MEMORANDUM FOR DEPARTMENT OF DEFENSE OFFICE OF DIVERSITY MANAGEMENT AND EQUAL OPPORTUNITY


Attached is the Missile Defense Agency’s submission of the Notification and Federal Employee Anti-discrimination and Retaliation (No FEAR) Act of 2002 Report for Fiscal Year 2018. This report specifies matters relating to the enforcement of certain anti-discrimination and whistleblower laws.

The point of contact for this report is Ms. Anita Boush, Director, Office of Equal Opportunity and Diversity Management. Ms. Boush can be reached at 571-231-8176 or email: anita.boush@mda.mil.

Attachment:
As stated
Missile Defense Agency

Notification and Federal Employee Antidiscrimination and Retaliation Act (NoFEAR)

Fiscal Year 2018 Report
# Table of Contents

I. Introduction ............................................................................................................................. 1  
II. Reporting Requirements ......................................................................................................... 2  
III. Analysis ................................................................................................................................ 4  
   a. Examination of Trends ....................................................................................................... 4  
   b. Causal Analysis .................................................................................................................. 5  
   c. Practical Knowledge Gained Through Experience ............................................................ 6  
   d. Actions Planned or Taken for Improvement Measures ..................................................... 7  
IV. Conclusion ........................................................................................................................... 8  
Appendix A ................................................................................................................................... 10  
Appendix B ................................................................................................................................... 17  
Appendix C ................................................................................................................................... 18
I. INTRODUCTION

The Missile Defense Agency (MDA) is a research, development, and acquisition agency within the U.S. Department of Defense (DoD). The MDA is responsible for managing, directing, and executing the Ballistic Missile Defense System (BMDS) program. The MDA’s mission is to develop and deploy a layered BMDS to defend the United States, its deployed forces and allies from ballistic missile attacks of all ranges in all phases of flight. The Honorable James N. Mattis, Secretary of Defense, defined the Department’s priorities and MDA’s key focus areas as building a more lethal force, strengthening allies and partnerships and bringing business reforms to the Department. MDA coordinates with the Combatant Commanders, other DoD components and federal agencies, foreign governments, international organizations and others as authorized. This NoFear Act Annual Report covers fiscal year (FY) 2018, October 1, 2017 to September 30, 2018.

This report provides the information on the number of cases pending or resolved that resulted in judgements, awards or comprised settlements, the amount of money required to be reimbursed by the MDA and the final year-end data about discrimination complaints. Fortunately, MDA is in good standing this reporting period, with no judgements. This information is provided each fiscal year and is posted on the agency’s external website in accordance with Equal Opportunity Commission (EEOC) regulations at 29 C.F.R. 1614 subpart G (implementing section 301(c) (1) (B) of the NoFear Act).

The Equal Opportunity and Diversity Management Office (EO) is authorized to employ a team of six personnel (3 Government and 3 Contractors) to carry out its mission: one (1) Director, one (1) Complaints Manager, one (1) Affirmative Employment Specialist/Special Emphasis Program Manager and three (3) Contractors, EO Support.

MDA’s policy is to stand with the nation and ensure all prohibited unlawful discrimination in the workplace is eliminated. MDA is committed to maintaining a healthy environment that fosters good order, discipline, teamwork and trust. The MDA promotes equal employment opportunity for its employees and applicants for employment.

At the end of FY 2018, MDA’s total government workforce included 2,452 government civilian employees, 120 MDA military service members, 245 other government agency (OGA) civilian employees, and 31 OGA military service members who supported MDA. The workforce is located in five (5) states and international locations.

There were 14 complaints on hand at the beginning of FY 2018, 11 new complaints were filed in FY 2018 for a total of 25 complaints. Ten complaints were closed, leaving 15 complaints on hand at the end of the reporting period. There have been no findings of discrimination issued against MDA for this reporting period.

The agency is required to complete cost reporting, which is a new requirement this year. The Cost Assessment and Program Evaluation (CAPE) Office is executing this requirement and has strict requirements for the cost data that must be collected for each Congressional report.
This report will account for roles and man-hours of EO government and contractor personnel. The completed CAPE is enclosed.

The following cites notable metrics from FY 17 to FY 18 respectively:

<table>
<thead>
<tr>
<th></th>
<th>FY 2017</th>
<th>FY 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints Filed</td>
<td>15</td>
<td>11</td>
</tr>
<tr>
<td>Complaints Closed</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Successful ADR</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Number of Findings</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Average Days in Investigation</td>
<td>208</td>
<td>167</td>
</tr>
</tbody>
</table>

During the reporting period, one federal court case was dismissed. The case involved two legal bases, race (Title VII, Civil Rights Act of 1964) and age (Age Discrimination in Employment Act). Currently, one federal court case is pending. This case involves three legal bases, sex and reprisal (Title VII, Civil Rights Act of 1964) and mental and physical disability (Section 501 of Rehabilitation Act).

II. REPORTING REQUIREMENTS

a. The number of cases in federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the federal antidiscrimination laws and whistleblower protection laws applicable to them as defined in 5 C.F.R. §724.102, in which an employee, former federal employee, or application alleged a violation of these laws, separating data by the provision of law involved (5 C.F.R. 724.302(a)(1)) and the status or disposition (including settlement) of such cases (5 C.F.R. 724.302(a)(2)(i)).

<table>
<thead>
<tr>
<th>Statute</th>
<th>Cases Opened in FY18</th>
<th>Cases Resolved in FY18</th>
<th>Cases Pending at Close of FY18</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Settlement</td>
<td>Other</td>
</tr>
<tr>
<td>Title VII, Civil Rights Act of 1964 42 U.S.C. 2000e-16</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Age Discrimination in Employment Act 29 U.S.C. 631, 633a</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Fair Labor Standards Act of 1938 29 U.S.C. 206(d)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Section 501 of Rehabilitation Act 29 U.S.C. 791</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Equal Pay Act 29 U.S.C. 206(d)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Whistleblower Protection Act</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
b. The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in 5 C.F.R. §724.102 (5 C.F.R. 724.302(a)(2)(ii)), and the amount of reimbursement to the Fund for attorney’s fees where such fees have been separately designated (5 C.F.R. 724.302(a)(2)(iii)), and any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred (5 C.F.R. 724.302(a)(8)).

<table>
<thead>
<tr>
<th>S Reimbursed to Judgment Fund</th>
<th>$ Attributed to Attorneys’ Fees</th>
<th>Adjustment to Agency Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>


c. In connection with the cases identified above, the total number of employees in each fiscal year disciplined (reprimand, suspension without pay, reduction in grade or pay, or removal) and the specific nature of the disciplinary actions taken, separated by the provision(s) of law involved (5 C.F.R. 724.302(a)(3)) and the number of employees in each fiscal year disciplined (reprimand, suspension without pay, reduction in grade or pay, or removal) in accordance with any agency policy, regardless of whether or not the matters are in connection to a federal court case (5 C.F.R. 724.302(a)(5)).

<table>
<thead>
<tr>
<th>Statute</th>
<th># of Employees Disciplined</th>
<th>Nature of Disciplinary Action (reprimand, suspension without pay, reduction in grade or pay, or removal.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title VII, Civil Rights Act of 1964</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>42 U.S.C. 2000e-16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age Discrimination in Employment Act</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>29 U.S.C. 631, 633a</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fair Labor Standards Act of 1938</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>29 U.S.C. 206(d)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 501 of Rehabilitation Act</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>29 U.S.C. 791</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equal Pay Act</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>29 U.S.C. 206(d)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Whistleblower Protection Act</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>5 U.S.C. 2302(b)(1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Matters that did NOT result in a federal court case</td>
<td>0</td>
<td>N/A</td>
</tr>
</tbody>
</table>


d. The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations 29 C.F.R. §§1614.701, et seq. (5 C.F.R. 724.302(a)(4)).

See Appendix A
e. A detailed description of the agency’s policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).

See Appendix B

f. The agency’s written plan to train its employees (5 C.F.R. 724.302(a)(9)).

See Appendix C

III. ANALYSIS

An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include: (i) An examination of trends; (ii) Causal analysis; (iii) Practical knowledge gained through experience; and (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace (5 C.F.R. 724.302(a)(7)).

a. Examination of Trends

An analysis of MDA’s complaint activity revealed a 26.7% decrease in formal complaints filed from FY 2017 (15 complaints filed) to FY 2018 (11 complaints filed). Of the 11 cases filed in FY 2018, five were dismissed by the MDA Equal Opportunity & Diversity Management (EO) Office and one Complainant withdrew constituting a 20% increase in the number of closures over FY 2017. The top three bases remain sex, reprisal, and disability. The top three issues are non-sexual harassment, disciplinary actions, and evaluation/appraisal. At the end of FY 2018, one complaint was pending a final agency decision (FAD), nine pending a hearing before an EEOC Administrative Judge, three pending a formal investigation, and two pending accept/dismissal determination.

MDA has seen an increase in the number of cases that are pending in hearing at the end of the FY for the past 4 years as shown below:

- At end of 2018 9 were at hearing
- At end of 2017 5 were at hearing
- At end of 2016 4 were at hearing
- At end of 2015 4 were at hearing

A major contributing factor to increasing trends has to do with the amount of time cases remain on the EEOC Hearing’s docket. The oldest case currently at hearing is approximately 4 years old. Another factor is the mediation acceptance rate is relatively low.
To prevent and eliminate harassment and reprisal in the workplace, the EO Director conducted enterprise-wide mandatory supervisory training on Anti-Harassment and Retaliation from May through November 2018. MDA developed and publicized written procedures for reporting allegations of harassment. These procedures are widely disseminated in a variety of forums to the workforce.

The following represents the agency’s continued effects to improve Complaint or Civil Rights Programs of the Agency with the Goal of Eliminating Discrimination and Retaliation in the Workplace:

- Published the EO Alternative Dispute Resolution Policy
- Conducted mandatory Anti-Harassment training for 439 of 453 supervisors
- Effectively communicate between MDA sites by publicizing EEO, Anti-Harassment, and Diversity Management policy memoranda to the workforce.
- Monitor complaints processing performance metrics to ensure compliance and efficiency.
- Provide Equal Opportunity and Diversity Management training to supervisors and employees on a quarterly basis.
- Conduct monthly Equal Opportunity and Diversity Management training to MDA new hires.
- Collaborate with EEO program enforcement agencies (OSD, EEOC, MSPB, OPM) to remain current on emerging diversity and EEO issues.
- Monitor complaints processing performance metrics to ensure compliance and efficiency.
- Provide Equal Opportunity and Diversity Management training to supervisors and employees on a quarterly basis.
- Collaborate with EEO program enforcement agencies (OSD, EEOC, MSPB, OPM) to remain current on emerging diversity and EEO issues.
- Ongoing efforts to improve employee and management perception of ADR through a comprehensive communications plan.
- MDA EO developed and issued, to the workforce, a Policy Memorandum signed by the MDA Director which communicates his commitment to ADR and mediation and his expectation that the workforce seek viable measures to address workplace disputes early with the goal of sustainable resolution.
- MDA EO developed a quarterly Newsletter that is disseminated to the workforce and in that Newsletter an entire page is dedicated to addressing issues around workplace disputes, articulating the benefits of ADR and medication, and strongly encouraging its use.
- Other activities planned are to survey workforce, stand up an ADR panel consisting of EO, GC, and HR representatives, and to establish an assertive ADR marketing campaign.

b. Causal Analysis

The 26.7% decrease in the number of complaints filed from FY 2017 (15) to FY 2018 (11) as described above is notable. The 11 formal complaints comprise less than one percent (.45%) of the total civilian MDA workforce 2,452. This percentage remains statistically insufficient to establish any causal relationship or to glean a discernible pattern from the filings. A review of complaints filed indicate there is no correlation or trend related to which MDA organization/directorate or the management official named. EO will continue to monitor for patterns and
trends in the filings as well as continue exploring creative and effective ways to mutually resolve complaints at the lowest possible level.

c. Practical Knowledge Gained Through Experience

To maximize effectiveness, MDA seeks to have exemplary EEO and Diversity programs. The EO Office reports to the MDA Director and other senior leadership and provides advice, guidance, and regulatory interpretation on federal EEO and civil rights matters. The EO Office assists leadership in shaping policies to protect the civil rights of all employees, applicants and former employees. The EO Office also develops policies and plans, generates reports, forecasts trends, assess demographics, deliver training and briefings, conduct oversight, process EEO complaints, integrate civil rights into initiatives and activities and submit annual reports to internal and external customers and stakeholders.

