



U.S. DEPARTMENT OF HOMELAND SECURITY OFFICE OF INSPECTOR GENERAL

OIG-25-07

December 23, 2024

FINAL REPORT

Oversight Review of the United States Secret Service, Office of Professional Responsibility





OFFICE OF INSPECTOR GENERAL

U.S. Department of Homeland Security

Washington, DC 20528 | www.oig.dhs.gov

December 23, 2024

MEMORANDUM FOR: Ronald L. Rowe, Jr.
Acting Director
United States Secret Service

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V CUFFARI** Digitally signed by
Inspector General **CUFFARI** JOSEPH V CUFFARI
Date: 2024.12.23
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SUBJECT: *Oversight Review of the United States Secret Service,
Office of Professional Responsibility*

Attached for your action is our final report, *Oversight Review of the United States Secret Service, Office of Professional Responsibility*. We incorporated the formal comments provided by your office.

The report contains five recommendations aimed at improving United States Secret Service, Office of Professional Responsibility' operations. Your office concurred with two of the five recommendations. Based on information provided in your response to the draft report, we consider recommendation 1 open and unresolved. Recommendations 3, 4, and 5 are open and resolved. Recommendation 2 is resolved and closed.

As prescribed by Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendations. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to Integrity.IQA@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the

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Department of Homeland Security. We will post the report on our website for public dissemination.

Please contact me with any questions, or your staff may contact Gladys Ayala, Deputy Inspector General, Office of Integrity, at (202) 981-6000.

Attachment



DHS OIG HIGHLIGHTS

Oversight Review of the United States Secret Service, Office of Professional Responsibility

December 23, 2024

Why We Did This Review

We conducted this review as part of our planned, periodic reviews of DHS component offices that perform internal investigations, as mandated by the *Inspector General Act of 1978, 5 United States Code §§ 401–424*. Specifically, we assessed the U.S. Secret Service RES' compliance with relevant authorities, departmental guidance, and its policies and procedures for internal affairs investigations.

What We Recommend

We made five recommendations to address RES' deficiencies and improve operations.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at:

DHS-OIG.OfficePublicAffairs@oig.dhs.gov.

What We Found

The United States Secret Service's Office of Professional Responsibility (RES) satisfied Lautenberg Amendment certification as well as personnel security requirements for periodic background investigations. RES also accurately accounted for all government-assigned firearms, badges, credentials, and vehicles. However, we found that RES did not consistently comply with reporting requirements for "significant activities" in accordance with the *Inspector General Act of 1978, 5 United States Code §§ 401–424 (IG Act)*, and other governing authorities. RES did not always refer or delayed referring some employee misconduct allegations to the Department of Homeland Security Office of Inspector General, and RES' policies and procedures contributed to untimely and non-referrals. RES did not have specific guidance regarding administration of rights advisements during interviews. In addition, RES did not consistently follow established procedures for recording interviews. We also found that some RES personnel did not comply with Law Enforcement Availability Pay requirements. Finally, RES should improve its maintenance of firearms training records.

Without clear policies and procedures aligned with governing authorities, RES cannot ensure timely referral of employee misconduct investigations to DHS OIG, and that its investigative actions do not impede future DHS OIG investigations. In addition, RES cannot ensure individuals receive proper advisement of rights and protections during employee misconduct investigations.

U.S. Secret Service Response

United States Secret Service non-concurred with three of the five recommendations. See Appendix B for the management response.



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Abbreviations

ISP	Inspection Division
LEAP	Law Enforcement Availability Pay
MD	Management Directive
MOU	Memorandum of Understanding
OE	Organizational Elements
RES	Office of Professional Responsibility
SES	Senior Executive Service
SOP	Standard Operating Procedure
U.S.C.	United States Code



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Background

The United States Secret Service (Secret Service) Office of Professional Responsibility (RES) reviews and investigates the actions of Secret Service personnel, programs, and offices to determine compliance with, and adherence to, internal and external policies and procedures. RES conducts internal investigations concerning allegations of employee misconduct, to include fact-finding inquiries, inquiries into allegations of workplace harassment based on a protected status, other special investigations, management reviews, and mission assurance inquiries.

RES consists of five divisions: the Inspection Division (ISP), Anti-Harassment Program, Insider Threat Program, Vulnerability Assessment Program, and the Audit Liaison Program. Our review focused on ISP, which conducts internal affairs investigations of administrative, non-criminal, and criminal allegations of Secret Service employee misconduct.¹

RES personnel emphasized they only conduct administrative investigations. RES leadership stated, to their knowledge, RES has never conducted criminal investigations. Upon receipt or discovery of a criminal allegation, RES officials indicated they refer such matters to the Secret Service Office of Investigations. RES personnel explained that inspectors and assistant inspectors are assigned to RES for a limited time (between 12-18 months) while awaiting the next promotion list to be announced or retirement. As a result, the division experiences regular turnover. At the time of our review, RES had 27 law enforcement-designated personnel.

As an internal affairs investigative office within a Department of Homeland Security component, RES must adhere to several laws and directives including:

Inspector General Act of 1978, 5 United States Code (U.S.C.) §§ 401–424 (IG Act)

The *IG Act* grants DHS Office of Inspector General oversight responsibility for Secret Service internal investigations.² In carrying out this responsibility, the *IG Act* also affords DHS OIG “timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available” regarding programs and/or operations subject to such oversight.³

¹ RES’ other four divisions do not have an internal investigative function and are not a part of our review.

² 5 U.S.C. § 417(e).

³ 5 U.S.C. § 406(a). On December 3, 2021, the Executive Office of the President, Office of Management and Budget, issued M-22-04, a *Memorandum for the Heads of Executive Departments and Agencies*, emphasizing their obligation to cooperate with their respective IG offices as those offices work to fulfill their statutory responsibilities under the IG Act.



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Homeland Security Act of 2002

According to the *Homeland Security Act of 2002*, the DHS Inspector General, “shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.”⁴

DHS Management Directive 0810.1, The Office of the Inspector General (MD 0810.1)

MD 0810.1,⁵ issued June 10, 2004, states Heads of DHS Organizational Elements (OE) shall “promptly advise the OIG of allegations of misconduct in accordance with the procedures described in Appendix A” of the Directive. That directive is caveated by the following:

*“The only exception to this requirement is that the OIG and the United States Secret Service will adhere to the terms of the Memorandum of Understanding entered into between those two entities on December 8, 2003, and as may be amended from time to time.”*⁶

The Directive lists, under Appendix A, categories of misconduct shall be referred to the DHS OIG “immediately upon receipt of the allegation, and no investigation shall be conducted by the organizations’ offices prior to referral unless failure to do so would pose an imminent threat to human life, health or safety, or result in the irretrievable loss or destruction of critical evidence or witness testimony.” The categories of misconduct include:

- All allegations of criminal misconduct against a DHS employee;
- All allegations of misconduct against employees at the GS-15, GM-15 level or higher, or against employees in the OE offices;
- All allegations of serious, noncriminal misconduct against a law enforcement officer. “Serious, non-criminal misconduct” is conduct that, if proved, would constitute perjury or material dishonesty, warrant suspension as discipline for a first offense, or result in loss of law enforcement authority. For purposes of this directive, a “law enforcement officer” is defined as any individual who is authorized to carry a weapon, make arrests, or conduct searches;
- All instances regarding discharge of a firearm that results in death or personal injury or otherwise warrants referral to the Civil Rights Criminal Division of the Department of Justice;

⁴ Section 811(e) of the Homeland Security Act of 2002, as amended.

⁵ *MD 0810.1* is included in its entirety as Appendix C.

⁶ The *Memorandum of Understanding Between the United States Secret Service and the Office of the Inspector General Department of Homeland Security (2003 MOU)* is included in its entirety as Appendix D. To date, neither *MD 0810.1* nor the 2003 MOU incorporated by reference have been amended.



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- All allegations of fraud by contractors, grantees, or other individuals or entities receiving DHS funds or otherwise engaged in the operation of DHS programs or operations; and
- All allegations of visa fraud by DHS employees working in the visa issuance process.

MD 0810.1 states, “Any prior Management Directive and any instruction or agreement of any kind issued by or entered into by any DHS official or Component that is inconsistent in any respect with this directive is hereby superseded to the extent it is inconsistent with this directive.”

Memorandum of Understanding Between the United States Secret Service and the Office of the Inspector General Department of Homeland Security (2003 MOU)

The 2003 MOU lists the categories of misconduct that “shall be referred” by ISP to the DHS OIG “immediately upon the receipt of adequate information or allegations by the [USSS] Office of Inspection to reasonably conclude that misconduct may have occurred, and no investigation shall be conducted by the USSS Office of Inspection prior to referral” [emphasis added]. The categories of misconduct include:

- All allegations of criminal misconduct against USSS employees;
- All allegations of misconduct against employees at the GS-15, GM-15 level or higher, or against employees in the USSS Office of Inspection;
- All allegations regarding misuse or improper discharge of a firearm (other than accidental discharge during training, qualifying or practice);
- All allegations of fraud by contractors, grantees or other individuals or entities receiving Department funds or otherwise engaged in in operation of Department programs or operations.

In addition, the IG will investigate allegations against individuals or entities who do not fit into the categories specified above if the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial and ethnic profiling; serious management problems within the department, or otherwise represents a serious danger to the public health or safety.

With regard to categories of misconduct not specified above, per the 2003 MOU, ISP should initiate an investigation upon receipt of the allegation and shall notify the OIG within five business days of the allegation.

In addition to the laws and directives stated above, RES must comply with its own policies and standard operating procedures for conducting internal investigations related to employee misconduct.⁷

⁷ The *United States Secret Service Directives System (Directives System)* at sections RES-01 and RES-02 (12/09/2020), RES-05 (12/01/2014), RES-06 (6/30/21), RES-07 (2/24/2022), ISP-01 (10/05/2020), and ISP-02 (12/28/2020) describes relevant policies and procedures for RES.



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We conducted this review as part of our planned, periodic reviews of Department component internal affairs offices, as mandated by the *IG Act*. Specifically, we assessed RES' compliance with its policies and procedures, departmental guidance, and other relevant authorities regarding internal affairs investigations.

