



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

August 2, 2012

**VIA CERTIFIED MAIL**

President Barack Obama  
1600 Pennsylvania Avenue N.W.  
Washington, D.C. 20500

**RE: THE OFFICE OF GOVERNMENT ETHICS FAILED TO PREVENT SCANDAL AT THE  
GENERAL SERVICES ADMINISTRATION**

Dear Mr. President:

Cause of Action is a nonprofit, nonpartisan organization that uses public advocacy and legal reform strategies to ensure greater transparency in government and protect taxpayer interests and economic freedom. We write to submit an investigative memorandum regarding the 2010 scandal at the General Services Administration (GSA) and our findings concerning the institutional failures that have allowed an agency like GSA to engage in substantial waste, fraud, and mismanagement.

As you are undoubtedly aware, from October 25 to 29, 2010, the Public Buildings Service (PBS) of the GSA held its Western Regions Conference (WRC) at the M Resort Spa Casino in Las Vegas, Nevada, at a cost of \$822,751. On April 2, 2012, the Office of Investigations of the Office of Inspector General (OIG) at GSA released a report on the 2010 Western Regions Conference, finding evidence of excessive spending on conference planning, improper contracting, excessive spending on food, and several other impermissible and questionable expenses.<sup>1</sup> Sadly, the scandal at GSA continues to plague federal taxpayers even months after the OIG's revelations of misuse. A July 17, 2012 article in the *Washington Post*

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<sup>1</sup> See Lisa Rein & Joe Davidson, *GSA Chief Resigns Amid Reports of Excessive Spending*, WASH. POST, Apr. 2, 2012, [http://www.washingtonpost.com/politics/gsa-chief-resigns-amid-reports-of-excessive-spending/2012/04/02/gIQABLNNrS\\_story.html](http://www.washingtonpost.com/politics/gsa-chief-resigns-amid-reports-of-excessive-spending/2012/04/02/gIQABLNNrS_story.html); Timothy R. Smith, *GSA Regional Office Rewards Program Divvied Up \$200,000 in Gifts*, WASH. POST, Apr. 5, 2012, [http://www.washingtonpost.com/blogs/federal-eye/post/gsa-regional-office-rewards-program-divvied-out-200000-in-gifts/2012/04/05/gIQAvaofxS\\_blog.html](http://www.washingtonpost.com/blogs/federal-eye/post/gsa-regional-office-rewards-program-divvied-out-200000-in-gifts/2012/04/05/gIQAvaofxS_blog.html); John Crawley & Thomas Ferraro, *Ex-US Agency Chief Called To Explain Spending Spree*, REUTERS, Apr. 9, 2012, available at <http://www.reuters.com/article/2012/04/10/us-usa-gsa-idUSBRE83901020120410>; Peter Grier, *GSA Scandal: Does Agency Have Culture of Waste, Fraud, and Abuse?*, CHRISTIAN SCIENCE MONITOR, Apr. 17, 2012, <http://www.csmonitor.com/USA/DC-Decoder/Decoder-Wire/2012/0417/GSA-scandal-Does-agency-have-culture-of-waste-fraud-and-abuse>; Rachel Rose Hartman, *The GSA Scandal's Powerful and Powerless Players*, ABC NEWS, Apr. 17, 2012, <http://abcnews.go.com/Politics/OTUS/gsa-scandals-powerful-powerless-players/story?id=16157522#.UAaIDbSviCo>.

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revealed that GSA spent \$660,000 on executive bonuses in fiscal year 2011.<sup>2</sup> A July 20, 2012 article in *Businessweek* revealed that GSA spent \$269,000 on a one-day event less than a month after the October 2010 Las Vegas conference.<sup>3</sup> A July 31, 2012 report by *9 News Now* found that the GSA paid another \$30 million in previously unreported bonuses for fiscal year 2011.<sup>4</sup>

As a result of Cause of Action's investigation, the full memorandum for which is enclosed, we have made the following findings concerning the Office of Government Ethics' (OGE) oversight of ethical abuses at the GSA:

- **Finding:**     **OGE had both specific and prior knowledge that significant ethics risks existed at the GSA.**

GSA failed to fill a Designated Agency Ethics Officer (DAEO) position from 2007 to at least 2010. According to the Standards of Ethical Conduct for Employees of the Executive Branch, all agencies are required to have a DAEO to supply ethics advice to employees, as well as an Alternate Designated Agency Ethics Official (ADAEO). The GSA ADAEO spent less than one-quarter of her time on ethics-related duties. OGE requires that DAEOs spend at least half their time on ethics-related duties. Furthermore, GSA has eleven regional offices with no full-time ethics officials.

