

Union Calendar No. 363

111TH CONGRESS
2^D SESSION

H. R. 5815

[Report No. 111-623]

To amend the Inspector General Act of 1978 to provide authority for Inspectors General to subpoena the attendance and testimony of witnesses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2010

Mr. TOWNS (for himself and Mr. ISSA) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

SEPTEMBER 23, 2010

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To amend the Inspector General Act of 1978 to provide authority for Inspectors General to subpoena the attendance and testimony of witnesses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Inspector General Au-
5 thority Improvement Act of 2010”.

6 **SEC. 2. SUBPOENA AUTHORITY FOR INSPECTORS GENERAL**
7 **TO REQUIRE TESTIMONY OF CERTAIN PER-**
8 **SONS.**

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

11 (1) in subsection (a)—

12 (A) at the end of paragraph (8), by strik-
13 ing “and”;

14 (B) at the end of paragraph (9), by strik-
15 ing the period and inserting “; and”; and

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

18 “(10) to require by subpoena the attendance
19 and testimony of witnesses necessary in the perform-
20 ance of the functions assigned to the Inspector Gen-
21 eral by this Act, except as provided for and subject
22 to the provisions in subsection (g).”;

23 (2) by adding at the end the following new sub-
24 section:

1 “(g)(1) An Inspector General shall use procedures
2 other than subpoenas to obtain attendance and testimony
3 from Federal employees.

4 “(2)(A) A subpoena issued under subsection (a)(10)
5 shall provide reasonable notice to the individual whose tes-
6 timony is sought and shall state the name of the individual
7 and the place of taking the testimony.

8 “(B) Except as provided in subparagraph (C), a sub-
9 poena issued under subsection (a)(10), in the case of con-
10 tumacy or refusal to obey, shall be enforceable in the
11 United States District Court in the district where the indi-
12 vidual whose testimony is sought by subpoena resides or
13 in the district of the individual’s place of employment.

14 “(C) A proceeding to enforce a subpoena may be
15 brought in the United States District Court for the Dis-
16 trict of Columbia if the individual whose testimony is
17 sought by the subpoena resides within 25 miles of the Dis-
18 trict of Columbia and if the complaint seeking enforce-
19 ment alleges that a significant portion of the matters that
20 are expected to be the subject of the investigation, audit,
21 inspection, evaluation, or review occurred in the District
22 of Columbia.

23 “(D) The Attorney General shall represent an Office
24 of Inspector General in the enforcement of a subpoena
25 under this subsection.

1 “(3)(A) An Inspector General may not issue a sub-
2 poena under subsection (a)(10) if the subpoena is being
3 issued in connection with a matter in which the Inspector
4 General has reasonable grounds to believe there has been
5 a violation of Federal criminal law or section 3729 of title
6 31, United States Code, unless the Inspector General noti-
7 fies the Attorney General of the intention of the Inspector
8 General to issue the subpoena, including the name of the
9 individual whose testimony is sought and the nature of
10 the testimony sought, at least 15 days before issuing the
11 subpoena.

12 “(B) The Inspector General may not issue the sub-
13 poena if the Attorney General informs the Inspector Gen-
14 eral, within 14 days after receipt of the notification under
15 subparagraph (A), that the Attorney General objects to
16 the issuance of the subpoena on one or more of the
17 grounds listed in clauses (i) through (iii) of subparagraph
18 (C).

19 “(C) If the Attorney General objects to the issuance
20 of the subpoena as described in subparagraph (B) and the
21 Inspector General does not agree with the objection of the
22 Attorney General, the Attorney General shall, within 30
23 days after receipt of the notification under subparagraph
24 (A), submit an explanation to the Inspector General that
25 the taking of the testimony—

1 “(i) is likely to endanger the national security
2 of the United States;

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

5 “(iii) is likely to interfere with any pending in-
6 vestigation under section 3729 of title 31, United
7 States Code, or any civil litigation to which the
8 United States is or is likely to be a party.”.

