



Testimony of Liz Hempowicz, Director of Public Policy  
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before the House Oversight and Reform Committee, Subcommittee on Government Operations  
on “Restoring Independence: Rebuilding the Federal Offices of Inspectors General”  
April 20, 2021

Chairman Connolly, Ranking Member Hice, and members of the subcommittee, thank you for inviting me to testify today about inspectors general. I am Liz Hempowicz, director of public policy at the Project On Government Oversight (POGO). POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

Congress enacted the Inspector General Act of 1978 to create a system of overseers who work within—but independent of—federal agencies. The resulting offices are charged with detecting and preventing waste, fraud, and abuse, and with promoting economy, efficiency, and effectiveness in their respective agencies’ operations. Before the law’s enactment, these efforts fell to the agencies themselves, and were often under-resourced and low priority.<sup>1</sup> It is important to ensure that the federal government is responsibly and faithfully executing the programs created by Congress and funded by the public, and the 95th Congress believed that the agencies had “clearly failed to make sufficient and effective efforts to prevent and detect fraud, abuse, waste and mismanagement in Federal programs and expenditures.” This failure was, in part, because of a “natural tendency for an agency administrator to be protective of the programs that he administers.”<sup>2</sup>

The inspector general system we have today was Congress’s answer to that problem.<sup>3</sup>

To ensure that robust oversight of federal programs would be a priority for the executive branch, Congress consolidated all agency investigative and auditing responsibilities within an agency under an agency inspector general office. Importantly, the legislation didn’t stop there. The 95th Congress also included statutory measures to provide federal inspectors general with the “requisite independence to do an effective job.”<sup>4</sup>

<sup>1</sup> United States Senate Committee on Governmental Affairs, *Establishment of Offices of Inspector and Auditor General In Certain Executive Departments and Agencies Report to Accompany H.R. 8588*, S. Rep. No. 95-1071, 5 (1978). [https://docs.pogo.org/document/2021/HR\\_8588\\_Cmte\\_Governmental\\_Affairs\\_OIG\\_Report.pdf](https://docs.pogo.org/document/2021/HR_8588_Cmte_Governmental_Affairs_OIG_Report.pdf)

<sup>2</sup> Committee on Governmental Affairs, *Establishment of Offices of Inspector and Auditor General*, 11 [see note 1].

<sup>3</sup> Of the 74 statutory federal inspector general offices, about half oversee relatively small federal entities and are appointed by those boards or commissions. The other half oversee federal agencies, and Congress has required that those inspectors general be nominated by the president and confirmed by the Senate. Congressional Research Service, *Statutory Inspectors General in the Federal Government: A Primer*, R45450 (Updated January 3, 2019), 4. <https://crsreports.congress.gov/product/pdf/R/R45450>

<sup>4</sup> Committee on Governmental Affairs, *Establishment of Offices of Inspector and Auditor General*, 11 [see note 1].

These measures include a requirement that inspector general nominees are selected “without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial and management analysis, law, public administration, or investigations”; a prohibition against the head of an agency from interfering in IG investigations; and a dual reporting structure where an inspector general reports to both the agency head *and* to Congress.<sup>5</sup>

While each measure is critical to the overall independence of inspectors general,<sup>6</sup> the last one deserves additional attention due to its novelty. Inspectors general are the only officers of their kind in the executive branch that report both to the agency head and to Congress.<sup>7</sup> This unique arrangement underscores the importance the creators of this modern watchdog system placed on independence from the prerogatives of the executive branch.<sup>8</sup>

In large part, the federal inspector general system that was established in 1978 has been a success. The work of IGs has continually resulted in substantial financial savings for the federal government. For example, the self-reported return on investment in fiscal year 2020 was \$17 for every \$1 spent on IG activities.<sup>9</sup> That is not to say that the system has reached its full potential. Especially at a time when the public is gravely concerned about government corruption,<sup>10</sup> it is critical that these watchdogs have the resources, independence, and accountability they need to root out all forms of corruption in our government.

Congress must act now to ensure that inspectors general are set up to succeed in fulfilling their important missions. I strongly urge Congress to expeditiously pass legislation that

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<sup>5</sup> Kathryn A. Francis and Michael Green, Congressional Research Service, *Federal Inspectors General: History, Characteristics, and Recent Congressional Actions*, R43814 (July 20, 2016), 5, 7.

[https://www.everycrsreport.com/files/20160720\\_R43814\\_c8b393d645313cc24a2b7a1bb8c1cb4abe072ccd.pdf](https://www.everycrsreport.com/files/20160720_R43814_c8b393d645313cc24a2b7a1bb8c1cb4abe072ccd.pdf)

<sup>6</sup> Congress has amended the Inspector General Act since its passage to include additional statutory independence from agencies and the president. In 2008, Congress amended the law to require that IG offices receive their own line item in agency budgets so Congress can explicitly direct funding to these watchdogs after it became clear that executive agencies could interfere in the offices’ work by limiting their budgets. The 2008 changes to the law also mandated that IG offices have their own general counsel, so as to limit the executive agency’s ability to manipulate the IG office’s work through the agency’s general counsel. And finally, the 2008 amendments also added an additional requirement that when a president removes an inspector general, they must submit the explanation for the removal to Congress.

