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Inspector General

August 5, 2016

The Honorable Virginia Foxx, Chairwoman
Committee on Education and the Workforce
Subcommittee on Higher Education and Workforce Training
2176 Rayburn House Office Building
Washington, DC 20515-6100

Re: Responses to Questions for the Record

Dear Chairwoman Foxx:

Thank you for the opportunity to testify before the Committee on Education and the Workforce, Subcommittee on Higher Education and Workforce Training, at the hearing about *Demanding Accountability at the Corporation for National and Community Service* on Tuesday, May 24, 2016. My staff and I greatly appreciate your interest in oversight of the programs, activities and operations of the Corporation for National and Community Service (CNCS). The hearing brought much needed visibility to a number of opportunities for improvement.

Attached are my responses to the questions that you have posed for inclusion in the hearing record. I look forward to continuing to work with you and your staff.

Respectfully,

Deborah J. Jeffrey

Enclosure

Cc: The Honorable Ruben Hinojosa, Ranking Member, Subcommittee on Higher Education and Workforce Training (w/encl.)

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Responses of Deborah Jeffrey, Inspector General of the Corporation for National and Community Service, to Questions for the Record Following the Hearing *Demanding Accountability at the Corporation for National and Community Service*, before the House Committee on Education and the Workforce, Subcommittee on Higher Education and Workforce Training, on May 24, 2016.

- 1. In your recent performance audit, you stated the Corporation's Fiscal Year (FY) 2015 Agency Financial Report did not comply with the Improper Payments Elimination and Recovery Act of 2010 (IPERA). What issues cause the Corporation to be out of compliance, and why is compliance with IPERA a good indicator to ensure a federal agency is a good steward of federal taxpayer funds? What recommendations do you have for the Corporation to improve compliance?**

Improper payments—payments that should not have been made, are unsupported by documentation or were made in incorrect amounts—present a continuing challenge to the effective use of taxpayer funds throughout the Federal government. Without an effective way to prevent, identify and reduce improper payments, government agencies must instead divert their time and money to attempting to recover funds, leaving the public to bear the costs and risks associated with that “pay and chase” approach. According to a recent report from the General Accountability Office, improper payments across the government since 2003 may exceed \$1 trillion.

CNCS represents only a small fraction of that total, but its inability to quantify the level of improper payments in most of its susceptible programs leaves it unable to assure taxpayers that their funds are being spent properly. For years, CNCS has struggled unsuccessfully to determine which of its programs and activities are at risk of more than \$10 million in improper payments annually, to detect improper payments in programs deemed to be susceptible, to estimate and report the rate and amount of those improper payments, and to reduce and recapture them. The Office of Inspector General's (OIG's) annual evaluations have consistently found significant flaws at every stage of the agency's IPERA process.¹ As with many of the challenges that dog grants management and monitoring, CNCS lacks sufficient expertise and has never devoted the level of resources necessary to develop and execute proper sampling and testing to detect and reduce improper payments.

¹In its FY 2011 Agency Financial Report (AFR), CNCS estimated that it made less than \$4,000 of improper payments, a result inconsistent with OIG audit findings and not credible on its face. The FY 2012 assessment relied on stale information and excluded from its analysis grantees' use of approximately \$ 750million in grant funds, representing 75 percent of the agency's budget. In its FY 2012 AFR, management promised to complete a new statistical analysis of payments within each of its programs in FY 2013, perform a new risk assessment, quantify the results for the AmeriCorps Program and report the results in the FY 2013 AFR. CNCS was unable to live up to these commitments in 2013, and promised again to fulfill them in 2014. That year, CNCS concluded that AmeriCorps, the Foster Grandparents Program (FGP) and the Retired Senior Volunteers Program (RSVP) are each susceptible to more than \$10 million of improper payments annually, but could provide an estimate only for AmeriCorps, which it estimated to have made \$12.4 million of improper payments. OIG found a number of fundamental flaws in the analysis, and we recommended that it be re-performed *ab initio* the following year.

Despite modest improvements in FY 2015, OIG found that CNCS remained out of compliance with IPERA, as your question noted. The Corporation could report the necessary information for only one program, AmeriCorps, and the results were startling. According to CNCS, AmeriCorps made an estimated \$14.5 million of improper payments, representing 6.5 percent of its total expenditures. Because, as OIG found, these results were not statistically valid, complete or accurate, the actual figures may be higher. Once again, CNCS could not produce estimates for the Foster Grandparents Program (FGP) and the Retired Senior Volunteers Program (RSVP), each of which it had determined to be susceptible for more than \$10 million in improper payments. Moreover, CNCS likely underestimated the susceptibility of the Social Innovation Fund (SIF) and the Senior Companion Program (SCP), calling into question their omission from IPERA analysis.

As OIG found, CNCS continued to rely upon and refine a sampling and testing methodology that had proven unsuccessful in the past and which it lacks the resources to execute. Instead, OIG recommended developing a more practical approach:

The methodology chosen by CNCS requires more resources than CNCS can spare to execute it. CNCS must either abandon that approach in favor of an alternative that can be timely executed with the available resources, or marshal sufficient additional resources to bring this methodology to completion, working with Congress and OMB if necessary.

