

PROTECTING OUR DEMOCRACY ACT: SECTION-BY-SECTION

DIVISION A—PREVENTING ABUSES OF PRESIDENTIAL POWER

TITLE I—ABUSE OF THE PARDON POWER PREVENTION

Summary

The Abuse of the Pardon Prevention Act is designed to deter abuses of the pardon power. First, it requires transparency in circumstances where the President uses that power for potentially self-serving purposes or in a manner that could undermine the functions of Congress. Second, the bill amends the federal bribery statute to make explicit that offering or granting a pardon or commutation may serve as the basis for finding criminal culpability under the statute. Finally, it makes explicit that a president may not issue a self-pardon.

Section-by-Section

Section 101. Short Title. Section 101 sets forth the short title as the “Abuse of the Pardon Prevention Act of 2020.”

Section 102. Congressional Oversight Related to Certain Pardons. Section 102(a) requires that within 30 days of a President issuing a pardon for a covered offense, the Attorney General must submit to the chairs and ranking members of the appropriate congressional committees investigative materials concerning the offense and materials related to the Department of Justice’s (DOJ) consideration of the pardon.

Section 102(b) provides that Federal Rule of Criminal Procedure 6(e), which generally restricts disclosure of grand jury materials, shall not be construed to prohibit production of the materials required under Section 102(a).

Section 102(c) defines terms used within the Act. “Appropriate congressional committees” means the House and Senate Judiciary Committees, and, if the underlying investigation involved an intelligence or counterintelligence matter, the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence.

A “covered offense” is defined to include: (i) any offense arising from an investigation in which the President or one of his relatives is a target, subject, or witness; (ii) any violation of 2 U.S.C. § 192, which prohibits a witness from refusing to testify or produce papers to Congress; or (iii) any violation of 18 U.S.C. §§ 1001, 1505, 1512, or 1621—which prohibit, respectively, false statements, obstruction, witness intimidation, and perjury—provided that the offense occurred in relation to a Congressional proceeding or investigation.

A “pardon” is defined to include commutations of sentences. The term “relative” is defined to have the same meaning as that contained in 5 U.S.C. § 3110(a).

Section 103. Bribery in Connection with Pardons and Commutations. Section 103 amends the federal bribery statute to make explicit that the offering or granting of a pardon or commutation may serve as the basis for finding criminal culpability under the statute. It clarifies that the definition of “public officials” who are covered by the statute includes the President and Vice President. It further amends the statute’s definition of the term “official act” to expressly include any pardon, commutation, or reprieve, or the offer of a pardon, commutation, or reprieve. Additionally, it amends the bribery statute to make explicit that “anything of value” underlying the exchange in a bribery scheme to influence a witness in various types of government proceedings includes any pardon, commutation, or reprieve, or the offer of a pardon, commutation, or reprieve.

Section 104. Prohibition of Presidential Self-pardon. Section 104 makes explicit that any pardon issued by the President to himself or herself has no legal effect and shall not deprive a court of jurisdiction over the offense.

TITLE II—ENSURING NO PRESIDENT IS ABOVE THE LAW

Summary

The No President is Above the Law Act would suspend the statute of limitations for any federal offense committed by a sitting president or vice president, whether it was committed before or during their terms in office. This legislation would ensure that presidents and vice presidents can be held accountable for criminal conduct just like every other American and not use their offices as a shield to avoid legal consequences.

Section-by-Section

Section 201. Short Title. Section 201 provides the short title of the bill as the “No President is Above the Law Act.”

Section 202. Tolling of Statute of Limitations. Section 202 would amend Section 3282 of Title 18 of the United States Code, which sets forth the typical statute of limitations for federal non-capital offenses (*i.e.*, 5 years). Section 202 would add a subsection—subsection 3282(c)—to the current statute in the case of “Offenses Committed by the President or Vice President During or Prior to Tenure in Office.” New subsection 3282(c) would exempt the duration of a president’s or vice president’s term in office from consideration for purposes of any statute of limitations applicable to any federal criminal offense committed by that person while in office or prior to taking office. Section 202 also makes clear that the tolling provision would apply to offenses committed prior to enactment of the bill, so long as the statute of limitations had not already run as of the date of enactment. Finally, Section 202 includes a Rule of Construction,

stating that nothing in the Title may be construed as precluding the indictment or prosecution of a president or vice president while in office.

TITLE III—ENFORCEMENT OF THE FOREIGN AND DOMESTIC EMOLUMENTS CLAUSES OF THE CONSTITUTION

Summary

The Foreign Emoluments Clause of the Constitution prohibits federal officers from receiving “presents” or “emoluments” from foreign nations unless Congress first provides its consent, while the Domestic Emoluments Clause bars the President from receiving any emoluments from the United States government or from any state government. The Foreign and Domestic Emoluments Enforcement Act codifies these foundational anti-corruption provisions and provides enhanced enforcement mechanisms for Congress and for entities within the Executive Branch.

Section-by-Section

Section 301. Short Title. Section 301 titles this portion of the bill the “Foreign and Domestic Emoluments Enforcement Act of 2020.”

Section 302. Definitions. Section 602 defines an “emolument” as “any profit, gain, or advantage” received from a foreign government or from a state or local government, including payments arising from commercial transactions. It further clarifies that the President and Vice President are subject to these provisions. Section 602 also defines a “government of a foreign country” consistent with the definition provided in the Foreign Agents Registration Act.

Section 303. Prohibition on Acceptance of Foreign and Domestic Emoluments. Section 303(a) codifies the Foreign Emoluments Clause of the Constitution by expressly prohibiting federal officers from receiving foreign emoluments without first obtaining the consent of Congress. Section 303(b) codifies the Domestic Emoluments Clause of the Constitution by prohibiting the President from receiving any domestic emoluments.

