

SIGAR

**Special Inspector General for
Afghanistan Reconstruction**

SIGAR 23-04 Evaluation Report

U.S.-Provided Funds and Equipment to Afghanistan: An Assessment of Taliban Access to Assets Remaining in Country When the Afghan Government Collapsed



NOVEMBER
2022



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

November 9, 2022

The Honorable Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform
United States House of Representatives

The Honorable Stephen Lynch
Chair
Subcommittee on National Security
Committee on Oversight and Reform
United States House of Representatives

The Honorable James Comer
Ranking Member
Committee on Oversight and Reform
United States House of Representatives

The Honorable Glenn Grothman
Ranking Member
Subcommittee on National Security
Committee on Oversight and Reform
United States House of Representatives

This report responds to your September 10, 2021, request to (1) determine the extent to which the Taliban may have gained access to funds that U.S. agencies provided directly, or through multilateral trust funds, to the former Afghan government; (2) determine the extent to which the Taliban has access to U.S.-funded defense articles and other equipment; and (3) assess Department of Defense (DOD), Department of State (State), and U.S. Agency for International Development (USAID) plans to recover or secure U.S. funds and U.S.-funded defense articles and other equipment remaining in Afghanistan when the government collapsed.¹

In summary, we found that the Taliban likely gained access to approximately \$57.6 million in funds that DOD, State, and USAID provided to the former Afghan government. Although DOD reported that it left at least \$7.1 billion in U.S.-funded defense articles and equipment in Afghanistan when the U.S. departed, State provided us limited, inaccurate, and untimely information about the equipment and funds it left behind.² The three agencies do not have plans to recover any of the funds or equipment identified.

To do our work, we reviewed prior audit and evaluation reports, documentation provided by the agencies, and other publicly available documentation regarding the funding and equipment provided to Afghanistan. We also interviewed current and former officials from DOD, State, USAID, the Department of the Treasury, and the Federal Reserve Bank of New York, as well as former Afghan government and Da Afghanistan Bank officials. However, we encountered unreasonable delays and a lack of cooperation from DOD, State, and USAID throughout the course of this evaluation, which limited our ability to respond comprehensively or in a timely manner to your request.³

We provided a draft of this report to DOD, State, and USAID for review and comment. We received a written response from State's Director, Office of Afghanistan Affairs, Bureau of South and Central Asian Affairs on

¹ This evaluation is one of five we initiated in response to the congressional request. We have published three evaluations, with the remaining work to be published later in 2022 (see, SIGAR, *Status of U.S. Funding and Activities for Afghanistan Reconstruction: On-budget Assistance Has Ended, Off-budget Assistance Continues, and Opportunities May Exist for U.S. Agencies to Recover Some Unliquidated Funds*, SIGAR 22-20-IP, April 22, 2022; SIGAR, *Collapse of the Afghan National Defense and Security Forces: An Assessment of the Factors That Led to Its Demise*, SIGAR 22-22-IP, May 12, 2022; SIGAR, *Afghan Civil Society: The Taliban's Takeover Risks Undoing 20 Years of Reconstruction Accomplishments*, SIGAR 23-02-IP, October 2022).

² USAID did not provide any defense articles or equipment to the Afghan government.

³ We notified Congress of these delays and lack of cooperation on June 22, 2022. SIGAR, Letter to Congress, June 22, 2022.



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

October 5, 2022, which is reproduced in appendix II. State also included correspondence challenging SIGAR's jurisdiction; that correspondence is also reproduced in appendix II. USAID did not provide comments in response to our draft report. DOD officials from the Under Secretary of Defense for Policy provided technical comments to the report, which we incorporated as appropriate.

State and USAID officials are prohibited by statute from preventing SIGAR's work, and are required to provide information and assistance to SIGAR upon request.⁴ Their refusal to provide certain requested information and assistance is a violation of their statutory duty to cooperate with SIGAR's oversight work. This lack of cooperation is a stark deviation from the cooperation that SIGAR received from both agencies over the course of the prior decade. Our detailed replies to State and USAID's justifications for their noncooperation are reproduced in appendix III.

SIGAR conducted this work under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended; and in accordance with the *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency.

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

⁴ Pub. L. No. 110-181, § 1229(h)(5).

ABBREVIATIONS

ANDSF	Afghan National Defense and Security Forces
DOD	Department of Defense
DOD IG	Department of Defense Office of Inspector General
State	Department of State
State INL	Bureau of International Narcotics and Law Enforcement Affairs
USAID	U.S. Agency for International Development

THE TALIBAN LIKELY GAINED ACCESS TO FUNDS THAT U.S. AGENCIES PROVIDED TO THE FORMER AFGHAN GOVERNMENT

From 2002 through August 15, 2021, the U.S. Departments of Defense (DOD) and State (State), and the U.S. Agency for International Development (USAID) provided about \$17.3 billion in on-budget assistance—funding provided directly to the Afghan government, or through multilateral trust funds—to the Afghan government.⁵ DOD, State, and USAID accounted for the transfer of these funds to the Afghan government at the time of their disbursement. However, once the money was transferred, U.S. agencies lost visibility over those funds and relied on the Afghan government to disburse funds for their intended purposes. Similarly, the agencies relied on the multilateral trust funds' managers to provide updates on disbursements to the Afghan government and to ensure that funds were disbursed for intended purposes. Based on available information, we determined that funds transferred to the Afghan government prior to fiscal year 2021 were likely disbursed by the former Afghan government, did not remain in Afghan government-controlled accounts for extended periods, and therefore, would not have been available to the Taliban following their takeover in August 2021.⁶

During fiscal year 2021, from October 1, 2020, until the Taliban returned to power on August 15, 2021, DOD, State, and USAID provided the following amounts directly to the former Afghan government:

- \$674 million provided by DOD, with the last disbursement of about \$45.6 million in the fourth quarter of 2021.
- \$10.8 million provided by DOD and State to the Law and Order Trust Fund for Afghanistan (\$8.8 million from DOD, and \$2 million from State) in fiscal year 2021.⁷
- Approximately \$10 million provided by USAID for two on-budget programs (\$4.3 million for the Textbook Printing and Distribution II project, and \$5.7 million for the Power Transmission Expansion and Connectivity project).
- \$200 million provided by USAID to the World Bank-managed Afghanistan Reconstruction Trust Fund, with the last disbursements, totaling \$144.3 million, made on January 22, 2021.⁸

With the exception of DOD recouping Law and Order Trust Fund for Afghanistan monies, the three agencies did not provide, or were unable to provide, SIGAR with information showing the amount of on-budget assistance funds they left in the country at the time of the Taliban's takeover.⁹ Based on the limited information available, the agencies' final, combined direct payments to the Afghan government in fiscal year 2021, prior to August

⁵ This amount included \$11.4 billion in government-to-government transfers, consisting of \$10.5 billion from DOD, \$776.8 million from USAID, and \$85.2 million from State. The amount also included almost \$6 billion to multilateral trust funds, consisting of \$4.1 billion to the Afghanistan Reconstruction Trust Fund, \$1.7 billion to the Law and Order Trust Fund for Afghanistan, and \$153.7 million to Afghanistan Infrastructure Trust Fund (see, SIGAR, *Quarterly Report to the United States Congress*, SIGAR-2022-QR-3, July 30, 2022, p. 42). For purposes of this evaluation, we focused on the on-budget assistance the U.S. provided to the Afghan government directly or through multilateral trust funds because those are the funds to which the Taliban may have gained direct access following the collapse of the Afghan government. In contrast, off-budget funds were provided to implementing partners, circumventing Afghan government access or control.

⁶ The limited information available and the lack of cooperation from the agencies prevented precise calculations of funds that may have remained in Afghan government-controlled accounts.

⁷ DOD requested the reimbursement of all its unspent Law and Order Trust Fund for Afghanistan contributions on September 10, 2021. On April 14, 2022, DOD officials told SIGAR that all of the requested funds had been reimbursed to the U.S. Department of the Treasury.

⁸ As we previously reported in *Status of U.S. Funding and Activities for Afghanistan Reconstruction* (SIGAR 22-20-IP) in April 2022, the Afghanistan Reconstruction Trust Fund disbursed more than \$135 million from the total donor contribution for reconstruction activities in Afghanistan, but these disbursements did not include U.S. contributions. However, we are including this number because we have data that shows the money was provided to the Afghanistan Reconstruction Trust Fund, even if it was not disbursed to the Afghan government.

⁹ DOD did not fully respond to our requests for this evaluation, but did provide some of the requested information for a previous report: SIGAR, *Status of U.S. Funding and Activities for Afghanistan Reconstruction: On-budget Assistance Has Ended, Off-budget Assistance Continues, and Opportunities May Exist for U.S. Agencies to Recover Some Unliquidated Funds*, SIGAR 22-20-IP, April 22, 2022.

15, 2021, totaled approximately \$57.6 million, with \$45.6 million provided by DOD, \$2 million provided by State, and \$10 million provided by USAID. It is likely that some portion of the \$57.6 million remained in Afghan government-controlled accounts when the Taliban returned to power and assumed control of Afghan ministries, including the Ministry of Finance.

DOD REPORTED THAT ABOUT \$7.1 BILLION IN DEFENSE ARTICLES AND EQUIPMENT IT PROVIDED THE AFGHAN GOVERNMENT REMAINED IN AFGHANISTAN WHEN THE U.S. MILITARY DEPARTED; STATE PROVIDED LIMITED, INACCURATE, AND UNTIMELY INFORMATION ABOUT THE DEFENSE ARTICLES IT LEFT BEHIND

In March 2022, DOD reported to Congress that approximately \$7.1 billion of transferred defense articles and equipment remained in Afghanistan when the Taliban took control in August 2021.¹⁰ U.S. and allied forces conducted ad-hoc demilitarization efforts at Hamid Karzai International Airport in Kabul and the U.S. Embassy–Kabul Compound in August 2021. Those efforts included rendering inoperable 70 Mine Resistant Ambush Protected tactical vehicles and 80 aircraft. U.S. Air Force personnel assisted in the decommissioning effort, which included clogging fuel lines, removing or destroying high tech equipment, and physically damaging cockpits and avionics.¹¹ In addition to the ad-hoc destruction of some equipment, DOD reported to us that much of the remaining equipment required specialized maintenance that DOD contractors previously provided, and that absent this support, the operational readiness of that equipment would continue to degrade over time.¹² However, an unclassified March 2022 U.S. Defense Intelligence Agency memorandum stated that the Taliban claimed to have repaired seven former Afghan Air Force aircraft.¹³ The Defense Intelligence Agency reporting indicates that the Taliban may have obtained a degree of operation and maintenance capability.

