

In order to address certain technical issues arising from Inspector General Reform Act of 2008, Public Law 110-409 (Reform Act), and to codify certain provisions of the Reform Act, the CIGIE Legislation Committee recommends the following proposed technical and conforming amendments to the Inspector General Act of 1978, 5 U.S.C. App. 3.

1. Amendment to Section 8G of Title 5, App. 3, United States Code

We propose that section 8G of Title 5, App. 3, United States Code, be amended by inserting the language in subsection 4(b) of the Reform Act regarding the pay of “designated Federal entity” (DFE) Inspectors General as a new subsection 8G(i).

Statement of Need and Purpose

Section 4(b) of the Reform Act contained the provisions underlined below revising the pay structure for Designated Federal Entity (DFE) Inspectors General. However, the statute did not amend the Inspector General Act of 1978 (IG Act), and, therefore, these provisions do not appear in the codified IG Act. In order to ensure that the DFE IG pay provisions are a part of the text of the IG Act, the DFE IG pay provisions found at section 4(b) of the IG Reform Act should be inserted into the IG Act as section “8G(i)”.

Statutory Text With Proposed Changes

The statute, as amended, would read as follows, with the language proposed to be added underlined (language is verbatim to text in section 4(b) of the Reform Act):

§ 8G. Requirements for Federal entities and designated Federal entities

* * *

(i) Inspectors General of Designated Federal Entities.--

(1) In general.-- Notwithstanding any other provision of law, the Inspector General of each designated Federal entity (as those terms are defined under section 8G of the Inspector General Act of 1978 (5 U.S.C. App.)) shall, for pay and all other purposes, be classified at a grade, level, or rank designation, as the case may be, at or above those of a majority of the senior level executives of that designated Federal entity (such as a General Counsel, Chief Information Officer, Chief Financial Officer, Chief Human Capital Officer, or Chief Acquisition Officer). The pay of an Inspector General of a designated Federal entity (as those terms are defined under section 8G of the Inspector General Act of 1978 (5 U.S.C. App.)) shall be not less than the average total compensation (including bonuses) of the senior level executives of that designated Federal entity calculated on an annual basis.

(2) Limitation on adjustment.---

(A) In general.--In the case of an Inspector General of a designated Federal entity whose pay is adjusted under paragraph (1), the total increase in pay in any fiscal year resulting from that adjustment may not exceed 25 percent of the average total compensation (including bonuses) of the Inspector General of that entity for the preceding 3 fiscal years.

(B) Sunset of limitation.--The limitation under subparagraph (A) shall not apply to any adjustment made in fiscal year 2013 or each fiscal year thereafter.

2. Amendment to Section 8 of the Inspector General Act of 1978

We propose that section 8 of Title 5, App. 3, United States Code, be amended by inserting the language in section 4(c) of the Reform Act as a new subsection 8M.

Statement of Need and Purpose

Section 4(c) of the Reform Act contained the provisions underlined below regarding pay of certain Inspectors General. However, the statute did not amend the Inspector General Act of 1978 (IG Act), and, therefore, these provisions do not appear in the codified IG Act. In order to ensure that these provisions are a part of the text of the IG Act, the language in section 4(c) of the IG Reform Act should be inserted into the IG Act as section “8M”.

Statutory Text With Proposed Changes

The statute, as amended, would read as follows, with the language proposed to be added underlined (language is verbatim of text in section 4(c) of the Reform Act):

§ 8M. Pay Retention

(a) In general.-- The provisions of section 3392 of title 5, United States Code, other than the terms "performance awards" and "awarding of ranks" in subsection (c)(1) of such section, shall apply to career appointees of the Senior Executive Service who are appointed to the position of Inspector General.

(b) Nonreduction in pay.-- Notwithstanding any other provision of law, career Federal employees serving on an appointment made pursuant to statutory authority found other than in section 3392 of title 5, United States Code, shall not suffer a reduction in pay, not including any bonus or performance award, as a result of being appointed to the position of Inspector General.

3. Amendment to Section 11 of Title 5, App. 3, United States Code

We propose that the provisions in section 7(b) of the Reform Act relating to the authority of the Integrity Committee to investigate allegations against the Special Counsel or Deputy Special Counsel be codified in Title 5, App. 3, United States Code. This amendment can be accomplished by adding the language of 7(b) of the Reform Act as a new subparagraph 11(d)(12).

