



governmentattic.org

"Rummaging in the government's attic"

Description of document:	Correspondence between the Department of Justice (DOJ) Offices of the Attorney General (OIG) and Information Policy (OIP) and the Government Accountability Office (GAO), 2015-2017
Requested date:	13-March-2017
Release date:	14-February-2020
Posted date:	10-August-2020
Source of document:	FOIA Request Chief, Initial Request Staff Office of Information Policy Department of Justice 6th Floor 441 G Street, NW Washington, DC 20530

The governmentattic.org web site ("the site") is a First Amendment free speech web site, and is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

February 14, 2020

Re: DOJ-2017-002939 (AG)
DOJ-2017-002940 (OIP)
DRH:LAD

This responds to the Freedom of Information Act (FOIA) requests dated and received on March 13, 2017, in which you requested correspondence between the Offices of the Attorney General and Information Policy and the Government Accountability Office since January 1, 2015. This response is made on behalf of the Offices of the Attorney General (OAG) and Information Policy (OIP).

Please be advised that we conducted a records search in the electronic database of the Departmental Executive Secretariat, which is the official records repository for the OAG. Additionally, a records search was conducted in OIP. As a result of these searches, 131 pages were located that contain records responsive to your request. I have determined that 107 pages should be released without excision and copies are enclosed.

Because the remaining twenty-four pages are of primary interest to the Federal Bureau of Investigation (FBI) and the Office of Justice Programs (OJP), we have referred that material to those Department components for direct response to you. Specifically, we have referred nine pages to the FBI and fifteen pages to OJP, respectively. Contact information for the FBI and OJP may be located at www.foia.gov.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552 (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation

services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with this Office's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Douglas R. Hibbard
Chief, Initial Request Staff

Enclosures



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

January 30, 2015

The Honorable Eric H. Holder, Jr.
Attorney General

Dear Mr. Attorney General:

The purpose of this letter is to remind you of the Federal Vacancies Reform Act of 1998 (Vacancies Act)¹ and, in particular, of the provisions of the Vacancies Act that require executive departments and agencies to report information about vacant positions to the Congress and to the Comptroller General.

The Vacancies Act provides rules for the temporary filling of certain vacant positions that require presidential appointment and Senate confirmation.² Under the Act, a person may serve as an acting officer in a vacant position covered by the Act for no longer than 210 days from the date of the vacancy. The Act provides for adjustments to the 210-day time limitation when the President submits a nomination to fill the position.³

The Act requires executive departments and agencies to immediately report to the Congress and to the Comptroller General when a vacancy occurs, the name of any person serving in an acting capacity, the name of any person nominated to fill the position, and the date of a rejection, withdrawal, or return of any nomination. The Act also requires the Comptroller General to report to Congress, the President, and the Office of Personnel Management if the Comptroller General determines that an acting official is serving longer than the 210-day period (including applicable extensions).⁴

GAO would also appreciate certain supplementary information to meet its statutory reporting requirements. Specifically, GAO requests that each agency report:

¹ 5 U.S.C. §§ 3345-3349d.

² The Vacancies Act applies to all presidentially-appointed, Senate-confirmed nominees, except for Article I judges, members of the Federal Energy Regulatory Commission and the Surface Transportation Board, and any appointment to a multimember board or commission that governs an independent establishment or a government corporation. 5 U.S.C. § 3349c.

³ The Department of Justice's Office of Legal Counsel provides advice to agencies on the application of the Vacancies Act to specific vacancies as well as some general guidance. See Memorandum for Agency Counsels, *Guidance on Application of Federal Vacancies Reform Act of 1998*, OLC Opinion, Mar. 22, 1999, available at: www.justice.gov/olc/opinions (last visited December 17, 2014).

⁴ GAO's Vacancies Act webpage, at <http://www.gao.gov/legal/fedvac/vacancies.html>, provides information on the Act and a searchable database containing all information reported to the Comptroller General pursuant to the Act.

- the authority under which an acting officer was designated, if not the Vacancies Act;⁵
- any changes in the status of the vacant position and the effective date of the change (such as a change in title or elimination of the position);
- the discontinuation of service in an acting role; and
- the name, mailing address, telephone number, and email address for your agency's designated contact person.

GAO has created a form that agencies may use to report this information. It is available at: www.gao.gov/legal/fedvac/submitvc.html.

If you have any questions about the reporting of vacancies to GAO, please contact Robert Cramer, Managing Associate General Counsel, on 202-512-7227, or Shirley A. Jones, Assistant General Counsel, on 202-512-8156.

Sincerely yours,



Susan A. Poling
General Counsel

cc: Donald B. Verrilli, Jr.
Solicitor General

⁵ For most vacancies, the Vacancies Act provides the exclusive means for making temporary appointments. However, there are some specific exceptions, such as where a statute expressly authorizes the President, a court, or an agency head to designate an officer or employee to temporarily perform the functions and duties of a specified office in an acting capacity. See 5 U.S.C. § 3347.



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

March 28, 2016

Congressional Recipients
The Attorney General
Chair, Equal Employment Opportunity Commission

Enclosed please find the information required pursuant to the annual reporting requirement set forth in section 203 of the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002" (No Fear Act), Pub. L. No. 107-174 (May 15, 2002).

Attachment A contains the information required under section 203(a)(1) through (a)(3) of the No Fear Act. The chart includes data for Fiscal Year (FY) 2015, as required in section 203(a)(5). Attachment B contains the final year-end data as required in section 203(a)(5).

Section 203(a)(4) requires that GAO submit data on the number of employees disciplined for discrimination, harassment, or any other infraction of the laws referred to in section 203(a)(1) for FY 2015. During the fiscal year in question, there were no findings of discrimination or other infractions of law and therefore no employees were disciplined for such actions.

Section 203(a)(6) requires that GAO provide a description of its policy relating to appropriate discipline against any employee who violates any of the laws cited under section 201(a)(1) or (2) or commits another prohibited personnel practice revealed in the investigation of a complaint alleging a violation of any of the laws cited in section 201(a)(1) or (2). GAO's policy is set forth in GAO Order 2751.1, Discipline and Adverse Actions (Jan. 16, 2013), Attachment C, which sets forth the procedural steps and due process rights of employees who are disciplined at GAO. Appendix 1 of this Order provides the types of disciplinary actions that can be taken and chapter 2, para. 1b of the Order lists the factors to be considered prior to taking action. The appendix contains a table of penalties ranging from suspension to removal for individuals in violation of the laws covered by the No Fear Act (see Appendix, paragraphs 4 and 14). Because a portion of GAO employees are represented by the GAO Employees Organization, International Federation of Professional and Technical Engineers, GAO posts each year a notice providing additional rights for bargaining unit employees during certain investigations conducted by the agency. See Attachment D.

Section 203(a)(7) requires that GAO provide an analysis of the information described in paragraphs 1 through 6, including an examination of trends, practical knowledge gained through experience and any actions planned or taken to improve complaint or civil rights programs of the agency. As indicated in Attachment A in FY 2015, one case was filed in district court and, as indicated in Attachment B, 7 complaints were filed with GAO's Office of Opportunity and Inclusiveness (O&I) (its EEO office). Of the 7 cases filed in O&I in FY 2015, two remained open at the end of FY 2015. Overall, given GAO's population of approximately 3000 employees in FY 2015, the complaint filings in O&I in FY 2015 remain quite low.

