Thank you for holding this hearing.

[Prepared statement of Mr. Connolly follows:]

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Mr. Meadows. I thank the gentleman.

I'll hold the record open for 5 legislative days for any member who would like to submit a written statement.

We will now recognize our panel of witnesses. I'm pleased to welcome Honorable Susan Tsui Grundmann, Chair of the U.S. Merit Systems Protection Board; the Honorable Walter Shaub, Jr., Director of U.S. Office of Government Ethics; and the Honorable Carolyn Lerner, special counsel at the U.S. Office of Special Counsel.

Welcome to you all.

And pursuant to committee rules, all witnesses will be sworn in before they testify. So if you would please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Thank you. Please be seated.

Let the record reflect that all witnesses answered in the affirmative.

In order to allow time for discussion, please limit your oral testimony to 5 minutes, but your entire written statement will be made part of the record.

And, Ms. Grundmann, you are recognized for 5 minutes.

STATEMENTS OF THE HONORABLE SUSAN TSUI GRUNDMANN,
CHAIRMAN, U.S. MERIT SYSTEMS PROTECTION BOARD; THE
HONORABLE WALTER M. SHAUB, JR., DIRECTOR, U.S. OFFICE OF
GOVERNMENT ETHICS; AND THE HONORABLE CAROLYN N. LERNER,
SPECIAL COUNSEL, U.S. OFFICE OF SPECIAL COUNSEL

STATEMENT OF THE HONORABLE SUSAN TSUI GRUNDMANN

Ms. Grundmann. Thank you. Good morning, Mr. Chairman,
Ranking Member Connolly, Chairman Chaffetz, and distinguished
members of this committee.

On behalf of MSPB and our 220 employees, thank you, Mr.
Chairman, for bringing us all together.

It has been both an honor and a privilege to serve as the
Chairman of the MSPB and its dedicated workforce for the last
6 years; the last 3 of which have been among the most eventful
and challenging in our history. These years have also been among
the most rewarding.

We are proud of what our agency, through its employees, has
accomplished during incredibly trying times and the role that
we have played in a variety of matters related to the overall
operation of the Federal civil service.

During the last 4 fiscal years, our agency has issued over
61,000 decisions. Over 54,000 of them were issued by our 65

administrative judges, the other over 6,200 were issued by the three, now two, board members in headquarters.

Our numbers are staggering due largely to, as you say, the 32,000 furlough appeals we received during the summer of 2013 as a result of sequestration budget cuts. In a normal fiscal year, our agency processes about 6,000 to 7,000 in the regions and about 700 to 800 in headquarters.

The last 2 years have been anything but normal with a workload five times a regular fiscal year. And while processing times have been adversely impacted, I am proud to report two significant accomplishments. We have completed almost 97 percent of our furlough cases. And while we have quantity in abundance, the quality of our decisions is ever constant. Our affirmance rate by our reviewing court, the U.S. Court of Appeals for the Federal circuit, is at a 4-year high, holding steady for a second year in a row at 96 percent.

And with performance at an all-time high, our employee commitment and satisfaction reflected in our employee viewpoint survey results have dramatically improved from last year as well. With a 72-percent response rate, we showed improvement, sometimes dramatic, in the 71 of the 72 core EVS questions, with the greatest positive responses in communication from leaders, high rates of motivation, commitment to the work, and the agency's purpose, which is to safeguard, protect, and promote the nine merit principles.

And while we do not know what the future holds for us in terms of factors and resources impacting our workload, this year's results are particularly encouraging as they come at a time when workload is at its peak, but employee morale and commitment did not falter. This year, we jumped eight slots from last year's rankings. And it is this commitment as recently as last week that the Partnership for Public Service recognized by ranking us eighth among small agencies in best places to work and the fifth most improved small agency in 2015.

I understand that you, Mr. Chairman, have been paying visits to the agencies that have been doing well. I hereby cordially invite both you and Ranking Member Connolly to pay us a visit one day soon.

Even though a great deal of our agency time has been dedicated to our adjudication function, our statutory studies function continues to produce high-quality, relevant reports that are significant to the deliberations of this subcommittee. Unlike our adjudication function, which looks backwards in time at events passed, our studies function is forward-looking, garnering a series of best practices that can and often become the basis of legislative or regulatory reform.

Some of our past reports have been uncanny in terms of their timing with respect to this committee's work, such as our barriers to whistleblowing, issued in 2011, which we believed helped assist in the passage of the Whistleblower Protection Enhancement Act

in 2012; our veterans' rights report in 2013; our Federal due process report, published earlier this year during the dialogue in the VA Accountability Act; and our new SES training report, which we will release this week, and we hope that will assist in the discussion and development of initiatives by OPM following the new executive order on SES training and development just issued last night.

Mr. Chairman, we welcome this occasion for reauthorization. We welcome this opportunity to tell our story. But as you note, we have only one legislative proposal solely dedicated to our studies function, which I will be happy to discuss with you. In the meantime, our work continues, but things are going well. Thank you.

[Prepared statement of Ms. Grundmann follows:]

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Mr. Meadows. Thank you so much.

Director Shaub.

STATEMENT OF THE HONORABLE WALTER M. SHAUB, JR.

Mr. Shaub. Chairman Meadows, Ranking Member Connolly, and Chairman Chaffetz, and members of the subcommittee, thank you for the opportunity to testify on behalf of the reauthorization of the Office of Government Ethics. I'm happy to be here with my colleagues from OSC and MSPB.

OGE was established by the Ethics in Government Act of 1978, which came out of the same committee in the same month as the Inspector General Act.

Congress established OGE as part of a broader framework for integrity which is coordinated among a variety of executive branch entities. Among others, this includes OSC, MSPB, and the 14,000-member inspector general community. The language of the Ethics in Government Act makes clear that the primary mission and objective of the ethics program is one of prevention. The program works to prevent conflicts of interest so that the American people can be confident that public servants make decisions based not on their own financial interest but on the interests of the public. Congress designed this program to be decentralized, with OGE setting ethics policies and agency ethics offices carrying out day-to-day operations.

Our strategic goals focus on the three pillars of uniformity, continuity, and transparency. OGE's work includes a wide range of activities for a small agency of about 70 employees. Much of that work can be grouped into the following general areas: Nominations and support for Presidential transitions; regulations and guidance; oversight of agency ethics programs; development of an electronic filing system; assistance to stakeholders; ethics education; and engaging leaders in ethical compliance and ethical culture.

My written testimony details OGE's accomplishments in these areas. I'll just highlight a few. Since I became Director in January 2013, we have leveraged technology to deliver more training, with our classes going from 1,400 attendees a year to 7,500 attendees in 2015. And 90 percent of customers surveyed said the training helped them to do their jobs better.

Through innovative new approaches, we've also cut costs. For example, we hosted our 2014 national ethics summit for less than 1 percent of the cost of OGE's traditional conferences. In 2015, we showed 59 reports in our oversight reviews of agency ethics programs, and we are on pace to review all agencies before the end of my 5-year term.

