

The Council of the Inspectors General of Integrity and Efficiency

Integrity Committee

Policy and Procedures

April 2009

Policies and Procedures of the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency

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**POLICIES AND PROCEDURES
OF THE INTEGRITY COMMITTEE
OF THE COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY**

1. Statement of Purpose

The Integrity Committee (the “IC”) of the Council of the Inspectors General on Integrity and Efficiency (the “Council”) serves as an independent review and investigative mechanism for allegations of wrongdoing brought against Inspectors General (“IGs”), designated staff members of an Office of Inspector General (“OIG”), and the Special Counsel and Deputy Special Counsel of the Office of Special Counsel (the “OSC”). These policies and procedures explain how the IC receives and processes these complaints.

The IC will review the allegations in a timely manner and strive for fairness and consistency in any actions regarding these complaints. The policies and procedures which follow specifically describe how the IC will ensure fairness and consistency in: (1) determining whether to initiate an investigation, (2) conducting an investigation, (3) reporting the results of an investigation, and (4) providing the person who is the subject of an investigation with an opportunity to respond to any IC Report.

2. Background

The Inspector General Reform Act of 2008 (Public Law 110-409 of October 14, 2008, 122 Stat 4302) provides several revisions to the Inspector General Act of 1978 (“the Act”) codified at 5 U.S.C. App. 3. Among the revisions, P.L. 110-409 establishes a Council of Inspectors General on Integrity and Efficiency. The Council is to have an Integrity Committee whose purpose is to review allegations of wrongdoing received against an IG or a designated OIG staff member. P.L. 110-409 also extends the authority of the IC to include review of complaints of wrongdoing received against the Special Counsel and Deputy Special Counsel of the OSC. This statutorily-created IC assumes the responsibilities of the IC which functioned previously under Executive Orders 12805 and 12993.

An IG who is a member of the Council is required to refer to the IC any allegation of wrongdoing concerning her/him. An IG is also required to refer to the IC any allegations of wrongdoing against a designated staff member of that OIG if (1) review of the substance of the allegation cannot be assigned to an agency of the Executive branch with appropriate jurisdiction over the matter, and (2) the IG determines that an objective internal investigation of the allegation is not feasible or an internal investigation of the allegation may appear not to be objective.

The basic authority and responsibilities of the IC are established by Section 11(d) of the Act, as amended, shown in Appendix B. These policies and procedures, required

by Section 11(d)(7)(B), were adopted by the IC following consultation with the Council Chairperson.

3. Matters for Consideration by the IC

A. Complaints within the IC's purview. Complaints within the IC's purview are those complaints which allege any wrongdoing on the part of an IG who is member of the Council and those complaints which allege wrongdoing on the part of a designated staff member of an IG when the allegation against that staff member cannot be assigned to an agency of the Executive branch with appropriate jurisdiction over the matter and an objective internal investigation of the allegation is not feasible or an internal investigation of the allegation may appear to not be objective. Complaints against the Special Counsel and the Deputy Special Counsel also fall within the IC's purview.

(Hereafter, whenever the procedures refer to a subject or respondent IG or designated OIG staff member, they also refer to the Special Counsel or Deputy Special Counsel with the exception that the Special Counsel will not designate additional staff members of the OSC.)

B. Complaints not within the IC's purview. Complaints outside the IC's purview are those complaints made against other, non-designated members of an IG's staff or complaints made against an IG who is not a member of the Council. (For example, IG's of the military departments are not members of the Council; complaints of wrongdoing concerning these officers or their staffs will be referred to Department of Defense IG.)

4. Designation of Staff Members by an Inspector General

Under Section 11(d)(4)(C) of the Act, each IG who is a member of the Council is required to designate those positions on their staff that qualify as "staff members" for purposes of IC consideration. Positions that report directly to an IG are to be included, as specified by the Act (e.g., the Deputy IG or Counsel to the IG). Consistent with policy established by the Council, other positions with significant responsibilities, such that it is likely that an internal investigation regarding an allegation of wrongdoing on the part of that staff member would lack an appearance of objectivity, should also be included (e.g., the Assistant IG for Investigations). Positions more than one level removed from direct reporting to the IG should not normally be included (e.g., the Deputy Assistant IG for Investigations). IGs must submit, by May 15 each year, a list of the designated positions to the IC Chairperson.

5. Referral of Allegations of Wrongdoing That Concern a Designated Staff Member of an Office of Inspector General

A. Referral by an IG. Allegations referred by an IG that a designated staff member engaged in wrongdoing will be considered by the IC following a determination by the concerned IG that the allegation against the designated staff member cannot be assigned to an agency of the Executive branch with appropriate jurisdiction over the

matter and an objective internal investigation of the allegation, including an investigation by an uninvolved OIG, is not feasible or an internal investigation of the allegation may appear to not be objective. Even if the allegation concerns a previously-designated staff member, the IG should refer an allegation of wrongdoing to the IC only after making a determination that these limitations apply in the particular circumstances of the allegation. The IG should indicate this determination in the referral letter.