<sup>7</sup> Committee on Governmental Affairs, *Establishment of Offices of Inspector and Auditor General*, 5 [see note 1]; Project On Government Oversight, *Inspectors General: Many Lack Essential Tools for Independence* (February 26, 2008), 10. <http://pogoarchives.org/m/go/ig/report-20080226.pdf>

<sup>8</sup> *Congressional Record: Establishing Offices of Inspectors General*, 95<sup>th</sup> Cong. 10405 (April 18, 1978) (remarks of L.H. Fountain, representative from North Carolina). <https://www.govinfo.gov/content/pkg/GPO-CRECB-1978-pt8/pdf/GPO-CRECB-1978-pt8-5-1.pdf>

<sup>9</sup> Council of the Inspectors General on Integrity and Efficiency, *Fiscal Year 2020 Annual Report to the President and Congress*, (2021).

[https://www.ignet.gov/sites/default/files/files/FY20\\_Annual\\_Report\\_to\\_the\\_President\\_and\\_Congress.pdf.pdf](https://www.ignet.gov/sites/default/files/files/FY20_Annual_Report_to_the_President_and_Congress.pdf.pdf)

<sup>10</sup> “State of Play Poll of National Likely Voters,” Change Research and CNBC, September 4-6, 2020, 4.

[https://changeresearch.com/wp-content/uploads/2020/09/CNBC-CR\\_National-Toplines\\_Wave-13\\_September-4-6-Wave-13\\_-9\\_4-6.pdf](https://changeresearch.com/wp-content/uploads/2020/09/CNBC-CR_National-Toplines_Wave-13_September-4-6-Wave-13_-9_4-6.pdf); Shreya Sheth, “America’s Top Fears 2019,” Chapman University, 2019, 1.

<https://www.chapman.edu/wilkinson/research-centers/babbie-center/files/americas-top-fears-2019.pdf>

- ensures inspectors general have the requisite authorities and resources to effectively investigate allegations of wrongdoing or illegality by granting all IGs subpoena authority to compel testimony when the subjects of their investigations have left government service, and by reducing the statutorily required reporting elements of inspector general semiannual reports to Congress;
- increases independence from political actors so inspectors general may conduct their investigations in a nonpartisan and apolitical way—one driven by facts and the law—by granting IGs for-cause removal protections<sup>11</sup> and limiting who can serve as a temporary, acting inspector general in the event of a vacancy; and
- improves the system designed to hold the watchdogs themselves accountable if they abuse their authority or don't live up to the community's standards by ensuring the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency has the resources and policies in place to enable adequate and consistent accountability.

## Authorities

Congress positioned inspectors general within the executive branch in part to ensure that the watchdogs would have easy access to executive branch documents and personnel necessary to conduct their work.<sup>12</sup> While that access has not always come without a fight, inspectors general typically enjoy freer access to executive branch documents and personnel than do external overseers in the legislative branch. One notable exception is access to departed agency personnel: Most inspectors general lack the authority to compel former agency officials to cooperate with IG investigations.<sup>13</sup>

This gap in authority allows federal employees who are subject to IG investigations to stymie robust oversight and accountability by retiring or resigning during the investigation.<sup>14</sup> To address this, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) has asked Congress for years to grant all IGs testimonial subpoena power. Such authority would allow inspectors general to compel testimony from former agency officials, agency contractors, or grantees where that testimony would be relevant for ongoing investigations. Congress has now granted that authority to the Department of Defense inspector general,<sup>15</sup> the special inspector general for pandemic recovery,<sup>16</sup> and the Pandemic Response Accountability Committee,<sup>17</sup> but

<sup>11</sup> In its 2020 term, the Supreme Court heard and decided a case on the constitutionality of for-cause removal protections for presidential appointees. The holding of the case, which struck down for-cause removal protections for the director of the Consumer Financial Protection Bureau, supports arguments that these same protections would be constitutional if applied to inspectors general. Rebecca Jones, “*Seila Law v. CFPB: What’s Unconstitutional for One May Not Be Unconstitutional for All*,” Project On Government Oversight, July 1, 2020. <https://www.pogo.org/analysis/2020/07/seila-law-v-cfpb-whats-unconstitutional-for-one-may-not-be-unconstitutional-for-all/>

<sup>12</sup> Andrew McCaense Wright, “Executive Privilege and Inspectors General,” *Texas Law Review*, vol. 97, no. 1295 (2019): 1299-1302. <https://texaslawreview.org/wp-content/uploads/2019/06/Wright.Printer.pdf>

<sup>13</sup> Letter from CIGIE Legislation Committee Chair Kathy A. Buller to Representatives Trey Gowdy, Elijah Cummings, and Steve Russell about inspector general testimonial subpoena authority, June 7, 2018, 2-3. [https://www.ignet.gov/sites/default/files/files/CIGIE%20Views%20letter\\_HR4917\\_June7\\_2018.pdf](https://www.ignet.gov/sites/default/files/files/CIGIE%20Views%20letter_HR4917_June7_2018.pdf)

<sup>14</sup> Letter from Buller to Gowdy, Cummings, and Russell, 2 [see note 13].

