Description of document:	Federal Deposit Insurance Corporation (FDIC) Office of Professional Conduct (OPC) Manual 2025
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Source of document:	FOIA Request FDIC Legal Division FOIA/PA Group 550 17th Street, N.W. Washington, DC 20429 Fax: 703-562-2797 Email: efoia@fdic.gov FOIA.gov

Federal Deposit Insurance Corporation
550 17th Street, NW, Washington, DC 20429-9990 Legal Division

September 5, 2025

RE: FOIA Log No. 2025-FDIC-FOIA-001182

This is in final response to your Freedom of Information Act (FOIA) request received on August 4, 2025, which is being processed under the above-noted FOIA request log number. Your request seeks the following:

> [T]he primary OPC manual or handbook used by the FDIC Office Professional Conduct for its professional conduct operations.

We have considered your request in light of the requirements of the FOIA and the FDIC's FOIA regulations.[1]

Our records search is complete. We have located 39 responsive pages. The records are being released to you in full and can be accessed via the link in the cover email to this letter.

This completes the processing of your request. You may contact me at sahayden@fdic.gov or our FOIA Public Liaison at FOIAPublicLiaison@fdic.gov or by telephone at 703-562-6040 for any further assistance and to discuss any aspect of your request.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

SARAH HAYDEN
Digitally signed by SARAH HAYDEN
Date: 2025.09.03 20:12:51 -04'00'

Sarah Hayden
Government Information Specialist
FOIA/PA Group
Legal Division

[1] The FDIC's FOIA regulations and FOIA Fee Schedule are available on our website at the FOIA Service Center, https://www.fdic.gov/about/freedom/index.html.

OFFICE OF PROFESSIONAL CONDUCT

INTAKE AND INVESTIGATIONS STANDARD OPERATING PROCEDURE

INTAKE & INVESTIGATIONS SOP
OFFICE OF PROFESSIONAL CONDUCT
(issued on June 25, 2025)

Table of Contents

CHAPTER 1 – OVERVIEW

1.1 Introduction

This SOP outlines the steps about the intake, investigation, and conclusion of complaints ensuring a consistent, impartial, and thorough approach. In addition, this SOP summarizes the possible outcomes after the investigation and OPC's responsibilities. Although each Allegation is unique and some may require a different process due to the severity of the situation or the parties involved, these are the key stages of the process that generally apply which will be discussed in this SOP: intake and assessment, standards for investigation, investigations, reports of investigation, and closing Cases.

1.2 Program Oversight

1.2.1: Program responsibilities. OPC staff are responsible for complying with this SOP. The OPC Director is responsible for oversight of OPC, including the intake and investigations programs. The ADIIP is responsible for management of OPC's intake, investigations, policy, and training programs. The CII is responsible for the management and execution of OPC's intake and investigations program.

1.2.2: Case data. Data related to Cases and Allegations received by OPC should be saved to CMS and to OPC's file system.

1.2.3: ROI reviews. The ADIIP will review all Substantiated ROIs. The CII will review all completed ROIs.

1.2.4: Recurring Quality Assurance Reviews. To ensure quality of the intake and investigations program, on at least a quarterly basis, the ADIIP will review five or more completed ROIs, including non-Substantiated ROIs, to ensure that this SOP is followed. If deficiencies are identified, the ADIIP will work with the CII to ensure mitigative actions are established. The ADIIP will report the findings of their review at least quarterly to the OPC Director and Deputy Director.

CHAPTER 2 – INTAKE AND ASSESSMENT

2.1 Overview

This Chapter covers the intake and assessment procedures and processes OPC Staff should follow when receiving Allegations of Harassment, Interpersonal Misconduct, and Retaliation. The purpose of the intake and assessment process is to gather sufficient information to determine if the Allegation(s) relate to Harassment, Retaliation, or Interpersonal Misconduct and are appropriate for OPC investigation or other action. All intake assessments will result in a Recommendation to send the Allegation(s) to investigations, refer to another Investigative Entity (such as OIG), or close the Case. Intake staff should consult with CII throughout the assessment phase as needed.

2.2 Intake Procedures

2.2.1: Receipt of Allegations. OPC receives Allegation(s) through OPC@fdic.gov, OPC's hotline, web-based form, or mail. OPC staff who receive Allegations outside of these mechanisms should forward the Allegations to OPC@fdic.gov. If, during regular communications, OPC staff are made aware of Allegations, they should ask for the person making the Allegation to consider filing a complaint with OPC through one of the above means. If an Allegation involves a crime, staff should notify their supervisor and contact OIG.

2.2.2: Creation of Case. The same day as a phone complaint or report is received by OPC, or within 2 business days after OPC receives a form, e-mail complaint or report, or mail:

- OPC Staff create a Case in CMS.
- The Complainant (if known) or Reporting Party will be contacted to arrange an Intake Interview. During the scheduling of the Intake Interview, the Complainant should be provided with the OPC case number.

When a new Case is created, OPC staff will review CMS for related Cases. OPC staff will enter a note in the case file documenting related Cases. This review will include the LERCT portal. If the review reveals that another Case is already open in CMS for the same incident and Allegations, the new Case may be closed as duplicate. If a Manager reports an Allegation that is identical to an Allegation submitted by the named Complainant, the Case documenting the Manager's report will be closed as duplicate and the matter investigated under the Complainant's Case.

Note: A Reporting Party does not receive updates on the status of a Case as a Complainant would. Further, unless the Complainant agrees to the release of their identity, a Reporting Party cannot be provided with any further information about the Case.

If the OIG or OEEO sends OPC a finding or ROI, a Case will be created in CMS and processed as defined below in Section 2.6, as matters received from other venues.

2.2.3: Intake Interview. During the Intake Interview with the Complainant or Reporting Party, OPC staff will gather more information about the Allegation. This includes information to assess whether interim corrective action (e.g., in Cases of sexual harassment, separating the alleged harasser from the individual who was harassed) is necessary or was taken.

If interim corrective action is necessary, OPC staff will consult with the ADIIP.

If an Allegation involves a crime, OPC staff will refer the Allegation to the OIG Hotline. If OIG accepts the referral, OPC will close the Case in CMS and notify the Complainant or Reporting Party that the Case has been referred to OIG. If OIG declines to investigate, OPC staff will document the declination in the Case and continue the process below.

2.2.4: Confidentiality. To ensure adherence to OPC policy regarding protecting the identity of Complainants, OPC only releases the identity of a Complainant if they consent to the release of their identity or when otherwise required by law. OPC Staff, must confirm whether Complainant consents to the release of their identity outside of OPC. It may be necessary to revisit a Complainant's request to keep their identity confidential if the investigation cannot proceed further without revealing the identity of the Complainant.

Even if the Complainant does not consent to the disclosure of their identity, OPC has the discretion whether to investigate the Allegations. However, OPC should consider whether the investigation could continue without revealing the identity of the Complainant. Under these circumstances, OPC staff or assigned law firm, must discuss any further action with the CII before proceeding to investigate.

2.2.5: Required OIG Notification. If an Allegation involves an FDIC executive, OPC staff will notify OIG Hotline within 5 business days of receiving the Case. OPC's liaison to the OIG Hotline is the CII.

2.2.6: Allegations about OPC staff. If an Allegation involves an OPC staff, the guidance memorandum issued by the OPC Director should be followed.

