

Notification and Federal Employee  
Anti-Discrimination and Retaliation Act  
(No FEAR Act)  
Annual Report to Congress  
Fiscal Year 2023



Office of Diversity, Inclusion and Civil Rights  
U.S. Department of the Interior

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## Introduction

The U.S. Department of the Interior (Department or Interior) protects and manages the Nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors its trust and treaty responsibilities or special commitments to American Indians, Alaska Natives, Native Hawaiians, and affiliated Island Communities. The Department plays a central role in how the Nation stewards its public lands and waters, increases environmental protections, pursues environmental justice, and honors our nation-to-nation relationship with Tribes.

The Department is the steward of 20 percent of the Nation's lands, including national parks, national wildlife refuges, and other public lands. It manages resources providing approximately 20 percent of the Nation's energy; delivers and manages water in the 17 western states and supplies 15 percent of the Nation's hydro-power energy; and upholds federal trust responsibilities to federally recognized Indian Tribes, Alaska Native communities, and insular areas.

The Department also partners with states to manage wildlife; promote healthy forests and suppress fires; manage energy resource development (oil, gas, coal, hydro, geothermal, wind, and solar) on its lands and offshore areas; promote outdoor recreation (including hunting, fishing, bird watching, boating, hiking, and biking); and provide mapping, geological, hydrological, and biological scientific data and research for the Nation.

The Department's mission is carried out by approximately 70,000 dedicated and skilled employees in 2,400 locations throughout the country. Over 280,000 volunteers annually contribute their time in support of bureau and office missions, bringing unique local knowledge to park operations, assisting in recovery from natural disasters, and participating in environmental education, among other activities.

Achieving the Department's mission requires talented individuals who are invested in the organization's purpose and who can navigate the challenges of fulfilling the mission. The Department succeeds because of the talents of its employees and volunteers. Each of the eleven bureaus – as well as the Office of the Secretary, including the Assistant Secretary – Fish, Wildlife and Parks, Assistant Secretary – Land and Minerals Management, Assistant Secretary – Water and Science; Assistant Secretary – Indian Affairs; Assistant Secretary – Insular and International Affairs; Assistant Secretary – Policy, Management and Budget; Office of the Solicitor; and Office of the Inspector General – perform equally important work, that is critical to accomplishing the Department's broader mission.

## Reporting Requirements and Background Information

The Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174, went into effect on October 1, 2003. The No FEAR Act requires that federal agencies be accountable for violations of anti-discrimination and whistleblower protection laws and post quarterly on its public website certain statistical data relating to federal sector Equal Employment Opportunity (EEO) complaints filed with the agency. The No FEAR Act also requires federal agencies to report annually on the Department's efforts to improve compliance with employment discrimination and whistleblower protection laws and detail the status of complaints brought against the agencies under these laws. In Fiscal Year (FY) 2021, Congress passed the Elijah E. Cummings Federal Employee Anti-Discrimination Act (ECA), which amended the No FEAR Act.

In relevant part, Section 203 of the No FEAR Act requires federal agencies to submit annual reports to:

- The Speaker of the House of Representatives;
- The President Pro Tempore of the Senate;
- The Committees on Governmental Affairs of the Senate and Government Reform of the House of Representatives;
- Each committee of Congress with jurisdiction relating to the agency;
- The U.S. Attorney General;
- The Chair of the U.S. Equal Employment Opportunity Commission (EEOC or the Commission); and
- The Director of the U.S. Office of Personnel Management (OPM).

Federal agencies must report:

- The number of federal court cases arising under each of the respective areas of law specified in the No FEAR Act in which discrimination was alleged;
- The number, status, and disposition of pending or resolved Federal court cases against the Department arising under EEO and whistleblower laws;
- The amount of money required to be reimbursed to the Judgment Fund;

- The number of employees disciplined for actions inconsistent with the laws governing the No FEAR Act, as well as the types of discipline administered for violations of EEO and whistleblower protection laws;
- Any policies implemented related to appropriate disciplinary actions against a federal employee who discriminated against any individual, or committed a prohibited personnel practice;
- An analysis of the data collected with respect to trends, causal analysis, and other forms for analysis; and
- Any action the Department is taking to improve its complaint and civil rights programs with the goal of preventing and eliminating employment discrimination, harassment and retaliation.<sup>1</sup>

This annual report for FY 2023 outlines the following information:

- The status of the 35 federal court cases filed against the Department under the laws governed by the No FEAR Act.
- The four matters requiring payment from the Judgment Fund for a total of \$142,500. These funds were related to FY 2023 judgments, awards, and settlements under the statutes addressed in the No FEAR Act.
- An overview of the disciplinary action taken against 81 employees stemming from actions that were prohibited by, or inconsistent with, federal anti-discrimination and anti-harassment laws.
- An analysis of the 264 formal EEO complaints filed against the Department in FY 2023. This analysis shows that retaliation was the most frequently alleged basis of discrimination, followed by disability, sex, race, and age. Harassment was by far the most frequently alleged issue, followed by disciplinary actions, appointment/hire, terms/conditions of employment, performance evaluation/appraisal, and assignment of duties.
- A trend and causal analysis of formal EEO complaints from FY 2019-2023.
- An explanation of the Department's No FEAR Act Training.
- The Department's relevant accomplishments and advances throughout FY 2023.

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<sup>1</sup> Additional information regarding the Department's responsibilities under the No FEAR Act can be accessed at <https://www.eeoc.gov/eeoc/statistics/nofear/qanda.cfm>

## Results and Data

Section 203(a)(1) of the No FEAR Act requires that agencies include in their annual report to Congress “the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of [S]ection 201(a) in which discrimination on the part of such agency was alleged.” Section 724.302 of OPM’s proposed regulations issued on January 25, 2006, clarifies section 203(a)(1) of the No FEAR Act to require that the agencies report on the “number of cases in Federal Court pending or resolved ... arising under each of the respective provisions of the Federal Antidiscrimination laws and whistleblower protection laws.” The No FEAR Act also requires agencies to report on the amount of money the Department was required to reimburse the Judgment Fund.

### A. Court Cases Arising Under Federal Anti-discrimination and/or Whistleblower Protection Laws

During FY 2023, the Department was a party to 35 federal court cases filed under laws covered by the No FEAR Act. The Department settled four cases with a total paid from the Judgment Fund in the amount of \$142,500.<sup>2</sup> Courts found for the Department in 13 of the 35 matters. The remaining 18 matters are still pending. The Department did not have any adverse rulings during FY 2023.

### B. Summary of Federal Court Cases

The most frequent basis alleged in all FY 2023 federal court cases was reprisal under Title VII of the Civil Rights Act of 1964 (Title VII). Complaints can be filed alleging multiple issues and bases of discrimination. Consequently, the sum of the bases and issues may not equal the total number of complaints filed.

Table 1 shows the protected bases alleged in all federal court cases filed in FY 2023.

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<sup>2</sup> This does not include an award for attorney fees and costs, which is still pending.

**Table 1:  
Bases Alleged in Federal District Court Cases**

<b>Bases alleged</b>	<b>Count</b>
Race	19
Reprisal/Retaliation	15
Age	13
Sex/Gender	11
Disability	10
National Origin	10
Color	7
Pregnancy	1
<b>TOTAL</b>	<b>86</b>

### C. Judgment Fund

During FY 2023, there were four cases requiring payment from the Judgment Fund for a total of \$142,500. These funds were related to FY 2023 settlements under the statutes addressed in the No Fear Act. The Department did not have any adverse rulings during FY 2023.

### D. Employee Discipline

During FY 2023, the Department took disciplinary action against 81<sup>3</sup> employees stemming from actions that were inconsistent with, or prohibited by, federal anti-discrimination, anti-harassment, and anti-retaliation laws.

Table 2 provides a list of the specific types of disciplinary actions that were imposed during FY 2023.

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<sup>3</sup> This number includes the data required under Section 203(a)(4) of the No FEAR Act, as well as the number of employees disciplined pursuant to the Department’s anti-harassment policy, Personnel Bulletin 18-01: Prevention and Elimination of Harassing Conduct, through which the Department proactively addresses misconduct before it becomes unlawful harassment. See Appendix C.

**Table 2:  
Disciplinary Actions Imposed on Employees**

<b>Disciplinary Action</b>	<b>Number of Employees</b>
No Action Taken*	1
Oral Counseling/Warning	7
Written Counseling/Warning	14
Reprimand	22
Suspension (14 days or less)	20
Suspension (More than 14 days)	3
Indefinite Suspension	0
Reassignment	0
Reduction in Grade	0
Termination	10
Removal	4
<b>Total Actions</b>	<b>81</b>

*\*In the case where misconduct was found, employee separated from the agency before action could be taken.*

Section 203 of the No FEAR Act requires the annual report to include a detailed description of an agency’s disciplinary policies related to laws governed by the No FEAR Act. Agencies must specify disciplinary policies for federal employees who discriminate against any individual in violation of any of the laws covered by the No FEAR Act or who commit any other prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of the federal anti-discrimination and/or whistleblowing laws.

At the Department, the appropriate level supervisor consults with the servicing Human Resources Office and utilizes the Department Manual 370 DM 752, Discipline and Adverse Actions, to recommend and take appropriate action. See Appendix H. 370 DM 752 includes an appendix that is a guide to supervisors/managers for considering disciplinary actions. It should further be noted that pursuant to the EEOC’s Management Directive 715 (MD-715), ODICR has a role in recommending remedial or disciplinary action concerning managers and supervisors who failed in their EEO responsibilities.

Pursuant to the ECA, the Department is required to provide a Disciplinary Action Report to the EEOC no later than 120 days from the date on which it takes final action or receives a final decision issued by the EEOC involving a finding of intentional discriminatory (including retaliatory) acts in violation of a provision of law covered by the No FEAR Act.

The following policies and procedures reinforce the Department's commitment to establishing a workplace free from discrimination, harassment, and/or retaliation. These policies hold all Interior employees accountable for their actions:

- **Personnel Bulletin 18-01: Prevention and Elimination of Harassing Conduct** updated and amended Interior's policy on providing a work environment free of harassment by defining unacceptable conduct that violates the policy; outlining the rights and responsibilities of employees, supervisors, and managers; and establishing reporting procedures and accountability measures. See Appendix C.
- **The Equal Employment Opportunity Policy Statement** issued by the Secretary on February 5, 2024, reaffirms the Secretary's commitment to ensuring that the Department's policies, practices, and procedures do not deny opportunities to employees, former employees, or applicants for employment because of race, color, national origin, religion, age, disability, genetic information, or sex (which includes pregnancy, sexual orientation, and gender identity). The EEO Policy Statement makes clear that the Department will not tolerate any form of unlawful employment discrimination, including harassment or reprisal against anyone who engages in EEO-protected activity, and encourages those who believe they have been subjected to unlawful discrimination to contact their Bureau EEO Office or the Department's Office of Diversity, Inclusion and Civil Rights within 45 calendar days of either the discrimination or retaliation. See Appendix A.
- **370 Departmental Manual 752: Discipline and Adverse Actions** establishes the policy, procedures, and authority for administering employee discipline within Interior, and for taking appropriate corrective action for disciplinary and certain non-disciplinary reasons, when it is determined that such actions will promote the efficiency of the federal service. See Appendix H.
- **Personnel Bulletin 17-09: Mandatory Training on Equal Employment Opportunity** mandates training on EEO, Prohibited Personnel Practices and Whistleblower Protections, and the No FEAR Act. This policy requires the Department's sub-components to communicate their EEO policies and programs to their employees and mandates No FEAR Act Training for all employees. Additionally, this policy requires that every supervisor and manager on the Interior rolls as of October 1, 2016, complete Civil Treatment for Leaders training. Lastly, Personnel Bulletin 17-09 mandates that beginning in FY17, every three years, all managers and supervisors must complete Prohibited Personnel Practices and Whistleblower Training. See Appendix D.
- **Personnel Bulletin 21-03: Processing Requests for Reasonable Accommodation for Individuals with Disabilities** establishes policy and procedures for processing reasonable accommodation requests. The goals of this policy are to ensure: (1) prompt and effective accommodation solutions are provided to foster maximum productivity and

performance, equal access to employment and the workplace environment and create an atmosphere where employees can fulfill the Department's mission; (2) qualified employees and applicants for employment participate in a transparent and communicative manner throughout the reasonable accommodation process; and (3) requests for reasonable accommodations are processed within established timeframes. See Appendix G.

- **Personnel Bulletin 23-11: Informing Employees of Prohibited Personnel Practices and Enhanced Whistleblower Protections** informs employees of their rights and responsibilities, as well as the remedies available to them under the Civil Service Reform Act of 1978, the Whistleblower Protection Act, the Whistleblower Protection Enhancement Act, the Whistleblower Protection Enhancement Act, and related laws. To implement this policy, Bureaus and Offices throughout Interior display posters and notices in prominent locations to inform employees about concepts such as whistleblowing, reprisal, prohibited personnel practices, and the Hatch Act. See Appendix I.
- **Personnel Bulletin 23-03: Supporting Gender Transition in the Federal Workplace** establishes Interior's policy and procedures for workplace assistance to employees who are transitioning, have transitioned, or are gender non-conforming. The policy supports the Department's goal of creating and maintaining a gender inclusive environment in a variety of areas, including workplace transition, confidentiality and privacy, dress and appearance, names and pronouns, facilities, and legal name changes. See Appendix J.

## Analysis and Trends

Section 203(7) of the No FEAR Act requires that agencies undertake “an examination of trends, causal analysis, and practical knowledge gained through experience and any actions planned or taken to improve complaint or civil rights programs of the agency.”

### A. Formal EEO Complaints, Protected Bases, and Issues

There has been a general trend downward in the number of formal EEO complaints filed with the Department over the past five fiscal years, but in the previous two fiscal years the number has rebounded and increased slightly. In FY 2019, 301 formal complaints were filed with the Department. That number dropped to 239 complaints in FY 2021 and then increased to 264 complaints in FY 2023. Complaints can be filed alleging multiple issues and bases of discrimination. Consequently, the sum of the bases and issues may not equal the total number of complaints filed.

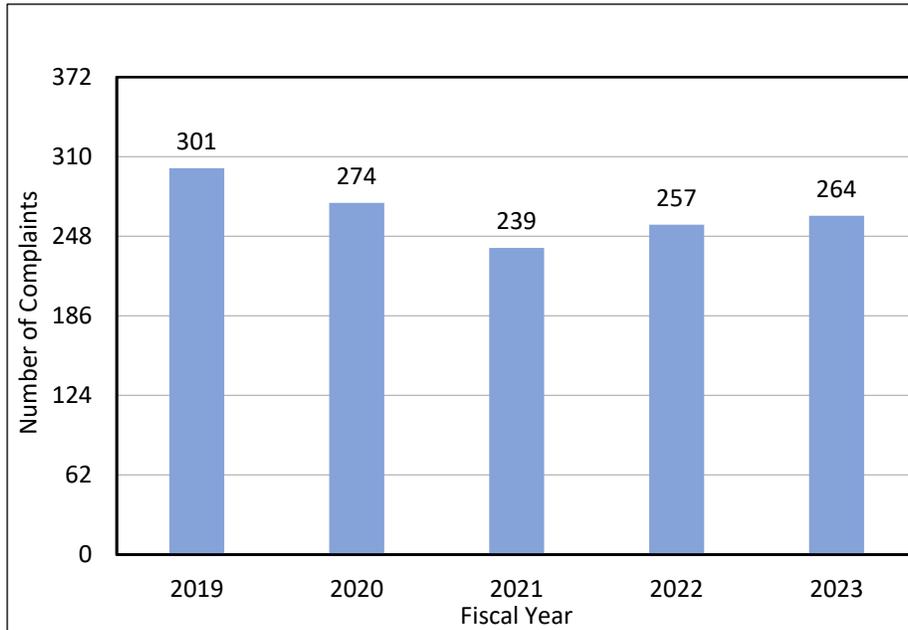
Table 3 provides a list of the number of formal complaints filed between FY 2019 and FY 2023, as well as the number of complainants.

**Table 3: Formal Complaints Filed Between FY 2019-2023**

<b>FY</b>	<b>Number of Complaints Filed</b>	<b>Number of Complainants</b>
<b>2019</b>	301	297
<b>2020</b>	274	267
<b>2021</b>	239	232
<b>2022</b>	257	249
<b>2023</b>	264	258

Chart 1 provides a visual representation of the number of complaints filed between FY 2019 and FY 2023.

**Chart 1: Formal Complaints Filed Between FY 2019-2023**



The protected basis is the protected characteristic the complainant alleges formed the motivation for the discriminatory conduct. The protected bases covered by EEO statutes are: race; color; religion; national origin; sex (including pregnancy, gender identity, and sexual orientation); disability (mental/physical); genetic information; age (+40 years); and retaliation.

In FY 2023, the three most frequently alleged bases in EEO complaints were: retaliation, disability, and age. Even though retaliation continues to be the most frequently alleged protected basis, the total number of complaints alleging retaliation as a basis has decreased from FY 2019 to FY 2023. Specifically, in FY 2019, 161 complaints alleged retaliation as the protected basis. In FY 2023 that number dropped to 149. Complaints can be filed alleging multiple issues and bases of discrimination. Consequently, the sum of the bases and issues may not equal the total number of complaints filed.

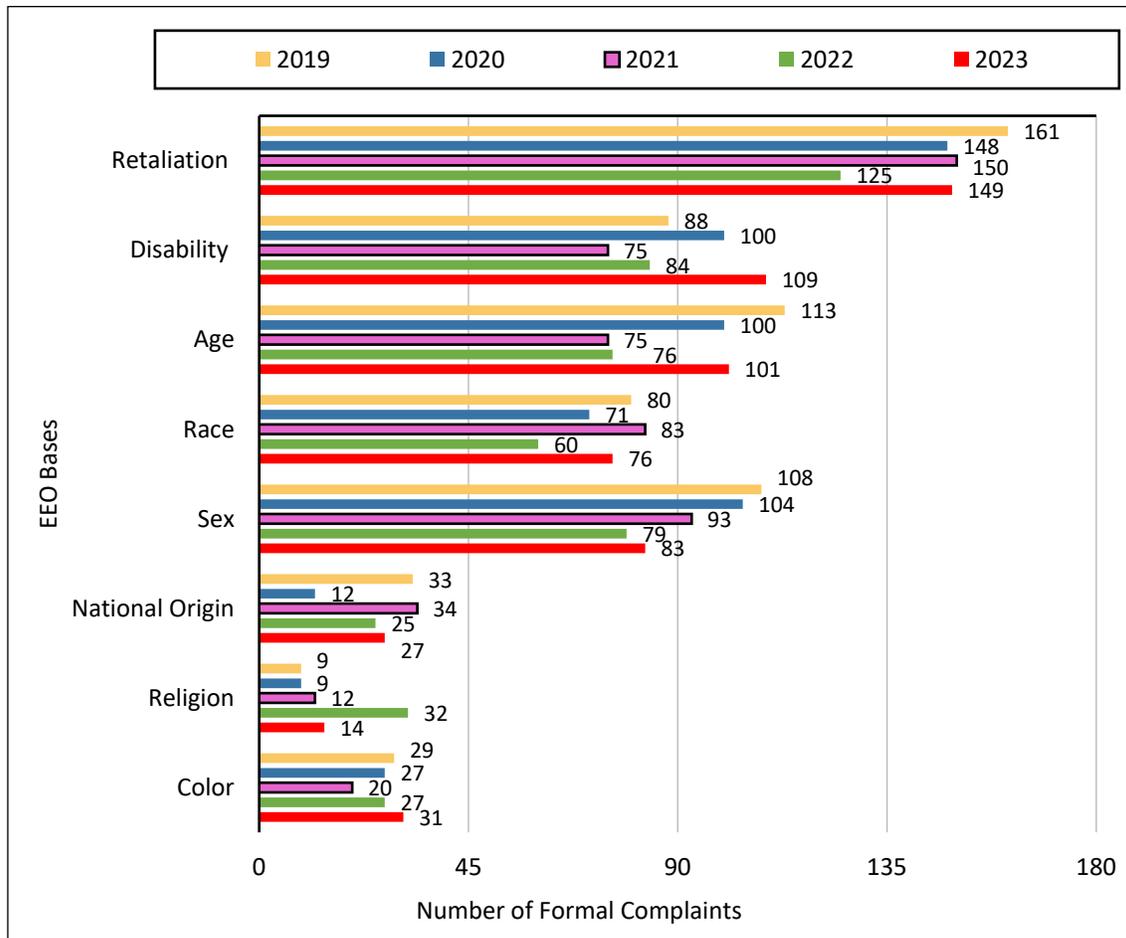
Table 4 contains a list of the most frequently alleged bases in EEO complaints between FY 2019 and FY 2023.

**Table 4:  
EEO Bases Alleged in Formal Complaints Between FY 2019-2023**

FY	Retaliation	Disability	Age	Race	Sex	National Origin	Religion	Color
2019	161	88	113	80	108	33	9	29
2020	148	100	100	71	104	12	9	27
2021	150	75	75	83	93	34	12	20
2022	125	84	76	60	79	25	32	27
2023	149	109	101	76	83	27	14	31

Chart 2 provides a visual representation of the most frequently alleged bases in EEO complaints between FY 2019 and FY 2023.

**Chart 2:  
EEO Bases Alleged in Formal Complaints Between FY 2019-2023**



The issue of a complaint is the alleged discriminatory incident for which the individual is seeking redress. Harassment was the most frequently alleged issue for each of the previous five fiscal years. There was a significant drop in harassment allegations in FY 2020 through FY 2022, but FY 2023 saw an increase over the previous fiscal year. Specifically, in FY 2019, 165 complaints alleged harassment, while in FY 2023, 146 complaints alleged harassment. Complaints can be filed alleging multiple issues and bases of discrimination. Consequently, the sum of the bases and issues may not equal the total number of complaints filed.

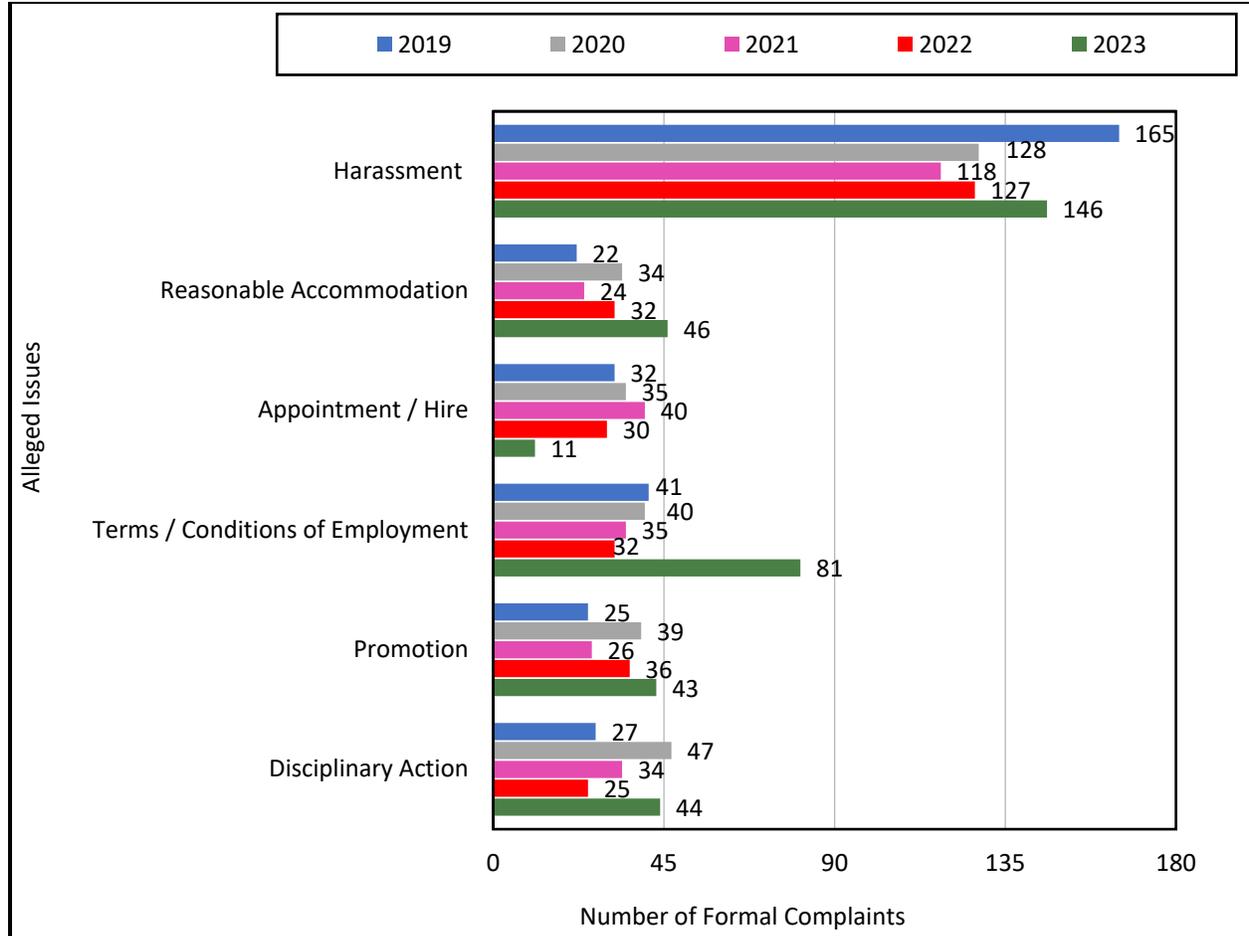
Table 5 contains a list of the most frequently alleged issues in formal complaints between FY 2019 and FY 2023.

**Table 5:  
Alleged Issues in Formal Complaints Between FY 2019-2023**

<b>FY</b>	<b>Harassment</b>	<b>Reasonable Accommodation</b>	<b>Appointment/ Hire</b>	<b>Terms / Conditions of Employment</b>	<b>Promotion</b>	<b>Disciplinary Action</b>
<b>2019</b>	165	22	32	41	25	27
<b>2020</b>	128	34	35	40	39	47
<b>2021</b>	118	24	40	35	26	34
<b>2022</b>	127	32	30	32	36	25
<b>2023</b>	146	46	11	81	43	44

Chart 3 provides a visual representation of the most frequently alleged issues in formal complaints between FY 2019 and FY 2023.

**Chart 3: Alleged Issues Between FY 2019-2023**



## B. EEO Complaints Processing

Pre-complaints are informal complaints filed with the Department as part of the federal sector EEO process. In FY 2023, 503 informal complaints were filed with the Department and there were 68 informal complaints on hand at the beginning of the reporting period. The Department counseled a total of 465 informal complaints. Of the 465 informal complaints, 191 complaints were counseled within 30 days, and 262 cases were counseled within 31-90 calendar days. Only 12 informal complaints were counseled beyond 90 days.

The average time complaints were pending investigation has remained steady from the prior fiscal year. Overall, although there was an increase in the number of days complaints were pending investigation in FY 2021, there was a subsequent decrease in the number of days complaints were pending investigation in FY 2022 and 2023.

Table 6 shows the average number of days complaints were pending investigation and pending final agency actions between FY 2019 and FY 2023.

**Table 6: Average Days Complaints Were Pending Between FY 2019-2023**

<b>FY</b>	<b>Pending Investigation</b>	<b>Pending Final Agency Action</b>
<b>2019</b>	209.01	58.56
<b>2020</b>	184.04	111.33
<b>2021</b>	223.28	107.51
<b>2022</b>	179.68	47.32
<b>2023</b>	181.59	92.45

## C. Findings of Discrimination

ODICR issues Final Agency Decisions (FADs) on the merits of a complaint after an investigation has been conducted. A merit FAD is a determination of whether discrimination has occurred on the bases and issues alleged in a formal complaint. Generally, a FAD may also determine whether to accept or dismiss a complaint for procedural reasons, which are outlined in EEO regulations at Title 29 Code of Federal Regulations (C.F.R.) Section 1614. Final Orders, a third type of FAD, are issued following decisions from EEOC administrative judges and notify parties whether the Department intends to implement or appeal the administrative judge's decision.

In FY 2023, the Department issued 39 FADs. Merit FADs accounted for 33 of ODICR's FADs and six were procedural dismissal FADs. Of the 33 merit FADs, three found that discrimination had occurred. In FY 2023, the Department issued 67 Final Orders following an administrative judge's decision. The Department fully implemented all 67 decisions that it received from EEOC administrative judges.

## D. Closures

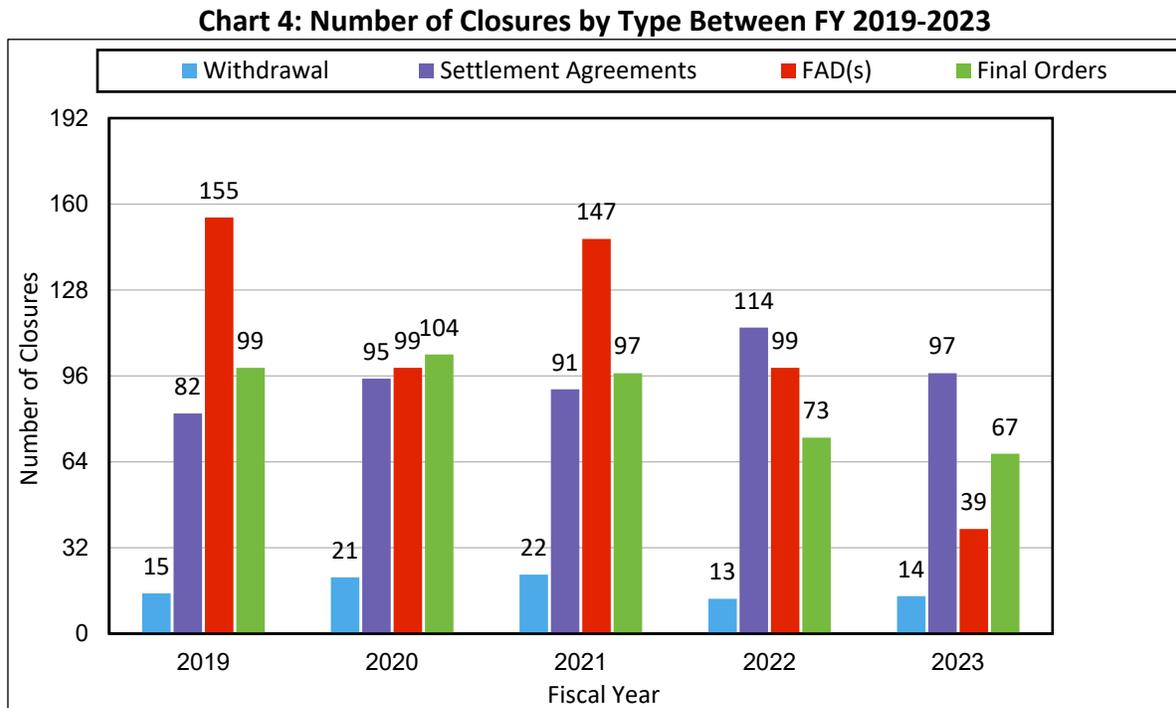
During FY 2023, the Department closed 217 formal complaints. Of the 217 formal complaints, 14 were withdrawn, 97 were closed via settlement agreement, 39 were closed through a FAD, and 67 were closed through a Final Order after an EEOC administrative judge’s decision.

Table 7 shows the number of closures by type between FY 2019 and 2023.

**Table 7:  
Number of Closures by Type Between FY 2019-2023**

FY	Withdrawal	Settlement Agreement	FAD(s)	Final Orders	Total Closures
2019	15	82	155	99	351
2020	21	95	99	104	319
2021	22	91	147	97	357
2022	13	114	99	73	298
2023	14	97	39	67	217

Chart 4 provides a visual representation of the number of closures by type between FY 2019 and 2023.



## E. Trends, Analysis, and Practical Experience

The Department has seen an overall decline in the number of formal complaints filed since FY 2019. Specifically, while 301 formal complaints were filed with the Department in FY 2019, only 264 formal complaints were filed with the Department in FY 2023. This trend is consistent with the broader trend of a decreased number of EEO complaint filings across the federal sector and could be due, in part, to the decreased number of in-person interactions resulting from pandemic-related implementation of telework and remote work policies.

