

**SSA OIG REVIEW PROCEDURES
PURSUANT TO PRESIDENTIAL POLICY DIRECTIVE (PPD) – 19**

1. **PURPOSE:** These procedures set forth the Social Security Administration (SSA), Office of the Inspector General's (OIG) responsibilities to review employee appeals of SSA actions affecting Eligibility for Access to Classified Information the employee alleges to be in violation of PPD-19 (See attached copy of PPD-19 – Exhibit A), prohibiting such actions/reprisals for protected disclosures.
2. **AUTHORITIES:** The Inspector General Act of 1978, as amended (5 U.S.C. § App. 3); Executive Order 12968, as amended, 60 Fed. Reg. 40245; Presidential Policy Directive-19 (PPD-19); *Protecting Whistleblowers with Access to Classified Information* (October 10, 2012); Presidential Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, as amended; and other applicable provisions of law and regulation.
3. **IMPLEMENTATION DATE:** The review procedures under this policy shall apply to any SSA actions that occur after the date that SSA certifies to the Director of National Intelligence that it has a PPD-19 review process in place, permitting appeals of SSA actions affecting Eligibility for Access to Classified Information.
4. **APPLICABILITY:** These procedures apply to any employee appeal of an SSA action affecting Eligibility for Access to Classified Information, if the employee alleges that the action is a reprisal for a protected disclosure.
5. **DEFINITIONS:** The following selected definitions from PPD-19 applicable to PPD-19 Section B are incorporated herein:
 - A. “Eligibility for Access to Classified Information” is the result of the determination whether an employee (a) is eligible for access to classified information in accordance with Executive Order 12968 (relating to access to classified information), or any successor thereto, and Executive Order 10865 of February 20, 1960, as amended (relating to safeguarding classified information with industry), or any successor thereto; and (b) possesses a need to know under such orders.
 - B. “Protected Disclosure” is defined as:
 - i. a disclosure of information by the employee to a supervisor in the employee’s direct chain of command up to and including the Commissioner of Social Security (COSS); to the SSA Inspector General (IG); or to an employee designated by either the COSS or SSA IG for the purpose of receiving such disclosures, that the employee reasonably believes evidences:
 - a. a violation of any law, rule, or regulation; or

- b. gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- ii. the exercise of any appeal, complaint, or grievance with regard to the violation of Section B of PPD-19;
- iii. lawfully participating in an investigation or proceeding regarding a violation of Section B of PPD-19; or
- iv. cooperating with or disclosing information to an Inspector General, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the Inspector General.

if the actions described in (ii) through (iv) do not result in the employee making an unauthorized disclosure of classified information or disclosing other information contrary to law.

6. **PPD-19 BACKGROUND INFORMATION:** Presidential Policy Directive – 19 (PPD-19) ensures that employees (1) serving in the Intelligence Community or (2) who are eligible for access to classified information can effectively report waste, fraud, and abuse while protecting classified national security information. It prohibits retaliation against employees for reporting waste, fraud, and abuse. Specifically, PPD-19 prohibits:

- A. any officer or employee of a Covered Agency who has authority to take, direct others to take, recommend, or approve any Personnel Action, shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a Personnel Action with respect to any employee serving in an Intelligence Community Element as a reprisal for a Protected Disclosure (Section A); and
- B. any officer or employee of an executive branch agency who has authority to take, direct others to take, recommend, or approve any action affecting an employee's Eligibility for Access to Classified Information shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, any action affecting an employee's Eligibility for Access to Classified Information as a reprisal for a Protected Disclosure (Section B).

PPD-19 Section C provides an external IG review process for employees to seek review of alleged retaliatory actions that violate PPD-19, Section A or B.

7. **POLICY:** Pursuant to Section B of PPD-19, SSA OIG shall conduct a review of all SSA's actions affecting Eligibility for Access to Classified Information that an employee alleges to be in violation of PPD-19 (i.e., the action was a reprisal for a Protected Disclosure). Such reviews shall only be conducted of SSA actions that arise after the date SSA certifies it has a PPD-19 review process in place.

SSA OIG's review under PPD-19 only pertains to PPD-19 Section B prohibitions, since Section A does not apply to SSA. The procedures below outline the process for (1) SSA's referral of employee appeals of SSA's actions affecting Eligibility for Access to Classified Information, which an employee alleges to be in violation of PPD-19 (a reprisal for a protected disclosure), and (2) OIG's review of such action to ascertain if any such action was a reprisal for a protected disclosure.