B. Complaints received from other sources. An allegation received from a source other than an IG that a designated staff member engaged in wrongdoing may be referred to the IG for a determination on whether an internal objective investigation could be conducted, including the possibility of an investigation by an uninvolved OIG. The IC is not required to make the referral, however, and may in its discretion proceed to consider the allegation in manner otherwise consistent with these Procedures.

6. Establishment of a Working Group

The IC Chairperson will appoint an Integrity Committee Working Group (ICWG) composed of employees of the FBI or from the staff of a Council member. The ICWG will assist the Chairperson in the execution of the Chairperson's responsibilities including the oversight of investigations undertaken on behalf of the IC. The ICWG handles all IC correspondence.

7. Receipt and Review of Complaints of Wrongdoing

A. Initial review by the Working Group. The ICWG will conduct an initial review of each complaint of wrongdoing received by the IC and determine if the complaint is likely within the IC's purview. The ICWG may seek additional information from the complainant if the complaint lacks sufficient detail. The ICWG will log each complaint and assign it a control number, and acknowledge each complaint by return correspondence to the complainant unless the complaint is made anonymously. Questions about whether a particular complaint is within the IC's purview will be referred to the IC for resolution. Any complaint referred to the IC by an IG regarding a member of that IG's staff will be reviewed by the IC.

B. Complaints outside the IC's purview. Complaints determined to be clearly outside the IC's purview because they do not allege wrongdoing by an IG or a designated staff member may be submitted by the ICWG to the IC Chairman for referral to another agency of the Executive branch of the Federal government for disposition, when possible. The IC Chairman will inform the concerned IG when a matter is so referred, if appropriate. These complaints may also be submitted by the ICWG to the IC Chairman for referral to the concerned IG for disposition, unless referred to another agency. Due care will be taken to protect the identity of a complainant who requests confidentiality.

C. Allegations that concern possible criminal conduct. The IC Chairman will refer any complaint containing an allegation that presents the possibility of criminal conduct to the Public Integrity Section, United States Department of Justice. The IC will

suspend its consideration of such a complaint unless the Public Integrity Section declines prosecution.

D. Placement on the IC agenda. Consistent with the foregoing, the ICWG will place those complaints that may fall within the IC's purview on the agenda for consideration at the next IC meeting. The ICWG will also provide the IC at its meetings a summary report of those complaints referred by the IC Chairperson to another agency or to a concerned IG that were deemed to be outside the IC's purview.

8. Determining Whether to Initiate an Investigation

A. Threshold Standard. The IC will review each complaint within its purview and determine whether the allegation substantially involves administrative misconduct [a violation of law, rule or regulation; gross mismanagement; gross waste of funds; or abuse of authority in the exercise of official duties or while acting under color of office] or potentially involves conduct so serious that it may undermine the independence or integrity reasonably expected of an IG or OIG senior staff member.

B. Requests for additional information. Typically, allegations accepted for IC investigation will contain meaningful supporting documentation and will clearly identify the alleged wrongdoing by an IG or a designated staff member. The IC has the option to seek additional information from the complainant or referring IG through the ICWG if the complaint lacks sufficient detail or meaningful supporting documentation. This is not intended as a preliminary investigation.

C. Complaints lacking potential merit. The IC may determine that the allegation does not meet the threshold standard, is frivolous, is not supported by meaningful documentation, concerns a matter within an IG's discretion to investigate, or otherwise lacks potential merit, and direct that the case be closed.

D. Referral to another agency. The IC may refer a complaint not meeting the threshold standard to another agency in the Executive branch with appropriate jurisdiction over the matter, if warranted. For example, the IC will refer equal employment opportunity complaints to the Equal Employment Opportunity Office of the affected agency, and refer allegations of illegal political activity, whistleblower retaliation, or prohibited personnel practices to the Office of Special Counsel or other agency as provided by law. Normally, the IC will not request a response from the agency head to which a complaint is referred under this paragraph, because the allegation does not meet the threshold standard.

E. Referral to the concerned IG. The IC, in its discretion, may refer a complaint that concerns an allegation of wrongdoing on the part of a designated OIG staff member, received from a source other than the concerned IG, to the concerned IG and ask that the IG determine whether an objective internal investigation could be conducted, including the possibility of an investigation by an uninvolved OIG. Alternatively, the IC may, in its discretion, proceed to consider the allegation in manner consistent with these Procedures.

The IC will request a response from the IG concerning the disposition of the matter, if the complaint is so referred, including the disposition of the allegation(s) accepted for internal investigation by the concerned IG and actions taken by the IG following the completion of the investigation. The complaint will be held in open status by the IC pending the response. If the IC is not satisfied with the disposition, the IC may undertake an investigation of the matter, as provided below.

F. Response to allegations by the subject IG or designated staff member. If the case is within the IC's purview, involves an allegation meeting the threshold standard and has potential merit, and is not referred to another agency or to the concerned IG, the IC will normally summarize the allegation(s) in a letter to the IG or designated staff member who is the subject of the complaint and request a timely response to the allegation(s). Due care will be taken to protect the identity of a complainant who requests confidentiality. The matter will be placed on the agenda for the next IC meeting during which the IC will again consider the complaint together with the response. The IC may dispense with the request for response if the allegations clearly warrant an investigation and the request for response would not serve a useful purpose or unnecessarily delay the initiation of that investigation.