9 **SEC. 3. INVESTIGATIONS, AUDITS, INSPECTIONS, EVALUA-**
10 **TIONS, AND REVIEWS CONDUCTED BY IN-**
11 **SPECTORS GENERAL.**

12 Section 3518(c) of title 44, United States Code, is
13 amended—

14 (1) in paragraph (1), by striking “paragraph
15 (2)” and inserting “paragraph (3)”;

16 (2) by redesignating paragraph (2) as para-
17 graph (3); and

18 (3) by inserting after paragraph (1) the fol-
19 lowing new paragraph:

20 “(2) Notwithstanding paragraph (3), this subchapter
21 shall not apply to the collection of information during the
22 conduct of any investigation, audit, inspection, evaluation,
23 or other review conducted by—

24 “(A) any Federal office of Inspector General,
25 including—

1 “(i) any office of Inspector General of any
2 establishment, Federal entity, or designated
3 Federal entity as those terms are defined under
4 sections 12(2), 8G(a)(1), and 8G(a)(2) of the
5 Inspector General Act of 1978 (5 U.S.C. App.),
6 respectively; or

7 “(ii) any office of Special Inspector Gen-
8 eral established by statute;

9 “(B) the Council of the Inspectors General on
10 Integrity and Efficiency established under section 11
11 of the Inspector General Act of 1978 (5 U.S.C.
12 App.); or

13 “(C) the Recovery Accountability and Trans-
14 parency Board established under section 1521 of di-
15 vision A of the American Recovery and Reinvest-
16 ment Act of 2009 (Public Law 111–5; 123 Stat.
17 289).”.

18 **SEC. 4. ENHANCED INSPECTORS GENERAL AUTHORITY FOR**

19 **COMPUTER MATCHING.**

20 Section 6(a) of the Inspector General Act of 1978
21 (5 U.S.C. App.), as amended by section 2, is further
22 amended—

23 (1) at the end of paragraph (9), by striking
24 “and”;

1 (2) at the end of paragraph (10), by striking
2 the period and inserting “; and”; and

3 (3) by adding at the end the following new
4 paragraph:

5 “(11) notwithstanding subsections (o), (p), (q),
6 (r), and (u) of section 552a of title 5, United States
7 Code, to compare, through a matching program (as
8 defined in such section), any Federal records with
9 other Federal or non-Federal records while con-
10 ducting an audit, inspection, or investigation author-
11 ized under this Act to identify weaknesses that make
12 a program vulnerable to fraud, waste, or abuse and
13 to detect improper payments and fraud.”.

14 **SEC. 5. REPORTS AND RESPONSES TO IDENTIFIED PROB-**
15 **LEMS, ABUSES, AND DEFICIENCIES.**

16 (a) **ADDITIONAL REQUIREMENTS FOR THE INSPEC-**
17 **TOR GENERAL REPORT.**—Section 5(b) of the Inspector
18 General Act of 1978 (5 U.S.C. App.) is amended—

19 (1) by redesignating paragraphs (2), (3), and
20 (4) as paragraphs (4), (5), and (6), respectively; and

21 (2) by inserting after paragraph (1) the fol-
22 lowing new paragraph:

23 “(2) a description of any corrective action taken
24 or proposed to be taken with respect to questioned
25 costs; a recommendation that funds be put to better

1 use, significant problems, abuses, and deficiencies
2 identified by the Inspector General;

3 ~~“(3) any certification required under subsection~~
4 ~~(e)(2);”.~~

5 (b) CORRECTIVE ACTION.—Section 5 of the Inspector
6 General Act of 1978 (5 U.S.C. App.) is amended—

7 (1) by redesignating subsections (e) and (f) as
8 subsections (f) and (g), respectively; and

9 (2) by inserting after subsection (d) the fol-
10 lowing new subsection:

11 ~~“(e) CORRECTIVE ACTION BY THE HEAD OF THE ES-~~
12 ~~TABLISHMENT.—~~

13 ~~“(1) CORRECTIVE ACTION.—Except as provided~~
14 ~~in subsection (b), the head of the establishment shall~~
15 ~~take corrective action in response to any questioned~~
16 ~~costs, a recommendation that funds be put to better~~
17 ~~use, significant problems, abuses, or deficiencies~~
18 ~~identified by the Inspector General of such establish-~~
19 ~~ment.~~

20 ~~“(2) CERTIFICATION TO CONGRESS.—If the~~
21 ~~head of the establishment determines that no action~~
22 ~~is necessary or appropriate with respect to any ques-~~
23 ~~tioned costs, a recommendation that funds be put to~~
24 ~~better use, significant problems, abuses, or defi-~~
25 ~~iciencies identified by the Inspector General of such~~

1 establishment, such head shall submit a certification
2 to Congress that no such action is necessary or ap-
3 propriate.”.