8. PROCEDURES:

- A. **SSA Referral:** In order to facilitate OIG's PPD-19 review, on and after the implementation date of this policy, SSA will refer to the OIG Office of the Counsel to the Inspector General any employee appeals of actions affecting Eligibility for Access to Classified Information the employee alleges are in violation of PPD-19/a reprisal for a Protected Disclosure, received by SSA for actions arising after SSA's PPD certification date. The referral shall be sent by email to the SSA OIG Whistleblower Protection Ombudsman Inbox at [^Whistleblower Ombudsman
whistleblower.ombudsman@ssa.gov](mailto:whistleblower.ombudsman@ssa.gov).
- B. **Referral Information:** SSA's initial referral to SSA OIG shall include the appeal letter or other similar information and any documentation received from the employee as part of that appeal. Upon receipt of the referral, SSA OIG Office of Counsel to the Inspector General (OCIG) shall request with any and all documentation supporting and/or refuting the employee's appeal, and all records related to SSA's underlying action that gave rise to the appeal and the adjudication and disposition of such action to the extent that it has not already been provided. SSA shall update SSA OIG with additional records as they become available to SSA, including additional documentation supporting and/or refuting the employee's appeal, witness statements, documentation of SSA consideration, review and disposition of the appeal and underlying supporting documentation related thereto.
- C. **OIG Intake, Review and Reporting Process:** Once the SSA OIG receives an appeal referral, SSA OIG will:
 - i. Determine if the employee against whom the action was taken was an SSA employee or OIG employee. If the employee is an OIG employee, the review shall be conducted by an OIG component other than the one in which the employee worked when the activity occurred which gave rise to SSA's action. OCIG, in consultation with the Deputy Inspector General, shall designate and notify the OIG component responsible for conducting the PPD-19 review.
 - ii. Notify the requesting employee in writing that his/her appeal of SSA's action has been received by the OIG and is under assessment. Request the employee to provide any documentation that supports his/her allegation, including any signed and dated written statement that the employee wishes to submit. Notify the employee that the employee's failure to provide requested materials in a timely manner may impact OIG's determination of whether SSA's action violated PPD-19 (was a reprisal for a Protected Disclosure).

- iii. Review all documentation provided by the Agency and the employee and obtain any additional required information, such as any needed documentation or corroboration from other individuals.
- iv. Assess whether there is support for the allegation that the action taken was a reprisal for a Protected Disclosure.
- v. Document the results of SSA's review of employee's reprisal allegation, and assess the extent to which remedial actions, if any, recommended and/or taken by SSA appropriately address employee reprisals.
- vi. Confirm whether SSA has a process to notify employees alleging a reprisal who have exhausted the SSA and OIG review process that the employee may request an external review by an Inspector General External Review Panel.
- vii. Prepare a report to the Agency Head stating OIG's findings and any actions recommended. The report shall state whether there is support for the allegation that the action taken was a reprisal for a protected disclosure, and include the basis for the conclusions reached. If there was support to conclude a reprisal occurred, include any recommendations deemed appropriate, which may include the following:
 - a. Reconsider the employee's Eligibility for Access to Classified Information consistent with the national security and with Executive Order 12968.
 - b. Take other corrective action to return the employee, as nearly as practicable and reasonable, to the position such employee would have held had the reprisal not occurred.
 - c. Provide notice in the report that to the extent authorized by law (including the Back Pay Act), corrective action may include, but is not limited to, reinstatement, reassignment, reasonable attorney's fees, other reasonable costs, back pay and related benefits, travel expenses, and compensatory damages.
 - d. Request a response from the Agency head within 30 days of the report date, with its intended actions.

9. INSPECTOR GENERAL EXTERNAL REVIEW PANEL:

- A. An employee who has exhausted the SSA and OIG review processes for an alleged violation of PPD may request an external review by a three-member Inspector General panel (External Review Panel), chaired by the Inspector General of the Intelligence Community. If such a request is made, the Inspector General of the Intelligence Community shall decide, in his or her discretion, whether to convene the External

Review Panel, and, if so, shall designate *two* other panel members from the Inspectors General of the following agencies: Departments of State, the Treasury, Defense, Justice, Energy, and Homeland Security and Central Intelligence Agency. The Inspector General from the agency that completed the initial review shall not be a member of the External Review Panel. The External Review Panel shall complete a review of the claim, which may consist of a file review, as appropriate, within 180 days.

- i. If the External Review Panel determines that the individual was the subject of an action affecting his or her Eligibility for Access to Classified Information prohibited by Section B of PPD-19, the panel may recommend that the agency head take corrective action to return the employee, as nearly as practicable and reasonable, to the position such employee would have held had the reprisal not occurred and that the agency head reconsider the employee's Eligibility for Access to Classified Information consistent with the national security and with Executive Order 12968.
- ii. An agency head is required to carefully consider the recommendation of the External Review Panel pursuant to the above paragraph and within 90 days, inform the panel and the DNI of what action he or she has taken. If the head of any agency fails to so inform the DNI, the DNI shall notify the President.
- iii. On an annual basis, the Inspector General of the Intelligence Community is required to report the determinations and recommendations and department and agency head responses to the DNI and, as appropriate, to the relevant congressional committees.

B. **COMPLIANCE WITH PPD-19:** With respect to matters covered by PPD-19, all agencies are required to cooperate with their respective agency Inspectors General, the Inspector General of the Intelligence Community, and External Review Panels and provide such information and assistance to their respective agency Inspectors General, the Inspector General of the Intelligence Community, and members of External Review Panels as such Inspectors General may request, to the extent permitted by law.

C. **EFFECTIVE DATE:** These Procedures are effective upon signature.


Patrick P. O'Carroll, Jr.
Inspector General
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Date

6/28/2013