Even though harassment continues to be the most frequently alleged issue, the Department has observed a decrease in the number of harassment complaints since FY 2019. In FY 2019, the Department received 165 harassment complaints, whereas in FY 2023, the Department received 146 harassment complaints. This decrease could be due, in part, to the Department's agency-wide approach to promote and maintain an inclusive environment that is free from harassment. One of the Department's key initiatives has been the establishment of Personnel Bulletin 18-01: Prevention and Elimination of Harassing Conduct, which updated and amended Interior's policy on providing a work environment free of harassment by defining unacceptable conduct that violates the policy; outlining the rights and responsibilities of employees, supervisors, and managers; and establishing reporting procedures and accountability measures. See Appendix C.

For the Department, and many agencies throughout the federal sector, retaliation continues to be the most frequently alleged basis. Even though retaliation has consistently been the most frequently alleged basis at the Department, the number of complaints alleging retaliation has declined since FY 2019. Specifically, in FY 2019, 161 complaints alleged reprisal discrimination, and in FY 2023, 146 complaints alleged reprisal discrimination. This decrease may be due to the Department's active efforts in recent years to maintain a work environment free from discrimination and retaliation.

A review of EEO complaint trends show that the Department must continue to concentrate resources on training that focuses on preventing discrimination and harassment based on reprisal, disability, age, race, and sex. The Department's success in reducing the number of EEO harassment complaints is evidence that targeted, proactive preventive efforts yield results.

The Department will continue to conduct comprehensive trend analyses, identify EEO-related trends within the workplace, and develop data-driven proactive prevention measures at the Department and Bureau levels. Robust data analytics will assist the Department in implementing an enterprise-wide strategic approach to EEO barrier analysis and proactive prevention.

## No Fear Act Training

The Department's No FEAR Act Training is an award-winning, video-based interactive training produced and developed by ODICR that provides an overview of the rights and remedies available under the federal employment discrimination and whistleblower protection laws. The training provides Interior employees with an opportunity to practice decision-making in simulated situations with scenarios designed to teach them how to address anti-discrimination and whistleblowing issues in a practical, effective way. The training is administered on-line through "DOI Talent," a talent management system that offers integrated learning and performance management to Interior employees. No FEAR Act Training is mandatory for all Interior employees. The training cycle is biennial.

## Accomplishments, Trainings, and Advances

- The Department expanded the number and scope of trainings to teach employees how to make various work products compliant with Section 508 of the Americans with Disabilities Act. The Department now offers weekly individual courses for making Word documents, Excel documents, PowerPoint presentations, and Adobe Acrobat documents 508 compliant.
- The Department offers a training entitled, "Trans 101 for Supervisors and Managers." The course discusses appropriate language and vocabulary, explains why proactive support from management and leaders is important, gives managers and supervisors tools for building inclusive teams, and provides insight and advice on ways to support an employee's transition and subsequent inclusion on teams.
- The Department added two new forms to the Department's Reasonable Accommodation website. One to memorialize a verbal accommodation request for record-keeping purposes and another to report a management official's decision in response to a reasonable accommodation request.
- The Office of Human Capital Strategic Talent Management Division facilitates a monthly Inter-Bureau Expert Team (I-BET) meeting for veterans, military spouses, and persons with disabilities. The I-BET is for Interior Veteran Employment Coordinators, DOI Selective Placement Program Coordinators, and any employee working to advance efforts to recruit, retain, and advance veterans, military spouses, and persons with disabilities.
- Throughout FY 2023, all Bureaus and Offices in the Department continue to require new managers and supervisors to attend a 40-hour training, which includes briefings on, among other topics, EEO, reasonable accommodation, and anti-harassment.
- Interior's Bureau of Indian Affairs, Bureau of Indian Education, and Bureau of Trust Funds Administration provide monthly dispute resolution trainings.
- During FY 2023 Interior's Bureau of Land Management (BLM) offered quarterly EEO trainings to all employees in addition to bi-annual trainings on reasonable accommodations. BLM's training for Senior Executive Service employees covers EEO topics. Specifically, BLM trained on EEO laws, policies, and procedures.
- In FY 2023, Interior's U.S. Bureau of Fish and Wildlife Service (FWS)'s Office of Diversity and Inclusive Workforce Management (ODIWM) launched an intranet site to serve as a centralized resource for employees on EEO. The site includes Bureau and Departmental EEO policy statements, information on EEO complaints, as well as detailed resources on

preventing harassment and retaliation. Moreover, ODIWM staff offered to management and supervisors 10 separate courses on the Department's reasonable accommodation process. In addition, ODIWM, in conjunction with the National Conservation Training Center, established a mandatory training that discusses EEO. ODIWM also held three conversations throughout the fiscal year that focused on recognizing and dismantling barriers to include building relationships and trust among employees and focusing on best practices. To support EEO program compliance, ODIWM staff also provided workforce demographic updates to management officials on a monthly basis.

## Appendices

## Appendix A: EEO Policy Statement



THE SECRETARY OF THE INTERIOR  
WASHINGTON

FEB 05 2024

**Equal Employment Opportunity Policy  
Statement**

As an employer of nearly 70,000 public servants nationwide, the Department of the Interior (Department) is uniquely responsible for advancing diversity, equity, inclusion, and accessibility across our workforce. This goal is not just the right thing to do—it is critical as we work to tell America’s story while making our public lands and waters accessible for all Americans. Too many of us know firsthand how devastating employment discrimination is both personally and professionally, with historically marginalized communities bearing the brunt of this mistreatment. Advancing our shared mission means ensuring that everyone, regardless of background, has access to equal employment opportunity (EEO), justice, and accountability. Our Department continues to address the barriers that persist while building an equitable workplace that serves each of us.

I reaffirm my commitment to ensuring that the Department embraces EEO, the core of which is the right to work and advance professionally based on merit, ability, and potential, free from prejudice, harassing conduct, unlawful discrimination, and reprisal. We must ensure that Department policies, practices, and procedures do not deny opportunities to employees, former employees, or applicants because of race, color, national origin, religion, age, disability, genetic information, or sex, which includes pregnancy, sexual orientation, and gender identity. Unlawful harassment is illegal and is unacceptable in Department workplaces. The Department will not tolerate unlawful workplace discrimination, which includes unlawful harassment or reprisal against anyone who engages in EEO-protected activity. When employees are found to have engaged in unlawful discrimination, retaliation, or harassing conduct, which is prohibited by Departmental policy, the Department will take prompt and effective remedial action, up to and including removal from Federal service.

The Department will ensure that EEO is implemented across our human capital and employment programs, management practices, and employment decisions, including recruitment, hiring, merit promotions, transfers, reassignments, training, career development, benefits, and separations. Employees, former employees, and applicants for employment who believe they have been subjected to unlawful discrimination or retaliation, either for opposing discrimination in the Department or for participating in protected EEO activities, are encouraged to contact their Bureau EEO Office or the Department’s Office of Diversity, Inclusion and Civil Rights for guidance and direction within 45 calendar days of either the discrimination or retaliation, or from the date on which they reasonably became aware of the discrimination or retaliation. Formal complaints of discrimination or retaliation that are filed and accepted will be thoroughly and timely investigated, and the facts of such investigations will be kept confidential to the extent permitted by law and policy.

The engagement of all employees, former employees, and applicants for employment is invaluable to ensuring that the Department is welcoming to all and that we uphold our policy that all employees, former employees, and applicants have the right to raise allegations of discrimination and harassment without fear of retaliation. To better understand barriers to EEO, each of us must look beyond obvious unlawful actions, like discriminatory hiring and firing. We must expand our understanding to recognize more subtle barriers to EEO and strive to create and maintain workplaces that are free from all forms of harassing conduct, unlawful discrimination, and reprisal. In addition, we must foster workplaces that allow all employees to reach their full potential. Therefore, as appropriate, and in accordance with applicable law and policy, we must ensure employees and applicants are afforded reasonable accommodations as appropriate to enjoy the full terms, conditions, benefits and privileges of employment, and that managers and supervisors ensure equal opportunity for training and career development, promotions, awards, and recognition.

All Department personnel are responsible for complying with this policy statement, encouraging inclusion in the workplace, and fostering an environment that upholds integrity, dignity, and respect.

Creating a future that works for everyone starts here at home, because equity and inclusion must be a part of everything our team does. I am proud of the progress we have accomplished together, and I look forward to the improvements we will continue to make across our Department.



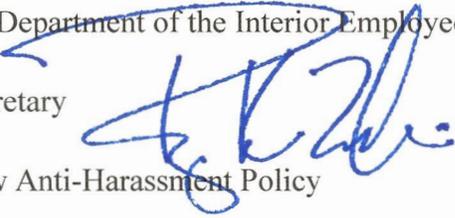
Deb Haaland

## Appendix B: Anti-Harassment Policy



THE SECRETARY OF THE INTERIOR  
WASHINGTON  
APR 23 2018

Memorandum

To: All Department of the Interior Employees  
From: Secretary   
Subject: New Anti-Harassment Policy

In December, I told you that, during my tenure as Secretary, we had begun taking a more aggressive stance against employees who engage in misconduct, including taking action against senior leaders for harassment or other inappropriate misconduct. I have made it clear to my management team that we have to take decisive action to hold employees accountable for misconduct. That decisive action includes removing employees when necessary. Since last December, agency management has been following my lead by aggressively tackling the harassment problem through discipline. My management team has also encouraged the Office of the Inspector General to open investigations into other claims that were brought to our attention. I want you to know that discrimination, harassment, and intimidation will find no quarter under my command.

Deputy Secretary David Bernhardt and I also directed that each Bureau develop an action plan to address its own specific harassment-related issues. Since that time, we have worked with Bureaus to achieve this goal and have finalized a new, comprehensive anti-harassment policy for the Department.

The policy enshrines our commitment to providing a work environment free from harassment by ensuring that appropriate officials are notified of, and can properly stop, harassing conduct. It also holds employees accountable at the earliest possible stage, before the conduct rises to the level of illegal harassment. The requirements laid out in the policy for both employee conduct and manager responsibilities take strong steps toward rooting out harassment at all levels of the Department.

Overall, my philosophy has been that “one-size-fits-all” ends up working for no one. Instead of a top-down approach, we solicited individual Bureau plans; we took this approach because we recognize that different Bureaus face different challenges. Employee feedback was critical in developing our final product.

To ensure that we effect real, lasting change, we will continue to monitor each Bureau’s efforts, so we can hold everyone, from senior leaders on down, accountable. This is a long-overdue culture change at Interior.

It is not enough to simply say that we want things to change. Past leaders have done that, only to watch as the problem persisted. By contrast, we have already taken a number of actions to back up our words on this topic. These include training nearly 100 employee relations and employment law practitioners on best practices for investigations of misconduct; issuing a guide on administrative investigations; and creating and updating an employee webpage with dedicated resources. You can visit that webpage at <https://www.doi.gov/employees/anti-harassment/personnel-bulletin-18-01>.

Management has a duty to act. If you report harassment, your voice will be heard. You should not have to suffer silently—afraid of retaliation or isolation—when you are just trying to do your job.

How we implement our new policy will have a direct effect on the quality of our work environment here at the Department. That is why the Deputy Secretary and I are deeply committed to this effort. As I have said before, I want Interior to be the best possible place to work in the Government. Today is a major step toward making that vision a reality.

Thank you for your cooperation throughout this process.

Appendix C: Personnel Bulletin 18-01



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**MAR 23 2018**

Memorandum

To: Assistant Secretaries  
Heads of Bureaus and Offices  
Solicitor  
Inspector General

From: Edward T. Keable   
Acting Deputy Assistant Secretary for Human Capital and Diversity

Subject: Implementation of the Department's Prevention and Elimination of Harassing Conduct Policy

Today, we are taking the next critical step in ensuring that the Department is fully prepared to address all forms of harassment. As part of the Secretary and Deputy Secretary's commitment to ensure that proper steps are taken to deal with problems as they arise and to hold people accountable where the facts warrant, please find attached the new Department of the Interior policy on the Prevention and Elimination of Harassing Conduct, Personnel Bulletin 18-01. This policy meets the Equal Employment Opportunity Commission's recommended elements for anti-harassment programs and enables the Department to best protect our employees from harassing conduct.

The policy's purpose is to provide a work environment free from harassment by ensuring that appropriate officials are notified of and have the opportunity to promptly correct harassing conduct; clearly communicating that the Department will not tolerate harassing behavior; and requiring that management address harassing conduct and hold employees accountable at the earliest possible stage, before the conduct rises to the level of harassment within the meaning of anti-discrimination law by becoming "severe or pervasive." In addition to providing a clear definition of unacceptable harassing conduct, the policy also establishes required reporting procedures and accountability measures.

The policy will become effective on April 23, 2018, and it will be announced to all employees at that time. The intervening thirty days serve to give Bureau and Office Heads the opportunity to determine what Bureau- or Office-specific procedures, guidance, employee and/or supervisor training, or resources may be necessary and appropriate for your organization, so that management is prepared to start organizational implementation and answer employee questions when the policy becomes effective. As stated in Section 4 of the policy, this policy supersedes any other Departmental or Bureau/Office policies or procedures that conflict with it. Bureaus and Offices may issue implementing procedures consistent with the policy, but all such procedures must be reviewed and approved prior to implementation by the Director of the Department's

Office of Human Resources. While it is not expected that all Bureau- or Office-specific implementation procedures will be fully in place by April 23, Bureau and Office Heads should have a firm idea as to whether your organization requires the development of more concrete guidance and is ready to respond to violations of the policy by the end of this thirty-day window.

In order for servicing human resources, equal employment opportunity, and other consultative staff to best advise senior leadership in this process, the Office of Human Resources is offering webinars to familiarize such staff with the content of the policy. Webinar schedule information has been distributed to Bureau/Office Human Capital Officers and Equal Employment Opportunity Directors.

Once the policy is effective on April 23, the Office of the Secretary will issue an email announcement to all DOI employees to launch the policy, with press coverage likely to follow. The policy will also be posted at that time on the Department's external and internal anti-harassment websites.

If you have any questions, please contact Raymond Limon, Director, Office of Human Resources at (202) 208-5310.

Attachment:  
Personnel Bulletin 18-01



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**MAR 23 2018**

## **PERSONNEL BULLETIN NO: 18-01**

**SUBJECT:** Prevention and Elimination of Harassing Conduct

**1. Purpose.** This Personnel Bulletin updates and amends the Department's policy on providing a work environment free from harassment by (1) defining unacceptable conduct that violates this policy; (2) outlining the rights and responsibilities of employees, supervisors, and managers; and (3) establishing reporting procedures and accountability measures. These procedures ensure that appropriate officials are notified of, and have the opportunity to promptly correct, harassing conduct that is, or has the potential to become, so severe or pervasive as to constitute a legal claim of harassment.

This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

**2. Effective Date.** This policy is effective April 23, 2018.

### **3. Authorities.**

- A. Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended
- B. Title 42 of the United States Code, Section 2000e through 16
- C. Title 29 of the United States Code, Section 633a and 791(f)
- D. Title 29 of the Code of Federal Regulations, Section 1604.11 and 1614
- F. Title 5 of the United States Code, Section 2302(b)(1) and (10)
- E. Title 5 of the United States Code, Chapter 75 and substantially similar authorities covering employees in alternate personnel systems
- G. Executive Order 11478, as amended
- H. 370 DM 752
- I. Secretary of the Interior Harassment Policy Statement, issued April, 12, 2017

**4. Coverage.** This policy applies to all employees within all Bureaus and Offices of the Department and supersedes any other Departmental or Bureau/Office policies or procedures that conflict with this policy. Bureaus/Offices may issue implementing procedures consistent with this policy. Prior to implementation, all Bureau/Office implementing procedures must be reviewed and approved by the Director of the Department's Office of Human Resources.

### **5. Policy.**

The Department is committed to providing a work environment free of discrimination and harassment based on race, color, religion, sex (including pregnancy and gender identity), sexual orientation, national origin, age, disability, genetic information (including family medical

history), status as a parent, marital status, or political affiliation, and free from illegal retaliation. The Department will not tolerate offensive sexual or non-sexual harassing behavior against any Department employee, intern, volunteer, contractor or other non-Federal employee, visitor, or other member of the public. The Department also will not tolerate adverse treatment of employees because they report harassing conduct or provide information related to such complaints. The purpose of this policy is to ensure that the Department takes immediate and appropriate corrective action, including appropriate disciplinary action, to eliminate harassing conduct regardless of whether the conduct rises to the level of a violation of law. Therefore, the goal of this policy is to address harassing conduct at the earliest possible stage, before it becomes “severe or pervasive,” i.e., harassment within the meaning of anti-discrimination law.

**A. Prohibited Harassing Conduct.** The conduct prohibited by this policy includes, but is broader than, the legal definitions of harassment and sexual harassment. Harassing conduct prohibited by this policy is defined as unwelcome conduct, verbal or physical, including intimidation, ridicule, insult, comments, or physical conduct, that is based on an individual’s protected status or protected activities under this policy, when:

1. the behavior can reasonably be considered to adversely affect the work environment; or
2. an employment decision affecting the employee is based upon the employee’s acceptance or rejection of such conduct.

Protected status is defined as an individual’s race, color, religion, sex (including pregnancy and gender identity), sexual orientation, national origin, age, disability, family medical history (including genetic information), status as a parent, marital status, or political affiliation. Protected activities under this policy are defined in Section 5.B.

Although not every instance of inappropriate behavior may meet the legal definition of harassment, such behavior undermines morale and the Department's mission. Accordingly, the misconduct prohibited by this policy is broader than the definition of illegal harassment under Title VII of the Civil Rights Act to ensure that appropriate officials are notified of, and can promptly correct, harassing conduct. Harassment becomes illegal when enduring the offensive conduct becomes a condition of continued employment or the conduct is sufficiently severe or pervasive as to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. All harassing conduct, as defined above, is a violation of this policy.

Employees are subject to disciplinary action, up to and including removal, for engaging in harassing conduct while in the workplace or in any work-related situation, including while on official travel. Off-duty misconduct may subject the employee to potential discipline if the misconduct is likely to have an adverse effect on the Department (e.g., harassing a co-worker, visitor, contractor, or volunteer during off-duty hours). Harassing conduct can occur in person, through phone calls or in writing, or through the use of social media, or other forms of technology.

**B. Prohibited Retaliatory Conduct.** It is a violation of this policy to retaliate against employees who engage in protected activity under this policy. Protected activity includes reporting harassing conduct, discrimination or retaliation; filing a claim of harassment; providing evidence in any investigation; or intervening to protect others who may have suffered harassing

conduct, discrimination or retaliation. A manager may not fire, demote, harass, or otherwise take any personnel action against an individual for reporting an allegation of misconduct under this policy.

It is important that supervisors and managers protect employees who report alleged misconduct, and do not take any retaliatory personnel action against these individuals in order to deter reporting harassing conduct or filing a complaint. A supervisor/manager found to have engaged in retaliation is subject to disciplinary action.

The following examples are a non-exhaustive list of actions that would be prohibited retaliation if they were taken because of, or were motivated by, an employee's protected activity: transferring the complainant or witness against their will, ignoring or not communicating with the complainant or witness, engaging in verbal or physical abuse, or non-selection for an employment opportunity.

Engaging in protected activity under this policy does not shield an employee from all personnel actions. Supervisors/managers can take personnel actions, including discipline and removal, if they are motivated by *non-retaliatory and non-discriminatory* reasons that would otherwise result in such consequences (e.g., transferring an employee for legitimate business reasons or closely monitoring the performance of an employee on a Performance Improvement Plan).

**C. Employee Reporting Expectations.** The Department cannot correct harassing conduct if a supervisor, manager, or other Department official is not aware of it. Any employee who has been subjected to harassing conduct is encouraged to inform the person(s) responsible for the conduct that it is unwelcome and offensive, and request that it cease. If the conduct continues, is severe, or if the employee is uncomfortable addressing the responsible person(s) about the conduct, the employee ***is encouraged to*** report the matter to:

- the supervisor of the employee engaging in the misconduct;
- another supervisor or other management official;
- the servicing Human Resources office; or
- the Office of the Inspector General (OIG).

Employees who know of or witness possible harassing conduct directed at others ***are expected to*** report the matter to any of the officials or offices listed above.

Reports made pursuant to this policy do ***not*** replace, substitute, or otherwise satisfy the separate obligations of an Equal Employment Opportunity (EEO) complaint, negotiated or administrative grievance, or other complaint process. Unlike this policy, other complaint procedures typically provide for remedial relief to the victims. See Section 9 for more information about how an employee may pursue rights under one of these separate processes, in addition to reporting the misconduct under this policy.

Engaging in additional processes and services available to support employees who have experienced harassing conduct, such as consulting with a union representative to get advice, engaging in alternative dispute resolution procedures, consulting an ombuds/CORE PLUS

neutral<sup>1</sup>, or contacting the employee assistance program, do **not** constitute a report under this policy. See Section 10 for additional information.

**D. Management Duty to Act.** Supervisors/managers who observe or are informed of allegations of harassing conduct must comply with the following requirements:

- a) report the conduct/allegations to the appropriate officials, even if the employee raising the allegation requests confidentiality (see Section 8.A. for additional details);
- b) ensure that a prompt, objective, and thorough investigation is conducted; and
- c) take steps to ensure that the harassing conduct is appropriately addressed to deter further misconduct, including taking disciplinary action, if appropriate.

The fact that a potential victim of harassing conduct will or has filed an EEO complaint or grievance alleging harassment **does not** relieve a supervisor/manager of their duty to act pursuant to this policy. Therefore, it is possible that multiple inquiries into a given complaint may proceed in parallel.

Appropriate corrective action, disciplinary or otherwise, up to and including removal, will be taken against any supervisor or other management official who fails to perform their obligations as set forth in this policy, including any failure to report known violations of this policy.

**E. Distinction from EEO and Other Remedial Procedures.** This policy and its reporting procedures are separate and distinct from the EEO process, which focuses on making employees whole after they have experienced discrimination (including harassment) by issuing remedial relief, such as compensatory damages. This policy does not replace an employee's EEO or other rights. Corrective action taken under this policy does not provide the remedies available in the EEO process, administrative or negotiated grievance procedures, or any other processes. Reporting allegations of misconduct under this policy **does not** satisfy the requirements for filing an EEO complaint, administrative or negotiated grievance, or other procedure, **nor does it delay the time limits for initiating those procedures.** See Section 9 for additional information on remedial processes.

## **6. Responsibilities.**

As noted in Section 4, Bureaus may issue implementing procedures to add additional responsibilities to each of the below roles and/or identify additional roles within their organizational structures in order to implement this policy.

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<sup>1</sup> Ombuds and other CORE PLUS neutrals are available to discuss any workplace-related concern, including those related to harassing or inappropriate conduct. Ombuds, in particular, work independently from management's chain of command, are impartial, and help with both individual and systemic issues.

## **A. Deputy Assistant Secretary for Human Capital & Diversity**

The Deputy Assistant Secretary for Human Capital & Diversity, as the Department's Chief Human Capital Officer (CHCO), is responsible for:

1. Disseminating this policy to all employees on an annual basis and periodically reminding employees of their responsibilities under this policy.
2. Ensuring that performance plans of all supervisors/managers include a critical element that would rate their performance on taking appropriate action against employees for misconduct.
3. Fulfilling the role of Bureau Human Capital Officer, as defined in Section 6.C., for the Office of the Secretary.
4. Providing periodic reports to the Deputy Secretary of the Interior or their designee on information received from the Bureau Human Capital Officers pursuant to Section 6.C.5 of this policy on allegations of misconduct under this policy and the necessary corrective action taken, if any.

## **B. Bureau Directors and Equivalent Office Heads**

Bureau/Office Heads are responsible for:

1. Ensuring that supervisors/managers are appropriately rated on the critical element described in Section 6.A.2.
2. Ensuring that their organizations are in full compliance with requirements of this policy.
3. Monitoring the work environment following a report alleging a violation of this policy to ensure that there are no further violations or incidents of retaliation against any individual who has reported harassment or participated in the investigation.

## **C. Bureau and Equivalent Office Human Capital Officers (Bureau HCOs)**

Bureau HCOs are responsible for:

1. Developing and providing periodic communications to all Bureau/Office employees on this policy and any Bureau/Office-specific requirements, and incorporating this policy into the Bureau/Office's supervisory training curriculum.
2. Resolving any disagreements involving investigations between management officials and consulting staff from servicing Human Resources Offices or the Office of the Solicitor regarding whether and what type of investigation is necessary.
3. Providing oversight, technical assistance, and support to Bureau/Office staff to ensure compliance with this policy.
4. Ensuring that the procedures in this policy are properly executed by monitoring inquiries and investigations of reported or otherwise discovered harassing conduct; providing guidance concerning the information to be gathered and methods to be used during

inquiries and investigations; and otherwise ensuring that the investigations are swift, thorough, impartial, and appropriate to the allegation.

5. Reviewing on a monthly basis the information contained in the system used by servicing Human Resources Offices to track harassing conduct allegations, as described in Section 8.B., and providing information to the Bureau/Office Director and the CHCO as requested.
6. Providing the record of actions taken under this policy to any office handling a parallel statutory or grievance claim, as referenced in Section 7.F.

#### **D. Servicing Human Resources Offices (HROs)**

Servicing HROs (normally the Employee Relations function in particular) are responsible for:

1. Receiving reports alleging violations of this policy and, as described in Section 7 of this policy, notifying and assisting the relevant management officials in handling allegations of harassing conduct and taking corrective action, as appropriate and necessary.
2. Tracking all reports made and actions taken pursuant to this policy in line with the Department's Office of Human Resources case tracking procedures, and reporting on them to the Bureau HCO.

#### **E. Office of the Solicitor (SOL)**

The Office of the Solicitor is responsible for advising and assisting the relevant management officials and servicing HROs in handling allegations of harassing conduct and taking corrective action, as appropriate and necessary. Within SOL, the Employment and Labor Law Unit (ELLU) is the initial point of contact for issues related to harassing conduct, and is responsible for providing Harassment Duty Attorney coverage on weekdays, 8:00 am – 7:00 pm Eastern time.

#### **F. Supervisors and Management Officials**

Supervisors and management officials must:

1. Make every effort to provide a work environment free of illegal harassment.
2. Ensure that their subordinates are aware of this policy and its requirements.
3. Act promptly and effectively to stop harassing conduct of which they are aware, and hold employees who have engaged in harassing conduct accountable.
4. Receive reports alleging violations of this policy and, as described in Section 7 of this policy, make or direct further inquiries into such reports and take corrective action, as appropriate and necessary.
5. Follow any additional procedures, handbooks, or guidelines issued by the Department or the Bureau/Office as related to this policy.

6. Notify appropriate officials in their chain of command of reported or observed conduct under this policy and of their efforts to correct the conduct.
7. Appropriately evaluate and hold accountable subordinate supervisors/managers of their performance under this policy.
8. Protect employees who report misconduct from retaliation.

## **G. All Employees**

All Department employees **must**:

1. Refrain from engaging in harassing conduct.
2. Participate in any training required under this policy.
3. Cooperate fully in any inquiry or investigation.

All Department employees **are expected to**:

1. Understand their rights and responsibilities under this policy.
2. Report harassing conduct of which they are aware or witness in the work environment, as described in Section 5.C. of this policy.

All Department employees who are victims of harassing conduct **are encouraged to** report the harassing conduct.

## **7. Management Response to Reports of Harassing Conduct.**

**A. Documenting Report of Harassing Conduct.** A supervisor, manager, or HR official who receives a report of, or otherwise becomes aware of, harassing conduct, must **within one business day**:

1. Document the allegation in writing (see Appendix A, Sample Intake Form).
2. Acknowledge receipt of the report to the reporting party.

## **B. Supervisor/Manager Immediate Actions**

1. Determinations to be made

The supervisor/manager who receives a report of, or otherwise becomes aware of, harassing conduct involving subordinates must promptly contact the servicing HRO. In consultation with the servicing HRO, the supervisor/manager must determine:

- a. What conduct is at issue, whether it arguably could be considered harassing conduct, and whether it is potentially criminal in nature;
- b. Who may be involved; and

- c. Whether the reported activity poses a security risk and whether it is necessary to alert law enforcement (e.g., in instances where there is a threat of immediate physical harm).

If the report is made outside of the regular business hours of the servicing HRO, supervisors/managers should take action based on their best judgment to minimize any perceived risk of immediate harm and contact the servicing HRO as soon as normal business hours resume.

2. Conflicts of interest of senior-level officials

If an Assistant Secretary, Deputy Assistant Secretary, Bureau or equivalent Office Head, or similar high ranking official is implicated in the potentially harassing conduct, the CHCO will designate an appropriate management official to be responsible for making the preliminary determinations and directing any further investigation that is warranted.

3. Interim measures to ensure harassing conduct does not continue

Before directing a thorough investigation into the allegations of misconduct, a supervisor/manager must take any necessary interim steps to ensure that the potentially harassing conduct does not continue. The interim measures taken will depend on the severity of the conduct alleged. The two interim measures listed below are required in cases of serious misconduct, including, but not limited to, harassing conduct of a sexual nature, depending on the circumstances.

Before implementing either of the measures below, the supervisor/manager must consult with the servicing HRO and the Harassment Duty Attorney of SOL/ELLU for advice and guidance. If the report is made outside of the regular business hours of the servicing HRO, supervisors/managers should take action based on their best judgment to minimize any perceived risk of immediate harm and contact the servicing HRO as soon as normal business hours resume.

- a. Separation of the Allegedly Harassing Employee from the Alleged Victim

If the conduct is severe or pervasive, including, but not limited to, threatening behavior, touching, punching, or other egregious harassing behavior, the supervisor/manager should separate the employee alleged with harassing conduct from the alleged victim, at least until the matter otherwise can be resolved. Management should ***not*** move the employee who reported or otherwise was the alleged victim of harassing conduct. If the alleged victim, without having been asked or prompted, specifically requests such a move or transfer, management should inform the employee that they need not leave, and that instead the employee alleged to be responsible for the harassing conduct may be moved. Nonetheless, to the extent possible, management should honor the alleged victim's request. Appropriate steps to separate the alleged victim from the alleged harasser include, but are not limited to:

- assigning the alleged harasser to a telework status or a temporary detail;
- moving them to another office space, desk or floor; or

- requesting approval to place the employee on administrative or investigative leave.

b. Issuing No Contact Instructions

Another interim measure that a supervisor/manager may take to help ensure that harassing conduct stops is to instruct the allegedly harassing employee to have no further contact or communications with the alleged victim.

**C. Notifying Appropriate Officials of Report.** In implementing this policy, Bureaus may identify additional roles or change which of the below roles accomplish the notifications required in this section.

Management officials must notify the following parties *within one business day*:

1. Supervisors/managers who become aware of harassing conduct involving their subordinates must notify their own first-line supervisor or, if the conduct implicates the first-line supervisor, notify the second-line supervisor.
2. Supervisors/managers who become aware of harassing conduct involving employees outside of their chain of command must:
  - a. Notify the allegedly harassing employee's supervisor; and
  - b. Notify the alleged victim's supervisor, or, if the conduct implicates the supervisor or another manager, the Bureau HCO.
3. When a supervisor/manager has consulted with the servicing HRO regarding a report of alleged harassing conduct, the HR officer or assigned Employee Relations supervisor/specialist will:
  - a. Notify the Harassment Duty Attorney of the SOL/ELLU at [SOL-Antiharass@sol.doi.gov](mailto:SOL-Antiharass@sol.doi.gov); and
  - b. If applicable, notify the servicing HRO of the allegedly harassing employee.
4. When a report of alleged harassing conduct is made directly to the servicing HRO, the HR officer or assigned Employee Relations supervisor/specialist will:
  - a. Notify the SOL/ELLU Harassment Duty Attorney at [SOL-Antiharass@sol.doi.gov](mailto:SOL-Antiharass@sol.doi.gov); and
  - b. Notify and assist the next appropriate level of management above the allegedly harassing employee implicated in the report with immediately making the determinations described in Section 7.B. and taking any other necessary and appropriate action.