We have improved our financial disclosure program by going paperless and cutting review times for annual reports from 180 days to 30 days. As required by the STOCK Act, we developed an electronic filing system for financial disclosure. In less than

a year, we have registered about 10,000 employees and, as of yesterday, 90 agencies in that system. And 90 percent of agency administrators who operate the system for their agencies were surveyed and rated the system favorably.

In 2015, we responded to about 2,000 requests for assistance from agencies. And 91 percent of agency ethics officials surveyed said our assistance helped them do their jobs. We received another 700,000 requests from outside the government.

Since our last authorization expired, we have issued over 100 legal advisories. This year, 98 percent of responders to our survey said these advisories helped them in their work. We also actively support the enforcement community. As Director, I am statutory member of CIGIE, the Council of the Inspectors General on Integrity and Efficiency, as well as CIGIE's Integrity Committee. OGE also provides IG staffs and prosecutors with legal advice and training.

Looking forward, our next big challenge will be the Presidential transition. A Presidential transition is a critical time when the Nation is vulnerable with the potential for man-made, natural, and economic disasters to strike while the government's top positions are vacant. OGE makes sure that nominees are free of conflicts of interest so that top leadership positions can be filled quickly.

During a transition, our nominee work triples in volume and increases in complexity. The challenge is nothing short of

extraordinary, and it requires a full commitment of resources. We're doing everything possible to be ready for the transition because we know how important it is.

Finally, we have submitted a legislative proposal to amend this Ethics in Government Act. Because the systems in place are working, the proposal is limited to technical corrections.

We are also seeking reauthorization through 2022 so that the next reauthorization does not coincide with a Presidential transition, when OGE's resources will be stretched thinnest, but we are more than happy to talk to you at any time in between.

So thank you for the opportunity to testify today.

[Prepared statement of Mr. Shaub follows:]

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Mr. Meadows. Thank you for your testimony.

Ms. Lerner, you are recognized for 5 minutes.

STATEMENT OF THE HONORABLE CAROLYN N. LERNER

Ms. Lerner. Thank you, Chairman Meadows, Ranking Member Connolly, and members of the subcommittee.

Thank you for the opportunity to testify today about the U.S. Office of Special Counsel. I also want to thank Chairman Chaffetz for your being here today and for your ongoing interest in OSC's work. Under your leadership and with Ranking Member Cummings, we reformed the Hatch Act in 2012 and, last year, in response to whistleblower disclosures and your oversight, prompted changes to overtime at the Department of Homeland Security, saving hundreds of millions of dollars a year. So thank you for being here.

I am also pleased to be here today with Chairman Grundmann and Director Shaub. I appreciate the committee's interest in reauthorizing OSC. The Office of Special Counsel provides a safe and secure channel for government whistleblowers who report waste, fraud, and abuse, and threats to public health and safety.

OSC also protects veterans and servicemembers from discrimination under the Uniformed Services Employment and Reemployment Rights Act, or USERRA, and we enforce the Hatch Act, which keeps partisan political activity out of the workplace.

By nearly every statistical measure, OSC is operating more efficiently and effectively than at any time in its history. For example, in 2015, OSC received and resolved approximately 6,000 cases, a 55-percent increase since I took office in 2011.

We are also getting better results for whistleblowers. For instance, in 2015, OSC secured 268 favorable actions, up from only 29 favorable actions a few years ago.

Beyond statistics, our successes in individual, high-impact cases show how OSC promotes better and more efficient government. For example, our work with whistleblowers has prompted improvements at VA medical centers across the country. It has saved hundreds of millions of dollars every year in overtime payments at the Department of Homeland Security. And we helped the Air Force fulfill its sacred mission on behalf of fallen servicemembers and their families.

We are promoting integrity through a robust enforcement of the Hatch Act, and we are protecting the jobs of returning servicemembers and members of the Reserves and Guard.

Many of our recommendations for OSC reauthorization would help to ease the burden resulting from the increased demand for our services. In addition to reauthorizing OSD for 5 years, we have some recommendations.

First, we ask Congress to streamline OSC's access to agency information. This will assist our investigations of retaliation and reviews of whistleblower disclosures. Statutory access to

agency records would be similar to the authorities provided to the inspectors general and the Government Accountability Office. It will help avoid unnecessary and duplicative government investigations and lead to quicker and better results.

Second, we ask that Congress increase agency accountability in whistleblower disclosure cases. Over the last 3 years, agencies substantiated 90 percent of the allegations that we referred to them for investigation. Typically, the agency will commit to taking corrective actions to remedy the misconduct. But sometimes the corrective plans are insufficient or their actions are incomplete at the time that I send my final report to the President and to Congress.

When there is substantiated misconduct, we recommend that Congress require agencies to provide an explanation if they fail to take an action, including disciplinary action. And for any agency action that is planned but not yet implemented, OSC should have statutory authority to request detailed followup information.

Third, Congress should consider reducing the procedural requirements imposed on OSC in certain prohibited personnel practice cases. The current requirements are onerous and unnecessary. In every case, regardless of the merits, title V requires OSC to take several procedural steps before closing a file. These requirements are unique to OSC and use a large amount of our resources. The proposed changes would allow us to generate

more positive outcomes on behalf of whistleblowers and the American taxpayers.

Fourth, OSC recommends that Congress eliminate the annual survey requirement that was passed as part of a prior OSC reauthorization. In addition to having little statistical or informational value, the survey is costly and time-consuming, and it takes away from our other duties. We recommend that Congress eliminate this requirement so OSC can dedicate our limited resources to actual case work.

Finally, my written testimony includes some additional proposals that are of a technical nature.

I want to thank you for considering these options to improve OSC's authorities. I would be very happy to answer any questions that the committee may have.

[Prepared statement of Ms. Lerner follows:]

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Mr. Meadows. Thank you, Ms. Lerner.

The chair will recognize himself for 5 minutes for a series of questions.

Thank you for the invitation. I can tell you we'll take note of that. One of the things that the ranking member and I enjoy doing is actually reaching out to a number of the Federal agencies. I've been concerned, I guess, and very surprised to find that many times as we have made the visit, it is sometimes the first time a Member of Congress has ever shown up at an agency. So shame on us. I am committed, along with my ranking member, to make sure we change that. So thank you for the invitation.

Let me focus real quickly on the whistleblower aspect because I think we've got, Ms. Grundmann and Ms. Lerner, two different kinds of areas that address that. But as we look at whistleblowers, one of the reoccurring themes that has been very disconcerting to me has been the retaliation against whistleblowers and, in even in highlighting that, that it continues to go on. And so what happens is it has a chilling effect on those who are willing to speak up. We did an email address here which was a "Tell Mark" email address, and we started getting all kinds of whistleblower information, but the overriding concern, in fact, I've gotten from the Secret Service, a number of agents who have called me from New York to California and in between, is that they want to do it anonymously because there has been retaliation in real terms, whether it be with lack of

promotion -- sometimes it is more subtle. How do we work with your two agencies to make sure that we correct that? Anybody want to weigh in on that?

