

5 USC 403: Appointments

Text contains those laws in effect on April 16, 2023

From Title 5-GOVERNMENT ORGANIZATION AND EMPLOYEES

PART I-THE AGENCIES GENERALLY

CHAPTER 4-INSPECTORS GENERAL

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§403. Appointments

(a) IN GENERAL.-There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. Each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of the establishment. Neither the head of the establishment nor the officer next in rank below the head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(b) REMOVAL OR TRANSFER.-An Inspector General may be removed from office by the President. If an Inspector General is removed from office or is transferred to another position or location within an establishment, the President 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. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.

(c) NOT EMPLOYEE DETERMINING POLICY.-For the purposes of section 7324 of this title, an Inspector General shall not be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(d) ASSISTANT INSPECTORS GENERAL AND WHISTLEBLOWER PROTECTION COORDINATOR.-

(1) IN GENERAL.-Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service-

(A) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment;

(B) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations; and

(C) designate a Whistleblower Protection Coordinator who shall-

(i) educate agency employees-

(I) about prohibitions against retaliation for protected disclosures; and

(II) who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures, including-

(aa) the means by which employees may seek review of any allegation of reprisal, including the roles of the Office of the Inspector General, the Office of Special Counsel, the Merit Systems Protection Board, and any other relevant entities; and

(bb) general information about the timeliness of such cases, the availability of any alternative dispute mechanisms, and avenues for potential relief;

(ii) assist the Inspector General in promoting the timely and appropriate handling and consideration of protected disclosures and allegations of reprisal, to the extent practicable, by the Inspector General; and

(iii) assist the Inspector General in facilitating communication and coordination with the Special Counsel, the Council of the Inspectors General on Integrity and Efficiency, the establishment, Congress, and any other relevant entity regarding the timely and appropriate handling and consideration of

protected disclosures, allegations of reprisal, and general matters regarding the implementation and administration of whistleblower protection laws, rules, and regulations.

(2) WHISTLEBLOWER PROTECTION COORDINATOR NOT TO ACT AS LEGAL REPRESENTATIVE, AGENT, OR ADVOCATE.-The Whistleblower Protection Coordinator shall not act as a legal representative, agent, or advocate of the employee or former employee.

(3) WHISTLEBLOWER PROTECTION COORDINATOR ACCESS TO INSPECTOR GENERAL.-The Whistleblower Protection Coordinator shall have direct access to the Inspector General as needed to accomplish the requirements of this subsection.

(4) WHISTLEBLOWER PROTECTION COORDINATOR EXCEPTION FOR INTELLIGENCE ACTIVITY.-For the purposes of this section, the requirement of the designation of a Whistleblower Protection Coordinator under paragraph (1)(C) shall not apply to-

(A) any agency that is an element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))); or

(B) as determined by the President, any executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counter intelligence activities.

(e) RATE OF PAY.-The annual rate of basic pay for an Inspector General (as defined under section 401 of this title) shall be the rate payable for level III of the Executive Schedule under section 5314 of this title, plus 3 percent.

(f) PROHIBITION ON CASH AWARDS.-An Inspector General (as defined under section 401 or 415(a) of this title) may not receive any cash award or cash bonus, including any cash award under chapter 45 of this title.

(g) LEGAL ADVICE.-Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service, obtain legal advice from a counsel either reporting directly to the Inspector General or another Inspector General.

(Pub. L. 117–286, §3(b), Dec. 27, 2022, 136 Stat. 4208 .)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from section 3 of the Inspector General Act of 1978, Pub. L. 95–452, which was set out in the former Appendix to this title and was amended by Pub. L. 117–263, div. E, title LII, §§5202(a)(1), 5203(a), 5204(a), Dec. 23, 2022, 136 Stat. 3222, 3227, 3233, prior to being repealed and reenacted as this section by Pub. L. 117–286, §§3(b), 7, Dec. 27, 2022, 136 Stat. 4208, 4361. For applicability of those amendments to this section, see section 5(b) of Pub. L. 117–286, set out in a Transitional and Savings Provisions note preceding section 101 of this title. Section 3 of Pub. L. 95–452 was amended as follows:

(1) in subsection (b)-

(A) by inserting "(1)(A)" after "(b)";

(B) in paragraph (1), as so designated-

(i) in subparagraph (A), as so designated, in the second sentence-

(I) by striking "reasons" and inserting "substantive rationale, including detailed and case-specific reasons,"; and

(II) by inserting "(including to the appropriate congressional committees)" after "Houses of Congress"; and

(ii) by adding at the end the following:

"(B) If there is an open or completed inquiry into an Inspector General that relates to the removal or transfer of the Inspector General under subparagraph (A), the written communication required under that subparagraph shall-

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

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

(C) by adding at the end the following:

"(2)(A) Subject to the other provisions of this paragraph, only the President may place an Inspector General on non-duty status.