G. Action by the IC. After receiving a response from the IG or designated staff member, or in a subsequent review if a response is not received, the IC may take one of the following actions:

- (1) Determine that the response sufficiently answers or refutes the allegation(s) and that further inquiry or an investigation is not warranted.
- (2) Refer the allegation(s) to an agency of the executive branch with appropriate jurisdiction over the matter. In accordance with Section 11(d)(7)(C)(ii) of the Act, the IC shall request a report containing the results of investigation from the agency head to whom the complaint is referred under the preceding sentence. This report will be later forwarded to the Executive Chairperson following review and evaluation by the IC.
- (3) If the matter appears to have potential merit but cannot be referred to another agency, submit the matter to the IC Chairperson who will cause an investigation to be conducted regarding the allegation(s). The IC may determine that only one or more of the allegations in a complaint that contains multiple allegations warrants an investigation and disregard other allegations not meeting the threshold standard or lacking potential merit.

9. **Conducting Investigations**

A. Arranging for an IC investigation. When authorized to conduct an investigation, the IC Chairperson will seek assistance from an uninvolved IG who is a member of the Council. These requests will be rotated among Council members so as not to create a burden on any particular OIG. The ICWG will maintain a list of OIGs

volunteering to assist; the IC Chairperson will select an available OIG from the list, maintaining a rotation in order among all OIGs on the list to the extent practical. An IG may detail employees from the IG's staff to the IC to undertake the investigation that will be conducted under the control and direction of the IC Chairperson. Reimbursement of expenses shall be subject to the policies and procedures established by the Council and the Executive Chairperson. The investigation will be conducted in accordance with the most current *Quality Standards for Investigations* issued by Council (or its predecessors, the PCIE and ECIE) and utilize the investigative procedures of the OIG providing the lead investigator unless otherwise directed by the IC Chairperson following review of the investigative plan. The IC Chairperson, through the IWGC, will closely monitor progress of the investigation.

B. Reviewing the status of an investigation. The IC may review the status of any investigation currently underway and will request expeditious and appropriate action where necessary. If information is developed during the course of an investigation which may indicate criminal conduct, the OIG investigators assigned to the matter will promptly notify the IC Chairperson through the ICWG and the matter will be discussed with the Public Integrity Section. In addition, the OIG investigators will always consult with the ICWG and the Public Integrity Section before conducting an interview of the subject of the investigation. If additional allegations are received in a complaint or if additional allegations surface during the course of the investigation, the IC may expand the scope of the investigation to include these new matters after applying the threshold standard in paragraph 8.A above.

C. Notice to the respondent IG and opportunity for comment. When the investigation is ready to commence, the IC Chairperson will notify the respondent IG or designated staff member of the pending investigation by letter and –

- List the allegations to be investigated;
- Advise that additional allegations may be investigated as they become known with notice of such additional allegations to be made if they concern new subject matter;
- Outline the following procedures regarding the investigation and consideration by the IC:
 - The IG or designated staff member will be interviewed but may decline that interview;
 - The IG will be provided a copy of the interview transcript if the interview is recorded, or a summary memorandum of the interview if it is not, at the time the IG or designated staff member is provided a copy of the report of investigation;
 - A copy of the report of investigation will be provided to the IG or designated staff member before the final consideration of the report by the IC;
 - The IG or designated staff member will have the opportunity for comment concerning the report, including the accuracy of the transcript or summary memorandum of interview, and may submit additional statements or

- documents to the IC for its consideration, subject to a caveat that these documents should not be unnecessarily voluminous;
- The report and additional materials submitted by the IG or designated staff member, if any, along with the findings, conclusions, and opinions of the IC will be forwarded for review by the Executive Chairperson of the Council and by the President or head of a designated federal entity, as appropriate.

10. Reporting the Results of the Investigation

A. Report of Investigation. At the conclusion of the investigation, the investigative team will provide an investigative report containing necessary facts and conclusions regarding the allegations. The format for the report of investigation will be prescribed by the IC Chairperson. The report shall contain an executive summary as well as transcribed or summarized statements of witnesses.

B. Senior-level review. An appropriate senior-level official designated by the IG who has provided the lead investigator, preferably the Assistant Inspector General – Investigations, will personally review the report to ensure that the investigation meets the *Quality Standards for Investigations*. Following the senior-level review and the satisfactory completion of the investigation, the report of investigation will be provided to the IC Chairperson. The number of copies required will be discussed in advance with the IC Chairperson.

11. Review of Reports of Investigation by the IC

A. Report provided to IC members. The IC Chairperson will provide a copy of each report of investigation to IC members for review.

B. Review and comment by the respondent IG or designated staff member. A copy of the report will be provided to the respondent IG or designated staff member. Appropriate redactions may be made to the report to protect the identity of a complainant or witness requesting confidentiality or because of other limitations imposed by the Privacy Act. The respondent IG or designated staff member will have ten (10) days after being sent a copy of the report to provide written comment regarding the matter to the IC before its final consideration. The respondent IG or designated staff member may include documents to support statements made in her/his written comments but these documents should not be voluminous.

