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IN FOCUS

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Legislative Proposals Related to the Removal of Inspectors General in the 116th Congress

The role of inspectors general (IGs) within the federal government is an issue of perennial interest to Congress. In particular, removal protections for IGs have drawn frequent attention. Proposals to adjust the requirements and procedures for IG removal received increased attention in 2020, especially after President Donald Trump removed two Senate-confirmed IGs and replaced two acting IGs.

This In Focus describes the current removal procedure under the Inspector General Act (IG Act; 5 U.S.C. Appx.) and then briefly summarizes legislation introduced during the 116th Congress that would change this procedure. While policy experts and others have offered other proposals, this In Focus does not discuss those proposals.

Current Removal Procedure

The removal procedure for presidentially appointed IGs is found in Section 3(b) of the IG Act. 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 the President, appoints and removes the IG. For DFEs headed by boards, committees, or commissions, removal requires the written concurrence of two-thirds of the members. The IG for the U.S. Postal Service may be removed only with agreement of seven out of nine postal governors and only "for cause," which is not further defined.

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 [IG] removal to both Houses of Congress" but not to provide advance notice.

A more detailed discussion of the current removal framework can be found in CRS Legal Sidebar LSB10476, *Presidential Removal of IGs Under the Inspector General Act*, by Todd Garvey.

Proposals in the 116th Congress

There have been at least nine distinct proposals in the 116th Congress to alter the removal procedure for IGs. Where substantially similar legislation was introduced on multiple occasions, those bills are discussed together. Unless otherwise stated, provisions apply to presidentially appointed and DFE IGs governed by the IG Act.

Inspectors General Independence Act of 2020 (H.R. 6668 and S. 3664)

This legislation would allow for removal of IGs only for "permanent incapacity, inefficiency, neglect of duty, malfeasance, or conviction of a felony or conduct involving moral turpitude." The current 30-day written notice requirement is also retained by this legislation.

The bills would also establish seven-year terms for IGs. (Currently IGs have no set terms under the IG Act.) Individuals would be eligible to serve more than one term, and presidentially appointed IGs could hold over in their positions for up to one year or until a successor is confirmed, whichever comes first.

Inspector General Independence Act (H.R. 6984)

This legislation would establish that IGs may be removed only for the following reasons and with documentary support: permanent incapacity, neglect of duty, malfeasance, conviction of a felony or conduct involving moral turpitude, knowing violation of a law or regulation, gross mismanagement, gross waste of funds, abuse of authority, and inefficiency.

The legislation would explicitly require that the documentation associated with the cause for removal be included in the written notice provided to Congress.

Securing Inspector General Independence Act of 2020 (S. 3994)

S. 3994 would amend the current 30-day notice provision to require that the President or head of a DFE removing an IG provide a "substantive rationale, including detailed and case-specific reasons" for that action, including specific information about any "open or completed inquiry" into the IG that is related to the removal action.

The bill would allow for an IG to be placed on non-duty status if written notice is provided to Congress 15 days in advance at any time except when the President or DFE has provided notice that an IG will be removed. The legislation would allow for an IG to be placed on non-duty status with concurrent (rather than advance) notice to Congress if it is determined that the IG's continued presence in the

workplace would pose a threat as laid out in Title 5, Section 6329b(b)(2)(A), of the *United States Code*.

Additionally, S. 3994 would provide that, when an IG position becomes vacant, either a specified first assistant or an individual designated by the President who has served in an IG office for at least 90 of the previous 365 days may serve as the acting IG.

Coronavirus Oversight and Recovery and Ethics (CORE) Act of 2020 (H.R. 7076 and S. 3855)

The CORE Act includes a number of provisions related to IGs. First, it would allow for removal of IGs only for the following causes: "permanent incapacity, neglect of duty, malfeasance, conviction of a felony or conduct involving moral turpitude, knowing violation of a law, gross mismanagement, gross waste of funds, or abuse of authority." Second, it would require the Council of Inspectors General on Integrity and Efficiency (CIGIE) to investigate and report on the removal of an IG.