MDA recognizes the critical role valuable training plays in raising awareness of EEO laws, regulations and procedures. In addition to providing NO FEAR Act Training, MDA also provides employees and managers training on the prevention of sexual harassment in the workplace, EEO Complaints Overview, Diversity, Reasonable Accommodations, Retaliation, Effective Communications, and Teambuilding training on a recurring basis. On a monthly basis, EEO participates in New Employee Orientation training to ensure that new employees are aware MDA fosters a culture that values diversity and empowers individuals so they may participate and contribute to their fullest potential in support of the Agency’s mission. In addition to monthly and quarterly training, supervisors at all locations were provided Anti-Harassment training. A total of 439 of 453 supervisors received the training.

MDA EO published its Alternative Dispute Resolution Program for Workplace Disputes Policy effective July 26, 2018. The Equal Employment Opportunity Commission’s regulations at 29 C.F.R. § 1614.102 (b)(2) require agencies to establish and make available an effective EEO ADR program. The program must be available during the pre-complaint process and the formal complaint process.

MDA provided a framework for successful diversity and inclusion efforts as outlined below:

1. Published the inaugural issue of the EO Interceptor Newsletter. The Newsletter will serve as a bridge between the EO community and MDA’s leaders, supervisors and employees by providing useful information on current and emerging EEO and diversity related issues.
3. Participated in The Society of Asian Scientists and Engineers Conference. MDA served as conference sponsor and hosted the Saturday Conference Breakfast. Additionally, one of MDA’s Senior Technical (SES Equivalent) delivered the keynote address at the MDA sponsored conference event.
4. MDA consistently participates in recruitment and outreach with agency subject matter experts, HR and EO representatives by attending over 40 colleges and universities, and
partnering with university, minority serving institutions, and other professional development organizations across the United States.

5. Participated in numerous job fairs to reach groups that have a historically low participation rate in engineering and business career fields.

6. Consistently published Internal Canvas job announcements to the workforce in an effort to retain valuable employees by rotation in other career fields.

7. EO/HR teams participated in job and career fairs at four engineering and national diversity conferences and 40 colleges and universities nationwide.

8. Participate in a Tiger Team bi-weekly to address common concerns of employees.

9. Developed and published Communication Roundtable messages to bring awareness to all Special Emphasis Program Heritage Months and activities.

10. Participated in the Team Redstone’s Heritage Month Observance Display Contest and won awards for Women’s Equality Day and Hispanic Heritage Month.

11. Two MDA employees were winners at the Black Engineer of the Year Award (BEYA) Conference in the Career Achievement and Technical Contribution categories.

12. MDA hosted the HBCU Engineering Deans Roundtable in conjunction with the 32nd Annual Black Engineer of the Year Award.

13. The MDA Executive Director, also the MDA STEM Champion, has been a key participant for the STEM Diversity Campaign efforts. The STEM Diversity Campaign is a hybrid reporting unit for the DoD STEM Development Office and DoD Equal Opportunity and Diversity Management.

14. The MDA Director and Executive Director participated in the BEYA Executive and Flag Officer mentoring sessions and had the opportunity to mentor many young students from various Historically Black Colleges and Universities.

d. Actions Planned or Taken for Improvement Measures

1. In addition to the activities cited above to increase operational efficiencies, MDA/EO held several meetings with a Virginia based vendor who can provide the specific software required to meet our tracking, monitoring, and reporting needs. This vendor is currently used and endorsed by both OSD Office of Diversity, Equality, and Inclusion (ODEI) and EEOC. EEOC implemented use of the software as a means to directly issue and receive annual report submissions (EEOC Form 462 and Quarterly/Annual Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 Report). The MDA Executive Director approved EO’s acquisition of the software (iComplaints) if the vendor guaranteed that MDA owns its data and if the software is compatible with MDA systems. MDA/EO’s research revealed that the iComplaints software is approved for use on DoD systems by the Defense Information Systems Agency.

2. Published an ADR Policy Memorandum to complement the existing ADR procedures published by the MDA Office of General Counsel.

3. Hired two additional contractors, one in Huntsville (Management Analyst) and one at HQs, Fort Belvoir (Executive Assistant to the EO Director).
4. EO Director and Complaints Manager participated in the DoD, Defense Civilian Personnel and Advisory Services Alternative Dispute Resolution (ADR) Symposium.

5. MDA personnel actively participated in eight Special Emphasis Programs held throughout the year as part of Team Redstone. Participation included displays, essay contests and program attendance. MDA employees received several essay awards.

6. MDA continued its active partnership with Human Resources and Office of the General Counsel through bi-weekly meetings.

7. Continue to provide online training module for existing and new employees on the provisions of the NoFear Act.

8. Work closely with the MDA Diversity Wellness Morale Advisory Council to address and meet programmatic objectives.

9. Complaints Manager attended Basic and Advanced Mediation Training at the Justice Center of Atlanta.

10. Continue to collaborate with EEO program enforcement agencies (OSD, EEOC, MSPB and OPM) to remain current on emerging diversity and EEO issues.

11. Reviewed and updated the NoFear Act computer-based training.

12. Reviewed internal practices and procedures to identify opportunities to improve complaints processing and quality control.

13. Updated the EO Portal to include re-issued policies.

14. Continue its focus of assisting the agency to achieve model EEO status by focusing on the following elements: demonstrated commitment to EEO from agency leadership; integration of EEO into the agency’s strategic mission, management and program accountability; proactive prevention of unlawful discrimination; efficiency; and responsiveness and legal compliance.

IV. CONCLUSION

The future of MDA depends on the success of our workforce. Our commitment to employee success involves increasing training and career development opportunities, and ensuring appropriate funding and resources for EEO programs and initiatives. Our programs are essential for success and MDA EO will facilitate the agency’s efforts to be responsive to the needs of a diverse workforce. MDA’s success depends on our ability to strengthen diversity by developing effective partnerships and a progressive affirmative employment program.

MDA is firmly committed to developing and sustaining a culture and fostering an environment where diversity is valued and leveraged, all employees are treated with dignity and respect, and have equal access to opportunity. Moreover, we believe our workforce should be reflective of society as a whole. Practicing inclusive management creates a high performing work environment where all employees are optimal contributors to the mission objectives.

The MDA values every bright mind that helps us meet our goal. For that reason, we have cultivated an environment where each applicant and employee is offered an opportunity for equal advancement and recognition, regardless of gender, cultural background, or disability.

MDA EO will continue to:
1. Identify and monitor triggers and barriers underlying employee-supervisor issues in the workplace.
2. Consistently review and modify operational procedures according to EEOC regulations and DoD Directives.
3. Promote the benefits of ADR as a viable and cost saving alternative to traditional EEO discrimination complaint processing.
APPENDIX A

The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations 29 C.F.R. §§1614.701, et seq. (5 C.F.R. 724.302(a)(4)).

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

Missile Defense Agency

For the period beginning October 1, 2017 and ending September 30, 2018
### Complaint Activity

<table>
<thead>
<tr>
<th>Complaint Activity</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>Through 09-30-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Complaints Filed</td>
<td>6</td>
<td>2</td>
<td>2</td>
<td>5</td>
<td>15</td>
<td>11</td>
</tr>
<tr>
<td>Number of Complainants</td>
<td>6</td>
<td>2</td>
<td>2</td>
<td>5</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Repeat Filers</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>1</td>
</tr>
</tbody>
</table>

### Complaints by Basis

*Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.*

<table>
<thead>
<tr>
<th>Complaint by Basis</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>Through 09-30-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Color</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Religion</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Reprisal</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>4</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Sex</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td>PDA</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>National Origin</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Equal Pay Act</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Age</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Disability</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Genetics</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Non-EEO</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
### Complaints by Issue

*Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.*

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment/Hire</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Assignment of Duties</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>Awards</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Conversion to Full-time</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

### Disciplinary Action

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Demotion</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Reprimand</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Suspension</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Removal</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Other (Disciplinary Warning)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Duty Hours</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Evaluation Appraisal</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Examination/Test</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
## Harassment

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>Through 09-30-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Sexual</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>Sexual</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Medical Examination</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Pay (Including Overtime)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Promotion/Non-Selection</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>0</td>
</tr>
</tbody>
</table>

## Reassignment

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>Through 09-30-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denied</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Directed</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Reasonable Accommodation</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Reinstatement</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Retirement</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Terms/Conditions of Employment</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Time and Attendance</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Training</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Other: Denial Deployment</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other: Denial Admin Leave</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other: (LGBT Info?)</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Processing Time</td>
<td>Complaints pending during fiscal year</td>
<td>Complaints pending during fiscal year where hearing was requested</td>
<td>Complaints pending during fiscal year where hearing was not requested</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td>-------------------------------------</td>
<td>--------------------------------------------------------------</td>
<td>---------------------------------------------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average number of days in investigation</td>
<td>343</td>
<td>109</td>
<td>0</td>
<td>42</td>
<td>208</td>
<td>167</td>
</tr>
<tr>
<td>Average number of days in final action</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Complaints Dismissed by Agency</th>
<th>Total Complaints Dismissed by Agency</th>
<th>Average days pending prior to dismissal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Complaints Dismissed by Agency</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Average days pending prior to dismissal</td>
<td>121</td>
<td>0</td>
</tr>
</tbody>
</table>
### Complaints Withdrawn by Complainants

<table>
<thead>
<tr>
<th>Year</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>Through 09-30-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Complaints Withdrawn by Complainants</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

### Total Final Agency Actions Finding Discrimination

<table>
<thead>
<tr>
<th>Year</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>Through 09-30-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number Findings</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

### Findings of Discrimination Rendered by Basis

*Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.*

<table>
<thead>
<tr>
<th>Year</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>Through 09-30-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number Findings</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

### Findings of Discrimination Rendered by Issue

<table>
<thead>
<tr>
<th>Year</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>Through 09-30-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number Findings</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
### Previous Complaints Filed in Previous Fiscal Years by Status

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total complaints from previous Fiscal Years</td>
<td>9</td>
<td>11</td>
<td>11</td>
<td>11</td>
<td>7</td>
<td>14</td>
</tr>
<tr>
<td>Total Complainants</td>
<td>9</td>
<td>9</td>
<td>7</td>
<td>11</td>
<td>7</td>
<td>11</td>
</tr>
</tbody>
</table>

### Number Complaints Pending

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigation</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>ROI issued, pending Complainant's action</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Hearing</td>
<td>6</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>Final Agency Action</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Appeal with EEOC Office of Federal Operations</td>
<td>0</td>
<td>4</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Appeal pending Civil Court</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>0</td>
</tr>
</tbody>
</table>

### Complaint Investigations

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Pending Complaints Where Investigations Exceed Required Time Frames</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>6</td>
<td>0</td>
</tr>
</tbody>
</table>
APPENDIX B

A detailed description of the agency’s policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).

