



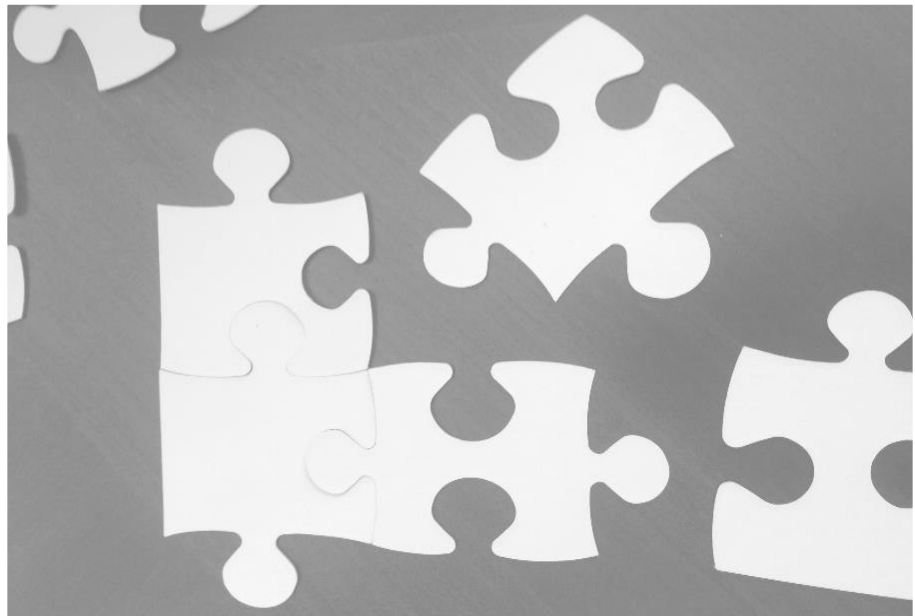
U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL



# FY 2016

## U.S. Chemical Safety and Hazard Investigation Board Management Challenges



## Abbreviations

CSB	U.S. Chemical Safety and Hazard Investigation Board
FY	Fiscal Year
GAO	U.S. Government Accountability Office
HOCR	House Oversight and Government Reform Committee
OIG	Office of Inspector General
OMB	U.S. Office of Management and Budget
OPM	U.S. Office of Personnel Management

**Cover image:** OIG image of puzzle pieces being put together to make whole or to form a complete picture, depicting corrective actions being implemented to address issue areas.

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# At a Glance

## What Are Management Challenges?

According to the Government Performance and Results Modernization Act of 2010, major management challenges are programs or management functions, within or across agencies, that have greater vulnerability to waste, fraud, abuse and mismanagement, where a failure to perform well could seriously affect the ability of an agency or the federal government to achieve its mission or goals.

An internal control system is a continuous component of operations that provides reasonable assurance that an entity's objectives will be achieved.

As required by the Reports Consolidation Act of 2000, the Office of Inspector General is providing the issues we consider as the U.S. Chemical Safety and Hazard Investigation Board's (CSB's) major management challenges for fiscal year 2016. We are also noting an internal control weakness.

Send all inquiries to our public affairs office at (202) 566-2391 or visit [www.epa.gov/oig](http://www.epa.gov/oig).

[Listing of OIG reports.](#)

## FY 2016 U.S. Chemical Safety and Hazard Investigation Board Management Challenges

**Attention to CSB management challenges could result in stronger results and protection for the public, and increased confidence in management integrity and accountability.**

Based on our continuous audit work, CSB public hearings, congressional hearings and CSB board meetings, we identified three management challenges and one internal control weakness related to operational controls.

### ***CSB Should Continue to Address Employee Morale***

- CSB's management must continue to address its employee morale to improve accomplishment of its investigative mission. The House Oversight and Government Reform Committee held a hearing on CSB in June 2014 and found "...a toxic work environment" at CSB, "...retaliation against whistleblowers," and the former Chairperson's "...disregard for proper board governance." The newly confirmed Chairperson has implemented initiatives to improve employee morale by creating an environment to encourage open communication.

### ***CSB Should Increase Its Investigations and Improve Investigative Management Controls***

- CSB is not investigating all accidents that fall within its legal jurisdiction, and should increase the number of investigations it conducts. CSB has a "gap" between the number of accidents that it investigates and the number of accidents that fall under its statutory responsibility to investigate. Also, CSB needs to improve controls over investigations that it does conduct.