Statement of Need and Purpose

Section 7(b) of the Reform Act, which relates to “Allegations of Wrongdoing Against the Special Counsel or Deputy Special Counsel,” did not amend the Inspector General Act of 1978 (IG Act). Accordingly, these provisions do not appear in the codified IG Act. In order to ensure that these provisions are a part of the text of the IG Act, the language in section 7(b) of the IG Reform Act should be inserted into the IG Act as a new subparagraph “11(d)(12)”.

Statutory Text With Proposed Changes

The statute, as amended, would read as follows, with the language proposed to be added underlined:

(11) Establishment of the Council of the Inspectors General on Integrity and Efficiency.

* * *

(d)

* * *

(12) Allegations of Wrongdoing Against Special Counsel or Deputy Special Counsel.--

(A) Definition.-- In this subparagraph -- the term "Special Counsel" refers to the Special Counsel appointed under section 1211(b) of title 5, United States Code.

(B) Authority of integrity committee.----

(i) In general.--An allegation of wrongdoing against the Special Counsel or the Deputy Special Counsel may be received, reviewed, and referred for investigation by the Integrity Committee to the same extent and in the same manner as in the case of an allegation against an Inspector General (or a member of the staff of an Office of Inspector General), subject to the requirement that the Special Counsel recuse himself or herself from the consideration of any allegation brought under this paragraph.

(ii) Coordination with existing provisions of law.--This subsection does not eliminate access to the Merit Systems Protection Board for review under section 7701 of title 5, United States Code. To the extent that an allegation brought under this subsection involves section 2302(b)(8) of that title, a failure to obtain corrective action within 120 days after the date on which that allegation is received by the Integrity Committee shall, for purposes of section 1221 of such title, be considered to satisfy section 1214(a)(3)(B) of that title.

(C) Regulations.-- The Integrity Committee may prescribe any rules or regulations necessary to carry out this subparagraph, subject to such consultation or other requirements as might otherwise apply.

4. Amendment to Section 11(c) of Title 5, App. 3, United States Code

We propose that section 11(c)(3)(A)(ii) of Title 5, App. 3, United States Code, be amended by striking the language “department, agency, or entity of the executive branch” and inserting the language “Federal agency, establishment or designated Federal entity,.”

Statement of Need and Purpose

As currently written, section 11(c)(3)(A)(ii) does not apply to certain members of the CIGIE, including the Legal Services Corporation (LSC), which is not an agency as that term is defined in the IG Act and section 552(f) of Title 5. The proposed change would ensure that all OIGs currently included in the phrase “agency” would be covered by section 8L. As currently written, the LSC OIG is not authorized to fund or participate in the funding of Counsel activities.

The words “department” and “entity of the executive branch” are deleted because they are redundant. Section 12(5) of the IG Act defines the “term Federal agency” to have the same definition as agency in section 552(f) of Title 5. That definition applies to any “executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency”;

Statutory Text With Proposed Changes

The statute, as amended, would read as follows, with the language proposed for deletion shown as struck through and the proposed new language shown as underlined:

(ii) upon the authorization of the Executive Chairperson, any ~~department, Federal agency, or entity of the executive branch~~ establishment or designated Federal entity, which has a member on the Council shall fund or participate in the funding of such activities.

5. Amendment to Section 8L of Title 5, App. 3, United States Code

We propose that section 8L of Title 5, App. 3, United States Code, be amended by striking the word “agency” and inserting the language “establishment, designated Federal entity, and agency.”

Statement of Need and Purpose

As discussed above, use of the term “agency” in section 8L does not cover certain DFEs. Thus, it is unclear whether these DFE OIGs may invoke section 8L to assure hotline callers that their identities are protected from disclosure by Federal law. Absent such assurances, hotline callers might be reluctant to disclose their identities, or to provide the DFE OIG any information at all, thus defeating the plain purpose of section 8L(b)(2)(B), which states:

“Anonymity.—The Inspector General of each agency shall not disclose the identity of any individual making a report under this paragraph without the consent of the individual unless the Inspector General determines that such a disclosure is unavoidable during the course of the investigation.”

Statutory Text With Proposed Changes

The statute, as amended, would read as follows, with the proposed new language shown as underlined:

(a) Direct Links to Inspectors General Offices.--

(1) In general.-- Each Federal agency, establishment, and designated federal entity shall establish and maintain on the homepage of the website of that Federal agency, establishment, or designated federal entity, a direct link to the website of the Office of the Inspector General of that agency.