“Attached”
Missile Defense Agency
Disciplinary and Adverse Actions
MDA Instruction 1426.01-INS
Effective Date April 16, 2018
APPENDIX C

The agency’s written plan to train its employees (5 C.F.R. 724.302(a)(9)).

Training Plan

MDA requires all employees to complete required EEO training through an internal website (E-Learning Management System). EEO courses introduce laws prohibiting discrimination and harassment and protections afforded to employees under Title VII and Whistle-blowers Protection Act. MDA EO Policy Memoranda supports EEO training.
# TABLE OF CONTENTS

**PURPOSE** ........................................................................................................................................3  
**APPLICABILITY AND SCOPE** .....................................................................................................3  
**POLICY** ...........................................................................................................................................4  
**RESPONSIBILITIES** ......................................................................................................................5  
  - Director for Human Resources (HR) .........................................................................................5  
  - General Counsel (GC) ................................................................................................................5  
  - Proposing Official ......................................................................................................................6  
  - Deciding Official .......................................................................................................................6  
  - Supervisors .................................................................................................................................6  
  - Employees ..................................................................................................................................7  
**PROCEDURES** ................................................................................................................................7  
  - Misconduct-Based Disciplinary and Adverse Actions ..............................................................7  
  - Performance-Based Actions .....................................................................................................11  
  - Related Personal or Medical Issues .........................................................................................15  
  - Records ....................................................................................................................................16  
  - Electronic Official Personnel Folders (eOPFs) .........................................................................16  
  - Status during Investigations and Notice Periods ..................................................................16  
  - Employee Grievances and Appeals ........................................................................................16  
**EFFECTIVE DATE** ............................................................................................................................17  

**ENCLOSURE 1, REFERENCES** ......................................................................................................18  
**ENCLOSURE 2, TABLE OF OFFENSES AND PENALTIES** ............................................................19  
**ENCLOSURE 3, DOUGLAS FACTORS** ..........................................................................................28  
**ENCLOSURE 4, GLOSSARY** .........................................................................................................35  
  - PART I. ACRONYMS ..................................................................................................................35  
  - PART II. DEFINITIONS ..............................................................................................................35  

**TABLE**  
  - Table of Offenses and Penalties ...............................................................................................21
SUBJECT: Disciplinary and Adverse Actions

References: See Enclosure 1

1. **PURPOSE.** This instruction:
   
   a. Establishes policy, assigns responsibilities, and establishes procedures for taking disciplinary and adverse actions, in accordance with the authority in Chapters 43 and 75 of Title 5, United States Code (U.S.C.) (Reference (a)) referred to in this instruction as “Chapter 43” and “Chapter 75.”
   
   b. Establishes the Missile Defense Agency (MDA) Table of Offenses and Penalties listing the infractions committed most frequently along with a suggested range of penalties for each infraction. It is a guide, not a rigid standard.
   
   c. Is intended to provide administrative guidance and summarize procedures. It creates no substantive or procedural employee rights, benefits or privileges beyond those created by applicable statutes and regulations. In the event any provision of this instruction is inconsistent with the DoD civilian personnel policies, DoD policies will apply.

2. **APPLICABILITY AND SCOPE.** This instruction applies to:
   
   a. All organizational entities within MDA.
   
   b. All MDA federal civilian employees except those identified below:
      
      (1) Individuals who are not “employees” pursuant to Section 7501 of Title 5, U.S.C. (Reference (a)) with respect to suspensions of 14 days or less.
      
      (2) Individuals who are not “employees” pursuant to section 7511 of Title 5, U.S.C. (Reference (a)) with respect to suspensions for more than 14 days and removals.
      
      (3) Defense Civilian Intelligence Personnel System employees hired under Section 1601 of Title 10, U.S.C.
      
      (4) Foreign national employees.
      
      (5) Members of the Senior Executive Service.
(6) Members of the Defense Intelligence Senior Executive Service or Defense Intelligence Senior Level employees.

(7) Reemployed annuitants.

(8) Employees serving under temporary appointments.

(9) Political appointees.

(10) Highly qualified experts.

(11) Experts and consultants.

c. This instruction does not apply to the following actions:

(1) Separation of employees who commit misconduct before entrance on duty.

(2) Furloughs of 30 days or fewer.

(3) Reduction in force actions (including furloughs of more than 30 days).

(4) Reductions in grade under Section 3321(b) of Title 5, U.S.C. (Reference (a)) of a supervisor or manager who has not completed the required probationary period.

(5) Actions that entitle an employee to grade retention under Part 526 of Title 5, Code of Federal Regulations (CFR) (Reference (b)) and actions to terminate this entitlement.

(6) Voluntary actions by an employee.

(7) Termination of appointments on their termination date and termination of temporary or term promotions.

(8) Reductions in an employee’s rate of pay required by law or regulation.

d. While excluded from coverage according to this instruction, supervisors may admonish, warn, or reprimand the employees listed in paragraph 2.b. consistent with this instruction. When separation is warranted, the employee’s appointment may be terminated without applying the procedures outlined in this instruction. Prior to taking any action, supervisors must seek advice and assistance from the Management-Employee Relations (MER) section of the Management-Employee Relations and Performance Management office of the Human Resources Directorate.

3. POLICY. It is MDA policy that:

a. Formal disciplinary and adverse actions will be taken to promote the efficiency of the federal service.
b. Before taking any action under this instruction, managers and supervisors will seek advice and assistance from MER.

c. Managers and supervisors will continuously monitor and evaluate employees’ performance and conduct and take action if the performance or conduct falls below acceptable standards. In consultation with MER, managers and supervisors will investigate alleged misconduct as appropriate and will document instances of misconduct and poor performance that they witness.

d. Managers and supervisors will safeguard knowledge and information regarding proposed or decided disciplinary or adverse actions to ensure the collection, use, maintenance and distributions of personally identifiable information of federal employees is in accordance with DoD Directive 5400.11 (Reference (c)) and DoD 5400.11-R (Reference (d)).

e. Managers and supervisors will inform the organization security manager if the cause for action covered by this instruction could impact the employee’s eligibility for access to classified information or compromise national security as required by DoDM 5200.2 (Reference (e)).

4. RESPONSIBILITIES.

a. The Director for Human Resources (HR) will:

   (1) Provide authoritative information and interpret policy and procedures concerning civilian discipline and adverse actions.

   (2) Ensure disciplinary and adverse actions comply with governing requirements.

   (3) Research applicable case law and advise management accordingly to ensure informed and judicial decisions are rendered.

   (4) Assist management in drafting disciplinary and adverse action notices, and ensure coordination with the General Counsel (GC) before delivery of proposed and final notices to the employee.

   (5) Advise employees of their rights, privileges and established standards of conduct.

b. The General Counsel (GC) will:

   (1) Review notices of proposed actions and final decisions for legal sufficiency.

   (2) Provide legal advice to HR and supervisory and management officials on disciplinary and adverse actions, including inquiries and investigations.
c. The Proposing Official will:

(1) Reasonably investigate the alleged offense and gather, document and analyze all facts and mitigating circumstances in a timely manner.

(2) Involve the minimum number of people necessary when gathering facts and coordinating actions. The Proposing Official must not involve the Deciding Official in any part of the proposal stage.

(3) Consult with MER on appropriate penalties and requirements and for assistance in drafting the proposal notice.

(4) Seek advice and assistance from MER to ensure the consideration of any action complies with statutory, regulatory and policy requirements.

(5) Issue the notice of proposed disciplinary or adverse action only after all required coordination is complete.

d. The Deciding Official will:

(1) Remain impartial and objective in reviewing and considering all relevant material regarding the proposed action.

(2) Prepare and provide final decision to employee.

e. The Supervisors will:

(1) Set a good example for their subordinate employees and promote good employee-management relations.

(2) Create a work environment free from discrimination because of race, color, religion, sex (including sexual harassment, gender identity, sexual orientation, pregnancy, and Lesbian, Gay, Bisexual and Transgender (LGBT) status), national origin, age (over 40), mental/physical disability, genetic information, or reprisal for participating in protected Equal Employment Opportunity (EEO) activity.

(3) Establish, clearly communicate and consistently enforce the rules and standards of conduct and performance.

(4) Identify conduct and performance that needs improvement in a way that respects the employee’s dignity.

(5) Refer employees to the Employee Assistance Program (EAP), as necessary.

(6) Consult with MER prior to initiating action in accordance with this instruction.
f. The **Employees** will:

   (1) Conduct themselves, both on and off-duty, in a way that ensures their conduct does not reflect adversely on MDA or DoD.

   (2) Follow the work rules and directives provided by the Agency.

   (3) Comply with the standards of conduct prescribed in DoD Directive 5500.7 (Reference (f)).

5. **PROCEDURES**.

   a. **Misconduct-Based Disciplinary and Adverse Actions**.

      (1) **General**.

         (a) **Informal Disciplinary Action**. A traditional informal disciplinary action consists of an oral admonishment, a counseling letter or memorandum, or a written warning, as applicable. Normally an employee’s first-level supervisor takes informal disciplinary action. However, any supervisor at least one level of supervision above an employee within his or her chain of command may take an informal disciplinary action.

         (b) **Formal Disciplinary Action**. A formal disciplinary action includes a written reprimand, a suspension of any length, or a removal. Formal discipline is made a matter of record in an employee’s electronic Official Personnel Folder (eOPF).

            1. An “adverse action,” a subset of formal disciplinary actions, is a formal disciplinary action that includes a suspension for more than 14 days (including indefinite suspensions), a reduction in grade or pay, a removal, or furloughs of 30 days or less. Federal law and regulations prescribe procedures that must be followed when taking an adverse action against a federal civilian employee. Failure to adhere to these procedures may result in the reversal of the action on appeal, without consideration of the merits of the case, or other unfavorable outcomes.

            2. Normally a first-level supervisor issues written reprimands and proposes suspensions and removals. A supervisor or manager at least one level above the first-level supervisor normally serves as a deciding official for suspensions and removals. However, any supervisor at least one level of supervision above an employee within his or her chain of command may issue a written reprimand and serve as a proposing or deciding official. If appropriate, a supervisor or manager outside the employee’s chain of command may be designated to perform these functions.

