

May 5, 2020

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

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

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

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

Dear Leaders McCarthy, McConnell, and Schumer and Speaker Pelosi:

The undersigned former inspectors general write to urge you to lay the groundwork for the success of current and future inspectors general (IGs) through several reforms that will help IGs do their most impactful work in safeguarding taxpayer dollars. As former IGs, we have a unique understanding of which tools, protections, and resources are needed to ensure that future IGs will be able to fulfill their important oversight roles. IGs can only serve their vital function with the support of Congress in strengthening the tools and resources at their disposal.

We ask that you enact the following reforms to ensure that current and future IGs are *independent*, *qualified*, and *expeditiously appointed*.

For-cause removal protections are critical to IG independence:

As you know, Congress passed the Inspector General Act of 1978 to help ensure that federal agencies, contractors, and individuals do not misuse taxpayer dollars. In order to fulfill that mandate, IGs must be sufficiently independent from the agencies they oversee and from outside political pressure. Congress should codify for-cause removal protections for IGs to ensure that IGs can work without fear of reprisal for faithfully executing their mission. Without these protections, IGs may be reticent to follow an investigation to its conclusion if it could put them at odds with political leadership—something that has the potential to influence the conduct and outcome of IG audits and investigations.

The recent congressional response to the firing of Intelligence Community Inspector General Michael Atkinson demonstrated that when the President removes an IG, Congress expects a substantial and substantive rationale for that firing. In this instance, a bipartisan group of eight Senators sent a letter to President Trump noting that “Congress intended that Inspectors General only be removed when there is clear evidence of wrongdoing or failure to perform the duties of the office, and not for reasons unrelated to their performance, to help preserve IG independence.”¹ Given this consensus, we feel it is

¹ Letter from bipartisan Senators to President Trump regarding the firing of ICIG Michael Atkinson, April 8, 2020. <https://www.grassley.senate.gov/sites/default/files/2020-04-08%20CEG%20et%20a%20to%20POTUS%20%28IC%20IG%20removal%29.pdf>

past time for Congress to codify that intent by placing these protections explicitly into the law governing the IGs.

In a subsequent letter to Congress, Senator Grassley remarked that “over time, politicians in both the legislative and the executive branches have attempted to politicize IGs and use them for gain but, even the appearance of political interference in their process cannot be tolerated. It erodes public confidence in IGs, making them appear to be weapons politicians use against each other and not the assets that they are.”²

Importantly, for-cause removal protections do not make underperforming IGs untouchable. If structured properly, these protections always reserve the right of any sitting president to remove an IG when they are ineffective or unwilling to conduct the rigorous oversight required of their office. Under such circumstances, IGs should be removed to make way for individuals willing and able to uphold the important mandate of the office.

Such protections are not without precedent. The U.S. Postal Service IG, for example, already benefits from statutory for-cause removal protections.³ Further, extending these protections to IGs would be consistent with the constitutional principle of separation of powers as the Supreme Court has repeatedly upheld Congress’s ability to set conditions on removal from office. In a 2007 report, the Congressional Research Service (CRS) analyzed the constitutionality of granting for-cause removal protections to IGs in the Inspector General Reform Act.⁴ CRS found that such protections for IGs would not violate constitutionally mandated separation of powers as the Executive Branch would retain the authority to determine whether an IG was fulfilling their statutory duties in line with their oath of office. Given this precedent, it is not surprising that this proposal also has broad nonpartisan support from civil society organizations.⁵

Forcing inspectors general to choose between doing their jobs with integrity and keeping their positions is not an acceptable model of governance and oversight. We therefore urge you to pass for-cause removal protections for all IGs.

Inspectors general offices must be led by qualified individuals:

Given the unique nature of the work of inspectors general, it is imperative that these offices be led by individuals with the requisite experience and skillsets to perform the job well from the outset of their time in office. We recommend several reforms to ensure that anyone serving in this role is up to the task.

² Senator Chuck Grassley, “Grassley: Watchdogs’ Communications with Congress Improve Government Accountability,” April 22, 2020. <https://www.grassley.senate.gov/news/news-releases/grassley-watchdogs-communications-congress-improve-government-accountability>

³ 39 U.S.C. Part 1 CH 2 § 202(e)(3)

⁴ Vanessa K. Burrows and Frederick M. Kaiser, “Statutory Inspectors General: Legislative Developments and Legal Issues,” Congressional Research Service. November 6, 2007. https://www.everycrsreport.com/files/20071106_RL34176_28b8df5fa07cb8307faad8af85c5c520be7b05ec.pdf

⁵ “Organizations Call on Congress to Urgently Pass Inspector General Removal Protections,” Project On Government Oversight. April 10, 2020. <https://www.pogo.org/letter/2020/04/organizations-call-on-congress-to-urgently-pass-inspector-general-removal-protections/>

First, upon nominating an IG, the president should explain how the nominee satisfies the Inspector General Act's qualification requirements.⁶ This should include the president's appointment of any individual to a vacant IG position in an "acting" capacity in order to ensure that the office can operate effectively while awaiting Senate confirmation of a permanent IG.

