



# No FEAR Act Annual Report to Congress Fiscal Year 2021



**OFFICE OF DIVERSITY, INCLUSION AND CIVIL RIGHTS**  
**U.S. DEPARTMENT OF THE INTERIOR**

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# Introduction



***DOL's mission is carried out by approximately 70,000 dedicated and skilled employees in 2,400 locations throughout the United States.***

## Introduction

The Department of the Interior (DOI or Department) 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 United States 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.

DOI 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.

DOI's mission is carried out by approximately 70,000 dedicated and skilled employees in 2,400 locations throughout the United States. 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 DOI's mission requires talented individuals who are invested in the organization's purpose and who can navigate the challenges of fulfilling the mission. DOI 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 broader DOI mission.

# Background



***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.***



## Background

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 Agency'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 FY21, Congress passed the Elijah E. Cummings Federal Employee Anti-discrimination Act (ECA), which amended the No FEAR Act. It is anticipated that the U.S. Equal Employment Opportunity Commission (EEOC) and Office of Personnel Management (OPM) will issue updated regulations in FY22 regarding implementation of the ECA.

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 Attorney General;
- The Chair of the Equal Employment Opportunity Commission; and
- The Director of the Office of Personnel Management.

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 status or disposition of cases;
- 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;
- Any policies implemented related to appropriate disciplinary actions against a federal employee who discriminated against any individual, or committed a prohibited personnel practice; and
- An analysis of the data collected with respect to trends, causal analysis, and other forms for analysis.

## Background, Continued

This annual report for FY21 outlines the following information:

- The status of the 20 federal court cases filed against DOI under the laws governed by the No FEAR Act.
- DOI reports that during FY21, there were four matters requiring payment from the Judgment Fund for a total of \$485,000. These funds were related to FY21 judgments, awards, and settlements under the statutes addressed in the No FEAR Act.
- An overview of the disciplinary action taken against at least 76 employees stemming from actions that were inconsistent with federal anti-discrimination and anti-harassment laws.
- An analysis of the 239 formal EEO complaints filed against DOI in FY21. This analysis shows that reprisal 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 FY18-21. This analysis shows there has been a steady decrease in EEO harassment complaints over the last four fiscal years at DOI.
- DOI's EEO Program Action Plan, which contains tangible action the Department has recently taken and/or plans to take for FY22 and beyond.
- DOI's No FEAR Act Training Plan.
- DOI's Accomplishments, Training, and Awareness from FY21.

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

# Results and Data



*The Equal Employment Opportunity Policy Statement issued by the Secretary on September 30, 2021, reaffirms the Department's commitment to ensuring DOI policies, practices and procedures do not deny opportunities to employees or applicants because of race, color, sex, national origin, religion, age, disability, or genetic information.*



## Results and Data

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

In FY21, DOI was a party to 20 federal court cases filed under laws governed by the No FEAR Act. Of these cases, 18 were pending at the time of reporting. In addition, in one of the cases a decision was issued in favor of the Department. One case was settled. The most frequent basis alleged in all of these FY21 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 complaints filed.

### B. Summary of Federal Court Cases

Federal Court Cases by Basis (FY21)		
<i>Basis</i>	<i>Pending</i>	<i>Resolved</i>
Reprisal	11	2
Race	5	1
Color	4	0
Religion	0	0
Sex	3	2
National Origin	0	0
Age	6	0
Disability	4	0
Genetic Information	0	0
Equal Pay Act	0	1
Whistleblowing	0	1

Federal Court Cases by Issue (FY21)		
<i>Issue</i>	<i>Pending</i>	<i>Resolved</i>
Harassment (Sexual)	2	0
Harassment (Non Sexual)	5	0
Reasonable Accommodation	2	0
Other	7	0

### C. Judgment Fund

DOI reports that during FY21, there were four matters requiring payment from the Judgment Fund for a total of \$485,000. These funds were related to FY21 judgments, awards, and settlements under the statutes addressed in the No FEAR Act.

### D. Employee Discipline

During FY21, DOI took disciplinary action against at least 76 employees stemming from actions that were inconsistent with federal anti-discrimination and anti-harassment laws.

DOI Disciplinary Actions (FY21)	
Oral Counseling/Warning	3
Written Counseling/Warning	8
Reprimand	21
Suspension (Less than 14 days)	25
Suspension (More than 14 days)	3
Reduction in Grade	2
Reassignment	2
Termination	9
Removal	3
Total Actions	76

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 DOI, 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. 370 DM 752 includes Appendix B, Table of Offenses and Penalties, 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), the EEO Office has a role in recommending remedial or disciplinary action concerning managers and supervisors who failed in their EEO responsibilities.

## D. Employee Discipline, Continued

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

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

- **Personnel Bulletin 18-01: Prevention and Elimination of Harassing Conduct** updated and amended DOI'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.
- The **Equal Employment Opportunity Policy Statement** issued by the Secretary on September 30, 2021, reaffirms the Department's commitment to ensuring DOI policies, practices and procedures do not deny opportunities to employees or applicants because of race, color, sex, national origin, religion, age, disability, or genetic information. The Policy Statement provides that DOI will ensure that EEO is implemented in all of our human capital and employment programs, management practices, and employment decisions, including recruitment, hiring, merit promotions, transfers, reassignments, training, career development, benefits, and separations.
- **370 Departmental Manual 752: Discipline and Adverse Actions** establishes the policy, procedures, and authority/responsibility for administering employee discipline within DOI, 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 service.
- **Personnel Bulletin 17-09:** Mandates training on EEO, Prohibited Personnel Practices and Whistleblower Protections, and the No FEAR Act. This policy requires DOI's sub-component agencies 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 DOI rolls as of October 1 2016, complete Civil Treatment for Leaders training. Lastly, Personnel Bulletin 17-09 mandates that beginning in FY17, every three (3) years, all managers and supervisors must complete Prohibited Personnel Practices and Whistleblower Training.

# Analysis and Trends

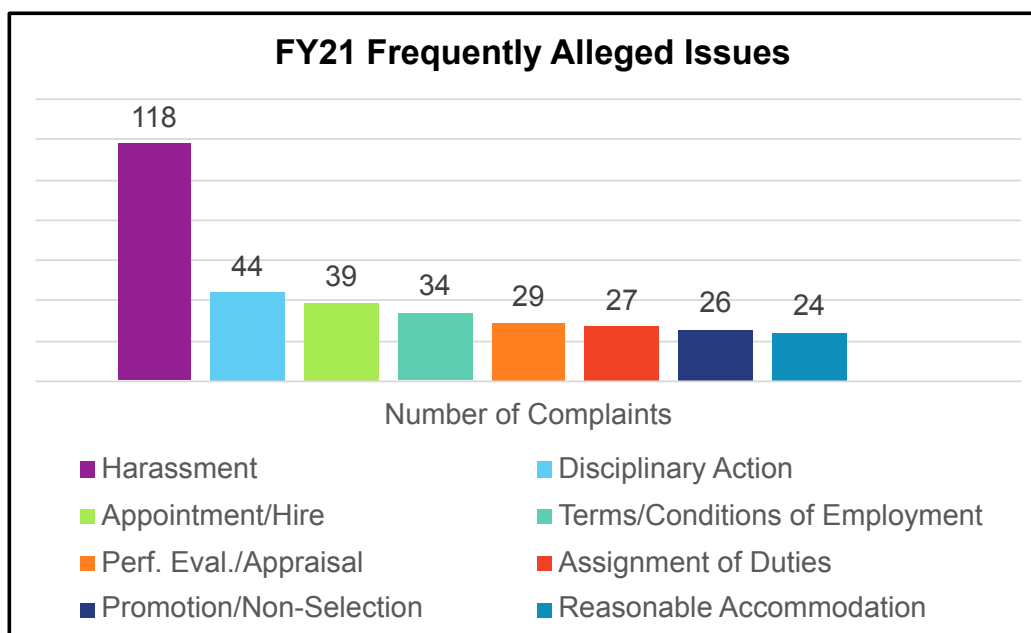
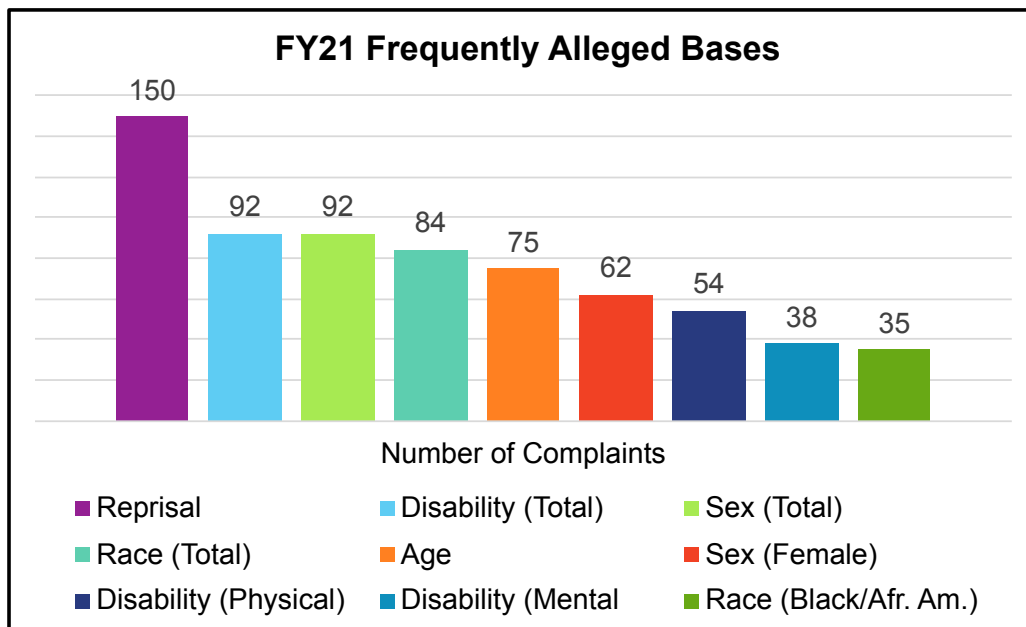


