

116TH CONGRESS
2D SESSION

S. 3994

To amend the Inspector General Act of 1978 to provide that the President or certain agency heads may remove an Inspector General, or place an Inspector General on non-duty status, only if certain conditions are satisfied, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2020

Mr. GRASSLEY (for himself, Mr. PETERS, Mr. PORTMAN, Mr. CARPER, Mr. LANKFORD, Ms. HASSAN, Mr. ROMNEY, Mr. TESTER, Ms. COLLINS, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend the Inspector General Act of 1978 to provide that the President or certain agency heads may remove an Inspector General, or place an Inspector General on non-duty status, only if certain conditions are satisfied, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing Inspector
5 General Independence Act of 2020”.

1 **SEC. 2. REMOVAL OR TRANSFER OF INSPECTORS GENERAL;**
2 **PLACEMENT ON NON-DUTY STATUS.**

3 (a) IN GENERAL.—The Inspector General Act of
4 1978 (5 U.S.C. App.) is amended—

5 (1) in section 3(b)—

6 (A) by inserting “(1)(A)” after “(b)”;

7 (B) in paragraph (1), as so designated—

8 (i) in subparagraph (A), as so des-
9 ignated, in the second sentence—

10 (I) by striking “reasons” and in-
11 serting the following: “substantive ra-
12 tionale, including detailed and case-
13 specific reasons,”; and

14 (II) by inserting “(including to
15 the Committee on Homeland Security
16 and Governmental Affairs of the Sen-
17 ate and the Committee on Oversight
18 and Reform of the House of Rep-
19 resentatives)” after “Houses of Con-
20 gress”; and

21 (ii) by adding at the end the fol-
22 lowing:

23 “(B) If there is an open or completed inquiry into
24 an Inspector General that relates to the removal or trans-
25 fer of the Inspector General under subparagraph (A), the

1 written communication required under that subparagraph
2 shall—

3 “(i) identify each entity that is conducting, or
4 that conducted, the inquiry; and

5 “(ii) in the case of a completed inquiry, contain
6 the findings made during the inquiry.”; and

7 (C) by adding at the end the following:

8 “(2)(A) Subject to the other provisions of this para-
9 graph, only the President may place an Inspector General
10 on non-duty status.

11 “(B) If the President places an Inspector General on
12 non-duty status, the President shall communicate in writ-
13 ing the substantive rationale, including detailed and case-
14 specific reasons, for the change in status to both Houses
15 of Congress (including to the Committee on Homeland Se-
16 curity and Governmental Affairs of the Senate and the
17 Committee on Oversight and Reform of the House of Rep-
18 resentatives) not later than 15 days before the date on
19 which the change in status takes effect, except that the
20 President may submit that communication on the date on
21 which the change in status takes effect if—

22 “(i) the President has made a determination
23 that the continued presence of the Inspector General
24 in the workplace poses a threat described in any of

1 clauses (i) through (iv) of section 6329b(b)(2)(A) of
2 title 5, United States Code; and

3 “(ii) in the communication, the President in-
4 cludes a report on the determination described in
5 clause (i), which shall include—

6 “(I) a specification of which clause of sec-
7 tion 6329b(b)(2)(A) of title 5, United States
8 Code, the President has determined applies
9 under clause (i) of this subparagraph;

10 “(II) the substantive rationale, including
11 detailed and case-specific reasons, for the deter-
12 mination made under clause (i);

13 “(III) an identification of each entity that
14 is conducting, or that conducted, any inquiry
15 upon which the determination under clause (i)
16 was made; and

17 “(IV) in the case of an inquiry described
18 in subclause (III) that is completed, the find-
19 ings made during that inquiry.

20 “(C) The President may not place an Inspector Gen-
21 eral on non-duty status during the 30-day period pre-
22 ceding the date on which the Inspector General is removed
23 or transferred under paragraph (1)(A) unless the Presi-
24 dent—

1 “(i) has made a determination that the contin-
2 ued presence of the Inspector General in the work-
3 place poses a threat described in any of clauses (i)
4 through (iv) of section 6329b(b)(2)(A) of title 5,
5 United States Code; and

6 “(ii) not later than the date on which the
7 change in status takes effect, submits to both
8 Houses of Congress (including to the Committee on
9 Homeland Security and Governmental Affairs of the
10 Senate and the Committee on Oversight and Reform
11 of the House of Representatives) a written commu-
12 nication that contains the information required
13 under subparagraph (B), including the report re-
14 quired under clause (ii) of that subparagraph.