Section 304. Civil Actions by Congress Concerning Foreign Emoluments. Section 304 affirms the right of the House and Senate to bring legal actions concerning violations of the Foreign Emoluments Clause and sets forth procedures governing such actions. It provides that these actions must be heard by three-judge courts and are reviewable only by direct appeal to the Supreme Court, and it requires all courts to expedite such actions to the greatest extent feasible. Section 304 further describes the types of remedies courts may impose, and it prohibits government funds from being used to pay any disgorgement remedy ordered by a court.

Section 305. Disclosures Concerning Foreign and Domestic Emoluments. Section 305 amends the reporting requirements of the Ethics in Government Act of 1978 to require disclosures related to the receipt or potential receipt of foreign emoluments, including any

business interests that may result in the receipt of foreign emoluments. Section 305 further amends the President’s reporting requirements to require parallel disclosures with respect to domestic emoluments.

Section 306. Enforcement Authority of the Director of the Office of Government Ethics.

Section 306 provides the Office of Government Ethics (OGE) authority to enforce the prohibitions and reporting requirements set forth in Title III. These authorities include the authority to issue compliance policies, to impose fines or order corrective actions, to bring civil enforcement actions, and to refer matters to the Office of Special Counsel (OSC) for investigation.

Section 307. Jurisdiction of the Office of Special Counsel. Section 307 amends OSC’s jurisdiction to include authority to investigate violations of the prohibitions and reporting requirements set forth in Title III. If OGE refers a matter to OSC, or if OSC receives a credible report of a violation of these provisions, OSC must complete an investigation within 120 days and present its findings to OGE and to Congress.

**DIVISION B—RESTORING CHECKS AND BALANCES, ACCOUNTABILITY AND
TRANSPARENCY**

TITLE IV—ENFORCEMENT OF CONGRESSIONAL SUBPOENAS

Summary

The Congressional Subpoena Compliance and Enforcement Act reinforces Congress’s Article I powers by strengthening its tools to enforce lawfully issued subpoenas. First, the bill affirms the House’s and Senate’s authority to enforce their subpoenas through civil suits and provides expedited processes for these actions, as well as enhanced penalties for non-compliance. Second, it specifies the manner in which subpoena recipients must comply, including by creating an express requirement to testify and produce subpoenaed information and, to the extent any information is withheld, to produce a detailed log describing the basis for non-compliance.

Section-by-Section

Section 401. Short Title. This section sets forth the short title of the bill as the “Congressional Subpoena Compliance and Enforcement Act of 2020.”

Section 402. Findings. Section 402 contains certain findings regarding Congress’ constitutional powers to gather information and enforce its subpoenas. The findings are intended to make clear that, although the bill sets forth an express statutory right of action, Congress does not view that provision as a necessary prerequisite to enforce its subpoenas through civil suits.

Section 403. Enforcement of Congressional Subpoenas. Section 403 affirms the House’s and Senate’s authority to enforce their subpoenas through civil suits and provides special procedures governing these suits.

Section 403(a) sets forth an explicit right of action for the House and Senate and their committees and subcommittees to enforce subpoenas through civil suits.

Section 403(b) establishes special rules governing these suits. First, federal courts are required to expedite these suits to the greatest extent possible, and the congressional entity bringing the action may choose to have it heard by a three-judge panel of a district court with direct appeal to the U.S. Supreme Court. Second, under some circumstances, courts may impose monetary penalties on an executive branch official for knowing noncompliance, and government agencies are prohibited from paying for those penalties with federal taxpayer dollars. Third, any privilege or other ground for non-compliance is waived if the court finds that the subpoena recipient failed to produce a detailed privilege log, as required by Section 404. Fourth, the section requires the Supreme Court and the Judiciary to establish rules of procedure to ensure these suits are expedited in the courts. Finally, the provision preserves the accommodations process by requiring that in seeking enforcement of a subpoena, Congress must submit a certification that they have met and conferred (or attempted to) in good faith to resolve the issue without going to court.

Section 404. Compliance with Congressional Subpoenas. Section 404 establishes specific rules for compliance with congressional subpoenas. First, it requires all recipients to appear and testify or to produce records, in accordance with the requirements of the subpoena. Second, it provides that the grounds for withholding information are limited to those secured by the Constitution or by federal statute. Third, if any subpoena recipient withholds information, the recipient is required to produce a log describing each piece of information withheld and the specific basis for non-compliance.

Section 405. Rule of Construction. Section 405 makes clear that nothing in the bill should be interpreted to constrain Congress’ inherent authority to enforce its subpoenas through other means, nor should the bill be interpreted to establish or recognize any basis for noncompliance with a congressional subpoena.

TITLE V—REASSERTING CONGRESSIONAL POWER OF THE PURSE

Summary

In drafting the Constitution, the Framers built checks and balances into the foundation of our democracy to protect against monarchy. Vesting Congress with the power to make funding decisions—the “power of the purse”—is a critical component of that founding principle. Congress has crafted longstanding, foundational laws to protect its authority like the Antideficiency Act (ADA) and the Impoundment Control Act (ICA) to prevent federal agencies from misusing federal funds. But over time, Presidents and Executive Branch agencies have

pushed the boundaries of these and other laws designed to prevent executive overreach, exploiting secrecy and limitations on enforcement to push their own agenda. The reforms included in the Congressional Power of the Purse Act will help Congress reclaim its Constitutional spending authority and safeguard our nation’s separation of powers.

Specifically, the Act would restore Congress’ central role in funding decisions by preventing the President from effectively rescinding funds without congressional approval; requiring the Office of Management and Budget (OMB) to release funding at least 90 days before it expires, whether or not the funding is part of a Presidential rescission or deferral request; and closing a budget law loophole that essentially lets the President unilaterally block the spending of enacted appropriations designated as emergency. The Act would put an expiration date on Presidential declarations of national emergencies and any special executive authorities triggered by those declarations; declarations would expire unless Congress extends them.