### ***CSB Should Establish a Chemical Reporting Regulation***

- CSB has not published a chemical incident reporting regulation as required in the Clean Air Act Amendments of 1990.

We also note an internal control weakness that CSB should address regarding purchase cards and program operations.

Due to corrective actions taken by CSB, we removed two issues cited in our fiscal year 2015 report. The two issues removed were on the Information Security Program and Electronic Records Management.

CSB is concentrating efforts on improving the management challenge on employee morale, and has identified actions taken to address the management challenges and the internal control weakness.



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

THE INSPECTOR GENERAL

June 29, 2016

The Honorable Vanessa Allen Sutherland  
Chairperson and Chief Executive Officer  
U.S. Chemical Safety and Hazard Investigation Board  
1750 Pennsylvania Avenue, NW, Suite 910  
Washington, DC 20006

Dear Ms. Sutherland:

Enclosed are the Office of Inspector General's (OIG's) fiscal year (FY) 2016 proposed management challenges and an internal control weakness for consideration as part of the U.S. Chemical Safety and Hazard Investigation Board (CSB) Federal Managers' Financial Integrity Act review. The Reports Consolidation Act of 2000 requires our office to report what we consider the most serious management and performance challenges facing CSB. We used audit, evaluation and investigative work; public hearings; CSB board meetings; and additional analysis of CSB operations to arrive at the issues presented.

Challenges and Internal Control Weakness	Page
<b>Challenge:</b> CSB Should Continue to Address Employee Morale	1
<b>Challenge:</b> CSB Should Increase Its Investigations and Improve Investigative Management Controls	3
<b>Challenge:</b> CSB Should Establish a Chemical Reporting Regulation	6
<b>Internal Control Weakness:</b> CSB Should Address Operational Controls	8

Due to corrective actions taken by CSB, we removed two of four operational controls under the internal control weakness in the FY 2015 proposed management challenges and internal control weakness report. We removed the operational control on CSB's Information Security Program, due to CSB's responsiveness in addressing recommendations associated with deficiencies; and Electronic Records Management, due to the completion of the related investigation and CSB's implementation of recommendations.

You are not required to provide a written response to this final report. Should you choose to provide a final response, we will post your response on the OIG's public website. 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 along with corresponding justification. We will post this report to our website at [www.epa.gov/oig](http://www.epa.gov/oig).

Sincerely,

Arthur A. Elkins Jr.

Enclosure

cc: Ms. Anna Brown, Director of Administration and Audit Liaison, CSB  
Mr. Manuel H. Ehrlich Jr., Board Member, CSB  
Mr. Rick Engler, Board Member, CSB  
Dr. Kristen M. Kulinowski, Ph.D., Board Member, CSB  
Ms. Kara Wenzel, Acting General Counsel, CSB

## **CHALLENGE: CSB Should Continue to Address Employee Morale**

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### **CHALLENGE FOR CSB**

The U.S. Chemical Safety and Hazard Investigation Board's (CSB's) management must address its employee morale to improve accomplishment of its investigative mission. The House Oversight and Government Reform Committee (HOCR) held a hearing on June 19, 2014, *Whistleblower Reprisal, and Management Failures at the U.S. Chemical Safety Board*, and found:

- A toxic work environment resulted in the departure of at least nine experienced CSB employees (almost 25 percent of its staff).
- Current and former CSB employees indicated that the former Chairperson retaliated against whistleblowers, resulting in employees fearing retaliation.
- The former Chairperson's disregard for proper board governance processes caused CSB employees and fellow board members consternation, leading to an unproductive work environment.

CSB needs to continue its work on improving employee morale issues noted by HOCR.

### **BACKGROUND**

In 2014, a HOCR report identified that the environment had drastically changed under the former Chairperson. HOCR reported that witnesses interviewed stated that the former Chairperson alienated the agency's investigators; only communicated with the General Counsel and Managing Director; and had only minimal, if any, interaction with his fellow board members. Witnesses repeatedly told the committee that the former Chairperson created a dysfunctional and toxic work environment, leading to attrition of experienced engineers and investigators. On March 18, 2015, HOCR requested the President to remove the former CSB Chairperson. The Chairperson resigned from his position on March 26, 2015.

A newly confirmed Chairperson was sworn in on August 11, 2015. An additional board member was sworn in on August 24, 2015, bringing the total number of CSB board members up to four. The current Chairperson and board members are putting forth great efforts, as shown in progress below, to improve employee morale by creating an environment that encourages open communication. It appears the board is returning to functioning as intended, with open communication between the staff, board and Chairperson.