**D. Conducting Further Investigation**

1. Deciding whether further investigation is necessary

Within ***three business days*** of the receipt of the allegation, the supervisor/manager of the allegedly harassing employee, or other designated management official, must consult with SOL and the servicing HRO to determine whether and what type of further investigation is required (as described in Section 7.D.2), or if the preliminary inquiry is sufficient to determine whether corrective action is necessary. These decisions are fact-specific, and must be made on a case-by-case basis. Any disagreement between the responsible management official and the consulting offices will be directed to the Bureau HCO.

If it is determined that an investigation is necessary, the servicing HRO specialist will ensure that the investigative process is initiated within ***two business days*** of the decision being made regarding the appropriate investigative entity (e.g., refer the case to the OIG, initiate the funding process and prepare a statement of work for a third-party investigator). The servicing HRO specialist will serve as the primary point of contact for logistics related to getting an internal or third-party investigator in place, as well as when the allegations have been referred for criminal investigation or to the OIG.

## 2. Deciding who will conduct the investigation

If it is determined that further investigation is necessary, the following general guidelines will apply for choosing the type of investigation:

- a. OIG: Allegations of criminal activity, allegations implicating a member of the Senior Executive Service, or other senior or prominent management official, senior law enforcement official, or any OIG employee, and allegations tied to waste, fraud, or abuse of Department funds/programs or violations of Federal ethics regulations must be referred to OIG, which has the right of first refusal in conducting the investigation;<sup>2</sup>
- b. Bureau law enforcement internal affairs unit: Allegations involving law enforcement personnel of a Bureau's law enforcement entity must be referred to the entity's Office of Professional Responsibility or equivalent internal affairs unit;
- c. Third-party investigator<sup>3</sup>: Allegations of harassing conduct of a sexual nature.

All other allegations under this policy may be handled by a third-party investigator, employee relations specialist(s), supervisor/manager, or another employee trained to conduct investigations. The supervisor/manager of the allegedly harassing employee, or other designated management official, in consultation with the servicing HRO and SOL, will make the final decision about the investigation method based on the complexity and scope of the allegation(s) and the availability of qualified investigators.

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<sup>2</sup> OIG may also undertake any criminal, civil or administrative investigations regarding allegations of any grade employee involved in a serious or notorious allegation or incident that may negatively impact the operations and efficiency of the Department.

<sup>3</sup> A third-party investigator can be a contract investigator, a DOI HR official from outside the servicing HRO, or a management official outside the Bureau/Office/Region chain of command.

### 3. Conducting the investigation

All investigations must be conducted swiftly, impartially, and in a manner appropriate to the allegation. All investigations handled by a Department supervisor/manager, servicing HRO, or third-party investigator must be conducted in accordance with the Department's Investigator Guide to Conducting Administrative Investigations.

**E. Taking Corrective Action.** If it is determined that misconduct occurred, corrective action is necessary.

1. To determine whether corrective action is necessary, the supervisor/manager of the employee alleged to have engaged in harassing conduct must consult with the servicing HRO and SOL to determine whether any disciplinary or other corrective action would be appropriate or if the allegation should be closed with no finding of misconduct.
2. If the decision is made that the allegation should be closed with no finding of misconduct, the supervisor/manager must write a memorandum detailing why no corrective action was warranted. This memorandum must be approved by the next higher level manager and be included in the case file maintained by the servicing HRO.
3. If facts uncovered during the investigation or inquiry demonstrate that misconduct occurred, the supervisor/manager ***must*** propose disciplinary or corrective action. If there is disagreement between the supervisor/manager and the consulting offices on whether corrective action is appropriate, the next higher level of management will make the decision.
4. The appropriate corrective action will depend on the severity and/or pervasiveness of the offense, the action that would be required to end such conduct, the offender's disciplinary/conduct history, and other surrounding circumstances. Corrective action may include counseling or any disciplinary action applicable to instances of misconduct, such as reprimand, suspension, demotion, or termination, in accordance with 370 DM 752, Discipline and Adverse Actions. Where evidence indicates that employees are not sure about what conduct is appropriate and permissible, appropriate training should be provided.
5. A supervisor/manager's failure to take appropriate disciplinary and/or corrective action will generally support a charge of negligent supervision and be an actionable charge. Appropriate corrective action, disciplinary or otherwise, up to and including removal will be taken against any supervisor or other management official who fails to perform their obligations as set forth in this policy, including any unreasonable failure to report known violations of this policy. In addition, managers will appropriately evaluate and hold accountable subordinate supervisors/managers for their performance under this policy using the required supervisory critical element.

### **F. Responding to Reports of Harassing Conduct Raised in a Statutory, Administrative, or Negotiated Grievance Process**

If an employee pursues a claim of harassment through the EEO process, an MSPB appeal, or a negotiated/administrative grievance, the Department official who receives notice of such claim will promptly notify the appropriate responsible management official. The management official

has a duty to act promptly upon learning that harassing conduct has been alleged, must treat the notice as a report under this policy, and must follow the steps outlined in this section, unless inconsistent with applicable regulatory or statutory requirements. It is possible that multiple inquiries into a given complaint may proceed in parallel.

## **8. Maintaining Confidentiality and Keeping Records.**

**A. Maintaining Confidentiality.** Supervisors/managers must take action to investigate all allegations of harassing conduct, even if the employee raising the allegation requests confidentiality. All reports of harassing conduct and related information will be maintained on a confidential basis to the greatest extent possible. The identity of the employee alleging violations of this policy will be kept confidential, except as necessary to conduct an appropriate investigation into the alleged violations, to take appropriate disciplinary or corrective action, to comply with the reporting requirements of this policy, or when otherwise required by law.

Upon inquiry from the alleged victim, the supervisor/manager must notify the alleged victim of the harassing conduct about the completion of the process to the extent permitted under the Privacy Act. The alleged victim may not be provided the outcome of any disciplinary action against the allegedly harassing employee and may not be provided a copy of the fact-finding report. The supervisor/manager must consult with servicing HRO specialist and SOL about this notification.

**B. Tracking Allegations of Harassing Conduct.** The servicing HRO will be responsible for tracking the information related to the allegations of harassing conduct in separate case files, in accordance with established records management policies. The servicing HRO must monitor and record the status of allegations, including final resolution, in the appropriate tracking system approved by the Department's Office of Human Resources. This information will help the Department monitor compliance with this policy, understand trends related to harassing conduct, and ensure swift resolution of complaints.

## **9. Distinction from Statutory and Grievance Claims.**

The purpose of this policy is to stop harassing conduct that has occurred and deter its occurrence in the future. However, corrective action under this policy does not provide the remedies available in the EEO, grievance, or other processes, such as compensatory damages. Filing a report under this policy does *not* satisfy the requirements for filing an EEO complaint, negotiated grievance, or other procedure and obtaining remedies pursuant to them, nor does it delay the time limits for initiating those procedures. Thus, an employee who chooses to pursue statutory, administrative, or collective bargaining remedies for unlawful harassment must select one of the available forums as follows:

**A. For an EEO complaint pursuant to 29 C.F.R. §1614** (available for all claims of illegal harassment other than those based on status as a parent, marital status and political affiliation), contact an EEO counselor in the Bureau's or Office's Equal Employment Opportunity/Civil Rights Office within 45 calendar days from the most recent incident of alleged harassment (or personnel action, if one is involved), as required in 29 C.F.R. §1614.105(a)(1); or

**B. For a negotiated grievance claim,** file a grievance in accordance with the provisions of the applicable Collective Bargaining Agreement; or

**C. For an administrative grievance claim,** file a written grievance in accordance with the provisions of 370 DM 771, Administrative Grievance Procedures; or

**D. For an appeal to the Office of Special Counsel (OSC)** regarding claims of harassment related to marital status and political affiliation, pursuant to 5 U.S.C. §2302(b)(1) and (b)(10), file a written appeal with the OSC as described in 5 C.F.R. §1800.1 and on [www.osc.gov](http://www.osc.gov); or

**E. For an appeal to the MSPB** pursuant to 5 C.F.R. § 1201.22, file a written appeal with the Board within 30 days of the effective date of an appealable adverse action as defined in 5 C.F.R. §1201.3, or within 30 days of the date of receipt of the agency's decision, whichever is later.

## **10. Additional Resources.**

**A. Consultation Options.** Employees who have experienced harassing conduct have multiple resources available that can provide assistance and advice. Engaging with the following resources ***does not*** constitute a report under this policy, as these entities do not have an obligation to inform management of allegations of harassing conduct:

- **Ombuds/CORE PLUS neutrals.** Office of Collaborative Action and Dispute Resolution (CADR) ombuds work independently from management's chain of command and are impartial. CORE PLUS neutrals are qualified, certified providers of conflict management and alternative dispute resolution services. Conversations with ombuds and other CORE PLUS neutrals are confidential and informal and provide managers and employees a safe place to explore options for addressing individual or organizational concerns. Ombuds and CORE PLUS neutrals are not obliged to report discussions (outside of imminent risk of harm). Information about CADR programs is available at <https://www.doi.gov/pmb/cadr/>;
- **Employee Assistance Program (EAP).** The DOI EAP is an employee benefit program that helps employees with personal and/or work-related problems that may impact their job performance, health, and mental and emotional well-being. Information about EAP services is available at <https://www.doi.gov/pmb/hr/eap>;
- **Victim Assistance Program.** The DOI Office of Law Enforcement and Security or Bureau law enforcement office's Victim Assistance Program provides general information about rights and services available for victims of crime; and
- **Union Representative.** Employees who are covered by a bargaining unit can consult with a union representative.

**B. Additional Information.** To learn more about the Department's anti-harassment resources and Bureau-specific policies, visit [www.doi.gov/employees/anti-harassment](http://www.doi.gov/employees/anti-harassment).

## **11. Inquiries.**

Any Department employee or employee representative seeking further information concerning this policy may contact the appropriate Bureau HCO. Servicing HROs may contact the

Department's Office of Human Resources, Workforce Relations Division concerning questions related to this policy.

**12. Distribution.**

This policy will be distributed to all employees upon issuance, and annually thereafter. It will also be distributed to all employees new to the Department as part of their orientation materials. This policy also will be made available to employees on the Equal Employment and Workplace Conduct website accessible at [www.doi.gov/employees/anti-harassment](http://www.doi.gov/employees/anti-harassment), which also provides additional anti-harassment resources.



Edward T. Keable  
Acting Deputy Assistant Secretary  
Human Capital and Diversity  
Chief Human Capital Officer

**Appendix A: Sample Harassing Conduct Allegation Intake Form**

This sample intake form can be used by any management official to record a report of harassing conduct. It can be used as a prompt during a conversation with an employee reporting harassing conduct, or as a way to document the conversation after the fact. Gathering as much information as possible immediately from the individual reporting the alleged harassing conduct will aid management in swiftly determining the best course of action. Bureaus/Offices may wish to develop and issue their own versions of this form.

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***Management Official Taking the Report***

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Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Date Information Reported: \_\_\_\_\_ Time: \_\_\_\_\_

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***Individual Reporting Harassing Conduct***

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Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Phone: \_\_\_\_\_ Job location: \_\_\_\_\_

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***Individuals Allegedly Engaging in Harassing Conduct (if known)***

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1. Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Phone: \_\_\_\_\_ Job location: \_\_\_\_\_

2. Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Phone: \_\_\_\_\_ Job location: \_\_\_\_\_

3. Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Phone: \_\_\_\_\_ Job location: \_\_\_\_\_

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***Questions to Ask the Individual Reporting the Harassing Conduct***

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1. Date(s) of alleged incident(s)/action(s):

2. Please describe specifically the alleged harassing conduct, including the protected status on which you believe it was based [i.e., race, color, religion, sex (including pregnancy and gender identity), sexual orientation, national origin, age, disability, family medical history (including genetic information), status as a parent, marital status, or political affiliation]:

3. Was this an isolated event or a pattern of similar events or behaviors?

4. Was the harassing conduct directed at you or someone else? If someone else, to whom was it directed?

5. What was your reaction?

6. How did this conduct or behavior affect you? How did it make you feel?

7. Did you speak to the person who engaged in harassing conduct to ask them to cease? If so, what was their response?

8. Can you identify other individuals with knowledge of the alleged conduct at issue or other actions/behaviors by the charged individual(s) in the past? (Include observations, what people heard, and who you told about the events in question.)

9. Are there any documents or physical evidence that may support the claim of alleged occurrences? If so, please identify them.

10. Do you feel that the alleged harasser(s) is a threat to your safety and well-being or that of others? If so, how?

11. Have you previously complained about this or related acts of harassing conduct by the same individual(s) to a supervisor or manager? If so, please identify the individual(s) to whom you complained, the date(s) of the complaint(s), and the resolution(s), if any.

12. Is there is any other information related to the incident(s)/action(s) or any other information related to the inquiry that you would like to provide?

Appendix D: Personnel Bulletin 17-09



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

**APR 14 2017**

## **PERSONNEL BULLETIN NO: 17-09**

**SUBJECT:** Mandatory Training on Equal Employment Opportunity (EEO), Prohibited Personnel Practices (PPPs) and Whistleblower Protections, and Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (No FEAR Act)

- 1. Purpose:** This Personnel Bulletin (PB) establishes the Department's policy on mandatory EEO, No FEAR Act and PPPs/whistleblower protections training. Executing the activities described in this PB contributes to making the Department of the Interior a best place to work in America, where all of our employees are respected, quality of work life is valued, and everyone has the opportunity to achieve their potential.
- 2. Authorities:** 5 U.S.C. 2302(c); 5 C.F.R. 724.203; 29 C.F.R.1614.102(a)(4); DOI Policy on Equal Opportunity and Workplace Conduct, dated September 14, 2016; 370 DM 410.
- 3. Rescinds:**
  - a. Memo dated January 29, 2010 - Equal Employment Opportunity and Diversity Training for Managers, Supervisors, and Employees.** Effective immediately, this memo and the hourly training requirements stated therein are no longer in effect.
  - b. Memorandum dated September 28, 2015 - Postponement of No FEAR Act Training Requirement.** Effective immediately, the revised No FEAR Act on-line training course is available for use.
- 4. EEO Training 29 C.F.R.1614.102(a)(4).** This policy states agencies are required to communicate to employees their EEO policy and programs. Consistent with this guidance, Bureaus/Offices should develop competency-based EEO training programs to address bureau-specific challenges and needs. The DOI Learning Management System (DOI Learn) catalog has a variety of courses available for your use and can be found on the Diversity/EEO tab within DOI Learn.
- 5. Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (No FEAR Act) Training.** No FEAR Act training provides DOI managers, supervisors and non-supervisory employees with an opportunity to practice decision making in different simulated situations and learn how to address anti-discrimination and whistleblowing issues by: (a) recognizing and managing rights and responsibilities regarding anti-discrimination, whistleblowing, and diversity and inclusion; (b) exploring positive and effective ways to

respond to real-life stresses, conduct and performance situations; (c) enhancing interpersonal communication skills and strategies; and (d) increasing understanding of the importance of building a 21<sup>st</sup> Century DOI that reflects the diversity of America. This training is mandatory for all DOI employees serving on both permanent and temporary appointments.

- a. **Frequency:** The No FEAR Act training cycle is every two years and must be completed no later than December 31, 2017, for FY 2017, and by September 30 every other year thereafter. This course will be assigned routinely through DOI Learn, as appropriate, to comply with the recurring requirement without additional notifications. New employees must complete the training within 60 days of on-boarding.
  - b. **Applicable Training Audience:** The No FEAR Act training is mandatory for all DOI employees regardless of the length of their appointments.
  - c. **Instructional Method:** On-line course delivery via DOI Learn. A paper copy of this required course is available upon request to the DOI Learn Program Management Office or Bureau DOI Learn Program Manager.
  - d. **Accountability:** Training completions are documented using DOI Learn. Employees who do not complete the training requirement by the stated deadline can be held accountable under disciplinary or performance procedures covered in 370 DM 752.1 and 370 DM 430.
  - e. **Reporting Requirement:** Standardized compliance reports will be provided, through DOI Learn, to the Program Offices responsible for ensuring employees complete the training.
  - f. **Program Offices:** Office of Civil Rights and Bureau EEO Offices
6. **Workplace Harassment and Discrimination Prevention Training for Supervisors and Managers.** The Department is committed to providing all employees with a work environment where harassment and discrimination are not tolerated. Managers and supervisors must know their roles and responsibilities to prevent harassment and discrimination in all forms. The Equal Employment Opportunity Commission recommends civility training as a means of “preventing conduct from rising to the level of unlawful harassment.” Supervisors and managers are required to complete the 4-hour *Civil Treatment for Leaders*® (CTL) course. Bureaus/Offices may elect to use the entire 8-hour CTL course to meet this onetime requirement. The CTL also meets the training requirement as outlined above in 4.
- a. **Frequency:** The CTL course must be completed once by every supervisor and manager on the DOI rolls as of October 1, 2016. This course will be assigned through DOI Learn, as appropriate, to comply with the requirement without additional notifications.
  - b. **Applicable Training Audience:** All supervisors and managers on the DOI rolls as of

October 1, 2016, are required to complete the course by December 31, 2018. All new supervisors and managers must complete training as described in 4 within six months of appointment to a supervisory position.

- i. **Seasonal supervisors/managers:** Seasonal supervisors and managers hired for the FY 2017 season must complete CTL training within one month of hire.
    - ii. **Training for New Supervisors and Managers:** Bureaus/Offices must ensure training for new supervisors and managers includes workplace civility content such as: discussion of workplace norms and what constitutes appropriate and inappropriate behaviors.
  - c. **Instructional Method:** Classroom instruction or web-based virtual instruction by authorized instructors.
  - d. **Accountability:** Training registrations and completions are documented using DOI Learn. Supervisors and managers who do not complete the training requirement by the stated deadline will be held accountable under the Mandatory Supervisory/Managerial Critical Element in their Supervisory Employee Performance Appraisal Plan.
  - e. **Effective Date:** This requirement is effective immediately. Bureaus and Offices must certify compliance by September 15, 2018.
  - f. **Reporting Requirement:** Standardized compliance reports will be provided through DOI Learn to Bureau/Office Human Resource Officers, Bureau/Office Learning and Development Directors/Managers and the Program Offices responsible for ensuring employees complete the required training.
  - g. **Program Office:** Office of Strategic Employee and Organization Development and Bureau Learning and Development Offices.
7. **Prohibited Personnel Practices and Whistleblower Training for Supervisors and Managers.** Beginning in FY 2017, this training is to be completed every three years by all supervisors and managers. Compliance with this policy helps the Department meet the requirement under 5 U.S.C. 2302(c) to train supervisors and managers on Prohibited Personnel Practices (PPPs) and whistleblower protections.
- a. **Frequency:** Every three years beginning in FY 2017. This course must be completed by June 15, 2017, and every three years thereafter. This course will be assigned routinely, through DOI Learn, as appropriate, to comply with the recurring requirement without additional notifications.
  - b. **Applicable Training Audience:** All managers and supervisors. Newly appointed supervisors and managers must complete the course within 60-days of appointment to a supervisory/managerial position.
    - i. **Seasonal supervisors/managers:** Seasonal supervisors and managers must

complete PPPs training within one month of hire. If rehired within three years of their initial training they do not need to repeat the training. The PPPs must be repeated if the seasonal supervisor/manager is rehired three or more years after they last completed the training.

- c. **Instructional Method:** On-line course delivery via DOI Learn. A paper copy of this required course is available upon request to the DOI Learn Program Management Office or Bureau DOI Learn Program Manager.
- d. **Accountability:** Training completions are documented using DOI Learn. Supervisors and managers who do not complete the training requirement by the stated deadline will be held accountable under the Mandatory Supervisory/Managerial Critical Element in their Supervisory Employee Performance Appraisal Plan
- e. **Reporting Requirement:** Standardized compliance reports will be provided through DOI Learn to the Bureau/Office Human Resource Officers, Learning and Development Directors/Managers and the Program Office responsible for ensuring employees complete the required training.
- f. **Effective Date:** This requirement is effective immediately.
- g. **Program Office:** Office of Human Resources and Bureau HR Offices

**8. The Deputy Assistant Secretary for Human Capital and Diversity/Chief Human Capital Officer (DAS-HCD)** will ensure compliance with this PB and ensure that training covered in this PB is reviewed periodically and made available for use by bureaus/offices. The DAS-HCD will also ensure:

- a. The approved training is available in DOI Learn.
- b. The agenda for the four-hour CTL course is provided in DOI Learn; and
- c. Standardized reports are developed by the Office of Strategic Employee and Organization Development, LMS Program Manager, and made available to Bureaus/Offices.

**9. Bureau/Office Human Capital Officer (HCO) Responsibilities.** HCOs must ensure compliance with this PB in coordination with all appropriate bureau/office program offices.

**10. Inquiries.** The Department of the Interior point of contact for this policy is Patricia Houghton, Office of Strategic Employee and Organization Development, at (202) 208-6755 or by email at [patricia\\_houghton@ios.doi.gov](mailto:patricia_houghton@ios.doi.gov).

A handwritten signature in blue ink, appearing to read "Mary F. Pletcher", is written over a horizontal line.

Mary F. Pletcher  
Deputy Assistant Secretary  
Human Capital and Diversity  
Chief Human Capital Officer

## Appendix E: Whistleblower Protection/Prohibited Personnel Practices Memo



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

**OCT 01 2019**

Memorandum

To: All OIG Employees  
From: Mark L. Greenblatt  
Inspector General  
Subject: Whistleblower Protection/Prohibited Personnel Practices

The purpose of this memorandum is to ensure that all agency employees are aware of and understand the prohibited personnel practices and whistleblower protections available to federal employees.

The U.S. Office of Special Counsel (OSC) is an independent agency that protects federal employees from prohibited personnel practices, including whistleblower retaliation and unlawful hiring practices. OSC also provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies.

The Whistleblower Protection Act of 1989 and the Whistleblower Protection Enhancement Act of 2012 provide the right for all covered federal employees to make whistleblower disclosures and to ensure that employees are protected from whistleblower retaliation. The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 and OSC's Reauthorization Act of 2017 further enhanced and reinforced these rights and protections.

Whistleblowing is defined as the disclosure of information that an employee reasonably believes evidences: a violation of any law, rule or regulation; gross mismanagement; gross waste of funds; an abuse authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or analysis. Employees may make lawful disclosures to anyone, including, for example, management officials, the Inspector General of an agency, and/or OSC.

Please review the fact sheet, [Your Rights as a Federal Employee](#), which provides detailed information on the fourteen prohibited personnel practices and employees' rights to file complaints with OSC. Additionally, I encourage you to review [Know Your Rights When Reporting Wrongs](#), which describe different avenues for making whistleblower disclosures as federal employees. More information can also be found on the [OSC website](#).

Federal employees have the right to be free from prohibited personnel practices, including retaliation for whistleblowing. This agency is committed to making sure that all employees are aware of their rights as well as the safeguards that are in place to protect them.

## Appendix F: FY 2023 No FEAR Act Report Data

Equal Employment Opportunity Data Posted  
Pursuant to the No FEAR Act:

Department of the Interior (includes sub-level offices)

For 4th Quarter 2023 for period ending September 30, 2023

Part 1 Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2023 Thru 09-30
	2018	2019	2020	2021	2022	
Number of Complaints Filed	366	301	274	239	257	264
Number of Complainants	351	297	267	232	249	258
Repeat Filers	14	4	7	7	8	6

Part 2 Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2023 Thru 09-30
	2018	2019	2020	2021	2022	
<small>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</small>						
Race	118	80	71	83	60	76
Color	38	29	27	20	27	31
Religion	20	9	9	12	32	14
Reprisal	200	161	148	150	125	149
Sex	138	108	104	93	79	85
PDA	1	2	3	2	1	1
National Origin	53	33	12	34	25	27
Equal Pay Act	1	1	1	2	4	3
Age	114	113	100	75	76	102
Disability	119	88	100	75	84	108
Genetics	2	2	1	0	3	5
Non-EEO	19	15	16	8	6	5

Part 3 Complaints By Issue	Comparative Data					
<p>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</p> <p>Starting in FY2022, issues marked with: * are reported under Other Terms / Conditions of Employment. ** are reported under Other Disciplinary Actions.</p> <p>The reporting of Reassignment Claims has been changed from two separate Denied and Directed rows to one combined row: the first row now accommodates both "Reassignment: Denied/Directed" and the second row has been deprecated for the current FY starting in FY2023.</p>	Previous Fiscal Year Data					2023 Thru 09-30
	2018	2019	2020	2021	2022	
Appointment/Hire	32	32	35	40	30	11
Assignment of Duties*	40	43	23	27	25	0
Awards	4	7	2	3	2	2
Conversion to Full Time/Perm Status*	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	1	0	1	1	1
Reprimand**	13	8	13	13	8	0
Suspension	13	8	15	15	13	10
Removal	16	10	19	5	3	4
Other Disciplinary Actions**	0	0	0	0	0	29
Other 2**	0	0	0	0	0	0
Duty Hours*	1	5	6	5	5	0
Perf. Eval./ Appraisal	38	31	32	29	28	25
Examination/Test	2	0	0	5	1	1
Harassment						
Non-Sexual	183	158	120	114	125	144
Sexual	12	7	8	4	2	2
Medical Examination	1	1	2	0	3	3
Pay including overtime	2	6	4	11	10	11
Promotion/Non-Selection	54	25	39	26	36	43
Reassignment						
Reassignment: Denied/Directed	1	1	4	1	2	9
Directed	14	14	10	8	2	0
Reasonable Accommodation Disability	41	22	35	24	33	46
Reinstatement*	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	16	1
Retirement*	2	3	3	4	4	0
Sex-Stereotyping	2	0	0	1	0	1
Telework	11	3	4	3	11	5
Termination	30	20	25	22	23	20
Terms/Conditions of Employment*	49	41	40	35	32	0
Time and Attendance	15	14	20	12	7	18
Training	13	12	11	6	9	12
Other Terms/Conditions of Employment*	0	0	0	0	0	81
User Defined - Other 1*	0	0	0	0	0	0
User Defined - Other 2*	0	0	0	0	0	0
User Defined - Other 3*	0	0	0	0	0	0
User Defined - Other 4*	0	0	0	0	0	0



Findings After Hearing	1		4		3		5		1		2	
Race	1	100.00	0	0.00	0	0.00	4	80.00	0	0.00	0	0.00
Color	1	100.00	0	0.00	0	0.00	1	20.00	0	0.00	0	0.00
Religion	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Reprisal	1	100.00	3	75.00	1	33.33	5	100.00	1	100.00	2	100.00
Sex	1	100.00	2	50.00	1	33.33	2	40.00	0	0.00	0	0.00
PDA	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
National Origin	1	100.00	0	0.00	0	0.00	1	20.00	0	0.00	0	0.00
Equal Pay Act	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Age	1	100.00	2	50.00	2	66.67	0	0.00	0	0.00	0	0.00
Disability	0	0.00	0	0.00	3	100.00	3	60.00	0	0.00	1	50.00
Genetics	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Non-EEO	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Finding Without Hearing	1		0		4		21		1		3	
Race	0	0.00	0	0.00	1	25.00	4	19.05	0	0.00	1	33.33

Color	0	0.00	0	0.00	1	25.00	3	14.29	0	0.00	0	0.00
Religion	0	0.00	0	0.00	0	0.00	1	4.76	0	0.00	1	33.33
Reprisal	1	100.00	0	0.00	3	75.00	15	71.43	0	00.00	0	0.00
Sex	0	0.00	0	0.00	1	25.00	10	47.62	0	0.00	0	0.00
PDA	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
National Origin	0	0.00	0	0.00	1	25.00	1	4.76	0	0.00	0	0.00
Equal Pay Act	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Age	0	0.00	0	0.00	0	0.00	4	19.05	0	0.00	0	0.00
Disability	0	0.00	0	0.00	1	25.00	5	23.81	1	100.00	1	33.33
Genetics	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Non-EEO	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00





Findings Without Hearing	1		0		4		21		1		3	
Appointment/Hire	0	0	0	0	3	75	2	10	0	0	2	67
Assignment of Duties*	0	0	0	0	0	0	4	19	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status*	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand**	0	0	0	0	0	0	1	5	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	1	100	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other Disciplinary Actions**	0	0	0	0	0	0	0	0	0	0	0	0
Other 2**	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours*	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval. / Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Sexual	1	100	0	0	0	0	2	10	0	0	0	0
Non-Sexual	0	0	0	0	0	0	11	52	1	100	1	33
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	1	25	2	10	0	0	0	0
Reassignment												
Reassignment: Denied/Directed	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	5	24	1	50	0	0
Reinstatement*	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement*	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	2	10	1	50	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment*	0	0	0	0	0	0	7	33	1	50	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	1	5	1	50	0	0
Other Terms/Conditions of Employment*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 1*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4*	0	0	0	0	0	0	0	0	0	0	0	0

Part 9 Complaints Pending from Previous Fiscal Years By Status	Comparative Data					
	Previous Fiscal Year Data					2023 Thru 09-30
	2018	2019	2020	2021	2022	
Total complaints from previous Fiscal Years	285	277	270	195	135	157
Total Complainants	276	266	262	188	126	144
Number complaints pending						
Investigation	6	8	3	1	0	0
ROI issued, pending Complainant's action	0	2	1	0	1	20
Hearing	275	255	220	184	113	76
Final Agency Action	8	16	46	13	20	75
Appeal with EEOC Office of Federal Operations	62	45	59	76	63	59

Part 10 Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2023 Thru 09-30
	2018	2019	2020	2021	2022	
Pending Complaints Where Investigations Exceed Required Time Frames	18	7	2	8	2	3

Appendix G: Personnel Bulletin 21-03



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

October 24, 2022

## PERSONNEL BULLETIN 21-03

### **SUBJECT: Processing Requests for Reasonable Accommodation for Individuals with Disabilities**

**1. Purpose.** In compliance with the authorities listed below, the Department of the Interior (DOI) has established policy and procedures for processing reasonable accommodation requests. This Personnel Bulletin (PB) outlines the requirements and instructions by which Departmental supervisors and other responsible parties will act on requests for reasonable accommodation from employees and applicants for employment. This PB supersedes Civil Rights Directive 2014-02 and PB 14-01, Reasonable Accommodation for Individuals with Disabilities, dated February 20, 2014; and PB 08-09, Procedures for Conducting a Department-wide Search and Position Reassignment for Cases Involving Reasonable Accommodation, dated May 5, 2008. This document remains in effect until either rescinded or superseded by a new Departmental policy.

### **2. Authorities.**

- A. Title 29 of the United States Code (U.S.C.), Chapter 16, Subchapter V, Section 791 (Employment of Individuals with Disabilities)
- B. Title 42 of the U.S.C., Chapter 126, Section 12101 (Americans with Disabilities Act of 1990)
- C. Part 1614 of Title 29 Code of Federal Regulations (CFR), Federal Sector Equal Employment Opportunity
- D. Public Law 110-325, Americans with Disabilities Act Amendments Act (ADAAA) of 2008
- E. Part 1630 of Title 29 CFR, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act
- F. Part 1635 of Title 29 CFR, Genetic Information Nondiscrimination Act of 2008
- G. Part 335 of Title 5 CFR, Promotion and Internal Placement
- H. Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000)
- I. Equal Employment Opportunity Commission Management Directive 715
- J. Equal Employment Opportunity Commission Policy Guidance on Executive Resources 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, dated October 20, 2000
- K. DOI Merit Promotion & Staffing Policy Personnel Handbook (November 2020)

**3. Coverage.** This policy applies to all DOI Bureaus and Offices and supersedes any other Departmental or Bureau/Office policies or procedures that conflict with this policy.

**4. Goals.** The goals of this policy are to ensure:

- A. Prompt and effective accommodation solutions are provided to foster maximum productivity and performance, equal access to employment and the workplace environment, and create an atmosphere where employees can fulfill the DOI mission.
- B. Qualified employees and applicants for employment participate in a transparent and communicative manner throughout the reasonable accommodation process.
- C. Requests for reasonable accommodations (including interim and alternative accommodations) are processed within established timeframes.