<sup>15</sup> 5 U.S.C. App. § 8 (i)(1) (2020). <https://www.law.cornell.edu/uscode/text/5a/compiledact-95-452/section-8>

<sup>16</sup> 15 U.S.C. § 9053 (2020). <https://www.law.cornell.edu/uscode/text/15/9053>

<sup>17</sup> Coronavirus Aid, Relief, and Economic Security Act, Pub. Law No. 116-136, div. B, title V, §15010 (b) (2020).

not to the rest of the inspector general community. Chairman Connolly, I want to thank you for your leadership on this issue, demonstrated most recently by your cosponsorship of the IG Subpoena Authority Act,<sup>18</sup> a reintroduction of legislation that passed the House unanimously in 2018.<sup>19</sup> I urge you to pass this legislation to grant all inspectors general subpoena authority to compel testimony when the subjects of their investigations have left government service.

A related, but distinct, issue is the limited jurisdiction that the Office of Inspector General for the Department of Justice has to investigate misconduct allegations against department attorneys. While most federal agency inspectors general have the authority to investigate matters of alleged professional misconduct by agency attorneys, the current law prohibits the Justice Department inspector general from doing so.<sup>20</sup> Instead, the accountability process rests with the department's Office of Professional Responsibility, which has proven ineffective at holding department attorneys to account, in part because its decisions are reviewed within the normal department chain of command rather than by the independent inspector general. POGO found a few years back that even though the Office of Professional Responsibility determined that hundreds of Justice Department lawyers had acted recklessly or had intentionally violated rules, laws, or ethical standards governing their work, their names were often never revealed, even to the defendants in the cases they prosecuted.<sup>21</sup> In order to effectively hold Justice Department officials accountable for egregious misconduct, we need to enable the inspector general office to conduct these kinds of investigations.

Bipartisan legislation to address this access and accountability gap has been repeatedly introduced in Congress<sup>22</sup> but has yet to be passed into law. We strongly urge Congress to remove the jurisdictional carve-out in Section 8E of the Inspector General Act of 1978 that currently prohibits the Department of Justice inspector general from investigating department attorneys. This would bring the department in line with standard federal agency practice and would mitigate real and perceived issues of accountability around the conduct of federal attorneys, including federal prosecutors.

## Resources

Resource constraints can directly affect the ability of inspectors general to conduct effective and consistent oversight. When POGO convened a group of five former inspectors general—including my co-panelist Clark Ervin—to serve as advisors for a report we released in 2018

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<sup>18</sup> IG Subpoena Authority Act of 2021, H.R. 2089, 117<sup>th</sup> Cong., 5 U.S.C. App. (2021).

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/IG%20Subpoena%20Authority%20Act.pdf>  
<sup>19</sup> *Congressional Record Vol. 164, No. 154: IG Subpoena Authority Act*, 115<sup>th</sup> Cong. H 9072 (September 26, 2018).  
<https://www.congress.gov/congressional-record/2018/09/26/house-section/article/H9070-1>

<sup>20</sup> 5 U.S.C. App. § 8E (2020). <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5a-node20-section8E&num=0&edition=prelim>

<sup>21</sup> Nick Schwellenbach, Project On Government Oversight, *Hundreds of Justice Department Attorneys Violated Professional Rules, Laws, or Ethical Standards*, (March 13, 2014). <https://www.pogo.org/report/2014/03/hundreds-of-justice-department-attorneys-violated-professional-rules-laws-or-ethical-standards/>

<sup>22</sup> See, for example: Inspector General Access Act of 2015, S. 618, 114<sup>th</sup> Cong., 5 U.S.C. App. (2015). <https://www.congress.gov/bill/114th-congress/senate-bill/618>; Inspector General Access Act of 2015, H.R. 2240, 114<sup>th</sup> Cong., 5 U.S.C. App. (2015). <https://www.congress.gov/bill/114th-congress/house-bill/2240>; Inspector General Access Act of 2017, H.R. 3154, 115<sup>th</sup> Cong., 5 U.S.C. App. (2017). <https://www.congress.gov/bill/115th-congress/house-bill/3154>

examining the IG system after forty years, each one highlighted the statutorily required semiannual reports as disproportionate monopolizers of IG office resources. By law, each IG must “prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods.”<sup>23</sup> Yet, despite the time and energy put into these reports, so many of those reports go unread by their intended audience. Two potential explanations for this are the sheer volume of what the IGs are required to report and the fact that many of the reporting requirements are now redundant or even irrelevant.

