



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

# Controls Over State Underground Storage Tank Inspection Programs in EPA Regions Generally Effective

Report No. 12-P-0289

February 15, 2012



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## Report Contributors:

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## Abbreviations

EPA	U.S. Environmental Protection Agency
MOA	Memorandum of Agreement
OIG	Office of Inspector General
OSFM	Office of the State Fire Marshal
OSWER	Office of Solid Waste and Emergency Response
OUST	Office of Underground Storage Tanks
UST	Underground Storage Tank

**Cover photo:** EPA UST Enforcement Officer inspecting an underground storage tank.  
(EPA photo)

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# At a Glance

## Why We Did This Review

The Office of Inspector General sought to determine how the U.S. Environmental Protection Agency (EPA) ensures that the quality of compliance inspections at underground storage tanks (USTs) is protective of public health and the environment. Preventing releases through regular tank inspections and maintenance is key to protecting public health and the environment. According to the Office of Underground Storage Tanks (OUST), the greatest potential threat from a leaking UST is contamination of groundwater, the source of drinking water for nearly half of all Americans.

## Background

There are nearly 600,000 USTs in the United States. EPA annually grants \$34.5 million to states, tribes, and territories to implement UST inspection and compliance programs. All states determine compliance with UST regulations through compliance inspections.

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:  
[www.epa.gov/oig/reports/2012/20120215-12-P-0289.pdf](http://www.epa.gov/oig/reports/2012/20120215-12-P-0289.pdf)

## ***Controls Over State Underground Storage Tank Inspection Programs in EPA Regions Generally Effective***

### What We Found

We determined that EPA regions have management controls to verify the quality of state UST inspections. All three regions where we conducted our review had annually reviewed UST inspection programs to verify compliance with requirements. Further, two of the three regions we reviewed conducted more extensive annual reviews and made recommendations to improve state UST inspection programs.

While we did not find any major deficiencies in the administration of the state UST inspection programs or regional oversight activities, we have one concern about EPA's oversight of state UST inspection programs. The memoranda of agreement (MOAs) between regions and the state UST programs either do not exist or do not reflect changes resulting from the Energy Policy Act of 2005. An MOA is an important management control because it defines the roles and responsibilities between an EPA region and a state.

### What We Recommend

We recommend that EPA and states enter into MOAs that reflect program changes from the 2005 Energy Policy Act and address oversight of municipalities conducting inspections. The Office of Solid Waste and Emergency Response (OSWER) agreed with our recommendation and we agree that its planned actions meet the intent of the recommendation. Because OSWER did not provide a planned completion date for the corrective action, we consider the recommendation unresolved.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

February 15, 2012

**MEMORANDUM**

**SUBJECT:** Controls Over State Underground Storage Tank Inspection Programs  
in EPA Regions Generally Effective  
Report No. 12-P-0289

**FROM:** Arthur A. Elkins, Jr.  
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is written over the printed name.

**TO:** Mathy Stanislaus  
Assistant Administrator for Solid Waste and Emergency Response

This is our report on the subject review conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

**Action Required**

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective actions plan for agreed-upon actions, including milestone dates. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal. We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Dan Engelberg, Director of Water and Enforcement Issues, at (202) 566-0830 or [engelberg.dan@epa.gov](mailto:engelberg.dan@epa.gov).

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## Purpose

The Office of Inspector General (OIG) evaluated the U.S. Environmental Protection Agency's (EPA's) management controls<sup>1</sup> over states' underground storage tank (UST) inspections. Our objective was to determine how EPA ensures that the quality of compliance inspections at underground storage tanks is protective of public health and the environment.

## Background

There are nearly 600,000 USTs in the United States. EPA defines an UST system as a tank and any underground piping connected to the tank that has at least 10 percent of its combined volume underground. Federal UST regulations apply to only underground tanks and piping that store either petroleum or certain hazardous substances. Preventing releases through regular tank inspections and maintenance is key to protecting public health and the environment. According to the Office of Underground Storage Tanks (OUST), the greatest potential threat from a leaking UST is contamination of groundwater, the source of drinking water for nearly half of all Americans.