Ms. Lerner?

Ms. Lerner. Sure, well, they would start with us. And if an employee has a complaint, either a disclosure of waste, fraud, or abuse, or a health or safety issue, which we've been seeing in greater increasing amounts from the VA especially, they can come to us and say they want to do it anonymously.

Mr. Meadows. But here is what I'm finding is, is as they do that, the minute they raise that profile, what happens is, is somehow the information leaks out. I guess my question is, is there any special intervention that the special counsel does when we see it trying to undermine the very rules that we have in for whistleblower protection?

Ms. Lerner. Sure. We have a very robust Investigation and Prosecution Division that if there is any instance where a whistleblower believes that they are being retaliated against after having come to our agency and making disclosure, we can start with the agency by requesting an informal stay of any personnel actions. So if someone is threatened with their job or even threatened with like a demotion or a move, we can go to the agency and say: You need to stop; we think there is a basis here.

If they won't agree voluntarily to stop the adverse action,

we can go to the Merit Systems Protection Board and formally ask them to do it.

I should tell you: Whenever we make a disclosure or send a disclosure over to an agency, we include in our referral sort of a warning that says, "You need to make sure and take active steps to make sure there is no retaliation against the whistleblower."

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Mr. Meadows. So which agencies would you say have the worst track record as it relates to protecting whistleblowers.

Ms. Lerner. Well, in terms of pure numbers, we get the most complaints -- in the last 2 years -- from the Veterans Administration.

Mr. Meadows. But they feel a protection because it has been high profile. So outside of Veterans, who would it be?

Ms. Lerner. Our second -- well, I'm not sure that they do feel protection. I mean -- I'm sorry, the whistleblowers feel protection, or the VA does?

Mr. Meadows. No. Which agencies have the poorest record of protecting the whistleblowers? For example, giving retaliation in such a way that may not be direct retaliation, but it's indirect retaliation in that they get transferred or they don't get to move up because the retaliation is a lot more subtle a lot of times than what we're seeing. How do we address that?

Ms. Lerner. I think the first way is to send a strong message, has to start from the top of the agency that says: Retaliation isn't going to be --

Mr. Meadows. I guess what I am looking for is for this committee, what would be the three agencies we would need to look at closest as it relates to whistleblower retaliation?

Ms. Lerner. In terms of pure numbers, the VA is first.

Mr. Meadows. Okay. Who's second?

Ms. Lerner. Second is the Department of Defense. And I should note that the Department of Defense has double the number of civilian employees as the VA.

Mr. Meadows. And who would be third?

Ms. Lerner. Department of Homeland Security is probably --

Mr. Meadows. So all big, big --

Ms. Lerner. The large agencies have the largest numbers. I should say that the one agency where we have received a surprisingly small number of complaints is from the Secret Service.

Mr. Meadows. I can tell you that's very troubling because they have found my phone number, and I'm getting -- you may get the smallest amount, but I can tell you also -- and I know that he slipped you the note that you have got the smallest amount. I can give you a plethora of complaints as it relates to that.

One of the instances that I'm very concerned about is that once a whistleblower had made one particular comment, that there was an interview of almost every single employee trying to find out who that person was, and that's the kind of draconian management style that this committee is not going to adhere to. I'll go ahead and recognize the ranking member for 5 minutes for his questions, a generous 5 minutes.

Mr. Connolly. Thank you, Mr. Chairman.

Ms. Grundmann -- if we can hold on time.

Ms. Grundmann?

Ms. Grundmann. Yes. I just want to chime in very quickly. We have essentially two answers for you. The first is we come on the back end after OSC has done their work. So we are the adjudicator in this process. The front end part is actually in our studies program, and if you look at our report on whistleblowing and barriers to whistleblowing, we actually ask people: Are you seeing prohibitive personnel practices? What happens when you see them? And what happens if you disclose? Is there retaliation? So through the studies program, we get a plethora of answers -- some of them multiple choice, some of them essay -- that will talk about this anonymously and that we can analyze and then we can also publish. Thank you.

Mr. Connolly. Thank you, Mr. Chairman.

Chairman Grundmann, why has it taken 8 years to get to the point where we're hopefully going to consider reauthorization?

Ms. Grundmann. There was an attempt previously to do, so it just sort of fell off the wagon, I guess, and was forgotten.

Mr. Connolly. Congress fell off the wagon?

Ms. Grundmann. Not Congress, but it never came to fruition, if you will.

Mr. Connolly. Director Shaub, same question, from your perspective.

Mr. Shaub. I don't actually have an answer for that. We

have not had an authorization hearing since 2006.

Mr. Connolly. 2007.

Mr. Shaub. That's right. It ran out at the end of 2007. We have requested that from time to time. So I'm very pleased that you're holding the hearing this year, and we're thankful for being here.

Mr. Connolly. Well, we didn't rush into it. We have 2-1/2 days left in this session, but all right.

Special Counsel Lerner, your perspective.

Ms. Lerner. When I was nominated in 2011, I was told that the agency hadn't been reauthorized.

Mr. Connolly. I can't hear you. I'm sorry.

Ms. Lerner. Sorry. My mic is on.

Mr. Connolly. Yeah, but you've got to speak into it.

Ms. Lerner. When I was nominated to be special counsel in 2011, I was told that the agency hadn't been reauthorized in a few years. And, frankly, it gave me a little bit of a pause to take the job because not knowing whether the agency was going to be around. But I was assured that it would be; we just needed to have a reauthorization process started. And it's something that we've been asking for periodically since I became special counsel. I'm really pleased that we're here today. Thank you.

Mr. Connolly. Well, we've got sort of a different spirit on this committee, the leadership of Mr. Chaffetz, and hopefully we'll use that spirit on a bipartisan basis to try to rectify

that situation. I mean, there is just no excuse for going 8 years without a reauthorization.

Chairman Grundmann, in your testimony, you raised concerns about the Veterans Access, Choice, and Accountability Act of 2014 that allows the VA Secretary, at his or her discretion, to fire a senior executive without prior notice or the opportunity to respond if the Secretary determines performance of the individual warrants its action. The act provides an expedited appeal process but after the determination.

What's the nature of your concern about that?

Ms. Grundmann. On the constitutional side?

Mr. Connolly. Whatever you want to share with us.

Ms. Grundmann. In the operations?

Mr. Connolly. Speak as colorfully as you have already; Congress falling off the wagon is a great image.

Ms. Grundmann. That's dangerous.

Mr. Connolly. Cartoonists heed. All right.

Ms. Grundmann. Twofold. The constitutionality of that particular law is being litigated right now in the Federal circuit. No doubt we will have a decision in some course of --

Mr. Connolly. And that is about due process.