As required by the No Fear Act and regulations, in FY 2015 GAO continued to provide training to its staff in a course entitled "Rights and Protections Under Antidiscrimination and Whistleblower Protection Laws." All new employees were provided this training as part of their

orientation session or within 90 days of their start date at GAO. In the winter of 2016, GAO began its sixth cycle of training for all other employees, which was completed in March 2016. Attachment E contains GAO's training plan. GAO also maintains a No Fear Act Notice posted on the internet and its intranet, which informs employees, former employees, and applicants of the rights and protections available to them under antidiscrimination and whistleblower protection laws.

As part of GAO's commitment to equal opportunity, diversity, and inclusion, in FY 2015 we continued to monitor the composition of our workforce, outcomes from key human capital processes and the views of our employees. We continued to have a diverse workforce. At the end of FY 2015, 33.0 percent of the GAO staff were minorities, 56.0 percent were women, 53.0 percent were 40 years old and over and 6.0 percent identified themselves as having a disability. We continued our reviews of employee performance appraisal and promotion data—a program initially started in FY 2003. Hence, as in past years, the Chief Human Capital Officer (CHCO) and the Managing Director for Opportunity and Inclusiveness reviewed performance appraisal and promotion data from each team. They examined the data by protected class for consistency within teams and to provide reasonable assurance that the systems were operating in a fair, merit-based and non-discriminatory manner. Where concerns were noted, the CHCO conducted individual assessments, and if necessary, met with team Managing Directors or the heads of promotion panels in an effort to reconcile any concerns regarding the sufficiency of merit-based support for appraisals and promotion determinations. The CHCO then met with the Chief Operating Officer and Chief Administrative Officer to resolve any continuing issues. Additionally, managers from the Human Capital Office analyzed the appraisal and promotion data. Based on these reviews, we determined that no remedial efforts were needed. As for employee views, our FY 2015 employee survey results show that over 75 percent of the employees who responded gave positive responses to each of the three diversity and inclusion questions. Also, based on the employee survey results, the Partnership for Public Service rated GAO number one in support of diversity in its 2015 best places to work rankings.

We continued to offer and support activities designed to enhance understanding of diversity and inclusion issues in FY 2015. For example, we began offering one course, referred to as the mindfulness course, to all staff in late March 2014; our managers completed this course in 2013. This course helps employees examine the way they interact with others, especially those different from themselves, and by mid-2015, all staff on board as of the end of FY 2014 had completed this course. We also offered our senior leaders a course entitled "Creating and Sustaining a More Inclusive Organization", and by mid-2015, 98% of senior leaders had completed this course. In this course, our leaders and managers explored and shared thoughts about race, culture, and their personal experiences in order to deepen their awareness and understanding of the dynamics of diversity and inclusion and to examine the impact on leaders, employees, and the organization. In 2015, we added information about gender identity in the No Fear course.

Additionally, in FY 2015 we took other steps to demonstrate the agency's continued commitment to equal opportunity, diversity, and inclusion and to help sustain the improvements that we have made. For example, we established a Managing Directors' Community of Practice to enhance individual awareness and build senior leader diversity and inclusion skills. We provided training and job vacancy announcement language on the Genetic Information Nondiscrimination Act. We also established a Gender Identity Inclusion Team to examine issues relevant to gender identity and gender transition in the workplace. Finally, we continued to provide reasonable accommodations to staff and applicants, host our month long diversity celebration in June and support our employee groups.

Section 203(a)(8) requires that GAO provide information concerning any adjustment to the budget that has been needed to comply with section 201, which requires reimbursement to the Judgment Fund of monies paid in judgments or settlements in connection with proceedings brought under the laws cited therein. Since GAO did not make any payments to the Judgment Fund in FY 2015, it has not made any adjustment to its budget to comply with this provision.

We trust this information is responsive to the reporting requirements of the No Fear Act. Please contact Joan M. Hollenbach, Managing Associate General Counsel, at 512-8404 if you have questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "S. Poling", written in a cursive style.

Susan A. Poling
General Counsel

Enclosures

List of Recipients

The Honorable Joseph R. Biden, Jr.
The President of the Senate

The Honorable Paul Ryan
Speaker of the House of Representatives

The Honorable Orrin G. Hatch
President Pro Tempore
United States Senate

The Honorable Thad Cochran
Chairman
The Honorable Barbara A. Mikulski
Ranking Member
Committee on Appropriations
United States Senate

The Honorable Ron Johnson
Chairman
The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Shelly Moore Capito
Chairwoman
The Honorable Brian Schatz
Ranking Member
Subcommittee on Legislative Branch
Committee on Appropriations
United States Senate

The Honorable Harold Rogers
Chairman
The Honorable Nita Lowey
Ranking Member
Committee on Appropriations
House of Representatives

The Honorable Jason Chaffetz
Chairman
The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

The Honorable Tom Graves
Chairman
The Honorable Debbie Wasserman Schultz
Ranking Member
Subcommittee on Legislative Branch
Committee on Appropriations
House of Representatives

The Honorable Loretta E. Lynch ✓
The Attorney General

The Honorable Jenny R. Yang
Chair
Equal Employment Opportunity Commission

The Honorable Beth F. Cobert
Acting Director
Office of Personnel Management

SUMMARY OF ALLEGATIONS IN FEDERAL CASES PENDING DURING
FISCAL YEAR 2015 BY LAWS COVERED IN SECTION 203

(October 1, 2014 thru September 30, 2015)

Laws Alleged to have been Violated	Number of Allegations*
42 U.S.C. § 2000e-16	2
5 U.S.C. § 2302(b)(1)	0
5 U.S.C. § 2302(b)(8)	0
5 U.S.C. § 2302(b)(9)	0
29 U.S.C. §§ 631, 633a	3
42 U.S.C. § 12101**	0
29 U.S.C. § 206(d)	0
29 U.S.C. § 791	0
5 U.S.C. § 2302(d)(5)	0

*One new case was filed in FY 2015, which was dismissed by the court on November 24, 2015. Three previously filed cases remain pending in FY 2015. As shown above, these four cases contained five allegations of violation of two of the laws listed above.

**GAO is covered by the Americans with Disabilities Act, 42 U.S.C. § 12101, rather than the Rehabilitation Act, 29 U.S.C. § 791.