Third, the CORE Act would provide that if there is a vacancy in an IG position, if possible, the first assistant shall serve as acting IG. If there is no first assistant, the President may select from among certain employees already serving in an IG office to serve as acting IG. Fourth, if an IG is removed, then that IG, any member of the staff of that IG office, or "[a]ny individual harmed by an action of the establishment following the removal of the Inspector General and before the position is filled by an individual appointed by the President, with the advice and consent of the Senate," shall have a cause of action to challenge the IG's removal in district court.

Fifth, the bill would provide for the appointment of a temporary IG by a panel of three IGs named by the CIGIE chair. This would occur if a presidentially appointed IG position remains vacant for 210 days or more. A temporary IG may serve until a permanent IG is confirmed by the Senate, and the President can remove the temporary IG with 30-day written notice to Congress.

Sixth, the bill would require 30-day written notice to Congress before the placement of an IG on non-duty status.

Finally, like the Inspectors General Independence Act of 2020 (H.R. 6668 and S. 3664), the CORE Act would establish seven-year terms for IGs and allow individuals to serve additional terms.

In addition to presidentially appointed and DFE IGs covered by the IG Act, the CORE Act would apply to the IGs for the Intelligence Community, Central Intelligence Agency, Government Accountability Office, U.S. Capitol Police, Architect of the Capitol, Library of Congress, Government Publishing Office, and the special inspectors general for the Troubled Asset Relief Program and for Afghanistan Reconstruction.

Restoring the Public Trust Act (H.R. 706) and the Inspector General Protection Act (H.R. 1847)

Title III of H.R. 706 and H.R. 1847 include provisions that would require the President or the head of a DFE to provide written notice 30 days before placing an IG on non-duty status. In addition, the bills would require the President, if he or she fails to name a nominee for an IG position by the 210th day after that position becomes vacant, to provide a written explanation to Congress providing the reasons a nomination has not been made and a target date for that action.

Heroes Act (H.R. 6800, H.R. 8406, S. 4800)

While the different iterations of the Heroes Act (including H.R. 6800, which was passed by the House on May 15, 2020) are largely focused on the federal government's response to the COVID-19 pandemic, each version also includes language related to IG independence. Title I of the Division titled "Accountability of Government Operations" includes the expanded notice requirements also found in the Restoring the Public Trust Act (H.R. 706) and a variation of the "for cause" removal provisions of the Inspector General Independence Act (H.R. 6984). This language includes the same grounds for removal but does not explicitly require that the notice to Congress include documentation related to the grounds for removal.

Accountability for Acting Officials Act (H.R. 6689)

This legislation would, among other things, require that, if a presidentially appointed IG position becomes vacant, the first assistant in that office will serve as the acting IG. If the office has no first assistant then the President may appoint an acting IG but only among officials serving in any IG office who "occupy a position at the Senior Executive Service level or higher."

William M. (Mac) Thornberry National Defense Authorization Act for FY2021 (H.R. 6395)

The House version of the FY2021 National Defense Authorization Act included a section similar to H.R. 6689 that limits those officials who can serve as an acting IG for a presidentially appointed position to an identified first assistant or to qualifying individuals already serving in an IG office.

Protecting Out Democracy Act (H.R. 8363 and S. 4880)

This legislation includes the expanded notice requirements also found in the Restoring the Public Trust Act (H.R. 706) and the "for cause" removal provisions of the Inspector General Independence Act (H.R. 6984). In addition, it includes provisions similar to those in the Accountability for Acting Officials Act (H.R. 6689) defining which officials may serve as acting IGs. Finally, the bill would extend "for cause" removal and notice requirements to the IGs in the intelligence community.

Demanding Unconditional Accountability under the Law for Inspectors General (DUAL IG) Act (H.R. 8047)

The DUAL IG Act would require that, in the event that a presidentially appointed IG position is vacant, the acting IG performing the duties of the IG "may not perform the functions and duties of any other position with the Government."

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