Furthermore, although DOD reported \$7.1 billion in equipment left in Afghanistan that was previously provided to the Afghanistan government and the Afghan National Defense and Security Forces (ANDSF), the department has struggled for years with accurately accounting for the equipment it provided to the ANDSF. Since at least 2009, SIGAR and the DOD Office of Inspector General (DOD IG) have published reports noting accountability shortfalls and issues with DOD’s processes for tracking equipment in Afghanistan. For example, DOD IG found that the department did not maintain complete accountability of night-vision devices procured for the ANDSF.¹⁴ We also previously reported that DOD did not meet its own oversight requirements for sensitive equipment transferred to the Afghan government and ANDSF, and had not inventoried 60 percent of defense articles with enhanced monitoring requirements—those containing sensitive technology—between May 2019 and April 2020 due to security constraints and travel limitations.¹⁵

¹⁰ The DOD figures were contained in a non-public report. From 2002 through August 15, 2021, the United States government—primarily DOD and State—provided about \$18.6 billion to arm and equip the Afghan National Defense and Security Forces (ANDSF). The equipment included over 96,000 ground vehicles, 51,180 general purpose or light tactical vehicles, 23,825 High Mobility Multipurpose Wheeled Vehicles, nearly 900 armored combat vehicles, 427,300 weapons, and 17,400 helmet-worn night vision devices, among other items. In addition, as of July 31, 2021—approximately 2 weeks prior to the Taliban’s takeover—DOD records indicate that the Afghan Air Force had 162 U.S.-provided aircraft in its inventory, of which 131 were usable.

¹¹ DOD officials told us in July 2022 that Turkey owned some of the tactical vehicles. In addition, DOD said 78 of the 80 aircraft were Afghan Security Forces Fund-procured.

¹² The information DOD provided did not identify the full inventory of what was still in use when the Taliban took over, nor a list of equipment that was destroyed prior to the U.S. troop withdrawal.

¹³ Defense Intelligence Agency, “Fiscal Year 2022 Quarter 2 SIGAR Memo #1,” March 15, 2022, p. 1.

¹⁴ DOD IG, *Accountability of Night Vision Devices Procured for the Afghan National Security Forces Needs Improvement*, DODIG-2012-103, June 18, 2012.

¹⁵ SIGAR, *Military Equipment Transferred to the Afghan Government: DOD Did Not Conduct Required Monitoring to Account for Sensitive Articles*, SIGAR 21-11-AR, December 11, 2020.

In addition, DOD told us in March 2022 that it used the Core Inventory Management System to track the amount of equipment with the ANDSF.¹⁶ However, since at least 2008, SIGAR and DOD IG have repeatedly cited limitations with the utility and accuracy of that system. For example, in July 2014, we reported

...CSTC-A SAO officials stated that the information contained in CoreIMS [Core Inventory Management System] is incomplete and cannot be relied upon for accurate information. The officials concluded that this is due, in part, to the Afghan National Army not entering information correctly into the system. A 2008 report by the DOD IG also raised concerns about the Afghan National Army's record keeping process including CoreIMS [Core Inventory Management System]. As for weapons provided to the ANP, there is no standardized or automated system to account for them. Instead, the Afghan National Police used a combination of hard copy documents, handwritten records, and some Microsoft Excel spreadsheets to maintain inventory records.¹⁷

Similarly, 6 years later, DOD IG reported in July 2020 that the ANDSF only used the system to track equipment at 78 of 191 sites.¹⁸ As a result of the issues with the Core Inventory Management System and the regularly documented issues with DOD's ability to account for equipment provided to the Afghan government, it remains unclear whether the \$7.1 billion figure reported to Congress is accurate.¹⁹

State did not provide us any dollar figures or identify any transferred equipment it purchased that remained in Afghanistan when the Taliban took control in August 2021. Moreover, throughout the course of this evaluation, State provided erroneous information and did not provide information from all bureaus that left behind equipment and facilities to which the Taliban may now have access. Specifically, from October 2021 through September 2022, only State's Bureau of International Narcotics and Law Enforcement Affairs (State INL) provided us information concerning defensive articles or equipment it provided to the Afghan government. State INL officials told us that it transferred 2,828 pieces of U.S.-funded equipment to the Afghan government from December 2001 through August 2021. The equipment State INL provided included vehicles, field gear, communications equipment, computer equipment, laboratory equipment, investigative equipment, and other miscellaneous items. State INL estimated that only 494 pieces of that equipment (17 percent) may have been in use when the Afghan government collapsed and the Taliban took over in August 2021. However, State INL acknowledged that there are gaps in its records, so its inventory numbers may not be accurate or complete. Based on information we received during the course of other SIGAR audits and reviews prior to September 2022, we know that State's Antiterrorism Assistance program also left behind ANDSF training facilities and equipment to which the Taliban likely now have access.²⁰ In September 2022 comments on a draft of this report, State acknowledged that even though some program officials had previously provided information to State's Bureau of the Comptroller and Global Financial Services for release to SIGAR, the office "mistakenly" held back that information that impacted our work.²¹ Despite requesting information in November 2021, State did not forward the information to us until September 2022, and we incorporated it where appropriate. The

¹⁶ The Core Inventory Management System is an internet-based, property accountability system placed into service through U.S.-funded contracts to track equipment, weapons, and vehicles across the ANDSF.

¹⁷ SIGAR, *Afghan National Security Forces: Actions Needed to Improve Weapons Accountability*, SIGAR 14-84-AR, July 18, 2014. See also, DOD IG, *Assessment of Arms, Ammunition, and Explosives Control and Accountability; Security Assistance; and Sustainment for the Afghan National Security Forces*, SPO-2009-001, October 24, 2008.

¹⁸ In September 2022 comments on our draft report, DOD disputed the findings from the DOD IG report that questioned the system's accuracy and application within ANDSF. See, DOD IG, *Audit of Combined Security Transition Command-Afghanistan's Implementation of the Core Inventory Management System Within the Afghan National Defense and Security Forces*, DODIG-2020-104, July 10, 2020.

¹⁹ In September 2022 comments on our draft report, DOD acknowledged that its \$7.1 billion figure it reported to Congress is based on the best available data and it is possible this total might be slightly lower if more precise data were available.

²⁰ See SIGAR, *Department of State Anti-Terrorism Assistance Program in Afghanistan: Security Concerns Prevented State from Fully Monitoring and Evaluating the Program, And Up to \$32 Million in Assets May Be in the Taliban's Possession*, SIGAR 23-01-AR, October 4, 2022.

²¹ In accordance with State protocol, SIGAR generally submits requests for information through State's Bureau of the Comptroller and Global Financial Services. However, that bureau did not provide all responsive materials to SIGAR that were submitted by the other State bureaus.

new information included an inventory of program assets such as vehicles (armored and unarmored), weapons, and other assets used for training that State provided to the former Afghan government. The estimated total value of State's Antiterrorism Assistance program assets handed over to the Afghan government was approximately \$28.2 to \$32.2 million.

USAID did not provide any defense articles or equipment to the Afghan government. As such, USAID did not identify any such equipment that remained behind and possibly accessible to the Taliban.

DOD, STATE, AND USAID DO NOT HAVE PLANS TO RECOVER OR SECURE ANY OF THE IDENTIFIED U.S. FUNDS OR EQUIPMENT LEFT IN AFGHANISTAN

DOD, State, and USAID do not have plans to recover or secure any of the money or equipment they left in Afghanistan in August 2021. DOD officials told us in April 2022 that it would not be feasible to recover Afghan Security Forces Fund-procured materiel transferred to the former Afghan government and ANDSF due to United States not having a diplomatic relationship with the Taliban, and the inability to enter the country and safely retrieve equipment. DOD also told us it had attempted to retrieve funds—up to \$45.6 million—that the Afghan government possessed when the government collapsed, but could not due to the collapse of the Afghan banking system.

State INL officials told us in February 2022 that they were working through a pre-existing end-use monitoring contract with a private company that has the potential to maintain visibility on some U.S.-provided equipment and provide information on the extent to which the Taliban are using it. However, State did not provide us with information about whether work under that contract has begun, or to what extent it has been successful. Although State told SIGAR that INL was in the process of capturing some multilateral trust funds, State did not provide any support for their claim that they were working to recover any undisbursed on-budget funding—up to \$2 million—it provided to the former Afghan government that may have been accessible to the Taliban when they returned to power.

USAID stopped its two on-budget projects in August 2021, the Power Transmission Expansion and Connectivity project and the Textbook Printing and Distribution II project. USAID did not provide complete responses to our requests for information on plans or strategies to recover the \$10 million in funds that may have been accessible to the Taliban—\$4.3 million it disbursed in 2021 for the Textbook Printing and Distribution II project and \$5.7 million it disbursed in 2021 for the Power Transmission Expansion and Connectivity project. In addition to the on-budget funds provided to the Afghan government, USAID does not plan to recover any of the \$200 million it provided to the World Bank in fiscal year 2021 for the Afghanistan Reconstruction Trust Fund. As we reported above, USAID did not provide information about how much of that money actually remained in accounts controlled by the former Afghan government when the Taliban returned to power. The World Bank continues to provide funds from the Afghanistan Reconstruction Trust Fund for reconstruction activities. In June 2022, the World Bank approved \$793 million in Afghanistan Reconstruction Trust Fund monies for projects that are expected to provide urgent and essential food, livelihood, and health services to the people of Afghanistan.

