



# OIG HIGHLIGHTS

View Report: [ISP-C-16-16](#).

## What OIG Inspected

OIG conducted a compliance follow-up review of the Bureau of Human Resources' implementation of the nine recommendations issued in the report Review of the Department of State Disciplinary Process (ISP-I-15-04, December 2014) from October 5 to October 28, 2015.

## What OIG Recommends

OIG reissued four of the nine recommendations issued in the original report.

The reissued recommendations include updating Department guidance on disciplinary issues, implementing standard operating procedures relating to oversight of bureaus with delegated authority, implementing a recusal process for Department officials involved in the disciplinary process, and updating the instructions for the Foreign Service employee evaluation report to include supervisor responsibility to address employee misconduct.

~~SENSITIVE BUT UNCLASSIFIED~~

April 2016

OFFICE OF INSPECTIONS

Bureau of Human Resources

Compliance Follow-up Review of the Review of the Department of State Disciplinary Process

What OIG Found

- OIG determined that implementation was still pending, in varying stages, for the nine recommendations issued in Review of the Department of State Disciplinary Process, as of the beginning of this Compliance Follow-up Review.
- The Bureau of Human Resources had not updated the Civil Service and Foreign Service guidebooks to add the latest guidance and information on disciplinary issues.
- The Bureau of Human Resources had not implemented a recusal policy for its officials and those in bureaus with delegated authority.
- The Bureau of Human Resources had not implemented procedures to update delegation agreements and to establish reporting and evaluation mechanisms to monitor delegated bureaus' performance in administering disciplinary actions.



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ISP-C-16-16

Office of Inspections

April 2016

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# Compliance Follow-up Review of the Review of the Department of State Disciplinary Process

## DOMESTIC OPERATIONS AND SPECIAL REPORTS

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# CONTENTS

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EVALUATION OF COMPLIANCE.....	1
Context .....	1
Compliance Overview .....	1
DEPARTMENT GUIDANCE AND COMMUNICATIONS .....	2
Guidance for Department Supervisors and Employees .....	2
Publicizing Statistics on Department Disciplinary Actions.....	2
Guidance on Responsibility of Supervisors to Address Misconduct.....	2
Update Foreign Service Employee Evaluation Report Instructions .....	3
STANDARD OPERATING PROCEDURES.....	4
Procedures for Documenting Disciplinary Decisions.....	4
Oversight of Bureaus with Delegated Disciplinary Authority .....	4
Independence and Recusal Process for the Disciplinary Process.....	5
DEPARTMENT SURVEY ON DISCIPLINARY PROCESS.....	5
DISCIPLINARY CASE MANAGEMENT TOOL.....	6
CFR RECOMMENDATIONS .....	8
PRINCIPAL OFFICIALS.....	9
APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY .....	10
Purpose and Scope.....	10
Methodology.....	10
APPENDIX B: STATUS OF 2014 INSPECTION RECOMMENDATIONS .....	11
ABBREVIATIONS .....	13
INSPECTION TERMS AND DEFINITIONS .....	14
CFR TEAM MEMBERS.....	16

## EVALUATION OF COMPLIANCE

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### Context

In December 2014, OIG published Review of the Department of State's Disciplinary Process (ISP-I-15-04). Some of the key findings in that report include the following:

- The Department missed opportunities to communicate to its employees its expectations with regard to conduct, the responsibility of supervisors to address and report misconduct, and the statistics relating to real-life consequences of misconduct.
- The Department had neither assessed the impact of its messages and training on conduct and discipline nor surveyed supervisor and employee attitudes toward the disciplinary process.
- The Department did not have the knowledge management tools to readily and reliably produce statistics on disciplinary processes to manage workflow and track trends in discipline that might suggest areas for increased management attention, communication, and training.
- The Bureau of Human Resources (DGHR) had not evaluated the disciplinary programs of the bureaus to which it delegated disciplinary authority.

During the period between the publication of the report in December 2014 and the start of the Compliance Follow-up Review (CFR), OIG tracked and analyzed the actions reported by DGHR pertaining to the nine recommendations issued in the report. OIG conducted an on-site CFR to evaluate the extent of DGHR implementation of those recommendations.