There are 22 reporting requirements for inspectors general and four for agencies. A good number of these reporting requirements should be removed, primarily because they encourage IGs to prioritize easier-to-accomplish but less impactful work and do not provide much information about challenges faced by agencies in fulfilling their missions. For example, required quantitative data such as the number of reports completed during a specific time period is unhelpful. Arbitrarily dividing a large report into two or more smaller reports would inflate the number of reports, but it would not provide greater value. As a result, the semiannual reports tend to be voluminous and not user friendly. Additionally, much of the quantitative information currently required for the reports is now regularly published by individual IGs on their own websites and through the Council of the Inspectors General on Integrity and Efficiency’s federal-wide IG website, Oversight.gov.

Considering the invaluable function of inspectors general, and the reality of finite investigative and oversight resources, it is imperative that IGs focus their attention on the most important issues rather than on minor issues that reflect well in the reports. It’s past time for Congress to reexamine the statutory requirements for inspector general semiannual reports.

## **Independence**

As discussed above, the ability of inspectors general to do their jobs independently, without political interference, has been a central principle of the internal watchdog structure since Congress created it. Because inspectors general are directly responsible for investigating waste, fraud, and abuse within executive agencies, doing this job well will eventually put most IGs at odds with political leadership. Indeed, this tension is exactly why Congress established independence structures for federal IGs in the first place.

While the statutory independence built into the Inspector General Act is a good start, there are two critical gaps that leave these internal watchdogs vulnerable to politically driven interference. First, a president has unfettered ability to remove an inspector general even for improper reasons. Second, after such a removal, a president can replace them immediately with anyone, including an individual who doesn’t meet the standards laid out in the Inspector General Act. Both gaps pose serious risks to the effectiveness of inspectors general, and both must be addressed by Congress.

Though the 95th Congress didn’t place any limits on the president’s authority to remove independent inspectors general, it did require presidents to notify Congress about the reasons for

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<sup>23</sup> 5 U.S.C. App. § 5 (2020).

<https://uscode.house.gov/view.xhtml?path=/prelim@title5/title5a/node20&edition=prelim>



the removal. The Congress expected this requirement would act as a sufficient deterrent to keep presidents from removing aggressive watchdogs because they were doing their job well.<sup>24</sup> That intent and expectation was again articulated last year by a bipartisan group of senators who clearly stated that the intent of Congress is 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.”<sup>25</sup> Unfortunately, president after president has ignored Congress’s intent.

Then-President Barack Obama, for instance, removed an inspector general in 2009 with little explanation, just a notification to Congress that the president no longer had confidence in the IG’s abilities.<sup>26</sup> And just in the span of a few short months in 2020, then-President Donald Trump engaged in an attack on independent government oversight that was unprecedented in scale, firing or replacing four of these independent watchdogs.<sup>27</sup> As explanation for the removals, like President Obama before him, then-President Trump simply stated that he had lost confidence in their ability to fulfill their missions, but didn’t provide any specific details about what caused that lack of confidence.<sup>28</sup> In some cases, these removals appeared to be thinly veiled attempts to

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<sup>24</sup> “While the committee has not required the President to have ‘cause’ before removing an Inspector and Auditor General, the committee expects that there would be some justification—other than the desire to remove an Inspector and Auditor General who is performing his duties in a way which embarrasses the executive—to warrant the removal action.” Committee on Governmental Affairs, *Establishment of Offices of Inspector and Auditor General*, 26 [see note 1].

<sup>25</sup> Letter from eight senators to President Donald Trump requesting detailed reasoning for the president’s decision to remove Intelligence Community Inspector General Michael Atkinson, April 8, 2020, 1-2. [https://www.grassley.senate.gov/imo/media/doc/2020-04-08%20CEG%20et%20al%20to%20POTUS%20\(IC%20IG%20removal\).pdf](https://www.grassley.senate.gov/imo/media/doc/2020-04-08%20CEG%20et%20al%20to%20POTUS%20(IC%20IG%20removal).pdf)

<sup>26</sup> Letter from President Obama to Speaker of the House Nancy Pelosi explaining that he was removing the inspector general of the Corporation for National and Community Service, June 11, 2009. [http://a.abcnews.go.com/images/Politics/Obama\\_letter\\_%20to\\_Pelosi.pdf](http://a.abcnews.go.com/images/Politics/Obama_letter_%20to_Pelosi.pdf)