## **5. Responsibilities.**

- A. The Director, Office of Diversity, Inclusion and Civil Rights (ODICR) is responsible for:
  - 1. Ensuring that reasonable accommodations are made for qualified employees and applicants with a disability in accordance with applicable laws, regulations and bargaining unit agreements.
  - 2. Preparing periodic reports to analyze the agency's performance regarding the provision of reasonable accommodations to individuals with disabilities.
  - 3. Serving as a committee member, along with the Chief Human Capital Officer (CHCO)/Deputy Assistant Secretary for Human Capital & Diversity (DAS-HCD) and the Director of Financial Management, on undue hardship determinations.
  - 4. Implementing proactive prevention measures and a continual Departmentwide campaign to increase knowledge and awareness of the requirements, relevancy and capability of providing reasonable accommodations.
- B. The Chief Human Capital Officer (CHCO)/Deputy Assistant Secretary for Human Capital & Diversity (DAS-HCD) is responsible for:
  - 1. Serving as a committee member, along with the Director of ODICR and the Director of Financial Management, on undue hardship determinations.
  - 2. Making decisions on employee reassignment requests within **5 business days** of receipt of the DOI Reassignment Appeals Board's (DOI RAB) recommendation in cases of inter-bureau conflicts.
  - 3. Developing policy guidance on the timely processing of requests for accommodations.
- C. The Deputy Chief Human Capital Officer (DCHO)/Director, Office of Human Capital (OHC) is responsible for:
  - 1. Convening the DOI Reassignment Appeals Board (DOI RAB) within **10 business**

days of receipt of all documentation and making a recommendation to the CHCO/DAS-HCD within 5 business days of convening the DOI RAB.

D. The Department Reasonable Accommodation Program Manager, OHC is responsible for:

1. Developing DOI-wide policy on processing reasonable accommodation requests and partnering with ODICR and other key stakeholders to ensure that all Bureaus/Offices are aware of and apply policy requirements.
2. Serving as the liaison between Servicing Human Resources Offices (SHRO) and Department leadership in coordinating requests for undue hardship and the DOI RAB as described in this document.

E. The Department Medical Officer is responsible for providing a review of medical documentation when requested so that Bureaus/Offices can make informed decisions regarding employee accommodation requests.

F. Bureau/Office Disability Program Manager (DPM) is typically an employee of the Equal Employment Opportunity (EEO) Office and is responsible for:

1. Developing, implementing, and operating the Bureau/Office's disability program to eliminate employment barriers, seek full inclusion of individuals with disabilities, and providing guidance on reasonable accommodation matters related to employees and applicants.
2. Forwarding requests for accommodation to the responsible Deciding Official.
3. Promoting equal opportunity and equal access for individuals with disabilities.

G. The Servicing Human Resources Office (SHRO) is responsible for:

1. Assisting the Deciding Official in determining essential functions of the job; coordinating the initial search and job analysis on available, vacant, funded positions, in the case of reassignment as an accommodation; and removing barriers from the hiring process.
2. Forwarding requests for accommodation to the responsible Deciding Official.
3. Training human resources specialists who are involved in the application process to recognize requests for reasonable accommodation and handle them in accordance with this PB.
4. Assisting and training Deciding Officials in processing reasonable accommodation requests, identifying effective accommodations, and ensuring appropriate timeframes are met by the Deciding Official.

5. Coordinating the Bureau's efforts to identify vacant, funded positions; facilitating communication with the SHRO in other Bureaus on reassignments as an accommodation; assisting Bureau management in clarifying employee qualifications; coordinating with the Human Resources Officer in making final qualification determinations with respect to vacant, funded positions within their Bureau; ensuring the smooth and timely processing of any reassignments into or out of the Bureau; and appropriately documenting the expanded search process in the case of reassignment as an accommodation.
6. Tracking all reasonable accommodation requests and collecting the [Information Tracking and Reporting Form](#) from the Deciding Official. The information tracked must be sufficient to allow the Bureau Equal Employment Opportunity (EEO) Office to prepare regular and ad-hoc reports, as needed for the EEOC to ensure compliance with these procedures and the Rehabilitation Act.
7. Maintaining all reasonable accommodation records for the length of the employee's tenure with DOI or for **5 years**, whichever is longer, and separate from other personnel records.

H. Deciding Officials are responsible for:

1. Consulting with appropriate officials, such as the SHRO, Bureau DPM, Office of the Solicitor Employment and Labor Law Unit attorney, DOI Medical Officer, or other individuals that can assist in determining appropriate and effective accommodations.
2. Determining, in consultation with the SHRO, the essential function(s) of a subordinate employee's position.
3. Ensuring that all regulatory requirements and specified timeframes are adhered to in managing reasonable accommodation requests.
4. Providing assistance to the SHRO in clarifying qualifications and coordinating reassignment efforts, with respect to requests for reassignment as an accommodation.
5. Protecting medical documents as required by the Rehabilitation Act, Pub. L. 93-112 and the Privacy Act, 5 U.S.C. § 552a (1974).
6. Participating in the interactive process.
7. Communicating with the requestor and providing timely updates regarding accommodation status including following through and making necessary

arrangements to ensure that the accommodation is provided in a timely manner.

8. Completing the [Information Tracking and Reporting Form](#) and submitting it to the SHRO within **10 business days** of the decision.
- I. Office of the Solicitor (SOL), Employment and Labor Law Unit (ELLU) is responsible for providing legal counsel to agency officials relevant to reasonable accommodation laws, rules, and regulations.
- J. Qualified employees and applicants are responsible for:
  1. Making requests for reasonable accommodation.
  2. Timely providing appropriate supporting medical and/or other documentation upon request.
  3. Participating in the interactive process.
- K. Other Responsive Department/Bureau/Office Officials (e.g., Information Technology, Budget, Facilities, etc.) are responsible for:
  1. Timely providing action when engaged by Deciding Officials on coordination and/or logistical arrangements necessary to implement accommodation solutions.
  2. Forwarding requests for accommodation to the responsible Deciding Official.

## **6. Definitions.**

- A. Arduous or Hazardous Position. A position that is dangerous or physically demanding to such a degree that an incumbent's medical and/or physical condition is necessarily an important consideration in determining the ability to perform safely and efficiently.
- B. Deciding Official. The immediate supervisor, manager, or other designated management official with the authority to act on requests for reasonable accommodations.
- C. Direct Threat. A significant risk of substantial harm to the health or safety of an individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a "direct threat" shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm.

- D. Disability. To be eligible for a reasonable accommodation, an individual must either have a physical or mental impairment that substantially limits a major life activity or must have a record (a history) of a physical or mental impairment that substantially limits a major life activity. An individual who is only regarded as having a disability is not entitled to reasonable accommodation. Determination of disability will comply with the requirements of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) which requires a broad interpretation of the term and generally does not require an extensive analysis.
- E. Essential Functions of a Job. Job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be “*essential*” if, among other things, the position exists specifically to perform that function, there are a limited number of other employees to whom performance of the function could be distributed, or the function is specialized, and the incumbent is hired based on their ability to perform it. Determination of the essential functions of a position must be conducted on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description (PD). The term “essential functions” does not include the marginal functions of the position.
- F. Equivalent Position. Positions that are the same (or similar) as the job currently held by the employee in terms of pay, grade level, career level, promotion potential, supervisory status, pay system, type of appointment (competitive/excepted service), and other relevant factors.
- G. Extenuating Circumstances. Factors that cannot reasonably have been anticipated or avoided in advance of the request for accommodation.
- H. Individual with a Disability. A person who has a physical or mental impairment that substantially limits one or more major life activities, or has a record of such impairment, or is regarded as having such impairment. Individuals who are solely regarded as having a disability, but do not have a disability, are not entitled to a reasonable accommodation.
- I. Interactive Process. The collaborative effort by which the Deciding Official and individual, who requests an accommodation, engage in dialogue to clarify the precise limitations resulting from the disability and identify potential reasonable accommodations that could overcome those limitations. The interactive process may include an analysis of the particular job to determine its purpose and essential functions; a consultation with the individual to ascertain the precise job-related limitations imposed by the individual’s disability and how those limitations could be overcome with a reasonable accommodation; an identification of potential accommodations and, in conjunction with the individual, an assessment of the effectiveness of those accommodations in enabling the individual to perform the essential functions of the job; the consideration of the preference of the individual; the selection and implementation of an accommodation that is appropriate for the individual and the employer; and whether the accommodation poses an undue hardship.

- J. Major Bodily Functions. Functions that include, but are not limited to, functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems.
- K. Major Life Activities. Activities that include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working, and the operation of a major bodily function.
- L. Medical Documentation. Documentation that explains the nature, severity, and duration of the disability; the impact of the disability on and off the job; the extent to which the impairment(s) limits the individual's ability to perform functions of the job; the estimated date of full or partial recovery; a medical professional's assessment of the individual's ability to successfully perform the essential functions of the position; and how the particular accommodation will assist the individual in performing the essential functions of the position.
- M. Non-Equivalent Position. Position that is not equal or similar to an employee's current position in terms of pay, grade level, career level, promotion potential, pay system, type of appointment (competitive/excepted service), or other relevant factors. An accommodation to a non-equivalent position (e.g., change-to-lower grade) should be granted only if the employee agrees to voluntarily accept the position.
- O. Physical or Mental Impairment. 1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as, but not limited to, neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory (including speech organs), genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or 2) any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- P. Qualified. The term "qualified," with respect to an individual with a disability, means that the individual satisfies the requisite skills, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.
- Q. Reasonable Accommodation. A modification or adjustment that enables a qualified individual with a disability to apply for a job, perform job duties, or enjoy benefits and privileges of employment. There are three categories of reasonable accommodations:
- a) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for a job;
  - b) modifications or adjustments to the work environment, or to the manner or

circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of the job; and

- c) modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.
- R. Reassignment. A last resort accommodation that, absent an undue hardship, must be provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to available, vacant, funded positions for which the employee qualifies. If the employee is qualified for the position, the employee will be reassigned to the job and will not have to compete. Informing an employee that they may apply for or otherwise compete for a position does not satisfy the obligation to reassign.
- S. Record of Such an Impairment. Having a history of or being classified (or misclassified) as having a mental or physical disability that substantially limits one or more major life activities.
- U. Undue Hardship. With respect to the provision of an accommodation, means significant difficulty or expense to the Department when considered in light of factors such as the Department's size, financial resources, and the nature and structure of the position. Accommodations that are extensive, substantial or disruptive may fall within the realm of undue hardship. Determination of undue hardship is always made on a case-by-case basis. In the case of a potential undue hardship, alternatives must be explored to determine if there are other effective accommodations that do not impose an undue hardship on the Department.

**7. Policy.** The DOI must provide reasonable accommodation to employees and applicants for employment who are qualified individuals with disabilities, unless doing so would cause undue hardship to the DOI, in accordance with applicable law.

**8. Process.** There are five possible phases of the reasonable accommodation process: 1) initiation of request, 2) consideration, 3) decision, 4) reconsideration, and 5) appeal. Throughout the process, the Deciding Official must communicate with the SHRO to ensure adherence to policy, timeframe requirements, and proper tracking.

### **A. Initiation of Request**

#### 1. Request for Accommodation

In the initiation of request phase, the employee or applicant, or someone acting on their behalf, submits a request for an accommodation either verbally or in writing to their supervisor or other designated Deciding Official. *The individual requesting accommodation does not need to use any particular words (e.g., "reasonable accommodation" or*

**“disability”), need not fill out any specific form, and need not make their request within any particular time frame.** A request for accommodation is triggered when an individual or someone acting on their behalf asks for an adjustment or a change at work or in the application process for a reason related to a medical condition. An individual need not have a particular accommodation in mind, or propose any specific accommodation, before making a request and may not be required to propose a specific accommodation. Any urgency associated with a request, should be made known to the Deciding Official (including what the urgency is attributed to). If an accommodation is requested by a family member, health professional, or other representative, a signed statement shall be provided by the employee, or applicant, stating the name of the representative and authorizing that individual to speak with agency officials and to engage in the interactive process on their behalf.

- a. An employee with a disability may submit their request for accommodation to any of the following officials: their supervisor, a management official in their chain of command, the SHRO, the DPM or any other management official.
- b. An applicant with a disability may submit their request to the agency contact identified in the vacancy announcement or any other individual designated to accept accommodation requests.

Upon receipt of a request for reasonable accommodation, the Deciding Official must acknowledge receipt of the request in writing no later than **5 business days** from receipt of the request.

Requests for reasonable accommodation received by an agency official other than the Deciding Official (usually the first-level supervisor), shall be forwarded to the Deciding Official and the SHRO as soon as possible but no later than **5 business days** from the date the request is received.

A verbal request for accommodation is deemed accepted when the request is received by a designated agency official, the Deciding Official, the SHRO, the DPM or a supervisor or manager within the requesting individual’s immediate command. Verbal requests may be documented for record-keeping purposes using the [Request Confirmation Form](#). The recipient of the verbal request must not wait until the request is submitted in writing to act on the request. Regardless of how the request for accommodation is made, ***once the employee requests accommodation the time limits outlined in [Table 1](#) begin. Failure to respond in accordance with the timeframes outlined in [Table 1](#) may result in a violation of the Rehabilitation Act.*** Additional information (including medical documentation) reasonably needed to process the accommodation request may be sought during the interactive process. A determination that the employee or applicant is a qualified individual with a disability is a prerequisite to an entitlement to a reasonable accommodation. This determination should be made by the Deciding Official, in consultation with the SHRO and ELLU, prior to addressing the specifics of the accommodation request.

## 2. Initiation of the Interactive Process

The Deciding Official, in consultation with the SHRO, will engage the requesting individual in the interactive process within **5 business days** from receipt of the request and throughout the process, as necessary, to determine the precise limitations of the disability as well as potential reasonable accommodations that could overcome those limitations. The parties should not wait for medical documentation, if determined necessary, to engage in the interactive process. It is equally incumbent on both requestor and Deciding Official, to actively engage in the interactive process in order to attain results. Ongoing communication is particularly important where the specific limitation, problem, or barrier is unclear, and an effective accommodation is not obvious; or the parties are considering alternative reasonable accommodations. In addition to the SHRO and DPM, resources such as the Office of Collaborative Action and Dispute Resolution ([CADR](#)) are available to help ensure productive communication.

The Deciding Official may, as part of the interactive process, offer alternative accommodations and discuss the effectiveness in enabling the individual to perform the essential functions of their position in removing the workplace barrier that is impeding the requestor. If an employee or applicant requests an accommodation that is not effective or would pose an undue hardship (e.g., removing an essential job function), the Deciding Official will continue the interactive process with the requestor and explore alternatives until either a reasonable accommodation is found, the requestor withdraws the request, or the Deciding Official determines that reasonable accommodation would pose an undue hardship. Deciding Officials may not require an individual with a disability to accept an accommodation that is neither needed nor requested. If, however, an employee or applicant needs and requests a reasonable accommodation, and refuses to accept an effective accommodation, the employee or applicant may not be qualified.

### 3. Determination Whether Medical Documentation Is Necessary

When the disability is not obvious, previously known, or the requestor has not already provided sufficient medical information to establish that they are a qualified individual with a disability, individuals may be asked, but may not be required, to provide medical documentation in support of a reasonable accommodation request. In such a case, the Deciding Official shall, in consultation with the SHRO, ask but not require, the individual to submit medical documentation. Any such request for medical documentation must be limited to determining the nature and scope of the individual's disability, their need for reasonable accommodation, and how the requested accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy the benefits and privileges of the workplace. Supplemental medical information may be requested if the information submitted by the requesting individual is insufficient for the purposes outlined above. Every attempt shall be made to avoid overly burdensome requests for medical documentation.

The medical documentation must be from a licensed medical professional, who is qualified to render a medical opinion on the individual's disability and the type of functional limitation it imposes. Appropriate medical professionals include, but are not limited to, medical doctors (including psychiatrists), psychologists, chiropractors, nurses, nurse practitioners, physician assistants, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals. The medical documentation must be signed by the medical professional,

be on the provider's letterhead and include 1) the requestor's name, 2) the nature, severity, and duration of the individual's impairment, 3) the activities that the impairment limits, 4) the extent to which the impairment limits the individual's ability to perform the activities, and 5) how the requested accommodation will assist the individual in performing the essential functions of the job or enjoy a benefit of the workplace, or in the case of an applicant, assist them with the application process. If insufficient information is provided for management to make an informed decision on the accommodation request, or no further information is submitted by the requestor, then a decision shall be made based on the information available.

Deciding Officials must consult with the SHRO to help determine if medical consultation by the DOI Medical Officer is necessary. Medical information does not automatically have to be reviewed by the DOI Medical Officer if it clearly explains the nature of the disability and/or the need for reasonable accommodation. If medical consultation is necessary, the Bureau SHRO, not the Deciding Official, will engage the DOI Medical Officer by preparing a memorandum detailing the necessary background information and identifying questions to be addressed by the DOI Medical Officer. If a medical consultation is determined to be necessary, it shall be at the requesting Bureau/Office's expense.

If an individual's disability or need for reasonable accommodation is not obvious, and the employee or applicant refuses to provide the medical documentation requested, they may not be entitled to a reasonable accommodation.

Only if, in response to the agency's initial request, the employee or applicant submits insufficient documentation from their own health care or other appropriate professional to demonstrate that they have a disability or need an accommodation, may the Deciding Official, in consultation with the SHRO or ELLU, request that the individual be examined by a healthcare professional of the Bureau's choice and at the Bureau's expense. Before doing so, the agency should explain to that individual why the submitted documentation is insufficient; identify the information that is needed; and allow the individual an opportunity to provide the information before offering a medical examination. Any such medical examination must be limited to determining the existence of a disability and/or the functional limitations that require an accommodation. Where a medical examination is offered, the Deciding Official must explain to the individual that, although submitting to the medical examination is voluntary, failure to participate in the medical examination may result in a finding that the individual is not entitled to a reasonable accommodation.

## **B. Consideration Phase:**

In the consideration phase, the Deciding Official determines whether to provide the accommodation requested, if any, or present an effective alternative accommodation. The Deciding Official shall seek advice from and collaborate with their SHRO throughout this phase. After a request from a qualified individual with a disability is received, the request is reviewed to determine if a reasonable and effective accommodation exists.

**When all the facts and circumstances known make it reasonably likely that an individual is entitled to a reasonable accommodation, but the accommodation**

**cannot be provided immediately, supervisors must confer with the individual and consider providing an interim accommodation, if it is possible to do so without imposing an undue hardship.** The interim accommodation allows the employee to perform some or all of the essential functions of the job. An interim accommodation may also be provided in cases where a delay is attributable to the need to obtain or evaluate medical documentation and the Deciding Official has not yet determined that the individual is entitled to an accommodation. In such case, the Deciding Official should notify the individual in writing that an interim accommodation is being provided on a temporary basis pending a decision on the accommodation request. Deciding Officials who approve an interim accommodation are responsible for ensuring that they do not take the place of a more permanent accommodation and that all necessary steps to secure the permanent accommodation are appropriately taken.

Generally, reassignment should only be considered *after* the deciding official has determined that there are no available and effective accommodations that will enable the employee to perform the essential functions of their current position, or all other available and effective reasonable accommodations would impose an undue hardship for the Department. This type of reasonable accommodation must be provided to an employee who, because of a disability, can no longer perform the essential functions of their current position, with or without reasonable accommodation, unless the employer can show that it would be an undue hardship. See section 16 for information on reassignment.

### **C. Decision Phase:**

In the decision phase, following consultation with the SHRO, the Deciding Official notifies the employee or applicant in writing of the decision to provide the requested accommodation, deny the requested accommodation or present an alternative accommodation. The decision memorandum shall be emailed, mailed or presented to the individual within **15 business days** of the Deciding Official's receipt of the reasonable accommodation request or sooner. If medical documentation is necessary, the Deciding Official will issue a written decision within **15 business days** from the date the official received or requested, the necessary medical documentation, whichever is later. The timeframes outlined in [section 12](#) may be extended if the employee fails to provide necessary medical documentation in a timely manner.

The Deciding Official is not obligated to provide the specific accommodation requested but instead has the right to offer an alternative accommodation that is effective in removing the workplace barrier that is impeding the individual with a disability. Employees and applicants are entitled to effective and reasonable accommodations, but not necessarily to the accommodation of their choice.

Deciding Officials must complete the [Information Tracking and Reporting Form](#) and submit it to the Bureau SHRO within **10 business days** of the decision and must attach to the form and all information received during the processing of the request.

Once approved and accepted, the accommodation should be implemented as soon as possible but no later than **20 business days** from the date of the decision (inclusive of any necessary logistics and/or coordination). If there is a delay in processing/implementing the reasonable accommodation, the Deciding Official, in collaboration with their SHRO, must investigate

whether there are temporary measures such as an interim accommodation that can be provided to assist the individual. The employee will be kept apprised of the status and reason(s) for the delay, including any extenuating circumstances that justify the delay and expected completion date every **10 business days**, throughout the decision phase of the process until fully implemented.

In instances that may require expedited processing of reasonable accommodation requests (e.g., to enable an applicant to apply for a job or to participate in a specific agency activity that is scheduled to occur shortly), the Deciding Official must make every effort to complete the process quickly.

If the individual has requested a type of reasonable accommodation that is likely to be needed on a repeated basis (e.g., sign language interpreting), the individual should not be required to submit a formal written request each time the accommodation is needed. Once the accommodation is approved, the individual may obtain subsequent accommodations by verbal or written notice to the Deciding Official or other designated official.

Denials of requests for reasonable accommodation must be in writing and explain the specific reasons the request was denied (e.g., why the medical documentation is inadequate to establish that the individual has a disability or needs an accommodation; why the requested accommodation would not be effective; why the accommodation would pose an undue hardship or endangers the health and safety of the individual or others). Prior to issuing a decision to deny an accommodation, the Deciding Official must consult with the SHRO and/or ELLU. Where a Deciding Official has denied a specific requested reasonable accommodation but offered to make a different accommodation in its place, the Deciding Official should explain both the reasons for the denial of the requested accommodation and the reasons they believe that the chosen accommodation will be effective. Denials must include information about the individual's right to file an EEO complaint as well as the right to file an appeal against an appealable adverse action with the Merit Systems Protection Board (MSPB) over which MSPB has jurisdiction and/or the right to file a negotiated grievance, as applicable and appropriate. An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation **must**:

- For an EEO complaint: Initiate contact with an EEO counselor pursuant to 29 CFR. § 1614.106 within 45 calendar days from receipt of the denial notification, regardless of whether the applicant or employee participates in an informal dispute resolution process.
- For a collective bargaining claim: File a written grievance in accordance with the provisions of the applicable Collective Bargaining Agreement.
- For an appeal over which the MSPB has jurisdiction: Initiate an appeal to the MSPB within 30 calendar days of the appealable action as defined in 5 CFR § 1201.3.

For prompt reconsideration of denied requests for reasonable accommodation, individuals are encouraged to use the informal dispute resolution processes outlined in D and E below.

#### **D. Reconsideration Phase:**

In the reconsideration phase, the employee or applicant who disagrees with the decision to deny the requested accommodation or who disagrees that an alternative accommodation is effective, may submit a written request for reconsideration of the Deciding Official's

decision within **20 business days** from receipt of the written denial notification or from receipt of the offer of an alternative accommodation. Requests for reconsideration must include the reason for the request for reconsideration and any new information and/or documents in support of the request, along with the specific form of reasonable accommodation requested.

The Deciding Official's written response to the request for reconsideration shall be provided no more than **10 business days** from receipt of the request or receipt of additional information. Failure to provide additional documentation at the time of the request could impact the reconsideration decision and outcome. Invoking the reconsideration process does not toll or extend the mandatory time limits for initiating an EEO complaint, an MSPB appeal, or other grievance procedures.

#### **E. Appeal Phase:**

If reconsideration does not result in a reversal of the initial decision, the employee or applicant may appeal the decision in writing to the next level of management within **10 business days** from the date of the reconsideration decision. The employee or applicant must provide all previously submitted documents and decision memorandum. Appeal requests must include the reason for the appeal request and any new information and/or documents in support of the request, along with the specific form of reasonable accommodation requested. The employee or applicant may provide additional information in support of the appeal.

The written decision on the appeal shall be provided no more than **10 business days** from receipt of the appeal or receipt of additional information. ***There is no higher level of appeal of this phase provided for in these procedures.*** Invoking the reconsideration or appeal process does not toll or extend the mandatory time limits for initiating an EEO complaint, MSPB appeal, or other grievance procedures.

**9. Special Considerations for Medical Documents.** Medical documents must be protected as required by the Rehabilitation Act and the Privacy Act. It is expected that the Deciding Official, SHRO, and ELLU will have access to medical documents necessary to consider the reasonable accommodation request. At the request of the Deciding Official, other individuals, such as the DOI Medical Officer, may be granted access to medical information if those individuals need access to the information to provide guidance or consultative services to the Deciding Official.

Where medical information is disclosed, those individuals to whom the information was released shall be informed that the information is confidential and covered by various federal laws and executive orders.

While medical documents, when necessary, are expected to be part of the process, once received, they must be separated from other documents, placed in a sealed envelope marked " Rehabilitation Act/Privacy Act documents," and maintained in a secure storage separate from the official personnel files maintained by the agency.

All requests for, and provision of, reasonable accommodations and associated documents are confidential and must be appropriately protected from disclosure in accordance with applicable laws and regulations. Individuals who have access to information necessary to make a decisions

about whether to grant a requested accommodation may not disclose this information except as follows:

- Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);
- First aid and safety personnel may be told if the disability might require emergency treatment;
- Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;
- The information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers; and
- Agency EEO Officials may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation requests.

Where medical information is disclosed to any of the foregoing officials, the agency must inform those individuals about the confidentiality requirements associated with the information.

**10. Alternative Dispute Resolution.** In addition to the SHRO and DPM, resources such as [CADR](#) are available to help ensure productive communication. Alternative Dispute Resolution (ADR) may be utilized throughout the reasonable accommodation process, to include the reconsideration and appeal phases. In the event an employee opts for ADR, the timeframes specified in [Table 1](#) are suspended until the ADR process has concluded.

**11. Decision-Making Authority.** Once an accommodation has been granted by the Deciding Official, that decision is considered to be made on behalf of the agency. If, in the future, there is a change in the accommodated individual's chain of command, the accommodation will generally remain in place. A new supervisor in the accommodated individual's chain of command cannot request that the individual resubmit their request for accommodation for approval.

Supervisors should periodically assess the effectiveness of the provided accommodation. Deciding Officials should encourage employees to notify them if an accommodation is no longer effective (e.g., changes in the employee's limitations, changes to the essential duties, workplace equipment, etc.). If an accommodation is no longer effective, the employee and Deciding Official should promptly reengage in the interactive process. Such notice by the requestor retriggers the timeframes and obligations outlined in this policy and may necessitate additional documentation.

**12. Time Limits.** Every effort must be made to ensure that the time limits outlined in this policy (See [Table 1](#)) are strictly adhered to. Any deviation from these time limits must be justifiable, clearly explained, and noted. Moreover, the Deciding Official must notify the individual of the reason for the delay, including any extenuating circumstances that justify the delay.

**Table 1 – Time Limits**

<b>Action</b>	<b>Due Date*</b>
Acknowledging receipt of a verbal or written request for accommodation	5 business days from receipt of the request by the Deciding Official
Forwarding reasonable accommodation requests to the Deciding Official and the SHRO if received by another agency official	5 business days from receipt of the request
Engaging in the Interactive Process	5 business days from receipt of the request
Decision memo provided to requestor when no medical documents are required	15 business days from receipt of request by Deciding Official
Decision memo provided to requestor when medical documents are required	15 business days from date sufficient medical documentation is received
Information Tracking and Reporting form provided from the Deciding Official to the SHRO	10 business days from the decision
Implementation of approved accommodation	20 business days from decision
Notification of delayed implementation of an approved accommodation	Every 10 business days until fully implemented
Individual request for reconsideration of decision	20 business days from receipt of written denial notification
Decision on a request for reconsideration	10 business days from receipt of the request
Individual appeal of decision on requested reconsideration	10 business days from reconsideration decision notification
Decision on an appeal of a reconsideration decision	10 business days from receipt of request

*\*In the event an employee elects to use ADR, the timeframes for responding to a request for accommodation, processing a request for reconsideration of reasonable accommodation decision, and processing reasonable accommodation appeals are suspended until the ADR process has concluded.*

*The timeframe outlined above excludes the time spent waiting for necessary medical information from the requestor's health care provider. Medical documentation should generally be provided within **15 calendar days**, unless an extension is requested and granted. Medical documentation not received in a timely manner may result in a decision based upon existing information.*

Notwithstanding the timeframes prescribed by these procedures, some accommodations can be provided in less time. In instances where reasonable accommodations can be provided in less time than prescribed in these procedures, Bureaus shall make every effort to do so. Failure to provide an accommodation in a prompt manner may result in a violation of the Rehabilitation Act.

**13. Types of Reasonable Accommodation.** Reasonable accommodations must be effective and reasonable based on the individualized needs of the requestor. The Deciding Official should consider a broad range of options to appropriately accommodate the requestor. Employees and applicants are entitled to effective and reasonable accommodations, but not necessarily to the accommodation of their choice. Accommodations shall not include changing the essential functions of a job. Accommodations shall not expose an employee, co-worker or the public to an undue risk of harm and in some cases, may require a direct threat analysis if the employee is serving in an arduous or hazardous position (see [section 15](#)).

The need for accommodation can be reduced if Bureaus implement practices that reduce barriers to effective workplace practices and job design. Bureaus should consider establishing a central pool of readers and interpreters and implementing funding mechanisms that will avoid charging individual offices for the cost of accommodations. Bureaus are expected to limit impediments that may cause unnecessary delay in providing reasonable accommodation, by reviewing and modifying, in advance of a specific request, policies that might affect the Bureau's ability to respond promptly to requests for reasonable accommodation (e.g., purchasing or leasing equipment; hiring of, or contracting for, readers, interpreters, or other assistants; flexibility to approve leave or to restructure work schedules).

Expense may be a factor when considering the reasonableness of a requested accommodation. For example, if both a special piece of hardware and a specialized software program can provide a reasonable and effective accommodation, the less expensive alternative will normally be provided.

Examples of reasonable accommodation include, but are not limited to:

- Making existing facilities readily accessible to and usable by a person with a disability
- Job restructuring (does not include changing the essential duties of the position), including part-time or modified work schedules
- Acquisition or modification of equipment or devices
- Appropriate adjustment or modification of examinations (does not include changing examination questions)
- Provision of readers and interpreters
- Telework (and other work schedule flexibilities)
- Accommodations for meetings, conferences, training and seminars (e.g., interpreters, specific seating arrangements, tables that accommodate wheelchairs)
- Reassignment (as a last resort)

Examples of accommodation requests that would **not** be considered reasonable include, but are not limited to:

- Eliminating essential job functions (i.e., fundamental duties of the position)

- Lowering standards (qualitative or quantitative) that are applied uniformly to employees with and without disabilities (though a reasonable accommodation may be provided to enable an employee with a disability to meet the standard)
- Creating a new job or position
- Allowing or ignoring inappropriate conduct
- Providing personal use items such as prosthetic limbs, wheelchairs, prescription eyeglasses, personal hearing aids, or similar devices, which are needed to accomplish daily activities both on and off the job

**14. Undue Hardship Determinations.** An undue hardship occurs if the requested accommodation causes significant difficulty or expense for the Department. If a particular accommodation causes undue hardship, DOI does not have to provide it. Determination of undue hardship is always made on a case-by-case basis. This determination will include consideration of such factors as: 1) nature and cost of the accommodation; 2) overall size of the program with respect to the number of employees, number and type of facilities, and size of budget; and 3) the type of operation, including composition and structure of the workforce.

When considering whether an accommodation presents an undue hardship, the hardship must exist for the *Department*—not, just the *Bureau*. If the Deciding Official believes an undue hardship exists, they shall contact the SHRO who, in turn, shall coordinate with the Department’s Reasonable Accommodation Program Manager, who is responsible for coordinating requests for undue hardship at the Department level.

The Bureau shall submit a justification in writing outlining the undue hardship through the Department’s Reasonable Accommodation Program Manager to a deciding committee that includes the DAS-HCD/CHCO; the Director, ODICR; and the Director, Financial Management who will determine if the undue hardship exists at the *Department* level. A representative from ELLU shall advise the committee and review the decision prior to the committee issuing a final determination.