In fiscal year 2010, OUST issued grants totaling \$34.5 million to states, tribes, and territories to implement UST inspection and compliance programs. These grants also help grant recipients comply with the 2005 Energy Policy Act. This Act includes provisions intended to prevent UST releases. It requires states to inspect UST facilities (e.g., gas stations) at least once every 3 years; conduct operator training; obtain delivery prohibition authority; and to either have secondary containment systems for USTs within 1,000 feet of any existing community water system or any existing potable drinking water well, or financial responsibility for manufacturers and installers. OUST also supports UST inspection programs by publishing grant guidelines to help states comply with provisions of the 2005 Energy Policy Act and by issuing semiannual performance reports.<sup>2</sup>

EPA regions approve states to administer and enforce a state program in lieu of a federal program under Subtitle I of the Resource Conservation and Recovery Act if those state programs are at least as stringent as federal regulations. Not all states have obtained this approval and states without it still implement an UST inspection program. All states, including those without program approval, receive federal grants to implement UST inspection programs.

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<sup>1</sup> Office of Management and Budget's Circular A-123 directs government agencies to operate programs using adequate management controls to ensure effective program operation. Management controls involve planning, oversight, and reporting systems.

<sup>2</sup> Visit <http://www.epa.gov/oust/cat/camarchv.htm> to see the UST performance reports.

EPA has approved 37 states plus the District of Columbia and the Commonwealth of Puerto Rico to administer UST inspection and enforcement programs. According to OUST, once a state program is approved, the state takes the lead role in UST program enforcement. Under federal regulations, states and territories with an approved UST inspection program must also have a memorandum of agreement (MOA) with EPA that outlines EPA and state roles and responsibilities.

All states<sup>3</sup> determine compliance with UST regulations through compliance inspections, regardless of whether a state has an approved program. EPA regional staff members conduct inspections on tribal lands and sometimes assist states with compliance inspections.

States go about conducting inspections in different ways. The majority rely solely on state employees. Some use a combination of state and local government staff, while others contract out inspections or supplement their inspections with EPA staff or EPA contract inspectors. A small number of states allow UST owners to hire certified third-party contractors to do their compliance inspections.

According to OUST, 33 states use state employees; 9 states supplement state employees with city, county, or municipal employees; 7 states contract-out some or all of the inspection function; and 7 states use third-party inspection programs. EPA defines a third-party inspection program as a state program in which state-approved third-party inspectors are paid by the owner or operator of an underground storage tank to perform an on-site inspection. EPA guidelines affirm that the results of these inspections must be reviewed by state UST enforcement personnel to determine compliance with regulations.

## Scope and Methodology

We reviewed applicable sections of the 2005 Energy Policy Act, the Office of Solid Waste and Emergency Response's (OSWER's) 2011 and 2012 National Program Managers Guidance, regulations governing USTs, regional/state MOAs, and EPA performance reviews of state UST inspection programs. We reviewed regional oversight of state UST inspection programs in Regions 5, 7, and 8. This review included an analysis of the MOAs between the regions and states, where applicable (11 out of 16 states have MOAs; the other 5 do not). We also interviewed staff and managers from OUST and Regions 5, 7, and 8; and UST managers from Illinois, Minnesota, and Ohio (all in Region 5). We selected these regions because the states employ differing approaches to implementing UST inspection programs. Since we did not proceed into field work, we did not interview UST program officials in any of the states in EPA Regions 7 or 8.

We conducted our review from July 2011 to November 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our review to obtain sufficient, appropriate evidence to

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<sup>3</sup> For the purpose of implementing the UST Program, OUST uses the designation of *state* to include all 50 states, the District of Columbia, and U.S. territories.

provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.