2.3 Assessment

2.3.1: Investigator assignment and Case triage. Generally, the CII will assign an Investigator to the Case within 5 business days after intake has been completed but not more than 30 calendar days. When triaging Cases for assignment, the CII will consider as higher priority Cases those that involve sexual harassment, Harassment that is egregious and/or continuing, Allegations against senior leaders, or Allegations that may significantly affect the FDIC or its mission.

2.3.2: Clarification Interview. Within 5 business days after assignment, the Investigator will contact the Complainant or Reporting Party to set up a Clarification Interview. The

Clarification Interview should be audio, or audio-video, recorded. It should also be transcribed as needed. Any exception to recording the Clarification Interview requires approval of the CII.

Before conducting the Clarification Interview, the Investigator will review the Allegations and information received. During the Clarification Interview, the Investigator will confirm the Allegations, Subjects, Witnesses, and evidence to be gathered, and whether the Complainant has previously raised the same Allegations in other forums.

2.3.3: Allegations filed in another forum/simultaneous investigations. If a Complainant has filed a complaint in another forum (e.g., before the Merit Systems Protection Board, OEEO, the Equal Employment Opportunity Commission, or grievance under a collective bargaining agreement), the assigned Investigator should obtain a copy of the complaint and, if available, the decision.

If the complaint is a Harassment complaint pending with OEEO, OPC would simultaneously investigate that complaint and notify OEEO about the outcome.

If a pending complaint is with another forum, Investigators should consider the following factors when recommending whether a simultaneous OPC investigation will be conducted:

- Is the allegation in the other forum filing the same Allegation raised to OPC?
- Is there ongoing misconduct?
- Are there other individuals, outside of the Complainant, that are being affected?
- Is the complaint pending in an adjudicative forum?

2.4 Investigative Recommendation

2.4.1: Assessment Recommendation. Generally, within 2 business days after the Clarification Interview and review of any filings in other forums, the Investigator will make a recommendation to the CII to investigate or not investigate the Case.

The CII will determine whether to retain the Case for OPC to investigate or assign the Case to a law firm to investigate. If OPC is retaining the Case, the Investigator will develop an investigative plan and submit it to the CII for review and approval.

2.4.2: Assignment to law firm. If the CII refers the Case to a law firm to investigate, the Investigator will prepare an assessment which will include the Allegations that should be investigated and the Subject(s) for those Allegations, which will be submitted to the law firm. See the ALIS SOP for the process of initiating assignment to a law firm.

Once assigned to a law firm, the firm will respond to the Investigator with an investigative plan, cost estimate, and identify the specific attorney assigned to the matter and the partner overseeing the attorney's work product. Within a week of receiving the investigative plan, the Investigator will approve the investigative plan or return for further development. If a firm's investigative plan is approved, see the ALIS SOP for the additional steps to follow.

2.4.3: Assignment to OPC investigator. If OPC is retaining a Case for investigation, and the investigative plan is approved, see ALIS process for transcription and eDiscovery. CII may consult with the ADIIP and OPC Policy Counsel about this or other intake, investigations, or policy matters.

Once the Investigation commences, it should generally conclude within 60 calendar days from the date it commences.

2.5 Subject and Subject Supervisor Notification

Once a determination has been made to investigate, and upon approval of an assessment and Investigative Plan, the Investigator will email the Subject the *Subject Notification* and allow the Subject 2 business days to notify their supervisor. If the Subject doesn't confirm supervisor notification within 2 business days, the Investigator will send the *Supervisor Notification.*[1]

The Subject Notification informs a Subject and their supervisor of an OPC investigation wherein Allegations have been made against them.[2] The notification will be sent to the Subject within 2 business days of the CII's approval of the assessment recommendation.

2.6 Matters Received from Other Venues

OPC will receive copies of ROIs completed by other investigative entities, copies of complaints filed in other forums, or decisions by adjudicative bodies. Examples include, but are not limited to, OIG ROIs, complaints filed with OEEO, grievances filed under the collective bargaining agreement, and decisions by the EEOC or MSPB.

2.6.1: OIG transmitted matters. If the OIG sends OPC an ROI, a Case will be created in CMS and assigned to A&L for review. If the OIG refers Allegations to OPC, OPC Staff will open a new Case in CMS for intake. If the Allegation falls within OPC's Scope, it can be investigated. If the Allegation falls outside of OPC's Scope, OPC will notify the OIG to refer the matter to LEAS for review.

2.6.2: OEEO transmitted matters. If the OEEO sends OPC Allegations that it received, OPC staff will open a new Case in CMS for intake. If the Allegation falls within OPC's Scope, it can be investigated. If the Allegation falls outside of OPC's Scope, OPC will notify the OEEO to refer the matter to LEAS for review.

If the OEEO sends OPC a final agency decision or EEOC decision, a Case will be created in CMS and assigned to the ADIIP. The ADIIP will assign the decision to OPC Policy & Training Counsel for review. If the finding is sufficiently developed to warrant action, it will

[1] These notifications are in the OPC INV Template Library.
[2] If the immediate supervisor is part of the allegation, then send to the next level supervisor.

be assigned to the A&L for review. If further development is needed, it will be assigned to Investigations.

2.6.3: Other findings against Employees. If OPC receives notice of a finding by the MSPB or other entity indicative of potential misconduct within OPC's Scope by an Employee, a Case will be created in CMS and assigned to the ADIIP. The ADIIP will assign the ROI to Policy & Training Counsel for review. If the finding is sufficiently developed to warrant action, it will be assigned to the A&L for review. If further development is needed, it will be assigned to Investigations.

2.7 Interim Corrective Action

Some Allegations require that OPC initiate interim corrective action as provided for in the FDIC Anti-Harassment Directive 2710.03. While each Case is fact specific, some examples would be issuing a no-contact order to the Subject of the investigation, transferring or detailing the Subject out of their position of record, and if the Subject were the Complainant's supervisor, then arrangements could be made so that the Complainant does not report to the Subject during the pendency of the investigation.

Interim corrective actions are issued by the ADIIP. The ADIIP should coordinate the interim corrective action with the Subject's supervisor. The ADIIP may consult with Policy & Training Counsel regarding the need for interim corrective action and the appropriate interim corrective action to be taken.

2.8 Cases With Mixed Allegations

If Allegations filed with OPC include both misconduct that fall within OPC's Scope and misconduct outside of OPC's Scope, OPC may investigate both types of Allegations.

If, during the course of an investigation into a Case, OPC discovers misconduct that falls outside of OPC's Scope, OPC may investigate such misconduct.

CHAPTER 3 – STANDARDS FOR INVESTIGATIONS

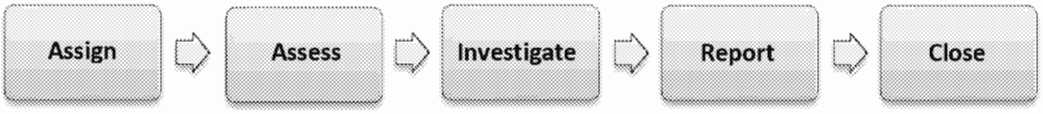
3.1 Overview

This Chapter provides OPC's standards for investigations. This Chapter also covers the procedures and guidelines related to conflicts of interest and Complainant Confidentiality.

3.2 Quality Standards

Individuals assigned to a matter for investigation must perform their roles and responsibilities in accordance with the procedures and processes outlined in this SOP. Individuals assigned to a matter for investigation must be professional, objective, and responsive in their work and in their interactions both internally and externally when performing their investigation activities.

