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**U.S. Department of Housing and Urban Development**

**Office of Inspector General**




**Disciplinary and Adverse Actions**

**OIGM 1752**

*November 2007*

## Disciplinary and Adverse Actions



<b>Material Transmitted</b>	Chapter 1752, Disciplinary and Adverse Actions.
<b>Material Superseded</b>	Chapter 1752, Disciplinary and Adverse Actions. July 19, 2002
<b>Purpose</b>	This issuance formalizes the changes outlined below.
<b>Summary of Changes</b>	Adds the Offense of Failure to Safeguard the Security and Confidentiality of Records to the OIG Table of Penalties.
<b>Approved</b>	 Kenneth M. Donohue Inspector General

## Disciplinary and Adverse Actions

This manual chapter has been updated and approved on the following dates to account for the latest changes. This task should be completed regularly to reflect updates.

Issue	Date	Pages Affected	Description
OIGM 1752	<a href="#">August 2001</a>	All	This manual chapter has been renumbered.
OIGM 1752	<a href="#">November 2001</a>	All	This Chapter eliminates the disciplinary panel process and the Division of Internal Affairs as elements in the handling of misconduct allegations against Office of Inspector General (OIG) employees. In addition, the OIG Table of Penalties at Appendix B is updated and expanded and Appendix C, "Prohibited Personnel Practices," is added.
OIGM 1752	<a href="#">July 2002</a>	All	This is a reissuance of the Disciplinary and Adverse Actions Chapter to clarify information on oral counseling. The paragraphs affected through this reissuance are 1-6.D., 2-1.B., 2-1.D., and II.B. of Appendix B.
OIGM 1752	<a href="#">November 2007</a>	All	Adds the Offense of Failure to Safeguard the Security and Confidentiality of Records to the OIG Table of Penalties.

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## Section 1 – General

### 1-1. Purpose

- A. This policy issuance establishes the policies and procedures for the U.S. Department of Housing and Urban Development, Office of Inspector General (OIG), relating to employee misconduct and/or employee deficiencies.
- B. It is the OIG's policy to use discipline as a managerial tool to: 1) correct deficiencies in employee conduct; 2) address situations that interfere with efficient agency operations; 3) set an example for the workforce; 4) serve as a deterrent to unacceptable conduct; and 5) ensure that employees meet high ethical standards.
- C. The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, provides that the OIG will conduct audits and investigations relating to the programs and operations of the Department. The OIG recommends policies to promote economy and efficiency and to prevent and detect fraud and abuse in programs and operations. The OIG keeps the Department and the Congress informed concerning fraud and other serious problems, abuses and serious management deficiencies found through audits and investigations. Accordingly, employees of the OIG must maintain the highest standards of conduct and professionalism. It is imperative that employees recognize that their acts of misconduct could have an adverse impact not only upon the accomplishment of their work, but also upon the ability of the OIG to function in accordance with its mission. Specifically:
  - 1. The OIG Manual Chapter 1083, "Standards of Conduct and other Requirements," Section 1, paragraph 1-2, states clearly that, "OIG employees, by the very nature of their job responsibilities, are required to maintain higher standards of conduct than others in the Department;" and
  - 2. The OIG, as a law enforcement agency, holds its employees, whether auditors, investigators, or other employees, to a higher standard of conduct than that applied to other HUD personnel. Employees of the OIG must conduct themselves in a principled and ethical manner because they are responsible in their positions for being scrupulous and accurate in their investigative and audit reports and for testifying about their activities in court and in other forums. In criminal cases, for example, the Assistant United States Attorney (AUSA) is responsible, when requested, for providing defense counsel with any evidence that is material to either guilt or innocence. *Brady v. Maryland*, 373 U.S. 83 (1963); *Bagley v. United States*, 473 U.S. 667 (1985). In addition, the AUSA must disclose impeachment evidence that would challenge the credibility of government witnesses. *Giglio v. United States*, 405 U.S. 150 (1972). This impeachment evidence extends to the disclosure of prior impeachable convictions (such as for dishonesty, false statements or fraud or those carrying a possible death penalty or more than one year in jail) and a check on every government employee witness who will testify at trial for information from the employee's personnel records to determine whether there is any information concerning dishonesty, perjurious

conduct, prior arrests, or other lack of truthfulness. See, e.g., *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991).

Decisions regarding matters covered by this policy will be made without regard to race, sex, religion, color, national origin, age or disability (also see Executive Order 11478, as amended, including but not limited to Executive Order 13087 [1998] and Executive Order 13152 [2000]).

