

The CSB's Fiscal Year 2024 Top Management Challenges

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Abbreviations

C.F.R.	Code of Federal Regulations
CSB	U.S. Chemical Safety and Hazard Investigation Board
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
OGE	U.S. Office of Government Ethics
OIG	Office of Inspector General
PAS	Presidentially Appointed and Senate Confirmed
U.S.C.	United States Code

Cover Image

CSB employees investigating. (CSB image)

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At a Glance

The CSB's Fiscal Year 2024 Top Management Challenges

What Are Management Challenges?

The Reports Consolidation Act of 2000 requires each inspector general to prepare an annual statement summarizing what the inspector general considers to be "the most serious management and performance challenges facing the agency" and to briefly assess the agency's progress in addressing those challenges.

Our previous U.S. Chemical Safety and Hazard Investigation Board [report, Fiscal Year 2023 U.S. Chemical Safety and Hazard Investigation Board Management Challenges](#), issued October 21, 2022, identified three top management challenges facing the agency. Those challenges addressed operating effectively without a full board, minimizing mission-critical staff vacancies and attrition rates, and improving cybersecurity. We have retained these challenges for fiscal year 2024. In addition, we have identified the promotion of ethical conduct as a new top management challenge for the CSB.

This report addresses the three CSB goals:

- *Prevent recurrence of significant chemical incidents.*
- *Advocate safety and achieve change.*
- *Create and maintain an engaged, high-performing workforce.*

Address inquiries to our public affairs office at (202) 566-2391 or OIG.PublicAffairs@epa.gov.

[List of OIG reports.](#)

What We Found

We retained the three previously identified top management and performance challenges from the prior year's report, and we added a fourth challenge. We consider these to be the CSB's greatest vulnerabilities to waste, fraud, abuse, and mismanagement and the most significant barriers to accomplishing the CSB's mission during fiscal year 2024:

1. Management Challenge (initially identified in fiscal year 2019):

Operating effectively without a full board.

The CSB's governing board has only three confirmed members, one more than when we highlighted this challenge in fiscal year 2023. The Clean Air Act Amendments of 1990 authorized the creation of the CSB and established a board of five members, including a chairperson. That board is responsible for major budgeting decisions, strategic planning and direction, general oversight of the CSB, and approval of investigation reports and studies. The lack of a full board has inhibited the CSB's mission to conduct investigations to protect people and the environment. A full board ensures that the CSB can function in the event of the loss of one or two board members.

2. Management Challenge (initially identified in fiscal year 2023):

Minimizing mission-critical staff vacancies and attrition rates.

The CSB is working to increase hiring, but vacancies and attrition rates remain a concern. As of the end of September 2023, the CSB's staffing level was short of fiscal year-end projections by ten full-time equivalents, or about 20 percent. Mission-critical positions have remained vacant for more than one year. Despite some improvements, we remain concerned that staffing problems affect the CSB's ability to carry out day-to-day operations in a timely manner, including deployment to new incidents, completion of investigations, and issuance of reports.

3. Management Challenge (initially identified in fiscal year 2023):

Improving cybersecurity.

The CSB has demonstrated a strong commitment to its cybersecurity program and to addressing the Office of Inspector General's cybersecurity recommendations to ensure the reliability, availability, and accuracy of CSB data. However, the CSB should ensure that it has formalized and documented policies, procedures, and strategies for its information security program and that they are consistently implemented. The risk that vulnerabilities may be exploited is elevated at the CSB's latest assessed information security level. The CSB's continued improvement to its cybersecurity posture and increased maturity level is necessary to fully address prior Office of Inspector General recommendations.

4. Management Challenge (new): *Promoting ethical conduct.*

In July 2023, the U.S. Office of Government Ethics recommended that the CSB take steps to improve its ethics program. The CSB is reviewing this recommendation and plans to fully respond by January 2024. A robust ethics program, combined with training, can assist employees in recognizing potential ethics concerns.



OFFICE OF INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY

December 6, 2023

Steve Owens
Chairperson
U.S. Chemical Safety and Hazard Investigation Board
1750 Pennsylvania Avenue NW, Suite 910
Washington, D.C. 20006

Dear Mr. Owens:

Enclosed is the Office of Inspector General's fiscal year 2024 management challenges report for the U.S. Chemical Safety and Hazard Investigation Board. The Reports Consolidation Act of 2000 requires that I prepare an annual statement summarizing what the OIG considers to be the "most serious management and performance challenges facing" the CSB. This statement is also to briefly assess the CSB's progress in addressing these challenges. We used audit, evaluation, and other analyses of CSB operations to arrive at the issues presented.