15 “(D) For the purposes of this paragraph—

16 “(i) the term ‘Inspector General’—

17 “(I) means an Inspector General who was
18 appointed by the President, without regard to
19 whether the Senate provided advice and consent
20 with respect to that appointment; and

21 “(II) includes the Inspector General of an
22 establishment, the Inspector General of the In-
23 telligence Community, the Inspector General of
24 the Central Intelligence Agency, the Special In-
25 specter General for Afghanistan Reconstruc-

1 tion, the Special Inspector General for the
2 Troubled Asset Relief Program, and the Special
3 Inspector General for Pandemic Recovery; and
4 “(ii) a reference to the removal or transfer of
5 an Inspector General under paragraph (1), or to the
6 written communication described in that paragraph,
7 shall be considered to be—

8 “(I) in the case of the Inspector General of
9 the Intelligence Community, a reference to
10 paragraph (4) of section 3033(c) of title 50,
11 United States Code;

12 “(II) in the case of the Inspector General
13 of the Central Intelligence Agency, a reference
14 to paragraph (6) of section 3517(b) of title 50,
15 United States Code;

16 “(III) in the case of the Special Inspector
17 General for Afghanistan Reconstruction, a ref-
18 erence to paragraph (6) of section 1229(c) of
19 the National Defense Authorization Act for Fis-
20 cal Year 2008 (Public Law 110–181; 122 Stat.
21 379);

22 “(IV) in the case of the Special Inspector
23 General for the Troubled Asset Relief Program,
24 a reference to paragraph (4) of section 121(b)

1 of the Emergency Economic Stabilization Act of
2 2008 (12 U.S.C. 5231(b)); and

3 “(V) in the case of the Special Inspector
4 General for Pandemic Recovery, a reference to
5 paragraph (3) of section 4018(b) of the CARES
6 Act (Public Law 116–136).”; and

7 (2) in section 8G(e)—

8 (A) in paragraph (1), by inserting “or
9 placement on non-duty status” after “a re-
10 moval”;

11 (B) in paragraph (2)—

12 (i) by inserting “(A)” after “(2)”;

13 (ii) in subparagraph (A), as so des-
14 ignated, in the first sentence—

15 (I) by striking “reasons” and in-
16 serting the following: “substantive ra-
17 tionale, including detailed and case-
18 specific reasons,”; and

19 (II) by inserting “(including to
20 the Committee on Homeland Security
21 and Governmental Affairs of the Sen-
22 ate and the Committee on Oversight
23 and Reform of the House of Rep-
24 resentatives)” after “Houses of Con-
25 gress”; and

1 (iii) by adding at the end the fol-
2 lowing:

3 “(B) If there is an open or completed inquiry into
4 an Inspector General that relates to the removal or trans-
5 fer of the Inspector General under subparagraph (A), the
6 written communication required under that subparagraph
7 shall—

8 (i) identify each entity that is conducting, or
9 that conducted, the inquiry; and

10 (ii) in the case of a completed inquiry, contain
11 the findings made during the inquiry.”; and

12 (C) by adding at the end the following:

13 “(3)(A) Subject to the other provisions of this para-
14 graph, only the head of the applicable designated Federal
15 entity (referred to in this paragraph as the ‘covered offi-
16 cial’) may place an Inspector General on non-duty status.

17 “(B) If a covered official places an Inspector General
18 on non-duty status, the covered official shall communicate
19 in writing the substantive rationale, including detailed and
20 case-specific reasons, for the change in status to both
21 Houses of Congress (including to the Committee on
22 Homeland Security and Governmental Affairs of the Sen-
23 ate and the Committee on Oversight and Reform of the
24 House of Representatives) not later than 15 days before
25 the date on which the change in status takes effect, except

1 that the covered official may submit that communication
2 on the date on which the change in status takes effect
3 if—

4 “(i) the covered official has made a determina-
5 tion that the continued presence of the Inspector
6 General in the workplace poses a threat described in
7 any of clauses (i) through (iv) of section
8 6329b(b)(2)(A) of title 5, United States Code; and

9 “(ii) in the communication, the covered official
10 includes a report on the determination described in
11 clause (i), which shall include—

12 “(I) a specification of which clause of sec-
13 tion 6329b(b)(2)(A) of title 5, United States
14 Code, the covered official has determined ap-
15 plies under clause (i) of this subparagraph;

16 “(II) the substantive rationale, including
17 detailed and case-specific reasons, for the deter-
18 mination made under clause (i);

19 “(III) an identification of each entity that
20 is conducting, or that conducted, any inquiry
21 upon which the determination under clause (i)
22 was made; and

23 “(IV) in the case of an inquiry described
24 in subclause (III) that is completed, the find-
25 ings made during that inquiry.