Performance Audit of the Corporation for National and Community Service's Compliance with the Improper Payments Elimination and Recovery Act of 2010 (IPERA) for Fiscal Year 2015, OIG Report 16-04, at p. 2, available at <http://www.cncsoig.gov/sites/default/files/16-04.pdf>.

We are now in the fourth quarter of FY 2016, and CNCS only recently decided on its IPERA approach and began this year's testing. Not surprisingly, CNCS will once again be unable to comply with IPERA, due to: the delayed start; lack of planning; insufficient expertise until April 2016, when the new Chief Risk Officer came on board; and decreased resources devoted to this effort. OIG sees some promise in the approach being tested this year and hopes for greater progress in FY 2017. Realistically, however, it will be two years or more before CNCS manages to meet its obligations under IPERA.

Far more than money is at stake. The overwhelming majority of improper payments identified at CNCS stem from the failure of grantees to complete thorough and timely Criminal History Checks (CHCs) for national service participants and grant-funded staff. Grantees must determine that those individuals are not murderers or registerable sex offenders, checking specific sources prescribed in the Edward M. Kennedy Serve America Act of 2009. For members or staff that work with children and youth, the elderly or persons with disabilities, the grantee must check the National Sex Offender Public Website (NSOPW), the criminal history repository of the state where the potential member/staff member resides and the state in which s/he will serve, and the Federal Bureau of Investigation. See 42 U.S.C. § 12645g. CNCS requires that the NSOPW check be *completed* before the member/staff member begins service; the other checks must be *initiated* at that time, and the member/staff member must be accompanied until the grantee receives the results with no disqualifying criminal history. 45

C.F.R. § 2540.203. Living allowance, stipend or salary payments to an individual are improper if the required checks were not performed or during any period of untimeliness.

Failure to execute timely and complete CHCs exposes the beneficiaries of CNCS programs to unnecessary risk from potentially violent predators. Such people can do incalculable harm, and they seek out opportunities to interact with vulnerable persons. Vigilance in conducting CHCs is a moral, as well as legal, imperative.²

The IPERA process has demonstrated a significant level of noncompliance with this important safety measure. CNCS is undertaking a number of measures to improve CHC compliance. Without a robust IPERA process, it will be difficult to gauge the effectiveness of these measures.

Quite apart from criminal history checks, CNCS's FY 2015 IPERA results show two further points of concern. The first relates to what CNCS has described as "the agency's substantial nonresponse rates across programs, which resulted in CNCS's failing to test enough samples to reach the required statistical confidence interval" In other words, grantees did not cooperate with CNCS's requests for information, making it impossible for CNCS to complete its work. That high nonresponse rate is itself cause for concern. CNCS believes that its data requests were not clear and that this contributed to the level of nonresponse. In its Agency Financial Report for FY 2015, it promised a number of improvements. Given the late start and limited IPERA testing that the Corporation will do this year, the impact of these improvements, assuming that they occur, will be very difficult to measure.

The second area of concern is the fact that certain grantees could not reconcile their internal accounting records (general ledger) to the reports that they submitted semiannually regarding their expenditures (Federal Financial Reports, or FFRs). A discrepancy between the general ledger and the FFR suggests a possible misapplication of Federal funds. Multiple OIG audits have found grantees whose internal records showed lower spending on grant-funded activities than the amounts that they drew down from the grant and reported on their FFRs. In some cases, the discrepancy has been significant. Moreover, if the grantee cannot and does not routinely reconcile these records, then its capability to manage Federal funds is called into question.

2. How often have you recommended the Corporation terminate a grant or debar a grantee? What other forms of corrective action are used, and how would you assess the effectiveness of those various actions?

The Office of Inspector General (OIG) does not hesitate to recommend that CNCS debar a grantee or an individual associated with a grantee whenever necessary to protect the public interest, and to ensure the integrity of Federal programs by conducting business only with responsible parties. Except in the case of a criminal conviction, a proposal to debar an entity

² Until recently, CNCS wavered in its willingness to impose financial accountability on a grantee that failed to perform criminal history checks. Now, it is more willing to do so, but the financial penalties are low and not commensurate with the serious harm that these checks are meant to prevent.

is typically resolved through the entity's agreement to institute reforms to prevent and detect misconduct, with specific monitoring to assure compliance. Because debarment is remedial and not to be used as punishment,³ the debarment process across the Federal government reflects a strong preference to return the grantee to "present responsibility" if possible.

Since October 1, 2014, CNCS has debarred two individuals at OIG's recommendation.⁴ The debarments arose from the submission of false timesheets by an employee of a subgrantee, which allowed her granddaughter to receive \$2,464 in unearned funds from the AmeriCorps program during a four-month period. OIG found no evidence that the subgrantee was aware of the scheme. Both the grandmother and the granddaughter were debarred for a period of one year.

