

**Protocol for Cooperation Between the Nuclear Regulatory Commission's
Office of the General Counsel, Office of the Chief Human Capital Officer,
Office of Administration, and the Office of the Inspector General in Cases of
Alleged Employee or Contractor Misconduct**

This protocol pertains to cooperation between the U.S. Nuclear Regulatory Commission (NRC) Office of the General Counsel (OGC), the Office of the Chief Human Capital Officer (OCHCO), the Office of Administration (ADM), and the Office of the Inspector General (OIG) for matters within the purview of the Inspector General Act, 5 U.S.C. App. 3.

Within the context of this Memorandum of Understanding, the roles of the respective offices are defined as follows:

The OIG conducts investigations and audits designed to promote economy, efficiency, and effectiveness within the NRC, and to prevent and detect fraud, waste, abuse, and mismanagement in agency programs and operations. The decision to enter into any investigation or audit, and, once begun, the conduct of any such investigation or audit, lies within the sole discretion of the Inspector General (IG) and is independent of any policy direction from the NRC or any division within the NRC.

OGC directs matters of law and legal policy, providing opinions, advice, and assistance to the agency with respect to all of its activities. This includes, but is not limited to, representing the NRC in legal proceedings related to labor and employment issues, equal employment opportunity, personnel security, and acquisitions/procurement.

OCHCO provides overall leadership and management of agency human capital planning and human resources planning, policy, and program development. OCHCO plans and implements NRC policies, programs, and services to provide for employment services and operations, training, employee and labor relations, organizational development, and workforce information and analysis.

ADM provides centralized services in the areas of contracts, facilities and security, property management, and administrative services, including services provided by:

- (1) The Acquisition Management Division (AMD), which develops and implements agencywide contracting policies and procedures; executes and administers contracting, simplified acquisition, interagency agreement, grant and financial assistance activities for the NRC, and provides oversight for regional procurement activities; and develops and administers overall agency guidance for contracting activities with U.S. Department of Energy laboratories and other agencies.
- (2) The Division of Facilities and Security (DFS), which administers the NRC security program for personnel security, manages the personnel security program (including building access), information technology access, access to safeguards information, and security clearances, and administers the NRC's drug testing program.

Cooperation and consultation between the above-named offices, consistent with limitations imposed by their respective organizational requirements, is in the best interest of agency and the OIG mission objectives. Expectations and limitations regarding the cooperation/consultation at specific events are detailed below.

I. Cooperation Between OGC, OCHCO, ADM, and the OIG Prior to an OIG Investigation of Alleged Employee Misconduct or Contractor Wrongdoing

As stated in NRC Management Directive (MD) 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals," all NRC employees (including employees in OGC, OCHCO, and ADM), upon learning of alleged employee misconduct or contractor wrongdoing, will promptly report the allegations to the OIG, or advise an appropriate management official. In the latter case, the management official will promptly inform the OIG of the alleged misconduct or wrongdoing. The point of contact in the OIG shall be the Assistant Inspector General for Investigations (AIGI) or the Special Agent in Charge (SAC). Points of contact in OGC, OCHCO, ADM/DFS (for employee misconduct), and ADM/AMD (for contractor issues) will be identified on a case-by-case basis.

OGC, OCHCO, ADM, or other appropriate NRC management will provide the OIG with information describing the reported misconduct or wrongdoing. The OIG will advise the respective management official(s) as to whether it will pursue the matter and what action, if any, the OIG will take—for example, opening an investigation or audit. This protocol is not intended to preclude NRC management from taking appropriate immediate action to carry out its responsibilities to maintain a safe and orderly workplace, or to otherwise protect agency interests. These actions may include, but are not limited to, taking appropriate disciplinary actions in compliance with MD 10.99 – "Discipline and Adverse Actions" and/or performance-based actions in compliance with MD 10.67 – "General Grade Performance Management System."