*Over the last four fiscal years, there has been a steady decrease in the overall number of formal EEO complaints filed with the Department. In FY21, there was a 12 percent decrease in new formal complaints compared to FY20 and a 33 percent decrease compared to FY18.*

## Analysis and Trends

### A. Formal Complaints

In FY21, 239 formal EEO complaints were filed against DOI. Reprisal was the most frequently alleged basis, 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, and performance evaluation/appraisal. As noted above, complaints can be filed alleging multiple issues and bases of discrimination; consequently, the sum of the bases and issues may be not equal the total complaints filed.

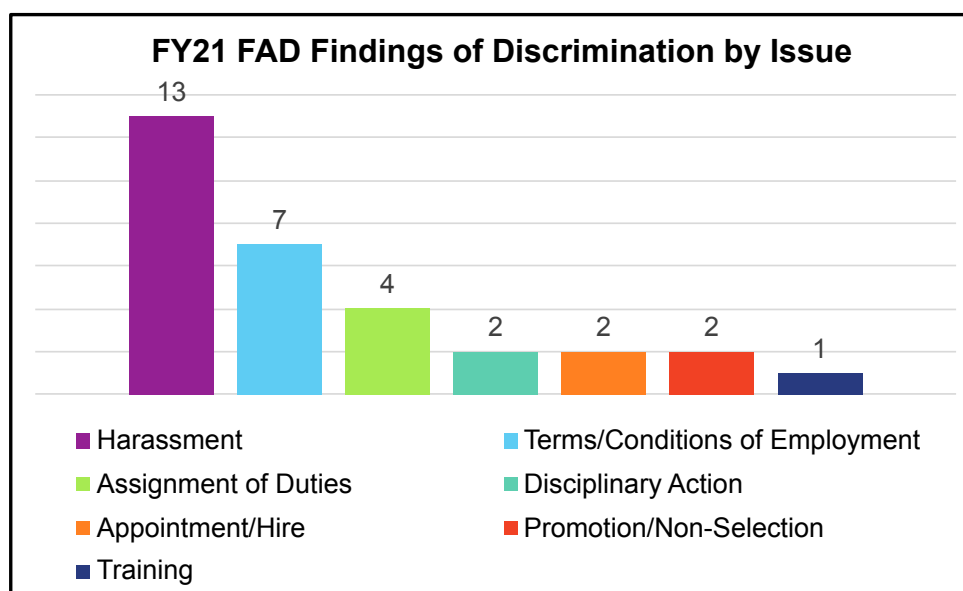
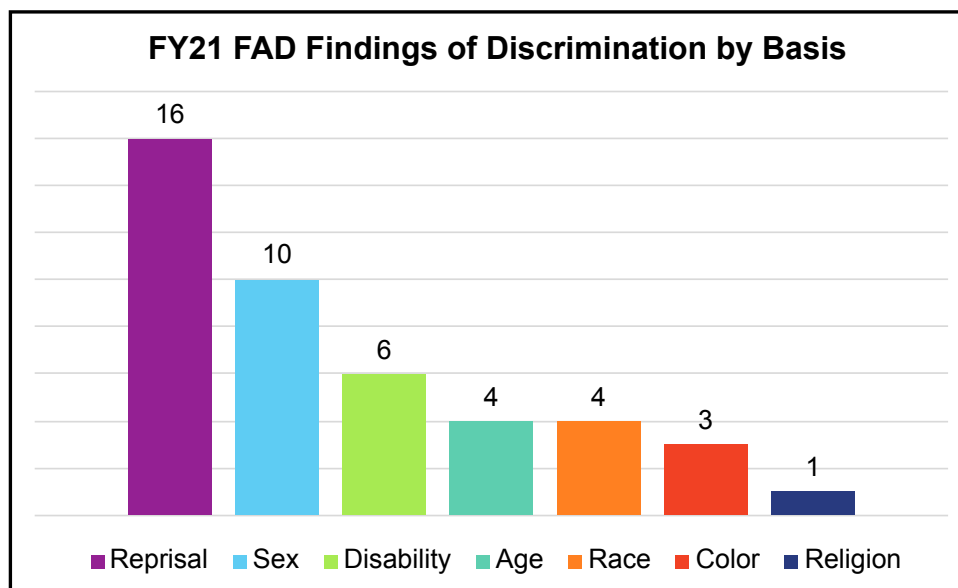


## B. Efficiency of Complaints Processing

In FY21, DOI counseled 97 percent of its 376 pre-complaints in a timely manner, which is above the federal sector average of 94 percent. Pre-complaints are informal complaints filed as part of the federal sector EEO process. Also, DOI completed 81.5 percent of EEO investigations in a timely manner, which is consistent with the federal sector average of 82.7 percent.

