

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL

**STATEMENT OF
THE HONORABLE PHYLLIS K. FONG
INSPECTOR GENERAL**

Submitted to
The Committee on Oversight and Government Reform

U.S. House of Representatives

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Chairman Gowdy, Ranking Member Cummings, and Members of the Committee, thank you for inviting me to testify at today's hearing to discuss our recent work on the issue of workplace misconduct at the Forest Service (FS). The Office of Inspector General (OIG) regards the safety of U.S. Department of Agriculture (USDA) employees as one of its most important priorities, especially when those employees are performing dangerous work in remote, isolated locations. Accordingly, we have taken a number of steps to provide oversight as FS addresses concerns about sexual harassment or retaliation against employees who allege mistreatment.

In my testimony today, I will discuss the recent oversight work we have undertaken to help FS improve conditions for all of its employees. Those efforts are threefold. First, when we receive allegations of sexual assault or harassment, we initiate criminal investigations when appropriate. Second, we conducted a survey of FS employees in Region 5 (California) that explored employees' perceptions of conditions in their workplace and how FS responds to allegations of harassment. Third, we are conducting audit work in Region 5 to evaluate whether the actions FS took in response to complaints of sexual misconduct and harassment sufficiently addressed workplace concerns. Because we currently have ongoing audit and investigative work regarding these sensitive matters, I can only comment on the reports we have already published and the cases we have already closed.

Investigations Work Concerning Alleged Sexual Harassment and Assault at FS

OIG conducts investigations into allegations of misconduct involving USDA's programs and operations. In fiscal year (FY) 2018, OIG's investigative work yielded 541 convictions and \$326.5 million in monetary results. OIG receives information regarding allegations from three primary sources: USDA agencies; other Federal, State, and local law enforcement agencies; and the public. When we receive an allegation, we assess the allegation to determine how to respond. If the allegation involves potential fraud or misconduct the matter is usually referred to the OIG Office of Investigations, but some allegations are referred to the OIG Office of Audit, the program agency, or the Office of Special Counsel.

Although much of OIG's investigative work focuses on program fraud, we also conduct employee misconduct investigations, including allegations of harassment or assault. Since FY 2009, OIG's Hotline received 107 complaints alleging some form of harassment involving FS employees.¹ During that same period, from all other agencies within USDA, OIG received 163 complaints alleging harassment. If OIG initiates an investigation, we work with the U.S. Attorney's Office or local prosecutor to determine if criminal activity has occurred. The prosecutors ultimately decide whether a matter will be prosecuted. If a matter is declined for prosecution, it is referred back to the program agency to determine whether to take administrative action. OIG does not have the authority to pursue administrative action against an employee of another agency.

It is an OIG priority to address allegations involving physical assault. Since FY 2009, OIG has initiated 13 investigations of allegations of sexual assault involving FS employees. Of those investigations, eight resulted in penalties such as a criminal conviction and removal or resignation of the employee. For example, in February 2017, FS contacted OIG and reported that one of its employees had been arrested for the sexual assault of a minor. OIG collaborated with the local police department on the investigation. The individual resigned from FS and pled guilty to four counts involving the sexual assault of a minor. He was sentenced in May 2017 to 70 months in prison, 36 months of supervision, and fines totaling \$2,419.

Another OIG investigation disclosed that a student at an FS Job Corps Center² sexually assaulted another student on several occasions from June to August 2014. In March 2015, charges were filed against five students for indecent liberties and forcible compulsion. In June 2015, the charges against four of the students were dismissed. In July 2015, the fifth student pled guilty to

¹ All of these complaints allege harassment, but some refer more specifically to sexual harassment, bullying, intimidation, or hostile work environment.

² Job Corps is a no-cost education and vocational training program, created in 1964 and administered by the U.S. Department of Labor that helps young people ages 16–24 from disadvantaged backgrounds to obtain jobs and become independent. Job Corps serves approximately 60,000 youths annually through 120 Job Corps centers throughout the country. As first responders during local, State, and national disasters, FS Job Corps students also are trained by local FS units to assist during national emergencies, including those caused by wildfires, floods, hurricanes, and tornados.

one count of assault in the fourth degree and was sentenced to 364 days in prison and 24 months of probation.

Audit and Office of Data Sciences Work on Sexual Harassment and Assault at FS

In November 2014, we received a Congressional request to review allegations of sexual harassment, attempted sexual assault, gender discrimination, and whistleblower retaliation in FS' Region 5. Based on our preliminary review of FS' work environment for women firefighters, we responded in May 2015 that FS was taking steps to improve its work environment, such as realigning and strengthening its employee relations and civil rights organizations and functions; FS also developed a comprehensive information system to track and monitor its employee relations cases. FS and senior-level Departmental officials expressed a commitment to ensuring that FS effectively implemented steps that would improve its workplace. At that time, FS expected to implement most of its planned actions by the end of FY 2015. Accordingly, OIG decided to monitor FS' progress and to initiate, if and when appropriate, an audit at a later date.

We continued to monitor the situation, meeting periodically with FS and Department officials. In November 2016, Congress wrote requesting that we review the effectiveness of those steps and whether FS' actions have succeeded in improving the workplace environment. In response, OIG expedited a survey and an audit that we had already planned to do in FY 2017 to address this question.