AGENCY COMMENTS

We provided a draft of this report to DOD, State, and USAID for review and comment. We received a written response from State's Director, Office of Afghanistan Affairs, Bureau of South and Central Asian Affairs on October 5, 2022, which is reproduced in appendix II. In its comments, State included correspondence challenging SIGAR's jurisdiction; that correspondence is also reproduced in appendix II. DOD provided technical comments, which we incorporated as appropriate, and USAID did not provide comments.

State commented that the department "disagrees with SIGAR's characterization in the draft report that 'State provided us limited, inaccurate, and untimely information about the equipment left behind,' and that 'State

provided erroneous information and did not provide information from all the bureaus that left behind equipment and facilities that the Taliban may now have access.” For example, State said that the report does not mention the Bureau of Political-Military Affairs’ communication to us regarding end-user monitoring in Afghanistan or the “the hundreds of documents” the Bureau of Diplomatic Security provided to SIGAR.

State’s comments about its cooperation are misleading, inaccurate, and disregard important context and details about when and how State provided information for this report. From October 2021 (when we initiated this evaluation) through June 2022 (when we provided a first draft of this report to State for review and comment), State INL was the only bureau to provide requested information. During this period, State’s Bureau of Political-Military Affairs did not provide complete or accurate information for our questions about the equipment it provided to the former Afghan government that was left behind. For example, the Bureau of Political-Military Affairs told us in March 2022 that State did not transfer any equipment to the Afghan government. However, we knew this statement was inaccurate and misleading based on information we obtained from other sources and from our prior work. We know, for example, State provided over \$1 billion to train and equip the Afghan National Army, and State’s Antiterrorism Assistance Program in Afghanistan left behind up to \$32 million in assets that were transferred to the Afghan government in August 2022.²² The bureau also stated that it did not maintain documentation related to transferred material including weapons, though some other bureaus within State did so. The bureau declined to answer most of our questions, directing us to instead contact DOD, which we did.

Furthermore, in September 2022, after reviewing a draft of this report, State acknowledged that it failed to provide us with information that the Bureau for Diplomatic Security had forwarded to State’s Bureau of the Comptroller and Global Financial Services in response to our November 2021 request for information.²³ While State provided the information in September 2022, it was nearly a year after our request and after receiving a draft of this report. Nevertheless, we incorporated the information provided in September 2022, where appropriate.

State also commented in its response to our draft that “any cooperation with SIGAR is without prejudice to the unresolved question about SIGAR’s statutory mandate raised by the Department’s April 25, 2022, and July 8, 2022, letters to SIGAR, enclosed.” State’s letters to SIGAR are reproduced in appendix II. Our replies to the State and USAID letters are reproduced in appendix III. Both our General Counsel and Inspector General have explained to State and USAID leadership how their offices’ failure to cooperate with certain SIGAR requests violates those agencies’ statutory duty to provide information and assistance to SIGAR upon request. State and USAID officials are prohibited from preventing SIGAR’s work and are required to provide information and assistance to SIGAR, so long as it is practicable to do so and not legally prohibited.²⁴ State and USAID have not identified any impracticability to or legal prohibition against providing information or assistance to SIGAR in support of this review. Therefore, their refusal to provide certain requested information and assistance is a violation of their duty to cooperate with SIGAR’s oversight work.

²² State provided more than \$1 billion to train and equip the Afghan National Army from 2002 through 2008. State did not provide information on funding provided to the Afghan National Army after 2008. For information related to State’s Anti-Terrorism Assistance Program in Afghanistan, see SIGAR, *Department of State Anti-Terrorism Assistance Program in Afghanistan*, SIGAR 23-02-IP, October 4, 2022.

²³ In accordance with State protocol, SIGAR generally submits requests for information through State’s Bureau of the Comptroller and Global Financial Services. However, that bureau failed to provide all responsive materials to SIGAR that were submitted by the other State bureaus.

²⁴ Pub. L. No. 110-181, § 1229(h)(5).

Appendix I - SCOPE AND METHODOLOGY

To carry out this evaluation we interviewed current and former officials from the U.S. Departments of Defense (DOD), State (State), and Treasury, the U.S. Agency for International Development (USAID), and the Federal Reserve Bank of New York, as well as former Afghan government and Da Afghanistan Bank officials. We also requested documentation from DOD, State, and USAID. For example, to help quantify Taliban access to U.S. government on-budget assistance, we requested information from DOD on the Afghanistan Security Forces Fund, as well as information from State and USAID for processing on-budget disbursement transactions from a U.S. financial entity to an Afghan financial entity. To determine the extent to which the Taliban has access to U.S.-funded defense articles and other equipment, we requested information from DOD, State, and USAID on the type or model of item, and quantity of funded defense articles and other equipment transferred to the Afghan government that were in use at the time of the Afghan government's collapse; were destroyed prior to collapse; or had been removed from the country prior to collapse. To identify DOD, State, and USAID plans to recover or secure U.S. funds and U.S.-funded defense articles that remained in country when the Afghan government collapsed, we requested documentation from DOD, State, and USAID to show how each agency identified or secured equipment, funds, or assets previously provided, as well as tracked the extent to which the Taliban and other malign groups used U.S.-provided equipment to surveil, coerce, or combat Afghan civilians, resistance groups, and former ANDSF personnel. We encountered unreasonable delays and a lack of cooperation from DOD, State, and USAID throughout the course of this evaluation, which limited our ability to comprehensively address all our objectives.

We conducted our work in Arlington, Virginia, from September 2021 through November 2022, in accordance with *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the lack information provided and evidence obtained hindered our ability to provide complete, accurate findings and conclusions based on our evaluation objectives. SIGAR performed this evaluation under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended.

Appendix II - COMMENTS FROM THE DEPARTMENT OF STATE



United States Department of State

Washington, D.C. 20520

October 5, 2022

Mr. John M. Sopko
Special Inspector General
Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR)
2530 Crystal Drive
Arlington, VA 22202

Dear Special Inspector General Sopko:

The Department of State has appreciated the opportunity to work closely with SIGAR for many years to ensure transparency and accountability to the American people regarding U.S. reconstruction efforts in Afghanistan. The Department welcomes the opportunity to review and comment on SIGAR's E-014 report on "U.S.-Provided Funds and Equipment to Afghanistan: An Assessment of Taliban Access to Assets Remaining in Country When the Afghan Government Collapsed."

The Department disagrees with SIGAR's characterization in the draft report that "State provided us limited, inaccurate, and untimely information about the equipment it left behind" and "State provided erroneous information and did not provide information from all the bureaus that left behind equipment and facilities to which the Taliban may now have access." On the contrary, the Department continued to engage and cooperate with SIGAR throughout the course of this evaluation.

Furthermore, the Department disagrees with SIGAR's statement that the Bureau of International Narcotics and Law Enforcement (INL) was the only cooperative bureau throughout the course of this evaluation. For example, the Bureaus of Political-Military Affairs (PM) and Diplomatic Security (DS) engaged with SIGAR on this evaluation. There is no mention in this report of the PM Bureau's repeated communication to SIGAR regarding the Department of Defense's end-use monitoring in Afghanistan through the Golden Sentry program, for example. The Department refers SIGAR to the Golden Sentry End-Use Monitoring Program website at <https://www.dsca.mil/golden-sentry-end-use-monitoring-program> for further details on this program. In addition, there is no acknowledgement of the hundreds of documents DS provided to SIGAR, among other examples of the Department's extensive cooperation. We ask for this relevant cooperation to be included in your report.

Lastly, the Department notes that any cooperation with SIGAR is without prejudice to the unresolved question about SIGAR's statutory mandate raised by the Department's April 25, 2022, and July 8, 2022, letters to SIGAR, enclosed. As you are aware, these letters demonstrate the Department's deep cooperation with SIGAR and raise unresolved questions about SIGAR's jurisdiction given the end of U.S. assistance for the purpose of the reconstruction of Afghanistan following the Taliban takeover in August 2021. The

Department asks that SIGAR include both letters and today's correspondence in any dissemination of its report, as part of the Department's official response.

Thank you for this opportunity to review and comment on SIGAR's E-014 report on "U.S.-Provided Funds and Equipment to Afghanistan: An Assessment of Taliban Access to Assets Remaining in Country When the Afghan Government Collapsed."

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Covert". The signature is stylized with a large, sweeping flourish at the end.

Kevin Covert
Director
Office of Afghanistan Affairs
Bureau of South and Central Asian Affairs

Enclosure: as stated.



April 25, 2022

John G. Arlington
General Counsel
Office of the Special Inspector General
for Afghanistan Reconstruction (SIGAR)
2530 Crystal Drive
Arlington, VA 22202-3940

Dear Mr. Arlington:

Thank you for SIGAR's October 1, 2021, letter to Secretary Blinken, Administrator Power, and Secretary Austin requesting information related to five evaluations SIGAR is conducting at the request of the Chairwoman and Ranking Member of the U.S. House of Representatives Committee on Oversight and Reform, and the Chair and Ranking Member of its Subcommittee on National Security. The Department of State and USAID appreciate the opportunity to assist SIGAR with these evaluations and other lines of inquiry in furtherance of SIGAR's vital mandate to audit funds expended on reconstruction efforts in Afghanistan. SIGAR's audits are an important part of Afghanistan-related oversight, which now includes inquiries from agency inspectors general, internal agency after-action reviews, the Afghanistan War Commission established in this year's National Defense Authorization Act, and Congress itself. Our agencies have responded to many of SIGAR's requests for information (RFIs) and for interviews of employees pursuant to these evaluations and continue to provide reconstruction-related data for SIGAR's regular quarterly reports.

