April 10, 2023

The Honorable Chris Van Hollen
Chair
Subcommittee on Financial Services and General Government
110 Hart Senate Office Building
Washington, DC 20510

The Honorable Bill Hagerty
Ranking Member
Subcommittee on Financial Services and General Government
251 Russell Senate Office Building
Washington, DC 20510

The Honorable Steve Womack
Chairman
Subcommittee on Financial Services and General Government
House Committee on Appropriations
2412 Rayburn House Office Building
Washington, DC 20515

The Honorable Steny Hoyer
Ranking Member
Subcommittee on Financial Services and General Government
House Committee on Appropriations
1705 Longworth House Office Building
Washington, DC 20515

Dear Chair Van Hollen, Ranking Member Hagerty, Chairman Womack, and Ranking Member Hoyer:

The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. POGO champions reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

To further strengthen Congress’s efforts to promote government accountability and civil rights, we suggest several modest reforms, all of which could be addressed in either bill text or report language accompanying the Financial Services and General Government appropriations bill.

- Establish a direct congressional appropriation for the Council of the Inspectors General on Integrity and Efficiency.
- Improve whistleblower demographic data collection.
- Improve data quality of federal sub-award reporting.
- Establish a centralized ethics records database.
- Close the enforcement gap in Hatch Act civil penalties.
- Protect the public from a politicized civil service.
- Increase resources to the FOIA ombudsman.
- Improve FOIA through alternative access to records.
POGO submits the enclosed requests for language to be included in the fiscal year 2024 Financial Services and General Government appropriations bill and report.

Thank you for your consideration of these proposals to strengthen government accountability and oversight. For more information, please have your staff contact me at joe.spielberger@pogo.org.

Sincerely,

Joe Spielberger
Policy Counsel

Enclosure: 1

cc: Senate Committee on Appropriations Chair Patty Murray
House Committee on Appropriations Chairwoman Kay Granger
Senate Committee on Appropriations Vice Chair Susan Collins
House Committee on Appropriations Ranking Member Rosa DeLauro
POGO Recommendations to Strengthen Government Accountability and Oversight

In order to strengthen government accountability and oversight, the Project On Government Oversight (POGO) recommends the following reforms be incorporated into report language accompanying both the Senate and the House Financial Services and General Government appropriations bills for fiscal year 2024.

Establish a Direct Congressional Appropriation for the Council of the Inspectors General on Integrity and Efficiency

**Appropriations Committee:** Financial Services and General Government  
**Agency:** Independent Agencies  
**Account:** General Provisions  
**Funding Level:** “Adequate Funding”  
**Type of Request:** Report Language

**Background:**
The Council of the Inspectors General on Integrity and Efficiency (CIGIE) is the oversight body designed to hold federal inspectors general (IGs) accountable for misconduct. Despite the critical nature of its mission, CIGIE has never received consistent annual funding. Instead, its budget relies on the piecemeal, voluntary contributions of more than 70 IG member offices. This means that CIGIE cannot be confident in the size of its budget until all of its member offices have been fully funded for the year, which precludes CIGIE from engaging in long-term strategic planning. The existing funding model also means that a reduction in funding for any of CIGIE’s largest contributors would similarly translate to a reduction in CIGIE’s topline. While there have been improvements in recent years — for instance, Congress recently authorized a partial appropriation for CIGIE, and in fiscal year 2023, lawmakers directed CIGIE to brief the appropriate congressional committees “on the advantages and disadvantages of its current funding model” — lawmakers must now take an actional step toward ensuring that CIGIE receives consistent funding. CIGIE identified a single direct congressional appropriation as a priority in their Legislative Priorities letter to the 117th Congress. Congress should improve CIGIE’s funding mechanism by establishing a direct congressional appropriation.

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1. [Overseeing the Overseers: Council of the Inspectors General on Integrity and Efficiency @ 10 Years: Hearing before the U.S. House of Representatives Committee on Oversight and Government Reform, Subcommittee on Government Relations, 116th Cong. (September 18, 2019), (statement of Michael E. Horowitz, Chair, Council of the Inspectors General on Integrity and Efficiency),](https://docs.house.gov/meetings/GO/GO24/20190918/109944/HHRG-116-GO24-Wstate-HorowitzM-20190918.pdf).
Proposed Report Language:
The Committee directs CIGIE to determine, in consultation with its member IG offices and taking into account prior years' budgets, what would constitute adequate funding for a direct congressional appropriation. CIGIE shall submit a congressional budget justification for the upcoming appropriations cycle. This Committee will then work with CIGIE to establish a direct congressional appropriation that is informed by this requested funding.