         (c) **Alternative Disciplinary Action**. After proposing a formal disciplinary or adverse action and hearing the employee’s reply, management may offer an employee the option of participating in alternative discipline in lieu of traditional discipline. MER advises management
on how to implement an alternative disciplinary action in such a way that it meets the Merit Systems Protection Board’s (MSPB) definition of formal disciplinary action. Examples of alternative disciplinary action include:

1. Last chance agreements and agreements to hold the penalty in abeyance, provided no additional misconduct occurs within a specified period of time.

2. Flexibility in the timeline of when a suspension is served.

(2) Pre-Action Investigation. Before initiating a disciplinary or adverse action, the supervisor may need to investigate an incident to determine the facts and collect evidence.

(a) The investigation, conducted in consultation with MER, may include:

1. Obtaining signed and dated witness statements.

2. Preparing, signing and dating a written record summarizing incidents personally observed.

3. Collecting documentation and other evidence related to the misconduct.

4. Documenting, signing and dating a summary of the employee’s oral explanation.

(b) Supervisors, or individuals responsible for conducting the investigation, must forward all of the information and other documentary evidence gathered during the course of the investigation to MER.

(3) Written Reprimands. The written reprimand:

(a) Describes the specific reason(s) for the written reprimand in sufficient detail so the employee understands the misconduct.

(b) Contains a statement that further misconduct may result in more severe disciplinary action.

(c) References past attempts to correct the employee’s behavior, if any.

(d) Explains that a copy of the written reprimand is placed in the employee’s eOPF for a period not to exceed two years. Management officials may direct the removal of the written reprimand at an earlier date, if warranted.

(e) Advise the employee of their grievance rights in accordance with MDA Instruction 1400.03-INS, (Reference (h)), the right to file a complaint with the Office of Special Counsel, and the right to file a complaint through the EEO process.
(4) Suspensions, Removals, and Reductions in Grade or Pay.

(a) MER will work with management to determine who should serve as proposing and deciding officials and, if applicable, a reply official for the proposed action.

(b) Except as provided in paragraph 5.a.(7), employees are entitled to at least 10 days advance written notice before a suspension of 14 days or less and at least 30 days advance written notice before a suspension of more than 14 days or removal.

(c) MER will help prepare a draft notice of the proposed action. The notice of proposed action will:

1. Include the specific reasons for the proposed action and include specific examples, where applicable, to include all offenses on which the proposing official is relying in support of the proposed action. The reasons must be described with sufficient specificity and detail to allow the employee to provide an informed reply.

2. Include the proposed penalty. MER will recommend a proposed penalty. Guided by the Douglas Factors outlined in Enclosure 3, the notice of proposed action will explain the reason for selection of the penalty, including reference to previous counseling, disciplinary action, or other attempts to correct the employee’s behavior, if applicable, as well as any aggravating or mitigating factors. The notice will refer to any informal or formal disciplinary action upon which the proposing official is relying to support the proposed action.

3. Inform the employee of their right to reply, orally, in writing, or both to the proposed action within 10 calendar days.

4. Include the name and contact information for the deciding official and, if applicable, the reply official.

5. Inform the employee of their right to representation by an attorney or other representative at no cost to MDA. An employee’s choice of representative may be disallowed if the representation would result in a conflict of interest or position. For example, the employee may not be represented by a member of the HR staff; an MDA EEO manager, counselor, or investigator; a military or civilian attorney or specialist; or anyone whose service as a representative would result in a conflict or apparent conflict of interest within their position or with the priority needs of the agency.

6. Inform the employee of what arrangements the employee must make to review the materials relied upon. Alternatively, the employee may be provided a copy, in a manner determined by the proposing official, of the materials relied upon.

7. Inform the employee that a request for an extension of the time limit permitted for a reply will be considered by the deciding official and may be approved for good cause.
8. Inform the employee a final written decision on the proposed action will be provided as soon as practicable after the employee’s reply or after expiration of the time permitted for the reply.

9. Inform the employee of their duty status during the notice period. See paragraph 5.f.

10. Inform the employee of the name, telephone number, and e-mail address of the MER specialist to whom the employee may present questions about the proposal or the employee’s rights.

11. Inform the employee that any use of official time must be requested and approved by the Deciding Official.

(d) The employee may submit an oral or written reply, or both, to the deciding official or reply official during the specified reply period. This is the employee’s opportunity to present for consideration to the deciding official any information that supports the employee’s position and to furnish any affidavits and other documentary evidence before a decision is made. The employee may have a representative present during an oral reply.

(e) The decision must be based on careful consideration of the notice of proposed action, the materials relied on for the proposal, the reply(ies) the employee provides, and any evidence presented by the employee. The deciding official must consider only the facts specified in the notice of proposed action and provided for in the employee’s reply(ies), if any. The written decision must:

1. Indicate whether or not the employee replied and, if so, that their reply was considered.

2. If all or part of the proposed action is sustained, specify the instances of unacceptable conduct or behavior on which the decision is based.

3. Inform the employee of the penalty, if any, and the effective date of the penalty. The employee should be informed of the reason(s) why the penalty selected is appropriate, as guided by the Douglas Factors.

4. Include a statement the action taken is for such cause as well promote the efficiency of the service.

5. Be signed and dated by the deciding official.

6. Be delivered to the employee before the effective date of the action.

7. Inform the employee of any right to appeal the decision with the MSPB, any right to grieve the decision pursuant to Reference (h), the right to file a complaint with the Office of Special Counsel, and the right to file a complaint through the EEO process.
(5) Separation of Individuals Who are Serving a Trial or Probationary Period.

(a) The requirement that federal employees serve a trial or probationary period provides federal agencies an opportunity to evaluate the individual’s conduct and performance after entry on duty to determine if an appointment to government service should become final. During the probationary period or trial period, individuals may be discharged with minimal procedural requirements for a deficiency in performance or conduct that occurs after the employee’s entrance on duty.

(b) Determinations regarding whether an employee is subject to a trial or probationary period requires coordination with HR.

(c) If the supervisor of an individual serving a trial or probationary period determines the individuals continued employment is not in the best interest of the Federal Government, the supervisor will contact MER to initiate a separation action. Although such discharges may be made at any time during the trial or probationary period, it is important to contact MER at least 90 days before the end of the trial or probationary period to ensure the action can be effected in a timely fashion.

(d) The individual must be notified in writing as to why they are being separated and the effective date of the action. The notice, at a minimum, will consist of the conclusions as to the inadequacies of the individual’s performance or conduct.

(6) Indefinite Suspensions.

(a) General. An employee may be temporarily placed in a non-duty status without pay. Consultation with MER is required to determine circumstances in which an indefinite suspension is appropriate. Such situations include, but are not limited to, cases when the agency has reasonable cause to believe an employee has committed a crime for which the employee could be imprisoned, pending the completion of the investigation or criminal proceedings.

(b) Requirements. Indefinite suspensions taken in accordance with Chapter 75 of Title 5, U.S.C. (Reference (a)) are imposed only after a proposal, an opportunity for the employee to reply, and a decision issued, just as with any adverse action.

(7) Crime Provision. In accordance with Section 7513(b) of Title 5, U.S.C. (Reference (a)), the “crime provision” allows for a shortened notice period and may be used when a federal agency has reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment may be imposed. In these cases, an employee must provide their reply to the proposed action within seven calendar days.

b. Performance-Based Actions.

(1) Types of Performance Based Actions.
(a) Performance-Based Actions Taken in Accordance with Chapter 75. Performance-based actions may be taken in accordance with Chapter 75 of Title 5, U.S.C. (Reference (a)) using the procedures outlined below. Performance-based actions taken in accordance with Chapter 75 are most appropriate under one of the following circumstances:

1. The action involves both performance and conduct matters.

2. Performance standards/objectives are in place, but certain deficiencies are not covered by the standards/objectives, e.g., carelessness, laziness.

3. It would not be in MDA’s best interest to place an employee on a contribution improvement plan (CIP) or performance improvement plan (PIP) and provide the opportunity to demonstrate acceptable performance because of concerns such as security or safety.

4. Performance standards/objectives are in place and an employee has the knowledge, skills and abilities to perform their duties but is unwilling or is intentionally failing to do so.

(b) Performance-Based Actions Taken in Accordance with Chapter 43 for General Schedule (GS) employees. Performance-based actions may be taken in accordance with Chapter 43 of Title 5, U.S.C. (Reference (a)) using the procedures outlined below. Performance-based actions taken in accordance with Chapter 43 are most appropriate when an employee is performing duties to the best of their ability but is unable to meet the minimum requirements of one or more critical elements/factors for their position.

(c) Performance-Based Actions Taken in Accordance with the Provisions of the DoD Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo) Operating Procedures (Reference (g)). With the exception of the right of appeal to the MSPB, the procedures in Sections 4301-4304 of Title 5, U.S.C. (Reference (a)) are waived and replaced with the procedures contained in Reference (g).

(2) Performance-Based Adverse Action.

(a) A performance-based adverse action, including removal or reduction in grade/broadband or pay, may be taken against an employee at any time during the performance appraisal cycle when contribution/performance in one or more critical element/factor becomes inadequate/unacceptable. Prior to taking a performance-based adverse action, the employee must be given the opportunity to improve through a contribution improvement plan (CIP) for AcqDemo employees or performance improvement plan (PIP) for GS employees. In accordance with Section 432.104 of Title 5, CFR (Reference (b)), the CIP/PIP must:

1. Notify the employee what contribution/performance is inadequate/unacceptable.

2. Inform the employee of:
a. AcqDemo – The specific area in which the employee is inadequately contributing and what improvements are required, including the standards for adequate contribution. A sample CIP is contained in Reference (g).

b. GS – The performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in their position.

3. Give the employee a reasonable opportunity, i.e., not fewer than 60 calendar days under a CIP or 30 calendar days under a PIP to demonstrate acceptable contributions/performance.

4. Inform the employee that unless their contribution/performance improves and is sustained at an acceptable level, the employee may be reduced in grade/broadband or removed.

5. Explain what MER and the rating official will do to assist the employee in improving unacceptable contribution/performance.

6. Inform the employee of what arrangements the employee must make to review the materials relied upon. Alternatively, the employee may be provided a copy, in a manner determined by the proposing official, of the materials relied upon.

(c) Management may propose a reduction in grade/broadband, pay or removal if the employee’s contribution/performance remains unacceptable. The employee must be given at least 30 days advance written notice of the proposed action before the performance-based adverse action may be effected. The notice must:

1. Identify specific instances of inadequate contribution/unacceptable performance upon which the proposed action is based, including the specific critical factors/elements the employee failed to meet where applicable. The employee must be given at least 30 days advance written notice of the proposed action before the performance-based adverse action may be effected.

2. Reference the CIP/PIP and any past counseling or other attempts to correct the employee’s performance.

3. Inform the employee of their right to reply orally, in writing, or both to the proposed action within 10 calendar days.

4. Include the name and contact information of the deciding official.

5. Inform the employee of their right to representation by an attorney or other representative. As described in paragraph 5.a.(4)(c)(5.), the employee’s choice of representative may be disallowed.

6. Inform the employee of their right to review and obtain copies of the materials relied upon to support the proposed action.
7. Inform the employee that a request for an extension of the time limit permitted for a reply will be considered by the deciding official and may be approved for good cause.