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## **1-2. References**

As provided in the Inspector General Act at 5 U.S.C. App. 3, §6 (a)(7), and as confirmed in the FY 1999 HUD Appropriations Act (Pub. Law 105-276, 112 Stat. 2461, 2482) and FY 2000 HUD Appropriations Act (Pub. Law 106-74, 113 Stat. 1047, 1068), or subsequent pertinent fiscal year Appropriations Acts, the Inspector General of HUD has independent authority over all personnel issues within the Office of Inspector General. This Disciplinary and Adverse Actions policy is based on:

1. 5 U.S.C. Chapter 75; which addresses adverse actions;
2. 5 C.F.R. Part 752; which addresses adverse actions;
3. 5 C.F.R. Part 315, which addresses and defines probationary periods;
4. 5 C.F.R. Part 2635, as supplemented by 5 C.F.R. Part 7501 and the OIG Manual Chapter 1083, Standards of Conduct and Other Requirements; and
5. The Investigation/Operations Manual and Audit Operations Manual.

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## **1-3. Supersession**

This policy supersedes OIG Policy Issuance 1752, “Disciplinary and Adverse Actions,” dated July 19, 2002.

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## **1-4. Exceptions to Policy Provisions**

The Inspector General or the OIG Human Resources Director may authorize waivers to the provisions of this policy consistent with applicable laws and regulations.

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## **1-5. Coverage**

- A. This policy covers all General Schedule and Senior Executive Service (SES) OIG employees. However, suspensions of 14 days or less do not apply to members of the SES. Other procedures, such as those found in 5 U.S.C. Chapter 75, Subchapter V; 5 C.F.R. Part 752, Subparts E and F; and Executive Order 12993, “Administrative Allegations Against Inspectors General,” are applicable to members of the SES.

- B. The applicability of the procedures described in Section 2 will be determined by the status (competitive service or excepted service, completion of probationary period, preference eligibility, length of service, etc.) of the subject employee as prescribed by 5 C.F.R. Part 315 and 5 C.F.R., §§ 752.101, 201, 301, 401, 501, and 601.
- C. The procedures described in Section 2 do not apply to the following actions:
1. A reduction-in-force action under 5 U.S.C. §3502;
  2. A suspension or removal taken in the interest of national security;
  3. A reduction in grade of a supervisor or manager who fails to complete successfully a new probationary period as a supervisor or manager, if such a reduction in grade is to the grade held immediately before becoming a supervisor or manager;
  4. A voluntary action by an employee;
  5. A separation during probation under 5 C.F.R., §315.804, or a separation during probation based in whole or in part on pre-appointment reasons under 5 C.F.R., §315.805;
  6. The termination of an appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;
  7. A reduction in grade or removal taken under 5 U.S.C. §4303 (for unacceptable performance);
  8. An action that terminates a time-limited promotion and returns an employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the employee was informed that the promotion was to be of limited duration;
  9. The reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation;
  10. An action that entitles an employee to grade retention under 5 C.F.R. Part 536, and an action to terminate this entitlement;
  11. An action taken or directed by the Office of Personnel Management (OPM) under 5 C.F.R. Part 731;
  12. An action against a reemployed annuitant;
  13. A directed reassignment; and
  14. Any other action excluded from coverage by 5 C.F.R. Part 752, Subparts A, B, C, D, E, and F.

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## 1-6. Definitions

- A. **Adverse Action:** A removal, suspension for more than 14 days, furlough for 30 days or less, or reduction in grade or pay, normally a result of misconduct or other management necessity.

- B. **Aggravating Factors:** Actions, circumstances, or events that increase or magnify the seriousness or severity of an employee's offense;
- C. **Appeal:** A request by an employee to the Merit Systems Protection Board (MSPB) for a review of a suspension of more than 14 days (including an indefinite suspension or an enforced leave action in excess of 14 consecutive days), a reduction in grade or pay, a furlough for 30 days or less, or a removal.
- D. **Counseling:** Oral or written actions by a supervisor to provide guidance to an employee concerning conduct in the workplace. Such actions include cautions and warnings. Counseling actions are not disciplinary actions.
- E. **Days:** Calendar days.
- F. **Deciding Official:** Typically, the management official one level above the official proposing a disciplinary or adverse action. The exception to this is that when the Inspector General (IG) is the proposing official, he or she is also the deciding official.
- G. **Decision Notice:** A written notice from a deciding official to an employee against whom a suspension of 14 days or less or an adverse action (except an emergency furlough) has been proposed, stating the decision on that action.
- H. **Disciplinary Action:** A formal action taken by management against an employee, ranging from reprimand to a 14-day suspension.
- I. **Douglas Factors:** Factors management must consider when proposing and deciding a suspension or more severe adverse action, as prescribed by *Douglas v. Veterans Administration*, 5 MSPR 280; 5 MSPB 313 (1981). (See Appendix A to this policy.)
- J. **Employee's Reply:** The employee's answer, oral, written, or both, to a proposed suspension or adverse action. The employee may provide affidavits, documents, medical records, or any other information that he or she wishes the deciding official to consider. The oral reply is not a hearing, and the employee does not have the right to call witnesses. The Deciding Official must consider whatever the employee provides.
- K. **Enforced Leave:** Placement of an employee in a temporary leave status without duties (or on leave without pay if the employee has no accrued leave) without the employee's consent, pending assessment of appropriate medical documentation and a determination that the employee may safely return to duty. Such action is considered equivalent to a suspension and, if continued for more than 14 days, confers to the employee the right to appeal to MSPB.
- L. **Furlough:** Placement of an employee in a temporary status with neither duties nor pay because of lack of work or funds, or for other non-disciplinary reasons.
- M. **Indefinite Suspension:** Placement of an employee in a temporary non-duty, non-pay status pending investigation, inquiry or further OIG action. The indefinite suspension continues until the completion of the administrative or legal action that precipitated it. An indefinite suspension is most commonly used when an employee has been indicted for a crime for which a penalty of imprisonment may be imposed.
- N. **Mitigating Factors:** Actions, circumstances, or events that lessen the seriousness or severity of the employee's offense.