### **CSB'S PROGRESS**

CSB has begun work on several initiatives to address its employee morale issues. The CSB Chairperson has put in place an agencywide code of conduct that highlights the manner in which employees are to treat each other. The CSB Chairperson also informed the Office of Inspector General (OIG) of their goal of improving on the U.S. Office of Personnel Management's (OPM's) Federal Employee Viewpoint Survey results; in February of 2016, the agency formed a partnership with OPM to administer a survey

for CSB. The purpose of the 360 survey is to help non-supervisors, supervisors, managers and executives identify their leadership strengths and developmental needs.

On December 18, 2015, CSB signed and awarded a solicitation to acquire the services of a personnel consultant to assist with an organizational assessment that includes a review of the CSB's current organizational structure and employee position descriptions. Some of the deliverables include an organizational assessment report, which will include proposed organizational charts, proposed example position descriptions for new proposed positions, policies and procedures, and a proposed implementation plan.

CSB has made efforts to create additional means of communication between leadership and staff. Those efforts include frequent meetings where all staff can attend. CSB indicated that it holds biweekly leadership (board and managers) meetings where all staff are invited to attend, and also indicated that the Chairperson's staff and the board now meet weekly. Also, CSB now prepares a biweekly newsletter—the *CSB Communique*—that includes information on CSB accomplishments and lists board and staff upcoming events.

CSB stated it is working with the U.S. Equal Employment Opportunity Commission to schedule training for the agency, and a chat with the Chairperson can be scheduled by staff any Thursday. In addition, CSB stated that there is a very active Workplace Improvement Committee, made up of staff, that meets to develop recommendations on various agency issues.

Further, CSB indicated it intends to update all existing board orders, and has updated orders covering the following subject areas:

- Equal Employment Opportunity Program.
- General Schedule Employee Performance Appraisal Program.
- Reasonable Accommodation Procedures.
- Anti-Harassment Program.
- Records Management.
- Protection of Privacy Act Records.
- Telework Program.
- Roles, Responsibilities and Standards of Conduct in Procurement Activities.

## **WHAT REMAINS TO BE DONE**

CSB needs to continue efforts to restore open communication between management and staff. Opening communication via a newsletter, regular meetings and other means can give employees a better sense of organizational purpose, encourage ownership, and keep them informed. Also, CSB needs to collect and review the results of those efforts, and use them to address all areas related to the challenge on employee morale. Further, CSB needs to review results of the 2016 OPM Federal Employee Viewpoint Survey and perform internal assessments to assess whether current leadership efforts have improved employee morale. With continued improvement and positive sustained results, this challenge will be on track to be removed and not reported in fiscal year (FY) 2017.

# CHALLENGE: CSB Should Increase Its Investigations and Improve Investigative Management Controls

## CHALLENGE FOR CSB

CSB is not investigating all accidents that fall within its legal jurisdiction, and should increase the number of investigations it conducts. Pursuant to its enabling statute—the Clean Air Act Amendments of 1990, 42 U.S. Code § 7412(r) (6)—CSB “shall ... investigate (or cause to be investigated), determine, and report to the public in writing the facts, conditions, and circumstances, and the cause or probable cause, of any accidental chemical release resulting in a fatality, serious injury, or substantial property damages.” Further, CSB needs to improve controls over the investigations that it does conduct. CSB believes it is operating according to its statutory mandate, and cites a lack of resources to investigate the additional accidents cited.

## BACKGROUND

In FYs 2011 through 2015, we noted that CSB recorded a number of accidents that involved fatalities—to either people employed where the accidents took place or members of the public—for which CSB did not deploy investigators. Table 1 notes the percentage of accidents with fatalities that CSB did not investigate. CSB’s investigative “gap” between the number of accidents it chooses to investigate and the number of accidents that fall under its statutory responsibility to investigate increased during the FYs 2011 through 2012 period, and remained at a higher level for in FYs 2013, 2014 and 2015.

**Table 1: Percent of accidents with fatalities not investigated by fiscal year**

Fiscal year	Accidents and investigations with fatalities			
	Investigated	Not investigated*	Total	Percentage not investigated
2015	1	26	27	96%
2014	2	47	49	96%
2013	2	47	49	96%
2012	1	64	65	98%
2011	5	46	51	90%

Source: CSB budget justifications for FYs 2011, 2012, 2013 and 2014; and other supporting data.