## C. Findings of Discrimination

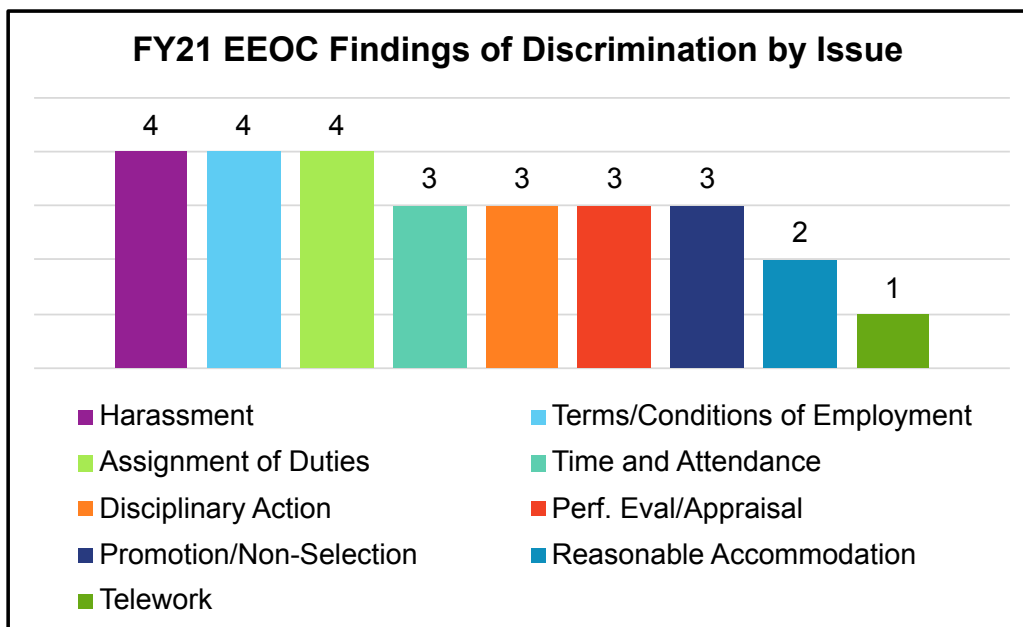
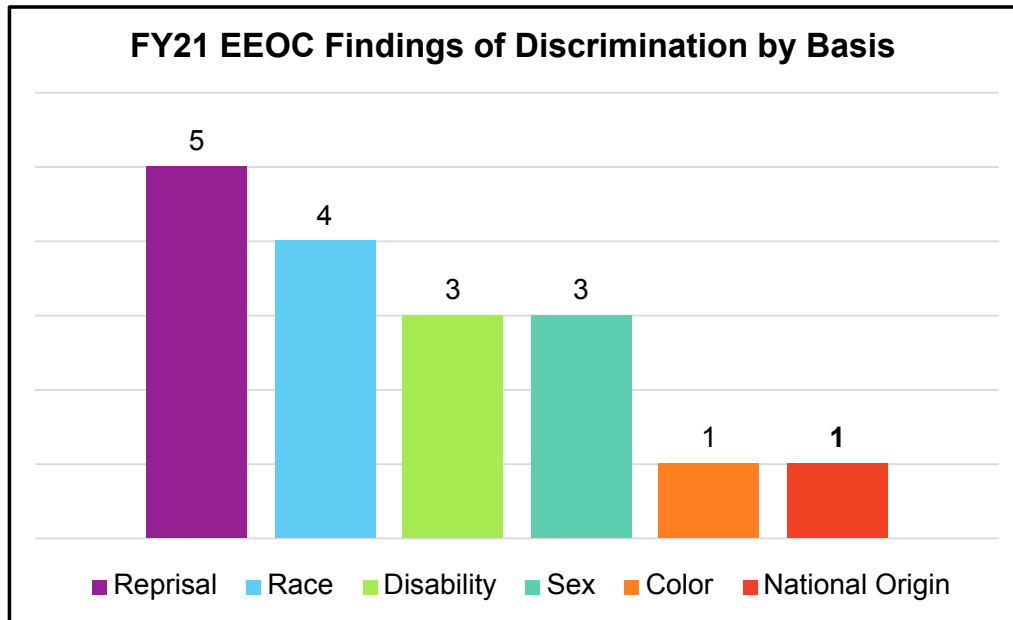
In FY21, DOI issued 23 Final Agency Decisions (FADs) with a finding of discrimination. Complaints can be filed alleging multiple issues and bases of discrimination; consequently, the sum of the bases and issues may not equal the total complaints filed.





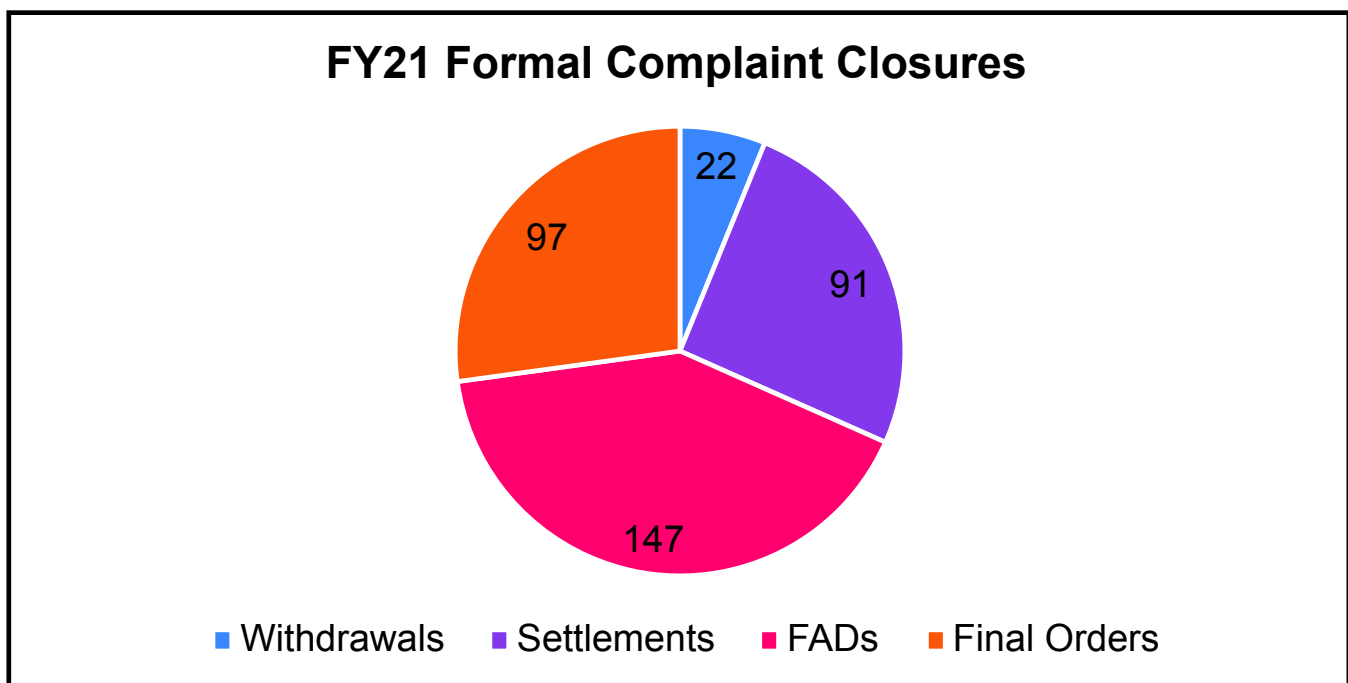
## C. Findings of Discrimination, Continued

In FY21, the EEOC issued six findings of discrimination against DOI. Complaints can be filed alleging multiple issues and bases of discrimination; consequently, the sum of the bases and issues may not equal the total complaints filed.



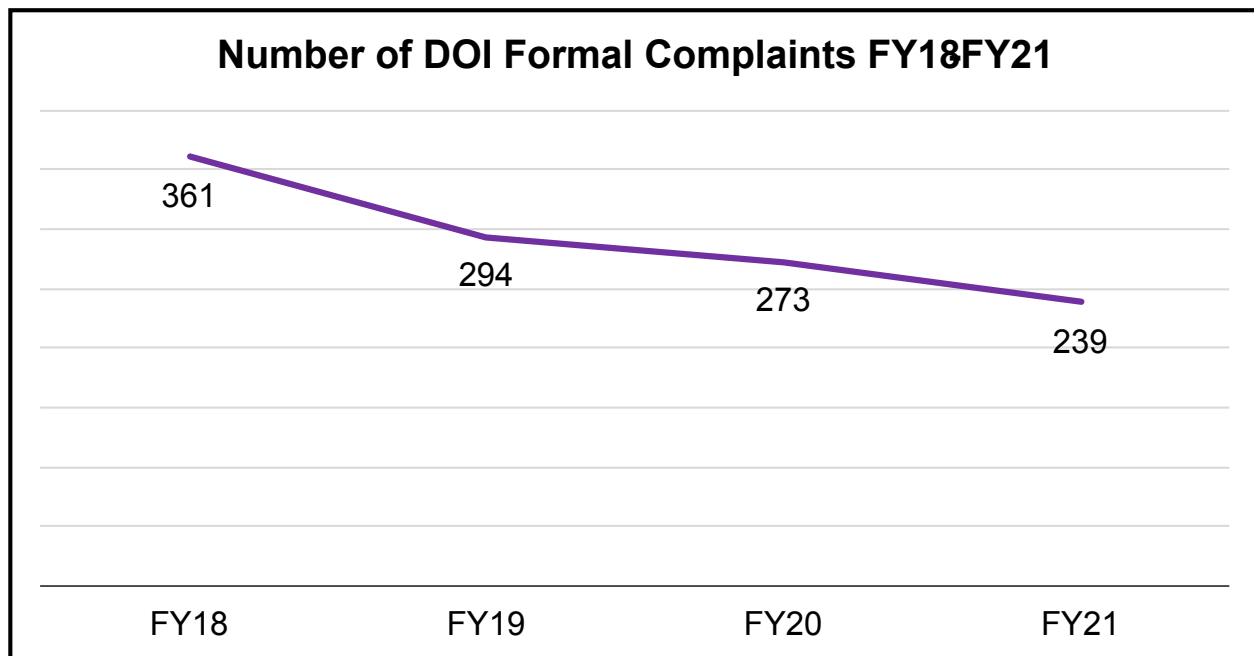
## D. Closures

In FY21, DOI closed 357 complaints by withdrawal, settlement, FAD, or final orders. This accounts for 22 withdrawals during the formal stage, 91 settlements during the formal stage, and 244 Final Agency Actions, including 147 FADs without an EEOC Administrative Judge (AJ) Decision (which includes FAD procedural dismissals), and 97 Final Agency Orders with an AJ Decision. As referenced above, the Department issued 23 FAD findings of discrimination and EEOC issued six findings of discrimination against the Department. Less than 1 percent of all DOI Final Agency Actions appealed were remanded by the EEOC Office of Federal Operations.