- O. **Nexus:** The relationship or connection between the offense an employee commits and the efficiency of the federal service, including the effective performance of that employee's or any other employee's duties. Any disciplinary or adverse action against an employee must be taken to promote the efficiency of the service.
- P. **Proposal Notice:** A written notice to an employee presenting management's intention to impose a suspension of 14 days or less or an adverse action (except an emergency furlough). The proposal notice triggers due process rights for the employee against whom the action is proposed.
- Q. **Proposing Official:** Typically, the proposing official is the subject employee's immediate supervisor (or someone at a higher level in the chain of command) who signs and issues the proposal notice.
- R. **Reduction in Pay:** Reduction in the rate of basic pay fixed by law or administrative action for the position held by an employee.
- S. **Removal:** The involuntary separation of an employee from federal service, except when taken as a reduction-in-force action, or at the expiration of an appointment.
- T. **Reprimand:** An official written disciplinary action issued by a supervisor to an employee to correct a deficiency. The reprimand is placed in the employee's Official Personnel Folder (OPF) and remains in effect for two years, unless withdrawn sooner. No proposal notice is required for a reprimand.
- U. **Suspension:** Placement of an employee in a non-duty, non-pay status for disciplinary reasons.

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## 1-7. Responsibilities

- A. Employees are responsible for:
  - 1. Conducting themselves in a manner that is above reproach and that enhances and furthers the mission of the OIG;
  - 2. Familiarizing themselves with governing laws, regulations, and OIG policies pertaining to employee conduct, including 5 C.F.R. Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch;" 5 C.F.R. Part 7501;
  - 3. IG Manual Chapter 1083; the Table of Penalties in Appendix B of this Chapter; and either the Investigation/Operations Manual or the Audit Operations Manual, as appropriate.
- B. Supervisors are responsible for:
  - 1. Informing employees of, and setting an example of, the scrupulous conduct that is expected and required of members of the OIG;
  - 2. Identifying, early, employee deficiencies that need improvement or correction to prevent serious problems from developing. Performance problems may be treated as misconduct in many situations, such as, but not limited to, performance issues not covered by the employee's performance elements, performance plan not signed, or performance problems resulting from inattention or willfulness; and

3. Taking appropriate action when deficiencies occur, including ascertaining the facts of the situation, obtaining advice from the Office of Management and Policy (OMAP), Human Resources Division (HRD), or its service contractor, when one exists, and the Office of Counsel; and proposing or taking disciplinary or adverse action, as warranted.

C. Assistant Inspectors General (AIGs) and Counsel are responsible for:

1. Ensuring that employee deficiencies are handled effectively, fairly, and promptly within their respective organizations;
2. Ensuring that managers within their respective organizations follow the policies set forth in this Chapter;
3. Serving as a proposing official or deciding official, as appropriate, for actions involving subordinate employees; and
4. Through their own personal conduct and performance, serving as examples for subordinates by exhibiting the highest ethical and professional standards and leadership qualities and skills.

D. Proposing officials are responsible for:

1. Conducting inquiries to ascertain the facts concerning alleged employee wrongdoing;
2. Requesting support from the Special Investigations Division of the Office of Investigation, if the proposing official needs assistance to examine the allegations and develop the facts;
3. Evaluating the facts and developing the proposal notice with the assistance of the HRD or its service contractor, when one exists, and the Office of Counsel; and
4. Issuing an appropriate proposed penalty after review of the Douglas Factors, the Table of Penalties, and all of the surrounding facts and circumstances.

E. Deciding officials are responsible for:

1. Obtaining advice, arranging for and considering the employee's oral and written reply, if any (including granting short extensions to the time for providing a reply, when appropriate), evaluating the evidence pertaining to each charge and specification, and arranging for legal review of the decision notice;
2. Resolving questions of fact by additional inquiry if necessary, providing the subject employee with a written explanation of any adverse facts discovered during the additional inquiry, and allowing the employee an opportunity to respond;
3. Hearing, or designating a representative to hear, the employee's oral reply. However, the proposing official for the action may not be a representative. In addition, the representative must not have taken part in the events that led to issuance of the proposal notice nor be under the jurisdiction of the proposing official. A representative must be in a position to recommend or make a decision on the proposed action;

