



United States Marshals Service – POLICY DIRECTIVES

2.3

MISCONDUCT INVESTIGATIONS

PROPONENT: Office of Professional Responsibility, Internal Affairs (OPR-IA)

PURPOSE: This policy directive establishes policies and procedures for conducting investigations of allegations of misconduct by United States Marshals Service (USMS) employees, Task Force Officers (TFO), and contractors.

AUTHORITY: 5 C.F.R. 735; 28 C.F.R. 45.12; 28 C.F.R. 45.13; and Department of Justice (DOJ) 1-4.000 Standards of Conduct.

CANCELLATION: This policy directive supersedes USMS Policy Directive 2.3, *Misconduct Investigations*, dated May 2, 2012, and cancels the following: USMS Policy Directive 2.4, *District/Division Referred Internal Investigations*, dated June 7, 2012; Memorandum, *Reporting Unauthorized Purchases on an Agency Credit Card*, dated May 21, 2020; and Memorandum, *Pre-Investigative Agreement for Expedited Disciplinary Adjudication*, dated April 28, 2020.

ADMINISTRATION AND LOGISTICS:

1. Records Management: This administrative policy directive document is maintained in accordance with the approved Specific Records Schedule, DAA-0527-2013-0018-0002.

APPROVED BY:

 /s/
Donald W. Washington
Director
U.S. Marshals Service

 10/07/2020
Effective Date

Updated Date: 09/07/2021

A. Policy Statements:

1. Employees shall conduct themselves on- and off-duty in accordance with laws, federal regulations, DOJ Orders, and USMS Policy Directives.
2. Employees are required to immediately report to their direct supervisor any allegations of misconduct in good faith, including alleged misconduct by an USMS employee, contract employee, TFO, or other person doing business with the USMS.
3. Employees must cooperate with compelled, administrative investigations conducted by OPR-IA and DOJ-Office of the Inspector General (OIG). Employees who refuse to cooperate with OPR-IA or DOJ-OIG misconduct investigations, after having been informed that their statements will not be used to incriminate them in a criminal proceeding, may be subject to disciplinary action up to and including removal.
4. All complaints of employee misconduct will be investigated by the appropriate agency or office. Complaints against contractors will be referred to the appropriate contracting office and complaints against TFOs will be referred to the Investigative Operations Division, and the involved district will be carbon copied.
5. At the discretion of OPR-IA, a misconduct complaint may be referred to the subject employee's district/division for investigation or other appropriate action in accordance with the OPR-IA USMS Internal Affairs OIG Allegations Codes (referenced in Appendix A. *Internal Affairs Allegation Triage Protocol*). The investigation of all district/division referred cases involving USMS employees must be provided to the Human Resources Division-Employee and Labor Relations (HRD-ELR) Branch within 30 days of receipt.
6. An employee may be placed on administrative leave, limited duty status, or be subject to other administrative actions (i.e., full-time telework or temporary reassignment) by the Director, Deputy Director, Associate Director for Operations, Associate Director for Administration, Assistant Director (AD), Deputy Assistant Director (DAD), United States Marshal (USM), and/or Chief Deputy United States Marshal (CDUSM), in consultation with HRD-ELR, and the Office of General Counsel (OGC) when it is corroborated that:
 - a. The misconduct complaint represents a criminal violation of the law;
 - b. The employee poses a danger to himself/herself or others; and/or
 - c. Such action is necessary or prudent to protect the interests of the USMS.
7. An open or recently closed misconduct investigation may preclude an employee from receiving promotions, awards, transfers, or other positive personnel actions.
8. Nothing in this policy is intended to conflict with or limit the Whistleblower Protection Act of 1989, as amended by the Whistleblower Protection and Enhancement Act of 2012 and the Whistleblower Protection Coordination Act of 2018.

B. Roles and Responsibilities:

1. **USMS Managers/Supervisors:**
 - a. Must make their best efforts to inform subordinates of all relevant regulations, policies, and procedures pertaining to the subordinates' positions and conduct.
 - b. Immediately report all allegations of misconduct to OPR-IA or DOJ-OIG. If an employee reports an allegation of misconduct to an appropriate management official in the first instance, the management official shall evaluate whether the allegation is a misconduct issue, and, if so, shall report it to OPR-IA or DOJ-OIG.

- c. Must immediately report all allegations of misuse/perceived government credit card misuse to the appropriate Agency/Organization Program Coordinators (A/OPC).
- d. May not disclose the existence of a misconduct investigation to a subject, other USMS personnel, and/or the public unless directed by OPR-IA.
- e. Must contact the Tactical Operations Division, Office of Security Programs (TOD-OSP) Security Programs Manager when relieving an employee from duty.
- f. Ensure district/division referred investigations are fairly and appropriately conducted within 30 days of notice unless an extension is granted by HRD-ELR. The assigned investigator must be of equal or higher grade than the subject employee and will remain impartial and free from any real or perceived conflict of interest.
- g. Ensure all files and records related to ongoing misconduct investigations are kept in a secure area with restricted access at all times. Disclosure of investigative material may be governed by the Privacy Act of 1974.
- h. Must coordinate with HRD-ELR prior to initiating a District/Division referred investigation.
- i. Ensure all investigative files for District/Division referred investigations are forwarded to HRD-ELR within 30 days of receipt of the referral, and subsequent adjudication is coordinated for appropriate and consistent disciplinary action.
- j. Ensure each district/division with operational employees assign (b) (7)(E) or above to the Internal Affairs Collateral Duty Investigations Training Program designation.