<sup>27</sup> See, for example: Letter from President Donald J. Trump to Senators Richard Burr and Mark R. Warner announcing his decision to remove Intelligence Community Inspector General Michael Atkinson, April 3, 2020. <https://www.politico.com/f?id=00000171-4308-d6b1-a3f1-c7d8ee3f0000>; Letter from President Donald J. Trump to Representatives Adam Schiff and Devin Nunes announcing his decision to remove Intelligence Community Inspector General Michael Atkinson, April 3, 2020. <https://www.politico.com/f?id=00000171-4308-d6b1-a3f1-c7d8ee3f0000>; Meredith McGraw and Nahal Toosi, “Trump ousts State Department watchdog,” *Politico*, May 15, 2020. <https://www.politico.com/news/2020/05/15/state-department-inspector-general-fired-261536>; Ian Duncan and Michael Laris, “Democrats open investigation into Trump’s replacement of acting Transportation Department inspector general,” *Washington Post*, May 19, 2020. [https://www.washingtonpost.com/local/trafficandcommuting/democrats-open-investigation-into-replacement-of-acting-transportation-department-inspector-general/2020/05/19/e8e62b52-99f5-11ea-89fd-28fb313d1886\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/democrats-open-investigation-into-replacement-of-acting-transportation-department-inspector-general/2020/05/19/e8e62b52-99f5-11ea-89fd-28fb313d1886_story.html); Ben Kesling, Andrew Restuccia, and Dustin Volz, “Trump Removes Watchdog Who Heads Panel Overseeing Pandemic Stimulus Spending,” *Wall Street Journal*, April 7, 2020. <https://www.wsj.com/articles/trump-removes-acting-defense-department-inspector-general-11586277895>

<sup>28</sup> The White House eventually provided substantive reasons to Senator Charles Grassley for its removal of two inspectors general, but these explanations came long after the White House was required by law to report to Congress. The explanation about the firing of State Department Inspector General Steve Linick contradicted an earlier explanation from then-President Trump that he fired Mr. Linick because then-Secretary of State Mike Pompeo asked him to. Senator Charles E. Grassley, “Press Statement: Grassley Statement For Senate Record Regarding White House Compliance With IG Protection Law,” June 18, 2020. <https://www.grassley.senate.gov/news/news-releases/grassley-statement-senate-record-regarding-white-house-compliance-ig-protection>

undermine or silence various investigations the watchdogs were conducting.<sup>29</sup> In other cases, they appeared to be attempts to undermine credible oversight altogether.<sup>30</sup> Altogether, they illustrate the incredible vulnerability of these offices.

The public and Congress depend on inspectors general to ensure our federal agencies are functioning effectively, and to do this job the IGs must be confident they will not be retaliated against for doing that job well. That is why I strongly urge Congress to enact legislation that would require the president to have just cause to fire an inspector general, and to communicate the specific causes underlying the impending removal to Congress. Granting inspectors general for-cause removal protections will make it less dangerous to exercise the independence required of them to fulfill their missions. Indeed, Congress has considered such legislation in the past, and it passed the House in 2008 on an overwhelmingly bipartisan basis.<sup>31</sup> It is past time to finish what the House started over a decade ago.

It is equally urgent that Congress look at how the process for choosing temporary leadership for these watchdog offices also poses a threat to independence. The threat presents itself in two ways: The first is the ability of a president to install temporary leadership for inspector general offices regardless of qualifications or conflicts that could impact their ability to faithfully execute the office's critical oversight functions<sup>32</sup>; the second is a pernicious reliance on acting leadership in these offices for extended periods of time.<sup>33</sup>

The president's authority to choose temporary leadership for Senate confirmed offices is spelled out in the Federal Vacancies Reform Act. The law places some limits on whom the president can tap for these roles,<sup>34</sup> but the law's guardrails are not sufficient to preserve the independence of the watchdog offices. For example, there is nothing in current law that prohibits those with serious conflicts, such as the agency's general counsel or a presidentially appointed, Senate-confirmed official from the agency, from serving as an agency's acting IG. Indeed, during his time in office, then-President Trump appointed three individuals with serious conflicts of interest to serve as acting inspectors general.<sup>35</sup>

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<sup>29</sup> Danielle Brian, Nick Schwellenbach, and Adam Zagorin, "Watchdog Firing Came Amid Probe of Trump's Friend, the U.S. Ambassador in London," Project On Government Oversight, August 7, 2020. <https://www.pogo.org/investigation/2020/08/watchdog-firing-came-amid-probe-of-trumps-friend-the-u-s-ambassador-in-london/>

<sup>30</sup> Kyle Cheney and Connor O'Brien, "Trump removes independent watchdog for coronavirus funds, upending oversight panel," *Politico*, April 7, 2020. <https://www.politico.com/news/2020/04/07/trump-removes-independent-watchdog-for-coronavirus-funds-upending-oversight-panel-171943>