U.S. GOVERNMENT ACCOUNTABILITY OFFICE (GAO) SECTION 203 NO FEAR REPORT

FEDERAL CASES PENDING DURING FISCAL YEAR 2015 (October 1, 2014 thru September 30, 2015)

Case	Laws Alleged To Have Been Violated	Year Filed	Status/Disposition	Amount Reimbursed to Judgment Fund
A	42 U.S.C. § 2000e-16	2015	On November 24, 2015, Judge Colleen Kollar-Kotelly granted GAO's motion to dismiss. Plaintiff had until January 25, 2016 to file an appeal, but did not do so.	0
B	29 U.S.C. §§ 631, 633a	2006	On January 12, 2012, Judge Royce C. Lamberth granted GAO's motion for summary judgment. On February 9, 2012, Plaintiff filed a motion to alter or amend the January 12, 2012 judgment. GAO filed a response February 26, 2012. An order denying motion to alter or amend judgment was issued on April 20, 2012. Plaintiff filed an appeal on June 22, 2012, in the U.S. Court of Appeals for the District of Columbia. GAO filed a motion for summary affirmance on September 27, 2012, in the Court of Appeals. GAO's motion was denied on March 25, 2013, and the case is still on appeal awaiting full briefing.	0
C	42 U.S.C. § 2000e-16 29 U.S.C. §§ 631, 633a	2000	Pending	0
D	29 U.S.C. §§ 631, 633a	1987	Motion to dismiss granted on March 30, 2012. Plaintiff filed an appeal on May 31, 2012, in the U.S. Court of Appeals for the District of Columbia. GAO filed a motion for summary affirmance on August 15, 2012, in the Court of Appeals. GAO's motion was denied on March 25, 2013, and the case is still on appeal awaiting full briefing.	0

*GAO is covered by the Americans with Disabilities Act, 42 U.S.C. § 12101, rather than the Rehabilitation Act, 29 U.S.C. § 791.

Complaint Activity	Comparative Data					FY 2015 Thru 09/30/15
	Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	
Number of Complaints Filed	5	16	8	8	6	7
Number of Complainants	5	12	12	8	6	7
Repeat Filers	1	3	0	0	0	1

Complaints by Basis	Comparative Data					FY 2015 Thru 09/30/15
	Previous Fiscal Year Data					
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed .</i>	2010	2011	2012	2013	2014	
Race	2	10	3	5	1	3
Color	0	1	1	3	0	0
Religion	0	1	0	0	0	0
Reprisal	3	7	3	2	1	2
Sex	2	9	0	4	4	4
National Origin	1	2	4	3	0	0
Equal Pay Act	0	0	0	0	0	0
Age	2	2	2	4	1	5
Disability	4	4	4	2	3	2
Genetic Information	0	0	0	0	0	0
Pregnancy Discrimination	0	0	0	0	0	0
Non-EEO	0	1	0	2	2	0

Complaints by Issue	Comparative Data					FY 2015 Thru 09/30/15
	Previous Fiscal Year Data					
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed .</i>	2010	2011	2012	2013	2014	
Appointment/Hire	0	0	0	0	0	1
Assignment of Duties	0	0	1	3	1	1
Awards	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0
Removal	0	0	0	0	0	0
Suspension	0	0	0	0	0	0
Other	0	0	0	0	1	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	2	0	0	4	3	4
Examination/Test	0	0	0	0	0	0
Harassment						
Non-Sexual	3	3	1	2	0	2
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	0	7	0	0	0	0
Promotion/Non-Selection	0	0	2	1	2	3
Reassignment						
Denied	0	0	0	0	0	1
Directed	0	0	0	0	0	0
Reasonable Accommodation	1	0	3	1	1	2
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	0	1	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	2
Time and Attendance	1	0	0	0	0	0
Training	0	0	0	0	1	0
Other	5	11	2	7	2	0

Processing Time	Comparative Data					FY 2015 Thru 09/30/15
	Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	
Complaints pending (for any length of time) during fiscal year						

Average number of days in investigation stage	127	282	95	0	0	156
Average number of days in final action stage	101	61	54	334	384	337
Complaint pending (for any length of time) during fiscal year where hearing was requested						
Average number of days in investigation stage						
Average number of days in final action stage						
Complaint pending (for any length of time) during fiscal year where hearing was not requested						
Average number of days in investigation stage	127	282	95	0	0	156
Average number of days in final action stage	101	61	54	334	384	337

Complaints Dismissed by Agency	Comparative Data					FY 2015 Thru 09/30/15
	Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	
Total Complaints Dismissed by Agency	2	13	7	5	3	10
Average days pending prior to dismissal	27	42	62	42	36	297
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	0	1	1	1	1	0

[illegible][illegible]

[illegible]

Complaint Activity	Comparative Data					FY 2015 Thru 09/30/15
	Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	
Number of Complaints Filed	5	16	8	8	6	7
Number of Complainants	5	12	12	8	6	7
Repeat Filers	1	3	0	0	0	1

Complaints by Basis	Comparative Data					FY 2015 Thru 09/30/15
	Previous Fiscal Year Data					
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed .</i>	2010	2011	2012	2013	2014	
Race	2	10	3	5	1	3
Color	0	1	1	3	0	0
Religion	0	1	0	0	0	0
Reprisal	3	7	3	2	1	2
Sex	2	9	0	4	4	4
National Drigin	1	2	4	3	0	0
Equal Pay Act	0	0	0	0	0	0
Age	2	2	2	4	1	5
Disability	4	4	4	2	3	2
Genetic Information	0	0	0	0	0	0
Pregnancy Discrimination	0	0	0	0	0	0
Non-EED	0	1	0	2	2	0

Complaints by Issue	Comparative Data					FY 2015 Thru 09/30/15
	Previous Fiscal Year Data					
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed .</i>	2010	2011	2012	2013	2014	
Appointment/Hire	0	0	0	0	0	1
Assignment of Duties	0	0	1	3	1	1
Awards	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0
Removal	0	0	0	0	0	0
Suspension	0	0	0	0	0	0
Dther	0	0	0	0	1	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	2	0	0	4	3	4
Examination/Test	0	0	0	0	0	0
Harassment						
Non-Sexual	3	3	1	2	0	2
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	0	7	0	0	0	0
Promotion/Non-Selection	0	0	2	1	2	3
Reassignment						
Denied	0	0	0	0	0	1
Directed	0	0	0	0	0	0
Reasonable Accommodation	1	0	3	1	1	2
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	0	1	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	2
Time and Attendance	1	0	0	0	0	0
Training	0	0	0	0	1	0
Dther	5	11	2	7	2	0

Processing Time	Comparative Data					FY 2015 Thru 09/30/15
	Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	
Complaints pending (for any length of time) during fiscal year						

Average number of days in investigation stage	127	282	95	0	0	156
Average number of days in final action stage	101	61	54	334	384	337
Complaint pending (for any length of time) during fiscal year where hearing was requested						
Average number of days in investigation stage						
Average number of days in final action stage						
Complaint pending (for any length of time) during fiscal year where hearing was not requested						
Average number of days in investigation stage	127	282	95	0	0	156
Average number of days in final action stage	101	61	54	334	384	337

Complaints Dismissed by Agency	Comparative Data					FY 2015 Thru 09/30/15
	Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	
Total Complaints Dismissed by Agency	2	13	7	5	3	10
Average days pending prior to dismissal	27	42	62	42	36	297
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	0	1	1	1	1	0

[illegible][illegible]