\* The 26 accidents in FY 2015 involved 32 fatalities; the 47 accidents in FY 2014 involved 62 fatalities; the 47 accidents in FY 2013 involved 54 fatalities; the 64 accidents in FY 2012 involved 80 fatalities; and the 46 accidents in FY 2011 involved 52 fatalities.

CSB believed in 2013 that it could select incidents at its discretion based on funding and resources. CSB believed the Supreme Court settled the issue in *City of Arlington, Texas et al. v Federal Communications Commission et al.*, 133 S. Ct. 1863 (2013). The court decision, relying on *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), applied an agency’s interpretation of its own statutory jurisdiction. The court held that applying the *Chevron* doctrine to an ambiguous statute would not upset an agency’s permissible interpretation of its own authorizing legislation and the authority entrusted to the agency administering the law. We noted in 2013 that *Arlington* addresses deference to agency



interpretation when a statute is silent or ambiguous as to the intended creation. However, 42 U.S.C. § 7412(r)(6) is not ambiguous with regard to the issue of the scope of cases to be investigated, stating that CSB “shall” investigate.

Lastly, OIG Report No. [13-P-0337](#), *U.S. Chemical Safety and Hazard Investigation Board Needs to Complete More Timely Investigations*, issued July 30, 2013, found that CSB does not have an effective management system to meet its established performance goal to conduct incident investigations and safety studies concerning releases of hazardous chemical substances. Specifically, CSB has not fully accomplished its related strategic objective to complete timely, high-quality investigations that examine the technical, management system, organizational and regulatory causes of chemical incidents.

### CSB’S PROGRESS

CSB sought to clarify its mandate in a November 2009 letter to Congress, and in a March 2013 meeting with congressional staffers. Neither effort led to Congress changing the statutory language that would clearly give CSB discretion to select which accidents to investigate, nor did Congress endorse CSB’s interpretation of its statutory mandate.

CSB examined its existing approach for investigating serious chemical accidents, and defined a new investigatory methodology to close the gap. The board’s traditional model focused exclusively on deployments to major chemical process accident sites, resulting in full investigations lasting more than 1 year. In 2010, CSB investigators began assessing smaller accidents with significant consequences and generating internal reports outlining the details of the accident. Also in 2010, the board initiated three short, focused safety bulletins and case studies on critical issues facing the chemical and petrochemical industries. Using this model, CSB is able to target high-risk industries with data collected from assessments as well as data in the incident-screening database.

CSB has been working toward completing investigations in a timely fashion. According to CSB’s website, for FY 2016, CSB has six open investigations, with the oldest dating back to June 2013 and none of them more than 3 years, as shown in Table 2.

**Table 2: CSB open investigations as of June 2016**

Incident	Date of occurrence	Length of time investigation open
Delaware City Refining Company	11/29/2015	6 months
Exxon Mobile Refinery Explosion	2/18/2015	1 year, 4 months
DuPont LaPorte Facility Toxic Chemical Release	11/15/2014	1 year, 7 months
Tesoro Martinez Sulfuric Acid Spill	2/12/2014	2 years, 4 months
Freedom Industries Chemical Release	1/9/2014	2 years, 5 months
Williams Olefins Plant Explosion and Fire	6/13/2013	3 years

Source: CSB website.

Also, according to the CSB website, three investigations have been completed thus far in FY 2016, as shown in Table 3:

**Table 3: Investigations closed in FY 2016**

Incident	Date of occurrence	Release date of report	Length of time to complete report
West Fertilizer Explosion and Fire	4/17/2013	1/28/2016	2 years, 9 months
Caribbean Petroleum Refining Tank Explosion and Fire	10/23/2009	10/21/2015	6 years
Macondo Blowout and Explosion	4/20/2010	4/20/2016	6 years

Source: CSB website.

CSB has taken steps to close investigations more than 3 years old. In addition, CSB has improved its management controls by adopting a process that defines the size and direction of its investigations for better management. The improved process was suggested by a CSB employee, and approved during a public meeting on January 28, 2015, as an update to the first chapter of Board Order 040, *Investigations Protocol*.

**WHAT REMAINS TO BE DONE**

We recommend that CSB seek to close the investigative gap by reprioritizing its resources to investigate all accidents that fall within its statutory mandate. CSB noted that it has sought and will continue to seek statutory amendments from its authorizing committees in Congress that would amend its mandate. CSB stated it is revising and updating its Strategic Plan.