Ms. Grundmann. It is about due process. It is also about the appointments clause in the Constitution. The argument is that if you eliminate three Presidentially appointed board members from the process all together and delegate that authority

to a, quote, "not a principal employee" and have that decision be final without board review, without court review, that is a violation of Article II, Section 2, of the appointments clause.

There is the constitutional argument on due process as well, and due process is prior notice and an opportunity to respond. That is also being litigated.

Mr. Connolly. Well, is that a constitutional issue, or is that just a practice? I mean, in the private sector, you're not entitled to those protections. I mean, if the boss decides you're not performing, you're an at-will employee, and you can be terminated.

Ms. Grundmann. You're absolutely right. But according to Supreme Court case law, Loudermill has told us repeatedly that Federal employees have a property interest in continued employment, the deprivation of which must be accompanied by opportunity -- advanced notice and opportunity to respond, nothing more, nothing less.

You raise a really good point, and this gives me an opportunity to talk about how that act has impacted our operations. So far, we've only seen seven cases under the VA Accountability Act.

Mr. Connolly. So abuse of that new authority is not yet a problem holding in abeyance the merits of those seven.

Ms. Grundmann. Well, two of them were withdrawn. It's not the abuse of the authority; it is how it impacts our operations.

What the law says is that once an employee files, he or she is entitled to a full hearing. And that hearing for us means discovery, motions, the opportunity to raise affirmative defenses, a full hearing, prehearing conferences, along with a written decision. And if you look at some of the decisions that we have issued -- and we have only issued two written decisions -- they are about 60 to 70 pages long. It is not a summary decision.

Mr. Connolly. But let's remember the genesis of the bill: It was a growing frustration on the part of veterans, of the public, of this Congress. And the inability to assign accountability to Veterans Administration officials -- everyone was kind of pointing somewhere else, and meanwhile, the backlog grows; falsification of medical records expanded; treatment was inadequate and, in some cases, nonexistent; getting an appointment became, in some places, very difficult. And these are our veterans. And there was deep outrage up here, and we had to weigh expediting the process determination to hold people accountable against process. And while no one wants to make light of due process, that was the balancing act we were looking at. Your comment on that?

Ms. Grundmann. Yeah, I understand completely the genesis of this bill. And let me just share with you a question, a thought. When these cases come to us, and this is not just the VA, but any case, the employee is off the payroll. They are not being

paid during the time they are litigating before us. We wonder -- and it's a question -- whether or not the bill is actually doing what it's supposed to do. Agencies may act -- the VA, I don't know this, may actually be taking longer to prepare for these cases because they have to finish the case in essentially 18 days.

Mr. Connolly. Yeah.

Ms. Grundmann. During the time they are investigating and preparing their case on the front end, the employee is still on the payroll. So is it having the same effect? Shortening the processing period doesn't get rid of the employee faster; they've already been removed. It just determines whether or not the removal was proper.

Mr. Connolly. Well, we look forward to working with you on this. I think it is a conundrum.

Ms. Grundmann. Yes.

Mr. Connolly. And no one wants to trample overdue process and the rights of Federal employees, but we do not want to sacrifice accountability, especially in the case of men and women who put on the uniform and serve the country.

Ms. Grundmann. In order for us to get involved, an agency has to act first.

Mr. Connolly. Yeah. Okay. I wish I had more time because I think this is a very important issue.

Thank you, Mr. Chairman.

Mr. Meadows. I thank you.

The chair recognizes the chairman of the full committee, Chairman Chaffetz, for a series of questions.

Mr. Chaffetz. Thank you. I thank -- to all three of you for your good and important work.

Mr. Shaub, I want to direct my comments to you, if I could. You work with some very important issues dealing with ethics. You work with some 4,500 ethics officials in more than 130 different agencies. I want to focus on honorarium, particularly as it relates to public appearances and speaking. Can a government official act as an official agent for a charity or a foundation?

Mr. Shaub. There's no specific prohibition on the types of outside employment you can have in that regard, but we have to distinguish between the types of government official we're talking about.

Mr. Chaffetz. If it is a Senate-confirmed position, can you act as an agent for a foundation?

Mr. Shaub. Certainly not for pay and certainly not as a representative to the government. There's an outside earned-income prohibition in a longstanding executive order so they can't earn honoraria, and they can't represent anyone back to the government, so it would have to be an outside activity where they would speak for free, but they --

Mr. Chaffetz. But what if there is compensation to a

foundation?

Mr. Shaub. A government official themselves -- I -- could not speak for any compensation without violating the earned-income ban, even if they subsequently donated it to someone else.

Mr. Chaffetz. What if somebody went and spoke and then that money was directed or given to a foundation --

Mr. Shaub. Right.

Mr. Chaffetz. Do they have to disclose that?

Mr. Shaub. The disclosure depends on whether the money was paid to them as an individual speaker and then they chose to donate it to a charity, or whether you're acting as an agent of some sort of charity. A comparable example would be, for instance, if you were working for a car dealership and you sold a car, you would not report the income from the sale of the car because that's income of the car dealership.

Mr. Chaffetz. Let's go back. Can you be an agent, a Senate-confirmed person, can they be an agent of a foundation?

Mr. Shaub. Not if they are representing the foundation to the Federal Government, but there is no legal prohibition on serving as an agent for an outside entity in an outside activity.

Mr. Chaffetz. Do you have to disclose that?

Mr. Shaub. Your role as an agent?

Mr. Chaffetz. Yeah.

Mr. Shaub. If you have a position with an outside entity,

that would be disclosable on the form.

Mr. Chaffetz. So you have to disclose that.

I want to bring up -- there have been -- there has been a lot of controversy with Secretary Clinton and the lack of candor in her financial disclosures. I will go back to the Wall Street Journal article in May of this year. The spokesperson, Mr. Salamone, who works for you, commented directly on that case. Did you review that case?

Mr. Shaub. I'm hoping I'm remembering the correct one. The one I recall was a question not about Secretary Clinton's speaking activities but about her husband -- the former President's speaking activities. The question Mr. Salamone was asked, if I'm recalling correctly, was, would he be -- would she be required to report honoraria paid in compensation for his speaking if he was acting as an agent for a foundation as opposed to acting in a personal capacity. And Mr. Salamone correctly answered, consistent with our longstanding view of government financial disclosure requirements, that that would not be required to be disclosed if he was acting as an agent for the foundation, in contrast to a situation where he went out on his own, gave a speech, and then donated the funds to a charity.

EDTR ROSEN

Mr. Chaffetz. How could he not be an agent for the Clinton Foundation? It is under his own name.

Mr. Shaub. I think our understanding was he was an agent, so that's why it was not required to be disclosed.

Mr. Chaffetz. So where is that found in the rules?

Mr. Shaub. The statute is a very long, very detailed statute.

Mr. Chaffetz. I have it in front of me, and I went on your Web site. He is what your Web site says, "Do I report payments donated or directed to charity?" Yes, you must report honoraria as usual.

Mr. Shaub. Right.

