

**SUBJECT: RESPONSIBILITY AND PROCEDURES FOR REPORTING MISCONDUCT
AND CRIMINAL OFFENSES**

5-10-00	Purpose
10	Definitions
20	General Policy
30	Procedures for Reporting Allegations of Improper Conduct
40	Procedures for Reporting Allegations of Criminal Offenses
50	Prohibition of Reprisals Against Employees for Providing Information

Exhibit 5-10-A Administrative Offenses

5-10-00 PURPOSE

This chapter sets forth Department of Health and Human Services (HHS) policies, procedures, and assignments of responsibility for reporting allegations of:

- A. Improper conduct not related to loyalty and security matters; and,
- B. Criminal offenses against the United States.

5-10-10 DEFINITIONS

- A. As used in this chapter, "improper conduct" includes the performance of one's assigned duties in a manner which contributes to abuse or waste of the taxpayers' money, which threatens the integrity of HHS programs and operations, which is contrary to the standards of conduct established by the appropriate authority, or which constitutes a prohibited personnel practice (see 5-10-50).
- B. As used in this chapter, "criminal offenses" include, but are not limited to, bribery; fraud; perjury; conflict of interest; embezzlement; misuse of funds, equipment, and facilities; and other violations of criminal law by Government officers and employees, grantees, contractors, and other persons doing business with the Department. Note that some potential criminal offenses may also constitute "improper conduct" as defined above (e.g., travel voucher fraud). Such allegations should be reported in accordance with 5-10-40, entitled Procedures for Reporting Criminal Offenses.
- C. As used in this chapter, "administrative offenses" are those incidents of improper conduct which can and should be handled directly by supervisors with the assistance of their servicing personnel office. A list of administrative offenses is shown in Exhibit 5-10-A.

- D. This chapter does not cover procedures for the handling of matters related to loyalty and security; employee grievances; equal employment opportunity complaints, including sexual harassment complaints; classification appeals; or other matters for which a formal Governmentwide review system has been established by the Federal Government.

5-10-20 GENERAL POLICY

- A. In order to provide objective uniform procedures for the handling of allegations of wrongdoing covered by this chapter, it shall be the responsibility of the Office of Inspector General (OIG) to investigate allegations of wrongdoing reported to the OIG or to refer such allegations to the appropriate operating division (OPDIV), the appropriate staff division (STAFFDIV), to Assistant Secretary for Administration and Management (ASAM), to another law enforcement agency, or to another appropriate authority.
- B. Every employee, supervisor, and management official shall report any allegations of criminal offenses he/she receives, immediately to the OIG, unless it is clear to him/her that the allegation is frivolous and has no basis in fact.
- C. Every employee, supervisor, and management official shall cooperate with the OIG during the conduct of any investigation.
- D. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to a supervisor, management official, or the OIG. This prohibition does not apply if the employee who made the complaint, or disclosed the information, knew the information provided was false.

5-10-30 PROCEDURES FOR REPORTING ALLEGATIONS OF IMPROPER
CONDUCT

A. Submission of Allegations

Allegations of improper conduct (non-criminal) should normally be submitted in writing by an employee to his/her supervisor, a higher management official within the employee's organization, or the OIG. Allegations should, where possible, be supported by any available documentation. Oral reports are, however, acceptable, and may be necessary if immediate action is required.

B. Reporting of Allegations

Supervisors and management officials shall report any allegations of improper conduct (non-criminal) received or observed to the OIG or the next highest Department official within their organization. The head of each OPDIV or STAFFDIV is responsible for ensuring that all allegations of improper conduct, other than those that are clearly frivolous and have no basis in fact, are either investigated by the responsible component within that agency or referred to the OIG for its consideration of the appropriate action to take.

C. Investigation of Allegations

1. Allegations of improper conduct (non-criminal) received by the OIG will be reviewed promptly and a decision made as to whether an investigation is warranted. Normally, the administrative offenses shown in Exhibit 5-10-A will be handled by the employee's supervisor. If an investigation is warranted, the OIG will determine whether the investigation is to be conducted by the OIG, by an OPDIV, STAFFDIV, by ASAM or by other appropriate authority, based upon the following considerations:
 - a. An OPDIV or STAFFDIV may conduct a non-criminal investigation within its own organization when the OIG determines that the OPDIV or STAFFDIV is able to conduct the investigation in a fair and impartial manner.
 - b. The ASAM may conduct an investigation that the OIG determines involves prohibited personnel practices or non-criminal violations of established standards of conduct. The ASAM may also conduct investigations of cases directly referred to the Department by the Office of Special Counsel (OSC).
 - c. The OIG may conduct an investigation of any allegation of misconduct received from any source.
2. Whenever the OIG determines an inquiry initiated by an OPDIV or STAFFDIV would more appropriately be handled by the OIG, the OIG may assume responsibility for completing the investigation.

