

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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MEMORANDUM

April 28, 2021

To: Members of the Committee on Oversight and Reform

Fr: Majority Staff

Re: Hearing on Improving Government Accountability and Transparency

On **Monday, May 3, 2021, at 11:00 a.m.**, the Committee will hold a hearing **in room 2154 of the Rayburn House Office Building and remotely on the Zoom video platform.** This hearing will evaluate legislative reforms to enhance accountability and transparency, improve efficiency, combat waste and fraud, and build public trust in the federal government.

I. IMPROVING TRANSPARENCY THROUGH PROACTIVE DISCLOSURES

A. Improving Transparency of Federal Advisory Committees

Federal advisory committees—which may also be labeled as commissions, councils, task forces, or working groups—are established to assist congressional and executive branch policymaking and grantmaking. Federal advisory committees may be established by Congress, the president, or an agency head to render independent advice or provide the federal government with policy recommendations. In 1972, Congress enacted the Federal Advisory Committee Act (FACA), prompted by the perception that some advisory committees were duplicative, inefficient, and lacked adequate oversight.¹

H.R. 1930, the Federal Advisory Committee Transparency Act, was introduced by Chairwoman Maloney and Ranking Member Comer and would require agencies to inform advisory committee members of any applicable ethics requirements, ensure the disclosure of detailed minutes from advisory committee meetings, and clarify that the law applies to subcommittees and to committees set up by a contractor. According to a coalition of transparency and good-government groups and experts, the proposed reforms in this bipartisan bill would “make advisory committees more transparent, strengthen the independence of advisory committees, improve oversight of the advisory committee process, and close

¹ Congressional Research Service, *Federal Advisory Committees: An Introduction and Overview* (Oct. 27, 2016) (R44253) (online at <https://fas.org/sgp/crs/secrecy/R44253.pdf>).

implementation loopholes.”² The Federal Advisory Committee Transparency Act passed the House in 2019 by voice vote, and substantially similar bills passed the House in the 115th and 114th Congresses.

B. Providing Timely and Transparent Information on Senior Leaders

Currently, a comprehensive list of positions appointed by the president is made available only once every four years in a publication referred to as the “Plum Book.”³ The Plum Book only provides a snapshot in time and does not reflect changes that occur in between publications.

H.R. 2043, the Periodically Listing Updates to Management Act (PLUM Act), introduced by Chairwoman Maloney, Rep. Connolly, and Rep. Sarbanes, would modernize the Plum Book and provide timely and transparent information about who is serving in senior leadership positions in the executive branch. Specifically, it would require the Office of Personnel Management (OPM) to develop and maintain a publicly accessible website with data on senior leaders in government that meets modern data standards, require all federal agencies to share data on senior officials with OPM, and require OPM to coordinate with the White House every six months to confirm that information is complete, accurate, reliable, and up to date.

The PLUM Act would implement recommendations made by the Government Accountability Office (GAO) and the Administrative Conference of the United States.⁴ A bipartisan group of 24 organizations and experts have expressed their support for the PLUM Act.⁵

The modernized Plum Book would enhance visibility into who is serving in the executive branch, identify offices with vacancies, and increase visibility for potential job opportunities to encourage a more diverse pool of candidates to consider federal service.

² Letter from 24 Organizations and Experts to Chairwoman Carolyn B. Maloney and Ranking Member James Comer, Committee on Oversight and Reform (Mar. 16, 2021) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Letter%20Plum%20Book%20Transparency%202021-03-16_coalition%20letter.pdf).

³ Government Publishing Office, *United States Government Policy and Supporting Positions 2020 (Plum Book)* (online at www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2020/pdf/GPO-PLUMBOOK-2020.pdf) (accessed Apr. 21, 2021).

⁴ Government Accountability Office, *Federal Ethics Programs: Government-Wide Political Appointee Data and Some Ethics Oversight Procedures at Interior and SBA Could Be Improved* (Mar. 14, 2021) (GAO-19-249) (online at www.gao.gov/assets/gao-19-249.pdf); Administrative Conference of the United States, *Report to the Administrative Conference of the United States: Listing Agency Officials* (Nov. 13, 2019) (online at www.acus.gov/sites/default/files/documents/final-report-listing-agency-officials-nov132019.pdf).