**15. Direct Threat.** A direct threat analysis must be conducted by the Deciding Official whenever there is a reasonable belief, based on objective evidence that an employee’s (or applicant’s) medical condition results in a risk of substantial harm to the employee, their co-workers or to the public. Deciding Officials performing a direct threat analysis must consult with ELLU and the DOI Medical Officer through the SHRO.

Objective evidence is reliable information, either directly observed or provided by a third party, such as a physician, that an employee may have or has a medical condition that will result in a direct threat. Direct threat determinations must be based on an individualized assessment of the individual’s present ability to safely perform the essential functions of the job, considering a reasonable medical judgment relying on the most current medical knowledge and/or best available objective evidence. It should *not* be based on subjective perceptions, irrational fears, stereotypical or patronizing assumptions and must consider potential reasonable accommodations. Generalized fears about risks from the employment environment such as exacerbation of the disability caused by stress, cannot be used to disqualify an individual with a disability.

If there is reasonable belief that an employee’s medical condition or a reasonable

accommodation exposes the employee or others to significant risk of harm, the following criteria shall be included and documented in the analysis: 1) the duration of the risk, 2) the nature and severity of the potential harm, 3) the likelihood that the potential harm will occur, and 4) the imminence of the potential harm. It is highly recommended that Bureau/Office Safety and Health professionals be included in these deliberations.

Relevant evidence may include input from the individual with a disability, the experience of the individual with a disability in previous similar positions, and opinions of medical doctors, rehabilitation counselors, or physical therapists who have expertise in the disability involved and/or direct knowledge of the individual with the disability.

If performing the particular functions of a job results in a significant risk of substantial harm to the individual or to others, the employee shall not continue to perform their duties unless a reasonable accommodation that would not cause an undue hardship can decrease the risk of harm to an acceptable level.

A direct threat analysis may be necessary for positions that are covered under U.S. Office of Personnel Management approved medical standards, including, but not limited to, law enforcement officers, firefighters, inspectors, divers, tower climbers, and large vessel crewmembers. Other positions where a direct threat analysis may be necessary include positions that have significant physical requirements. Examples of such positions include, but are not limited to, those that require working in remote areas (with limited access to medical care), hiking, driving vehicles and equipment, long and/or unpredictable duty hours, and/or exposure to extreme environmental conditions. This latter category of positions includes, but is not limited to, those that require outdoor work, which includes positions such as field biologists, trail maintenance workers, interpretive rangers, and hydrologic technicians.

If an individual poses a direct threat as a result of a disability, the Deciding Official must determine whether a reasonable accommodation would either eliminate the risk or reduce the risk to an acceptable level. If no accommodation exists that would either eliminate or reduce the risk to an acceptable level, the Deciding Official may refuse to hire an applicant or may seek reassignment as a last resort accommodation for an employee whose disability poses a direct threat. A Deciding Official, however, is not permitted to deny an employment opportunity to an individual with a disability merely because of a slightly increased risk. The risk can only be considered when it poses a *significant* risk, i.e., high probability of substantial harm - a speculative or remote risk is insufficient to determine a direct threat.

**16. Reassignment as a Last Resort.** In certain situations, qualified employees with disabilities may be eligible for job reassignment (reassignment) as a last resort form of accommodation. Reassignments should only be considered after it has been determined that:

- There are no available and effective accommodations that will enable the employee to perform the essential functions of their current position, or
- All other available and effective reasonable accommodations would impose an undue hardship for the Department.
- Reassignment may also be a reasonable accommodation when both the employer and employee agree that this is more appropriate than accommodation in the present job.

**Reassignment must be considered even if not specifically requested.** Reassignment to an available, vacant, funded position **must** be provided, absent an undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position held, with or without a reasonable accommodation. Reassignment is not available to job applicants – only to current employees.

Before considering reassignment, the Deciding Official and Bureau must first consider those reasonable (e.g., feasible and effective) accommodations that would enable an employee to remain in their current position. An individual with a disability is not required to accept, and DOI is not required to offer, a reassignment if there is an effective accommodation that would allow the individual to remain in their current job without causing an undue hardship.

Reassignment may be made only to an available, vacant, funded position for which the employee is *qualified*. This may include both *equivalent* positions (i.e., same grade with no further promotion potential) and *non-equivalent* positions (i.e., lower graded position with promotion potential no higher than full performance level (FPL) of employee’s current position) based on the employee’s stated preferences. The term “vacant, funded position” includes positions that are *actually* vacant, as well as positions that Bureau management or the SHRO reasonably anticipate will become vacant and funded in a reasonable period of time—generally, no more than **30 calendar days**.

Reassignment must be made in accordance with the DOI Merit Promotion Plan and 5 CFR § 335. Reassignment must not require competitive procedures, (i.e., must not be made to a position with a higher FPL than previously held on a permanent basis in the competitive service).

Prior to initiating any reassignment searches, the SHRO shall review the employee’s current PD and obtain an updated resume from the employee (including relevant education). The SHRO will also provide the employee with the [Employee Questionnaire for Reassignment](#) (“Questionnaire”) to complete. Employees are encouraged to complete and return the Questionnaire to the SHRO within **7 business days** of receipt. The questionnaire identifies relevant information that the SHRO shall use to facilitate acceptable searches for available, vacant, funded position(s) based on the employee’s stated preferences. The [Checklist - HR Search for Vacant Position\(s\)](#) (“Checklist”) documents the SHRO searches and must be completed by the SHRO to ensure all appropriate actions have been completed and are properly documented.

- A. Conducting an Initial Search:** The initial **30 calendar day** search, conducted by the SHRO, should focus first on equivalent positions, and then, depending on the parameters outlined on the Questionnaire, any non-equivalent positions within the employee’s current Bureau. Following the initial search period, the SHRO will review all positions identified during the search. The order of consideration is first the most comparable position to that of the employee’s current position (i.e., first, an equivalent position in the employee’s current geographic area if available; if not, next would be an equivalent position(s) outside the employee’s current geographic area if available; if not, and if acceptable to the employee any nonequivalent position within or outside of the current geographic area). If more than one position is identified, the SHRO shall confer with the employee regarding their preference.
- B. Conducting an Expanded Search:** Only if the initial search yields no position(s), should an expanded search be conducted outside of the employee’s current Bureau. The

expanded **30 calendar day** search should focus first on equivalent positions outside of the employee's current Bureau, and then, depending on the parameters outlined on the Questionnaire, any non-equivalent positions outside of the employee's current Bureau. Following the expanded search period, the SHRO will review all positions identified during the search. The order of consideration is first the most comparable position to that of the employee's current position (i.e., first, an equivalent position in the employee's current geographic area if available; if not, next would be an equivalent position(s) outside the employee's current geographic area if available; if not, and if acceptable to the employee any nonequivalent position within or outside of the current geographic area). If a position is identified, the gaining SHRO and the employee's current SHRO should work together to determine qualifications. If more than one position is identified, the SHRO shall confer with the employee regarding their preference.

Employees are not required to compete for a position identified as part of any reassignment efforts, except in the case of a promotion; however, the employee must be qualified for and able to perform, either with or without reasonable accommodation, the essential functions of the vacant, funded position that is available for reassignment. Any offer of placement in a vacant, funded position will be made in writing and shall address the unique circumstances of the particular accommodation request. In addition, the offer must specify the consequences of declining an offer of reassignment. The employee shall respond to an offer of reassignment within **10 business days** of receipt. Declination of an offer of reassignment will cancel any further consideration of reassignment as a reasonable accommodation.

Reassignment must be considered as an accommodation prior to terminating or removing an individual that cannot be accommodated. If an employee needs a reasonable accommodation to perform an essential function or to eliminate a direct threat and refuses to accept an effective accommodation (including reassignment), the employee may not be qualified to remain in the position and may be subject to removal or termination. DOI is considered to have fulfilled its obligation to consider reassignment if the employee declines an offer of Reassignment OR if the searches have concluded without identifying any potential positions.

**DOI RAB:** The DOI RAB may be initiated by the SHRO conducting the expanded search in the case of Inter-Bureau conflict regarding reassignment but only after ELLU has been consulted on the conflict. Every effort must be made to resolve placement conflicts prior to requesting a DOI RAB referral. If a vacant, funded position is identified in another Bureau and the Bureau SHROs, along with management, are unable to reach agreement regarding if or where the employee will be reassigned; the vacant, funded position ***must be placed on hold and may not be filled until a final determination is made by the DOI RAB.***

SHRO requests for a referral to the DOI RAB must be made through the Department Reasonable Accommodation Program Manager and must include a memorandum from each of the involved SHROs and addressed to the Reasonable Accommodation Program Manager outlining/providing:

- The reason the employee's Bureau cannot provide an effective reasonable accommodation as well as all remedies and solutions the Bureau explored
- A statement from the Bureau(s) where vacant, funded position exists and the reasons why reassignment of the employee to that position is not appropriate or feasible
- A listing of dates and milestones pertaining to the request for reasonable

accommodation

- Documentation of the initial and, if appropriate, expanded search conducted;
- A copy of the employee's current PD
- A list of the vacant, funded position(s) for which the SHRO believes the employee is qualified
- The employee's current resume, most recent SF-50 and performance evaluation
- Any other pertinent information, (e.g., medical officer correspondence)
- A copy of the PD of any appropriate, vacant, funded position(s) identified by the employee's SHRO

The Department Reasonable Accommodation Program Manager will review the request to ensure that it includes the necessary information and documentation and will submit the request to the DOI RAB to make an appropriate recommendation. Incomplete or insufficient requests will be returned to the Bureau SHROs. ***If the Bureau in which the vacant, funded position is located fails to cooperate in the preparation of appropriate memorandum requesting referral to the RAB, that Bureau will be deemed to concur with the statement of the employee's Bureau.***

Once all required information and documentation is received, the Deputy Chief Human Capital Officer (DCHCO)/Director, Office of Human Capital (OHC) shall convene the DOI RAB. The DOI RAB shall consist of the following members: the DCHCO/OHC Director, a representative from CADR, a representative from ELLU, and a representative from ODICR. The DOI RAB shall convene within **10 business days** of receipt of all required information and documentation. Within **5 business days** of convening, the DOI RAB shall make a recommendation to the CHCO/DAS-HCD. The CHCO/DAS-HCD shall make the determination as to where the employee should be reassigned, based on the recommendation of the DOI RAB within **5 business days** of receipt of the RAB's recommendation. The CHCO/DAS-HCD may delegate the authority to make this decision. ***The decision of the CHCO/DAS-HCD is final and binding and there is no right to reconsideration or appeal.***

**17. Implementation.** Every attempt must be made to implement an approved reasonable accommodation in as short of a time as possible barring any extenuating circumstances. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. These may include, but are not limited to, situations in which equipment is on back order, the vendor typically used by the organization has unexpectedly gone out of business, or the accommodation requires restructuring facilities. In such case, an interim accommodation as explained in section 8 may be considered temporarily until such time that the permanent accommodation can be implemented.

**18. Monitoring Accommodations.** An important part of the reasonable accommodation process is monitoring accommodations after they are in place. Because changes occur, supervisors may need to periodically check the effectiveness of implemented accommodations. For example, an accommodation may stop being effective if there are changes in the employee's limitations, workplace equipment, or the work itself. The most effective way for supervisors to monitor accommodations is to maintain interactive communication with the employee.

**19. Recertification of Reasonable Accommodations Granted.** Supervisors generally cannot require that an individual with a permanent or long-term disability recertify the need for an accommodation that has been granted. A request to recertify should only be made in *limited* circumstances and *only* if there is a valid reason, e.g., if the individual's medical condition changes or if a change in circumstances creates a new or unexpected undue hardship. The supervisor must consult with the SHRO prior to requesting recertification. If an individual with a temporary limitation or disability was granted a temporary accommodation and the communication with the individual clearly stated that the accommodation was temporary, a request for recertification is permissible.

**20. Information Tracking and Reporting.** The SHRO is responsible for maintaining records that may be used to determine compliance with the nondiscrimination and affirmative action requirements imposed under Section 501 of the Rehabilitation Act of 1973, and to make such records available to the Department and/or the Equal Employment Opportunity Commission (EEOC), upon request, to ensure compliance with these Procedures and the Rehabilitation Act. Individuals may contact their SHRO or Deciding Official for the status of their accommodation request.

**21. Resources.** The resources outlined below are not all inclusive, but rather are some of the many resources available relative to assistive technology and accessibility. The SHRO and/or DPM may be aware of additional resources.

- a. **[Job Accommodation Network \(JAN\)](#)**  
JAN is funded by a contract from the U.S. Department of Labor, Office of Disability Employment Policy (ODEP) and serves as the leading source of free, expert, and confidential guidance on workplace accommodations and disability employment issues.
- b. **[Registry of Interpreters for the Deaf, Inc. \(RID\)](#)**  
RID provides a searchable database for interpretive and transliteration services.
- c. **[FCC Telecommunications Relay Services \(TRS\)](#)**  
Allows persons who are deaf, hard of hearing, deafblind, or have speech disabilities to communicate by telephone in a manner that is functionally equivalent to telephone services used by persons without such disabilities.
- d. **[RESNA Technical Assistance Project](#)**  
RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities.
- e. **[EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#)**  
Clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship.
- f. **[GSA Schedule, Professional Services-Language Services](#)**

Translation and interpretation services include services to facilitate communications with and by persons who are visually or hearing impaired.

**22. Labor-Management Obligations.** Bureaus/Offices are reminded to fulfill their labor-management obligations, as appropriate, in implementing the requirements set forth in this PB.

**23. Inquiries.** Any Department employee or employee representative seeking further information concerning this policy may contact their SHRO. SHROs may contact the Department's Office of Human Capital concerning questions related to this policy.

Jennifer A. Ackerman

**JENNIFER  
ACKERMAN**

Digitally signed by  
JENNIFER ACKERMAN  
Date: 2022.10.24 09:07:54  
-04'00'

Director, Office of Human Capital  
Deputy Chief Human Capital Officer

Attachments

**REASONABLE ACCOMMODATION  
REQUEST CONFIRMATION FORM**

**This form is only used to track reasonable accommodation requests.**

**SECTION 1.**

Applicant or Employee Name: \_\_\_\_\_

Applicant or Employee Telephone: \_\_\_\_\_

Applicant or Employee Email: \_\_\_\_\_

Today's Date: \_\_\_\_\_ Date of Request: \_\_\_\_\_

**SECTION 2.**

Accommodation Requested. *(Be as specific as possible, e.g., adaptive equipment, reader, interpreter)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 3.**

Reason for Request.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If accommodation request is time sensitive, please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Applicant Requests:** Must be sent to the agency contact identified in the vacancy announcement.

**Employees Requests:** Must be sent to your supervisor, a management official in your chain of command, the Servicing Human Resources Office (SHRO), the Disability Program Manager (DPM) or any other management official.

*Additional information (including medical documentation) reasonably needed to process the accommodation request may be sought during the interactive process. No additional information should be captured on the Request Confirmation form.*

### INFORMATION TRACKING AND REPORTING FORM

This form is to be completed by the Deciding Official and submitted it to the Bureau SHRO within **10 business days** of the decision along with all information received during the processing of the reasonable accommodation request.

1. Name of individual requesting reasonable accommodation: \_\_\_\_\_

2. Office of requesting individual: \_\_\_\_\_

3. Date reasonable accommodation request received: \_\_\_\_\_

4. Who received request: \_\_\_\_\_

5. Job held by employee or in the case of an applicant request, job desired in requesting reasonable accommodation (including occupational series, grade level, and office):  
\_\_\_\_\_

6. Reasonable accommodation needed for: (check one)

\_\_\_\_\_ modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for a job

\_\_\_\_\_ modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job or accessing the work environment

\_\_\_\_\_ modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities

7. Reasonable accommodation requested (e.g., adaptive equipment, reader or interpreter, modified work schedule or removal of architectural barrier):  
\_\_\_\_\_  
\_\_\_\_\_

8. Was the request for reasonable accommodation(s) requested for a permanent disability or for a temporary disability or limitation? \_\_\_\_\_

9. Date reasonable accommodation request sent to Deciding Official: \_\_\_\_\_

10. Name of Deciding Official: \_\_\_\_\_

11. The requestor does \_\_\_\_\_ OR does not \_\_\_\_\_ have a disability as defined by the Rehabilitation Act; OR no disability determination made \_\_\_\_\_ (check one).

12. Reasonable accommodation: (check one)

\_\_\_\_\_ Approved

\_\_\_\_\_ Approved through \_\_\_\_\_ (ONLY for temporary disability or limitation)

\_\_\_\_\_ Denied (attach a copy of the written denial which must explain the basis of denial)

\_\_\_\_\_ Offered an alternative accommodation (attach a detailed explanation)

13. Date reasonable accommodation approved or denied: \_\_\_\_\_

14. Describe the reasonable accommodation provided (if different from what was requested):  
\_\_\_\_\_

15. Requestor accepted \_\_\_\_\_ alternative accommodation(s) offered OR rejected some or all  
\_\_\_\_\_ alternative accommodation(s) offered (check one). Reason(s) provided for rejection:  
\_\_\_\_\_

16. Date reasonable accommodation implemented: \_\_\_\_\_

17. If time frames outlined in the Reasonable Accommodation Procedures were not met, explain why: \_\_\_\_\_  
\_\_\_\_\_

18. Was medical information required to process this request? If yes, explain why. List the documents submitted on behalf of the individual: \_\_\_\_\_  
\_\_\_\_\_

19. Was a direct threat analysis included in the review of this request? If yes, who was involved and list the documentation: \_\_\_\_\_  
\_\_\_\_\_

20. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations (e.g., Job Accommodation Network, disability organization, Disability Program Manager): \_\_\_\_\_  
\_\_\_\_\_

21. Servicing Human Resources Office (SHRO): \_\_\_\_\_  
\_\_\_\_\_

22. Comments: \_\_\_\_\_  
\_\_\_\_\_

**Deciding Official's Signature:** \_\_\_\_\_

Date: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

## EMPLOYEE QUESTIONNAIRE FOR REASSIGNMENT

This Employee Questionnaire for Reassignment (Questionnaire) must be returned to your Servicing Human Resources Office (SHRO) within **7 business days of receipt** and is used to document your preference(s) on parameters for conducting a search for vacant position(s). Your SHRO is available to provide assistance with completing the form, if needed.

You are being considered for possible reassignment as a form of last resort accommodation as discussed on [insert date]. The initial search will be limited to available, vacant, funded positions within the current Bureau and those that are anticipated to become vacant within a reasonable period of time (generally no more than 30 business days) and will seek the most comparable position available in terms of pay, grade/career level, promotion potential, status, etc., and for which you are qualified. An expanded search for positions outside of the current Bureau but within the Department will not be conducted if a position is identified in the initial search OR if you indicate you are not interested in an expanded search. Depending on your responses indicated in this Questionnaire, positions may include equivalent and nonequivalent positions both within and outside of your current geographic area.

If you need a reasonable accommodation to perform an essential function of your position or to eliminate a direct threat and you decline an effective accommodation (including an offer of reassignment), you may not be qualified to remain in your position and may be subject to removal or termination. DOI is considered to have fulfilled its obligation in this case or if the search has concluded without identifying any potential positions.

To enable an effective search to be conducted, you must answer the following questions. Your answers to these questions will determine the specific parameters of the search. If you answer "no" to any question, or fail to answer any question, a search for vacant, funded positions in that category will not be conducted and you will have waived your right to consideration for such positions as a form of reasonable accommodation. Therefore, you are *strongly* encouraged to complete this form in its entirety.

Please remember that you may choose to change or update your answers and/or choices after the job search starts, however any changes or updates will not extend the job search period. To make any changes or updates, please submit a new Questionnaire. Please note that any relocation is at your own expense.

To assist you in making informed decisions, any offer of a vacant, funded position will be made in writing and will specify the consequences of rejecting the offer.

**Employee Name:** \_\_\_\_\_

### Initial Search

30-calendar day search period

1. Will you accept an **equivalent** position in your current Bureau in your current geographical area?

Yes       No

2. Will you accept an **equivalent** position in your current Bureau but outside of your current geographical area?

Yes       No

3. Will you accept a **nonequivalent** position (e.g., not equal to your current position in terms of pay, grade level, career level, promotion potential, pay system, type of appointment (competitive/excepted service) in your current Bureau within your current geographical area?

Yes       No

4. Will you accept a **nonequivalent** position (e.g., not equal to your current position in terms of pay, grade level, career level, promotion potential, pay system, type of appointment (competitive/excepted service) in your current Bureau but outside of your current geographical area?

Yes       No

If you answered “Yes” to questions 3 or 4 above and you want to specify nonequivalent conditions such as the lowest acceptable grade, no temporary appointments, etc., please specify here. Otherwise, if you answered “Yes”, you will be considered and may be offered any nonequivalent position identified.

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### Extended Search

30-calendar day search period

*An extended search is only performed if the initial search did not yield any positions within the search parameters outlined in questions 1 - 4 above. If you decline a reassignment offer for a position located in the initial search, an extended search will not be performed.*

5. Will you accept an **equivalent** position outside of your current Bureau but in your current geographical area?

Yes       No

6. Will you accept an **equivalent** position outside of your current Bureau and outside of your current geographical area?

Yes       No

7. Will you accept a **nonequivalent** position (e.g., not equal to your current position in terms of pay, grade level, career level, promotion potential, pay system, type of appointment (competitive/excepted service) outside of your current Bureau but in your current geographical area?

Yes       No

8. Will you accept a **nonequivalent** position (e.g., not equal to your current position in terms of pay, grade level, career level, promotion potential, pay system, type of appointment (competitive/excepted service) outside of your current Bureau and outside of your current geographical area?

If you answered “Yes” to question 7 or 8 above, please state any geographic areas to which you *would not* consider relocating to accept a vacant position. Otherwise, if you answered “Yes”, you will be considered and may be offered any nonequivalent position identified in any geographic area.

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If you fail to respond to the questions above, the search for a vacant, funded position will be limited to and initial search for **equivalent** positions within the current Bureau and current geographic area.

My signature below acknowledges my receipt and review of the parameters for conducting a search for reassignment opportunities as part of the reasonable accommodation process.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Current Supervisor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
SHRO Signature

\_\_\_\_\_  
Date

## CHECKLIST - HR SEARCH FOR VACANT POSITION(S)

Servicing Human Resources Office (SHRO) shall use this checklist to document reasonable accommodation reassignment search efforts.

**1. Employee's Name:** \_\_\_\_\_

**2. Employee's Current Position:** \_\_\_\_\_

Bureau/Office: \_\_\_\_\_

Title of Position: \_\_\_\_\_

Pay Plan, Series: \_\_\_\_\_

Grade level: \_\_\_\_\_

Promotion Potential: \_\_\_\_\_

Location (City/State): \_\_\_\_\_

Work Schedule: \_\_\_\_\_

Other Factors (if any): \_\_\_\_\_

**3. Date(s) Interactive Discussion with Employee** \_\_\_\_\_

\_\_\_\_\_ Discuss employee's qualifications for other positions. Ask employee for updated resume/application, detailing all qualifying experience, including volunteer work, and education (attach copy of the resume/application if provided by employee). Employee should list prior positions held (both government and non-government, paid and unpaid jobs).

\_\_\_\_\_ Discuss search options with employee (document employee choices for geographic area and non-equivalent positions); attach completed [Employee Questionnaire for Reassignment](#).

List other qualifying education: \_\_\_\_\_

\_\_\_\_\_

List all series and grades/or career levels for which employee is qualified, and/or which employee will consider: \_\_\_\_\_

\_\_\_\_\_

**4. Initial Search (within the current Bureau)**

Date initial search began: \_\_\_\_\_

For each option, search first for open vacancy announcements; if none, contact Bureau SHRO for pending vacancies within the employee's current Bureau. Place a check mark in

the appropriate blocks below for each category in which a search for vacant, funded positions was conducted.

For each vacant, funded position found, that is deemed viable as a potential reassignment opportunity, list the Bureau, pay plan, series, grade level, title, location, promotion potential, and work schedule. Note the contact person in the Bureau in which the position is located and whether there were any limitations on the position (e.g., funding, FTE, etc.). State whether the employee is a qualified employee with a disability (i.e., can perform the essential functions of the position with or without a reasonable accommodation).

\_\_\_\_ Equivalent positions in current Bureau in the current geographic area.

Position(s) found? No  Yes

If Yes, please list: \_\_\_\_\_

\_\_\_\_ Equivalent positions in current Bureau outside of the current geographic area.

Position(s) found? No  Yes

If Yes, please list: \_\_\_\_\_

\_\_\_\_ Non-equivalent positions in current Bureau inside or outside the current geographic area.

Position(s) found? No  Yes

If Yes, please list: \_\_\_\_\_

### 5. Expanded Search (Outside the Current Bureau but within the Department)

Date expanded search began: \_\_\_\_\_

For each option, search first for open vacancy announcements; if none, contact Bureau SHROs for pending vacancies outside of the employee's current Bureau. Place a check mark in the appropriate blocks below for each category in which a search for vacant, funded positions was conducted.

For each vacant, funded position found, that is deemed viable as a potential reassignment opportunity, list the Bureau, pay plan, series, grade level, title, location, promotion potential, and work schedule. Note the contact person in the Bureau in which the position is located and whether there were any limitations on the position (e.g., funding, FTE, etc.). State whether the employee is a qualified employee with a disability (i.e., can perform the essential functions of the position with or without a reasonable accommodation).

\_\_\_\_ Equivalent positions in other Bureau(s) in the current geographic area.

Position(s) found? No  Yes

If Yes, please list: \_\_\_\_\_

\_\_\_\_\_ Equivalent positions in other Bureau(s) outside the current geographic area.

Position(s) found? No  Yes

If Yes, please list: \_\_\_\_\_

\_\_\_\_\_ Non-equivalent positions within other Bureau(s) inside or outside the current geographic area.

Position(s) found? No  Yes

If Yes, please list: \_\_\_\_\_

\_\_\_\_\_ Equivalent positions in other geographic areas within other Bureaus.

Position(s) found? No  Yes

If Yes, please list: \_\_\_\_\_

\_\_\_\_\_ Non-equivalent positions in other geographic areas within the employing Bureau.

Position(s) found? No  Yes

If Yes, please list: \_\_\_\_\_

\_\_\_\_\_ Non-equivalent positions in other geographic areas within other Bureaus.

Position(s) found No  Yes

If Yes, please list: \_\_\_\_\_

**6. Position Offer:**

Employee was offered the following position, in writing (attach copy of offer):

\_\_\_\_\_

Date of offer: \_\_\_\_\_

Date employee decision due by: \_\_\_\_\_

**7. Position Acceptance/Declination:**

Employee accepted the following position: \_\_\_\_\_

Date of acceptance: \_\_\_\_\_

EOD date for new position: \_\_\_\_\_

Employee declined offer: \_\_\_\_\_

Date of declination: \_\_\_\_\_

\_\_\_\_\_  
SHRO Specialist

\_\_\_\_\_  
Date

Date reassignment efforts closed: \_\_\_\_\_

Appendix H: 370 Department Manual 752

## Department of the Interior Departmental Manual

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**Effective Date:** 12/22/06

**Series:** Personnel Management

**Part 370:** Departmental Personnel Program

**Chapter 752:** Discipline and Adverse Actions

**Originating Office:** Office of Human Resources

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### 370 DM 752

1.1 **Purpose.** This chapter establishes the policy, procedures and authority/responsibility for administering employee discipline within the Department of the Interior (Department), and for taking appropriate corrective action for disciplinary or certain non-disciplinary reasons, when it is determined that such actions will promote the efficiency of the service. Requirements stated in this chapter are consistent with law, regulations and other Department policy applicable at the time of its issuance. Actions taken through the application of this chapter must comply with the requirements of pertinent laws, rules and regulations, as well as the lawful provisions of applicable negotiated agreements for employees in exclusive bargaining units.

1.2 **Authority.** Chapter 75 of Title 5, United States Code and Part 752 of Title 5, Code of Federal Regulations.

#### 1.3 Coverage.

A. This chapter applies to all bureaus and offices of the Department. Bureaus/offices will not issue supplemental disciplinary policy, except where otherwise prescribed in this chapter. Employees covered by a collective bargaining agreement may be subject to additional procedures which may supersede/supplement those described in this chapter. Bureaus/offices may issue supplemental implementing guidance as needed.

B. The disciplinary/adverse action procedures described in this chapter do not apply to an Administrative Law Judge (ALJ), whose discipline is governed by separate statutory requirements. Additionally, only the adverse action procedures described in 1.7C of this chapter are applicable to Department appointees in the Senior Executive Service (SES), although SES employees (and ALJs) may be counseled/reprimanded for engaging in misconduct. Management must consult with the servicing Human Resources Office for guidance regarding employee/action coverage.

#### C. Employees

- (1) The following employees are covered by the provisions of this chapter:

(a) An employee in the competitive service who has completed a probationary or trial period, or who is serving in an appointment that requires no probationary or trial period and who has completed one year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less;

(b) A preference eligible employee in the excepted service who has completed one year of current continuous employment in the same or similar positions;

(c) A non-preference eligible employee in the excepted service who has completed two years of current continuous employment in the same or similar positions under other than a temporary appointment limited to two years or less;

(d) An employee with competitive status who occupies a Schedule B position; and

(e) An employee who was in the competitive service at the time his/her position was first listed as part of the excepted service and still occupies that position.

(2) The following employees are excluded from coverage:

(a) An individual appointed by the President;

(b) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the President, the agency head, or the Office of Personnel Management (such that the position is excepted from the competitive service – “Schedule C”);

(c) A reemployed annuitant;

(d) An employee whose appointment is made with the advice and consent of the Senate;

(e) A non-preference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service;

(f) Administrative Law Judges;

(g) An employee in the competitive service serving a probationary or trial period; and

(h) Individuals who are otherwise excluded by the statutory provisions of Title 5, United States Code.

#### D. Actions

(1) The following actions are covered by this chapter when taken with respect to a covered employee:

- (a) Written Reprimands;
- (b) Suspensions;
- (c) Removals;
- (d) Reductions in grade;
- (e) Reductions in pay; and
- (f) Furloughs without pay for 30 days or less.

(2) The following actions are not covered by this chapter:

- (a) A reduction-in-force action;
- (b) A suspension or removal in the interest of national security;
- (c) An action taken against an Administrative Law Judge;
- (d) The reduction in grade of a supervisor or manager who fails to successfully complete a new probationary period as a supervisor or manager, if such reduction is to the grade held immediately before becoming a supervisor or manager;
- (e) An action which entitles an employee to grade retention, and an action to terminate this entitlement;
- (f) A voluntary action initiated by the employee;
- (g) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;
- (h) An action which terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the Department informed the employee that it was to be of limited duration;
- (i) Cancellation of a promotion to a position not classified prior to the promotion;
- (j) Reduction of an employee's rate of pay from a rate which is contrary to a rate allowed or permitted by law or regulation;

(k) Placement of an employee serving on an intermittent or seasonal basis in a temporary non-duty, non-pay status in accordance with conditions established at the time of appointment;

(l) An action imposed by the Merit Systems Protection Board;

(m) A reduction in grade or removal based solely on unacceptable performance and taken under 5 U.S.C. 4303; and

(n) An action taken or directed by the Office of Personnel Management based on a suitability determination.

(o) An action otherwise not covered by the statutory provisions of Title 5, United States Code, and the regulatory provisions of Title 5, Code of Federal Regulations.

#### 1.4 Definitions.

A. Administrative Leave. An excused absence from duty without charge to leave or loss of pay.

B. Adverse Action. For purposes of this chapter, a personnel action taken by management, appealable to the Merit Systems Protection Board (MSPB), to effect an employee's removal, suspension for more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay.

C. Day. A calendar day (except where otherwise specified).

D. Deciding Official. A Department supervisor or manager who makes a decision on a proposed adverse action or disciplinary action.

E. Disciplinary Action. For purposes of this chapter, an action taken by management, not appealable to the MSPB (i.e., written reprimand; suspension for 14 days or less) to address employee misconduct.