Individuals conducting investigations must follow the Council of Inspectors General on Integrity and Efficiency's Quality Standards for Investigations (QSI) to ensure the work performed is independent and of high quality.[3] To conform to the QSI, OPC's investigative process consists of the following phases:



3.2.1 Assign. Within 2 business days after receipt of a complaint or report, OPC staff create a Case in CMS, contact the Complainant or Reporting Party and schedule an Intake Interview. Generally, within 5 business days, but not more than 30 calendar days after intake is completed, the Case is assigned by CII to an Investigator.

3.2.2 Assess. Within 5 business days after receiving the assignment, the Investigator will contact the Complainant to schedule a Clarification Interview. Within 2 business days after the Clarification Interview, the Investigator will assess the Allegation(s) and recommend to the CII to close the Case or recommend the Case be investigated.

3.2.3 Investigate. For Cases to be further investigated, the Investigator will consult with the CII who will decide whether to retain the Case for OPC to investigate or assign the Case to a law firm. If OPC is retaining the Case for investigation, the Investigator will prepare an investigative plan and submit to the CII for approval.

[3] QSI. Only certain provisions of the QSI are applicable to OPC. If you have questions, please reach out to your supervisor.

If OPC is assigning the matter to a firm, the Investigator will prepare an assessment, and the law firm will prepare an investigative plan for review by the Investigator. The investigation commences after approval of the investigative plan. The investigation should generally be completed within 60 calendar days from the day it commences.

3.2.4 Report. The Investigator or law firm assigned to conduct the investigation will develop an ROI to report findings, analysis, and conclusions. An ROI must be written accurately, clearly, concisely, and logically and be released promptly upon final approval.

3.2.5 Close. The CII, in consultation with the ADIIP and Policy & Training Counsel, will determine when the ROI is completed, and the investigation has concluded. The Case can be presented to the OPC Director for input before closure or submitted to the A&L for action, as appropriate.

3.3 Conflicts of Interest

All individuals assigned to conduct an investigation must perform their roles and responsibilities independently while identifying and disclosing any actual or perceived conflicts of interest as they arise. If a conflict arises, the ADIIP or CII must be notified and take steps to apply safeguards to mitigate, reduce, or eliminate the threat the conflict poses to OPC's impartiality.

If an Allegation involves an OPC staff, the guidance issued by the OPC Director should be followed.

3.4 Confidentiality

OPC staff or Contractors will protect and not disclose the identity of a Complainant without the consent of the Complainant, except as provided by law. OPC staff or Contractors will comply with the Privacy Act to ensure that Case-related information (e.g., information about Subjects or Witnesses) are not disclosed except when authorized by law.

3.5 Release of Case Records

Investigative files are confidential records and may not be shared outside of OPC, except pursuant to the following procedures.

3.5.1: Freedom of Information Act (FOIA) Requests. If OPC staff receive a request from any individual (*e.g.*, Complainants, Subjects, or Representatives) for Case documents or information from a Case, the requestor should be referred to FDIC's FOIA office. FDIC's FOIA Office will coordinate with OPC's FOIA liaison to address FDIC's response to the request.

3.5.2: Non-FOIA Requests. Requests or inquiries from Congress, OIG, the Office of Special Counsel (OSC), the Government Accountability Office, and other Federal agencies are considered non-FOIA requests. These entities may have the authority to request information for business reasons. The OPC Director should be informed of any such requests and would be responsible for OPC's reply.

3.5.3: Authorized Release of Information. There are occasions when an individual assigned to an investigation may release Case documents. Examples include to OIG in a referral, in support of an OPC investigation, and transcripts to a Witness for review. There may be other exceptions and individuals assigned to an investigation should consult with the ADIIP or CII for guidance.

3.6 Privacy Incidents

3.6.1: Unauthorized Release of Information. OPC staff must report an unauthorized release of information to their immediate supervisor promptly. This generally relates to the release of personally identifiable information or other protected information disclosed to an individual without a need to know.

3.6.2: Reporting Requirements. If you become aware of the release of unauthorized information in any Case, you must promptly notify your supervisor.

CHAPTER 4 – INVESTIGATIONS

4.1 Overview

This Chapter provides the processes and procedures for conducting an investigation.

4.2 Interviews (Testimonial Evidence)

Investigators should attempt to interview the Complainant, Subject(s), and Witnesses involved in the Allegations. Investigators must exercise sound professional judgement and verify through corroborating evidence whether the information provided during interviews is reliable. Investigations should consider an analysis under the Hillen Factors[4] if testimonial evidence conflicts.

4.2.1: Identifying Who to Interview.

Complainant. The purpose of interviewing the Complainant is to obtain relevant information regarding the Allegations. The Clarification Interview may provide sufficient information to proceed with the investigation, or an additional interview may be needed. If an additional interview is needed, Investigators should attempt to interview the Complainant before any other individual.

Subject. The Subject must be provided the opportunity to respond to the Allegations made against them, identify Witnesses, and present evidence that may be material to the Allegation. Investigators will interview the Subject unless a supervisor has granted an exception. If the Subject is not interviewed, Investigators should document the justification for this exception in the ROI.

Witnesses. Investigators will identify and interview relevant Witnesses. Witnesses may include eyewitnesses, subject matter experts, and other individuals with knowledge of the Allegations.

In some circumstances, Investigators may not need to interview the following types of Witnesses:

- Human resources staff not materially involved in the alleged act(s);
- Witnesses, although identified by the Complainant or Subject, who would provide redundant evidence already sufficiently established and would serve no probative value; or
- Witnesses who would only speak to character (a character Witness).

Non-FDIC Employees. Investigators may interview individuals aware of or directly

[4] *See Hillen v. Army*, 35 M.S.P.R. 453, 458 (MSPB 1987)

involved in the Allegations who are not employed by FDIC:

- Federal employees who are no longer employed by FDIC are not required to cooperate in an OPC investigation; however, Investigators can request their participation. Investigators may contact the individual's employing Federal agency and request assistance in obtaining an interview.
- Investigators may only solicit, not compel, individuals who are not employed by the Federal government to cooperate with an OPC investigation.
- Contractor staff are not employed with the FDIC, but they may have an obligation to cooperate with an FDIC investigation if the Contractor employing them has contractual requirements with FDIC to cooperate with FDIC investigations. Investigators must contact the FDIC contracting officer for assistance and to request an interview.

4.2.2: Interviewee Rights.

Investigators must be aware of the rights afforded to Interviewees. Employees are required to cooperate with an OPC investigation. Interviewees have the Constitutional right against self-incrimination. If an individual refuses to be interviewed, respond to certain questions, or invokes their Constitutional right against self-incrimination, Investigators should document the information and contact the CII to determine next steps unique to the Interviewee. If the individual is not invoking their right against self-incrimination, but rather simply refusing to cooperate, this may be viewed as a separate incidence of misconduct. Further, Interviewees should be notified that retaliation, in any form, for their participation in the interview will not be tolerated.

Representative. Investigators must allow Interviewees to have their own Representative present during interviews to request advice and counsel, provided certain conditions are met. Prior to the interview, Investigators will request the Interviewee provide written confirmation that they have a designated Representative. Investigators will ensure "Designation of Personal Representation Form" is completed and saved in the Case folder. Failure to follow the Investigator's guidance or improper conduct during the interview may result in the Representative's exclusion from the process. Investigators should consult with the CII for further guidance in these instances. A Representative must adhere to following conduct:

- The Representative is there to advise or provide counsel to the Interviewee, not to testify on the behalf of the Interviewee.
- The Representative should not object to questions posed or otherwise interrupt the interview unless it concerns an issue of privilege or the right against self-incrimination.
- Maintain a professional demeanor, communicate respectfully with Investigators and Employees, and avoid any form of intimidation or coercion.