II. Cooperation Between OGC, OCHCO, ADM and the OIG during an OIG Investigation of Alleged Employee Misconduct or Contractor Wrongdoing

While an investigation is ongoing, the OIG may consult with OGC, OCHCO, and ADM to ensure a comprehensive understanding of Federal labor and employment law; contract and procurement statutes; or other laws, regulations, policies, and practices that may be relevant to the investigation. Such consultation will be for informational purposes only so that the OIG can obtain the agency's understanding of applicable law, regulation, and policy; any legal opinions OGC provides to the OIG will not be binding on the OIG.

These informational consultations may relate to issues such as the elements needed to prove the allegation being investigated; recalcitrant or non-cooperative employee/contractor witnesses; relevant contract provisions or procurement regulations and policies; methods of obtaining NRC records, documents (including ADM documents) or other needed information related to the investigation; past agency practice with respect to personnel policies involved in the issue under investigation; past disciplinary records of employees; past performance of contractors; and information relevant to the credibility of a witness. These informational consultations are not expected to involve OIG requests for access to attorney-client protected material or attorney work product. If the OIG believes it needs access to such material, OIG management will work with OGC management to seek a resolution of the matter.

In situations where the OIG identifies information that may warrant prompt NRC management action, the OIG will alert NRC management officials, including the Chief of the Policy, Labor and Employee Relations Branch (PLERB) in OCHCO and the Chief of the Personnel Security Branch (PSB) in ADM, of such information prior to the completion of an investigation. Such circumstances may include, but are not limited to, threats or risks to agency security, the safety or security of an NRC-licensed facility, and the safety or health of an employee or member of the public.

The OIG and the NRC recognize the mutual benefit of global settlement agreements. During an ongoing OIG investigation of which NRC management is aware, the agency shall notify the OIG AIGI or SAC of the agency's intent to enter into a settlement agreement regarding the individual under investigation. Similarly, should the OIG decide to enter into a settlement agreement regarding an individual who has been under investigation, it shall notify the Assistant General Counsel (AGC) for Labor, Employment, and Contract Law (LECL) in OGC; the Chief of the PLERB in OCHCO; and the Chief of the PSB in ADM. In either case, notification should take place before either the NRC or the OIG begins settlement discussions with the individual.

III. Cooperation Between OGC, OCHCO, and the OIG Following Completion of an OIG Investigation

Once an investigation is completed, the OIG will forward the investigative report and associated exhibits to the Executive Director for Operations (EDO), the Chief Financial Officer (CFO), or, in appropriate circumstances, the Chairman, unless otherwise prohibited by law. In addition, the OIG will provide a copy of the report (with exhibits) to OCHCO, OGC, and ADM/DFS. Access to investigatory reports will be limited to those individuals whose official duties present a "need-to-know" in connection with a particular case.

As directed by the Chairman, EDO, CFO, or senior NRC managers, OGC attorneys and representatives of OCHCO and/or ADM will review the investigative report. If questions about the report arise, the OIG SAC will be contacted. Similarly, if agency officials believe that additional investigation or documentation may be necessary for NRC management to resolve the allegations identified in the report, the OIG SAC should be contacted.

Investigative reports are provided to employees only under statutory and regulatory authority related to employee rights within defined legal processes, e.g., adverse and disciplinary actions. However, as an exception, a copy of an investigative report may be provided to an employee prior to initiation of formal discipline when both of the following conditions are met:

- (1) Management provides an oral briefing of the investigative findings to the employee and the employee requests a copy of the investigation; and,
- (2) the AGC for LECL in OGC advises the SAC that he or she has determined that releasing the report is necessary and that, based on review of the report, management fully supports initiating disciplinary action.

Following discussions between witnesses and OGC, OCHCO, and/or ADM relating to a contested disciplinary, adverse, contract, or security action, the relevant office will notify the SAC immediately if it appears a witness has provided information that, to the best of management's knowledge, may be materially inconsistent with information the witness previously provided to the OIG. Additionally, if OGC, OCHCO, or ADM employees become aware of information that may warrant further OIG investigation of the subject employee or any other person, the employees or their managers should promptly notify the SAC and the OIG General Counsel (GC).

