



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

December 11, 2009

The Honorable John Conyers, Jr.  
Chairman, Committee on the Judiciary  
United States House of Representatives  
2426 Rayburn H.O.B.  
Washington, DC 20515

**Subject: H.R. 3848**  
**Testimonial Subpoena Authority for Inspectors General**

Dear Chairman Conyers:

As Chair of the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), I am writing in regards to IG subpoena authority to include the attendance and testimony of non-Federal agency witnesses.

As you might imagine, the IG community is overwhelmingly in favor of such an expansion of its existing subpoena authority as it would help the community conduct thorough investigations and audits that presently may be hampered by the lack of cooperation of private contractors, grantees loan or benefit recipients, and former employees. The IG community has raised concerns, however, about any requirements for Department of Justice consultation and approval of the use of such authority as it may undermine the effectiveness of this expanded authority and an IG's independence under the Inspector General Act of 1978, as amended (IG Act).

Recent proposed and enacted legislation would provide new testimonial subpoena authority to certain IGs. The National Defense Authorization Act (NDAA), was passed into law on October 28, 2009 (P.L. 111-84) and provides the DOD IG with authority to subpoena witnesses and testimony. After concerns were raised about the original DOJ consultation and objection provisions, the final language of the bill provides the Attorney General seven-days to object. In contrast, H.R. 885 would provide IGs of five financial oversight entities (Federal Reserve Board, Commodity Futures Trade Commission, National Credit Union Administration, Pension Benefit Guaranty Corporation, and the Securities and Exchange Commission) the authority, without the need to consult with the Attorney General, to subpoena testimony from contractors, grantees, subcontractors, subgrantees, or entities regulated by the establishment. H.R. 3848 provides yet an alternative approach to testimonial subpoena authority.

Because these legislative proposals differ significantly, the CIGIE Legislation Committee is concerned about a piece-meal approach to expansion of IG subpoena authority. As

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you might imagine, this is likely to create inconsistencies in the implementation and execution of the subpoena authority.

The Legislation Committee conducted a comprehensive survey of the IG community in an effort to develop a consensus on this issue. Subsequently, we met with staff from the Senate Homeland Security and Government Affairs Committee who have been closely following the various legislative proposals. Additionally, we have met with officials from both the Criminal and Civil Divisions of the Department of Justice to address specific concerns.

Based upon our evaluation of the concerns identified, the Legislation Committee prepared draft legislative language which we believe would address the majority (if not all) of the issues concerning testimonial subpoena authority for Inspectors General. I have attached a copy of the proposed legislation for your consideration. We would suggest this language be considered as a substitute to H.R. 3848. We have also shared this language with Senate HSGAC staff, staff from the House Oversight and Government Reform Committee, and per specific request, staff for Representative Robert Menendez. Additionally, we have forwarded a copy to DOJ and tentatively have a combined civil/criminal division follow-up meeting next week to discuss the proposal.

The IG community is grateful for your interest in this issue, and we look forward to working with you and your staff in developing a proposal that would meet the objectives of all of the interested parties and stakeholders.

We would appreciate the opportunity to meet and discuss this proposal with you or your staff. You may contact me directly at [togden@gpo.gov](mailto:togden@gpo.gov) or at 202-512-2288.

Kind thanks and best wishes for the holidays.

Sincerely,



J. Anthony Ogden  
Inspector General, United States Government Printing Office  
Chair, Legislation Committee  
Council of the Inspectors General on Integrity and Efficiency

Attachment

ec: The Honorable Phyllis Fong, Chairperson, CIGIE  
Carl Clinefelter, Vice Chairperson, CIGIE  
The Honorable Jeffrey D. Zients, Executive Chairperson, CIGIE

## A BILL

To amend the Inspector General Act of 1978 to provide authority for Inspectors General to subpoena the attendance and testimony of witnesses as necessary in the performance of functions assigned to the Inspector General by the Inspector General Act of 1978 as amended, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the 'Inspector General Authority Improvement Act of 2009'.

### SEC. 2. SUBPOENA AUTHORITY FOR INSPECTORS GENERAL TO REQUIRE TESTIMONY OF CERTAIN PERSONS.

Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended--

(1) in subsection (a)--

(A) at the end of paragraph (8), by striking 'and';

(B) at the end of paragraph (9), by striking the period and inserting ' ; and';

(C) by adding at the end the following new paragraph:

'(10) to require by subpoena the attendance and testimony of witnesses as necessary in the performance of functions assigned to the Inspector General by this Act, except as provided in subsection (g). A subpoena issued under this subsection shall provide reasonable notice to the individual whose testimony is sought and shall state the name of that individual and the place of taking the testimony.'; and

(2) by adding the following new subsection:

'(g)(1)(A) The Inspector General shall use procedures other than subpoenas to obtain attendance and testimony from Federal employees.

'(B) An Inspector General may not issue a subpoena under subsection 10 when the subpoena is being issued in connection with a matter in which the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, or the Civil False Claims Act (31 U.S.C. 3729-3733), unless the Inspector General notifies the Attorney General of his or her intent to issue a subpoena under subsection (10), the identity of the witness, and the nature of the testimony sought at least 14 days before issuing such a subpoena.

` (C) The Inspector General may not issue the subpoena if the Attorney General, or his or her designee, informs the Inspector General, within 14 days after receipt of the notification under subparagraph (B), that the Attorney General objects to the issuance of the subpoena on one or more of the grounds listed in clauses (i) through (iii) of subparagraph (D).

` (D) If the Attorney General objects to the issuance of the subpoena as described in subparagraph (C) and the Inspector General does not agree with the Attorney General's objection, the Attorney General shall, within 30 days after receipt of the notification under subparagraph (C), explain in writing addressed to such Inspector General that the taking of the testimony--

` (i) is likely to endanger the national security of the United States;

` (ii) is likely to interfere with any Federal or State criminal investigation or prosecution; or

` (iii) is likely to interfere with any pending investigation under the Civil False Claims Act or any civil litigation to which the United States or any of its agencies is or is likely to be a party.

` (E) Except as provided in subparagraph (F), any subpoena issued under this subsection, in the case of contumacy or refusal to obey, shall be enforceable in the district where the individual whose testimony is sought by subpoena resides, or in the district of the individual's place of employment.

` (F) A proceeding to enforce a subpoena may be brought in the United States District Court for the District of Columbia if the individual whose testimony is sought by the subpoena resides within 25 miles of the District of Columbia and if the complaint seeking enforcement alleges that a significant portion of the matters that are expected to be the subject of the investigation occurred in the District of Columbia.

` (G) The Attorney General shall represent an Office of Inspector General in the enforcement of a subpoena under this subsection.'.