

117TH CONGRESS
1ST SESSION

S. 587

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

MARCH 4, 2021

Mr. GRASSLEY (for himself, Mr. PETERS, Mr. PORTMAN, Mr. CARPER, Mr. LANKFORD, Ms. HASSAN, Mr. ROMNEY, Mr. TESTER, Ms. COLLINS, Mrs. FEINSTEIN, Mr. WICKER, and Ms. SINEMA) 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 2021”.

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, the Committee on Oversight and
 18 Reform of the House of Representa-
 19 tives, and any other congressional
 20 committee that has jurisdiction with
 21 respect to that Inspector General)”
 22 after “Houses of Congress”; and

23 (ii) by adding at the end the fol-
 24 lowing:

25 “(B) If there is an open or completed inquiry into
 26 an Inspector General that relates to the removal or trans-

1 fer of the Inspector General under subparagraph (A), the
 2 written communication required under that subparagraph
 3 shall—

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

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

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

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

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

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

6 “(ii) in the communication, the President in-
7 cludes a report on the determination described in
8 clause (i), which shall include—

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

13 “(II) the substantive rationale, including
14 detailed and case-specific reasons, for the deter-
15 mination made under clause (i);

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

20 “(IV) in the case of an inquiry described
21 in subclause (III) that is completed, the find-
22 ings made during that inquiry.

23 “(C) The President may not place an Inspector Gen-
24 eral on non-duty status during the 30-day period pre-
25 ceding the date on which the Inspector General is removed

1 or transferred under paragraph (1)(A) unless the Presi-
2 dent—

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

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

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

20 “(i) the term ‘Inspector General’—

21 “(I) means an Inspector General who was
22 appointed by the President, without regard to
23 whether the Senate provided advice and consent
24 with respect to that appointment; and

1 “(II) includes the Inspector General of an
 2 establishment, the Inspector General of the In-
 3 telligence Community, the Inspector General of
 4 the Central Intelligence Agency, the Special In-
 5 spector General for Afghanistan Reconstruc-
 6 tion, the Special Inspector General for the
 7 Troubled Asset Relief Program, and the Special
 8 Inspector General for Pandemic Recovery; and
 9 “(ii) a reference to the removal or transfer of
 10 an Inspector General under paragraph (1), or to the
 11 written communication described in that paragraph,
 12 shall be considered to be—

13 “(I) in the case of the Inspector General of
 14 the Intelligence Community, a reference to sec-
 15 tion 103H(c)(4) of the National Security Act of
 16 1947 (50 U.S.C. 3033(c)(4));

17 “(II) in the case of the Inspector General
 18 of the Central Intelligence Agency, a reference
 19 to section 17(b)(6) of the Central Intelligence
 20 Agency Act of 1949 (50 U.S.C. 3517(b)(6));

21 “(III) in the case of the Special Inspector
 22 General for Afghanistan Reconstruction, a ref-
 23 erence to section 1229(c)(6) of the National
 24 Defense Authorization Act for Fiscal Year 2008
 25 (Public Law 110–181; 122 Stat. 379);

1 “(IV) in the case of the Special Inspector
 2 General for the Troubled Asset Relief Program,
 3 a reference to section 121(b)(4) of the Emer-
 4 gency Economic Stabilization Act of 2008 (12
 5 U.S.C. 5231(b)(4)); and

6 “(V) in the case of the Special Inspector
 7 General for Pandemic Recovery, a reference to
 8 section 4018(b)(3) of the CARES Act (15
 9 U.S.C. 9053(b)(3)).”; and
 10 (2) in section 8G(e)—

11 (A) in paragraph (1), by inserting “or
 12 placement on non-duty status” after “a re-
 13 moval”;

14 (B) in paragraph (2)—

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

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

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

22 (II) by inserting “(including to
 23 the Committee on Homeland Security
 24 and Governmental Affairs of the Sen-
 25 ate, the Committee on Oversight and

1 Reform of the House of Representa-
 2 tives, and any other congressional
 3 committee that has jurisdiction with
 4 respect to that Inspector General)”
 5 after “Houses of Congress”; and
 6 (iii) by adding at the end the fol-
 7 lowing:

8 “(B) If there is an open or completed inquiry into
 9 an Inspector General that relates to the removal or trans-
 10 fer of the Inspector General under subparagraph (A), the
 11 written communication required under that subparagraph
 12 shall—