The Act would increase transparency in the Executive Branch by requiring OMB to make apportionments (legally binding documents that make funding available to agencies to spend) publicly available and to publish the positions of officials with delegated apportionment authority; requiring the DOJ Office of Legal Counsel (OLC) to publish opinions instructing agencies on budget and appropriations law; requiring the Executive Branch to make public amounts and explanations of cancelled or expired fund balances, and amounts and legal justifications of obligations incurred by agencies during a lapse in their appropriations; and requiring the Executive Branch to report violations of the ICA and ADA identified by the Government Accountability Office (GAO) to Congress.

The Act would also add enforcement mechanisms to budget law and deter lawbreaking by strengthening and expediting GAO’s ability to obtain information from agencies to assess compliance with budget or appropriations law; expediting GAO’s ability to sue agencies to release funds being impounded in violation of the ICA; authorizing administrative discipline for officials found to have violated the ICA, including suspension without pay or termination of employment; and requiring the DOJ to review reports of ADA violations and investigate whether a violation occurred knowingly and willfully.

Subtitle A—Strengthening Congressional Control and Review to Prevent Impoundment

Section-by-Section

Section 501. Strengthening Congressional Control. Section 501 expands upon the existing requirements under the ICA to make budget authority prudently available for obligation. This section requires that budget authority proposed for rescission or deferral pursuant to sections 1012 or 1013 of the Impoundment Control Act of 1974 be made available in time to be prudently obligated—as is already required under the ICA—but in any case, no later than 90 calendar days before such budget authority would expire. This section would include a corresponding requirement that appropriations be released to agencies through administrative apportionment processes in time for the agencies to prudently obligate their appropriations—as is already

required under current law—but in any case, no later than 90 calendar days before such appropriation would expire.

Section 502. Strengthening Congressional Review. Section 502 requires the Executive Branch to make publicly available, in an automated fashion, all documents apportioning an appropriation, as these documents are final, decisional, and legally binding on agencies. It would also require that such documentation include a contemporaneous written explanation for the apportionment schedule to prevent arbitrary decision making and promote legal compliance. This section would also require agencies with apportioned funding to notify appropriate congressional committees if an apportionment of an appropriation is not made within the required statutory time period, or if the approved apportionment conditions the availability of an appropriation on further action or may otherwise hinder the agency’s ability to prudently obligate its appropriations or carry out its program, project, or activity. Finally, this section would require that delegations of the apportionment authority be published in the Federal Register and require that a continuously updated list of the positions of the approving officials be posted on a publicly-available website, with an explanation of any changes in delegations to approving officials transmitted to the Congress within 5 days after the change is made.

Section 503. Updated Authorities for and Reporting by the Comptroller General. Section 503 requires that GAO shall review and report on compliance with the ICA without regard to whether a withholding or deferral is ongoing and extends GAO’s review and compliance monitoring to the new congressional control provisions added to the ICA in section 501. This section also requires the Executive Branch to timely provide GAO with information, documentation, views, and access to employees for interview, if requested by the Comptroller General. Finally, this section eliminates the treatment of GAO’s report on the Executive Branch failing to issue a special message as a “substitute” special message for the Executive Branch.

Section 504. Advance Congressional Notification and Litigation. Section 504 shortens the waiting period for a GAO-initiated action to release withheld budget authority from 25 session days following congressional notification to 15 calendar days following congressional notification and also creates an exception to the required 15-calendar day wait for appropriate circumstances. This section also expands the suits that may be brought by the Comptroller General under the ICA to include suits to compel the production of information, documentation, views, or access to interview employees withheld by a department, agency, or office in violation of the requirements of the ICA.

Section 505. Penalties for Failure to Comply with the Impoundment Control Act of 1974. Section 505 requires the Executive Branch to provide a report to the Congress and the Comptroller General in the event of any violations of the ICA, including in response to any reports by GAO that identify a failure to transmit a special message under section 1015 and legal decisions by GAO that find the Executive Branch has violated the ICA. This section would also codify existing authorities by explicitly authorizing administrative discipline for responsible officials. This reporting requirement and the authorization of administrative discipline are

modeled on the reporting requirement and non-criminal penalties for certain violations of the Antideficiency Act, another bedrock statute of fiscal law and congressional control.

Subtitle B— Strengthening Transparency and Reporting

Part 1—Funds Management and Reporting to the Congress

Section 511. Expired Balance Reporting in the President’s Budget. Section 511 requires the Executive Branch to report as part of the President’s budget submission unobligated expired balances by appropriation for the preceding 3 years with explanations for balances that exceed certain thresholds.

Section 512. Cancelled Balance Reporting in the President’s Budget. Section 512 requires the Executive Branch to report as part of the President’s budget submission cancelled balances by appropriation for the preceding 3 years with explanations for balances that exceed certain thresholds. This section also requires certain reporting on expenditures from appropriations available for an indefinite time period.

Section 513. Lapse in Appropriations—Reporting in the President’s Budget. Section 513 requires agencies to maintain a detailed accounting of their funding actions taken during a lapse in appropriations and report this information to Congress for any lapses in appropriations lasting 5 or more days for which amounts were not available. The report required by this section provides information on obligations by program, project, and activity and an explanation of the agency’s legal judgment that an Antideficiency Act exception or other legal authority that authorized the obligations during the lapse. This section also requires disclosure to Congress of any disbursements made during a lapse in appropriations.

Section 514. Transfer and Other Repurposing Authority Reporting in the President’s Budget. Section 514 adds a one-time reporting requirement for the Executive Branch for the budget for fiscal year 2023 to provide a compilation of transfer authorities and authorities to repurpose funding that are provided in laws other than appropriations acts, as well as an explanation of any use of such authorities in the 3 preceding fiscal years.

Section 515. Authorizing Cancellations in Indefinite Accounts by Appropriation. Section 515 adds authority to allow for cancellation by appropriation within an indefinite Treasury account in the event such appropriation has not been used for 2 years and the agency head determines they are no longer needed to fulfill their statutory purpose, which is the existing standard for cancellations of indefinite funding at the account level. This section applies only to appropriations that are available without fiscal year limitation.