According to documents produced by OGE, GSA's ethics program is principally administered by eleven regional ethics offices. Yet OGE reviewed only five of GSA's eleven regional offices for compliance with applicable laws, regulations, and policies. OGE, prior to its investigation of GSA, noted that "the existence of regional and field offices within an agency is identified as a risk factor on OGE's Resource Allocation Model (RAM)."<sup>5</sup>

- **Finding:**     **The GSA intentionally ignored findings of vulnerability concerning conflicts of interest among its staff and federal contractors.**

Leigh Snyder, a Government Ethics Specialist in OGE's Program Review Division (PRD), stated in an official memorandum that GSA employees were vulnerable to conflicts of interest in the contractual award process. According to Leigh Snyder, since 1994, the Office of Government Ethics has known that GSA's Office of Human Resources failed to timely detect

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<sup>2</sup> Lisa Rein, *GSA Chief Reins in Bonuses and Freezes New Hiring*, WASH. POST, July 17, 2012, [http://www.washingtonpost.com/blogs/federal-eye/post/gsa-chief-reins-in-bonuses-and-freezes-new-hiring/2012/07/17/gJQAbwIVrW\\_blog.html](http://www.washingtonpost.com/blogs/federal-eye/post/gsa-chief-reins-in-bonuses-and-freezes-new-hiring/2012/07/17/gJQAbwIVrW_blog.html).

<sup>3</sup> Danielle Ivory, *GSA Spent \$269,000 on One-Day Conference After Las Vegas Junket*, BLOOMBERG BUSINESSWEEK, July 20, 2012, <http://www.businessweek.com/news/2012-07-20/gsa-spent-269-000-on-one-day-conference-after-las-vegas-junket>.

<sup>4</sup> Russ Ptacek, *\$30 Million in Unreported GSA Bonuses Uncovered by WUSA9 Investigation, Rep John Mica Plans Congressional Investigation*, WUSA 9 NEWS NOW, July 31, 2012, <http://www.wusa9.com/news/article/214978/158/WUSA9-Investigation-Finds-30M-GSA-Bonuses-Not-Reported>.

<sup>5</sup> Memorandum, Leigh Snyder, Government Ethics Specialist, Program Review Division, Office of Gov't Ethics, to Patricia Zemple, Associate Director, Program Review Division, Office of Gov't Ethics, at 000073-000079 (Jan. 20, 2010).

conflicts of interest. As recently as 2008, the failure to detect conflicts of interest had still not been addressed by GSA.

- **Finding:** **OGE's investigation into the GSA scandal was inadequate and ineffectual.**

In November 2010, OGE reported to GSA Inspector General Brian Miller that "GSA's ethics program appears to be effectively administered and in compliance with applicable laws, regulations, and policies." OGE considered GSA to have "model practices" in place. OGE made no findings concerning GSA conference spending, even though GSA's alleged misfeasance of federal funds in its conference planning process occurred before and during OGE's stated investigation period. OGE has produced no records that show it addressed any allegation of whistleblower retaliation at GSA, although there has been at least one credible allegation of retaliation by GSA Regional Commissioner Jeff Neely against federal employees who sought to blow the whistle on waste, fraud or abuse.

#### **Recommendation**

Under Executive Order 12805, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) was established to coordinate government efforts to promote integrity and efficiency and to prevent waste, fraud, and abuse in federal programs. On April 20, 2012, Cause of Action requested that CIGIE perform an agency-wide audit, evaluation, and investigation to ensure that federal agencies were complying with federal ethics and whistleblower laws, including Executive Order 12731, 5 C.F.R. Part 2635, and 5 U.S.C. § 1213, which may have been violated by the GSA both before and during the recent scandal.

CIGIE Chair Phyllis Fong explained to Cause of Action that CIGIE lacks the authority to perform audits, evaluations, and/or investigations. While CIGIE has review authority, CIGIE relies exclusively on OGE, the Special Counsel of the Office of Special Counsel, and individual IGs of each agency or department to investigate wrongdoing.

OGE's ethical standards are derived from the Standards of Ethical Conduct for Employees of the Executive Branch (standards). Section 2635.101(b) of the standards states, "Employees shall not hold financial interests that conflict with the conscientious performance of duty[;] Employees shall not use public office for private gain[;] Employees shall protect and conserve Federal [sic] property and shall not use it for other than authorized activities[; and] Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities."