F. Furlough. The placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

G. Grade. A level of classification under a position classification system.

H. Indefinite Suspension. The placement of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

I. Pay. The rate of basic pay fixed by law or administrative action for the position held by an employee.

J. Preponderance of the Evidence. That degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as sufficient to find that a contested fact is more likely to be true than untrue.

K. Proposing Official. A Department supervisor or manager who proposes an adverse or disciplinary action.

L. Removal. The involuntary separation of an employee from employment with the Department and Federal service, except when effected due to a reduction-in-force or the expiration of an appointment.

M. Suspension. The involuntary placement of an employee in a temporary non-duty, non-pay status for disciplinary reasons.

### 1.5 **Responsibilities.**

A. Heads of Bureaus and Offices are Responsible for:

- (1) Implementing, supporting and providing oversight for the effective management of employee conduct and discipline;
- (2) Communicating information to the workforce regarding conduct requirements and disciplinary parameters;
- (3) Delegating appropriate authority, establishing roles/responsibilities for policy implementation within the bureau/office, and ensuring that applicable training is provided for supervisors to properly exercise their disciplinary responsibilities;
- (4) Ensuring adherence to the policy and procedural requirements of this chapter, as well as the applicable provisions of established collective bargaining agreements; and
- (5) Providing and implementing bureau/office-wide guidance and instructions other than those outlined in this chapter, as appropriate.

B. Director, Office of Human Resources is Responsible for:

- (1) Developing and issuing Departmental policy and guidance regarding employee conduct and discipline;
- (2) Monitoring and evaluating the administration of discipline throughout the Department, and revising the disciplinary policy and procedures as appropriate;

(3) Providing advice and assistance to bureaus/offices on the provisions of this chapter (as well as related laws, rules and regulations) and on managing employee conduct and discipline;

(4) Establishing and implementing reporting requirements for actions taken under this chapter, as well as complying with reporting requirements established by OPM; and

(5) Establishing overall parameters for Department-wide conduct/discipline training and coordinating the availability of related training opportunities.

C. Servicing Human Resources Offices (HRO) are Responsible for:

(1) Advising supervisors on employee conduct issues and disciplinary options (including procedural/regulatory parameters);

(2) Drafting or reviewing all disciplinary notices prior to issuance and applicable case files, to ensure reasonableness of penalty and statutory/regulatory compliance;

(3) Advising employees and supervisors of their procedural rights and responsibilities relative to this chapter (and applicable laws, regulations and negotiated agreements);

(4) Consulting for legal sufficiency with the Office of the Solicitor on adverse action proposals and decisions, and providing technical assistance to the Office of the Solicitor on actions taken under this chapter;

(5) Maintaining disciplinary and adverse action files and an information system for tracking and periodically reporting the actions effected; and

(6) Providing operational training support to ensure the workforce is sufficiently aware of the provisions of this chapter.

D. Office of the Solicitor is Responsible for:

(1) Providing reviews for legal sufficiency and overall appropriateness of adverse actions being considered, proposed, or taken under this chapter;

(2) Representing the Department during settlement negotiations, MSPB appeals, arbitrations and other activities related to the administrative and federal personnel litigation process; in accordance with established Departmental policy, coordinating settlements of actions taken under this chapter which impose a financial obligation on the Department; and

(3) Reviewing and providing input on conduct/discipline training and related instructional guidance for Department supervisors and employees.

E. Supervisors are Responsible for:

- (1) Establishing and maintaining a safe, productive, supportive and well-ordered work environment;
- (2) Providing a work environment free of illegal discrimination;
- (3) Advising employees regarding assigned duties and conduct expectations and observing employee performance and conduct to ensure compliance with the standards of ethical conduct and other established work requirements;
- (4) Promptly investigating and documenting circumstances related to incidents of employee misconduct;
- (5) Consulting with the servicing HRO regarding employee misconduct and initiating appropriate, timely and relatively consistent corrective action as warranted; and
- (6) Recognizing and complying with the requirements of this chapter and the applicable provisions of established collective bargaining agreements.

F. Employees are Responsible for:

- (1) Having a familiarity with Federal and Departmental standards of ethical conduct, complying with all established conduct and performance requirements, and requesting clarification if necessary;
- (2) Reporting incidents of waste, fraud, abuse, corruption and other misconduct to appropriate authorities; and
- (3) Cooperating in official investigations and furnishing testimony.

1.6 **Policy.**

A. General. Employees of the Department are expected to demonstrate high standards of integrity, both on and off the job, abiding by the Department's conduct regulations (43 CFR Part 20) and other Federal and Departmental laws, rules and regulations. When established standards of conduct are violated, or the rules of the workplace are disregarded, corrective action is warranted to motivate employees to conform to acceptable behavioral standards and prevent prohibited and/or unsafe activities. Such corrective actions, when taken under this chapter, should comport with applicable laws and regulations, should be administered with relative consistency and should be taken for such cause as will promote the efficiency of the service.

B. Standard for Taking Action. Management must be able to show that the actions taken under this chapter promote the efficiency of the service. To demonstrate this, the written notices of proposal and decision must clearly specify the charge(s) or reason(s) upon which the action is based, be able to prove the specific basis for its action by a preponderance of the evidence, be able to show the connection ("nexus") between the charge(s) and promotion of the efficiency of the service, and be able to establish the reasonableness of the action taken under the

circumstances. In taking a corrective action against an appointee in the SES, management's options are limited to a written reprimand or an adverse action covered by this chapter (i.e., suspension for more than 14 days; removal from the Federal service); management may take an adverse action against an SES employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

C. Use and Choice of Discipline. Discipline should be imposed to correct improper employee conduct and to maintain order, morale and workplace safety throughout the workforce. After determining that misconduct occurred and that corrective action is warranted, discipline should be initiated as soon as practicable after the misconduct which prompted it and effected on a progressive and equitable basis as much as possible. Progressive discipline provides that in dealing with an instance of employee misconduct, the responsible management official (often the first-level supervisor) should select the minimum disciplinary/adverse action most likely to correct the specific behavioral problem, with penalties selected at an escalating level for subsequent (but not necessarily identical) offenses, when appropriate. Management officials must exercise reasonable judgment and consider all relevant factors, both mitigating and aggravating (as reflected in the guidance found at Appendix A), in determining the most appropriate corrective action for each situation. As a guide for considering disciplinary options, the Department's *Table of Offenses and Penalties* is included as Appendix B to this chapter. This *Table* does not mandate the use of specific penalties in most disciplinary situations. Supervisors/managers retain full authority, except in limited circumstances (i.e., discipline prescribed by statute or the MSPB), to set penalties as they deem appropriate, based on the particular circumstances and specifications of the offense. Consultation and close coordination with the servicing HRO should ensure that a particular penalty is proportional to the offense and employees who commit similar offenses are treated with relative consistency.

D. Delegations of Authority. Each bureau will determine the level of supervisory authority required for taking actions covered by this chapter. For actions that require the issuance of a proposal and a decision (e.g., suspensions; removals; reductions in grade/pay), ordinarily the same supervisory/management official should not serve as both the proposing and deciding official on the action. Generally, the decision on a proposed action should be made by a management official at a higher organizational level than the proposing official; if there is no higher-level official within the Bureau/Office or if it is not feasible to use the higher-level official, another management official within the Department may be delegated the decision-making authority (in such exceptional situations, determinations regarding the delegation of decision-making authority must be approved by the Bureau/Office head, with the concurrence of the Director, OHR). Bureau officials, managers and supervisors who are delegated authority for implementing the provisions of this chapter and managing the workforce are accountable for complying with and properly administering all controlling laws, rules, policies, regulations and negotiated agreements pertaining to employee conduct and discipline.

## 1.7 Procedures.

A. General. Taking a corrective action against an employee is appropriate only when the employee has engaged in identifiable misconduct adversely affecting the efficiency of the service. Before initiating such action, management should conduct a thorough inquiry into any

apparent offense (collecting information to the greatest extent practicable directly from the subject employee) to ensure the objective consideration of all relevant facts and aspects of the situation. Ordinarily, this inquiry will be conducted by the appropriate line supervisor, with guidance from the servicing HRO. However, certain situations (particularly those involving possible criminal activity) warrant an investigation by the Office of Inspector General and/or internal Bureau law enforcement/criminal investigation offices. Once it is established that an employee engaged in misconduct necessitating corrective action, a supervisor or other management official (using the guidance at Appendices A and B, and in consultation with the servicing HRO) must determine the action/penalty required to deter the recurrence of the unacceptable behavior.

Minor misconduct may be corrected if the supervisor informally counsels the employee about the problem promptly after the first instance. The supervisor also may rely on notices of warning/admonishment to convince the employee to change the undesirable behavior. These actions are less severe than the disciplinary and adverse actions described below, are less subject to review by third parties, and do not become part of the employee's permanent official employment record. Notices of warning/admonishment document the employee's misconduct, place the employee on notice regarding the behavior expected by management, and advise the employee that more serious corrective action (e.g., reprimand; suspension; removal) will result if the unacceptable behavior is not corrected. The use of such corrective actions does not constitute a "prior penalty" for disciplinary purposes, as alluded to in Appendix B, to enhance the severity of penalty for a subsequent offense; however, such corrective actions may be viewed as "prior notice" (in consideration of factor 9, Appendix A).

B. Disciplinary Action.

(1) Written Reprimand

(a) This is a written notice issued to an employee by an authorized management official (usually the immediate or higher-level supervisor) when the employee's conduct warrants a corrective action more serious than a counseling or warning but without involving a loss of pay. Unlike a notice of counseling, warning or admonishment, a written reprimand is a formal penalty for disciplinary purposes (under Appendix B).

(b) The servicing HRO will assist management in the preparation and issuance of the reprimand, which should specify: the reason(s) prompting the action; the period of time a copy of the reprimand will be maintained in the employee's Official Personnel Folder (OPF); for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to file a grievance in accordance with the applicable administrative/negotiated grievance procedures.

(c) A copy of the reprimand will be filed on the temporary side of the employee's OPF for a period not-to-exceed two years or where applicable, the time specified by an established negotiated agreement; the time period will be appropriately recorded and tracked by the servicing HRO. The employee's supervisor may elect to withdraw the reprimand from the

OPF earlier than the period specified, in which case the supervisor will inform the employee, after consulting with the servicing HRO.

(2) Suspension (14 days or less)

(a) A disciplinary suspension is a management directed absence from work for an employee (excluding all SES appointees), with forfeiture of pay for the time specified. Since suspensions result in a loss of productivity and represent a financial loss to employees, they should be imposed only after lesser corrective actions have proven ineffective in improving employee behavior or when an employee has engaged in serious misconduct.

(b) An employee against whom a suspension of 14 days or less is initiated is entitled to receive a written proposal stating the specific reason(s) for the proposed action (including aggravating/mitigating factors referenced in Appendix A) in sufficient detail to enable the employee to answer the charge(s). The notice of proposed suspension (issued by the immediate supervisor or other management official, with the advice and assistance of the servicing HRO), shall state the proposed length of the suspension, as well as the employee's entitlement to: review the material relied upon by management in proposing the suspension (upon request); 7 days to answer orally and/or in writing the proposal (and furnish affidavits and other documentary evidence) before a decision is made; representation by an attorney or other representative; and a written decision (explaining the specific reasons for that decision) at the earliest practicable date. The notice also shall identify the name of the deciding official (generally, a higher-level manager) and, if different, the name of the official designated to receive the oral and/or written answer (if such an official is designated, that individual may provide a recommendation to the deciding official regarding the disposition of the proposed action). After issuing the notice of proposed suspension, management can amend the proposal notice (or cancel and reissue it at a later date) to allow for the consideration of any additional misconduct which becomes known to management prior to the issuance of a decision.

(c) The employee's representative must be designated, in writing, to the deciding official prior to any oral and/or written answer. Employees serving in a legal capacity within the Department (e.g., attorneys with the Office of the Solicitor and Office of Hearings and Appeals) may not represent another Department employee with regard to actions taken under this chapter. Additionally, Department management may disallow, as an employee's representative, an individual whose activities as a representative could cause a conflict of interest or of position, or an employee of the Department whose release from his/her official position would result in unreasonable costs or whose priority work assignments preclude his/her release for representational duties.

(d) The employee's answer(s) to the proposed suspension should be provided to the deciding official (or designee) within 7 days following the date the employee receives the proposal notice. The employee is entitled to a reasonable amount of official time (normally a matter of hours, not days) to prepare and present an oral and/or written answer. If the employee wishes additional time to answer, the employee (or designated representative) must submit an extension request, in writing, to the deciding official (or designee) before the expiration of the answer period, stating the reason for the request and the amount of additional

time needed. The deciding official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

(e) The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted. Although oral replies are generally conducted in a face-to-face meeting, when this is impractical, audio or video conferencing may be used. When practicable, a representative from the servicing HRO should be present during the presentation of the oral answer, to assist and provide procedural guidance to the deciding official (or designee) and employee (or representative). If the employee makes an oral answer, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral answer is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made part of the record. The final summary of the oral answer and any comment made by the employee (or representative) regarding the summary shall become part of the official disciplinary case file maintained by the servicing HRO.

(f) The deciding official will obtain (from the servicing HRO) and review a copy of the entire case file, which should contain all the evidence relied upon by the proposing official (including the proposal notice and all supporting documents), before making a decision on the proposed suspension. Upon request, the employee also may review this file, which should contain only the material relied upon to support the action; information that cannot be disclosed to the employee shall not be used as a basis for taking any action.

(g) The deciding official shall issue a written decision at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the answer period. The notice of decision must be delivered to the employee (or representative) at or before the time any action is to be effected (or in accordance with applicable provisions of any negotiated agreement). The servicing HRO will assist the deciding official in making the appropriate decision and preparing and issuing the decision notice. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the disciplinary process, as well as the employee's answer(s), and use only the reasons which were included in the proposal notice to support the decision. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process; if considered, the deciding official should make such additional information available to the employee for comment prior to making a decision.

(h) The notice of decision should indicate: the specific action decided upon (and applicable effective dates); the charge(s) and specification(s) in the proposal notice which were/were not sustained; the consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors; for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to file a grievance in accordance with the applicable administrative/negotiated grievance procedures.

C. Adverse Action.

(1) Most adverse actions taken under this chapter (i.e., removal for cause; suspension for indefinite period/more than 14 days; reduction in grade or pay) are based on instances of egregious and/or repeated employee misconduct (exceptions include furlough for 30 days or less and removal for medical inability to perform the duties of the position). Employees are entitled to receive advance written notice of at least 30 days before an action covered by this chapter may be effected, except for the following situations:

(a) *Emergency furlough.* The requirements for both an advance written notice and an employee opportunity to answer are waived for furloughs due to unforeseeable circumstances, such as sudden breakdowns in equipment, a lapse of appropriations, acts of God, or sudden emergencies requiring immediate curtailment of activities. Circumstances must be truly unforeseen, and of such a nature that they do not reasonably allow for time to prepare a proposal to take action or to receive an employee's answer.

(b) *Crime provision.* Management may shorten the advance notice period when there is reasonable cause to believe an employee has committed a crime (either on or off the job) for which a sentence of imprisonment may be imposed. The shortened notice period must still be at least 7 days. When circumstances require that the employee be kept away from the worksite during this shortened notice period, management may place the employee in an administrative leave status for such time as is necessary to decide and effect the adverse action. Generally, evidence that meets the requirements for a shortened notice period also will support an adverse action to *indefinitely* suspend an employee pending resolution of the criminal charges or completion of a subsequent administrative action. An employee who has been arrested with or without a warrant and held for further legal action by a magistrate court or indicted by a grand jury for a serious crime should be indefinitely suspended without pay pending the outcome of the judicial process. The consideration of any adverse action prompted by an employee's alleged criminal conduct must be closely coordinated with the Office of the Solicitor.

(2) An employee against whom an adverse action is initiated is entitled to receive a written proposal (normally with 30-days advance notice), stating the specific action proposed and the reason(s) for the proposed action (including any aggravating and/or mitigating factors referenced in Appendix A) in sufficient detail to enable the employee to answer the charge(s). The notice of proposed adverse action (issued by the immediate supervisor or other management official, with the advice and assistance of the servicing HRO, and after a legal sufficiency review by the Office of the Solicitor), additionally shall reference that the employee may: review the material relied upon by management in proposing the suspension; have 14 days (and a reasonable amount of official time) to answer orally and/or in writing the proposal (and furnish affidavits and other documentary evidence) for consideration before a decision is made; be represented by an attorney or other representative; and receive a written decision (explaining the specific reasons for that decision) at the earliest practicable date. The notice also shall identify the name of the deciding official (generally, a higher-level manager) and, if different, the name of the official designated to receive the oral and/or written answer (if such an official is designated, that individual may provide a recommendation to the deciding official regarding the disposition of the proposed action). After issuing the notice of proposed adverse action, management can amend the proposal notice (or cancel and reissue it at a later date) to allow for

the consideration of any additional misconduct which becomes known to management prior to the issuance of a decision.

(a) When some but not all employees in a given competitive level are being furloughed, the notice of proposal shall state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(b) Ordinarily, the employee shall remain in an active duty status during the advance notice period, and the proposal notice should so state. However, in rare instances, the proposing official may determine that the employee's presence at the workplace may be injurious to the employee or to others, may result in loss of or damage to Government property, or may otherwise jeopardize legitimate Government interests. In such cases, management (in consultation with the servicing HRO and the Office of the Solicitor) may assign the employee to other duties, allow the employee to take leave (or place the employee in an appropriate leave status if the employee is absent from the workplace), curtail the notice period (using the crime provision), or place the employee in an administrative leave status for such time as is necessary to make a decision and effect an action. The placement of an employee on administrative leave does not constitute an adverse action, but should only be done in the most exceptional situations (i.e., cases involving proposed removals or indefinite suspensions), when all other options are considered imprudent. Only bureau/office heads, their deputies, or the Director, OHR, may authorize the placement of an employee on administrative leave for an extended period of time (i.e., beyond 45 days); this authority may not be re-delegated. Bureau/Office heads (or their deputies) must coordinate decisions regarding the placement/continuation of an employee in an administrative leave status for more than 45 days with the Director, OHR, who will review such decisions for the Department and may rescind them if considered inappropriate.

(c) Management must make a reasonable and diligent effort to ensure that the employee receives the notice of proposed adverse action in a timely basis. Personal delivery of the advance notice to the employee, allowing for the employee's signed acknowledgment of receipt, is the most desirable method of delivery. If the notice cannot be personally delivered to the employee, the servicing HRO will determine the appropriate alternative delivery method.

(3) The employee's representative must be designated, in writing, to the deciding official prior to any oral and/or written answer. Employees serving in a legal capacity within the Department (e.g., attorneys with the Office of the Solicitor and Office of Hearings and Appeals) may not represent another Department employee with regard to actions taken under this chapter. Additionally, Department management may disallow, as an employee's representative, an individual whose activities as a representative could cause a conflict of interest or of position, or an employee of the Department whose release from his/her official position would result in unreasonable costs or whose priority work assignments preclude his/her release.

(4) The employee's answer(s) to the proposed adverse action should be provided to the deciding official (or designee) within 14 days following the date the employee receives the proposal notice. An employee in an active duty status is entitled to a reasonable amount of official time (normally a matter of hours, not days) to review the material relied on to support the proposed action and to prepare and present an oral and/or written answer; the employee must

request and obtain supervisory approval for the use of official time, in advance. If the employee wishes additional time to answer, the employee (or designated representative) must submit an extension request, in writing, to the deciding official (or designee) before the expiration of the answer period, stating the reason for the request and the amount of additional time needed. The deciding official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

(5) The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted. Although oral replies are generally conducted in a face-to-face meeting, when this is impractical, audio or video conferencing may be used. When practicable, a representative from the servicing HRO should be present during the presentation of the oral answer, to assist and provide procedural guidance to the deciding official (or designee) and employee (or representative). If the employee makes an oral answer, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral answer meeting is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made part of the record. The final summary of the oral answer and any comment made by the employee (or representative) regarding the summary shall become part of the official adverse action case file maintained by the servicing HRO.

(6) The deciding official will obtain (from the servicing HRO) and review a copy of the entire case file, which should contain all the evidence relied upon by the proposing official (including the proposal notice and all supporting documents) before making a decision on the proposed adverse action. Upon request, the employee also may review this file, which should contain only the material relied upon to support the action; information that cannot be disclosed to the employee shall not be used as a basis for taking any action.

(7) The deciding official shall issue a written decision at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the 14-day answer period. The notice of decision must be delivered to the employee (or representative) at or before the time any action is to be effected (or in accordance with applicable provisions of any negotiated agreement). The servicing HRO will assist the deciding official in making the appropriate decision and preparing and issuing the decision notice. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the adverse action process, as well as the employee's answer(s), and use only the reasons which were included in the proposal notice to support the decision. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process.

(8) The notice of decision should indicate: the specific action decided upon (and applicable effective dates); the charge(s) and specification(s) in the proposal notice which were/were not sustained; the consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors; for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to either file an appeal to MSPB (include a copy of the Board's appeal form/regulations and the address of the

appropriate Board office) or file a grievance in accordance with any applicable negotiated agreement.

1.8 **Records.** The servicing HRO shall maintain confidential disciplinary/adverse action case files; each file shall contain copies of the notice of proposed action, any written answer, a summary of any oral answer, the notice of decision (including the reasons for it), any order effecting the action, and any supporting material (e.g., witness statements; affidavits; documents; investigative reports). Disciplinary/adverse action files must be provided to various parties (e.g., the MSPB; the affected employee and/or designated representative; a grievance examiner), but need only be furnished in response to a specific request.

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## APPENDIX A

### PENALTY DETERMINATION

After establishing a sufficient basis for taking action (i.e., a preponderance of the evidence to support the charge(s); a nexus between the offense(s) and the employee's job or the agency's mission), the supervisor/manager, in consultation with the servicing HRO, must determine the appropriate penalty for the employee's misconduct. At this point, whether proposing or deciding an action, it is prudent to consider all remedies (disciplinary or non-disciplinary; formal or informal) that may effectively resolve the identified problem.

In selecting an appropriate penalty for a specific offense, responsible judgment must be exercised so that an employee will not be penalized out of proportion to the offense. Management should take into account all of the specific circumstances of the case and should ensure, to the extent possible, that employees who commit similar offenses are treated consistently. However, while equitable and uniform treatment of employees who commit similar offenses (under "like" circumstances) is preferable when possible, mechanistic consistency is not recommended or required. In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), the MSPB identified a number of factors -- generally referred to as the "*Douglas* Factors" -- which it specified were not exhaustive, but were generally recognized as relevant in determining the appropriateness of a penalty. A reasonable and conscientious application of these factors (listed below, with guidance based on MSPB case-law) could result in employees receiving different penalties, even though they may have committed similar offenses.

(1) *Nature and Seriousness of Offense* – the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

- Mitigating factors and the employee's potential for rehabilitation must be balanced against the seriousness of the offense and its effect on the duties of the position and the mission of the organization.
- Serious misconduct can outweigh an employee's length of service and overall good work record.

- If the misconduct is serious enough, removal might be an appropriate penalty for a first offense, and on appeal, a third party might overlook a questionable application of other *Douglas* factors (e.g. failure to properly notify the employee of consideration of past record; disparate penalties).

(2) *Employee's Job* – the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

- Persons in positions of trust can be held to higher standards; positions of trust include jobs with fiduciary, law enforcement and public safety or health responsibilities.
- Loss of confidence in an employee's ability to function as a supervisor supports removal from a supervisory position.
- If an employee has performed well in non-supervisory jobs, but fails as a supervisor, demotion is often viewed as more appropriate than removal from federal service.

(3) *Disciplinary Record* – the employee's past disciplinary record.

- The MSPB may review independently prior disciplinary actions pending in grievance proceedings when reviewing termination and other serious disciplinary actions.
- An employee's record of past discipline is used to enhance the penalty; it may not be used as proof of the current misconduct.
- Any past offense may form the basis for proposing a penalty from the next higher range of penalties for a subsequent offense; the offenses need not be identical or similar.
- Prior disciplinary actions may be cited even if they involved offenses unrelated to the current charges, although past discipline that occurred years before the current action and that involved unrelated offenses likely will be discounted on appeal.
- Management may not cite disciplinary actions that have expired in accordance with agency regulations or a collective bargaining agreement.
- An employee may not challenge the merits of prior disciplinary actions if the employee was informed of the actions in writing, the actions are a matter of record, and the employee had an opportunity to dispute the actions before a higher authority (if such actions were reviewed by a higher authority, they must have been upheld).
- Management's intent to consider the past disciplinary record must be stated in the proposal notice.

(4) *Work Record* – the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

- When the offense involves supervisory misconduct, the length of service as a supervisor is more important than total service with the agency.
- When official records concerning an employee's performance (e.g. written performance appraisals) are contradicted by a manager's statements in the notice of decision or in testimony, the official records will be judged more reliable.
- Disciplinary actions or additional misconduct occurring after the issuance of the adverse action proposal may not be cited as a past disciplinary record, but may be used to show an overall poor work record.

- Positive actions by management after learning of an employee's misconduct (e.g. promoting the employee; allowing the employee to perform his/her duties for an extended period of time) may indicate that the employee's overall work record outweighs or diminishes the seriousness of the offense.

(5) *Effect on Future Performance* – the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties.

- Loss of trust in the employee's ability to perform assigned duties in the future may be used to enhance the penalty.
- Offenses directly related to an employee's duties (e.g., falsification of the same documents the employee has responsibility to review) raise legitimate concerns about his/her ability to continue to perform those duties.
- Offenses inconsistent with an employee's supervisory responsibilities call into question his ability to function as a supervisor in the future.

(6) *Consistency with Other Penalties* – consistency of the penalty with those imposed upon other employees for the same or similar offenses.

- Management may not knowingly treat similarly situated employees differently when setting disciplinary penalties; to be similarly situated, the comparison employees must work in the same unit for the same supervisor. When an employee identifies a difference in penalties for the same offense, management may need to present evidence supporting the difference.
- There is no requirement for management to be absolutely consistent in its penalty determinations. The prior disciplinary and work records of the comparison employees may justify a difference, and the underlying facts in each case might warrant different penalties.
- When management has an established policy or practice to impose a particular penalty for an offense, it cannot begin to use a harsher penalty without giving prior notice to employees.

(7) *Consistency with Table of Penalties* – consistency of the penalty with any applicable agency table of penalties.

- Management's departure from the agency table of penalties may be permissible; it should not apply the table of penalties so rigidly as to ignore other *Douglas* factors.
- Management may take a more severe action than suggested in the table of penalties for a first offense if the employee has a record of prior, unrelated offenses.

(8) *Notoriety and Impact* – the notoriety of the offense or its impact upon the reputation of the Agency.

- Publicity or even the possibility of publicity that could have a negative impact on the reputation of the agency is a factor that may be considered to enhance a penalty.

(9) *Clarity of Notice* – 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.

- While lack of notice of the rules to be followed can be a mitigating factor, management is under no obligation to warn employees about behavior the employees should know is improper.
- Supervisors' ignoring or condoning certain behavior can indicate lack of notice.
- Training on agency policies constitutes notice of expected behavior.
- Prior misconduct for which the employee was counseled, even though the employee was not formally disciplined (or was formally reprimanded, but the reprimand is no longer in effect), can be cited to show an employee was on notice of the rules to be followed.

(10) *Potential for Rehabilitation* – potential for the employee's rehabilitation.

- An employee who admits misconduct and shows remorse displays potential for rehabilitation, while an employee who rationalizes his/her wrongdoing, fails to take responsibility or doesn't show an understanding of why his/her behavior was wrong is not a good candidate for rehabilitation.
- Lying during an investigation may be viewed as a lack of potential for rehabilitation.
- An employee who ceases misconduct after being warned may show potential for rehabilitation; however, an employee who shows improvement after receiving a notice of proposed adverse action is not particularly convincing.
- Attending meetings with an EAP counselor to discuss personal problems may indicate potential for rehabilitation.

(11) *Mitigating Circumstances* – 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.

- Emotional problems and stress may be mitigating factors, but there must be some evidence showing the problems contributed to the misconduct.
- Stress generally should not be viewed as a mitigating factor when the misconduct involves illegal drug use.
- Job tension, although not a medical problem, can be a mitigating factor.
- Bad faith on the part of agency management (e.g., evidence that management set out to "get rid of" the employee) can be a factor used to reduce the penalty.
- Evidence that the deciding official was predisposed against the employee is viewed as a mitigating factor by a third party.

(12) *Availability of Alternative Sanctions* – the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

- Prior warnings and reprimands indicate that a penalty less than removal will not deter the employee from similar misconduct in the future.
- A penalty designed primarily for its value as an example or warning to other employees likely will not be upheld upon review, as third parties generally do not accept this as a

valid basis for penalty selection. A penalty can be used to deter future misconduct by other employees, but this objective does not warrant overlooking other relevant *Douglas* factors.

- Management does not have to prove that the penalty was the least sanction necessary to promote the efficiency of the service or that it considered alternative penalties. However, such a showing provides essential evidence that the deciding official considered the relevant *Douglas* factors and that the penalty is reasonable.

Not all of these factors will be pertinent in every case. Frequently, some of the pertinent factors will weigh in the employee's favor while others may not (or even constitute aggravating factors). Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the specific case, and in reviewing penalty selection, a third party will determine whether management considered all the relevant factors and exercised its discretion within tolerable limits of reasonableness.

Management need not demonstrate that it considered all potential mitigating or aggravating factors before selecting a penalty, nor is it required to specifically show how each *Douglas* factor applies to each case. Even though there is no absolute requirement to do so, it is advisable for management to specifically state in proposal/decision notices what factors it considered in setting the penalty, to avoid concerns that relevant issues were not addressed. Therefore, both proposing and deciding officials should address the *Douglas* factors, as well as any mitigating factors, in terms of their particular relevance to penalty selection.

As a general rule, aggravating factors used by management in its penalty determination (e.g., an employee's poor work record), should be included in the proposal notice so that the employee has a chance to respond to them in the oral and/or written replies. In the notice of decision, the deciding official should reference his/her consideration of the proposing official's *Douglas* factor analysis and the employee's related response(s), before explaining his/her judgment regarding how the relevant factors serve to support or mitigate the proposed penalty.

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## APPENDIX B

### TABLE OF OFFENSES AND PENALTIES

This Table provides a list of common infractions, along with a suggested range of penalties for each; it does not presume to cover all possible offenses, nor does it mandate the use of specific penalties in most disciplinary situations. The range of penalties described in the Table is intended to serve as a guide to discipline, not a rigid standard, and deviations are allowable for a variety of reasons. Greater or lesser penalties than suggested may be imposed as circumstances warrant, and based on a consideration of mitigating and aggravating factors. Management officials must exercise reasonable judgment and consider all relevant factors (as reflected in the guidance found at Appendix A) in determining the most appropriate corrective action for each situation. Any penalty determination outside the suggested range should be based upon a

reasonable consideration of the factors described in Appendix A, and the rationale documented in the decision notice.

The use of this Table as a guide will help to ensure appropriateness of penalty in relation to the charge(s), as well as relative consistency in discipline throughout the Department. The fact that a particular offense is not listed in the Table does not mean that the employee cannot be charged with that offense. In such instances, a reasonable penalty can be determined (with the assistance of the servicing HRO) by a comparison to those offenses listed in the Table.

The Table lists only disciplinary and adverse actions which become a matter of record in the employee's Official Personnel Folder; it does not mention oral warnings, counseling notices, and other corrective actions which may be more appropriate for correcting minor offenses. The *First Offense* column, therefore, refers to the first offense for which a disciplinary/adverse action is taken, although it may not be the first time the employee engaged in misconduct.

Progressively stronger corrective actions should be taken if an employee repeatedly engages in misconduct. When an employee receives corrective action for an offense which falls under one range of penalties, and later commits a different offense under the same or another category of offense, the latter is considered a second offense for progressive disciplinary purposes. For example, if an employee is charged with absence without leave (AWOL) and is issued an official reprimand (first offense), then is later charged with insubordination for subsequent misconduct, the appropriate penalty range for the insubordination charge is a 30-day suspension to removal (as a second offense).