Part 2—Empowering Congressional Review Through Nonpartisan Congressional Agencies and Transparency Initiatives

Section 521. Requirement to Respond to Requests for Information from the Comptroller General for Budget and Appropriations Law Decisions. Section 521 requires executive agencies and the D.C. government to respond to GAO’s written requests for information, documentation, and views relating to a decision or opinion on budget or appropriations law not later than 20 days after the agency receives the request, unless such request provides a later deadline. This section requires the Comptroller General to notify Congress in the event that requested information is not provided to GAO within the required timeframe, and it authorizes the Comptroller General to bring suit to compel production of information, documentation, or views withheld in violation of this section.

Section 522. Reporting Requirements for Antideficiency Act Violations. Section 145 of OMB Circular A-11 sets out reporting requirements for Antideficiency Act violation reports, which includes a summary of the cause of the violation, identification of the position of the officials responsible for the violation, and descriptions of the actions the agency will take to prevent the recurrence of such violation. Section 522 amends the reporting requirements in the Antideficiency Act to codify and mandate compliance with this existing practice. This section also codifies the long-standing requirement that Antideficiency Act violation reports are required when GAO finds that a violation occurred.

Section 523. Department of Justice Reporting to Congress for Antideficiency Act Violations. Section 523 amends the reporting requirements in the Antideficiency Act to ensure that the DOJ is appropriately reviewing all reports of Antideficiency Act violations and investigating to the extent necessary to determine whether there are reasonable grounds to believe that the responsible officer or employee knowingly and willfully violated the Antideficiency Act. This section further requires the DOJ to provide annual updates to Congress and the Comptroller General on the number of reports the Department has reviewed by agency as well as the status of investigations undertaken.

Section 524. Publication of Budget or Appropriations Law Opinions of the Department of Justice Office of Legal Counsel. Section 524 requires prompt public disclosure of final OLC opinions relating to budget and appropriations law, subject to certain exceptions. This section sets a schedule for public disclosure, pursuant to which new opinions must be published within 30 days of their issuance and pre-existing opinions must be published within 1 year (for decisions issued since 1993), 2 years (for decisions issued between 1981 and 1993), 3 years (for decisions issued between 1969 and 1981), or 4 years (for all other opinions). This section also provides exceptions pursuant to which OLC may withhold opinions containing classified information, opinions relating to the appointment of a specific individual not confirmed to office, and opinions exempted from disclosure by statute.

Subtitle C—Strengthening Congressional Role in and Oversight of Emergency Declarations and Designations

Section 531. Improving Checks and Balances on the Use of the National Emergencies Act. Section 531 amends section 201 *et seq.* of the National Emergencies Act to limit the President’s

ability to exercise statutory emergency authorities indefinitely, without meaningful review or approval by the House of Representatives and Senate. It provides that, with the exception of emergencies under the International Emergency Economic Powers Act (IEEPA), an emergency declared by the President shall automatically cease after a set period unless Congress expressly approves the declaration. This will require both Houses affirmatively to approve of an emergency, flipping the current default that resulted from the Supreme Court's decision in *INS v. Chadha* in which both Houses must affirmatively disapprove of an emergency with sufficient votes to override a veto. This section also provides that individual statutory emergency authorities associated with a non-IEEPA emergency declaration shall cease unless approved by Congress during the prescribed period, even if Congress approves the underlying declaration. This would enable Congress to approve of an emergency and the exercise of some but not all of the statutory emergency authorities sought by the President in addressing it. Finally, this section requires reporting related to the exercise of statutory emergency authorities.

Section 532. National Emergencies Act Declaration Spending Reporting in the President's Budget. Section 532 requires the President to include, as part of the annual budget submission to Congress, a report on the proposed, planned, or actual obligations and expenditures of funds attributable to the exercise of powers and authorities made available by statute by declarations of a national emergency. These obligations and expenditures shall be reported by appropriations account and by program, project, and activity, including a description of each such program, project, and activity, the authorities under which such actions are taken, and their purpose and progress toward addressing the national emergency. Further, the report shall include the amount of each transfer, repurposing, and reprogramming to address the emergency; the authority authorizing each; and a description of programs, projects, and activities affected, including by a reduction in funding. The report shall cover obligations and expenditures anticipated for the fiscal year for which the budget is submitted and actual and estimated obligations and expenditures for the prior and the current fiscal year, respectively, for each presidentially declared national emergency currently active or in effect during applicable fiscal years for which funding actions are proposed, planned, or have taken place for the covered fiscal years.

Section 533. Disclosure to Congress of Presidential Emergency Action Documents. Section 533 requires the President to turn over presidential emergency action documents (PEAD) to Congress not later than 30 days after the approval, adoption, or revision of any PEAD, and requires the President to submit to Congress all PEADs currently in existence.

Section 534. Congressional Designations. Section 534 prevents the President from unilaterally blocking the availability of appropriations designated as emergency requirements and eliminates the overseas contingency operations designation.

TITLE VI—SECURITY FROM POLITICAL INTERFERENCE IN JUSTICE

Summary

Since Watergate, every Administration has issued guidance limiting contact between the White

House and DOJ in order to limit political interference in criminal and civil enforcement matters. Unfortunately, in recent years we have seen numerous instances where that norm was ignored. The Security from Political Interference in Justice Act seeks to help ensure that these norms are followed in the future, by requiring that the Attorney General (AG) maintain a log of certain designated contacts between the White House and DOJ that is to be shared with the DOJ Inspector General (IG) on a semi-annual basis, with an additional requirement that the IG share any inappropriate or improper contacts with the House and Senate Judiciary Committees.

Section-by-Section

Section 601. Short Title. The short title of the bill is the “Security from Political Interference in Justice Act of 2020.”

