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Fax: 816-350-5785

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August 24, 2011

U.S. Department of Homeland Security

COW2011000109



U.S. Citizenship
and Immigration
Services

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office February 08, 2011. You requested a copy of the USCIS Employee Misconduct Reporting Form and Management Inquiry Handbook.

We have completed our search for records that are responsive to your request. The record consists of 73 pages of material and we have determined to release it in full. The enclosed record consists of the best reproducible copies available.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Please include the control number listed above on all correspondence with this office. Requests may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead, or sent by fax to (816) 350-5785. You may also submit FOIA/PA related requests to our e-mail address at uscis.foia@uscis.dhs.gov.

Sincerely,

Jill A. Eggleston
Director, FOIA Operations

A handwritten signature in blue ink, appearing to read "Jill A. Eggleston".



U.S. Citizenship
and Immigration
Services

USCIS Employee Misconduct Reporting Form Printable Version

July 2010

U.S. Department of Homeland Security
Office of Security and Integrity MS 2275
633 Third Street NW, 3rd Floor
Washington, DC 20529-2275
osi.uscis.dhs.gov

When to Use this Form: USCIS employees can use this form to report allegations of employee misconduct to the Office of Security and Integrity, Investigations Division. Allegations relating to less serious misconduct, such as insubordination, rude behavior in the workplace, tardiness, inattention to duties or poor job performance, should be reported directly to management in the affected office for resolution. Alternatively, you may submit an allegation online through OSI's Web site at osi.uscis.dhs.gov.

How to Submit the Form. Fax your completed form to 202-233-2453 or mail it to **Chief, Investigations Division, Office of Security and Integrity MS 2275, U.S. Citizenship and Immigration Services, 633 Third Street NW, 3rd Floor, Washington, DC 20529-2275**

The OSI makes every effort to maintain the confidentiality of informational sources; however, you should be aware that for investigations in which an allegation is substantiated and disciplinary action is proposed, the subject is entitled to review documentation and evidence relied upon as the basis for the proposed action.

Depending upon the nature of the allegation(s) included in your report, the OSI will refer this matter as required to the DHS OIG for review and investigative determination. If the allegation either does not meet the criteria for referral to the DHS OIG or is not accepted by the DHS OIG for investigation, the OSI will resolve the matter either by conducting an investigation, referring the matter for an official Management Inquiry if appropriate, or referring the matter to the appropriate USCIS manager for information and action as necessary. You should be aware that as a matter of procedure, the OSI does not provide a complainant, victim, witness, or subject of a complaint with the initial investigative determination of a complaint, since a disclosure of this nature could adversely impact the investigative process.

Email Confirmation

If you would like us to confirm that we have received your report, please provide an email address in the box below where we can send an acknowledgment message.

(example: john.doe@dhs.gov)

Section I - Your Information (Optional)

Name _____ Employment Status _____ Federal Employee _____ Contractor

Title/Position _____ Office _____

Region _____ City _____ State _____

Telephone Number, including extension _____

Section II - Subject(s) Information

Please include first and last name, title, region, office, city, state, and telephone (including extension) in the space below.

Section III – Narrative

Please provide the details/facts about the misconduct in the space below.

Section IV - Witness(es) Information

Please include first and last name, title, region, office, city, state, and telephone (including extension) in the space below.

Section V - Additional Information and Attachments

Provide any additional information related to your report.

USCIS Office of Security and Integrity

Management Inquiry Handbook



**U.S. Citizenship
and Immigration
Services**

**Version 1.0
February 2009**

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1.0 INTRODUCTION

This Management Inquiry Handbook serves as the primary resource guide for Management Inquiry Officers in preparing for, conducting and reporting management inquiries referred by the U.S. Citizenship and Immigration Services (USCIS) Office of Security and Integrity (OSI). It outlines the critical elements necessary in completing management inquiries into allegations of non-criminal misconduct. Procedures in this handbook are to be adhered to by Management Inquiry Officers (MIO) charged with conducting Management Inquiries (MI).

2.0 DEFINITIONS

A "Management Inquiry" (MI) is an inquiry into alleged employee misconduct that is not criminal in nature, referred to local USCIS management by the USCIS/OSI for completion by a USCIS Management Inquiry Officer.

"Agency" refers to the U.S. Citizenship and Immigration Services (USCIS).

An "allegation of misconduct" is information from any source that a federal employee or contract employee of USCIS has violated any federal, state, or local statute, Department of Homeland Security (DHS) or USCIS regulation, or any applicable standard of conduct. Such allegations apply not only to on-the-job conduct, but also to conduct off the job that may affect USCIS programs and operations.

The "OSI/RFO" refers to the OSI-Investigations Division's Regional Field Office responsible for the USCIS geographical region in which the alleged employee misconduct is reported to have occurred (see Section 14.0 of this handbook). The OSI/RFO will assist Management Inquiry Officers with questions and/or issues relating to assigned inquiries, or the management inquiry process.

A "subject" is an individual whose conduct is at issue in the inquiry.

A "witness" is a person who is believed to have information that may aid in proving or disproving an allegation.

An "interview" is a planned conversation, the intended purpose for which is to acquire facts and obtain evidence that will either corroborate or refute alleged employee or contractor misconduct. An interview provides a means for explaining, confirming, supplementing and elaborating upon information in a complaint; clarifies what witnesses observed and/or heard; helps identify, correlate and explain physical evidence; permits witnesses to explain contradictory evidence or irregularities in information; and provides a subject the opportunity to admit or deny the allegation(s).

A "systemic corrective action" is an action taken in an effort to address and rectify conditions which permitted or contributed to the misconduct, or the perception of

misconduct. Systemic corrective action is taken in order to reduce vulnerability to waste, fraud, abuse and mismanagement.

3.0 PURPOSE

This Management Inquiry Handbook is designed to provide guidance for the conduct of management inquiries by individuals appointed by USCIS management as Management Inquiry Officers (MIO). This handbook outlines the steps to be taken in preparing for, conducting, and reporting a management inquiry, as well as background information related to disciplinary actions and representation issues. It is intended to promote uniformity in the reporting of management inquiries, and to enhance the effectiveness of the Management Inquiry Reports (MIR).

All federal employees are expected to observe federal, state, and local laws. USCIS employees are further required to observe the Standards of Ethical Conduct for Employees of the Executive Branch, DHS and USCIS policies and directives, and other applicable government-wide regulations. USCIS expects the highest standards of ethics and professionalism from its employees.

4.0 PRINCIPLES

The goal of a management inquiry is to identify any and all information that tends to prove or disprove that misconduct has taken place, whether or not an existing policy, procedure or regulation has been violated, and whether the subject employee committed the alleged violation. The only desired outcome of a management inquiry is that it be an objective and comprehensive review of all the relevant facts and evidence. It should be emphasized that an inquiry that establishes the innocence of an employee is equally as important as an inquiry that substantiates misconduct.

As a Management Inquiry Officer, your role in the management inquiry is to address all issues related to the alleged employee misconduct. All management inquiries are considered serious and deserve attention to detail, process, and procedure. Upon receipt of a referral, you should contact your USCIS OSI/RFO with any questions or concerns relating to either the assigned inquiry or the management inquiry process. The OSI Investigations Division staff is always available for consultation on any issue. Your OSI/RFO is available to provide support and guidance. If you are in doubt on any point, no matter how seemingly insignificant, discuss it with your local OSI/RFO.

Your job in the inquiry process requires impartiality, objectivity and integrity. You must conduct your inquiry objectively, regardless of any personal opinion you may form. Perceptions are important. Be sensitive to them and take appropriate steps to avoid an appearance of loss of impartiality. To maintain your credibility, you must be sensitive

not only to the propriety of your conduct, but also to the perceptions that others may have of your conduct. Professionalism and objectivity on your part during all aspects of the management inquiry are key factors in an appropriately conducted inquiry.

If you feel you cannot objectively conduct an inquiry due to personal knowledge of the issue(s) or individual(s) involved, you should recuse yourself. The impartiality required to accomplish an appropriate and objective Management Inquiry Report requires that Management Inquiry Officers recuse themselves from any inquiry involving a USCIS employee subject with whom they have had a close working relationship, or about whom they have strong personal feelings. Even the appearance of the loss of impartiality may influence the outcome of the inquiry. If you find that you may have to recuse yourself from a management inquiry, or if an objection is made to having you conduct a management inquiry, you must contact your OSI/RFO immediately.

Correctly identifying the legal and factual issues relative to the allegation directs the planning and conduct of any inquiry. A professional inquiry is focused upon developing facts, collecting and retaining evidence, and accurately reporting all findings relative to the specific allegation in an objective and unbiased manner.

Understanding employee rights and obligations is vital to the success of your inquiry. You must respect the rights of all USCIS employees and never intentionally violate the rights of any person during the course of an inquiry. At the same time, you must know the limits of those rights and their relationship to an employee's duty to cooperate in an inquiry.

The timeliness of reports is also critical to the fact-finding process. Established timelines are identified in Sections 12.2 and 12.3 of this handbook.

Management inquiries will never be referred as criminal investigations. If the conduct at issue in an inquiry constituted a potential criminal violation, a decision to address it in an alternate manner will already have been made prior to its referral to you. If you receive new information while conducting an inquiry that indicates a criminal violation may have occurred, you must immediately notify your OSI/RFO before proceeding any further with the inquiry.

As a Management Inquiry Officer, you have a duty to protect the integrity of the management inquiry. The following are several issues you should keep in mind:

4.1 Safeguarding Information

All information received during any management inquiry is considered to be **sensitive in nature**. This means that your discussion of such information is limited to official purposes. Since you identify yourself in your official capacity at the outset of interviews, witnesses should be advised that any information they furnish is for official purposes. In addition, you must take appropriate measures to secure all information, documentation and evidence you have obtained while the management inquiry is ongoing.

4.2 "Off the Record" Statements

Occasionally a witness offers to provide information "off the record." Should this occur, explain to the witness that you will report all pertinent information provided, and any information provided will be used for official purposes only. There is no such thing as "off the record" during a management inquiry.

4.3 Media Inquiries

Under no circumstances are you to initiate or respond to any press contact. If the news media contacts you, explain that you cannot grant an interview, cannot discuss your work, or even acknowledge that an inquiry is being conducted. You should refer them to OSI and then immediately inform your local OSI/RFO of the contact.

4.4 Electronic Recording

Neither the recording of an interview by a Management Inquiry Officer without the interviewee's knowledge, nor the overt or covert recording of an interview by any other party during the course of a management inquiry, is permitted [see Section 8.3.1(B) for further information]. Nevertheless, you should conduct every interview as if it were being recorded. Never say, do, or imply anything during an interview that you would not say, do, or imply if the interview was being recorded. If you believe you have been electronically recorded, contact your local OSI/RFO.

4.5 Freedom of Information and Privacy Act Requests

The Freedom of Information Act (FOIA) enables the public to obtain information regarding the general operations of USCIS. The Privacy Act (PA) enables individuals to request personal information about them. All requests for information under these acts should be referred to the National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, Missouri, 64064-8010. Information regarding how to make a FOIA or PA request is available online at the uscis.gov website, under the link "Freedom of Information Act," which appears at the bottom of the USCIS homepage. Under no circumstances should a Management Inquiry Officer release records to the public, or any other USCIS or government entity. Any requests of this nature must be directed to the National Records Center FOIA/PA Office, and followed up with a notification to the OSI/RFO. Further, you should not discuss or release any information regarding your inquiry with anyone, including other employees who do not have a need to know. Do not release any documentation regarding the matter outside official channels.

5.0 AUTHORITY

In accordance with Section 453(a)(1) of the Homeland Security Act of 2002 (P.L. 107-96, November 25, 2002), the Director of USCIS is responsible for conducting

investigations of non-criminal allegations of misconduct, corruption, and fraud involving any USCIS employee that are not subject to investigation by the DHS Office of Inspector General. The Director of USCIS has delegated the foregoing investigatory responsibility to the Office of Security and Integrity (OSI) which, in turn, may refer minor allegations of employee misconduct to local USCIS management officials for appropriate inquiry. Accordingly, Management Inquiries are conducted by local USCIS management under the auspices of OSI investigatory authority as delegated by the Director.