Order

2751.1

January 16, 2013*

Subject: DISCIPLINE AND ADVERSE ACTIONS

Chapter 1.	Purpose and General Information.....	3
	1. Purpose.	3
	2. Supersession.	3
	3. References.....	5
	4. Definitions	6
	5. Advice and Assistance from the Human Capital Office/Workforce Relations Center	8
	6. Alternative Discipline.....	8
	7. Timing of Disciplinary Actions	8
	8. Disciplinary Action Based on Off-Duty Misconduct.....	8
	9. Documentation.....	8
	10. Prohibition on Coerced Resignations or Retirements	9
	11. Standards for Taking Disciplinary and Adverse Actions	9
	12. Grievances and Appeals	9
	13. Actions Covered by Other Orders	9
Chapter 2.	Choosing among Disciplinary Actions	10
	1. Factors to Be Considered in Determining an Appropriate Penalty	10
	2. Letters of Reprimand.	11
	3. Suspensions from Duty and Pay.....	11
	4. Reductions in Grade, Band, or Pay	12
	5. Removals	12
Chapter 3.	Suspensions for 14 Days or Less	12
	1. Purpose and Scope.....	12
	2. Employee Coverage.....	13
	3. Step 1—Proposing a Suspension.....	13
	4. Step 2—Deciding the Proposed Suspension.....	14
	5. Identification of Proposing and Deciding Officials.....	15
	6. Employees' Appeal Rights.....	15
	7. Documentation of Suspension.....	16
Chapter 4.	Removals, Reductions in Grade or Band, Reductions in Pay, Suspensions for More Than 14 Days, and Furloughs for 30 or Fewer Days	16
	1. Types of Adverse Actions Covered.	16
	2. Types of Actions Not Covered.	16
	3. Employee Coverage.....	17
	4. Step 1—Proposing an Adverse Action.....	17
	5. Step 2—Deciding the Proposed Adverse Action.....	19
	6. Identification of Proposing and Deciding Officials.....	19

	7. Employees' Appeal Rights.....	19
	8. Documentation of Adverse Actions	20
Appendix 1.	GAO Guide—Table of Penalties for Various Offenses.....	21

Chapter 1. Purpose and General Information

1. Purpose.

This order establishes the policies for initiating and taking disciplinary actions at the U.S. Government Accountability Office (GAO) and provides general management guidelines for discipline and adverse actions.

2. Supersession.

This order supersedes GAO Order 2751.1, Discipline, dated September 26, 2005, and GAO Order 2752.1, Adverse Actions, dated July 23, 2001. These orders have been combined.

- a. Changes have been made throughout this order to update organizational and title changes as a result of the Human Capital Office (HCO) reorganization and creation of the Workforce Relations Center (WRC). Changes have been made to clarify the role of WRC advisory services and GAO Counseling Services. Other edits have been for clarification purposes, including some within the definitions, or to update citations. For example,
 - (1) The definition of "removal" now includes performance as a factor that may result in an involuntary separation of an employee.
 - (2) The definition of "adverse action" references suspensions of more than 14 days (including suspensions or furloughs of 30 or fewer days).
 - (3) The definition of "indefinite suspension" has added the word "agency" to clarify that it is further agency action being referenced.
 - (4) The definition of "furlough" now clarifies that an employee can be placed in a temporary status without duty and pay "because of lack of work or funds."
- b. The section on Alternative Discipline has been updated to provide examples of lesser disciplinary action and to allow alternative discipline only when agreed upon as appropriate by GAO and the employee.
- c. Several paragraphs in the section on "Prohibition on Coerced Resignations or Retirements" have been deleted regarding actions based on the status of the employee to reflect the advisory nature of WRC.
- d. In Chapter 2, paragraph 1, it is noted that managers should use certain factors as a guide for determining the penalty. It is also noted, however, that the list is not all-inclusive and some factors may not apply to every situation.
- e. Language has been added to reflect the establishment of bargaining units and that employees may have union representation when appropriate or may be required to use the negotiated grievance procedure contained within a collective bargaining agreement (CBA).
- f. In Chapter 2, the Letters of Reprimand section has been updated to reflect that the letter shall also inform the employee regarding his or her appeal rights concerning allegations of discrimination.
- g. Suspensions from Duty and Pay has been edited to clarify that an employee can be suspended, in part, when there is a reasonable cause to believe a crime has been committed for which a sentence of imprisonment may be imposed. In addition, GAO may

proceed with appropriate disciplinary action based on the underlying misconduct that led to the arrest regardless of whether there is a plea or conviction. Managers must consult with WRC/HCO before implementing any indefinite suspension.

- h. In Chapter 3, Paragraph 2 and Chapter 4, paragraph 3 on Employee Coverage
 - (1) Language has been added to indicate that both employees who have not completed the 2-year probationary period or, newly, that those employees who have not completed their 1-year probationary period due to prior federal service, are not covered.
 - (2) Employees who are covered by a CBA are not covered by this chapter to the extent that the provisions of this chapter conflict with the CBA.
- i. Employees now have 5 days, where feasible, to reply to the notice regarding a proposed suspension rather than the 3 days previously provided.
- j. Language has been added to clarify that employees are allowed up to 4 hours of official time to review materials provided in support of a suspension or adverse action. Employees may also now present an oral and written reply to these notices rather than just an oral reply as previously provided.
- k. Sections on contributory medical conditions have been deleted.
- l. Chapter 3, paragraph 5, has been revised to provide the Chief Operating Officer (COO) with the authority, if deemed appropriate, to designate to the Chief Administrative Officer/Chief Financial Officer (CAO/CFO) the responsibility of acting as the deciding official in actions involving suspensions where the COO is supposed to perform this function. This chapter has been further revised to provide the CAO/CFO with the authority to designate the Director of Workforce Relations as the proposing official. Finally, this chapter has been further revised to clarify that the deciding official may be below the level of a managing director or equivalent if the proposing official is below the level of a director or equivalent.
- m. Clarifies that the Personnel Appeals Board (PAB) regulations govern who can file charges of prohibited personnel practices. Employees who wish to file a prohibited personnel claim with the PAB should consult those regulations.
- n. Updates have been made to reflect that WRC is responsible for maintaining the contents of official files related to discipline and adverse actions.
- o. Several changes have been made to the Appendix 1. GAO Guide—Table of Penalties for Various Offenses.
 - (1) Footnote 7 has been eliminated as it pertains to WRC guidance. The table has been clarified to differentiate and list separate penalty sections for government travel charge cards to include a delinquent or nonpayment offense, a misuse of card offense of \$500 or less value, and a misuse of card offense of greater than \$500 value.
 - (2) The table has also been modified to include an offense concerning an employee's duty to cooperate with official investigations.
 - (3) Further, the lowest level of formal penalty is now a reprimand, rather than an admonishment. Several types of offense have been updated to reflect this change. In

addition, because of this change, the first disciplinary action for the following offenses has changed from “admonishment to reprimand” to “reprimand to 1-day suspension.”