Section 602. Definitions. Section 602 sets forth various definitions. It defines a “covered communication” as communications between officers and employees of the DOJ and officers and employees of the Executive Office of the President relating to civil or criminal investigations, limited to exclude: (i) communications between the AG, Deputy AG, and Associate AG and the President, Vice President, Counsel to the President and Principal Deputy Counsel to the President (except to the extent the communication involves an investigation of the President, Vice-President or their families; a high ranking White House official; or a high ranking campaign official); (ii) in cases where continuing contact between DOJ and the White House on a matter is required, communications involving designated subordinates from each side to carry on such contact; (iii) certain communications involving national security; (iv) communications relating to pardons; and (v) communications relating to policy, appointments, legislation, rulemaking, budgets, public affairs, administrative or personnel matters, appellate litigation, or requests for legal advice.

Section 603. Communications Log. Section 603 requires the Attorney General to maintain a log of “covered communications,” including the name of the individuals involved, topic discussed, and need for the communication. The Attorney General would be required to submit the log semiannually to the DOJ IG, who in turn, would forward to the House and Senate Judiciary Committee any covered communications that are inappropriate from a law enforcement perspective or which raise concerns about improper political interference. Finally, the section includes a rule of construction stating that nothing in it limits the valid written assertion of the presidential communications privilege.

Section 604. Rule of Construction. Section 604 establishes a rule of construction such that nothing in this title shall be construed to affect any reporting requirement under Title I of the Act.

TITLE VII – PROTECTING INSPECTOR GENERAL INDEPENDENCE

Subtitle A—Requiring Cause for Removal

Summary

The Inspector General Independence Act would protect Inspectors General (IGs) from being removed by the President based on political retaliation. President Trump removed or replaced numerous IGs in what appeared to be retaliation for investigating misconduct of his own Administration. The Inspector General Independence Act would only allow an IG to be removed for a limited number of causes and would require that the President, before removing the IG, provide Congress with documentation of the cause.

Section-by-Section

Section 701. Short Title. The short title is the “Inspector General Independence Act.”

Section 702. Amendment. Section 702 would amend section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.) to specify that the President could only remove an inspector general for a limited number of causes and must provide documentation to Congress of the cause or causes for such removal. Paragraph 1 specifies the list of possible causes for removal: 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; and inefficiency. Paragraph 2 would amend section 8G(e)(2) of the Inspector General Act of 1978 to similarly limit the authority of the head of an agency in cases in which the inspector general is appointed by the head of the agency.

Section 703. Removal or Transfer Requirements. Section 703 would require disclosure to Congress of “detailed and case-specific reasons” for the removal or transfer of an IG, including providing the findings of any inquiry that relates to the removal or transfer decision.

Subtitle B—Inspectors General of Intelligence Community

Summary

The Act would further insulate Inspectors General of the Intelligence Community (IC) from political interference, bolster their independence, and enhance their congressional reporting requirements. The Act would permit the President or an agency head to remove or place on administrative leave an IG of the IC only for cause and only after satisfying certain procedural requirements. The Act would require the IG’s office to report to Congress on any pending investigations or other significant matters at the time of the IG’s removal. The Act clarifies that IGs of the IC have sole authority to determine matters of “urgent concern,” which the Act makes clear include foreign interference in our elections. The Act also enhances congressional reporting requirements when there is an unresolved difference, for instance about how to handle a whistleblower complaint, between an IG of the IC and the head of an agency or other Executive Branch official.

Section-by-Section

Section 711. Independence of Inspectors General of Intelligence Community. Section 711 would permit the President or agency head to remove or place on administrative leave an IG of the IC only for cause. It would require the President or agency head to provide written notice to Congress along with an explanation of the reasons for removal of the IG at least 30 days in advance. It would require the office of the removed IG to provide a report to Congress detailing all of the investigations and other significant matters that were pending at the time of the IG’s removal.

Section 712. Authority of Inspectors General of the Intelligence Community to Determine Matters of Urgent Concern. Section 712 clarifies that IGs of the IC have sole authority to determine whether any complaint or information reported to the IG constitutes a matter of “urgent concern” under the IC whistleblower statutory framework. It makes clear that matters of urgent concern include matters relating to foreign interference in U.S. elections. It provides for enhanced congressional reporting requirements whenever there is an unresolved difference between an IG of the IC and an agency head or other Executive Branch official. It clarifies that the authority of the Director of National Intelligence includes coordinating and supervising activities relating to protecting the United States from foreign interference in our elections.

Section 713. Conforming Amendments and Coordination with Other Provisions of Law. Section 713 makes conforming amendments to the National Security Act of 1947 and the Central Intelligence Agency Act of 1949 to effectuate the amendments made by Sections 711 and 712.

Subtitle C—Congressional Notification

Summary

The Inspector General Protection Act would protect the independence of Inspectors General by requiring advance notice to Congress before an IG is placed on administrative leave. The President is currently required by law to provide Congress with notice 30 days prior to removing an IG. The Inspector General Protection Act would require the President to provide Congress with notice 30 days before placing an IG on nonduty status and report to Congress if an IG has not been nominated for a vacant IG position for an extended period of time.

Section-by-Section

Section 721. Short Title. The short title is the “Inspector General Protection Act.”

Section 722. Congressional Notification in Change of Status of Inspector General. Section 722 would require the President to notify Congress 30 days before placing an IG on nonduty status, with an exception allowing notification sooner than 30 days prior to placement on nonduty status if the IG remaining on active status would pose a threat to people, an ongoing investigation, or government property.

Section 723. Presidential Explanation of Failure to Nominate an Inspector General. Under Section 723, if the President were to fail, within 210 days, to make a formal nomination for a vacant IG position, the President would be required to communicate to Congress within 30 days after the end of such period (1) the reasons why the President has not yet made a formal nomination and (2) a target date for making a formal nomination.

TITLE VIII – PROTECTING WHISTLEBLOWERS

Summary

The Whistleblower Protection Improvement Act would strengthen the law to ensure that federal employees who blow the whistle on waste, fraud, and abuse are protected from retaliation. The Whistleblower Protection Improvement Act would clarify that no federal official may interfere with a federal employee’s ability to share information with Congress. This measure would also limit disclosure of a whistleblower’s identity, prohibit retaliatory investigations, expand whistleblower protections to all noncareer appointees in the Senior Executive Service, and provide access to jury trials for whistleblowers.

