

**SUBJECT: DFEC PROTOCOL STATEMENT – OIG AUDITS, EVALUATIONS AND INVESTIGATIONS**

Federal agencies' increased awareness of the monies spent on workplace injuries under the Federal Employees' Compensation Act (FECA) has prompted agencies and their respective Office of Inspectors General (OIG) to look for ways to reduce costs, return more people to work and increase identification and prevention of fraud in the program. Consequently the Division of Federal Employees' Compensation (DFEC) is receiving an increasing number of requests for information from the OIG community as they perform audits, evaluations, inspections and investigations. While, as a program, we want to be fully cooperative with the OIGs, OIG projects must be coordinated in a way that does not interfere with our ability to perform our mission. It is important that DFEC approach these requests with a consistent and coherent process that ensures that DFEC coordinates, cooperates and supports these requests in a manner that preserves program resources and avoids duplication of effort.

Each district office will designate a point of contact (POC) for all OIG requests. The designee should be easily accessible and readily available to the OIG representative. These names will be provided to the OIG community for use solely for this purpose.

It is important to differentiate between types of IG requests such as:

**1) Investigations of a single case or medical provider.**

Such investigations are normally directed toward a single case or a single medical provider where a potential violation of law is under investigation. Agency IG investigate fraud cases involving their own agency employees/former employees and may also investigate related medical provider fraud in such cases.

**2) Audits and evaluations**

Audits and evaluations tend to review a specific process or processes. Data mining is an audit function. An IG is permitted to audit only its own agency's processes. The only data that could be made available would pertain solely to the requesting agency's cases; the primary focus of such an evaluation is the agency's part in the FECA process. (The Department of Labor Office of Inspector General has overall audit responsibility for the FECA program, as FECA is a DOL administered program.)

**Single case investigations**

The OIG should provide advance notice to the district's POC when coming into the office to review cases. The necessary lead time will be dependent on local usage of the viewing kiosk and may be as much as three weeks for a non-emergency review. Case records may also be supplied on encrypted CD-ROM if the case is fully imaged. When an employing agency IG investigator requests to view a case record, he/she will be required to sign a brief statement prior to gaining access to the file to the effect that access to the file is being requested based on an investigation into a potential violation of law. These statements will not be placed in the individual case records but should be maintained by the district's POC in a separate file.

Investigative memoranda (IM) and supporting documentation should not be placed in the DFEC case record **until the investigation is completed**. However, a decision **cannot** be rendered that considers evidence in an IM until the IM and any supporting documentation is included in the case record. Our longstanding policy, as set forth in the OWCP Procedure Manual, Part 1-0400.7(a)(1)(b), states that "Most documents that originate with an investigative agency and are given to OWCP with the expectation that OWCP act on them, become releasable as a part of the case file. The only exception would be for witness statements that would jeopardize the privacy of the witness." As the Privacy Act requires that a FECA claimant is entitled to a copy of his/her case record upon request, it follows that a claimant is entitled to receive the investigative materials (including videotapes) that are part of the case file.

Of course, not all investigations will lead to criminal prosecution. When IMs are referred to the district office, a designated individual should review each IM to determine if the investigation establishes inconsistencies or calls into question the validity of the medical evidence, the severity of the employment injury or the reported work restrictions or whether it establishes unreported work activity. Such documentation of misrepresentation of physical disability does not result in immediate termination of compensation. However, it will be placed in the file and used for future case management actions such as an amendment to the Statement of Accepted Facts or second opinion medical examination. (See [FECA PM 2-0402.6](#).) The Employees' Compensation Appeals Board now requires that a claimant be notified if a videotape is being provided to a doctor performing an OWCP-directed medical examination. See J.M., ECAB Docket No. 2006-0661 (April 25, 2007) (OWCP "has the responsibility to make the claimant aware that it is providing videotape evidence to a medical expert.")

OIGs may be asked to differentiate between questionable physical disability and unreported work activity. Memoranda reflecting possible questionable physical disability will be considered a Report of Investigation rather than an IM. IMs will be specifically assigned and tracked in each district office. However, Reports of Investigation will not be tracked, although the district office may expect the OIG to confirm with the POC that the Report of Investigation was fully reviewed for possible claims action. Physical evidence of investigations submitted to DFEC should be in an easily viewable format; currently Windows Media Player compatible. DFEC will maintain the security of the physical evidence.

Should the claims examiner discover actual or suspected abuse or fraud in FECA claims, an OWCP referral to OIG will be made based on instructions contained in the [FECA Procedure Manual at PM 2-0402.7](#) and [PM 2-0402.8](#).

### **Audit and evaluation processes**

An IG is permitted to audit its own agency's processes. Much of the information necessary for official investigative purposes should be contained in the weekly, monthly and quarterly extracts provided to each agency's compensation management office. The weekly extracts contain case management, bill payment and compensation payment detail data; monthly extracts contain new case-create data; quarterly extracts contain agency chargeback data. We will not duplicate our efforts to reproduce these data runs. The OIG should be referred to their agency's injury compensation management program coordinator. However, if the audit requires data that is not routinely sent by OWCP to the employer, the agency OIG should schedule a meeting with the DFEC Deputy Director to discuss the request. The discussion will cover the project's objectives, clarify the types of data needed and identify the format for receiving them. This initial meeting is intended to pinpoint data needs and availability, thereby reducing additional data requests to OWCP and preserving program resources while supporting these requests.

The OIG should also notify DOL OIG Assistant Inspector General for Audit (AIGA) of the planned work.

Any single case investigation requests received by the district office's POC that cross district office jurisdictional lines must be forwarded to the DFEC Deputy Director for review in order to avoid repetition of data runs and to pinpoint the OIG needs. Additionally, any data requests for audit or evaluation purposes should be forwarded to the DFEC Deputy Director for review and response. This allows DFEC to track these requests closely and to explain fully to the various OIG offices what information is available in the system and what the information means.

All OWCP records relating to claims for benefits, including copies of such records maintained by an employer, are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act of 1974 (5 U.S.C. § 552a). OWCP information is available to be used by employing agencies only for purposes consistent with the routine uses in OWCP's system of records for FECA information, DOL/GOVT-1. Requests from an agency for materials in a case file should include the specific reason for requesting the information.

DOUGLAS C. FITZGERALD  
Director for  
Federal Employees' Compensation

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