- (a) Insubordination – failure to submit required background forms within prescribed time frame or to attend scheduled security briefing.
 - (b) Negligent performance of duties – where waste or other cost is insubstantial.
 - (c) Violations of financial disclosure requirements – untimely filing of financial disclosure reports or requested amendment.
- p. Given the potential severity of the penalty, the time frame for failure to timely pay government-issued travel charge card bills has been defined to be within 90 days rather than 60 days.
- q. In addition, changes were made throughout the order for clarity, including:
- (1) A definition was added for “Managers,” and the “Unit Head” definition was clarified. The order was updated throughout for consistent use of these terms and to eliminate use of “supervisor.”
 - (2) In Chapter 3, paragraph 2 and Chapter 4, paragraph 3 employees of the Office of Inspector General are now covered by this order.
 - (3) Chapter 3(2)(a)(3) has been added to note employees who are covered by a CBA are not covered by this chapter only to the extent that the provisions of this chapter conflict with a provision of the CBA.
 - (4) Chapter 3(3)(d)(2) clarifies that a written reply should be submitted no later than the oral reply meeting.
 - (5) Chapter 3(6)(b) clarifies that employees who are members of a bargaining unit covered by a collective bargaining agreement may grieve under the applicable negotiated grievance procedure.
 - (6) Chapter 4(3)(2) has been added to note employees who are covered by a CBA are not covered by this chapter to the extent that the provisions of this chapter conflict with the CBA.
 - (7) Chapter 4(4)(d) clarifies that a written reply should be submitted no later than the oral reply meeting.
 - (8) Appendix 1 has been updated for clarity, tone, and the word “illegal” added to the section on using or being under the influence of intoxicants or drugs while on official duty or reporting for duty or being on duty under the influence of intoxicants or drugs.

* Note: This order was updated on September 28, 2015, to include the protections from discrimination based on genetic information, pregnancy, or gender identity. No other updates were made.

3. References.

- a. 5 U.S.C. Chapter 75.
- b. 5 C.F.R. Part 752—Adverse Actions.

- c. 31 U.S.C. 732.
- d. 4 C.F.R., Subchapter A, Parts 2, 4, and 7.
- e. GAO Order 2315.1, Status, Tenure, and Trial Periods.
- f. GAO Order 2432.1, Dealing with Unacceptable Performance.
- g. GAO Order 2531.3, Within-Grade Salary Increases.
- h. GAO Order 2713.2, Discrimination Complaint Resolution Process.
- i. GAO Order 2731.1, Personnel Suitability for Employment.
- j. GAO Order 2752.2, Suspensions and Removals Taken in the Interest of National Security.
- k. GAO Order 2771.1, Administrative Grievance Procedure.
- l. GAO Order 2211.1, Veterans' Preference.
- m. GAO Order 2213.1, Positions Covered by Non-Competitive Appointments.
- n. GAO Order 2307.1, Veterans Readjustment Appointments.
- o. GAO Order 2316.1, Competitive Time Limited Employment.
- p. GAO Order 2317.1, GAO's Senior Executive Service and Senior Level Positions.
- q. GAO Order 2339.1, Medical Determinations.
- r. GAO Order 2351.1, Workforce Restructuring Procedures for the Government Accountability Office.
- s. GAO Order 2536.1, Pay Retention in the GAO.
- t. 42 U.S.C. §§ 2000ff, Genetic Information Nondiscrimination Act (GINA).
- u. 42 U.S.C. § 2000e(k), amended by the Pregnancy Discrimination Act, 925 Stat. 2026.

4. Definitions.

For purposes of this order, the following definitions apply:

- a. "Admonishment" means a warning to an employee by a supervisor concerning the employee's behavior. It may be oral or written. It may also be called a warning or caution.
- b. "Reprimand" means a written disciplinary action against an employee. A reprimand is placed in the employee's official personnel folder for a period of at least 1 year but not more than 3 years.
- c. "Suspension" means the placement of an employee, for disciplinary reasons, in a temporary status without duty and pay.
- d. "Removal" means the involuntary separation of an employee based on misconduct or performance.
- e. "Reduction in pay" means the involuntary reduction in the rate of basic pay of an employee.

- f. "Reduction in band" means the involuntary change of an employee in GAO's broad banded performance-based compensation system to a lower band.
- g. "Reduction in grade" means the involuntary change of a General Schedule system employee to a lower grade.
- h. "Adverse action" means the personnel action of removal; reduction in grade, band, or pay; or suspension of more than 14 days (including suspensions or furloughs of 30 or fewer days) against an employee for such cause as will promote the efficiency of the federal service.
- i. "Alternative Discipline" means a form of corrective action other than traditional disciplinary procedures and actions.
- j. "Indefinite suspension" means a suspension pending GAO investigation or further agency action. The indefinite suspension is of unspecified length and ends when conditions set forth in a proposal notice have been met.
- k. "Day" means a calendar day.
- l. "Demotion" means the involuntary reduction in pay level of a GAO Senior Executive Service or GAO Senior Level employee, involuntary reduction in band of an employee who is under GAO's broad banded performance-based compensation system to a position in a lower band, or involuntary reduction in grade of a General Schedule -equivalent or Wage Grade employee to a position at a lower grade level.
- m. "Resignation" means a separation, other than retirement, at an employee's request. It is a voluntary expression of the employee's desire to leave the organization that is normally made in writing.
- n. "Band" is a level of classification under GAO's performance-based compensation system.
- o. "Current continuous service" means civilian service in the same position or similar positions without a break of a workday.
- p. "Furlough" means an employee is placed in a temporary status without duty and pay because of lack of work or funds or other nondisciplinary reasons.
- q. "Grade" is a rank of positions under the General Schedule classification system.
- r. "Pay" means the basic pay rate set by the Comptroller General (CG) for a position before any deductions and additional compensation, such as overtime.
- s. "Preference eligible" means a veteran or a relative of a veteran as defined in GAO Order 2211.1.
- t. "Similar positions" mean positions in which the duties performed are similar in nature and require substantially the same or similar qualifications, so that the incumbent could be interchanged without significant training or undue work interruption.
- u. "Unit head" means managing directors, regional directors, or heads of mission support offices or staff offices.
- v. "Manager" means an assistant director, assistant general counsel, and MS-II or MS-I.

5. Advice and Assistance from the Human Capital Office/Workforce Relations Center.

- a. Managers and human capital consultants should seek advice and assistance regarding possible disciplinary and adverse actions (which may include performance actions consistent with 5 U.S.C. Chapter 75), as well as procedures to be followed, from WRC/HCO. WRC/HCO provides guidance, consultation, and assistance to management on labor and employee relations matters, including grievances and appeals, employee discipline, adverse actions, and related matters.
- b. HCO's Counseling Services is a GAO resource for managers and employees. It works collaboratively with WRC/HCO to manage employee issues. The Counseling Center provides free, confidential, short-term counseling for all GAO employees about work-related and personal issues.
- c. Certain documents (e.g., reprimands, proposals, decision letters) require review and clearance by WRC/HCO prior to issuance.

6. Alternative Discipline.

With guidance from and the concurrence of the Director of Workforce Relations Center, a GAO manager or unit head may take lesser disciplinary action, such as a permanent letter of reprimand, suspension held in abeyance, or last chance agreement, in lieu of a suspension described in chapter 3. Alternative discipline will only be used when agreed upon as appropriate by GAO and the employee.

7. Timing of Disciplinary Actions.

Because circumstances vary with each case, no specific deadlines can be established. It is important that all disciplinary actions be taken in a timely manner—that is, as close as possible to the event or management's awareness of it.

8. Disciplinary Action Based on Off-Duty Misconduct.

Under some circumstances, GAO can and should initiate disciplinary action for off-duty misconduct. Action is appropriate when a nexus (i.e., a link) exists between the misconduct and the efficiency of the service. The misconduct must, among other things, affect the employee's job performance or that of co-workers or management's confidence in the employee's performance, or interfere with GAO's mission. The nature of the employee's duties may be critical to determining a nexus. While previous cases should be considered in making a nexus determination, each case must be examined carefully as differences between cases can be subtle. WRC/HCO should be contacted for assistance in making nexus determinations.