Section-by-Section

Section 801. Short Title. The short title is the “Whistleblower Protection Improvement Act of 2020.”

Section 802. Additional Whistleblower Protections. Section 802 would provide additional protections for whistleblowers.

Subsection (a) would prohibit retaliatory investigations, or retaliatory referrals to an office of Inspector General, against any covered employee who engages in whistleblowing activity protected by 5 U.S.C. § 2302(b)(8).

Subsection (b) would prohibit retaliation against any covered employee for sharing information with Congress, as protected by 5 U.S.C. § 7211.

Subsection (c) would limit disclosure of the identity of an employee who engages in whistleblowing activity protected by 5 U.S.C. § 2302(b)(8).

Subsection (d) would amend the Lloyd-La Follette Act (5 U.S.C. § 7211) to make clear that no officer or employee of the federal government—including the President or Vice President—may interfere with or retaliate against a federal employee for sharing information with Congress.

Section 803. Enhancement of Whistleblower Protections. Section 803 would enhance and expand protections for whistleblowers.

Subsection (a) would enable the Office of Special Counsel to refer any disclosures of misconduct by an officer or employee of an Office of Inspector General to the Council of the Inspectors General on Integrity and Efficiency.

Subsection (b) would require that, if the Special Counsel determines that a referral to an Office of Inspector General was made in retaliation for protected whistleblowing activity, the Special Counsel must communicate that finding in writing to the relevant Inspector General within seven days of making the finding.

Subsection (c) would allow an employee to bring an individual cause of action to challenge an executive branch nondisclosure agreement that limits the employee's ability to share information with Congress, report violations of law to an inspector general, or engage in any other protected whistleblowing activity. The subsection also would empower an employee to file an action directly with the appropriate United States district court if the Merit Systems Protection Board (MSPB) fails to issue a final order or decision within 180 days (240 days for a complex case) of receiving the employee's request for corrective action, and would make that right to bring a cause of action in federal court retroactive for claims submitted to the MSPB for up to five years prior to the date of enactment.

Subsection (d) would 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.

Subsection (e) would clarify that an employee is entitled to recover attorney fees if the employee prevails in judicial review of a decision by the MSPB.

Subsection (f) would extend protections under the Whistleblower Protection Act to all non-career appointees in the Senior Executive Service and to officers or applicants of the Public Health Service and the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act.

Subsection (g) would clarify that when an employee is the prevailing party in an appeal to the MSPB, the employee shall be granted relief necessary to make the employee whole, including training, seniority, and promotions consistent with the employee's record.

Section 804. Classifying Certain Furloughs as Adverse Personnel Actions. Section 804 specifies that furloughs of 13 days or less caused by a lapse in appropriations are not covered by the procedures in 5 U.S.C. §§ 7513-15.

Section 805. Codification of Protections for Disclosure of Censorship Related to Research, Analysis, or Technical Information. Section 805 codifies Section 110 of the Whistleblower Protection Enforcement Act of 2012.

Section 806. Technical and Conforming Edits. Section 806 makes technical and conforming edits throughout Title 5.

Subtitle B—Whistleblowers of the Intelligence Community

Summary

Subtitle C of Title VIII would provide additional protections for whistleblowers within the IC. Specifically, it makes unlawful the sharing of whistleblower complaints with the subjects of those complaints; provides a secure mechanism for whistleblowers to provide information directly to the congressional intelligence committees; prohibits the disclosure of a whistleblower's identity without his or her consent; and creates a private cause of action for whistleblowers against whom an adverse personnel action is taken as a reprisal.

Section-by-Section

Section 821. Limitation on Sharing of Intelligence Community Whistleblower Complaints with Persons Named in Such Complaints. Section 821 makes it unlawful for any federal officer or employee to knowingly and willfully share any whistleblower complaint or other disclosure information with any individual named as a subject of the whistleblower's complaint, with certain limited exceptions.

Section 822. Disclosures to Congress. Section 822 creates a secure mechanism for whistleblowers in the IC to directly contact the congressional intelligence committees regarding a complaint or to provide other information. The reporting mechanism would protect both the whistleblower's identity and classified information. This section would require the IG of the relevant agency within the IC to inform Congress if the agency head impedes a whistleblower's attempt to directly contact the congressional intelligence committees.

Section 823. Prohibition Against Disclosure of Whistleblower Identity as Reprisal Against Whistleblower Disclosure by Employees and Contractors in Intelligence Community. Section 823 prohibits the disclosure by IC employees and contractors of a whistleblower's identity without his or her consent. It creates a private right of action for whistleblowers in the IC against any federal officer or employee who takes an adverse personnel action against the whistleblower as a reprisal.

TITLE IX – ACCOUNTABILITY FOR ACTING OFFICIALS

Summary

The Accountability for Acting Officials Act would amend the Federal Vacancies Reform Act (FVRA) to bring greater accountability to the process for filling vacant positions. The Act would

promote filling vacancies with qualified acting officials, incentivize the President to nominate officials for vacancies more rapidly, and close loopholes in existing law.

Section-by-Section

Section 901. Short Title. The short title is the “Accountability for Acting Officials Act.”

Section 902. Clarification of the Federal Vacancies Reform Act of 1998. Section 902 would make several amendments to the FVRA.

Subsection (a) would require first assistants to have served in their role for at least 30 days in the year prior to the vacancy arising (with an exception to this requirement for the first 180 days of a new administration), and for their position to be properly designated as the first assistant for the purposes of the FVRA at least 30 days prior to the vacancy arising. Current law has no minimum time required for either such service or designation. The provision would also require individuals serving as acting officials under a different provision of the FVRA—allowing such service for individuals at a GS-15 pay rate or higher—to have been at the same agency for a year prior to vacancy, increased from 90 days under current law.

Subsection (b) would require acting officials who are serving on the basis of being Senate confirmed to other positions, as well as acting IGs, to meet any relevant legal qualifications that would apply to Senate-confirmed individuals in those positions.

