



## DoD INSTRUCTION 5505.16

### INVESTIGATIONS BY DoD COMPONENTS

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<b>Originating Component:</b>	Office of the Inspector General of the Department of Defense
<b>Effective:</b>	June 23, 2017
<b>Releasability:</b>	Cleared for public release. Available on the DoD Issuances Website at <a href="http://www.dtic.mil/whs/directives">http://www.dtic.mil/whs/directives</a> .
<b>Reissues and Cancels:</b>	DoD Instruction 5505.16, "Criminal Investigations by Personnel Who Are Not Assigned to a Defense Criminal Investigative Organization," May 7, 2012
<b>Approved by:</b>	Glenn A. Fine, Acting Inspector General of the Department of Defense

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**Purpose:** This issuance:

- Establishes policy, assigns responsibilities, and provides procedures for the DoD Components to conduct investigations in accordance with the authority in DoD Directive (DoDD) 5106.01 and Title 5, United States Code (U.S.C.) Appendix 3 (also known and referred to in this issuance as "the Inspector General Act of 1978, as amended").
- Establishes that DoD Components will not conduct criminal investigations unless the agency or organization has law enforcement authority established by statute in the U.S.C., or Inspector General authority, as prescribed by the Inspector General Act of 1978, as amended, or as granted by the Secretary of Defense under Section 2672 of Title 10, U.S.C.

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## **SECTION 1: GENERAL ISSUANCE INFORMATION**

### **1.1. APPLICABILITY.** This issuance:

a. Applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

b. Does not affect authorities or procedures outlined in DoDD 5106.04, DoD Instruction 5505.02, or Title 10, U.S.C.

### **1.2. POLICY.**

a. DoD Components will only conduct criminal investigations if the Component has:

(1) Law enforcement authority established by statute in the U.S.C.;

(2) Inspector General authority, as prescribed by the Inspector General Act of 1978, as amended; or

(3) Authority as granted by the Secretary of Defense in accordance with Section 2672 of Title 10, U.S.C.

b. DoD Components without law enforcement authority will be limited to administrative investigations only.

c. DoD Components without law enforcement authority will participate in a criminal investigation only if requested by a defense criminal investigation organization (DCIO) or law enforcement organization. The DCIO or other law enforcement organization will be the lead investigative agency.

## **SECTION 2: RESPONSIBILITIES**

**2.1. IG DOD.** The IG DoD will monitor and evaluate compliance with this issuance.

**2.2. DOD COMPONENT HEADS.** The DoD Component heads will develop procedures to implement the requirements of this issuance and ensure their Components comply with this issuance.

## SECTION 3: PROCEDURES

### 3.1. INITIATING AN INVESTIGATION.

a. DCIOs have:

(1) Investigative responsibility regarding all personnel, property, and resources assigned to their respective Military Services as well as DoD Components where they have been assigned investigative responsibility for criminal matters.

(2) The authority and independent discretion to assume investigative jurisdiction, join an investigation, or monitor the progress of an investigation when it involves personnel, property, or resources associated with a Military Service or other DoD Components in which the DCIO has investigative jurisdiction.

b. When a DoD Component has a non-criminal investigation assumed by a DCIO or another law enforcement organization, all material pertinent to the investigation will be released to the servicing DCIO or law enforcement organization.

c. When they receive a criminal allegation, DoD Components will promptly refer the allegation to either their servicing DCIO or appropriate law enforcement organization. If the referral is declined, the DoD Component can conduct an administrative investigation. During the administrative investigation, the DoD Component must refer any new criminal allegation to the servicing DCIO or law enforcement organization.

d. A DoD Component must be joined by their servicing DCIO or another law enforcement organization if presenting the administrative investigation to a legal office for prosecution consideration.

(1) If the investigation is accepted for prosecution, the servicing DCIO or law enforcement organization will assume responsibility as the lead investigative agency.

(2) If the investigation is not accepted for prosecution, the DoD Component can seek remedies or recoupment through administrative proceedings.

