



# National Association of Assistant United States Attorneys

*Safeguarding Justice for All Americans*

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## Inspector General Access Act (S. 426/H.R. 3064)

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### Background

The Inspector General Access Act (IG Access Act) has been proposed as a necessary measure for increasing accountability and transparency at the U.S. Department of Justice (DOJ), making it politically toxic to oppose. *This characterization could not be farther from the truth.*

This legislation deeply misinterprets the role of the Office of Professional Responsibility (OPR). It would eliminate Section 8E of the Inspector General Act of 1978, which placed attorney professional misconduct investigations under the specialized OPR within the DOJ.

### Problem

DOJ OPR has unique, highly specialized expertise and has developed decades of precedent on handling attorney professional misconduct investigations.

Placing the livelihoods of federal attorneys in the hands of waste, fraud, and abuse investigators undermines our system of justice and puts DOJ attorneys at risk of becoming casualties in IG/OPR turf wars.

### Key Issues

- **OPR plays a critical role in our justice system.** Congress created OPR in response to the Watergate scandal to ensure that Department attorneys perform their duties in accordance with the high professional standards expected of the nation's principal law enforcement agency. Decisions within the OPR are based on an independent analytical framework and established procedures and precedents developed and solidified since the office's creation.
- **OPR is uniquely equipped to handle attorney professional conduct issues.** OPR employs attorneys in a range of positions at a scale unlike other federal agencies, including DOJ OIG. These attorneys have unique expertise in navigating complex legal and ethics standards applicable to attorneys within the DOJ. This includes navigating myriad state bar rules, which requires established relationships across the nation that the OPR maintains. Decades of precedent building and practiced procedure has led to the formation of a highly professional and skilled staff at the OPR that reaches conclusions based upon an impartial application of clearly defined principles.
- **The OIG is inherently different from OPR.** OPR practices are vastly different from the processes followed within the OIG for handling criminal audits and fraud investigations. The OIG employs criminal investigators whose instincts and training are to look for potential criminal conduct. The OPR employs attorneys as investigators who are trained to apply the ethics and state bar rules governing attorney professional conduct. This legislation provides no mechanism for ensuring quality of investigations is maintained.
- **The OIG cannot provide more transparency than OPR.** The OPR has a transparent process for disclosing summaries of its investigations, statistical information and procedural information through various means such as annual reports, releases published on the OPR website, and reports to Congress. To the extent that Congress is concerned about transparency related to individual cases, the OPR is constrained by the same Privacy Act

considerations as the OIG concerning disclosing specific information about individual DOJ attorneys investigated for professional misconduct.

- **There already exists a referral process to the OIG when it is appropriate and necessary.** In rare circumstances, we acknowledge that it may be necessary to get a second view on an attorney professional misconduct issue. *The law already accounts for this rare possibility.* 5a U.S.C. § 8e(b) permits the Deputy Attorney General to refer an attorney professional misconduct investigation to the Office of the Inspector General. This happened [recently](#), proving that the system can work as Congress intended when necessary.
- **This bill will make DOJ attorneys the subject of political turf wars.** The IG has admitted he does not wish to investigate all attorney professional misconduct allegations, only those of top, national concern. This places attorneys in the middle of political turf wars over authority to investigate their case. It also establishes two systems of justice for DOJ attorneys: For some attorneys, allegations of professional misconduct will be reviewed by highly trained and specialized OPR lawyers; but when a case is politically interesting to the IG, some attorneys will have their cases selectively reviewed by OIG investigators.
- **The OIG has an inherent conflict of interest.** The OIG regularly investigates cases and refers them to DOJ attorneys for prosecution. Ultimately, DOJ attorneys decide whether to move forward with a prosecution. Under the IG Access Act, the OIG may launch an investigation if they disagree with the DOJ attorney's prosecutorial decisions. Sometimes, an OIG investigator and a DOJ attorney work side by side on a case. This means an OIG investigator would be able to investigate an attorney they worked with if they do not like the way the attorney handled their case. This creates a conflict of interest and improper OIG interference in DOJ cases after the investigatory period.

### Alternative Options

- The issue of attorney accountability at the DOJ has not been subject to review by the U.S. Government Accountability Office nearly a decade, with the [last review](#) in 2014. A GAO review of the current OPR investigative process would assist Congress in identifying the existence, if any, of deficiencies in accountability and the proper steps for improvement.
- Rather than undoing decades of the professionalization by the OPR of investigating, reporting and holding DOJ attorneys accountable, the National Association of Assistant United States Attorneys supports establishing the OPR as a completely independent office, similar to the OIG, that is not subject to the supervision of the Attorney General. Under this proposal, the chief of professional responsibility would be a presidential appointment with U.S. Senate confirmation, just like the inspector general, and outside the chain of command of the Attorney General.

### Conclusion.

The OIG serves an important purpose at the DOJ—a department with a large contingent of employees involved in law enforcement. But the role of an attorney is distinguishable, as is demonstrated by the fact that all attorneys must be licensed by a state bar, and therefore must abide by a set of ethical and professional rules mandated by state bars and federal courts.

Ultimately, the IG Access Act is a solution in search of a problem. There is no evidence that the OPR conclusion are affected by political considerations.<sup>1</sup> OPR does its job well. Without any data nor evidence to the contrary, it is wasteful and practically ineffective to seek to fix a system that is not broken.

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<sup>1</sup> Indeed, organizations supporting the bill admit it addresses perceived issues of accountability but offers little supporting evidence of the issues they claim are real.