4. Arranging for a written summary of the oral reply. If a verbatim transcript is made, the OIG will pay for the transcript. The summary or transcript will become part of the official file and will be made available to the employee upon request;
  5. Determining the appropriate penalty after reviewing the Douglas Factors, the Table of Penalties, and all of the surrounding facts and circumstances; and
  6. Issuing the decision and initiating the appropriate personnel action.
- F. The HRD, or its service contractor, when one exists, is responsible for:
1. Providing technical guidance and assistance to supervisors and managers on the provisions of this policy and other aspects of handling employee deficiencies;
  2. Preparing and reviewing non-disciplinary, disciplinary and adverse action notices to assure compliance with law, regulations, and OIG policy;
  3. Explaining appeal and grievance rights to employees, and providing them with the appropriate documents;
  4. Serving as a technical representative on behalf of the OIG in MSPB appeals; and
  5. Maintaining official disciplinary and adverse action files.
- G. The Office of Counsel is responsible for:
1. Reviewing adverse action notices and decisions before they are issued, and advising AIGs, supervisors, and managers on personnel law; and
  2. Serving as the agency representative, as appropriate, on behalf of the OIG on third-party appeals.
- H. OIG staff members wishing to raise allegations of misconduct within the OIG are responsible for doing so through their chain of command, the OIG Hotline, the Special Investigations Division of the Office of Investigation, or other suitable means. Recipients of such allegations are responsible for placing them in the appropriate channels for proper handling as provided in Section 2 below.

## Section 2 – Procedures

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### 2-1. Determining Appropriate Management Action

- A. In taking disciplinary and adverse actions, OIG management must ensure that:
1. Charges against an employee are factual and appropriate;
  2. Nexus exists between the act(s) of misconduct and/or deficiency and the employee's job. This can include the impact of the misconduct and/or deficiency on other employees and the mission of the OIG; and
  3. Penalties imposed are reasonable.
- B. An oral or written counseling, including cautions and warnings, may be appropriate in instances of minor misconduct. For example, a first instance of one hour of unexcused absence may warrant only counseling, while a first instance of more serious misconduct may warrant formal discipline, depending upon the severity of the offense. In choosing a course of action, management must ensure the OIG's high standards of conduct and maintain an appropriate level of discipline within the agency. While oral counseling is the least formal action a supervisor can take, it is advisable to document the occurrence of such counseling. The supervisor's documentation may take a variety of forms, for example, an informal note placed in a drop file.
- C. Determining the appropriate penalty requires the exercise of responsible judgment to discipline in proportion to the nature and severity of the offense with the goal of correcting the deficiency, whenever possible. While the OIG subscribes to the principle of progressive discipline (increasing the severity of adverse action, up to removal, for successive offenses) serious offenses may warrant removal for the first offense.
- D. As needed, management must seek advice from the HRD, or its service contractor, when one exists, prior to initiating oral or written counseling. This technical advice along with a review of the Table of Penalties should be considered prior to the issuance of any oral or written counseling. Management must seek advice from the HRD, or its service contractor, when one exists, when contemplating a disciplinary or adverse action, and must consult with the Counsel's Office when contemplating an adverse action.
- E. If an employee is being removed from Federal service for inability to perform the duties and responsibilities of the position for physical or mental disability reasons, the employee will be given information on applying for disability retirement, if he or she has the requisite years of service. If the employee raises physical or mental disability issues before or in response to charges of misconduct, management must consider those issues as described in paragraphs 2-2. B.2. and C.2.
- F. The proposing official (or the appropriate AIG in emergency situations) will determine whether an employee remains in a paid duty status during the advance notice period (see paragraphs 2-2.B.1 and C.1.) of an adverse action process. While the employee normally remains in the workplace during the notice period, there are situations in which this is not advisable. The employee should not remain in the workplace during this period if he or

she may pose a threat to himself or herself or others. Nor should the employee remain in the workplace if his or her presence could result in the loss or damage to Government property; risk injury to ongoing OIG audits, investigations or activities; or otherwise jeopardize legitimate Government interests. The proposing official may elect one or a combination of the following alternatives:

1. Assign the employee to duties where he or she is no longer a threat to anyone's safety, the OIG mission, or Government property;
2. Grant leave upon request, or assign an absent-without-leave status if the employee has left the work site without requesting leave; or
3. Place the employee in a paid, non-duty status for such time as is necessary to effect an adverse action.

G. In accordance with 5 C.F.R., §§752.202 and 752.403, disciplinary and adverse actions will only be taken for such cause as will promote the efficiency of the federal service. However, in accordance with 5 C.F.R., §752.603(a), adverse actions against members of the SES may only be taken for reasons of misconduct, neglect of duty, malfeasance or failure to accept a directed reassignment or to accompany a position in a transfer of function.

H. Disciplinary and adverse actions will not be taken against an employee on the basis of any reason prohibited by 5 U.S.C. §2302 (prohibited personnel practices – see Appendix C).