C. Review by the IC. The IC will review and assess the report of investigation, along with the written comments provided by the respondent IG or designated staff member, and discuss the findings and conclusions proposed. At the discretion of the IC Chairperson, the investigative team providing a report under paragraph 10 above may be asked to present the report at a meeting of the IC and answer questions about the report and their investigation. Personal appearance by a respondent IG or designated staff

member before the IC is not contemplated. The IC's goal is to complete review of the report of investigation within 30 days from the date the report is received, if practicable.

D. IC determination. The IC will determine by a consensus of the members whether the allegation(s) under investigation are established, factually, as true by a preponderance of the evidence. Thereafter, the IC will opine on whether the allegation(s) amounts to administrative misconduct [a violation of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority in the exercise of official duties or while acting under color of office] or is conduct so serious that it undermines the independence or integrity reasonably expected of an IG or senior staff member. If a consensus cannot be reached, the IC will determine the results by majority vote. A dissenting report may be filed.

12. Forwarding the Investigative Report

The IC, through its Chairperson, will forward the report of investigation along with a letter containing IC's findings, opinions, and recommendations including a recommendation on disciplinary action, if warranted, to the Executive Chairperson of the Council and to the President (in the case of a report relating to an IG of an establishment or any designated staff member of the IG) or the head of a designated federal entity (in the case of a report relating to an IG of such entity or any designated staff member of that IG) for resolution. A dissenting letter will also be forwarded, if filed. A copy of the IC Chairperson's letter transmitting the report, and any dissenting letter, will be provided to the respondent IG or designated staff member within seven (7) days following its submission to the Executive Chairperson. The IC will also send an executive summary of the report and a copy of the letter containing the findings, opinions, and recommendations of the IC, and any dissenting letter, to those committees of the House and Senate designated in the Act within 30 days of providing the report to the Executive Chairperson of the Council.

13. Closing a Case

Depending on the circumstances, the IC may take action to close a case:

A. After its review, if the allegation(s) concern a matter outside the IC's purview, whether or not the allegations are referred to an IG for appropriate resolution by the IG or to the head of an agency of the Executive branch with appropriate jurisdiction over the matter.

B. After its review, if the IC decides to take no further action regarding the allegation(s) because the matter is considered to be frivolous, lacks supporting documentation, or otherwise lacks potential merit, whether or not the matter is referred to the head of agency of the Executive branch with appropriate jurisdiction over the matter. Included within the category of disposition are those complaints which are resolved as being a matter within the discretion of an IG to investigate.

C. After review of the response from a respondent IG or designated staff member, if the IC determines that the response satisfactorily answers or refutes the allegation(s) and an investigation is not warranted because the complaint lacks further potential merit.

D. After review of the response from an IG to whom a complaint regarding allegations of wrongdoing on the part of a designated OIG staff member was referred for internal OIG investigation, and the IC is satisfied with the disposition taken by the IG.

E. After receipt of a notice of final disposition provided by the Executive Chairperson, if a report concerning the matter was forwarded to the Executive Chairperson.

14. Notice of Final Action

The IC Chairman will notify the individual making the complaint when a case is closed and the reasons for the action, unless the complaint was made anonymously. The IC Chairman will notify a respondent IG or designated staff member after a case is closed if the allegation was investigated by the IC Chairperson or by another agency and referred back to the IC for review and recommendation.

15. Review of Complaints by the Public Integrity Section

A. Initial review. The Public Integrity Section will review each complaint referred by the IC Chairperson to determine whether it presents information sufficient to warrant a criminal investigation. Should the Public Integrity Section determine that criminal investigation is warranted, the IC Chairperson will refer the matter to the appropriate law enforcement agency. If the Public Integrity Section determines that criminal investigation is not warranted, the matter will be returned to the ICWG for further screening.

B. Subsequent review. In the course of IC review of a matter following declination by the Public Integrity Section, the IC Chairperson may determine that additional information should be considered by the Public Integrity Section and refer such information to the Public Integrity Section. The IC will maintain the allegation in a pending status pending Public Integrity Section review.

C. Report of a criminal investigation. When a criminal investigation has been conducted, the IC Chairperson may request that the investigative authority provide a summary report of the results of the investigation to the IC, to the extent the criminal investigation relates to a matter within the jurisdiction of the IC.

18. Administration of IC Meetings

A. Membership. The IC is composed of the following members: a Chairperson, who is the FBI official designated by the Director of the FBI to serve on the Council; the Special Counsel of the Office of Special Counsel; the Director of the Office of Government Ethics; and four IGs, appointed by the Chairperson of the Council. The Chief of the Public Integrity Section of the Department of Justice, or designee, serves as the IC's legal advisor and attends the meetings in an advisory capacity.

B. Meetings. The IC will meet at least once each calendar quarter to review the status of all pending complaints. More frequent meetings may be called at the discretion of the IC Chairperson. Prior to the meetings, IC members are expected to independently review each case. The ICWG will maintain a written agenda of each meeting, including decisions made pursuant to each agenda item, as a record of the IC.