Two other debarments are now pending before CNCS's Debarring Official as a result of OIG's investigations. The first matter involves the Georgia Center for Nonprofits (GCN), in Atlanta, GA. By letter dated July 8, 2016, CNCS gave notice of its intent to debar GCN for a period of three years for misuse of the resources of the Volunteers in Service to America (VISTA) program. OIG's investigation found that GCN repeatedly and systematically misused the labor of VISTA members for GCN's own benefit and financial enrichment in a variety of ways, including charging a fee for their services, requiring them to complete personal errands for GCN management, impermissibly assigning them administrative and staff duties and directing them to perform service activities unrelated to the eradication of poverty, which is the exclusive purpose of the VISTA program. The proposed debarment was in addition to requiring GCN to repay all funds associated with the misuse of VISTA members' time and discontinuing CNCS's relationship with GCN.

The second matter involves the proposed debarment of a grantee staff member who improperly certified 97 Segal AmeriCorps Education Awards, totaling more than \$117,000. The director of the AmeriCorps program at Synergy, Education, and Empowerment (SEE) of West Monroe, in Monroe, LA, certified the awards, knowing that the members had not completed the requisite number of service hours and/or based on insufficient evidence of their service. CNCS gave notice of its intent to debar this individual on July 20, 2016, and is working with Volunteer Louisiana to recoup the funds from SEE of West Monroe.

Certain features of debarment, however, limit its use and effectiveness. Debarment is prospective only; it does not affect any existing grants. And, while debarments based on conviction of a crime can be implemented very quickly and with minimal effort, those that require fact-finding on the part of the debarring agency often take substantial time to complete and may demand considerable resources.

³ See 2 CFR 180.125(c), *What is the purpose of the nonprocurement debarment and suspension system?*

⁴ Under government-wide debarment regulations, a debarred individual may not serve as an officer, director, owner, partner or in any other management or supervisory capacity of an entity with respect to a Federal grant (2 CFR 180.130 and 180.995). As a result, debarring executives and/or program leaders requires the entity either to sever its relationship with those culpable individuals or to become ineligible for future grants.

As a result, CNCS has adopted other corrective and protective measures that it can take when a grantee presents programmatic or financial problems. These include: technical assistance, tailoring actions to address individual issues, imposing special conditions on the grantee's operations or expenditures, "manual holds" (requiring the grantee to obtain authorization in advance of any expenditure of Federal grant funds),⁵ withholding payments, suspension of the grant, or termination of the grant. In complex cases, CNCS may also request audit assistance from OIG and is required to report timely waste, fraud or other criminal activity or abuse.

Without formally terminating a grant, CNCS in many cases has the discretion not to fund successive years of a three-year grant term, and it may also encourage a grantee to relinquish a grant in order to avoid more formal adverse actions. In some cases, particularly with Senior Corps programs and VISTA, CNCS may locate another grantee or sponsor to assume responsibility, so that the community may continue to receive services.

While, as noted, CNCS also has authority under certain circumstances to terminate or suspend a grant, the procedures can be lengthy and cumbersome. As a result, it is often more convenient to decline to continue a grant for successive years, rather than to initiate suspension or termination. Corporation management has at times expressed reluctance to terminate or decline to continue VISTA and Senior Corps grants because the Domestic Volunteer Service Act of 1972 creates a presumption of renewals of funding, grants more extensive hearing rights and imposes high standards for denial of refunding, suspension or termination. As a practical matter, these requirements, plus the absence of a competitive grant award process for certain Senior Corps programs, leave CNCS hesitant to enforce grant terms and conditions strictly.

OIG has not done sufficient analysis to provide an overall assessment of the effectiveness of the Corporation's corrective actions. In one area, however, those actions have been ineffective: criminal history checking. Despite years of training, an extraordinary amnesty, self-assessment and self-correction period and other measures, an unacceptably high percentage of grantees do not properly and timely check the criminal histories of AmeriCorps and Senior Corps members and grant-funded staff, to ensure that they are not convicted murderers or registered sex offenders. This jeopardizes the safety of the communities served by CNCS programs, including such vulnerable groups as children and youth, persons with disabilities and the elderly.

Historically, CNCS has not effectively enforced the background checking that Congress has mandated. When they discovered non-compliance, program officers generally assisted grantees to complete the checks but often took no further action. As long as no currently

⁵ Ordinarily, a grantee may withdraw ("draw down") grant funds at will, subject to a rule, enforced on the honor system, that funds should be withdrawn only for immediate programmatic needs. Under a manual hold, release of funds is conditioned on the grantee's demonstration that it has corrected (or is in the process of correcting) a deficiency that called into question its ability to manage Federal funds or otherwise perform its obligations in compliance with the terms and conditions of the grant. When OIG discovers a problem that requires immediate attention pending completion of our work, we recommend a manual hold, to protect the integrity of public funds and/or Federal programs as an interim measure. CNCS has acted favorably on our requests. The agency also initiates its own manual holds, often simultaneously with reporting a matter to OIG for investigation. By definition, a manual hold involves close supervision of a grantee's operations.

serving members or staff were murderers or sex offenders, CNCS required little accountability and did not disallow costs for the prior failure to perform criminal history checks when and as required. In 2011, CNCS adopted a policy of disallowing all costs associated with service during incomplete or untimely checks, but did not consistently enforce it. This informal “no harm, no foul” policy rewarded grantees for being lucky, and excused their recklessness with the safety of the people served by their programs. As a result, many grantees have continued to place a low priority on critical measures intended to protect public safety.