In the context of a Management Inquiry, there are two types of statements that a Management Inquiry Officer may obtain from a subject or witness: (1) a sworn statement or (2) an unsworn statement.

A Management Inquiry Officer's authority to administer an oath for purposes of a sworn statement is derived from Title 8, Code of Federal Regulations (C.F.R.) Section 287.5(a)(2), which permits a duly appointed "immigration officer" to administer an oath concerning:

...any matter which is material or relevant to the enforcement of the Act [Immigration and Nationality Act] and the administration of the immigration and naturalization functions of the Department.

A Management Inquiry Officer may administer an oath and obtain a sworn statement only if he or she meets the definition of "Immigration Officer" as described in 8 C.F.R. § 103.1(b). The latter section provides that DHS employees in the following positions, including senior or supervisory officers of such employees, are considered "Immigration Officers" and have authority to administer an oath:

...Immigration officer, immigration inspector, immigration examiner, adjudications officer, Border Patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention enforcement officer, detention officer, investigator, special agent, investigative assistant, immigration enforcement agent, intelligence officer, intelligence agent, general attorney (except with respect to CBP, only to the extent that the attorney is performing any immigration function), applications adjudicator, contact representative, legalization adjudicator, legalization officer, legalization assistant, forensic document analyst, fingerprint specialist, immigration information officer, immigration agent (investigations), asylum officer, other officer or employee of the Department of Homeland Security or of the United States as designated by the Secretary of Homeland Security as provided in §2.1 of this chapter...

If a Management Inquiry Officer is not an "immigration officer" as defined above, he or she may not administer an oath in the conduct of an inquiry for purposes of obtaining a sworn statement. A Management Inquiry Officer who lacks authority to administer an oath may, however, obtain an unsworn written statement that has the same effect as a sworn statement pursuant to 28 U.S.C. § 1746.

In order to obtain a valid unsworn statement, a Management Inquiry Officer must ensure that the following language is inserted at the end of the statement:

- a. If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."
- b. If executed in the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

Sample forms for a Sworn and Unsworn Statements are included in this handbook (Attachments E and F).

6.0 OBJECTIVES

The goal of a management inquiry is to identify all available facts and other information which tend to prove or disprove whether an employee engaged in misconduct or violated an existing policy, procedure, or regulation. As stated earlier, exonerating an employee is just as important as determining that an individual committed a violation. When allegations are substantiated, the purpose of a management inquiry is to support appropriate corrective action, be it individual or systemic.

It is vital that management inquiries be conducted in accordance with standards that will safeguard the findings and see them through third-party review (i.e., arbitration, Equal Employment Opportunity Commission [EEOC], Federal Labor Relations Authority [FLRA], or Merit Systems Protection Board [MSPB] hearings), should an employee challenge a disciplinary action.

Disciplinary and adverse actions have their place in preventing misconduct, however deterrence is only one aspect of prevention. You also should be actively looking for deficiencies in USCIS systems and processes that fostered and permitted misconduct, and address those matters in your findings. **Systemic corrective actions**, such as tightening loose procedures and internal controls, improving work methods or security, increasing oversight or supervision, and enhancing training, stand to benefit and protect USCIS and employees alike.

Two guiding principles in the area of disciplinary actions with which you should be familiar are:

6.1 Standard for Action

The standard for taking administrative action against an employee, when merited, is “for such cause as will promote the efficiency of the service” (5 U.S.C. §§ 7503, 7513). The agency does not have to prove violation of law, regulation or a specific agency rule. The agency does have to demonstrate that agency or government interests are at issue. That is, there must be a relationship between the conduct at issue and the interests of the federal service. This relationship is commonly referred to as “nexus” and must be demonstrated by the agency in a disciplinary or adverse action case. Nexus can be proven by showing the misconduct adversely affected an employee’s or co-worker’s job performance, or the agency’s trust and confidence in the employee. It may also be proven by showing the misconduct interfered with, or adversely affected the agency’s mission. The agency is justified in taking disciplinary action because of the negative effect the behavior has on agency operations and the agency’s trust and confidence in the employee’s ability to perform the duties of the position.

When employee misconduct is substantiated, the so-called “Douglas Factors” are taken into consideration by proposing and deciding officials to determine the appropriate, reasonable penalty, since disciplinary action is generally warranted. These significant factors were set forth in the case of Douglas v. Veteran’s Administration, 5 M.S.P.R. 280 (1981). While the Douglas Factors do not generally come into play during the conduct of management inquiry, you should be familiar with them, especially numbers 9 and 11:

1. The nature and seriousness of the offense and its relation to the employee’s duties, position and responsibilities, including whether the offense was intentional, technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. the employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. the employee’s past disciplinary record;
4. the employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. the effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon supervisors’ confidence in the employee’s ability to perform assigned duties;
6. consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. consistency of the penalty with any applicable agency table of penalties;
8. the notoriety of the offense or its impact upon the reputation of the agency;

9. the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

(This point is particularly important for those who conduct management inquiries. Information regarding whether the subject knew better or had been previously warned about certain conduct must be sought from both the subject and their supervisor, as well as applicable co-workers and other witnesses.)

10. potential for the employee's rehabilitation;
11. mitigating circumstances surrounding the offense such as unusual job tensions, personality problems; mental impairment, harassment or bad faith, malice or provocation on the part of others involved in the matter; and

(This type of information should be elicited from a subject during the interview. Asking questions regarding and documenting mitigating circumstances will ensure they are known from the outset and considered.)

12. the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

6.2 Burden of Proof

The government must be able to prove that a disciplinary action is warranted by the **preponderance of evidence** [5 U.S.C. § 7701 (c)(1)(B)]. This burden of proof is defined in 5 CFR § 1201.56(c)(2) as follows:

The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

The preponderance standard applies to all elements of the agency's case; the charges themselves, the determination there is a nexus between the behavior and the interests of the government, and determinations relied upon to support the penalty.

In order for evidence to be admissible in a case before the MSPB, it must be relevant, material and not unduly repetitious. If an Administrative Law Judge (ALJ) is in doubt as to the relevance of evidence, he or she may admit the evidence and determine relevance later. Live testimony of a witness with first hand knowledge of the facts at issue, subject to cross-examination, is given the most weight. Sworn statements are not as good as live testimony, but will be given weight. Unsworn statements may be admitted, but do not carry much weight except when corroborated by a live witness. Hearsay evidence is admissible in an administrative proceeding, and its weight and value are dependent upon the following factors as determined by the MSPB in Borinkhof v. Department of Justice, 5 M.S.P.R. 77 (1981):

1. The availability of persons with first-hand knowledge to testify at the hearing;
2. whether the statements of the out-of-court declarants were signed or in affidavit form, and whether anyone witnessed the signing;
3. the agency's explanation for failing to obtain signed or sworn statements;
4. whether declarants were disinterested witnesses to the events, and whether the statements were routinely made;
5. consistency of declarants' accounts with other information in the case, internal consistency, and their consistency with each other;
6. whether corroboration for statements can otherwise be found in the agency record;
7. the absence of contradictory evidence; and
8. credibility of declarant when she/he made the statement attributed to her/him.

The weight given to a report of inquiry can be diminished if the author (or person who conducted the inquiry) of the report is not available for cross-examination, or if a witness merely states that his or her statement as contained in the report is true, rather than submitting to cross-examination.

When a witness's testimony conflicts with the contents of an investigative report or the testimony of other witnesses, a number of factors are used by an ALJ to resolve credibility issues. These factors are commonly known as the "Hillen Factors" [Hillen v. Department of the Army, 35 M.S.P.B. 453 (1987)]. Management Inquiry Officers should be familiar with these factors, and may find them useful when determining credibility. These include:

1. The witness's opportunity and capacity to observe the event or act in question;
2. the witness's character;
3. any prior inconsistent statement by the witness;
4. a witness's bias, or lack of bias;
5. contradiction of the witness's version of events by other evidence or its consistency with other evidence;
6. the inherent improbability of the witness's version of events; and
7. the witness's demeanor.

7.0 EVIDENCE

Evidence is information that tends to prove or disprove a purported fact. In a management inquiry, where there is no contemplation of criminal prosecution, the case findings may reflect any type of credible evidence which tends to substantiate or refute the allegation(s). Prior review of a matter in contemplation of criminal prosecution--including declination by a prosecutor--does not constitute the employee's exoneration on an administrative basis, and does not diminish the importance of conducting a thorough management inquiry.

Simply put, in order to substantiate an allegation in an administrative inquiry, you must be able to show that it is more likely than not that the alleged misconduct at issue occurred. This is not to say that any statement is to be taken at face value. Information must be assessed for credibility. The Management Inquiry Officer must establish witness competence and basis for knowledge.

Physical and documentary evidence should be identified and obtained as early as possible in the inquiry process, in order to allow for review and analysis prior to initiation of your interviews. This will establish custody of the evidence and provide the Management Inquiry Officer with knowledge of the issues in order to properly prepare for interviews.

7.1 Types of Evidence

There are several types of evidence that can be used in management inquiries to prove or disprove allegations:

- A. Direct evidence proves the existence of the main fact without any inference or presumption. It is direct evidence when the very facts in dispute are sworn to by those who have acquired knowledge of them by means of their senses, that is, direct observation.
- B. Hearsay evidence does not come from the personal knowledge of the witness, but from the repetition of what he or she has heard others say happened. In an administrative inquiry, hearsay information is an acceptable source of evidence, and may be that which serves to tip the scale in an administrative proceeding against an employee. However, hearsay evidence should not be relied upon solely in reporting the results of your inquiry. In addition, a report should make clear that the information is hearsay and identify, if possible, the source of the information to the witness reporting it.
- C. Opinion evidence generally is a conclusion offered by a witness based on the facts presented. The facts that support the opinion may be known to the witness or supplied by the Management Inquiry Officer when soliciting the opinion. In criminal proceedings, only the opinions of recognized experts within their area of expertise are admissible. In administrative inquiries the standards are less

stringent. While the opinions of witnesses often are helpful in evaluating testimony, great care must be exercised to ensure that a final product clearly distinguishes between fact and the opinion of a particular witness. In addition, the credibility and basis of the witnesses' knowledge must be established clearly before any evidentiary weight can be attached to their opinions.

- D. Circumstantial evidence tends to prove or disprove an issue indirectly through inferences that are drawn from other proven facts. Circumstantial evidence is secondary evidence to be used only when there is no direct evidence. It can be used by itself or in combination with other types of evidence to establish a fact in question. Circumstantial evidence may be a composite of testimony, documents and other information which, when consolidated, would cause an outside observer to conclude that something did or did not happen.

7.2 Forms of Evidence

The above types of evidence can take the following forms:

- A. Physical or Real evidence consists of objects or conditions that establish facts. This evidence speaks for itself and requires little or no explanation, only identification.
- B. Documentary evidence is a form of physical evidence that includes writings, photographs, maps, sketches, regulations, laws and other types of written or documented material.
- C. Testimonial evidence is evidence given orally by a competent witness. Types of testimonial evidence include:
1. Sworn testimony is a statement taken under oath administered by a Management Inquiry Officer who may be authorized, in accordance with 8 C.F.R. (see Section 5.0, "Authority"), to administer an oath.
 2. Unsworn testimony is a statement executed under "penalty of perjury" pursuant to 28 U.S.C. § 1746. Unsworn testimony is obtained in the same manner as sworn testimony, except that the interviewee is not administered an oath by the Management Inquiry Officer; rather, the interviewee declares in writing that their statement is true and correct under penalty of perjury.
 3. Taped testimony is a statement that is tape-recorded with the full knowledge of the subject or witness.

7.3 Other Concepts Related to Evidence

Several other concepts related to evidence apply to management inquiries:

A. Relevancy

If a fact offered in evidence relates in some logical way to the main issue in the case, it is relevant. The word "relevant" implies a traceable and significant connection between facts involved in the case. A fact need not bear directly on the principal fact for it to be relevant. It is sufficient if the fact at issue constitutes one link in a chain of evidence, or if it relates to facts that would constitute circumstantial evidence.

B. Competency

Competent evidence is evidence that is generally admissible (i.e., relevant and material) as opposed to "incompetent" or "inadmissible" evidence.