In connection with an administrative, contract, or security action taken or contemplated by NRC management, OGC, OCHCO, ADM, and the OIG may consult on various matters. These matters may relate to issues such as witness credibility, the substance of discussions between the OIG and officials of the U.S. Attorney's office or other prosecutive body (with the permission of the U.S. Attorney's office or other prosecutive body), and potential involvement of the OIG investigators as witnesses in anticipated administrative litigation or security-related litigation concerning security or employment clearances.

NRC management may wish to obtain the benefit of an OIG investigator's views related to the investigation before deciding whether to initiate or effect disciplinary or contract actions. In such cases, the SAC will be contacted to make the individual investigator available.

IV. Cooperation Between OGC, OCHCO, ADM, and the OIG in Settlement of a Case Involving an OIG Investigation

If a settlement is reached relating to an employee discipline matter or contract matter which the OIG investigated, OGC, OCHCO, or ADM will ensure that the settlement includes a specific provision stating that the settlement terms and conditions are not binding on the OIG unless the AIGI agreed in writing before the NRC executed the settlement agreement that the OIG would be bound by the agreement. Regardless of whether or not a settlement agreement is binding on the OIG, all settlement agreements involving the subject of an OIG investigation shall be provided to the SAC and the OIG GC prior to signing. If the agreement is not binding on the OIG, the focus of the OIG's review will be to confirm that appropriate language is included in the agreement relating to matters within the OIG's authority. The OIG and the OGC may mutually decide on appropriate language that shall be included in certain types of agreements, preempting the need for a case-by-case review of every agreement; any such decision must, however, be in writing and approved by both the OIG GC and OGC's AGC for LECL.

The OIG shall, to the extent practicable, provide to the AGC for LECL, OCHCO, and ADM prior to signing all settlement agreements involving an employee or contractor to which the OIG will be party. The OIG will consider any comments on the settlement agreement to the extent practicable.

V. Cooperation Between OGC, OCHCO, ADM, and the OIG in Administrative Hearings and Other Litigation Involving an OIG Investigation

If an administrative hearing or other litigation matter involving an OIG investigation is initiated, OGC shall promptly notify the OIG GC and provide all documentation relating to the claims involving the OIG investigation and the anticipated schedule for the proceeding.

Should the IG find that it is necessary to represent the interests of the IG or the OIG, the OIG GC shall enter a notice of appearance in the proceeding. This determination, whether for the purposes of participation as a full party or for a more limited purpose such as participation in the discovery phase of the proceeding, shall be at the sole discretion of the IG. The OIG GC will, however, notify OGC before entering a notice of appearance in a proceeding.

Regardless of whether the OIG is a party to a proceeding, OGC and the OIG GC will consult, to the extent practicable, on matters of discovery potentially impacting the OIG, including production of documents created by the OIG, responses to interrogatories directed to the IG or a member of the OIG staff, and requests to depose members of the OIG staff. If an OIG employee is to be deposed, OGC will, to the extent practicable, invite the OIG GC to participate in any deposition preparation sessions conducted by OGC, as well as the deposition itself.

In addition, regardless of whether the OIG is a party to the proceeding, OGC will consult, to the extent practicable, with the OIG GC on all pleadings, correspondence, and other written external communications describing the rights and responsibilities of the IG and his or her staff, the work methods of the OIG, or the conduct or outcome of any OIG investigation. If any OIG employee will be testifying, OGC should invite the OIG GC to participate in any preparation sessions conducted by OGC. To the extent practicable, OGC should also invite the OIG GC to attend the testimonial sessions and assist the OIG in obtaining transcripts thereof.

Similarly, if the OIG is a party to a proceeding, the OIG will consult with OGC to the extent practicable on all pleadings, correspondence, and other written external communications describing the rights and responsibilities of the NRC or its staff, their work methods, or the conduct or outcome of any NRC administrative actions. If any NRC employee will be testifying in the proceeding, the OIG GC should invite OGC to participate in any preparation sessions conducted by the OIG. To the extent practicable, the OIG GC should also invite OGC to attend the testimonial sessions and assist OGC in obtaining transcripts thereof.

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