INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
WASHINGTON, DC 20511

IC IG EXTERNAL REVIEW PANEL PROCEDURES PURSUANT TO PRESIDENTIAL POLICY DIRECTIVE – 19

1. (U) AUTHORITIES: The National Security Act of 1947, as amended (50 U.S.C. § 403-3h et seq.); The Inspector General Act of 1978, as amended (5 U.S.C. App. § 7(a)&(c), 8H); Intelligence Community Whistleblower Protection Act of 1998 (ICWPA), as amended (5 U.S.C. App.§ 1); Executive Order 10865, as amended; Executive Order 12333, as amended; Presidential Policy Directive-19 (PPD-19): *Protecting Whistleblowers with Access to Classified Information* (October 10, 2012); and other applicable provisions of law and regulation.

2. (U) REFERENCES: Intelligence Community Directive 120: *IC Whistleblower Protection.*

3. (U) PURPOSE: These procedures set forth the Office of the Inspector General of the Intelligence Community (IC IG) responsibilities for processing employee requests for an external review process pursuant to Section C of PPD-19.

4. (U) APPLICABILITY: These procedures apply to any employee of a Covered Agency or any employee with access to classified information, alleging a reprisal, who has exhausted the applicable PPD-19 review procedures.

5. (U) DEFINITIONS: The following definitions from PPD-19 are incorporated here:

1) "Covered Agency" means an executive department or independent establishment, as defined under sections 101 and 104 of title 5, United States Code that contains or constitutes an Intelligence Community Element, as defined below.

2) "Intelligence Community Element" means any executive agency or unit thereof determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities, including but not limited to the Office of the DNI, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, and the National Reconnaissance Office. For purposes of these procedures, the term "Intelligence Community Element" does not include the Federal Bureau of Investigation.

3) "Personnel Action" is defined as an appointment, promotion, detail, transfer, reassignment, demotion, suspension, termination, reinstatement, restoration, reemployment, or performance evaluation; a decision concerning pay, benefits, or awards; a decision concerning education or training if the education or training may reasonably be expected to lead to an appointment, reassignment, promotion, or performance evaluation; a decision to order psychiatric testing or examination; and any other significant change in duties, responsibilities, or working conditions. The term "Personnel Action" does not include:

   a. The termination of an employee pursuant to section 1609 of title 10, United States Code;
   b. The termination of an employee pursuant to section 102A(m) of the National Security Act of 1947, section 104A(e) of the National Security Act of 1947, or section 7532 of title 5, United States Code, so long as the official authorized by those provisions to terminate the employee (and not his or her delegee):
      1. determines that the alternative legal procedures to terminate the employee cannot be invoked in a manner consistent with the national security, and
      2. promptly notifies the IG of the employing agency;
   c. Actions taken with respect to a position that the agency head has designated, prior to the action as being of a confidential, policy determining, policymaking, or policy advocating character.
   d. Actions taken with respect to a member of the Armed Forces, as used in section 1034 of Title 10, United States Code.
   e. Any actions taken prior to the issuance of PPD-19.

4) "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.

5) "Protected Disclosure" is defined as:
   a. a disclosure of information by the employee to a supervisor in the employee's direct chain of command up to and including the head of the employing agency, to the Inspector General of the employing agency or IC element, to the DNI; to the IC IG; or to an employee designated by any of the above officials for the purpose of receiving such disclosures, that the employee reasonably believes evidences:
      i. a violation of any law, rule, or regulation, or

ii. gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

b. any communication described by and that complies with subsection (a) (1), (d), or (h) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App § 1); subsection (d) (5) (A) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. § 403q); or subsection (k) (5) (A), (D), or (G), of section 103H of the National Security Act of 1947 (50 U.S.C. § 403-3h);

c. the exercise of any appeal, complaint, or grievance with regard to the violation of Section A or B of PPD-19;

d. lawfully participating in an investigation or proceeding regarding a violation of Section A or B of PPD-19; or

e. 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.

Such disclosures will be protected if the action does not result in the employee making an unauthorized disclosure of classified information or disclosing other information contrary to law.

6. (U) POLICY: 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 directs that:

1) 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

2) 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).

As part of this policy, Section C of PPD-19 provides an external Inspector General (IG) review process for an employee, who has exhausted the applicable review process required by Section A or

B, to seek review of reprisal actions that allegedly violate PPD-19. The procedures below outline the process for an employee seeking an IG external review and the process for conducting such a review.

7. (U~~//FOUO~~) PROCEDURES: Pursuant to Section C of PPD-19, an employee alleging a reprisal who has exhausted the applicable review process as required by PPD-19 may request an external review by a three-member IG panel chaired by the Inspector General of the Intelligence Community (IC IG).