SIGAR's enabling statute authorizes it to audit, supervise, and investigate the "programs and operations funded with amounts appropriated or otherwise made available for the reconstruction of Afghanistan." A particular investigation falls within SIGAR's jurisdiction if it concerns "the treatment, handling, and expenditure of amounts appropriated or otherwise made available for the reconstruction of Afghanistan, and of the programs, operations, and contracts carried out utilizing such funds," § 1229(f)(1). This grant of jurisdiction includes all funds expended through the Afghanistan Security Forces Fund or the Afghanistan Commanders' Emergency Response Program without limitation to expenditures only for reconstruction purposes, § 1229(m)(1)(A), as well as those funds "for the reconstruction of Afghanistan" expended through other provisions of law, § 1229(m)(1)(B). The grant of jurisdiction is not limited to financial audits of the expenditure of the designated funds, but rather authorizes SIGAR to conduct oversight of the programs and activities that utilize such funds. We note that, as part of the 2022 budget process, SIGAR expressly sought an expansion of its statutory mandate from "reconstruction" to "reconstruction, humanitarian, and other development assistance for" Afghanistan. That requested expansion has not been enacted into law and, as such, activities involving humanitarian and development assistance remain outside SIGAR's current mandate.

We are writing to ask for clarification regarding several of SIGAR's evaluations that appear to contain within their scope lines of inquiry that would exceed SIGAR's jurisdiction: Evaluation 11, which seeks information related to "the collapse of the Afghan government in August 2021"; Evaluation 15, which

concerns “the potential risk to the Afghan people and civil society since the Taliban regained control of the government in Afghanistan”; Audit 152A, which examines “State’s and USAID’s adherence to guidance issued by OFAC regarding contracting in Afghanistan since September 24, 2021”; and Audit 153A, which pertains to “USAID’s support for emergency food assistance in Afghanistan since FY 2020.” In the requests for information stemming from these reviews, SIGAR has not limited the scope to information related to reconstruction expenditures. Pursuant to these evaluations, SIGAR has, among other things, indicated that SIGAR plans to travel internationally to interview Afghans about their evacuation from Afghanistan and experience in resettlement abroad and sought “copies of any analytical products discussing the non-security factors that contributed to the collapse of the Afghan government, including but not limited to any chronic weaknesses with respect to the governing authority of Afghanistan since 2002” (with a particular interest in “products generated during the run-up to President Biden’s announcement of the full U.S. troop withdrawal in April 2021 and since that time.”). Separately, SIGAR has sought information regarding \$3.5 billion in Afghan Central Bank assets held in the Federal Reserve Bank of New York that will be used for the benefit of the Afghan people, and other topics that may implicate information that falls outside the scope of SIGAR’s mandate to audit.

To be clear, the State Department and USAID remain committed to assisting SIGAR with its important auditing role. Nevertheless, given the apparent attenuation between some of the requests for information and SIGAR’s statutory jurisdiction, we would appreciate additional information regarding the nexus of each RFI sent pursuant to Evaluations 11 and 15, and Audits 152A and 153A, to the funds expended on reconstruction that fall within SIGAR’s statutory authority to investigate. Going forward, it would be helpful if SIGAR would provide the jurisdictional basis for each forthcoming RFI. Further information about SIGAR’s jurisdiction over these matters will help us ensure that the proper oversight authority is investigating the many aspects of the U.S. Government’s role in Afghanistan over the past 20 years. Many of the requests for information from SIGAR address topics that are currently the subject of oversight by other investigative bodies with whom our agencies are already cooperating, including congressional committees and our own Inspectors General, or fall within the purview of the newly established Afghanistan War Commission. De-duplicating these efforts and ensuring that they are handled by duly mandated oversight bodies will guarantee that taxpayer dollars are spent efficiently and that each body’s investigative expertise is put to its best and highest use.

Sincerely,



Richard C. Visek
Acting Legal Adviser
Department of State



Margaret L. Taylor
General Counsel
USAID



July 8, 2022

John F. Sopko,
Special Inspector General for
Afghanistan Reconstruction (SIGAR)
2530 Crystal Drive
Arlington, VA 22202-3940

John G. Arlington
General Counsel, SIGAR

Dear Messrs. Sopko and Arlington:

We acknowledge our Agencies' receipt of SIGAR's June 22, 2022, letter to Secretary Blinken and Administrator Power, as well as of SIGAR's May 6, 2022, letter in response to our April 25, 2022, letter. We appreciate SIGAR's continued engagement on issues related to SIGAR's jurisdiction and, on behalf of our Agencies, wish to provide you with the following additional information.

In our April 25, 2022, letter, we made clear that the Department of State and USAID have long been—and remain—committed to helping SIGAR fulfill its important statutory mandate. Consistent with President Biden's deep commitment to transparency for the American people, the Department and USAID believe in the importance of inspectors general to protect against fraud, waste, and abuse.

In that spirit, we asked SIGAR to clarify for us its authority to investigate certain matters that do not appear to relate to the reconstruction of Afghanistan. We also requested that SIGAR provide a written basis for SIGAR's jurisdiction in connection with any future requests for information. Our purpose in seeking these clarifications was to engage on a way forward that will allow SIGAR to continue its work that falls within its statutory mandate, while accounting for the significantly changed circumstances in Afghanistan. We noted that this additional information would be particularly useful as we work to ensure that we are responding appropriately to the entities reviewing the U.S. government's role in Afghanistan over the past 20 years, which include our own Inspectors General, who have jurisdiction over all of our respective programs and operations, the Government Accountability Office, Congress itself, and, notably, the Afghanistan War Commission—the body Congress established through legislation that the President signed into law in order to conduct a comprehensive review of the war effort.

We recognize, as SIGAR's May 6, 2022, letter states, that SIGAR has broad authority under its enabling legislation to conduct oversight of "programs and operations funded with amounts

1

appropriated or otherwise made available for the reconstruction of Afghanistan.”¹ We also acknowledge that SIGAR’s jurisdiction extends to oversight of all funds made available to the Afghanistan Security Forces Fund or programs similar to the Commanders’ Emergency Response Program established under subsection (a)(2) of section 1202 of the National Defense Authorization for Fiscal Year 2006, as well as those funds made available “for the reconstruction of Afghanistan” expended under (i) the Economic Support Fund; (ii) the International Narcotics Control and Law Enforcement account; or (iii) any other provision of law.² Similarly, we do not dispute SIGAR’s assertion that “any funds used for a reconstruction purpose are within SIGAR’s jurisdiction, regardless of the fund or account from which those funds derive.”

The State Department and USAID Continue to Engage with SIGAR on Reconstruction-Related Activities

Since receiving requests for information sent pursuant to Evaluations 11-16, the State Department and USAID have responded to SIGAR’s evaluations that relate to the reconstruction of Afghanistan. The State Department and USAID have responded to Evaluation 13, pursuant to which SIGAR sought to “review the current status of U.S. funding appropriated or obligated for reconstruction programs in Afghanistan as of October 1, 2021.” We have likewise responded to Evaluation 14, pursuant to which SIGAR sought to “evaluate the extent to which the Taliban have access to U.S. on-budget assistance or U.S.-funded equipment and defense articles previously provided to the government of Afghanistan and the ANDSF, as well as any mechanisms the U.S. government is using to recoup, recapture, or secure this funding and equipment.” In response to these evaluations, the State Department and USAID provided written responses to dozens of questions and thousands of pages of responsive documents, analyses, and Excel spreadsheets describing dozens of programs that were part of the U.S. government’s reconstruction effort in Afghanistan.

We understand that neither the State Department nor USAID received official requests for information pursuant to Evaluation 12 because that evaluation addressed Department of Defense programs related to the collapse of the ANDSF.

In addition to the above engagements, the State Department and USAID have consistently provided SIGAR data related to the reconstruction of Afghanistan for its regular quarterly reports, as well as reviewed and provided recommended edits to the draft versions of these reports (the unclassified reports and their accompanying classified supplements). Both USAID and the State Department have also provided edits and commentary on reports SIGAR publishes as part of its evaluations. Moreover, SIGAR continues to have access to State Department cables classified up to the SECRET level.

The State Department and USAID raised questions about two of the evaluations SIGAR submitted: Evaluation 11, which sought information related to “the collapse of the Afghan government in August 2021”; and Evaluation 15, which addressed “the potential risk to the Afghan people and civil society since the Taliban regained control of the government in

¹ Section 1229(a)(1) of the National Defense Authorization Act for Fiscal Year 2008 (5 U.S.C. App 8G note) (NDAA for FY 2008).

² *Id.*, Sections 1229(m)(1)(A) and 1229(m)(1)(B).

Afghanistan.” In our April 25, 2022, letter, we asked that you explain how these evaluations related to SIGAR’s jurisdiction to audit reconstruction activities. We also inquired about the nexus between the reconstruction of Afghanistan and two audits you opened—Audit 152A, which examines, *inter alia*, “State’s and USAID’s adherence to guidance issued by OFAC regarding contracting in Afghanistan since September 24, 2021”; and Audit 153A, which pertains to “USAID’s support for emergency food assistance in Afghanistan since FY 2020.” We also separately raised a question about Evaluation 16, which sought information related to “U.S. funding appropriated or obligated for reconstruction programs in Afghanistan, as of March 1, 2022” (later modified to March 31, 2022), as the time period in question became increasingly attenuated from the period during which reconstruction efforts had been undertaken in Afghanistan. Notwithstanding these questions, the State Department and USAID responded to reconstruction-related inquiries within Evaluations 11, 15, and, in USAID’s case, 16 by replying to requests for information, providing narrative responses and documents, coordinating an interview for SIGAR, and conducting a mission-wide interview. The State Department and USAID also responded to Audit 152A by providing narrative responses, spreadsheets of contracts, and points of contact.