We retained the previous three top management challenges that we identified in our [report](#) *Fiscal Year 2023 U.S. Chemical Safety and Hazard Investigation Board Management Challenges*. The first of these challenges concerns the impairment of the CSB's mission accomplishment from having less than a full confirmed board, a challenge we first identified in 2019. The second challenge focuses on the CSB's need to minimize staff vacancies and attrition rates to ensure timeliness of deployments, investigations, and reports. Our third challenge highlights the criticality of addressing cybersecurity weaknesses to ensure mission-essential information is secure and will not compromise agency systems. We have identified a fourth challenge, *promoting ethical conduct*, which relates to lapses in the CSB's ethics program.

You are not required to provide a written response to this final report. We will post this report to our website at www.epaoig.gov.

Sincerely,

Sean W. O'Donnell
Inspector General

Enclosure

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Introduction

This U.S. Environmental Protection Agency Office of Inspector General report provides Congress and the U.S. Chemical Safety and Hazard Investigation Board, or CSB, with an independent and objective assessment of the CSB's top management and performance challenges identified by the OIG for fiscal year 2024.

The Clean Air Act Amendments of 1990, 42 U.S.C. § 7412(r)(6), authorized the creation of the CSB, which became operational in January 1998. Headquartered in Washington, D.C., the CSB is an independent federal agency charged with investigating chemical incidents and hazards to prevent similar events. The Clean Air Act Amendments of 1990 provide that the CSB board “shall consist of five members, including a Chairperson.” Board members serve by presidential appointment with the Senate’s confirmation. The CSB’s mission is to “drive chemical safety change through independent investigation to protect people and the environment.”¹ The CSB examines all aspects of significant chemical incidents, including causes and root causes. It is not a regulatory agency and does not issue fines or citations, but it makes recommendations to plants; industry organizations; labor groups; and regulatory agencies, such as the Occupational Safety and Health Administration and the EPA. The CSB considers these recommendations its principal tool for influencing positive change, though compliance with them is voluntary.

The CSB’s FY 2022–2026 [Strategic Plan](#), which serves as a blueprint for its priorities, sets three goals:

1. Prevent recurrence of significant chemical incidents through independent investigations.
2. Advocate safety and achieve change through recommendations, outreach, and education.
3. Create and maintain an engaged, high-performing workforce.

We annually assess the top management and performance challenges affecting the programs and operations of the CSB, consistent with the Reports Consolidation Act of 2000. The Act requires each inspector general to prepare an annual statement summarizing what the inspector general considers to be “the most serious management and performance challenges facing the agency” and to briefly assess the agency’s progress in addressing those challenges. As part of the OIG’s annual assessment, we solicit input from senior CSB leadership, consider our prior year’s oversight work and how the CSB’s programs addressed management challenges identified in other fiscal years, review congressional hearings and public statements, analyze oversight work conducted by the U.S. Government Accountability Office, and consider issues raised in media coverage and the civil sector. For FY 2024, we also considered a U.S. Office of Government Ethics, or OGE, inspection report.

The CSB’s FY 2024 top management challenges are as follows:

1. *Operating effectively without a full board.*
2. *Minimizing mission-critical staff vacancies and attrition rates.*

¹ *About the CSB – Mission*, U.S. Chemical Safety and Hazard Investigation Board, <https://www.csb.gov/about-the-csb/mission/> (last visited Sept. 11, 2023).

3. *Improving cybersecurity.*
4. *Promoting ethical conduct.*

We have numbered these for reference, not as an indication of priority, severity, or precedence. Each challenge relates significantly to the CSB's ability to meet its mission of protecting communities, workers, and the environment. These challenges are all forward-looking to assist the CSB in its operations, as well as to guide the OIG in its oversight planning for the next fiscal year.

Summary of the FY 2024 Management Challenges

The OIG's *Fiscal Year 2023 U.S. Chemical Safety and Hazard Investigation Board Management Challenges [report](#)*, hereafter referred to as the *FY 2023 Management Challenges* report, was issued October 21, 2022. It identified three top management challenges for the CSB, which we have retained for FY 2024.

The first challenge is ***operating effectively without a full board***. With three congressionally approved members as of September 2023, including the chairperson, the CSB is still missing 40 percent of the five board members authorized by the Clean Air Act Amendments of 1990. The board members are responsible for major budgeting decisions; strategic planning; general oversight; approval of investigation reports and studies; and other specific duties, such as serving as the principal spokespersons at accident sites and conducting community meetings, hearings, and boards of inquiry during accident investigations. CSB staff cannot assume board-specific duties. While the addition of the third confirmed board member in FY 2023 is an improvement and provides the board with a tie-breaking vote for its decisions, the loss of one member would return it to its previously mission-impaired condition. It took an average of seven-and-a-half months after nomination to confirm the existing board members. The CSB's mission to protect communities, workers, and the environment may be impaired without the full complement of board members.