Union Representative. For Employees that fall within an FDIC bargaining unit,

Investigators must notify them of their right to a Union Representative. FDIC bargaining unit Employees must indicate their intent to have a Union Representative present or to waive their right by completing the "Waiver of Union Representation for Interview with OPC Form." For FDIC bargaining unit Employees who request representation by someone other than their Union Representative, Investigators must ensure the Employees complete both the "Designation of Personal Representation Form" and "Waiver of Union Representation for Interview with OPC Form."

- A Union Representative may not participate or demand to be present during an interview against the bargaining unit FDIC Employee's objections.
- If an Employee requests a Union Representative during an interview, Investigators must grant the request, discontinue the interview, or offer the bargaining unit FDIC Employee the choice to continue the interview without representation.
- Bargaining unit FDIC Employees may decline to participate in an interview without a Union Representative present if they have the reasonable belief that the examination may result in disciplinary action. It is the Employee's right, not a union prerogative.
- If a Union Representative is not immediately available, Investigators will reschedule the interview to permit the bargaining unit FDIC Employee a reasonable amount of time to obtain union representation.

Right to an Interpreter. If an Interviewee requests to have an interpreter present in an interview, Investigators will coordinate with their supervisor to identify an appropriate interpreting service.

Right to Reasonable Accommodation. If an Interviewee has a reasonable accommodation or requests a reasonable accommodation for an interview, Investigators should consult with the CII to ensure that the accommodation is provided.

Kalkines and *Garrity* Warnings. In Cases involving potential criminal matters, it may be necessary to give the Interviewee *Kalkines* or *Garrity* Warnings. Investigators must consult with their supervisor before giving *Kalkines* or *Garrity* Warnings.

- *Kalkines* Warning would apply to compelled interviews after a prosecutorial declination regarding a potential criminal matter.
- *Garrity* Warning should be given to the Interviewee before questioning for statements that may support a criminal charge.

4.2.3: Interview Process

All interviews must have clear objectives, well-prepared questions, and a designated time and location. Interviews must be conducted in a professional manner and remain unbiased. Interviews should be recorded, transcribed, and maintained in the Case folder. Requests to conduct an interview that is not recorded and transcribed must be approved by the CII.

Generally, each interview follows the below steps:

1. Read-in. Use a standard OPC approved read-in.
2. Questioning. Investigators should develop their interview questions based on thorough research of the Allegations and relevant evidence. Investigators should also develop questions that generally follow the chronology of events.
3. Read-out. Use a standard read-out.

Investigators will record and transcribe interviews. This may be accomplished through a court reporter being present during the interview or by recording the interview and providing the recording to a transcription service for transcribing.

Upon receipt of a transcript, the Investigator will provide Interviewees a copy of the transcript and errata sheet for review.

Written Statements or Interrogatories. Written Statements or interrogatories are statements obtained from Witnesses. These are used in limited situations with approval of the CII. Typically, such statements are used for limited follow-up questions and not as a substitute for a transcribed interview of a fact Witness. Examples include a Witness responding in an email to a limited number of follow-up questions, or after a follow-up discussion with a Witness, the Investigator provides a written summary of the discussion, via email, for the Witness to review and reply back acknowledging the accuracy of the summary. An instant message (Teams message) is not a proper format for such a statement.

4.3 Documentary Evidence

Documentary evidence includes written and recorded evidence, such as emails, text messages, voicemails, personnel and training records, social media, photographs, audit logs, and other such evidence.

Most information and documents that Investigators obtain are stored on FDIC information systems or storage devices (*e.g.*, computers, cell phones, card readers, etc.). Under FDIC policy, Employees and Contractors do not have a reasonable expectation of privacy regarding the communications or documents they store or transmit on FDIC systems.

Investigators may request information from an established point of contact within the location, facility, or office in possession of the needed documents. Investigators may only request personal materials, such as privately-owned data storage devices and papers with the consent of the individual and coordination with the CII.

Levels of Testimonial Evidence. Investigators must consider the level of testimonial evidence to determine whether the evidence is useful and accurate. The four levels of testimonial evidence are defined in Table 2.

Table 2: Levels of Testimonial Evidence

Direct	Direct knowledge or observation and establishes or provides a fact without any inference or presumption. An example of this is when an Interviewee testifies that they directly saw or did not see someone do something.
Circumstantial	Inference drawn from other proven facts, but not from direct knowledge or observation. When consolidated, circumstantial evidence may cause Investigators to conclude something did or did not occur.
[illegible]	Testimony given by an Interviewee that relates to what others have told them, or what the Interviewee has heard people say to others. Although acceptable as evidence, Investigators must attempt to verify with the person having direct knowledge or observation of the hearsay evidence.
Opinion	A belief or judgment, not necessarily based on fact or firsthand knowledge. Investigators may ask Interviewees for their opinion, but they must document the basis for their opinion and assess for accuracy and reliability afterwards.

4.4 Status Updates

Investigators will provide status updates every 15 calendar days to Complainants and Subjects until the investigation is complete.[5] The status updates must be informative and unique to the progress of the investigation while not disclosing details that may jeopardize the investigation.

[5] The first update for the Complainant will be 15 calendar days from the Clarification Interview. The first update for the Subject will be 15 calendar days from the date they are notified of the investigation.

CHAPTER 5 – REPORTS OF INVESTIGATION

5.1 Overview

This Chapter provides the procedures and processes for developing, reviewing, and approving ROIs. This Chapter also provides instructions for releasing approved ROIs.

5.2 Drafting the ROI

ROIs are drafted using approved ROI templates relevant to the specific Allegation category (*e.g.*, misconduct or Whistleblower Retaliation). ROIs should state the facts,[6] state the applicable law, analyze the facts in context of the law, and reach a conclusion. The ROI should include footnote citations to the Evidence File for statements that are made (e.g., Doe transcript, p. 13). When possible, quotes should be used for testimonial evidence, but investigators should avoid block quotes. When applying the facts to the law, the ROI may include footnote citations to case law or policy.

Investigators will write and review the draft ROI throughout the investigative phase, resulting in a substantially written draft ROI upon the completion of evidence gathering.

Investigators, and law firms, should utilize a rolling ROI approach. A rolling ROI approach is one in which information is added to the ROI as the investigation progresses, rather than waiting until the investigation has concluded to begin crafting the ROI. This promotes faster completion of the ROI once the investigation has been completed. There is no additional time provided for ROI completion than that provided for completion of the investigation, which is generally 60 calendar days from the date of initiation to the date of conclusion.

In some Cases, with approval of the CII, an abbreviated ROI can be produced. An example of an abbreviated ROI would be where information is received during the investigation which definitively indicates the Allegation does not have merit or where there are no longer any facts in dispute and the Allegation definitively has merit.

ROIs document two types of investigative outcomes, which are defined in Table 3.

[6] If testimonial evidence conflicts, Investigators should apply the factors in *Hillen*, 35 M.S.P.R. at 458 to reach a conclusion on which evidence is more credible.

Table 3: Types of Investigative Outcomes

Substantiated ROI	Evidence obtained in the investigation substantiates any Allegation(s) and results in a referral to the Actions and Litigation Section.
Not Substantiated ROI	Evidence obtained in the investigation did not substantiate any of the Allegations and the Case is closed after completion.