## **Results of Review**

We determined that EPA regions have management controls to verify the quality of state UST inspections. Regions evaluate state UST programs, and have taken additional steps to recommend improvements to state UST programs. While we did not find any major deficiencies in the administration of the state UST inspection programs or regional oversight activities, we have one concern about EPA's oversight of state UST inspection programs. The MOAs between regions and the state UST programs do not exist or do not reflect changes resulting from the Energy Policy Act of 2005. An MOA is an important management control because it defines the roles and responsibilities between an EPA region and a state for all inspections conducted by state and municipal governments.

### ***Regional Controls Over State UST Inspection Programs Are Generally Effective***

Regions evaluate state UST inspection programs to ensure that the states conduct quality compliance inspections. All three regions annually reviewed UST inspection programs and grants to verify compliance with the 2005 Energy Policy Act requirements. Regions 5 and 7 reports about state reviews were more extensive and contained recommendations for improvements to state programs. In a recent Region 5 review, for example, the regional program manager for Illinois recommended that the state take immediate action to evaluate and improve tracking of how staff time is charged against the federal UST grant. Region 7 also made recommendations to improve a state program. The region found that Iowa's UST enforcement actions took up to 4 years to complete and made recommendations to improve the timeliness of enforcement cases.

Each region we reviewed reported taking additional steps to oversee state UST inspection programs. For example:

- Region 5 UST program managers inspect up to 30 UST sites annually per state to verify that state UST inspection staff conduct quality tank inspections. Ohio's UST inspection program agreed to increase its training regimen for USTs storing hazardous substances after the regional program manager identified inconsistencies in state inspections for this class of tank.
- Region 7 UST program managers conduct state program reviews to determine whether each state has sufficient management controls to ensure that quality inspections are performed. Additionally, Region 7 conducts approximately 60 inspections annually to help states meet the 2005 Energy



Policy Act requirements and to assist states with bringing recalcitrant owner/operators into compliance using EPA enforcement authority.

- Region 8 conducts 5 to 20 joint inspections annually in all its states except Montana. Because Montana uses a third-party inspection program, the region evaluates the state's oversight activities during its end-of-year review.

The states in the three regions we examined use a variety of management controls to verify the quality of inspections performed by state staff. Examples of these controls include:

- Reviewing inspection reports
- Conducting joint inspections with staff
- Conducting follow-up inspections to verify inspection results
- Analyzing results of a series of individual inspection reports for anomalies
- Auditing a percentage of contract inspections
- Conducting annual training and certification

In our opinion, EPA regions and states have management controls to verify the quality of state UST inspections.

***Lack of Up-to-Date MOAs Are a Management Concern for Oversight of State UST Inspection Programs***

Despite not finding any problems with EPA oversight of the quality of state UST inspections, we have a concern regarding EPA's oversight of the state inspection programs. MOAs between the regions and states either do not exist or are outdated. Office of Management and Budget Circular A-123, *Management's Responsibility for Internal Control*, directs government agencies to operate programs using adequate management controls to ensure effective program operation. An MOA establishes regional oversight roles and responsibilities for state UST programs, including local governments acting on the states' behalf, and are required for states with program approval. However, the MOAs we reviewed do not require management controls over the quality of the inspections conducted, and have not been updated to incorporate 2005 Energy Policy Act requirements.

EPA does not have MOAs with 5 of the 16 states we reviewed and has outdated MOAs with the other 11 states. While MOAs are not required for states that do not have approved UST programs, they are a mechanism to determine implementing agency authority. As such, they could serve as a foundation for EPA management controls and oversight. Furthermore, for states that have either delegated or contracted their inspection responsibilities to local governments, the MOA should affirm these arrangements.

