



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

October 29, 2014

The Honorable Darrell Issa  
Chairman, Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Elijah E. Cummings  
Ranking Member, Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Issa and Ranking Member Cummings:

The Council of the Inspectors General on Integrity and Efficiency (CIGIE) has advocated for several legislative proposals to enhance the work of Inspectors General.<sup>1</sup> In this and recent Congresses, committees of jurisdiction have taken testimony and maintained an ongoing dialogue with CIGIE representatives and Inspectors General (IGs) regarding the underlying challenges that the legislative proposals seek to address. IGs share Congress' and taxpayers' concerns regarding fraud, waste, and abuse in Federal programs and are committed to rooting out the same in the most efficient and cost-effective manner as we carry out our responsibilities as set forth in the Inspector General Act of 1978, as amended (IG Act). To that end, the CIGIE offers the following views on H.R. 5492, as amended—the *Inspector General Empowerment Act of 2014* (H.R. 5492).

H.R. 5492 would provide IGs with tools the community has long advocated for, as well as other provisions that provide additional authority to IGs<sup>2</sup> and the CIGIE. The CIGIE believes the provisions of H.R. 5492 will enhance the work of IGs and supports passage of this bill.

Section 2(a) of the bill will authorize IGs to subpoena the attendance and testimony by certain witnesses, including any former Federal employee necessary in the performance of the functions of the IG Act. In the absence of such authority, the resignation of Federal employees has in some instances substantially hampered an audit, investigation or other review into matters within the scope of that individual's responsibilities. The bill also authorizes testimonial subpoenas to Federal contractors but does not extend to former contractors or to contractor employees, either current or former. The new authority would be more effective in assisting IG work if it did not limit the allowable recipients of a subpoena, but rather solely require that the

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<sup>1</sup> March 19, 2013 letter from CIGIE Legislation Committee Chair to the Deputy Director for Management, Office of Management and Budget

<sup>2</sup> These additional authorities would not apply to the Inspectors General of the Intelligence Community or the CIA as their authorities are contained in Title 50 of the US Code.

subpoena be necessary in performance of the functions assigned to IGs by the IG Act. That would make the testimonial subpoena authority the same as the IGs' existing authority to subpoena documents. That authority, set forth in section 6(a)(4) of the IG Act, does not specify the recipients to whom IGs may issue subpoenas, but rather only requires that a subpoena must be necessary in the performance of IG work.

In addition, although we agree with the bill's exclusion of Federal employees from an IG's subpoena authority, we recommend that this exclusion be explained so as not to discourage Federal employee cooperation with IG investigations, audits, or other reviews, such as by stating: "Current Federal employees may not be subpoenaed because they are otherwise obligated to provide testimony and cooperate with the Inspector General."

As drafted, Section 2(a)(1) composes the CIGIE review panel of the chairs of two committees that CIGIE has established pursuant to Section 11(b)(3)(B)(vii) of the IG Act. As these committees are not statutorily created, CIGIE suggests that, if a panel of IGs is created to review requests for testimonial subpoenas, the section be drafted in such a way as to provide flexibility to appoint members of the panel regardless of the committee structure of CIGIE and in such a manner so as to ensure the panel is comprised of IGs with diverse experience and perspectives. Given that testimonial subpoena authority would be a new authority for most IGs, and in the interests of transparency, CIGIE would be supportive of a requirement that OIGs annually report on the number of times subpoenas are issued under this new section. Such a requirement could be added to an existing reporting requirement, such as CIGIE's *Annual Progress Report to the President*<sup>3</sup>.

In context of Section 2(a), certain IGs already have testimonial subpoena powers conferred by statutes other than the IG Act or by delegation that are available in limited circumstances or in particular types of cases. For example, section 205(d) of the Social Security Act [42 U.S.C. § 405(d)] authorizes subpoenas to compel testimony in the course of hearings, investigations or other proceedings brought under that Act. Section 1128A(j) of the Social Security Act [42 U.S.C. § 1320a-7a(j)] applies this authority to the Health and Human Services (HHS) Secretary in civil monetary penalty matters under section 1128A. Additionally, section 1128A(j) of the Social Security Act permits, but does not require, the HHS Secretary to delegate that authority to the IG for the limited purpose of investigating and assessing administrative monetary penalties for certain Medicare and Medicaid providers and suppliers. The Secretary did delegate this authority; accordingly, since 1988, HHS/IG has had authority to issue testimonial subpoenas in pursuit of one category of administrative violations. The Health Care Reform law extended this authority to a second category of administrative violations – HHS/IG's "exclusions" authority.<sup>4</sup> In both cases, the subpoena authority is confined to specified administrative proceedings.