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## **2-2. Types of Disciplinary and Adverse Actions and Procedures for Imposing Them**

### **A. Reprimand:**

1. A reprimand is the least severe formal disciplinary action available. It is issued in writing to an employee by a supervisor.
2. The reprimand must:
  - a. Specify the reasons for its issuance;
  - b. State that it will be filed in the employee's Official Personnel Folder and will remain in effect for two years, unless management rescinds it earlier;
  - c. Explain that while in effect, management may count the reprimand as a prior offense in determining a penalty for any future offense. (Management may consider an expired or rescinded reprimand as an aggravating factor under the Douglas Factor review only to the extent that it clearly put the employee on notice about such conduct); and
  - d. Specify the employee's right to file an administrative grievance over the reprimand.

**B. Suspensions of 14 Days or Less** (this subsection does not apply to members of the SES):

1. Management must provide an employee against whom a suspension of 14 days or less is proposed an advance written notice stating:
  - a. The specific charges and specifications (reasons) for the proposed action;
  - b. The name, title and how to contact the deciding official who will hear an oral reply, receive a written reply, or both;
  - c. The period of time, not less than 14 days, within which the employee may reply orally and in writing and furnish affidavits and other documentary evidence to support the reply;
  - d. The right of the employee to be represented by an attorney, or other representative. However, the OIG may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position. The OIG may also disallow an employee of the OIG whose release from his or her official position would give rise to unreasonable costs, or whose priority work assignments preclude his or her release. An Equal Employment Opportunity (EEO) official may not serve as an employee representative;
  - e. The right of the employee and his or her representative to review the material relied upon by the OIG to support the proposal, and a statement of where this OIG Manual Chapter, pertinent statutes, and the OPM regulations are available for review;
  - f. The right of the employee, if in a duty status, to use up to four hours of official time to review the material relied upon by the OIG, to prepare a reply, and to secure affidavits. An OIG employee representative may not be granted official time, except to attend the oral reply; and
  - g. That the proposed action will not become effective earlier than 15 days following the date the employee receives the proposal notice.
2. If the employee wishes the OIG to consider any medical condition that may be contributing to a conduct, performance or leave problem, he or she will be given a reasonable time to furnish medical documentation (see 5 C.F.R. Part 339). Whenever possible, the employee will supply such documentation within the time limit allowed for an answer. The OIG will provide reasonable accommodation to qualified employees with disabilities in accordance with 29 C.F.R. Part 1614.
3. A management official at a higher level than the proposing official (see paragraph 1-6.F.) must provide the employee a signed, written decision notice that:
  - a. Considers only the charges specified in the proposal notice and any amendment to that notice;
  - b. Considers any reply provided by the employee or his or her representative;
  - c. Specifies the reasons for the decision, including stating which charges and specifications are sustained and which are not sustained, and stating the

appropriate penalty if one or more charges is (are) sustained (the action decided upon may not be more severe than the action proposed);

- d. Specifies the employee's right to file an administrative grievance; and
- e. Ensures that the notice is delivered to the employee on or before the effective date of the action.

**C. Suspensions of 15 Days or More Including Indefinite Suspensions, Enforced Leave Lasting 15 Consecutive Days or More, Reductions in Grade or Pay, Removals, and Furloughs for 30 Days or Less:**

1. A management official must provide an employee, against whom one of the above actions is proposed at least a 30-day advance written notice, stating:
  - a. The specific charges and specifications (reasons) for the proposed action;
  - b. The basis for selecting the particular employee for furlough, as well as the reasons for the furlough, when some but not all employees in a given competitive level are being furloughed;
  - c. The name, title and how to contact the deciding official who will hear an oral reply, receive a written reply, or both;
  - d. The period of time, but not less than 21 days, within which the employee may reply orally and in writing and furnish affidavits and other documentary evidence to support the reply;
  - e. The right of the employee to be represented by an attorney or other representative. However, the OIG may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position. The OIG may also disallow an employee of the OIG whose release from his or her official position would give rise to unreasonable costs, or whose priority work assignments preclude his or her release. An EEO official may not serve as an employee representative;
  - f. The right of the employee and his or her representative to review the material relied upon by the OIG to support the proposal, and a statement of where this OIG Manual Chapter, pertinent statutes, and the OPM regulations are available for review; and
  - g. The right of the employee, if in duty status, to use up to 16 hours of official time to review the material relied upon by the OIG, to prepare a reply, and to secure affidavits. An OIG employee representative may not be granted official time, except to attend the oral reply.
2. If the employee wishes the OIG to consider any medical condition that may be contributing to a conduct, performance or leave problem, he or she will be given a reasonable time to furnish medical documentation (see 5 C.F.R. Part 339). Whenever possible, the employee will supply such documentation within the time limit allowed for an answer. The OIG will provide reasonable accommodation to qualified employees with disabilities in accordance with 29 C.F.R. Part 1614.
3. Crime provision (see 5 C.F.R. §752.404)