The second challenge is ***minimizing mission-critical staff vacancies and attrition rates***. This challenge concerns the understaffing and turnover rates that continue to affect the CSB. While the CSB brought on 11 professional staff new-hires and one new board member in FY 2023, its personnel strength was still ten full-time equivalents short of projections for the fiscal year. We have previously noted that insufficient staffing of both management and nonmanagement positions has hampered the CSB's ability to investigate new safety incidents, to complete its backlog of investigations, and to issue timely reports. This staffing shortage remains an obstacle to the Board's mission accomplishment.

In the third challenge, ***improving cybersecurity***, we focus on the CSB's information security program. We have consistently identified deficiencies and vulnerabilities in this program that could affect the CSB's ability to fulfill its obligations and mission. The Federal Information Security Modernization Act of 2014 requires federal agencies to develop, document, and implement information system programs to protect federal information and systems. The CSB should ensure formal policies, procedures, and strategies for its information security program are in place and consistently implemented to reduce the risk that vulnerabilities may be exploited.

Finally, we identified a new challenge for FY 2024. The fourth challenge, ***promoting ethical conduct***, is an issue about which the OGE'S work has raised concerns. Federal laws and regulations govern CSB employees' ethical conduct, but deficiencies that the OGE identified in a July 2023 inspection underscore how a delay in appointing the designated agency ethics official may have left the CSB vulnerable to ethical lapses. If the CSB does not strengthen its ethics program and promote an ethical culture, it could jeopardize the CSB's programs and risk the loss of public trust in the organization's ability to accomplish its mission efficiently and effectively.

Challenge 1: Operating Effectively Without a Full Board

Introduction and Overview

The CSB's governing body has been operating below its authorized five-member complement since FY 2019, which we have consistently identified as a top management challenge. All three members on the board as of September 2023 had more than three years left on their terms, but the body was still operating with slightly more than half of its authorized members. The Clean Air Act Amendments of 1990 authorize the CSB's governing board to consist of five members. The board's significant and irreplaceable management role and its consistent shortfall under the statute present a continuing challenge to the CSB's ability to fulfill its mission and achieve its goals.



Board Member Appointments Are Subject to Potential Delays

Congress intended the CSB to have five board members to perform many important roles, but efforts to fill board vacancies are subject to political processes outside the CSB. The Clean Air Act Amendments of 1990 state that the CSB's governing body shall consist of five members, including a chairperson, appointed by the president and confirmed by the Senate. However, the statute limits board member terms to five years and permits their removal for inefficiency, neglect of duty, or malfeasance in office. The statute also assigns board members the responsibility to investigate, determine, and report to the public in writing the facts, conditions, circumstances, and causes or root causes of any accidental release resulting in a fatality, serious injury, or substantial property damage. Board members are also responsible for major budgeting decisions; strategic planning; general oversight; and other specific duties, such as serving as the principal spokespersons at accident sites and conducting community meetings, hearings, and boards of inquiry during accident investigations. These board-specific duties cannot be delegated to CSB staff.

The newest CSB board member's term began in FY 2023. However, with the board still lacking two members as of September 2023, the addition does not fully mitigate the risk of operating without a full board. Delays in appointing the remaining members can have debilitating effects because the board members' duties cannot be delegated and the absence of one or more members could make it difficult to break a tie or otherwise meet board requirements under the Clean Air Act. As we noted in the *FY 2023 Management Challenges report*, the governing body had four vacancies at the end of 2021, which left one person to serve as the lone board member and chairperson. Two new board members began terms in February 2022. But the chairperson resigned in July 2022, leaving the board membership at two for several months until a third member's term began in February 2023. It took an average of over seven-and-a-half months to nominate, confirm, and appoint the three board members serving as of September 2023. That figure was ten-and-a-half months just a few years earlier,² and it has historically

² U.S. Env't Prot. Agency Off. of Inspector Gen., [20-N-0218](#), *Fiscal Year 2020 U.S. Chemical Safety and Hazard Investigation Board Management Challenges* (2020).

stretched to as long as 18.0 months.³ The appointment process, the risk of additional resignations, and natural attrition put the CSB's governing body at risk of continuing cycles of unfilled membership that could reduce the effectiveness of the governing body or stall its initiatives.