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

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

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

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

22 “(B) If a covered official places an Inspector General
 23 on non-duty status, the covered official shall communicate
 24 in writing the substantive rationale, including detailed and
 25 case-specific reasons, for the change in status to both

1 Houses of Congress (including to the Committee on
2 Homeland Security and Governmental Affairs of the Sen-
3 ate, the Committee on Oversight and Reform of the House
4 of Representatives, and any other congressional committee
5 that has jurisdiction with respect to that Inspector Gen-
6 eral) not later than 15 days before the date on which the
7 change in status takes effect, except that the covered offi-
8 cial may submit that communication on the date on which
9 the change in status takes effect if—

10 “(i) the covered official has made a determina-
11 tion that the continued presence of the Inspector
12 General in the workplace poses a threat described in
13 any of clauses (i) through (iv) of section
14 6329b(b)(2)(A) of title 5, United States Code; and

15 “(ii) in the communication, the covered official
16 includes a report on the determination described in
17 clause (i), which shall include—

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

22 “(II) the substantive rationale, including
23 detailed and case-specific reasons, for the deter-
24 mination made under clause (i);

1 “(III) an identification of each entity that
2 is conducting, or that conducted, any inquiry
3 upon which the determination under clause (i)
4 was made; and

5 “(IV) in the case of an inquiry described
6 in subclause (III) that is completed, the find-
7 ings made during that inquiry.

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

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

18 “(ii) not later than the date on which the
19 change in status takes effect, submits to both
20 Houses of Congress (including to the Committee on
21 Homeland Security and Governmental Affairs of the
22 Senate, the Committee on Oversight and Reform of
23 the House of Representatives, and any other con-
24 gressional committee that has jurisdiction with re-
25 spect to that Inspector General) a written commu-

1 nication that contains the information required
 2 under subparagraph (B), including the report re-
 3 quired under clause (ii) of that subparagraph.

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

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

8 “(ii) any other action that a covered official
 9 may take under law with respect to an Inspector
 10 General.”.

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

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

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

19 “(h)(1) In this subsection—

20 “(A) the term ‘first assistant to the position of
 21 Inspector General’ means, with respect to an Office
 22 of Inspector General—

23 “(i) an individual who, as of the day before
 24 the date on which the Inspector General dies,

1 resigns, or otherwise becomes unable to perform
 2 the functions and duties of that position—

3 “(I) is serving in a position in that
 4 Office; and

5 “(II) has been designated in writing
 6 by the Inspector General, through an order
 7 of succession or otherwise, as the first as-
 8 sistant to the position of Inspector Gen-
 9 eral; or

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

12 “(I) the Principal Deputy Inspector
 13 General of that Office, as of the day before
 14 the date on which the Inspector General
 15 dies, resigns, or otherwise becomes unable
 16 to perform the functions and duties of that
 17 position; or

18 “(II) if there is no Principal Deputy
 19 Inspector General of that Office, the Dep-
 20 uty Inspector General of that Office, as of
 21 the day before the date on which the In-
 22 spector General dies, resigns, or otherwise
 23 becomes unable to perform the functions
 24 and duties of that position; and

25 “(B) the term ‘Inspector General’—

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

4 “(ii) includes the Inspector General of an
5 establishment, the Inspector General of the In-
6 telligence Community, the Inspector General of
7 the Central Intelligence Agency, the Special In-
8 spector General for the Troubled Asset Relief
9 Program, and the Special Inspector General for
10 Pandemic Recovery.

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

14 “(A) section 3345(a) of title 5, United States
15 Code, and section 103(e) of the National Security
16 Act of 1947 (50 U.S.C. 3025(e)) shall not apply;

17 “(B) subject to paragraph (4), the first assist-
18 ant to the position of Inspector General shall per-
19 form the functions and duties of the Inspector Gen-
20 eral temporarily in an acting capacity subject to the
21 time limitations of section 3346 of title 5, United
22 States Code; and

23 “(C) notwithstanding subparagraph (B), and
24 subject to paragraphs (4) and (5), the President
25 (and only the President) may direct an officer or

1 employee of any Office of an Inspector General to
2 perform the functions and duties of the Inspector
3 General temporarily in an acting capacity subject to
4 the time limitations of section 3346 of title 5,
5 United States Code, only if—

6 “(i) during the 365-day period preceding
7 the date of death, resignation, or beginning of
8 inability to serve of the Inspector General, the
9 officer or employee served in a position in an
10 Office of an Inspector General for not less than
11 90 days, except that—