OUST reported that 16 states currently either contract out or supplement their inspection activities to specific cities or counties. For example, in Illinois, the city of Chicago conducts all UST inspections within the city's limits and submits the results to the Office of the State Fire Marshal (OSFM) for review and entry into the state database of inspections. This provides the OSFM some oversight of UST inspection quality in Chicago. However, because Chicago has authority to implement an UST inspection program, an OSFM manager said that he conducts fewer on-site spot checks of city inspections when compared to other UST inspections in the state. While there is no evidence that inspections conducted in Chicago are not thorough, inconsistent statewide oversight of UST inspections is a vulnerability to the integrity of a state's oversight program. In our opinion, MOAs between regions and states need to contain language defining roles and responsibilities for inspections conducted in the specific delegated or contracted city or county. This would ensure that oversight of these municipal inspections is the same as in the rest of a state.

According to a Deputy Director in OUST, the office is drafting a new set of regulations pertaining to UST protections. These new regulations will likely prompt states to update or request state program approvals and sign new MOAs.

## **Conclusion**

We believe EPA Regions 5, 7, and 8, and the states we reviewed, have adequate management controls over UST inspections. However, the absence of MOAs or outdated MOAs between EPA and states is a management control weakness that needs to be addressed. In our opinion, EPA and states need to enter into MOAs that reflect program changes from the 2005 Energy Policy Act and address oversight of municipalities conducting inspections.

## **Recommendation**

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

1. Require EPA and states to enter into MOAs that reflect program changes from the 2005 Energy Policy Act and address oversight of municipalities conducting inspections.

## **Agency Response and OIG Evaluation**

In its response to the draft report, OSWER agreed with the overall finding and our recommendation and we agree that its planned actions meet the intent of the recommendation. Because OSWER did not provide a planned completion date for the corrective action, we consider the recommendation unresolved.

## **Status of Recommendations and Potential Monetary Benefits**

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	5	Require EPA and states to enter into MOAs that reflect program changes from the 2005 Energy Policy Act and address oversight of municipalities conducting inspections.	U	Assistant Administrator for Solid Waste and Emergency Response			

O = recommendation is open with agreed-to corrective actions pending  
 C = recommendation is closed with all agreed-to actions completed  
 U = recommendation is unresolved with resolution efforts in progress

## ***Agency Comments on Draft Report and OIG Responses***

December 14, 2011

### **MEMORANDUM**

**SUBJECT:** Response to Draft Report: Controls Over State Underground Storage Tank Inspection Programs in Three EPA Regions are Generally Effective  
Project No. 2011-0019

**FROM:** Mathy Stanislaus  
Assistant Administrator

**TO:** Wade Najjum  
Assistant Inspector General for Program Evaluation

Thank you for the opportunity to comment on the draft report entitled “Controls Over State Underground Storage Tank Inspection Programs in Three EPA Regions are Generally Effective,” dated November 14, 2011. I am proud of the excellent relationship that the Underground Storage Tank (UST) program has with the states and am pleased that the quality of this program was demonstrated in your review. I agree with you that preventing releases through regular tank inspections and maintenance is key to protecting public health and the environment. With a few specific exceptions, we are in general agreement with your findings and the recommendation.

### **Comments on the Draft Report:**

In addition to providing specific recommended changes to language to enhance clarity (attached), there were some broad UST themes for which there appears to be some misunderstanding. These broad themes are outlined below.

As a general comment, when the Office of Underground Storage Tanks (OUST) provides information on USTs, program performance measures, etc., the term “state” is understood and defined to mean the 50 states, the District of Columbia and the five territories. This distinction is important because, unless defined, most readers do not consider that “state” includes the five territories and the District of Columbia. We recommend that you define this term at the beginning of the report to avoid confusion.

States have primary responsibility for implementation of the UST program in their jurisdictions. This is equally true in states with or without State Program Approval (SPA). In both cases, the responsible region works with the state for program oversight and provides inspection and enforcement assistance when needed and requested. Regardless of a state’s approval status, it is clear who has the responsibility to oversee local governments performing UST inspections. In all

cases, if the state contracts or delegates inspections, the state has full responsibility to oversee these inspections. The Illinois Fire Marshal (the agency responsible for the Illinois UST program), does provide oversight to Chicago's inspection activities through the contract arrangement in place. Because the relationship between Illinois and Chicago appears to have been misunderstood, we recommend that the associated example be removed and replaced with the concept that for all states that have either contracted out or supplemented their inspection responsibilities with a local entity, those relations should be identified in an MOA.