<sup>31</sup> "Roll Call 937: H.R. 928," Office of the Clerk of the United States House of Representatives, October 3, 2007. <https://clerk.house.gov/Votes/2007937>

<sup>32</sup> Letter from Senator Charles Grassley to President Donald J. Trump requesting the rationale for firing State Department Inspector General Steve Linick, May 18, 2020, 2. [https://www.grassley.senate.gov/imo/media/doc/2020-05-18%20CEG%20to%20POTUS%20\(State%20IG\).pdf](https://www.grassley.senate.gov/imo/media/doc/2020-05-18%20CEG%20to%20POTUS%20(State%20IG).pdf)

<sup>33</sup> At the time of writing, ten of the 74 inspector general offices across the federal government have been without Senate confirmed leadership for over a year, with the Department of Defense, the Central Intelligence Agency, the Office of Personnel Management, and the Export-Import Bank of the United States all having vacancies lasting longer than 1,800 days. Project On Government Oversight, "Inspector General Vacancy Tracker." <https://www.pogo.org/database/inspector-general-vacancy-tracker/> (accessed April 12, 2021)

<sup>34</sup> 5 U.S.C. § 3345 (2020). <https://www.law.cornell.edu/uscode/text/5/3345>

<sup>35</sup> Eric Tucker and Matthew Daly, "White House letter doesn't explain why Trump fired watchdogs," Associated Press, May 26, 2020. <https://apnews.com/article/c107775eabd6ed0ea5f59101e674a4ab>; Michael Stratford, "Trump

In addition to negatively impacting independent investigations, installing an agency insider as acting inspector general could also compromise whistleblowers. Acting IGs have full access to the whistleblowing disclosures and retaliation complaints filed with that office. The implications of a political appointee simultaneously running an agency office and serving as the inspector general in charge of investigating whistleblower complaints into that office present an obvious and inherent conflict. Such a situation would surely chill any agency employees from making whistleblower disclosures to that acting inspector general. Yet there's nothing to prevent this from occurring at any inspector general office at any time. This could result in whistleblowers across government choosing not to disclose waste, fraud, or abuse to their inspector general offices to avoid the increased risk that political leadership may find out who they are.

Though less obvious, a persistent reliance on acting leadership for a significant number of inspector general offices—which has been the case by presidents from both parties—also undermines the independence, and ultimately the effectiveness, of these offices.<sup>36</sup> As POGO has previously explained, “if the acting officer is ‘auditioning’ for the job, they may not want to make waves by investigating actions of the administration they are hoping will nominate them to fill the job permanently.”<sup>37</sup> Furthermore, since they are theoretically only acting in a caretaker role until a permanent leader is appointed, an acting inspector general may not make the long-term strategic decisions that are necessary for the organization.

A key distinction between acting and Senate-confirmed inspectors general is that acting IGs aren't bound by the explicit qualification requirements laid out in the Inspector General Act. And inspector general vacancies are known to go on for years; the Interior Department's inspector general office recently got its first Senate-confirmed leader in over 10 years.<sup>38</sup> It should be a great cause of concern for Members of Congress that the current system allows potentially unqualified acting inspectors general to serve for years on end, depriving agencies and taxpayers of critical oversight leadership.

An obvious first step is to ensure that acting inspectors general have the minimum qualifications required of permanent inspectors general. Second, in order to prevent conflicts of interest, Congress should limit who the president can appoint as an acting inspector general. Fortunately, Representative Katie Porter's (D-CA) Accountability for Acting Officials Act would require

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backtracks on replacement of Education Department watchdog,” *Politico*, February 1, 2020.

<https://www.politico.com/story/2019/02/01/elizabeth-warren-education-betsy-devos-1138082>

<sup>36</sup> See, for example: *Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years: Hearing before the Senate Homeland Security and Governmental Affairs Committee*, 114<sup>th</sup> Cong. (June 3, 2015) (testimony of Danielle Brian, Director, Project On Government Oversight).

<https://www.pogo.org/testimony/2015/06/testimony-of-pogos-danielle-brian-on-watchdogs-needed-top-government-investigator-positions-left-unfilled-for-years/>; *Where Are All the Watchdogs? Addressing Inspector General Vacancies: Hearing before the House Committee on Oversight and Government Reform*, 112<sup>th</sup> Cong. (May 10, 2012) (testimony of Jake Wiens, Investigator, Project On Government Oversight).

<https://www.pogo.org/testimony/2012/05/testimony-of-pogos-jake-wiens-on-where-are-all-watchdogs-addressing-inspector-general-vacancies/>

<sup>37</sup> Rebecca Jones, “The Dangers of Chronic Federal Vacancies,” Project On Government Oversight, August 6, 2019.