C. Credibility

Credibility is the worthiness of belief in what an individual is saying or claiming. It is the quality in a witness that renders his evidence worthy of belief. It is especially important to assess the credibility of complaints against employees and not accept them on their face, since complaints can be used as a means of retaliation against others.

Although a complainant interview should never be approached with skepticism, the motive for the complaint should be taken into consideration. At the same time, legitimate allegations can be made for less than altruistic motives. You should not dismiss allegations based on your own feeling that they are being made by a complainant with less than completely honorable reasons for making them.

Even with cooperating witnesses, you should be aware of some of the factors that may cause a witness, either deliberately or unconsciously, to color or distort facts. Some of these factors are:

1. Hope of gain (If he or she goes, I get promoted....);
2. Prejudice or dislike for a person, race, sex, organization, or principle;
3. Fear of implication in the act(s) being investigated;
4. Demographics--education, background, age, sex, political views, and socioeconomic status, all of which shape opinions and views;
5. Physical conditions at the scene being described (poor lighting or bad weather);
6. Strong emotions such as fright, excitement or anger, either at the time of the incident or at the time of interview; and
7. Poor memory or gaps in recollection.

None of these factors preclude what an interviewee says from being used as evidence in a management inquiry. You must, however, take any such factors into consideration and make them a part of the report of the interview. For example, if the interviewer notices a seemingly strong bias against a particular person or issue on the part of a witness, and this information is relevant to the inquiry, you should attempt to have the witness describe his or her personal feelings and report same. This will provide a more realistic basis for assessing the veracity of the witness testimony.

D. Impeachment

Impeachment is a legal tactic aimed at discrediting an adversary's witness by diminishing their credibility by reason of traits of character or commission of prior bad acts, crimes or previous convictions. Where it can be anticipated that important issues of fact will be contested in administrative proceedings or arbitration, you should obtain and report all available information concerning witnesses which would tend to impeach them, such as information that calls into question witness credibility or truthfulness.

E. Silence

Silence is an important issue in management inquiries in that, unlike criminal cases, adverse inferences may be drawn from the fact that the employee remained silent or refused to give evidence. This is especially relevant in circumstances in which it would have been in the employee's best interest to speak. When an employee refuses to answer questions posed by you as the Management Inquiry Officer, the employee should be reminded of this duty and asked the question again. It should be emphasized that you should draw no "personal" inference or conclusion in your report related to silence; rather, you should report it as you would any other unusual circumstance you encounter during the inquiry. Further, where a witness or a subject makes sweeping denials but refuses to answer specific questions about the details of an event, such refusal should be noted in your report, as it can be used as evidence against that individual by a proposing official in a proposal for disciplinary action for substantiated misconduct. Likewise, a complainant's refusal to provide information or additional details after making the initial complaint should be considered when assessing the credibility of the complaint itself.

8.0 PLANNING AND CONDUCTING THE MANAGEMENT INQUIRY

No single factor contributes as much to the thoroughness and efficiency of a management inquiry as does proper planning. Planning is a dynamic process. From the beginning of an inquiry to its end, a Management Inquiry Officer constantly must reassess the inquiry plan and revise it as necessary.

In conducting a management inquiry, it is not your responsibility to be an expert in legal or regulatory requirements, nor is it your job to frame disciplinary action charges. However, it is your job to produce a product that enables others to do so. With that said, a management inquiry should be conducted with the knowledge of what must be demonstrated in a final written product to support the finding.

Typically, a management inquiry will encompass the following steps:

- A. Reviewing the Allegation(s)
- B. Planning the Inquiry
- C. Conducting the Inquiry
- D. Reporting Findings to OSI/INV

8.1 Reviewing the Complaint

An inquiry plan must pursue all possible avenues of inquiry fully to develop the facts and circumstances concerning the allegation(s). To ensure a consistent inquiry process, as a critical first step you must carefully review the complaint in order to:

- Identify the specific allegation(s) of misconduct;
- Identify the complainant and each victim, witness and subject;
- Make a preliminary determination as to which procedure, directive, policy provision or standard of conduct may have been violated; and
- Make a preliminary determination as to potential documentary or other evidence that may be needed to support the findings, as well as the possible source(s) of this evidence.

Careful consideration must be given to these points when reviewing the complaint, as the expectation is that all of these factors will be accounted for in your report of inquiry.

The initial review of a complaint is also the proper stage during which to ensure that any documents or other items of evidence at issue that you have identified as noted above, are secured properly. For example, if in reviewing the initial allegation you note that it relates to an employee who alleges he or she was threatened by a supervisor and that this threat was communicated by memo, you should request that the complainant, if in possession of the document, forward the original to you or maintain it until you arrive at the location.

8.2 Planning the Inquiry

Your planning should begin with preparing a “*Chronological Case Worksheet*” (see Attachment A). Although there is no specific format for this plan, there are certain areas you should keep in mind. The worksheet should identify the allegation(s), analyze the results of any database queries, identify documentary evidence needed, identify potential subjects and witnesses, and determine interviewing sequences. This list is not all-inclusive; therefore, your plan may include other areas not listed here. Your local OSI/RFO can assist you in answering any questions concerning the formulation of your inquiry plan.

8.2.1 Review of Government-Issued Equipment, Systems and Databases

There may be instances where a Management Inquiry Officer believes that government issued equipment, government property, or a USCIS system or database may contain relevant information. If you believe that examining government issued equipment, government property, or a USCIS system or database may be necessary to corroborate or refute an allegation, **you must contact the OSI/RFO for further instructions prior to conducting any physical examination or review of equipment, property, system or database.**

8.2.2 Deciding Who to Interview

The first step in determining who will be interviewed in a management inquiry is to thoroughly review the initial allegation with an eye towards who is specifically identified as having knowledge of the allegation. It is also important to consider who in the subject employee's chain of command would likely have knowledge of the allegation(s). Once you determine who should be interviewed, the next step is to determine the interview sequence and include this in the inquiry worksheet. **Victims and complainants should be interviewed first, in order to establish the veracity of the specific allegation(s), and subjects should be interviewed last.**

You should then prepare an outline of questions to be asked, in order to obtain particular witness testimony relative to the allegation(s) and any existing evidence. The questions should be logically organized and fully relevant to the issues contained within the inquiry. Remember, however, that **during an interview you must not confine your questioning to your list of questions, to the extent that you fail to carefully listen and follow up on important information volunteered by an interviewee.** You can always pause to review your list to ensure that you ask **all** the relevant questions.

Also keep in mind that these initial interviews may identify other persons with direct or relevant knowledge who may also need to be interviewed, or other documentary evidence that must be retrieved and reviewed. These interviews set the stage for the subject interview, which normally takes place after all other interviews. However, a subject interview may also disclose additional witnesses that need to be interviewed or additional issues that need to be explored, particularly when a subject offers an alibi. If

necessary, a follow-up interview should be conducted with any previous interviewee if there is a need to address additional information developed.

8.2.3 Arranging Appearances for Interviews

Once you have determined who will be interviewed, you should schedule your interviews, ensuring that interviews of complainants and victims will occur first, then informational witnesses and, finally, the subject(s).

A. Contacting Local Office Management

As a matter of procedure, OSI referrals to field management for completion of a management inquiry include a request that the inquiry be assigned to an employee who does not work in the same specific office as the subject(s) of the inquiry, or who is in the same local chain-of-command as the subject(s). As such, you may find it necessary to contact the local management of another office within the jurisdiction and establish a management point of contact (who is not the complainant or subject of the inquiry) for logistics purposes. Arrangements should be made at that time with this point of contact for a private work space to conduct interviews, as well as for the collection of any documentary evidence prior to your arrival that, at that point, you are aware will be needed for the inquiry. You should also advise the point of contact at this time that you will make your own arrangements for interviews by contacting the interviewees directly and issuing the appropriate notices to appear for interviews.

Should the situation dictate that local management in another office must become involved in ensuring an interviewee will be on duty when you are there, be sensitive to protecting the confidentiality of your arrangements to the extent possible, and caution the point of contact making arrangements for you to exercise the utmost discretion possible. When access to an interviewee is only through a manager, secretary or other subordinate, identify yourself but limit your discussion of the reason for contacting the individual to the need to arrange the interview for official purposes. You can then fully discuss the purpose for the interview directly with the interviewee.

B. "Required Appearance" Memorandum (NTA)

Once you have identified an available, suitable location (with your USCIS management point of contact, if at another office) in which to conduct the interviews and have tentatively established the schedule availability of each interviewee (shift schedules, leave schedules), all interviewees should then be contacted individually to make arrangements for interview. At this time, it is imperative that you determine a valid email address for each interviewee, to which you can forward to the interviewee an individual *"Required Appearance Memorandum"* (see Attachment B, commonly referred to as a "Notice to Appear" or NTA) at least 48 hours prior to the interview. It is imperative that you

provide all individual employees to be interviewed, particularly bargaining unit employees, with this notice.

This memorandum will provide specific information to the interviewee:

- the identity of the Management Inquiry Officer before whom the interviewee is directed to appear;
- the specific date, time and location of the interview (In order to avoid any confusion or undue disruption to employee work schedules, it is imperative that the notice to appear you issue to an employee include this information. It is detrimental, not only to the employee's scheduled availability but to your inquiry plan as well, if the notice reflects nothing more specific than a "block" of hours during a given day, or a "block" of days during a given week);
- a brief description of the misconduct alleged (this should include the date, location if known and a specific description of the nature of the alleged misconduct that does not include complainant or witness names); and
- whether the employee's appearance is as a witness or a subject.

Of equal importance is the requirement to present this memorandum to all interviewees developed during the inquiry, regardless of a short length of time between developing a name and interviewing that employee, prior to the interview.

You should also ensure that each interviewee acknowledges receipt of this memorandum via signature/date at the bottom of the memorandum.

8.2.4 Timing and Location of Interviews

Make sure the location you arrange for your interviews safeguards the dignity and confidentiality of both witnesses and subjects. The atmosphere of privacy helps place the interviewee at ease, eliminates distractions, and provides an environment more conducive to the purpose of the interview.

Interviews undertaken during an inquiry on behalf of OSI should be conducted at a reasonable hour within the employee's assigned duty hours. However, you should consider such factors as employee fatigue and potential length of an interview. If you anticipate that an interview might be lengthy, you should schedule that interview early in the day.

Interviews should be scheduled so witnesses do not confront each other when coming to, or leaving from an interview location. Arrange this by allowing time between interviews, or by having witnesses enter and exit by different routes.

Instruct each witness not to discuss the inquiry, the interview, or the nature of your questions with other people and have them sign a *"Non-Disclosure Memorandum"* (discussed in more detail in Section 9.4 of this handbook). Be aware that this instruction may go unheeded. It is vital that witnesses not have an opportunity to talk among themselves before all of their interviews are completed, therefore you should schedule your interviews to include enough time between the interviews in order to preclude witnesses present from the opportunity to have contact with each other.

8.2.5 Preparing for Interviews

There is no substitute for detailed preparation. Knowledge of the issue(s), witness(es) and employee role(s) in the situation, and potential information to be gained from the interview, are vital to its success. An interview may produce sufficient evidence by itself, or it may produce leads for collecting additional facts and evidence.

Prior to conducting any employee interviews, a Management Inquiry Officer must become familiar with the administrative notices provided to employees. Detailed information concerning these notices is contained in Sections 8.2.3(B) and 9.5 of this handbook.

You must be thoroughly familiar with all information in the allegation complaint, as well as the information that has been developed to date during the inquiry. Consider how each potential interviewee fits into the overall picture, and what information he or she might be expected to give. Using an outline format, write down the questions you want to ask and the issues you want to be sure to cover during your interview. Again, be careful not to rely solely upon your outline, as doing so might cause you to not follow up on important information volunteered by a witness.

8.3 Conducting the Inquiry

Official Management Inquiries are conducted under the auspices of the OSI – Investigations Division, and are therefore subject to established OSI investigative procedures.

8.3.1 Interviews

Both initial and any follow-up interviews should always be conducted in person. Telephonic interviews should be used only as a last resort, and only for witnesses. The subject(s) of an inquiry must be interviewed in person.