Following two years of IPERA data that showed substantial failures to perform the necessary criminal history checks, CNCS has adopted more active measures. One, which OIG endorses enthusiastically, is CNCS’s contract with a vendor that is expert in conducting these background checks to perform them for certain grantees. CNCS worked hard to accomplish this, and the public would be well served if this service were more widely available. We are also pleased that CNCS undertook a special initiative of having program officers reach out personally to grantees and conduct a meaningful spot-check of their compliance.

OIG is far less happy with another “innovation”: a recently adopted system of fines that CNCS characterizes as “risk-based,” but which will have *de minimis* impact on large grantees, includes features that burden small grantees disproportionately and, overall, creates perverse incentives that undervalue the importance of protecting the most vulnerable among us from dangerous predators. In one recent case, where an experienced grantee did not perform fundamental elements of the required criminal history checks for certain AmeriCorps members and grant-funded staff, CNCS imposed a fine of three-tenths of one percent (.003) of the grant funds. This result trivializes the harm that would result to individuals, to the grantee and the community that it serves, and to the AmeriCorps program if an identifiable sex offender were to use a CNCS grant as a means of access to vulnerable persons. OIG has made its views clear to CNCS’s leadership, including its Board of Directors, and we look forward to much-needed modifications of this approach.

3. Do prohibited activities occur more frequently at the grantee or subgrantee level? What is the most common instance of waste, fraud, and abuse committed within the Corporation? How can the Corporation reduce and eliminate these wasteful practices?

Where prohibited activities occur

It is difficult to state categorically the level at which prohibited activities occur, because CNCS’s monitoring is not well suited to detecting those violations. However, since the vast majority of service activities take place at the subgrantee level⁶, it seems likely that the majority of prohibited activities likewise occur there.

⁶ See Written Testimony of Wendy Spencer, Chief Executive Officer, Corporation for National and Community Service before the Committee on Education and the Workforce, Subcommittee on Higher Education and Workforce Training, May 24, 2016, at p. 3 (“A large percentage of CNCS resources are distributed to and administered by Governor appointed State Service Commissions”). Many direct grantees, such as the National Association of Community Health Clinics (NACHC), also distribute all or a portion of their grant funds to subgrantees, as do the intermediaries awarded funds through the Social Innovation Fund.

That is consistent with OIG's experience. In the matters that have come to our attention, all of the prohibited activities occurred at the subgrantee level. In the case of the National Association of Community Health Clinics (NACHC), the abortion-related prohibited activities in question occurred at a subgrantee, the Institute for Family Health (IFH), where AmeriCorps members provided emotional support during abortions. NACHC was aware of the activities and authorized IFH to continue them.

In an unrelated matter, OIG has investigated an allegation that an AmeriCorps member serving at a subgrantee of a State Commission was directed by a supervisor to transport a domestic violence victim to a clinic for an abortion.⁷ The member complied, and the supervisor told investigators that she was unaware that this was prohibited. Several years ago, OIG learned that a faith-based subgrantee of another State Commission regularly included worship in its service hours until directed to cease that practice.

Most common instances of waste, fraud and abuse

The more common instances of waste, fraud and abuse found by OIG include:

- Failure to timely complete checks of the National Sex Offender Public Website (NSOWP) and other Criminal History Checks, which are required by statute for grantee staff and national service members. Allowing individuals to serve without the proper background checks jeopardizes the safety of the communities served by CNCS programs, including such particularly vulnerable groups as children, persons with disabilities and the elderly;
- Grantees' use of national service members as cheap labor, to perform staff and administrative tasks, rather than serving the public. The national service laws expressly prohibit a grantee from using national service members to duplicate the work of employees and/or displace them. See 42 U.S. Code §§ 12584a(c) and § 12637;
- Fundamental deviations from the approved purpose and intent of the grant, without informing CNCS, which I discussed in my testimony and which are described at length at pages 22-29 of our Semiannual Report for the period ended September 30, 2014, available at http://www.cncsoig.gov/sites/default/files/2_sar_14-02_3.pdf;
- Lack of documentation to demonstrate that members actually performed service;
- Improper certification of partial education awards for members who exited AmeriCorps early for reasons other than the "compelling personal

⁷ The clinic in question was not a subgrantee of NACHC.

circumstances” defined in AmeriCorps regulation 45 C.F.R. § 2522.230, and are therefore ineligible;

We have also found some notable instances of fraud. Most recently, a civil fraud case investigated by OIG settled in FY 2015, yielding \$4,083,304 in compensatory damages, penalties and interest, the largest recovery in the history of CNCS. In that case, AmeriCorps issued grants to an Arizona community college from 2007 through 2010 to fund a variety of services by students. The students were enrolled in specialized academic programs (e.g., nursing and dental hygiene) that required a combination of classroom study and clinical hours. Upon successful completion of their AmeriCorps service, the members would earn an education award of up to \$4,725, which could be used to pay tuition or student loans.