⁵ Letter from 24 Organizations and Experts to Chairwoman Carolyn B. Maloney and Ranking Member James Comer, Committee on Oversight and Reform (Mar. 16, 2021) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Letter%20Plum%20Book%20Transparency%202021-03-16_coalition%20letter.pdf).

C. Strengthening Transparency and Accountability of Acting Officials

Agencies need permanent and steady leadership to help meet their missions. Excessive use of acting or non-confirmed leadership circumvents the constitutional requirement that these officials receive Senate confirmation and leaves acting officials less accountable to both Congress and the American people. In addition, the temporary nature of acting officials can limit long-term planning and erode employee morale.⁶ To serve as an acting officer for a position requiring Senate confirmation, a government officer or employee must be authorized to perform the duties of a vacant office by the Federal Vacancies Reform Act of 1998 (FVRA).⁷

The Accountability for Acting Officials Act, introduced in the 116th Congress by Rep. Porter as H.R. 6689, would reform the FVRA by limiting who can serve as an acting official and increase reporting transparency and reporting by acting officials. Specifically, the bill would limit acting agency heads to serving a maximum of 120 days from the date of the vacancy, require acting officials to testify before Congress at least once every 60 days, and close other loopholes that allow the president to appoint acting officials without experience in the agencies they lead.

D. Ensuring Federal Employees Can Use FOIA and Privacy Act

The Freedom of Information Act (FOIA) is an important tool for the public to obtain information about the actions of government. The Privacy Act regulates how federal agencies may use the personal information that individuals supply when obtaining government services or fulfilling obligations. H.R. 2042, the Federal Employee Access to Information Act, would protect employees from retaliation for filing FOIA or Privacy Act requests. Federal employees should have the same right as any member of the public to request and obtain government information.

E. Enhancing the Transparency and Preservation of Presidential Records

Reforms to the Presidential Records Act (PRA) would strengthen the current law and improve transparency by requiring the president and the president's senior advisors to document decisions. H.R. 1929, the Presidential Records Preservation Act, introduced by Chairwoman Maloney, would update the PRA to require the president, vice president, and other senior White House officials to "make and preserve records" that document the official activities of the president. This would align the PRA with language already in the Federal Records Act.

The Presidential Records Preservation Act would also require the president to establish records management controls to ensure that electronic messages are preserved in a manner that would allow them to be readily searched and retrieved.

⁶ Partnership for Public Service, *The Replacements: Why and How "Acting" Officials Are Making the Senate Confirmation Process Obsolete* (Sept. 2020) (online at <https://ourpublicservice.org/wp-content/uploads/2020/09/The-Replacements-1.pdf>).

⁷ 5 U.S.C. §§ 3345–3349c.

F. Improving Access to Congressionally Mandated Reports

On April 13, 2021, Rep. Quigley and Ranking Member Comer reintroduced the Access to Congressionally Mandated Reports Act (ACMRA). In the 116th Congress, the bill passed the U.S. House of Representatives unanimously.

ACMRA would enhance government transparency by creating a single website where the public can access reports that agencies submit to Congress. The legislation would require the Government Publishing Office to establish and maintain this website to allow the public to search, sort, and download all congressionally mandated reports for free. The bill would not require information exempt from public disclosure under FOIA to be disclosed.

II. ENSURING INSPECTORS GENERAL HAVE SUFFICIENT INDEPENDENCE, ACCESS, AND AUTHORITY

Since they were established in 1978, Offices of the Inspector General (OIGs) have provided oversight of the executive branch. Inspectors General (IGs) play a critical role in independently and objectively working to help recover overpayments by government agencies, identify risks and program improvement areas, and root out fraud, waste, abuse, and gross mismanagement.⁸

A. Protecting IGs from Retaliation

In 2020, President Trump removed or replaced multiple IGs and acting IGs in what appeared to be retaliation for investigating misconduct of his own Administration.⁹ In June 2020, GAO issued a report addressing the impact of political retaliation on IGs. GAO concluded that “ensuring the independence of IGs is critical to OIGs’ credibility and effectiveness.”¹⁰

On April 19, 2021, Chairwoman Maloney, along with Majority Leader Steny Hoyer and Reps. Gerald Connolly, Stephen Lynch, Jimmy Gomez, Katie Porter, and Ted Lieu, introduced H.R. 2662, the IG Independence and Empowerment Act. One proposal in this package, introduced in the 116th Congress as H.R. 6984, the Inspector General Independence Act, would allow an Inspector General to be removed 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 or regulation, gross mismanagement, gross waste of funds, abuse of authority, or inefficiency. The Act would require documentation of the cause for removal to be reported directly to Congress.