With regard to inquiry interviews, absent concurrence by the OSI, participation in an employee interview for management inquiry purposes will be limited to the following three (3) individuals:

- the Management Inquiry Officer;

- the employee being interviewed; and
- one (1) union representative (if appropriately requested by a bargaining unit employee).

Personal testimony obtained in the form of statements in conjunction with employee interviews provides the core of the management inquiry. During the interview process, adherence to procedure and professionalism facilitates the discovery of facts that will either support or refute the allegation. Conduct all *witness* interviews and obtain sworn or unsworn statements (as appropriate in accordance with your authority to administer an oath) prior to interviewing the *subject*.

No two people can be expected to act or react exactly alike. Some may be cooperative and willing to provide information, while others may be indifferent or reluctant, or even hostile and unwilling to give information. A complainant who is sufficiently dissatisfied to make a formal complaint may feel anxious, frustrated or resentful. It is incumbent upon you to allay these feelings and eliminate any obstacles that might inhibit a free exchange of information.

If at any time an interviewee does not appear to be in a suitable mental or physical condition (e.g., under the influence of drugs or alcohol, in pain or ill), stop or delay the interview. When appropriate, reschedule the interview.

Your personal observations are valuable in weighing the evidence and determining the facts. During questioning, continuously evaluate the mannerisms and emotional state of the interviewee. Hesitation, evasiveness and body language may indicate that an interviewee is not being truthful, or may be concealing information. However, caution must be exercised when interpreting physical mannerisms, and attaching unfounded significance to them must be avoided.

Further, you should not rely solely on a statement or description of events presented during an interview as fact. You should corroborate statements with documentary or other testimonial evidence whenever possible.

There are a number of components associated with conducting an interview that you must be aware of:

A. The Introduction

When introducing yourself to an interviewee, clearly state your name, identify yourself and your official capacity and, if applicable, display your credentials. Make sure the witness understands the general nature of the inquiry and that the interview is an important part of an official inquiry. For example: *"I am (your name), (your title), conducting an official Management Inquiry under the auspices of the U.S. Citizenship and Immigration Services' Office of Security and Integrity. I would like to talk*

with you today regarding your knowledge of an allegation of misconduct that took place on January 15, 2008 at the (location). Specifically, it has been alleged that (specific allegation without complainant or witness names)." You will provide the specific details as you progress through the interview.

Further advise the interviewee that at the conclusion of the interview, he/she will be afforded an opportunity to add any additional remarks or present any additional material which may pertain to the inquiry. Explain that your manner of handling the interview is routine and required of all witnesses.

Explain to the interviewee that you have been designated as a Management Inquiry Officer and you are interested in obtaining the interviewee's direct and indirect knowledge regarding the allegations. Tell the interviewee you will be asking questions and giving him/her time to respond. Lastly, advise the interviewee that immediately following the interview, you will be obtaining a signed statement from him/her.

B. Recording an Interview

A written statement is ALWAYS the preferred method with which to memorialize an employee interview during a management inquiry, however in rare instances due to circumstances such as a potentially lengthy interview involving numerous allegations and/or the complexity of an allegation, an interview electronically recorded in a taped format "may" be considered in lieu of obtaining a signed statement. However, the local OSI/RFO must first be consulted for authorization prior to proceeding with a recorded interview.

If you plan to electronically record a subject interview, remember that recording equipment generally causes people to be uncomfortable. They usually are already nervous about being interviewed during the course of an inquiry, so you do not want the recorder to cause more stress. Set up the recorder beforehand in the most "inconspicuous" way possible, but in plain view. Always test the equipment prior to bringing the interviewee into the room, as well as before you arrive at the location of the interview.

Be sure that you know how the recorder works, and that all switches and volume settings are correct before beginning the interview. Pay attention to the volume at which the witness is speaking and adjust the position of the recorder to accommodate the witness. It is wise to also do a recording test with your witness to ensure optimum recording conditions. This also lets the witness know the recorder is working properly.

When electronically recording an interview, begin the interview by reading into the record the *"Preamble for Recorded Statement"* (see Attachment C).

If you receive approval from OSI to electronically record an interview, it must be emphasized that:

- telephonic interviews may not be recorded;
- under no circumstances will an employee interview be recorded without the employee's knowledge;
- the only recording device used during an interview will be the recorder used by you;
- All original recordings of interviews must be forwarded to the OSI/RFO with the original report of inquiry.

As an official inquiry being conducted under the auspices of the USCIS Office of Security and Integrity, all information obtained by a designated Management Inquiry Officer on behalf of the OSI during the inquiry, to include electronic recordings, is subject to custody and control by Headquarters OSI. As such, the investigative procedure of recording interviews and obtaining statements as part of the official record of OSI Management Inquiries is reserved to OSI and its designated representatives, and will not extend to any other employee. As part of official evidence that, for review and potential confidentiality purposes in an ongoing inquiry, must remain in OSI custody, employees are not immediately entitled to a copy or transcript of a recording. Upon completion of an official inquiry, a copy or transcript of a recorded interview may be made available to an employee if it is subsequently used in support of a proposal for disciplinary action. If you believe that any other participant in an interview has surreptitiously recorded the interview, the local OSI/RFO should be contacted immediately.

If electronically recording an interview, prior to starting the recording the interviewee (and union representative, if present) should be reminded to:

- verbalize all responses clearly;
- remain quiet when anyone else is speaking;
- avoid actions such as tapping on the table that might obliterate words in the recording;
- spell the last name of any person mentioned during the interview;

- avoid non-verbal communications (nodding or shaking of head, shrugging shoulders, etc.); and
- provide details verbally when discussing documentary evidence presented, such as a map, diagram, chart, etc.

The commencement of the recording (going "on the record") will begin with an introduction and swearing-in (if you are authorized to administer oaths) of the interviewee using the aforementioned preamble. Ensure that all parties present during the interview are identified for the record.

If the interview is of an employee subject, the "*Statement of Rights and Obligations*" (see Attachment D) must be executed on the record prior to questioning. This memorandum is discussed in more detail in Section 9.5 of this handbook.

If, during a recorded interview, a legitimate need arises to pause the interview (restroom break, request by the interviewee or union representative for a brief private consultation, etc.), you will do the following:

- prior to turning off the recorder, you will state that "A brief administrative break has been requested by (name) for (reason). The time is now (time)." Then, turn off the recorder;
- at the conclusion of the administrative break, you will turn the recorder on and immediately state that "The administrative break has concluded and we are back on the record. The time is now (time)." Then, continue with the interview.

It must be emphasized that administrative breaks for legitimate purposes should be brief (a few minutes at most), few in number, and that the recorder must remain on at all other times during the interview.

Interview recordings will be secured with the original Management Inquiry Report (MIR) and forwarded at the completion of the inquiry, along with the original report, to USCIS HQ/OSI.

C. Controlling the Interview

When your attitude and actions are professional, you warrant respect. Do not lose control of the interview through indignation, ill temper, hesitancy, arrogance, foul language or fumbling for questions. It is imperative that you conduct yourself in a professional manner at all times during an interview. (This is particularly important during a recorded interview. While tone and volume of voice don't translate into a written statement,

they will be quite obvious in a recording.) During the interview, you must guide the discussion along lines that will encourage answers that are responsive to the issues being investigated. Be specific and do not ramble. Have a reason for asking each question. Develop facts in the order of their occurrence to help the interviewee recall details. As a general rule, ask questions about less important matters before you confront the interviewee with the more serious issues. Ask direct questions and do not talk around a subject.

You will encounter occasions when an interviewee may appear to ramble and "wander" from the focal point of the interview. Your job is to refocus the interview on the specific details and issues germane to the case.

D. Formatting Your Questions

Remember: During questioning, you should not divulge specific complainant or other witness names.

Avoid questions that are answered solely by "yes" or "no." Such questions limit the interviewees' responses and prompt only an acknowledgment or denial. Avoid long, complicated or legalistic questions. Interviewees might answer "I don't know" when, in fact, they just don't understand the question. Further, when you get an answer to such a question, it is sometimes difficult to know what part of the question was addressed.

Ask one question at a time and wait for the interviewee's answer before going to your next question. Usually, the more a person talks, the more he or she will recall and tell you.

Be aware of any tendency you may have to feel uncomfortable during a period of silence, and ensure that you refrain from moving on too quickly to another question. Whether recording an interview or conducting an interview for purposes of a statement, some interviewers become anxious if they don't feel they are asking questions in a "rapid fire" manner in order to avoid periods of silence, particularly during a recording. Remember, there is nothing wrong with taking an extra moment or so to analyze the previous answer given, collecting your thoughts and then asking the next question. Taking extra time before asking a pertinent question that is relevant to the previous answer(s) given by the interviewee is always preferable to asking a question for no reason other than to "fill in a void" in the conversation.

Be aware of any tendency you might have of "finishing" an interviewee's sentences when you "believe" you know what the interviewee is going to say, before he/she has had the opportunity to do so. Let them say it themselves. Further, if someone is talking too slowly for your style and

you interject too quickly before they have made their point, you may miss an important point. Accepting the pace of the interviewee is a way of keeping them comfortable.

Phrase your questions so the interviewee is allowed to comment on all phases of the issue under inquiry. Do not hesitate to rephrase a question if the interviewee does not understand it, or if the answer is incomplete. Avoid speaking for the interviewee by making detailed statements followed by, "Is that correct?" However, if what an interviewee says is confusing, you should acknowledge this and say, "I'm not sure what you mean." Do not put words in the mouth of an interviewee. When an interviewee uses jargon, slang or acronyms, be sure to ask for clarification at the time they are used during the interview.

Note: When interviewing a subject, be sure to include the "difficult questions." Ask the subject specifically to confirm or deny the allegation(s). If the subject confirms the allegation(s), ask for a detailed explanation as to: (1) why the subject engaged in the misconduct; and (2) the extent to which the subject was aware that the conduct was improper. If the subject denies the allegation(s), proceed with your prepared line of questions.

E. Filling in Gaps or Reconciling Inconsistencies

After a witness finishes responding to your question, ask precise follow-up questions that will assist in filling any informational "gaps" in the interviewee's account. If you have any doubt as to what the interviewee is saying, ask, "What I hear you saying is..." or "Do you mean by that..."; then repeat your understanding to the interviewee. Allow the interviewee time to respond before moving on to the next question.

Be alert for "standard" answers to questions. For example, if an interviewee explains that his response in a situation was based upon "training received at the Academy" or in other agency training programs, ask specific questions as to the nature of the training received, and specifically how it was applied in the situation in question.

All discrepancies noted during the inquiry, whether contained in the initial complaint information, conflicting information obtained during interviews, or in documentary evidence, must be addressed in your report.

Reconcile all discrepancies by asking specific questions based on the conflicting information. For example, you might say, "Earlier, you told me..., but now you're saying... Determine whether the interviewee has personal knowledge of important events, individuals, dates, etc. If not, determine the source of their information and be prepared to conduct

additional interviews and/or identify and acquire additional documentary evidence.

F. Evasive or False Information

When interviewees provide information that you know is not correct, realize that it does not always mean they are lying, and that they may be mistaken. The honest but mistaken person usually will acknowledge an obvious mistake, and will welcome efforts to establish the truth.

If an answer is unresponsive or evasive, repeat the question. If the answer is not complete, develop the omitted information by specific, detailed questioning. Give the interviewee a chance to qualify his or her answer. (It is not uncommon for a Management Inquiry Officer to move on too quickly when a person does not immediately respond.)

When an interviewee attempts to deceive you by furnishing false information, encourage the person to talk as much as possible, and then question the details of the story. The individual normally is not prepared to supply additional details to support the original false statement. They probably will furnish contradictory information or become enmeshed in inconsistencies. It is very difficult for someone to lie spontaneously in a logical and consistent manner.

G. Refreshing Recollections

If an interviewee claims not to recall precise details or cannot explain inconsistencies, help refresh their recollection. You may furnish a fact or incident to help them recall the details, but do not provide information about the source of the information. For example, you may provide them with documents or other evidence obtained during the course of the investigation which may assist in refreshing their recollection, to include the interviewee's own previously prepared reports, memoranda or other documents involved in the inquiry. If the subject of the inquiry has been previously interviewed regarding the same allegation, allow the subject to review his or her prior statement(s). **Remember, however, that employees are NOT entitled to review statements of other persons who have been interviewed.**

H. Checking Your Outline

Be sure all of the questions and topics on your previously-prepared interview outline have been covered thoroughly. Do not hesitate to go back and cover any topic you may have inadvertently missed, or that needs further clarification.