Results of Review

RES satisfied Lautenberg Amendment certification as well as personnel security requirements for periodic background investigations. RES also accurately accounted for all government-assigned firearms, badges, credentials, and vehicles. However, RES did not consistently comply with the 2003 MOU referral requirements for allegations of employee misconduct involving criminal matters, allegations implicating employees at the GS-15, GM-15 level or higher, or involving improper discharge of a firearm. We found that RES did not always refer or delayed referring some employee misconduct allegations to DHS OIG, and RES policies and procedures contribute to untimely and non-referrals. RES policy did not provide detailed standards for providing employee rights advisements during interviews, accurately or consistently inform individuals of their legal rights or follow their audio recording procedures during interviews. We also found that some RES personnel did not comply with Law Enforcement Availability Pay requirements. Finally, RES should improve its maintenance of firearms training records.

Without clear policies and procedures, RES cannot ensure timely referral of employee misconduct investigations to DHS OIG, and that its investigative actions do not impede future DHS OIG investigations.

RES Complied with Lautenberg and Personnel Security Requirements and Accounted for All Government-Assigned Equipment

The *Lautenberg Amendment* specifically prohibits individuals convicted in any court of a misdemeanor crime of domestic violence from possessing a firearm or ammunition.⁸ DHS Policy Directive 045-05⁹ requires all law enforcement officers to certify annually that they have no convictions of a misdemeanor crime of domestic violence. We reviewed the data for the 27 law enforcement-designated personnel assigned to RES at the time of our review and determined that RES satisfied the *Lautenberg Amendment* certification requirements.

⁸ See 18 U.S.C. § 922(g)(9).

⁹ Policy Directive 045-05, *Required Reporting of Off-Duty Contact with Law Enforcement by DHS Law Enforcement Personnel and the Suspension and/or Revocation of Authority to Carry a Firearm or other Weapon and Perform Law Enforcement Duties*, January 10, 2017.



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According to the Office of Personnel Management, individuals with top secret access are “subject to periodic reinvestigations at any time following the completion of, but no later than five years from the date of the previous investigation.”¹⁰ Of the 27 law enforcement-designated personnel requiring a top-secret security clearance, 26 completed the periodic reinvestigations and the remaining employee’s investigation was in progress at the time of our fieldwork.

We also conducted an onsite inspection of government-issued firearms, law enforcement badges and credentials, and government-assigned vehicles. We verified via serial number and vehicle identification number and found that RES law enforcement-designated personnel accounted for all equipment and vehicles issued.

RES Did Not Consistently Comply with Referral Requirements for Allegations of Employee Misconduct

The *IG Act* and the *Homeland Security Act of 2002* authorize DHS OIG oversight responsibility for Secret Service internal investigations, including timely access to all related information. *MD 0810.1* instructs RES to adhere to the terms of the 2003 MOU which requires RES to refer, among other things, allegations of criminal misconduct, misconduct allegations against employees at the GS-15, GM-15 level or higher, and allegations involving improper discharge of a firearm to the OIG “...immediately upon the receipt of adequate information [emphasis added] or allegations by [RES] to reasonably conclude that misconduct may have occurred, and no investigation shall be conducted by [RES] prior to the referral.”

RES Did Not Always Refer Allegations to DHS OIG, Consistent with Governing Authorities

We reviewed 282 RES investigative case files closed between fiscal years 2018 and 2022¹¹ and identified 186 allegations that RES did not refer to DHS OIG. We acknowledge that not all closed cases reviewed required referral. However, we identified 8 of the 186 cases RES should have referred to DHS OIG, per the 2003 MOU.

For example, per the 2003 MOU, RES is required to refer all allegations of misconduct against employees at the GS-15 level or higher and all instances regarding misuse or improper discharge of a firearm to OIG “immediately upon the receipt of adequate information or allegations . . . to reasonably conclude that misconduct may have occurred.” We reviewed seven cases involving GS-15s and/or a member of the Senior Executive Service (SES) for allegations including abuse of

¹⁰ Office of Personnel Management (OPM), Federal Investigations Notice No. 05-04, “Reinvestigation Products for Positions Requiring Q, Top Secret, or SCI Access,” September 16, 2005

¹¹ RES Inspection division provided a spreadsheet indicating that they closed 284 cases between FY 2018 and FY 2022. However, due to a computer error during the electronic data transfer, we only received 282 cases. We determined the difference of two in the sample size was not significant to affect the results of our findings.



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authority, harassment, retaliation, misuse of position, and a Hatch Act violation. Two of the seven cases featured allegations against the same GS-15. We also reviewed a case involving a law enforcement officer who discharged their weapon resulting in the death of an animal.

RES Delayed Referring Some Allegations of Misconduct to DHS OIG

The 2003 MOU mandates that referrals shall be transmitted to DHS OIG immediately upon receipt of the allegation when there is enough information to reasonably conclude that misconduct may have occurred. In those situations, no investigation shall be conducted by the OE offices prior to referral.” We reviewed 282 case files and identified 96 cases referred to DHS OIG. Of the 96 cases, RES referred 14 cases to DHS OIG more than 7 business days after initiating an investigation [emphasis added].

In 3 of the 14 cases, RES delayed referring the cases to DHS OIG for more than 50 days after initiating an investigation, even though these cases involved personnel at the GS-15 level or higher and/or involved criminal misconduct. For example, in one case involving three subjects accused of criminal misconduct, RES conducted interviews and administered polygraph examinations to each subject. Prior to referring the case to DHS OIG, one subject at the GS-15 level retired. Another subject’s security clearance was suspended, and they were placed on administrative leave. The third subject maintained full duty status.

Although these 14 cases were ultimately referred to DHS OIG, RES’ initiation of investigations prior to referral is not in compliance with *the 2003 MOU*, which requires RES to refer cases immediately upon the receipt of adequate information or allegations to reasonably conclude that misconduct may have occurred, and no investigation shall be conducted by the USSS Office of Inspection prior to referral [emphasis added].” In addition, RES’ investigative actions described above could have negatively impacted DHS OIG’s ability to conduct a criminal investigation. The *2003 MOU* addresses this potential outcome by precluding investigations “prior to referral.” RES is required to immediately refer allegations to DHS OIG for investigation when RES receives adequate information to reasonably conclude that the allegations are credible.

RES’ Intake Process Contributes to Untimely and Non-Referral of Employee Misconduct Allegations

RES’ allegation intake process contributes to untimely and non-referral of employee misconduct allegations. RES receives allegations of employee misconduct from multiple sources, including Secret Service directorates, internal online complaints, anti-harassment hotline emails, DHS OIG referrals, and the Secret Service’s public website. RES’ *Intake Procedures*¹² state that once issues

¹² *Directives System, ISP-02 (12/28/2020), Intake Procedures*, at page 1.



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of employee misconduct arise, Secret Service personnel must present the information to RES, which convenes an Intake Group¹³ to review the allegation(s). The *Intake Procedures* require Secret Service directorates to notify RES as soon as practicable of the need to convene the Intake Group, and not more than 7 business days from when the allegation was initially reported.

RES' *Intake Procedures* regarding allegations against SES-level employees,¹⁴ provide:

Where the [Secret Service] Directorate informs RES that the allegation is against an SES-level employee, RES will notify the Deputy Director of the need to convene the SES Intake Group.

This language contradicts the *2003 MOU* because RES policy requires additional steps — notifying the Deputy Director and convening the SES Intake Group — prior to RES making a determination to refer allegations of misconduct against employees at the GS-15 level or higher to DHS OIG. The *2003 MOU* directs RES to immediately refer all allegations of misconduct against employees at the GS-15 level or higher to the DHS OIG when there is adequate information to conclude misconduct may have occurred.

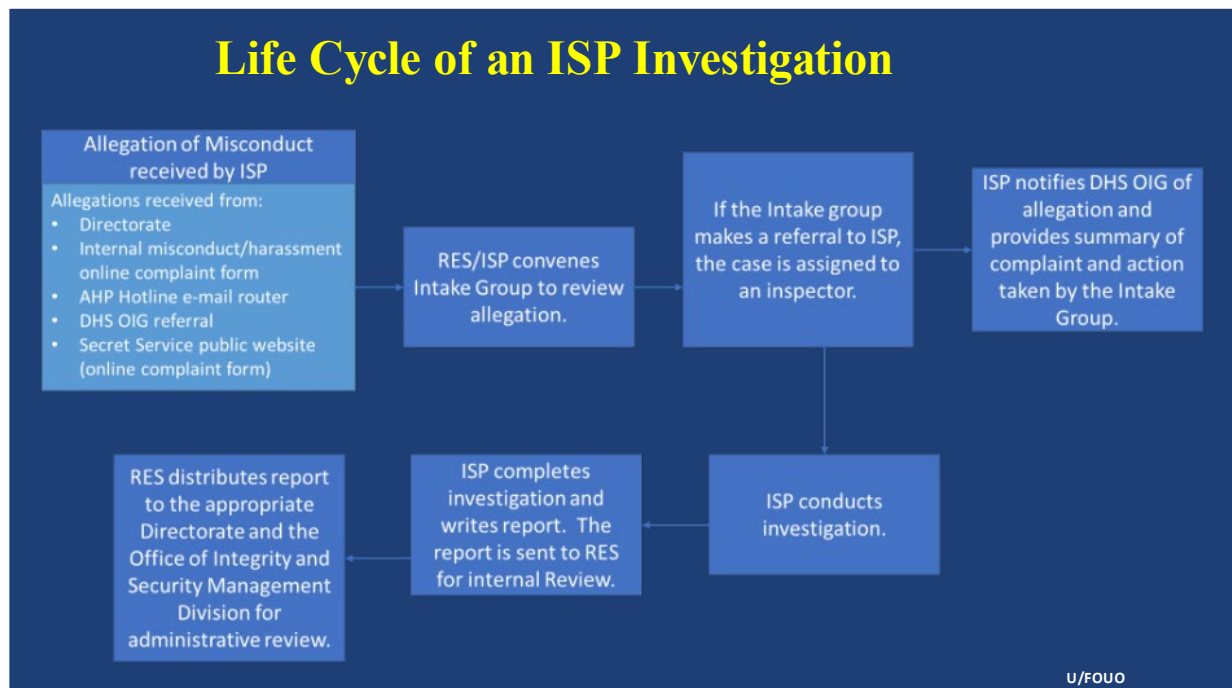
The Intake Group typically meets weekly to discuss allegation(s). Generally, the Intake Group decides for each allegation whether to *take no action*; *refer the allegation to the Secret Service Office of Integrity for discipline*; *return the allegation to the directorate for further investigation*; or *refer the allegation to RES for investigation*. When the Intake Group refers an allegation to RES for investigation, RES notifies DHS OIG of the allegation (see Figure 1).