In addition to a management-initiated corrective action, a Department employee also may be subject to criminal prosecution when there is evidence of a possible statutory violation; such evidence should be provided to the Office of Inspector General, which then may refer the matter to the Department of Justice for further consideration and possible prosecution. If the Department of Justice declines to prosecute, the employee involved in the alleged wrongdoing will then be subject to an appropriate administrative action consistent with the penalties contained in this Table. An employee who has been arrested and held for further legal action by a magistrate court, or indicted by a grand jury for an imprisonable offense, should be indefinitely suspended without pay pending the outcome of the judicial process so as not to prejudice the employee's right to due process in the criminal case. If the employee pleads guilty or is convicted, the Department may then proceed with a removal or other appropriate action; in the absence of a conviction, the indefinite suspension should end, although other administrative action may be taken.

The servicing HRO must be consulted regarding the procedural requirements to follow when taking corrective action. This consultation requirement includes securing advice on the merits of the charge(s) and the appropriateness and Departmental-consistency of the penalty being proposed. In situations involving possible violations of the Department's Standards of Ethical Conduct, supervisors/managers should also consult with a bureau Ethics Counselor and/or an ethics official from the Office of the Solicitor, Office of Ethics.

Nature of Offense (General Misconduct)	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense	Remarks
<p>1. Attendance-related offenses.</p> <p>a. Absence without leave (AWOL). This includes tardiness and unauthorized delay in returning from lunch and break periods, or in returning after leaving work station on official business; unauthorized departure or absence from duty station.</p> <p>b. Failure to follow established leave procedures; failure to provide administratively acceptable documentation to support absence(s).</p> <p>c. Excessive unauthorized absences (e.g., more than 5 consecutive workdays).</p>	<p>Written Reprimand to 5-day suspension</p> <p>Written Reprimand to 5-day suspension</p> <p>5-day suspension to removal</p>	<p>5- to 30-day suspension</p> <p>5- to 30-day suspension</p> <p>14-day suspension to removal</p>	<p>30-day suspension to removal</p> <p>30-day suspension to removal</p> <p>Removal</p>	<p>Refer to 370 DM 630 for leave requirements and guidance. Penalty depends primarily on length and frequency of unacceptable absences. Removal may be appropriate for a first or second offense if the absence is prolonged, the failure to adhere to leave procedures is flagrant, or the circumstances are otherwise particularly burdensome.</p>
<p>2. Improper or unauthorized release of sensitive and administratively-controlled information or employee records; failure to safeguard classified material.</p> <p>a. Information is not compromised and release is unintentional.</p> <p>b. Information is compromised and release is unintentional.</p> <p>c. Release of restricted information is deliberate.</p>	<p>Written Reprimand to 5-day suspension</p> <p>Written Reprimand to 30-day suspension</p> <p>30-day suspension to removal</p>	<p>5- to 30-day suspension</p> <p>30-day suspension to removal</p> <p>Removal</p>	<p>30-day suspension to removal</p> <p>Removal</p>	<p>Refer to 5 USC 552a and 43 CFR 2.52 for Privacy Act provisions regarding the misuse of personal information; also refer to 18 USC 798 and 18 USC 1905. Deliberate disclosures of Privacy Act information must be referred to OIG.</p>
<p>3. Offenses related to substance abuse.</p> <p>a. Alcohol-related</p> <p>(1) Reporting to or being on duty while “under the influence” of alcohol.</p>	<p>Written Reprimand to 5-day</p>	<p>5- to 30-day suspension</p>	<p>30-day suspension to removal</p>	<p>Refer to 43 CFR 20.505, 370 DM 792, Drug-Free Workplace (Zero Tolerance) Policy, DOI Handbook on the Department of Transportation</p>

<p>(2) Unauthorized use and/or possession of alcoholic beverages while on Government premises (or vehicle).</p> <p>(3) Operating a Government vehicle/aircraft while “under the influence” of alcohol.</p> <p>b. Drug-related</p> <p>(1) Administratively confirmed positive finding under the testing portion of the Drug-Free Workplace Program.</p> <p>(2) Unlawful use, being under the influence or unauthorized possession of drugs, drug paraphernalia or controlled substance while on Government premises or in a duty status.</p> <p>(3) Sale or transfer of an illegal drug or controlled substance while on Government premises (or vehicle).</p> <p>(4) Refusal or failure to provide a required specimen for drug-testing; tampering with a drug-test specimen; refusal to obtain counseling or rehabilitation (after finding of illegal drug use).</p>	<p>suspension</p> <p>Written Reprimand to 30-day suspension</p> <p>30-day suspension to removal</p> <p>Written Reprimand to removal</p> <p>Written Reprimand to removal</p> <p>Removal</p> <p>14-day suspension to removal</p>	<p>30-day suspension to removal</p> <p>Removal</p> <p>Removal</p> <p>30-day suspension to removal</p> <p>30-day suspension to removal</p>	<p>Removal</p> <p>Removal</p> <p>Removal</p>	<p>Alcohol and Drug Testing Program, and DOI Federal Railroad Administration Supplement for specific guidance.</p> <p>Actions involving these offenses must assure that counseling or rehabilitative assistance is offered; however, referral to an employee assistance program (EAP) does not preclude the initiation of corrective action.</p> <p>The illegal drugs currently tested for (as defined in 370 DM 792, Subchapters 9 &amp; 10) include: marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). However, the Department is authorized to test for any illegal drugs as deemed necessary.</p> <p>When there is possession of illegal drugs - call law enforcement and notify OIG.</p> <p>When the substance is prescribed by an appropriate medical authority and used accordingly, it would not be an offense. 370 DM 792, 10.12 requires mandatory initiation of removal from service for a second offense of failing to refrain from illegal drug use.</p>
<p>4. Discourteous conduct (e.g., rude, insolent, disgraceful acts or remarks)</p>	<p>Written Reprimand to</p>	<p>5- to 30-day suspension</p>	<p>30-day suspension</p>	<p>5 USC 7503(a) permits suspension of</p>

toward supervisors, co-workers, or the public.	5-day suspension		to removal	14 days or less of any employee with four documented instances of discourteous conduct toward the public within a one-year period as confirmed by an immediate supervisor, or any other pattern of discourteous conduct.
5. Boisterous or disruptive/disorderly conduct; use of insulting, intimidating, abusive or offensive language to or about another employee or supervisor.	Written Reprimand to 5-day suspension	5- to 30-day suspension	30-day suspension to removal	
6. Deliberately making known false, malicious, or unfounded statements against co-workers, supervisors, subordinates, or Government officials which could undermine the authority or damage the reputation of those concerned.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Refer to 5 USC 2302(b)(8) and (9), prohibiting actions against employees for engaging in protected activities.
7. Threatening statements or behavior (of a physical nature).	14-day suspension to removal	Removal		Charge involving "threat" must consider the listener's reactions, the listener's apprehension of harm, the speaker's intent, any conditional nature of the statements, and the attendant circumstances – refer to <u>Metz v. Dept. of Treasury</u> , 780 F.2d 1001 (Fed. Cir. 1986).
8. Fighting and offenses related to fighting.  a. Engaging in potentially dangerous "horseplay."  b. Hitting, pushing, or other acts against another without causing injury.  c. Hitting, pushing, or other acts against another causing injury.	Written Reprimand to 14-day suspension  5- to 30-day suspension  30-day suspension to removal	14-day suspension to removal  30-day suspension to removal  Removal	30-day suspension to removal  Removal	Penalty depends on such factors as provocation, extent of injuries, and whether actions were defensive or offensive in nature.

<p>9. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching.</p>	<p>Written Reprimand to removal</p>	<p>14- day suspension to removal</p>	<p>Removal</p>	<p>Refer to the Department’s Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.</p>
<p>10. Failure to provide equal opportunity regardless of race, color, religion, gender, national origin, age, marital status, political affiliation, sexual orientation or handicapping condition.</p>	<p>Written Reprimand to removal</p>	<p>14-day suspension to removal</p>	<p>Removal</p>	<p>Refer to 5 CFR 2635.101(13).</p>
<p>11. Unauthorized possession/sale (actual or attempted) of Government property or property of others; improper acceptance of Government funds/reimbursement.</p>	<p>Written Reprimand to removal</p>	<p>14-day suspension to removal</p>	<p>30-day suspension to removal</p>	<p>Referral to OIG may be appropriate.</p>
<p>12. Loss, misuse of, damage to or failure to safeguard Government property, records, or information (e.g., willful or negligent damage to Government resources; carelessness in performance of duty resulting in waste of public funds).</p>	<p>Written Reprimand to 14-day suspension</p>	<p>14- to 30-day suspension</p>	<p>30-day suspension to removal</p>	<p>Refer to 5 CFR 2635.101(9). For misuse of Government vehicles, see item 5 under Violations of Statute. Referral to OIG may be appropriate.</p>
<p>13. Failure to comply with safety regulations, instructions or prescribed safe practices; failure to use proper safety equipment; failure to report accident or injury.</p>	<p>Written Reprimand to 14-day suspension</p>	<p>14- to 30-day suspension</p>	<p>30-day suspension to removal</p>	
<p>14. Sleeping or loafing while on duty; inattention to duty; willful idleness while on duty.</p>	<p>Written Reprimand to 5-day suspension</p>	<p>5- to 14-day suspension</p>	<p>14-day suspension to removal</p>	<p>Seriousness of offense is greater if persons/property endangered.</p>
<p>15. Failure or delay in carrying out instructions; failure or carelessness in performing assigned work; failure to take/complete officially-directed training.</p>	<p>Written Reprimand to 14-day suspension</p>	<p>14- to 30-day suspension</p>	<p>30-day suspension to removal</p>	<p>Refer to 370 DM 430 to deal with unacceptable performance and performance-based actions.</p>
<p>16. Insubordination; disregard of directive; refusal to comply with a proper order.</p>	<p>5-day suspension to removal</p>	<p>30-day suspension to removal</p>	<p>Removal</p>	<p>Refer to 43 CFR 20.502. An “insubordination” charge requires a showing that the</p>

				employee <u>deliberately</u> disregarded supervisory directives. In some instances (e.g., refusal to report for an ordered reassignment) removal may be appropriate.
17. Falsification/misrepresentation of official Government records or documents including, but not limited to, time and attendance records, travel vouchers, job applications, performance appraisals, claims for benefits, and other employment-related documents.	Written Reprimand to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510.  Referral to OIG may be appropriate.
18. Misrepresentation, falsification, exaggeration, concealment or withholding of material fact in connection with an official Government investigation, inquiry or other administrative proceeding.	14-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510.  Referral to OIG may be appropriate.
19. Refusal to testify or cooperate in connection with any administrative investigation, inquiry, or other proper proceeding (when criminal charges are not anticipated).	5-day suspension to removal	14-day suspension to removal	30-day suspension to removal	
20. Prohibited/improper use of Government property (e.g., office equipment; supplies; facilities; credentials; records; communication resources; cellular phones; official time); misuse of the Internet/electronic mail; using the Internet/electronic mail for unauthorized purposes.	Written Reprimand to 14-day suspension  More severe discipline (including removal) may be appropriate for first/second offense if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including	14- to 30-day suspension  More severe discipline (including removal) may be appropriate for first/second offense if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including gambling, accessing/send	30-day suspension to removal	Refer to 5 CFR 2635.704 and 705(a); 410 DM 2 (Limited Personal Use of Government Personal Property). Consider issue of employee notice regarding agency policy.

	gambling, accessing/sending prohibited sexually-related material, or other egregious acts of misuse.	ing prohibited sexually-related material, or other egregious acts of misuse.		
21. Offenses related to gambling.				Refer to 5 CFR 735.201.
a. Participating in a gambling activity while on Government premises or in a duty status (e.g., office pools).	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	
b. Operating, assisting, or promoting a gambling activity while on Government premises or in a duty status or while others involved are in a duty status.	5- to 30-day suspension	30-day suspension to removal	Removal	
22. Indebtedness; failure to meet financial obligations in a proper and timely manner.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Refer to 5 CFR 2635.809. Actionable if there is a nexus between the failure to pay and the efficiency of the service. Since a suspension may reduce an employee's ability to pay overdue financial obligations, a reprimand may be more appropriate for a first offense (more severe discipline may be appropriate for subsequent offenses). Special care is called for in dealing with this type of offense, as it may involve mitigating circumstances.
23. Offenses related to Government travel charge card and/or purchase card.				Refer to Financial Administration Memorandum (FAM) 2000-010 for further information and instructions on
a. Misuse of travel card (i.e., personal/authorized purchases) <b>or</b>	Written Reprimand to	5-day suspension to	30-day suspension	

delinquent in payment.	30-day suspension	removal	to removal	Resolving Delinquencies on Individually-billed Travel Card Accounts, and the Department's Integrated Charge Card Program Guide (revised 4/2004).
b. Misuse of travel card (i.e., personal/ unauthorized purchases) <b>and</b> delinquent in payment.	5- to 30-day suspension	14-day suspension to removal	Removal	
c. Unauthorized use of or failure to appropriately monitor use of Government purchase card; "micro-purchasing" violations.	Written Reprimand to 30-day suspension	14-day suspension to removal	Removal	
24. Carrying a firearm or other weapon on Government property (or in Government vehicle) unless specifically authorized/required in the performance of duties.	30-day suspension to removal	Removal		Refer to 43 CFR 20.511.
25. Using public office for private gain.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.702.
26. Engaging in unauthorized/prohibited selling, soliciting or fundraising activities.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Refer to 5 CFR 2635.808.
27. Engaging in prohibited outside employment or private business activities.	Written Reprimand to removal	Removal		Refer to 5 CFR 3501.105.
28. Participating in particular matters while having a conflicting financial interest.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.401.  Consult Ethics Office and may require referral to OIG. See 18 USC 208.
29. Participating in matters affecting financial interests of an entity where employment is being sought.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.601.  Consult Ethics Office and may require referral to OIG. See 18 USC 208.
30. Violating the Department's Code of Scientific Conduct (or other professional code of conduct that applies to employees required to maintain a professional license or membership).	Written Reprimand to 30-day suspension	30-day suspension to removal	Removal	Refer to 305 DM 3.

31. Violating the Standards of Ethical Conduct not covered elsewhere in this Table.	Written Reprimand to removal	14-day suspension to removal	Removal	Refer to 5 CFR 2635.
32. Unauthorized use of nonpublic information.	Written Reprimand to removal	Removal		Refer to 5 CFR 2635.703.
33. Engaging (on-duty or off-duty) in criminal, infamous, dishonest, or notoriously disgraceful conduct prejudicial to the Government.	5-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.501.
<b>Nature of Offense (Supervisory Misconduct)</b>	<b>Penalty for First Offense</b>	<b>Penalty for Second Offense</b>	<b>Penalty for Third Offense</b>	<b>Remarks</b>
1. Taking, directing others to take, recommending or approving any action which may be considered a “prohibited personnel practice” (e.g., reprisal against an employee for engaging in protected activities; discrimination based on race, color, gender, age, religion, national origin, marital status, political affiliation, sexual orientation or handicapping condition).	5-day suspension to removal	14-day suspension to removal	Removal	Refer to 5 USC 2302, 5 CFR 2635.101(13), and related Department policies. Action may be taken regardless of whether there was an official “finding” of discrimination (or other prohibited personnel practice).
2. Taking reprisal action against an employee for exercising rights provided by the Federal Service Labor-Management Relations Statute.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC, Chapter 71.
3. Neglecting to recommend/take corrective action upon receipt of information regarding the job-related misconduct of a subordinate employee.	Written Reprimand to 30-day suspension	14-day suspension to removal	Removal	
4. Failure to appropriately monitor employee use of Government purchase/travel charge card.	Written Reprimand to 14-day suspension	14-day suspension to removal	Removal	
5. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching.	5-day suspension to removal	14-day suspension to removal	Removal	Refer to the Department’s Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.

6. Influencing or attempting to influence the DOI employment of a relative.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC 3110.
7. Violating, or inducing a subordinate to violate, the Department's Code of Scientific Conduct (or other profession's Code of Ethical Conduct).	5-day suspension to removal	Removal	Removal	Refer to 305 DM 3.
8. Using Government employees in duty status for other than official purposes.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Refer to 5 CFR 2635.705(b).
<b>Nature of Offense (Violations of Statute)</b>	<b>Penalty for First Offense</b>	<b>Penalty for Second Offense</b>	<b>Penalty for Third Offense</b>	<b>Remarks</b>
1. Engaging in prohibited partisan political activity (e.g., partisan campaigning; soliciting/receiving political contributions).	30-day suspension to removal	Removal		Refer to 5 USC, Sections 7321-7326.
2. Participating in a strike, work stoppage, work slowdown, sick-out, or other similar job action.	30-day suspension to removal	Removal		Refer to 5 USC 7311.
3. Misappropriating/misapplying Government funds; directing, expecting, or rendering services not covered by appropriations.	1- to 30-day suspension	30-day suspension to removal	Removal	Refer to 31 USC 1301, 1341 and 1349.
4. Willfully mutilating or destroying a public record.	Removal			Refer to 18 USC 2071.
5. Willfully using or authorizing the use of a Government vehicle/aircraft for other than official purposes.	30-day suspension to removal	Removal		Refer to 31 USC 1344 and 1349.
6. Engaging in actions against national security.	30-day suspension to removal	Removal		Refer to 5 USC 7532.

12/22/06 #3738  
Replaces 3/29/06 #3705

Appendix I: Personnel Bulletin 23-11



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

September 25, 2023

## PERSONNEL BULLETIN NO: 23-11

**SUBJECT:** Informing Employees of Prohibited Personnel Practices and Enhanced Whistleblower Protections

**1. Purpose.** This Personnel Bulletin (PB) updates the Department's policy on meeting the requirement under 5 U.S.C. § 2302 to inform employees of the rights and remedies available to them under the Civil Service Reform Act of 1978 (CSRA), the Whistleblower Protection Act (WPA), the Whistleblower Protection Enhancement Act (WPEA), and related laws and to satisfy the new requirements of the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017. Executing the activities described in this PB contributes to the Department's ability to attain and maintain certification of statutory compliance by the Office of Special Counsel (OSC) and OSC's 5 U.S.C. § 2302 Certification Program. This policy supersedes PB 16-10, *Informing Employees of Prohibited Personnel Practices and Whistleblower Protections* dated November 8, 2016.

### **2. Authorities.**

- A. Public Law 115-73 ("Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017"), enacted October 26, 2017
- B. Title 5 United States Code § 2302, Prohibited Personnel Practices
- C. Title 5 United States Code § 7515, Discipline of Supervisors Based on Retaliation Against Whistleblowers

**3. Coverage.** This policy applies to all Department of Interior (DOI) Bureaus and Offices and supersedes any other Departmental or Bureau/Office policies or procedures that conflict with this policy.

### **4. Definitions.**

- A. **Disclosure.** A formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences any violation of any law, rule, or regulation; or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety (see 5 U.S.C. § 2302(a)(2)(D)).
- B. **Prohibited Personnel Practice.** Employment-related activities that are banned in the Federal workforce because they violate the government's merit system through some form of employment discrimination, retaliation, improper hiring practices, or failure to adhere to laws, rules, or regulations that directly concern the merit system principles (see 5 U.S.C. § 2302(b) for complete list of prohibited personnel practices).

D. Whistleblowing. For the purposes of this PB carries the same meaning as defined under 5 U.S.C. §§ 2302(b)(8) and 2302(b)(9).

## **5. Responsibilities.**

- A. Office of Human Capital (OHC). The OHC Director/Deputy Chief Human Capital Officer (DCHCO) is delegated all program and management authority necessary to carry out the functions of the position as described in 112 DM 15; all administrative authorities described in 212 DM 1.1B, subject to the limitations; and any Personnel Management Authority described in 205 DM 8, subject to the limitations. Accordingly, OHC is responsible for:
1. Serving as the liaison between the Department and any oversight offices such as Office of Personnel Management (OPM), OSC, etc. as it relates to human resources requests, data calls, etc.
  2. Notifying Department Bureaus/Offices through their Human Capital Officers/ Servicing Human Resources Offices (SHROs) of the requirements outlined in this PB.
  3. Collecting and reviewing HCO Certifications in support of OSC's 5 U.S.C. § 2302 Certification Program.
  4. Enforcing required training consistent with [PB 17-09](#), *Mandatory Training on Equal Employment opportunity (EEO), Prohibited Personnel Practices (PPPs) and Whistleblower Protections, and Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (No FEAR Act)* dated April 14, 2017.
- B. Bureau/Office Director. Many of the responsibilities of the Secretary of the Interior have been delegated to the Bureau/Office Directors. The Bureau/Office Directors will be accountable for carrying out the following responsibilities for employees in the Bureaus/Offices under their purview implemented through their HCOs/SHROs as outlined in 5.C. and 5.D. below.
- C. Human Capital Officers are responsible for:
1. Ensuring the SHRO requirements outlined in 5.D. are completed in a timely manner.
  2. Submitting the [HCO Certification](#) (Appendix A), by email to [doi\\_office\\_of\\_human\\_resources@ios.doi.gov](mailto:doi_office_of_human_resources@ios.doi.gov) by **December 31** of each year.
  3. Consulting with OHC's Workforce Relations Division, Employee Relations Program Manager when there is a policy and/or accountability concern.
- D. Servicing Human Resources Offices (SHROs) are responsible for:

1. Ensuring the following informational posters are displayed in all Human Resource Offices and Equal Employment Opportunity (EEO) Offices and in other prominent places in all Bureau/Office facilities:
  - a. [Whistleblowing](#)
  - b. [Reprisal for Whistleblowing](#)
  - c. [Prohibited Personnel Practices](#)
  - d. [The Hatch Act: Permitted and Prohibited Activities for Most Federal Employees](#)
  
2. Providing a copy of the Secretary's and/or OIG's annual Whistleblower Protection and Prohibited Personnel Practices notice to all new employees within **180 days** from the date they are appointed as part of new employee orientation materials, along with the following notices:
  - a. [Your Rights as a Federal Employee](#)
  - b. [Know Your Rights When Reporting Wrongs](#)

## **6. Program Changes and Requirements.**

- A. *New Prohibited Personnel Practice.* It is a prohibited personnel practice to “access the medical record of another employee or an applicant for employment as part of, or otherwise in furtherance of, any conduct described (1) through (13) of 5 U.S.C. § 2302(b)”.
- B. *Accessibility of Information Regarding Whistleblower Protections.* Information regarding whistleblower protections that apply to all employees is available on the [OIG's website](#).
- C. *Education Requirements.* New employees must be informed of their rights and remedies available under § 2302 and chapter 12 of Title 5 within 180 days following the date they are appointed. In addition, supervisors (including new supervisors) must be provided annual training regarding how to respond to complaints alleging a violation of whistleblower protections.
- D. *Supervisors' Performance Appraisals.* A mandatory standard for Whistleblower Protections must be added to the performance plans of all supervisors and managers. The mandatory critical element established by the Department was updated in October 2018 to include criteria which promotes the protection of whistleblowers.
- E. *Proposed Disciplinary Action.* Proposing mandatory minimum penalties against supervisors found to have committed a prohibited personnel practice. For a first offense, the agency must propose a suspension that is not less than 3 days and may propose additional action determined appropriate, including a reduction in grade or pay. For a second offense, the agency must propose removal (see 5 U.S.C. § 7515).

**7. Labor-Management Obligations.** Bureaus/Offices are reminded to fulfill their labor-management obligations, as appropriate, in implementing the requirements set forth in this PB.

**8. Inquiries.** Any Department employee or employee representative seeking further information concerning this policy should contact their SHRO. SHROs may contact the Department's Office of Human Capital concerning questions related to this policy.

JENNIFER  
ACKERMAN

 Digitally signed by JENNIFER  
ACKERMAN  
Date: 2023.09.25 10:25:16 -04'00'

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Jennifer A. Ackerman  
Director, Office of Human Capital  
Deputy Chief Human Capital Officer

Attachment

Appendix A:

[Date]

Memorandum

To: Mark D. Green  
Deputy Assistant Secretary - Human Capital and Diversity  
Chief Human Capital Officer

From: [NAME]  
[Title]  
[BUREAU/OFFICE]

Subject: Human Capital Officer (HCO) Certification in Support of the Office of Special Counsel (OSC) 5 U.S.C. § 2302 Certification Program

The OSC's 5 U.S.C. § 2302 Certification Program (Certification Program) enables the Department of the Interior (Department) to meet the statutory obligations under 5 U.S.C. § 2302 to inform employees about the rights and remedies available to them under the Civil Service Reform Act of 1978 (CSRA), the Whistleblower Protection Act (WPA), the Whistleblower Protection Enhancement Act (WPEA), and related laws.

In accordance with the requirements of OSC's Certification Program and Personnel Bulletin (PB) 23-11, this memorandum certifies that [BUREAU/OFFICE] has completed the following actions:

1. Displayed the following informational posters in all Human Resource Offices and Equal Employment Opportunity (EEO) Offices and in other prominent places in all Bureau/Office facilities:
  - a. [Whistleblowing](#)
  - b. [Reprisal for Whistleblowing](#)
  - c. [Prohibited Personnel Practices](#)
  - d. [The Hatch Act: Permitted and Prohibited Activities for Most Federal Employees](#)
2. Provided a copy of the Secretary's and/or OIG's annual Whistleblower Protection and Prohibited Personnel Practices notice to all new employees within **180 days** from the date they are appointed as part of new employee orientation materials, along with the following notices:
  - a. [Your Rights as a Federal Employee](#)
  - b. [Know Your Rights When Reporting Wrongs](#)

Should you have any questions or require any additional information regarding these actions, please contact [NAME, TITLE, CONTACT INFORMATION].

Appendix J: Personnel Bulletin 23-03



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**September 12, 2023**

## **PERSONNEL BULLETIN 23-03**

### **SUBJECT: Supporting Gender Transition in the Federal Workplace**

**1. PURPOSE:** It is the policy of the Federal Government and the Department of the Interior (DOI or Department) to treat all of its employees with dignity and respect and to provide a workplace that is free from discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, age, or reprisal.

The purpose of this policy is to ensure that all employees are treated in a professional and respectful manner including individuals who are transitioning or have transitioned, as well as those who are gender nonconforming and/or non-binary who seek to legally, medically, socially, and/or physically transition or expand their gender identity. An individual's gender identity and gender transition are inherently personal matters. Some individuals may request workplace assistance or changes, whereas others will seek no workplace acknowledgement or changes at all. Accordingly, this policy does not anticipate every workplace situation that might arise, and the needs of an individual employee should be addressed on a case-by-case basis as requested by an employee. This policy addresses some of the most common changes and questions that may arise during gender transition and provides guidance on appropriate handling of transition-related needs. This Personnel Bulletin (PB) supersedes PB 13-03, Transgender and Other Gender Non-Conforming Employee Policy, dated April 10, 2013. This document remains in effect until either rescinded or superseded by a new Departmental policy.

This policy is not intended to, and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

### **2. AUTHORITIES:**

- A. Title 42 United States Code (U.S.C.), Chapter 21, Subchapter VI, Equal Employment Opportunities
- B. Title VII of the Civil Rights Act of 1964 (Title VII)
- C. Privacy Act of 1974, as amended, 5 U.S.C. 552a
- D. Equal Employment Opportunity Act of 1972 (Public Law 92-261)
- E. Rehabilitation Act of 1973 (Public Law 93-112)
- F. Executive Order (EO) 11478, Equal Employment Opportunity in the Federal Government dated August 8, 1969 as amended by EO 12106, Equal Employment Opportunity Enforcement dated December 28, 1978 as further amended by EO 13087, Equal Employment Opportunity in the Federal Government dated May 28, 1998
- G. EO 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation dated January 20, 2021
- H. EO 14035, Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce dated

June 25, 2021

- I. EO 14075, Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals dated June 15, 2022
- J. Office of Personnel Management (OPM) Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace
- K. DOI Joint Equal Employment Opportunity (EEO) Statement signed June 2020
- L. PB 18-01, Prevention and Elimination of Harassing Conduct dated March 23, 2018

**3. COVERAGE:** This policy applies to all employees within all Bureaus and Offices of the Department and supersedes any other Departmental or Bureau/Office policies or procedures that conflict with this policy. Bureaus/Offices may issue implementing procedures consistent with this policy. Prior to implementation, all Bureau/Office implementing procedures must be reviewed and approved by the Director of the Department’s Office of Human Capital.

**4. GOALS:** The goal of this policy is to provide a framework for ensuring employee gender identity and gender transition needs are addressed with dignity and respect in the Federal workplace.

**5. DEFINITIONS:**

- A. **Affirming Name/Gender/Pronouns.** Are terms used to refer to the name, gender, and/or pronouns with which an individual identifies and uses.
- B. **Cisgender.** Cisgender individuals are people with a gender identity that is consistent with their sex assigned at birth. Someone assigned male at birth who identifies as a boy or man is a cisgender man; likewise, someone assigned female at birth who identifies as a girl or woman is a cisgender woman. “Cis-“ is from the Latin prefix “cis-“ meaning “on the same side of.” It is a linguistic opposite of “trans-“, meaning “across from.”
- C. **Dead Name/Gender/Pronouns.** Are terms used to refer to the name, gender, and pronouns an individual used prior to a gender transition, but no longer identifies/uses.
- D. **Gender Expression.** Sometimes referred to as “gender presentation”. This refers to how a person represents or expresses their gender identity to others. This might be communicated through appearance, dress, mannerisms, speech patterns, social interactions, name, and/or other characteristics and behaviors. The observed expression may or may not correspond to societal expectations of gender identity.
- E. **Gender Identity.** Is an individual’s internal sense of being male, female, another gender, no gender, of multiple genders, or fluid in gender. The way an individual expresses their gender identity is frequently called “gender expression,” and may or may not conform to social stereotypes associated with a particular gender. Those who do not may describe themselves as “non-binary” or “gender queer.”
- F. **Gender Non-Binary.** An umbrella term for gender identities that are not solely male or female – identities that are outside the gender binary. Non-binary identities are often considered to fall under the transgender umbrella, since non-binary individuals typically identify with a gender that is different from their sex assigned at birth, though some non-binary individuals do not consider themselves transgender. Non-binary individuals may

identify as an intermediate or separate third gender, identify with more than one gender, no gender (e.g., agender), or have a fluctuating identity (gender-fluid). Non-binary individuals vary in their gender expressions, and some may reject gender identities altogether.

- G. **Gender Nonconforming.** A broad term used to refer to individuals who do not appear, behave, or identify in conformity with societal gender norms, stereotypes, expectations or preferences. May also be referred to as “gender expansive”.
- H. **Gender Transition/Transitioning.** The process by which a transgender or gender nonconforming individual takes steps to socially, legally, medically and/or physically align with their gender identity and gender expression (e.g., attire, grooming, personal style, voice, mannerisms, medical treatments, and/or name and personal pronoun preference/use). Gender transition is an umbrella term used within this PB to broadly refer to any employee who is undergoing, is about to undergo, or has undergone the process of changing their gender expression and gender markers in the workplace. A transitioning employee may stay at a specific point of the gender transition spectrum; they may move along the gender transition spectrum via a one-time, one-direction, finite sequence of actions; or they might move through a continuous, evolving, or even multi-directional flow. Some individuals will find it necessary to transition from living and working as one gender to another. Social role transition – that is, living full-time in the gender role that is consistent with an individual’s gender identity – is an important aspect of an individual’s gender transition. Transgender individuals may also seek some form of medical treatment such as counseling, hormone therapy, electrolysis, and surgical interventions as part of their transition. These treatments may be deemed medically necessary for many individuals, based on determinations of their medical providers. Some individuals, however, will not pursue some (or any) forms of medical treatment because of their age, medical condition, lack of funds, or other personal circumstances, or because they may not feel the treatment is necessary for their well-being. Decisions about whether or not to undergo medical or legal transition do not affect a person’s ability to identify as transgender.
- I. **LGBTQ+.** Is an acronym that is often used as an umbrella term referring to lesbian, gay, bisexual, transgender, queer/questioning, intersex, asexual, and other individuals who do not identify as typically cisgender and heterosexual. Other acronyms used to refer to this community include “LGBTQIA” and “LGBTQIA2S”. The term “queer” is also often used as a community umbrella term.
- J. **Pronouns.** Gender-specific linguistic markers used in most languages to refer to the subject of a sentence, (e.g., “he/him,” “she/her,” “they/them,” and many neopronouns (e.g., “ze,” “xe,” “xie,” and others), which may or may not match an individual’s gender expression. Supervisors/managers and coworkers should use the pronoun appropriate to the gender-identity of the employee as expressed by the employee.
- K. **Sex.** Is a term that refers to anatomical, physiological, genetic, or physical attributes typically used to assign a person as male, female, or intersex at birth. These include both primary and secondary sex characteristics, including genitalia, gonads, hormone levels, hormone receptors, chromosomes, and genes. Variations of this term might also include “biological sex,” “physical sex,” “anatomical sex,” or “sex assigned at birth”.