Subsection (c) would clarify that the FVRA applies when a vacancy arises due to an official being fired.

Subsection (d) would establish different procedures for vacancies of Senate-confirmed IGs, requiring that the first assistant shall serve as the acting IG in the event of such a vacancy. If the first assistant position is also vacant, then the President could designate another official who has served in the inspector general community for at least 90 days in the previous year, and whose rate of pay is at a GS-15 rate or higher.

Subsection (e) would institute a new requirement that acting officials, or officials who continue to perform the same duties after relevant FVRA time limits expire, must testify before congressional committees of jurisdiction once every 60 days, subject to joint waiver by the committee chair and ranking member.

Subsection (f) would change the FVRA time limits for acting service to 120 days, from 210 days, for the heads of federal agencies and any other position in the President’s cabinet.

Subsection (g) would clarify that another statute with “non-discretionary” orders or directives (e.g. “shall” language) designating agency official succession or designating the means of appointing acting officials supersedes the FVRA.

Subsection (h) would clarify that current reporting requirements specifying agencies report vacancies “immediately” to the Government Accountability Office requires such reporting within seven days of a vacancy arising and would require that the GAO report to Congress within 14 days of determining that an acting official served beyond the FVRA time limits.

Subsection (i) would simplify FVRA time limits for acting officials filling vacancies that exist as of the inauguration of a new President, or for vacancies arising within the first 60 days of a new administration, providing for 300 days from the date of the vacancy arising during that period or 300 days from inauguration day, if the vacancies already existed.

TITLE X – STRENGTHENING HATCH ACT ENFORCEMENT AND PENALTIES

Summary

Under existing law, only the President can impose discipline on senior political appointees when they violate the Hatch Act, which prohibits federal employees from engaging in improper partisan activities. The Hatch Act Accountability Act would provide the Merit Systems Protection Board with the authority to hold senior political appointees accountable when the President fails to act, by issuing a fine of up to \$50,000.

Section-by-Section

Section 1001. Short Title. The short title is the “Hatch Act Accountability Act.”

Section 1002. Strengthening Hatch Act Enforcement and Penalties Against Political Appointees. Section 1002 includes several provisions that enhance enforcement of the Hatch Act and provide accountability for violations of the Act, including by political appointees.

Subsection (a) would authorize the Office of Special Counsel to investigate a Hatch Act violation even if the office has not received an allegation. This subsection would require the President to provide a written statement to OSC in response to a finding by OSC that a political appointee violated the Hatch Act. Under this subsection, if the President failed to impose discipline on a political appointee following a finding of a Hatch Act violation by OSC, the Merit Systems Protection Board (MSPB) would have the authority to issue an administrative fine of up to \$50,000. OSC would be required under subsection (a) to provide every report of investigation of a senior political appointee that finds a violation of the Hatch Act, along with any recommendations it makes to the President regarding discipline, to Congress and to the public, as well as any response to OSC’s report from the President.

Subsection (b) clarifies that every senior appointed official, paid or unpaid, who works in the Executive Office of the President, any office of the White House, and the Office of the Vice President is subject to the Hatch Act.

TITLE XI – PROMOTING EFFICIENT PRESIDENTIAL TRANSITIONS

Summary

Title XI modifies provisions around ascertainment by the Administrator of the General Services Administration (GSA) for purposes of promoting efficient presidential transitions and preventing politicization of the transition process.

Section-by-Section

Section 1102. Ascertainment of Successful Candidates for Purposes of Federal Elections.

Section 1102 requires the GSA Administrator to make an ascertainment of the successful candidate in a federal election as soon as possible. If the Administrator does not make an ascertainment within 5 days of the election, each eligible presidential and vice-presidential candidate shall be treated as successful for purposes of the Presidential Transition Act, until such time as the Administrator makes an ascertainment or the results of the election are certified.

TITLE XII – PRESIDENTIAL AND VICE PRESIDENTIAL TAX TRANSPARENCY

Summary

Title XII requires sitting presidents and vice presidents and major party candidates for the presidency and vice-presidency to publicly disclose their 10 most recent federal income tax returns.

Section-by-Section

Section 1201. Presidential and Vice Presidential Tax Transparency. Section 1201 requires that a sitting president or vice president, and covered candidates for president or vice president, defined as major party candidates, submit the previous ten years of tax returns to the Federal Elections Commission (FEC). In any instance in which a covered candidate or sitting president or vice president does not provide the required tax returns, the Chair of the FEC must request them from the Secretary of Treasury who is required to provide them. The FEC is required to make the returns public, with appropriate redactions for privacy.

DIVISION C – DEFENDING ELECTIONS AGAINST FOREIGN INTERFERENCE

TITLE XIII – REPORTING FOREIGN INTERFERENCE IN ELECTIONS

Summary

Title XIII of the Act requires political campaigns, parties, and political committees like political action committees (PACs) and Super PACs to report attempts by foreign governments, foreign political parties, and their agents to influence our elections to the Federal Election Commission

(FEC) and Federal Bureau of Investigation (FBI). It requires the FBI to report on these notifications annually to the congressional intelligence committees. It also requires campaigns to establish compliance mechanisms. It ensures violations of these foreign contact reporting requirements can incur criminal or civil liability.

Section-by-Section

Section 1301. Federal Campaign Reporting of Foreign Contacts. Section 1301 amends the Federal Election Campaign Act to create a reporting requirement of disclosing reportable foreign contacts; creates an obligation for each political committee to notify the FBI and the FEC of the contact and provide a summary of circumstances not later than one week after said contact; creates an individual obligation for each candidate to notify the treasurer or other designated official of the principal campaign committee of the reportable foreign contact and to provide a summary of the circumstances of the contact not later than three days after said contact; and requires each official, employee, or agent of a political committee to notify the treasurer or other designated official of the committee of a contact and provide a summary of the circumstances of the contact, not later than three days after said contact.