While it is true that MOAs are not required for states that do not have approved UST programs, they are, however, a mechanism that is used to determine which agency acts as the UST program implementing agency for that state. 40 CFR Section 280.12 (and similarly, 40 CFR Section 281.12(b)(1)), defines *implementing agency* as: "EPA, or, in the case of a state with a program approved under section 9004 (or pursuant to a memorandum of agreement with EPA), the designated state or local agency responsible for carrying out an approved UST program." Therefore we believe that all MOAs (those in SPA and non-SPA states) should be evaluated and updated as necessary.

Regions are active in oversight of their states. The regions keep in regular contact with their states and have a formal review process to assess state progress and compliance with program objectives. In terms of formalizing grant conditions and funding outlays, the most active and primary means the regions ensure the quality and effectiveness of the UST program is through the grant negotiation process which occurs prior to the issuance of a new grant award to a state. Prior to awarding any new Subtitle I funding, regions review the state's progress in achieving compliance with the mandates of the Energy Policy Act (EPAAct), in addition to anticipated future performance. Through these negotiations, a workplan is developed which outlines the activities for the state over the upcoming year. While the grant negotiations are relied upon most significantly to provide program management, we agree there is a role for the MOA as well.

#### **Comments on the Recommendation:**

We generally agree with the recommendation to have EPA and states enter into MOAs reflective of changes from EPAAct and addressing oversight of municipalities conducting inspections. We are currently in the process of updating the UST regulations and recognize that certain proposed changes to the existing regulations may cause states to amend different aspects of their programs. As a result, we will ensure this recommendation is implemented concurrently to the process outlined in the proposed regulations for states to reapply for SPA.

Thank you for providing this draft report for our review. We have worked hard to develop a program that balances the flexibility needs of the states with appropriate oversight. While the regions use the grant negotiations process to provide the direct means of oversight, MOAs can certainly serve a role in that as well. If you have any questions, please contact Carolyn Hoskinson, Director of the Office of Underground Storage Tanks. She can be reached at 703-603-9900.

## Attachment: Specific comments

Proposed language in red/reasoning in italics

### Background

Pg. 1, 2<sup>nd</sup> paragraph: It requires states to inspect UST facilities (e.g., gas stations) at least once every three years, conduct operator training, obtain delivery prohibition authority, and to **either** have secondary containment systems for USTs within 1,000 feet of any existing community water system or any existing potable drinking water well, **or financial responsibility for manufacturers and installers.**

Pg. 1, 2<sup>nd</sup> paragraph: OUST also supports UST inspection programs by publishing grant guidelines to help states comply with provisions of the 2005 Energy Policy Act and **by issuing** semiannual performance reports. <sup>2</sup>

Pg. 1, 3<sup>rd</sup> paragraph: EPA regions approve states to administer and enforce a state program in lieu of a federal program under Subtitle I of the Resource Conservation and Recovery Act if those state programs are at least as stringent ~~or broader in scope than~~ **as** federal regulations. *For a state to be approved to receive SPA under Subtitle I of the Solid Waste Disposal Act, as amended, those state programs must be at least as stringent as the federal regulations. The state needs to regulate at least the same universe of USTs that are federally regulated. The state can, however, choose to be broader in scope for their individual regulations. We, however, consider those USTs that are broader in scope to be outside the purview of SPA.*

Pg. 1, 3<sup>rd</sup> paragraph: ~~In states without an approved program, EPA works with state officials in coordinating UST enforcement actions.~~ *Even in states without SPA, states have primary responsibility for implementing their underground storage tank program.*

Pg. 2, 1<sup>st</sup> paragraph: All states, ~~plus the District of Columbia,~~ determine compliance with UST regulations through compliance inspections, regardless whether or not ~~there is~~ **the state has** an approved program. *This statement is true of all states and territories. Suggest defining this appropriately such that states represent states, territories and the District of Columbia.*

Pg. 2, 1<sup>st</sup> paragraph: EPA regional staff members conduct inspections on tribal lands and, **in some cases, regularly** ~~occasionally~~ assist states with compliance inspections.