We sought clarifications about these inquiries, several of which are currently the subject of oversight from our own Inspectors General, because of their seemingly attenuated relationship to funds made available for the reconstruction of Afghanistan. Our Inspectors General are currently conducting or about to begin several reviews related to Afghanistan outside of reconstruction, including reviews of sanctions policies and procedures, humanitarian assistance programming, the Afghan Special Immigrant Visa program, and emergency action planning guiding the evacuation and suspension of operations at U.S. Embassy Kabul. Our Inspectors General have also recently closed or are currently monitoring compliance regarding dozens of other audits and reviews related to Afghanistan that concern activities other than reconstruction.

Reconstruction in Afghanistan Has Ended

Since the Taliban takeover in August 2021, the United States has stopped providing assistance for the purpose of the reconstruction of Afghanistan. Before August 2021, the United States undertook a broad range of activities as part of a partnership with the government of Afghanistan, including activities for the reconstruction of Afghanistan. That broad effort has since ceased. Since August 2021, the United States has dramatically changed the nature and scope of its activities in Afghanistan to focus instead on humanitarian aid and targeted assistance designed to help meet basic human needs and avoid a complete and imminent economic collapse. As SIGAR noted in its August 2021 “lessons learned” retrospective on 20 years of reconstruction in Afghanistan, reconstruction is different in kind from stand-alone humanitarian aid:

Reconstruction programs are not like humanitarian aid; they are not meant to provide temporary relief. Instead, they serve as a

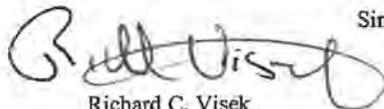
foundation for building the necessary institutions of government, civil society, and commerce to sustain the country indefinitely.³

The assistance the U.S. government has provided to Afghanistan since August 2021 has been focused on alleviating the immediate humanitarian situation in the country, supporting early recovery and basic human needs, and averting a further economic crisis, not on the broad-based reconstruction projects of the previous 20 years. While certain assistance may once have fallen under SIGAR's jurisdiction insofar as it was part of the United States' broader reconstruction effort, our assistance after August 2021 is no longer being provided for the reconstruction of Afghanistan.

You have repeatedly cited section 1229(i)(2) of the NDAA for FY 2008 as giving SIGAR jurisdiction over humanitarian and development programs. Section 1229(i)(2), however, does not expand SIGAR's jurisdiction but rather is merely a reporting provision that requires that SIGAR's quarterly reports address specific activities within its existing jurisdiction. We further note SIGAR's suggestion in its previous correspondence that a request from a congressional committee and language in a committee report imbue it with additional, freestanding jurisdiction over the matters about which we have asked you for clarification. This is incorrect. Notwithstanding your description of SIGAR's recent inquiries as "Congressionally-mandated," neither a congressional request nor a committee report can augment SIGAR's statutory jurisdiction. Only an act of Congress can do that. In addition, Congress itself routinely obtains information on Afghanistan-related matters outside SIGAR's jurisdiction by directly engaging State and USAID. Since reconstruction in Afghanistan ended, we have provided Members and committees with over 150 briefings on Afghanistan-related matters, participated in hearings addressing these topics, and responded to numerous requests for information from Members and staff in writing.

Moving forward, State and USAID will continue to provide SIGAR information about reconstruction assistance for Afghanistan, taking into account that the United States is no longer engaged in reconstruction in Afghanistan. We will also continue to cooperate with the oversight of congressional committees, our own Inspectors General on our current humanitarian and other programming in Afghanistan, and the Afghanistan War Commission when it begins its review.

Our SIGAR liaisons remain our points of contact for our ongoing cooperation with SIGAR. We look forward to assisting you with your work.



Richard C. Visek
Acting Legal Adviser
Department of State

Sincerely,



Margaret L. Taylor
General Counsel
USAID

³ Special Inspector General for Afghanistan Reconstruction, "What We Need to Learn: Lessons from Twenty Years of Afghanistan Reconstruction," August 2021, available online at <https://www.sigar.mil/lessonslearned/lessonslearnedreports/index.aspx>.

Appendix III - CORRESPONDENCE FROM SIGAR TO THE DEPARTMENT OF STATE AND THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT REGARDING SIGAR'S JURISDICTION



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

John F. Sopko
Special Inspector General

June 22, 2022

The Honorable Antony J. Blinken
Secretary of State

The Honorable Samantha Power
Administrator
U.S. Agency for International Development

Dear Secretary Blinken and Administrator Power:

As required by Section 1229(h)(5)(B) of the National Defense Authorization Act for FY 2008 and Section 6(c)(2) of the Inspector General Act of 1978, as amended, I am writing to report that State and USAID officials are unreasonably refusing to provide information and assistance requested by SIGAR. This information and assistance is needed for several audits and Congressionally mandated reviews pertaining to, among other things: (1) the collapse of the U.S.-backed government in Afghanistan; (2) State and USAID compliance with laws and regulations prohibiting the transfer of funds to the Taliban; and (3) ongoing humanitarian and development programs supporting the Afghan people.

Historically, State and USAID officials have supported SIGAR's mission and honored my office's requests. Where there has been confusion on the part of State and USAID concerning the extent of SIGAR's jurisdiction, forthright exchanges between our offices have consistently concluded with State and USAID correcting course and complying with SIGAR's requests. Inexplicably, this long track record of cooperation seems to have abruptly ended. Agency officials now appear to have adopted a premeditated position of obstruction.

I find this development particularly troubling in light of the clear legal prohibitions against State and USAID officials preventing SIGAR's oversight work,¹ as well as recent OMB guidance calling for cooperation with federal offices of inspectors general.² The President underscored the importance of such cooperation only a few weeks ago, when he stated unequivocally, "[I]n my administration, the watchdogs are back."³

¹ National Defense Authorization Act for Fiscal Year 2008 ("NDAA for FY2008"), Pub. L. No. 110-181, § 1229(e)(2); Inspector General Act of 1978, 5 U.S.C. app. § 3(a) ("Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation . . .")."

² Memorandum from the Executive Office of the President, Office of Management and Budget, *Promoting Accountability through Cooperation among Agencies and Inspectors General* (December 3, 2021) at 1.

³ Remarks by President Biden with Inspectors General on Commitment to Oversight, Accountability, and Transparency (April 29, 2022).

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As discussed below, the coordinated efforts by State and USAID officials to deny SIGAR access to information and assistance are unprecedented. However, the billions of U.S. taxpayer dollars that have been spent and continue to be spent in support of the Afghan government and the Afghan people warrant independent oversight, and the law requires it. Therefore, I respectfully request that you direct State and USAID officials to cease their illegal obstruction of SIGAR's oversight work and to provide the requested information and assistance without further delay.

Congress Has Directed SIGAR to Conduct Studies of the Collapse of the Afghan Military and the Afghan Government

The information and assistance requested by SIGAR is needed to carry out evaluations and reports required by Congress. Specifically, Congress has directed SIGAR to:

[C]onduct an evaluation of the performance of the ANDSF for the period between February 2020 and August 2021. The committee also directs the Special Inspector General for Afghanistan Reconstruction to submit a report to the Committees on Armed Services of the Senate and the House of Representatives and the Secretary of Defense by March 1, 2022, on the findings of such evaluation, including why the ANDSF proved unable to defend Afghanistan from the Taliban following the withdrawal of U.S. military personnel; the impact of the withdrawal of U.S. military personnel had on the performance of the ANDSF; elements of the U.S. military's efforts since 2001 to provide training, assistance, and advising to the ANDSF that impacted the ANDSF's performance following the U.S. military withdrawal; the current status of U.S.-provided equipment to the ANDSF; the current status of U.S.-trained ANDSF personnel; and any other matters the Special Inspector General for Afghanistan Reconstruction deems appropriate.⁴

Congress also directed SIGAR to examine:

[T]he underlying causes that may have contributed to the rapid collapse . . . of the government of Afghanistan and the Afghan National Defense and Security Forces (ANDSF), any potential loss or compromise of U.S. reconstruction assistance resulting from the Taliban's return to power, and the ramifications of the U.S. military and diplomatic withdrawal for U.S. national security and the people of Afghanistan.⁵

⁴ H. Rept. No. 117-118 at 251 (2021).

⁵ U.S. House of Representatives, Committee on Oversight and Reform and Subcommittee on National Security, Letter to John F. Sopko, Sep. 10, 2021. In response to this request, we initiated four evaluations to examine: (1) the circumstances surrounding the collapse of the Afghan government; (2) the continued risk to U.S.-funded reconstruction assistance in Afghanistan; (3) the Taliban's access to U.S.-provided funds and defense equipment; and (4) the risk to vulnerable Afghans resulting from the Taliban's return to power.⁶ NDAA for FY2008, § 1229(h)(5)(A).

Two SIGAR audits are also being hindered by a lack of cooperation from State and USAID. The first evaluates your agencies' compliance with the laws and regulations prohibiting transfers of funds to members of the Taliban and the Haqqani Network. The second concerns ongoing emergency food assistance to Afghanistan.

SIGAR was also informed by State that the Department would not cooperate with future financial audits conducted by SIGAR, but would from now on choose its own auditors. It should go without saying, but neither SIGAR's authorizing statute nor the Inspector General Act of 1978 contain a "choose your own auditor" provision.

State and USAID are Required by Law to Provide Information and Assistance to SIGAR Upon Request

SIGAR's authorizing statute provides that,

Upon request of the Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Inspector General, or an authorized designee.⁶

The Inspector General Act of 1978, as amended, contains a similar provision.⁷

The statute goes on to state that,

Whenever information or assistance is, in the judgment of the Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the Secretary of State or the Secretary of Defense, as appropriate, and to the appropriate congressional committees without delay.⁸

State and USAID's failure to provide information and assistance to SIGAR also violates the December 3, 2021, guidance from the Office of Management Budget regarding cooperation with federal inspectors general, which states that, "It is the President's expectation that executive departments and agencies will restore and respect the integrity and independence of their respective agency inspectors general (IGs) and work with the Congress to ensure that IG offices can exercise their vital oversight role."⁹ The OMB Guidance goes on to explain that "in

⁶ NDAA for FY2008, § 1229(h)(5)(A).