8. Inform the employee that a final written decision on the proposed action will be provided within 30 days after the expiration of the notice period.

9. Inform the employee of their duty status during the notice period (see paragraph 5.f.).

10. Inform the employee of the name, telephone number, and e-mail address of the MER specialist to whom the employee may present questions about the proposal or the employee’s rights.

11. Inform the employee that any use of official time must be requested and approved by the Deciding Official.

(d) The employee may submit an oral or written response, or both, to the deciding official during the specified reply period. This is the employee’s opportunity to present for consideration to the deciding official any information that supports the employee’s position and to furnish any affidavits and other documentary evidence before a decision is made. The employee may have a representative present during an oral reply.

(e) The decision must be based on careful consideration of the notice of proposed action, the materials relied upon for the proposal, the reply(ies) the employee provides, and any evidence presented by the employee. The deciding official must consider only the facts specified in the notice of proposed action and provided for in the employee’s reply(ies), if any. Unless the MDA Director proposed the action, a supervisor or manager in a higher-level position than the proposing official must render the decision. The decision must:

1. Indicate whether or not the employee replied to the proposal and, if so, that their reply was considered.

2. Inform the employee whether or not the deciding official found sufficient evidence to support the proposed action. If there was sufficient evidence to support the proposed action, specify the instances of inadequate contribution/unacceptable performance by the employee upon which the action is based.

3. Be signed and dated by the deciding official.

4. Be delivered to the employee in writing within 30 calendar days after the expiration of the notice period and before its effective date.

5. Inform the employee of any right to appeal the decision with the MSPB, any right to grieve the decision pursuant to Reference (h), the right to file a complaint with the Office of Special Counsel, and the right to file a complaint through the EEO process.
(f) MDA management may extend the advance notice period for more than 30 days without prior approval from the Office of Personnel Management, for the following reasons:

1. To obtain or evaluate medical information when the employee has raised a medical issue in their reply to a proposed reduction in grade/broadband or removal.

2. To consider the employee’s reply if an extension to the period for a reply has been granted, e.g., because of the employee’s illness or incapacitation.

3. To consider reasonable accommodation of a disability pursuant to the Rehabilitation Act of 1973 (Reference (i)).

(g) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade/broadband or removed, and the employee’s performance continues to be acceptable for two years (AcqDemo) or one year (GS) from the date of the advance written notice, any entry or other notation of the proposed action (AcqDemo) or unacceptable performance for which the action was proposed (GS) must be removed from any record relating to the employee.

c. Related Personal or Medical Issues.

(1) Referrals to the EAP. If a supervisor suspects an employee has a personal or medical problem that may be affecting their conduct or performance, the supervisor may encourage the employee to contact the EAP. Contact details for EAP can be obtained by contacting MER. The employee’s participation in EAP is voluntary and confidential.

(2) Employee Assertion of Personal or Medical Problem during Counseling or Reply to Discipline. If an employee cites a personal or medical problem in response to counseling or discipline, management has an obligation to consider the employee’s input and should contact MER for guidance.

   (a) Employees with personal or medical issues are held to the same standards of conduct as other employees.

   (b) Reasonable accommodations in the workplace may be available to address an employee’s medical condition in accordance with Reference (i).

   (c) Employee personal medical issues are to be kept confidential and must not be shared or discussed with anyone, including other supervisors or managers, outside a need-to-know basis.
d. Records.

(1) Delivery and Recording of the Action. Normally the official taking the action personally delivers the proposal or decision to the employee and, if possible, obtains written acknowledgement of receipt by the employee. An employee’s refusal to sign a delivered action does not affect the processing of the action. Equally, an employee’s signature on an action does not necessarily mean the employee agrees with the content of the action. A copy of the issued proposal and decision letter must be provided to MER for the case file.

(2) MDA Case Files. MER maintains the official files on all formal disciplinary and adverse actions, including performance-based actions. These files are kept separate from the eOPF.

e. eOPFs.

(1) Informal Disciplinary Actions. Documentation of oral admonishments and written warnings are not maintained in the employee’s eOPF.

(2) Formal Disciplinary and Adverse Actions. An appropriate Standard Form 50, “Notification of Personnel Action” authorizing any formal disciplinary or adverse actions, except written reprimands, is maintained in the eOPF. Written reprimands are maintained in the eOPF for up to two years.

f. Status during Investigations and Notice Periods. Under ordinary circumstances, employees remain in a duty status in their regular positions during investigation of a potential disciplinary action, during adverse action procedures, and during performance-based adverse action procedures. Other options may be appropriate in a given situation, e.g., employee requests voluntary use of leave. In some circumstances, the employee may be placed in an administrative leave, investigative leave or notice leave (excused absence) status – a paid, non-duty status – during the notice period. Excused absence is discouraged and is used only in those circumstances where retention of the employee in an active duty status during the investigation or notice period may pose a threat to the employee or others, result in loss of or damage to government property, or otherwise jeopardize government interests. Care must be exercised to use the minimum amount of excused absence time necessary in any individual situation. Any determination to place an employee in an excused absence status must be coordinated with MER.

g. Employee Grievance and Appeals.

(1) Grievance of Formal Disciplinary Action (Written Reprimand or Suspension of 14 Days or Less). In accordance with Section 752.203 of Title 5, CFR (Reference (b)), disciplinary actions may be grieved through the administrative grievance system (Reference (h)).

(2) Grievance or Appeal of Adverse Action (Suspension Over 14 Days, Reduction in Grade/Broadband/Pay or Removal). In accordance with Section 752.405 of Title 5, CFR (Reference (b)), such adverse actions may be appealed to MSPB.
6. **EFFECTIVE DATE.** This instruction is effective immediately.

Enclosures
1. References
2. Table of Offenses and Penalties
3. *Douglas* Factors
4. Glossary
REFERENCES

(a) United States Code, Title 5
(b) Code of Federal Regulations, Title 5
(g) DoD Civilian Acquisition Workforce Personnel Demonstration Project Operating Procedures, May 15, 2003, as amended
(h) MDA Instruction 1400.03-INS, “Administrative Grievance System,” December 3, 2012
(i) Rehabilitation Act of 1973
(j) *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (MSPB 1981)
TABLE OF OFFENSES AND PENALTIES

1. General. The Table of Offenses and Penalties is a guide when selecting an appropriate penalty for actionable misconduct. It is not a substitute for supervisory judgment and does not dictate penalties. It only provides supervisors a general framework to consider on a case-by-case basis.

2. Offense and Nature of Offense Columns. The offense and nature of offense columns do not provide a complete listing of every possible cause for disciplinary or adverse action. If a specific offense is not listed, the omission does not mean a penalty cannot be imposed. Supervisors should compare a specific incident of misconduct to the offenses described and determine the offense that most closely describes the misconduct. If there is not an offense that best describes the misconduct, MER can provide assistance in identifying additional offenses that more accurately reflect the misconduct.

3. Penalty Columns.
   a. The three columns that identify first, second and third offense penalties establish a range of minimum to maximum punitive measures that may be imposed for a specific type of offense. The penalties ranges from less severe to more severe as offenses progress from the first through the third offense.
      (1) Previous informal disciplinary actions are not counted as previous offenses for the purpose of penalty selection. To be considered a second or third offense, the subsequent misconduct does not have to be the same or similar to the first type of misconduct. For example, if an employee was previously given a written reprimand for a first offense for being absent without leave (AWOL) and subsequently engages in insubordination, the penalty range would be derived from the second offense column and the offense would be insubordination.
      (2) Additionally, various factors can combine to either enhance or mitigate a penalty selection. For example, the presence of multiple charges would tend to enhance a penalty selection.
   b. A supervisor has a choice of the severity of the penalty, ranging from no penalty, imposing informal disciplinary actions or a penalty up to the maximum stated in the range.
      (1) When significant aggravating circumstances exist, the penalty range may be exceeded. For example if the Table lists a 14-day suspension as a minimum penalty for an offense, the supervisor may determine no penalty is needed or may issue an oral admonishment, a letter of warning, a reprimand or suspension of up to 14 days. Using this same example, the imposed penalty could be greater than a 14-day suspension if significant aggravating circumstances exist.
(2) Deviation from the suggested penalties should be justified in the notice of proposed action and notice of decision. In cases where previous offenses are relied upon to support a more severe penalty, those offense must be cited in the notice of proposed action.
## Table of Offenses and Penalties

<table>
<thead>
<tr>
<th>Offense</th>
<th>Nature of Offense</th>
<th>First Offense Penalty</th>
<th>Second Offense Penalty</th>
<th>Third Offense Penalty</th>
</tr>
</thead>
</table>
| 1. AWOL or Failure to Follow Leave Procedures| A. Any absence from the regularly scheduled tour of duty that has not been authorized and for which pay must be denied; e.g., AWOL or any unauthorized absence, unauthorized early departures, unauthorized tardiness, or unauthorized absence from the work site during duty hours.  
B. AWOL totaling more than 5 days in duration                                                                                               | Written reprimand to 14-day suspension     | 14-day suspension to removal                  | 14-day suspension to removal                |
| 2. Failure to Follow Established Leave Procedures | Failure to follow established leave procedures.                                                                                                                                                                  | Written reprimand to 5-day suspension      | 5-day suspension to 14-day suspension         | 14-day suspension to removal                |
| 3. Falsification, Fraud, or Misrepresentation | Providing incorrect or inaccurate information; the information was material; the information was knowingly supplied; and the information was supplied with the intention to mislead, deceive, or defraud.                                               | 14-day suspension to removal               | 30-day suspension to removal                  | Removal                                     |
| 4. Failure to Comply with Time and Attendance/Telework Rule | Failure to follow agency telework procedures.                                                                                                                                                                   | Written reprimand to 14-day suspension     | 14-day suspension to removal                  | 30-day suspension to removal                |
| 5. Failure to Accurately Complete Time Card   | A. Failure to accurately complete time in the payroll system to include using the wrong time keeping codes.                                                                                                   | Written reprimand to 5-day suspension      | 5-day suspension to 14-day suspension         | 14-day suspension to removal                |
|                                              | B. Failure to accurately complete time card in excess of 40 hours “Same penalty as AWOL”                                                                                                                                                         | Written reprimand to 14-day suspension     |                                               | 14-day suspension to removal                |
Table of Offenses and Penalties