C. Recusal of members. A member shall recuse herself/himself when the IC considers an allegation concerning that member or a designated staff member of that IC member's staff. An IC member shall also recuse herself/himself if an allegation under consideration by the IC involves an IG or designated staff member with whom the IC member has a close personal friendship or professional relationship and the IC member believes she or he could not act impartially in the matter. The recusal will be noted in the minutes of the meeting.

D. Member under Criminal Investigation. An IC member under criminal investigation shall relinquish her/his IC responsibilities while a criminal investigation of the member is pending, while the member is pending trial on criminal charges, or following a conviction. Notice to the member from a federal, state, or local police department or from the Department of Justice, a United States Attorney's Office, or a state prosecuting attorney's office that the member is under investigation for any felony or misdemeanor in violation of federal or state law triggers this requirement. An IC member will inform the IC Chairperson of his/her inability to serve. The Council Chairperson may appoint a replacement for an IG member to serve during the absence. Alternates to the Special Counsel and the Director of the Office of Government Ethics will not be appointed.

19. Maintenance of IC Records

A. The Central Records System.

(1) Content of Records. All documents received or transmitted by the IC in fulfilling its responsibilities under the Act or under EO 12993 (including, but not limited to, written complaints making allegations against IGs; IC correspondence; reports of administrative misconduct investigations; reports of final actions taken with regard to proven allegations; and memoranda providing the final dispositions of allegations determined to be frivolous, outside the purview of the IC, or otherwise closed without further investigation) will be collected and maintained

as IC records in the FBI's Central Records System. The Central Records System consists of a numerical sequence of subject matter files and an index.

(2) Criminal Investigative Files Not Included as Integrity Committee Records.

The IC records will not include any criminal investigative files with general investigative information except that IC records may contain limited information about an allegation from criminal investigative files when such information is the source of the alleged administrative misconduct being investigated by the IC. The FBI's criminal investigative files are maintained in the Central Records System under the subject matter of the criminal violation, and, therefore, will be separate from IC records.

B. Disclosure of Information

(1) Privacy Act protection and restrictions on disclosure. The records of the IC will be maintained in accord with the Privacy Act of 1974 (Title 5, U.S.C., Section 552a), which restricts the disclosure of all records contained in a system of records maintained by an executive branch agency and retrieved by an individual's name or a personal identifier, such as a social security number. The records may be disclosed only in response to the written request of, or with the prior consent of, the individual to whom the record pertains, or under the conditions specifically set forth in the Act at Section 552a(b).

(2) Access by individuals to their own records. Procedures for access by individuals to their own records have been established by the Privacy Act and in regulations implementing the Act at Title 28, C.F.R., Part 16, Subpart D. All disclosures of information requested from the IC records will be coordinated with the ICWG.

(3) Disclosure under the Freedom of Information Act. Third party requests (requests by individuals other than the IG or OIG staff member who is the subject of the allegation) for information will be processed pursuant to the Freedom of Information Act (FOIA) (Title 5, U.S.C., Section 552), in accord with applicable law; regulations implementing the FOIA at Title 28, C.F.R. Part 16, Subpart A; and FBI FOIA policy and procedures.

(4) Congressional inquiries. Section 11(d)(8) of the Act directs the IC Chairman to provide an executive summary of a report of investigation, along with recommendations of the IC, to congressional committees of jurisdiction within 30 days of providing the complete report to the Executive Chairperson. Under Section 11(d)(9) of the Act, the Council Chairperson shall provide to the Congress by December 31 of each year a report on the activities of the IC including, in the case of allegations referred to the IC Chairperson, a summary of the status of the investigation and, in the case of investigations completed during the preceding fiscal year, a summary of the findings of the investigation. After an Executive Summary or annual report is provided, the Council, [through its

Chairperson] is required to provide more detailed information about specific allegations upon request of the Chairperson and Ranking Member of the Committee on Homeland Security and Governmental Affairs of the Senate, the Chairperson or Ranking Member of the Committee on Oversight and Government Reform of the House of Representatives, and the Chairperson or Ranking Member of other congressional committees of jurisdiction. The IC will not provide information while an allegation or investigation is pending, except as described in Sections 11(d)(8), (9), and (10) of the Act. Requests from other committee chairman or ranking members, or from individual senators or representatives, will be treated as requests received under the Freedom of Information Act.

D. Physical Maintenance of Records.

(1) Retention of records. The ICWG will maintain the records of the IC in a manner which ensures their physical security and will restrict access to the records except as necessary for their review, as provided in these Policies and Procedures.

(2) Disposal of records. IC records will be disposed of in accordance with the record disposition programs that apply to the FBI's Central Records System.

20. Confidentiality

The IC attempts to protect the confidentiality of a person who makes an allegation of wrongdoing concerning an IG or OIG staff member if specifically requested by that complainant. In conducting investigations, the IC will also endeavor to protect the confidentiality of a person making a statement to investigators if specifically requested by the person. However, the IC may be required to disclose the identity of these persons if a criminal prosecution ensues based on information from the complainant or person who has requested confidentiality, if adverse action is taken against the subject of the complaint or investigation in an administrative forum based on the information from the complainant or person, or if a court orders disclosure. A person making a complaint or a person providing a statement during an investigation should be aware that even if the IC does not release their name, their identity may be discernable from the context of the complaint or investigation.