12 “(I) the requirement under this clause
13 shall not apply if the officer is an Inspec-
14 tor General; and

15 “(II) for the purposes of this subpara-
16 graph, performing the functions and duties
17 of an Inspector General temporarily in an
18 acting capacity does not qualify as service
19 in a position in an Office of an Inspector
20 General;

21 “(ii) the rate of pay for the position of the
22 officer or employee described in clause (i) is
23 equal to or greater than the minimum rate of
24 pay payable for a position at GS-15 of the
25 General Schedule;

1 “(iii) the officer or employee has dem-
2 onstrated ability in accounting, auditing, finan-
3 cial analysis, law, management analysis, public
4 administration, or investigations; and

5 “(iv) not later than 30 days before the
6 date on which the direction takes effect, the
7 President communicates in writing to both
8 Houses of Congress (including to the Com-
9 mittee on Homeland Security and Govern-
10 mental Affairs of the Senate, the Committee on
11 Oversight and Reform of the House of Rep-
12 resentatives, and any other congressional com-
13 mittee that has jurisdiction with respect to that
14 Inspector General) the substantive rationale, in-
15 cluding the detailed and case-specific reasons,
16 for such direction, including the reason for the
17 direction that someone other than the individual
18 who is performing the functions and duties of
19 the Inspector General temporarily in an acting
20 capacity (as of the date on which the President
21 issues that direction) perform those functions
22 and duties temporarily in an acting capacity.

23 “(3) Notwithstanding section 3345(a) of title 5,
24 United States Code, section 103(e) of the National Secu-
25 rity Act of 1947 (50 U.S.C. 3025(e)), and subparagraphs

1 (B) and (C) of paragraph (2), and subject to paragraph
2 (4), during any period in which an Inspector General is
3 on non-duty status—

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

9 “(B) if the first assistant described in subpara-
10 graph (A) dies, resigns, or becomes otherwise unable
11 to perform those functions and duties, the President
12 (and only the President) may direct an officer or
13 employee in that Office of Inspector General to per-
14 form those functions and duties temporarily in an
15 acting capacity, subject to the time limitations of
16 section 3346 of title 5, United States Code, if—

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

20 “(ii) that officer or employee served in a
21 position in that Office of Inspector General for
22 not fewer than 90 of the 365 days preceding
23 the date on which the President makes that di-
24 rection.

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

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

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

13 “(B) the individual performing those functions
 14 and duties temporarily in an acting capacity, as of
 15 the date on which the President issues that direc-
 16 tion, if that individual is an individual other than
 17 the first assistant to the position of Inspector Gen-
 18 eral.”.

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

25 (c) EFFECTIVE DATE.—

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

6 (2) APPLICABILITY.—

7 (A) IN GENERAL.—Except as provided in
 8 subparagraph (B), this section, and the amend-
 9 ments made by this section, shall take effect on
 10 the date of enactment of this Act.

11 (B) EXISTING VACANCIES.—If, as of the
 12 date of enactment of this Act, an individual is
 13 performing the functions and duties of an In-
 14 specter General temporarily in an acting capac-
 15 ity, this section, and the amendments made by
 16 this section, shall take effect with respect to
 17 that Inspector General position on the date that
 18 is 30 days after the date of enactment of this
 19 Act.

20 **SEC. 4. OFFICE OF INSPECTOR GENERAL WHISTLEBLOWER**
 21 **COMPLAINTS.**

22 (a) WHISTLEBLOWER PROTECTION COORDINATOR.—
 23 Section 3(d)(1)(C) of the Inspector General Act of 1978
 24 (5 U.S.C. App.) is amended—

1 (1) in clause (i), in the matter preceding sub-
2 clause (I), by inserting “, including employees of
3 that Office of Inspector General” after “employees”;
4 and

5 (2) in clause (iii), by inserting “(including the
6 Integrity Committee of that Council)” after “and
7 Efficiency”.

8 (b) COUNCIL OF THE INSPECTORS GENERAL ON IN-
9 TEGRITY AND EFFICIENCY.—Section 11(c)(5)(B) of the
10 Inspector General Act of 1978 (5 U.S.C. App.) is amended
11 by striking “, allegations of reprisal,” and inserting the
12 following: “and allegations of reprisal (including the timely
13 and appropriate handling and consideration of protected
14 disclosures and allegations of reprisal that are internal to
15 an Office of Inspector General)”.

○