¹³ The Intake Group includes representatives from RES, the Office of Integrity, the Office of the Chief Counsel, the Office of Security, and the directorate employing the subject of the misconduct allegation(s).

¹⁴ *Directives System*, ISP-02 (12/28/2020), *Intake Procedures*, at page 2.



Figure 1. RES Current Life Cycle for ISP Investigations



Source: U.S. Secret Service

RES must immediately refer all allegations covered under the 2003 MOU to DHS OIG upon receipt of adequate information associated with an allegation involving an employee at the GS-15/GM-15 lever or higher. Once DHS OIG declines to investigate an allegation, RES should handle the allegation in accordance with agency policies and procedures.

RES Needs to Establish New Policy and Update Existing Policy

RES Did Not Have Specific Guidance Regarding Administration of Rights Advisements During Interviews

RES policies state they conduct internal affairs investigations of administrative, non-criminal, and criminal allegations of Secret Service employee misconduct. However, RES' *Investigations of Alleged Employee Misconduct* policy¹⁵ does not provide standards for identifying the need for and providing appropriate advisements to employees during interviews. RES personnel emphasized they only conduct administrative investigations and, to their knowledge, have never conducted criminal investigations.

¹⁵ Directives System, RES-05 (12/01/2014), *Investigations of Alleged Employee Misconduct*, at page 2.



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The RES policy states, in part, “Employees being investigated during an administrative proceeding... are expected to voluntarily [emphasis added] cooperate with the investigation. Refusal to be interviewed, or lack of cooperation with the investigation, may be cause for dismissal.”

While DHS employees are generally required to assist investigators in the performance of their official duties, it is sometimes necessary for investigators to issue advisements informing the employee that that their statements or silence may be used in future administrative or criminal proceedings.

RES issues an administrative advisement to employees during an administrative inquiry. The language in the administrative advisement form states, “I understand that my answers may be used in an administrative or civil proceeding brought against me or a third party. I understand that if, during the course of this interview, I refuse to answer questions, fail to truthfully and fully respond to a question, or refuse to provide a written statement when asked to do so by inspectors, I could be subject to disciplinary action up to and including removal.” This language is similar to an advisement of rights normally associated with a *Kalkines*¹⁶ advisement, but does not notify the employee that their statements, nor any information or evidence gained by reason of such statements, cannot be used against them in a criminal proceeding.

In some cases, RES used a *Garrity*¹⁷ advisement form during administrative inquiries when the underlying conduct may give rise to future criminal proceedings. Although RES’ policies do not address *Garrity*, we found that between FY 2018 and FY 2022, RES used a *Garrity* form that stated, “...your silence may be used against you in an administrative proceeding.” Our review of the case files found RES used this form in eight cases and it was last used in October 2021. In response to our document request, we received an updated version of the form (it is unclear when RES updated the form) with modified language which states, “...the evidentiary value of your silence may be considered in administrative proceedings as part of the facts surrounding your case.” The revised language provides appropriate consideration for the totality of the circumstances rather than focusing solely on the impact of the employee’s silence.

¹⁶ *Kalkines v. United States*, 473 F.2d 1391 (1973). Once afforded these protections, a federal employee may be subject to disciplinary action, to include termination, for refusing to provide information or answer questions. Before RES provides a *Kalkines* warning, they must coordinate with DOJ for assurances that the matter will not be the subject of a criminal prosecution.

¹⁷ *Garrity v. New Jersey*, 385 U.S. 493 (1967) prohibits the government from using the threat of discharge to secure incriminatory evidence against an employee. For employees facing a choice between self-incrimination and job forfeiture, the Court held that circumstance to be categorically coerced, involuntary, and inadmissible in criminal proceedings against that employee.



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The RES policy further notes, “If during the course of an administrative inquiry possible criminal violations of law are suspected, the subject of the inquiry must be given the ‘*Miranda*’ warning.”¹⁸ The use of *Miranda* warnings during an administrative inquiry is inappropriate, since these are only required when the employee is subject to custodial interrogation (i.e., arrested or taken into custody for a criminal offense).

RES also lacks a clear policy regarding how and when to administer appropriate advisements during investigations. During our review of 282 cases, we found documentation in 24 cases indicating RES administered *Kalkines* and/or *Garrity* advisements/warnings to employees. Of the 24 cases, we found three cases where RES improperly administered advisements after the interview concluded.

RES Did Not Consistently Follow Its Audio Recording Procedures

Effective January 1, 2022, RES began recording its interviews. According to the draft *Standard Operating Procedures (SOPs) for the Digital Audio Recording of Administrative ISP Interviews*, “Investigators must follow the standard prerecording read-in and read-out process. This is to ensure that all interviewees are treated equally and that they are afforded the proper notifications of authorities and due process.” We found that RES did not consistently adhere to these procedures.

We identified four cases opened after January 1, 2022, with multiple audio recordings subject to the SOP. When reviewing the audio recordings, RES inspectors did not consistently follow the standard read-in procedures when conveying the information required. For example, RES inspectors began some recordings and standard read-in language outside the presence of the interviewees. Additionally, inspectors began to ask the interviewees questions prior to completing the standard read-in language. Although these examples are not policy violations, they demonstrate RES inspectors’ inconsistency when following the audio recording procedures during interviews.

The SOP requires “when the recorded interview begins, the inspector must ask the interviewee to verbally acknowledge that the interview is being recorded and that all answers must be verbalized.” However, in some recordings, RES inspectors stated the interview was being recorded and began issuing the oath without receiving the interviewees’ verbal acknowledgement. We also found that some interviewees were not explicitly told if they were the subject, complainant, or witness, as required by the SOP.

¹⁸ In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court established that the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.



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The read-in language states, “If warnings (Disclosure, Administrative, *Kalkines*, or *Garrity*) are required for an interviewee, then they will be a part of this ‘read-in’ language at the beginning of the interview.” This read-in language also states, “Advise the interviewee that this is an administrative (not criminal) investigation.” RES did not consistently notify interviewees that the investigation was administrative and not criminal, as required by the SOP.

The SOP also contains language that conflicts with the *IG Act*. The SOP states, “If any individual, to include a U.S. Secret Service employee, or entity external to the U.S. Secret Service [emphasis added], requests a transcript or audio record, they will be advised to do so in accordance with the Freedom of Information Act.” This language could restrict DHS OIG’s timely access to all records and should be modified to acknowledge that DHS OIG is exempt.

According to RES’ audio recording SOP, the purpose of audio recordings is to ensure that interviews provide a complete and accurate record of testimony. RES needs to ensure that inspectors consistently follow audio recording procedures to “better document events, actions, conditions, and statements obtained over the course of the investigative process” as described in the SOP. In addition, RES should update and finalize the draft audio recording SOP to ensure that DHS OIG receives timely access to information as specified in the *IG Act*.

RES Needs to Improve Law Enforcement Availability Pay (LEAP) and Firearms Training Records

Some RES Agents Did Not Meet LEAP Reporting Requirements

Title 5 U.S.C. § 5545a, *Availability Pay for Criminal Investigators*, allows criminal investigators to receive a 25 percent premium payment to ensure their availability for unscheduled duty more than the 40-hour basic workweek. Criminal investigators are required to work, or be available to work, substantial amounts of unscheduled duty that are not part of the normal 40-hour workweek and are not regularly scheduled overtime hours. Title 5 U.S.C. § 5545a(d) stipulates, “a criminal investigator shall be paid availability pay, if the annual average of unscheduled duty hours worked by the investigator is equal to or greater than 2 hours per regular workday.”

Our analysis of LEAP hours reported by 70 agents between FY 2018 and FY 2022 showed 14 agents failed to report annually an average of 2 hours of unscheduled work or availability in a regular workday (see Table 1).



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Table 1. Number and Percentage of RES Agents That Did Not Meet LEAP Reporting Requirements (FYs 2018-2022)

Fiscal Year	Total Agents	2 or More Hours of LEAP	Less than 2 Hours of LEAP	Percentage Per Year
2018	28	24	4	14.29%
2019	33	30	3	9.09%
2020	33	30	3	9.09%
2021	33	32	1	3.03%
2022	32	29	3	9.38%

Source: DHS OIG Analysis of RES data

Criminal investigators receiving LEAP and the appropriate supervisors “shall make an annual certification to the head of the agency attesting that the investigator has met and is expected to meet the requirement.”¹⁹ According to RES personnel, managers did not have access to employee personnel files containing LEAP certifications unless the employee was assigned to RES. As a result, RES was unable to provide LEAP certification documentation for all employees between FY2018 and FY2022. RES should ensure that its law enforcement-designated personnel complete LEAP hours as required by statute.

RES Needs to Improve Its Maintenance of Firearms Training Records

The Secret Service training manual requires that all gun carrying personnel complete handgun qualification training quarterly, and service rifle and submachine gun qualification training semi-annually during the FY. The training manual also states, “Authorized employees who fail to attend a mandatory qualification session must submit an SSF-4438 (Failure to Attend Firearms Qualification) form to their supervisor detailing the circumstances which prevented them from attending. Upon receipt, the supervisor will complete the supervisory section of the form to determine if the employee’s failure to attend was justified.”²⁰

We requested the training records of 27 inspectors who worked in RES between October 1, 2021, and September 30, 2022. Although RES provided a list of all inspectors who participated in firearms training, we were unable to determine if all inspectors completed their firearms training,

¹⁹ 5 U.S.C. § 5545a(e)(1).

²⁰ Training Manual RTC-05(08), Scheduling Guidelines for Qualification.



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as required, because some records were incomplete.²¹ Of the 27 inspectors, we could only confirm:

- 5 inspectors completed all requirements for the quarterly handgun qualification;
- 6 inspectors completed all requirements for the semi-annual submachine gun qualification; and
- 3 inspectors completed all requirements for the semi-annual service rifle training.

