

**FEDERAL DEPOSIT INSURANCE CORPORATION**  
**OFFICE OF INSPECTOR GENERAL**  
**Policies and Procedures Manual**

<b>PART</b>	<b>I</b>	<b>Operations Policies and Procedures</b>
<b>SECTION</b>	<b>OIG-110</b>	<b>General Management Policies and Procedures</b>
<b>CHAPTER</b>	<b>110.6</b>	<b>Office of Inspector General Subpoenas</b>

1. Purpose. The purpose of this chapter is to set forth the procedures to be followed by FDIC Office of Inspector General (OIG) employees when seeking and executing OIG administrative subpoenas. Additional procedures applicable to the OIG Office of Investigations are found in Chapter 420.2. Section 6(a)(4) of the Inspector General Act gives the Inspector General authority to subpoena the production of all documentary evidence and other data. An OIG subpoena is enforceable in United States District Court.

2. OIG Policy. Information sought by OIG subpoenas must be relevant to an ongoing audit, investigation, or other activity within the statutory authority of the Inspector General. Subpoenas must not be overly broad or excessive in scope. They will be reviewed by the OIG Counsel's Office for legal sufficiency. If the records sought are records of a financial institution subject to the Right to Financial Privacy Act they can be obtained only by subpoena or with written consent of the individual.

3. Procedures For Requesting a Subpoena. In order that sufficient information is provided for preparing a subpoena, the employee will submit a request using the electronic subpoena form. Auditors shall submit a copy of the request to the Assistant Inspector General for Audits. If an employee is unable to submit an electronic request (e.g. the employee is in the field and has no ready access to the computer system), a telephonic request may be made to the manager or directly to OIG Counsel's office.

4. Clearance and Logging. The manager will review the request and forward it electronically to the OIG Counsel's Office. Counsel's office will prepare the subpoenas and any necessary related materials. A copy of the signed subpoena will be maintained in the case file. For each issued subpoena, the OIG Counsel's Office will maintain a copy of the request, the approved subpoena, and a log of all subpoenas issued.

5. Subpoena Package Content. Upon receipt of the subpoena documents package from OIG Counsel, the employee should review the documents carefully for accuracy. Do not alter or amend the documents.

6. Right to Financial Privacy Act (RFPA). Financial records may be obtained from a financial institution by administrative subpoena (12 USC § 3405). The term "Financial Institution" includes a bank, credit card issuer, loan company, trust company, savings association, credit union, or consumer credit institution, etc. (12 USC § 3401(1)). The Act applies to the financial records of individuals and partnerships of five or fewer individuals (12 USC §§ 3401(4), 3402). Generally, the Act requires prior written notice to the customer that their financial records have been subpoenaed and that the customer has the right and opportunity to challenge the subpoena in court. OIG Counsel's office will prepare an RFPA package with detailed instructions and all necessary documentation.

a. The RFPA documents package subpoena must include:

- (1) A Certificate of Compliance with the RFPA of 1978;
- (2) A Privacy Act Notice;
- (3) Instructions for completing and filing the attached Motion and Sworn

Statement;

(4) The Customer's sworn statement for filing a challenge in the United States District Court, prepared for customer's signature; and

(5) The Customer's Motion to Challenge Government's Access to Financial Records, prepared for customer signature.

b. Upon receipt of the subpoena package, a copy of the subpoena must be served on the customer (i.e., individuals and partnerships of 5 or fewer individuals) along with the originals of items (2), (3), (4), and (5) listed above.

c. The financial institution must be served with the original of the subpoena, and a copy of the Privacy Act Notice.

d. After service, the Act requires a waiting period to give the customer an opportunity to file a challenge before the records are released. In the case of personal service, the waiting period is 10 calendar days. In the case of service by certified mail, the waiting period is 14 calendar days. If the last day of the waiting period falls on a weekend or holiday, the waiting period is extended to the close of the next business day.

e. If the customer challenges the subpoena, the challenge motion and statement must be filed with both the court and the Inspector General. If a challenge is received, the OIG Counsel's Office will immediately inform the employee, and no further action will be taken pending further instructions.

f. If a challenge is expected, the employee should immediately contact the OIG Counsel's Office and the manager.

g. It is advisable for the employee to wait at least 21 calendar days in order to be sure that no challenge has been filed. Verification through inquiry with the court is required. Employees should then provide the financial institution with the original Certificate of Compliance if no challenge is filed within the statutory period.

7. Serving an IG Subpoena. The following steps should be taken when serving a subpoena:

a. The entire original subpoena package should be served on the person named on the front of the subpoena.

b. Personal Service. Personal service means actual delivery of the subpoena to the person named on the front of the subpoena, and, in the case of subpoenas subject to the RFPA, to the "customer" whose records are required. Personal service is generally the preferred means of service. All reasonable means of personal service should be attempted, unless the package indicates that another means of service is being used.

c. Other Types of Service. Service via fax or certified mail is also a means of service with receipt acknowledged by the recipient.

d. Return of Service. The employee serving the subpoena (personally or by other means) will execute a Return of Service Form attesting to service of the subpoena.

e. Signature on Return of Service Form. Ask the person accepting the subpoena to sign the statement at the bottom of the receipt form. If the person accepts service but declines to sign the Return of Service Form, note this on the form. Documentation should be as detailed as possible to include date, time, place and circumstances.

f. The Return of Service Form should be included in the case file. A certified mail return receipt should be attached to the receipt of service when applicable.

g. The date on which the records must be produced is shown in the subpoena. Service should allow sufficient time for compliance, and 10 working days (14 by mail) is generally considered reasonable although circumstances may warrant either a shorter or longer period.

8. Obtaining Documents

a. Whenever documents are received, an inventory must be prepared. If the documents are delivered in person, a copy of the inventory and a signed receipt should be given to the person providing the documents.

b. Immediately review and determine whether the documents and/or related materials that are furnished satisfy the terms and conditions of the subpoena.

c. Problems encountered in obtaining compliance with the subpoena will be immediately reported to the manager and OIG Counsel's office. Consideration can be given to requesting a certificate of compliance from the subpoenaed party if one was not supplied with the original subpoena. Any such request must be coordinated with the OIG Counsel's Office.

d. If the subpoenaed party does not comply or flatly refuses to supply all or a portion of the required documents, the employee or manager will notify the OIG Counsel's Office to determine whether to enforce the subpoena in Federal District Court. Counsel's office will obtain enforcement through the U.S. Department of Justice.

9. Payment for Locating, Copying and Transporting Documents. A subpoena cannot be unduly burdensome on the subpoenaed party. If the cost of compliance is high, in view of the resources of the subpoenaed party, then in some very limited circumstances assurance of payment may be necessary. Otherwise, the subpoena will be more difficult to enforce in court. If the cost of compliance is low and/or the subpoenaed party is a large organization with extensive resources, compliance without payment is not unduly burdensome. Financial institutions that respond to RFPAs are entitled to fees. Requests for or inquiries concerning payment should be referred to the OIG Counsel's Office. If it is determined that payment is appropriate, 12 CFR Part 219 may be used as a guide for rates and methods of payment. Budgetary approval must be obtained from the Assistant Inspector General for Management and Congressional Relations (or other OIG officials with appropriate spending approval authority) prior to a commitment being made to pay for these expenses.