## E. Trends and Causal Analysis

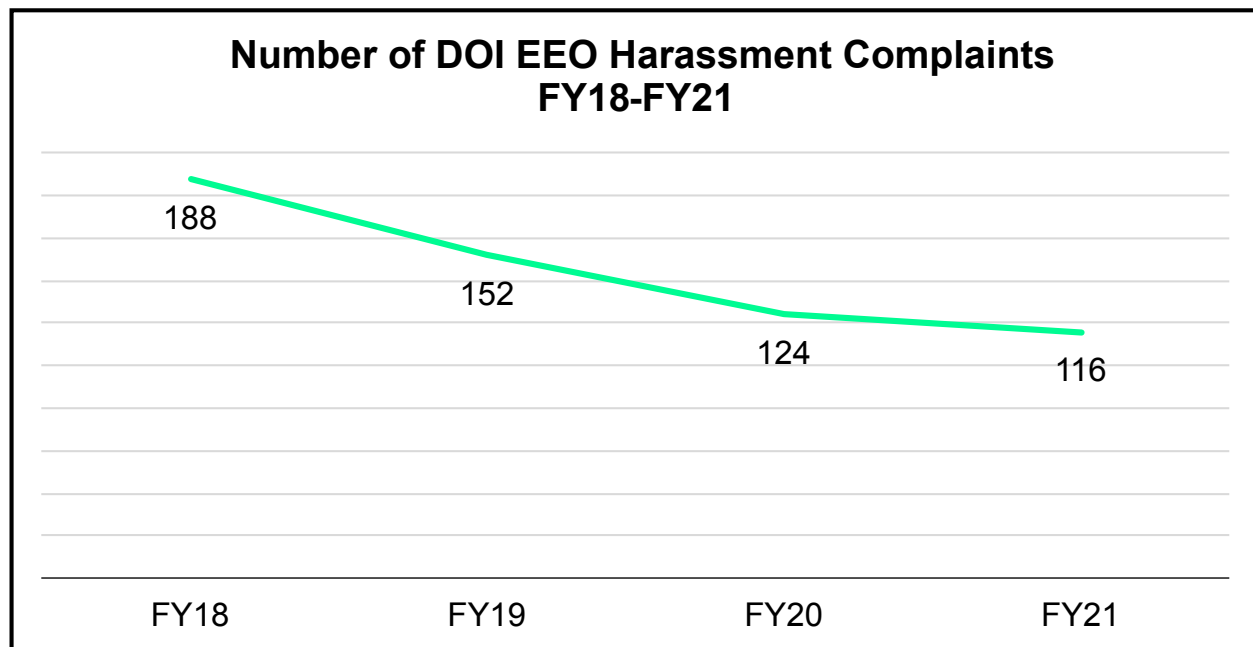
Over the last four fiscal years, there has been a steady decrease in the overall number of formal EEO complaints filed with the Department. In FY21, there was a 12 percent decrease in new formal complaints compared to FY20 and a 33 percent decrease compared to FY18. This trend is consistent with the broader trend of decreased EEO complaints across the federal sector. This trend may be due to several root causes, such as the government shutdown in FY19, the ongoing COVID-19 pandemic, and the Department's increased proactive preventative efforts which are summarized below.



## E. Trends and Causal Analysis, Continued

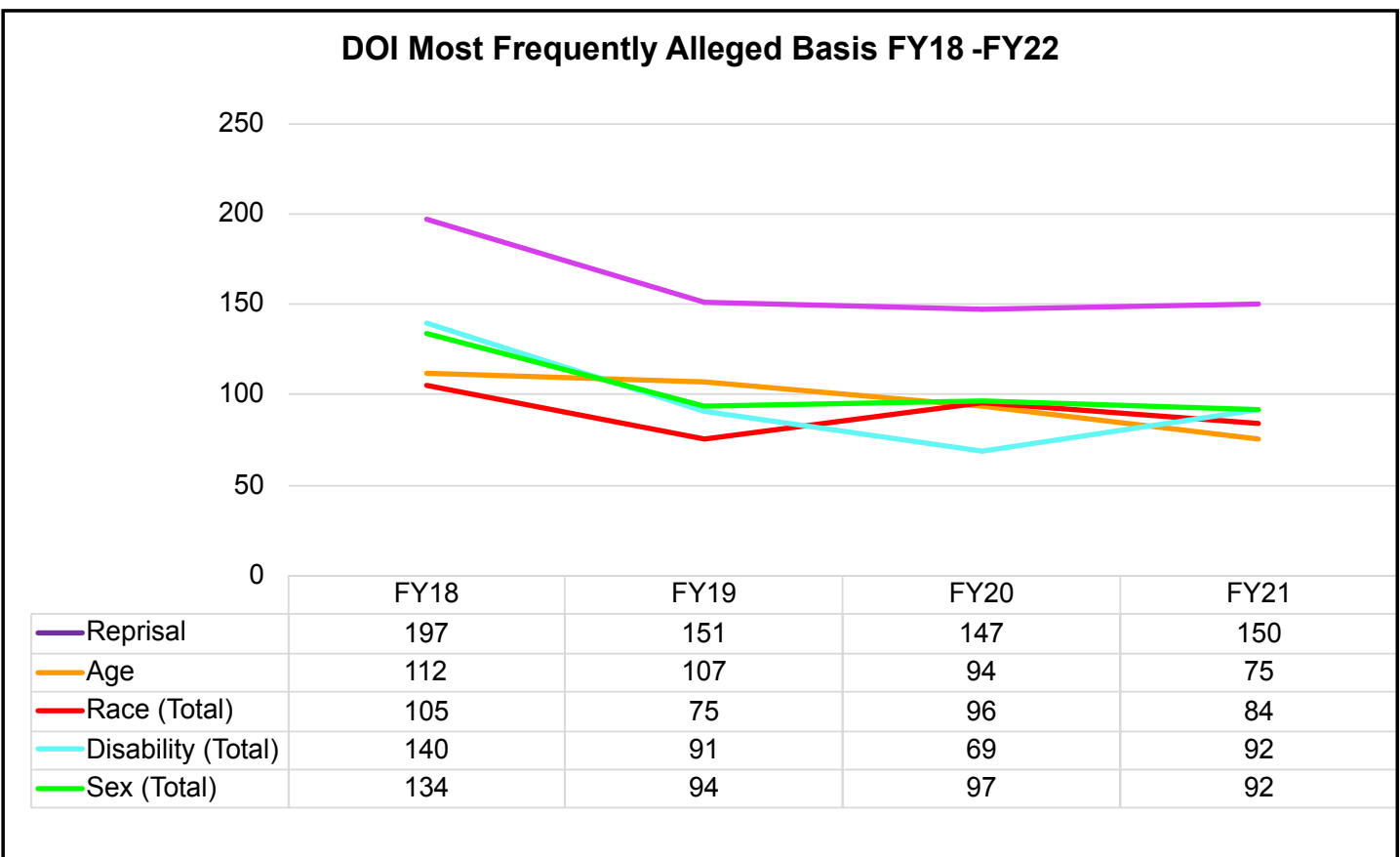
Consistent with the decline in formal complaints, over the last four fiscal years, there has been a steady decline in EEO complaints alleging harassment at DOI. In FY18, EEO harassment complaints comprised approximately 52 percent of all EEO complaints at DOI. In FY21, EEO harassment complaints comprised 48 percent of all EEO complaints, a 4 percent decrease from FY18. This decrease is due, in part, to the Department's enterprise-wide approach to maintain a harassment-free workplace and to take prompt and effective action when allegations of harassment arise.