Due to the incomplete training records, we were unable to confirm if inspectors, who did not participate in the mandatory firearms training, submitted an SSF-4438 form to their supervisor.

RES personnel explained that Secret Service recently transitioned firearms training records from a Learning Management System to a personnel data application that records and stores firearms training data. During the transition, some training records were lost, and firearms coordinators could not access training records to verify if agents completed their mandatory firearms training as required. As a result, RES could not verify its personnel who were authorized to carry firearms received the required training during our review period. Although RES stated it is not their responsibility to store and track firearms training records, RES should be able to verify firearms training records for its law enforcement-designated personnel.

Recommendations

Recommendation 1: We recommend that the Assistant Director for the United States Secret Service Office of Professional Responsibility review and revise its intake procedures, or develop new procedures, to ensure that the Department of Homeland Security, Office of Inspector General receives timely and appropriate notice of all allegations of employee misconduct, consistent with the law.

Recommendation 2: We recommend that the Assistant Director for the United States Secret Service Office of Professional Responsibility develop and implement internal policies and procedures to ensure that individuals interviewed by the Office of Professional Responsibility are issued timely and appropriate advisements.

Recommendation 3: We recommend that the Assistant Director for the United States Secret Service Office of Professional Responsibility update and finalize the Office of Professional Responsibility's draft audio recording standard operating procedures to ensure consistency when recording interviews, and DHS OIG receives timely access to information consistent with the law.

²¹ In September 2022, DHS transitioned from the Performance and Learning Management System, which contained USSS' training records. Therefore, records are no longer available.



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Recommendation 4: We recommend that the Assistant Director of the United States Secret Service Office of Professional Responsibility develop and implement a process to ensure the Office of Professional Responsibility's law-enforcement designated personnel complete Law Enforcement Availability Pay requirements, consistent with the law.

Recommendation 5: We recommend that the Assistant Director of the United States Secret Service Office of Professional Responsibility develop and implement a process to effectively track the Office of Professional Responsibility's personnel firearms training requirements and records of completion.

Management Comments and OIG Analysis

Secret Service provided management comments on a draft of this report. We included the comments in their entirety in Appendix B. We also received technical comments from Secret Service on the draft report and revised the report as appropriate. Secret Service concurred with recommendations 3 and 5, which we consider open and resolved. Secret Service did not concur with recommendations 1, 2, and 4, however, we consider recommendation 4 open and resolved. Recommendation 1 is open and unresolved, and recommendation 2 is resolved and closed. A summary of the Secret Service's response and our analysis follows.

Secret Service Response to Recommendation 1: Non-concur. Secret Service stated that RES follows the referral requirements in the 2003 MOU and its current policy and procedures are sufficient to ensure that the OIG receives timely and appropriate notification of allegations of misconduct as dictated in the 2003 MOU. Secret Service stated that, with the incorporation of the 2003 MOU into MD 0810.1's language, the drafters of MD 0810.1 made the intent clear that the 2003 MOU is the controlling authority for the Secret Service. Secret Service requested that the OIG consider this recommendation resolved and closed.

OIG Analysis: We do not consider Secret Service's actions responsive to the intent of the recommendation, which is open and unresolved. Although Secret Service stated it follows the referral requirements in the 2003 MOU, Secret Service did not consistently refer some allegations as required under the 2003 MOU and delayed referring other allegations of employee misconduct, sometimes for months. Therefore, Secret Service should review and revise its intake procedures or develop new procedures, to ensure that allegations of employee misconduct are referred timely to DHS OIG in accordance with departmental policy. We will consider closing this recommendation upon receipt and review of new or revised policy.

Secret Service Response to Recommendation 2: Non-concur. In August 2023, Secret Service updated its *Investigations of Alleged Employee Misconduct* policy. Secret Service stated this updated policy addresses the OIG's concerns regarding federal employee protections because it



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removed confusing language and now contains a detailed discussion of employee cooperation relative to RES investigative interviews. Secret Service also stated the policy explains the administrative warnings that may be provided and the circumstances where an employee may be provided with *Kalkines* or *Garrity* warnings. The policy also provided the language for those advisements. Secret Service requested that the OIG consider this recommendation resolved and closed.

OIG Analysis: Although Secret Service non-concurred with this recommendation, we consider Secret Service's actions responsive to the intent of the recommendation. Secret Service's updated *Investigations of Alleged Employee Misconduct* policy issued in August 2023 addresses the OIG's concerns regarding alleged employee misconduct investigations and the advisements associated with those investigations. We consider this recommendation resolved and closed.

Secret Service Response to Recommendation 3: Concur. Secret Service stated it has already implemented several mechanisms to ensure consistency when recording interviews. Secret Service noted that the audio recordings the OIG reviewed were the first cases recorded under the new process in 2022 and it is not surprising that there were some inconsistencies. Secret Service asserts that, in recent years, inspectors receive a copy of the SOP and supplemental training in addition to experienced mentors to guide them through investigative procedures including recorded interviews. Secret Service stated that management ensures personnel abide by the SOP and the current practices are sufficient to ensure RES personnel adhere to the SOP requirements. Secret Service stated it will revise the SOP and include language to ensure DHS OIG receives timely access to information as specified by law. The estimated completion date is January 30, 2025.

OIG Analysis: We consider Secret Service's actions responsive to the intent of the recommendation, which is open and resolved. We will consider closing this recommendation once we receive the updated, final version of the SOP.

Secret Service Response to Recommendation 4: Non-concur. Secret Service stated they have a process for annual LEAP certifications and that information is retained within an electronic database. Additionally, Secret Service stated its supervisors use a dashboard that identifies how many LEAP hours each of their law enforcement personnel average so they can take appropriate action if hours are not being met. Secret Service requested that the OIG consider this recommendation resolved and closed.

OIG Analysis: Although Secret Service non-concurred with this recommendation, we consider Secret Service's actions responsive to the intent of the recommendation, which is open and resolved. We will consider closing this recommendation once we receive Secret Service's policy (HUM-10(06)) and documentation demonstrating Secret Service's dashboard, and its ability to monitor LEAP hours for law enforcement-designated personnel.



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Secret Service Response to Recommendation 5: Concur. The DHS Performance and Learning Management System Secret Service used to record, store, and report on firearms training information was decommissioned in September 2022. Since then, Secret Service has used the Interim Training Administration Site to track, store, and report on agency-wide training data. Secret Service stated it is currently in the acquisition process for an agency-wide training management system that will be configured to alert employees and supervisors of upcoming deadlines and track reoccurring firearms requalification for all Secret Service gun carriers. Secret Service anticipates the system and associated policy will be fully implemented by May 30, 2025.

OIG Analysis: We consider Secret Service's actions responsive to the intent of the recommendation, which is open and resolved. We will consider closing the recommendation once Secret Service implements the agency-wide training management system and we receive the associated agency policy.



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Appendix A: Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Pub. L. No. 107-296) by amendment to the *Inspector General Act of 1978*, 5 U.S.C. §§ 401-424.

We examined the United States Secret Service (Secret Service), Office of Professional Responsibility (RES) to assess compliance with its internal policies and procedures, departmental policies, and other relevant laws and guidelines, regarding internal affairs investigations. We conducted this review between December 2022 and April 2023 completing onsite fieldwork at Secret Service headquarters in Washington, DC, from February 21-23, 2023. The review covered RES investigative activities from FY 2018 to FY 2022.

Our areas of inspection include case file review; evidence review; firearm/ammunition inventory; training requirements; personnel security; technical equipment; and fleet management. However, because RES indicated they only conduct administrative investigations, we did not inventory evidence or technical equipment.

We held discussions with RES management officials to obtain background information. RES management officials also provided policies and procedures governing operations. We reviewed administrative and investigative program areas using checklists tailored to RES' policies and procedures, DHS policies, and applicable laws. We examined 282 closed investigative cases. We also conducted 14 interviews with RES and Secret Service personnel.

We conducted this review under the authority of the *Inspector General Act of 1978*, 5 U.S.C. §§ 401-424, and according to the *Quality Standards for Inspection and Evaluation*, issued by the Council of the Inspectors General on Integrity and Efficiency.



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DHS OIG's Access to DHS Information

During this review, the United States Secret Service provided timely responses to our requests for information and did not delay or deny access to information we requested.



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Appendix B:

United States Secret Service Comments on the Draft Report



U.S. Department of Homeland Security
UNITED STATES SECRET SERVICE

Washington, D.C. 20223

BY ELECTRONIC SUBMISSION

September 19, 2024

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Ronald L. Rowe, Jr. *R. Rowe*
Acting Director
United States Secret Service

SUBJECT: Management Response to Draft Report: "Oversight Review
of the U.S. Secret Service, Office of Professional
Responsibility" (Project No. 23-011-OI-USSS)

Thank you for the opportunity to comment on this draft report. The U.S. Secret Service (Secret Service) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

The Secret Service is pleased to note OIG's recognition that the law enforcement personnel assigned to the Office of Professional Responsibility (RES) satisfied Lautenberg Amendment certification, as well as personnel security requirements for periodic background reinvestigations and that RES accurately accounted for all firearms, credentials, and government-assigned vehicles. The Secret Service values RES for its dedication and commitment to fulfilling its mission of reviewing and investigating the actions of Secret Service personnel, programs, and offices to ensure compliance with and adherence to internal and external policies, procedures, and protocols. The Secret Service remains committed to continuously improving the timeliness of RES' reporting, the effectiveness and efficiency of its operations, and the clarity of its policies.

The Secret Service appreciates OIG's deletion of one recommendation, the rewording of two other recommendations, and corrections and clarifications made to the draft report in response to nearly 100 technical comments¹ provided by program officials and subject

¹ Such feedback is not intended to substantially alter any of OIG's overall findings, conclusions, or recommendations; rather, they are to strengthen audit products by improving accuracy, helping to ensure and validate workable solutions, and minimizing the number of non-concurrences. This process also helps foster mutually beneficial and production relationships with the audit agencies, while maintaining and respecting auditor independence.