### Compliance Overview

During the on-site review, OIG interviewed DGHR staff and reviewed available documentation and found that:

- Five recommendations are closed (Recommendations 2, 3, 4, 6, and 7).
- Four recommendations are pending final action (Recommendations 1, 5, 8, and 9).

This CFR report closes the original 2014 report and the original recommendations. As a result of this CFR, OIG reissued four of the nine recommendations issued in the previous report and closed five. This report provides a discussion of the Department's reported actions and OIG's determination to re-issue or close recommendations.

## DEPARTMENT GUIDANCE AND COMMUNICATIONS

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### Guidance for Department Supervisors and Employees

In 2014, OIG reviewed Department resources for Foreign Service and Civil Service supervisors pertaining to employee misconduct and found that the Department had not updated two guides—*A Guide for Supervisors of Foreign Service Employees* and *Addressing Unacceptable Performance and Conduct of Civil Service Employees*—since 2004 and 2007, respectively. As a result, the guides did not contain the latest Department-issued guidance on disciplinary issues, including sexual harassment, prostitution, drug and alcohol abuse, workplace violence, and fulfilling financial obligations. OIG recommended that DGHR update the guides with the latest Department guidance on disciplinary issues (Recommendation 1).

During the CFR, OIG determined DGHR had taken no action other than to assign the task of revising the guidebooks to the Conduct, Suitability, and Discipline Division in the Office of Employee Relations, with a first draft due at the end of December 2015. DGHR stated that staffing shortages and competing work demands were the main challenges to its efforts to comply with the recommendation. As a result, OIG reissued Recommendation 1.

**Recommendation CFR 1:** The Bureau of Human Resources should update the guides for supervisors of Foreign Service and Civil Service employees so they contain the latest Department guidance on disciplinary issues. (Action: DGHR)

### Publicizing Statistics on Department Disciplinary Actions

In the original report, OIG found the Department provided little information about the nature and number of disciplinary actions the Department administered. OIG recommended that DGHR regularly publish the results of disciplinary actions, including statistics regarding the number of Foreign Service and Civil Service employees disciplined, penalties imposed, and prevalent types of misconduct and trends (Recommendation 2).

OIG determined that DGHR implemented the recommendation with the issuance of a cable to all diplomatic and consular posts on April 15, 2015, entitled *Straight Talk about Misconduct and Performance Problems* (15 STATE 42574). A Department Notice on the same subject was distributed on April 20, 2015. The cable provided an overview of the actions the Department took to address misconduct and poor performance over a 4-year period, from 2011 to 2014. The data highlighted the most common reasons Civil Service and Foreign Service employees are admonished, reprimanded, suspended, or separated from the Department. DGHR advised OIG that it will routinely publish misconduct statistics in the future. As a result, OIG closed Recommendation 2.

### Guidance on Responsibility of Supervisors to Address Misconduct

OIG found that DGHR issued a Department Notice, *Dealing with Employees' Unacceptable Behavior*, dated March 26, 2007. The notice stated that supervisors are responsible for

addressing misconduct and failing to do so might subject supervisors to disciplinary action. OIG recommended that DGHR reissue the guidance relating to the responsibility of supervisors to identify misconduct and to take corrective action (Recommendation 4).

During this CFR, DGHR issued a cable and Department Notice in November 2015, entitled *Managing Employee Misconduct and Deficient Performance*. The notice reminded all Department managers and supervisors of their responsibility to address misconduct and deficient performance for the employees they supervise and that failure to do so could result in adverse action against the manager or supervisor through the disciplinary or performance appraisal process. As a result, OIG closed Recommendation 4.

## **Update Foreign Service Employee Evaluation Report Instructions**

During the original review, OIG found that the Decision Criteria for Tenure and Promotion in the Foreign Service made no mention of the responsibility of mid- and senior-level Foreign Service Officers to address misconduct on the part of their subordinates. OIG recommended that DGHR revise the Decision Criteria to include the responsibility to deal with misconduct (Recommendation 5).

OIG found that DGHR, in early 2015, modified and consolidated the Foreign Service decision criteria for the 2015–2018 rating cycles. Although the modifications included considerations of leadership and Equal Employment Opportunity principles, the revised decision criteria did not include the requirement to address misconduct. DGHR stated it had also modified, in May 2015, the Foreign Service employee evaluation report form (DS-5055) and its related instructions (DS-5055I) to address misconduct. DGHR reported that the changes to the three documents make it clear that, if a supervisor has not properly addressed a misconduct issue by a subordinate, that failure must be documented in the rater's evaluation report.