⁸ P.L. 95-452 (1978), as amended.

⁹ See, e.g., *Trump Takes Aim at a Watergate Reform: The Independent Inspector General*, New York Times (May 22, 2020) (online at www.nytimes.com/2020/05/22/us/politics/trump-inspectors-general.html).

¹⁰ Government Accountability Office, *Inspectors General: Independence Principles and Considerations for Reform* (June 8, 2020) (GAO-20-639R) (online at www.gao.gov/assets/gao-20-639r.pdf).

The Congressional Research Service evaluated congressional authority to limit the removal of IGs and concluded that for cause removal restrictions “appear to be a constitutionally permissible means of encouraging independence for most IGs.”¹¹ The Inspector General Independence Act passed the House on May 15, 2020, as part of H.R. 6800, The Heroes Act.

Another proposal included in H.R. 2662 would provide that if an IG is removed, Congress and the Council of the Inspectors General on Integrity and Efficiency (CIGIE) must be notified of any ongoing investigations when the IG is placed on non-duty status. This would help prevent an administration from concealing sensitive investigations by removing an IG.

B. Ensuring Acting Inspectors General Are Independent and Experienced

Currently, 15 OIGs are without a permanent IG and in some cases have been for many years.¹² These offices are led by Acting IGs. IGs are required to provide oversight that is both independent and objective, and it is critical that the individuals serving as Acting IGs are experienced and competent. The Accountability for Acting Officials Act, introduced in the 116th Congress as H.R. 6689, includes a provision to require that an Acting IG be selected from either an existing IG for another agency or from the senior staff in an OIG. The proposal is included in H.R. 2662 and passed the House as part of the Fiscal Year 2021 National Defense Authorization Act. CIGIE recommended this reform.¹³

C. Enhancing Authority for Inspectors General

Since 2009, Congress, on a bipartisan basis, has attempted to provide the IG community with the authority to subpoena testimony from non-federal employees.¹⁴ In 2014, then Committee Chairman Darrell Issa stated, “This reform sends a message of congressional support for full and timely compliance with the important work of Inspectors General.”¹⁵ Without this so-called testimonial subpoena authority, IGs are hampered from completing cases and holding individuals accountable for wrongdoing. H.R. 2089, the IG Subpoena Authority Act, introduced by Rep. Gomez, would grant IGs testimonial subpoena authority so that they can compel testimony from contractors and former government employees.

¹¹ Congressional Research Service, *Congress’s Authority to Limit the Removal of Inspectors General* (Apr. 16, 2021) (R46762) (online at <https://crsreports.congress.gov/product/pdf/R/R46762>).

¹² Council of the Inspectors General on Integrity and Efficiency, *Inspector General Vacancies* (online at www.oversight.gov/ig-vacancies) (accessed Apr. 26, 2021).

¹³ Subcommittee on Government Operations, Testimony of Inspector General Kathy A. Buller, Legislation Committee Chair, Council of the Inspectors General on Integrity and Efficiency, *Hearing on Restoring Independence: Rebuilding the Federal Offices of Inspectors General* (Apr. 20, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Buller%20Testimony.pdf>).

¹⁴ H.R. 4917, 115th Cong. (2018); H.R. 2395, 114th Cong. (2015); H.R. 5492, 113th Cong. (2014); H.R. 5815, 111th Cong. (2009).

¹⁵ Committee on Oversight and Government Reform, *Press Release: Oversight Committee Approves Bipartisan Inspector General Empowerment Legislation* (Sept. 17, 2014) (online at <https://republicans-oversight.house.gov/release/oversight-committee-approves-bipartisan-inspector-general-empowerment-legislation/>).

In multiple instances, IGs have been unable to obtain testimony from contractors or former government employees. For example, the Department of Justice (DOJ) OIG was unable to obtain cooperation from witnesses in its review of the Carter Page FISA applications and in the Fast and Furious investigation, and the Department of Housing and Urban Development OIG was unable to interview a former official in a review of disaster recovery funds appropriated to Puerto Rico following Hurricanes Irma and Maria.¹⁶

The IG Subpoena Authority Act includes procedural safeguards such as requiring that any testimonial subpoena be approved by a special panel of CIGIE. If approved, notice would be given to the Attorney General, who would have ten days to object to the issuance of the subpoena if he or she determined that it would interfere with an ongoing investigation.

