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WASHINGTON – Senator Chuck Grassley, Ranking Member of the Senate Committee on the Judiciary, today pressed Attorney General Eric Holder to delegate a presidential-mandated review of FBI whistleblower protections to the department's Inspector General.

Grassley said that the Justice Department has an abysmal record when it comes to rectifying FBI whistleblower cases.

The letter from Grassley to Holder comes after an October 10 directive from the President that is intended to protect whistleblowers with national security clearances against retaliation. The directive requires a review within 180 days from the Attorney General in consultation with the Special Counsel and FBI employees. The letter questions the potential conflict of interest created by having the Attorney General review the department's performance.

"There is no logical reason to empower people who have such a horrendous record on whistleblowers with the responsibility to determine whether the current process helps FBI whistleblowers," Grassley said. "The Attorney General and his Deputy have already allowed cases to languish for far too long. One case has been sitting at the Justice Department for more than 10 years, with no end in sight. That's unacceptable."

Grassley is a strong supporter of whistleblower protections. He is an original cosponsor of the Whistleblower Protection Enhancement Act which bolsters the 1989 Whistleblower Protection Act after it had been weakened by rulings of the Merit Systems Protection Board and the Federal Circuit Court of Appeals. An amended version of this bill passed the House of Representatives on September 28, and may be considered by the Senate after the election. Grassley had co-authored the 1989 law with Senator Carl Levin for government employees who stand up and speak out against fraud, waste and mismanagement. He also pushed

then-Attorney General Janet Reno and President Bill Clinton to implement whistleblower protections for FBI employees that were authorized by Congress, but never implemented. As a result of Grassley's work, President Clinton issued a presidential memorandum in 1997 ordering the Attorney General to create a whistleblower adjudication and appeals process.

Grassley also authored the 1986 update of the False Claims Act with qui tam provisions to empower private citizens who had information about fraudulent activity by government contractors to bring wrongdoing forward and sue in the name of the government. To date, these whistleblower provisions have recovered more than $30 billion for taxpayers that otherwise would be lost to fraud.

In 2009, Grassley and Senator Patrick Leahy won passage of the Fraud Enforcement and Recovery Act which made the most significant improvements to the False Claims Act since 1986. The law restores the scope and applicability of the False Claims Act where it had been limited by court decisions. This effort also revised criminal laws to help prosecute mortgage fraud, securities fraud, and complex financial crimes that led to the 2008 financial crisis.

In addition, Grassley authored the 2006 overhaul of the IRS whistleblower program to fight major tax fraud.

Here's a copy of the text of the letter. A signed version of the letter can be found here .

November 1, 2012

**Via Electronic Transmission**

The Honorable Eric H. Holder

Attorney General

U.S. Department of Justice

950 Pennsylvania Avenue, N.W.

Washington, DC 20530

Dear Attorney General Holder:

I write today regarding the recent Presidential Policy Directive, PPD-19 (herein Directive), entitled "Protecting Whistleblower with Access to Classified Information" that was issued by the President on October 10, 2012. [1] This Directive is intended to protect whistleblowers with national security clearances against retaliation. Section E of the Directive requires you, in consultation with the Special Counsel and employees of the Federal Bureau of Investigation (FBI), to provide a report to the President assessing the effectiveness of the regulations that protect FBI whistleblowers. While I welcome the Directive and the effort to provide some level of whistleblower protection to government employees in the Intelligence Community, I am deeply concerned about the current state of these protections for FBI employees and the Justice Department's role in adjudicating retaliation claims brought forward by FBI whistleblowers.

As you are aware, Section 2303 of Title 5 defines prohibited personnel practices in the FBI, and Part 27 of Title 28 of the Code of Federal Regulations lays out the process for investigating and adjudicating claims of retaliation filed by FBI employees. This process was created following a Presidential Memorandum issued by President Clinton in 1997. [2] These regulations detail an investigatory phase conducted by the FBI's Office of Professional Responsibility (OPR) or the Department of Justice's Office of the Inspector General (OIG), an

adjudicatory phase conducted by the Office of Attorney Recruitment and Management (OARM), and an appeal phase conducted by the Deputy Attorney General. The regulations also proscribe timelines for each phase of the process to ensure that cases do not linger without a resolution. Unfortunately, as history has shown, the Department has been woeful in meeting these timelines.

Specifically, I remain concerned about the treatment of two FBI whistleblowers whose cases have languished for years at the Department, namely, the cases of Jane Turner and Robert Kobus. In 2002, Special Agent Turner exposed misconduct by FBI agents when she revealed that they removed “souvenirs” from New York’s Ground Zero, the site of the 9-11 terrorist attacks. A decade later, and after a federal jury has ruled in her favor finding discrimination on the part of the FBI, Agent Turner’s case has been continually stalled with appeals and is still open—most recently after Deputy Attorney General Cole remanded the case for additional proceedings before OARM. Mr. Kobus’s case has also faced unwarranted delays. Kobus blew the whistle on timecard fraud in the FBI in 2007 and the OIG found that the FBI retaliated against him for his actions. Despite the unequivocal findings of the OIG, Kobus’ case remains unresolved after five years. Simply put, the delays in both of these cases call into question the Department’s ability, and willingness, to follow through on FBI whistleblower cases in a fair and timely fashion.

The Directive requires you to complete the review of the FBI whistleblower process within 180 days. Given the lengthy delays in retaliation cases that are still pending before the Department, and given the role that the Deputy Attorney General has played in these cases, I have serious misgivings about the ability of the Department to fairly review the FBI whistleblower process and to do so within the 180 day timeframe.

The Directive’s requirement that the review involve the Special Counsel and FBI employees—which should, at the very least, include those who currently have whistleblower complaints pending before OARM—creates the possibility of a conflict of interest in reviewing the Department’s performance. Accordingly, I ask that you delegate this review to the Department’s Inspector General. The OIG would offer a more objective and accountable analysis of the regulations prescribed in the Directive. Further, it would allow you to continue to focus resources on closing these cases that continue to languish before the Department, instead of devoting resources to this review.

I strongly support whistleblower protections and will continue to work hard to see that all FBI employees who reveal fraud, waste, and wrongdoing receive fair and equitable treatment at the FBI and within the Department. This Directive, if implemented properly, could provide

temporary relief for whistleblowers within the Intelligence Community. However, the Department has a lot to prove to FBI employees, the Congress, and the American people that whistleblowers will be treated fairly. As a first step toward this, I encourage you to strongly consider my request to designate the OIG to conduct the review of FBI whistleblower protections as outlined in the President's Directive.

Sincerely,

Charles E. Grassley

Ranking Member

Cc: The Honorable Michael E. Horowitz, Inspector General, U.S. Department of Justice

The Honorable Patrick Leahy, Chairman

[1] The White House, Presidential Policy Directive 19: Protecting Whistleblowers with Access to Classified Information, (October 10, 2012), http://www.fas.org/irp/offdocs/ppd/ppd-19.pdf .

2 Memorandum on Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978, 62 Fed. Reg. 23,123 (April 14, 1997), *available at* http://www.gpo.gov/fdsys/pkg/FR-1997-04-28/pdf/97-10984.pdf
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[1] The White House, Presidential Policy Directive 19: Protecting Whistleblowers with Access to Classified Information, (October 10, 2012), http://www.fas.org/irp/offdocs/ppd/ppd-19.pdf
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[2] Memorandum on Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978, 62 Fed. Reg. 23,123 (April 14, 1997), *available at* http://www.gpo.gov/fdsys/pkg/FR-1997-04-28/pdf/97-10984.pdf
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