(2) Accessibility.-- The direct link under paragraph (1) shall be obvious and facilitate accessibility to the website of the Office of the Inspector General.

(b) Requirements for Inspectors General Websites.--

(1) Posting of reports and audits.-- The Inspector General of each Federal agency, establishment, and designated federal entity shall--

* * *

(2) Reporting of fraud, waste, and abuse.----

(A) In general.--The Inspector General of each Federal agency, establishment, and designated federal entity shall establish and maintain a direct link on the homepage of the website of the Office of the Inspector General for individuals to report fraud, waste, and abuse. Individuals reporting fraud, waste, or abuse using the direct link established under this paragraph shall not be required to provide personally identifying information relating to that individual.

(B) Anonymity.--The Inspector General of each Federal agency, establishment, and designated federal entity shall not disclose the identity of any individual making a report under this paragraph without the consent of the individual unless the Inspector General determines that such a disclosure is unavoidable during the course of the investigation.

...

(c) Implementation.--Not later than 180 days after the date of enactment of this Act, the head of each Federal agency, establishment, and designated federal entity and the Inspector General of each Federal agency, establishment, and designated federal entity shall implement the amendment made by this section.

6. Amendment to Section 8L(b)(1) of Title 5, App. 3, United States Code

We propose that section 8L(b)(1) of Title 5, App. 3, United States Code, be amended by replacing the phrase “report or audit (or portion of any report or audit),” with the language “audit report, inspection report, and evaluation report (collectively “report”) or portions of such reports” in the first instance, and “report or portions thereof” for all subsequent instances.

Statement of Need and Purpose

This change provides a more natural description of OIG written products, and makes this provision consistent with changes made by section 12 of the Reform Act to the semiannual reporting provisions. In addition, it clarifies that reports of criminal investigations are not posted on OIG websites.

Statutory Text With Proposed Changes

The amendment would be accomplished by the following:

- (1) Striking the phrase “report or audit (or portion of any report or audit)” each time that phrase appears in section 8L(b)(1);
- (2) In first instance in subparagraph (A), inserting the language “audit report, inspection report, and evaluation report (collectively report) or portions of such reports;” and
- (3) Thereafter in subparagraphs (A) and (B) inserting the language “report or portions thereof.”

The statute, as amended, would read as follows, with the language proposed for deletion shown as struck through and the proposed new language shown as underlined:

(1) Posting of reports and audits.-- The Inspector General of each agency shall--

(A) not later than 3 days after any ~~report or audit (or portion of any report or audit)~~ audit report, inspection report, and evaluation report (collectively “report”) or portions of such reports is made publicly available, post that ~~report or audit (or portion of that report or audit)~~ report or portions thereof on the website of the Office of Inspector General; and

(B) ensure that any posted ~~report or audit (or portion of that report or audit)~~ report or portions thereof described under subparagraph (A)--

(i) is easily accessible from a direct link on the homepage of the website of the Office of the Inspector General;

(ii) includes a summary of the findings of the Inspector General; and

(iii) is in a format that--

"(I) is searchable and downloadable; and

"(II) facilitates printing by individuals of the public accessing the website.

7. Amendment to Section 8L(b) of Title 5, App. 3, United States Code

We propose that section 744 in Division D, Title VII of the Commerce, Justice, Science, and Related Agencies Appropriations Act of 2009 (Public Law 111-08) be repealed.

Statement of Need and Purpose

Section 744 of division D, title VII of the Financial Services and General Government Appropriations Act of 2009 establishes OIG website requirements that conflict with section 8L of the IG Act, as amended by section 13 of the Reform Act. Repealing section 744 would eliminate this conflict.

Moreover, section 744 is similar to section 746(b) of the Financial Services and General Government Appropriations Act of 2008, which was repealed by section 13(b) of the Reform Act.

Statutory Text With Proposed Changes

Section 744, division D, title VII, of the Financial Services and General Government Appropriations Act of 2009 (Public Law No. 111-08) is repealed.

8. Technical Amendments to Title 5, App. 3, United State Code

We propose that the following technical amendments be made to Title 5, App. 3, United States Code, to correct typographical errors and make other changes to the codified text of the IG Act.

a. Amendment to Section 11(d)(7)(B)(ii) of Title 5, App. 3, United States Code

We propose that section 11(d)(7)(B)(ii) of Title 5, App. 3, United States Code be amended by capitalizing the word “Congress.” This amendment can be achieved by striking the lower-case letter “c,” and inserting a capital letter “C.”