<https://www.pogo.org/analysis/2019/08/the-dangers-of-chronic-federal-vacancies/>

<sup>38</sup> Rebecca Beitsch, “Interior gains new watchdog,” *Hill*, September 17, 2019. <https://thehill.com/policy/energy-environment/461670-interior-gains-new-watchdog>



both changes, and I strongly urge Congress to pass that important legislation.<sup>39</sup> Additionally, POGO has proposed two appointment structures for temporary inspectors general that Congress should consider. By either designating certain federal judges to appoint acting IGs from a list of candidates maintained by the Council of the Inspectors General on Integrity and Efficiency or by designating an executive body of sitting inspectors general to appoint IGs to serve temporarily in the absence of a presidential appointment, Congress can constitutionally ensure that temporary leaders are as independent as possible and increase the incentives for a president to nominate an individual to permanently fill these positions.<sup>40</sup>

## Accountability

Though it is paramount to their success that inspectors general be independent and protected from political interference, that does not mean they should be insulated from accountability. As Congress considers how best to ensure that IGs have the authorities and independence they need to aggressively oversee executive branch agencies, it is critical to also examine whether there is adequate accountability for the watchdogs themselves. I applaud this subcommittee for its work in the last Congress in examining and improving the Integrity Committee within the Council of the Inspectors General on Integrity and Efficiency, and I urge you to continue your examination to consider whether this important oversight body is fulfilling its mission.

The Integrity Committee was created to “receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General” and designated senior staff in their offices.<sup>41</sup> The committee purports to

[take] action on allegations of wrongdoing against a Covered Person that involve abuse of authority in the exercise of official duties or while acting under color of office, substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation, or conduct that undermines the independence or integrity reasonably expected of a Covered Person.<sup>42</sup>

Unfortunately, one recent example highlights gaps in how the committee approaches its work, and the consequences of that approach.

Four months after then-President Trump removed State Department Inspector General Steve Linick from his position, Undersecretary of State for Management Brian Bulatao testified to

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<sup>39</sup> Senators Gary Peters and Charles Grassley also recently reintroduced legislation, called the Securing Inspector General Independence Act, that includes limits on who can serve as an acting inspector general in the event of a vacancy. The Project On Government Oversight has endorsed this legislation, as well as Representative Porter’s Accountability for Acting Officials Act.

<sup>40</sup> Rebecca Jones and Peter Tyler, Project On Government Oversight, *The Watchdogs After Forty Years: Recommendations for Our Nation’s Federal Inspectors General* (July 9, 2018), 15.  
[https://docs.pogo.org/report/2018/2018-07-09\\_POGO\\_The\\_Watchdogs\\_After\\_40\\_Years\\_IG\\_Report.pdf](https://docs.pogo.org/report/2018/2018-07-09_POGO_The_Watchdogs_After_40_Years_IG_Report.pdf)

<sup>41</sup> 5 U.S.C. App. §11(d)(1) (2020).

<https://uscode.house.gov/view.xhtml?path=/prelim@title5/title5a/node20&edition=prelim>

<sup>42</sup> Council of the Inspectors General on Integrity and Efficiency, *Integrity Committee Policies and Procedures 2018*, (April 13, 2019), 6.

[https://www.ignet.gov/sites/default/files/files/Integrity\\_Committee\\_Policies\\_and\\_Procedures\\_Revised\\_Jan-2018\\_Final.pdf](https://www.ignet.gov/sites/default/files/files/Integrity_Committee_Policies_and_Procedures_Revised_Jan-2018_Final.pdf)

Congress that the removal was partially predicated on Mr. Linick's handling of allegations of wrongdoing in the office.<sup>43</sup> Mr. Bulatao testified that Mr. Linick "failed to self-report a leak of a draft IG report" to the Integrity Committee "as he was directed to by the department."<sup>44</sup> Notwithstanding the fact that an IG is not required to follow "direction" from agency officials, this criticism deserves some unpacking.

Mr. Bulatao's complaint refers to an investigation into allegations that someone in the State Department Office of Inspector General had leaked a draft report indicating that a high level political appointee within the department had retaliated against career civil servants for political reasons.<sup>45</sup> After telling State Department leadership that he would secure an independent review of the allegations, Mr. Linick asked the Department of Defense (DOD) Office of Inspector General to conduct an investigation into Mr. Linick's office. Mr. Bulatao specifically took issue with the fact that the leak investigation was conducted by the DOD inspector general rather than by the Integrity Committee. It's relevant to note here that the Integrity Committee itself can, and often does, refer investigations to other IG offices,<sup>46</sup> likely because the committee has limited resources. The DOD inspector general's investigation concluded that the leak did not come from the 15 State Department inspector general office personnel who had access to the draft report.<sup>47</sup>

After Mr. Linick was removed, Mr. Bulatao wrote directly to the Integrity Committee asking them to investigate both the original leak and Mr. Linick's decision to ask the DOD inspector general to conduct the original investigation, instead of the Integrity Committee. The committee investigated the matter and concluded that Mr. Linick did not act improperly, but did acknowledge that the committee's investigation policy left critical accountability gaps and needed attention.<sup>48</sup>

While I agree that the Integrity Committee should have the necessary processes and resources to conduct investigations like the one required into the State Department Office of Inspector

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<sup>43</sup> Because the law requires notice to Congress of the reasons a president plans to remove an inspector general 30 days before that intended removal, it is worth noting that this explanation came four months too late and contradicted earlier statements that the president removed Mr. Linick because then-Secretary Mike Pompeo asked him to. There was also a clear abdication of the president's constitutional duty to take care to execute the law, given the Inspector General Act's explicit exclusion of agency heads from removal decisions.