Virtually all of these principles were violated by the GSA in 2010 and Cause of Action's investigation sheds light on the fact that OGE recklessly disregarded clear warning signs of waste, fraud and abuse at GSA. Furthermore, any mismanagement or fraud within the OGE is subject to review only by OGE itself, as OGE lacks an inspector general.

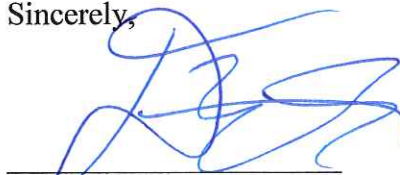
Executive Order 13589 directs agency heads to take "aggressive steps to ensure the Government is a good steward of taxpayer money." Executive Order 13576 proposed to eliminate "wasteful, duplicative, or otherwise inefficient programs; and publicize these reforms

so that they may serve as a model across the Federal Government.” While OGE’s 2010 investigation into ethics risks at GSA found GSA to be in compliance with applicable laws, regulations, and policies, including the aforementioned Executive Orders, GSA’s Inspector General found clear evidence of noncompliance by GSA during the time period of OGE’s investigation.

Cause of Action’s research suggests that Inspector General Phyllis Fong’s belief that OGE is capable of investigating wrongdoing is both uninformed and dubious. Our memorandum of findings reveals that OGE overlooked several serious issues of executive agency ethics abuse. OGE’s inaction, in the case of GSA, has left its mission to “foster high ethical standards for executive branch employees and strengthen the public’s confidence that the Government’s business is conducted with . . . integrity” unfulfilled.

Given your commitment to ethics and transparency in government, we recommend that you have the Office of Management and Budget consider whether the OGE’s sole authority over the standards of ethical conduct should be transferred to the Inspectors General, who, as is the case with GSA IG Brian Miller, have the appropriate resources and independence to address waste, fraud, and mismanagement in the Federal Government.

Sincerely,



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DANIEL EPSTEIN  
EXECUTIVE DIRECTOR

Encl. “Memorandum: The Office of Government Ethics Failed to Prevent Scandal at the General Services Administration”



**Memorandum:**  
The Office of Government Ethics Failed to Prevent Scandal at the General  
Services Administration

Thursday, August 02, 2012

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## **About Cause of Action**

### **Mission**

Cause of Action (CoA) is a nonprofit, nonpartisan government accountability organization that uses public advocacy and legal reform tools to ensure greater government accountability and transparency while protecting taxpayer interests and economic opportunity. Our mission is to expose the ways our government is playing politics in its use of taxpayer dollars, in its decision-making on behalf of individual Americans, and how it seeks to burden the economic opportunities that employ us and make our lives better. CoA seeks to prevent the federal government from politicizing agencies, rules, and spending by bringing transparency to the federal grant and rule-making processes. CoA's representation of organizations and individuals helps to educate the public about government overreach, waste, and cronyism.

### **Investigative Function**

CoA uses investigative tools to attack federal government waste, fraud, and mismanagement as well as overreach in the form of arbitrary and burdensome regulations. CoA employs "sunshine advocacy" tools to achieve its goals, including document and information requests, lawsuits, ethics complaints, and requests for investigation. Through its use of advocacy and investigatory tools, CoA promotes transparency, integrity, and accountability in government. CoA's investigations help expose the ways our government is mismanaging federal funds and educate the public on how government can be made more accountable. Rigorous oversight can prevent taxpayer dollars from being wasted on improper activities.

## MEMORANDUM

FROM: CAUSE OF ACTION INVESTIGATIONS STAFF  
DATE: AUGUST 2, 2012  
RE: THE OFFICE OF GOVERNMENT ETHICS FAILED TO PREVENT SCANDAL AT THE  
GENERAL SERVICES ADMINISTRATION

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This memorandum reports Cause of Action's (CoA) investigative findings following a multi-month investigation into ethics abuses at the General Services Administration (GSA) and the Office of Government Ethics' (OGE) oversight of the GSA.

### Introduction

From October 25 to 29, 2010, the Public Buildings Service (PBS) of the General Services Administration held its Western Regions Conference (WRC) at the M Resort Spa Casino in Las Vegas, Nevada, at a cost of \$822,751.<sup>1</sup> On April 2, 2012, the Office of Investigations of the Office of Inspector General (OIG) of the GSA released a report on the 2010 Western Regions Conference, finding evidence of excessive spending on conference planning, improper contracting, excessive spending on food, and several other impermissible and questionable expenses. In the weeks following the OIG report's release, allegations surfaced concerning GSA retaliation against whistleblowers as well as unauthorized spending of GSA funds by non-government individuals.