Survey of Employees' Perceptions of Sexual Harassment at FS

Early in 2018, we published the results of a survey of FS employees in Region 5 in an effort to determine whether and how Region 5 employees perceive the occurrence of sexual harassment in their work environment. On May 31, 2017, OIG sent the survey to all Region 5 employees, both full-time and part-time. 1,907 employees elected to participate, including a wide and diverse range of job positions, genders, and ethnic identities. Our report highlighted several key observations concerning the survey responses:

- A small number of respondents report directly experiencing sexual harassment in Region 5. A larger number report knowing someone who has been harassed in Region 5 or elsewhere in FS.
- A noticeable minority of respondents view harassment behaviors as problematic in Region 5. These behaviors include both sexual and non-sexual harassment.
- Most of those who indicated direct experience as a victim of sexual harassment did not report it.
- Common forms of harassment appear to be verbal rather than physical.
- The experience of sexual harassment is shared across gender and ethnic identities.
- The majority of respondents “agree” or “agree strongly” that they are aware that FS has a zero-tolerance policy on sexual harassment.

The report was provided to FS in January 2018 for its use and was published on the OIG website in its entirety.

Audit Work Concerning How FS Responds to Complaints of Sexual Harassment

After the November 2016 Congressional request, we began a review to evaluate whether the actions FS took in response to complaints of sexual misconduct and harassment in the workplace were effectively implemented and sufficiently addressed workplace concerns. That audit is ongoing, and we anticipate issuing our final report in January 2019.

In March 2018, we issued an interim report finding that FS needs to improve how it handles investigations of sexual harassment. While FS has taken steps to improve its process of handling sexual harassment and sexual misconduct complaints, the agency needs to work to provide investigators who are more independent. FS updated its sexual harassment policy in July 2017 to require all allegations of sexual harassment and sexual misconduct be investigated, but FS primarily uses its own internal investigators to perform these investigations. Through interviews of 69 current and former FS employees in Region 5, we found that 33 of them expressed some level of mistrust in FS’ process for

handling sexual harassment and sexual misconduct complaints. The practice of using internal investigators may contribute to that mistrust.

An official we interviewed from the Office of the Assistant Secretary for Civil Rights strongly believed that FS should be using contract investigators to investigate all of its sexual harassment and sexual misconduct complaints. Another Department-level official from the Office of Human Resources Management expressed support for using investigators from other Federal agencies within the Department who were available to perform the investigations, should FS choose to use them.

We recommended that FS, for a trial period of at least 1 year, use only contract investigators or investigators from other Federal agencies who are not former FS employees to investigate complaints of sexual harassment and sexual misconduct, establish guidelines to ensure FS hires investigators with the necessary experience, and stipulate these requirements in writing. At the end of the trial period, FS should assess whether the practice should be made permanent. FS generally agreed with our findings and recommendations.

Our ongoing audit continues to evaluate FS' actions in response to complaints of sexual misconduct and harassment in the workplace to determine if they were effectively implemented and sufficiently addressed workplace concerns.

I would like to close by reiterating OIG's commitment to helping FS address these long-standing concerns about conduct in the workplace and how the agency handles allegations of sexual harassment and assault. I look forward to briefing the Committee more fully once our report has been issued, and I am happy to answer your questions.

Phyllis K. Fong
Inspector General, U.S. Department of Agriculture

Phyllis K. Fong was sworn in as Inspector General for the U.S. Department of Agriculture (USDA) on December 2, 2002. Ms. Fong was nominated by President George W. Bush and confirmed by the U.S. Senate.

As Inspector General (IG), Ms. Fong is the senior official responsible for audits, investigations, and other oversight activities relating to USDA's programs and operations. The Office of Inspector General (OIG) provides leadership in promoting economy and effectiveness in USDA programs and preventing fraud, waste, and abuse. Ms. Fong's priorities as IG have been to focus OIG's resources on the protection of public health and safety related to USDA's mission and operations, and to improve the management and financial integrity of the Department's programs.

In November 2008, Ms. Fong was elected by the Inspector General community as the first Chairperson of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), an independent agency established by Congress in the Inspector General Reform Act of 2008. CIGIE's members include 72 Federal Inspectors General, and its mission is to promote economy and effectiveness in Federal programs through coordinated Governmentwide activities. She served for three terms as CIGIE Chair, concluding her tenure in December 2014. Ms. Fong also served as a member of the Recovery Accountability and Transparency Board, established by Congress to oversee Federal spending under the American Recovery and Reinvestment Act of 2009 until its sunset in September 2015. The Board's responsibilities included oversight of disaster relief funds for Hurricane Sandy.

Ms. Fong has been the recipient of numerous awards in recognition of her leadership in enhancing sound financial management practices and policies in the Federal Government. Such awards include the Frank Greathouse Distinguished Leadership Award from the Association of Government Accountants for sustained outstanding leadership in financial management and notable professional contributions at the national level.

Prior to her appointment at USDA, Ms. Fong was nominated by President Bill Clinton and confirmed by the U.S. Senate to be Inspector General of the U.S. Small Business Administration (SBA). Ms. Fong served as SBA's Inspector General from April 1999 until December 2002. A career member of the Senior Executive Service, she held several senior management positions at SBA OIG.

Ms. Fong was born in Philadelphia, Pennsylvania, and raised in Honolulu, Hawaii. She graduated from Pomona College with a B.A. degree in Asian studies and earned her J.D. degree from Vanderbilt University School of Law. Ms. Fong is a member of the Tennessee and District of Columbia bars. She and her husband have two children.