Mr. Chaffetz. And then if You look at the code, it goes on saying that filers are expected to, and I quote, "the source, date, amount of honoraria from any source received during the preceding calendar year aggregating \$200 or more in value, effective January 1st, 1991. The source, date, amount of payments made to charitable organizations in lieu of honoraria. And the reporting individual shall simultaneously file with the applicants supervising ethics office."

Mr. Shaub. Right. So that's interpreting section 102(a) of the appendix to Title V under the Ethics in Government Act.

Mr. Chaffetz. Correct.

Mr. Shaub. That is a provision that applies to your own earnings if you go out and speak on behalf as your own individual, on your own behalf, earn it and subsequently donate it. And we have been very consistent in requiring. But it is not even a close call as to whether it would be reportable if you're acting as an agent of a foundation. It is not even a close call. I can tell you unambiguously, that's not reportable.

Mr. Chaffetz. Why isn't it reportable? I don't understand.

Mr. Shaub. Well, it is for the same reason as the car dealership example. Another example is, we've had nominees -- you know, I've handled nominee reports personally under both the Bush administration and the Obama administration. I have been doing this for a long time. We've had a lot of nominees over the years who have been attorneys. They have to follow nominee incoming financial disclosure reports. So although while they are an appointee, they would be covered by outsider and income ban, and there would be no income or honoraria to report; nominees are the perfect comparison to a Presidential candidate or the appointee who has a spouse doing outside speaking, as in this case, where they do have income to report. And, so, they report their earnings from the law firm, but they do not report each individual payment from each individual client. It is simply not required by the financial disclosure laws. Now you have within, you know, within your power to change those laws, but it is not --

Mr. Chaffetz. I'm not understanding where the rule or where you can point to in the law, where you have this distinguished -- Mr. Salamone said, quote, "Disclosure of speaking fees is not required when the public filer or the filer's spouse is acting as agent of an organization, and payment it made directly to that organization." Where is that found in the rule?

Mr. Shaub. 5 U.S.C. appendix section 102(a).

Mr. Chaffetz. Okay. We may be looking at that differently than you are, but I would really love to have some details. Why wouldn't we have that disclosed? I just -- if you're trying to maintain the maximum amount of transparency which you report to do, it says the OGE makes sure that the nominees and Presidential candidates have complied with extensive requirements for financial disclosure under the Ethics in Government Act. Have you investigated this situation with Secretary Clinton?

Mr. Shaub. The -- so that's a two-part question. I'll answer the first question first, why don't we pursue maximum disclosure?

Mr. Chaffetz. Yeah.

Mr. Shaub. Anything that could be potentially relevant or interesting to anyone. And it is simply because we're a Nation of laws, and OGE is specifically regulated by an extremely detailed, highly prescriptive statute. Congress left us almost no discretion in terms of interpreting this statute. We apply it uniformly to everyone across the board, highly detailed. It's

not the statute that I would have written, as evidenced by the fact that OGE has a confidential financial disclosure system where Congress left us the ability to write our own rules. We wrote very different rules for those.

But we are bound by the laws as they are written, this has been OGE's long-standing interpretation across the board, whether you're a car salesman, an attorney, a Member of Congress. Anybody coming into the executive branch, you disclose income paid to you that you earned yourself, act in your own capacity, or you disclose income from an entity, but you don't disclose every payment to that entity. We've been absolutely uniform, it is not even a close call.

Mr. Chaffetz. So when you show up and give a speech, is that -- I mean, that seems like a direct payment. There is a reason why the University of California, Los Angeles, paid \$250,000 to the Clinton Foundation it is because Secretary Clinton showed up and gave a speech.

Mr. Shaub. I have no doubt that they paid that money because he gave a speech?

Mr. Chaffetz. She gave that speech, she gave a speech.

Mr. Shaub. Sorry, I misunderstand.

Mr. Chaffetz. She did. She was Secretary of State.

Mr. Shaub. Okay.

Mr. Chaffetz. And that's why is I'm curious: Is she an agent for the Foundation? Is she the Secretary of State? How

do you determine what's what?

Mr. Shaub. Well, I can say for sure she did not have a position, but that does not preclude --

Mr. Chaffetz. She didn't have a position what?

Mr. Shaub. She did not have -- she did not hold a formal position with the Foundation while she was in the government but --

Mr. Chaffetz. But -- so she wasn't an agent?

Mr. Shaub. No. Those are different questions. The question of whether somebody holds a formal position, Vice President, President --

Mr. Chaffetz. Right.

Mr. Shaub. -- Secretary, is very different from whether you're acting as an agent. There is an entire --

Mr. Chaffetz. So was she an agent or not an agent?

Mr. Shaub. Well, we don't investigate their reports so I can tell you if --

Mr. Chaffetz. Wait. Why don't you investigate their reports?

Mr. Shaub. Well, we don't have the authority.

Mr. Chaffetz. That's not what you said in your testimony.

Mr. Shaub. Well, I believe it was.

Mr. Chaffetz. Your testimony said, OGE makes sure that the nominees and Presidential candidates have complied with the extensive requirements for financial disclosure under the Ethics

in Government Act.

Mr. Shaub. That's exactly what we do.

Mr. Chaffetz. Well, how do you do that if you don't investigate it?

Mr. Shaub. We have to take the facts as they are asserted at face value, and then using those facts, we determine whether they've complied with requirements. The reason Congress made these reports public --

Mr. Chaffetz. How can you do that without investigating? You don't ask any questions?

Mr. Shaub. It is the same practice as the House Committee on Ethics when they review your financial disclosure report. They don't bring you in for an audit and conduct an investigation. We don't do that either. We follow the industry standards of the Senate Ethics Committee, the House Ethics Committee, the Office of Congressional Ethics, the Ethics Office for the judicial branch.

Mr. Chaffetz. Do you do any investigations?

Mr. Shaub. In the 37 years that OGE has existed, it has not done a specific investigation. We haven't had, to, because we have a 14,000-member inspector general community. We work extremely closely with them. We have been involved in investigations, though not leading them. We assist them, in great detail, in understanding these highly complex ethics laws, the conflicts of interest laws, the standards of conduct, we work

closely with them.

We also get calls frequently from prosecutors when they prosecute these cases. We work with them to help them understand it. We also conduct training for both of them.

So as I said, OGE gets part of the larger framework for integrity in the executive branch. We have our role to play, which is strictly laid out by statute and we adhere to our role, but it is one important piece in a framework consisting of multiple executive branch entities.

Mr. Chaffetz. And I'm just suggesting that you're just shuffling paperwork. If you are just taking everything at face value and then reprinting it and putting it up on the shelf -- what good are you? Why should we even have you if you're not going to actually review them, hold people accountable, and do any investigation? I mean, what is it that they would actually do? Let me read what you had written. This is your testimony today.

OGE makes sure that the nominees and Presidential candidates have complied with the extensive requirements for financial disclosure under the Ethics in Government Act. These requirements are highly complex, and ensuring full compliance is labor intensive. OGE's goal, with regard to a nominee's disclosure, is to ensure that the Senate receives a complete accounting of relevant financial interest in order to facilitate its advice and consent role in considering the President's nominees.