9. Documentation.

In order to support a disciplinary action, it is critical that managers maintain specific detailed documentation of the facts. Such documentation may take a variety of forms, including notes of conversations or events; documents such as telephone messages and official documents (for example, performance appraisals and records of performance reviews, time and attendance reports, travel vouchers, or work products); records of previously imposed disciplinary action; and, where applicable, reports of findings. Any documentation containing confidential or privileged information must be maintained in secure areas to protect its confidentiality.

10. Prohibition on Coerced Resignations or Retirements.

Under no circumstances shall coercion be used for the purpose of securing resignation or retirement. Managers are urged to seek the advice of WRC/HCO before engaging in a discussion of possible resignation or retirement with an employee but particularly when disciplinary or adverse action has been initiated against the employee.

11. Standards for Taking Disciplinary and Adverse Actions.

GAO may take a disciplinary or adverse action, including a performance-based adverse action consistent with 5 U.S.C. 75, against an employee only "for such cause as will promote the efficiency of the service" (5 U.S.C. 7521).

12. Grievances and Appeals.

- a. As a general rule, employees against whom disciplinary actions are taken have a right to protest the actions formally. The type of disciplinary action involved and the status of the employee (e.g., whether covered under a CBA) determines whether the recourse is a grievance under GAO Order 2771.1, Administrative Grievance Procedure, a grievance under the negotiated grievance procedure for bargaining unit employees, or an appeal to the GAO PAB. See GAO Order 2771.1 and PAB regulations, 4 C.F.R. Part 28, for further guidance. Employees are not entitled to grieve or appeal warnings of possible future disciplinary actions.
- b. Employees may file complaints under GAO Order 2713.2, Discrimination Complaint Process, concerning any disciplinary action if they contend that the action is the result of discrimination on the basis of race, color, religion, sex (including pregnancy), national origin, age (40 or over), disability, genetic information, sexual orientation, gender identity, or retaliation for protected activities.

13. Actions Covered by Other Orders.

Procedures applicable to a variety of actions not covered by GAO Order 2751.1, both disciplinary and nondisciplinary, are discussed in other GAO orders. Table 1 provides references to these other orders.

Table 1: Actions Covered by Other Orders

Action	GAO order where information is found
Removals or reductions in grade or band based solely on unacceptable performance.	2432.1
Terminations during probationary or trial period.	2315.1 chapter 7, 2315.1 (A-90), (A-04)
Removals and suspensions taken in the interests of national security.	2752.2
Suitability disqualifications.	2731.1

Chapter 2. Choosing among Disciplinary Actions

1. Factors to Be Considered in Determining an Appropriate Penalty.

- a. Reasonableness of action. No disciplinary action shall be taken against an employee unless the allegations against the employee are supported by a preponderance of the evidence.
- b. Factors to be considered in selecting penalties. In selecting a penalty to propose or deciding what penalty to impose for an offense, managers should use the following factors as a guide for determining the penalty. However, this list is not all-inclusive and some factors may not apply to every situation. The manager considers such factors as
 - (1) the nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical, or inadvertent, was committed maliciously or for gain, or was frequently repeated;
 - (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
 - (3) the employee's past disciplinary record;
 - (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
 - (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
 - (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;

- (7) consistency of the penalty with Appendix 1. GAO Guide—Table of Penalties for Various Offenses;
 - (8) the notoriety of the offense or its impact upon the reputation of GAO;
 - (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense or had been warned about the conduct in question;
 - (10) potential for the employee's rehabilitation;
 - (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others (including managers) involved in the matter; and
 - (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
- c. Nondiscrimination. In no event shall GAO discriminate against an employee by taking disciplinary action on the basis of any of the following:
- (1) race, color, religion, sex (including pregnancy), national origin, age (40 or over), disability, or genetic information;
 - (2) partisan political beliefs, affiliations, or activities;
 - (3) marital status; or
 - (4) sexual orientation or gender identity.
- d. Retaliation and reprisal. GAO shall not take disciplinary action against an employee on the basis of any of the following:
- (1) in retaliation for the employee's having engaged in protected activity;
 - (2) in reprisal for the employee's exercise of any appeal right granted by any law, rule, or regulation; or
 - (3) in reprisal for the employee's engaging in whistleblowing as described in 5 U.S.C. 2302(b)(8).

2. Letters of Reprimand.

Letters of reprimand shall cite the specific acts for which the employee is reprimanded and shall include a warning that repetition of the offense or other improper action may lead to a recommendation for more severe disciplinary action. The letter shall inform the employee that the reprimand may be grieved through GAO's administrative grievance procedure or the negotiated grievance procedure contained within a CBA for bargaining unit employees. It shall also inform the employee regarding his or her appeal rights concerning allegations of discrimination. It shall inform the employee that a copy of the letter will be filed in the employee's official personnel folder for a period of at least 1 year but not more than 3 years, and that the employee can ask, after 1 year, that the letter be removed from the official personnel folder.

3. Suspensions from Duty and Pay.

- a. Suspension as a disciplinary action is effected when it is believed that the employee may be worthy of retention in the service but action more severe than a letter of reprimand is

warranted. It is mandatory to impose a disciplinary suspension in certain situations prescribed by law. For example, under the U.S. Code, a suspension for at least 1 month must be imposed for willfully using or authorizing use of any government-owned or government-leased passenger vehicle for other than official purposes. (The U.S. Code provision does not cover use of employee-rented vehicles for the purpose of carrying out official duties.)

- b. A GAO employee may be indefinitely suspended pending an initial adjudication in the judicial process if the employee has been arrested or indicted, it is determined that there is reasonable cause to believe that a crime has been committed for which a sentence of imprisonment may be imposed, and the alleged misconduct that led to the arrest or indictment bears a sufficient relationship to the employee's duties to warrant the action as promoting the efficiency of the service. If the employee pleads guilty or is convicted, the agency may proceed with appropriate disciplinary action on the basis of the misconduct that led to the conviction without returning the employee to duty from the indefinite suspension. In the alternative, GAO may proceed with appropriate disciplinary action based on the underlying misconduct that led to the arrest regardless of whether there is a plea or conviction. Managers must consult with WRC/HCO before implementing any indefinite suspension both as to the advisability of taking such action and the length of such suspension.

4. Reductions in Grade, Band, or Pay.

- a. Reduction in grade, band, or pay as a disciplinary action may be effected when action more severe than a suspension is required, but it is believed that the employee may be worthy of retention in the service. In appropriate circumstances, the reduction in grade or band may include placement in a different series or movement to a nonsupervisory position. Similarly, a supervisory employee who is reduced in grade as discipline for an abuse of supervisory authority may be placed in a nonsupervisory position.
- b. For more information about reduction in grade, band, or pay solely for unacceptable performance, see GAO Order 2432.1, *Dealing with Unacceptable Performance*.

