



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

STATEMENT OF

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CHAIR OF THE LEGISLATION COMMITTEE
COUNCIL OF INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY**

BEFORE THE

**SUBCOMMITTEE ON CONTRACTING OVERSIGHT
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
U.S. SENATE**

DECEMBER 6, 2011

Chairman McCaskill, Ranking Member Portman, and distinguished members of the Subcommittee, thank you for the opportunity to be here today and for your continued support of the work of Inspectors General. I am happy to be here in my capacity as Chair of the Legislation Committee for the Council of Inspectors General on Integrity and Efficiency, which is otherwise known as CIGIE.

CIGIE is comprised of all Inspectors General whose offices are established under section 2 or section 8G of the Inspector General Act of 1978 (5 U.S.C. App.), those that are Presidentially-appointed/Senate-confirmed and those that are appointed by agency heads (Designated Federal Entities, or DFEs). CIGIE also has other statutory members, with the Deputy Director for Management of the Office of Management and Budget serving as the Executive Chair of the Council.

As a Community, Inspectors General are strongly supportive of essential safeguards for “whistleblowers” who come forward seeking to protect the public’s interest and maintain integrity in government programs. Tools to incentivize and protect whistleblowers, whose actions are often brave and selfless, are encouraged and needed by Inspectors General.

Offices of Inspectors General (OIGs) play an important role in investigating allegations of wrongdoing brought forward by whistleblowers. Given our experience and resources, such as our established Hotlines to receive reports of fraud, waste, or abuse, OIGs are well positioned to receive information from whistleblowers, protect their confidentiality, and fully investigate their allegations in a fair, timely, and unbiased manner.

Driven by Congress’ ongoing dialogue relative to whistleblowers within government and of those that are non-federal employees whose disclosures involve misuse of government funds, the CIGIE Legislation Committee has sought to obtain an accurate sense of the Inspector General Community on certain whistleblower-related legislative proposals. Several surveys of appropriate OIGs have been conducted within the past two years to meet the information needs of Congress on matters involving whistleblowers.

One such survey involves the perspective of OIGs in agencies that were allocated funds under the American Recovery and Reinvestment Act (ARRA), which includes a provision aimed at protecting state and local government contractor whistleblowers. This provision is found in Section 1553 of Public Law 111-5.

The survey responses evidenced that during the time frame of February 2009 through April 2011, the OIGs received 1,652 complaints regarding ARRA transactions from employees of non-federal employers. The complaints related to approximately 323 distinct ARRA transactions, meaning multiple complaints were received for individual transactions. Of the 1,652 complaints, 35 percent (or 580) resulted in the opening of an investigation, audit, or other OIG review, with 150 others, as of April 2011, still being considered for OIG action. Though the judicial process can be lengthy and may be still

ongoing in some these cases, responding OIGs indicated that their investigations and reviews of these whistleblower complaints resulted in recovery of approximately \$1.85 million dollars as of April 2011.

One of the key provisions of Section 1553 of ARRA is the authority of OIGs to investigate reprisal complaints from non-federal employee whistleblowers. Of the surveyed OIGs, only 8 of the OIGs received a total of 18 reprisal complaints—with 11 being adopted for investigation. The majority of the 8 OIGs that received complaints did not experience any problems or concerns with implementing Section 1553 or in responding to complainants' request to access the completed investigation file.

That said, several responding OIGs did advise that they had experienced problems in responding to reprisal complaints. Several respondents noted that when reprisal complaints led to the opening of criminal fraud investigations, the investigation disclosure requirements in Section 1553, and the statutory deadline for completing the investigation within 180 days, became problematic.

These survey responses substantiate broader concerns of OIGs. As a Community, OIGs are always concerned about statutory requirements to conduct an investigation, and statutory deadlines mandating completion of an investigation within a prescribed period of time. Such mandates undermine the ability of OIGs to independently set priorities and create the potential for finite resources to be diverted from other high impact investigations that may better serve taxpayers' interest. In the case of expanding the potential pool of non-federal employee whistleblower complaints beyond ARRA to encompass all government contracts, grants, and payments, a significant impact on OIG resources is anticipated. Accordingly, efforts to provide for IG discretion as to whether to open an investigation are very important.

Notwithstanding such resource concerns, the ability of OIGs to carry out their mission is dependent on authority to access records pertinent to the investigation of the whistleblower's complaint. In instances of OIGs having authority to access the records of State, local and private sector employers who receive covered funds, and their subcontractors or subgrantees, OIGs believe Section 1515 of ARRA serves as a viable model.

An additional area of concern is a requirement that IGs disclose pending investigations of a whistleblower's reprisal complaint to the whistleblower's employer. Such disclosure requirements could jeopardize the ability to obtain accurate information for the investigation. Efforts to provide IGs with greater discretion on whether to disclose an investigation to the employer would likely assist OIG investigatory efforts.

It is evident by the number of ARRA-related complaints received that non-federal employees can play an important role in rooting out fraud, waste, and abuse in government programs and in utilization of "covered funds." Our survey also substantiates the concern that whistleblowers in this category can be subject to reprisal by their employers.

CIGIE shares the perspective that OIGs are well positioned to investigate these complaints but believe the scope of the legislative proposal necessitates that OIGs have authority to access key records and allow OIGs flexibility in the conduct of these investigations as balanced with other priorities, some of which are mandated by other statutes. The role of OIGs in reprisal investigations should be narrow, whereby OIGs conduct the investigation and report their findings to officials authorized to make ensuing decisions.

As we continue forward and to close here today, I want to assure you that the CIGIE Legislation Committee is available to work with the Congress to provide any technical assistance that may be necessary.