Lack of Full Board Puts CSB Operations at Risk

Having a full board helps to ensure the continuity of the CSB's operations in the event of board member attrition or conflicts. Our *Fiscal Year 2022 U.S. Chemical Safety and Hazard Investigation Board Management Challenges report*, issued November 10, 2021, detailed the risks of having just one board member, and our *FY 2023 Management Challenges report* stated that the CSB's operations remained at risk with a board of two. The CSB's governing body will continue to operate in an impaired state until its full membership is appointed.

Much of the risk we have previously identified has to do with the possibility of the board being reduced to a single member, which would render it unable to perform many of its basic functions, such as passing a budget, approving investigative reports, and hiring senior personnel. A revised board order states that the board cannot perform certain functions with a quorum of one. Even with two members, an unbreakable tie vote could hamper decision-making on basic functions and other vital matters.

Any number of events could reduce the board again to two or fewer members, including natural attrition. Despite the CSB's governing body operating at only 60 percent of its authorized membership, the lack of members leaves it with no less responsibility. As noted, Congress intended the five technically qualified board members to perform specific duties that cannot be delegated to CSB staff. The CSB has been working to clear a long-standing backlog of investigations, but it may be hampered in opening new ones because, with fewer than the five board members intended by the Clean Air Act, the CSB may lack sufficient leadership resources to oversee the investigations. Further, the board members significantly help advocate for the adoption of the CSB's recommendations by industry, labor, the government, and other entities. Board members also regularly meet with leaders of other federal agencies and participate in conferences, safety forums, and committees. Three board members are unlikely to have the time to perform the required duties of five members or the same breadth of technical qualifications. Without a full governing body, the CSB is at risk of not functioning as required and intended under the Clean Air Act. Board members require presidential nomination and Senate confirmation, subjecting authorization efforts to political processes and other factors outside the CSB's control or influence.

Conclusion

Although the Senate confirmed two new board members in 2022 and one in 2023, the organization still has only slightly more than half of its authorized board members. Having a full board is authorized under the Clean Air Act and is necessary for the CSB to operate as intended by the Act. The president should nominate and the Senate should confirm new board members as soon as possible, especially since the nomination and confirmation process has historically taken up to 18 months to complete.

³ U.S. Env't Prot. Agency Off. of Inspector Gen., *Fiscal Year 2023 U.S. Chemical Safety and Hazard Investigation Board Top Management Challenges* (2022).

Challenge 2: Minimizing Mission-Critical Staff Vacancies and Attrition Rates

Introduction and Overview

The CSB has struggled in recent years to reduce staff vacancies and turnover rates. Continued understaffing in management and nonmanagement ranks adversely affects the CSB's ability to investigate new safety incidents, complete existing investigations, and issue timely reports.



The CSB's limited investigative staff have focused on eliminating a long-standing backlog of investigations, resulting in investigators having been deployed to only two new incidents since January 2022. Meanwhile, the CSB has received hundreds of reports of accidental chemical releases since a new reporting rule took effect in March 2020,⁴ which has added to the workload. The CSB is planning to hire more investigative staff and expects to deploy investigators more frequently after the backlog is cleared. While we have noted improvement in hiring, we anticipate that the CSB will continue to face staffing-related challenges throughout FY 2024, which may continue to affect the CSB's productivity.

Understaffing and Attrition Rates Delay CSB Reporting

We identified understaffing as a management challenge in FY 2023, and the CSB continues to struggle in filling its ranks. For FY 2023, the CSB was allocated 49 full-time equivalent staff, but as of the end of the fiscal year, the number remained ten staff members shy of that total. According to the CSB, a total of seven professional staff members departed the CSB in FY 2022, and four left in FY 2023. While attrition rates improved in FY 2023, the CSB's attrition rates in recent years were about three times those of the EPA. Specifically, we found in OIG Report No. [22-N-0056](#), *Special Review of the U.S. Chemical Safety and Hazard Investigation Board Capabilities to Effectively Administer Its Programs and Operations*, issued September 7, 2022, that CSB attrition rates averaged 22 percent for FY 2019 through 2021. In contrast, we found that the EPA's average annual attrition rate for the same period was 7 percent. The attrition rates were among several mission-critical staffing problems affecting the CSB that we detailed in OIG Report No. 22-N-0056.

Our report also noted that the CSB had nine management staff departures during FY 2021.⁵ Some of the positions vacated had yet to be permanently filled as of September 19, 2023. The CSB has been operating without a general counsel since November 2020, although an acting general counsel was appointed in July 2022. The director of administration position had been vacant for more than two years and remained so as of September 2023. The director of human resources and the chief information

⁴ *Incident Reporting Rule Submission Information and Data*, U.S. Chemical Safety and Hazard Investigation Board, <https://www.csb.gov/news/incident-report-rule-form/> (last accessed October 3, 2023).