1 “(C) A covered official may not place an Inspector
2 General on non-duty status during the 30-day period pre-
3 ceding the date on which the Inspector General is removed
4 or transferred under paragraph (2)(A) unless the covered
5 official—

6 “(i) has made a determination that the contin-
7 ued presence of the Inspector General in the work-
8 place poses a threat described in any of clauses (i)
9 through (iv) of section 6329b(b)(2)(A) of title 5,
10 United States Code; and

11 “(ii) not later than the date on which the
12 change in status takes effect, submits to both
13 Houses of Congress (including to the Committee on
14 Homeland Security and Governmental Affairs of the
15 Senate and the Committee on Oversight and Reform
16 of the House of Representatives) a written commu-
17 nication that contains the information required
18 under subparagraph (B), including the report re-
19 quired under clause (ii) of that subparagraph.

20 “(D) Nothing in this paragraph may be construed to
21 limit or otherwise modify—

22 “(i) any statutory protection that is afforded to
23 an Inspector General; or

1 “(ii) any other action that a covered official
2 may take under law with respect to an Inspector
3 General.”.

4 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
5 Section 12(3) of the Inspector General Act of 1978 (5
6 U.S.C. App.) is amended by inserting “except as otherwise
7 expressly provided,” before “the term”.

8 **SEC. 3. VACANCY IN POSITION OF INSPECTOR GENERAL.**

9 (a) **IN GENERAL.**—Section 3 of the Inspector General
10 Act of 1978 (5 U.S.C. App.) is amended by adding at the
11 end the following:

12 “(h)(1) In this subsection—

13 “(A) the term ‘first assistant to the position of
14 Inspector General’ means, with respect to an Office
15 of Inspector General—

16 “(i) an individual who, as of the day before
17 the date on which the Inspector General dies,
18 resigns, or otherwise becomes unable to perform
19 the functions and duties of that position—

20 “(I) is serving in a position in that
21 Office; and

22 “(II) has been designated in writing
23 by the Inspector General, through an order
24 or succession or otherwise, as the first as-

1 sistant to the position of Inspector Gen-
2 eral; or

3 “(ii) if the Inspector General has not made
4 a designation described in clause (i)(II)—

5 “(I) the Principal Deputy Inspector
6 General of that Office, as of the day before
7 the date on which the Inspector General
8 dies, resigns, or otherwise becomes unable
9 to perform the functions and duties of that
10 position; or

11 “(II) if there is no Principal Deputy
12 Inspector General of that Office, the Dep-
13 uty Inspector General of that Office, as of
14 the day before the date on which the In-
15 spector General dies, resigns, or otherwise
16 becomes unable to perform the functions
17 and duties of that position; and

18 “(B) the term ‘Inspector General’—

19 “(i) means an Inspector General who is ap-
20 pointed by the President, by and with the ad-
21 vice and consent of the Senate; and

22 “(ii) includes the Inspector General of an
23 establishment, the Inspector General of the In-
24 telligence Community, the Inspector General of
25 the Central Intelligence Agency, the Special In-

1 spectator General for the Troubled Asset Relief
2 Program, and the Special Inspector General for
3 Pandemic Recovery.

4 “(2) If an Inspector General dies, resigns, or is other-
5 wise unable to perform the functions and duties of the po-
6 sition—

7 “(A) section 3345(a) of title 5, United States
8 Code, and section 3025(e) of title 50, United States
9 Code, shall not apply;

10 “(B) subject to paragraph (4), the first assist-
11 ant to the position of Inspector General shall per-
12 form the functions and duties of the Inspector Gen-
13 eral temporarily in an acting capacity subject to the
14 time limitations of section 3346 of title 5, United
15 States Code; and

16 “(C) notwithstanding subparagraph (B), and
17 subject to paragraphs (4) and (5), the President
18 (and only the President) may direct an officer or
19 employee of any Office of an Inspector General to
20 perform the functions and duties of the Inspector
21 General temporarily in an acting capacity subject to
22 the time limitations of section 3346 of title 5,
23 United States Code, only if—

24 “(i) during the 365-day period preceding
25 the date of death, resignation, or beginning of

1 inability to serve of the Inspector General, the
2 officer or employee served in a position in an
3 Office of an Inspector General for not less than
4 90 days, except that—

5 “(I) the requirement under this clause
6 shall not apply if the officer is an Inspec-
7 tor General; and

8 “(II) for the purposes of this subpara-
9 graph, performing the functions and duties
10 of an Inspector General temporarily in an
11 acting capacity does not qualify as service
12 in a position in an Office of an Inspector
13 General;

14 “(ii) the rate of pay for the position of the
15 officer or employee described in clause (i) is
16 equal to or greater than the minimum rate of
17 pay payable for a position at GS-15 of the
18 General Schedule;

19 “(iii) the officer or employee has dem-
20 onstrated ability in accounting, auditing, finan-
21 cial analysis, law, management analysis, public
22 administration, or investigations; and

23 “(iv) not later than 30 days before the
24 date on which the direction takes effect, the
25 President communicates in writing to both

1 Houses of Congress the substantive rationale,
2 including the detailed and case-specific reasons,
3 for such direction, including the reason for the
4 direction that someone other than the individual
5 who is performing the functions and duties of
6 the Inspector General temporarily in an acting
7 capacity (as of the date on which the President
8 issues that direction) perform those functions
9 and duties temporarily in an acting capacity.