<table>
<thead>
<tr>
<th>Offense</th>
<th>Nature of Offense</th>
<th>First Offense Penalty</th>
<th>Second Offense Penalty</th>
<th>Third Offense Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Inappropriate Conduct</td>
<td>Misconduct that discredits one’s character, reputation, or credibility, or that is not in accordance with standards of conduct.</td>
<td>Written reprimand to 14-day suspension</td>
<td>14-day suspension to removal</td>
<td>Removal</td>
</tr>
<tr>
<td>7. Performing Unauthorized Personal Activities on Official Time</td>
<td>Performing or conducting personal business or activities during duty hour.</td>
<td>Written reprimand to 14-day suspension</td>
<td>14-day suspension to removal</td>
<td>Removal</td>
</tr>
<tr>
<td>8. Violation of an information security requirement and policy; including failure to comply with the Missile Defense Agency Information Systems User Agreement.</td>
<td>A. Non-compliance with the MDA Information System User Agreement.</td>
<td>Written reprimand to 14-day suspension</td>
<td>14-day suspension to removal</td>
<td>Removal</td>
</tr>
<tr>
<td></td>
<td>B. Inappropriate Use of Government Email (such as sending FOUO, Confidential or Sensitive Agency work product to commercial email addresses)</td>
<td>Written reprimand to 14-day suspension</td>
<td>14-day suspension to removal</td>
<td>Removal</td>
</tr>
<tr>
<td>9. Failure to Comply with Work Schedule</td>
<td>Unauthorized departure from the worksite.</td>
<td>Written reprimand to 14-day suspension</td>
<td>14-day suspension to removal</td>
<td>Removal</td>
</tr>
<tr>
<td>10. Possession, downloading, or transmission of pornographic/sexually explicit material by computer or other means.</td>
<td>Viewing or downloading inappropriate content from a government computer system.</td>
<td>Written reprimand to removal</td>
<td>14-day suspension to removal</td>
<td>Removal</td>
</tr>
<tr>
<td>11. Lack of Candor or Truthfulness</td>
<td>Providing statement(s) (oral, written, or electronic) that are less than candid, truthful, accurate, or complete.</td>
<td>Written reprimand to removal</td>
<td>30-day suspension to removal</td>
<td>Removal</td>
</tr>
<tr>
<td>Offense</td>
<td>Nature of Offense</td>
<td>First Offense Penalty</td>
<td>Second Offense Penalty</td>
<td>Third Offense Penalty</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------</td>
<td>-------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
</tbody>
</table>
| 12. Failure to Delay or Carrying Out Written or Oral Regulations, Orders, Rules, Procedures, or Instructions | A. Violation where safety to persons or government property or information is not compromised.  
B. Violation where safety to persons, delay, or government property or information is compromised.                                                                                                         | Written reprimand to 5-day suspension | 5-day suspension to removal                                 | 14-day suspension to removal |
|                                                                        |                                                                                                                                                                                                                | 5-day suspension to removal      | 14-day suspension to removal                                 | Remval                       |
| 13. Neglect or Careless Work Performance; Inattention to Duty          | A. Violation when safety to persons or government property or information is not compromised.  
B. Violation when safety to persons or government property or information is compromised.                                                                                                                 | Written reprimand to 5-day suspension | 5-day suspension to removal                                 | 14-day suspension to removal |
|                                                                        |                                                                                                                                                                                                                | 5-day suspension to removal      | 14-day suspension to removal                                 | 30-day suspension to removal |
| 14. Failure to Perform Duties while Sleeping on Duty or Exhibiting a Sleep-Like State | A. Violation when the employee occupies a position where safety of personnel or property is not comprised.  
B. Violation when the employee occupies a position where safety of personnel is compromised.                                                                                               | Written reprimand to 5-day suspension | 5-day suspension to removal                                 | 14-day suspension to removal |
|                                                                        |                                                                                                                                                                                                                | 5-day suspension to removal      | 14-day suspension to removal                                 | 30-day suspension to removal |
| 15. Insubordination                                                   | Willful and intentional refusal to obey an authorized order of a superior, who is either permanently assigned or in an acting capacity, which order the superior or acting supervisor is entitled to have obeyed. | Written reprimand to 14-day suspension | 14-day suspension to removal                                 | 30-day suspension to removal |
Table of Offenses and Penalties

<table>
<thead>
<tr>
<th>Offense</th>
<th>Nature of Offense</th>
<th>First Offense Penalty</th>
<th>Second Offense Penalty</th>
<th>Third Offense Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>16. Conduct Unbecoming a Federal Employee/Conduct Unbecoming a Supervisor</td>
<td>Misconduct that discredits one’s character, reputation, or credibility, or that is not in accordance with standards of conduct.</td>
<td>Written reprimand to removal</td>
<td>14-day suspension to removal</td>
<td>Removal</td>
</tr>
<tr>
<td></td>
<td>May be based on conduct such as engaging in prohibited outside employment; discourtesy; alcohol and drug offenses; gambling offenses; discrimination, harassment, including sexual harassment, and retaliation (whether or not the conduct rises to the level of being unlawful), violations of the Hatch Act, and retaliation against whistleblowers; ethics violations.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17. Discourtesy or Other Inappropriate Conduct</td>
<td>Rude, impolite acts or remarks; disrespectful, inappropriate, offensive or abusive language or gestures; or similar misconduct.</td>
<td>Written reprimand to removal</td>
<td>5-day suspension to removal</td>
<td>14-day suspension to removal</td>
</tr>
<tr>
<td>18. Fighting or Creating a Disturbance</td>
<td>A. Hitting, pushing, or other physical acts against another (without causing injury). Includes threatening another or intending to inflict injury.</td>
<td>5-day suspension to removal</td>
<td>14-day suspension to removal</td>
<td>30-day suspension to removal</td>
</tr>
<tr>
<td></td>
<td>B. Hitting, pushing, or other physical acts against another (inflicting injury).</td>
<td>14-day suspension to removal</td>
<td></td>
<td>Removal</td>
</tr>
<tr>
<td></td>
<td>C. Intimidation, aggressive, harassing, or abusive conduct to others. Includes engaging in dangerous horseplay or rough-housing.</td>
<td>Written reprimand to removal</td>
<td>5-day suspension to removal</td>
<td>14-day suspension to removal</td>
</tr>
<tr>
<td>Offense</td>
<td>Nature of Offense</td>
<td>First Offense Penalty</td>
<td>Second Offense Penalty</td>
<td>Third Offense Penalty</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>---------------------------------------------</td>
<td>---------------------------------------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td><strong>19. Unauthorized Taking Possession, or Removal of Government Property or of Another Person’s Personal Property</strong></td>
<td>Actual or attempted possession or carrying away of government property or the property of others or collusion with others to commit such acts.</td>
<td>Written reprimand to removal</td>
<td>5-day suspension to removal</td>
<td>14-day suspension to removal</td>
</tr>
<tr>
<td><strong>20. Misappropriation or Other Contracting Violations</strong></td>
<td>A. Directing, expecting, or rendering services not covered by authorized appropriations.</td>
<td>Removal</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>B. Failure to deposit money accruing from lapsed salaries or from unused unauthorized appropriations for salaries into the Treasury.</td>
<td>Removal</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>C. Entering into an unauthorized procurement commitment or personal services contract.</td>
<td>Written reprimand to 14-day suspension to removal</td>
<td>14-day suspension to removal</td>
<td>Removal</td>
</tr>
<tr>
<td></td>
<td>D. Unauthorized disclosure of proprietary or source selection information regarding a procurement action.</td>
<td>14-day suspension to removal</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>21. Failure to Carry, Show or Wear Government-issued Identification or Credentials</strong></td>
<td>A. Failure of civilian employees to carry government-issued identification while on duty or failure to furnish.</td>
<td>Written reprimand to 14-day suspension</td>
<td>14-day suspension to removal</td>
<td>Removal</td>
</tr>
<tr>
<td></td>
<td>B. Misuse of official identification or investigative credentials or other DoD identification, including lending identification cards or badges or credentials to others.</td>
<td>14-day suspension to removal</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Table of Offenses and Penalties

<table>
<thead>
<tr>
<th>Offense</th>
<th>Nature of Offense</th>
<th>First Offense Penalty</th>
<th>Second Offense Penalty</th>
<th>Third Offense Penalty</th>
</tr>
</thead>
</table>
| 22. Mishandling Government Information or Documentation | A. Mishandling or failing to safeguard information or documentation that is restricted or otherwise generally prohibited.  
B. Mishandling or failing to safeguard information or documentation that is classified. | Written reprimand to 14-day suspension | 14-day suspension to Removal | Removal |
| 23. Misuse or Abuse of Official Government Position | Misuse of positions of authority for other than official purposes. | 14-day suspension to removal | Removal |
| 24. Misuse or Abuse of Government Property         | Using government, government-leased, or government-contracted property for other than official purposes. | Written reprimand to removal | 14-day suspension to removal | 30-day suspension to removal |
| 25. Misuse or Abuse of Government Time, Property, Personnel, Information, Funds, or Leased Services | A. Includes the willful misuse of time, personnel, contractors, equipment, and vehicles, including, but not limited to: computers, e-mail, IT systems, wireless devices and services, faxes, telephones or mail.  
B. Willful misuse or authorizing the misuse of government vehicles for other than official purposes.  
C. Misuse of government-issued credit or travel card, including failure to timely file travel vouchers and failure to pay entire balance after receiving reimbursement; obtaining ATM advances that exceed expenditures; using card for personal expenses or personal travel. | 5-day suspension to removal | 30-day suspension to removal | Removal  
**|  | 30-day suspension to removal* | Removal |
| | Written reprimand to removal | 5-day suspension to 60-day suspension | 60-day suspension to removal |

* Mandatory statutory minimum proposed penalty in accordance with Section 1349 of Title 31. United States Code.
### Table of Offenses and Penalties

<table>
<thead>
<tr>
<th>Offense</th>
<th>Nature of Offense</th>
<th>First Offense Penalty</th>
<th>Second Offense Penalty</th>
<th>Third Offense Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>26. Loss or Damage to Government Property</td>
<td>Loss of or damage to government-owned or -leased property, records, or information, including the concealment, removal, mutilation, alteration, or destruction of government property.</td>
<td>Written reprimand to removal</td>
<td>14-day suspension to removal</td>
<td>30-day suspension to removal</td>
</tr>
</tbody>
</table>
| 27. Improper Use of Weapons, Firearms, or Protective Gear | A. Possession of unauthorized weapon or firearm on government or government-leased property.  
B. Possession of an unauthorized firearm while traveling aboard aircraft on official department travel.  
C. Failure to wear appropriate protective body armor while engaged in field activities while in a duty status. | 30-day suspension to removal           | Removal                                | Removal                                |
|                                                   |                                                                                                                                                                                                                | 5-day suspension to 14-day suspension  | 14-day suspension to removal           | Removal                                |
|                                                   |                                                                                                                                                                                                                | Written reprimand to 5-day suspension  | 5-day suspension to removal            | Removal                                |
| 28. Betting, Gambling, or Promoting Gambling      | Conducting or participating in any gambling activity, including operating a gambling device, conducting a lottery or pool, participating in a game for money or property, or selling or purchasing a numbers slip or ticket while on government-owned or -leased property while in a duty status. This does not apply to activities necessitated by an employee’s official duties such as charitable fundraising or activities that are lawful while on personal time. | Written reprimand to 14-day suspension | 14-day suspension to removal           | 30-day suspension to removal           |
| 29. Committing a Prohibited Personnel Practice    | See 5 U.S.C. 2302. Note: If a supervisor or manager has engaged in an activity which adversely reflects upon the integrity of the management process, a decision should be made as to whether they should be reassigned or changed to lower pay band. | 14-day suspension to removal           | 30-day suspension to removal           | Removal                                |
ENCLOSURE 3

DOUGLAS FACTORS

1. The MSPB in its landmark decision, Douglas v. Veterans Administration (Reference (j)), established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. These twelve factors are commonly referred to as “Douglas Factors.”

