



*Council of the*  
**INSPECTORS GENERAL**  
*on INTEGRITY and EFFICIENCY*

December 2, 2009

The Honorable Jeffrey D. Zients  
Deputy Director for Management and Chief Performance Officer  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

**Re: CIGIE Legislation Committee  
FY 2010 – Legislative Initiatives**

Dear Mr. Zients:

As Chair of the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), I am pleased to provide you this summary of the Committee's current legislative initiatives. I have also included copies of relevant correspondence for each of the matters summarized below. We appreciate your feedback and thank you in advance for your support of these efforts.

The CIGIE Legislation Committee (Committee) is dedicated to providing helpful and timely information about Congressional initiatives to the Inspector General (IG) community; soliciting the views and concerns of the community in response to Congressional initiatives and requests; and presenting views and recommendations to Congressional entities and the Office of Management and Budget on issues and initiatives of interest. The Committee has begun advancing several pro-active initiatives. Among the topics:

- Paperwork Reduction Act
- Computer Matching Act
- Testimonial Subpoena Authority
- Technical Amendments to the Inspector General Reform Act of 2009

In addition, the Committee has responded to several legislative initiatives that would have an impact on the IG community at large. We have corresponded most recently on the following matters:

- Data Breach Notification & Personal Data Privacy and Security
- Whistleblower Protection Act

Brief summaries of these initiatives are provided below, and additional relevant information and communications are provided in the attachments.

### ***1. Paperwork Reduction Act***

The Paperwork Reduction Act (PRA) requires a lengthy and burdensome approval process for the collection of information by a Federal agency. The CIGIE has recommended that the PRA be amended to exempt the Federal IG offices from its requirements.

Senator Grassley introduced S. 976 which would exempt from the PRA information collected during the conduct of any investigation, audit, inspection, evaluation, or other review conducted by a Federal IG. S. 976 fully addresses the concerns of the IG community and the Committee has expressed its support thereof. S. 976 awaits action by the Committee on Homeland Security and Government Affairs.

### ***2. Computer Matching Act***

The Computer Matching and Privacy Protection Act requires a protracted review and approval process before computer matching can be performed to identify improper or fraudulent disaster or other assistance payments. The timely use of computer matching to identify those who improperly received Federal assistance, and subsequently removing them from the program after verification, improves program efficiency and enables the government to focus resources on eligible applicants. Moreover, timely computer matching can under optimum conditions prevent improper payments from occurring in the first instance and, even following payments, usually leads to enhanced recovery of improper payments. The Committee has recommended that the IG community be exempt from the provisions of the Computer Matching and Privacy Protection Act to facilitate review and identification of fraud.

### ***3. Testimonial Subpoena Authority***

The IG community overwhelmingly supports expanding the IG subpoena authority to include compelling the attendance and testimony of non-Federal agency witnesses. Virtually all IGs agree that this new authority would enhance their ability to conduct thorough audits and investigations, particularly in procurement fraud matters dealing with Government contractors or grantees. IGs have cited numerous examples of problems obtaining cooperation from private contractors and former employees in their audits or investigations. This lack of cooperation either led to incomplete audits or closed investigation cases.

Congress has begun to address the issue and has passed legislation to grant the expanded authority to the Department of Defense IG. Several bills now pending before Congress offer a variety of solutions to the issue; however, they do not offer a uniform, consistent approach for all IGs. The Committee is working with congressional staff and both the criminal and civil divisions of the Department of Justice to develop consensus around a uniform legislative approach. A draft legislative proposal and guidelines for implementation are being prepared for review by the Committee.