2. USMS Employees, TFOs, and Contractors:

- a. Must ensure they are aware of the laws, regulations, policies, Union Rights, Employee rights, Weingarten Rights, and procedures that pertain to their employment or contract with the USMS.
- b. Know and understand responsibilities under USMS Policy Directive 1.7, *Code of Professional Responsibility*.
- c. Must cooperate with misconduct investigations. Refusal to cooperate may result in removal.
- d. Are prohibited from using recording devices during investigative interviews.
- e. Must provide any additional documentation requested by the OPR-IA investigator assigned to his or her misconduct case within 3 business days.

3. A/OPCs: Determine whether a memo from the government cardholder and repayment (when appropriate) is sufficient, or whether the case needs to be referred to OPR-IA for further investigation.

4. OPR-IA:

- a. Reviews all reports of lost, stolen, damaged, or improperly disposed of government property for misconduct.

- 1) Reports must be made using Form (b) (7)(E) (b) (7)(E)
 - 2) The employee submitting Form (b) (7)(E) must provide any additional information requested by OPR-IA if the initial submission does not contain sufficient documentation to make a misconduct determination.
 - 3) If misconduct is suspected, OPR-IA will formally open a misconduct investigation.
- b. Refers all complaints of employee misconduct to DOJ-OIG in accordance with DOJ-OIG reporting procedures.
 - c. Maintains records associated with misconduct investigations on a server with restricted access at all times.
 - d. Provides each member of the public who files a complaint with a notification to verify the USMS received the complaint.
 - e. Provides guidance and training to the Internal Affairs Investigations Coordinator regarding the processes, techniques, and responsibilities of conducting a misconduct investigation.

5. **HRD-ELR:**

- a. Ensure all files and/or records received that are related to disciplinary actions are kept in a secure area with restricted access at all times. Disclosure of investigative material may be governed by the Privacy Act of 1974.
- b. Ensure all investigative files pertaining to disciplinary matters that have been forwarded to HRD-ELR for subsequent adjudication are coordinated for appropriate and consistent disciplinary action.

6. **Internal Affairs Investigations Coordinator:** Reviews misconduct complaints referred to district/division management for investigation by OPR-IA.

C. Procedures:

1. **Reporting Misconduct:**

- a. Employees must report allegations of misconduct directly to OPR-IA, the DOJ-OIG, or an appropriate management official within their district/division.
 - 1) **Exemption:** When misuse/perceived misuse has occurred using an Agency credit card, the issue should be reported to the appropriate A/OPC, who will make the determination whether it is to be forwarded to OPR-IA for further investigation/action. The specific card type A/OPC contacts are:
 - a) Purchase Card – Office of Procurement.
 - b) Travel Card – Financial Services Division.
 - c) Fleet Card – Management Support Division.
- b. Employees may also concurrently report information to the Office of Special Counsel (OSC) and/or Congress if they reasonably believe there is evidence of a violation of a law, rule, or regulation; gross mismanagement; gross waste of

funds; abuse of authority; or a substantial and specific danger to public health or safety to anyone as long as the disclosure of information is not specifically prohibited by law, or such information is not specifically required by Executive Order to be kept classified in the interest of national defense or the conduct of foreign affairs. Reporting to the OSC or Congress does not alleviate an employee's responsibility to report allegations in accordance with D.2. of this policy.

- c. Reporting an allegation raises no inference that the allegation is well-founded. If an employee is uncertain as to whether, or where, an allegation should be reported, the employee should consult with OPR-IA.
- d. If the investigation conducted by OPR-IA finds an employee knowingly reported false allegations, that employee will be subject to a misconduct investigation.

2. **Investigation:**

- a. DOJ-OIG will decide whether it will investigate the allegation independently, refer it to OPR-IA, or investigate jointly with OPR-IA:
 - 1) OPR-IA will complete all investigations and submit the investigative findings within 180 days of gaining exclusive control of the investigation to HRD-ELR for adjudication. Days elapsed exclusive to OPR-IA control involving the pending release of an investigation by outside law enforcement entities are excluded from the 180-day deadline; and
 - 2) The Chief, OPR-IA, may approve an extension of the 180-day deadline on a case-by-case basis.
 - 3) **Pre-Investigative Agreement (PIA):** When subject to misconduct allegations where qualifying conditions exist, employees can enter into a PIA acknowledging and accepting responsibility for the misconduct committed, and in turn accept a corresponding pre-determined disciplinary personnel action.
 - 4) As OPR-IA encounters qualifying allegations of misconduct, the OPR-IA Inspector assigned to the case will coordinate with a Deciding Official to create a PIA inclusive of the proposed disciplinary personnel action.
 - 5) Should the subject employee accept the agreement, the formal OPR-IA investigative process will be bypassed, and the disciplinary adjudication will be finalized.
 - 6) Employees who opt to decline the PIA will be subject to the conventional OPR-IA misconduct investigation and disciplinary adjudication process, if necessary.
- b. Misconduct complaints referred to OPR-IA from DOJ-OIG for investigation will be reviewed by the Chief, OPR-IA, to determine the next appropriate action.
- c. OPR-IA will notify OGC, TOD-OSP, and/or HRD-ELR of any arrest and any relevant on or off-duty allegations of misconduct involving USMS personnel. Additionally, OPR-IA will notify OGC, TOD-OSP, and/or HRD-ELR if any significant new information developed during an open investigation when any of the following conditions exist:
 - 1) USMS personnel are arrested pending criminal charges, criminal/civil complaints, criminal information, or criminal indictments;