D. Action on Investigation Reports

1. Where an investigation of improper conduct is conducted by an OPDIV or STAFFDIV, the head of the OPDIV or STAFFDIV will proceed as he/she determines is necessary based upon the findings of the investigation. He/she will inform, where appropriate, the Inspector General (IG), the Secretary, or other Department officials of his/her findings. Such reports will be in writing.
2. Where an investigation is conducted by the OIG, the OIG will determine if the findings of the investigation require additional action. Where appropriate, the IG will inform the head of the OPDIV or STAFFDIV, the Secretary, or other Department officials of his/her findings. Such reports will be in writing.
3. Where an investigation of improper conduct is conducted by ASAM, the Assistant Secretary will take whatever action he/she determines is necessary based upon the findings of the investigation, or will refer the findings to the appropriate authority for such action. Where appropriate, he/she will inform the IG, the Secretary, or other Department officials of his/her findings, and request further action be taken as warranted by the findings. Such reports will be in writing.

E. Record-Keeping

1. The OPDIV or STAFFDIV head, ASAM, or the IG shall ensure that a file is maintained on each investigation which is initiated. The investigation file shall contain complete documentary material showing in detail: the basis for the investigation, the extent of the investigation, persons interviewed and information furnished, records reviewed and information obtained, and any other material pertinent to the investigation. The file shall also contain a record of the action taken. Files so maintained by an OPDIV or STAFFDIV, or ASAM shall be made available to the OIG upon request.
2. Investigative files shall be retained by the office which conducted the investigation for a period of 10 years from the date of its completion.

5-10-40 PROCEDURES FOR REPORTING ALLEGATIONS OF CRIMINAL
OFFENSES

A. Cooperation With the Attorney General

The Department will cooperate fully with the Attorney General (AG) and his/her staff in reporting, conducting, and assisting with investigations of alleged criminal offenses against the United States. Through the Deputy Inspector General for Investigations (DIGI), OIG, the Department will promptly report to the AG alleged violations of law by its employees and agents.

B. Authority of Office of Investigations

1. The DIGI, who heads the Office of Investigations (OI), has been designated by the Secretary and the IG, as prescribed by Appendix 3 of title 5, United States Code to:
 - a. Provide liaison for the Department with the AG and his/her staff on all investigative matters; and,
 - b. Conduct investigations of alleged cases of criminal wrongdoing by HHS employees, grantees, contractors, and other persons doing business with the Department.
2. The authority of OI includes authority to undertake or authorize others to undertake such investigations without the prior approval of higher officials. The authority generally does not include investigations of matters related to loyalty and security; employee grievances; equal employment opportunity complaints, including sexual harassment; employee civil rights; tort claims; and similar administrative activities that are under the jurisdiction of other HHS offices.

C. Reporting Violations of Title 18 U.S.C. (Criminal Offenses) by HHS Employees, Grantees, Contractors and Others Doing Business with the Department

1. Any HHS employee who has knowledge of possible criminal offenses against the United States by another HHS employee, grantee, contractor, or any other person doing business with the Department, shall immediately report such information directly to the OIG, to his/her supervisor or to any management official.

2. Supervisors or management officials shall immediately report any allegations or complaints of criminal offenses received, or observations of criminal conduct, directly to the OIG. The head of each OPDIV or STAFFDIV shall insure that no other action will be taken in regard to the subject of the complaint, without first consulting with OIG. The head of each OPDIV or STAFFDIV shall also insure that all such allegations which are received are referred to the OIG.
3. Allegations or complaints should normally be made in writing and include any available documentation. This method of reporting enables the OIG to make an informed decision on the handling of the alleged violation, once it is received. Oral reports, however, are acceptable if it is believed that immediate action is required by the OIG. The OI will determine if a written referral report will be required.
4. All allegations or complaints should be reported directly to the:

Deputy Inspector General for Investigations
Department of Health and Human Services
Office of Inspector General
330 Independence Avenue, S.W., Room 5409
Washington, D.C. 20201
5. When OI has reasonable grounds to believe an HHS officer or employee has committed a criminal offense, it shall promptly notify the United States Attorney for the District in which the alleged violation occurred; the Criminal Division, Department of Justice; or the Federal Bureau of Investigation (FBI).