Improve Whistleblower Demographic Data Collection

Appropriations Subcommittee: Financial Services and General Government
Agency: Office of Special Counsel
Account: Salaries and Expenses
Type of Request: Report Language

Background:
Although federal whistleblowers play an integral role in enabling Congress’s full oversight authority and rooting out government waste, fraud, and abuse of power, they continue to lack adequate protections against retaliation. Over a decade ago, a landmark whistleblowing study of over 3,000 U.S. Air Force employees found that women experienced retaliation at a higher rate than men, especially when exposing serious wrongdoing at higher levels, and that women in higher level positions were not afforded the increased protection from retaliation that men in higher level positions received. This study also found that the more directly impacted a woman is by the wrongdoing, the greater likelihood that she will experience retaliation after exposing it. In the years since, other studies have similarly shown gender disparities in whistleblower retaliation. It is thus unsurprising that, as possible remedies, anti-retaliation and confidentiality provisions are needed to better support women whistleblowers. By better understanding federal

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whistleblowers and how they experience retaliation, Congress can ensure it provides the strongest protections for these individuals.

**Proposed Report Language:**
The Office of Special Counsel shall collect, including on its complaint form for possible prohibited personnel practices or other prohibited activity and in its Annual Complainant Survey, self-reported demographic data of whistleblower retaliation complainants, regarding race, ethnicity, gender, national origin, sexual orientation, and gender identity. The Office of Special Counsel shall include in its Annual Report to Congress for each fiscal year aggregated, anonymized data about the number of whistleblower reprisal complaints and case outcomes, categorized by these demographics.

**Improve Data Quality of Federal Sub-award Reporting**

**Appropriations Committee:** Financial Services and General Government

**Agency:** Department of Treasury/All Agencies

**Account:** General Provisions

**Type of request:** Report Language

**Background:**
The Digital Accountability and Transparency Act (DATA Act) of 2014 sought to improve the quality of spending data that agencies post on USASpending.gov, the federal government’s primary portal for federal spending information. Congress included a requirement that each agency’s office of inspector general conduct audits of their agency’s data to assess compliance with the law. The DATA Act required three audits over a six-year period, issued every other year (2017, 2019, and 2021). The audits provided important feedback to agencies and helped spur important improvements in data quality. However, these audits were limited to prime award data only and failed to evaluate the quality of sub-award data that agencies are required to report.

Currently, the sub-award data reported on USASpending.gov is almost wholly unreliable. Often, sub-award data is either heavily under-reported or missing entirely. Other times, sub-award data has duplicate entries that massively overcount the amount being distributed by prime recipients. The problems have existed for years, and normal administrative updates have done little to remedy the situation.

**Proposed Report Language:**
The Committee is disappointed in agencies’ inability to consistently report accurate and complete federal sub-award data as required by the Federal Funding Accountability and Transparency Act, as well as the Digital Accountability and Transparency Act. Within one year of the passage of this legislation, the Inspector General for each agency reporting into the USASpending.gov system shall complete a review of the data quality of sub-award data being

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reported by their agency and issue a report detailing the agency’s performance and offering recommendations for immediate improvements.

Report on Resource Allocation for Freedom of Information Act

Appropriations Committee: Financial Services and General Government
Agency: Government Accountability Office
Account: General Provisions
Type of request: Report Language

Background:
The existing Freedom of Information Act (FOIA) system — meant to provide public access to federal agency records from the executive branch — is slow, confusing, and broken. Under the law, federal agencies are required to respond to FOIA requests within 20 business days, with the potential to increase to 30 days if there are “unusual circumstances.” Yet in fiscal year 2020, agencies took an average of 97 days to process requests, with responses to more complex requests averaging six months. The number of backlogged requests has not been below 100,000 in almost 10 years, since fiscal year 2013 when federal agencies had a backlog of 95,564 requests.

While these problems are not solely the result of staffing and funding shortfalls, it is clear that federal agencies have not been providing sufficient resources to the FOIA process to keep up with the new FOIA requests being received each year and to clear out the substantial backlog that has persisted for years. Congress could seek to commit greater resources to FOIA processing at key agencies, but it currently has no framework to guide such efforts.

Proposed Report Language:
The Committee instructs the Government Accountability Office (GAO) to review the funding and staffing levels at agencies receiving significant numbers of FOIA requests and evaluate those resource commitments against the request processing and backlogs. Within one year of the passage of this legislation, GAO is expected to produce a report of its findings and recommendations for staffing and funding levels needed to process the level of FOIA requests being received at various agencies and clear current backlogs.