The goal as to Presidential candidate is to provide the electorate with similar information. That's a bit of a stretch, isn't it?

Mr. Shaub. It is not a stretch at all. This is --

Mr. Chaffetz. You do no investigations. You -- I question, Mr. Chairman, why we have such an agency, because if they are just taking it at face value, and then putting it in a file, what if you saw something that was askew?

The Wall Street Journal said that Secretary Clinton's disclosure -- not included in the disclosure were payments for at least five speeches that Mrs. Clinton directed to her family's Foundation. So --

Mr. Shaub. Unfortunately, the House is not involved in our Senate confirmations work, so you're not as familiar with it.

Mr. Chaffetz. It's a Presidential candidate, it's different. There is if no Senate confirmation. We understand that.

Mr. Shaub. Well, it was a multipart question. I was answering the earlier question about what we do with nominees.

Mr. Chaffetz. I'm asking about Presidential candidates. And there is a lot of controversy swirling around here, and you're trying to parse words by saying, well, if you're an agent, you have to disclose, if you're not an agent, you don't have to disclose it. I don't know how you distinguish whether somebody is an agent or not, because on the one hand, the Foundation's

in Secretary Clinton's name. On other hand, she, definitively, according to you, is not an agent of a Foundation, or she doesn't have a title within that organization. I don't know what good you are if you don't do this kind of work.

Mr. Shaub. Well, that's an incorrect characterization of my statement. I did not say we concluded she is not an agent. We said she did not hold a formal position within. Those are two different things.

Your question on how you determine whether someone's an agent, there is an entire body of law and the law of agencies that's well-established in the common law.

Mr. Chaffetz. I've gone way over my time. In the case of Secretary Clinton speaking, for instance, at UCLA, did you do any sort of investigation to figure out whether or not she was an agent?

Mr. Shaub. We did not investigate the factual circumstances that she reported.

Mr. Chaffetz. So, and the problem I have is, you go out and comment as the authority leading one to believe that, quote, "disclosure of speaking fees is not required when a public" -- and to comment on a specific case when you have not investigated it, I think is wrong.

Mr. Shaub. We reported on the legal requirement and where you've compared factual analysis with legal analysis. You have to take the facts at face value, that's why the reports are public,

so that they can be challenged. This is a good decision for the public to have. It is a good conversation --

Mr. Chaffetz. It is good information to have.

Mr. Shaub. -- for Congress to have. But our role is legal in this respect; we can tell you that if the facts are that they are an agent, the information is not disclosable on part A of the form.

Mr. Chaffetz. Help us understand what an agent actually is.

Mr. Shaub. An agent?

Mr. Chaffetz. Yeah.

Mr. Shaub. An agent is someone who acts on behalf of another. That's the simplest statement; the body of law fills treatises, but the simplest statement is someone acting on behalf of another.

Mr. Chaffetz. So it says, quote, "The rule is different when the speaking is done in a personal capacity and the fees that are directed are donated to a charity, in which case disclosure would be required."

Mr. Shaub. These are the same rules that applied to Members of Congress and to Senators and to Presidential --

Mr. Chaffetz. Don't confuse your branches here for a second. We're talking about executive here.

Mr. Shaub. There is one statute that applies to all three branches. Congress has been very firm in wanting parity among the branches, so they passed only one statute that is applicable to all three branches. We have regular meetings with our

colleagues in the House and Senate and the Judicial Ethics Office to make sure we're all on the same page and we are interpreting these. We have a regular three-branch forum. It is three branches, but it is actually four offices, because you also have the Office of Congressional Ethics.

We meet as a group, we talk about the interpretations of laws and regulations. And OGE has a great deal more experience than they do, simply because we handle a much higher volume. So we often take the lead in helping others to understand how we interpret --

Mr. Chaffetz. You shuffle paperwork. There is no consequence. There is no accountability. There is no review and there is no investigation. Why do we need you? If the law is crystal clear, you know, I -- well, if you're an agent, you don't have to disclose; if you're not an agent, you do have to disclose. Your name's on the Foundation, and yet, they weren't disclosed. Does that really add up to you?

Mr. Shaub. Sir, I don't think we just push papers. The work of reviewing these financial disclosures --

Mr. Chaffetz. What do you do when you review it? Is there an analysis?

Mr. Shaub. There is an intensive analysis of every --

Mr. Chaffetz. Where is the conclusion of that analysis?

Mr. Shaub. The conclusion is the certification by the director of the Office of Government Ethics, or the chair of Senate

Ethics Committee, or the chair of the House Ethics Committee.

Mr. Chaffetz. In the case of a Presidential candidate, do you certify?

Mr. Shaub. I certify the reports. And I can tell you, there isn't a major party candidate whose reports we didn't require substantive changes on. Our detailed analysis we went back to every single Republican or Democrat who was running for Congress right now and made them make significant changes on their --

Mr. Chaffetz. I'm talking about Presidential candidates, I'm talking about Presidential candidates, you keep trying to get -- you said congressional candidates.

Mr. Shaub. No, I'm sorry, if I said congressional --

Mr. Meadows. I think you just misspoke.

Mr. Shaub. I'm sorry. I apologize. I was talking Presidential candidates. There isn't a major party candidate whose reports we haven't gone back to. And it is a very intensive back-and-forth process. We ask them questions. We say, have you fully disclosed this? Is there more information on this? Do you understand that the law requires that? These are very detailed interactions. I don't think there is a Presidential candidate out there right now who has great love for us, because we've made them do so much work on their reports.

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[12:07 p.m.]

Mr. Chaffetz. And is all that information, if somebody submitted a FOIA, can they get all that information?

Mr. Shaub. You don't even have to submit a FOIA. They're on our Web page. And we have them annotate -- we made the candidates themselves initial each change on the report. So every page that has changes, you can see the initials. You could see the reports as they were certified by the Federal Election Commission, which receives the reports. They do the first line review. Their focus is mostly on getting the right people to file the right reports by the right deadline. Then they get them to us, and we get involved in the substantive work. We roll up our sleeves. We spend a lot of time. I'm sure these candidates are appreciative of the work we do, but I'm sure they also would have rather spent their money on something other than having to make all the changes we've sent them back to do. But we felt we were obligated by the law to hold them accountable to meet the financial disclosure requirements.

Now, if there are factual discrepancies, that's the reason they're publicly available. So that they can go through the rigorous scrutiny of the press, the American people, Congress. There are plenty of eyes looking at these reports. And some of

them may have information that they can contradict the factual assertions. But we make sure they're legally compliant.

Mr. Chaffetz. I have lots more questions, but I will yield back.

Mr. Meadows. I thank the chairman.

Let me go ahead and follow up on a little bit of this.