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matter experts on July 29, 2024, and our original management response letter, dated September 13, 2024. Although OIG took over five weeks to provide a response to the technical comments on September 5, 2024,² Secret Service acknowledges that the comments were extensive, and understands that the modifications made by OIG corrected many mischaracterizations of Secret Service policies, clarified several RES operations, and recognized inaccuracies in certain of OIG's data analyses. Secret Service leadership, however, remains concerned that OIG's draft report still contains inaccurate representations of RES' policies, procedures, and practices, which provides readers with misleading information.

During OIG's fieldwork for this review, for example, OIG personnel remarked multiple times that RES' operations are unique from other U.S. Department of Homeland Security (DHS, or the Department) Components, and how the OIG team had not previously encountered a Component that does not conduct its own internal criminal investigations. While OIG's lack of experience and familiarity with RES' operations may have contributed to the audit team's confusion, it does not excuse the draft report's numerous missteps that include, but are not limited to, the continued application of the incorrect controlling standard for reporting allegations of misconduct to OIG, a misunderstanding of RES policies, and the misinterpretation of relevant caselaw.

One of the most significant of these missteps is the application of an incorrect standard for when allegations of misconduct must be referred to the OIG. It is important that readers understand that the majority of the findings in OIG's draft report are compromised because OIG's analyses utilize DHS Management Directive (MD) 0810.1 Appendix A (App. A)³ as the controlling standard for RES misconduct referral requirements, rather than the Memorandum of Understanding (MOU) between the OIG and the Secret Service.⁴ The MD 0810.1, App. A requires a DHS Component to refer an allegation of reportable misconduct to the OIG "immediately upon the receipt of the allegation" if it belongs to any of six categories of misconduct identified, and leaves a Component no discretion on when, or if, it can refer allegations of reportable misconduct to the OIG. In contrast, the 2003 MOU, which MD 0810.1 explicitly incorporates by reference, grants the Secret Service discretion regarding when, or if, RES makes a referral of an allegation of misconduct. Under the 2003 MOU, RES must refer an allegation of reportable misconduct "immediately upon the receipt of *adequate information or allegations* by [RES] to *reasonably conclude* that misconduct *may have occurred*" (emphasis added). In other words, RES is not required to "promptly advise" OIG of all allegations of misconduct. Instead, it must refer an allegation of reportable

² This was received after the original management response letter began moving through the final clearance process for signature and distribution.

³ "The Office of Inspector General," dated June 10, 2004.

<https://www.oig.dhs.gov/sites/default/files/0810.1%20The%20Office%20of%20Inspector%20General.pdf>

⁴ "Memorandum of Understanding Between the United States Secret Service and the Office of the Inspector General Department of Homeland Security;" signed December 2003.



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misconduct *only* if it has “adequate information or allegations” that allows it to “reasonably” conclude that reportable misconduct may have occurred.

While OIG recognizes the existence of the MOU, the draft report reaches the conclusion that MD 0810.1, App. A is the superseding authority and takes precedence, meaning that RES must abide by the immediate reporting requirements of App. A, *and* simultaneously follow the requirements of the 2003 MOU, which does not mandate immediate reporting. This conclusion is not only contrary to the plain language of MD 0810.1, but also leads to contradictory and inequitable results.

OIG’s reasoning as articulated in the draft report is premised solely on MD 0810.1, Section I, “Purpose,” which states that “[a]ny prior . . . agreement of any kind issued by or entered into by any DHS official or Component that is inconsistent in any respect with this directive is hereby superseded to the extent it is inconsistent with this directive.” This general statement, however, is followed by the specific provisions of Section VI.B, “Policy and Procedures,” that explicitly states:

Allegations received by the OIG or OE offices ***shall be retained or referred*** in accordance with Appendix A of this MD. The ***only exception*** to this requirement is that the ***OIG and the United States Secret Service will adhere to the terms of the [MOU]*** entered into between those two entities on December 8, 2003. . . . (emphasis added)

It is clear from this that the drafters of MD 0810.1 were aware of the existence of the 2003 MOU, as MD 0810.1 was issued June 10, 2004, just six months after the 2003 MOU became effective. By having Section IV.B acknowledge and incorporate the 2003 MOU by reference, and include an explicit direction that the Secret Service will adhere to the 2003 MOU, not App. A, the clear intent was to designate the MOU as the controlling authority for the Secret Service.⁵ Indeed, the 2003 MOU states that its purpose was “to prevent duplication of effort and ensure the most effective, efficient and appropriate use of resources.” Fundamental canons of construction⁶ dictate that words are to be understood in their “plain meaning,” that the four corners⁷ of the written document should be examined first to determine intent, and that any interpretation that leaves portions of the document inoperative, meaningless, or superfluous must be rejected.⁸ More plainly, the writing must be interpreted as a whole, giving a reasonable, lawful, and

⁵ The original draft of MD 0810.1 circulated for review in May 2004 did not include the exception language, which was added after the Secret Service noted its non-concurrence to that draft of the MD and highlighted the existence of the 2003 MOU.

⁶ A system of rules or maxims that is used to interpret legal instruments.

⁷ A phrase used to explain that a document’s meaning should be derived from the document itself, *i.e.*, from its language and all matters encompassed in it.

⁸ See *Aleman Food Serv., Inc. v. United States*, 994 F.2d 819, 822 (Fed. Cir. 1993); *Hol-Gar Mfg. Corp. v. United States*, 351 F.2d 972, 979-80 (Ct. Cl. 1965); *Blake Constr. Co. Inc. v. United States*, 987 F.2d 743, 746-47 (Fed. Cir. 1993).



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effective meaning to all its terms, and ascertaining the meaning in light of all the circumstances surrounding the parties at the time the contract was made.⁹ The interpretation in OIG's draft report ignores all of these basic principles.

Additionally, OIG's conclusion that RES must abide by *both* MD 0810.1, App. A, and the 2003 MOU, rather than the 2003 MOU, leads to absurd results. For example, in asserting that the categories of misconduct in the MD and MOU "generally align," the draft report states that MD 0810.1, App. A, *but not* the 2003 MOU, requires reporting of serious, non-criminal misconduct against a law enforcement officer, implying that RES should have been reporting such allegations immediately upon receipt. However, the 2003 MOU specifies that RES must *only* report allegations against GS-15 level or higher employees once there is information to reasonably conclude that misconduct has occurred. This would mean that RES would be immediately reporting all allegations against law enforcement personnel *except* misconduct by high-ranking Secret Service officials. Later in the draft report, OIG concludes that the Secret Service's "allegation intake" process contributes to untimely and non-referral of employee misconduct allegations because both MD 0810.1, App. A and the 2003 MOU direct RES to refer all allegations of misconduct against employees at the GS-15 level or higher. This would mean that RES must *both* transmit such allegations *immediately upon receipt and wait* to transmit those same allegations only *once adequate information has been obtained* to reasonably conclude that misconduct has occurred.

This places RES in the untenable position of not knowing what standard to follow, with apparently portions of the 2003 MOU being "superseded" while other unknown portions remain in effect. This position is made even more inequitable by the fact that, in the 20 years that the 2003 MOU and MD 0810.1 have been in place, RES is unaware of anyone from OIG ever providing notice that the 2003 MOU was not the controlling document for RES operations. This is despite OIG both being aware of RES' referral practices, and having the ability to unilaterally revoke the MOU.¹⁰ Accordingly, each of OIG's findings regarding RES' purported noncompliance with reporting requirements for allegations of employee misconduct are based upon OIG's application of the incorrect standard for RES operations.¹¹

With respect to MD 0810.1, DHS leadership was disappointed that OIG commented in footnote 6 of the draft report that:

⁹ *Hensel Phelps Constr. Co. v. Cooper Carry Inc.*, 861 F.3d 267, 272 (D.C. Cir. 2017).

¹⁰ The 2003 MOU provides that it "shall be effective upon the signature of both parties and shall remain in effect until revoked by one party upon thirty day's written notice to the other."

¹¹ Further exacerbating the issues resulting from use of the incorrect standard, there remain multiple errors in OIG's data analysis. For example, OIG's draft report identifies cases that OIG believes RES improperly either non-referred or untimely referred. When the OIG team shared its data underlying these findings, RES identified errors in the data including instances of double counting the same allegation because the case was assigned different case numbers for administrative reasons, and calculated timeframes using incorrect dates.



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To date, neither MD 0810.1 nor the 2003 MOU incorporated by reference have been amended. We note that the MOU and MD 810.1 may not be consistent with the law . . . Public Law 117-103, Department of Homeland Security Appropriations Act of 2022 directs the Secretary to review and revise MD 0810.1, as warranted, to ensure the Department has clearly delineated roles and responsibilities for each of its oversight bodies while preserving the DHS OIG's independence and authorities pursuant to the IG Act.

The Department circulated draft revisions to MD 0810.1 on November 2, 2023. This update is being undertaken, in part, at the direction of Congress¹² and in accordance with the DHS Directives System,¹³ which establishes the policy, responsibilities, and process for preparing, coordinating, and submitting Directives for approval and issuance by DHS and applies throughout DHS. However, despite DHS efforts to coordinate with OIG on this update, OIG refused thus far to substantively participate in that review process. Instead, on November 30, 2023, the IG sent a letter to the Secretary with a copy to various members of Congress stating (1) in order to maintain its independence, OIG would not offer an opinion on the proposed revisions, and (2) his legal objections to the proposed revisions and questioning the legal sufficiency of Congress's direction to revise MD 0810.1. To date, OIG's continuing refusal to substantively participate in the directive review process has impaired the Department's efforts in updating MD 0810.1. Notwithstanding, comments from across the Department have been received and adjudicated, and the resultant revised proposed revisions to MD 0810.1 are currently being circulated for further review, which provides OIG another opportunity to substantively participate in the revision process.

In addition, OIG's conclusions in the draft report that RES policies and practices conflict with protections afforded to federal employees demonstrate a fundamental misunderstanding of relevant caselaw, in particular *Garrity v. New Jersey*, 385 U.S. 493 (1967). In *Garrity*, police officers who were questioned in a misconduct investigation were told they could "refuse to answer if the disclosure would tend to incriminate" them, but if they "refused to answer [they] would be subject to removal from office." *Id.* at 494. The Supreme Court determined that putting the police officers to a choice between "either forfeit[ing] their jobs or incriminate[ing] themselves" violated the police officers' constitutional Due Process rights because the option between losing their "livelihood" or "pay[ing] the penalty of self-incrimination" was the "antithesis of free choice to speak out or to remain silent." *Id.* at 497-98. Because of this constitutional violation, the Court held that the government was prohibited from using the police officers' statements in a later criminal proceeding. *Id.* at 497-98, 500. In other words, *Garrity* "prohibits use in subsequent *criminal* proceedings of *statements* obtained under threat of removal from

¹² 168 CONG. REC. H1709, H2397 (Mar. 9, 2022).