Establish a Centralized Ethics Records Database

Appropriations Subcommittee: Financial Services and General Government
Agency: Office of Government Ethics

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Account: Salaries and Expenses
Type of Request: Report Language

Background:
Public oversight is crucial to the success of any government ethics program, but far too many ethics records of high-level executive branch political appointees are not adequately available to the public. The public has a strong interest in seeing formal ethics records, which are the last line of defense against intentional or inadvertent misconduct by covered officials. However, many records are only available through Freedom of Information Act requests, a notoriously slow and often costly process without a guarantee of accessing the records requested.

Additional laws requiring public access to ethics records have likewise failed to achieve the intended transparency. For example, the primary conflict-of-interest law provides a process for accessing waivers of this law, but the public has no way of knowing when any of the executive branch’s 2.1 million employees have received a waiver. The public should not be forced to randomly file repeated requests with different federal agencies to fish for possible waivers the government may have issued.

Only through increased transparency can Congress ensure accountability for individuals who wield influence that could waste taxpayer money and jeopardize federal government operations. Fortunately, the Office of Government Ethics (OGE) has an online database for a limited set of records that the public can access directly or request. Congress should require OGE to expand its existing database to include all formal ethics records of high-level, noncareer executive branch employees. (Exceptions would exclude the release of any classified information and any informal advice provided to individual employees.)

Proposed Report Language:
The Office of Government Ethics shall establish on its website a centralized database of specified ethics records, excluding informal ethics advice to individual employees and classified information, of current and former executive branch political appointees at the following levels: noncareer GS-15 (Schedule C) employees, noncareer Senior Executive Service members, Presidential appointees (PA) not requiring Senate confirmation, and Presidential appointees in Senate-Confirmed positions (PAS). The database shall include all government ethics waivers, authorizations, approvals, certifications, certificates of divestiture, requests for certificates of divestiture, ethics agreements, ethics agreement compliance certifications, and screening arrangements issued pursuant to chapter 11 of title 18, United States Code, the Ethics In Government Act, the standards of conduct for employees of the executive branch, other

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regulations of the Office of Government Ethics, governmentwide policies or issuances of the Office of Government Ethics, supplemental agency ethics regulations, any executive order pertaining to government ethics, any policy of an executive agency pertaining to government ethics, and such other records as the director of the Office of Government Ethics determines would advance public oversight of government ethics. The database shall also include public financial disclosures, but not confidential financial disclosures. These records shall be publicly accessible to view on the website or by request through OGE’s Officials’ Individual Disclosures Search Collection portal free of cost to the public, and shall comply with all applicable accessibility standards.

Close the Enforcement Gap in Hatch Act Civil Penalties

Appropriations Subcommittee: Financial Services and General Government
Agency: Office of Special Counsel
Account: Salaries and Expenses
Type of Request: Report Language

Background:
In a November 2021 report, the Office of Special Counsel (OSC) found that 13 former senior administration officials violated the Hatch Act by using their official authority to promote then-President Donald Trump’s reelection. Instead of pursuing disciplinary action for these violations through the Merit Systems Protection Board, OSC relied on an opinion by the Department of Justice’s Office of Legal Counsel to argue that it lacks authority to pursue disciplinary action against White House commissioned officers through the board. However, the relevant statute creates a disciplinary exception only for those presidential appointees who are appointed by the president by and with the Senate’s consent.

In passing the Hatch Act, Congress sought to protect the public from senior federal officials using their official authority to engage in prohibited political activity. Presidential appointees whose positions are not Senate confirmed are — and should be — subject to the jurisdiction of the Merit Systems Protection Board. While constitutional limitations might prevent the board from removing presidential appointees from their positions, the board does have authority to impose civil monetary penalties for violations of the Hatch Act. Congress must close this enforcement gap by reiterating and clarifying that OSC can enforce the Hatch Act against all political appointees.