Just prior to concluding your interview, summarize all of the important answers and review the information furnished by the interviewee. This provides the opportunity for the interviewee to verify, clarify or amend the information he/she furnished. It also will allow you to further discuss important points. This process often helps the interviewee to recall additional details and important facts.

Always ask the interviewee if they have any other information to provide.

After providing a written statement, the interviewee should leave the interview feeling they can contact you with additional information. Provide them information on how to contact you, should additional information be recalled or come to their attention. They also should be told that you will re-contact them if additional information is required.

At the conclusion of all interviews, interviewees will again be advised not to discuss or disclose any details or issues concerning the interview.

8.3.2 Obtaining a Sworn or Unsworn Statement/Administering an Oath

If your current USCIS job position classification is included as one of the categories listed under 8 C.F.R. (see Section 5.0, "Authority"), all statements you obtain during a management inquiry should be sworn to under oath. A sworn statement is a written statement, given voluntarily, signed by the interviewee and sworn to before a competent authority such as a designated Management Inquiry Officer who is authorized by job position classification to administer oaths.

If your USCIS job position classification is not listed under 8 C.F.R., then all statements you obtain should be unsworn statements. An unsworn written statement is also a written statement, given voluntarily and signed by the interviewee; however, it is executed under penalty of perjury by the interviewee and not under oath.

A. USCIS Employees

Before beginning an interview, make sure you allow enough time for both the interview and preparation of the signed statement.

Immediately following an unrecorded interview, you will obtain a written, signed statement (sworn or unsworn, as appropriate) from each employee subject and witness interviewed, and any others interviewed when possible and appropriate.

A written statement should be based upon detailed notes taken by you during an interview. All information acquired during an interview, particularly that which either corroborates or refutes the alleged misconduct, must be included in the sworn statement. Therefore, it is critical to ensure that the statement is accurate and complete. It is a good

idea to review your notes prior to concluding the interview to check for any information that might be missing from an employee's statement.

If there are empty lines or there is blank space on the last page of the statement, a diagonal line should be drawn through the space and initialed by the interviewee to signify that nothing was added after it was signed.

The oath, if applicable, should be administered to and affirmed by the interviewee prior to providing the written sworn statement. Although not required, the signing of the statement may be witnessed, if feasible. The oath should be administered as follows, using the "Sworn Statement" included in this handbook (Attachment E):

"Do you swear or affirm that the information you will provide is true and correct?"

If administering an oath is not applicable, a written statement will be executed "under penalty of perjury" as an unsworn statement, using the "Unsworn Statement" included in this handbook (Attachment F).

If an employee refuses to provide a written, signed statement, advise the employee that such a failure is considered failing to cooperate during an official inquiry, and is subject to disciplinary action. If an employee persists in refusing to provide a signed statement, you should memorialize the initial refusal and note that despite being advised of the consequences for failure to cooperate during an official inquiry, the employee still refused to provide a written statement. The circumstances surrounding the refusal to comply should be thoroughly detailed in the narrative of the MIR.

If a bargaining unit employee is represented by a union representative, the employee may provide the representative with a draft of the written statement for review (in your presence) before it is executed. This review will occur at the interview location. All written statements must be signed before you and submitted to you at the interview site. Again, sworn or unsworn statements should be completed immediately following the interview. It is not advisable to allow the interviewee to take the statement to another location outside of your presence, for completion.

Sworn statements should be typed. When this is not possible, you must ensure that the handwritten statement is entirely legible.

Interviewees who request a copy of their own signed statement are to be provided one upon conclusion of the interview.

B. Non-Federal Personnel and Contract Employee Interviews

Although you cannot compel persons not employed by USCIS to provide statements, you should request from civilian interviewees a voluntarily provided written statement. If the witness is amenable, the statement should be collected under oath if appropriate, or executed under penalty of perjury as an unsworn statement. If a civilian refuses to complete a written statement, you should take comprehensive notes of the interview and complete a detailed Memorandum of Activity (see Section 8.3.3 for further information) regarding the interview, for the report.

- **Contractor Personnel Interviews:**

Contractor personnel are not federal employees, nor are they subject to the Union agreement provisions outlined in this handbook that apply to USCIS bargaining-unit employees. As contractor personnel, they are also not subject to the USCIS disciplinary action process. Further, contractors often provide their employees with written guidance (such as an "employee handbook") that includes the employee's rights and responsibilities as the contractor's employee.

USCIS contracts with a number of different contractors for purposes of supporting agency operations, and the provisions specified in each individual contract may vary to some extent. Typically, the mechanics of administering a contract involve general oversight by a designated USCIS Contracting Officer's Technical Representative (COTR), or Contracting Officer's Representative (COR).

The OSI intakes misconduct allegations relating to contractor personnel for review and further determination as appropriate, to include periodic referrals to USCIS field management for management inquiry.

Should you be assigned to conduct a management inquiry involving interviews of contractor personnel, you should first contact the COTR assigned to the contract, in order to ascertain the existence of any contract provisions or conditions relating to an interview of contractor personnel by the Government such as advance notification to the contractor, contract personnel local site supervisor or individual contractor employee; participation by a contractor management representative in the interview; and/or notification to the contractor management of the inquiry findings.

Absent any specific contract provisions or conditions, you should proceed with the management inquiry according to the procedures outlined in this handbook except that contractor personnel will not be issued "Required

Appearance" (Attachment B) or "Statement of Rights and Obligations" (Attachment D) memoranda.

At a minimum, USCIS local management should always notify the respective USCIS COTR when a management inquiry substantiates an allegation of misconduct on the part of contractor personnel.

C. Other Federal Employee Interviews

If an interview of an employee of another agency is required, **you must notify the OSI/RFO**, who in turn will be responsible for notifying the other agency's Internal Affairs component of this request. Once this notification has been completed, the OSI/RFO will advise you as to how to proceed in coordinating with the appropriate agency official regarding the interview. This other-agency notification must be part of your report, and must include who was notified, as well as the date and the content of the notification.

D. Overseas Personnel Interviews

Management Inquiries, or portions of a Management Inquiry that require interviews of USCIS personnel assigned to overseas locations will be coordinated by Headquarters OSI – Investigations Division through the USCIS Headquarters Refugee, Asylum and International Operations Directorate (RAIO).

Should you identify a need for an interview of an employee posted overseas, the OSI/RFO should be contacted immediately for further instructions.

As a point of information, you should be aware that written, unsworn statements executed outside the United States "under penalty of perjury" require modified wording (see Attachment F).

8.3.3 Memorandum of Activity (MOA)

A "Memorandum of Activity" (see Attachment G) may be included in reports for the primary purpose of facilitating the documentation of any "non-interview" related case activity, such as telephone calls received, receipt of supplemental documentation via mail, etc. The MOA should always identify the date, time, location if appropriate, and source of the information received, and should be made an exhibit to the final report. The MOA should always be dated and signed by the MIO recording the information.

The MOA should never be used to document a formal employee interview. Interviews must be documented by means of a sworn or unsworn statement, and recorded or reduced to a written or typed format. (An MOA containing your sworn or unsworn

statement detailing the contents of an interview, which would not bear the interviewee's signature, is not a valid statement for purposes of a management inquiry). A report exhibit containing an appropriately completed written/typed statement, or a transcript of a recorded interview, does not need to include an MOA as well.

Exceptions to the above are as follows:

- Interviews of non-USCIS employees (i.e., civilians) who decline to provide sworn or unsworn testimony must be recorded on a detailed MOA and included as a report exhibit.
- In the rare event that an employee witness statement must be recorded and the interview subsequently discloses *minimal* information, a detailed MOA, to include the fact that the statement was sworn or unsworn, may replace a transcript as an exhibit. Please remember, however, that it is your responsibility to ensure that this MOA details all perspectives of the interview information, and cannot subsequently be interpreted as "biased" (i.e., highlighting only information tending to corroborate substantiation) in content. Keep in mind that there may be an occasion in which your recorded interview will be compared to the content of your MOA, so it is imperative that all information is accurately and sufficiently summarized in your MOA in all instances.

8.3.4 Documentary Evidence

The "Best Evidence Rule" applies only to documentary evidence and is strictly adhered to in the context of criminal investigations. In an administrative inquiry, it is also applicable. The rule states that where the contents of a document are at issue in a case, the document itself, if available, rather than a copy or secondary evidence as to its content, must be introduced. When documents are material to the facts in an inquiry, try to obtain the originals and make them a part of the record, or obtain copies that can be authenticated as reflecting the contents of the original. For example, the source of the document can provide a sworn statement to the effect that it is a true and correct copy of the original. In administrative inquiries, documentary evidence may be the most accurate reflection of past events, such as a report written at the time of an incident versus the recollection of a witness months after the fact. In interviews, documentary evidence can be used to refresh the recollection of a witness.

The following points must be considered during the inquiry with respect to documentary evidence:

- Make every effort to ensure that all documentary evidence is addressed appropriately during interviews, and that the final report of inquiry sufficiently addresses any and all discrepancies between documentary evidence and employee testimony;

- Record on documentary evidence your initials/date/time received, and the initials/date of the person from whom received (for report/evidence purposes); and
- Do not “assume” anything based upon testimony alone. Obtain the documentary evidence to support the testimony, if you believe it exists.

Any questions or issues relating to the retrieval of documentary evidence required for the inquiry should be directed to the OSI/RFO.

8.3.5 Do's and Don'ts

The following items summarize the primary points to remember during your interview:

Do:

- Maintain a high standard of professional conduct;
- Be courteous;
- Get the witness to explain fully;
- Develop facts;
- Respect the rights of the witness;
- Be fair;
- Be thorough, objective and discreet;
- Ask the hard questions;
- Provide the interviewee with copies of interview forms/memoranda signed during the interview, if requested.

Don't:

- Mislead, threaten or intimidate;
- Make promises;
- Give advice;
- Lose your temper or patience;
- Argue or make snide remarks;
- Reveal the identity of other witnesses;
- Be embarrassed by silence. Give the interviewee time to think and then respond;
- Ask long, multiple or involved questions;
- Lead the witness or put words in their mouth.

9.0 ADVISEMENTS OF RIGHTS AND RESPONSIBILITIES

In general, employees are obligated to give information to authorized representatives of the Department of Homeland Security when called upon, if the inquiry relates to official

matters and the information sought was obtained during the course of their employment. This section outlines the fundamentally non-criminal nature of management inquiries and an employee's duty to cooperate in such inquiries.

9.1 The Fundamentally Non-Criminal Nature of Inquiries

Management inquiries are conducted solely for administrative purposes. While it is true that many allegations of employee misconduct initially referred for administrative investigation "could" subsequently be construed as potential criminal violations (e.g., falsification of employment forms is technically criminal), as a rule the possibility of criminal prosecution will already have been ruled out by the time you undertake an inquiry. That will hold true throughout the inquiry, so long as no evidence or new allegations of more serious misconduct surface.

It is important to understand that any time an employee is compelled in an administrative setting to submit to an examination under coercive conditions such as that of job forfeiture, the employee's statement is considered involuntary and cannot be used against them in a criminal proceeding [*Garrity v. New Jersey*, 385 U.S. 493 (1967)].

9.2 Miranda Warnings

A Management Inquiry Officer should never have occasion to give any person a Miranda warning during the course of an administrative inquiry. Miranda warnings are given where the interviewee is in custody or otherwise deprived of his or her freedom of action or movement in any significant way. **If, during the course of an interview, the interviewee begins to disclose to you information for which criminal prosecution could be a reasonable possibility, you should immediately stop the interview and immediately notify your OSI/RFO.**

9.3 Employee Responsibilities and Privilege Against Self-Incrimination

The Government has a right to have its employees answer questions about the performance of their official duties. This right is balanced against an employee's Fifth Amendment privilege against self-incrimination. An employee may invoke the Fifth Amendment in either an administrative or criminal inquiry. An employee's invocation of the Fifth Amendment in a management inquiry, however, may subject them to discipline to include removal, if the employee has been informed both that their refusal to answer questions may subject them to discharge and that his/her replies and the fruits thereof cannot be used against them in a criminal proceeding. As long as employees are free from the danger of criminal prosecution, they must cooperate or face potential disciplinary action.