OIG reviewed the two evaluation forms and found that neither the evaluation report form nor the instructions address misconduct as part of the evaluation process. OIG determined that without specific guidance in the decision criteria for tenure and promotion or the employee evaluation report or instructions, many managers may not realize the importance of holding supervisors responsible to address misconduct of subordinates in employee evaluation reports. OIG determined that a revision of the instructions to the employee evaluation report to address misconduct would be sufficient. As a result, OIG reissued and revised Recommendation 5.

**Recommendation CFR 2:** The Bureau of Human Resources should revise the Foreign Service employee evaluation report instructions to include a duty that supervisors address misconduct by subordinates. (Action: DGHR)

## STANDARD OPERATING PROCEDURES

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### Procedures for Documenting Disciplinary Decisions

OIG found that previous decision letters on proposed disciplinary action did not document the rationale of the DGHR deciding official for reducing a penalty or withdrawing a proposed disciplinary action. OIG recommended that DGHR establish a standard operating procedure requiring a deciding official to fully document the reasons underlying its decision, including the proposed disciplinary action, a discussion of the Douglas Factors,<sup>1</sup> and the consideration given to an employee's statements and submissions (Recommendation 6).

During this CFR, OIG found that DGHR completed three relevant standard operating procedures and made them available in a shared DGHR folder for use by the DGHR deciding official. Two of the standard operating procedures pertain to Foreign Service procedures for administering action to reprimand, suspend, or separate for cause. The third is a combined Civil Service standard operating procedure pertaining to reprimand, suspension, and separation for cause. As a result, OIG closed Recommendation 6.

### Oversight of Bureaus with Delegated Disciplinary Authority

OIG noted in the original report that DGHR had signed delegation of authority agreements with 14 Department bureaus authorizing them to administer human resource management activities and services previously provided by DGHR.<sup>2</sup> The majority of these bureaus were also delegated authority to administer disciplinary actions (issuance of letters of admonishment or reprimand). The agreements do not include a provision for DGHR to evaluate the delegated bureaus' management of its employee relations program to include disciplinary action. OIG found DGHR had not evaluated delegated bureaus' management of disciplinary actions and recommended DGHR implement a process to oversee the performance of bureaus with delegated disciplinary authority, revise the agreements as needed, and establish reporting and evaluation mechanisms (Recommendation 8).<sup>3</sup>

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<sup>1</sup> The term "Douglas Factors" is derived from a landmark decision by the Merit Systems Protection Board—*Douglas v. Veterans Administration*, 5 MSPR 280 (1981)—that established criteria (12 factors in all) that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct.

<sup>2</sup> Delegated bureaus include: Administration, Consular Affairs, Diplomatic Security, Educational and Cultural Affairs, Foreign Service Institute, International Security and Nonproliferation, OIG, and Overseas Buildings Operations.

<sup>3</sup> 3 Foreign Affairs Manual 4515.2-2: When the authority to propose and decide adverse actions has been delegated by the Director General of the Foreign Service and Director of Human Resources to the bureau level, [Employee Relations], in consultation with the Office of the Assistant Legal Adviser for Employment Law will assist and advise the bureaus and offices on adverse action procedures to insure consistency in application and the meeting of regulatory and legal requirements. The concurrence of [Employee Relations] is required on all proposal and decision letters issued to employees under this subchapter.

During the first half of 2015, DGHR completed a review of letters of admonishment and reprimand issued by bureaus with delegated authority. As a result of the review, DGHR issued a memorandum to all bureau executive offices that included required and recommended actions to improve the process, a list of recommendations for bureau human resources staff, and a discussion of observed best practices. However, DGHR did not provide documentation that it had reviewed and revised, as needed, all delegation of authority agreements as recommended in the 2014 OIG report. OIG noted that the agreements were more than 5 years old and at least three agreements had more than one addendum. OIG also found DGHR had not implemented procedures to address the second part of Recommendation 8 in the original report to establish reporting and evaluation mechanisms relating to oversight of delegated bureaus' administration of the disciplinary process. As a result, OIG reissued and revised Recommendation 8.

