



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY



Via Email

To: Members of the Council of the Inspectors General on Integrity and Efficiency (CIGIE)

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Date: October 30, 2020

Subject: Standards of Procedure for 5 USC § 1213 Referrals

The purpose of this memorandum is to announce two agreements between CIGIE and OSC concerning the handling of 5 USC § 1213 (Section 1213) referrals. The first agreement is the attached “Standards of Procedure for 5 USC § 1213 Referrals” (Standards) and the second agreement is memorialized below. These agreements protect the independence of Inspectors General (IGs) and synergize the authorities and responsibilities of the IGs and OSC.

Pursuant to the attached Standards, when processing Section 1213 complaints against individuals subject to IC oversight (Covered Persons), OSC will treat the IG as the agency head for all allegations submitted against establishment IGs and non-IG Covered Persons in both establishment and non-establishment Offices of Inspector General (OIGs), and the IG will then forward the allegations to the IC. Only in cases of complaints submitted against non-establishment IGs is the agency head involved. And, even in such cases, OSC will advise the agency head to delegate their review authority to the IG who will, in turn, submit the matter to the IC.

The Standards also set forth a framework for the IC and OSC to work together to ensure that the IC’s review provides OSC with the needed findings for OSC to fulfill its responsibilities under Section 1213.

The second agreement concerns Section 1213 complaints against non-Covered Persons at an OIG and is as follows: CIGIE and OSC agree that both establishment and non-establishment IGs will be treated as agency heads for purposes of Section 1213 when allegations are submitted against any subordinate OIG employee who is not a Covered Person. In such cases involving non-Covered Persons, the OSC will look to the IG to perform the duties required of an agency head in investigating the allegations of wrongdoing pursuant to Section 1213.

Should you have any questions, please contact Atticus Reaser, CIGIE General Counsel, at atticus.reaser@cigie.gov, or Travis Millsaps, OSC Deputy Special Counsel for Public Policy, at tmillsaps@osc.gov.

**Standards of Procedure for
5 USC § 1213 Referrals
Office of Special Counsel and
Council of the Inspectors General on Integrity and Efficiency**

The Office of Special Counsel (OSC) and the Council of the Inspectors General on Integrity and Efficiency (CIGIE) agree to the following Standards of Procedure with regard to 5 USC § 1213 matters that involve certain officials of the various Offices of Inspector General (OIGs) as described in section 11(d)(4)(B) (Covered Persons) of the Inspector General Act of 1978 (IG Act) and section 2 of the Integrity Committee Policies and Procedures 2018 (ICP&P):

- A. When OSC receives a 5 USC § 1213 disclosure and makes a positive determination pursuant to 5 USC § 1213(b), OSC will define agency head for transmittal purposes as follows:
 1. **In matters involving Covered Persons at an establishment OIG, as that term is defined in section 12(2) of the IG Act, OSC has determined that the head of the agency for purposes of 5 USC § 1213 is the Inspector General (IG) of the establishment.** For allegations involving IGs, OSC will also copy CIGIE's Integrity Committee (IC).
 - a. Pursuant to section 11(d)(4)(A) of the IG Act, upon receipt and review of the allegations against Covered Persons, the IG will forward the allegations to the IC.
 2. **In matters involving the IG at a non-establishment OIG, OSC has determined that the head of the agency is the individual(s) described in sections 8G(a)(3)-(4) of the IG Act, or as otherwise provided by law.** OSC will contemporaneously transmit the allegations to the respective OIG and will also copy the IC.
 - a. The OSC referral letter will advise the agency head that pursuant to 5 USC § 1213(c)(1), an investigation must be conducted, a report prepared, and that this framework applies.
 - b. OSC's referral letter will also advise the agency head to delegate the authority and responsibility (as described in 5 USC § 1213(c)(1)) to conduct the investigation and prepare the report to the agency's IG. Pursuant to section 11(d)(4)(A) of the IG Act, the IG will forward the allegations to the IC.
 3. **In matters involving Covered Persons other than the IG at a non-establishment OIG, OSC has determined that the head of the agency is the IG of the non-establishment OIG.**
 - a. Pursuant to section 11(d)(4)(A) of the IG Act, upon receipt and review of the allegations against Covered Persons, the IG will forward the allegations to the IC.
- B. Upon receipt of the allegations by the IC, the IC will conduct its regular process of review under section 11(d) of the IG Act and the ICP&P to determine whether to refer the matter to the IC Chairperson for investigation.

1. If the matter is not referred to the IC Chairperson for investigation, the IC will issue an explanatory letter of the decision not to refer the matter, that includes to the extent appropriate the information reflected in 5 USC § 1213(d). If the matter is referred to the IC Chairperson for investigation, the IC Chairperson will prepare a Report of Investigation (ROI).
 2. The IC will forward to OSC the explanatory letter or the ROI and associated recommendations.
 3. OSC will review the explanatory letter or ROI for reasonableness and sufficiency in the same manner as if received from the agency head under 5 USC § 1213(d).
 4. Upon request, the IC will provide OSC with additional details to address questions or issues OSC raised after its review of the explanatory letter or ROI.
 5. If OSC determines that it will not treat the explanatory letter or ROI as the ROI required by 5 USC § 1213, OSC will coordinate with the head of the agency, as described above, the subject non-establishment IG or designee (if appropriate and applicable), and the IC to gather additional information and/or arrange for an alternative resolution, including having a disinterested third-party OIG that is not currently on the IC, investigate the disclosure pursuant to 5 USC § 1213.
 6. OSC will review the explanatory letter or ROI for reasonableness and sufficiency and will provide a copy to the complainant for written comment pursuant to 5 USC § 1213(e)(1).
- C. Under the IG Act, the IC has a responsibility to protect the confidentiality of complainants and witnesses. Before dissemination of any documents received by OSC from the IC pursuant to these Standards of Procedure, OSC will provide CIGIE with an opportunity to redact any information prohibited from disclosure by law or by Executive order.
- D. Subject to the foregoing, OSC will transmit and make public the relevant documents as set forth in 5 USC §§ 1213(e)(3) and 1219.