5.3 ROI Review Process

ROIs undergo a thorough review process prior to finalization and release.

Investigator Review. Before submission to the CII, investigators should review ROIs, including those received from law firms, for typos, accuracy, structure, logic, and sufficiency of supporting evidence. Any substantive edits or suggestions are made in coordination with Investigators.

CII Review. The CII reviews the ROI for typos, accuracy, structure, logic, and sufficiency of supporting evidence. Any substantive edits or suggestions are made in coordination with Investigators.

ADIIP Review. The ADIIP will review all Substantiated ROIs for typos, accuracy, structure, logic, and sufficiency of supporting evidence, before transmission to A&L. Any substantive edits or suggestions are made in coordination with Investigator or CII.

Policy & Training Counsel Review. Assistance may be requested from Policy & Training Counsel, including legal guidance or for assistance in the review of ROIs. After completion of any review, the Policy & Training Counsel will return the ROI to the OPC supervisor or Investigator who asked for the review.

5.4 ROI Release Procedures

Once an ROI with Substantiated Allegations is approved, the Investigator will transmit the completed ROI and Evidence File to A&L.

Once an ROI with no Substantiated Allegations is approved, the closure procedures in Chapter 6 will be followed.

CHAPTER 6 – CLOSING CASES

6.1 Overview

This Chapter addresses case closure and transmittal procedures upon OPC's completion of an investigation and final ROI.

6.2 Substantiated Cases

Cases in which any Allegation is Substantiated. The ROIs in these Cases are reviewed and approved by the CII and ADIIP before being transmitted to A&L.

6.3 Not Substantiated Cases

Cases in which no Allegations are Substantiated. The ROIs in these Cases are reviewed and approved by the CII and closed following standard case closure procedures.

6.4 Out of OPC's Scope Cases – No Referral

After assessing the Allegations, the CII may conclude that the Allegations are outside of OPC's Scope and should be closed with no referral or further action.

6.5 Criminal Matters Transmitted to OIG

Some complaints may contain an Allegation of criminal misconduct that are part of the initial filing or arise later from evidence or testimony gathered during the investigation. Criminal Allegations will be referred to the OIG to accept or decline. If OIG accepts the Criminal Allegation, OPC will close its investigation of that accepted Allegation. If OIG declines to accept the Criminal Allegation, the Investigator will review with the CII to determine if OPC will continue to investigate that Allegation in an administrative investigation.

6.6 Insufficient Information to Proceed

Investigators may be unable to obtain needed information, or the information presented in the Allegations may not present sufficient justification or details to proceed with an investigation. This may occur when there is an anonymous Complainant and OPC cannot follow up, or when a Complainant is not responsive. In these instances, the Investigator will consult with the CII on closing the Case.

6.7 Duplicate Case

The Investigator may determine that another Case is open with the same Allegation(s). If

this occurs, the Investigator should consult with the CII whether to close the duplicate Case.

6.8 Complainant Requests to Withdraw

If at any time a Complainant requests to withdraw their Allegation, the Investigator will consult with the CII to determine if closure is appropriate.[7] This determination will include the Complainant's request to withdraw, as well as the nature of the Allegation and the ability to proceed with the investigation absent the Complainant's cooperation. If the supervisor determines that closing the Case is appropriate, they will follow standard closure procedures.

[7] If the investigation can be continued without the Complainant's cooperation, then consideration should be given to continuing.

CHAPTER 7 – CLOSED CASE REVIEWS

7.1 Overview

This Chapter addresses closed Cases in which the Complainant requests a re-review of their Case. It also includes OPC's continuing evaluation of completed investigations and completed reports of investigations for quality control.

7.2 Requests for Re-Review

Complainants may request that their Case or a matter investigated by FDIC's Labor and Employment Relations Section or Labor, Employment, and Administration Section, be re-reviewed by OPC. These requests should be directed to the ADIIP, who will be responsible for making a determination.

The following criteria should be applied in the re-review of Cases to determine if further investigation is warranted; was a Clarification Interview conducted with the Complainant, was the Allegation(s) properly scoped, were relevant Witnesses identified and interviewed, were relevant documents collected and reviewed, was the Subject of the Allegation(s) interviewed, was the evidence analyzed against the relevant standard (law, rule, regulation, FDIC policy), and was the conclusion reached reasonable based upon the available evidence. Any deficiencies in the investigation should be addressed. If necessary, the Case can be assigned to an Investigator or a law firm for further investigative activity.

Complainants will be notified of the results of their request for a re-review. Standard closing procedures should be followed upon the conclusion of the re-review (e.g., closing conference and closing letter to the Complainant requesting the re-review).

OFFICE OF PROFESSIONAL CONDUCT

ACTIONS AND LITGATION STANDARD OPERATING PROCEDURE

ACTIONS AND LITIGATION SOP
OFFICE OF PROFESSIONAL CONDUCT
(issued on June 25, 2025)

Table of Contents

CHAPTER 1 - INTRODUCTION

1.1 Introduction

This SOP outlines the steps for OPC to determine, take, and defend actions for Allegations within OPC's Scope.

1.2 Program Oversight

1.2.1: Program responsibilities. OPC staff are responsible for complying with this SOP. The OPC Director is responsible for oversight of OPC, including actions arising from OPC investigations and litigation arising from those actions. The ADAL is responsible for management and execution of OPC's actions and litigation programs.

1.2.2: Case data. Data related to Cases received by OPC should be saved to CMS and to OPC's file system.

1.3 Authorities

FDIC Directive 2750.01, Discipline and Adverse Actions, establishes FDIC's policies for discipline and Adverse Actions.

Pursuant to FDIC Board of Directors (Board) Resolution 089006 and notwithstanding conflicting policy, the OPC Director or Deputy Director serve as the proposing and Deciding Official for Allegations about Managers that fall within OPC's Scope. The OPC Director or Deputy Director may also direct Non-Disciplinary Action, such as counseling or training, to address conduct by Managers when that conduct does not warrant formal discipline.

Until such time as FDIC policy is amended to define OPC's roles and responsibilities, OPC will make a Recommendation for Employees who are not Managers.

1.4 Safeguarding Information & Maintaining Records

All OPC staff are responsible for safeguarding sensitive information in accordance with FDIC Directive 1360.09, Protecting Information.

A&L is responsible for maintaining action and litigation files, including documentation about actions that have been proposed or taken; tracking Recommendations and actions taken; and litigation files. A&L is also responsible for tracking the consistency of penalties for OPC-related actions in CMS.

1.5 Working with Human Resources to Administer Actions

When a Disciplinary or Adverse Action is issued or certain Non-Disciplinary Action (e.g., 5 U.S.C. § 3322) is taken, A&L Counsel is responsible for coordinating with the appropriate FDIC offices to administratively implement such action.

Confirmation of implementation of the action will be documented.

CHAPTER 2 - RECEIPT AND REVIEW OF ROIs

2.1 Receipt of ROIs

A&L receives all OPC ROIs that contain a Substantiated Allegation, including those completed by law firms contracted by OPC. OPC's Director receives all OIG ROIs involving Allegations within OPC's Scope and refers them to A&L.

2.2 Review of ROIs

A&L reviews the ROI to determine whether the evidence supporting the conclusions of the investigation is sufficient or whether additional investigation is necessary to resolve questions arising from review.

If additional information is needed, A&L may:

- Return the matter to the Investigative Entity and/or request additional information; or
- If additional information is needed, but not to the extent that further investigation is necessary, obtain the additional information independently; this must be documented in writing and included in any subsequent Evidence File, if relied upon in proposing a Disciplinary or Adverse Action.