21. Roles and Responsibilities in IC Matters

A. The IC Chairperson.

As Chairperson of the IC, the FBI representative to the Council is the federal official with primary responsibility for the effective conduct of the IC. The IC Chairperson is responsible for—

- scheduling IC meetings and the timeliness of IC actions and discretionary determinations, generally;
- oversight of the ICWG, including its discretionary determinations;

- the timeliness, thoroughness and overall quality of IC investigative reports;
- drafting an annual report for the Council Chairperson on the status of complaints received by the IC, consistent with the requirements of Section 11(d)(9) of the Act;
- providing reports of investigation, along with the IC's findings, conclusions, and recommendations, to the Executive Chairperson and to congressional committees of jurisdiction, as required by Section 11(d)(8) of the Act;
- responding to inquiries received from executive, legislative, and judicial branch officials regarding the status of matters pending before the IC in a manner consistent with applicable law and in consultation with the IC as may be appropriate, except that information regarding reports concerning specific allegations will be provided by the Council Chairperson, in accordance with Section 11(d)(10) of the Act. The IC Chairperson will assist in providing this information to the Council Chairperson at the conclusion of an investigation and following consideration of the matter by the IC and submission of the report to the congressional committees of jurisdiction, as required by Section 11(d)(8)(iii) of the Act.

B. The Executive Chairperson of the Council.

The Council Executive Chairperson receives from the IC Chairperson all reports of investigation conducted by the IC or by an agency of the executive branch submitted to the IC, along with IC findings, conclusions, and recommendations derived from those reports of investigation. The Executive Chairperson will notify the IC concerning final disposition as required by Section 11(d)(8)(B) of the Act. Congressional inquiries concerning final disposition will be referred to the Executive Chairperson, who may coordinate a response with the Council Chairperson. After the completion of IC action on a matter within its purview, the Executive Chairperson may join with the Council Chairperson and Vice Chairperson in reviewing with an IG, or with other appropriate parties, any allegations which appear to constitute a pattern of misconduct or gross mismanagement in a particular OIG.

C. The Chairperson and Vice Chairperson of the Council.

The Chairperson and Vice Chairperson of the Council provide insight and advice to the IC on its operating procedures generally and assist the IC Chairperson in obtaining investigative assistance for an IC-directed investigation from Council members, as may be required. The Council, acting through the Chairperson with assistance from the IC Chairperson, provides an annual report to Congress and the President regarding the activities of the Integrity Committee, as required by Section 11(d)(9) of the Act. The Council, acting through the Chairperson and with assistance provided by the IC Chairperson, is also responsible for providing the detailed information about specific allegations considered by the Integrity Committee to Congressional committees of jurisdiction, as required by Section 11(d)(10) of the Act.

D. Legal Advisor

The Chief of the Public Integrity Section of the Criminal Division of the Department of Justice, or a designee, serves as legal advisor to the IC. The legal advisor or designee will review allegations of wrongdoing on the part of an IG or designated staff member that may involve criminal conduct before they are considered by the IC. Questions on matters of law and legal policy will be referred to the legal advisor for resolution. The legal advisor will serve as a conduit to other components of the Department of Justice when their involvement is appropriate.

E. The Integrity Committee Working Group

The ICWG will assist the IC Chairperson in the execution of the IC Chairperson's responsibilities, including the oversight of investigations undertaken on behalf of the IC. The ICWG will handle all IC correspondence and will correspond with IC members regarding matters pending before the IC as necessary. The ICWG will forward complaints that are to be considered at an IC meeting to IC members before the meeting such that IC members will have sufficient time to review the complaint.

F. Inspectors General

By May 15 of every year, IGs must designate those positions on their staffs subject to referral or investigation by the IC. See paragraph 4 above. In addition, as members of the Council, IGs are expected to assist the IC by providing resources and personnel to assist with IC investigations when requested. The IC requests will be rotated among the Council members so as not to place an unreasonable burden on any particular OIG. IGs may volunteer their staffs for placement on a list from which OIGs will be selected to conduct these investigations. Contact the IC Chairman or the ICWG.

22. Amendments to the IC Policies and Procedures

The Council Chairperson or Vice Chairperson, the IC Chairperson, or an IC member may propose revisions or amendments to these Policies and Procedures. The IC will consider the proposed revision or amendment following consultation with the Chairperson of the Council. A majority of the IC members must approve any revision or amendment. Thereafter, the revision or amendment will be submitted to the Chairperson of the Council who will provide a copy to the congressional committees of jurisdiction in accordance with section 11(d)(7)(ii) of the Act.

23. No right or benefit

These procedures are not intended to create any right or benefit, substantive or procedural, enforceable at law by a person against the United States, its agencies, its officers, or any person.

Approved: Kenneth W. Kaiser Date: 4/17/09
Kenneth W. Kaiser
Chair
Integrity Committee

Appendix A: Definitions

"Abuse of authority" means arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to her/him or to preferred other persons. There is no *de minimus* standard for abuse of authority.