12 U.S. Office of Special Counsel, Investigation of Political Activities by Senior Trump Administration Officials During the 2020 Presidential Election, 45.
Proposed Report Language:
Nothing in 5 U.S.C. § 1215 prohibits the Special Counsel from presenting a complaint that seeks imposition of civil monetary penalties to the Merit Systems Protection Board under subsection (a)(1) of that section against a presidential appointee, whether serving in the Executive Office of the President or elsewhere in the executive branch, other than a presidential appointee who has been appointed by and with the advice and consent of the Senate whose position is described in 5 U.S.C. § 1215(b). The Special Counsel shall file a complaint with the Merit Systems Protection Board seeking the imposition of a civil monetary penalty against a presidential appointee, other than an individual who has been appointed by and with the advice and consent of the Senate whose position is described in 5 U.S.C. § 1215(b), if the Special Counsel determines that the presidential appointee has violated the Hatch Act and that, at any time during the period of four years preceding the violation, the Office of Special Counsel previously issued to the presidential appointee a written warning, complaint, or allegation concerning a Hatch Act violation. Nothing in this paragraph precludes the Special Counsel from filing a complaint upon the first violation of the Hatch Act by an executive branch employee.

Protect the Public from a Politicized Civil Service

Appropriations Subcommittee: Financial Services and General Government
Agency: Office of Personnel Management
Account: Salaries and Expenses
Type of Request: Report Language

Background:
Upon taking office, President Joe Biden rescinded then-President Donald Trump’s executive order creating Schedule F, a job classification that would have involuntarily transferred an estimated tens of thousands of federal employees into new positions without important due process rights.\(^\text{15}\) Schedule F would have enabled a president or political appointee to fire civil servants for almost any reason, greatly expanding the president’s power to purge the civil service of nonpartisan career employees and pack the federal government with partisan loyalists. Politicizing merit-based public service would jeopardize national security, disaster response, public health, and other federal government operations, including the ability to deliver vital services without partisan influence.

Proposed Report Language:
No funds in this or any other appropriation act may be used to take an action that would result in an individual described in 5 C.F.R. § 752.401(c), as in effect on September 30, 2023, becoming covered by 5 C.F.R. § 752.401(d)(2), as in effect on September 30, 2023, unless the individual has received written notice of the consequences to the individual’s coverage by 5 C.F.R. § 752.401(c) and, after having been afforded not less than 30 days to consider the notice, has

voluntarily agreed in writing to the action without coercion. This restriction shall apply without regard to whether the effect of the action as to the individual is direct or indirect and without regard to whether the action is focused on the individual or on a class of persons. The Director of the Office of Personnel Management shall ensure that the restriction set forth in this paragraph is not violated.

Increase Resources to the FOIA Ombudsman
Appropriations Committee: Financial Services and General Government
Agency: National Archives and Records Administration
Type of request: Bill Text

Background:
The Office of Government Information Services (OGIS) serves as the FOIA ombudsman and assists agencies and requesters to fulfill requests and address structural problems. OGIS currently has a staff of 10 individuals, including its director and deputy director, while the government handles hundreds of thousands of FOIA requests. The Project On Government Oversight found comparable GS levels for the office’s leadership and staff and totaled salary data pulled from the Office of Personnel Management. The cost of nearly doubling the number of staff members at OGIS amounted to roughly $2,000,000 in salaries, before benefits. We estimate that with benefits and additional staffing needs, expanding the staff and capacity at OGIS would cost around $4,000,000 a year.

Proposed Bill Text:
For salaries and expenses of the Office of Government Information Services and subordinate staff as appropriate, there shall be $4,000,000 to be disbursed. OGIS shall be allocated funding for seven staffers between the GS-8 and GS-11 level. An additional two staffers shall be hired at the GS-12 or GS-13 level.

Improve FOIA through Alternative Access to Records
Appropriations Committee: Financial Services and General Government
Type of request: Bill Text

Background:
Currently, a large amount of the work government agencies perform under FOIA has little connection to increasing transparency for the public. An estimated two-thirds of all FOIA requests across the government are from individuals seeking records on themselves or for their own benefit. Examples include people seeking records of their own entry into the country, medical history, tax filings, or genealogy. Individuals may file a FOIA request for their own

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records numerous times to multiple agencies, such as when applying for a visa or immigration benefit.

Some agencies, such as the National Archives, have created dedicated, fee-based processes for providing some of these records, which are counted as FOIA during reporting but are not processed as FOIA requests. Other agencies, such as the Department of State, do not have dedicated systems, and fees for providing these records may vary.

**Proposed Bill Text:**
Within 120 days, all 15 Cabinet-level agencies shall report to Congress an estimated number of requests made by individuals seeking their own records for any purpose under 5 U.S.C. § 552, as well as an estimated cost for administering these programs. Within 365 days, all 15 Cabinet-level agencies shall report to Congress a plan for providing alternative access to these “first party” requests outside of FOIA and through a self-service system.