

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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**REP. STEPHEN F. LYNCH**

Ranking Member

Subcommittee on National Security

*“Oversight of the Department of Defense Office of Inspector General’s Military Whistleblower Reprisal Investigations”*

September 7, 2016 at 2:00pm in 2154 RHOB

Thank you, Mr. Chairman. I’d like to thank you for holding this hearing to examine the management of military whistleblower reprisal investigations by the Department of Defense Office of Inspector General. I’d also like to thank our colleague, Mr. Zinke of Montana, and our other distinguished witnesses for helping this Subcommittee with its work.

As the members of this Committee well know, federal whistleblowers serve a critical role in reporting waste, fraud, and abuse in the federal government and facilitating congressional and independent oversight on behalf of the American public. In recognition that whistleblowers often represent the so-called “first line of defense” against government wrongdoing, Congress has continued to establish and expand legal protections for federal employees who report agency misconduct in order to better safeguard them against employment retaliation.

Recent whistleblower statutes enacted by Congress on a bipartisan basis include the landmark *Whistleblower Protection Enhancement Act of 2012* as well as provisions included in the Intelligence Authorization Act for Fiscal Year 2014 that for the first time codified protections for national security and intelligence community employees. On this Committee, we are seeking to further extend the scope of federal whistleblower protections to include employees of the Federal Bureau of Investigation. In July of this year, Chairman Chaffetz and Ranking Member Cummings introduced H.R. 5790, the *F.B.I. Whistleblower Protection Enhancement Act*, which I have cosponsored.

Against this backdrop of ongoing efforts to strengthen federal whistleblower protections, I am deeply concerned by reports that the Department of Defense Office of Inspector General has faced severe management and operational challenges in its handling of whistleblower reprisal claims filed by members of the Uniformed Armed Services. These are cases in which military whistleblowers have disclosed wrongdoing within the Department of Defense and subsequently report to the Inspector General that they have been subject to retaliation or other adverse personnel actions as a result.

Pursuant to the *Military Whistleblower Protection Act of 1988* and its amendments: “if a member of the Armed Forces submits to the Inspector General of the Department of Defense an allegation that a prohibited personnel action has been taken or threatened against the member with respect to a protected communication, the Inspector General shall expeditiously investigate the allegation.” In addition, resulting investigatory reports submitted by the Inspector General to the Secretary of Defense must include a “thorough review of the facts and circumstances relevant to the allegation.” Regrettably, audit reports issued by the independent Government Accountability Office dating back to 2012 indicate that the

process for investigating military whistleblower reprisal claims at the Inspector General's Office has been plagued by delays and incomplete and inaccurate case information.

Most recently, G.A.O. reported in May of 2015 that while the *Military Whistleblower Protection Act* requires the Defense Department Inspector General to notify a service member if an investigation will not be closed within 180 days, the median notification time identified was approximately 353 days after a service member initially filed a reprisal complaint. In some cases, notification did not occur until more than 1 year after the complaint filing. In addition, G.A.O. reported that the average time for investigating and closing reprisal cases at the Department of Defense was 526 days – that's nearly three times the 180 day requirement for case duration established via agency directive. Moreover, the audit found that in 77% of the cases closed in fiscal year 2013, Inspector General staff uploaded investigatory reports, service member complaints, and other key documentation only after cases had already closed. An estimated 43% of cases that the office closed in 2013 were incorrectly logged by staff as "fully investigated" when they had not been subject to full investigation at all. In total, the Defense Department Inspector General's office dismissed about 84.6% of reprisal complaints between October of 2012 and September of 2015 and investigated only 9.6% of claims. It is no surprise that the Project on Government Oversight has characterized these management challenges as creating a "toxic" environment for military whistleblowers.

Now, I understand that the Inspector General's Office is under the new leadership of Acting Inspector General Glenn Fine. Mr. Fine was appointed in January of 2016 and has sought to enhance the investigatory process for reprisal claims based on G.A.O.'s work. I look forward to hearing from Inspector General Fine and our other witnesses in order to identify what additional steps we must take in order to better ensure the expeditious and thorough review of reprisal complaints at the Defense Department and safeguard our military whistleblowers against retaliation.

Thank you, Mr. Chairman. I yield the balance of my time.

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