2. When selecting a penalty, management must consider the following factors:
   
   a. 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.
   
   b. The employee’s job level and type of employment including supervisory or fiduciary role, contacts with the public, and prominence of the position.
   
   c. The employee’s past disciplinary record.
   
   d. The employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
   
   e. The effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon supervisor’s confidence in the employee’s ability to perform assigned duties.
   
   f. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
   
   g. Consistency of the penalty with the MDA Table of Penalties in Enclosure 2.
   
   h. The notoriety of the offense or its impact upon the reputation of the agency.
   
   i. The clarity with which the employee was on notice of any rules violated in committing the offense, and whether he or she had been warned about the conduct in question.
   
   j. The potential for the employee’s rehabilitation.
   
   k. 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.
   
   l. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
3. The supervisor is responsible for ensuring a disciplinary penalty is fair and reasonable. If a penalty is disproportionate to the alleged violation or is unreasonable, it is subject to being reduced or reversed even if the charges would otherwise be sustained. The Douglas Factors provide valuable assistance to supervisors in making a penalty determination.

4. There is no requirement in law, regulation, or in “Douglas” that the written agency decisions or proposals contain specific, detailed information demonstrating that an agency has considered all of the pertinent mitigating factors in a given case. However, the case file must contain a Douglas Factor analysis. When considering prior disciplinary action, the proposing memorandum must reference the specific prior misconduct.

5. Factor 1 – Seriousness of the Offense.

   a. This factor is first because it is the most important. In determining the appropriate penalty, a supervisor should consider primarily the nature and seriousness of the misconduct and its relation to the employee’s duties, position, and responsibilities. This Douglas Factor provides some guidance in determining the seriousness of an offense.

   b. In evaluating the seriousness of the misconduct, an offense is more severe if it was intentional rather than inadvertent and if it was frequently repeated rather than being an isolated incident. Misconduct is also considered more severe if it is done maliciously or for personal gain.

   c. The Table of Offenses and Penalties provides some distinction regarding the severity of the misconduct. For example, sleeping on duty is a serious offense. However, it is considered more serious as provided in our Table of Offenses and Penalties where safety of personnel or property is endangered. Moreover, the seriousness of the offense is increased if the employee is involved in what might be described as “pre-meditated” sleeping on duty. For example, if you discover an employee sleeping away from his or her duty station with the lights off, pillow in hand and blanket over body, this intentional action is much more egregious than an employee who just cannot keep his or her eyes open and falls asleep while on duty.

   d. There are other examples in the Table of Offenses and Penalties that provide guidance in determining the seriousness of misconduct. Misconduct of a sexual nature is a serious offense. However, the severity is increased when the misconduct involves physical touching or promising benefits in exchange for sexual favors in comparison to telling a sexual joke or making a sexual remark inappropriate to the workplace. Sexual jokes are more serious if made directly to an employee rather than if overheard by an employee. The misconduct is even more grievous if the jokes were repeated after the offender was told that the behavior was offensive.

   e. The relationship of the misconduct to the employee’s job duties is another important consideration in determining the seriousness of an offense. Falsification of government documents is a serious offense because it relates to an employee’s reliability, veracity, trustworthiness, and ethical conduct. The misconduct is more serious if it relates “to the heart” of an employee’s duties and responsibilities. For example, if a Time and Attendance (T&A) Clerk was falsifying their T&A records and it resulted in more pay or less leave used, this
misconduct is very serious. The fact that accurate T&A records are a critical element of the employee’s position, coupled with the fact that the misconduct resulted in personal gain, increases the gravity of this offense. The misconduct would be considered even more serious if the falsification was not an isolated incident, but reflected falsification over several pay periods.

f. The supervisor deciding the appropriate penalty is in the best position to determine the seriousness of the offense and how the misconduct relates to the employee’s duties, position, and responsibilities. Remember, an offense is more serious if it is intentional, frequently repeated, or committed maliciously, or for personal gain.


a. This factor recognizes a relationship between the employee’s position and the misconduct. Factors considered are the employee’s job level and the type of employment, which may include a supervisory or fiduciary role, contacts with the public, and prominence of the position.

b. It is a well-recognized principle that a supervisor occupies a position of trust and responsibility and is held to a higher standard of conduct than non-supervisory employees. When misconduct occurs by a supervisor, it is considered more serious. An employee’s supervisory status must be considered in determining the penalty for other offenses as well.

c. Higher ethical standards are not limited to supervisory positions. Employees who hold law enforcement or security positions are also held to higher ethical standards. Employees of the Internal Revenue Service are held to a higher standard of compliance with Federal tax laws. Employees who exercise discretion in regulating, contracting or otherwise conducting government business with private companies are subject to stricter limits in the areas of gifts, gratuities, and conflicting financial interests regarding the companies with which they conduct official business.

d. An employee’s contacts with the public as well as the prominence of his or her position are additional considerations that should be evaluated in relationship with the misconduct. In addition, we must not forget the important element of safety in many of our positions and any misconduct must be weighed against this critical agency mission.

e. To summarize, the relationship between the employee’s misconduct and the employee’s position is an important consideration which must be analyzed as part of the penalty determination.

7. Factor 3 – Prior Discipline.

a. The Douglas criteria are sometimes referred to generally as mitigating factors. The consideration of past discipline, however, is an aggravating factor, i.e., mitigation in reverse.

b. In order to use prior discipline as a basis to enhance a current penalty, three criteria must
be met. First, the employee must have been informed of the action in writing; second, the employee must have been given an opportunity to dispute the action by having it reviewed, on the merits, by an authority different from the one who took the action; and third, the action must be a matter of record.

c. Once it has been determined that a prior disciplinary action meets the requirements to be available for use, the supervisor will need to decide how much weight to give it. There are two major factors to consider here: temporal proximity, i.e., how recently did the prior discipline occur, and the similarity of the offense. If the employee was disciplined six months ago for essentially the same misconduct as the current offense, a good argument can be made that an extra firm penalty is needed this time to achieve the desired change in behavior. On the other hand, if it has been many years since the prior discipline, it is much more difficult to make a convincing case for an enhanced penalty.

d. The same sort of assessment is needed concerning similarity of the offense. Persistent repetition of similar misconduct is more directly relevant to supporting a more severe disciplinary action. The first time an employee is formally disciplined is considered a first offense on the Table of Offenses and Penalties. Continued misconduct involving subsequent violations of rules and regulations may be considered under the second and third offense columns, even if the misconduct is different from the previous offense(s). However, good judgment must be used to weigh prior discipline when choosing an appropriate penalty to correct the situation.

e. If prior discipline is going to be used as an aggravating factor, it must be cited in the proposed notice. Non-disciplinary sanctions and non-disciplinary instructional material may be relied upon for imposing an enhanced penalty and need to be cited as well in the proposed notice.

8. Factor 4 – Length of Service and Prior Work Record.

   a. This factor is especially likely to prompt mitigation. An employee’s length of service and prior work record must be evaluated and be balanced against the seriousness of the offense. An employee with many years of exemplary service and numerous commendations may deserve to have their penalty mitigated. However, the seriousness of the offense and an evaluation of other Douglas Factors may outweigh an employee’s positive work record. It is important to note that third parties have rejected the argument that long service supports a stiff penalty since the employee arguably should have “known better.”

   b. An interesting dilemma sometimes occurs when an agency justifies a penalty in part due to what it believes is an employee’s past poor performance, but the employee’s appraisals demonstrate good or excellent performance. In this case, third parties favor relying upon official appraisals and agency contentions to the contrary are provided little weight in determining the reasonableness of the penalty. This is just one more example of the importance of documentation and communication of performance to employees.

9. Factor 5 – Erosion of Supervisory Confidence - The effect of the offense upon the
employee’s ability to perform at a satisfactory level and its effect upon supervisor’s confidence in the employee’s work ability to perform assigned duties.

a. The analysis of this factor involves much more than a supervisor’s statement that he or she has lost confidence in the employee. Specific evidence/testimony as to why an employee can no longer be trusted is critical. Conclusionary and vague statements do not hold much weight with third parties. It is critical to articulate a relationship between the misconduct and the employee’s position and responsibilities. The supervisor needs to specifically state why there is an erosion of supervisory confidence.

b. There is a clear inter-relationship between this factor and Factor 2 – Employee’s Position. For example, misconduct by a supervisor will undermine his or her ability to require subordinates to adhere to agency policies and regulations. A T&A Clerk falsifying T&As or the theft of property by an employee entrusted with custody and control of the property, are just two examples in which the misconduct would severely erode supervisory confidence.

10. Factor 6 – Disparate Treatment - Consistency of penalty with that imposed on other employees.

a. This factor is one of the more technically difficult to apply. One of the basic tenets of the administration of “just cause” is the even-handed application of discipline. However, the principle of “like penalties for like offenses” does not require perfect consistency. On the surface, many incidents of misconduct may seem similar. However, a thorough investigation and evaluation may lead to a determination that the misconduct was not substantially similar. In addition, even if the circumstances surrounding the misconduct incident may be substantially similar, the penalty imposed may be different based upon an independent evaluation of the other Douglas Factors.

b. Third parties look at these consistency factors differently. MSPB views “similarly situated” employees as employees working in the same unit and for the same supervisor. Arbitrators tend to look at the “equitable” nature of labor agreements and focus on the importance of treating employees the same.

c. Consistency of penalty with that imposed on other employees is only one Douglas Factor to apply. However, if the penalty is different for a similar incident of misconduct, specific reasons for the difference in penalty must be articulated.

11. Factor 7 – Consistency with Agency Penalty Guide. Misconduct should not be forced into a listed offense unless it accurately fits. Similar offenses can be used to guide penalty selection. Deviation from the guide is allowed but going beyond or outside the penalty recommended in the table will be closely scrutinized. However, it may be appropriate based upon the facts of a specific case and/or application of other Douglas Factors to impose either a lesser or greater penalty as circumstances dictate.

a. The notoriety of an offense or its impact on the reputation on the agency is usually directly related to the seriousness of the misconduct and/or prominence of the employee’s position.

b. This factor is one of the least significant of the Douglas Factors and is usually considered as aggravating. There are certain standards of behavior and conduct expected of MDA employees by our external and internal customers. When these expectations are not met as a result of an employee’s misconduct, the reputation of MDA may be tarnished. In these circumstances, appropriate analysis of this factor may result in considering a more severe penalty.