⁵ U.S. Env't Prot. Agency Off. of Inspector Gen., [22-N-0056](#), *Special Review of the U.S. Chemical Safety and Hazard Investigation Board Capabilities to Effectively Administer Its Programs and Operations* (2022).

officer positions, however, had been filled by that time.⁶ Other long-standing executive-level vacancies have proven difficult to keep filled. In February 2022, the CSB briefly filled the managing director position that had been vacant for over two years, but that individual subsequently tendered a resignation in May 2022 and vacated the position by the following July.⁷ While the general counsel and the managing director positions had not been advertised in FY 2023, the director of administration position had been advertised in January 2023. However, the CSB chairperson did not select a candidate from more than 50 applicants.

Hiring has long been a challenge for the CSB. We detailed in a special review that, since FY 2018, Congress has allocated the CSB significantly more full-time equivalent employee positions than it has been able to fill. For FY 2021, the difference between congressionally allocated and actual full-time equivalents at the CSB was 24 percent. By comparison, the difference at the EPA, a much larger agency, was less than 1 percent for the same fiscal year.⁸ The actual number of full-time equivalents at the CSB remained about one-quarter below budgeted numbers in FY 2022. That figure improved slightly in FY 2023 to 20 percent short of allocated numbers.

Of particular concern are the vacancies that persist among the CSB's cadre of investigators, which limit the agency's ability to perform core functions. New requirements have added to the CSB's investigative workload. In August 2022, the CSB had 12 chemical incident investigators working on 17 open investigations.⁹ By the following August, the CSB had closed 12 backlogged investigations in the prior 12 months, which board Chairperson Steve Owens said is the highest rate of productivity in the CSB's history. But investigators had only deployed to two new incidents since January 2022—a fatal incident at the BP-Husky refinery in Oregon, Ohio, in September 2022, and a fatal explosion at the R.M. Palmer chocolate factory in West Reading, Pennsylvania, in March 2023. What is more, the CSB's Office of Investigations personnel are responsible for reviewing and following up on the over 270 chemical release reports that have been submitted under the Accidental Release Reporting Rule that took effect in March 2020.¹⁰

A CSB director reported that, as of July 1, 2023, the CSB had hired an additional supervisory investigator and three chemical incident investigators, which fulfilled a commitment outlined in its FY 2023 budget request and brought the total number of investigators on staff to 17. The CSB was also committed to hiring three more chemical incident investigators in FY 2024. As of August 2023, the CSB was also working to onboard three chemical engineers who accepted offers via the Pathways Internship Program. Hiring is likely to remain an issue for the CSB, given the number of vacancies and various concerns raised by professional staff and board members. The CSB's human resources director has been focused on

⁶ *CSB Directory*, U.S. Chemical Safety and Hazard Investigation Board, <https://www.csb.gov/about-the-csb/csb-directory/> (last accessed September 11, 2023).

⁷ *Special Review of the U.S. Chemical Safety and Hazard Investigation Board Capabilities to Effectively Administer Its Programs and Operations*, *supra* note 5.

⁸ *Special Review of the U.S. Chemical Safety and Hazard Investigation Board Capabilities to Effectively Administer Its Programs and Operations*, *supra* note 5.

⁹ *Special Review of the U.S. Chemical Safety and Hazard Investigation Board Capabilities to Effectively Administer Its Programs and Operations*, *supra* note 5.

¹⁰ *Incident Reporting Rule Submission Information and Data*, *supra* note 4.

recruitment efforts. Consequently, an anticipated workforce analysis that was in process in July 2022 has yet to be completed, according to the CSB. However, the CSB is a microagency, which is an agency employing fewer than 100 full-time equivalents. As such, it does not have the ability to do its own hiring. It, therefore, relies on a service provider, an arrangement that two directors and a board member said presents challenges to onboarding mission-critical personnel. The CSB reported that board members have been working to improve the hiring process. Board members also reported that the CSB has been working to improve employee morale and retention through various engagement activities, awards, and other measures.

Conclusion

The long-standing hiring and attrition challenges at the CSB will take time to address. We recognize that the CSB has made progress in clearing its backlog, which should free up investigators for future deployments, but the CSB will not be able to sustain historical levels of productivity or add significantly to its workload without addressing its staffing needs. We also note that the CSB has made some progress in hiring staff for key positions, such as the chief information officer and several chemical incident investigators, but efforts to lower attrition rates by improving senior management communication and promoting a healthy workplace environment remain critical to overcoming the CSB's staffing challenges. The lack of staffing and the attrition rates at the CSB hinder its ability to deploy to new incidents, delay the completion of investigations, and reduce the timeliness of reports, all of which affect the CSB's ability to meet its mission of protecting workers, the community, and the environment.

