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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

August 1, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable Mark Esper
Secretary
U.S Department of Defense
3010 Defense Pentagon
Washington, DC 20301-3010

Dear Secretary Esper:

During our recent meeting, we had an opportunity to discuss the roles of whistleblowers and Inspectors General (IG) in the federal government. In that meeting, you agreed that whistleblowers and the IGs are a vital part of the oversight process and are necessary to combat waste, fraud, and abuse. It is in the spirit of that conversation that I am writing you today.

On June 12th, I received a concerning letter from the Department of Defense Office of Inspector General (DOD OIG) informing my office of three independent and verified cases of whistleblower retaliation spanning multiple Secretaries and Administrations.¹ Alarming, the Department thus far has failed to act on the IG's recommendations concerning these cases. Verified instances of whistleblower retaliation must meet expeditious, appropriate action. Failure to do so will cause a chilling effect, deterring potential whistleblowers from coming forward in the future. As the new leader of the Department, you have an opportunity to right the ship.

Case of Discharged NAFI employee / Air Force veteran

On July 16, 2014, a retired Air Force enlisted member and Non-Appropriated Fund Instrumentality employee, was discharged from his position as a Child and Youth Program Assistant at Tyndall Air Force Base.² DOD OIG found that the discharge was reprisal for the employee reporting alleged violations of rules and regulations to DOD OIG after he fruitlessly

¹ Letter from Glenn A. Fine, Principal Deputy Inspector Gen., Dep't. of Defense, to Charles E. Grassley, Chairman, Committee on Finance (June 12, 2019).

² Inspector Gen. U.S. Dep't. of Def., Whistleblower Reprisal Investigation Case No. 20140731-026780-CASE-01, at 1 (Feb. 18, 2015).

raised his concerns with his chain of command, including his supervisor.³ DOD OIG recommended that the employee be reinstated and that his superior receive appropriate administrative action.⁴ However, DOD has failed to act upon either recommendation.

Case of Terminated NAFI employee

On October 6, 2015, management officials retaliated against a former Automotive Mechanic at the Marine Corps Exchange Service Station at Camp Allen, by issuing the mechanic an Employee Warning Notice and terminating his employment.⁵ According to DOD OIG, the mechanic made three protected disclosures regarding alleged mismanagement and abuse of authority by his manager.⁶ As a direct result, the mechanic was removed from his job and effectively rendered ineligible for future employment in any Non-Appropriated Fund Instrumentality positions with the federal government.⁷

DOD OIG recommended that the Director of Administration and Management retract the mechanic's Employee Warning Notice, provide him with the updated Notification of Personnel Action, and offer him an Automotive Mechanic position commensurate with his former grade as an Automotive Mechanic.⁸ DOD OIG also recommended that Director of Administration and Management take "appropriate corrective action" against three managers for their reprisals against the mechanic.⁹ Although the subjects of the investigation were given opportunity to respond and DOD OIG fully considered those responses, DOD officials disputed the Inspector General's findings and refused to implement its recommendations.¹⁰

Case of Non-Selected Subcontractor employee

On June 12, 2019, a second-tier subcontractor for the Department of Defense Office of Economic Adjustment, was non-selected for inclusion on a bridge contract.¹¹ DOD OIG found that the non-selection was reprisal for making protected disclosures to the prime contractor, Leidos, and government officials.¹² DOD OIG recommended remedial actions be taken against

³ *Id.* at 3-4 (stating that the employee informed the unit IG of his concerns: 1) a fellow employee utilizing Youth Center sound equipment for his personal disc jockey (DJ) business; 2) staff allowing nine-year-old children to sign themselves out of the Youth Center contrary to the Tyndall Air Force Base "Home Alone" policy; and 3) inconsistent enforcement of a policy requiring employees not to use their cell phones while supervising children).

⁴ *Id.* at 1.

⁵ OFFICE OF INSPECTOR GEN., U.S. DEP'T OF DEF., 20151021-033827-CASE-01, at 3 (June 8, 2018).

⁶ *Id.*

⁷ *Id.* at 26.

⁸ *Id.* at 29.

⁹ *Id.*

¹⁰ Letter from Glenn A. Fine, Principal Deputy Inspector General, DoD OIG, to Sen. Chuck Grassley, Co-Chairman, S. Whistleblower Protection Caucus & Sen. Ron Wyden, Co-Chairman, S. Whistleblower Protection Caucus (June 12, 2019).

¹¹ INSPECTOR GEN. U.S. DEP'T. OF DEF., WHISTLEBLOWER REPRISAL INVESTIGATION CASE NO. 20160506-037300-CASE-01, at 1 (Jan. 1, 2018) (hereinafter "OIG REPORT").

¹² *Id.* at 2-4 (stating that the second-tier subcontractor's disclosures included reports of inappropriate sexual and racial remarks made by the military liaison).

Leidos.¹³ DOD again disputed the report's findings, and failed to follow the IG's recommendations.¹⁴

These reports conclude that individuals in DOD engaged in significant mismanagement, poor supervision, and whistleblower retaliation. DOD **must** act quickly to implement the Inspector General's recommendations in these cases. Otherwise, the Department's ongoing antipathy and intransigence in cases of unlawful whistleblower reprisal will only greenlight future retaliation, waste, fraud, and abuse. To demonstrate the Department's clear commitment to whistleblower protection and respect for the independent oversight work of inspectors general, please answer the following questions and provide my staff with a briefing on these matters no later than August 15, 2019:

1. When does DOD expect to implement DOD OIG's recommendations in these cases?
2. Allowing retaliation like this to continue will result in a chilling effect. What actions will DOD take to deter future retaliation and discipline individuals who the DOD OIG found to have retaliated against whistleblowers in these cases?
3. When will these whistleblowers be reinstated? Will they be receiving back pay or other compensations?
4. In two of these cases (the mechanic and the second-tier subcontractor), abusive and/or sexual remarks were made by individuals in positions of authority. This is a historical and ongoing problem with the DOD. How does DOD plan to address such hostile work environments?

Should you have any questions, please contact Daniel Boatright of my Committee staff at (202) 224-4515. Thank you for your attention in this important matter.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on Finance

CC: Principal Deputy Inspector General Glenn Fine
Department of Defense Office of Inspector General

¹³ *Id.* at 15.

¹⁴ See Memorandum from John S. Albanese, General Counsel, Dep't. of Def. to General Counsel, Office of the Inspector General 3 (Jun. 15, 2018).