**Recommendation CFR 3:** The Bureau of Human Resources should implement a standard operating procedure to review delegated authority agreements and establish a mechanism by which the Bureau of Human Resources will evaluate delegated bureaus' performance in administering personnel actions. (Action: DGHR)

## **Independence and Recusal Process for the Disciplinary Process**

OIG originally found DGHR and delegated bureaus lacked procedures to address issues of independence; mitigation of conflict of interests; and recusal of officials who review, recommend, and decide disciplinary actions. Formal procedures would assist officials involved in the disciplinary process to identify potential personal and external impairments to their independence and mitigate those impairments or recuse themselves from a given disciplinary action decision. OIG recommended DGHR institute a standard recusal process for personnel involved in implementing the disciplinary process (Recommendation 9). At the time of this CFR, DGHR had developed and cleared a standard operating procedure for the recusal process that was pending approval and distribution within DGHR and to applicable bureaus. As a result, OIG reissued and revised Recommendation 9.

**Recommendation CFR 4:** The Bureau of Human Resources should implement a recusal policy for officials in the Bureau of Human Resources and bureaus with delegated authority. (Action: DGHR)

## **DEPARTMENT SURVEY ON DISCIPLINARY PROCESS**

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OIG noted in 2014 that the Department had neither conducted a survey of Department staff to determine the impact of its messages and training on conduct and discipline nor surveyed

supervisor and employee attitudes toward the disciplinary process. The report quoted a statement in the *2007 National Government Ethics Survey, An Inside View of Public Sector Ethics* (issued by the Ethics Resource Center<sup>4</sup>) that “non-reporting of misconduct across Federal, state, and local government agencies is high, in part due to fear of retaliation and a belief that reporting will not effect change.” OIG determined a Department-wide survey would indicate whether supervisors and staff had similar views toward the disciplinary process and to what extent misconduct may be underreported. OIG recommended that DGHR conduct a survey of supervisors and employees to determine their views of the disciplinary system and use the results to implement an action plan to address potential impediments to dealing more effectively with misconduct within the Department (Recommendation 3).

OIG found little action had been taken by DGHR to implement Recommendation 3 during the 9 months since the publication of the OIG report on the disciplinary process and the start of the CFR. Staff in the Workforce Planning and Analysis Division in the DGHR Office of Resource Management and Organization Analysis provided OIG with a draft plan of action for a survey. DGHR anticipated that it may have a draft survey completed by about January 2016. However, DGHR reported that it must determine an optimal period during 2016 to issue the survey, given the numerous Department and Office of Personnel Management surveys issued throughout the year. OIG concurs with the Department’s action plan to issue the survey in 2016. As a result, OIG closed Recommendation 3.

## DISCIPLINARY CASE MANAGEMENT TOOL

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The 2014 OIG report on the Department’s disciplinary process noted that DGHR had made little progress in integrating its Grievance, Appeals, and Disciplinary Tracking and Reporting System with other databases in DGHR’s integrated personnel management system. The installation of the initial application was the first of five planned phases for implementation of a comprehensive case management system. OIG issued a recommendation in the 2014 report for DGHR to complete the full implementation of the database (Recommendation 7). In May 2014, the DGHR Office of Employee Relations submitted a request to the DGHR Information Technology Advisory Committee (the DGHR working group that reviews IT proposals and makes funding recommendations to the Director General) to fully upgrade the Grievance, Appeals, and Disciplinary Tracking and Reporting System. But because of resource constraints and DGHR commitments to fund higher priority, world-wide DGHR integrated personnel management systems, the committee did not recommend the upgrade request for approval.

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<sup>4</sup> The Ethics Resource Center was founded in 1922 as a nonprofit, nonpartisan organization that conducts independent research of ethical standards and practices in public and private organizations. The National Government Ethics Survey is a subset of the National Workplace Ethics Study (previously known as the National Business Ethics Survey).

OIG found that, in September 2015, DGHR awarded a contract that included the installation of a new integrated case management system, *ServiceNow* (a commercial off-the-shelf software). DGHR determined that the system would more effectively and efficiently meet the requirements of all DGHR offices involved in case management than planned, future upgrades of the Grievance, Appeals, and Disciplinary Tracking and Reporting System. DGHR plans to have *ServiceNow* operational in 2016. As a result, OIG closed Recommendation 7.