Challenge 3: Improving Cybersecurity

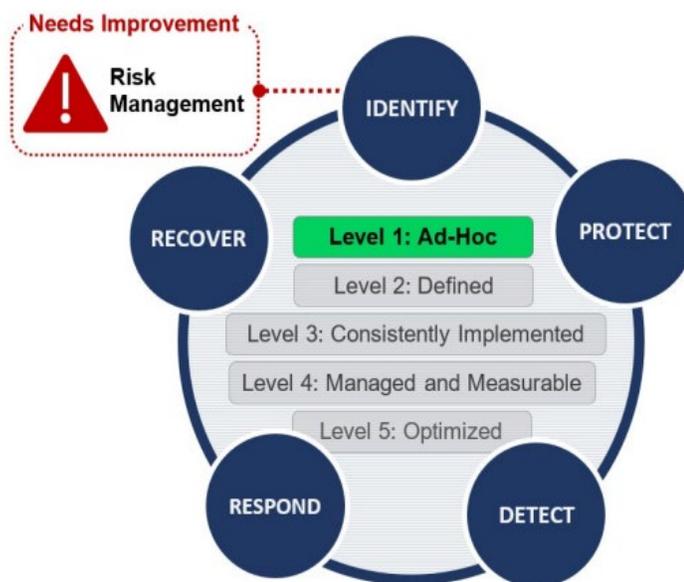
Introduction and Overview

Across the federal government, cybersecurity remains a high-risk concern, given the increased threat from sophisticated cyberattacks targeting critical infrastructure. This is no less true for the CSB. Our oversight of the CSB has consistently identified deficiencies in the CSB’s information security program. Since we identified the need for improved cybersecurity as an FY 2023 management challenge, the CSB has demonstrated a commitment to address this issue by implementing corrective actions from prior OIG reports. Nonetheless, given the threat from malicious cyberactors and the repeated poor assessments of the CSB’s information security program, we are continuing to highlight the need for further improvement and continued vigilance in cybersecurity.



Heightened Cyberthreats Require Continued Information Security Improvement

The CSB must continue to improve its information security program to combat rising cyberthreats. The increased governmentwide threat from sophisticated cyberattacks targeting critical infrastructure led the Government Accountability Office to include *ensuring the cybersecurity of the nation* in its 2023 *High-Risk List*.¹¹ Our evaluations of the CSB’s information security program, however, have repeatedly identified deficiencies and low overall maturity ratings. OIG Report No. [23-E-0016](#), *The CSB Is at Increased Risk of Losing Significant Data as Vulnerabilities Are Not Identified and Remediated Timely*, issued May 2, 2023, calculated the CSB’s overall maturity at the lowest level possible.



The CSB’s FY 2022 maturity level, according to the OIG’s evaluation of the CSB’s information security program and associated domains based on reporting metrics for the Federal Information Security Modernization Act of 2014. (EPA OIG image)

Specifically, in OIG Report No. 23-E-0016, our evaluation of the CSB’s compliance with U.S. Department of Homeland Security FY 2022 reporting metrics for the Federal Information Security Modernization Act of 2014 calculated the information security program’s overall CyberScope maturity rating as “Level 1, Ad

¹¹ U.S. Gov’t Accountability Off., [GAO-23-106203](#), High-Risk Series: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas (2023).

Hoc.”¹² This means that the CSB’s relevant policies, procedures, and strategies were not formalized and activities were performed in an ad hoc, reactive manner. The calculated rating was based on core CyberScope metrics as detailed in the May 2, 2023 report.

OIG Report No. 23-E-0016 also identified that the CSB needed to continue improvements by resuming monthly vulnerability scanning, which was discontinued in FY 2022 because of staffing issues. The report evaluated the CSB’s progress toward addressing deficiencies identified in the prior year’s Federal Information Security Modernization Act of 2014 evaluation report, which recommended that the CSB improve its cybersecurity program by consistently storing system backups at an off-site location a sufficient distance from its headquarters to prevent significant loss of data. OIG Report No. [22-N-0058](#), *Data Vulnerabilities Could Impact the CSB’s Ability to Carry Out Its Obligations Under the Federal Information Security Modernization Act of 2014*, issued September 22, 2022, identified both the discontinuation of periodic vulnerability scans and the lack of regular off-site backups as being among several vulnerabilities with potential significant impacts on the confidentiality, integrity, and availability of the CSB’s information technology resources.