Ms. Grundmann, one of the things that I would like, as we look at the reauthorization of your particular agency, is if you would look quantitatively, and maybe a little bit more forward thinking in terms of what are the type of reforms that you say: Golly, I wish this were happening, or that were happening. Because as we relate to that, sometimes we get used to the laws and the rules that we have grown up under. And just like Director Shaub was just talking about a few things that he would have written differently, those are the kind of things that as we look to reauthorize what we'd like to do is not only look at the reauthorization, but perhaps other legislation that needs to accompany that.

And before the ranking member left, we agreed we're going to let him take the lead on one of those. I think he chose your particular group that he's going to take the lead on. I'm going to take the lead on the other two, as we start to work towards that. But are you willing to provide that to the committee?

Ms. Grundmann. We are always willing to provide assistance, with one tiny caveat. That --

Mr. Meadows. Those little caveats are always the troubling pebble in the shoe. But go ahead.

Ms. Grundmann. Kind of like a footnote. If these laws would come to us for interpretation, you know, we're the adjudicator in the case. That's the only caveat.

Mr. Meadows. We understand that. And so we'll keep that in mind --

Ms. Grundmann. Call us.

Mr. Meadows. -- and be sensitive to that.

Ms. Lerner, I want to come back. You mentioned earlier about getting rid of a survey. Which survey were you talking about?

Ms. Lerner. Sure. It's an annual survey that was put into effect during a prior reauthorization. It requires that we --

Mr. Meadows. What's the name of it?

Ms. Lerner. Hold on.

Mr. Meadows. It's not the employee satisfaction survey, is it?

Ms. Lerner. No. No. It's -- I don't have the -- I have a copy --

Mr. Meadows. Okay. You can get that to me later. I can see them, you know, with puzzled looks behind you. And so as we look at that, and I say that in a kind way. What I'd love to do is you said it was statistically not valid.

Ms. Lerner. Yeah.

Mr. Meadows. Why is that?

Ms. Lerner. Because it has an incredibly low response rate.

Mr. Meadows. Does it have an incredibly low response rate because you do nothing with it?

Ms. Lerner. No. No. No. We have to, by statute. We send it to --

Mr. Meadows. I know, but you only fill out surveys if you think that they're making a difference. So I guess that's what I'm saying is, is do the people who will fill them out see no value in it because nothing happens with it, it just gets put on a shelf?

Ms. Lerner. Not sure why they fill it out or why they don't. I can tell you that we mailed out 3,500 -- over 3,500 in fiscal year 2014. Three hundred and fifty-five people returned them. These are folks who have come to our agency and asked for help. And we can't help everybody who comes to us. And the fact is that, you know, the folks who returned the survey, we had a 10 percent response rate. And of the 10 percent who responded, very few of them feel like they got what they asked for. And it's not statistically significant if we're only getting a 10 percent response rate.

Mr. Meadows. Well, statistically some would argue contrary in terms of that response rate, but in terms of what you do with that. Here's what I would ask for. If you would get us the survey that you're talking about. Obviously, what has happened historically and what has not happened historically with that.

If you would get that to the committee, and we'll look at that as we look at the reauthorization. I'm one that, you know, if you're just doing busy work, I'm all for streamlining. I think that was in your testimony about streamlining some of that. And I'll be glad to look at that.

Ms. Lerner. We are taking some actual concrete steps to be responsive and be better about customer service. We just finished a study of everyone who participated in our mediation and alternative dispute resolution program.

Mr. Meadows. So do you participate, as Ms. Grundmann -- and congratulations on being fifth most improved, did you say?

Ms. Grundmann. Fifth most improve in small agencies.

Mr. Meadows. Okay. Do you participate in the public/private partnership surveys?

Ms. Lerner. Yes.

Mr. Meadows. Okay. All right. And so --

Ms. Lerner. That's a different -- that's completely different. This is the folks -- this survey is the folks who come to OSC with --

Mr. Meadows. And they're evaluating you?

Ms. Lerner. Yes. The agency. The results that they got at the agency.

Mr. Meadows. And so you're saying that those results, they say they don't get helped. Is that what you said?

Ms. Lerner. Well --

Mr. Meadows. Is that 10 percent of the people say that they don't get helped. Is that your testimony?

Ms. Lerner. No. We get a response rate of 10 percent.

Mr. Meadows. But the majority of those I think you said feel like they didn't --

Ms. Lerner. That's right. They did not get what they were seeking when they came to our agency. That's right.

Mr. Meadows. So based on that 10 percent response rate and those survey results, what have you changed operationally?

Ms. Lerner. What we've done is tried to actually get some concrete feedback from the people who come to our agency. For example --

Mr. Meadows. All right. So if we were to do away with the survey and say that's no longer a requirement, how would you evaluate whether you're doing a good job or not? How would you know whether you're getting a A or an F?

Ms. Lerner. Well, I think our results really speak for themselves in terms of the number of corrective actions that we've gotten. Before I came, they were in around 20 a year corrective actions for complainants. Last year they were around 280.

Mr. Meadows. So would you be willing --

Ms. Lerner. I would say that those are pretty substantial --

Mr. Meadows. So would you be willing to put forth a matrix, kind of a dashboard of sorts, so we can evaluate? Because, you

know, it's one thing with you there and you're taking it on personally. It would be another when there's a new special counsel there. How do we compare apples to apples and --

Ms. Lerner. Look at our actual results. Look at -- look at the cases that we are bringing to you.

Mr. Meadows. Right. And I guess that's what I'm saying. I'm willing to look at that matrix if you can come up with a reporting standard that reports to this committee and says: Okay. Here is a matrix on how we decide whether we're getting -- you know, doing a good job or a bad job. And we're willing to look at that. I'll get with minority staff and see about changing that. But I want to make sure it's quantifiable. You know, it's kind of like we've done with FITARA. You know, most of the agencies got Fs and Ds. But that was a good start. It set a benchmark for where we needed to go. And I guess what I'm needing is the same thing from you on how we determine whether you're doing a good job or not.

Ms. Lerner. Yeah. Look at our cost per case, which has gone down significantly.

Mr. Meadows. That's what I'm saying. If you'll get that to committee, we're willing to evaluate that.

Ms. Lerner. Very happy to work with you on that.

Mr. Meadows. Does that make sense?

Ms. Lerner. Sure thing.

Mr. Meadows. So Director Shaub, let me finish with you.

Because you've mentioned the inspector generals in CIGIE and your close relationship, I guess, is the way that you just characterized it with Chairman Chaffetz in terms of working with them. How, in that passing of the baton, between you and the inspector general, or inspectors general, who do you leave it up to for enforcement? Because we get an IG's report, and it depends on, you know, what chairman, what subcommittee chairman, whether there's a hearing, and whether it gets highlighted. How do you pass the baton? Because I think in your testimony with Chairman Chaffetz, you said that you don't investigate. You leave that up to the IG. Is that correct?

Mr. Shaub. That's correct.

Mr. Meadows. All right. So if the IG finds something that is egregious, what happens?