CSB should finalize its Board Order 040 to ensure implementation of investigative management controls. CSB recognizes the need for an updated investigations protocol to improve investigation management. Part of CSB’s organizational review would include setting a realistic and firm timeline for project completion. With the departure of several members of the protocol team, a new team was formed to complete the updates. The team has been delayed because of many competing investigation priorities. CSB has indicated to the OIG that it expects to complete Board Order 040 by the end of calendar year 2016.

## **CHALLENGE: CSB Should Establish a Chemical Reporting Regulation**

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### **CHALLENGE FOR CSB**

CSB has not published a chemical incident reporting regulation as required in the Clean Air Act Amendments of 1990. In 2008, the U.S. Government Accountability Office (GAO) recommended that CSB publish a regulation requiring facilities to report all chemical accidents. In 2009, CSB notified the public of a proposed reporting regulation. CSB has not yet published the regulation.

### **BACKGROUND**

The Clean Air Act Amendments of 1990, at 42 U.S.C. § 7412(r)(6)(C)(iii), states:

“The Board shall establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board’s investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases that are within the Board’s jurisdiction....”

In its 2008 report, GAO suggested that the reporting regulation offered additional value. GAO stated that the rule would “better inform the agency of important details about accidents that it may not receive from current sources.” GAO also suggested that the information obtained through the reporting rule could improve CSB’s ability to “target its resources, identify trends and patterns in chemical incidents, and prevent future similar accidents.” To improve surveillance of chemical accidents, GAO recommended that CSB “publish a regulation requiring facilities to report all chemical accidents, as required by law, to better inform the agency of important details about accidents that it may not receive from current sources.”

On June 25, 2009, CSB published an advance notice of proposed rulemaking in the Federal Register, seeking comments and information in advance of drafting a proposed regulation to implement the accidental release reporting requirement. In the advance notice of proposed rulemaking from the Federal Register, CSB identified four potential approaches for implementing the statutory requirement.

CSB has not taken steps to publish a proposed rule or to request changes to the requirement in the Clean Air Act Amendments of 1990. After further considering this issue, and public comments from the notice of proposed rulemaking, CSB believes that it receives adequate incident notifications through constant media and internet searches, as well as existing federal sources such as the National Response Center.

CSB stated that even if it had already adopted a reporting rule, the agency would have essentially no capacity to collect or interpret much of the data it received, or seek enforcement action against any non-reporters.

## **CSB'S PROGRESS**

CSB has made little to no progress in addressing this management challenge. A Chemical Reporting Regulation is not a priority and has been deferred because CSB leadership is now focused on addressing the management challenge related to employee morale and the completion of investigations.

## **WHAT REMAINS TO BE DONE**

CSB needs to establish the rule as required by the Clean Air Act Amendments of 1990.

## INTERNAL CONTROL WEAKNESS: CSB Should Address Operational Controls

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CSB has two operational controls that should be addressed to ensure its administrative operations are working in concert with its mission. These controls relate to purchase cards and program operation.

### PURCHASE CARD CONTROLS

CSB's risks regarding purchase cards need to be controlled to ensure the risks do not threaten the accomplishment of CSB's mission. During our purchase card risk assessment, as discussed in OIG Report No. [15-N-0171](#), *CSB's Fiscal Year 2014 Purchase Card Program Assessed as High Risk*, issued June 29, 2015, we determined that CSB's FY 2014 purchase card program was at high risk for illegal, improper or erroneous purchases and payments. The program did not meet federal requirements and had the following deficiencies:

- CSB did not timely submit a charge card management plan to the U.S. Office of Management and Budget (OMB).
- CSB certified controls without written internal policies and procedures.
- CSB's management plan did not identify all key management officials.
- A compliance summary was not included in the management plan.
- CSB did not obtain prior written approval for purchases.

CSB did not submit its Charge Card Management Plan to OMB by the January 31, 2014, deadline. On November 6, 2014, we requested a copy of that plan, and CSB provided an unsigned copy of the plan to the OIG on November 18, 2014. According to CSB, this was its first written Charge Card Management Plan, and the document was provided as submitted to OMB. CSB stated it was not aware of any other written policies or procedures regarding charge cards and their use.

As part of CSB's 2014 Performance and Accountability Report, CSB's management made assurances that its internal management control system will help provide assurance that obligations and costs comply with applicable law; assets are safeguarded against waste, loss and unauthorized use or misappropriation; and revenues and expenditures are properly accounted for and recorded. We found that CSB did not have any internal written policies and procedures regarding purchase cards.

