



Presidential Removal of IGs Under the Inspector General Act

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President Trump has recently removed or replaced a number of acting and permanent Inspectors General (IGs), including the [Intelligence Community IG](#), the [State Department IG](#), and [acting IGs](#) at the [Department of Transportation](#) and [Department of Defense](#). These actions have stirred both immediate [concern](#) by some within Congress and a [larger](#) conversation on IG independence. While governing statutes provide that IGs are intended to be “[independent and objective units](#)” tasked with auditing and investigating agency programs, they are not entirely insulated from presidential influence. In most cases it is the [President](#) that both selects and removes IGs, subject to checks on that authority discussed below.

With respect to his replacement of the acting IGs, President Trump appears to have taken action permitted by the [Vacancies Act](#), which generally provides the President with discretion to fill temporarily vacancies in positions requiring Senate confirmation. That [law](#) does not appear expressly to restrict the President’s authority to replace acting officials. With respect to the permanent IGs, who had been confirmed to their position by the Senate, the governing statute is principally the [Inspector General Act of 1978](#) (IG Act). That [law](#) requires the President to notify Congress of the reasons for the removal of an IG not later than 30 days before taking action. In each recent instance where President Trump removed a permanent IG, he gave [advanced notice](#) to Congress, and in each case justified the action on the [ground](#) that he “no longer” had “confidence” in the official to be removed. Some Members of Congress expressed concern about the articulated reasons for these removals, including a bipartisan [group](#) of Senators who concluded that “an expression of lost confidence, without further explanation, is not sufficient to fulfill the requirements” of the IG Act. The House-passed [Heroes Act](#) includes several provisions that seek to provide IGs with further independence from presidential influence, and the bill would also [amend](#) the IG Act’s notification requirements to extend to situations where an IG is placed on administrative leave. This Sidebar addresses the removal notification provision of the IG Act and the requirements it may impose upon the President.

Notification of Removal Under the IG Act

Under the IG Act, most executive agency IGs (known as “[establishment IGs](#)”) are appointed by the President with the advice and consent of the Senate, while IGs for other entities, including most government corporations (known as “[DFE IGs](#)”), are appointed by the head of a designated federal entity (DFE). As to removal, the IG Act provides that “[a]n Inspector General may be removed from office” by

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the appointing authority. However, “[i]f an Inspector General is removed from office or is transferred to another position or location within an establishment,” the President or the DFE head, “shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer.” (The Intelligence Community IG is also governed by 50 U.S.C. § 3033, which largely mirrors the IG Act’s language but specifically requires notice to the Intelligence Committees.)

The IG Act’s text does not, by its terms, substantively limit the reasons for which the President can exercise his removal power. As a purely textual matter, the notification requirement appears to be primarily procedural. According to [one federal appellate court](#), the provision was intended to give Congress “an opportunity for a more expansive discussion of the President’s reasons for removing an inspector general.” In short, if Congress believes an IG removal to be unwarranted, the provision gives Congress a 30-day period to dissuade the President—through the use of its not inconsiderable [legislative powers](#) and levers of influence—from taking his announced course of action.

The evolution of the IG Act’s removal provision reflects Congress’s intent to strike a delicate balance between autonomy and supervision: to give IGs enough independence to be effective, but not so much as to create an adversarial relation to the executive branch. An early House version of the IG Act would have required the President to notify both Houses of Congress of the reasons for any removal. The Department of Justice (DOJ) [objected](#) to that provision on constitutional grounds, arguing that such a provision would constitute “an improper restriction on the President’s exclusive power to remove Presidentially appointed executive officers.” The committee which reported out the bill disagreed with the DOJ’s position, but the House nevertheless removed the presidential notification requirement, instead adding language that would have mandated that the Comptroller General promptly investigate and report to Congress on the “circumstances” of any removal of an IG. The House bill was then taken up in the Senate, which reinstated the original House approach by requiring that the President “communicate the reasons for any [] removal to both Houses of Congress.” The Senate report acknowledged and rejected the DOJ’s constitutional objections, determining that the notification requirement was “justified and permissible.” The report also elaborated on the effect of the provision, stating that the intent was to provide IGs with a “measure of independence” and noting the Senate’s intent that the provision act as something more than a procedural notice requirement:

[w]hile the committee has not required the President to have “cause” before removing an Inspector and Auditor General, the committee expects that there would be some justification—other than the desire to remove an Inspector and Auditor General who is performing his duties in a way which embarrasses the executive—to warrant the removal action.

The House ultimately acceded to the Senate version.