¹³ DHS Directive 112-01, "Directives System," dated September 26, 2011.



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office. . . ." *Id.*, 385 U.S. at 500 (emphasis added); *see also United States v. Stein*, 233 F.3d 6, 15 n.4 (1st Cir. 2000) ("Where the government seeks to compel testimony by threat of loss of livelihood, the witness may rightfully refuse to answer unless he is protected against the use of the compelled answers in any subsequent criminal case."); *Nat'l Fed'n of Fed. Emps. v. Greenberg*, 983 F.2d 286, 291-92 (D.C. Cir. 1993) (same).

Garrity, however, does not prevent the government from noting that an interviewee asserted his Fifth Amendment privilege—along with other evidence—in a subsequent administrative proceeding. Nor does it prevent a deciding official from drawing an adverse inference from the employee's choice to remain silent. To ensure Secret Service employees fully understood all their rights, and the consequences of invoking those rights, RES' "Garrity Warning" form told employees that they may invoke their right against self-incrimination but, if they do, that their "silence may be used against [them] in an administrative proceeding." OIG's draft report asserts that, while this language does not "technically" violate *Garrity*, it "negates the purpose of *Garrity*" because threatening the "possibility of 'administrative proceedings' or sanctions" could lead to an employee's statements being considered compelled and unusable in a criminal proceeding. Contrary to OIG's supposition, "[i]t is well settled that the government need not make the exercise of the Fifth Amendment privilege cost free." *See McKune v. Lile*, 536 U.S. 24, 41 (2002). Further, "the Fifth Amendment does not preclude a presiding official from drawing adverse inferences when an appellant refuses to testify at a hearing in response to probative evidence offered against him or her." *See, e.g., Book v. U.S. Postal Serv.*, 6 M.S.P.R. 378, 380 (1981), *aff'd*, 675 F.2d 158 (8th Cir. 1982); *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) (holding prison disciplinary board did not violate inmate's Fifth Amendment right against self-incrimination when it drew an adverse inference against him for remaining silent after it told him it would if he refused to testify at an administrative hearing).

It appears that OIG is advocating that, rather than transparently informing an employee that an adverse inference could be drawn from their silence in a later administrative proceeding, employees must be shielded from this information because it could be considered threatening and thus coercive. The Secret Service, however, believes that decisions based on more information are always better than those based on less. After all, the whole purpose of providing employees *Garrity* warnings is to ensure employees are fully informed of their rights, and the consequences of invoking those rights before they decide whether to make a statement. *See Garrity*, 385 U.S. at 498 (citing *Miranda v. Arizona*, 384 U.S. 436 (1966)).

Indeed, OIG's draft report findings on this matter are not only at odds with *Garrity*, but also contradict advice in OIG's own investigative manual. In the "Subject Interviews" chapter of the "Department of Homeland Security Inspector General Special Agent Handbook," dated June 2013, OIG special agents are advised of the various warnings they must administer prior to conducting employee interviews. Included in that chapter is



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a description of “*Beckwith Rights*,” *i.e.*, the *Garrity* counterpart warnings that OIG agents must administer to certain bargaining unit employees of the U.S. Customs and Border Protection (CBP). *See id.* At Chapter 10, p. 9. The Special Agent Handbook advises OIG agents that “[i]n circumstances in which it is appropriate to administer . . . *Garrity* . . . ([the CBP collective bargaining agreement] uses the term “*Beckwith*” instead of “*Garrity*”) warnings, for CBP/NTEU employees use the . . . “*Beckwith Rights*” . . . [f]orm” *See id.* (emphasis added). The Handbook also contains a copy of OIG’s *Garrity/Beckwith* form (INV Form-110),¹⁴ which, in relevant part, reads:

If you refuse to answer the questions posed to you on the grounds that the answers may tend to incriminate you, you cannot be discharged solely for remaining silent. ***However, your silence can be considered in an administrative proceeding for its evidentiary value that is warranted by the facts surrounding your case.*** (emphasis added).

Since OIG requires its own investigators to use *Garrity/Beckwith* warnings that are virtually identical, including a reference to an “administrative proceeding,” to the RES warnings criticized by OIG, it is difficult to comprehend why the OIG asserts that RES’ warnings negate the purpose of *Garrity*.¹⁵

Finally, Secret Service leadership is concerned with the overall tone and characterizations of the draft report. Throughout the report, OIG identifies minor issues that are then characterized as major errors. For example, OIG’s draft report concludes that RES policies and practices may result in employees not being afforded due process based, in part, on OIG’s objection to when a warning was given in three cases, OIG’s misunderstanding of the types of warnings, and OIG’s analysis of the policy it knew is no longer in effect. The draft report neither recognizes that many of the deficiencies identified occurred years ago, nor acknowledges the corrective action proactively taken by RES independent of the OIG’s review. Instead, OIG generally couches all its conclusions in terms of failures, non-compliance, and inadequacies. By doing so, the report leaves a reader with the mistaken impression that RES operations blatantly flout the law and regularly violate employee rights, despite OIG’s underlying data not supporting those extreme conclusions.

¹⁴ “National Treasury Employees Union (NTEU) Advisement: Beckwith Rights,” INV Form 110. Chapter 10, pg. 25, Exhibit 10-10.

¹⁵ Additionally, OIG appears to be operating under the misapprehension that warnings are required for all interviews, confusing – or conflating – administrative warnings (used where then is no reason to believe elicited statements will be used in a criminal proceeding) with *Kalkines* warnings (used when an employee is being questioned about potential criminal misconduct), and going so far as to assert, without support, that “it is often necessary for investigators to issue warnings informing the employees of their rights.” While that may be true of other DHS Components, as noted previously, RES does not conduct criminal investigations. As such, the need to administer warnings does not often arise, with OIG identifying warnings administered in fewer than 9 percent of cases.



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The draft report contains five recommendations, three with which the Secret Service non-concurs (Recommendations 1, 2, and 4) and two with which Secret Service concurs (Recommendation 3, 5). Attached, find our detailed response to each recommendation. The Secret Service previously submitted technical comments addressing several accuracy, contextual, sensitivity, and other issues under a separate cover for OIG's consideration, as appropriate.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions.

Attachment



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Attachment: Management Response to Recommendations Contained in OIG 23-011-OI-USSS

OIG recommended that the Secret Service Assistant Director for RES:

Recommendation 1: Review and revise its intake procedures, or develop new procedures, to ensure that the Department of Homeland Security, Office of Inspector General receives timely and appropriate notice of all allegations of employee misconduct consistent with the law and policy.

Response: Non-Concur. RES' referral requirements are outlined in the 2003 MOU, under which RES must refer an allegation of reportable misconduct "immediately upon the receipt of adequate information or allegations by the [Secret Service] Office of Inspection to reasonably conclude that misconduct may have occurred."

Accordingly, the current intake procedures require that allegations of misconduct referred to RES for presentation to the Intake Group must contain supporting documentation and the available facts and circumstances surrounding the matter. This process ensures that there are sufficient facts presented to enable the Intake Group to determine whether a claim of misconduct may be supported. Further, time is allotted to the directorates to facilitate their ability to gather adequate information so that the Intake Group may reasonably conclude whether employee misconduct has occurred prior to referral to DHS OIG. As such, current policy and procedures are sufficient to ensure that the OIG receives timely and appropriate notification as dictated by the requirements of the 2003 MOU.

Further this recommendation is founded on the premise that RES must abide by *both* MD 0810.1, App. A, and the 2003 MOU, and its policies must be revised to enable RES to immediately refer allegations of misconduct upon receipt and simultaneously wait to refer allegations of misconduct until adequate information has been obtained to reasonably conclude that misconduct has occurred. OIG's reliance on MD 0810.1, Section I, "Purpose," as the only support for its interpretation that the MD "supersedes" the MOU is misinformed. The general language of Section I is followed by the *specific* provisions of Section VI.B, "Policy and Procedures," that explicitly states, "[a]llegations received by the . . . OE offices *shall be retained or referred* in accordance with Appendix A of this MD. The *only exception* to this requirement is that the *OIG and the United States Secret Service will adhere to the terms of the [2003 MOU]. . .*" (emphasis added). MD 0810.1 was issued June 10, 2004, just six months after the 2003 MOU became effective. By having Section IV.B acknowledge and incorporate the 2003 MOU by reference, and include an explicit direction that the Secret Service will adhere to the 2003 MOU, not App. A, the drafters of MD 0810.1 made their intent clear. By the plain language of MD 0810.1, the 2003 MOU was designated as the controlling authority for the Secret Service.



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Secret Service requests that the OIG consider this recommendation resolved and closed.

Recommendation 2: Develop and implement internal policies and procedures to ensure that individuals interviewed by United States Secret Service, Office of Professional Responsibility, are afforded their legal rights and issued appropriate warnings.

Response: Non-Concur. This recommendation appears to be associated with a single RES policy, “Investigations of Alleged Employee Misconduct,”¹⁶ discussed in the OIG’s draft report. This policy was administratively transferred to RES from another directorate in October 2022, to allow RES to review and appropriately update the policy to conform with RES practices, and did not reflect practices followed by RES. The final version of the policy was published on August 28, 2023, and was provided to the OIG on July 31, 2024. This updated policy addresses the OIG’s draft report concerns regarding federal employee protections. Specifically, the 2023 RES-05 removes language regarding criminal investigations, *Miranda* warnings, and voluntariness that may have caused confusion. RES-05 now contains a detailed discussion of employee cooperation requirements relative to RES investigative interviews and explains the administrative warnings that may be provided. The policy also explains the circumstances where an employee may be provided with *Kalkines* or *Garrity* warnings and provides the language of those advisements.

