



October 18, 2018

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Charles Schumer  
Minority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Kevin McCarthy  
Majority Leader  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Nancy Pelosi  
Minority Leader  
U.S. House of Representatives  
Washington, DC 20515

Dear Leaders McConnell, Schumer, McCarthy, and Pelosi:

I am writing to express my concern about a potential leadership change in the Department of the Interior Office of Inspector General. Such a shift in leadership would threaten the independence of that office, underscores the need for permanent Inspectors General across federal agencies, and demonstrates why Congress should amend the Federal Vacancies Reform Act of 1998 (“Vacancies Act”) to address its current vulnerabilities.

On October 12, 2018, Department of Housing and Urban Development (HUD) Secretary Ben Carson sent an email to HUD staff that said that Suzanne Israel Tufts, HUD’s assistant secretary for administration, and a political appointee, “has decided to leave HUD to become the Acting Inspector General at the Department of Interior.”<sup>1</sup> While it’s unclear at this time if this news is accurate, it is nevertheless concerning because it demonstrates why leaving IG offices vacant for extended periods can severely undermine the independence that Congress intended those offices to have.

The Vacancies Act dictates who can temporarily perform the duties of an executive agency officer who was nominated by the President and confirmed by the Senate when that officer dies, resigns, or is “otherwise unable to perform the functions and duties of the office...”<sup>2</sup> The person who fills in becomes the “acting” officer. They are subject to strict term limits because an acting official is meant to be a temporary solution until a permanent candidate is selected by the President and confirmed by the Senate. We at the Project On Government Oversight (POGO) are

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<sup>1</sup> Secretary Ben Carson, email message to Department of Housing and Urban Development employees, “A Fond Farewell,” October 12, 2018.

<sup>2</sup> Federal Vacancies Reform Act, As Amended. 5 USC §3345(a)

concerned that the dearth of nominees by the President threatens the independence of IG leadership across the federal government.

The Department of the Interior has lacked a permanent IG for over nine years. The current leader of the IG office is Mary Kendall, whose title is now deputy inspector general (her title reverted from “acting inspector general” pursuant to the term limits of the Vacancies Act). Kendall is a career Senior Executive Service federal employee and could theoretically face removal from her position by Interior Secretary Ryan Zinke, even though she is leading the watchdog office overseeing Zinke’s agency. Additionally, Kendall’s removal would not even trigger the mandatory 30-day Congressional notification required by the Inspector General Act in the case of an IG’s removal.<sup>3</sup>

Essentially, this presents a loophole through which an agency head could potentially fire their principal overseer while under investigation for allegations of waste, fraud, and abuse, without even notifying Congress. It is noteworthy that the Interior IG has opened at least seven separate investigations into Zinke’s conduct since he took office in March of 2017.<sup>4</sup>

The independence of IGs is paramount to their effectiveness. IGs are important watchdogs within executive agencies who investigate abuses of power, incidents of whistleblower reprisal, constitutional rights violations, gross waste of taxpayer money, major violations of public trust, and misconduct by agency leadership. It is vital that they retain independence from the agency they oversee.

It is therefore imperative that Congress move to amend the Vacancies Act as it relates to IGs. Congress must create stronger incentives for the President to nominate qualified, permanent candidates to federal IG offices for the Senate to thoroughly yet expeditiously vet.

POGO proposes that Congress amend the Vacancies Act to allow an outside entity such as a federal judge or a panel of IGs appointed by the Council of Inspectors General on Integrity and Efficiency (CIGIE) to select temporary IGs from a list of pre-recommended candidates that CIGIE already compiles by law.<sup>5</sup> This selection and placement would happen after the deputy IG’s term as “acting” reaches its limit pursuant to the Vacancies Act.

By allowing such a selection, Congress would ensure that whoever is leading the office benefits from a necessary barrier of independence.

We understand that the power to nominate federal IGs is firmly with the President; however, we also acknowledge the realities that nominations aren’t always being made, or they are stalling in the Senate—this has been a serious problem POGO has been tracking since early in the Obama Administration. We believe this suggested amendment would help to prevent bizarre situations

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<sup>3</sup> Inspector General Act of 1978, As Amended. 5 USC APP. §3(b) (Hereinafter “IG Act”)

<sup>4</sup> Citizens for Responsibility and Ethics in Washington, “A Guide to the 14 Federal Investigations into Ryan Zinke.” <https://www.citizensforethics.org/a-guide-to-the-14-federal-investigations-into-ryan-zinke/> (Downloaded October 17, 2018)

<sup>5</sup> IG Act §11(c)(F)

such as what is apparently happening at the Department of the Interior Office of Inspector General.

To leave the Vacancies Act as written, Congress is allowing an egregious loophole to persist and in effect is relinquishing its right to notification when an IG is removed from office. I therefore ask that you act expeditiously in reforming the Vacancies Act to ensure universal independence and effectiveness of our federal IGs. I also ask that you investigate the possible leadership change at the Department of the Interior's Office of Inspector General.

Sincerely,

A handwritten signature in blue ink that reads "Danielle Brian". The signature is written in a cursive, flowing style.

Danielle Brian  
Executive Director

Cc:

Senator Ron Johnson, Chair, Senate Committee on Homeland Security and Governmental Affairs

Senator Claire McCaskill, Ranking Member, Senate Committee on Homeland Security and Governmental Affairs

Representative Trey Gowdy, Chair, House Committee on Oversight and Government Reform

Representative Elijah Cummings, Ranking Member, House Committee on Oversight and Government Reform

Senator Lisa Murkowski, Chair, Senate Committee on Energy and Natural Resources

Senator Maria Cantwell, Ranking Member, Senate Committee on Energy and Natural Resources

Representative Rob Bishop, Chair, House Committee on Natural Resources

Representative Raúl Grijalva, Ranking Member, House Committee on Natural Resources