⁷ See Inspector General Act of 1978, 5 U.S.C. app. § 6(c)(1). Section 6(a)(1)(A) of the IG Act authorizes inspectors general "to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act."

⁸ NDAA for FY2008, § 1229(h)(5)(B).

⁹ Memorandum from the Executive Office of the President, Office of Management and Budget, *Promoting Accountability through Cooperation among Agencies and Inspectors General* (December 3, 2021) at 1.¹⁰ *Id.* at 3.¹¹ NDAA for FY2008, § 1229(e)(2).

recent years, there have been concerns that executive branch agencies have not consistently provided their IGs with the full cooperation and access to which they are entitled under the law.” OMB then noted that the most effective agency leadership communications, “affirmed the duty of agency personnel to cooperate” and noted that the IG Act “requires IG’s timely access to all agency records.”¹⁰

State and USAID are Prohibited by Law from Preventing SIGAR from Carrying Out Its Duties

SIGAR’s authorizing statute states that:

No officer of the Department of Defense, the Department of State, or the United States Agency for International Development shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation related to amounts appropriated or otherwise made available for the reconstruction of Afghanistan¹¹

The Inspector General Act of 1978, as amended, contains a similar provision.¹²

In addition, Section 7 of the Inspector General Act of 1978 authorizes SIGAR to interview government employees and prohibits the agency from retaliating against those employees:

The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.¹³

* * * *

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.¹⁴

A State official has informed SIGAR that department staff have received internal direction to not engage with or speak to SIGAR without prior clearance from State legal counsel. This

¹⁰ *Id.* at 3.¹¹ NDAA for FY2008, § 1229(e)(2).

¹¹ NDAA for FY2008, § 1229(e)(2).

¹² The Inspector General Act of 1978, 5 U.S.C. app. § 3(a) provides that “[n]either the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation”

¹³ Inspector General Act of 1978, 5 U.S.C. app. § 7(a).

¹⁴ *Id.* § 7(c).

direction is at odds with Section 7 of the Inspector General Act and other legal protections related to whistleblowers.¹⁵

State and USAID Officials Are Coordinating to Obstruct SIGAR Audits and Congressionally Mandated Reviews

As of the date of this letter, State and USAID have unreasonably failed to provide the majority of the information SIGAR requested in support of several audits and Congressionally-mandated reviews. State and USAID have, in some cases, simply ignored our communications, refused to make staff available for interviews, or refused to permit SIGAR to travel internationally to conduct research on the ground – all of which I have determined are unreasonable and in disregard of the responsibilities of my office. SIGAR’s audit and evaluation teams have been completely flexible and provided many options to facilitate your department’s cooperation with our mission, to little effect.

1. State and USAID Officials Were Given Several Months to Comply with SIGAR’s Requests for Information

On October 1, 2021, SIGAR announced that it was beginning several evaluations pertaining to the collapse of the Afghan government. Beginning on October 26, 2021, my office sent requests for information ("RFIs") to multiple offices and bureaus involved in Afghanistan reconstruction, including the Bureau of South and Central Asian Affairs; the Bureau of International Narcotics and Law Enforcement Affairs; the Coordinator for Afghanistan Relocation Efforts; and the U.S. diplomatic interests section for Afghanistan in Qatar, among others. Over the succeeding months, we submitted more than 20 follow-up or supplemental requests.

Unfortunately, after giving your agencies several months to provide the requested information and assistance, it is now evident that offices and staff who have cooperated with similar requests in the past were being silenced or overruled by officials opposed to SIGAR’s independent oversight. For example, State declined to make staff available for interviews regarding the settlement of Afghan refugees and the conditions those refugees faced when fleeing Afghanistan. Similarly, USAID’s Bureau of Humanitarian Assistance ("BHA") declined to provide funding information regarding its ongoing programs in Afghanistan, citing ongoing consultation with its legal counsel.

Of greatest concern, however, has been State and USAID’s refusal to provide basic information relevant to SIGAR’s audit concerning efforts to ensure that ongoing programs supporting the people of Afghanistan do not result in the illegal transfer of U.S. taxpayer funds to the Taliban or the Haqqani Network. This audit is simply the latest in a number of audits that SIGAR has

¹⁵ Whistleblower Protection Act of 1989, Pub. L. No. 101-12, § 4 (codified at 5 U.S.C. § 2302(b)(8), as amended).¹⁶ See, e.g., SIGAR, *Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified*, SIGAR Audit 13-14 (July 2013).

undertaken over the past decade related to the U.S. government's efforts to prevent contracting with the enemy.¹⁶ The fact that State and USAID would obstruct such oversight work, particularly after the Taliban's seizure of governmental power in Afghanistan, is unprecedented. Given the express prohibition against State and USAID officials preventing SIGAR from conducting its oversight work, it is also illegal.¹⁷

2. State and USAID Legal Counsel Falsely Claim that SIGAR Lacks Jurisdiction Over Humanitarian and Development Programs in Afghanistan

In April 2022, following more than six months of delay, the State Department's Acting Legal Adviser and USAID's General Counsel sent a letter to SIGAR requesting "clarification" of SIGAR's jurisdiction to conduct the audits and Congressionally mandated reviews noted above. The letter asserted, without basis, that "activities involving humanitarian and development assistance remain outside SIGAR's current mandate."¹⁸

SIGAR's General Counsel promptly responded to the State and USAID legal counsels' letter, explaining the broad scope of SIGAR's existing jurisdiction as stated in both the plain text of SIGAR's authorizing statute and its legislative history.¹⁹ A copy of SIGAR's letter is attached. The bottom line is that SIGAR's authorizing statute provides that SIGAR has jurisdiction to audit, investigate, and report on projects and programs using:

- "any . . . funding mechanism" that supports "any of the following purposes:
- (A) To build or rebuild physical infrastructure of Afghanistan.
 - (B) To establish or reestablish a political or societal institution of Afghanistan.
 - [and]
 - (C) To provide products or services to the people of Afghanistan."²⁰

More than a month later, SIGAR's General Counsel still has not received a response to his letter. However, two weeks ago, a State Department audit liaison sent a terse email to SIGAR's auditors stating that "the Department's position has not changed" and State would not cooperate with SIGAR's requests for information.²¹

Consistent with the plain text of SIGAR's authorizing legislation, we have since 2008 reported on humanitarian and development assistance programs in Afghanistan. For example, SIGAR's very first Quarterly Report to Congress discusses humanitarian and development assistance

¹⁶ See, e.g., SIGAR, *Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified*, SIGAR Audit 13-14 (July 2013).

¹⁷ NDAA for FY2008, § 1229(e)(2).

¹⁸ Letter from Richard C. Visek, Acting Legal Adviser, Department of State, and Margaret L. Taylor, General Counsel, USAID, to John G. Arlington, General Counsel, SIGAR (April 25, 2022).

¹⁹ Letter from John G. Arlington, General Counsel, SIGAR, to Richard C. Visek, Acting Legal Adviser, Department of State, and Margaret L. Taylor, General Counsel, USAID (May 6, 2022).

²⁰ NDAA for FY2008, § 1229(i)(2).

²¹ E-mail from State Department Audit Liaison to SIGAR Auditor (May 31, 2022).

within the broader context of Afghanistan reconstruction.²² No federal agency has challenged SIGAR's authority to conduct oversight of such programs until now. State and USAID legal counsels' claim that SIGAR's jurisdiction does not include such matters is not only contrary to the law, but a gross deviation from over 14 years of precedent set by three prior administrations.

Conclusion

As the U.S. government continues adding to the billions of dollars that it has already spent on the Afghan government and people since 2002, U.S. taxpayers deserve objective information concerning where their money is going and to whom it is being given. It is my sincere hope that you will follow the example of your predecessors across administrations and affirm the duty of State and USAID officials to comply with SIGAR's requests for information and assistance.

I respectfully request that your office respond to this letter within 10 days and advise SIGAR of your agencies' plans to provide the requested information and assistance, and to accept our interview requests. In addition, I request that you take immediate action to rescind any written or oral direction prohibiting State or USAID staff from communicating with SIGAR.

Pursuant to my duty under Section 1229(h)(5)(B) of the National Defense Authorization Act for FY 2008, I am providing a copy of this letter to the appropriate Congressional committees.

Thank you for your assistance in this matter. Should you have any questions with regard to this letter, please contact me at 703-545-6000, or john.f.sopko3.civ@mail.mil, or your staff may contact Jaryd M. Bern, Chief of Staff, at 703-861-1269 or jaryd.m.bern.civ@mail.mil.

Sincerely,



John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

cc: The Honorable Ron Klain, Chief of Staff, Executive Office of the President
The Honorable Shalanda Young, Director, Office of Management and Budget

Attachment: As stated

²² SIGAR, Quarterly Report to the United States Congress, October 2008.



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

John G. Arlington
General Counsel

May 6, 2022

Mr. Richard C. Visek
Acting Legal Advisor
Department of State

Ms. Margaret L. Taylor
General Counsel
USAID

Dear Mr. Visek and Ms. Taylor:

I am in receipt of your letter of April 25 in response to SIGAR's October 1, 2021 request for information ("RFI"). SIGAR submitted the October 1 RFI to carry out a bipartisan request by the House Committee on Oversight and Reform to examine

"... the underlying causes that may have contributed to the rapid collapse [in August 2021] of the government of Afghanistan and the Afghan National Defense and Security Forces ("ANDSF"), and potential loss or compromise of U.S. reconstruction assistance resulting from the Taliban's return to power, and the ramifications of the U.S. military and diplomatic withdrawal for U.S. national security and the people of Afghanistan."

To carry out that request, and in consultation with the requestors, SIGAR divided the task into five parts, evaluating: (1) the circumstances surrounding the collapse of the Afghan government; (2) the collapse and dissolution of the ANDSF; (3) the continued risk to U.S.-funded reconstruction assistance in Afghanistan; (4) the Taliban's access to U.S.-provided funds and military equipment; and (5) the risk to vulnerable Afghans, including women and girls, resulting from the Taliban's return to power.