The findings of the GSA OIG report raise the concern that GSA violated the Office of Government Ethics' (OGE) Standards of Ethical Conduct for Employees of the Executive Branch as well as the applicable laws concerning procurement spending. On April 4, 2012, CoA submitted a Freedom of Information Act (FOIA) request to 32 federal agencies, departments, and inspectors general relating to excessive spending and the waste of taxpayer dollars on commemorative items. On April 19, 2012, CoA sent a FOIA request to the OGE requesting all documents referring or relating to any OGE investigation into or determination made concerning the GSA's compliance with the Standards of Ethical Conduct for Employees of the Executive Branch since January 1, 2009. On April 20, 2012, CoA requested that the Council of the Inspectors General for Efficiency and Integrity (CIGIE) perform a government-wide audit, evaluation, and investigation to ensure that federal agencies are complying with federal ethics and whistleblower laws.

The documents produced by OGE in response to CoA's request reveal that, as far back as 1994, OGE had determined the GSA to be vulnerable to ethics abuses, particularly in areas that include the agency's ability to detect conflicts of interest among its employees and appoint leadership responsible for enforcing its ethics programs. These documents detail how in 2008, an OGE Ethics Specialist recommended review of GSA's ethics program, which led to a subsequent investigation of GSA in June 2010. However, in November 2010, OGE determined,

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<sup>1</sup> OFFICE OF INVESTIGATIONS, OFFICE OF INSPECTOR GEN., U.S. GEN. SERVS. ADMIN., MANAGEMENT DEFICIENCIES REPORT: 2010 WESTERN REGIONS CONFERENCE (2012), [hereinafter OIG WEST CONF. REP.] *available at* <http://www.gsaig.gov/?LinkServID=908FFF8C-B323-14AD-270C38936310AEBD&showMeta=0> (last visited Aug. 2, 2012).



on the basis of its June 2010 investigation, that GSA's ethics programs were in compliance with applicable federal ethics standards. Despite OGE's conclusion, GSA's activities in the month leading up to OGE's review represent one of the most egregious examples of wasteful spending by the federal government in recent history.<sup>2</sup>

### Investigative Timeline and Summary

On April 2, 2012, *The Washington Post* reported that GSA Administrator Martha Johnson had resigned, that both Public Buildings Service (PBS) Chief Robert Peck and Johnson's "top advisor" Stephen Leeds had been fired, and four GSA "managers" had been placed on administrative leave, all shortly before GSA Inspector General Brian Miller (IG Miller) released a report detailing GSA expenditures at a conference that occurred in October 2010.<sup>3</sup> The OIG's *Management Deficiencies Report* revealed that the GSA's four-day WRC at the M Resort Spa Casino just outside Las Vegas, Nevada cost taxpayers an estimated \$822,751.<sup>4</sup>

Following IG Miller's report, news outlets focused their attention on GSA and began questioning the agency's spending patterns. *The Washington Post* again reported on GSA expenditures on April 5, 2012, citing a "staff award program," created by GSA's "Pacific Region's public building's administrator," Jeff Neely, that "gave away more than \$200,000-worth of iPods, gift cards, and other items to employees . . . that allowed them to redeem reward points for tax funded items."<sup>5</sup>

On April 4, 2012, CoA wrote to several agencies and departments concerning agency spending on commemorative items, following revelations of excessive gift spending by GSA.<sup>6</sup> On April, 19, 2012, CoA sent a FOIA request to Walter Schaub, Jr., Deputy General Counsel and Chief FOIA Officer at the OGE, "request[ing] all documents referring or relating to any Office of Government Ethics investigation into or determination made regarding the GSA's compliance with the Standards of Ethical Conduct for Employees of the Executive Branch between January 1, 2009 and the present."<sup>7</sup>

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<sup>2</sup> Rep. Tom Cole, *Status Quo Spending is Indefensible*, WEEKLY COLUMNS, (Apr. 9, 2012), available at <http://cole.house.gov/status-quo-spending-indefensible> ("Yet every so often a government spending scandal comes along that reminds us all just how careless and irresponsible some federal agencies are with taxpayer money. New revelations about extravagant spending at the Government Services Administration (GSA) serve as one of the most egregious examples in recent memory").