"Act" means the Inspector General Act of 1978 as amended by the Inspector General Reform Act of 2008, P.L. 110-409.

"Administrative misconduct" means non-criminal misconduct, or misconduct the Public Integrity Section declines to pursue on a criminal basis, that evidences a violation of any law, rule, or regulation; or gross mismanagement; gross waste of funds; or abuse of authority in the exercise of official duties or while acting under color of office.

"Agency head" means the head of an establishment or a designated federal entity, as defined by the Act.

"Frivolous allegations" means those allegations that would not constitute criminal violations or administrative misconduct, or other serious conduct, even if proven to be true.

"Gross mismanagement" means action or inaction that creates a substantial risk of significant adverse impact on the OIG's ability to accomplish its mission. It does not include discretionary management decisions, or action or inaction that constitutes simple negligence or wrongdoing. There must be an element of willful misconduct or gross and wanton negligence.

"Gross waste of funds" means an expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government; it is more than a debatable expenditure

Appendix B

Selections from the Inspector General Reform Act of 2008 (Public Law 110-409)

11(d) INTEGRITY COMMITTEE.—

"(1) ESTABLISHMENT.--The Council shall have an Integrity Committee, which shall receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and staff members of the various Offices of Inspector General described under paragraph (4)(C).

"(2) MEMBERSHIP.--The Integrity Committee shall consist of the following members:

"(A) The official of the Federal Bureau of Investigation serving on the Council, who shall serve as Chairperson of the Integrity Committee, and maintain the records of the Committee.

"(B) Four Inspectors General described in subparagraph (A) or (B) of subsection (b)(1) appointed by the Chairperson of the Council, representing both establishments and designated Federal entities (as that term is defined in section 8G(a)).

"(C) The Special Counsel of the Office of Special Counsel.

"(D) The Director of the Office of Government Ethics.

"(3) LEGAL ADVISOR.--The Chief of the Public Integrity Section of the Criminal Division of the Department of Justice, or his designee, shall serve as a legal advisor to the Integrity Committee.

"(4) REFERRAL OF ALLEGATIONS.--

"(A) REQUIREMENT.--An Inspector General shall refer to the Integrity Committee any allegation of wrongdoing against a staff member of the office of that Inspector General, if--

"(i) review of the substance of the allegation cannot be assigned to an agency of the executive branch with appropriate jurisdiction over the matter; and

"(ii) the Inspector General determines that--

"(I) an objective internal investigation of the allegation is not feasible; or

"(II) an internal investigation of the allegation may appear not to be objective.

"(B) DEFINITION.--In this paragraph the term 'staff member' means any employee of an Office of Inspector General who--

"(i) reports directly to an Inspector General; or

"(ii) is designated by an Inspector General under subparagraph (C).

"(C) DESIGNATION OF STAFF MEMBERS.--Each Inspector General shall annually submit to the Chairperson of the Integrity Committee a designation of positions whose holders are staff members for purposes of subparagraph (B).

"(5) REVIEW OF ALLEGATIONS.--The Integrity Committee shall--

"(A) review all allegations of wrongdoing the Integrity Committee receives against an Inspector

General, or against a staff member of an Office of Inspector General described under paragraph (4)(C);

"(B) refer any allegation of wrongdoing to the agency of the executive branch with appropriate jurisdiction over the matter; and

"(C) refer to the Chairperson of the Integrity Committee any allegation of wrongdoing determined by the Integrity Committee under subparagraph (A) to be potentially meritorious that cannot be referred to an agency under subparagraph (B).

"(6) AUTHORITY TO INVESTIGATE ALLEGATIONS.--

"(A) REQUIREMENT.--The Chairperson of the Integrity Committee shall cause a thorough and timely investigation of each allegation referred under paragraph (5)(C) to be conducted in accordance with this paragraph.

"(B) RESOURCES.--At the request of the Chairperson of the Integrity Committee, the head of each agency or entity represented on the Council--

"(i) may provide resources necessary to the Integrity Committee; and

"(ii) may detail employees from that agency or entity to the Integrity Committee, subject to the control and direction of the Chairperson, to conduct an investigation under this subsection.

"(7) PROCEDURES FOR INVESTIGATIONS.--

"(A) STANDARDS APPLICABLE.--Investigations initiated under this subsection shall be conducted in accordance with the most current Quality Standards for Investigations issued by the Council or by its predecessors (the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency).

"(B) ADDITIONAL POLICIES AND PROCEDURES.--

"(i) ESTABLISHMENT.--The Integrity Committee, in conjunction with the Chairperson of the Council, shall establish additional policies and procedures necessary to ensure fairness and consistency in--

"(I) determining whether to initiate an investigation;

"(II) conducting investigations;

"(III) reporting the results of an investigation; and

"(IV) providing the person who is the subject of an investigation with an opportunity to respond to any Integrity Committee report.

"(ii) SUBMISSION TO CONGRESS.--The Council shall submit a copy of the policies and procedures established under clause (i) to the congressional committees of jurisdiction.