Once A&L determines sufficient evidence exists to support the conclusions of the investigation, A&L recommends a level of action, if any, to the OPC Director or Deputy Director. Actions may include Disciplinary Action or Non-Disciplinary Action.

A&L is responsible for providing legal advice and support to the OPC Director and Deputy Director. The support addressed above, advice, and Recommendations to the OPC Director and Deputy Director are protected by the attorney-client and attorney work-product privileges.

To maintain impartiality and objectivity, A&L Counsel will not provide substantive advice to the OPC's Investigations Unit about ongoing investigations. Instead, this advice will be provided by OPC Policy & Training Counsel.

CHAPTER 3 - DISCIPLINARY OR ADVERSE ACTION

3.1 Proposal Notice

3.1.1: Roles. The Proposing Official determines whether to propose disciplinary or Adverse Action, and, if so, the level of penalty warranted.

OPC Director or Deputy Director:

- Serves as the Proposing Official for any potential disciplinary or Adverse Action involving Managers.
- Makes a Recommendation for potential disciplinary or Adverse Action involving non-Managers to the Proposing Official.

A&L Counsel is responsible for providing legal advice and support to assist the Proposing Official, in:

- Determining whether Disciplinary or Adverse Action is warranted.
- Determining whether the evidence provided by investigating entity is sufficient to support a Disciplinary or Adverse Action.
- Determining the appropriate charge(s) of misconduct.
- Determining what level of penalty, if any, is warranted.
- Drafting a proposed Disciplinary or Adverse Action; and
- Assembling the Evidence File to support the Disciplinary or Adverse Action.

Such advice and support is protected by the attorney-client and attorney work-product privileges.

3.1.2: Determining Whether Disciplinary Action is Warranted.

The Proposing Official determines whether the evidence provided by the investigative entity supports the conclusions reached in the ROI. The evidence must demonstrate by a Preponderance of the Evidence that the Employee engaged in misconduct. If the evidence meets the preponderant evidence standard, the Proposing Official determines whether the substantiated misconduct warrants Disciplinary or Adverse Action.

Disciplinary and Adverse Action may only be taken as will promote the efficiency of the service. This is often referred to as "nexus," which generally requires that the FDIC establish the misconduct is likely to have an adverse effect on the FDIC's functioning, the Employee's ability to accomplish their duties, or some other legitimate government interest. There are instances in which off-duty misconduct satisfies the nexus requirement.

Charges of misconduct will be based on the facts and circumstances of each case, and in accordance with relevant legal authorities and applicable case law.

3.1.3: Determining Penalty.

If Disciplinary or Adverse Action is warranted, the Proposing Official determines what penalty level is appropriate.

Disciplinary Actions include:

- Letter of reprimand.
- Suspension of 14 calendar days or less.

Adverse Actions include:

- Suspension of more than 14 calendar days.
- Reduction in grade or pay.
- Removal from Federal service.
- Indefinite suspension.

All relevant *Douglas* Factors must be considered at the proposal stage, when determining the appropriate penalty. *Douglas v. Veterans Admin.*, 5 M.S.P.R. 280 (MSPB 1981). These factors are not intended to be a checklist but rather factors to be balanced. Some factors may weigh more than others, such as the first *Douglas* factor, the nature and seriousness of the misconduct.

To avoid workplace disruption and ensure the Employee's supervisor is on notice of the potential action, A&L Counsel will notify the Employee's supervisor, on behalf of the Proposing Official, of the potential action[1] and seek input on certain *Douglas* factors that relate to supervisory knowledge (e.g. prior work record, impact on Employee's ability to perform duties at satisfactory level, the impact on supervisor's confidence, and the potential for rehabilitation). A&L Counsel will utilize a template inquiry to ensure consistency in the information requested.

The Proposal must include any aggravating factors relied upon in determining the penalty. The penalty will be based on the facts and circumstances of each case, and in accordance with relevant legal authorities and applicable case law.

A&L will track proposed penalties in CMS for the purpose of ensuring consistency. OPC will maintain consistency when applying penalties for same or similar misconduct. There may be instances in which a more severe penalty is warranted for same or similar misconduct based on the facts and circumstances of each case.

Last chance agreements and abeyance agreements may be available in some cases. *See* FDIC Directive 2750.01, Discipline and Adverse Actions.

[1] Unless it is necessary to provide notification to higher level official, due to potential conflict.

3.1.4: Evidence File.

All evidence relied upon by the Proposing Official in issuing the Proposal must be included in the Evidence File, including evidence supporting any aggravating factors.

The Evidence File must be provided to the Employee with the Proposal. The Proposal and Evidence File may be provided electronically or in hard copy.

3.1.5: Issuing Proposed Disciplinary or Adverse Action.

A&L Counsel will ensure that the Proposal includes notice of:

- The right of the Employee to appeal an action;
- The forums in which the Employee may file an appeal; and
- Any limitations on the rights of the Employee that would apply because of the forum in which the Employee decides to file an appeal.

A&L Counsel will ensure that applicable appeal rights, including limitations, are set forth in the Proposal, which may include the following, depending on the action:

- Administrative grievance pursuant to this document and FDIC Directive 2700.01, Grievances;
- Negotiated grievance pursuant to applicable collective bargaining agreement;
- FDIC Office of Equal Employment Opportunity (OEEO);
- MSPB; or
- OSC.

A&L will be responsible for delivering the Proposal and Evidence File to the Employee.

Delivery and receipt will be confirmed and documented in writing. If receipt cannot be confirmed, a written explanation will be noted.

3.1.6: Investigative and/or Notice Leave.

When issuing a proposed Disciplinary or Adverse Action, the Proposing Official, in consultation with A&L Counsel should determine whether it is necessary to place the Employee on Notice Leave. This includes instances in which the Employee subject to the proposed action is on Investigative Leave.

This determination must be made in accordance with 5 U.S.C. § 6239b; and 5 C.F.R. §§ 630.1501-1506.

3.2 Reply Stage

For Disciplinary and Adverse Actions, and indefinite suspensions, the Employee is entitled to:

- The right to representation by an attorney or other Representative, including, if applicable, a Union Representative;

- The opportunity to review all material relied upon to support the Proposal;
- The opportunity to submit a written and/or oral reply to the Proposal and consideration of the reply before a Decision is made; and
- A written Decision before the effective date of the action. As mandated by law or regulation, the Decision will inform the Employee of applicable appeal and/or grievance rights.

For suspensions of 14 calendar days or less, the Employee is entitled to:

- Advance written notice that states the charge(s) and reason(s) for the proposed suspension.

For Adverse Actions and indefinite suspensions, the Employee is entitled to:

- A written notice that states the charge(s) and reason(s) for the proposed action at least 30 calendar days in advance of the effective date of any Decision, except when the agency has reasonable cause to believe that the Employee has committed a crime for which a sentence of imprisonment may be imposed.

The Employee will have 10 business days from the date of receipt of the proposal to provide an electronic written and/or oral reply.

A&L Counsel will be responsible for receiving the written reply electronically, and for scheduling the oral reply to the Deciding Official. If an Employee chooses to reply orally, the reply may be completed virtually or in-person. A&L Counsel will attend the oral reply with the Deciding Official and the reply will be recorded and transcribed. The FDIC will not reimburse for an Employee to travel to provide an oral reply.

Requests for extension to the 10 business day reply period must be in writing. Extensions should be rare, and only in the most exigent circumstances. The Deciding Official determines whether to grant an extension.

