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Removal of Inspectors General: Rules, Practice, and Considerations for Congress

Introduction

In 1978, Congress passed the Inspector General Act (IG Act; P.L. 95-452) with the intent to improve oversight within certain executive branch agencies. During the floor debate on the legislation, Senator Thomas Eagleton described independence as the “most important” characteristic of the inspectors general (*Congressional Record*, vol. 124, part 29, October 22, 1978, p. 30952). While this independence has been considered essential, it is also weighed against the fact that inspectors general are situated within the agencies and that their dual mission is to report to both their home agencies and Congress, which calls for consideration of the balance between independence from and general supervision by agencies.

The removal procedures for inspectors general, which fall between removal without limitations and removal only for cause, have been considered an integral element of that independence since 1978. Nonetheless, there have been some instances in which Presidents have removed inspectors general, and those actions have raised concerns in Congress. In addition, Congress has considered and enacted additional removal requirements since 1978.

This In Focus provides an overview of the current removal procedure for inspectors general, identifies some notable removals, and discusses potential issues for Congress.

Removal Procedure

The removal procedure for presidentially appointed inspectors general is found in Section 3(b) of the IG Act (5 U.S.C. Appendix, as amended). The section reads:

An Inspector General may be removed from office by the President. If an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.

For the inspectors general of designated federal entities (DFEs), which are listed in Section 8G(2) of the IG Act, the same notice rule applies, except that the head of the DFE, rather than President, appoints and removes the inspector general. For DFEs headed by boards, committees, or commissions, removal requires the written concurrence of two-thirds of the members. The inspector general for the U.S. Postal Service may be removed only with agreement of seven out of nine postal governors and only “for cause.”

The 30-day notice requirement was established under the Inspector General Reform Act of 2008 (P.L. 110-409). Previously, the President (or head of a DFE) was required to “communicate the reasons for any such removal to both Houses of Congress” but not to provide advance notice.

Acting inspectors general, some of whom have served in this capacity for years at a time, do not enjoy the same removal protections as confirmed inspectors general. The status of acting inspectors general is dictated by the Federal Vacancies Reform Act of 1998 (5 U.S.C. §§3345-3349c; see CRS Report R44997, *The Vacancies Act: A Legal Overview*, by Valerie C. Brannon).

Removal Practice

CRS has identified three instances of inspector general removals by Presidents. This section discusses those actions and examples of related congressional practice.

President Reagan’s Removal of All Inspectors General

One of President Reagan’s first official acts upon his inauguration on January 20, 1981, was to remove all 15 confirmed and acting inspectors general then working across the executive branch. This action appears to have caused bipartisan concern in Congress. On February 3, 1981, an article in the *New York Times* quoted Representatives L. H. Fountain and Frank Horton, the chairperson and ranking member of the House Committee on Government Operations, respectively, as saying that the move had the potential to politicize, and thereby undermine, the position of inspector general (Robert Pear, “Ouster of All Inspectors General by Reagan Called Political Move,” *New York Times*, February 3, 1981, p. B14).

The controversy dissipated after President Reagan’s nominees met with the approval of Congress. By the time the Subcommittee on Intergovernmental Relations and Human Resources of the House Committee on Government Operations held a hearing on April 1, 1981, Chairperson Fountain stated that his concerns had been eased by the fact that five of the former inspectors general had been renominated and the Administration had made other commitments to support the inspector general system.

Chairperson Fountain, though, also described the impact of the removals:

This action undoubtedly had an adverse effect on the operations of the offices whose directors were abruptly removed. Much more serious damage was done, however, by the perception that Inspectors

General were being viewed in the same light as political appointees, who expect to be removed with each change in administrations (U.S. Congress, House Committee on Government Operations, Subcommittee on Intergovernmental Relations and Human Resources, *Oversight of Offices of Inspector General*, 97th Cong., 1st sess., April 1, 1981, pp. 1-2).