The Inspector General Access Act is another reform the House has passed on a bipartisan basis in previous Congresses. Unlike most IGs, the DOJ IG does not have authority to investigate misconduct by DOJ attorneys. As a result, there is an unfair double standard in which all other DOJ employees, such as FBI agents, can be investigated by the IG, but not DOJ attorneys. The Inspector General Access Act would close this loophole and transfer authority to investigate DOJ attorneys from the DOJ Office of Professional Responsibility to the DOJ IG. The Inspector General Access Act is included in Chairwoman Maloney's IG Independence and Empowerment Act. Senators Durbin and Lee have reintroduced the Senate version of this bill, with 12 bipartisan cosponsors.

III. STRENGTHENING WHISTLEBLOWER PROTECTIONS

Federal whistleblowers provide critical information on government corruption and wrongdoing. Whistleblower disclosures have the potential to save lives and safeguard taxpayer dollars.¹⁷

The Whistleblower Protection Improvement Act of 2020 (WPIA), introduced in the 116th Congress by Chairwoman Maloney along with Reps. Connolly, Speier, Neguse, Rice (NY), Welch, Lieu, and Phillips and former Rep. Visclosky would reform existing laws to enhance whistleblower protections for federal employees.

The WPIA would extend protections to noncareer Senior Executive Service employees, Public Health Service officers or applicants, and the National Oceanic and Atmospheric Administration's commissioned officer corps. The bill would also:

¹⁶ Department of Justice, Office of the Inspector General, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (Dec. 2019) (online at www.justice.gov/storage/120919-examination.pdf); Department of Justice, Office of the Inspector General, *A Review of ATF's Operation Fast and Furious and Related Matters* (Nov. 2012) (online at <https://oig.justice.gov/reports/2012/s1209.pdf>); Department of Housing and Urban Development, Office of Inspector General, *Review of HUD's Disbursement of Grant Funds Appropriated for Disaster Recovery and Mitigation Activities in Puerto Rico* (Apr. 20, 2021) (online at https://hudoig.gov/sites/default/files/2021-04/HUD%20OIG%20Final%20Report_2019SU008945I.pdf).

¹⁷ See, e.g., Project on Government Oversight, *The Baker's Dozen: 13 Policy Areas Critical to an Effective, Ethical, and Accountable Government* (Feb. 18, 2021) (online at www.pogo.org/report/2021/02/the-bakers-dozen-13-policy-areas-critical-to-an-effective-ethical-and-accountable-government/#heading-6).

- Clarify that no federal government employee—including the president or vice president—may interfere with or retaliate against a federal employee for sharing information with Congress;
- Prohibit agencies from launching retaliatory investigations against employees who blow the whistle;
- Prohibit retaliation against an employee for disclosing to a supervisor any violations of law, gross mismanagement or waste, abuse of authority, or a substantial and specific danger to public health or safety; and
- Limit public disclosure of the identity of an employee who engages in whistleblowing activity.

The WPIA provides federal whistleblowers with more expedited legal recourse and equitable relief. It grants whistleblowers access to a jury trial in federal district court when the Merit Systems Protections Board (MSPB), which adjudicates whistleblower complaints, does not do so in a timely fashion. Because the MSPB has lacked a quorum since January 2017 and has been without members since March 2019, this change is particularly critical.¹⁸ Vacancies at the MSPB have resulted in a historic backlog of 774 whistleblower cases.¹⁹

The WPIA ensures timely consideration and appeals for federal employees who are seeking relief for whistleblower retaliation. It also clarifies that whistleblowers who prevail are entitled to recover attorney fees and to receive the necessary relief to make them whole, such as through training, restoration of seniority, or a promotion consistent with the employee's record.

IV. WITNESSES

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¹⁸ Merit Systems Protection Board, *Frequently Asked Questions About the Lack of Board Quorum and Lack of Board Members* (Feb. 10, 2021) (online at www.mspb.gov/FAQs_Absence_of_Board_Quorum_Feb_10_2021_508.pdf).

¹⁹ *MSPB Confirms Backlog of 3118 Federal Employment Cases*, Whistleblower News Network (Jan. 29, 2021) (online at <https://whistleblowersblog.org/2021/01/articles/exclusives/wnn-exclusive-mspb-confirms-backlog-of-3118-federal-employment-cases/>).

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