"(C) REPORTS.--

"(i) POTENTIALLY MERITORIOUS ALLEGATIONS.--For allegations described under paragraph (5)(C), the Chairperson of the Integrity Committee shall make a report containing the results of the investigation of the Chairperson and shall provide such report to members of the Integrity Committee.

"(ii) ALLEGATIONS OF WRONGDOING.--For allegations referred to an agency under paragraph (5)(B), the head of that agency shall make a report containing the results of the investigation and shall provide such report to members of the Integrity Committee.

"(8) ASSESSMENT AND FINAL DISPOSITION.--

"(A) IN GENERAL.--With respect to any report received under paragraph (7)(C), the Integrity Committee shall--

"(i) assess the report;

"(ii) forward the report, with the recommendations of the Integrity Committee, including those on disciplinary action, within 30 days (to the maximum extent practicable) after the completion of the investigation, to the Executive Chairperson of the Council and to the President (in the case of a report relating to an Inspector General of an establishment or any employee of that Inspector General) or the head of a designated Federal entity (in the case of a report relating to an Inspector General of such an entity or any employee of that Inspector General) for resolution; and

"(iii) submit to the Committee on Government Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and other congressional committees of jurisdiction an executive summary of such report and recommendations within 30 days after the submission of such report to the Executive Chairperson under clause (ii).

"(B) DISPOSITION.--The Executive Chairperson of the Council shall report to the Integrity Committee the final disposition of the matter, including what action was taken by the President or agency head.

"(9) ANNUAL REPORT.--The Council shall submit to Congress and the President by December 31 of each year a report on the activities of the Integrity Committee during the preceding fiscal year, which shall include the following:

"(A) The number of allegations received.

"(B) The number of allegations referred to other agencies, including the number of allegations referred for criminal investigation.

"(C) The number of allegations referred to the Chairperson of the Integrity Committee for investigation.

"(D) The number of allegations closed without referral.

"(E) The date each allegation was received and the date each allegation was finally disposed of.

"(F) In the case of allegations referred to the Chairperson of the Integrity Committee, a summary of the status of the investigation of the allegations and, in the case of investigations completed during the preceding fiscal year, a summary of the findings of the investigations.

"(G) Other matters that the Council considers appropriate.

"(10) REQUESTS FOR MORE INFORMATION.--With respect to paragraphs (8) and (9), the Council shall provide more detailed information about specific allegations upon request from any of the following:

"(A) The chairperson or ranking member of the Committee on Homeland Security and Governmental Affairs of the Senate.

"(B) The chairperson or ranking member of the Committee on Oversight and Government Reform of the House of Representatives.

"(C) The chairperson or ranking member of the congressional committees of jurisdiction.

"(11) NO RIGHT OR BENEFIT.--This subsection is not intended to create any right or benefit,

substantive or procedural, enforceable at law by a person against the United States, its agencies, its officers, or any person."

(b) ALLEGATIONS OF WRONGDOING AGAINST SPECIAL COUNSEL OR DEPUTY SPECIAL COUNSEL.—

(1) DEFINITIONS.--In this section--

(A) the term "Integrity Committee" means the Integrity Committee established under section 11(d) of the Inspector General Act of 1978 (5 U.S.C. App), as amended by this Act; and

(B) the term "Special Counsel" refers to the Special Counsel appointed under section 1211(b) of title 5, United States Code.

(2) AUTHORITY OF INTEGRITY COMMITTEE.--

(A) IN GENERAL.--An allegation of wrongdoing against the Special Counsel or the Deputy Special Counsel may be received, reviewed, and referred for investigation by the Integrity Committee to the same extent and in the *4313 same manner as in the case of an allegation against an Inspector General (or a member of the staff of an Office of Inspector General), subject to the requirement that the Special Counsel recuse himself or herself from the consideration of any allegation brought under this paragraph.

(B) COORDINATION WITH EXISTING PROVISIONS OF LAW.--This subsection does not eliminate access to the Merit Systems Protection Board for review under section 7701 of title 5, United States Code. To the extent that an allegation brought under this subsection involves section 2302(b)(8) of that title, a failure to obtain corrective action within 120 days after the date on which that allegation is received by the Integrity Committee shall, for purposes of section 1221 of such title, be considered to satisfy section 1214(a)(3)(B) of that title.

(3) REGULATIONS.--The Integrity Committee may prescribe any rules or regulations necessary to carry out this subsection, subject to such consultation or other requirements as might otherwise apply.

(c) EFFECTIVE DATE AND EXISTING EXECUTIVE ORDERS.--

(1) COUNCIL.--Not later than 180 days after the date of the enactment of this Act, the Council of the Inspectors General on Integrity and Efficiency established under this section shall become effective and operational.

(2) EXECUTIVE ORDERS.--Executive Order No. 12805, dated May 11, 1992, and Executive Order No. 12933*, dated March 21, 1996 (as in effect before the date of the enactment of this Act) shall have no force or effect on and after the earlier of--

(A) the date on which the Council of the Inspectors General on Integrity and Efficiency becomes effective and operational as determined by the Executive Chairperson of the Council; or

(B) the last day of the 180-day period beginning on the date of enactment of this Act.

* Incorrect in original; should be Executive Order 12993.