

## Protecting Inspectors General

President Trump's unprecedented firing of inspectors general – part of an effort to undermine oversight of Coronavirus Aid, Relief, and Economic Security Act (CARES Act) spending and eliminate checks on his power and corruption – has revealed a systemic flaw in America's system of government oversight. Unlike many other government officials who need to remain independent of politics, inspectors general can be fired for any reason, leaving them vulnerable to corrupt presidents attempting to avoid meaningful oversight.<sup>1</sup> While the President is required to give Congress 30 days' notice before removing an inspector general, acting inspectors general can be fired without any advance notice to Congress.<sup>2</sup> As a result, the president has an incentive to simply leave inspectors general in acting status to ensure that they are at his mercy. President Trump has perfected that approach, explicitly choosing to leave officials in acting status in order to preserve his “flexibility” to fire them when they get in his way.

### *For Cause Protections for Inspectors General*

Under current law, the president must give Congress 30 days' notice before firing an inspector general, but there are no substantive limits on his removal authority. Most recently, President Trump removed Intelligence Community Inspector General Michael Atkinson for performing his statutory duty to identify whistleblower reports that must be submitted to Congress. Atkinson's actions were broadly supported by his fellow inspectors general, but that did not insulate him from retaliation. Under current law, inspectors general can be fired for doing their jobs.

- To protect the independence of inspectors general and the American people's right to an honest government, **inspectors general should be fired only “for good cause shown,”** a protection currently enjoyed by officials ranging from entry level civil servants to the leaders of independent agencies. **This is a small step to protect the inspector general oversight system.**
- The president should also be **required to inform Congress** when an inspector general is placed on paid or unpaid non-duty status.

### *Protecting Acting Inspectors General*

Even if inspectors general were protected from wrongful termination, corrupt presidents could still use the Trump playbook to undermine independent oversight. President Trump has refused to fill inspector general positions with Senate-approved nominees, and as a result 11 of the nation's 37 Senate-confirmable inspector general positions are currently filled with temporary placeholders, including four that have remained vacant throughout the entire Trump Administration.<sup>3</sup> In addition to undermining morale, long-term planning and management, this approach leaves inspectors general vulnerable to presidential retaliation and therefore not fully independent. Acting inspectors general do not even enjoy the 30-day wait period requirement that

<sup>1</sup> See 5 U.S.C. § APP. 3 § 3 (applicable to established inspectors general); 5 U.S.C. § APP. 3 § 8G(e) (applicable to inspectors general of designated federal entities); 50 U.S.C § 3033(c)(4) (applicable to the inspector general of the intelligence community); 50 U.S.C. § 3517(b)(6) (applicable to the inspector general of the CIA).

<sup>2</sup> See GAO, Inspectors General: Information on Vacancies and IG Community Views on Their Impact, March 2018, at 8, available at <https://www.gao.gov/assets/700/690561.pdf>.

<sup>3</sup> See Inspector General Vacancy Tracker, Project on Government Oversight, April 8, 2020, available at <https://www.pogo.org/database/inspector-general-vacancy-tracker/>; see also R45450, Statutory Inspectors General in the Federal Government: A Primer, CRS, Jan. 3, 2019, at 32, available at <https://fas.org/sgp/crs/misc/R45450.pdf> (for list of which IG positions are Senate-confirmable).

applies to removing confirmed inspectors general. They can be fired immediately if the president decides they pose a threat.

President Trump recently relied on this loophole to remove Acting Defense Department Inspector General Glenn Fine from his post and replace him with an individual who will split time between two IG offices. Trump's action came immediately after Fine was selected to lead the Pandemic Response Accountability Committee (PRAC), which will oversee the Trump Administration's bailout of selected companies affected by the coronavirus, and Trump clearly intended to prevent Fine from serving in that role.

- **When an inspector general position becomes vacant, it should automatically be filled** by the “first assistant” to the last inspector general, ensuring that there is always a cop on the beat overseeing major government entities.
- **Acting inspectors general should enjoy the same job protections as inspectors general who have been confirmed.** Presidents cannot be allowed to insulate themselves from accountability simply by declining to nominate and confirm inspectors general.

### *Making the Law Enforceable*

While fixing legal loopholes should be sufficient to constrain the executive branch, President Trump has shown that he is willing to ignore the law when it constrains his power. Most recently, President Trump made clear that he would ignore the CARES Act's requirement that Congress be informed when inspectors general are denied access to information. Since the beginning of his presidency, President Trump has fired executive branch officials in spite of all relevant rules and norms. Unless President Trump is forced to follow the law, he simply will not do so.

Unfortunately, too often, tenure protections for government officials are difficult—if not impossible—to enforce. When an official is fired unlawfully, the administration that fired him will not challenge the unlawful action, and the fired official may not have the resources or the inclination to litigate against the executive branch. Further, the D.C. Circuit has held that the limited protections that currently exist for confirmed inspectors general are, for all intents and purposes, toothless. The president can get around the 30-day notification requirement by simply placing an inspector general on administrative leave and even the thinnest of reasons—that the president no longer has the “fullest confidence” in the inspector general, for example—is enough to satisfy the written explanation requirement.<sup>4</sup> The hundreds of millions of Americans who are harmed when government operates without robust oversight have no ability to enforce the law against the president.

Congress can fix this. Congress can grant individuals who have experienced a concrete harm the ability to challenge an unlawful firing in court.

- **Any member of the staff** of an unlawfully fired inspector general or acting inspector general should be **allowed to file suit** to challenge the firing.

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<sup>4</sup> Walpin v. Corporation for Nat. and Community Services, 630 F. 3d 184, 187 (D.C. Cir. 2011).

- **Any member of the public who has been harmed** as the result of an unlawful firing of an inspector general or acting inspector general should be **authorized to file suit** and vindicate their rights and the public interest.

**The Trump Administration has shown that the American system of accountable government is vulnerable to the unlawful actions of a president who considers himself above the law. As Congress authorizes trillions in taxpayer dollars to be spent by this Administration, it must take action to ensure that the government acts on behalf of the American people, not just the wealthy and well-connected. Without effective oversight, Congress cannot in good conscience put this much power in the hands of the executive branch. It must pass strong, effective, and enforceable laws to protect the American people.**