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May 3, 2021

Chairwoman Carolyn Maloney
Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, DC 20515

Ranking Member James Comer
Committee on Oversight and Reform
2105 Rayburn House Office Building
Washington, DC 20515

RE: Inspector General Access Act of 2019, H.R. 202

Dear Chairwoman Maloney, Ranking Member Comer, and Members of the Committee:

On behalf of the National Association of Assistant United States Attorneys (NAAUSA), representing the interests of over 6,000 Assistant U.S. Attorneys working in the 94 U.S. Attorney Offices, I write you to express our strong concerns with and opposition to the Inspector General Access Act of 2019 as introduced.

NAAUSA believes that Assistant U.S. Attorneys and all DOJ attorneys should be held to the highest standards – and we believe the systems currently in place do support and enforce those standards fairly.

This legislation erroneously conflates “fraud, waste and abuse” investigations into criminal and administrative misconduct traditionally handled by the Department of Justice (DOJ) Office of the Inspector General (OIG) with investigations into attorney professional misconduct handled by the specialized DOJ Office of Professional Responsibility (OPR). They are not the same, which Congress has historically recognized by maintaining the Section 8E carve out from the Inspector General Act for DOJ attorney professional misconduct to be investigated by OPR.

The OIG uses criminal investigators whose instincts and training are to look for potential crimes. OPR uses attorneys as investigators who are trained to apply the ethics and professional rules of attorney conduct. Their backgrounds and focal points are alarmingly different. These distinctions have a real potential for achieving different investigative results when applied to the same case. Are OIG agents or other professionals of the OIG truly proficient in the ethical concepts and rules of professional conduct associated with an OPR review? This legislation provides no mechanism to ensure that is so.

OPR was established in 1975. Its stated purpose: to ensure that DOJ attorneys perform their duties in accordance with the highest professional standards expected of the nation’s principal law enforcement agency. OPR investigators have unique expertise in navigating complex legal and ethics standards applicable to attorneys within the DOJ that is unlike the process followed within the OIG for handling audits and fraud investigations. This includes navigating myriad state bar rules, which requires established relationships across the nation that OPR maintains. Decisions within OPR are made based on an independent analytical framework and established procedures and precedents developed and solidified since the

Office's creation. This has led to the formation of a highly independent, skilled OPR that reaches conclusions based on an impartial application of clearly defined principles.

OPR's expertise is in the ethical and professional rules of conduct that govern the practice of law by each DOJ attorney. These rules are specific to only attorneys, which is the obvious reason why DOJ, and no other Department in government, has an office like OPR to review allegations against attorneys. Whereas attorneys in private practice are subject to Bar investigations and proceedings for allegations of professional misconduct (conducted by trained Bar counsel), DOJ attorneys first face OPR.

Furthermore, OPR has a transparent process for disclosing summaries of its investigations, statistical information, and procedural information through various means such as annual reports, releases to the public published on the OPR website, and reports to Congress. To the extent that Congress is concerned about transparency related to specific individual cases, OPR is constrained by the same Privacy Act considerations as the OIG in terms of disclosing specific information about individual DOJ attorneys. Throughout its history, OPR has acted with independent, impartial and transparent procedures.

This legislation leaves it to the OIG's discretion to determine if it would like to review a case of professional misconduct. At best, this will create inconsistent results and rulings by removing the standardized and dependable method of reviewing cases of attorney professional misconduct. Moreover, it means the lives and professional decisions of DOJ attorneys will be fodder for turf wars between OPR and DOJ OIG, because Congress provides no guidance nor mechanism for adjudicating when both will want to conduct investigations.

It must also be noted that the law already allows the OIG to investigate attorney professional misconduct, with the approval of the Deputy Attorney General.

Expanding the OIG's oversight into attorney professional misconduct cases could undermine the consistent accountability standards necessary for reviewing DOJ attorney professional misconduct and maintaining high standards. It also would produce duplicative efforts and ineffectively capitalize on specialized offices with dedicated skill sets that all available data demonstrate serve the Department and taxpayers well.

For these reasons, we strongly oppose inclusion of the Inspector General Access Act within the broader IG Independence and Empowerment Act.

Thank you for considering the perspective of NAAUSA. Please do not hesitate to reach out to Jason Briefel (jbriefel@shawbransford.com) if we can be of further assistance on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Lawrence J. Leiser". The signature is fluid and cursive, with the first name being the most prominent.

Lawrence. J. Leiser
President