4 **SEC. 5. REPORTS AND RESPONSES TO IDENTIFIED PROB-**
5 **LEMS, ABUSES, AND DEFICIENCIES.**

6 (a) *ADDITIONAL REQUIREMENTS FOR THE INSPECTOR*
7 *GENERAL REPORT.*—Section 5(b) of the Inspector General
8 Act of 1978 (5 U.S.C. App.) is amended—

9 (1) by redesignating paragraphs (2), (3), and (4)
10 as paragraphs (5), (6), and (7), respectively; and

11 (2) by inserting after paragraph (1) the fol-
12 lowing new paragraphs:

13 “(2) a description of any corrective action taken
14 or proposed to be taken with respect to questioned
15 costs, a recommendation that funds be put to better
16 use, or any significant problems, abuses, and defi-
17 ciencies identified by the Inspector General;

18 “(3) a description of any potential cost savings
19 generated by any corrective action taken pursuant to
20 subsection (e)(1);

21 “(4) any certification required under subsection
22 (e)(2);”.

23 (b) *CORRECTIVE ACTION.*—Section 5 of the Inspector
24 General Act of 1978 (5 U.S.C. App.) is amended—

1 (1) *by redesignating subsections (e) and (f) as*
2 *subsections (f) and (g), respectively; and*

3 (2) *by inserting after subsection (d) the following*
4 *new subsection:*

5 “(e) *CORRECTIVE ACTION BY THE HEAD OF THE ES-*
6 *TABLISHMENT.—*

7 “(1) *CORRECTIVE ACTION.—Except as provided*
8 *in paragraph (2), the head of the establishment shall*
9 *take corrective action in response to any questioned*
10 *costs, a recommendation that funds be put to better*
11 *use, or any significant problems, abuses, or defi-*
12 *ciencies identified by the Inspector General of such es-*
13 *tablishment.*

14 “(2) *CERTIFICATION TO CONGRESS.—If the head*
15 *of the establishment determines that no action is nec-*
16 *essary or appropriate with respect to any questioned*
17 *costs, a recommendation that funds be put to better*
18 *use, or any significant problems, abuses, or defi-*
19 *ciencies identified by the Inspector General of such es-*
20 *tablishment, such head shall submit a certification to*
21 *Congress that no such action is necessary or appro-*
22 *priate, with a detailed explanation why no such ac-*
23 *tion is necessary or appropriate.”.*

1 **SEC. 6. CODIFICATION OF CERTAIN PROVISIONS OF THE**
2 **INSPECTOR GENERAL REFORM ACT OF 2008**
3 **AND OTHER TECHNICAL AMENDMENTS.**

4 (a) INSPECTORS GENERAL OF DESIGNATED FED-
5 ERAL ENTITIES.—

6 (1) AMENDMENT TO THE INSPECTOR GENERAL
7 ACT OF 1978.—Section 8G of the Inspector General
8 Act of 1978 (5 U.S.C. App.) is amended by adding
9 at the end the following new subsection:

10 “(i) INSPECTORS GENERAL OF DESIGNATED FED-
11 ERAL ENTITIES.—

12 “(1) IN GENERAL.—Notwithstanding any other
13 provision of law, the Inspector General of each des-
14 ignated Federal entity shall, for pay and all other
15 purposes, be classified at a grade, level, or rank des-
16 ignation, as the case may be, at or above those of
17 a majority of the senior level executives of that des-
18 ignated Federal entity (such as a General Counsel,
19 Chief Information Officer, Chief Financial Officer,
20 Chief Human Capital Officer, or Chief Acquisition
21 Officer). The pay of an Inspector General of a des-
22 ignated Federal entity shall be not less than the av-
23 erage total compensation (including bonuses) of the
24 senior level executives of that designated Federal en-
25 tity calculated on an annual basis.