Mr. Shaub. Well, at that point, assuming it was a criminal violation, we would --

Mr. Meadows. No. Let's say it's ethical. Let's say it's ethical and not criminal.

Mr. Shaub. Okay.

Mr. Meadows. Okay? So what happens?

Mr. Shaub. So if, for example, it was the standard of conduct and it was a violation of a provision that was not criminal, the next mechanism that would need to come in place would be disciplinary action. IGs will write reports. Sometimes they'll recommend action. Other times they'll state conclusions, and

those will go back to the agency --

Mr. Meadows. So how many IG reports have you gotten to have action? Would you be the one that would do the action?

Mr. Shaub. No. The agencies each have the authority to take individual action against the employees.

Mr. Meadows. All right. Then let's assume it's the head of the agency.

Mr. Shaub. Right.

Mr. Meadows. What happens?

Mr. Shaub. Well, if it's the head of the agency, then a decision's not going to be made by the agency. The President's the only one with the authority to --

Mr. Meadows. All right. Well, let me -- so how often is the President going to do that with one of his nominees?

Mr. Shaub. Well, I hope every time that --

Mr. Meadows. Yeah. I would hope so, too, but I'm not as confident as you are that that would happen. So let me quit beating around the bush and share one particular issue that I'd like you to look into and report back to this committee.

It was an IG report that was done by an Inspector General Roth. It was a very scathing report of Mr. Mayorkas as it relates to EB-5, the potential ethical bounds of interference in terms of visa applications. You know, there were some allegations of interference at the very highest level, which would include some elected officials in very nearby States.

I read it. I could not believe it, because normally, the inspectors general are not that scathing in their report. And as I read this particular issue, it really is something that was troubling. Obviously, Mr. Mayorkas didn't agree with that. But being where he is in that particular agency, so the only person that could hold him accountable would be the President? Is that what you're saying? So you don't have the authority to do that?

Mr. Shaub. You know, I have to beg your pardon. I remember reviewing Mr. Mayorkas' financial disclosure report --

Mr. Meadows. Yeah, and this is not financial disclosures. This really has to do with the fact that he was intervening on behalf GreenTech Automotive, one where Mr. Clinton, President Clinton, had given a speech. All of a sudden, there was money that came over. I mean, it was -- you know, I'm not a conspiracy theory kind of guy, but when you look at connecting the dots, it was very troubling. And the fact that the inspector general would look at that and have employees, whistle blowers, within the agency that said they felt like Mr. Mayorkas had acted improperly, where does that go? Because the inspector general felt like he had done his job. And so does it come to us, or who would investigate that?

Mr. Shaub. So the reason I mention his report is I was going to tell you I can't remember his exact position, his position title. Was he assistant secretary? Under Secretary?

Mr. Meadows. I don't recall either. So --

Mr. Shaub. In any event, he works, then, for the State Department and would report --

Mr. Meadows. Well, this would -- well, so who --

Mr. Shaub. It wouldn't be the President. It could be -- the head of the agency could take some action.

Mr. Meadows. So your agency has no role in that whatsoever? Should you have?

Mr. Shaub. When an IG is conducting an investigation, we don't want to step on the IG's toes. We're very respectful of IG jurisdiction. So during the investigative phase, absolutely not.

Mr. Meadows. Yeah, I was passed a note. He was then the director of USCIS. Now he's the DHS deputy director.

Mr. Shaub. Okay. So either the President or somebody who's in charge of his agency at a higher level can take some action. Only the President could take removal action. So something like that actually would be well within your jurisdiction if you're asking whether you could, obviously.

Mr. Meadows. Well, we've got all these other ethics groups out there, Congressional Ethics. You mentioned some of those that they're your sister -- they actually take action. Are you the only one that just does financial disclosure with no actions?

Mr. Shaub. No. We don't just do financial disclosure. But we're the prevention piece of the framework. This is a broad framework --

Mr. Meadows. So who's the enforcement piece? Because it's not the IG.

Mr. Shaub. No. That would come to agency management or the White House to take action against a Presidential appointee.

Mr. Meadows. Do you not see an ethical dilemma that you put yourself in when you have someone that is a nominee having to be held accountable by the person who nominated them?

Mr. Shaub. Well, that's the framework the Ethics in Government Act established. But we do have the separation of powers issue where Congress has the ability to ask the very questions you're asking about an individual. And you could certainly have a hearing on that investigative--

Mr. Meadows. So do you think that your agency needs to have expanded authority to be able to investigate?

Mr. Shaub. I don't think so. I think that there --

Mr. Meadows. You don't want it?

Mr. Shaub. Well, I don't think we should have it. What I might want one way or the other is not as relevant as what would be the right thing. And what's the right thing is that we have a broad framework with a number of different, very specialized entities that perform very important roles. The inspectors general have investigative authority. Agencies can take disciplinary action. In whistle blower cases, you mentioned whistle blower in this example, the Office of Special Counsel can initiate an action against them. And I won't speak for what's

within your power, but they then take a case before the MSPB.

So there are -- everybody has their individual roles. We, for instance, don't adjudicate the disciplinary cases. The MSPB has the authority to do that. So ours is the prevention piece of the program.

Mr. Meadows. So if the employees -- what you're saying, is if the employees in that particular situation feel like that they have been thwarted, then either special counsel or -- I guess it would be special counsel first?

Ms. Lerner. No. I don't believe we would have jurisdiction over these matters.

Ms. Grundmann. Are we talking about --

Mr. Meadows. I'll tell you what I'll do, is let me do this: I'll get that particular IG's report. I'll get it to all of you and then let you weigh in before we go forward. How about that?

Ms. Grundmann. Are you talking -- just to be clear, you're talking about a political appointee who's not the head of the agency?

Mr. Meadows. Right. Yeah, he would have been. That's correct.

Ms. Grundmann. Okay. We wouldn't have jurisdiction.

Mr. Meadows. But there was employees that felt like they were wronged that were rank-and-file employees underneath.

Mr. Shaub. Yeah. I'm sorry. I was talking about the whistle blower complaints of the individual level employees --

Mr. Meadows. Okay. All right. So basically other than our oversight, we need to have a hearing on that if I care about it.

Mr. Shaub. Well, the Constitution has set up Presidential appointments, Senate confirmation process. I think I saw talk of an impeachment proceeding in the news about one Federal official. So there are constitutional mechanisms. But at the level you're talking, that's -- we're getting into the constitutional area.

Mr. Meadows. Okay. Well, I want to thank each one of you for your testimony. I know that this is sometimes like going to the dentist and you're just glad it's over. And so -- but I would say this, is if you will get those follow-ups that counsel's been taking notes, if you would get those follow-ups, we'll be expeditious in our return in terms of information to you, and hopefully work with you on the reauthorization language, or any caveats that might need to be addressed legislatively.

And if there's no further business, the subcommittee stands adjourned.

[Whereupon, at 12:24 p.m., the subcommittee was adjourned.]