5. Removals.

- a. Action to remove an employee is taken when the removal is for such cause as will promote the efficiency of the service.
- b. For more information about offenses warranting removal, see Appendix 1. GAO Guide—Table of Penalties for Various Offenses. For information about removal, reduction in grade, band, or pay solely for unacceptable performance, see GAO Order 2432.1, *Dealing with Unacceptable Performance*.

Chapter 3. Suspensions for 14 Days or Less

1. Purpose and Scope.

This chapter covers suspensions of 14 days or less, except suspensions taken for national security reasons (see GAO Order 2752.2).

2. Employee Coverage.

- a. Employees in administrative, professional, and support staff (APSS) and attorney positions are covered, except as follows:
 - (1) Employees who are required to complete a 1-year probationary period, but have not yet done so, are not covered by this chapter (see GAO Order 2315.1).
 - (2) Employees whose appointments do not require a probationary period are not covered by this chapter until they have completed 1 year of current, continuous service in the same position or similar positions.
 - (3) Employees who are covered by a CBA are not covered by this chapter only to the extent that the provisions of this chapter conflict with a provision of the CBA.
- b. Employees in GAO analyst positions are covered, except as follows:
 - (1) Employees who are required to complete either a 2-year probationary period or 1-year probationary period (with prior federal service), but have not yet done so, are not covered by this chapter.
 - (2) Employees whose appointments do not require a probationary period are not covered by this chapter until they have completed 2 years of current, continuous service in the same position or similar positions.
 - (3) Employees who are covered by a CBA are not covered by this chapter only to the extent that the provisions of this chapter conflict with the CBA.
- c. The following employees are not covered by this chapter:
 - (1) The CG and the Deputy CG.
 - (2) Members of GAO's Senior Executive Service (see GAO Order 2317.1).
 - (3) Experts and consultants.
 - (4) Re-employed annuitants.
 - (5) Employees on time-limited appointments of 1 year or less (see GAO Order 2316.1).
 - (6) Employees on Veterans Recruitment Act appointments (see GAO Order 2307.1).¹
 - (7) Employees on noncompetitive appointments, except for attorneys and CG appointees (see GAO Order 2213.1).

3. Step 1—Proposing a Suspension.

- a. Written proposal. Before employees may be suspended, the proposing official (see ch. 3, para. 5) shall give employees a written proposal.
- b. Contents. Proposals shall
 - (1) state the specific reasons for the proposed suspension;

¹ Employees on Veterans Recruitment Act appointments and employees on noncompetitive appointments (except for attorneys and CG appointees) are excluded from coverage by this chapter consistent with 5 U.S.C. Chapter 75, Subchapter 1.

- (2) inform employees that they and their representative, if applicable, may review the materials relied upon to support the proposed suspension; and
 - (3) inform employees that they may reply, orally or in writing, as set as forth in chapter 3, paragraph 3d1.
- c. Representation. Employees may be represented by an attorney or other person. Bargaining unit employees may choose to be represented by a union. The deciding official (see ch. 3, para. 5) may disallow as representatives individuals whose activities as a representative would cause a conflict of interest or position; whose release from their position would give rise to unreasonable costs; or whose priority work assignments preclude release. In such cases, the deciding official will notify employees in writing of the reasons for the denial.
- d. Reply. The proposing official shall provide employees a reasonable time (i.e., at least 5 days, where feasible, but in any event not less than 24 hours) to reply to the notice.
 - (1) Employees may reply orally, in writing, or both and furnish affidavits and other documentary evidence to support their reply.
 - (2) If the employee elects to make an oral reply, any written reply may be submitted no later than the oral reply meeting. The deciding official may hear the reply or designate someone (other than the proposing official) to hear and prepare a written summary.
 - (3) Employees are entitled to a reasonable amount of official time (up to 4 hours) to review the supporting materials and to present an oral reply, written reply, or both to the deciding official or designee. Official time shall not be authorized for any other activity related to the reply.

4. Step 2—Deciding the Proposed Suspension.

- a. In deciding on proposed suspensions, deciding officials shall consider
 - (1) only the reasons specified in the notice of proposed action; and
 - (2) the reply, if any, employees and their representatives gave to the notice.
- b. The decision shall contain specific findings as to whether the deciding official has sustained or not sustained each charge in the proposal. In addition, the decision shall specify the factors considered in selecting the penalty.
- c. The agency shall deliver the decision notice to the employee before the time the action will be effective.

5. Identification of Proposing and Deciding Officials.

Table 2: Identification of Proposing and Deciding Officials

If the employee against whom the suspension action is being taken	The proposing official is	The deciding official is
reports to a manager who is below a director or unit head	that manager or a higher-level management official	the next higher-level management official
reports to a unit head	the unit head or director	—the managing director, or equivalent, if the unit head reports to a managing director —the COO, if the unit head reports to the COO —the General Counsel (GC) if the unit head reports to the GC —CAO/CFO if the unit head reports to the CAO/CFO
reports to the COO	COO	CG or Deputy CG (DCG)
reports to the CG	CG	CG or DCG
reports to the GC	GC	CG or DCG
reports to the CAO/CFO	CAO/CFO	CG or DCG

Note: If the CAO/CFO deems it appropriate, the Director of Workforce Relations may be designated to act as the proposing official. If the CAO/CFO deems it appropriate, the Chief Human Capital Officer may be designated to act as the deciding official. If the COO deems it appropriate, the CAO/CFO may be designated to act as the deciding official when the COO is supposed to perform this function.

6. Employees' Appeal Rights.

- a. Employees may grieve a suspension of 14 days or less under the administrative grievance procedure, GAO Order 2771.1, Administrative Grievance Procedure.
- b. Employees who are members of a bargaining unit covered by a collective bargaining agreement may grieve under the applicable negotiated grievance procedure.
- c. Employees who believe that a suspension of 14 days or less is discriminatory on the basis of race, color, religion, sex (including pregnancy), national origin, age (40 or over),

disability, genetic information, sexual orientation, gender identity, or retaliation for protected activities may file a complaint with GAO's Opportunity and Inclusiveness Office under GAO Order 2713.2. To do so, employees must contact an equal employment opportunity counselor in the office for precomplaint counseling within 45 days of the effective date of the suspension.

- d. The PAB regulations at 4 C.F.R. Part 28 govern who can file charges of prohibited personnel practices with the PAB. Employees who wish to file a prohibited personnel practice claim with the PAB should consult those regulations.

7. Documentation of Suspension.

WRC/HCO maintains the official suspension files.

Chapter 4. Removals, Reductions in Grade or Band, Reductions in Pay, Suspensions for More Than 14 Days, and Furloughs for 30 or Fewer Days

1. Types of Adverse Actions Covered.

This chapter covers the following types of adverse actions:

- a. Removals.
- b. Suspensions for more than 14 days.
- c. Indefinite suspensions.
- d. Reductions in grade or band.
- e. Reductions in pay.
- f. Furloughs for 30 days or less.

2. Types of Actions Not Covered.

This chapter does not cover the following types of actions:

- a. Suspensions or removals taken for national security reasons under GAO Order 2752.2.
- b. Reductions in grade or band of supervisors or managers who have not completed the required supervisory or managerial probationary periods (see GAO Order 2315.1).
- c. Reductions in grade or band or removals taken under GAO Order 2432.1.
- d. Reduction-in-force actions taken under GAO Order 2351.1.
- e. Terminations of appointments on their established expiration dates.
- f. Terminations of time-limited promotions.
- g. Reductions of employees' pay because the pay is contrary to law or regulation.
- h. Actions that entitle employees to grade and pay retention and actions to end these entitlements (see GAO Order 2536.1).