<sup>44</sup> *Why did the Trump Administration Fire the State Department Inspector General?: Hearing before the House Committee on Foreign Affairs*, 116<sup>th</sup> Cong. 9 (September 16, 2020). <https://foreignaffairs.house.gov/2020/9/why-did-the-trump-administration-fire-the-state-department-inspector-general>

<sup>45</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters and Vice Chair Deborah J. Jeffrey to CIGIE Chairperson Michael E. Horowitz and CIGIE Vice Chairperson Allison C. Lerner regarding the investigation into former State Department Inspector General Steve Linick, December 29, 2020. <https://www.ignet.gov/sites/default/files/files/IC%202020-060%20Letter%20to%20CIGIE%2012-29-2020.pdf>; Erin Banco, "State IG Set to Recommend Discipline for Trump's Top Iran Hand," *The Daily Beast*, September 13, 2019. <https://www.thedailybeast.com/brian-hook-state-department-inspector-general-set-to-recommend-discipline-for-trumps-top-iran-hand>

<sup>46</sup> Council of the Inspectors General on Integrity and Efficiency, *Integrity Committee Policies and Procedures 2018*, (April 13, 2019), 8. [https://www.ignet.gov/sites/default/files/files/Integrity\\_Committee\\_Policies\\_and\\_Procedures\\_Revised\\_Jan-2018\\_Final.pdf](https://www.ignet.gov/sites/default/files/files/Integrity_Committee_Policies_and_Procedures_Revised_Jan-2018_Final.pdf)

<sup>47</sup> Letter from Winters and Jeffrey to Horowitz and Lerner [see note 45].

<sup>48</sup> Letter from Winters and Jeffrey to Horowitz and Lerner, 11 [see note 45]. <https://www.ignet.gov/sites/default/files/files/IC%202020-060%20Letter%20to%20CIGIE%2012-29-2020.pdf>, 11

General leak, Mr. Bulatao's ultimate complaint that Mr. Linick somehow acted improperly in securing an investigation from the DOD IG<sup>49</sup> is meritless. Therefore, Mr. Bulatao, on behalf of the Trump administration, either intentionally or unintentionally exploited the gaps in the committee's investigative mandate to belatedly justify improper agency involvement in the removal of the independent inspector general.<sup>50</sup>

I strongly urge the committee to continue your engagement with the Integrity Committee and the Council of the Inspectors General on Integrity and Efficiency as they update the committee's policies to address this gap, and to consider whether legislation is necessary to make additional changes to the committee to support its mission. As part of that engagement, I urge you to examine whether the Integrity Committee is adequately resourced to conduct its own independent investigations. I also suggest reviewing whether the committee's investigative procedures and standards, including under what circumstances the committee will open or complete an investigation into departed IGs or their senior staff, are clear and applied uniformly, and whether changes in the committee's makeup are necessary to ensure that it can adequately and independently investigate potential wrongdoing in IG offices.

## **Conclusion**

The federal inspector general system is a triumph. The passage of the Inspector General Act of 1978 and subsequent legislation to increase the authority and independence of these watchdogs demonstrate a firm commitment by the legislative branch to ensuring robust and impartial oversight of the executive branch. That said, it is time for Congress to address the public's concerns about government corruption by again acting to strengthen our nation's watchdogs. My colleagues and I at the Project On Government Oversight welcome the chance to work with this subcommittee in doing so.

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<sup>49</sup> *Why did the Trump Administration Fire the State Department Inspector General?: Hearing*, 17 [see note 44].

<sup>50</sup> This removal in particular led to significant, bipartisan questioning by Members of Congress and considerable public attention, especially because, as discussed above, the president immediately replaced Mr. Linick with a conflicted agency official. Letter from Senator Charles Grassley to President Donald Trump reiterating Congress's intent that a president should explain in detail to Congress why he plans to remove an inspector general, May 18, 2020. [https://www.grassley.senate.gov/imo/media/doc/2020-05-18%20CEG%20to%20POTUS%20\(State%20IG\).pdf](https://www.grassley.senate.gov/imo/media/doc/2020-05-18%20CEG%20to%20POTUS%20(State%20IG).pdf)