26 “(2) LIMITATION ON ADJUSTMENT.—

1 “(A) IN GENERAL.—In the case of an In-
2 specter General of a designated Federal entity
3 whose pay is adjusted under paragraph (1), the
4 total increase in pay in any fiscal year resulting
5 from that adjustment may not exceed 25 per-
6 cent of the average total compensation (includ-
7 ing bonuses) of the Inspector General of that
8 entity for the preceding 3 fiscal years.

9 “(B) SUNSET OF LIMITATION.—The limi-
10 tation under subparagraph (A) shall not apply
11 to any adjustment made in fiscal year 2013 or
12 each fiscal year thereafter.”.

13 (2) CONFORMING REPEAL.—Section 4(b) of the
14 Inspector General Reform Act of 2008 (Public Law
15 110–409; 122 Stat. 4304; 5 U.S.C. App. 3 note) is
16 repealed.

17 (b) PAY RETENTION.—

18 (1) AMENDMENT TO THE INSPECTOR GENERAL
19 ACT OF 1978.—The Inspector General Act of 1978
20 (5 U.S.C. App.) is amended by adding after section
21 8L the following new section:

22 **“SEC. 8M. PAY RETENTION.**

23 “(a) IN GENERAL.—The provisions of section
24 3392(c) of title 5, United States Code, other than the
25 terms ‘performance awards’ and ‘awarding of ranks’ in

1 paragraph (1) of such section, shall apply to career ap-
2 pointees of the Senior Executive Service who are ap-
3 pointed to the position of Inspector General on or after
4 October 14, 2008.

5 “(b) NONREDUCTION IN PAY.—Notwithstanding any
6 other provision of law, career Federal employees serving
7 on an appointment made pursuant to statutory authority
8 found other than in section 3392 of title 5, United States
9 Code, shall not suffer a reduction in pay, not including
10 any bonus or performance award, as a result of being ap-
11 pointed to the position of Inspector General.”.

12 (2) CONFORMING REPEAL.—Section 4(c) of the
13 Inspector General Reform Act of 2008 (Public Law
14 110–409; 122 Stat. 4304; 5 U.S.C. App. 3 note) is
15 repealed.

16 (c) ALLEGATIONS OF WRONGDOING AGAINST SPE-
17 CIAL COUNSEL OR DEPUTY SPECIAL COUNSEL.—

18 (1) AMENDMENT TO THE INSPECTOR GENERAL
19 ACT OF 1978.—Section 11(d) of the Inspector Gen-
20 eral Act of 1978 (5 U.S.C. App.) is amended by
21 adding at the end the following new paragraph:

22 “(12) ALLEGATIONS OF WRONGDOING AGAINST
23 SPECIAL COUNSEL OR DEPUTY SPECIAL COUNSEL.—

24 “(A) DEFINITION.—In this paragraph, the
25 term ‘Special Counsel’ refers to the Special

1 Counsel appointed under section 1211(b) of
2 title 5, United States Code.

3 “(B) AUTHORITY OF INTEGRITY COM-
4 MITTEE.—

5 “(i) IN GENERAL.—An allegation of
6 wrongdoing against the Special Counsel or
7 the Deputy Special Counsel may be re-
8 ceived, reviewed, and referred for investiga-
9 tion by the Integrity Committee to the
10 same extent and in the same manner as in
11 the case of an allegation against an Inspec-
12 tor General (or a member of the staff of
13 an Office of Inspector General), subject to
14 the requirement that the Special Counsel
15 recuse himself or herself from the consider-
16 ation of any allegation brought under this
17 subparagraph.

18 “(ii) COORDINATION WITH EXISTING
19 PROVISIONS OF LAW.—This paragraph
20 does not eliminate access to the Merit Sys-
21 tems Protection Board for review under
22 section 7701 of title 5, United States
23 Code. To the extent that an allegation
24 brought under this paragraph involves sec-
25 tion 2302(b)(8) of that title, a failure to

1 obtain corrective action within 120 days
2 after the date on which that allegation is
3 received by the Integrity Committee shall,
4 for purposes of section 1221 of such title,
5 be considered to satisfy section
6 1214(a)(3)(B) of that title.