A Management Inquiry Officer will notify an employee who may be the subject of an inquiry, of their rights and obligations before the start of an interview by means of the "Statement of Rights and Obligations" (see Attachment D).

9.4 Non-Disclosure Memorandum

Prior to an interview, a “Non-Disclosure Memorandum” (see Attachment H) will be read to the interviewee (and union representative, if present) in order to ensure that the material discussed in the interview will not be disclosed to unauthorized personnel. The participant(s) will be informed that any discussion or disclosure of matters under official review to unauthorized personnel is prohibited, and presented with the “Non-Disclosure Memorandum” for signature. The memorandum, in conjunction with verbal notice, clearly cautions that any discussion or disclosure of the substance of the interview or the circumstances surrounding any of the incidents discussed during the interview may result in disciplinary action taken against them.

Refusal by any participant to sign this memorandum, if presented, should be noted both on the memorandum and in the report.

9.5 Statement of Rights and Obligations Memorandum

All employees who are the subject of an inquiry must be formally advised of the obligation to provide information and the fact that information they provide cannot be used against them in a criminal proceeding, via use of the “Statement of Rights and Obligations” (Attachment D). This memorandum must be provided to all subject employees prior to an interview, as well as to witnesses as appropriate if there is a reasonable basis to believe they will not be forthcoming.

The memorandum reads, in pertinent part:

In conjunction with an administrative inquiry being conducted under the auspices of the Office of Security and Integrity (OSI), U.S. Citizenship and Immigration Services (USCIS), you are here to be asked questions pertaining to your employment with U.S. Citizenship and Immigration Services and the duties you perform for USCIS. You have the option to remain silent, although you may be subject to removal from your employment by the Service if you fail to answer material and relevant questions relating to the performance of your duties as an employee. You are further advised that the answers you may give to the questions propounded to you at this interview, or any information or evidence which may be gained by reason of your answers, may not be used against you in any criminal proceeding except that you may be subject to criminal prosecution for any false answer that you may give.

If the subject of an inquiry or any employee refuses to answer questions after being provided the foregoing advisement, contact your OSI/RFO for guidance.

10.0 REPRESENTATION ISSUES

An employee's right to representation by their union comes from 5 U.S.C. Chapter 71, also known as the Federal Service Labor Management Relations Statute (FSLMRS)

and the collective bargaining agreement, commonly referred to as “the contract” or “the agreement.” The Union is entitled to representational rights in many different situations. As a Management Inquiry Officer, you must be familiar with the Union’s right to representation during an investigatory examination.

10.1 Right to Counsel

Normally, there will be no instance during a management inquiry where an employee would need to be advised of a right to legal counsel. The right to counsel is generally limited to criminal investigations and does not apply to employees questioned as part of any administrative inquiry.

As noted in Section 9.2 of this handbook, if an interviewee begins to disclose information for which criminal prosecution could be a reasonable possibility, the Management Inquiry Officer should immediately stop the interview and notify the OSI/RFO.

10.2 Right to Representation

Certain procedures must be followed in a management inquiry when dealing with bargaining unit employees. Section 7114(a)(2)(b) of the FSLMRS vests bargaining unit member federal employees with the right to have a representative present during investigatory interviews. This right is generally referred to as the “Weingarten Rule” [National Labor Relations Board v. J. Weingarten, Inc., 420 U.S. 251 (1975)]. Congress carried the right over to the federal sector in enacting FSLMRS, which provides that a bargaining unit employee will be allowed to have a union representative present at:

Any examination of an employee in the unit by a representative of the agency in connection with an investigation if - the employee reasonably believes that the examination will result in disciplinary action against the employee; and the employee requests representation.

If the agency is conducting an examination of an employee witness in connection with a management inquiry and the employee has a reasonable belief that a disciplinary action might result from the interview, he or she may request union representation. It is the possibility, rather than the inevitability, of future discipline that determines the employee’s right to union representation. In addition, requiring an employee to provide information, either orally or in writing, has been held to constitute an examination.

In the original Weingarten decision, the Supreme Court defined the function of and limitations on union representatives as follows:

The employer has no duty to bargain with the union representative at an investigatory interview. The representative is present to assist the employee, and may attempt to clarify the facts or suggest other employees who have knowledge of them. The employer, however, is free

to insist that he is only interested in hearing the employee's own account of the matter under investigation.... Certainly his presence need not transform the interview into an adversary contest (Weingarten, 420 U.S. 251 at 260, 263).

10.3 Notification of Right to Union Representation

The requirement to notify all bargaining unit employees annually of their right to union representation during investigative interviews is contained in Article 30, Section (B)(2) of the 2000 collective bargaining agreement, and is applicable to USCIS bargaining unit employees. If you are unsure about an employee's bargaining unit status, you should contact the Labor and Employee Relations (LER) office representative servicing your area.

The Union represents all non-supervisory employees whose positions are not excluded from the bargaining unit by law. In accordance with 5 U.S.C. 7112(b), positions that fit within the following categories are excluded from the bargaining unit:

1. except as provided under section 7135(a)(2) of this title, any management official or supervisor;
2. a confidential employee;
3. an employee engaged in personnel work other than a purely clerical capacity;
4. an employee engaged in administering the provisions of this chapter;
5. both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;
6. any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or
7. any employee primarily engaged in investigation or audit functions relating to the work of individuals by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

In addition, 5 U.S.C. § 7112(a)(2) provides that any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization –

1. which represents other individuals to whom such provision applies; or
2. which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

Additionally, Article 30, Section (D)(1) of the 2000 Agreement provides that when taking a sworn statement from a bargaining unit employee in connection with investigations by the "Office of Internal Audit (or successor)", management will "provide sufficient advance written notice to the subject of the interview to allow them time to secure Union representation if they so desire." For the purposes of this handbook, a management inquiry is considered an investigation under the auspices of the OSI. In addition, Article 30, Section (D)(1) states that the "failure to obtain representation, or adequately confer with the representative, will not delay the interrogation by more than 48 hours from the time the employee receives such notice." The Union has an obligation to promptly designate a representative and make reasonable efforts to minimize delay. Upon request, reasonable extension of time will be granted when the representative cannot be present.

10.4 Choice of Union Representative

The Union has the right to designate its own representative to represent the employee at the interview. While the choice of particular representative at an interview falls to the Union itself, the representative designated by the Union cannot be a subject or witness in the same investigation. It is important to remember that the choice belongs to the Union, not the employee. An attorney representative may be retained by the Union to serve in this capacity, however the attorney's role in these instances is limited to that of a union representative.

The Union may request a short delay so that a representative versed in the subject matter of the examination may be consulted. Although the Union has the right to choose its representatives, the agency need not always delay its interview because of the absence of the Union's chosen representative. Situations involving requests to delay questioning because of the unavailability of a "specific" union representative must be evaluated on a case-by-case basis.

The Union should be reminded of its obligation, under the agreement, to make reasonable efforts to minimize delay. On the other hand, if accommodating a Union request for delay to facilitate furnishing a qualified representative will not compromise the quality of the investigation, consideration should be given to granting a delay. If attempts to work out mutually agreeable solutions with regard to such requests are unsuccessful, you should seek advice from the OSI/RFO and the local Labor and Employee Relations (LER) representative servicing your area.

10.5 Conduct of Representative

A Management Inquiry Officer should be aware of the following:

- A union representative may take an active role in assisting a bargaining unit employee in presenting facts in his or her defense. This right includes not only the right to assist the employee in presenting facts, but also the right to consult with the employee. However, any right for an employee and union representative

to confer privately outside an interview room depends upon whether it is reasonably necessary to do so in order to ensure active and effective union representation. [Bureau of Prisons Office of Internal Affairs Washington, D.C. and Phoenix, Arizona, and Federal Correctional Institution EL Reno, Oklahoma and American Federation of Government Employees AFL-CIO, Local 171, 52 FLRA 43 (1996).]

- Management has a legitimate interest in seeing that an investigatory interview does not become an adversarial contest of wills between the investigator and the union representative. [U.S. Customs Service, Region VII, Los Angeles and National Treasury Employees Union, 5 FLRA 297 (1981).]

Accordingly, management may place reasonable limits on union representatives during the course of an interview to achieve the objectives of the interview. The representative's conduct may be a legitimate basis for terminating the interview if it is disruptive or confrontational.

The union representative does not act as legal counsel for the employee. This includes attorney representatives who have been retained by the Union. The representative may briefly consult with the employee during an interview, however they may not unreasonably delay it.

As noted above, the representative does have the right to take an active part in an interview. This includes suggesting lines of questioning that might lead to other relevant facts, requesting that questions be clarified, and addressing possible infringements of an employee's rights during the interview.

The conduct of the union representative during the interview has some limitations arising from case law and FLRA guidance. The union representative may not hide or confuse facts, mislead the Management Inquiry Officer, or impede the investigation. The representative may not answer the questions for the employee, or repeatedly interrupt the questioning of the employee. Engaging in arguments with the Management Inquiry Officer is also not permitted.

10.6 Interaction Between Employees and Representatives in an Interview

Management may not prevent a bargaining unit employee from consulting with the representative during the course of the interview. It is appropriate for an employee to consult with their union representative during an interview, however there may be occasions when a representative becomes an impediment to the interview or attempts to answer questions for the employee. If necessary, remind both the employee and the representative that the purpose of the interview is to elicit information from the employee, not the representative.

10.7 Bargaining Unit Agreement

The Article of the current union agreement applicable to USCIS employees that is most relevant to the conduct of management inquiries is included in this handbook (see Attachment I).

10.8 Non-Bargaining Unit Employee Interviews

Prior to interviewing a non-bargaining unit employee, the Management Inquiry Officer should provide to the employee, at least 48 hours in advance, a "Required Appearance" memorandum (Attachment B). At the beginning of a subject interview, you will also provide the employee with the "Statement of Rights and Obligations" (Attachment D).

11.0 ORGANIZING AND ANALYZING THE INFORMATION

Upon conclusion of all interviews and the collection of evidence, and prior to writing the management inquiry report, you should address any unresolved issues and consider the following:

- Are there any leads, either original or developed, that have not been pursued?
- Has all possible evidence been obtained, and have all necessary interviews been conducted?
- Do the findings indicate a procedural or systemic deficiency that can be improved upon or corrected? If so, have you articulated the deficiency in detail in your report?

After all interviews have been conducted, with written statements prepared and all other tasks completed, you should review and organize the assembled information. This will allow you to focus on relevant information and identify any material obtained during the inquiry that may not be germane to the issues in question, or that does not contribute to a logical report.

12.0 WRITING THE MANAGEMENT INQUIRY REPORT

The final step in the administrative inquiry process is the writing of the Management Inquiry Report (MIR). A timely, detailed, accurate, comprehensive and objective MIR is absolutely critical to an efficient and effective management inquiry process. The report must tell a story, typically in chronological order, by explaining to the reader the exact nature of the allegation(s) and all the facts disclosed by the inquiry.

No written report generated by a Management Inquiry Officer as a result of a management inquiry should ever contain any opinion or conclusion of the writer as to whether or not an allegation was substantiated. The facts and information contained in the management inquiry report should be objective, clearly supportive of the findings, and allow the reviewing official to be able to reach a supportable conclusion based solely on the report and exhibits provided, that the allegation(s) was/were substantiated or unsubstantiated.

The Management Inquiry Report should be completed in Microsoft Word (New Times Roman, 12 font) using the attached "*Management Inquiry Report*" format (see Attachment J). The report should be written using a technical style of writing, as opposed to a business style. For example, paragraphs should not be indented and, except where used within a quote, contractions should be avoided if possible. The first person and present tense should not be used. The third person (he, she, it, they) active voice in the past tense is the preferred method of writing the report. Use of the passive voice should be kept to a minimum. Further, the use of "the reporting officer" by the Management Inquiry Officer when referring to himself/herself in the report is acceptable.

The use of quotes in the report, from dialogue used during the interview or taken from a sworn statement, can provide an effective emphasis on a subject or issue. However, specific care should be taken to use only exact quotes.