- a. All of the procedural requirements of paragraph 2-2.C. must be observed, except for the 30-day advance written notice period and the time for an oral or written reply as set forth in paragraph 2-2.C.1. An employee may be suspended indefinitely when there is reasonable cause to believe he or she has committed a crime for which a sentence of imprisonment may be imposed. In such a case, the employee will have at least 7 days to reply orally, in writing, or both. Reasonable cause to suspend indefinitely may be based on an indictment, or formal judicial determination made following a preliminary hearing, an arrest warrant and factual material culled from supporting affidavits, or an investigation of the underlying facts and circumstances conducted by or on behalf of the OIG.
  - b. The OPM regulations provide that an employee may be placed in a non-duty status with pay (administrative leave) for such time as may be necessary to effect an action under the crime provision. The OIG managers may also detail an employee to another position or to unclassified duties. When a proposal is issued to suspend indefinitely under the crime provision, the notice must clearly discuss the nexus between the conduct that led to the indictment and the individual's employment with the OIG. An indefinite suspension is temporary. There must be a foreseeable event or condition that will bring the action to an end, such as a conviction, acquittal or plea of guilty.
4. A management official at a higher level than the proposing official (see paragraph 1-6.F.) must provide the employee a written decision notice that:
  - a. Considers only the charges specified in the proposal notice and any amendment to that notice;
  - b. Considers any reply provided by the employee or his or her representative;
  - c. Specifies the reasons for the decision including stating which charges and specifications are sustained and which are not sustained, and stating the appropriate penalty, if one or more charges is/are sustained (the decision cannot be more severe than the action proposed);
  - d. Specifies the employee's right to file an EEO complaint or an appeal of the action to the MSPB. It must also state the applicable time limits for filing such an appeal (within 30 days after the effective date of the decision or within 30 days after the date of receipt of the OIG decision, whichever is later), and the appropriate MSPB office with which to file. An appeal form must be provided to the employee as well as a copy of the applicable MSPB regulations;
  - e. Notifies the employee of the opportunity to apply for disability retirement within one year of the effective date of the decision, if he or she raised a medical condition as an issue in the action; and
  - f. Ensures that the notice is delivered to the employee on or before the effective date of the action.
5. The advance written notice and opportunity to reply are not necessary for furlough because of unforeseen circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.



## Appendix 1 – Douglas Factors

In selecting the appropriate penalty for a specific offense, management must exercise responsible judgment so the penalty selected is in proportion to the offense. Among the factors that are to be considered are the following:

1. 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;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. 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;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the OIG;
9. 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;
10. Potential for the employee's rehabilitation;
11. 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; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

## Appendix 2 – The OIG Table of Penalties

### I. Introduction:

- A. The OIG Table of Penalties informs the workforce of potential consequences concerning various acts of employee misconduct and assists management in selecting appropriate penalties for given offenses. It provides a framework within which the OIG management can exercise sound judgment and mete out discipline in a reasonably consistent manner.
- B. Management must base its selection of an appropriate penalty on the conclusions that there is sufficient credible evidence to support the charge(s) and that the penalty is warranted and reasonable.

### II. Application of the Table of Penalties:

- A. The Table provides the OIG management with a guide for assessing appropriate penalties for a range of offenses. It should not be viewed as a prescriptive tool to be applied mechanically; however, it is important to note that consistent application of an agency's Table of Penalties is a Douglas Factor that the Merit Systems Protection Board (MSPB) will consider when assessing whether the agency's penalty in an appealed case is reasonable.
- B. A non-disciplinary action such as oral counseling, including cautions and warnings, may be appropriate for an employee's first offense. However, management may not consider these actions as prior offenses for the purposes of imposing a harsher penalty, i.e., moving to the *Second Offense* and *Third Offense* columns. Similarly, an expired or rescinded reprimand may not be used as prior discipline; however, management may consider it an aggravating factor as part of the Douglas Factor review.
- C. The first column labeled *Offense* identifies the more commonly occurring offenses. The second column labeled *First Offense* provides a range of penalties that may be appropriate for an employee's first offense. The *Second Offense* and *Third Offense* columns provide a framework to consider progressive discipline in cases where an employee has previously been disciplined.
- D. The Table does not identify every possible offense. If an offense does not appear to be covered under any of those listed in the first column labeled "*Offense*," management may still charge the employee with that particular misconduct and/or employee deficiency. A specific offense may also fall into more than one category of "*Offense*". When such overlap occurs, the "*Offense*" category that most closely correlates to the behavior should be used to determine the penalty range.
- E. An individual offense or a combination of offenses may require a penalty more or less severe than that identified in the Table, especially if particularly strong aggravating or mitigating factors are present.
- F. When considering a penalty for an employee who has one or more prior disciplinary actions, the *Second Offense* or *Third Offense* columns, as appropriate, should be used. However, management must exercise careful judgment in assessing what the appropriate

penalty should be, especially when the prior disciplinary action was for an offense of a less or more serious nature. The following examples illustrate this point:

1. An employee received a two-day suspension based on eight hours of AWOL. Later, the employee temporarily lost possession of a government-issued firearm. Note that the penalty range in the *Second Offense* column for “Misuse of a Firearm” is a “30-day suspension to removal.” In this case, it would be reasonable (absent additional aggravating factors) to consider proposing a 30-day suspension rather than removal since the first offense (the two-day suspension for AWOL) was a relatively minor act.
  2. In the converse, an employee receives a 30-day suspension for “Misconduct During a Trial.” Subsequently, the supervisor observes the employee sleeping on the job. Here, it would be appropriate to consider proposing a removal under the *Second Offense* column for “Sleeping on Duty” since the prior misconduct was of a serious nature. This would be particularly appropriate if additional aggravating factors existed.
- G. In cases where an employee has committed several offenses at the same time, management should assess each charge on its own merits, and then consider them collectively to determine if a more severe penalty would be appropriate than it would be for any one of the offenses standing alone. For example, if an employee committed the following acts of misconduct on the same day:
- “Failure to carry out a work assignment,” with a penalty range of “reprimand to removal”;
- “Four hours of AWOL,” with a penalty range of “reprimand to removal”; and
- “Falsification of official documents,” with a penalty range of “reprimand to removal”;
- then the penalty could range from a lengthy suspension to removal, depending upon all of the circumstances surrounding the incidents and any aggravating or mitigating factors.

## THE OIG TABLE OF PENALTIES

Offense	First Offense	Second Offense	Third Offense
Attendance problems/absence without leave/leave abuse			
Un-excused tardiness	Reprimand	Reprimand to 5-day suspension	Reprimand to removal
Un-excused or unauthorized absence (AWOL) on one or more scheduled days of work or assigned overtime	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Excessive unauthorized absences (more than 3 consecutive workdays)	Reprimand to removal	10-day suspension to removal	Removal;
Leaving job location or OIG premises during working hours without proper authorization	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Alcohol-related misconduct			
Use of, or being under the influence of alcohol while on duty (violation of 41 CFR 101-20.307 if on Federal property)	14-day suspension to removal	30-day suspension to removal	Removal
Use of, or being under the influence of, alcohol while at the work site, either on or off duty (violation of 41 CFR 101-20.307 if on Federal property)	14-day suspension to removal	30-day suspension to removal	Removal
DWI/DUI in Government Owned Vehicle (GOV)	30-day suspension to removal	60-day suspension to removal	Removal
DWI/DUI in POV while off duty	Reprimand to removal	10-day suspension to removal	Removal
Drinking while using GOV or while using a POV on official business	30-day suspension to removal	60-day suspension to removal	Removal

Offense	First Offense	Second Offense	Third Offense
Arrest/indictment/conviction, misdemeanor and felony, <sup>1</sup> Federal or State, also failure to report arrest/indictment/ conviction, misdemeanor and felony, Federal or State <sup>2</sup>	Reprimand to removal	14-day suspension to removal	Removal
Dishonest, infamous, or notoriously disgraceful conduct (including discreditable involvement with local or Federal Law Enforcement Authorities)	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Credit matters (official or personal) that impact or discredit the OIG			
Failure to pay government credit card bills in a timely fashion	Reprimand to 14-day suspension	5-day suspension to removal	30-day suspension to removal
Misuse of government issued credit card	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Failure to meet personal financial obligations	Reprimand to 14-day suspension	Reprimand to removal	30-day suspension to removal
Criticism by Administrative or Judicial tribunal/misconduct during trial or hearing	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Disruptive/disrespectful/or abusive behavior/offensive language			
Disrespectful conduct, disruptive behavior, use of insulting, abusive, or obscene language to or about coworkers/supervisors/subordinates /other work related persons (e.g. Federal, State or local law enforcement personnel or auditees, etc.)	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

<sup>1</sup> 5 U.S.C. §7371 requires that any law enforcement official who is convicted of a felony be removed from the law enforcement position on the last day of the first full pay period after the agency receives notice of the felony conviction.

<sup>2</sup> Excluding: (1) moving violations, which do not result in suspension or revocation of drivers license or uninsurability, if a valid driving license is a condition of employment; and (2) moving violations, if a valid driving license is not a condition of employment.

Offense	First Offense	Second Offense	Third Offense
Assault/battery against coworker, subordinate, or supervisor	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Making threats to other employees, subordinates, or supervisors, fighting or other physical altercation, engaging in dangerous horseplay	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Discrimination/harassment/retaliation/ covered by Title 7, Americans with Disabilities Act, or Rehabilitation Act			
Discrimination against an employee or applicant based on race, color, religion, sex, handicap, national origin, or age; or any reprisal or retaliation against a complainant, representative, witness, or other person involved in the EEO process	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Sexual harassment	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Drug related misconduct			
Unlawful use, possession, sale, or distribution of illegal drugs, on or off duty	Reprimand to removal	Removal	
Misuse of prescription medication(s) (e.g., sale of)	Reprimand to removal	14-day suspension to removal	Removal
Refusal to be tested or positive drug test under OIG Drug Free Workplace Program, or other violation of the Drug Free Workplace Program policies	Reprimand to removal	Removal	
Standards of Conduct (Ethics) violations	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Exhibiting lack of candor as a witness in an official investigation	Reprimand to removal	5-day suspension to removal	30-day suspension to removal