<sup>3</sup> Lisa Rein & Joe Davidson, *GSA Chief Resigns Amid Reports of Excessive Spending*, WASH. POST, Apr. 2, 2012, [http://www.washingtonpost.com/politics/gsa-chief-resigns-amid-reports-of-excessive-spending/2012/04/02/gIQABLNNrS\\_story.html](http://www.washingtonpost.com/politics/gsa-chief-resigns-amid-reports-of-excessive-spending/2012/04/02/gIQABLNNrS_story.html).

<sup>4</sup> OIG WEST CONF. REP., *supra* note 1, at 1.

<sup>5</sup> Timothy R. Smith, *GSA Regional Office Rewards Program Divvied Up \$200,000 in Gifts*, WASH. POST, Apr. 5, 2012, [http://www.washingtonpost.com/blogs/federal-eye/post/gsa-regional-office-rewards-program-divvied-out-200000-in-gifts/2012/04/05/gIQAVaofxS\\_blog.html](http://www.washingtonpost.com/blogs/federal-eye/post/gsa-regional-office-rewards-program-divvied-out-200000-in-gifts/2012/04/05/gIQAVaofxS_blog.html).

<sup>6</sup> See e.g. Letter from Daniel Z. Epstein, Exec. Dir. of Cause of Action to Wade Green, Jr., Csl. to the IG, Commerce Dep't (Apr. 4, 2012) (on file with author); *accord* Press Release, Cause of Action, Coin for Coins: Cause of Action Demands Agencies Reveal Wasteful Spending on Commemorative Items (Apr. 11, 2012), available at <http://causeofaction.org/2012/04/11/coin-for-coins-cause-of-action-demands-agencies-reveal-wasteful-spending-on-commemorative-items/>.

<sup>7</sup> Letter from Daniel Z. Epstein, Exec. Dir., Cause of Action, to Walter M. Schaub, Jr, Deputy Gene. Counsel & Chief FOIA Officer, Office of Gov't Ethics (Apr. 19, 2012) (on file with Cause of Action).

OGE responded to CoA's request on May 16, 2012, producing 96 pages of material, including 25 pages of draft internal OGE documents that OGE produced as a discretionary release.<sup>8</sup> The records produced by OGE included numerous Agency Ethics Program Questionnaires spanning from 2008-2011,<sup>9</sup> an OGE Ethics Program Review,<sup>10</sup> associated letters explaining the review's results,<sup>11</sup> and a memorandum from OGE's Program Review Division (PRD) that recommended a review of GSA in January 2010.<sup>12</sup> The documents showed that OGE initiated a review of GSA in June 2010<sup>13</sup> during the same time period that GSA was spending taxpayer dollars to plan for its WRC.<sup>14</sup> The documents also revealed that OGE found "GSA's ethics program . . . to be effectively administered and in compliance with applicable laws, regulations, and policies."<sup>15</sup>

IG Miller's April 16, 2012 testimony before the U.S. House of Representatives, Committee on Oversight and Government Reform, revealed that the excess spending at Region 9 of the GSA was widespread and that investigations were ongoing concerning "all sorts of improprieties including bribes and possibly kickbacks."<sup>16</sup> IG Miller testified that GSA employees feared retaliation, adding that Jeff Neely, the Region 9 Administrator, "squashed" agency whistleblowers "like a bug."<sup>17</sup>

Under Executive Order 12805, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) has the responsibility to coordinate government efforts to promote integrity and efficiency and to prevent waste fraud and abuse in Federal programs. On April 20, 2012, CoA made a request for investigation<sup>18</sup> to the Council of the Inspectors General on Integrity and

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<sup>8</sup> Letter from Kerri A. Cox, Alternate FOIA Officer, Office of Gov't Ethics, to Daniel Z. Epstein, Exec. Dir., Cause of Action (May 16, 2012) (on file with Cause of Action).

<sup>9</sup> U.S. OFFICE OF GOV'T ETHICS, GENERAL SERVICES ADMINISTRATION 2011 AGENCY ETHICS PROGRAM QUESTIONNAIRE, \*000009-\*25 (2011); U.S. OFFICE OF GOV'T ETHICS, GENERAL SERVICES ADMINISTRATION 2010 AGENCY ETHICS PROGRAM QUESTIONNAIRE \*000026-\*42 (2010); U.S. OFFICE OF GOV'T ETHICS, GENERAL SERVICES ADMINISTRATION 2009 AGENCY ETHICS PROGRAM QUESTIONNAIRE \*000043-\*56 (2009); U.S. Office of Gov't Ethics, GENERAL SERVICES ADMINISTRATION 2008 AGENCY ETHICS PROGRAM QUESTIONNAIRE 000057-71 (2008).