OIG investigators found that the Executive Director gave students AmeriCorps credit for completing their pre-existing clinical requirements, work-study, academic courses and study abroad. She then fraudulently certified that they had performed the AmeriCorps service hours required to earn education awards. In fact, the students performed little or no community service beyond their degree requirements. Creating the illusion of a large and active AmeriCorps program generated administrative funds, enhanced the position of the program’s Executive Director, and allowed students to use their unearned education awards to pay their tuition or repay their student loans. The community, however, received no additional services and thus no benefit from the taxpayers’ investment in this AmeriCorps grant.

To educate CNCS staff and grantees about preventing and detecting fraud and waste, OIG investigators and auditors conduct briefings on common audit and investigation findings several times per year. Those presentations suggest certain best practices and measures that grantees can adopt to avoid encountering these problems.

Within the Corporation and throughout the Federal government, the procurement process is particularly vulnerable to waste, fraud and abuse. Our 2014 audit of service contracts issued under blanket purchase agreements revealed serious weaknesses within CNCS’s procurement function, including waste of \$900,000 for five projects that CNCS never used.⁸ The audit also found that program officials exceeded their authority and violated Federal procurement requirements with impunity by directing consultants to deviate from contract terms. CNCS agreed that the weaknesses found in our audit existed throughout its procurement function and adopted certain changes, including recruitment of experienced leadership and new staff. CNCS management regards the procurement function as improving.

Measures to reduce and eliminate waste, fraud and abuse

CNCS and the individual grant programs that it oversees need a more sophisticated and granular understanding of the risks to which their activities and operations are subject, including the extent to which those risks vary by the type of grantee. Then, the agency and its staff must determine what data/indicators provide useful insight to identify and measure

⁸ See Audit of Blanket Purchase Agreements for Professional Consulting Services, OIG Report 14-09, available at <https://www.cncsoig.gov/sites/default/files/14-09.pdf>

those risks. That risk-based approach should inform every stage of the grant lifecycle, including:

- Grant competition—what information CNCS should solicit in its grant applications and how that data is assessed in the award process, and willingness to deny funding if CNCS, whether for lack of resources or for any other reason, cannot manage the risks appropriately;
- Special conditions—whether, in addition to the terms generically applicable to all CNCS grants, the risks of an individual grant warrant requiring particular measures to mitigate certain risks;
- Expansion of CNCS's repertoire of monitoring activities and customizing them to the risks presented by a particular grant, to avoid wasting resources monitoring *de minimis* risks;
- Smart design of IPERA testing to complement and cross-check grant monitoring;
- Recruiting, training and assigning responsibilities to a workforce based on the type of risks presented—including (a) transforming a longstanding culture at CNCS that has excused substantial deviations from grant terms and regarded financial enforcement of those terms as inherently punitive⁹, (b) differentiating between programmatic and financial risks and assigning the latter for active monitoring by trained grant officers/financial staff; and (c) to minimize confirmation bias, having risk assessments conducted by someone other than the program and grant officers responsible for the particular grantee;
- Better use of technology and ready access to data analytics for routine monitoring and to identify anomalies, outliers and trends that warrant greater attention;

⁹ CNCS's refusal to disallow costs for significantly noncompliant or unauthorized activities, and its decisions in egregious cases to authorize the conduct retroactively, have encouraged grantees to believe that they do not need to seek permission because they can confidently expect forgiveness. The grant terms and conditions expressly require authorization in advance for changes to grant scope, objectives and goals. Consistent enforcement of that requirement would allow CNCS to determine when to permit a change of plans. The elaborate grant competition conducted annually by CNCS is pointless if a grantee can depart from the grant terms at will.

We are encouraged to see greater willingness by the Office of Grants Management to enforce the grant terms and to disallow and recover improperly incurred costs. I was therefore disappointed that the CEO did not state unequivocally at the May 24 hearing that CNCS would make very different decisions today than it made in 2014, when it ratified the misconduct of three grantees, as described at pages 22-29 of our Semiannual Report for the period ended September 30, 2014.

- Formal assessment of bad outcomes, to identify systemic gaps, red flags, human errors and necessary improvements;
- Updating grantee risk assessments for consideration at continuation-of-funding decisions in the same three-year grant cycle;
- Continuous validation of the risk approach and risk indicators, to be sure that what they measure actually relates to outcomes and results;
- Better use of audit and investigation findings to identify risks and improve risk modeling;
- Adopting and enforcing a zero-tolerance approach to the most consequential risks and/or legal violations;
- Real accountability for individuals, offices and programs, both for positive accomplishments at risk identification and management and for poor performance in those areas;
- Decisive and prompt action when a grantee cannot or will not live up to its important obligations.

Creation of the Chief Risk Officer (CRO) position is an important first step in the right direction, which will bring much needed expertise and experience to CNCS. OIG has long advocated this change and was heartened to see the position filled in April 2016. With the myriad responsibilities of the CRO—Enterprise Risk Management, IPERA, grant monitoring, internal controls—and the challenges that each of these has historically posed for the Corporation, that Office must be well resourced if it is to have any impact. The statement in the House Appropriations bill and report emphasizes that point. We hope that this is the beginning of an effort that will be sustained through the next Presidential Administration, because the necessary improvements will not occur overnight, or, indeed, in a single year.

