



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

November 30, 2009

The Honorable Joseph Lieberman
Chairman
Senate Homeland Security and Government Affairs Committee
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Subject: S. 1490- The Personal Privacy and Security Act of 2009

Dear Senator Lieberman:

As Chair of the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), I am writing to offer feedback from the Inspector General (IG) community regarding certain provisions of S. 1490, The Personal Privacy and Security 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.

On July 10, 2009, we provided comments on a similar bill, S. 139, The Data Breach Notification Act of 2009, based on a survey of the IG community on S. 139's notification provisions. As further explained below, while the IG community overwhelmingly supports notification requirements for breaches of PII, IGs are primarily concerned that proposed S. 1490 notification requirements may confuse existing requirements, under federal law and executive guidelines, that agencies should notify their respective IGs of any breach of PII.

Section 316 of S. 1490 would require that federal agencies notify the U.S. Secret Service (USSS) of any known or suspected PII security breaches, while section 316(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. 1490 does not mention any agency notification of PII security breaches to their respective IGs. We believe this may be just an oversight that is easily remedied.

There is near unanimity in the IG community (98%) that IGs should be contemporaneously notified of PII security breaches by their respective agencies. Currently, under the Federal Information Security Management Act (FISMA), agencies are required to have procedures to notify their IGs of security incidents, such as PII security breaches.¹ As you might imagine, there is concern among the IGs that section 319, which states that this law would

¹ 44 U.S.C. § 3544(b)(7)(C).

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“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.

The Legislation Committee would like to recommend that S. 1490 (as well as S. 139) be clarified to ensure that Federal agencies promptly notify their respective IGs in the event of any PII security breach to effectively coordinate any investigation with other federal law enforcement agencies. This could be accomplished by adding a section 316(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.”

In addition, as with S. 139, we note that that S. 1490 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 319 may supersede all other requirements related to PII security breach notifications by agencies, we would recommend that you consider including 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 Senator Collins, Senator McCaskill, and Committee on the Judiciary Chairman Leahy and Ranking Member Sessions. 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
U.S. Government Printing Office

cc: Phyllis Fong, Chair, CIGIE
Carl Clinefelter, Vice-Chair, CIGIE
Jeffrey Zients, Executive Chair, CIGIE