



## The Problem

Despite bringing to light valuable disclosures about fraud, waste, and abuse of power within our nation's most sensitive agencies, intelligence community whistleblowers often find themselves navigating a complex reporting system, with rules that make their protections exceedingly difficult to take advantage of when needed. **Ineffective whistleblower protections provide little incentive for those with access to information about corruption in the intelligence community to come forward, which makes strengthening their protections a critical issue of national security.**

Protections for whistleblowers in the intelligence community lack an independent enforcement mechanism. This means that, in cases of retaliation against a whistleblower, enforcement of the law is ultimately left in the hands of those who allowed the retaliation to occur in the first place. While inspectors general may investigate whistleblower disclosures, they do not possess the authority to enforce corrective action against an agency that retaliates against a whistleblower. Without an independent enforcement mechanism, legal protections available to whistleblowers are toothless, and this chilling effect directly impacts future whistleblowers, who may be discouraged from stepping forward. Furthermore, if an intelligence community whistleblower's identity is exposed, there are no explicit protections to help rectify a breach of confidentiality. Confidentiality of a whistleblower's identity is crucial to prevent retaliation before it begins.

Whistleblower disclosure requirements are also overly burdensome. If a whistleblower wants to report an urgent concern to Congress, they must first go through their inspector general and alert their agency that they intend to communicate with Congress. This process acts as an unnecessary hurdle for whistleblowers to overcome in order to make their disclosures. Additionally, Congress intended for the inspectors general of the intelligence community to have the authority to determine what qualifies as a matter of urgent concern, but a [2019 Office of Legal Counsel opinion](#) limited that authority, muddling the process even further.

## The Solution

Congress can better protect intelligence community whistleblowers by eliminating the red tape associated with making disclosures and creating an avenue for whistleblowers to enforce their protections.

- **Provide an independent enforcement mechanism for intelligence community whistleblowers to exercise their legal protections.** Empowering independent adjudicators to grant relief to whistleblowers will help ensure that these employees' rights are enforceable, which would help encourage timely, secure, and lawful whistleblowing disclosures about critical issues in traditionally opaque agencies.

- **Remove existing barriers so intelligence community whistleblowers can make disclosures directly to Congress.** Language should be added to amend Section 8H of the Inspector General Act of 1978, 50 U.S.C. § 3033(k)(5)(D), and 50 U.S.C. § 3517(d)(5)(D), which would allow whistleblowers to make their disclosures directly to any congressional committee of jurisdiction, not just the congressional intelligence committees. After the phrase “either or both of the congressional intelligence committees” in 50 U.S.C. § 3033(k)(5)(D) and “either or both of the intelligence committees” in Section 8H of the Inspector General Act of 1978 and 50 U.S.C. § 3517(d)(5)(D), respectively, a suggested change would insert the text “or any other committee of jurisdiction of the Senate or the House of Representatives.”
- **Clarify that the intelligence community inspectors general have the final say in determining what qualifies as a matter of “urgent concern.”** This change would restore authority to the inspectors general and rectify the chilling impact that the Office of Legal Counsel’s opinion has had on conducting effective congressional oversight. Clarifying language can be found in section 712 of H.R. 5314, the Protecting Our Democracy Act, which recently passed the House on a bipartisan vote in the 117th Congress.
- **Protect confidentiality by enacting enforceable rights should a whistleblower’s identity be exposed.** Strict confidentiality procedures strengthen a whistleblower’s protection from retaliation. Knowing or willful disclosures of an intelligence community whistleblower’s identity or identifying information, without their consent, should be added by Congress to the list of prohibited personnel practices. Including a private right of action ensures whistleblowers can take advantage of their protections to make them whole should their identity be disclosed.

## **Additional Resources**

[POGO Resource: Summary of Intelligence Community Whistleblowing](#)

[POGO Testimony: The State of Whistleblower Protections and Ideas for Reform](#)

[OIG Report on Intelligence Community Whistleblower Matters and Harmonization of Processes and Procedures](#)

[House Office of the Whistleblower Ombuds Intelligence Community Whistleblowing Fact Sheet](#)

[Congressional Research Service Report: Intelligence Community Whistleblower Protections](#)

## **Contacts**

Melissa Wasser, Policy Counsel, [melissa.wasser@pogo.org](mailto:melissa.wasser@pogo.org)