## CFR RECOMMENDATIONS

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**Recommendation CFR 1:** The Bureau of Human Resources should update the guides for supervisors of Foreign Service and Civil Service employees so that they contain the latest Department guidance on disciplinary issues. (Action: DGHR)

**Recommendation CFR 2:** The Bureau of Human Resources should revise the Foreign Service employee evaluation report instructions to include a duty upon supervisors to address misconduct by subordinates. (Action: DGHR)

**Recommendation CFR 3:** The Bureau of Human Resources should implement a standard operating procedure to review delegated authority agreements and establish a mechanism by which the Bureau of Human Resources will evaluate delegated bureaus' performance in administering personnel actions. (Action: DGHR)

**Recommendation CFR 4:** The Bureau of Human Resources should implement a recusal policy for officials in the Bureau of Human Resources and bureaus with delegated authority. (Action: DGHR)

## PRINCIPAL OFFICIALS

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<b>Title</b>	<b>Name</b>	<b>Arrival Date</b>
Deputy Assistant Secretary	Bruce Williamson	12/2014
Director, Office of Employee Relations	Vacant	
Chief, Conduct, Suitability and Discipline Division	Kimberly B. Brooks	06/2013
Director, Office of Performance Evaluation	Claire Pierangelo	07/2015
Director, Office of Resource Management and Organization	Jeffrey Miller	08/2014
Chief, Workforce Planning and Analysis Division	Chester Philips	08/1999
Director, Office of Executive Direction	William Schaal	03/2012

**Source:** Bureau of Human Resources

## APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY

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This CFR was conducted in accordance with the Quality Standards for Inspection and Evaluation, as issued in 2012 by the Council of the Inspectors General on Integrity and Efficiency, and the Inspector's Handbook, as issued by OIG for the Department and the Broadcasting Board of Governors.

### **Purpose and Scope**

The Office of Inspections provides the Secretary of State, the Chairman of the Broadcasting Board of Governors, and Congress with systematic and independent evaluations of the operations of the Department and the Broadcasting Board of Governors. CFRs assess the inspected entities' compliance with recommendations made in previous inspections and verify whether agreed-upon corrective actions for recommendations issued in previous reports were fully and properly implemented.

### **Methodology**

During the course of this CFR, the inspectors: 1) reviewed the recommendations issued in the original inspection report and the reported corrective actions; 2) collected and reviewed documentation and conducted those interviews necessary to substantiate reported corrective actions; and 3) reviewed the substance of the report and its findings and recommendations with offices, individuals, and activities affected by this review.

Eleven DGHR officials were interviewed and approximately 120 documents were collected and reviewed to determine the status of implementation of the nine recommendations issued in the original report and to support the findings and recommendations issued in this report.

## APPENDIX B: STATUS OF 2014 INSPECTION RECOMMENDATIONS

**Recommendation 1:** The Bureau of Human Resources should update the guides for supervisors of Foreign Service and Civil Service employees so that they contain the latest Department of State guidance on disciplinary issues. (Action: DGHR)

**Pre-CFR Status:** Open

**CFR Status:** Reissued as Recommendation CFR 1.

**Recommendation 2:** The Bureau of Human Resources should regularly publicize the results of disciplinary actions, including statistics regarding numbers of Foreign Service and Civil Service employees disciplined, the penalties imposed, the prevalent types of misconduct, and trends, in a manner that respects the privacy of personally identifiable information. (Action: DGHR)

**Pre-CFR Status:** Open

**CFR Status:** Closed

**Recommendation 3:** The Bureau of Human Resources should conduct a survey of supervisors and employees to determine their perceptions of the disciplinary system and to shape an action plan for addressing what impediments may exist to dealing more effectively with misconduct within the Department of State. (Action: DGHR)

**Pre-CFR Status:** Open

**CFR Status:** Closed

**Recommendation 4:** The Bureau of Human Resources should reissue guidance concerning every supervisor's responsibility to identify misconduct and take corrective action. (Action: DGHR)

**Pre-CFR Status:** Open

**CFR Status:** Closed

**Recommendation 5:** The Bureau of Human Resources should revise the Decision Criteria for Tenure and Promotion in the Foreign Service to include the responsibility to deal with misconduct. (Action: DGHR)