In OIG Report No. [23-E-0016](#), we did find signs of improvement. As the CSB noted in its response to that report, the CSB had been without a chief information officer for nearly the entirety of FY 2022, but it onboarded a chief information officer in September 2022. It has also implemented Cybersecurity and Infrastructure Security Agency programs, including the Vulnerability Disclosure Program and the Continuous Diagnostics and Mitigation Program, to address the recommendations in our previous report. Additionally, the CSB has established a process to perform daily backups of critical servers to an off-site location. The CSB also noted that there is about a one-year lag between our Federal Information Security Modernization Act of 2014 evaluations and the CSB’s program status as of September 2023, which means our latest review has not captured all efforts to improve cybersecurity. Our subsequent reviews will determine the effectiveness of the CSB’s corrective actions.

Conclusion

Since onboarding its new chief information officer, the CSB has taken steps to improve its cybersecurity posture and address the OIG’s cybersecurity recommendations. However, the CSB needs to formalize and document all relevant policies, procedures, and strategies for its information security program and consistently implement them. The risk that vulnerabilities may be exploited is elevated at the CSB’s information security maturity level. The CSB’s continued improvement to its cybersecurity posture and CyberScope maturity level is necessary to provide for the protection, reliability, and availability of its data.

¹² CyberScope is a web-based application that collects data from each federal agency to assess information technology security, relying on live data feeds and data entry by agency staff.

Challenge 4: Promoting Ethical Conduct

Introduction and Overview

According to the Standards of Ethical Conduct for Employees of the Executive Branch, “[p]ublic service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.”¹³ As the supervising ethics office for the executive branch, the OGE is responsible for evaluating federal agency ethics programs by conducting program reviews, including inspections, to assess agency compliance with statutory and regulatory ethics requirements.¹⁴ In July 2023, the OGE issued an inspection report for the CSB ethics program and identified areas of improvement that resulted in the issuance of ten recommendations for the CSB to address.¹⁵ Also in July 2023, we published a report of investigation that identified expenses the former chairperson improperly incurred in violation of federal statutes and regulations. Given the breadth and scope of the concerns noted in these reports, we have identified *promoting ethical conduct* as a top management challenge for the CSB.



OGE Inspection Report Findings Identify Need for a Stronger Ethics Program

When the OGE determines that an agency’s ethics program is not in substantial compliance with a statute or regulation, the OGE will issue a recommendation.¹⁶ The OGE inspection report for the CSB covered the period from October 29, 2021, through January 31, 2023, and resulted in ten recommendations to the CSB. The deficiencies that the OGE noted in the inspection report covered a range of issues, including the need for the CSB to have its ethics program appropriately staffed with a designated agency ethics official; concerns regarding timely collection, review, and certification of required financial disclosures; and the need for the CSB to provide ethics notices to new supervisors and training to employees who complete public financial disclosure reports.

As noted in the inspection report, the position of designated agency ethics official was vacant during the period covered by OGE’s review. As detailed in the inspection report, the former designated agency ethics official—the general counsel—terminated CSB employment in November 2020. As required by 5 C.F.R. § 2638.104(a), each agency head must appoint a designated agency ethics official who is “the employee with primary responsibility for directing the daily activities of the agency’s ethics program and coordinating with the Office of Government Ethics.” The CSB was without a permanent full-time designated agency ethics official until October 2023. The lack of a permanent designated agency ethics official to lead the ethics program and promote a culture of ethics within the CSB during the almost three-year gap raises concerns. While the appointment of a permanent ethics official is a positive step,

¹³ 5 C.F.R. § 2635.101(b).

¹⁴ U.S. Off. of Gov’t Ethics, [What Ethics Officials Should Know About Program Reviews](#) (last visited Oct. 25, 2023).

¹⁵ U.S. Off. of Gov’t Ethics, [23-35J](#), Ethics Program Inspection Report – United States Chemical Safety and Hazard Investigation Board (2023).

¹⁶ What Ethics Officials Should Know About Program Reviews, *supra* note 14.

the CSB needs to address its other ethics program deficiencies, as noted in the OGE report, and ensure its employees adhere to required ethical standards for federal government employees.

The recommendations issued in the inspection report regarding the need for timely collection and review of financial disclosures by CSB employees are also of significant concern. Financial disclosures—both public disclosures for employees who are presidentially appointed and Senate confirmed, or PAS, and employees in the Senior Executive Service who are non-PAS and confidential disclosures for designated career employees—serve the purpose of identifying and preventing potential ethical conflicts of interest between federal employees and any personal financial interests, as well as assisting ethics officials in providing counseling to employees.¹⁷ The OGE inspection report noted deficiencies related to the need to (1) timely collect and review non-PAS public financial disclosure reports, (2) timely collect and review confidential financial disclosure reports, and (3) provide notices regarding the need for financial disclosures to those prospective employees entering into designated positions. In particular, the OGE noted that, in the sample reviewed, the CSB certified and reviewed confidential financial disclosure reports in a timely manner only 50 percent of the time, or for seven of 14 reports, with one report being submitted more than 200 days after the employee was appointed. Similarly, two of four non-PAS public financial disclosure reports that the OGE reviewed were neither reviewed nor certified in a timely manner by the CSB.