<sup>10</sup> U.S. OFFICE OF GOV'T ETHICS, ETHICS PROGRAM REVIEW, GENERAL SERVICES ADMINISTRATION, OCTOBER 2010 REPORT \*000004-\*8 (2010) [hereinafter OGE 2010 ETHICS REP.].

<sup>11</sup> Letter from Patricia Zemple, Assoc. Dir., Program Review Div., Office of Gov't Ethics, to Martha Johnson, Adm'r, Gen. Servs. Admin., \*000001 (Nov. 2, 2010) (on file with Cause of Action); Letter from Patricia Zemple, Assoc. Dir., Program Review Div., Office of Gov't Ethics, to Brian D. Miller, Inspector Gen., Gen. Servs. Admin. \*000002 (Nov. 2, 2010) (on file with Cause of Action); Letter from Patricia Zemple, Assoc. Dir., Program Review Div., Office of Gov't Ethics, to Kris E. Durmer, Designated Agency Ethics Official, Gen. Servs. Admin. \*000003 (Nov. 2, 2010) (on file with Cause of Action).

<sup>12</sup> Memorandum from Leigh Snyder, Gov't Ethics Specialist, Program Review Div., Office of Gov't Ethics, to Patricia Zemple, Assoc. Dir., Program Review Div., Office of Gov't Ethics \*000073-\*79 (Jan. 20, 2010) (on file with Cause of Action).

<sup>13</sup> OGE 2010 ETHICS REP., *supra* note 10, at \*000004.

<sup>14</sup> OIG WEST CONF. REP., *supra* note 1, at 4.

<sup>15</sup> Letter from Patricia Zemple to Martha Johnson, *supra* note 11, at \*000001 (on file with Cause of Action).

<sup>16</sup> See *Addressing GSA's Culture of Wasteful Spending: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. (2012), available at <http://oversight.house.gov/hearing/addressing-gsas-culture-of-wasteful-spending/> (last visited Aug. 2, 2012).

<sup>17</sup> *Id.*

<sup>18</sup> Letter from Daniel Z. Epstein, Exec. Dir., Cause of Action, to Jeffrey Zients, Exec. Chair, Council of the Inspectors Gen. on Integrity & Efficiency (Apr. 20, 2012) (on file with Cause of Action).

Efficiency (CIGIE), asking CIGIE to perform an agency-wide audit, evaluation, and investigation to ensure that federal agencies are complying with federal ethics and whistleblower laws that may have been violated by the GSA. CoA's request for investigation stated, "the scandal at GSA highlights the need for oversight over the way all federal agencies comply with federal ethics requirements and whistleblower protection statutes, including but not limited to Executive Order 12731, 5 C.F.R. Part 2635, and 5 U.S.C. § 1213."<sup>19</sup>

On June 19, 2012, CIGIE's Chairperson, USDA Inspector General Phyllis Fong replied to CoA's request for investigation by explaining that CIGIE lacked the authority to perform audits, evaluations, and/or investigations and that it relies exclusively on OGE, the Special Counsel of the Office of Special Counsel (OSC), and agency OIG offices to investigate wrongdoing.<sup>20</sup>

### **Findings Based on the Investigation**

- **Finding:** *GSA failed to fill a Designated Agency Ethics Officer (DAEO) position from 2007 to at least 2010. According to the Standards of Ethical Conduct for Employees of the Executive Branch, all agencies are required to have a DAEO, as well as an Alternate Designated Agency Ethics Official (ADAEO). The GSA ADAEO spent less than one-quarter of her time on ethics-related duties. OGE requires that DAEOs spend at least half their time on ethics-related duties. GSA has eleven regional offices with no full-time ethics officials.*

In 2008, OGE's Program Review Division (PRD) distributed an Agency Ethics Program Questionnaire to agencies, such as GSA, that presented high risks of unethical behavior.<sup>21</sup> Leigh Snyder, a Government Ethics Specialist in OGE's Program Review Division (PRD), wrote:

Since at least 2007, the Designated Agency Ethics Official (DAEO) position [at GSA] has been vacant . . . The current Alternate Designated Agency Ethics Official (ADAEO) has served in the position for 19 years as of fiscal year 2008. The Questionnaire reported GSA's ADAEO spent less than 25% of her time on ethics-related duties; agencies with ADAEOs spending less than 50% of time on ethics were identified as presenting risk on the RAM. The Central Office of GSA contains two full-time ethics officials and 48 part-time ethics officials, including two Deputy DAEOS. There are not full-time ethics officials in the regional or field offices of GSA. However, there are 65 part-time ethics officials who administer some elements of the ethics program in the regional and field offices. The Central Office provides guidance to the field and regional offices on daily and weekly basis via emails, phone calls, written memoranda, periodic status reports and conferences. The existence of regional and field offices within an agency is identified as a risk factor on OGE's RAM.<sup>22</sup>

<sup>19</sup> *Id.* at 1-2.