A&L Counsel is responsible for providing legal advice and support to the Deciding Official during the reply stage. Such advice and support is protected by the attorney-client and attorney work-product privileges.

3.3 Decision Stage

3.3.1: A&L Counsel. A&L Counsel is responsible for providing legal advice and support to the Deciding Official during the decision stage. Such advice and support is protected by the attorney-client and attorney work-product privileges.

3.3.2: Determining Whether the Charges are Proven by Preponderance of the Evidence.

Following the Employee's reply, the Deciding Official will consider the following:

- the Proposal;
- the Evidence File;

- the Employee's oral and written reply; and
- any evidence submitted by the Employee with the reply.

If the Deciding Official chooses to consider any additional evidence not included in the Proposal or reply, the Deciding Official will provide the Employee with notice of the additional evidence and an additional opportunity to provide a written reply to that evidence.

The Deciding Official determines whether the evidence in support of the action, weighed against the Employee's oral and written reply, demonstrates by a Preponderance of the Evidence that the charged misconduct occurred.

Disciplinary and Adverse Action may only be taken as will promote the efficiency of the service. This is often referred to as "nexus," which generally requires that the FDIC establish the misconduct is likely to have an adverse effect on the FDIC's functioning, the Employee's ability to accomplish their duties, or some other legitimate government interest. There are instances in which off-duty misconduct satisfies the nexus requirement.

3.3.3: Determining Whether the Proposed Penalty is Warranted or Mitigation is Appropriate.

If Disciplinary or Adverse Action is warranted, the Deciding Official determines whether the proposed penalty is warranted. The penalty must be within the tolerable limits of reasonableness.

All relevant *Douglas* Factors must be considered at the decision stage, when determining the appropriate penalty. *Douglas v. Veterans Admin.*, 5 M.S.P.R. 280 (1981). These factors are not intended to be a checklist but rather factors to be balanced. Some factors may weigh more than others, such as the first *Douglas* factor, the nature and seriousness of the misconduct.

The Deciding Official may not consider any aggravating factors in which the Employee has not been placed on notice. If the Deciding Official considers an aggravating factor that was not in the Proposal, the Deciding Official must provide the Employee with notice of the aggravating factor and an additional opportunity to provide a written reply to that aggravating factor.

The penalty will be based on the facts and circumstances of each case, and in accordance with relevant legal authorities and applicable case law.

The Deciding Official may:

- sustain the proposed penalty;
- mitigate to a lesser penalty; or
- find no penalty is warranted.

A&L will track decided penalties in CMS for the purpose of ensuring consistency. OPC will maintain consistency when applying penalties for same or similar misconduct. There may be instances where a more severe penalty is warranted for same or similar misconduct based on the facts and circumstances of each case.

Last chance agreements and abeyance agreements may be available in some cases. See FDIC Directive 2750.01, Discipline and Adverse Actions.

3.3.4: Issuing Decision.

A&L Counsel will ensure that applicable appeal rights are set forth in the Decision, which may include one or more of the following, depending on the action:

- Administrative grievance pursuant to this document and FDIC Directive 2700.01, Grievances;
- Negotiated grievance pursuant to applicable collective bargaining agreement;
- Filing an equal employment complaint with OEEO;
- Filing an appeal to the Merit Systems Protection Board (MSPB); or
- Filing a complaint with the Office of Special Counsel (OSC).

A&L Counsel will serve as the Agency Contact Official for appeals filed with the MSPB.

A&L will be responsible for delivering the Decision and Evidence File to the Employee.

Delivery and receipt will be confirmed and documented in writing. If receipt cannot be confirmed, a written explanation will be noted.

On behalf of the Deciding Official, A&L Counsel will notify the Employee's supervisor of the Decision.

3.4 Grievance Stage (if applicable)

3.4.1: Exclusions. The exclusions set forth in FDIC Directive 2700.01, Grievances, apply, including:

- Matters that can be raised to the MSPB, OPM, or EEOC.
- Termination or separation of an Employee during a probationary or trial period or an Employee who otherwise lacks MSPB appeal rights over the termination/separation.
- Non-disciplinary counseling actions or preliminary warnings for conduct.
- Proposals of a Disciplinary or Adverse Action.
- Payment or failure to pay the amount of a recruitment bonus, relocation bonus, or retention allowance.
- Reassignment of an Employee from one position to another position within a commuting area when there is no loss of pay or grade, including reassignment from a supervisory position to a non-supervisory position.
- A matter in which the Employee has filed a complaint or other challenge under another review, reconsideration, or dispute resolution process.

3.4.2: Process. The Employee must present a Grievance to the Grievance Official identified in the Decision, within 15 calendar days of receipt of the Decision. A meeting between the Grievance

Official and grievant is not required; however, a meeting may take place if the Grievance Official requests one.

3.4.3: Review. A&L Counsel is responsible for providing legal advice and support to the Grievance Official. Such advice and support is protected by the attorney-client and attorney work-product privileges.

The Grievance Official reviews the written record, which consists of:

- Proposal and Evidence File;
- Reply to the Proposal and any evidence furnished by the Employee;
- Decision; and
- Grievance.

The Grievance Official will determine whether the charged misconduct is supported by Preponderance of the Evidence and the penalty is within the bounds of reasonableness.

The Grievance Official may:

- deny the Grievance;
- mitigate to a lesser penalty; or
- find no penalty is warranted.

3.4.5: Issuing Grievance Decision.

The Grievance Official will issue a written decision within 15 calendar days of the date on which the Grievance was presented. The Grievance Official may extend the response period when necessary.

The Grievance decision is final and not subject to further review or appeal.

A&L will be responsible for delivering the Grievance decision to the Employee.

Delivery and receipt will be confirmed and documented in writing. If receipt cannot be confirmed, a written explanation will be noted.

CHAPTER 4 - NON-DISCIPLINARY AND CORRECTIVE ACTION

There may be instances in which findings of an investigation warrant non-disciplinary or corrective action, including those in which Allegations are Not Substantiated.

Non-Disciplinary Actions include:

- Oral and written counseling.
- Training.
- Permanent Notation of Official Personnel Folder (5 U.S.C. § 3322).

Corrective actions include:

- Developing FDIC organization policies, processes, or procedures.
- Amending FDIC organization policies, processes, or procedures.
- Returning detailed, reassigned, or demoted Employee to original position.

For these actions, the OPC Director or Deputy Director may direct an action or make a Recommendation for an action to the appropriate manager. A&L Counsel is responsible for providing legal advice for these actions or Recommendations. Such advice and support is protected by the attorney-client and attorney work-product privileges.

To avoid workplace disruption and ensure efficacy of non-disciplinary and/or corrective action, OPC, through A&L Counsel, will notify and consult with the appropriate supervisor concerning the most effective action.

CHAPTER 5 - LITIGATION

A&L Counsel will represent the FDIC in any subsequent litigation arising out of Disciplinary, Adverse, or Non-Disciplinary Actions taken by OPC.

A&L Counsel will represent the FDIC in any subsequent litigation arising out of actions taken based on Recommendations made by OPC.

Such litigation includes challenges in the administrative and negotiated grievance processes, MSPB, EEOC, FLRA, and Federal Court. Litigation files will be saved to CMS.

APPENDIX: DEFINITIONS & ABBREVIATIONS
OPC STANDARD OPERATING PROCEDURE
(issued on June 25, 2025)

1. **A&L:** OPC's Actions & Litigation Section.