Several key initiatives of note have contributed to the decrease in overall EEO harassment complaints. First, in FY18 the Department issued Personnel Bulletin 18-01: Prevention and Elimination of Harassing Conduct (PB-18-01), which updated and amended DOI'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 the Accomplishments, Training, and Awareness Section for a comprehensive summary of these efforts.



## E. Trends and Causal Analysis, Continued

Reprisal, age, race, disability, and sex are consistently the most frequently alleged bases of discrimination at DOI. This trend is consistent with the broader federal sector. The number of complaints alleging reprisal, which is the most frequently alleged basis, has remained static from FY20 to FY21, even as the number of total formal complaints has decreased. Moreover, there was a noticeable decrease in the number of complaints alleging discrimination on the basis of age from FY20 to FY21.



## F. Practical Knowledge Gained

A review of EEO complaint trends show that the Department must continue to focus resources on training and prevention in the areas of reprisal, disability, age, race, and sex-based discrimination as well as anti-harassment. DOI's success in reducing the number of EEO harassment complaints is evidence that targeted, proactive preventive efforts yield results.

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

Many substantive EEO concepts are complex, and supervisors and managers often struggle to understand and carry out their EEO responsibilities (e.g., those involving disability and anti-retaliation laws). Consistent proactive prevention of discrimination, harassment, retaliation (including whistleblower retaliation), and other prohibited personnel practices—through training and targeted technical assistance—remains vital to fostering Diversity, Inclusion, Equity, and Accessibility (DEIA) throughout the workforce and upholding Merit System Principles.

All organizational leaders must consider DEIA while implementing new or changed policies, practices, procedures, and organizational matters that could affect the workforce. Engaging with the Department's EEO stakeholders early and often to obtain crucial input and feedback on personnel, budget, technology, and other workforce issues can help prevent potential missteps and ensure DEIA best practices are adopted.



# EEO Program Action Plan



***DOI's Office of Diversity, Inclusion and Civil Rights (ODICR) is currently working with colleagues from the Office of the Solicitor (SOL), Office of Collaborative Action and Dispute Resolution (CADR), and the Office of Human Capital (OHC) to design a new Anti-Harassment training.***

## EEO Program Action Plan

DOI's Office of Diversity, Inclusion and Civil Rights (ODICR) is currently working with colleagues from the Office of the Solicitor (SOL), Office of Collaborative Action and Dispute Resolution (CADR), and the Office of Human Capital (OHC) to design a new Anti-Harassment training. DOI anticipates assigning the training to employees by the end of FY22. This new training will meet the anti-harassment prevention biennial training requirements for employees and contractors. New employees and contractors must complete the training within thirty (30) calendar days of their start date.

The purpose of this new Anti-Harassment training course is to: 1) equip employees to identify unlawful discrimination, including unlawful harassment and retaliation; and 2) explain employee rights, responsibilities, and expectations as they relate to responding to and/or reporting allegations of unlawful discrimination, including unlawful harassment and retaliation.

ODICR has procured and is currently planning a launch of a new EEO case management system. The new system is a next generation EEO platform that will allow the Department to enhance the tracking and management of EEO complaints throughout the EEO complaint lifecycle while increasing efficiency and data analytics capabilities to meet the demands of a changing workforce. The updated system allows individuals to make EEO contact electronically and track the progress of their claims. In addition, the new system includes role-based dashboards that enable EEO practitioners to more efficiently manage workloads. DOI anticipates the new EEO case management system will be fully operational by the end of FY22.

In FY21, ODICR set strategic priorities to increase quality control measures related to the drafting and issuance of FADs, final orders, and compliance documents and to improve compliance with EEO regulatory timeframes through regular assessment of internal Departmental processes and operations. In FY22, ODICR plans to build on the significant progress made throughout FY21 to increase quality control and improve compliance with EEO regulatory time-frames.

In FY21, ODICR developed and delivered EEO compliance training to approximately 600 employees who were associated with findings of discrimination from the Department and EEOC. These trainings were delivered in four, eight-hour training sessions and included an in-depth overview of EEO law as well as critical soft-skill training for managers and supervisors. The aim of the trainings were to prevent a recurrence of discrimination and provide managers and supervisors with the tools necessary to be successful. In FY22, ODICR is evaluating methods to improve the delivery and efficiency of the trainings as well as how increase proactive preventive EEO training across the Department.

# No FEAR Act Training Plan



***DOI'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.***

## No FEAR Act Training Plan

DOI'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 DOI 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. In FY20, ODICR began the process of making significant technical upgrades to the training to enhance the end user's learning experience. The training is administered on-line through DOI Talent, a talent management system that offers integrated learning and performance management to DOI employees.

No FEAR Training is mandatory for all DOI employees. The training cycle is biennial, and must be completed no later than September 30th, every other year. In FY21, the last training cycle, 91.5 percent of the Department's workforce completed the training.

Furthermore, ODICR plans to update the training in FY22 for the FY23 biennial cycle to reflect the Elijah E. Cummings Act of 2020, Executive Order 13985, and Executive Order 13988.

## Accomplishments, Training, and Awareness



*FY21 saw the arrival of a new Secretary of the Interior, who has prioritized workforce DEIA as a fundamental part of the agency's mission. As part of this commitment, the Secretary issued the agency's first EEO policy statement since 2014.*

## Accomplishments, Training, and Awareness

### A. Diversity, Equity, Inclusion, and Accessibility (DEIA) Training

DOI Interior Business Center (IBC) conducted Crucial Conversations training for managers and supervisors. The DOI IBC issued the Supervisor Digest digital newsletter to all managers and supervisors six times yearly that includes a dedicated topic area on Positive Workplace Conduct and reminders on managers' and supervisors' roles and responsibilities in the workplace.

DOI Office of the Secretary (OS) continued to participate in the Bureau of Safety and Environmental Enforcement (BSEE) and IBC's new employee orientation to ensure all employees are aware of their EEO rights and responsibilities, are familiar with the BSEE and IBC Human Resources (HR) practitioners, and are knowledgeable about the agency's resources for Equal Opportunity.

In FY21, the Fish and Wildlife Service (FWS) implemented a process on DOI Talent requiring employees to certify they have read the EEO policy statement, as part of performance management requirements, and established a one-hour mandatory training on the Bureau's DEIA Implementation Plan for all employees that covers the current state of DEIA, barrier analysis and removal, and strategic planning. In addition, the FWS Affirmative Employment Program team uses information on EEO complaints to develop targeted training on retaliation and harassment, as an intervention with certain field offices.

During FY21, the Bureau of Land Management (BLM) Office of Civil Rights provided a quarterly, BLM-wide EEO Complaint Process Training to all employees, managers, and supervisors. 660 employees, managers and supervisors participated in these training sessions in FY21. The BLM Office of Civil Rights also partnered with the BLM Employee Relations/Labor Relations National Program Lead to develop and provide a quarterly, BLM-wide Reasonable Accommodations Training (with individual sessions designed specifically for employees and another for managers, and supervisors. 350 employees, and 380 managers and supervisors participated in these training sessions in FY21. Additionally, the BLM Fire & Aviation Associate Director sends out direction to all Bureau fire personnel on the requirement to complete annual Do What's Right (DWR) and Prevention of Sexual Harassment (POSH) training each year. This is mandatory for firefighters across the Bureau and supervisors are responsible for promoting and fostering a workplace free from unlawful discrimination and harassment.



## A. DEIA Training, Continued

In FY21, DOI's Section 508 Compliance Coordinator provided training to over 750 bureau/office personnel on how to create Section 508 compliant electronic documents, along with a webinar to bureau/office personnel on how to provide accessible training events, ensuring they know their responsibilities regarding accessibility and Section 508 compliance.

## B. DEIA Awareness

The DOI's ODICR conducted several virtual Departmental special observance events in FY21, focused on building employee skill sets and increasing their cultural competencies in facilitating discussions on workplace diversity, DEIA, and resources for career planning and professional development.