As this comment illustrates, some considered removal protections to be a part of the organizational design of the offices of inspectors general, ensuring that they could perform their duties free of the perception that they are partisan political actors.

Presidential Transitions after Reagan

During presidential transitions, turnover of political appointees is particularly common. While new Presidents have the authority to remove inspectors general at the start of their Administrations and make their own nominations, as they do for appointees in many other positions, this has generally not been the practice.

Following the actions at the beginning of the Reagan Administration, some Members of Congress were proactive in informing new administrations that they expected inspectors general to remain in their positions notwithstanding the change in Administration. For instance, in both 1988 and 1992, Senators John Glenn and William Roth, the chair and vice chair of the Senate Committee on Governmental Affairs, sent letters to Presidents-elect George H. W. Bush and Bill Clinton emphasizing this position. Since 1981, inspectors general have remained in their positions during each presidential transition.

Recent Presidential Removals of Inspectors General

There are at least two instances of a President removing an inspector general since 2000:

- On June 11, 2009, President Barack Obama notified Congress that he was removing the inspector general of the Corporation for National Community Service, Gerald Walpin. President Obama's stated reason for Walpin's removal was that he no longer had "the fullest confidence" in Walpin (letter from Barack Obama to Nancy Pelosi, June 11, 2009).
- On April 3, 2020, President Donald Trump notified Congress that he was removing the inspector general of the Intelligence Community, Michael Atkinson. President Trump's stated reason for Atkinson's removal was, again, that he no longer had the "fullest confidence" in Atkinson (letter from Donald Trump, to Senators Richard Burr and Mark Warner, April 3, 2020).

The removal requirements for the inspector general for the Intelligence Community are under Title 50, Section 3033(c)(4), of the *United States Code*, which has the same requirements as the IG Act.

The legal sufficiency of these notifications has not been adjudicated, but in each case, bipartisan groups of

legislators objected to the lack of specificity in these notices and requested more detailed explanations (letter from Senator Joe Lieberman et al. to Barack Obama, June 19, 2009, and letter from Senator Chuck Grassley et al. to Donald Trump, April 8, 2020). Senators received more information from the Obama Administration (letter from Norm Eisen, Special Counsel for Ethics and Government Reform, to Senators Joseph Lieberman and Susan Collins, June 16, 2009). The Trump Administration has not provided additional details.

It may be the case that other inspectors general have resigned under threat of removal. Because it is not possible to identify these cases with certainty from publicly available materials, they are not discussed here. Nonetheless, because such actions may impact the independence of inspectors general, Congress may monitor or investigate reports of such incidents.

Considerations for Congress

The removal of inspectors general has remained a topic of interest for Congress since 1978. Below are some aspects of the issue that Congress may consider.

Effectiveness of the Current Procedure

As an initial step, it may be useful to consider whether the current removal procedure provides for the desired independence and performance from inspectors general. If Congress has concerns about how inspectors general are operating, it may also be useful to investigate the cause of those issues in order to determine what action by Congress, if any, could effectively address those items.

Additional Removal Protections

Congress has previously made changes to the rules for removal of inspectors general, as discussed above. The most frequently discussed of these options has been to allow removal of inspectors general only for reasons that fall within a provided definition of *good cause*.

The version of the Inspector General Reform Act of 2008 that initially passed the House (H.R. 928, 110th Congress, as engrossed by the House), for instance, provided that inspectors general would serve for fixed seven-year terms and could be removed only for one of nine specified reasons (including malfeasance, gross mismanagement, and similar justifications). The Senate elected not to adopt this language based on the results of a comptroller general's panel that identified concerns regarding for-cause removal for inspectors general (S.Rept. 110-262 at 4-5).

Constitutional Limits on Congress's Policy Options

Some policy options that limit the removal of executive branch officials could raise constitutional concerns over separation of powers. Congress may explore those issues before enacting legislation that could later be challenged in the courts.

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