Note: Management Inquiry Officers must keep in mind that the Management Inquiry Report may be subject to a subsequent discovery request, or to disclosure under the Freedom of Information and Privacy Acts (FOIA/PA).

12.1 Components of the Management Inquiry Report

In order to ensure both standardization and consistency of report contents, the Management Inquiry Report will include the following five (5) sections, each of which is discussed below:

A. Report Title Block

The report title block will include:

- **Case Number:** noted on the OSI Management Inquiry referral memo;
- **Case Title:** name(s) of inquiry subject(s), including middle initials;
- **Report Status:** Usually "Final" for a completed MI, or "Supplemental" if reporting additional inquiry completed as requested by OSI subsequent to submission of a prior report;
- **Alleged Violation(s):** very brief description of allegation (i.e., "T&A Irregularities", "Misuse of Government Computer", etc.)

B. Introduction

The "Introduction" will provide information as to when and from whom the MI referral was received; identify only the subject(s) of the complaint and a brief summary of the allegation(s); the time frame and location(s) in which the inquiry was conducted; and, if the report relates to information obtained as a result of a supplemental inquiry requested by OSI, a notation to that effect as well as the time frame and location(s) of the supplemental inquiry. For example:

This case originated upon receipt of complaint information referred by the U.S. Citizenship and Immigration Services (USCIS), Office of Security and Integrity (OSI) on January 10, 2008 for a management inquiry, wherein it was alleged that on December 19, 2007, Immigration Information Officer (IIO) John Doe misused his assigned government computer to access unauthorized internet websites in violation of DHS policy.

During the period of January 18, 2008 to January 29, 2008, a management inquiry was conducted in Los Angeles, California with regard to the alleged employee misconduct.

If the report relates to supplemental inquiry requested by OSI, add the following:

On (date of OSI memorandum), USCIS Headquarters OSI requested supplemental information relating to the above-referenced complaint. During the period of February 20, 2008 to February 24, 2008, a supplemental inquiry was conducted in Los Angeles, California relating to this complaint.

Remember: The "Introduction" should make **no** reference to a complainant or witness name.

C. Details of Inquiry

The "Details of Inquiry" section is a complete, comprehensive, accurate and objective report of all management inquiry findings, broken down by specific allegation (if more than one allegation), written in narrative format and in chronological order of when interviews took place and other information/evidence was acquired during the inquiry.

This section should begin with a detailed description of the allegation(s) specifics, to include subject name(s), date(s) and alleged misconduct.

If the inquiry involves a complaint containing more than one allegation, upon completion of the inquiry the MIO will separate the allegations in this

section and report all inquiry information under each allegation that pertains specifically to that allegation. For example, if one employee interview contains information relating to two separate allegations, the employee's statement will be referenced under both individual allegations in this section, with specific statement information relating to each allegation segregated and reported separately under the relevant allegation.

This section will be broken down as follows:

Allegation #1: *(Brief description of first allegation.)*

- Detailed, chronological narrative(s) broken out by allegation. "Details" should start with a complete description of the allegation specifics without identifying the complainant or witnesses by name. Exhibit numbers, bolded and in parentheses, i.e., (**Exhibit 1**), should be assigned as the exhibits first appear in the narrative. Subsequent references to the same exhibit should not be bolded. Report narratives must be thorough enough in explaining each exhibit's relevance to the findings, so the reader does not need to refer to the exhibits in order to understand each exhibit's relevance to the investigation;
- Each interview reported should start with the date, name/title of interviewee, location of interview (i.e., "On June 6, 2007, District Adjudications Officer (DAO) Tom Jones was interviewed at the _____ office."); and conclude with a comment such as, "A signed (or recorded) sworn/unsworn statement provided by (interviewee's last name) is attached (**Exhibit ____**)";
- Each document provided by an interviewee or other source should be initialed and dated by the individual providing the document(s), and this should be noted in the report;
- No MIO "note(s)" are to be included in the written report;
- Any report narrative describing the information obtained in any recorded statement must reflect all information that tends to both corroborate and refute the allegation(s). In other words, an objective, unbiased accounting of all information obtained during the interview; and
- No opinions or conclusions in the report, just findings.

Allegation #2: (Brief description of second allegation, if applicable.)

- Same considerations as under “Allegation #1” above.

D. Summary of Findings

The “Summary of Findings” section will consist of a brief, concise summary of the highlights (i.e., bullets) of the significant points of the inquiry findings reported in the “Details of Inquiry” and similarly broken down by specific allegation.

As in the “Details of Inquiry”, under no circumstances will this section, or any other part of the Report of Inquiry, contain any opinions or conclusions of the Management Inquiry Officer conducting the inquiry.

This section will be broken down as follows:

Allegation #1: (Brief description of allegation.)

- Brief objective, non-conclusive summary (bullets) of all significant facts disclosed during the inquiry that would be relevant to the allegation, to include findings/evidence that would either corroborate or refute the allegation of employee misconduct.

Allegation #2: (Brief description of allegation.)

- Same as “Allegation #1” above.

E. Exhibits

The last section of the written report will be a list of the exhibits attached to the report. Each exhibit will be briefly described and listed sequentially, in the order in which each exhibit first appears in the report.

The original exhibits themselves will be individually tabbed and attached to the report in the order they first appear in the “Exhibits” list.

12.2 Submission of the Management Inquiry Report

Note: OSI referrals of Management Inquiries to the field specify a deadline of 60 days from the date of receipt of the referral by the USCIS field element designated to conduct the inquiry, for submission of the completed report to the OSI/RFO.

It is imperative that you submit your completed report to the designated reviewing official as far in advance of the response due date as possible, in order to provide management sufficient time to consider the findings. Any request for a deadline extension must be relayed through your local management, to the referring OSI/RFO.

Once you have completed, signed and dated the original hard copy of your report, prepare a complete package comprised of the original report, attached exhibits that include any electronic recording media generated during the inquiry, as well as any related materials such as *original investigative notes*, and submit the package directly to the appropriate management reviewing official (as designated by a District Director or other head-of-office, in accordance with the OSI Management Inquiry referral memorandum) for a review of report findings, both for sufficiency and determination as to whether or not a proposal for disciplinary action is warranted.

Management Inquiry Officers will not retain a copy of a completed report for reference or any other purpose. Any questions received relating to a previously submitted report will be directed to USCIS Headquarters OSI – Investigations Division.

12.3 Management Inquiry Report Field Transmittal Information

Upon receipt of your completed report, the designated reviewing official will evaluate the inquiry findings and determination whether or not the report substantiates the allegation(s), in whole or in part, or if the report should be returned to you for supplemental inquiry.

If the allegation (or at least one of multiple allegations) is substantiated, the Labor and Employee Relations (LER) office servicing the local jurisdiction should be consulted by the reviewing official for guidance in developing a proposal for disciplinary action.

Regardless of the reviewing official's determination, as noted in the beginning of this section a written MI response is due back to OSI – Investigations Division within the 60-day deadline specified in the OSI initial MI referral memorandum, unless a deadline extension is requested by the USCIS field management. The MI response from the field will be forwarded under a dated cover transmittal memorandum from the head-of-office to the Chief, Office of Security and Integrity, referencing the OSI case number, name(s) of the subject(s) of the inquiry, and including the following:

- the name of the Management Inquiry Officer conducting the inquiry;
- a brief summary of the inquiry findings;
- determination as to whether the case is unsubstantiated or substantiated (If substantiated, the response must include copies of the disciplinary action proposal and decision letters);
- the original signed MIR, with all exhibits tabbed and attached; and
- the Management Inquiry Officer's original notes.

Again, unless otherwise specified, Management Inquiry responses will be forwarded to the respective OSI/RFO noted on the OSI referral memorandum.

Please note that upon review of a field-submitted Management Inquiry, the OSI reserves the right to return Management Inquiry Reports to the submitting office for supplemental inquiry, if deemed necessary. Further, upon OSI review of the field's submitted finding of unsubstantiated allegations, the OSI will forward a subject notification letter to local management for presentation to the subject(s) of the inquiry.

13.0 CONCLUSION

Management Inquiry Officers are charged with the significant responsibility of addressing and reporting, in a comprehensive, concise, objective and impartial manner, their findings regarding issues that potentially impact significantly not only upon agency operations, but upon the livelihood of agency employees as well. From this perspective, it is imperative that assigned management inquiries be conducted in strict adherence to the provisions contained in this handbook. In addition, be mindful of the following considerations which are central to achieving a complete and effective fact-finding report:

Do:

- obtain appropriate authorization before beginning an inquiry;
- recuse yourself if necessary;
- identify all legal and factual issues;
- remain focused on the allegation(s) at issue;
- plan questions prior to interviewing;
- be familiar with the bargaining unit agreement;
- give appropriate employee administrative advisements;
- reference all exhibits in the narrative;
- comply with timelines;
- be thorough, impartial and fair;
- direct all FOIA requests for inquiry information to the National Records Center, FOIA/PA Office and notify the OSI/RFO;
- forward all original material with your report; and

- be professional at all times, otherwise you cannot expect professionalism from others.

Don't:

- conduct searches of government property, equipment, systems or databases without authorization from the OSI/RFO;
- give criminal war
- disclose any information outside official channels;
- give opinions or advice, particularly with respect to the inquiry or your perceived potential outcome;
- destroy notes;
- keep personal copies of completed inquiries; or
- engage in general discussion concerning inquiries in which you are or have been involved, either during the inquiry or at any time subsequent to the completion of the inquiry. It is imperative that the sensitivity and confidentiality of an inquiry be maintained, and that any questions regarding an ongoing or completed management inquiry be directed to your local OSI/RFO.

14.0 OSI – INVESTIGATIONS DIVISION CONTACT INFORMATION

The following contact information is provided for use by Management Inquiry Officers in the event it is necessary, in accordance with the provisions of this handbook, to contact a USCIS OSI/Investigations Division Regional Field Office (OSI/RFO) or the Headquarters office:

A. Headquarters OSI: Special Agent-In-Charge: Headquarters INV Programs

Address: 633 Third Street, N.W. – 3rd Floor
INV / MS #2275
Washington, D.C. 20529-2275

Office: (202) 233-2468

Fax: (202) 233-2453

B. Washington, DC: Special Agent-in-Charge: Washington Field Office

Jurisdiction: *USCIS Northeastern Region*

Address: 633 Third Street, N.W. – 3rd Floor
INV / MS #2275
Washington, D.C. 20529-2275

Office: (202) 233-2464

Fax: (202) 233-2453

C. Houston, TX: Special Agent-in-Charge: Houston Field Office

Jurisdiction: *USCIS Central and Southeastern Regions*

Address: 126 Northpoint Drive
Houston, TX 77060

Office: (281) 774-4602

Fax: (281) 774-5883

D. Los Angeles, CA: Special Agent-in-Charge: Los Angeles Field Office

Jurisdiction: *USCIS Western Region*

Address: 300 N. Los Angeles Street – RM 6211
Los Angeles, CA 90012

Office: (213) 830-5007

Fax: (213) 830-8055

15.0 ATTACHMENTS: MANAGEMENT INQUIRY DOCUMENTS

The following Management Inquiry documents are attached for use by a Management Inquiry Officer in completing an assigned inquiry:

- A. Chronological Case Worksheet
- B. Required Appearance Memorandum (NTA)
- C. Preamble for Recorded Statement
- D. Statement of Rights and Obligations
- E. Sworn Statement
- F. Unsworn Statement
- G. Memorandum of Activity (MOA)
- H. Non-Disclosure Memorandum
- I. Bargaining Unit Agreement (Excerpt)
- J. Management Inquiry Report (MIR) Format
- K. Management Inquiry Officer Checklist

It should be emphasized that absent unusual circumstances, the documents presented to any employee in a Management Inquiry will typically only include the following:

- Required Appearance Memorandum (NTA)
- Non-Disclosure Memorandum
- Statement of Rights and Obligations
- Sworn or Unsworn Statement



U.S. Citizenship
and Immigration
Services

REQUIRED APPEARANCE MEMORANDUM

TO: _____
FROM: _____
SUBJECT: **Required Appearance**

You are hereby directed to personally appear as either a Subject or a Witness (the appropriate box is checked below)

On (date) _____
(time) _____
At (location) _____
Before (Official) Name _____
Title _____

You will be questioned concerning your knowledge of alleged misconduct relating to:

Your Appearance is requested -

- ☐ As a **Witness** to this Inquiry
-
- ☐ As a **Subject** of this Inquiry. Pursuant to 5 USC 7114 (a)(2)(B), if you are a bargaining unit employee you have a right to Union representation during the interview about to take place if: (a) you reasonably believe that the results of this interview may result in disciplinary action against you; and (b) you request representation.