Congress amended the IG Act notification provision in 2008 to “strengthen” and “safeguard” IG independence by requiring notification prior to the removal of an IG, rather than at the time of removal, as originally directed under the statute. The 2008 reforms added the current time limitation, which requires the President communicate his reasons for any “removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer.” The [legislative history](#) of the 2008 amendment suggests that the purpose of this change was to alter the after the fact nature of the notification requirement and instead “allow for an appropriate dialogue with Congress in the event that the planned transfer or removal is viewed as an inappropriate or politically motivated attempt to terminate an effective Inspector General.” While the Senate report accompanying the amendment [expressed](#) “hope” that the provision would “encourage useful communication between Congress and the Executive Branch on IG performance and serve as an effective deterrent against improper terminations,” it also stated that “the provision does not alter the President’s ultimate authorities with respect to Executive Branch employees.” As in 1978, the [legislative history](#) suggests that Congress viewed the notification requirement as not only imposing a procedural requirements, but also as a mechanism to deter unwarranted Presidential removals:

The Committee intends that Inspectors General who fail to perform their duties properly whether through malfeasance or nonfeasance, or whose personal actions bring discredit upon the office, be removed. The requirement to notify the Congress in advance of the reasons for the removal should serve to ensure that Inspectors General are not removed for political reasons or because they are doing their jobs of ferreting out fraud, waste and abuse.

Although the idea of imposing explicit statutory restrictions on the reasons for which a President could remove an IG was considered at this time (such a provision was [approved](#) by the House), Congress opted not to take that step. As described by the [Government Accountability Office](#), the general debate over further strengthening IG removal protections related to the proper balancing of autonomy, supervision, and accountability, with some [arguing](#) that limiting the President to “removal for cause could help relieve immediate pressures of removal, but such independence could also lead to an IG who is isolated from the agency head and the rest of the agency,” thereby threatening the “IG concept.” Nevertheless, given the relative [infrequency](#) of IG removals since 1978, the notification provision (in combination with other provisions of the IG Act that support IG [independence](#)) has arguably had success in deterring Presidents from treating IGs like officials who serve at the President’s pleasure.

Recent Presidents have treated the notice provision narrowly, interpreting it as imposing neither substantive restrictions on removal, nor requiring any significant explanation or discussion of the reason for removal, nor barring the President from taking employment action against the IG short of removal within the 30-day waiting period. For example, both [President Obama](#) and [President Trump](#) have removed IGs due to a “lack of confidence” and placed IGs on administrative leave during the 30-day waiting period. The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) appears to have endorsed this vision of the statute, at least in the context of a mandamus suit. In *Walpin v. Corporation for National and Community Services*, a former IG argued that President Obama had violated the IG Act by placing him on administrative leave during the waiting period and providing Congress with an inadequate justification for his removal. President Obama’s explanation for the IG’s removal stated only that he had lost “fullest confidence” in the IG. Both the D.C. Circuit and the [district court below](#) rejected the IG’s arguments, holding that the President’s “explanation satisfies the minimal statutory mandate” as the IG Act notification provision “imposes no ‘clear duty’ to explain the reasons in any greater detail.” The D.C. Circuit also suggested that placing the IG on administrative leave during the 30-day waiting period did not appear to amount to a removal or transfer without notice in violation of the IG Act, reasoning that the Act “provides no right to continued duty performance but only to deferral of ‘removal’ until thirty days after notice is given.”

Although the D.C. Circuit’s interpretation of the statutory text suggests a narrow construction of the notification provision, there is evidence that Congress’s intent was that the provision would work as more than a procedural waiting period before formal removal. As previously discussed, the legislative history of the IG Act—both when initially enacted in 1978 and later when amended in [2008](#)—suggests that Congress believed that the notification should at least provide Congress with enough information to assess whether a planned IG removal is based on grounds it deemed concerning. For instance, it seems that Congress wanted to have an opportunity to assess whether a removal was motivated by an inappropriate desire to remove an IG for “political reasons,” because an IG investigation risked “embarrass[ment],” or because the IG was “doing their job[] of ferreting out fraud, waste and abuse.”

Thus, while recent presidential actions may be in compliance with the strict requirements of the IG Act, placing an IG on administrative leave prior to removal and articulating only that the removal is based on a lack of confidence does not appear to be consistent with Congress’ aspirational intent for how the law would work in practice. The legislative history of the IG Act seems to indicate Congress’s aim that the advanced notification requirement would not only deter removals motivated by either political disagreement or a desire to avoid the embarrassment inherent in IGs exposing waste, fraud, or abuse, but also provide Congress with the information

necessary to make an informed response to the presidential action. Congress's constitutional authority to alter the IG framework, for example to provide directly and explicitly IGs with statutory removal protections, is to be discussed in a CRS product in preparation.

Author Information

Todd Garvey
Legislative Attorney

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