Second, the list of qualified nominees maintained by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) should play a more prominent role in the nomination process. Currently, the IG Act requires CIGIE to transmit suggestions to the President upon an IG vacancy that requires presidential nomination.⁷ We believe this list should also be furnished to the relevant committees in the House and Senate, and that the president should offer an explanation of the individual's qualifications to Congress, particularly when he nominates someone not on the list of suggestions offered by CIGIE.

In the Senate report accompanying the 2008 Inspector General Reform Act, which created this requirement, members explained that they hoped CIGIE's list would "provide valuable advice to selecting officials and improve the quality and professionalism of the IG community." Unfortunately, we do not believe that the intent of this report has been realized in practice.

While the president should not be required to choose someone from CIGIE's list, the individuals therein have been pre-vetted as qualified by CIGIE and should be seriously considered by the president during the selection and nomination process.

Timely appointment of inspectors general is critical to effective oversight:

Offices of inspectors general (OIGs) that require presidential nomination are best served by permanent, Senate-confirmed leadership.⁸ Individuals appointed in an acting capacity are less likely to make needed adjustments to the OIG staffing, organization, and process given the temporary nature of their appointment. Acting IGs may also be reluctant to take on important but controversial matters without the full support that the IG statute provides to the Senate-confirmed IG. Unfortunately, there appears to be a growing trend of administrations relying on acting or temporary IG leadership over nominating qualified candidates to hold the role in a permanent capacity.⁹

This practice circumvents the Senate's mandated advice and consent role and creates instability within the OIGs. As a bipartisan group of Senators pointed out during this Congress, an overreliance on temporary IG leadership "threatens to impede the ability of these offices to conduct the oversight and investigation necessary to ensure that taxpayer dollars are protected, public safety risks are identified, and that whistleblowers who expose waste, fraud, and abuse are protected."¹⁰

⁶ Under the IG Act, an IG must be appointed "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations." 5 U.S.C. App. § 3(a).

⁷ Inspector General Act of 1978, as amended. 5 U.S.C. App. § 11(c)(1)(F)

⁸ Letter from Danielle Brian, Executive Director of the Project On Government Oversight, to President Trump, regarding inspectors general vacancies, July 12, 2018. <https://www.pogo.org/letter/2018/07/pogo-urges-president-trump-to-fill-inspectors-general-vacancies/>

⁹ Courtney Bubl , "Inspector General Vacancies Continue to Jeopardize Oversight and Investigations," *Government Executive*. September 18, 2019. <https://www.govexec.com/oversight/2019/09/inspector-general-vacancies-continue-jeopardize-oversight-and-investigations/159978/>

¹⁰ Letter from bipartisan U.S. Senators to President Trump regarding inspector general vacancies, September 13, 2019. <https://www.hsgac.senate.gov/imo/media/doc/2019-09-13%20HSGAC%20Letter%20on%20IG%20Vacancies.pdf>

To ensure that this and future administrations do not over-rely on acting IG leadership, Congress should explore options for alternative methods of filling longstanding IG vacancies. Regardless of the political affiliation of the party in power, the goal of Congress should be securing and confirming qualified IG nominations from the president.

As former inspectors general, we fully understand what it takes to run a successful “watchdog” office and believe that the timely appointment of qualified, independent leadership is paramount. Based on the historical bipartisan and bicameral support for the vital work and independence of IGs, it seems clear that Congress shares these priorities. We therefore urge you to lay the groundwork to support the work of current and future inspectors general with these necessary reforms. Thank you for your work in upholding the original intent of the Inspector General Act and related statutes as the people’s independent, empowered watchdogs to protect the taxpayers’ interests.

Sincerely,

Joel F. Brenner

Former Inspector General, National Security Agency

Lanie D’Alessandro

Former Inspector General, National Reconnaissance Office

Earl Devaney

Former Inspector General, Department of the Interior

Clark Ervin

Former Inspector General, Department of Homeland Security

Former Inspector General, Department of State

Eric R. Feldman

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Former Inspector General, Department of Homeland Security

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