Pg. 2, 2<sup>nd</sup> paragraph: States go about conducting inspections in different ways. The majority rely on state employees **only**. Some use a combination of state and local government staff, while others contract-out inspections **or supplement their inspections with EPA or EPA contract inspectors**. A small number of states allow UST owners to hire certified third-party contractors to do their compliance inspections. According to OUST, **33** ~~27~~ states use state employees; 9 states supplement state employees with city, county, or municipal employees; 7 states contract-out **some or all of** the inspection function; and 7 states use third-party inspection programs. EPA defines a third-party inspection program as a state program in which state-approved third-party inspectors are paid by the owner or operator of an underground storage tank to perform an on-site inspection. EPA Guidelines affirm that the results of these inspections must be reviewed by state UST enforcement personnel to determine compliance with regulations. *Corrected number (33 vs. 27) is based on the definition of state to include all 50 states, the District of Columbia and the five territories.*

Pg. 3, top of page: ~~In addition, for states without MOAs it is unclear who has responsibility to oversee local governments performing UST inspections. In all cases, if the state contracts or delegates inspections, the state has full responsibility to oversee these inspections. At no time does EPA have the responsibility to oversee local government USTs. Those states that have 3<sup>rd</sup> party programs or otherwise contract or delegate out inspection responsibilities have specific agreements to do so and the regions are aware of these agreements.~~

### **Regional Controls Over State UST Inspection Programs Are Generally Effective**

Pg.3, 1<sup>st</sup> bullet: Ohio's UST inspection program agreed to increase its training regimen for USTs storing hazardous ~~waste~~ **substances** after the regional program manager identified inconsistencies in state inspections for this class of tanks.

Pg. 3, 2<sup>nd</sup> bullet: ~~The region also inspects USTs to help the states meet the 2005 Energy Policy Act requirements and assist with state enforcement work.~~ **Additionally, Region 7 conducts approximately 60 inspections annually to help states meet the EPA Act requirements and to assist states with bringing recalcitrant owner/operators back into compliance using EPA enforcement authority.**

### **Lack of Up-To-Date MOAs Are a Management Concern for Oversight of State UST Inspection Programs**

Pg.4, paragraph 2: EPA does not have MOAs with 5 of the 16 states we reviewed and has outdated MOAs with the other 11 states. While MOAs are not required for states that do not have approved UST programs, **they are a mechanism to determine implementing agency authority. As such,** they could serve as a foundation for EPA management controls and oversight.

Furthermore, in states that have ~~given~~ **either delegated or contracted with** local governments **their** inspection responsibilities, the MOA should affirm these arrangements. ~~46~~ **Sixteen** states currently either contract out or supplement their inspection activities to specific cities or counties. ~~For example, in Illinois, the city of Chicago conducts all UST inspections within the city's limits. However, Illinois officials stated that they have much less oversight of inspections conducted in Chicago compared with the rest of the state.~~ In our opinion, an MOA between the region and state ~~Illinois~~ with language defining roles and responsibilities for inspections **conducted in the specific delegated or contracted city or county in Chicago** would ensure that oversight of these municipal inspections is the same as in the rest of the state. *It appears that there may have been a miscommunication regarding Illinois and Chicago. Illinois provides oversight to Chicago's inspection activities (as is the case in other similarly delegated or contracted interactions). Your broader point about MOAs including language regarding who has specific authority and responsibility for UST program in a specific jurisdiction is well-taken.*

**OIG Response:** While generally agreeing with our findings, OUST suggested edits to the final report. We discussed these with OUST officials and revised the final report accordingly.

## ***Distribution***

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