13. Factor 9 – Clarity of Notice.

a. This factor relates to how well the agency informed an employee of the rule that was violated. Breaking an obscure rule will be viewed less harshly than breaking one that is well publicized, and particularly one on which the employee was given specific notice. Non-disciplinary advice and letters of expectation are methods to communicate what are the requirements of conduct in the workplace.

b. Supervisors are required to encourage employees to review the standards of conduct, and are required to ensure that employees under their supervision review, at least once, the Government-wide ethical standards.

c. Briefings and/or training on the standards of conduct to employees can be of assistance in evaluating this factor. Communication of the consequences of an employee’s misconduct will also be useful in considering the clarity of notice.


a. Potential for rehabilitation can be either an aggravating or mitigating factor. An employee with a significant disciplinary record most likely would have poor potential for rehabilitation. However, an employee with no prior disciplinary record, good prior performance and job dedication would probably have good potential for rehabilitation.

c. An employee’s recognition of a personal problem that may negatively affect conduct weighs favorably in determining an employee’s potential for rehabilitation. Willingness to seek counseling assistance through an EAP or any self-help activity to deal, for example, with an anger management problem or a family situation that is negatively affecting attendance are good indicators of a potential for rehabilitation. Simply put, recognizing one has a problem and doing something about it, are factors that may influence mitigation.

d. Apologizing for misconduct usually helps. Recognizing a mistake and taking responsibility for one’s misconduct are factors that are clearly mitigating. An employee’s admission of wrongdoing on their own also constitutes a mitigating factor and the earlier the better for possible mitigation.
e. Conversely, an employee who never apologized, never admitted an error, is not remorseful, is unrepentant, and has been uncooperative should not expect much mitigation under this factor.

15. Factor 11 – Mitigating Circumstances.

a. Unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice, or provocation on the part of others involved in an incident are mitigating circumstances that should be reviewed.

b. Personal problems, which may place an employee under considerable stress, may be significant to warrant mitigation. The death of a spouse and a serious illness of a family member are “life-shaking” events and are examples of such stressors. Specific evidence should be presented as to how the misconduct was directly related to the personal problems and the subsequent stress.

c. Evidence that an employee’s medical condition played a part in the charged conduct is ordinarily entitled to considerable weight as a significant mitigating factor. An employee who falls asleep in the workplace after taking medication should not have this behavior excused but the use of medication may be a reason for considering mitigation. However, an employee’s medical condition may not be sufficient in some cases to outweigh egregious acts of misconduct.

d. Provocation may be considered in certain incidents, for example, a fight in the workplace. An employee who may have been provoked to fight may be due more mitigating consideration for the misconduct than the aggressor.

16. Factor 12 – Adequacy and Effectiveness of Alternative Sanctions.

a. This factor is listed last because this consideration should occur after a thorough analysis of all the other Douglas Factors. Remember, there is only one absolute penalty that can be given without a Douglas analysis – the 30-day suspension required under law for misuse of a government vehicle. All other penalty determinations should undergo thorough reasoning under the Douglas Factors. It is important to note a case was recently lost in another government agency when the deciding official stated the agency’s zero tolerance policy on workplace violence required him to remove the employee from governmental service.

b. The feasibility of other alternative sanctions can be greatly limited by other Douglas Factors. For example, an employee who has a significant disciplinary record and shows limited potential for rehabilitation should expect the worst. However, demotion to a non-supervisory position instead of a removal may be the appropriate penalty for a supervisor who failed to discharge his or her required supervisory responsibilities but had a good record in non-supervisory positions.
PART I. ACRONYMS

AWOL  absence without leave
CFR   Code of Federal Regulations
CIP   contribution improvement plan
EAP   Employee Assistance Program
EEO   equal employment opportunity
eOPF  electronic Official Personnel Folder
GC    General Counsel
GS    general schedule
HR    Director for Human Resources
MER   Management-Employee Relations
MSPB  Merit Systems Protection Board
PIP   performance improvement plan

PART II. DEFINITIONS

advance written notice. A written notice with the period of time computed as follows: A calendar day is the 24-hour period between 12 midnight of one day and 12 midnight of the next. The day on which the notice is delivered is not counted. Saturday, Sunday, or a legal holiday is never counted as the last day.

adverse action. A disciplinary or non-disciplinary removal, suspension of more than 14 days, furlough without pay for 30 days or less, or reduction in grade, broadband or pay taken for such cause as will promote the efficiency of the service.

cause of action. A recognizable offense against the employee-employer relationship such as a violation of rule, regulation or procedure; employment-related off-duty misconduct; failure to fulfill an employment-related agreement; or a mandatory requirement to take an action personal to an employee. It is disciplinary if it results from delinquency or misconduct by the employee. A disciplinary cause of action is also called an offense. It is non-disciplinary, for example, if it results from the employee’s disability, the employee’s declination of functional transfer, or a management determination such as reclassification of the employee’s position.

charge. The label or characterization of an offense; the reason stated in a notice of proposed
action and in the final decision when the action is disciplinary.

counseling. An informal disciplinary action used to correct minor misconduct or delinquency. A counseling is documented with a memorandum for record.

day. A calendar day. The day a notice is delivered is not counted. If the last day of a notice period falls on a weekend or holiday, the last day of the notice period becomes the next business day following the weekend or holiday.

deciding official. The official who issues a notice of final decision on a disciplinary or adverse action. The deciding official will be of a higher level than the official who proposes the action, unless the proposing official is the MDA Director.

disciplinary action. An action management takes to correct an employee’s delinquency or misconduct. Included are oral admonishments, reprimands, suspensions, removals, and in some cases, reductions in grade, broadband or pay. Except for oral admonishments and reprimands, these disciplinary actions are also adverse actions.

Douglas Factors. Factors an agency must consider when determining an appropriate penalty for misconduct when taking an adverse action.

eOPF. An electronic version of the paper Official Personnel Folder (OPF) and a system for accessing the electronic folder online. The eOPF system combines document management with workflow capabilities, and allows each employee to have an electronic personnel folder instead of a paper folder.

formal disciplinary action. An action that is made a matter of record for inclusion in the employee’s eOPF.

furlough. A temporary non-duty and non-pay status of 30 days or less that results from a lack of work or funds, or for other non-disciplinary reasons. A furlough is an adverse action, in accordance with Part 752 of Title 5, CFR if it is for a period of 30 calendar days or less and is based on a decision of an appropriately designated management official. Furloughs for more than 30 calendar days are reduction-in-force actions.

indefinite suspension. The placing 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.

informal disciplinary action. An action taken by management to correct minor misconduct or delinquency. Informal disciplinary actions include counseling, oral admonishments, and written warnings and are not made a matter of record in the employee’s eOPF.

nondisciplinary adverse action. An adverse action that is taken for reasons other than to
correct an employee’s delinquency or misconduct.

**offense.** A cause of action due to an employee’s delinquency or misconduct.

**oral admonishment.** A very specific discussion between a supervisor and employee to address minor misconduct, clarify expectations, and warn of progressively more severe disciplinary action, when the intent of that discussion is to correct the misconduct without initiating more serious disciplinary or adverse action. An oral admonishment is an informal disciplinary measure and should be documented with a memorandum of record.

**nondisciplinary adverse action.** An adverse action that is taken for reasons other than to correct an employee’s delinquency or misconduct.

**penalty selection factors.** The factors most commonly used in determining the appropriateness of a penalty include, but are not limited to: the seriousness of the offense, the employee’s past disciplinary record, consistency with the table of penalties, consistency with penalties imposed on other employees, effect of the offense on the supervisor’s confidence in the employee’s ability to perform assigned duties, the employee’s potential for rehabilitation, length of service, and past disciplinary record.

**preponderance of the evidence.** The degree of relevant evidence that a reasonable person, considering the record as a whole would accept as sufficient to find that a contested fact is more likely to be true than untrue. The agency is required to prove actions taken according to Part 752 of Title 5, CFR, by a preponderance of the evidence.

**prior offense.** A prior cause of action for which a disciplinary penalty has been imposed.

**proposing official.** The management official who proposes the action, normally (but not necessarily) the first-line supervisor.

**reduction in grade or broadband.** The involuntary assignment of an employee to a position of lower classification or job-grading/broadband level.

**removal.** An involuntary separation of an employee from employment.

**reprimand.** A formal memorandum issued for employee misconduct. A written reprimand is the least severe formal disciplinary action and is not an adverse action. A copy is placed in the employee’s eOPF for a period not to exceed two years.

**substantial evidence.** The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. “Substantial evidence” is a lower standard of proof than “preponderance of the evidence.” The agency must establish the factors required for a performance-based action under Part 432 of Title 5, CFR by substantial evidence.

**suspension.** An action placing an employee, for disciplinary reasons, in a temporary non-
duty and non-pay status for a specified number of calendar days. A suspension is a disciplinary action and an adverse action.

**written warning.** A very specific memorandum issued to an employee to address minor misconduct, clarify expectations, and warn of progressively more severe disciplinary action when the intent of issuing the memorandum is to correct the misconduct without initiating more serious formal disciplinary or adverse action. A written warning is an informal disciplinary measure and is considered to be more severe than an oral admonishment.
A 12/27/2010 Secretary of Defense memorandum directed that all congressional reports have a cost sticker affixed to the front cover/page before delivery to Congress. The Cost Assessment and Program Evaluation (CAPE) Office is executing this requirement and has strict requirements for the cost data that must be collected for each Congressional report. The below template should only include the costs associated with writing and directly producing the report, from initiation to signature.

Directions for completing the template:
1.) CAPE requires costs for contract support, government manpower and government travel, which have been broken out into three sections below.
2.) The dates listed above each Section are approximate dates for which your Service was working on the Annual Report.
3.) Section 1: Please enter the contract number and costs in the yellow boxes on Lines 8 and 9. If multiple contracts were used to support this effort, please include all contracts/contract numbers/costs.
4.) Section 2: Please enter the requested information for all government employees supporting the report in Lines 11-14.
   Line 11: Enter military grade or civilian GS-equivalent. If additional columns are needed, please add as necessary.
   Line 12: Designate whether the employee's role was Study Activity (prepared non-oversight activities in preparation of the report) or Oversight (provided supervision in preparation of the report).
   Line 13: Using one word, describe the type of activity performed by the employee (e.g. analysis, oversight)
   Line 14: Enter the number of man-hours associated with the activity/oversight. The total of all man hours will automatically populate in the Total cell.
   Note: If four GS-14's conducted the same role and activity, please include only one column for GS-14 with the total hours for all four individuals in the Man Hours cell.
5.) Section 3: Please enter travel destination and costs required to support the report in Lines 16 and 17.
   Line 16: Enter destination of travel
   Line 17: Enter total cost of travel

<table>
<thead>
<tr>
<th>Section 1: Contract Support</th>
<th>2018 Annual Report efforts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract/Task Order #</td>
<td>HQ0147-18-C-0038</td>
</tr>
<tr>
<td>Contract cost spent on the Annual Report</td>
<td>$63</td>
</tr>
<tr>
<td>FY 2018 (1 Oct 2017-30 Sep 2018)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 2: Government Activity</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Military grade or civilian GS-equivalent</td>
<td>NH-3, GS-13 Equivalent</td>
<td>NH-4, GS-15-Equivalent</td>
</tr>
<tr>
<td>Role (Study Activity or Oversight)</td>
<td>Oversight</td>
<td>Study Activity</td>
</tr>
<tr>
<td>Activity Performed (e.g. analysis, oversight)</td>
<td>Analysis</td>
<td>Analysis</td>
</tr>
<tr>
<td>Man Hours (per rank, grade or GS-equivalent)</td>
<td>25</td>
<td>4</td>
</tr>
<tr>
<td>FY 2018 (1 Oct 17 - 30 Sep 18)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 3: Government Travel</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Travel destination/description</td>
<td>0</td>
</tr>
<tr>
<td>Total cost (per Service, not per individual)</td>
<td>0</td>
</tr>
</tbody>
</table>