



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

July 10, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Subject: S. 139-Data Breach Notification Act

Dear Chairman Leahy:

As Chair of the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), I am writing to convey the concerns of the Inspector General (IG) community about S. 139, the “Data Breach Notification Act.” This legislation 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. As explained below, the Legislation Committee surveyed the IG community on S. 139 and found that IGs are primarily concerned that the legislation may confuse requirements under federal law and executive guidelines, specifically under the Federal Information Security Management Act (FISMA), that agencies should notify their respective IGs of any breach of PII.

Section 7(a) of S. 139 would require that Federal agencies notify the U.S. Secret Service (USSS) of any known or suspected PII security breaches while section 7(b) makes USSS responsible for notifying the Federal Bureau of Investigation and the U.S. Postal Service and state attorneys general of certain security breaches. However, S. 139 does not mention any agency notification of PII security breaches to their respective IGs.

The Legislation Committee survey showed that 98% of the 48 IGs that responded believe IGs should be contemporaneously notified of PII security breaches by their respective agencies. In fact, under FISMA, agencies are required to have procedures to notify their IGs of security incidents, such as PII security breaches.¹ The IG community is concerned that section 10, which states that this law would “supersede any other Federal law...relating to notification by...an agency of a security breach”, would disrupt or confuse this already established agency process under FISMA.

¹ 44 U.S.C. § 3544(b)(7)(C).

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The IG community believes that S. 139 should clarify that Federal agencies should promptly notify their respective IGs in the event of any PII security breach. With such notification, IGs would be able to effectively coordinate any investigation with other federal law enforcement agencies. This could be accomplished by adding a section 7(d) with the following language: "Notice by Federal Agencies to Inspectors General - Federal agencies shall be responsible for notifying their respective Offices of Inspectors General of a security breach in accordance with 44 U.S.C. § 3544(b)(7)(C). Offices of Inspectors General may coordinate any security breach investigation with any other law enforcement agency."

Other IGs raised the concern that S. 139 does not mention any 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. Because section 10 appears to supersede all other requirements related to PII security breach notifications by agencies, consideration should be given to include US-CERT in the notification requirements of the law.

The CIGIE Legislation Committee appreciates the opportunity to present to you this important issue to the IG community. Please note that a similar letter is also being sent to Senators Sessions and Feinstein. If you have any questions or need more information, please do not hesitate to contact me 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

cc: The Honorable Joseph Lieberman