#### ***4. Technical Amendments to the Inspector General Reform Act of 2009***

The Committee has proposed certain amendments to the Inspector General Reform Act of 2008 (Reform Act) and is preparing a final draft of the recommendations for submission to staff of the Senate Homeland Security and Government Affairs and House Oversight and Government Reform Committees. The recommendations include those proposals that are technical in nature and that affect multiple CIGIE members. The proposed amendments seek to accomplish the following:

- Codify the following provisions from the Reform Act in the Inspector General Act of 1978: (a) the designated Federal entity inspector general pay provisions set forth in section 4(b) of the Reform Act; (b) pay provisions for career Senior Executive Service personnel that become inspectors general set forth in section 4(c) of the Reform Act, and (c) the authority of the Integrity Committee to investigate allegations of wrongdoing against the Special Counsel or Deputy Special Counsel provided in section 7(b) of the Reform Act;
- Authorize all executive OIGs to fund or participate in CIGIE activities (the current language “department, agency, or entity of the executive branch” does not include certain designated Federal entities);
- Replace “agency” with “Federal agency, establishment or designated Federal entity” so that non-agency OIGs may promise to keep anonymous the identity of parties filing complaints;
- Clarify that reports that OIGs must post on their web-sites includes audit reports, inspection reports and evaluation reports, consistent with semi-annual reporting requirements;
- Repeal parts of the 2009 Omnibus Appropriations Act that conflict with codified Reform Act language regarding OIG websites; and
- Correct various typographical errors.

#### ***5. Data Breach Notification – S. 139 Personal Data Privacy and Security – S. 1490***

The Committee has offered feedback from the IG community regarding certain provisions of S. 139, *The Data Breach Notification Act*, and S. 1490, *The Personal Privacy and Security Act*. These proposals would require Federal agencies to notify consumers and certain law enforcement agencies of security breaches of personally identifiable information (PII) and supersede any other Federal or state laws concerning notification of a PII security breach.

While the IG community overwhelmingly supports notification requirements for breaches of PII, IGs are primarily concerned that the notification requirements may confuse existing requirements, under Federal law and executive guidelines, that agencies should notify their respective IGs of any breach of PII. In addition, the proposed legislation does not provide reporting of PII security breaches to the U.S. Computer Emergency Readiness Team (US-CERT). Under OMB Memorandum M-07-16, Federal agencies are required to report PII security breaches to US-CERT, which is charged with providing response support and defense against cyber attacks against the Federal Civil Executive Branch. We have notified the relevant Committees of our concerns.

#### **6. *Whistleblower Protection Act***

The Committee has corresponded with Congressional members and staff regarding H.R. 1507 and S. 372, both titled *The Whistleblower Protection Enhancement Act of 2009*. The Committee surveyed the IG community specifically about the new IG requirements under Section 10 and 11 of H.R. 1507 related to investigations of whistleblower reprisal allegations by employees or former employees of Executive agencies whose disclosure “consists in whole or in part of classified or sensitive information” and amendments to the Federal Property and Administrative Services Act of 1949 covering contractor employees.

While the IG community recognizes the importance of whistleblower protection for Federal employees, a majority of IGs are primarily concerned that the legislation as drafted would impose strict time requirements to investigate whistleblower reprisal complaints thereby undermining the ability to independently set priorities on OIG case investigations. IGs further believe that they should have the discretion, as they do for other complaints from employees, to not conduct an investigation. In addition, a substantial majority of IGs do not believe they should be required to make conclusions on burdens of proof concerning whistleblowing reprisal violations. Finally, a substantial majority of IGs also believe a complainant’s access to an IG’s investigative file should be limited in accordance with any applicable laws, regulations, or established privileges.

The Committee also conducted a survey to assess the sense of the IG community regarding a requirement under S. 372, that IGs designate a Whistleblower Protection Ombudsman within their offices. IGs believe that, under the IG Act, they have an important role in educating and informing agency employees about whistleblower rights and investigating retaliation against employees that make a complaint or disclose information to an IG. However, a significant majority share a concern that the proposed Ombudsman’s “advocacy” and “advise” duties under S. 372 would be in conflict with the IG Act’s independence and objectivity mandates.

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The Committee appreciates the opportunity to present to you this summary of important issues. We look forward to working with you to advance our legislative initiatives. Should you have any questions or need more information, please do not hesitate to contact me directly at 202-512-2288.

Sincerely,



J. Anthony Ogden  
Inspector General  
United States Government Printing Office

Chair, Legislation Committee  
Council of the Inspectors General on Integrity and Efficiency

Enclosures

cc: CIGIE Executive Committee (w/encs)  
CIGIE IGs and Liaisons (w/out encs)