Special Observances recognize the continuous achievements of all Americans to American culture with the goal of increasing awareness, mutual respect, and understanding at the Department. They are designed to enhance cross-cultural awareness and promote a culture of dignity and respect in the DOI workforce. These activities are key to DOI's efforts in the proactive prevention of unlawful discrimination as required by the EEOC and identified in DOI's Management Directive 715 (MD-715) Plan. Special observance events support proactive prevention efforts by equipping all employees with the necessary tools and knowledge needed to support an inclusive environment, where every employee is free to exchange ideas, value the uniqueness of individual differences, and use creativity to resolve mission-related challenges and improve organizational performance.

In support of observances, ODICR also developed a series of resource pages for employees to access educational materials and resources to support each community recognized during the respective observance month; and continued the "People of Interior" social media campaign to highlight DOI employees during each observance month and agency programs that support the cultural heritage of each group.

The DOI established the Diversity Partners Community of Practice as a platform to provide effective guidance, and professional development to the various stakeholders tasked with supporting the workforce DEIA efforts, and to encourage informational exchanges that will enable these stakeholders to be more proactive in addressing issues that may impact employees in the workplace, to enhance and strengthen their DEIA and Affirmative Employment Program (AEP) program and/or initiatives that meet MD-715 requirements.

## B. DEIA Awareness, Continued

The Community of Practice met monthly during FY21 and had broad participation by several different groups involved in EEO and/or workforce DEIA activities. These include the Department's Diversity Change Agents (DCAs), Employee Resource Group leaders, Diversity Program Managers, Affirmative Employment Program Managers, Special Emphasis Program (SEP) Managers, SEP Committees, EEO Professionals, HR community, and others across the Department in the realm of DEIA. The Community of Practice provided education on topics such as bystander intervention training, communicating with tact and diplomacy, and creating accessible communication products.

The BSEE and Bureau of Ocean Energy Management (BOEM) EEO Offices, in collaboration with their Diversity Change Agents and in partnership with several DOI Bureaus, held its Allyship Enrichment and Engagement Week virtual event from August 2-6. The event, which had 642 unique participants from across the Department, covered a range of DEIA and employee engagement-related topics, including bystander intervention principles, inclusion as a risk management strategy, cultivating courage to speak out, and an overview of Employee Resource Groups.

DOI's Section 508 Compliance Coordinator gave presentations on the importance of digital accessibility to DOI Office of Communications and the DOI Diversity Partners Community of Practice. These presentations included a screen reader demonstration.

## C. DEIA Accomplishments

FY21 saw the arrival of a new Secretary of the Interior, who has prioritized workforce DEIA as a fundamental part of the agency's mission. As part of this commitment, the Secretary issued the agency's first EEO policy statement since 2014.

ODICR established an MD-715 Intra-Bureau Expert Team (IBET) in FY 2021, consisting of liaisons from DOI Bureaus and Departmental Offices, to provide further program accountability across the Department. The IBET liaisons were provided a stakeholder guide that defines the MD-715 Essential Element Key Performance Indicators (KPIs), to help communicate to their senior leadership how their organizations are expected to ensure workforce DEIA. The IBET will provide information to DOI's MD-715 program managers to conduct a more thorough evaluation of performance on DEIA and proactive prevention of discrimination.

## C. DEIA Accomplishments, Continued

The DOI OHC drafted a new DEIA agency-specific performance requirement for Senior Executive Service (SES). This will be implemented for the FY22 performance cycle. This will provide an accountability mechanism for Senior Leaders to cascade down a commitment to DEIA throughout their teams. Pursuant to this requirement, SES Members must include the following language as an agency-specific performance requirement under Critical Element 1: Leading Change in their FY22 Performance Plans:

- The Executive demonstrates commitment to integrate diversity and Equal Employment Opportunity (EEO) principles and practices into the Department's strategic mission, plans, and outcomes. Executive demonstrates management and program accountability related to actualizing Diversity, Equity, Inclusion, and Accessibility (DEIA). Executive proactively prevents unlawful discrimination and exclusion, and initiates ways to identify and remove impediments to equal access for all people.
- Executive proactively assesses and strengthens DEIA outcomes, benefits, and opportunities to DOI customers, partners, and stakeholders. Executive identifies weaknesses and improvement opportunities, and initiates measures to strengthen DEIA adoption and culture in working with and serving external entities.
- Executive is accountable for and holds managers and employees accountable for DEIA at every stage of the employment lifecycle, including recruitment, development, and retention. Executive equips subordinate leaders and employees with the tools necessary to sustain a diverse, equitable, inclusive, and accessible workforce, and to advance DEIA in its mission objectives, including training on DEIA best practices, assessing program deficiencies, and removing impediments to DEIA.

In FY21, the Secretary established the Gender Equity and Equality Council (GEEC), a representative body of Heads of Bureaus/Offices and senior management officials from across DOI, to address issues of gender equality and make recommendations to ensure that the Department promotes and advances equal rights and opportunities to everyone, regardless of gender or gender identity. The Council includes two subgroups: Science, Technology, Engineering, and Mathematics (STEM); and DOI Women. ODICR staff actively participate in the working group.

ODICR and OHC established a new Anti-harassment Coordinator position that will reside in the OHC. The Anti-harassment Coordinator is onboarding in the Spring FY22.

## C. DEIA Accomplishments, Continued

ODICR began a collaborative partnership with the OHC's Office of Policy Analysis to ensure DEIA is incorporated into the DOI Strategic Plan for FY22-26. ODICR will continue meeting with stakeholders to ensure a commitment to DEIA is featured in the DOI Strategic Plan for FY22-26. The DEIA Strategic Plan focuses on eight (8) goals: 1) Commit to advancing DEIA; 2) Embed DEIA in everything we do; 3) Invest in DEIA; 4) Focus on the Employee Lifecycle; 5) Provide full and equal access; 6) Promote a model EEO Program; 7) Educate and develop the workforce; and 8) Measure, report and improve performance. The DEIA Strategic Plan is currently under review by the Office of the Secretary. ODICR intends to release the DEIA Strategic Plan by the end of FY22.

In support of both its MD-715 EEO program evaluation efforts and the DEIA Strategic Plan implementation, DOI and various Bureau EEO Offices continue to collect and analyze various workforce data sources to comply with the EEOC's guidelines for a model Equal Opportunity program, particularly by incorporating mechanisms for identifying triggers, analyzing barriers, and developing action plans to eliminate barriers. DOI will use results of their workforce data analyses to identify possible barriers for groups that show low participation rates in the workforce, particularly identifying obstacles to advancing people of color and women to senior management representation throughout the agency and effective hiring of persons with disabilities. DOI will continue this process in FY 2022 by reviewing feedback from employee surveys, exit interviews, listening sessions, and training evaluations to identify opportunities for improvement of the EEO program.

DOI's Office of Human Capital (OHC) drafted an updated Departmental Reasonable Accommodation Policy. The revised policy is currently undergoing stakeholder review. The revised policy is scheduled to be issued in FY22.

## C. DEIA Accomplishments, Continued

In FY21, DOI's 508 Compliance Coordinator conducted a wide range of activities to ensure greater 508 compliance across the Department. These activities included:

- Providing guidance to bureau/office Section 508 coordinators, Contracting Officers and Contracting Officers Representatives (CORs), Information Technology (IT) personnel, Human Resources (HR) personnel and other employees/contractors on topics such as the Access Board's Information and Communication Technology (ICT) Standards and Guidelines, Web Content Accessibility Guidelines, contents of procurement solicitations, requirements for the accessibility of various ICT (such as electronic documents, videos, websites, mobile applications, information kiosks and transaction machines, copiers, etc.), and processes for testing software and web applications for Section 508 conformance.
- Collaborating with bureau and Office of Chief Information Officer (OCIO) staff to develop DOI's 21st Century Integrated Digital Experience Act (IDEA) implementation guide. The implementation guide was published at the end of September 2021 to ensure DOI bureaus and offices develop accessible websites and digital services.
- Providing Section 508 content to the OCIO correspondence team to include into the OCIO Correspondence Handbook, and to the program manager for the DOI Charge Card Program to include into the draft Purchase Card Program Policy to ensure procurement of accessible products and services.
- Conducting testing to determine the compliance of bureau/office websites with the standards identified in the Web Content Accessibility Guidelines (WCAG) 2.0.
- Collaborating with the OCIO IT enterprise Solutions team and representatives from the Office of Communications to host the 2021 DOI Digital Week Event, to include Section 508 awareness. The event occurred from May 17-20, 2021.