L. **Transgender.** Transgender individuals are people with a gender identity that is different from their sex assigned at birth. Someone who was assigned the male sex at birth but who identifies as female is a transgender woman. Likewise, an individual assigned the female sex at birth but who identifies as male is a transgender man. An individual who has a gender identity other than the traditional definitions of male or female may simply self-identify as transgender or nonbinary. Moreover, some individuals who would fit the definition of transgender do not identify themselves as such and identify simply as men/male and women/female, consistent with their gender identity. The guidance provided in this PB applies whether or not a particular individual explicitly self-identifies as transgender. An individual need not undergo any medical procedure to be considered transgender or transitioning.

M. **Workplace Gender Transition Plan.** A written plan, developed by the employee and supervisor/manager, that serves as an individualized roadmap to communicate components of the employee's transition that impact the workplace – the purpose of which is to facilitate clear and uniform understanding between the parties in order to promote a safe, secure, and respectful work environment. Such plans should only be created and developed at the request of the employee.

## **6. RESPONSIBILITIES:**

### **A. Heads of Bureaus/Offices are responsible for:**

1. Ensuring compliance with this policy and ensuring that their servicing Human Resources offices (SHRO) and EEO offices are informed and trained to comply with this policy if a transitioning employee requests support or needs assistance as provided for herein.
2. Providing a workplace that is free from discrimination, harassment, and harassing conduct and treating all employees with dignity and respect.
3. Ensuring that employees are provided access to information regarding resources available for consultation and assistance including the neutral, confidential services of the Office of Collaborative Action Dispute Resolution (CADR) and DOI's Employee Assistance Program (EAP).

### **B. Supervisors/Managers are responsible for:**

1. Ensuring that all employees are provided notice of and comply with this policy.
2. Ensuring that transgender, gender nonconforming, and non-binary employees are not subject to unlawful discrimination, including a hostile work environment, based on their gender identification, gender expression or any other protected basis.
3. Ensuring that transgender, gender nonconforming, and non-binary employees going through a transition process are treated with as much dignity, respect, sensitivity, and confidentiality and privacy as any other employee who experiences a major life event.

4. Ensuring that the personal and medical privacy rights of transgender, gender nonconforming, and non-binary employees are observed.
5. Instructing subordinate employees to refer to transitioning/transitioned employee by their affirming name/gender/pronouns.
6. Working with transitioning employees to develop a [Workplace Gender Transition Plan](#) addressing the activities and logistics involved in an employee's transition process, when requested.

C. **The SHRO is responsible for:**

1. Providing guidance and support to supervisors/managers and transitioning employees.
2. Participating, as requested, in the development and implementation of the transitioning employee's [Workplace Gender Transition Plan](#).
3. Processing/updating personnel and other related records/systems to reflect a transitioning employee's affirming name/gender/pronouns consistent with the guidance provided herein.

D. **The EEO Office is responsible for:**

1. Providing guidance and support to supervisors/managers and transitioning employees on the prevention of discrimination on the basis of gender identity, perceived gender nonconformity or other non-merit factors.
2. Participating, as requested, in the development and implementation of a transitioning employee's [Workplace Gender Transition Plan](#).
3. Promoting equal opportunity and equal access for all employees.

E. **All Employees are responsible for:**

1. Complying with the legal obligation to abstain from unlawful discrimination, including harassment on the basis of gender identity and/or perceived gender nonconformity or other protected bases.
2. Striving to engage others with dignity and respect.
3. Referring to employees by their affirming name/gender/pronouns.

F. **Transitioning Employees are invited and encouraged, but not required to:**

1. At their discretion and desire, communicate with their supervisor/manager and others regarding their specific circumstances, workplace needs, and related concerns.
2. At their discretion and desire, request changes to their name/gender/pronouns.

3. Determine how to communicate information about their transition to others.

G. **Other Responsive Department/Bureau/Office Officials:** (e.g., Information Technology, Budget/Finance, Facilities, Security, etc.) are responsible for timely action when engaged on activities outlined in the employee's [Workplace Gender Transition Plan](#).

## **7. TRANSITION CONSIDERATIONS:**

It is not DOI's intent to be overly prescriptive, but to provide a consistent process by which employees and supervisors/managers can provide support and assistance. Not all transitioning employees will follow the same pattern and decisions about which steps are necessary as part of an individual's transition are highly personal ones made by the transitioning employee. Whatever form an individual's transition takes, all employees should be treated with dignity and respect. Moreover, the medical aspects of an individual's transition will often be less apparent, and in most cases are less important from a personnel management perspective, than an individual's social transition in the workplace. Each transitioning employee will have their own unique set of factors, needs, challenges, and preferences that may benefit from putting together a customized [Workplace Gender Transition Plan](#).

Transitioning employees requiring support or assistance in the workplace are encouraged to communicate and work with their supervisor/manager and their SHRO to enable a smooth transition in the workplace. The employee should be empowered to set the pace and tone of these communications. Transitioning employees have the right to be open and feel safe about their identity, and to professionally express their gender identity or characteristics in the manner they choose. The [Workplace Gender Transition Plan](#) should not address sensitive issues that the transitioning employee is uncomfortable addressing or issues which do not impact the workplace.

All employees are protected under federal anti-discrimination laws and DOI policies. Although an employee is not required to provide notification about their intended gender transition to the Department or to others (e.g., their supervisor/manager, SHRO or others), employees are encouraged to provide such notice because the agency can be better poised to support and assist an employee's transition process if it is aware of the employee's specific needs. The following non-exhaustive list addresses some of the more common topics and gender-identifying markers that may be considered when supporting an employee's transition in the workplace:

A. **Confidentiality and Privacy.** An employee's transition should be treated with as much sensitivity and confidentiality as any other private or highly personal life experiences. Transitioning employees often want as little publicity about their transition as possible. They may be concerned about safety and employment issues if other people or employers become aware that they are transitioning or transitioned. A transitioning employee's privacy must be maintained at all times. Release of information including disclosure of medical information, gender history, or regarding an employee's planned, ongoing, or past gender transition may result in unauthorized disclosure of confidential information prohibited under laws such as the Rehabilitation Act of 1973 and the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Other employees should not be provided information about the employee's transition unless strictly necessary in accordance with the

requirements of the Rehabilitation Act, the Privacy Act, and other applicable laws. Questions regarding a coworker's medical process, body, and sexuality are generally inappropriate and is prohibited by law in most cases.

- B. **Dress and Appearance.** Supervisors and managers are encouraged to evaluate, and consider eliminating, where appropriate, gender-specific dress and appearance rules. Once an employee has informed management that they are transitioning, consistent with the employee's wishes, DOI dress codes should be applied to employees transitioning to a different gender in the same way that they are applied to other employees of that gender, as appropriate. Dress codes should not be used to prevent transgender, gender nonconforming or transitioning employees from living full-time in the role consistent with the individual's gender identity, nor should they be used to prevent an employee from maintaining a gender-neutral appearance. Gender-identifying markers displayed on uniforms and identification tags may be subject to industry standards for certain occupations' uniforms (e.g., law enforcement).
- C. **Names and Pronouns.** For everyday interactions and usage, supervisors/managers and coworkers should use an employee's affirming name/gender/pronouns, as expressed by the employee. Supervisors/managers and coworkers should take care to use the affirming name/gender/pronouns in communications with the employee and with others regarding the employee. The affirming name/gender/pronouns to be used in the workplace are established by the employee with no additional documentation (such as legal name change or medical information) required. Repeated, intentional refusal to use the employee's affirming name/gender/pronouns, and/or repeated reference to the employee's dead name/gender/pronouns by supervisors/managers, or coworkers is contrary to the goal of treating all employees with dignity and respect. Such intentional conduct is also inconsistent with the employee's decision to keep certain aspects of the employee's gender identity private. Such intentional conduct could constitute unlawful discrimination. Supervisors/managers and coworkers should be sensitive to the fact that the transitioning employee may not be able to change their name on certain platforms (e.g., email, electronic Official Personnel Folder (e-OPF), DOI Talent, etc.) or that such changes may be delayed. The employee's affirming name/gender/pronouns should be used regardless.
- D. **Inclusive Language.** To the extent practicable, use gender-neutral language in broad communications to avoid assumptions about gender identity. Using gender-neutral language (e.g., person, individual, or employee) and pronouns (e.g., they, them, theirs, ze/hir/hirs, ze/zir/zirs, xe/xem/xyrs) are also inclusive of gender nonconforming and non-binary employees and may be used in everyday conversations (e.g., you could address an audience by saying "everyone" rather than "ladies and gentlemen").
- E. **Restrooms and Related Facilities.** Consistent with [guidance](#) by the Department of Labor's Occupational Safety and Health Administration (DOL/OSHA), all employees shall be provided access to sanitary and related facilities. In accordance with DOI policy and informed by OSHA's [best practices](#), all employees, including transgender, gender nonconforming and non-binary employees in the Federal workplace shall have access to sanitary and related facilities that correspond with their gender identity. The decision should be left to the employee to determine the most appropriate and safest option for them. Generally, for a transitioning employee, once the employee has begun working in

the gender that reflects the employee's gender identity, Bureaus/Offices should allow access to restroom and other related facilities (if provided to other employees) consistent with the employee's gender identity. Supervisors and managers may not require the employee to have undergone or to provide proof of any particular procedure (including gender reassignment surgery) in order to have access to facilities designated for use by a particular gender. Under no circumstances may a Bureau/Office require an employee to use a facility that is unsanitary, potentially unsafe for the employee, located at an unreasonable distance from the employee's workstation, or that are inconsistent with the employee's gender identity. Bureaus/Offices are encouraged to provide unisex, single-user restrooms when feasible to maximize comfort, access, and privacy for everyone; however, transgender employees should not be limited to using these facilities.

- F. **Workplace Assignments and Duties.** In some workplaces, specific assignments or duties are appropriately differentiated by gender. For a transitioning employee, gender nonconforming or non-binary employee, once they have begun working full-time in the gender that reflects their gender identity, supervisors/managers should treat the employee as that gender for purposes of all job assignments and duties. Transitioning employees should not be required to have undergone or to provide proof of any particular medical procedure (including proof of surgery) in order to be eligible for gender-specific assignments or duties. Bureaus/Offices generally may not require an employee to accept a gender-specific assignment or duty contrary to the gender under which the employee otherwise works, or limit gender-specific assignments or duties for an employee once the employee's e-OPF has been constructed to reflect the new gender.
- G. **Recordkeeping.** Consistent with the Privacy Act and applicable record-keeping, the records in the employee's e-OPF and other employee personnel-related records (pay/leave accounts, training records, benefits documents, etc.) should, to the extent permissible and within the Department's control, be changed to reflect the employee's affirming name/gender/pronouns, once the employee has begun working full-time in the gender role consistent with the employee's gender identity and has submitted a request, including the requisite documentation, to update the employee's e-OPF and other personnel records pursuant to Chapter 4 of OPM's [Guide to Personnel Recordkeeping](#). An employee's name is typically updated in their e-OPF *after* the employee receives a legal name change. However, for a variety of reasons an employee may not be able or may choose not to obtain a legal name change at the same time the employee changes their name for everyday interactions. For this reason, even if their e-OPF has not been updated, Bureaus/Offices are encouraged to adopt procedures that allow an employee to use their affirming name/gender/pronouns or first initial in or on email accounts, employee directories, business cards, name tags, and similar items not posing legal or security implications, without requiring a name change order. Requests to change historical data or records within the Department's control may be subject to additional Federal recordkeeping regulations/procedures.
- H. **Sick and Medical Leave.** Employees receiving treatment as part of their transition may use sick leave under applicable regulations. Employees who are qualified under the Family Medical Leave Act (FMLA) may also be entitled to take medical leave for transition-related needs of their selves and/or their families.
- I. **Hiring Process.** During the hiring process, hiring managers and supervisors should be

sensitive to the possibility that applicants have transitioned or are in the process of transitioning. The name and gender on their application may correspond with the person's current usage; however, background or suitability checks may disclose a previous name that indicates a gender different from the one the applicant is currently presenting/expressing. In such case, if hiring managers are uncertain how an individual identifies, it is appropriate to respectfully ask the individual how they identify so that the hiring manager can use the proper name/gender/pronouns during the hiring process. Bureaus/Offices may consider asking all new employees about their name/gender/pronouns used when onboarding.

## **8. SUPPORTING TRANSITION IN THE WORKPLACE:**

### **A. Supervisors/Managers.**

Supervisors and managers are responsible for promoting, cultivating, and reinforcing non-discriminatory, inclusive practices and a safe and supportive work environment. For a transitioning employee, notifying their supervisor/manager about their transition might be a stressful event, compounded with concerns about the possibility of rejection, discrimination, job loss, or more. Supervisors/managers are expected to treat all employees with respect, concern, and be aware of and sensitive to the stress and anxiety a transitioning employee may experience before, during, and/or after the transition process. It is critical that supervisors/managers engage in an interactive dialogue with their employee to fully understand their needs and concerns. Such conversations should only occur at the request of a transitioning or transitioned employee and should be led by the requesting employee. All employees are entitled to be free from unlawful discrimination, which includes unlawful harassment.

Supervisors/managers must be willing and available to collaborate with the transitioning employee on the development and implementation of a [Workplace Gender Transition Plan](#). The Workplace Gender Transition Plan is intended to facilitate clear and uniform understanding in order to promote a safe, secure, and respectful work environment before, during, and after an employee's transition. The focus of the plan should be to provide support and assistance to the transitioning employee. Supervisors/managers should follow the lead and comfort level of the transitioning employee in the development of the employee's plan. Supervisors/managers should discuss with the employee, if/how they want to engage in any notification to their colleagues and/or customers.

Supervisors/managers should note that their assistance and support may also be needed if/when the transitioning employee requests changes to DOI-controlled systems and/or supplies (e.g., business cards, if cards are provided to all employees). The [Suggested Element Changes](#) provides a list of potential actions that may be further supplemented to fully support transitioning employees. Supervisors/managers should consider and grant leave requests relating to an employee's transition as they would for all other employee medical appointments.

If/when a supervisor/manager makes an announcement, upon request of the transitioning employee, the supervisor/manager should mention the availability of resources, including support organizations/offices including the employee's SHRO, EEO Office, CADR,

Employee Resource Groups (ERGs) and EAP. Supervisors/managers are also encouraged to reaffirm their commitment to equal employment opportunity, including to diversity, equity, inclusion and accessibility (DEIA) and anti-harassment. Supervisors/managers should communicate support for transitioning employees and set an example and expectations for all employees on appropriate conduct in the workplace.

Supervisors/managers are required to take appropriate steps to address and correct any situation in which the supervisor/manager has awareness (or reasonably should be expected to have awareness) of offensive remarks or conduct relating to an employee's transition, including promptly reporting harassing conduct consistent with agency policy.

Supervisors/managers should work closely with their SHRO and EEO offices to ensure training opportunities are provided for employees to educate themselves about treating all employees, customers, and others with dignity and respect. Trainings enable employees to ask questions in a moderated space and are an effective way of preventing discrimination and harassment. Trainings should inform employees that it is their responsibility to report acts of discrimination or harassment and to address derogatory language, jokes, and behavior.

## **B. Coworkers and Other Employees.**

All employees are responsible for understanding DOI's policies prohibiting unlawful discrimination and harassment, including on the basis of gender identity, gender expression, and/or perceived gender non-conformity. Employees should be mindful not to make assumptions about an individual's gender. All employees should be respectful and inclusive when interacting or communicating with one another.

Because some people might be unfamiliar with gender transition, it is possible that coworkers might make mistakes, such as referring to the transitioning employee by their dead name/gender/pronouns as opposed to their affirming name/gender/pronouns. In such case, transitioning employees, coworkers, and supervisors/managers are encouraged to correct coworkers who make mistakes, especially early in the transition process. It is assumed that mistakes will become less frequent after a reasonable period of time. What is reasonable may differ in length depending on the relationship of the coworker to the transitioning employee.

Outside of information voluntarily disclosed by the transitioning employee, all employees must protect the transitioning employee's privacy by not discussing medical conditions, procedures, or confidential information with other employees in accordance with the Privacy Act of 1974 and the Rehabilitation Act of 1973.

## **9. RECOMMENDED PROCESS:**

- A. **Notification of Intent.** Transitioning employees are encouraged to notify their supervisor/manager and their SHRO of their intended, ongoing, or completed transition if they wish to make any workplace changes consistent with their transition. Employees are encouraged to initiate contact with as much advance notice as possible, so that the Department can be engaged and supportive throughout the transition process, if requested. If a transitioning employee feels uncomfortable contacting their immediate supervisor/manager, they can consult with anyone in their immediate chain of command

or even the SHRO to assist with initiating notification. Other resources include EEO, CADR, ERGs and/or EAP.

- B. Establishment of a Support Team.** Transitioning employees are encouraged to establish, in collaboration with their supervisor/manager, a support team which may include their SHRO and members of their local EEO Office, ERG, EAP or others to assist in the development and implementation of their [Workplace Gender Transition Plan](#).
- C. Development of a Workplace Gender Transition Plan.** To promote a specific, clear and coordinated process, the transitioning employee and their supervisor/manager are encouraged to develop a [Workplace Gender Transition Plan](#) which is maintained by the transitioning employee. The attached template may be adopted in whole or in part and may be augmented, as needed and desired, to fit each circumstance. Such plans are not required but will likely inspire mutual understanding, facilitate collaboration, promote communication, and reduce uncertainties for all parties involved – resulting in an efficient and effective process to support an employee’s transition. The plan is not intended to be shared with others but rather serves as an individualized roadmap to communicate components of the employee’s transition that impact the workplace. While timing is an important factor to include in the plan, the plan should not be treated as a strict timetable or formal contract, as situations and needs may change based on a number of factors. Some aspects of the plan may evolve over time, necessitating different timeframes and solutions. The employee and their supervisor/manager, along with the employee’s support team should regularly engage and collaborate on resolving any questions or concerns that may arise during the transition process.

DOI recommends that any plan used, includes, at a minimum: 1) the initial date upon which the transitioning employee plans to change their gender expression at work (“effective date”); 2) the employee’s affirming name/gender/pronouns that others should use from that date forward; and 3) any process by which the transitioning employee prefers to provide awareness of their gender transition to others in the workplace, if at all. The plan may also include:

- Expected timelines, based on anticipated milestones and other events<sup>1</sup>;
- Whether the transitioning employee chooses to play an active role in informing/educating their coworkers, customers, or others<sup>2</sup>;
- Whether and when the transitioning employee anticipates taking any extended period of leave; and
- Any specific issues that may need to be addressed (e.g., whether any accommodations might be needed following any gender affirming medical treatment/procedure(s)); however, the transition plan should not contain any personal or sensitive information about any medical treatment the employee

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<sup>1</sup> Consider, for example, the timing necessary to change a legal name and data systems including timekeeping, payroll, and badging/security/access to facilities and electronic systems. The employee may need to consult their SHRO for guidance and timing on name change requests and their Security Office for badging and access.

<sup>2</sup> The transitioning employee should be empowered to decide whether their gender transition is acknowledged or announced, including whether/what information should be included in any requested announcement, who will make the announcement and how the announcement will be made.

may be receiving or issues that do not affect the workplace. The [Suggested Element Changes](#) identifies some of the elements that may need to be updated as a result of gender transition. The [Sample Tools for Supervisors of Transitioning Employees](#) may assist supervisors/managers when asked to announce gender transition in the workplace.

## **10. ASSISTANCE FROM THE SHRO:**

An employee's SHRO and other offices, as appropriate, are available for consult and to assist the transitioning employee in updating different DOI systems and records that typically include employee gender markers and identifiers. A formal name change may also prompt the need for an employee to update their Personal Identity Verification (PIV) credential and other DOI-specific identification badges accordingly. The following actions are initiated by the employee and completed by the SHRO.

- A. **Requesting a Legal Name Change.** An employee requesting a legal name change, should initiate the process by contacting their SHRO. Chapter 20 of OPM's [Guide to Processing Personnel Actions](#) provides instruction on processing legal name change requests including whether and what type of supporting documentation may be required. *Note: A legal name change differs from an employee's name/gender/pronouns for everyday interactions and usage which may be implemented with no additional documentation (such as legal name change or medical information) required.*
- B. **Requesting a Gender Change.** An employee requesting a gender change, should initiate the process by contacting their SHRO. Chapter 4 of OPM's [Guide to Personnel Recordkeeping](#) provides procedures on reconstructing an employee's e-OPF due to a change in gender identity including whether and what type of supporting documentation may be required. *Note: A gender change differs from an employee's name/gender/pronouns for everyday interactions and usage which may be implemented with no additional documentation (such as legal name change or medical information) required.*
- C. **Changing Identification Badge and PIV Credential.** An employee requesting a legal name change may trigger a need to update their identification badge, PIV credential, and personnel security and suitability file/records. The employee should coordinate their Security Office, following Bureau/Office specific procedures. *Note: Changes to name and/or user identification/logins on certain platforms (e.g., email, electronic Official Personnel Folder (e-OPF), DOI Talent, other IT systems, etc.) may be delayed and in some cases, may not be permissible.*

**11. RESOURCES:** The resources outlined below are not all inclusive, but rather are some of the many resources available relative to supporting gender transition in the workplace.

- A. DOI's Office of the Chief Information Officer (OCIO) Standard Operating Procedures (SOP) for [Changing Email Display Name and Email Address in M365](#).
- B. [National Center for Transgender Equality \(NCTE\)](#)  
NCTE advocates to change policies and society to increase understanding and acceptance of transgender people.

C. **The Gay and Lesbian Alliance Against Defamation (GLAAD)**

GLAAD is the world’s largest Lesbian, Gay, Bisexual, Transgender and Queer media advocacy organization – increases media accountability and community engagement that ensures authentic LGBTQ stories are seen, heard, and actualized.

**12. LABOR MANAGEMENT OBLIGATIONS:** Bureaus/Offices are reminded to fulfill their labor-management obligations, as appropriate, in implementing the requirements set forth in this PB.

**13. INQUIRIES:** Any Department employee or employee representative seeking further information concerning this policy may contact their SHRO. SHROs may contact the Department’s Office of Human Capital concerning questions related to this policy.

Jennifer Ackerman

**JENNIFER  
ACKERMAN** Digitally signed by  
JENNIFER ACKERMAN  
Date: 2023.10.12  
11:07:28 -04'00'

Director, Office of Human Capital  
Deputy Chief Human Capital Officer

Attachments

**CONTROLLED/PRVCY**  
**(When Filled In)**

**WORKPLACE GENDER TRANSITION PLAN**

The following is a Workplace Gender Transition Plan (“Plan”) template that may be adopted in whole or in-part and may be augmented, as needed and desired, to fit the circumstances of each individual employee’s needs. The use of such plan is not a requirement.

Transitioning employees may also wish to consider the following when developing their Plan:

- Information/documentation required for each record change request, and the estimated time to process each change request.
- Date(s) by which requests may need to be initiated or documentation submitted so that requested changes go into effect by a specific date.
- Follow-up to ensure that all requested record changes have occurred.

Employee (Affirming Name): \_\_\_\_\_

Formerly known as (Dead Name): \_\_\_\_\_

Has notified [BUREAU/OFFICE] of their intention to change their gender expression in the workplace effective [EFFECTIVE DATE]. This Plan will outline the actions and expectations of the [BUREAU/OFFICE] and [NAME OF TRANSITIONING EMPLOYEE].

**Key Points of Contact**

Name	Role (Not required to list all)	Email Address	Telephone Number
	Transitioning Employee		
	Supervisor/Manager of Transitioning Employee		
	Servicing Human Resources Office (SHRO)		
	Employee Resource Group (ERG) Contact		
	Employee Assistance Program (EAP) Representative		
	Equal Employment Opportunity (EEO) Office Contact		
	Other: _____		

**Notification of Intent to Change Gender Expression**

The transitioning employee contacted [NAME AND TITLE OR RELATIONSHIP TO EMPLOYEE] to notify the [BUREAU/OFFICE NAME] that they are requesting a change to their name, gender, and/or pronouns, and is to be referred to as [AFFIRMING NAME] with [AFFIRMING PRONOUNS] as pronouns.

**Identification Changes**

**CONTROLLED/PRVCY**  
**(When Filled In)**

[EMPLOYEE AFFIRMING NAME] is responsible for initiating any and all changes related to their Workplace Gender Transition Plan including, but not limited to legal name change, gender change requests, identification card(s), and/or facility access card(s).

**Planned Gender Transition Announcements**

[EMPLOYEE AFFIRMING NAME] has requested that the following individuals, groups, and/or organizations be made aware of their transition.

<b>Group(s) to be Notified</b>	<b>Notification Method</b>	<b>Notification Target Date</b>
<i>Ex. Workforce Relations Office</i>	<i>Email from Supervisor/Manager</i>	<i>TBD</i>

[EMPLOYEE AFFIRMING NAME] is reminded that there may be additional individuals who might be made or become aware of their transition and as a result of processing requested action(s).

Upon request of the employee, an announcement meeting may be convened for those in frequent workplace contact with the employee, such as coworkers, customers, work teams, etc. The purpose of the meeting is to announce the employee’s transition, articulate expected norms of conduct, answer work-related questions, and/or implement training. Medical privacy must be maintained. The meeting, if requested by the employee, can be conducted by the employee, a supervisor/manager, a representative from the employee’s SHRO, EEO, ERG, EAP or another individual, per the employee’s request. The employee may opt to be present in or absent from all or part of this meeting. If the employee so chooses, they may draft a short notice/email or create another type of brief message to be shared with those attending the meeting or via email for purposes of communicating the employee’s affirming name/gender/pronouns.

**Updating Historical Technical Reports/Work Products**

The employee **gives consent** / **does not give consent** (circle one) for historical technical reports and/or work products to be updated with the employee’s affirming name/gender/pronouns, following their transition.

**Disability-related Reasonable Accommodations**

If a disability-related reasonable accommodation becomes necessary during or after the transition process, the employee must request the accommodation through DOI’s reasonable accommodation policy/procedures outlined in [PB 21-03](#), *Processing Requests for Reasonable Accommodation Requests for Individuals with Disabilities* dated October 24, 2022.

**Family and Medical Leave Act (FMLA)**

If the employee wishes to request leave pursuant to the FMLA, the employee must do so through their normal leave requesting process. The employee should consult their SHRO for information about the availability and use of FMLA leave.

**CONTROLLED/PRVCY  
(When Filled In)**

Other points of agreement between the employee and their supervisor/manager include the following:

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**Signatures**

_____ Employee	_____ Date
_____ Supervisor/Manager	_____ Date
_____ SHRO Representative	_____ Date

**Records Disposition:** Short Term Human Resources. Disposition: Temporary. Cut off at the end of the fiscal year after the plan has been completed or is no longer needed. Destroy 3 years after cutoff. (DRS 1.2.0004 DAA-0048-2013-0001-0004)

**Privacy Act Statement:** This information is requested under 5 U.S.C. 1302; 42 U.S.C. Subchapter VI; Title VII of the Civil Rights Act of 1964; Executive Orders 11478 as amended by EO 12106 and EO 13087; EO 13988; EO 14035; EO 14075. The purpose of the Workplace Gender Transition Plan is to support Department of the Interior employees who are transitioning or have transitioned and to ensure that all employees are treated in a professional and respectful manner. The information provided will be used to process employee requests and evaluate an employees' needs before, during and after transition to ensure an inclusive and supportive workplace. Information may be shared internally with supervisors, human resources and equal employment opportunity officials to implement the transition plan and take appropriate action, and may be shared with the Office of Personnel Management and other organizations as necessary to process and update personnel and administrative records, as required by law, and as authorized under the Privacy Act of 1974 and routine uses published in OPM/GOVT-1, General Personnel Records, 77 FR 73694 (December 11, 2012); modification published at 80 FR 74815 (November 30, 2015). Completing the Workplace Gender Transition Plan and providing information are voluntary. There are no impacts to individuals who choose not to complete the plan.

## **EMPLOYEE GENDER TRANSITION SUGGESTED ELEMENT CHANGES**

This is a list of suggested element changes that a transitioning employee may want to consider updating as a result of their gender transition in the workplace. The list is not exhaustive, nor does it address systems or data outside of DOI's control. Employees and their supervisors/managers may wish to supplement this list, as necessary and appropriate.

### **Servicing Human Resources Office (SHRO)**

- Federal Employee Health Benefits (FEHB) Election Form, SF-2809
- Notice of Change in FEHB Enrollment, SF-2810
- Federal Employees Dental and Vision Insurance Program (FEDVIP)
- Federal Employees' Group Life Insurance (FEGLI) Program Election, SF-2817
- FEGLI Beneficiary, SF-2823
- Unpaid Compensation Beneficiary Form, SF-1152
- Civil Service Retirement System (CSRS) Designation of Beneficiary, SF-2808
- Federal Employees Retirement System (FERS) Designation of Beneficiary, SF-3102
- Thrift Savings Plan (TSP) Election Form, TSP-1
- Federal Flexible Spending Account (FSA) Program
- Federal Long-Term Care Insurance (FLTCIP) Program
- Office of Workers' Compensation Program (OWCP)

### **Security Office**

- Federal Employee Identification and PIV Credentials (Badge) for legal name change(s)
- Personnel Security and Suitability File
- Facility Access (cards)

### **Finance Office**

- Government Travel Profile
- Government Travel/Purchase Card

### **Information Technology (IT) Office**

- Login name for all computer software systems, including initial login, email system, timekeeping systems and other DOI-controlled systems and programs with gender markers.
- Access to mobile device(s) and RSA token
- Change of email address, active directory, voicemail
- Updates to distribution list(s), contact list(s), POC list(s)

### **Local Office**

- Notification of Personnel Action, SF-50
- electronic Official Personnel Folder (e-OPF)
- Office Name Plate and Business Cards
- Local Transit Benefits

## **SAMPLE TOOLS FOR SUPERVISORS OF GENDER TRANSITIONING EMPLOYEES**

The following sample tools may assist supervisors/managers when employees request their gender transition be announced in the workplace. This is intended to provide very high-level suggestions and general examples – specific communications should be customized based on the expressed wishes of the transitioning employee.

### **Talking Points Example**

Supervisors/Managers may wish to include the following in announcements:

- The affirming name/gender/pronouns by which the transitioning employee should be addressed.
- The effective date that the transitioning employee should be addressed by their affirming name/gender/pronouns.
- Names and contact information of resources who can answer questions about gender transition at DOI, such as the SHRO, local EEO Office, LGBTQ+ ERG(s), and/or EAP.
- A copy of Personnel Bulletin (PB) 23-03, *Supporting Gender Transition in the Federal Workplace*.

### **Email Communication Example**

This email template may be used to communicate an employee’s gender transition in the workplace:

Email To:        [*INSERT EMAIL ADDRESS*]  
Subject:         Transition of Employee

Greetings [BUREAU/OFFICE],

Effective [DATE], the employee formerly known as [DEAD NAME] is to be referred to as [AFFIRMING NAME], with the use of [AFFIRMING PRONOUNS] as pronouns.

Leadership supports [AFFIRMING NAME] in [AFFIRMING NAME]’s gender transition, in accordance with DOI’s policies on Gender Transition, equal employment opportunity, diversity and inclusion, and anti-harassment. If you have questions or concerns, or if you need additional information, please consult [NAME OF SUPERVISOR/MANAGER] at [SUPERVISOR’S EMAIL AND PHONE NUMBER] OR [NAME OF SHRO REPRESENTATIVE] at [SHRO EMAIL AND PHONE NUMBER]. If you are interested in learning more about how DOI supports gender transition, I invite you to refer to DOI’s Guidance for Supporting Gender Transition in the Workplace policy.