A. **Employee Request**: An employee seeking an external review pursuant to Section C of PPD-19 shall provide a formal written request for such a review directly to the IC IG Hotline Manager within forty-five (45) calendar days of receiving an agency's final written disposition on his/her alleged reprisal complaint. Such request shall include:

   1. Employee's Full Name
   2. Federal Employing Agency
   3. Reprisal Complaint, which should include a summary of:
      i. Protected disclosure (s),
      ii. Personnel actions, and/or Actions Affecting Eligibility for Access to Classified Information,
      iii. Reprisal allegation(s),
      iv. Efforts to exhaust the applicable agency review process, and
      v. Agency final decision on the reprisal allegations.
   4. Reason for seeking an external IG review, and
   5. Any other supporting documentation.

B. **IC IG Request Intake Process**: Once the IC IG Hotline Manager receives a complete external review request package from a covered employee, the IC IG will:

   1. notify the requesting employee that his/her request for review has been received and is under assessment;
   2. notify the head of the department or agency where the employee is employed that the employee has made a request for an external review;
   3. notify the IG who conducted the initial IG review that the employee has made a request for an external review;
   4. request any and all official records, documents, materials, or accurate copies thereof from both the department or agency head and the IG who conducted the initial IG review; and
   5. request a written certification from the department or agency that the requesting employee exhausted the applicable review process required under PPD-19.
   6. To ensure that the IC IG's review includes the official agency record and can consider relevant materials in addition to those materials provided by the

requesting employee, materials requested from the agency should be provided to the IC IG within two (2) weeks of the IC IG's request.

7. An agency employee's failure to provide requested materials in a timely manner, may result in administrative disciplinary action as stated in section 10 below.

C. **IC IG Initial Review:** The IC IG will review all relevant materials submitted by the requesting employee, the head of the department or agency, and the IG who conducted the initial PPD-19 review. The IC IG will make a determination, based upon his or her discretion as outlined in IC IG guidance, whether to convene an external review panel (ERP) within forty-five (45) calendar days of receiving the requesting employee's complete external review request package. The IC IG will notify the requesting employee, the head of the employing agency, and the IG who conducted the initial IG review in writing of the determination to convene or not to convene an ERP.

D. **External Review Panel (ERP):** If the IC IG determines to convene an external review panel, the IC IG will serve as the chair of the panel and will select two (2) other IGs from the Departments of State, Treasury, Defense, Justice, Energy, and Homeland Security and Central Intelligence Agency to serve on the ERP.

1. Within 180 calendar days of the ERP convening, the ERP shall review the reprisal allegations, which may consist of a file review of all relevant materials submitted, and will determine whether a violation of PPD-19 occurred and recommend corrective actions, if any. The ERP will apply general acceptable standards of review to the reprisal allegations including, but not limited to:
   i. Title 5, and applicable case law, in so far as possible;
   ii. Council of the Inspectors General on Integrity and Efficiency, Quality Standards for Investigations (2011);
   iii. Directives, instructions and other regulations of the originating agency.
2. The IC IG will notify the requesting employee, the head of the employing Department or agency, and the agency IG in writing of the determination.
3. The IC IG will provide any of the ERP's recommendations for corrective action to the head of the employing agency, which may include 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 department or agency head reconsider the employee's Eligibility for Access to Classified Information consistent with the national security and with Executive Order 12968.
4. To avoid conflicts of interest and protect the objectivity of the ERP, none of the listed ERP IGs may serve on an ERP for a reprisal allegation that they reviewed previously as part of a PPD-19 review process or other IG review process. (See section 7.E for ODNI Employees).

E. **ODNI Employee Request for an ERP.** The IC IG will conduct the initial IG review for ODNI employees who allege reprisal in violation of PPD-19 and therefore will be recused from the ERP proceedings. When an ODNI employee requests an ERP as outlined in Section 6.A above, one of the other IGs from the Departments of State, Treasury, Defense, Justice, Energy, and Homeland Security and Central Intelligence Agency will be selected on a rotating basis to conduct the initial review and make the determination to convene an ERP. If the selected IG determines to convene an ERP, the selected IG will serve as the ERP panel chair and execute the IC IG actions outlined in Section 7.D above.

8. **(U) DEPARTMENT OR AGENCY HEAD ACTION**: The department or agency head shall carefully consider the recommendation for corrective action, if any, of the ERP pursuant to the Section 7. Within ninety (90) calendar days, the department or agency head shall inform the ERP, and the DNI of what action he or she has taken regarding the ERP's recommendation. If the department or agency head fails to so inform the DNI, the DNI shall notify the President.

9. **(U) IC IG ANNUAL REPORT**: On an annual basis, the IC IG shall report the ERP determinations and recommendations and department and agency head responses to such recommendations to the DNI and, as appropriate, to the relevant congressional committees.

10. **(U) COOPERATION WITH IGs**: With respect to matters covered by these procedures, all agencies shall cooperate with their respective agency IGs, the IC IG, and ERPs and provide such information and assistance to their respective agency IGs, the IC IG, and ERPs as such IGs may request, to the extent permitted by law.

11. **(U) EFFECTIVE DATE:** These Procedures are effective upon signature.

[signed]
I. Charles McCullough, III
Inspector General of the Intelligence Community

July 3, 2013
Date