We recommend that the provision of H.R. 5492, 2(a) be clarified so as not to disturb existing testimonial subpoena powers and procedures such as these. This could be accomplished by adding the proviso:

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<sup>3</sup> Section 11(b)(3)(B)(viii)

<sup>4</sup> Section 6402(e) of the Patient Protection and Affordable Care Act, P.L. 111-148

“No provision of this section shall affect the exercise by an Inspector General of testimonial subpoena authorities established under any other statutory authority.”

Section 2(b) will exempt IGs from the provisions of the Computer Matching and Privacy Protection Act (CMPPA), which CIGIE has long supported. Timely use of computer matching can be a powerful tool for safeguarding the integrity of Federal programs. IGs are, however, impeded in effective use of this tool. Under the CMPPA as currently written, an IG's request for computer matching must undergo a protracted review by the agency and is subject to the discretion of agency leadership. This requirement results in the overseen agency deciding whether its IG can have access to information that may be the most efficient means of addressing fraud. Removing this impediment will enable IGs to conduct their work timely, efficiently, and independently.

Section 2(b) is improved by making it explicit that the exemption also applies to a Federal agency that facilitates access to internal electronic records at the request of an IG for purposes of computer matching. In order to avoid any confusion over how this section would work in instances when an IG is seeking information from an agency (as opposed to another IG), we recommend that the language in paragraph 9 of Section 2(b) be clarified to read:

“(9) and any agency participating in a matching program with the Inspector General, notwithstanding subsections (e)(12), (o), (p), (q), (r), and (u) of section 552a of title 5, United States Code, to compare, through a matching program (as defined in such section), any Federal records with other Federal or non-Federal records, while the Inspector General is conducting an audit, investigation, inspection, evaluation, or other review authorized under this Act; and”

We also recommend that the provision of H.R. 5492, 2(b) be clarified so as not to disturb existing IG matching program authorities and procedures. This could be accomplished by adding the proviso:

“No provision of this section shall affect the exercise by an Inspector General of matching program authorities established under any other statutory authority.”

Section 3 amends Section 11 of the IG Act by authorizing a new source of funds available for appropriations to the CIGIE. The sums authorized are anticipated to be sufficient for CIGIE to implement new responsibilities mandated by H.R. 5492.

Section 4(a) amends Section 11(c)(1) of the IG Act and establishes a new function and duty for CIGIE. As drafted, the amendment is overly broad and authorizes CIGIE to receive, review, and mediate any disputes submitted in writing by an IG involving more than one Federal agency or entity. The scope of such disputes may be related to an audit, investigation, inspection, evaluation or project. CIGIE recommends the authorization to be limited to a dispute submitted

in writing by an IG involving the jurisdiction of more than one OIG, as opposed to Federal agencies or entities.

Section 4(b) amends Section 11(d) of the IG Act by prescribing time frames to carry out functions of the Integrity Committee. The role of the Integrity Committee is one of CIGIE's paramount duties and is vital to maintaining the public trust in the work of IGs. The prescribed time frames will further ensure allegations under the purview of the Integrity Committee are reviewed and investigated in a timely manner. The amendment provides necessary flexibility to the Integrity Committee for extending the time to fully investigate complex allegations and investigations while providing briefings at specified points to certain Congressional committees. The amendment also clarifies the authority of the Integrity Committee to conduct and coordinate parallel investigations with other investigations that may be ongoing by another governmental entity.