Your letter asks for "clarification regarding several of SIGAR's evaluations" which you assert "appear to contain within their scope lines of inquiry that would exceed SIGAR's jurisdiction."

Specifically, you object to providing information related to "the collapse of the Afghan government in August 2021" and "the potential risk to the Afghan people and civil society since the Taliban regained control of the government in Afghanistan." You particularly object to SIGAR interviewing Afghan refugees about the collapse of the Afghan government and SIGAR's request for USAID information regarding the collapse of the Afghan government.

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You also object to providing information for two SIGAR audits: Audit 152A, which examines State's and USAID's compliance with guidance issued by the Treasury Department's Office of Foreign Assets Control ("OFAC") regarding agency contracting in Afghanistan following the collapse of the Afghan government; and Audit 153A, which pertains to USAID's support for emergency food assistance in Afghanistan since FY 2020.

You also object to SIGAR's request for information pertaining to State's proposal to use \$3.5 billion of Afghan Central Bank assets now frozen in the United States "for the benefit of the Afghan people."

Finally, I note that last week, USAID's Bureau of Humanitarian Affairs ("BHA") notified SIGAR auditors that, based on your letter, it would no longer cooperate with future SIGAR financial audits of its Afghanistan programs and activities, but would "use USAID's internal process to conduct cost audits . . . via the Defense Contract Audit Agency."

In sum, you assert that SIGAR's audits and requests for information do not pertain to reconstruction and that "activities involving humanitarian and development assistance remain outside SIGAR's current mandate."

Your claim that these matters are not within SIGAR's jurisdiction is astonishing. SIGAR has been reviewing, auditing, investigating, and reporting on these and related issues for more than 12 years, including USAID humanitarian assistance (for example, food assistance programs) and support to Afghan refugees. These audits and requests for information are squarely within areas in which we have conducted oversight in the past.¹ Moreover, SIGAR has been issuing Congressionally mandated quarterly reports on security, governance, and economic and social development since 2009, incorporating large amounts of information obtained from your agencies. Prior to the collapse of the Afghan government in August 2021, State and USAID generally cooperated with our audits and requests for information.² What has changed?

There is little to no substantive difference between assistance referred to as "reconstruction" and assistance referred to as "development" or "humanitarian." It is a classic distinction without a difference. In the context of SIGAR's enabling legislation, reconstruction assistance is the broadest term, subsuming both development and humanitarian assistance. As explained below, Congress fully intended to include both development assistance and humanitarian assistance within SIGAR's jurisdiction, which only makes sense. What would be accomplished

¹ See, e.g., *Emergency Food Assistance to Afghanistan: Incomplete Reporting and Limited Site Visits Hindered USAID's Oversight of Millions of Dollars of Food Assistance*, SIGAR 20-10-AR, November 21, 2019; SIGAR, *Audit Letter: Efforts to Support Afghan IDPs*, SIGAR 16-47-AL, July 25, 2016; *Afghan Refugees and Returnees: Corruption and Lack of Afghan Ministerial Capacity Have Prevented Implementation of a Long-term Refugee Strategy*, SIGAR 15-83-AR, August 27, 2015; *Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified*, SIGAR Audit 13-14, July 24, 2013.

² State periodically objected to our requests for information about diplomatic and consular expenditures in Afghanistan, but in the end provided the requested information.

by trying to distinguish development assistance and humanitarian assistance from reconstruction assistance?

You agree that Congress' grant of jurisdiction to SIGAR "is not limited to financial audits of the expenditure of [these] funds, but rather authorizes SIGAR to conduct oversight of the programs and activities that utilize such funds." SIGAR also has the authority to examine the effectiveness, sustainability, and outcome of those same programs and activities, which is something that we have emphasized in our work from the very beginning. Success is not measured merely by how many schools are built or how many medical supplies were delivered, but by the outcome of those and other reconstruction activities taken as a whole.

It is therefore particularly striking that you object to SIGAR examining the reasons for the collapse of the Afghan government. Congress and the American public want to know why the Afghan government and the Afghan army collapsed after the State Department, USAID, and the Department of Defense spent more than \$135 billion on reconstruction. And Congress wants to know the risks involved in continued aid to Afghanistan, and the risks to vulnerable Afghans, especially women and girls, now that the Taliban have taken over.

I would think that State and USAID would welcome SIGAR's independent and objective evaluation of these important questions. It would make no sense to argue that SIGAR may audit and investigate discrete projects and programs, but not look at the overall result of 20 years of reconstruction assistance.

Nevertheless, you have asked for clarification of SIGAR's statutory authority to conduct this work. As explained below, SIGAR's enabling statute gives it broad authority to audit, supervise, and investigate all U.S. reconstruction aid to Afghanistan, which excludes war-fighting activities by U.S. forces.³ In addition, State and USAID are required to provide information and assistance to SIGAR upon request, and it is illegal for USAID's Bureau of Humanitarian Assistance to refuse to allow SIGAR to audit its Afghanistan programs.

SIGAR Has Jurisdiction Over All Reconstruction Assistance

Congress gave SIGAR broad jurisdiction over all assistance to Afghanistan, except for the war-fighting activities of U.S. military forces.⁴ This broad grant of jurisdiction is defined by the purposes, duties, and authorities set forth in Section 1229 of SIGAR's enabling legislation.

³ While the vast majority of U.S. war-fighting activities are outside SIGAR's jurisdiction, there are some limited exceptions. For example, Section 842 of the National Defense Authorization Act for Fiscal Year 2008 authorizes SIGAR to audit and investigate logistics contracts in support of U.S. military forces in Afghanistan, and private security contracts.

⁴ SIGAR's enabling legislation is § 1229 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 3, 378-85 (Jan. 28, 2008) (codified as amended at 5 U.S.C. App. § 8G note) ("NDAA for FY 2008").

Section 1229(a) states the purposes of the law:

"(1) To provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated or otherwise made available for the reconstruction of Afghanistan.

(2) To provide for the independent and objective leadership and coordination of, and recommendations on, policies designed to—(A) promote economy efficiency, and effectiveness in the administration of the programs and operations described in paragraph (1); and (B) prevent and detect waste, fraud, and abuse in such programs and operations.

(3) To provide for an independent and objective means of keeping the Secretary of State and the Secretary of Defense fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress on corrective action."

To carry out these purposes, Section 1229(f)(1) provides that,

"It shall be the duty of the Inspector General to conduct, supervise, and coordinate audits and investigations of the treatment, handling, and expenditure of *amounts appropriated or otherwise made available for the reconstruction of Afghanistan*, and of the programs, operations, and contracts carried out utilizing such funds . . ." [emphasis added]

In addition, Section 1229(f)(3) confers on the Inspector General "the duties and responsibilities of inspectors general under the Inspector General Act of 1978." As pertinent to this discussion, this includes the duty "to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by [the relevant agency] for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations".⁵

Further, Section 1229(g)(1) confers on the Inspector General all of the authorities provided in Section 6 of the Inspector General Act of 1978. This includes authority "to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, *in the judgment of the Inspector General*, necessary or desirable" [emphasis added].

Thus SIGAR is not limited to issuing audit reports, but may issue other reports, such as lessons learned reports, evaluations, studies, reviews, and analyses. SIGAR may undertake such investigations and reports as the Inspector General judges to be "necessary or desirable."

⁵ Inspector General Act of 1978 § 4(a)(3), as amended.

While your letter does not include reference to all of the duties and authorities cited above, you agree that SIGAR's jurisdiction "is not limited to financial audits of the expenditure of the designated funds, but [SIGAR is authorized] to conduct oversight of the programs and activities that utilize such funds."

However, you assert that "activities involving humanitarian and development assistance remain outside SIGAR's current mandate." This view is directly controverted by SIGAR's enabling legislation and its legislative history.

Subsection 1229(m)(1)(B) defines the term "amounts appropriated or otherwise made available for the reconstruction of Afghanistan" to include amounts appropriated or otherwise made available for any fiscal year for the reconstruction of Afghanistan under-

- "(i) the Economic Support Fund;
- (ii) the International Narcotics Control and Law Enforcement account; or
- (iii) *any other provision of law.*" [Emphasis added]

The catch-all phrase "any other provision of law" could not be any broader. It clearly means that any funds used for Afghanistan reconstruction are within SIGAR's jurisdiction. The legislative history of the phrase "*any other provision of law*" shows that Congress intended it to include, but not be limited to, amounts appropriated or otherwise made available to the following:

- "(i) Operating Expenses of the United States Agency for International Development.
- (ii) Economic Support Fund.
- (iii) International Narcotics Control and Law Enforcement.
- (iv) International Affairs Technical Assistance.
- (v) Peacekeeping Operations.
- (vi) Diplomatic and Consular Programs.
- (vii) Embassy Security, Construction, and Maintenance.
- (viii) Child Survival and Health.
- (ix) Development Assistance.
- (x) International Military Education and Training.

- (xi) Nonproliferation, Anti-terrorism, Demining and Related Programs.
- (xii) Public Law 480 Title II Grants.
- (xiii) International Disaster and Famine Assistance.
- (xiv) Migration and Refugee Assistance.
- (xv) Operations of the Drug Enforcement Agency.”⁶

In sum, the phrase “any other provision of law” means that any funds used for a reconstruction purpose are within SIGAR’s jurisdiction, regardless of the fund or account from which those funds derive. That includes “development assistance” and assistance commonly referred to as humanitarian, such as “child survival and health,” “international disaster and famine assistance,” and “migration and refugee assistance.”