**3.2. NOTIFICATION REQUIREMENTS.** DoD Components will identify and document all referrals and acknowledgements of the referral to a DCIO or appropriate law enforcement organization.

**3.3. COMMANDER-DIRECTED INQUIRY.** This issuance will not supersede the inherent authority of a commander or director to conduct a commander-directed inquiry outside of IG channels, which must be consistent with DoD Instruction 5505.03.

**3.4. IG INQUIRY.** This issuance will not supersede IG inquiries or non-criminal investigations.

**3.5. SENIOR OFFICIAL INVESTIGATIONS.** DoD Components must report allegations of misconduct against senior DoD officials to the IG DoD within 5 workdays of receipt, according to DoDD 5505.06.

## GLOSSARY

### G.1. ACRONYMS.

DCIO	Defense Criminal Investigation Organization
DoDD	DoD directive
IG DoD	Inspector General of the Department of Defense
U.S.C.	United States Code

### G.2. DEFINITIONS. These terms and their definitions are for the purpose of this issuance.

**administrative investigation.** Investigations which presume the allegations under investigation, if substantiated, are not reasonably expected to result in criminal prosecution.

**commander-directed inquiry.** Administrative fact-finding procedures to gather, analyze, and record relevant information about matters of primary interest to command authorities. Commanders and directors use the inherent authority of command to authorize administrative inquiries and investigations conducted outside of inspector general channels.

**criminal investigations.** Investigations into alleged or apparent violations of law undertaken for purposes which include the collection of evidence in support of potential criminal prosecution.

**DCIO.** Defense Criminal Investigative Service, Air Force Office of Special Investigations, U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service.

**Inspector General authority.** Authority derived from the Inspector General Act of 1978, as amended of the Title 5 Appendix, U.S.C. Within the DoD, this designation refers to the OIG DoD, Defense Intelligence Agency OIG, National Geospatial-Intelligence Agency OIG, National Reconnaissance Office OIG, National Security Agency OIG.

**law enforcement authority established by statute.** Authority given to agencies or organizations specific to law enforcement authority established by statute in the U.S.C. Within the DoD, this refers to:

Defense Criminal Investigative Service (Section 1585a of Title 10 U.S.C.)

Air Force Office of Special Investigations (Section 9027 of Title 10 U.S.C.)

U.S. Army Criminal Investigation Command (Section 4027 of Title 10 U.S.C.)

Naval Criminal Investigative Service (Section 7480 of Title 10 U.S.C.).

Any agency or organization granted authority by the Secretary of Defense in accordance with Section 2672 of Title 10 U.S.C.

Pentagon Force Protection Agency has limited law enforcement authority in accordance with Section 2674 of Title 10 U.S.C.

**legal office.** Servicing Staff Judge Advocate’s Office, Legal Service Support Section, or Region Legal Service Office; United States Attorney’s Office, state prosecutor’s office, or local district attorney’s office.

**other law enforcement organizations.** U.S. Army Military Police, U.S. Navy Masters at Arms, U.S. Air Force Security Forces, U.S. Marine Corps Criminal Investigation Division, or State or local law enforcement.

**senior official.** Defined in DoDD 5505.06.



## **REFERENCES**

- DoD Directive 5106.01, “Inspector General of the Department of Defense (IG DoD),” April 20, 2012, as amended
- DoD Directive 5106.04, “Defense Inspectors General,” May 22, 2014
- DoD Directive 5505.06, “Investigations of Allegations Against Senior DoD Officials,” June 6, 2013
- DoD Instruction 5505.02, “Criminal Investigations of Fraud Offenses,” August 29, 2013, as amended
- DoD Instruction 5505.03, “Initiation of Investigations by Defense Criminal Investigative Organizations,” March 24, 2011, as amended
- United States Code, Appendix 3, Title 5 (also known and referred to in this issuance as “the Inspector General Act of 1978, as amended”)
- United States Code, Title 10