7 “(C) REGULATIONS.—The Integrity Com-
8 mittee may prescribe any rules or regulations
9 necessary to carry out this paragraph, subject
10 to such consultation or other requirements as
11 might otherwise apply.”.

12 (2) CONFORMING REPEAL.—Section 7(b) of the
13 Inspector General Reform Act of 2008 (Public Law
14 110–409; 122 Stat. 4312; 5 U.S.C. 1211 note) is re-
15 pealed.

16 (d) TECHNICAL AMENDMENTS.—

17 (1) CORRECTION OF SPELLING.—The Inspector
18 General Act of 1978 (5 U.S.C. App.) is amended—

19 (A) in section 3(a), by striking “subpena”
20 and inserting “subpoena”;

21 (B) in section 6(a)(4), by striking “sub-
22 pena” and “subpenas” and inserting “sub-
23 poena” and “subpoenas”, respectively;

24 (C) in section 8D(a)—

1 (i) in paragraph (1), by striking “sub-
2 penas” and inserting “subpoenas”; and

3 (ii) in paragraph (2), by striking
4 “subpena” and inserting “subpoena”, each
5 place it appears;

6 (D) in section 8E(a)—

7 (i) in paragraph (1), by striking “sub-
8 penas” and inserting “subpoenas”; and

9 (ii) in paragraph (2), by striking
10 “subpena” and inserting “subpoena” each
11 place it appears; and

12 (E) in section 8G(d), by striking “sub-
13 pena” and inserting “subpoena”.

14 (2) CORRECTION OF PUNCTUATION AND CROSS-
15 REFERENCES.—

16 (A) The Inspector General Act of 1978 (5
17 U.S.C. App.) is amended—

18 (i) in section 6(a)(4), by striking “in-
19 formation, as well as any tangible thing)”
20 and inserting “information), as well as any
21 tangible thing”; and

22 (ii) in section 8G(g)(3), by striking
23 “8C” and inserting “8D”.

24 (B) Section 7(c)(2) of the Inspector Gen-
25 eral Reform Act of 2008 (Public Law 110–409;

1 122 Stat. 4313; ~~31 U.S.C. 501 note~~ *5 U.S.C.*
2 *App. 11 note*) is amended by striking “12933”
3 and inserting “12993”.

4 (3) CLARIFICATION OF REFERENCE TO AGEN-
5 CY.—

6 (A) The Inspector General Act of 1978 (5
7 U.S.C. App.) is amended—

8 (i) in section 8L, by striking “agency”
9 and inserting “Federal agency, establish-
10 ment, or designated Federal entity” each
11 place it appears; and

12 (ii) in section 11(c)(3)(A)(ii), by strik-
13 ing “department, agency, or entity of the
14 executive branch” and inserting “Federal
15 agency, establishment, or designated Fed-
16 eral entity”.

17 (B) Not later than 180 days after the date
18 of enactment of this Act, the head of each Fed-
19 eral agency, establishment, and designated Fed-
20 eral entity and the Inspector General of each
21 Federal agency, establishment, and designated
22 Federal entity shall implement the amendments
23 made by this paragraph.

24 (4) OTHER AMENDMENTS.—

1 (A) Section 8L(b)(1) of the Inspector Gen-
2 eral Act of 1978 (5 U.S.C. App.) is amended—

3 (i) by striking “report or audit (or
4 portion of any report or audit)” and in-
5 sserting “audit report, inspection report, or
6 evaluation report (or portion of any such
7 report)”; and

8 (ii) by striking “report or audit (or
9 portion of that report or audit)” and in-
10 sserting “report (or portion of that report)”
11 each place it appears.

12 (B) Section 744 of the Financial Services
13 and General Government Appropriations Act,
14 2009 (division D of Public Law 111–8; 123
15 Stat. 693; 5 U.S.C. App. 8L *note*) is repealed.

Union Calendar No. 363

11TH CONGRESS
2^D Session

H. R. 5815

[Report No. 111-623]

A BILL

To amend the Inspector General Act of 1978 to provide authority for Inspectors General to subpoena the attendance and testimony of witnesses, and for other purposes.

SEPTEMBER 23, 2010

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed