



**U.S. Department of
Transportation**

**Office of the Secretary
of Transportation**

GENERAL COUNSEL

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

May 21, 2020

The Honorable Peter A. DeFazio
Chairman, Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Carolyn Maloney
Chairwoman, Committee on Oversight
and Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Gerald E. Connolly
Chairman, Subcommittee on Government
Operations
Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairmen DeFazio, Maloney, and Connolly:

This responds to your letter of May 19, 2020, regarding the President's designation of Howard R. ("Skip") Elliott to perform the functions and duties of the Inspector General of the Department of Transportation ("DOT" or the "Department"). Your letter contains numerous errors of fact and law.

As a preliminary matter, Mitch Behm was not removed from office. He has long served and continues to serve in his position as the Deputy Inspector General, where his background and experience benefit the Office of Inspector General ("OIG") and the Department.

Similarly, your letter wholly mischaracterizes Skip Elliott's background and experience. Even a cursory review of his biography and publicly available Senate confirmation record would have corrected this mischaracterization. Your letter asserted that "Mr. Elliott lacks the independence, qualifications, and experience necessary to be an effective Inspector General," and that "Mr. Elliott appears to have no investigatory or law enforcement experience." These assertions could not be further from the truth.

In fact, Skip Elliott brings decades of safety and law enforcement experience to his role as the Acting Inspector General. In addition to seven years of frontline experience as a police officer, Mr. Elliott graduated from the Indiana Law Enforcement Academy and holds a Master of Science degree in Criminal Justice Administration and a Bachelor of Arts with a major in Forensic Studies.

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In 2009, Indiana University's Department of Criminal Justice awarded him the Distinguished Alumni Award. Most recently, Mr. Elliott served as head of safety for one of America's largest freight railroads in his capacity as Vice President of Public Safety, Health, and Environment at CSX Transportation. In that role, he oversaw CSX's police force for 13 years, and from 2006 to 2014, he served as a Special Deputy U.S. Marshal for the United States Marshals Service. Mr. Elliot has also served on the FBI-DHS Domestic Security Alliance Council. As a testament to this distinguished career in public safety, the American Association of Railroads awarded Mr. Elliot the Holden-Proefrock Award for lifetime achievement in hazardous materials transportation safety.

In short, Skip Elliott has dedicated his entire career to public safety. Every one of his jobs for the past four decades has been focused on public safety, the number one mission of this Department. He came out of retirement to serve his country as Administrator of the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), a position to which the Senate confirmed him by voice vote without recorded opposition in 2017. Your letter's complete disregard for the facts about Skip Elliott's exemplary record of service and experience only evidences that it was written to further an unfounded political narrative at the expense of one of this Nation's finest public servants.

Contrary to the arguments in your letter, Mr. Elliott's service as Acting Inspector General does not require that he "resign as PHMSA Administrator," and there is no basis to suggest that he cannot work on OIG matters involving the Office of the Secretary. Mr. Elliott will recuse himself from OIG audits or investigations of PHMSA matters falling under his responsibility as Administrator of PHMSA, and, to the extent appropriate, the Deputy Administrator can supervise PHMSA operations on a delegated basis. Mr. Elliott is not disqualified from OIG matters involving the Office of the Secretary simply because the position of PHMSA Administrator reports to the Secretary. All subordinate officials in DOT report to the Secretary, including the Inspector General. The Inspector General Act of 1978 expressly provides that Inspectors General "report to" the heads of their departments and fall under the "general supervision" of their department heads.¹ Thus, whoever performs the functions and duties of DOT's Inspector General will report to the Secretary, just like the PHMSA Administrator.

Moreover, it was by virtue of Mr. Elliott's position as PHMSA Administrator that he was eligible for designation to serve as Acting Inspector General under the Vacancies Reform Act ("VRA"). Only individuals who occupy certain positions in the Executive Branch are eligible to be designated by the President to perform the functions and duties of a vacant Senate-confirmed office in an acting capacity.² By continuing to hold the office of PHMSA Administrator, Mr. Elliott maintains his eligibility for an acting designation within the Department.

The functions and duties of Acting Inspector General and PHMSA Administrator are different, of course, but there is no reason to believe that Mr. Elliott will not faithfully carry out his new

¹ Inspector General Act of 1978, 5 U.S.C. app. 3, § 3(a), (b).

² Federal Vacancies Reform Act, 5 U.S.C. § 3345(a)(2)-(3).

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responsibilities as Acting Inspector General. He will coordinate with relevant agency officials, including the Designated Agency Ethics Official, to ensure that he discharges the duties of Inspector General in a manner consistent with the Federal ethics rules, and he will recuse himself from specific matters where and as appropriate.

Finally, your letter implies that there was some nefarious motive in the designation of Mr. Elliott to serve as Acting Inspector General—a baseless implication for which your letter provides no evidence. The Department will continue to follow all requirements of the law, including the Inspector General Act.

In sum, the unsupported assertions in your letter do a gross disservice to Mr. Elliott, to the Department, and to the American people. The Department looks forward to a public correction to these unfair assertions.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven G. Bradbury". The signature is fluid and cursive, with a large, stylized initial "S" and "B".

Steven G. Bradbury
General Counsel (and performing the functions and
duties of Deputy Secretary)

cc: The Honorable Sam Graves, Ranking Member
Committee on Transportation and Infrastructure

The Honorable Jim Jordan, Ranking Member
Committee on Oversight and Reform

The Honorable Jody B. Hice, Ranking Member
Subcommittee on Government Operations, Committee on Oversight and Reform