Statement of Need and Purpose

Correct apparent typographical error.

Statutory Text With Proposed Changes

The statute, as amended, would read as follows, with the language proposed for deletion shown as struck through and the proposed new language shown as underlined:

(ii) Submission to ~~e~~Congress—The Council shall submit a copy of the policies and procedures established under clause (i) to the congressional committees of jurisdiction.

b. Correction of Executive Order Number In Reform Act

We propose to repeal the reference to Executive Orders (EO) 12933 (which does not relate to IGs) in the Reform Act and issuing a statutory change that EO 12993 will be of no force and effect.

Statement of Need and Purpose

Section 7(c)(2) of the Reform Act stated that Executive Orders (EOs) 12805 and 12933 shall have no force and effect after the Reform Act is enacted. However, the reference to EO 12933 was in error as that EO does not apply to OIGs. The reference should have been to EO 12993.

Statutory Text With Proposed Changes

The statute would read as follows, with new language shown as underlined:

(1) Section 7(c)(2) of the Inspector General Reform Act of 2008 is repealed insofar as it relates to Executive Order 12933.

(2) Executive Order No. 12993, dated March 21, 1996 shall have no force or effect on the effective date of this Act.

c). Amendment to Section 6(a)(4) of Title 5, App. 3, United States Code

We propose that section 6(a)(4) of Title 5, App. 3, United States Code, be amended by moving the parenthesis from after “any tangible thing” to after electronically stored information.”

Statement of Need and Purpose

This amendment would clarify which items are required to be produced in response to an IG subpoena. Currently, the IG Act states that an IG is authorized to subpoena the production of, among other things, “other data in any medium (including electronically stored information, as well as any tangible thing).” By placing the final parenthesis after “thing,” this language permits the interpretation that an IG subpoena requesting “any tangible thing” is authorized only if it is connected with “electronically stored information.”

To ensure that “any tangible thing” is not only associated with electronically stored information, the final parenthesis found after “thing” should be moved and placed immediately after “electronically stored information.” This change will avoid possible misinterpretation and clearly preserve the authority of IGs to require the production of tangible things that are not associated with electronically stored information.

Statutory Text With Proposed Changes

The statute, as amended, would read as follows, with the language proposed for deletion shown as highlighted and struck through and the proposed new language shown as highlighted and underlined:

(4) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information), as well as any tangible thing and documentary evidence necessary in the performance of the functions assigned by this Act,...

d). Amendment to Section 6(a)(4) of Title 5, App. 3, United States Code

We propose that section 6(a)(4) of Title 5, App. 3, United States Code, be amended by inserting the proper spelling of “subpoenas,” in lieu of “subpenas.”

Statement of Need and Purpose

Although the first two instances of the term “subpena” found in section 6(a)(4) were amended, “subpena” still appears one more time in that subsection. Section 9(2) of the Reform Act provides for this language correction in subsection 6(a)(4), but the correction was not codified.

Statutory Text With Proposed Changes

The statute, as amended, would read as follows, with the language proposed for deletion shown as struck through and the proposed new language shown as underlined:

(4) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: *Provided*, That procedures other than ~~subpenas~~ subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies;

e). Amendment to Section 8G(g)(3) of Title 5, App. 3, United States Code

We propose that section 8G(g)(3) of Title 5, App. 3, United States Code, be amended to properly reference section 8D, instead of 8C. This amendment can be achieved by striking “8C,” and inserting “8D.”

Statement of Need and Purpose

A long-standing cross-referencing error exists at section 8G(g)(3) of the IG Act; it has appeared there since the 1988 amendments to the Act. This section applies certain special provisions concerning the Department of the Treasury OIG, found at section 8D, to the OIG for the Board of Governors of the Federal Reserve System. The error is that section 8G(g)(3) states that these special Treasury provisions are found at 8C, but they are actually found at 8D.

Statutory Text With Proposed Changes

The statute, as amended, would read as follows, with the language proposed for deletion shown as struck through and the proposed new language shown as underlined:

3) Notwithstanding the last sentence of subsection (d) of this section, the provisions of subsection (a) of section ~~8C-8D~~ (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (a)(1)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.