2. **ADAL:** OPC's Assistant Director for Actions & Litigation.

3. **Adverse Action:** See FDIC Directive 2750.01, Disciplinary and Adverse Actions for definition and examples.

4. **ADIIP:** OPC's Assistant Director for Intake, Investigations, & Policy.

5. **Allegation:** A claim or accusation about misconduct.

6. **Case:** An Allegation or Allegations received by OPC.

7. **CII:** OPC's Chief of Intake & Investigations.

8. **Clarification Interview:** A recorded interview of the Complainant to confirm Allegations, identify Subjects, Witnesses, evidence to be gathered, and answer questions about the OPC investigation process. The interview is transcribed on an as needed basis.

9. **CMS:** OPC's Case Management System.

10. **Confidentiality:** OPC only releases the identity of a Complainant if they consent or when otherwise required by law.

11. **Contractor:** A person or company which has submitted an offer to perform services for the FDIC or has a contractual agreement with the FDIC to perform services.

12. **Complainant:** An individual making an Allegation to OPC, typically the individual who was subjected to the conduct being alleged.

13. **Criminal Allegation:** An Allegation which, if true, would constitute a violation of federal or state criminal law. Such Allegations are required to be reported to OIG.

14. **Deciding Official:** The OPC Director or Deputy Director serves as deciding official for all actions involving managers. For non-managers, the deciding official is an appropriate manager, generally the second-line manager over the employee.

15. **Decision:** A written memorandum issued by the Deciding Official stating the decision on a proposed Disciplinary or Adverse Action. The decision must include the basis of the decision; the penalty, if any, to be imposed; the effective date of the decision; and any appeal and/or grievance rights.

16. **Disciplinary Action:** See FDIC Directive 2750.01, Disciplinary and Adverse Actions for definition and examples.

17. **Employee**: For the Intake & Investigations SOP, employee means any individual employed by the FDIC, formerly employed by the FDIC, or applicant for FDIC employment. For purpose of the Actions & Litigation SOP, employee means an individual employed by the FDIC.

18. **EEOC:** U.S. Equal Employment Opportunity Commission.

19. **Evidence File:** All materials relied upon by the Proposing and Deciding Official in proposing or deciding a disciplinary or adverse action.

20. **Grievance:** Written grievance submitted to the Grievance Official after receipt of the decision.

21. **Grievance Official:** The grievance official for OPC-taken actions is the Deputy to the Acting Chairman or other official designated by the Chairman. For non-managers, the grievance official is an appropriate manager, generally the next level higher above the individual taking the action.

22. **Harassment:** See FDIC Directive 2710.03, Anti-Harassment Program for definition and examples.

23. **Intake Interview:** The interview of the Complainant or Reporting Party by OPC. The purpose is to gather more information about the Allegation. This includes information to assess whether interim corrective action (e.g., in cases of sexual harassment, separating the alleged harasser from the individual who was harassed) is necessary or was taken. This interview is not typically recorded or transcribed and is of lesser depth than the clarification interview.

24. **Interpersonal Misconduct:** Includes, but is not limited to:

    a. Findings of discrimination against Employees made by OEEO or EEOC.
    b. Failure to cooperate or refusing to participate openly and honestly in an investigation or inquiry conducted by OPC.
    c. Inappropriate physical touching.
    d. Manager's failure to report under FDIC Directive 2710.03, Anti-Harassment Program or FDIC Directive 2400.02, Anti-Retaliation and Whistleblower Protection Rights.
    e. Sexual misconduct.
    f. Taking an action to influence, intimidate, impede, or otherwise obstruct an OPC investigation or inquiry.
    g. Violation of FDIC Directive 2400.04, Personal Relationships in the Workplace.

25. **Interviewee:** A person who is questioned during the OPC investigative process about Allegations. This could be the person that raised the Allegations, the Subject, or Witnesses.

26. **Investigative Entity:** An organization that conducts investigations entity (e.g., OIG or the U.S Office of Special Counsel).

27. **Investigative Leave:** See 5 C.F.R. § 630.1502.

28. **Managers:** Includes Executive Managers, Corporate Experts, and Corporate Managers.

29. **MSPB:** U.S. Merit Systems Protection Board.

30. **Not Substantiated:** When allegations are not found to be meritorious.

31. **Non-Disciplinary Action:** Any recommended action, not including a recommendation for disciplinary or adverse action, intended to correct conduct identified in an ROI or administrative decision.

32. **Notice Leave:** See 5 C.F.R § 630.1502.

33. **OEEO:** FDIC Office of Equal Employment Opportunity.

34. **OIG:** FDIC Office of Inspector General.

35. **OPC's Scope:** OPC's investigative, actions, and litigation scope is limited to Allegations of Harassment, Interpersonal Misconduct, and Retaliation. OPC may investigate and take action on other types of misconduct if they are raised to OPC at the same time as Allegations within OPC's Scope or if such misconduct is discovered during an investigation into an Allegation within OPC's Scope.

36. **Personnel Action:** An action as defined under 5 U.S.C. § 2302(a)(2)(A) refers to an appointment; promotion; disciplinary or corrective action; detail, transfer or reassignment; reinstatement; restoration; reemployment; performance evaluation; decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action within this definition; decision to order psychiatric testing or examination; the implementation or enforcement of any nondisclosure policy, form, or agreement; and any other significant change in duties, responsibilities, or working conditions.

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

38. **Proposal:** A written memorandum notifying an employee of a proposed disciplinary or adverse action. The proposal must include the basis of the proposed action; the evidence file; the opportunity to provide a written and/or oral reply; and any other entitlements required by statute or FDIC policy.

39. **Proposing Official:** The OPC Director or Deputy Director serves as proposing official for all actions involving Managers. For Non-Managers, the proposing official is an appropriate Manager over the employee, generally the first-line manager over the employee.

40. **Protected Activity:** Includes the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation, testifying for or otherwise lawfully assisting any individual in the exercise of any right to appeal, complain, or grieve, and cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law.

41. **Protected Disclosure:** Includes any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

42. **Recommendation:** A recommendation made by the OPC Director to a Member of the Board or Manager for Disciplinary or Adverse Action, non-Disciplinary Action, or corrective action.

43. **Reporting Party:** Any individual who submits an allegation to the OPC on behalf of someone else (e.g. a manager meeting their reporting requirement or employee reporting on behalf of a co-worker).

44. **Representative:** An individual designated by a Complainant, Subject, or Witness to represent them during any stage of the process.

45. **Retaliation:** Is actions taken against an FDIC employee, applicant for employment, or contractor in response to protected activities or a protected disclosure. See FDIC Directive 2400.02.

46. **ROI:** For the Intake & Investigations SOP, a report of investigation that covers all aspects of a completed investigation including any findings, analysis, and conclusions. For the Actions & Litigation SOP, a report of investigation or investigative findings with underlying evidence.

47. **Subject:** An individual who is named as the responsible party in an Allegation or is under investigation by OPC.

48. **Substantiated:** When one or more allegations are found to be meritorious.

49. **Union Representative:** An individual designated by the National Treasury Employees Union (NTEU) to represent the interest of unionized FDIC's employees during an investigation.

50. **Whistleblower:** Refers to an employee or applicant for employment at FDIC who makes a Protected Disclosure.

51. **Whistleblower Retaliation:** Refers to a supervisor taking or failing to take, threatening to take or not to take, a personnel action because of a whistleblower disclosure.

52. **Witness:** Any individual who possesses information relevant to an investigation.