<sup>20</sup> Letter from Phyllis K. Fong, Chairperson, Council of the Inspectors Gen. on Integrity & Efficiency, to Daniel Z. Epstein, Exec. Dir., Cause of Action (June 19, 2012).

<sup>21</sup> Memorandum from Leigh Snyder to Patricia Zemple, *supra* note 12, at \*000074.

<sup>22</sup> *Id.* at \*000075.

- **Finding:** *OGE records reveal that GSA employees are vulnerable to conflicts of interest in the contractual award process. Since 1994, the OGE knew that GSA's Office of Human Resources failed to timely detect conflicts of interest. As recently as 2008, the failure to detect conflicts of interest had still not been addressed by GSA.*

A January 20, 2010 memorandum from Government Ethics Specialist Leigh Snyder to OGE's Associate Director of Program Review Division (PRD) Patricia Zemple, stated, "(GSA) was identified as presenting risk factors that may necessitate review by PRD."<sup>23</sup> According to Snyder, PRD was at the time "conducting pre-reviews of executive branch agencies that presented risks according to OGE's Resource Allocation Model (RAM)," and Snyder stated the memorandum "identifies and assesses some of those risk factors and suggests how PRD's resources would be best allocated in a review of GSA."<sup>24</sup> One such risk factor identified by Snyder was that "GSA's mission causes its employees to have higher risks of conflicts of interest."<sup>25</sup>

Ms. Snyder's memorandum also recommended a review of GSA's confidential filing system based on a history of GSA failures to identify new entrant filers and catch potential conflicts of interest.<sup>26</sup> As far back as 1994, OGE was aware that GSA's Office of Human Resources was failing to timely identify new entrant filers and detect conflicts of interest.<sup>27</sup> Subsequent reviews in 1997, 2002, and 2008 revealed that the problem had not been fixed.<sup>28</sup> Snyder stated:

During OGE's 2002 review, it identified weaknesses in the Confidential Filing System. The Office of Human Resources (OHR) was responsible for the administration of the confidential financial disclosure program in 2002. During that time, new entrant filers were not being timely identified and potential conflicts of interest were not always detected. As a result, OGE recommended that the Ethics Division closely monitor OHR's administration of the confidential financial disclosure program . . . . During the six-month follow-up at GSA, OGE closed its recommendations finding that new procedures were in place for the identification of new entrant filers and that Form 450-As were being used correctly. Although the recommendations for the 2002 review were closed, further examination of the GSA review file revealed that OGE issued similar recommendations during a 1994 review and a 1997 review. Additionally, GSA's response to the 2008 Agency Ethics Program Questionnaire indicated that not all of the required confidential filers at GSA filed during 2008.<sup>29</sup>

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<sup>23</sup> *Id.* at \*000074.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at \*000074.

<sup>26</sup> *Id.* at \*000076.

<sup>27</sup> *Id.* at \*000076.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at \*000075-\*76.

Snyder subsequently recommended that “OGE should consider reviewing GSA’s confidential filing system in the year 2010 since GSA has demonstrated continued weakness in its administration of the system.”<sup>30</sup>

- **Finding:** *In November 2010, one month after the GSA’s Western Regions Conference, OGE reported to GSA Inspector General Brian Miller, “GSA’s ethics program appears to be effectively administered and in compliance with applicable laws, regulations, and policies.” In fact, OGE considered GSA to have “model practices” in place. OGE’s report to IG Miller did not reveal any findings of mismanagement or waste by the GSA in its conference spending.*

Documents obtained by CoA investigators show that OGE initiated an ethics review of GSA in June of 2010.<sup>31</sup> CoA uncovered an OGE letter addressed to GSA IG Miller from November 2010, the month following GSA’s \$822,751 conference, reporting the results of OGE’s review. OGE praised GSA for its ethics policies and practices.<sup>32</sup> Associate Director of OGE’s Program Review Division, Patricia Zemple stated:

GSA’s ethics program appears to be effectively administered and in compliance with applicable laws, regulations, and policies. GSA’s ethics program has also been enhanced by employing a number of what OGE considers to be model practices. Additionally, GSA regional ethics officials are following established procedures for administering the ethics program and appear to have received adequate training to prepare them to perform their duties related to the review and certification of confidential financial disclosure reports.<sup>33</sup>

OGE’s assessment of GSA’s ethics program administration conflicts with IG Miller’s report, which was sent from IG Miller to GSA Administrator Martha Johnson on April 2, 2012.<sup>34</sup> IG Miller determined that “GSA spending on conference planning was excessive, wasteful, and in some cases impermissible,” “GSA failed to follow contracting regulations in many of the procurements associated with the WRC and wasted taxpayer dollars,” “GSA incurred excessive and impermissible costs for food at the WRC,” “GSA incurred impermissible and questionable miscellaneous expenses,” and “GSA’s approach to the conference indicates that minimizing expenses was not a goal.”<sup>35</sup>

- **Finding:** *There is no one watching the watchdog. CIGIE defers to OGE’s judgment, which, given OGE’s lack of an Inspector General, effectively leaves the OGE unchecked.*

On April, 20, 2012, CoA submitted a Request for Investigation to CIGIE asking it perform an “agency-wide audit, evaluation and investigation to ensure that federal agencies are

<sup>30</sup> *Id.* at 000076.

<sup>31</sup> OGE 2010 ETHICS REP., *supra* note 10.

<sup>32</sup> Letter from Patricia Zemple to Brian D. Miller, *supra* note 11, at \*000002.

<sup>33</sup> *Id.*

<sup>34</sup> OIG WEST CONF. REP., *supra* note 1, at cover letter.

<sup>35</sup> *See* OIG WEST CONF. REP., *supra* note 1.

complying with the federal ethics and whistleblower laws.”<sup>36</sup> CIGIE Chairperson Phyllis Fong replied that it did not have any such authority to perform audits, evaluations, and/or investigations and that CIGIE relies exclusively on OGE, OSC, and Agency IGs to investigate wrongdoing. Fong stated:

CIGIE is not charged with or allocated independent resources to conduct audits, investigations, or evaluations. CIGIE and the Inspector General community take ethics and whistleblower issues seriously. The significance that Offices of Inspector General place on these issues is reflected through the investigations, audits, and evaluations conducted by Inspectors General who have jurisdiction over such matters within their individual departments and agencies. Additionally, the Director of the Office of Government Ethics and the Special Counsel of the Office of Special Counsel, who are both members of CIGIE, specifically address Federal ethics and whistleblower issues through their work. As such, absent evidence of any pervasive or crosscutting issues that transcend individual agency issues, there is a well established structure within the Federal Government, outside of CIGIE, for the kind of audits, investigations, and evaluations that you are seeking.<sup>37</sup>

OGE, aware of risk factors that made GSA an agency susceptible to ethics abuses, conducted an investigation in June 2010, but found GSA to be “in compliance with applicable laws, regulations, and policies,” in November 2010.<sup>38</sup> CIGIE, whose “statutory mission is to address integrity, economy, and effectiveness issues that transcend individual Government agencies,”<sup>39</sup> effectively defers to the OGE concerning interagency ethics abuses. Sadly, OGE overlooked several serious issues of executive agency ethics abuse. OGE’s inaction, in the case of GSA, has left its mission to “foster high ethical standards for executive branch employees and strengthen the public’s confidence that the Government’s business is conducted with . . . integrity,”<sup>40</sup> unfulfilled.

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<sup>36</sup> Letter from Daniel Z. Epstein to Jeffrey Zients, *supra* note 18.

<sup>37</sup> Letter from Phyllis K. Fong to Daniel Z. Epstein, *supra* note 20.

<sup>38</sup> Letter from Patricia Zemple to Brian D. Miller, *supra* note 11, at \*000002.

<sup>39</sup> Letter from Phyllis K. Fong to Daniel Z. Epstein, *supra* note 20.

<sup>40</sup> *Mission and Responsibilities*, UNITED STATES OFFICE OF GOVERNMENT ETHICS, [http://www.oge.gov/About/Mission-and-Responsibilities/Mission---Responsibilities/\(last visited Aug. 1, 2012\)](http://www.oge.gov/About/Mission-and-Responsibilities/Mission---Responsibilities/(last%20visited%20Aug.%201,%202012)).