Section 4(c) amends certain provisions of Section 11 to make technical corrections and authorize certain delegation authority. Specifically, the IG Act is amended to update the title of the IG for the Intelligence Community, previously identified as the IG of the Director of National Intelligence. The amendments also provide flexibility for the Special Counsel of the Office of Special Counsel (OSC) and the Director of the Office of Government Ethics (OGE) to designate a representative to carry out their responsibilities on the Integrity Committee. Such flexibility is necessary to ensure OSC and OGE are full participants as entities on the Integrity Committee, particularly when a conflict may exist that causes the principal to recuse themselves in specific matters. Frequently, matters pending before the Integrity Committee are also under the purview of either OSC or OGE, or both, whereby the principal's roles may be in conflict.

Section 5 will exempt Inspectors General from the provisions of the Paperwork Reduction Act (PRA), a proposal for which CIGIE has long advocated. It is noted that Section 5(3) makes specific reference to the "Recovery Accountability and Transparency Board," and that the Board is required to sunset on September 30, 2015.

The IG Community has advocated for over a decade for a change to the PRA in order to facilitate the independent reviews of IGs, and CIGIE has recommended that the PRA be amended to exempt the Federal IG offices from its requirements. Specifically, our concern is that the PRA requires that information collections, such as OIG surveys, be subject to approval from a "senior official" of the agency and then from OMB. Subjecting Inspectors General to the review process requirements of the PRA conflicts with their statutory mission to be independent and nonpartisan. Additionally, the protracted approval process affects IG's ability to carry out audits and evaluations required by members of Congress, through law or by requests, in a timely and effective manner.

While agency heads may generally supervise IGs, they are not to "prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation." We recognize OMB's wealth of knowledge in the formulation and conduct of surveys. Indeed, our community may wish to informally seek its advice in the areas of survey formats, techniques, and methodologies.

However, application of the PRA to IGs has both process and substance implications, and we continue to support an exemption to the PRA for IGs

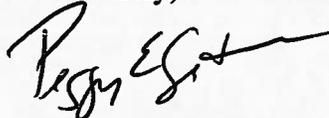
Section 6 amends the IG Act to make technical corrections, amendments for which CIGIE strongly advocates. The amendments codify certain provisions of the IG Reform Act, make technical corrections, and make corrections to typographical errors. CIGIE notes that the bill fails to codify a key provision of the IG Reform Act of 2008 (IG Reform Act): the designated Federal entity IG pay provisions set forth in section 4(b) of the IG Reform Act; and pay provisions for career Senior Executive Service personnel that become inspectors general set forth in section 4(c) of the IG Reform Act. CIGIE suggests that Sections 4(b) and 4(c) of the IG Reform Act be codified into the IG Act, which serves as the guiding statute for OIG authorities.

Section 7 of the bill establishes a requirement for two reports to Congress. GAO is required to conduct a study of prolonged vacancies in Office of Inspectors General. CIGIE is required to conduct an examination of critical issues that involve the jurisdiction of more than one IG. The examination will identify issues that could be better addressed through greater coordination among IGs and best practices that can be employed to increase coordination and cooperation on each issue identified. These reports will inform the Congress on these important topics.

Section 8 amends Section 4(a) of the IG Act to require public release of misconduct reports involving members of the Senior Executive Service, an employee in a position excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character, or commissioned officer in the Armed Forces in pay grades O-6 and above. The amendment appropriately ensures that information protected by the Freedom of Information Act, the Privacy Act of 1974, and Section 6103 of the Internal Revenue Code of 1986 is to be withheld. Such cases of misconduct also are to be reported by IGs to the Congress in Semi-annual Reports to the Congress mandated by Section 5 of the IG Act.

We are confident that H.R. 5492 would strengthen IG oversight of Federal programs and spending and provide much needed tools more efficiently and effectively to conduct audits, investigations, inspections, evaluations, or other reviews. Should you have any questions or need more information, please do not hesitate to contact me directly at 202-205-6586.

Sincerely,



Peggy E. Gustafson  
Inspector General  
U.S. Small Business Administration

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

**The Honorable Darrell Issa and The Honorable Elijah E. Cummings**

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**Cc: The Honorable Thomas R. Carper  
Chairman, Committee on Homeland Security and Government Affairs**

**The Honorable Tom A. Coburn, M.D.  
Ranking Member, Committee on Homeland Security and Government Affairs**