D. Complaints by Private Citizens

Any person desiring to bring to the attention of OIG any complaint that he/she considers warrants such attention should contact the HHS Hotline:

By Phone: 1-800-HHS-TIPS (1-800-447-8477)

By Fax: 1-800-223-8164

By E-Mail: HHSTips@oig.hhs.gov

By Mail: Department of Health and Human Services
Office of Inspector General
Hotline
P.O. Box 23489
Washington, DC 20026

E. Administrative Actions

1. Allegations Regarding Employees
 - a. After prosecution has been declined, or a criminal matter is otherwise closed, if administrative action by the Department appears warranted, OIG shall furnish to HHS management officials information that is relevant to their consideration of potential administrative action. Note that these referrals must be consistent with Federal classification and confidentiality laws.
 - b. Where OI conducts an investigation and determines that a case involves issues that are the responsibility of an OPDIV or STAFFDIV, the case shall be referred to the appropriate OPDIV or STAFFDIV for further action. The Department official who takes final action shall report the final disposition of the case to OI.
 - c. When a criminal investigation is ongoing and administrative action is being considered apart from the criminal investigation, the official considering the administrative action must consult with OI before implementing such action. The OI, in consultation with the Department of Justice, will assess what effect the proposed administrative action might have on the criminal investigation and advise the official accordingly. As appropriate, OIG shall furnish to HHS management officials information that is relevant to their consideration of potential administrative action. Note that these referrals must be consistent with Federal classification and confidentiality laws.

2. Allegations Regarding Non-Employees

Whenever OI informs an HHS official that it has initiated an investigation of a grantee, contractor, an employee of a grantee or contractor, or an individual doing business with the Department, the HHS official may wish to initiate administrative actions. This is a programmatic decision. Program decisions to suspend, limit, or terminate funds must be made based upon facts available, impact on the program, potential loss to the Government, and judgment as to the validity of the allegation. Officials contemplating administrative action in a case being investigated criminally will consult with OI before taking such action, to determine what effect the action may have on such investigation.

3. Investigative Reports

Reports by the FBI are the property of the FBI and are loaned to the Department. Reports by both OIG and the FBI are for official use only. Neither FBI nor OIG reports, nor their contents, may be distributed outside the component to which loaned without consultation with the FBI or OIG as appropriate. All OI and FBI reports should be stored in a secured file or safe while in the possession of the component.

F. Procedures for Requesting Investigative Assistance

Whenever the head of an OPDIV or STAFFDIV requires investigative assistance on suspected criminal activity related to his/her organization, he/she shall request the DIGI to provide such assistance. Regional officials and heads of HHS field installations shall send their requests for investigative assistance to the address listed in 5-10-40, C.4.

5-10-50 PROHIBITION OF REPRISALS AGAINST EMPLOYEES FOR PROVIDING INFORMATION

- A. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or providing any information pursuant to this chapter. If the complaint was made or the information was disclosed with the knowledge that it was false, or with willful disregard for its truth or falsity, any action taken against the employee based on those reasons would not constitute a reprisal action.

- B. No employee shall subject another employee to harassment nor take any action against that employee as a reprisal for making a complaint or providing any information pursuant to this chapter.

- C. Any employee who believes that he/she has been threatened with a personnel action or any other action, or who has been harassed or harmed by any action as a reprisal for having made a complaint or provided information pursuant to this chapter, may request the OIG to review his/her complaint about such reprisal. Whenever the OIG has reason to believe that the complaint may be true, it may, depending on the circumstances, decide to conduct the investigation or to refer the matter to OSC or ASAM for appropriate action. A more direct option an employee may exercise is filing a complaint with the OSC. The OSC has the ability to seek a stay of any agency personnel action from the Merit Systems Protection Board.

ADMINISTRATIVE OFFENSES

The improper conduct offenses listed below are considered administrative in nature. They should be handled directly by supervisors, with the assistance of members of the servicing personnel office staff. However, supervisors may also request the advice and assistance of the Office of Investigations (OI).

Improper conduct offenses which are considered administrative in nature include:

- A. Leave abuse and other attendance-related offenses, such as tardiness and absence without leave.
- B. Offenses related to intoxicants or other substance abuse by an individual.
- C. Negligent performance of, or failure to attend to, duties.
- D. Insubordinate behavior and failure to follow instructions.
- E. Discourteous behavior and offensive or abusive conduct.
- F. Offenses related to fighting.
- G. Failure to pay legitimate debts.
- H. Improper use of telephone or telephone charge card.
- I. Other minor infractions of a non-recurring nature.