Increasing the resources of the OIG, as the House Appropriations bill contemplates, will likewise enable our Office to identify, recommend and press for implementation of additional measures to reduce and eliminate waste, fraud and abuse. Many of the accountability enhancements described by CEO Spencer orally and in her written testimony originated specifically from OIG recommendations. I am confident that our work will continue to pay dividends to American taxpayers.

4. How many calls or other communications has the Inspector General's office received alleging prohibited activities are taking place in the last calendar year?

Within the last calendar year, the Office of Inspector General (OIG) received three complaints alleging prohibited activities within the meaning of 42 USC § 3. 12584a, which identifies eleven categories of activities that cannot be performed by an individual in a national service position.¹⁰ The first of these related to NACHC, and you are familiar with the allegations and the findings of that investigation.

The second complaint arose from the termination of an AmeriCorps member serving at a subgrantee of one of the State Commissions. In the termination proceedings, the member alleged that, at the direction of her immediate supervisor, she had transported a client who was the victim of domestic violence to a clinic for an abortion. The clinic was not a subgrantee of NACHC, and the member was terminated for reasons unrelated to the abortion activity relating to noncompliance with other program grantee rules. Per our procedures and practices, OIG will report on the matter when CNCS notifies us of its management action.

The third complaint arose from an AmeriCorps member serving in a school who took a pregnant student to a clinic for an abortion, at the student's request. Because the member was not acting at the direction or with the knowledge of any grantee staff, and the conduct occurred on a weekend, outside of AmeriCorps service hours, the activity was beyond the scope of the AmeriCorps prohibitions. The grantee terminated the member from the AmeriCorps program because the grantee's rules prohibited members from having contact with students outside their service hours.

5. When the Corporation discovers AmeriCorps members have engaged in prohibited activities, how often is the discovery the result of effective monitoring by the Corporation rather than self-reporting by the grantees or subgrantees?

In our experience, prohibited activities are discovered through a self-report by a grantee or subgrantee, a complaint by a member who objects to the activity, or allegations submitted directly to the OIG, e.g., via a call or written communication to our hotline. I am not aware of any prohibited activities that have come to light through the routine monitoring activities of CNCS, including the measures that CNCS promised to implement in 2011 to enhance its detection capabilities.

CNCS's routine monitoring activities are not well designed to detect prohibited activities, nor are they targeted towards those grantees at heightened risk of specific prohibited activities. Desk reviews are virtually guaranteed to be ineffective, because there is no requirement that AmeriCorps members keep itemized reports of their daily activities. Likewise, the Position Descriptions that grantees create, and which CNCS sampled for a brief period, are generic

¹⁰ As amended by the Edward M. Kennedy Serve America Act of 2009, the statute authorizing the AmeriCorps program bars AmeriCorps members and grant-funded staff from, among other activities, legislative lobbying; partisan political activities; voter registration; political or legislative advocacy; religious instruction, worship or proselytizing; benefiting a for-profit business; and abortion services or referrals.

in nature. No paper review can detect whether a grantee is in fact allowing members to deviate from a benign job description into service activities that are forbidden.

It would be far more effective to monitor for prohibited activities by determining which grantees, by virtue of their programmatic activities and their clientele, are at heightened risk of a particular prohibited activity and to prioritize those grantees for focused monitoring on that subject. CNCS should also expand its repertoire of monitoring activities, to require more frequent contact with members. Site visits, which may take place only once every six years, are too infrequent to be effective at detecting prohibited activities. For those grantees at heightened risk, OIG has suggested that CNCS conduct regular surveys of members about their specific activities; the surveys should be in plain English and should be reviewed and followed up on promptly. Similarly, OIG recommends that, for those high-risk grantees and activities, CNCS conduct routine searches of members' public postings on social media sites. That is how NACHC discovered prohibited abortion doula activity in 2015, and that is how OIG was able to identify at least some of the members who participated in this conduct at the subgrantee's service sites.

6. Does the Corporation provide adequate guidance to grantees concerning prohibited activities? What reforms are needed to ensure the Corporation provides effective guidance to grantees?

Since 2009, and more vigorously since 2011, CNCS has repeatedly taken steps to acquaint members and the grantee community with the restrictions on prohibited activities. At regional grantee meetings following disclosure of the NACHC investigation, members of my senior staff repeatedly heard grantee leaders express their shock that a CNCS grantee had foolishly undertaken such obviously impermissible activities. On this and other occasions, OIG has found most grantees to be conscientious about prohibited activities.

Nevertheless, there are many opportunities to improve both the manner and the substance of the guidance that CNCS provides to its grantees. CNCS needs to convey information about prohibited activities in a prominent manner commensurate with the importance of the subject, rather than merely to include it in the large volume of dense materials pushed out to grantees and to members. The communications need to distinguish prohibited activities as a high-priority and high-risk subject, warranting special care and vigilance beyond routine regulatory requirements. This is particularly true as to communications with members, who may be easily overwhelmed at the quantity of information that they are expected to absorb. We have seen several grantees that orient members with PowerPoint presentations consisting of more than 60 slides, with prohibited activities somewhere in the middle, sandwiched between routine compliance matters or general information.

Further, CNCS should offer guidance proactively and not await inquiries. As I testified at the May 24 hearing, CNCS made a considered decision in 2009 not to issue general guidance regarding what activities would constitute prohibited "abortion services" and what a prohibited "referral" for receipt of such services would entail. One reason for this decision seems to have been a desire to address questions case by case, in the hope that CNCS would know in advance what specific activities a grantee contemplated for AmeriCorps members, rather than

offering general, abstract explanations that could be misunderstood or misapplied. However well intentioned, the strategy was flawed, both in its theory and in its execution.

Similarly, CNCS's regulations regarding prohibited activities merely repeat verbatim the statutory language forbidding AmeriCorps members to provide abortion services or referral for such services, 45 C.F.R. § 2520.65(a)(10). Those regulations do not assist grantees or the public in understanding how CNCS will interpret and apply the statutory requirements. Instead, providing individual guidance informally, via email consultations, eliminated public scrutiny, risked inconsistent interpretations and made it more difficult to hold grantees and CNCS staff accountable. When CNCS did issue more general guidance, it did so in the form of voluntary training, with no record of which grantees completed it and little warning that the training contained new applications of key requirements. To this day, CNCS has not informed the grantee community and the public in a clear and prominent way how it interprets and applies the abortion restrictions. Nor has CNCS helped grantees and members by anticipating common situations and directing them how to respond.

This experience illustrates a number of ways to improve the guidance that CNCS provides about prohibited activities. Using the abortion prohibitions as an example, OIG recommends:

- CNCS should develop guidance concerning what activities constitute “abortion services” and “referrals” within the meaning of the statutory prohibition. OIG believes that “abortion services” should include all service activities related to an abortion procedure, whether before, during or after. This includes activities prior to or in anticipation of an abortion (such as escorting patients to clinic, making appointments, providing information about what to expect during and after the procedure, and emotional support or administrative assistance) as well as after-care or follow-up services.
- The guidance should make clear that a grantee proceeds at its peril if it undertakes any activities that potentially implicate “abortion services” or “referrals,” without first obtaining authorization in writing from CNCS.
- The guidance should be public and transparent, issued through rulemaking to adopt regulations that provide meaningful detail on how CNCS interprets and applies the prohibition.
- CNCS should actively direct the new guidance to the grantees most likely to encounter issues regarding abortion, such as those that operate in the healthcare space and those involved with children and youth of middle school age and above.
- Program officers should make personal contact with grantees whose programmatic activities place them at high risk of encountering these issues, to ensure that they are aware of CNCS's guidance and their responsibilities.

- The guidance should state clearly that strict compliance with the abortion prohibitions is of the utmost importance, and that it should be a top priority for all grantees.
- Grantees should be told what to do if they believe that a prohibited activity has occurred and that any such event must be reported immediately to CNCS and to the OIG.
- In addition to explaining the rules, CNCS should provide specific responses that members and grant-funded staff may give if they are asked for assistance that they are not allowed to render. For example, if an AmeriCorps member at a health clinic is asked where a patient can obtain an abortion, may that member refer the questioner to another clinic worker who is not subject to the AmeriCorps prohibition on referrals? How should the AmeriCorps worker respond? Providing a script so that an AmeriCorps member knows how to respond when put on the spot is very important. Similarly, AmeriCorps members should be told what actions to take if directed by a supervisor to perform an activity that the member believes is forbidden.
- CNCS should develop online mandatory training for all programmatic grantee staff and for AmeriCorps members, with an audit trail to demonstrate who has completed the training. The training should include a quiz to ensure mastery of the key points.

7. Since the hearing, your office released its Semiannual Report to Congress for the first half of FY 2016 (October 1, 2015- March 31, 2016). In the report, you state the Corporation "struggles to provide effective oversight of \$750,000,000 that it devotes annually to grants" leaving these funds "unnecessarily vulnerable to waste, fraud, mismanagement and abuse." Please detail your concerns with the Corporation's ability to provide effective oversight. What steps can the Corporation take to assure you and the Committee those taxpayer dollars are not vulnerable to waste, fraud, mismanagement, and abuse?

CNCS does not have a rigorous, tested, risk-based approach to grant monitoring. Until hiring a Chief Risk Officer in April of this year, CNCS had virtually no one trained and experienced in risk management.¹¹ As a result, it cannot deploy effectively the limited grant monitoring resources at its disposal or determine what additional resources might be needed. I discussed in my testimony a number of legacy burdens that have impeded the necessary progress. Better and more sophisticated risk management offers a significant opportunity to improve stewardship at CNCS.

¹¹ Similarly, in the last 18 months CNCS has brought in leaders from other Federal agencies with experience in grants management. This infusion of new perspectives has improved accountability.

Although grants represent three-quarters of CNCS's annual appropriation, CNCS has never evaluated the effectiveness of its own grant monitoring and oversight. The current risk model, on which CNCS relies heavily, is based on untested assumptions and has never been validated against results. As noted in my testimony, a preliminary analysis undertaken by OIG several years ago showed that the risk model does a poor job of predicting which grantees will produce catastrophic outcomes, such as going bankrupt while owing CNCS money, shutting down in the midst of a grant, or requiring CNCS to terminate a grant for cause. The model also omits certain known risks and disregards critical differences among CNCS's programs that bear directly on risk. OIG has repeatedly offered suggestions based on our audits and investigations that would materially improve the risk model in the short term, as well as longer term refinements.

Virtually all of CNCS's grant monitoring, like most of its other internal controls, is performed manually. Manual processes are subject to human error and are easily disrupted due to overwork or conflicting priorities. As I testified, when we conduct an audit or an investigation, OIG commonly finds red flags were that overlooked in the routine monitoring process. Moreover, having the same program officers who assist grantees responsible for risk assessments and monitoring introduces a strong potential for bias, something that I also discussed in my testimony.

CNCS collects a wealth of information from its grantees, but its outdated information technology systems do not support the kind of data analytics that other agencies use effectively for early detection of fraud and mismanagement. Grant-making agencies that have invested in technology can use data analytics to perform many routine monitoring tasks, thereby allowing staff to focus on solving problems that require human judgment. This vital tool is not yet available at CNCS, because its technology is ill-adapted to its current business needs. A modernization effort is underway, but it may be years before CNCS is able to make effective use of analytics to conduct benchmarking, to spot outliers and anomalies or to identify trends and emerging issues, much less look for patterns that suggest fraud or mismanagement. At present, CNCS cannot readily compare information across the grant portfolio or for subsets of grants or grantees; for example, although high member attrition/turnover is often a strong indicator of trouble, CNCS cannot easily benchmark the average attrition among successful grantees or identify those grantees whose attrition exceeds a pre-determined level.

OIG has long championed adoption of a true Enterprise Risk Management (ERM) approach to help CNCS leaders focus their resources where they will do the most good. This will require a multi-year effort and the sustained commitment of substantial resources. One of the priorities should be the development of a new, more rigorous, targeted approach to grant monitoring, with a risk model that will be tested, validated and continuously improved. CNCS needs to inventory and understand its risks and then reinvent its grant oversight to focus on those risks and their indicators. The Corporation can begin by moving quickly to implement the Framework for Managing Fraud Risk in Federal Programs, published by the General Accountability Office one year ago.

Once it identifies the risks, CNCS leaders must develop new means of monitoring them. For reasons cited in my testimony and in my responses above, the existing monitoring repertoire

is ill-suited to find prohibited activities or to accurately gauge their extent. As part of this process, CNCS should also revisit whether certain risks, such as prohibited activities and the failure to screen participants for disqualifying criminal histories, are so significant that it should monitor them directly, rather than relying solely on primary grantees to oversee their subgrantees.

Differentiating programmatic risks from financial and compliance risks is also essential. Our audits frequently find that monitoring has failed to identify serious financial irregularities that call into question a grantee's ability to manage and account for Federal funds. But the Program Officers, who perform most of the direct monitoring, cannot be expected to have the skills, training or experience to recognize those issues and intervene effectively before a problem ripens into a crisis. CNCS will need to assess whether it needs a different workforce and/or a different allocation of responsibility within its existing workforce, to monitor financial risks effectively.

A cultural shift regarding risk and accountability is also needed. For many years, CNCS has exaggerated the quality and rigor of its existing systems, understated risks and overestimated its ability to support grantees that lack the systems and know-how to manage Federal funds. That complacency and denial have inhibited progress. All agency personnel, from the leadership on down, must be committed to holding themselves, one another, and grantees accountable for the appropriate use of Federal resources and compliance with all applicable requirements. This means an end to condoning or retroactively approving violations of grant requirements and terms. See, e.g., Semiannual Report for the period March 31 through September 30, 2014, describing at pp. 22-29 CNCS's unwillingness to hold grantees financially accountable for waste, misuse and diversion of resources and fundamental deviations from grant purpose. It also means an end to viewing the disallowance of costs as punitive. Encouraging grantees to seek authorization in advance, and not to expect forgiveness after the fact, is essential.

CNCS must also develop better methods to detect waste, fraud and mismanagement. While most grantees are conscientious, this is not universally the case. I was shocked when a former member of the senior leadership told me repeatedly that CNCS "has no fraud risk, because our grantees are honest," and on another occasion expressed sympathy for a grantee leader who had gone to prison for essentially embezzling CNCS grant funds. Until CNCS grapples with the reality that *some* grantees, leaders and individual staff members are not honest, trustworthy, skilled or careful, it will never be sufficiently vigilant.

In part to break out of this denial, and as an essential risk assessment tool, CNCS should be compiling information about how frequently particular problems occur within and across the agency's programs. For example, CNCS for years maintained that its grantees did an excellent job of completing criminal history checks. Only when required to test compliance as part of its IPERA process was the agency forced to acknowledge the substantial incidence of failure to perform timely and complete criminal history checks, and only then did it begin developing strategies for improvement. Without better information about the results of rigorous monitoring, CNCS cannot know whether it has successfully managed and mitigated risks or whether new and emerging risks require attention.

8. Please provide the Committee with all documents related to your investigation into prohibited activities at a NACHC subgrantee (Case ID: 20 16-003).

OIG appreciates the Subcommittee's willingness to defer submission of the documents briefly, until we complete certain work connected to the NACHC investigation. We will work with the Subcommittee staff to facilitate the prompt submission of those documents.