Furthermore, this recommendation appears to derive from OIG’s misinterpretation or misunderstanding of *Garrity* in which the draft report alleges that: 1) RES previously used a “*Garrity* Warning” form that “negates the purpose of *Garrity*,” and 2) RES later employed an updated “*Garrity* Warning” form that contained similar defects. As previously discussed, the OIG’s draft report claims that RES’ forms do not “technically” violate *Garrity*, but essentially amount to a threat of administrative proceedings or sanctions, which could cause the employee’s statement to be considered compelled, thereby undermining the purpose of *Garrity*.

However, the conclusions in OIG’s draft report are incorrect. *Garrity* does not prevent the government from using an interviewee’s assertion of his Fifth Amendment privilege—along with other evidence—in a subsequent administrative proceeding. Federal courts have long held that an invocation of the right to remain silent may give rise to adverse inferences in civil actions, to include administrative proceedings. See, e.g., *Baxter v. Palmigiano*, 425 U.S. 308, 318-320 (1976). The language of RES forms, in fact, closely mirrors language OIG investigators are instructed to use themselves: “However, your silence can be considered *in an administrative proceeding* for its evidentiary value that is warranted by the facts surrounding your case.” The *Garrity* warning language used by RES is in harmony with the law and protective of employee

¹⁶ RES-05, “Investigations of Alleged Employee Misconduct,” dated December 1, 2014.



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rights.

Secret Service requests that the OIG consider this recommendation resolved and closed.

Recommendation 3: Update and finalize the draft United States Secret Service, Office of Professional Responsibility’s audio recording standard operating procedures to ensure consistency when recording interviews, and DHS OIG receives timely access to information as specified by law.

Response: Concur. RES has already put in place several mechanisms to ensure consistency when recording interviews. OIG’s review, covering fiscal years 2018 to 2022, only encompassed the first cases to utilize what was then a completely new process that had begun in 2022; as such, it is unsurprising that there were some inconsistencies. In the two fiscal years since, RES recorded over 500 interviews. Inspectors are given a copy of, and educated on, the “Standard Operating Procedures for the Digital Audio Recording of Administrative ISP Interviews” (SOP) and its requirements when they first join RES and receive supplemental training and reminders throughout their time in the division. Additionally, inspectors are paired with experienced mentors who guide them through all RES investigative procedures, which includes participating in recorded interviews as a second chair and conducting recorded interviews while paired with more senior investigators. RES management also ensures that personnel abide by the SOP by observing interviews as a quality control mechanism. As such, current practices are sufficient to ensure that RES personnel adhere to the requirements of the SOP.

RES will revise the SOP to ensure DHS OIG receives timely access to information as specified by law. RES notes that the original language in the draft SOP regarding requests for transcript and audio recordings by outside parties was never intended to apply to DHS OIG. RES is currently in the process of revising and finalizing the SOP and, as part of that update, will include the following language in the section of the document addressing requests for transcript and audio recordings: “These provisions do not apply to requests made by the Department of Homeland Security, Office of Inspector General (DHS OIG), which has the right to receive timely access to information as specified by law.” RES anticipates that the updates and revisions to the SOP will be completed early next year.

Estimated Completion Date (ECD): January 30, 2025.

Recommendation 4: Develop and implement a process to ensure United States Secret Service, Office of Professional Responsibility law-enforcement designated personnel complete Law Enforcement Availability Pay requirements, as required by statute.

Response: Non-Concur. A Secret Service process currently exists for annual certification, as referenced in our internal policy, HUM-10(06), “Premium Pay,” dated



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January 30, 2024. Special agents are required to provide annual certifications via memorandum attesting that the employee meets, and is expected to continue to meet, the “substantial hours” requirement for LEAP as defined in 5 CFR 550.183 during the upcoming one-year period. Certifications are signed and dated by the employee and supervisor and retained in the employee’s personnel file, now located within an electronic database called the Personnel and Records Information System. On July 31, 2024, RES provided the available LEAP documentation in its possession for its personnel, along with an explanation of how those documents are stored. Additionally, supervisors utilize a dashboard that identifies how many LEAP hours each of their law enforcement personnel are averaging so that they may take any appropriate actions if appropriate hours are not being met.

Secret Service requests that the OIG consider this recommendation resolved and closed.

Recommendation 5: Develop and implement a process to effectively track United States Secret Service, Office of Professional Responsibility personnel firearms training requirements and records of completion.

Response: Concur. The DHS Performance and Learning Management System (PALMS) was the Learning Management System (LMS) that the Secret Service used to record, store, and report on firearms training information until September 2022. At that time, PALMS was decommissioned after the contract to operate it expired and the system reached the end of its lifecycle. To meet the immediate need to provide training, and to track, store, and report on agency-wide training data, the Secret Service developed and deployed the Interim Training Administration Site (ITAS) while decommissioning the previous system of record.

ITAS consists of several interconnected applications. One of the applications is ePerson, a Secret Service personnel data application that records and stores firearms training data for all gun-carrying Secret Service personnel. Since December 2022, firearms data is provided to authorized personnel through the standardized dashboard. Enhancements to the dashboard reporting is ongoing with the goal of providing precise firearms data metrics to agency personnel.

Prior to the deployment of ITAS in September 2022, it is important to clarify that the Secret Service established processes to record and report agency-wide firearms data was documented in the “United States Secret Service Directives System Manual,” dated July 13, 2022, section RTC-05(08), which stated, “All firearms scores must be entered into the LMS by a firearms instructor or designee.” As the policy documented in RTC-05(08) was revised while DHS PALMS was still in use by the Secret Service, “LMS” is understood to be the system in which firearms instructors or designees should record firearms scores, despite not mentioning ePerson. For the purposes of this policy, and consistent with its intent, “LMS” is synonymous with ITAS even if ITAS is not an LMS.



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The Secret Service is currently in the acquisition process for an agency-wide training management system that will be configured to alert employees and supervisors of upcoming deadlines and track reoccurring firearms requalification's for all Secret Service gun carriers. We anticipate that both the agency-wide training management and the associated agency policy will be fully implemented by the end of May 2025.

ECD: May 30, 2025.



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Appendix C: DHS Management Directive 0810.1

Department of Homeland Security
Management Directive System
MD Number: 0810.1
Issue Date: 6/10/2004

THE OFFICE OF INSPECTOR GENERAL

I. Purpose

This directive established Department of Homeland Security (DHS) policy regarding the Office of Inspector General (OIG). Any prior Management Directive and any instruction or agreement of any kind issued by or entered into by any DHS official or Component that is inconsistent in any respect with this directive is hereby superseded to the extent it is inconsistent with this directive.

II. Scope

This directive applies to all DHS organizational elements (OEs), including all employees, contractors, and grantees.

III. Authorities

- A. The Inspector General Act of 1978, as amended
- B. The Homeland Security Act of 2002, as amended, codified in Title 6, US Code

IV. Definitions

A. **OE Offices** – As used in this Management Directive, the term OE offices include all Organizational Elements offices of internal affairs, inspections, audits or Professional Responsibility. This term also includes the DHS Office of Security.

B. **DHS Organizational Element** – As used in this directive, the term DHS Organizational Element (OE) shall have the meaning given to the term DHS Organizational Element in DHS MD 0010.1, Management Directives System and DHS Announcements. This includes Elements such as the Bureau of Customs and Border Protection, the United States Coast Guard, the Federal Emergency Management Agency, etc. It also includes entities that report to DHS Organizational Elements, such as National Laboratories.



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V. Responsibilities

A. **The Heads of DHS Organizational Elements** shall:

1. Promptly advise the OIG of allegations of misconduct in accordance with the procedures described in Appendix A, and when they become aware of any audit, inspection or investigative work being performed or contemplated within their offices by or on behalf of an OIG from outside DHS, the General Accounting Office, or any other law enforcement authority, unless restricted by law;
2. Ensure that, upon request, OIG personnel are provided with adequate and appropriate office space, equipment, computer support services, temporary clerical support and other services to effectively accomplish their mission;
3. Provide prompt access for auditors, inspectors, investigators, and other personnel authorized by the OIG to any files, records, reports, or other information that may be requested either orally or in writing;
4. Assure the widest possible dissemination of this directive within their OEs. They may issue further instructions as necessary to implement this policy. Any such further instructions shall not conflict with this MD and shall be provided to the OIG immediately upon issuance;
5. Assist in arranging private interviews by auditors, inspectors, investigators, and other officers authorized by the OIG with staff members and other appropriate persons;
6. Advise the OIG when providing classified or sensitive information to the OIG to ensure proper handling.

B. **DHS employees** shall report suspicions of violations of law or regulation to the DHS Office of Inspector General or the appropriate OE offices, and will likewise:

1. Cooperate fully by disclosing complete and accurate information pertaining to matters under investigation or review;
2. Inform the investigating entity of any other areas or activities they believe require special attention;
3. Not conceal information or obstruct audits, inspections, investigations, or other official inquiries;



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4. Be subject to criminal prosecution and disciplinary action, up to and including removal, for knowingly and willfully furnishing false or misleading information to investigating officials; and

5. Be subject to disciplinary action for refusing to provide documents or information or to answer questions posed by investigating officials or to provide a signed sworn statement if requested by the OIG, unless questioned as the subject of an investigation that can lead to criminal prosecution.

VI. Policy and Procedures

A. The OIG, while organizationally a Component of the DHS, operates independent of the DHS and all offices within it. The OIG reports to the Secretary. Under circumstances specified by statute, the Secretary, upon written notification to the OIG which then must be transmitted to Congress, can circumscribe the OIG's access to certain types of sensitive information and exercise of audit, investigative, or other authority. The DHS Inspector General is the head of the OIG.

The OIG is authorized, among other things, to:

1. Administer oaths;
2. Initiate, conduct, supervise and coordinate audits, investigations, inspections and other reviews relating to the programs and operations of the DHS;
3. Inform the Secretary, Deputy Secretary, and the Congress fully and currently about any problems and deficiencies relating to the administration of any DHS program or operation and the need for, and progress of, corrective action;
4. Review and comment on existing and proposed legislation and regulations relating to DHS programs, operations, and personnel;
5. Distribute final audit and inspection reports to appropriate authorizing and oversight committees of the Congress, to all headquarters and field officials responsible for taking corrective action on matters covered by the reports and to Secretarial officers, office heads, and other officials who have an official interest in the subject matter of the report;



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6. Receive and investigate complaints or information from employees, contractors, and other individuals concerning the possible existence of criminal or other misconduct constituting a violation of law, rules, or regulations, a cause for suspension or debarment, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety, and report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law;

7. Protect the identity of any complainant or anyone who provides information to the OIG, unless the OIG determines that disclosure of the identity during the course of the investigation is unavoidable.