In addition, the U.S. General Services Administration developed a compliance assessment tool to help document whether the required safeguards are in place. The tool requires completion of an internal control assurance assessment, with the results documented in a compliance summary. The compliance summary is to be submitted to OMB annually starting in January 2014, and should be available for Inspector General review. CSB did not complete the compliance summary and the internal control assurance assessment in the Charge Card Management Plan provided to the OIG in November 2014. CSB was unaware of the requirement for the compliance summary and assurance assessment.

Also, cardholders must ensure proper use of the purchase card. This includes documenting funds availability prior to purchase, maintaining a purchase log, receiving prior approval of the purchase from the Approving Official, and reconciling the monthly e-statements. Of the five purchase card transactions reviewed, we found that for one transaction the check date was before the supervisory approval date, and for another transaction the invoice and payment dates were before the supervisory approval.

## **CSB'S PROGRESS**

CSB has improved its compliance with the purchase card program. CSB sent to OMB by the deadline an email transmitting its FY 2015 Charge Card Management Plan, which included its completed compliance summaries and internal control assurance assessments. CSB has established internal controls and safeguards for purchase cards, as required. CSB's staff certify on training certifications that they have read the accounting service provider (U.S. Department of the Treasury's Bureau of the Fiscal Service) purchase card procedures and agree to obey the procedures set forth in the document.

With continued improvement to CSB's purchase card program, this operational control will be on track to be removed and not reported in FY 2017.

## **WHAT REMAINS TO BE DONE**

CSB needs to reiterate to cardholders and supervisors the importance of obtaining prior written approval for purchases made with purchase cards. Our FY 2016 audit of CSB's purchase card, once completed, will address the need for additional training and the recording of taxes as improper payments.

## **PROGRAM OPERATION CONTROLS**

CSB has not established and implemented a management control program to evaluate and report on the effectiveness of program operation controls. OMB Circular A-123, *Management's Responsibility for Internal Control*, states that internal controls "include program, operational, and administrative areas as well as accounting and financial management." CSB should develop and implement a comprehensive internal control program encompassing systems and processes; or program, operational, administrative, accounting and financial management functions.

In OIG Report No. [15-P-0245](#), *CSB Needs to Improve Its Acquisition Approvals and Other Processes to Ensure Best Value for Taxpayers*, issued July 31, 2015, and conducted in response to a hotline complaint, we found that CSB contract files did not have the proper approvals to allocate funds for 13 contracts and interagency agreements totaling over \$1.9 million.

The CSB had three board orders governing acquisitions: Orders 024, 027 and 028. In October 2014, the former CSB Chairperson and Managing Director issued instructions for managing acquisitions that were inconsistent with those board orders (in the form of a management directive). This caused confusion because CSB does not have a method to control or explain the distinction between board orders and management directives, or which takes precedence. On January 28, 2015, the board rescinded those

three board orders in a public meeting that violated the Sunshine Act. On May 6, 2015, following the departure of the former Chairperson, the board voted to reinstate Board Orders 024, 027 and 028, and eliminated the use of the conflicting management directive.

CSB has not followed its internal controls and has not implemented a management control plan. By not adhering to its internal controls, CSB places its acquisitions process at risk. In addition, without a structure to implement controls, CSB is at risk of ineffective and inefficient operations. Further, CSB did not perform market research actions for two contracts totaling over \$380,000, did not perform contract quality assurance surveillance actions, and did not create formal quality assurance surveillance plans. Also, CSB did not know the extent to which contractor past performance information was used.

### **CSB'S PROGRESS**

CSB has drafted its Management Accountability Control Plan, and a final plan is expected by June 2016. The plan implements OMB Circular A-123, and provides policy and procedures for management accountability and control. It also identifies general and specific management controls and lists roles and responsibilities for all CSB employees.

On February 23, 2016, the CSB approved and issued a revised board order on procurements. This order combined two prior orders (024 and 027) into a single Board Order 024. The order specifically describes the respective roles and responsibilities of key participants in the approval of CSB procurements, and reiterates important provisions of federal law related to procurement integrity. It also describes key procedures related to the procurement process, and addresses training, internal controls and recordkeeping. The CSB also issued an updated Acquisition Plan form to include a more detailed section on market research and instructions to adequately document reviews. Further, the CSB created a new Quality Assurance Surveillance Plan form for procurements, and included the Quality Assurance Surveillance Plan on the procurement checklist.

### **WHAT REMAINS TO BE DONE**

CSB needs to finalize the Management Accountability Plan. Also, CSB is working on a Contractor Performance Assessment Reporting System procedure, which is expected to be completed by June 2016.