**Pre-CFR Status:** Open

**CFR Status:** Reissued as Recommendation CFR 2.

**Recommendation 6:** The Bureau of Human Resources should establish a written standard operating procedure that requires the deciding official to provide a decision letter that documents fully the reasons for the decision, including the proposal, the discussion of the Douglas Factors, and the consideration given to the employee's statements and submissions. (Action: DGHR)

**Pre-CFR Status:** Open

**CFR Status:** Closed

**Recommendation 7:** The Bureau of Human Resources should complete the full implementation of the Grievance, Appeals, and Disciplinary Tracking and Reporting System. (Action: DGHR)

**Pre-CFR Status:** Open

**CFR Status:** Closed

**Recommendation 8:** The Bureau of Human Resources should establish and implement a procedure to oversee the performance of bureaus with delegated disciplinary authority, revising agreements as required and establishing reporting and evaluation mechanisms. (Action: DGHR)

**Pre-CFR Status:** Open

**CFR Status:** Revised and reissued as Recommendation CFR 3.

**Recommendation 9:** The Bureau of Human Resources should institute a standard recusal process for personnel involved in implementing the disciplinary process, including those in the delegated bureaus, to affirm independence and identify any potential personal and external impairment to independence on the part of those who may influence the outcome of a disciplinary action. (Action: DGHR)

**Pre-CFR Status:** Open

**CFR Status:** Revised and reissued as Recommendation CFR 4.

## ABBREVIATIONS

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CFR	Compliance Follow-up Review
DGHR	Bureau of Human Resources

## INSPECTION TERMS AND DEFINITIONS

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**Compliance Response:** A written response from the office to which a recommendation has been assigned for action, informing OIG of agreement or disagreement with the recommendation. Comments indicating agreement shall include planned corrective actions and, where appropriate, the actual or proposed target dates for achieving these actions. The reasons for any disagreement with a recommendation must be explained fully. Where disagreement is based on interpretation of law, regulation, or the authority of officials to take or not take action, the response must include the legal basis.

**Final Action:** The completion of all actions that the management of an action office, in its management decision, has concluded are necessary to address the findings and recommendations in OIG reports.

**Finding:** A conclusion drawn from facts and information about the propriety, efficiency, effectiveness, or economy of operation of a post, unit, or activity.

**Management Decision:** When the management of an action office for an OIG recommendation informs OIG of its intended course of action in response to a recommendation. If OIG accepts the management decision, the recommendation is considered resolved. If OIG does not accept the management decision and the issue cannot be resolved after a reasonable effort to achieve agreement, the Inspector General may choose to take it to impasse.

**Open Recommendation:** An open recommendation is either resolved or unresolved (see definitions of recommendation status below).

**Recommendation:** A statement in an OIG report requiring action by the addressee organizations or officials to correct a deficiency or need for change or improvement identified in the report.

### **Recommendation Status:**

**Resolved:** Resolution of a recommendation occurs when:

- The action office concurs with the recommendation (OIG accepted a management decision), but the action office has not presented satisfactory evidence that it has implemented the recommendation or an alternative course of action acceptable to OIG.
- The action office informs OIG that it disagrees with all or part of the recommendation, and OIG agrees to accept partial compliance or noncompliance.
- Impasse procedures have led to a positive or negative final management decision.

**Unresolved:** An unresolved recommendation occurs when the action office:

- Has not responded to OIG.

- Has failed to address the recommendation in a manner satisfactory to OIG.
- Disagrees with the recommendation and does not suggest an alternative acceptable to OIG.
- Requests OIG refer the matter to impasse, and the impasse official has not yet issued a decision.

**Closed:** A recommendation is closed when one of the following situations applies:

- OIG formally notifies the action office that satisfactory evidence of final action (i.e., information provided by the action office that confirms or attests to implementation) on an OIG recommendation has been accepted. The closing of a recommendation from an OIG report does not relieve the responsible manager of the obligation to report to OIG any changed circumstances substantially affecting the problem areas addressed in the recommendation or report and the effectiveness of agreed actions to correct these problems.
- OIG acknowledges to the action office that an alternative course of action to the action proposed in the recommendation will satisfy the intent of the recommendation and satisfactory evidence showing that the alternative action has been completed is provided to OIG.
- OIG agrees that partial implementation is acceptable and has been completed.
- OIG agrees that noncompliance is acceptable.

## CFR TEAM MEMBERS

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Deborah Taylor (Team Leader)  
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Joye Wagner



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