Further, the OIG shall:

8. Follow up on report recommendations to ensure that corrective actions have been completed and are effective;

9. Prepare a semiannual report to the Secretary and the Congress, summarizing OIG audit and investigative activities within DHS. Section 5(a) of the Inspector General Act of 1978, as amended, requires this report.

B. Allegations received by the OIG or OE offices shall be retained or referred in accordance with Appendix A of this MD. The only exception to this requirement is that the OIG and the United States Secret Service will adhere to the terms of the Memorandum of Understanding entered into between those two entities on December 8, 2003, and as may be amended from time to time.

C. **Standards**. Audits shall be conducted consistent with the standards issued by the Comptroller General of the United States. Inspections and investigations shall be conducted consistent with the quality standards issued by the President's Council on Integrity and Efficiency (PCIE).

D. **Questions or Concerns**. Any questions or concerns regarding this directive should be addressed to the OIG.



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APPENDIX A

MD 0810.1

The categories of misconduct identified below shall be referred to the OIG. Such referrals shall be transmitted by the OE offices immediately upon receipt of the allegation, and no investigation shall be conducted by the OE offices prior to referral unless failure to do so would pose an imminent threat to human life, health or safety, or result in the irretrievable loss or destruction of critical evidence or witness testimony. In such extraordinary situations, the OIG will be contacted as soon as practical, and all information and evidence collected by the OE office shall then be provided to the OIG as part of the OE referral to the OIG. The OIG will accept and retain all such allegations for investigation subsumed under this exigent circumstance exception.

- All allegations of criminal misconduct against a DHS employee;
- All allegations of misconduct against employees at the GS-15, GM-15 level or higher, or against employees in the OE offices;
- All allegations of serious, noncriminal misconduct against a law enforcement officer. "Serious, noncriminal misconduct" is conduct that, if proved, would constitute perjury or material dishonesty, warrant suspension as discipline for a first offense, or result in loss of law enforcement authority. For purposes of this directive, a "law enforcement officer" is defined as any individual who is authorized to carry a weapon, make arrests, or conduct searches;
- All instances regarding discharge of a firearm that results in death or personal injury or otherwise warrants referral to the Civil Rights Criminal Division of the Department of Justice;
- All allegations of fraud by contractors, grantees or other individuals or entities receiving DHS funds or otherwise engaged in the operation of DHS programs or operations;
- All allegations of visa fraud by DHS employees working in the visa issuance process.

In addition, the OIG will investigate allegations against individuals or entities that do not fit into the categories identified above if the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial and ethnic profiling, serious management problems within the department, or otherwise represent a serious danger to public health and safety.



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APPENDIX A

With regard to categories not specified above, the OE offices will initiate the investigation upon receipt of the allegation, and shall notify within five business days the OIG's Office of Investigations of such allegations. The OIG shall notify the OE offices if the OIG intends to assume control over or become involved in such an investigation, but absent such notification, the OE office shall maintain full responsibility for these investigations.

Any allegations received by the OIG that do not come within the categories specified above, or that the OIG determines not to investigate, will be referred within five business days of receipt of the allegation by the OIG to the appropriate OE office along with any confidentiality protections deemed necessary by the OIG.

The OE offices shall provide monthly reports to the OIG on all open investigations. In addition, upon request, the OE offices shall provide the OIG with a complete copy of the Report of Investigation, including all exhibits, at the completion of the investigation. Similarly, the OIG shall provide the OE offices, upon request, with a complete copy of any Report of Investigation relating to its OE, including all exhibits, at the completion of the investigation. The OIG shall have the right to request more frequent or detailed reports on any investigations and to reassert at any time exclusive authority or other involvement over any matter within its jurisdiction.



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Appendix D:

2003 Memorandum of Understanding Between U.S. Secret Service and DHS OIG

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES SECRET SERVICE
AND THE OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF HOMELAND SECURITY

The United States Secret Service (USSS), an organizational component of the Department of Homeland Security (DHS), operates within the Department under the authority and responsibilities enumerated in Title VIII, Subtitle C of the Homeland Security Act of 2002, as amended (the Act), and includes those responsibilities described generally in Section 1512 of the Act, as well as in various delegations of authority issued by the Secretary of DHS (the Secretary). The agency's dual statutory missions of protection and criminal investigations are more fully enumerated at Title 18, United States Codes, Section 3056 (Section 3056), and Title 3, United States Code, Section 202 (Section 202), and various other statutes.

The Office of the Inspector General (OIG), an organizational component of DHS, operates within the Department under the authority and responsibilities enumerated in Title VIII, Subtitle B of the Act, as amended, and the Inspector General Act of 1978, as amended, and includes authority and responsibility acquired pursuant to Section 1512 of the Act.

To prevent duplication of effort and ensure the most effective, efficient and appropriate use of resources, the Secret Service and the OIG enter into this Memorandum of Understanding.

The categories of misconduct listed below shall be referred to the OIG. Such referrals shall be transmitted by the USSS Office of Inspection immediately upon the receipt of adequate information or allegations by the USSS Office of Inspection to reasonably conclude that misconduct may have occurred, and no investigation shall be conducted by the USSS Office of Inspection prior to the referral. In cases involving exigent circumstances, if the OIG decides to investigate the allegation but is unable to do so immediately, the USSS Office of Inspection will conduct the investigation until the OIG is able to take it over. In cases not involving exigent circumstances, the OIG will determine within one business day of the referral whether to investigate the allegation itself or to refer the matter back to the USSS Office of Inspection for investigation. If no determination is communicated to the USSS Office of Inspection within one business day of the referral, the USSS Office of Inspection may initiate the investigation. The acceptance of a referral by the OIG reflects a determination that available investigative resources will be able to conclude the referred investigation within a reasonable time. This will afford the agency a reasonable opportunity to act expeditiously, if necessary, regarding the allegations.

- All allegations of criminal misconduct against a USSS employee;
- All allegations of misconduct against employees at the GS-15, GM-15 level or higher, or against employees in the USSS Office of Inspection;
- All allegations regarding misuse or improper discharge of a firearm (other than accidental discharge during training, qualifying or practice);



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- All allegations of fraud by contractors, grantees or other individuals or entities receiving Department funds or otherwise engaged in the operation of Department programs or operations.


In addition, the IG will investigate allegations against individuals or entities who do not fit into the categories identified above if the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial and ethnic profiling; serious management problems within the Department, or otherwise represent a serious danger to public health and safety.

With regard to categories of misconduct not specified above, the USSS Office of Inspection should initiate investigation upon receipt of the allegation, and shall notify within five business days the OIG's Office of Investigations of such allegation. The OIG shall notify the USSS Office of Inspection if the OIG intends to assume control or become involved in an investigation, but absent such notification, the USSS Office of Inspection shall maintain full responsibility for these investigations.

Pursuant to Section 811(a) of the Act, OIG audits, investigations, and subpoenas which, in the Secretary's judgment, constitute a serious threat to the protection of any person or property afforded protection pursuant to Section 3056 or Section 202, or any provision of the Presidential Protection Assistance Act of 1976, may be prohibited. Accordingly, to assure proper and timely responses to OIG requests for information or records, all OIG plans for audits involving the Secret Service shall be communicated via entrance letter by the OIG either directly to the USSS Office of Inspection or to the Office of the Deputy Director; any OIG investigation shall be communicated orally or via e-mail to the same entities. Any Secret Service Headquarters' concern under section 811(a) regarding the scope or direction of a planned audit or investigation will be raised and resolved expeditiously with OIG officials, or immediately communicated to the Secretary in the absence of resolution.

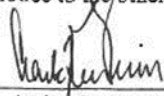
The USSS Office of Inspection shall provide a monthly report to the OIG on all open investigations. In addition, the USSS Office of Inspection, upon request, shall provide the OIG with a complete copy of the Report of Investigation, including all exhibits, at the completion of the investigation. Similarly, the OIG shall provide the USSS Office of Inspection, upon request, with a complete copy of any Report of Investigation relating to the Secret Service, including all exhibits, at the completion of the investigation. The OIG shall have the right to request more frequent or detailed reports on any investigations and to reassert at any time exclusive authority or other involvement over any matter within its jurisdiction.

This MOU shall be effective upon the signature of both parties and shall remain in effect until revoked by one party upon thirty day's written notice to the other.



Director of the United States
Secret Service

Dated: 12/5/03



Acting Inspector General

Dated: 12/8/03



OFFICE OF INSPECTOR GENERAL

U.S. Department of Homeland Security

Appendix E: Report Distribution

Department of Homeland Security

Secretary
Deputy Secretary
Chief of Staff
Deputy Chiefs of Staff
General Counsel
Executive Secretary
Director, GAO/OIG Liaison Office
Under Secretary, Office of Strategy, Policy, and Plans
Assistant Secretary for Office of Public Affairs
Assistant Secretary for Office of Legislative Affairs
DHS Component Liaison

Office of Management and Budget

Chief, Homeland Security Branch
DHS OIG Budget Examiner

Congress

Congressional Oversight and Appropriations Committees

External

As appropriate, e.g., grantee, mayor, state auditor, governor

Additional Information

To view this and any other DHS OIG reports, Please visit our website: www.oig.dhs.gov

For further information or questions, please contact the DHS OIG Office of Public Affairs via email: DHS-OIG.OfficePublicAffairs@oig.dhs.gov



DHS OIG Hotline

To report fraud, waste, abuse, or criminal misconduct involving U.S. Department of Homeland Security programs, personnel, and funds, please visit: www.oig.dhs.gov/hotline

If you cannot access our website, please contact the hotline by phone or mail:

Call: 1-800-323-8603

U.S. Mail:
Department of Homeland Security
Office of Inspector General, Mail Stop 0305
Attention: Hotline
245 Murray Drive SW
Washington, DC 20528-0305