You are advised that your willful refusal to appear, as directed herein, and failure to provide testimony may be construed as insubordination, which could result in disciplinary action against you, up to and including dismissal from U.S. Citizenship and Immigration Services.

ACKNOWLEDGEMENT OF RECEIPT (*Please return a signed copy of this memo promptly to the Management Inquiry Officer above.*)

Your
Signature _____
Date _____
Received _____



**U.S. Citizenship
and Immigration
Services**

PREAMBLE FOR RECORDED STATEMENT

My name is _____. My last name is spelled _____.

I am a designated Management Inquiry Officer within the Department of Homeland Security, U.S. Citizenship and Immigration Services. This interview is being conducted as part of an official Management Inquiry referred by the USCIS Headquarters Office of Security and Integrity (OSI) for completion.

It is now ____ (Time) ____ on ____ (Date) ____, and we are here at ____ (Location) ____.

1. Have the interviewee state his or her full name, and spell last name.
2. Identify anyone else present (e.g., the union representative) and have him/her state full name and spell last name.
3. If you meet the definition of "immigration officer" as described in Section 5.0 of the Management Inquiry Handbook, the following oath should be administered prior to obtaining a recorded statement:

"Do you swear or affirm that the information you are about to provide is true and correct?"

If you do not meet the definition of "immigration officer" as described in Section 5.0 of the Management Inquiry Handbook, do not administer the oath. Obtain a written declaration from the interviewee at the conclusion of the recorded statement that conforms with 28 U.S.C. 1746 (see Attachment F of the handbook).

4. If this is a subject interview, read the "Statement of Rights and Obligations" memorandum in its entirety into the record, then have the interviewee sign and date the memorandum.



U.S. Citizenship
and Immigration
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STATEMENT OF RIGHTS AND OBLIGATIONS

To: _____

From: _____
Management Inquiry Officer

Before you are asked any questions, it is my duty to inform you of the following:

In conjunction with an administrative inquiry being conducted under the auspices of the Office of Security and Integrity (OSI), U.S. Citizenship and Immigration Services (USCIS), you are here to be asked questions pertaining to your employment with U.S. Citizenship and Immigration Services and the duties you perform for USCIS. You have the option to remain silent, although you may be subject to removal from your employment by the Service if you fail to answer material and relevant questions relating to the performance of your duties as an employee. You are further advised that the answers you may give to the questions propounded to you at this interview, or any information or evidence which may be gained by reason of your answers, may not be used against you in any criminal proceeding except that you may be subject to criminal prosecution for any false answer that you may give.

ACKNOWLEDGEMENT

I have been given the above statement of rights and obligations at the beginning of the interview conducted on _____
(Date)

(Signature of Employee)

(Date)

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Initials: _____

SWORN STATEMENT

I, _____, have read this statement which begins on page 1, and ends on page _____. I fully understand the contents of the entire statement made by me. The statement is true and correct. I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat or punishment, and without coercion.

(Signature of Person Making Statement)

(Typed/Printed Name of Person Making Statement)

Subscribed and sworn to before me, a person authorized to administer oaths, this _____ day of _____, 20_____.

(Signature of Person Administering Oath)

(Typed/Printed Name of Person Administering Oath)
Management Inquiry Officer
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Initials: _____

UNSWORN STATEMENT

____ The foregoing statement is executed in the United States, its territories, possessions, or commonwealths:

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on _____."

(Date)

(Signature)

(Type/Print Name)

____ The foregoing statement is executed outside the United States:

"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on _____."

(Date)

(Signature)

(Type/Print Name)

(Signature of Person Taking Statement)

(Typed/Printed Name of Person Taking Statement)

Management Inquiry Officer

U.S. Citizenship and Immigration Services

U.S. Department of Homeland Security



**U.S. Citizenship
and Immigration
Services**

MEMORANDUM OF ACTIVITY

Type of Activity:

<i>Case Number:</i>	<i>Case Title:</i>
---------------------	--------------------

Printed Name, Title & Signature:	Date:
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MEMORANDUM OF ACTIVITY



**U.S. Citizenship
and Immigration
Services**

NON-DISCLOSURE MEMORANDUM

You are participating in this interview as part of an ongoing official inquiry being conducted on behalf of the Office of Security and Integrity (OSI), U.S. Citizenship and Immigration Services. As this inquiry is sensitive in nature, you are hereby instructed not to disclose the nature of this interview, or any other information relating to this official inquiry, to any other person(s), except as may be appropriate in consultation with a designated representative.

Failure to comply with this directive may subject you to disciplinary action for interfering with, or impeding an official investigation.

This advisement was made prior to the interview of _____
(Print Employee Name)

on _____, at _____
(Date) (Time)

Management Inquiry Officer (signature)

Employee Interviewed (signature)

Union Representative (if applicable)



U.S. Citizenship
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Services

AGREEMENT 2000 (EXCERPT)

Article 30

**Agreement 2000 Between U.S. Immigration and Naturalization Service and National
Immigration and Naturalization Service Council (NINSC)**

ARTICLE 30 - Formal Meetings and Investigative Interviews

- A. **FORMAL DISCUSSIONS**. The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Service and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment.
- B. **INVESTIGATORY INTERVIEWS**.
- (1) **Weingarten Rights**. The Service will provide the Union the opportunity to be represented at any examination of an employee in the unit by a representative of the Service in connection with an investigation if:
 - (a) **Reasonable Belief**. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
 - (b) **Employee Request**. The employee requests representation.
 - (2) **Annual Notice**: The employer will advise employees in the unit of this right annually.
- C. **WRITTEN MEMORANDUM**. In some circumstances, a written memorandum may be used as a substitute for an oral examination in connection with an investigation. In such cases, where the criteria of paragraph B (1) of this article are met, the employee is entitled to the opportunity to consult with a Union representative prior to completing the memorandum.
- D. **WRITTEN NOTICE / WITNESSES**:
- (1) **Office of Internal Audit**. In conducting investigations under the auspices of the Office of Internal Audit (or successor), the Service in taking a sworn statement from employees based on allegations which could result in disciplinary action against the employee, will provide sufficient advance written notice to the subject of the interview to allow them time to secure Union representation if they so desire. The failure to obtain representation, or adequately confer with the representative, will not delay the interrogation by more than 48 hours from the time the employee receives such notice. The Union will promptly designate its representative and make reasonable efforts to minimize delay. Upon request, a reasonable extension of time will be granted when the representatives cannot be present.
 - (2) **Witness**. An employee who is requested to give testimony against another employee and who refuses to do so voluntarily will be entitled to representation prior to the time the



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AGREEMENT 2000 (EXCERPT)

Agency initiates proceedings to compel such testimony or institutes charges of insubordination.

- E. **SCHEDULING OF INTERVIEW**. Interviews in connection with misconduct investigations may be conducted at any reasonable hour. However, where an employee is directed to appear for an interview, all hours spent in the interview shall be compensated at the appropriate rate.
- F. **TRAVEL FOR INTERVIEW**. When an employee is required to travel for the purpose of participation in an investigative interview or any hearing appeal process, the Service will pay the travel and per diem for the employee.



**U.S. Citizenship
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MANAGEMENT INQUIRY REPORT

Case Number:	[Noted on OSI MI referral memorandum]
Case Title:	[Name(s) of subject(s)]
Report Status:	[Final or Supplemental Report]
Alleged Violation(s):	[Brief description(s)]

INTRODUCTION

This case originated upon receipt of complaint information referred by the U.S. Citizenship and Immigration Services (USCIS), Office of Security and Integrity (OSI) on *(date)* for a management inquiry, wherein it was alleged that *(subject's name and brief summary of the alleged misconduct absent complainant and witness identities)*.

During the period of *(date)* to *(date)*, a management inquiry (or supplemental management inquiry) was conducted in *(location(s) of investigation)* with regard to the alleged employee misconduct.

Reporting Officer		Distribution:	
Name:	Signature:	Headquarters OSI	Original
Title:	Date:		cc
Reviewing Official		Other:	cc
Name:	Signature:		
Title:	Date:		

REPORT OF INQUIRY

DETAILS OF INQUIRY

Allegation #1: (Brief description of allegation.)

- (Detailed) chronological narrative(s) broken out by allegation. “Details” should start with a complete description of the allegation specifics without identifying the complainant by name. Exhibit numbers, bolded and in parentheses, i.e., **(Exhibit 1)**, should be assigned as the exhibits first appear in the narrative. Subsequent references to the same exhibit should not be bolded. Report narratives must be thorough enough in explaining each exhibit so the reader does not need to refer to the exhibits to understand each exhibit’s relevance to the investigation.
- Each interview reported should start with the date, name/title of interviewee, and location interviewed (i.e., “On June 6, 2008, District Adjudications Officer (DAO) Tom Jones was interviewed at the _____ office.”).
- Each document provided by an interviewee should be initialed and dated by the individual providing the document(s), and this should be noted in the report.
- No “note(s)” written into the report.
- Any report narrative describing the information obtained in any recorded statement must reflect all information that tends to either corroborate or refute the allegation(s). In other words, an objective, unbiased accounting of the information obtained during the interview.
- No opinions or conclusions in the report, just facts.

Allegation #2: (Brief description of Allegation.)

- (Same considerations as under “Allegation #1” above.)

SUMMARY OF FINDINGS

REPORT OF INQUIRY

Allegation #1: *(Brief description of allegation.)*

- Brief objective, non-conclusive summary of all significant facts disclosed during the inquiry that would be relevant to both corroborating or refuting the allegation of employee misconduct.

Allegation #2: *(Brief description of allegation.)*

- Same as “Allegation #1” above.

REPORT OF INQUIRY

EXHIBITS

NUMBER

DESCRIPTION



**U.S. Citizenship
and Immigration
Services**

MANAGEMENT INQUIRY OFFICER CHECKLIST

The following checklist is a guide for Management Inquiry Officers in preparing and conducting assigned management inquiries. This checklist is for reference only, and should not be substituted for a thorough review of the Management Inquiry Handbook prior to conducting the inquiry:

Item #:	Task:	Remarks:	See MIH Sections:
1	Review complaint information.	Careful review of all complaint documentation to determine: specific elements of each allegation; policy, directive, procedure, standard potentially violated; identity of each individual involved/role; potential source of documentary/database/other evidence needed to support findings.	8.1
2	Plan interviews.	Determine: who will be interviewed (at minimum, list should include all individuals named in complaint documentation); sequence of interviews (complainant/victim first, subject interview last). Prepare detailed outline of questions to be asked, taking into account any known or potential evidence.	8.2.2 – 8.2.5
3	Contact local management (if applicable).	General notification/logistics of inquiry, determine availability of specific appropriate interview location, arrange availability of known documentary evidence prior to commencing inquiry, resolve any employee availability issues (no conflicts with employee work schedule, TDY, etc.)	8.2.3(A)
4	Issue "Required Appearance" Memoranda.	Individual notification to every interviewee (at least 48 hours prior to scheduled interview) of specific interview time/date/location, and brief description of alleged misconduct.	8.2.3(B)
5	Employee representation considerations.	Review information relating to employee union representation, including notification of right to Union representation, designation of representative, interview interaction and non-bargaining unit employee interviews.	10.0 – 10.8
6	Conduct interviews.	<ul style="list-style-type: none"> Interview procedures generally Non-Disclosure Memorandum "Statement of Rights and Obligations" memoranda to all subjects (and witnesses, as appropriate) Sworn and Unsworn Statements (written) Review of all inquiry information 	8.3.1(A-H) 9.4 9.5 5.0, 8.3.2(A-D) 11.0
7	Writing/submitting the Management Inquiry Report (MIR).	Required MIR format, content and instructions for submitting a report.	12.0 – 12.3