- 2) The information involves impersonation of a federal officer or employee of the United States by a former USMS employee misusing his/her issued retirement badge and/or credentials;
 - 3) The information indicates the potential for an insider threat (refer to USMS Policy Directive 17.23, *Insider Threat Program*); and/or
 - 4) An act of violence or threat of violence and/or action(s) exists that could lead to violence in the workplace (refer to USMS Policy Directive 17.5, *Workplace Violence Program*).
- d. Chief, OPR-IA, will report all complaints of a significant nature to the DAD and/or the AD, OPR, who will notify the Director and Deputy Director as soon as possible.
 - e. After OPR-IA completes a misconduct investigation, OPR-IA will close the case and submit the case file to HRD-ELR for coordination of adjudication.
 - f. When OPR-IA exercises discretion to make a district/division referral, the responsible office and HRD-ELR will:
 - 1) Receive formal notification from OPR-IA within 5 business days indicating the complaint is being referred for review and adjudication;
 - 2) Be provided investigative guidance for referred investigations from IA; however, IA does not require a copy of investigative findings or final action; and
 - 3) Document the fact-finding investigation on Form (b) (7)(E) (b) (7)(E) The case file shall also include any supporting documents that corroborate or refute the allegation. Records associated with referred misconduct investigations must be kept in a secure area with restricted access at all times.
 - 4) Upon conclusion of the investigation, the district/division must contact HRD-ELR to coordinate adjudication. If the facts do not support the original allegation, district/division managers may exercise discretion to close the matter with a letter of clearance or closure, which must be coordinated with HRD-ELR.

3. **Special Examinations:**

- a. Employees subject to a misconduct investigation may request a breathalyzer, blood, urine, psychological, polygraph, or medical exam at the employee's expense if they believe it would benefit their defense.

- b. (b) (7)(E)

- c. (b) (7)(E)

- d. (b) (7)(E)
- e. (b) (7)(E)
- f. (b) (7)(E)

4. **Employee Rights during an Investigation:**

- a. The rights of an employee to an attorney or representation as related to a misconduct investigation are identified in the following documents, which each employee must review:
 - 1) 2015 Master Agreement as related to bargaining USMS employees;
 - 2) DOJ 1200.1: Part 3. Labor/Employee Relations: Chapter 3-1, Discipline and Adverse Actions (Aug. 25, 1998);
 - 3) (b) (7)(E)
 - 4) (b) (7)(E)
 - 5) (b) (7)(E)
- b. Employees who are the subject of an investigation are permitted to have a representative during the interview. It is incumbent on the employee to obtain representation and coordinate in advance his/her representation with OPR-IA. However, if the representative is unavailable, has a conflict of interest, or is disruptive during the interview, the interview will proceed without the representative.
- c. Employees who are interviewed as witnesses are not permitted to have a representative present during an interview.

D. References:

- 1. 5 C.F.R. § 735, [Employee Responsibilities and Conduct](#)
- 2. 28 C.F.R. § 45.12, [Reporting to the Department of Justice Office of Professional Responsibility](#)
- 3. 28 C.F.R. § 45.13, [Duty to Cooperate in an Official Investigation](#)
- 4. [DOJ 1-4.000 Standards of Conduct](#)
- 5. [Appendix A, Internal Affairs Allegation Triage Protocol](#)
- 6. [2015 Master Agreement](#)
- 7. [DOJ Departmental Ethics Office](#)

8. [Privacy Act of 1974](#)
9. [DOJ Regulations, Authorities, and References Materials](#)
10. USMS Policy Directive 1.7, [Code of Professional Responsibility](#)
11. USMS Policy Directive 3.36, [Drug-Free Workplace](#)
12. USMS Policy Directive 17.5, [Workplace Violence Program](#)
13. USMS Policy Directive 17.23, [Insider Threat Program](#)
14. (b) (7)(E) [REDACTED]
15. (b) (7)(E) [REDACTED]
16. (b) (7)(E) [REDACTED]
17. (b) (7)(E) [REDACTED]
18. (b) (7)(E) [REDACTED]
19. Purchase Card, Office of Procurement: [USMS A/OPC Point of Contacts](#)
20. Travel Card, Financial Services Division: [USMS A/OPC Point of Contacts](#)
21. Fleet Card, Management Support Division: [USMS A/OPC Point of Contacts](#)