<b>Offense</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
Failure to cooperate during an OIG inquiry	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Failure to pay/file income tax – Federal or State (without obtaining an extension)	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Failure to safeguard the security and confidentiality of records, including personally identifiable information. (electronic or paper format)	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
<b>Failure to follow instructions</b>			
Failure or delay in carrying out any proper order, work assignment or instruction, including failure to comply/follow OIG policy or procedure	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Disobedience to constituted authorities; deliberate refusal to carry out any proper order, work assignment, or instruction; insubordination	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Failure to report motor vehicle accident involving government owned/leased or POV used in official business	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Failure to report suspension/revocation of drivers license or uninsurability <sup>3</sup>	3-day suspension to removal	14-day suspension to removal	30-day suspension to removal
<b>Falsification of official documents</b>			
Falsification, misstatement, or concealment of material fact in connection with any official record, including investigative and audit activity or reporting	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

<sup>3</sup> Unless a valid driving license is not a condition of employment.

<b>Offense</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
Fraud against the Government	14-day suspension to removal	Removal	
Improper evidence handling	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
Improper association/relationship with criminal element	Reprimand to removal	14-day suspension to removal	Removal
Improper conduct with informants/cooperating witnesses	Reprimand to removal	14-day suspension to removal	Removal
Improper investigative/audit technique	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
Insubordination	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Loss of govt property such as equipment, govt issued undercover ID, govt issued credit card/telephone card, security access control card, credentials, case funds. Failure to report loss of such and an inventory discrepancy	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
Lying under Oath	Reprimand to removal	Removal	
Misuse/theft/unauthorized possession of Government property or funds	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Misuse of a firearm (shooting or no shooting)			
Loss of possession or control of firearm; alcohol use or unauthorized drug use while in possession of firearm; other unauthorized use or failure to report violation	3-day suspension to removal	30-day suspension to removal	Removal



Offense	First Offense	Second Offense	Third Offense
Misuse of			
Government owned/leased vehicle <sup>4</sup>	30-day suspension to removal	45-day suspension to removal	Removal
Position and/or credentials	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Providing false documents or information for official purposes			
Falsification (or aiding or assisting in falsification) of claims against the government, including (but not limited to) travel claims, time and attendance records, medical documentation supporting absences or request for accommodation	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Refusal to relocate			
Refusal to accept a management-directed geographic relocation when doing so is a condition of employment	Removal		
Reprisal for whistleblowing	5-day suspension to removal	14-day suspension to removal	30-day suspension to removal
Moving traffic violation while using government owned/leased vehicle or while using POV in conduct of official business; failure to report violation	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
Security violations	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

<sup>4</sup> 31 U.S.C. requires a minimum suspension of one month even for the first offense, if the misuse was willful, i.e., employee acted either with knowledge that the intended use would be characterized as unofficial or with reckless disregard of whether such use was unofficial. See OIG memorandums dated February 19, 1997 and August 8, 1997 regarding the use of government owned/leased vehicles.

Offense	First Offense	Second Offense	Third Offense
Title III (Electronic Surveillance) violations	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Unauthorized/unapproved: investigation/ audit; political activity; outside employment or participation in activities that conflict with official position; disclosure of official information	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
Unprofessional appearance and/or hygiene	Reprimand	Reprimand to 5-day suspension	Reprimand to removal
Unprofessional conduct			
Unprofessional conduct on duty	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
Unprofessional conduct off duty (that impacts or discredits OIG)	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
Unavailability during official duty hours, while on standby, or in AUO or LEAP status	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
Careless workmanship, work deficiencies, wasting time, loafing, sleeping on duty	Reprimand to removal	5-day suspension to removal	14-day suspension to removal

## Appendix 3 – Prohibited Personnel Practices

A prohibited personnel practice is defined at 5 United States Code (USC) § 2302 as a personnel action taken for one of a group of specified prohibited reasons, as follows:

1. Discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
2. Use of a recommendation for personnel action if the recommendation is not based on personal knowledge and does not consist of an evaluation of work-related factors;
3. Coercion of political activity or action against an individual as reprisal for refusal to engage in political activity;
4. Deception or willful obstruction of an individual's right to compete for employment;
5. Improving or impairing employment prospects of an individual by influencing another to withdraw from competition for a position;
6. Improving or impairing employment prospects of an individual by granting a preference or advantage not authorized by law, rule, or regulation;
7. Nepotism;
8. Reprisal against whistleblowers, as defined in 5 USC §2302 (b)(8);
9. Reprisal against individuals who exercise appeal rights, testify for or assist others in covered appeals, as defined by 5 USC §2302 (b)(9), cooperate with or disclose information to an Inspector General or to the Special Counsel, or refuse to obey an order that would require the individual to violate a law;
10. Discrimination on the basis of individual conduct unrelated to work requirements, suitability, or fitness for duty;
11. Actions that violate laws, rules, or regulations implementing or concerning merit system principles identified in 5 USC § 2301.