"(B) If the President places an Inspector General on non-duty status, the President shall communicate in writing the substantive rationale, including detailed and case-specific reasons, for the change in status to both Houses of Congress (including to the appropriate congressional committees) not later than 15 days before the date on which the change in status takes effect, except that the President may submit that communication not later than the date on which the change in status takes effect if-

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

"(ii) in the communication, the President includes a report on the determination described in clause (i), which shall include-

"(I) a specification of which clause of section 6329b(b)(2)(A) of title 5, United States Code, the President has determined applies under clause (i) of this subparagraph;

"(II) the substantive rationale, including detailed and case-specific reasons, for the determination made under clause (i);

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

"(IV) in the case of an inquiry described in subclause (III) that is completed, the findings made during that inquiry.

"(C) The President may not place an Inspector General on non-duty status during the 30-day period preceding the date on which the Inspector General is removed or transferred under paragraph (1)(A) unless the President-

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

"(ii) not later than the date on which the change in status takes effect, submits to both Houses of Congress (including to the appropriate congressional committees) a written communication that contains the information required under subparagraph (B), including the report required under clause (ii) of that subparagraph.

"(D) For the purposes of this paragraph-

"(i) the term 'Inspector General'-

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

"(II) includes the Inspector General of an establishment, the Special Inspector General for Afghanistan Reconstruction, the Special Inspector General for the Troubled Asset Relief Program, and the Special Inspector General for Pandemic Recovery; and

"(ii) a reference to the removal or transfer of an Inspector General under paragraph (1), or to the written communication described in that paragraph, shall be considered to be-

"(I) in the case of the Special Inspector General for Afghanistan Reconstruction, a reference to section 1229(c)(6) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 378);

"(II) in the case of the Special Inspector General for the Troubled Asset Relief Program, a reference to section 121(b)(4) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(b)(4)); and

"(III) in the case of the Special Inspector General for Pandemic Recovery, a reference to section 4018(b)(3) of the CARES Act (15 U.S.C. 9053(b)(3)).";

(2) in subsection (d)(1)(C)-

(A) in clause (i), in the matter preceding subclause (I), by inserting ", including employees of that Office of Inspector General" after "employees"; and

(B) in clause (iii), by inserting "(including the Integrity Committee of that Council)" after "and Efficiency"; and

(3) by adding at the end the following:

"(h)(1) In this subsection-

"(A) the term 'first assistant to the position of Inspector General' means, with respect to an Office of Inspector General-

"(i) an individual who, as of the day before the date on which the Inspector General dies, resigns, or otherwise becomes unable to perform the functions and duties of that position-

"(I) is serving in a position in that Office; and

"(II) has been designated in writing by the Inspector General, through an order of succession or otherwise, as the first assistant to the position of Inspector General; or

"(ii) if the Inspector General has not made a designation described in clause (i)(II)-

"(I) the Principal Deputy Inspector General of that Office, as of the day before the date on which the Inspector General dies, resigns, or otherwise becomes unable to perform the functions and duties of that position; or

"(II) if there is no Principal Deputy Inspector General of that Office, the Deputy Inspector General of that Office, as of the day before the date on which the Inspector General dies, resigns, or otherwise becomes unable to perform the functions and duties of that position; and

"(B) the term 'Inspector General'-

"(i) means an Inspector General who is appointed by the President, by and with the advice and consent of the Senate; and

"(ii) includes the Inspector General of an establishment, the Special Inspector General for the Troubled Asset Relief Program, and the Special Inspector General for Pandemic Recovery.

"(2) If an Inspector General dies, resigns, or is otherwise unable to perform the functions and duties of the position-

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

"(B) subject to paragraph (4), the first assistant to the position of Inspector General shall perform the functions and duties of the Inspector General temporarily in an acting capacity subject to the time limitations of section 3346 of title 5, United States Code; and

"(C) notwithstanding subparagraph (B), and subject to paragraphs (4) and (5), the President (and only the President) may direct an officer or employee of any Office of an Inspector General to perform the functions and duties of the Inspector General temporarily in an acting capacity subject to the time limitations of section 3346 of title 5, United States Code, only if-

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

"(I) the requirement under this clause shall not apply if the officer is an Inspector General; and

"(II) for the purposes of this subparagraph, performing the functions and duties of an Inspector General temporarily in an acting capacity does not qualify as service in a position in an Office of an Inspector General;

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

"(iii) the officer or employee has demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations; and

"(iv) not later than 30 days before the date on which the direction takes effect, the President communicates in writing to both Houses of Congress (including to the appropriate congressional committees) the substantive rationale, including the detailed and case-specific reasons, for such direction, including the reason for the direction that someone other than the individual who is performing the functions and duties of the Inspector General temporarily in an acting capacity (as of the date on which the President issues that direction) perform those functions and duties temporarily in an acting capacity.

"(3) Notwithstanding section 3345(a) of title 5, United States Code, and subparagraphs (B) and (C) of paragraph (2), and subject to paragraph (4), during any period in which an Inspector General is on non-duty status-

"(A) the first assistant to the position of Inspector General shall perform the functions and duties of the position temporarily in an acting capacity subject to the time limitations of section 3346 of title 5, United States Code; and

"(B) if the first assistant described in subparagraph (A) dies, resigns, or becomes otherwise unable to perform those functions and duties, the President (and only the President) may direct an officer or employee in that Office of Inspector General to perform those functions and duties temporarily in an acting capacity, subject to the time limitations of section 3346 of title 5, United States Code, if-

"(i) that direction satisfies the requirements under clauses (ii), (iii), and (iv) of paragraph (2)(C); and

"(ii) that officer or employee served in a position in that Office of Inspector General for not fewer than 90 of the 365 days preceding the date on which the President makes that direction.