The concern with ensuring that the CSB reviews and certifies public financial disclosure reports in a timely manner has been a pervasive issue. In the OGE’s August 2020 inspection report covering January to December 2019, a similar recommendation stated that the CSB needed to timely review and certify public financial disclosure reports.¹⁸ Although the 2020 inspection report noted that the CSB agreed with the recommendation and indicated a compliance date of August 2021, the issue remained unresolved, as reflected in the 2023 OGE report.

Finally, the 2023 OGE inspection report issued recommendations regarding the need for the CSB to provide necessary ethics information and training to employees. One recommendation provided that the CSB needs to ensure that new supervisors receive the required notice of their enhanced ethics-related responsibilities. Another recommendation noted the need for the CSB to ensure that all non-PAS public financial disclosure filers receive annual ethics training.

The CSB has been working to address the OGE report’s recommendations within the timelines OGE provided, according to the chairperson. For example, in addition to the designated agency ethics official, two other ethics officials have access to reporting systems and are providing staff with ethics training.

A bedrock of the Standards of Ethical Conduct for Employees of the Executive Branch is that federal employees cannot use their public office for private gain.¹⁹ A robust ethics program and training can assist employees in recognizing potential ethics concerns. Conversely, without robust training, CSB employees are at risk of not being fully aware of their ethical responsibilities.

The findings of our July 2023 [report](#) of investigation, for example, highlight the importance of ensuring employees at all levels understand their ethical responsibilities. In that report, we determined that a

¹⁷ 5 C.F.R. § 2634.104(a)–(b).

¹⁸ U.S. Off. of Gov’t Ethics, [20-40](#), Ethics Program Inspection Report – United States Chemical Safety and Hazard Investigation Board (2020).

¹⁹ 5 C.F.R. § 2635.702.

former CSB chairperson and chief executive officer improperly incurred almost \$100,000 in travel, furniture, and training expenses in violation of federal statutes and regulations. The report detailed the former chairperson's violation of federal travel regulations by using taxpayer funds for travel to and from the chairperson's residence in California and by not properly expensing other travel, resulting in the use of government funds for expenses that should have been the chairperson's personal responsibility. The report of investigation also concluded that the former chairperson's use of more than \$20,000 in government funds to furnish and redecorate her office in Washington, D.C., exceeded the \$5,000 statutory cap permitted on such expenses and that her selection of upgraded leather furniture was in violation of the *Federal Management Regulation*. Further, the report found that the former chairperson used more than \$20,000 in government funds for her own media training in violation of the Government Employees Training Act and Office of Personnel Management regulations.²⁰

Although the report of investigation did not address whether the chairperson's improper use of government funds constituted a violation of any ethical requirements, all government employees are required under their ethics obligations to protect and conserve federal property and to not use it for anything other than authorized activities.²¹ Ethics regulations also establish the principle that employees avoid situations that could give the appearance of violating the law or ethical standards.²² The former chairperson's use of government funds for personal expenses not only violated various federal statutes and regulations but also gives rise to an appearance of an ethics violation and potentially undermines the confidence of the public in the CSB.

Conclusion

According to the OGE, "[e]thical failures hurt our ability to fulfill our missions and erode the trust of citizens in their government," and public confidence is vital for government success.²³ As detailed in the OGE 2023 inspection report, the CSB needs to continue to improve its ethics program and its ethics culture, to include ensuring that public and confidential financial disclosure reports are timely reviewed and certified to prevent and identify conflicts of interest, and implementing robust training so that employees are aware of their ethical responsibilities. A demonstrated commitment to ethical behavior would empower board members and staff to make decisions that are ethically sound and build trust with external stakeholders.

²⁰ U.S. Env't Prot. Agency Off. of Inspector Gen., [23-N-0020](#), Report of Investigation: Katherine A. Lemos, Former Chairperson and Chief Executive Officer, U.S. Chemical Safety and Hazard Investigation Board (2023).

²¹ 5 C.F.R. § 2635.704(a).

²² 5 C.F.R. § 2635.101(b)(14).

²³ U.S. Off. of Gov't Ethics, [Memorandum to Agency Heads](#) (2018).



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U.S. Environmental Protection Agency

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