The National Park Service (NPS) EEO Director prepares monthly reports for bureau leadership that outline the number of anti-harassment program complaints received per region, trends, types of misconduct, protected classes, and corrective measures taken. The information provides an insight as to whether there has been an increase or decrease of complaints over a certain time period. Through this data, NPS continues to review and analyze tools already in place to make improvements that foster a work environment that is safe and respectful for employees.

## C. DEIA Accomplishments, Continued

The NPS' Anti-Harassment Program Manager and Equal Employment Opportunity Program Director established routine collaboration meetings to assist the NPS in maintaining an effective anti-harassment program. They share information to ensure cases are properly tracked and investigated, and that corrective actions are taken to stop and prevent harassing behavior. They also share information on developing and delivering on-going employee and supervisor/manager training. This training would serve to provide information on the distinct methods and procedures of the EEO and Anti-Harassment programs.

In FY21, ODICR continued engagement by supporting and participating in events and activities sponsored by the Department of Education's White House Initiative (WHI) on Historically Black Colleges and Universities (HBCUs). Additionally, in support of efforts to conduct outreach to HBCUs and Minority Serving Institutions, DOI held a virtual MSI Career Fair that drew 385 registrants from 310 colleges and universities. Leadership and representatives from Bureau of Indian Affairs (BIA), BSEE, BLM, BOEM, FWS, NPS, Office of Surface Mining Reclamation and Enforcement (OSMRE), United States Geological Survey (USGS), SOL, and OHC, presented on DOI Career Opportunities; hiring authorities, internships, and mission critical occupations. The Career Fair also had two representatives from the Office of Personnel Management (OPM), who conducted sessions on Federal Resume Writing, Interview Skills, and Navigating USA Jobs. The event also hosted a mission-critical occupations session, which entailed a presentation from DOI's Director of Strategic Talent Management on the mission-critical occupations within the Department, along with a panel discussion with leadership across the bureaus, who shared their personal career stories and journeys in the mission-critical occupations that they currently occupy, and provided information on the requirements, qualifications, and steps one must take if interested in acquiring a position in that occupation.



## D. Office of Inspector General (OIG) Accomplishments, Training, and Awareness

The DOI OIG Whistleblower Protection Coordinator (WPC) provided annual Prohibited Personnel Practice (PPP) training as prescribed by the U.S. Office of Special Counsel to all OIG supervisors (57) on November 16, 2021.

The OIG certified compliance with the U.S. Office of Special Counsel's Certification Program pursuant to its obligations under 5 U.S.C. § 2302(c), the Dr. Chris Kirkpatrick Whistleblower Protection Act, and the Office of Special Counsel Reauthorization Act of 2017.

The WPC provided whistleblower protection training to the DOI Office of Science Quality and Integrity on: June 11, 2021; and November 1, 2021.

The WPC provided targeted whistleblower protection input regarding the:

- USGS Policy on Scientific Integrity;
- DOI Policy on the Integrity of Scientific and Scholarly Activities; and
- DOI Scientific Integrity Procedures Handbook.

The WPC monitored the OIG Whistleblower Protection Inbox and provided individual consultation with approximately 36 DOI employees throughout the FY21.

The OIG Office of General Counsel provided comprehensive PPP training, including significant information about whistleblower protections, to OIG personnel on September 17, 2021. The Training was available to all OIG personnel and attended by approximately 60 employees.

The Inspector General and the Secretary issued a joint statement of appreciation to all DOI employees on July 30, 2021, which is National Whistleblower Appreciation Day.

The OIG sent letters of commendation to two particularly deserving whistleblowers for contributions made to OIG investigations in recognition of National Whistleblower Appreciation Day.

In terms of practical knowledge gained, the OIG found its commemoration of National Whistleblower Appreciation Day to be particularly helpful to DOI employees. Actions taken by the Department and the OIG increased communication between the WPC and DOI employees, and opened the discussion in a helpful and healthy way.

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# Appendices

# Appendix A



# 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
- E. Title 5 of the United States Code, Section 2302(b)(1) and (10)
- F. 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 his or her 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 his or her 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 her or his 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 his/her 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 she or he 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 him or her to another office space, desk or floor; or

- requesting approval to place him or her 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 her/his 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).

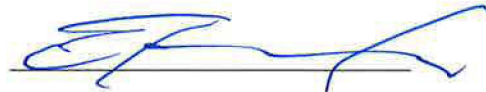
## **11. Inquiries.**

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.

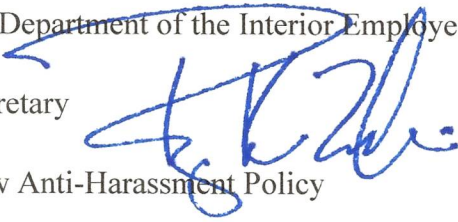
12. Is there is any other information related to the incident(s)/action(s) or any other information related to the inquiry that you would like to provide?

# Appendix B



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



THE SECRETARY OF THE INTERIOR  
WASHINGTON

**SEP 30 2021**

**Equal Employment Opportunity Policy Statement**

As members of a Department with incredible reach across many communities, we have a role to play in acknowledging inequities that exist in our country and making a commitment to addressing them. We must tackle these issues by working together to build a country where everyone has access to opportunity, justice, and accountability. As a Native American woman, I am keenly aware that many communities are unfairly judged and that bias builds barriers to equity. I am committed to ensuring that the U.S. Department of the Interior (DOI) embraces equal employment opportunity (EEO), the core of which is the right to work and advance based on merit, ability, and potential; free from prejudice, discrimination or harassment.

This statement reaffirms our commitment to ensuring DOI policies, practices and procedures do not deny opportunities to employees or applicants because of race, color, sex<sup>1</sup>, national origin, religion, age, disability, or genetic information. Unlawful harassment is illegal and is unacceptable in DOI workplaces. DOI will ensure that EEO is implemented in all of our human capital and employment programs, management practices, and employment decisions, including recruitment, hiring, merit promotions, transfers, reassignments, training, career development, benefits, and separations.

Everyone on our team should feel included, safe, and supported. If you believe you have been subjected to discrimination, harassment or retaliation, please contact your 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 event that you believe constitutes discrimination in the workplace or your becoming aware of that event. Anyone who engages in EEO reporting is protected from retaliation or reprisal. Your engagement is valuable as we continue our work to ensure our Department is welcoming to everyone and that those who violate this policy are held accountable.

Our success relies on mutual respect, allowing every person to contribute to their full potential. Maintaining a workplace free of discrimination allows our employees to develop and apply a range of talents, ideas, and solutions to advance our mission, goals, and objectives. To better understand barriers to equal employment opportunity, each of us must look beyond obvious actions, like discriminatory hiring and terminations. We must expand our understanding to recognize more subtle barriers to equal employment opportunity.

All DOI personnel are responsible for complying with this Policy Statement, upholding professional conduct in the workplace, and maintaining an environment that honors integrity,

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<sup>1</sup> This includes pregnancy, sexual harassment, sex stereotyping, caregiving responsibilities, gender identity, and sexual orientation.

dignity, and respect. We must continue to strive to create and maintain workplaces that are free from discrimination, harassment, and retaliation. In addition, we must foster workplaces that allow each employee to contribute to their full potential; therefore, upon request and as appropriate, we must provide reasonable accommodations to qualified individuals with disabilities, unless doing so would pose an undue hardship on the Department. Equity and inclusion can be a part of everything we all do here at DOI and as a team.

A handwritten signature in blue ink, appearing to read "Deb Haaland", with a large, stylized initial "D".

