



November 17, 2021

The Honorable Mazie K. Hirono
United States Senate
109 Hart Senate Office Building
Washington, DC 20510

The Honorable Sheldon Whitehouse
United States Senate
530 Hart Senate Office Building
Washington, DC 20510

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, DC 20510

The Honorable Edward J. Markey
United States Senate
255 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, DC 20510

Dear Senators Hirono, Whitehouse, Blumenthal, Markey, and Warren:

Thank you for your correspondance regarding the alleged misconduct by two now former U.S. Department of Commerce (Department) employees while on non-reimbursable details to an outside government agency.

In response to these allegations, our office conducted an assessment to determine the circumstances surrounding the allegations and whether the now former employees complied with the applicable policies and procedures.

I. Background

On January 15, 2021, our office began conducting preliminary steps to review the allegations. We subsequently opened an official review on January 22, 2021. Specifically, we assessed whether the former employees' conduct violated 18 U.S.C. § 1017, *Government seals wrongfully used and instruments wrongfully sealed*, or the *Standards of Ethical Conduct for Employees of the Executive Branch*,¹ as well as whether other Department employees had any involvement in the alleged wrongdoing.² We subsequently expanded our assessment based on additional allegations we received to determine whether one of the two former employees (Former Employee 1) violated 18 U.S.C. § 912, *Officer or employee of the United*

¹ 5 C.F.R. Part 2635.

² It is important to note that the Inspector General Act of 1978, as amended, limits OIG's jurisdiction to the programs and operations of the Department (including Department funding). As such, our assessment was limited in terms of investigative techniques employed and information obtained, and scoped to the allegations tied to Department funding. See 5 U.S.C. App. § 2.

States, 5 C.F.R. § 2635.702, *Use of public office for private gain*, and 5 C.F.R. § 2635.807(b), *Reference to official position*.

We further assessed the former employees' compliance with the applicable policies and procedures.

II. Summary of Findings

Our assessment determined that neither former employee complied with the applicable policies and procedures. Our assessment also identified a potential violation of 18 U.S.C. § 1017. Although we did not identify evidence directly establishing the two former employees as the individuals who affixed a seal in violation of that statute, we did identify circumstantial evidence of their involvement.

With respect to the *Standards of Ethical Conduct for Employees of the Executive Branch*, we did not substantiate that either former employee misused official Department time or resources or for private gain, which are necessary to establish violations of 5 C.F.R. § 2635.702, *Use of public office for private gain*, 5 C.F.R. § 2635.704, *Use of Government property*, and 5 C.F.R. § 2635.705, *Use of official time*. Nonetheless, we substantiated that the former employees' conduct violated the general principles of the basic obligations of public service enumerated in subsection (b)(14) of 5 C.F.R. § 2635.101, *Basic obligation of public service*, which specifies that "[e]mployees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards" Our office retained jurisdiction over this misconduct by the subjects based on the non-reimbursable nature of their detail agreements. We note, however, that because the former employees are no longer employed by the Department, they are no longer subject to the disciplinary actions enumerated in the *Standards of Ethical Conduct for Employees of the Executive Branch*. We also note that due to jurisdictional limitations, our office did not investigate whether the former employees misused the outside agency's time, positions, or resources and defers to that agency's review and conclusions on these matters.

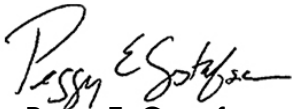
With respect to the new allegations we received during the course of our assessment that raised concerns that Former Employee 1 violated 18 U.S.C. § 912, *Officer or employee of the United States*, 5 C.F.R. § 2635.702, *Use of public office for private gain*, and 5 C.F.R. § 807(b), *Reference to official position*, we did not substantiate any violations of these authorities. We did identify a factual matter that we will refer to the Department for any action deemed necessary or appropriate.

We note that we offered both former employees the opportunity to participate in a voluntary interview to respond to the allegations, and both employees declined our offer. We also note that we do not have the authority to compel interview statements from former employees. We referred our investigative findings to the U.S. Attorney's Office for the District of Maryland, which declined the case for criminal prosecution.

Moreover, with respect to the potential involvement by other Department employees in the alleged misconduct, we did not substantiate any involvement by other Department employees.

Thank you for your interest in this matter. If you have any questions or would like to discuss our findings in further detail, please contact me at (202) 482-4661 or David Wonnberg, Senior Legislative and External Affairs Officer, at (202) 309-9444.

Sincerely,



Peggy E. Gustafson
Inspector General