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

"(5) If the President makes a direction under paragraph (2)(C), during the 30-day period preceding the date on which the direction of the President takes effect, the functions and duties of the position of the applicable Inspector General shall be performed by-

"(A) the first assistant to the position of Inspector General; or

"(B) the individual performing those functions and duties temporarily in an acting capacity, as of the date on which the President issues that direction, if that individual is an individual other than the first assistant to the position of Inspector General."

As enacted by Pub. L. 117–286, subsection (b) of this section contains a heading after the subsection designation. The amendment inserting "(1)(A)" after "(b)" in section 3(b) of Pub. L. 95–452 amended text that did not contain a subsection heading.

For definition of "appropriate congressional committees" as seen in the above amendments by Pub. L. 117–263, see Amendments Not Shown in Text note set out under section 401 of this title.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
403	5 U.S.C. App. (IGA §3)	Pub. L. 95–452, §3, Oct. 12, 1978, 92 Stat. 1101 ; Pub. L. 110–409, §§3(a), 4(a)(1), 5, 6(a), Oct. 14, 2008, 122 Stat. 4302 , 4305; Pub. L. 112–199, title I, §117(a), Nov. 27, 2012, 126 Stat. 1474 ; Pub. L. 114–317, §7(d)(3)(A), Dec. 16, 2016, 130 Stat. 1606 ; Pub. L. 115–192, §2(a), June 25, 2018, 132 Stat. 1502 .

In subsection (d)(4) (matter before subparagraph (A)), the words "Whistleblower Protection Coordinator" are substituted for "Whistleblower Protection Ombudsman" to correct an error in the law.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117–263, div. E, title LII, §5203(e), Dec. 23, 2022, 136 Stat. 3233 , provided that:

"(1) DEFINITION.-In this subsection, the term 'Inspector General' has the meaning given the term in subsection (h)(1)(B) of section 3 of the Inspector General Act of 1978 (5 U.S.C. App.), as added by subsection (a) of this section [see Amendments Not Shown in Text note above].

"(2) APPLICABILITY.-

"(A) IN GENERAL.-Except as provided in subparagraph (B), this section [amending section 3 of Pub. L. 95–452 (restated as this section), sections 3033 and 3517 of Title 50, War and National Defense, and enacting provisions set out as a note under this section], and the amendments made by this section, shall take effect on the date of enactment of this Act [Dec. 23, 2022].

"(B) EXISTING VACANCIES.-If, as of the date of enactment of this Act, an individual is performing the functions and duties of an Inspector General temporarily in an acting capacity, this section, and the amendments made by this section, shall take effect with respect to that Inspector General position on the date that is 30 days after the date of enactment of this Act."

CONSTRUCTION

Pub. L. 117–263, div. E, title LII, §5203(d), Dec. 23, 2022, 136 Stat. 3233 , provided that: "Nothing in the amendment made by subsection (a) [adding subsec. (h) to section 3 of Pub. L. 95–452 (restated as this section), see Amendments Not Shown in Text note above] may be construed to limit the applicability of sections 3345 through 3349d of title 5, United States Code (commonly known as the 'Federal Vacancies Reform Act of 1998'), other than with respect to section 3345(a) of that title."

Pub. L. 110–409, §6(c), Oct. 14, 2008, 122 Stat. 4305 , as amended by Pub. L. 117–286, §4(b)(5), Dec. 27, 2022, 136 Stat. 4343 , provided that: "Nothing in the amendments made by this section [amending former sections 3 and 8G of Pub. L. 95–452, see 5 U.S.C. 403, 415] shall be construed to alter the duties and responsibilities of the counsel for any establishment or designated Federal entity, except for the availability of counsel as provided under sections 403(g) and 415(g) of title 5, United States Code. The Counsel to the Inspector General shall perform such functions as the Inspector General may prescribe."

ACTING TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Pub. L. 105–277, div. C, title I, §101, Oct. 21, 1998, 112 Stat. 2681–584 , as amended by Pub. L. 106–113, div. B, §1000(a)(5) [title II, §239(a)], Nov. 29, 1999, 113 Stat. 1536 , 1501A-302; Pub. L. 117–286, §4(b)(7), Dec. 27, 2022, 136 Stat. 4343 , related to the appointment by the President of an Acting Treasury Inspector General for Tax Administration whose service was to conclude no later than Apr. 30, 1999.

[Pub. L. 106–113, div. B, §1000(a)(5) [title II, §239(b)], Nov. 29, 1999, 113 Stat. 1536 , 1501A-302, provided that the amendment made by subsection §239(a) to section 101 of Pub. L. 105–277 was effective as if included in the enactment of Pub. L. 105–277.]