Deb Haaland



# Appendix D

## 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>

(2) Unauthorized use and/or possession of alcoholic beverages while on Government premises (or vehicle).	suspension			Removal	Alcohol and Drug Testing Program, and DOI Federal Railroad Administration Supplement for specific guidance.
	Written Reprimand to 30-day suspension	30-day suspension to removal			
(3) Operating a Government vehicle/aircraft while “under the influence” of alcohol.	30-day suspension to removal	Removal			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.
b. Drug-related					
(1) Administratively confirmed positive finding under the testing portion of the Drug-Free Workplace Program.	Written Reprimand to removal	Removal			
(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.	Written Reprimand to removal	30-day suspension to removal		Removal	The illegal drugs currently tested for (as defined in 370 DM 792, Subchapters 9 & 10) include: marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). However, the Department is authorized to test for any illegal drugs as deemed necessary.
(3) Sale or transfer of an illegal drug or controlled substance while on Government premises (or vehicle).	Removal				
(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).	14-day suspension to removal	30-day suspension to removal		Removal	When there is possession of illegal drugs - call law enforcement and notify OIG.  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.
4. Discourteous conduct (e.g., rude, insolent, disgraceful acts or remarks)	Written Reprimand to	5- to 30-day suspension	30-day suspension		5 USC 7503(a) permits suspension of

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.



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.	Written Reprimand 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.
10. Failure to provide equal opportunity regardless of race, color, religion, gender, national origin, age, marital status, political affiliation, sexual orientation or handicapping condition.	Written Reprimand to removal	14-day suspension to removal	Removal	Refer to 5 CFR 2635.101(13).
11. Unauthorized possession/sale (actual or attempted) of Government property or property of others; improper acceptance of Government funds/reimbursement.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Referral to OIG may be appropriate.
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).	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	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.
13. Failure to comply with safety regulations, instructions or prescribed safe practices; failure to use proper safety equipment; failure to report accident or injury.	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	
14. Sleeping or loafing while on duty; inattention to duty; willful idleness while on duty.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Seriousness of offense is greater if persons/property endangered.
15. Failure or delay in carrying out instructions; failure or carelessness in performing assigned work; failure to take/complete officially-directed training.	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	Refer to 370 DM 430 to deal with unacceptable performance and performance-based actions.
16. Insubordination; disregard of directive; refusal to comply with a proper order.	5-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.502. An "insubordination" charge requires a showing that the

				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.  a. Participating in a gambling activity while on Government premises or in a duty status (e.g., office pools).  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.	Written Reprimand to 14-day suspension  5- to 30-day suspension	14- to 30-day suspension  30-day suspension to removal	30-day suspension to removal  Removal	Refer to 5 CFR 735.201.
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.  a. Misuse of travel card (i.e., personal/authorized purchases) <b>or</b>	Written Reprimand to	5-day suspension to	30-day suspension	Refer to Financial Administration Memorandum (FAM) 2000-010 for further information and instructions on

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/authorized 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 E



# 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).



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

# Appendix F



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 G

# Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:

## Department of the Interior (and below)

For 4th Quarter 2021 for period ending September 30, 2021

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2021Thru09-30
	2016	2017	2018	2019	2020	
Number of Complaints Filed	358	328	366	301	274	239
Number of Complainants	346	321	351	297	267	232
Repeat Filers	12	5	14	4	7	7

Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2021Thru09-30
	2016	2017	2018	2019	2020	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	105	101	118	80	71	83
Color	38	41	38	29	27	20
Religion	15	13	20	9	9	12
Reprisal	189	168	200	161	148	150
Sex	134	136	138	108	104	93
PDA	3	3	1	2	3	2



National Origin	45	41	53	33	12	34
Equal Pay Act	2	2	1	1	1	2
Age	108	117	114	113	100	75
Disability	124	105	119	88	100	75
Genetics	0	1	2	2	1	0
Non-EEO	5	12	19	15	16	8
Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2021Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2016	2017	2018	2019	2020	
Appointment/Hire	50	31	32	32	35	40
Assignment of Duties	40	35	40	43	23	27
Awards	2	9	4	7	2	3
Conversion to Full Time/Perm Status	0	1	0	0	0	0
Disciplinary Action						
Demotion	3	1	0	1	0	1
Reprimand	14	17	13	8	13	13
Suspension	13	20	13	8	15	15
Removal	4	8	16	10	19	5
Other	0	0	1	0	0	0
Duty Hours	3	8	1	5	6	5
Perf. Eval./ Appraisal	43	41	38	31	32	29
Examination/Test	0	2	2	0	0	5
Harassment						
Non-Sexual	158	155	183	158	120	114

Sexual	15	12	12	7	8	4
Medical Examination	2	3	1	1	2	0
Pay including overtime	13	10	2	6	4	11
Promotion/Non-Selection	51	40	54	25	39	26
<b>Reassignment</b>						
Denied	6	0	1	1	4	1
Directed	9	11	14	14	10	8
Reasonable Accommodation Disability	40	27	41	22	35	24
Reinstatement	0	0	0	0	0	0
Religious Accommodation	1	1	0	0	0	0
Retirement	3	3	2	3	3	4
Sex-Stereotyping	0	0	2	0	0	1
Telework	17	3	11	3	4	3
Termination	26	26	30	20	25	22
Terms/Conditions of Employment	46	59	49	41	40	35
Time and Attendance	19	18	15	14	20	12
Training	15	9	13	12	11	6
<b>Other</b>						
User Defined - Other 1	0	1	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

Processing Time	Comparative Data					
	Previous Fiscal Year Data					2021Thru09-30
	2016	2017	2018	2019	2020	
Complaints pending during fiscal year						
Average number of days in investigation	193.96	187.07	183.94	203.24	183.81	224.48
Average number of days in final action	59.99	51.78	52.62	55.40	112.45	108.10
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation	193.04	192.30	189.47	205.16	179.02	225.26
Average number of days in final action	24.04	46.42	34.69	40.58	74.00	66.07
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation	193.76	178.94	181.58	203.32	180.04	210.81
Average number of days in final action	79.92	56.88	69.12	73.59	157.66	157.12
Complaints Dismissed by Agency	Comparative Data					
	Previous Fiscal Year Data					2021Thru09-30
	2016	2017	2018	2019	2020	
Total Complaints Dismissed by Agency	38	43	24	33	27	22
Average days pending prior to dismissal	141.79	153.98	107.29	209.73	165.41	178.18
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	18	15	26	13	20	22



[illegible]

Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2021Thru09-30	
	2016		2017		2018		2019		2020			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		6		2		4		7		26	
Appointment/Hire	0	0	0	0	0	0	0	0	3	43	3	12
Assignment of Duties	0	0	1	17	0	0	3	75	1	14	8	31
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	0	0	0	0	2	8
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	1	4
Other	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	1	25	0	0	3	12
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	2	33	0	0	1	25	1	14	15	58
Sexual	0	0	0	0	1	50	2	50	0	0	2	8
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	1	17	1	50	0	0	1	14	2	8



Disciplinary Action													
Demotion	0	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	1	20	
Suspension	0	0	0	0	0	0	0	0	0	0	0	0	
Removal	0	0	0	0	0	0	0	0	0	0	1	20	
Other	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	1	25	0	0	3	60	
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0	
Harassment													
Non-Sexual	0	0	1	33	0	0	1	25	1	33	4	80	
Sexual	0	0	0	0	0	0	2	50	0	0	0	0	
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	100	0	0	0	0	0	0	
Reassignment													
Denied	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	0	0	1	33	2	40	
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	0	0	0	0	1	20	
Termination	0	0	0	0	0	0	1	25	1	33	0	0	



Terms/Conditions of Employment	0	0	1	33	0	0	1	25	0	0	4	80
Time and Attendance	0	0	2	67	0	0	1	25	0	0	3	60
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Define												
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
<b>Findings Without Hearing</b>	0		3		1		0		4		21	
Appointment/Hire	0	0	0	0	0	0	0	0	3	75	2	10
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	4	19
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	0	0	0	0	1	5
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	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												
Non-Sexual	0	0	1	33	0	0	0	0	0	0	11	52

[illegible]

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2021Thru09-30
	2016	2017	2018	2019	2020	
Total complaints from previous Fiscal Years	236	279	285	277	270	195
Total Complainants	223	269	276	266	262	188
<b>Number complaints pending</b>						
Investigation	7	14	6	8	3	1
ROI issued, pending Complainant's action	1	0	0	2	1	0
Hearing	220	269	275	255	220	184
Final Agency Action	13	7	8	16	46	13
Appeal with EEOC Office of Federal Operations	204	70	62	45	59	76
Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2021Thru09-30
	2016	2017	2018	2019	2020	
Pending Complaints Where Investigations Exceed Required Time Frames	18	28	18	7	2	8