Section 1229(i) of SIGAR’s enabling statute provides still further clarification of the term “the reconstruction of Afghanistan” as it applies to SIGAR’s jurisdiction. Under Section 1229(i)(2) SIGAR is required to report quarterly on, among other things, the following:

“any major contract, grant, agreement, or other funding mechanism that is entered into by any department or agency of the United States Government that involves the use of amounts appropriated or otherwise made available for the reconstruction of Afghanistan with any public or private sector entity for any of the following purposes:

- (A) To build or rebuild physical infrastructure of Afghanistan.
- (B) *To establish or reestablish a political or societal institution of Afghanistan.*
- (C) *To provide products or services to the people of Afghanistan.*”
[emphasis added].

Those provisions make it clear that SIGAR has the duty to examine and report on the collapse of the Afghan government and on humanitarian aid (*i.e.*, products or services provided to the people of Afghanistan). For example, SIGAR’s request for information from State and USAID regarding the proposal to use \$3.5 billion of the now-frozen assets of the Afghan Central Bank “for the benefit of the Afghan people” falls directly under these provisions.⁷

⁶ See Senator Lautenberg’s amendment to Sen. Amendment No. 2011 to H.R. 1585, the Senate bill that led to the NDAA for FY 2008, 153 Cong. Rec. S11907, S11909 (Sep. 20, 2007). The Lautenberg language was later changed to “any other provision of law” [§ 1229(m)(1)(B)(iii), as enacted] so as to ensure that no form of assistance to Afghanistan was inadvertently omitted.

⁷ In your letter you assert that “SIGAR expressly sought an expansion of its statutory mandate from “reconstruction” to “reconstruction, humanitarian, and other development assistance.” That is false. In fact, OMB asked SIGAR for language to clarify existing law due to OMB’s concern that one or more federal agencies might

In addition, SIGAR, like all other inspectors general, has the authority to review whether agency contracting and other activities comply with Federal law. Yet your letter objects to SIGAR Audit 152A, which examines State's and USAID's compliance with OFAC guidance regarding agency contracting in Afghanistan following the collapse of the Afghan government. The OFAC guidance is intended to ensure that U.S. support provided to Afghanistan does not end up in the hands of the Taliban or other terrorist groups. Your letter is unclear about the basis for your objection to this audit. But there can be no serious argument that SIGAR does not have the authority to review whether State and USAID contracts and other support are being provided to hostile forces. SIGAR has been conducting work on contracting with the enemy for years and received the cooperation of State and USAID in the past.⁸

State and USAID are Required by Law to Provide Information to SIGAR Upon Request

State and USAID have a statutory duty to provide information to the Inspector General upon request, regardless of their interpretation of SIGAR's jurisdiction or whether the agencies judge that some of the requested information may concern matters outside SIGAR's jurisdiction.

SIGAR's authorizing statute provides that

"[u]pon the Inspector General's request for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Inspector General, or an authorized designee."⁹

This provision gives the Inspector General a broad mandate to obtain the requested information or assistance, the only exceptions to which are impracticability or contravention of existing law.¹⁰

For example, if the Inspector General were to request information or assistance in order to determine whether SIGAR should audit a particular project, program, or activity, or whether to

seek to prevent SIGAR from overseeing post-collapse assistance to Afghanistan. Unfortunately, it appears from your letter that OMB's concerns may have been justified.

⁸ See, e.g., *Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified*, SIGAR Audit 13-14, July 24, 2013.

⁹ NDAA for FY 2008, § 1229(h)(5)(A). Section 4(a) of the Inspector General Act of 1978, as amended, contains a similar provision.

¹⁰ Commenting on the similar provisions of Section 6 of the Inspector General Act, which also extend to SIGAR, the Senate Committee on Governmental Affairs in its report to accompany H.R. 8588 (enacted as the IG Act) stated as follows: "Access to all relevant documents available to the applicable establishment relating to programs and operations for which the [Inspector General] has responsibilities is obviously crucial. The committee intends this subsection to be a broad mandate permitting the [Inspector General] the access he needs to do an effective job, subject, of course, to the provisions of other statutes, such as the Privacy Act The committee believes that . . . denials [of requested information or assistance] are extremely serious." S. Rept. No. 95-1071 (95th Cong. 1978), 33-34, 35.

open a criminal investigation, or as background for a report, State and USAID would have a duty to provide that information or assistance, unless doing so would be impracticable or contravene existing laws. State's and USAID's views on whether the requested information might simultaneously relate to matters outside as well as within SIGAR's jurisdiction, or might duplicate other requests,¹¹ have no bearing on their duty to provide it.

The logic of this provision of the law is clear. It ensures that an audited agency cannot simply decide to opt out of oversight by SIGAR.

Your position that you can decide what information SIGAR may have access to is contrary to the statute and its purpose. It would effectively reserve to an audited agency the decision whether to provide information requested by an Inspector General, even though providing the information would not be impracticable or contravene existing law. The result would be to make audits and investigations optional, and negate the entire purpose of having an independent Inspector General.

This problem is demonstrated by USAID's Bureau of Humanitarian Assistance, which has now decided that, based on your letter, it will no longer cooperate with future SIGAR financial audits, but will "use USAID's internal process to conduct cost audits . . . via the Defense Contract Audit Agency." BHA's position is clearly contrary to its duty to cooperate with SIGAR. Moreover, I am not aware of any Federal agency that has the authority to decline oversight by an Inspector General or to pick its own auditor.

Duplication of Effort

You have also expressed concern about the possibility of duplication of effort, stating that many of SIGAR's requests for information "address topics that are currently the subject of oversight by other investigative bodies with whom we are already cooperating"

All of our audit work is coordinated with other oversight bodies prior to initiation, specifically to avoid duplication. GAO has reviewed our process for coordination and found that it successfully avoids duplication. In fact, following extensive review of SIGAR products, GAO found no instances of duplication in SIGAR work.¹²

SIGAR's request for information for our Congressional evaluations was submitted to State and USAID on October 1, 2021, over seven months ago. Neither State or USAID has informed us of any undue burden placed on them by SIGAR's RFI. In addition, as noted above, State and USAID have a duty to provide information to SIGAR regardless of whether some of it may be information requested by other oversight or investigative bodies.

¹¹ SIGAR has a process for coordinating its efforts with other oversight bodies to avoid needless duplication.

¹² See GAO, *Documented Agreement of Certain Roles and Responsibilities Could Further Enhance Coordination in Afghanistan*, GAO -18-6 (Nov. 2017).

Conclusion

As discussed above, SIGAR has a clear mandate to conduct oversight of, among other things, funding used to build or rebuild physical infrastructure in Afghanistan; to establish or reestablish a political or societal institution of Afghanistan; and to provide products or services to the people of Afghanistan. Concomitant with that is the authority to request information about those and related matters.

Shifting the funding from one bureau to another or changing the name of a fund does not change the fact that the money is still being spent for reconstruction purposes, as defined by SIGAR's enabling legislation. In short, reconstruction funding by any other name remains reconstruction funding. And changing the name from "reconstruction assistance" to "humanitarian assistance" or "development assistance" doesn't shield an agency from audits and investigations by SIGAR. It is American taxpayer money being spent in Afghanistan and Congress has given SIGAR the statutory duty to oversee it.

It is particularly disappointing to see the position taken in your letter in view of the President's emphasis on cooperating with Inspectors General. The December 3, 2021, guidance from the Office of Management Budget regarding cooperation with Federal inspectors general states that, "It is the President's expectation that executive departments and agencies will restore and respect the integrity and independence of their respective agency inspectors general (IGs) and work with the Congress to ensure that IG offices can exercise their vital oversight role."¹³

The OMB Guidance goes on to explain that "in recent years, there have been concerns that executive branch agencies have not consistently provided their IGs with the full cooperation and access to which they are entitled under the law." OMB then noted that the most effective agency leadership communications, "affirmed the duty of agency personnel to cooperate with their Office of the Inspector General" and noted that the IG Act "requires IG's timely access to all agency records."¹⁴

In view of the clarity of the law, and the views of the President as expressed by OMB, I recommend that you provide advice to your respective agencies acknowledging SIGAR's authority and requesting full cooperation with all of SIGAR's requests for information and assistance. You may also wish to remind agency officers and employees of their right to speak to the Inspector General with a guarantee of anonymity and protection from reprisals for doing so.¹⁵

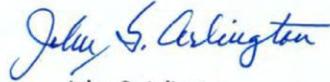
¹³ Memorandum from the Executive Office of the President, Office of Management and Budget, *Promoting Accountability through Cooperation among Agencies and Inspectors General* (December 3, 2021) at 1.

¹⁴ *Id.* at 3.

¹⁵ See Inspector General Act of 1978, as amended, § 7(b).

Should you have any further questions about this matter, please let me know.

Sincerely,



John G. Arlington
General Counsel

Appendix IV - ACKNOWLEDGMENTS

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SIGAR's Mission

The mission of the Special Inspector General for Afghanistan Reconstruction (SIGAR) is to enhance oversight of programs for the reconstruction of Afghanistan by conducting independent and objective audits, inspections, and investigations on the use of taxpayer dollars and related funds. SIGAR works to provide accurate and balanced information, evaluations, analysis, and recommendations to help the U.S. Congress, U.S. agencies, and other decision-makers to make informed oversight, policy, and funding decisions to:

- improve effectiveness of the overall reconstruction strategy and its component programs;
- improve management and accountability over funds administered by U.S. and Afghan agencies and their contractors;
- improve contracting and contract management processes;
- prevent fraud, waste, and abuse; and
- advance U.S. interests in reconstructing Afghanistan.

Obtaining Copies of SIGAR Reports and Testimonies

To obtain copies of SIGAR documents at no cost, go to SIGAR's Web site (www.sigar.mil). SIGAR posts all publicly released reports, testimonies, and correspondence on its Web site.

To Report Fraud, Waste, and Abuse in Afghanistan Reconstruction Programs

To help prevent fraud, waste, and abuse by reporting allegations of fraud, waste, abuse, mismanagement, and reprisal, contact SIGAR's hotline:

- Web: www.sigar.mil/fraud
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