10 “(3) Notwithstanding section 3345(a) of title 5,
11 United States Code, section 3025(e) of title 50, United
12 States Code, and subparagraphs (B) and (C) of paragraph
13 (2), and subject to paragraph (4), during any period in
14 which an Inspector General is on non-duty status—

15 “(A) the first assistant to the position of In-
16 spector General shall perform the functions and du-
17 ties of the position temporarily in an acting capacity
18 subject to the time limitations of section 3346 of
19 title 5, United States Code; and

20 “(B) if the first assistant described in subpara-
21 graph (A) dies, resigns, or becomes otherwise unable
22 to perform those functions and duties, the President
23 (and only the President) may direct an officer or
24 employee in that Office of Inspector General to per-
25 form those functions and duties temporarily in an

1 acting capacity, subject to the time limitations of
2 section 3346 of title 5, United States Code, if—

3 “(i) that direction satisfies the require-
4 ments under clauses (ii), (iii), and (iv) of para-
5 graph (2)(C); and

6 “(ii) that officer or employee served in a
7 position in that Office of Inspector General for
8 not fewer than 90 of the 365 days preceding
9 the date on which the President makes that di-
10 rection.

11 “(4) An individual may perform the functions and
12 duties of an Inspector General temporarily and in an act-
13 ing capacity under subparagraph (B) or (C) of paragraph
14 (2), or under paragraph (3), with respect to only 1 Inspec-
15 tor General position at any given time.

16 “(5) If the President makes a direction under para-
17 graph (2)(C), during the 30-day period preceding the date
18 on which the direction of the President takes effect, the
19 functions and duties of the position of the applicable In-
20 spector General shall be performed by—

21 “(A) the first assistant to the position of In-
22 spector General; or

23 “(B) the individual performing those functions
24 and duties temporarily in an acting capacity, as of
25 the date on which the President issues that direc-

1 tion, if that individual is an individual other than
2 the first assistant to the position of Inspector Gen-
3 eral.”.

4 (b) RULE OF CONSTRUCTION.—Nothing in the
5 amendment made by subsection (a) may be construed to
6 limit the applicability of sections 3345 through 3349d of
7 title 5, United States Code (commonly known as the “Fed-
8 eral Vacancies Reform Act of 1998”), other than with re-
9 spect to section 3345(a) of that title.

10 (c) EFFECTIVE DATE.—

11 (1) DEFINITION.—In this subsection, the term
12 “Inspector General” has the meaning given the term
13 in subsection (h)(1)(B) of section 3 of the Inspector
14 General Act of 1978 (5 U.S.C. App.), as added by
15 subsection (a) of this section.

16 (2) APPLICABILITY.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (B), this section, and the amend-
19 ments made by this section, shall take effect on
20 the date of enactment of this Act.

21 (B) EXISTING VACANCIES.—If, as of the
22 date of enactment of this Act, an individual is
23 performing the functions and duties of an In-
24 specter General temporarily in an acting capac-
25 ity, this section, and the amendments made by

1 this section, shall take effect with respect to
 2 that Inspector General position on the date that
 3 is 30 days after the date of enactment of this
 4 Act.

5 **SEC. 4. OFFICE OF INSPECTOR GENERAL WHISTLEBLOWER**
 6 **COMPLAINTS.**

7 (a) WHISTLEBLOWER PROTECTION COORDINATOR.—
 8 Section 3(d)(1)(C) of the Inspector General Act of 1978
 9 (5 U.S.C. App.) is amended—

10 (1) in clause (i), in the matter preceding sub-
 11 clause (I), by inserting “, including employees of
 12 that Office of Inspector General” after “employees”;
 13 and

14 (2) in clause (iii), by inserting “(including the
 15 Integrity Committee of that Council)” after “and
 16 Efficiency”.

17 (b) COUNCIL OF THE INSPECTORS GENERAL ON IN-
 18 TEGRITY AND EFFICIENCY.—Section 11(c)(5)(B) of the
 19 Inspector General Act of 1978 (5 U.S.C. App.) is amended
 20 by striking “, allegations of reprisal,” and inserting the
 21 following: “and allegations of reprisal (including the timely
 22 and appropriate handling and consideration of protected
 23 disclosures and allegations of reprisal that are internal to
 24 an Office of Inspector General)”.

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