Defines “reportable foreign contact” to mean any direct or indirect contact or communication between a candidate, political committee, or any official, employee, or agent of such committee, and an individual that any of the aforementioned individuals knows, or has reason to know, or reasonably believes, is a “covered foreign national”; where any of the aforementioned individuals further knows, has reason to know, or reasonably believes the contact or communication involves an offer or other proposal for a contribution, donation, expenditure, disbursement, or solicitation forbidden under Section 319 of the Federal Election Campaign Act, or involves a coordination or collaboration with, an offer or provision of information or services to or from, or persistent and repeated contact in connection with an election with a covered foreign national. Creates an exception such that “reportable foreign contact” does not include contact or communication between a covered foreign national and an elected official or such official’s employee solely in their official capacity as an official or employee. Precludes contact or communication that involves a contribution, donation, expenditure, disbursement, or solicitation as defined in Section 319 of the Federal Election Campaign Act from being considered exempt.

Defines a “covered foreign national” as a foreign principal that is a government of a foreign country or a foreign political party, an agent of such a foreign government or foreign political party, and persons on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury subject to sanctions related to the conduct of a foreign government or foreign political party. The agent definition applies to United States citizens only to the extent that person involved acts within the scope of that person’s status as the agent of a foreign government or foreign political party. Renders this section applicable with respect to reportable foreign contacts occurring on or after the date of the Act’s enactment.

Establishes that required reports for any reportable foreign contact shall include the date, time, and location of the contact, the date and time a designated committee official was notified of the contact, the identity of the individuals involved, and a description of the contact, including the nature of any contribution, donation, expenditure, disbursement, or solicitation involved or any prohibited activities discussed above. Renders this section applicable with respect to reports filed on or after the expiration of a 60-day period beginning on the date of this Act's enactment.

Section 1302. Federal Campaign Foreign Contact Reporting Compliance System. Section 1302 establishes a federal campaign foreign contact reporting compliance system, whereby each political committee must establish a policy requiring all officials, employees and agents of such committee to notify the treasurer or other designated official of the committee of any reportable foreign contact not later than three days following the contact. Requires each political committee to establish a policy that provides for retention and preservation of records and information related to reportable foreign contacts for no fewer than three years. When filing a statement of organization or certain reports, requires the treasurer of each political committee (except for an authorized committee) to certify that the committee has the aforementioned required policies in place, has designated an official to monitor compliance with such policies, and that not later than a week after the beginning of a formal or informal affiliation with the committee, all officials, employees, and agents of said committee will receive notice of such policies, be informed of contact restrictions, and sign a certification affirming their understanding of these policies and prohibitions. For authorized committees, the candidate shall make the required certification. Renders this section applicable with respect to political committees on or after the date of this Act's enactment. Allows existing political committees to file the aforementioned certification not later than 30 days after this Act's enactment.

Section 1303. Criminal Penalties. Section 1303 amends the Federal Election Campaign Act to include penalties such that anyone who knowingly and willfully commits a violation these provisions shall be fined not more than \$500,000, imprisoned not more than five years, or both. Further provides that anyone who knowingly and willfully conceals or destroys materials relating to a reportable foreign contact is to be fined not more than \$1,000,000, imprisoned not more than five years, or both.

Section 1304. Report to Congressional Intelligence Committees. Section 1304 would require the FBI to submit annual reports to the congressional intelligence committees concerning the notifications received under Section 1301.

Section 1305. Rule of Construction. Section 1305 establishes a rule of construction such that nothing in the title or amendments made by the title shall be construed to impede legitimate journalistic activities or to impose any additional limitation on the right to express political views or engage in public discourse for any individual who resides in the United States, is not a citizen or national, and is not lawfully admitted for permanent residence.

TITLE XIV – ELIMINATING FOREIGN INTERFERENCE IN ELECTIONS

Summary

Title XIV works to eliminate foreign interference in U.S. elections by making clear that the Federal Election Campaign Act prohibits the acceptance of opposition research, polling, and other non-public information relating to a candidate for federal, state, or local office by foreign governments and political parties for the purpose of influencing an election. It provides for enhanced criminal penalties for violations of this prohibition. It ensures that members and employees of political campaigns will be on notice of this prohibition by requiring the FEC to provide a written explanation of the prohibition to political campaigns, and for campaigns to certify their receipt and understanding of the explanation. Finally, it extends the ban on foreign national contributions to federal, state, and local elections to include ballot initiatives and referendums.

Section-by-Section

Section 1401. Clarification of Application of Foreign Money Ban. Section 1401 clarifies that for purposes of Section 319 of the Federal Election Campaign Act, a “contribution or donation of money or other thing of value” includes the provision of opposition research, polling, or other non-public information relating to a candidate for federal, state, or local office for the purpose of influencing the election. It explicitly excludes, however, the mere provision of an opinion about a candidate from the definition of a thing of value. This section provides that anyone who knowingly and willfully commits a violation of Section 319 that involves a foreign government or foreign political party, or which involves opposition research, polling, or other non-public information relating to a candidate, shall be subject to a fine and imprisonment for up to five years.

Section 1402. Requiring Acknowledgment of Foreign Money Ban by Political Committees. Section 1402 requires the FEC to provide a written explanation of Section 319 of the Federal Election Campaign Act, as amended by Section 1401, to political campaigns and committees. It also requires each political campaign and committee to certify that it has received the written explanation and provided a copy to all members, employees, contractors, and volunteers.

Section 1403. Prohibition on Contributions and Donations by Foreign Nationals In Connection with Ballot Initiatives. Section 1403 amends the Federal Elections Campaign Act to clarify that foreign nationals are barred from making contributions or donations in connection with a federal, state, or local election, including a state or local ballot initiative or referendum.

DIVISION D—SEVERABILITY

TITLE XV—SEVERABILITY

Section 1501. Severability. Section 1501 provides that if any provision within the Act is found unconstitutional or otherwise invalid, the validity of the remainder of the Act shall not be affected.