- i. Placement of intermittent or seasonal employees in nonduty, nonpay status in accordance with conditions established at the times of their appointments.
- j. Voluntary employee actions.
- k. Actions ordered by the PAB.

3. Employee Coverage.

- a. Employees in APSS and attorney positions are covered, except as follows:
 - (1) Employees, who are required to complete a 1-year probationary period, but have not yet done so, are not covered by this chapter (see GAO Order 2315.1).
 - (2) Employees whose appointments do not require a probationary period are not covered by this chapter until they have completed 1 year of current continuous service in the same position or similar positions.
 - (3) Employees who are covered by a CBA are not covered by this chapter only to the extent that the provisions of this chapter conflict with the CBA.
- b. Employees in GAO analyst positions are covered, except as follows:
 - (1) Employees who are required to complete either a 2-year probationary period or 1-year probationary period (with prior federal service), but have not yet done so, are not covered by this chapter (see GAO Order 2315.1).
 - (2) Employees whose appointments do not require a probationary period are not covered by this chapter until they have completed 2 years of current, continuous service in the same position or similar positions.
 - (3) Employees who are covered by a CBA are not covered by this chapter only to the extent the provisions of this chapter conflict with the CBA.
- c. The following employees are not covered by this chapter:
 - (1) The CG and the Deputy CG.
 - (2) Experts and consultants.
 - (3) Re-employed annuitants.
 - (4) Employees on time-limited appointments of 1 year or less (see GAO Order 2316.1).
 - (5) Nonpreference eligible employees on noncompetitive appointments, except for attorneys and CG appointees (see GAO Order 2213.1).

Note: Nonpreference eligible employees on noncompetitive appointments (except for attorneys and CG appointees) are excluded from coverage by this chapter consistent with 5 U.S.C. Section 7511. Section 7511 covers nonpreference eligible "excepted service" employees only if they (1) are not serving probationary periods pending conversion to the "competitive service" or (2) have completed 2 years of current, continuous service under other than a temporary appointment limited to 2 years or less.

4. Step 1—Proposing an Adverse Action.

- a. Advance written notice. Except as set forth in paragraph 4f of this chapter, the proposing official (see ch. 3, para. 5) shall give employees written notice of the action to be taken no

less than thirty (30) calendar days from the date the proposal letter is served on the employee. The proposal shall state the specific reasons for the proposed action; inform employees that they and their representatives may review the materials relied upon to support the proposed action; and inform employees that they may reply, orally or in writing, as set forth below.

- b. Furloughs. If GAO furloughs some but not all employees in a competitive level, the advance written notice must explain the basis for the furlough and why the employees to be furloughed were selected.
- c. Representation. Employees may be represented by an attorney or other person. Bargaining unit employees may choose to be represented by the union. Deciding officials (see ch. 3, para. 5) may disallow as representatives individuals whose activities as a representative would cause a conflict of interest or position; whose release from their position would give rise to unreasonable costs; or whose priority work assignments preclude release. In such cases, the deciding officials will notify employees in writing of the reasons for the denial.
- d. Reply. The proposing official shall provide employees with at least 7 days to reply to the notice.
 - (1) Employees may reply orally, in writing, or both, and furnish affidavits and other documentary evidence to support their reply.
 - (2) If the employee elects to make an oral reply, any written reply may be submitted no later than the oral reply meeting. The deciding official may hear the reply or designate someone else (other than the proposing official) to hear and prepare a written summary.
 - (3) Employees are entitled to a reasonable amount of official time (up to 4 hours) to review the supporting materials and to present an oral reply, written reply, or both to the deciding official or designee. Official time shall not be authorized for any other activity related to the reply.
- e. Employee status during notice period.
 - (1) Employees whose removal or suspension has been proposed generally shall remain in a duty status in their regular position during the notice period. However, if employees' presence at work would pose a threat to them or others, result in the loss of or damage to government property, or otherwise jeopardize legitimate government interests, the proposing official may, in consultation with the Chief Human Capital Officer,
 - (a) assign employees to duties that would not present a threat to safety, GAO's mission, or government property;
 - (b) allow employees to take annual leave, sick leave, or leave without pay, as appropriate;
 - (c) charge employees with absence without leave for unapproved absences; or
 - (d) place employees in a paid, nonduty status, such as administrative leave, for such time as is necessary to effect the action.

- f. The deciding official may give less than 30 days' advance written notice for a proposed removal or suspension when there is reasonable cause to believe that an employee has committed a crime for which the employee may be imprisoned. In such cases, the employee is entitled to reply to the proposal notice within a reasonable time, but not less than 7 days. GAO may forgo the advance written notice and opportunity to answer when it furloughs employees because of unforeseeable circumstances, such as sudden equipment breakdowns, acts of God, or emergencies requiring the immediate curtailment of activities.

5. Step 2—Deciding the Proposed Adverse Action.

- a. In deciding on proposed adverse actions, the deciding official shall consider
 - (1) the reasons specified in the notice of proposed action and
 - (2) the reply, if any, employees and their representatives gave to the notice.
- b. The decision shall
 - (1) contain specific findings as to whether each charge (and, where applicable, each specification of a charge) in the proposal is or is not sustained,
 - (2) specify the factors considered in selecting the penalty (see ch. 2, para. 1), and
 - (3) confirm that the action is "for such cause as will promote the efficiency of the service (5 U.S.C. 7521)."
- c. The agency shall deliver the decision notice to the employee at or before the time the action will be effective.

6. Identification of Proposing and Deciding Officials.

See chapter 3, paragraph 5.

7. Employees' Appeal Rights.

- a. Employees may appeal an adverse action under this chapter to the GAO PAB by filing a written charge with the PAB's General Counsel's office within 30 days of the effective date of the action. Employees may raise allegations of prohibited personnel practices in the appeal.

Employees who believe that an adverse action under this chapter is discriminatory on the basis of race, color, religion, sex (including pregnancy), national origin, age (40 or over), disability, genetic information, sexual orientation, gender identity, or retaliation for activities protected by the antidiscrimination statutes may elect to do either (but not both) of the following:

- (1) File a charge directly with the General Counsel of the PAB within 30 days of the effective date of the action and raise the issue of discrimination in the course of proceedings before the board.
- (2) File a complaint under GAO Order 2713.2. To do so, employees must contact a counselor in the Opportunities and Inclusiveness Office within 45 days of the effective date of the action.

- b. Employees may file a complaint of discrimination on the basis of sexual orientation under GAO Order 2713.2. To do so, employees must contact a counselor in the Opportunities and Inclusiveness Office within 45 days of the effective date of the action.

8. Documentation of Adverse Actions.

WRC maintains the official adverse action files.

Appendix 1. Appendix 1. GAO Guide—Table of Penalties for Various Offenses

What is the purpose of the guide?

The GAO Guide—Table of Penalties for Various Offenses is a list of infractions along with a suggested range of penalties. The actions described in the table are not mandatory but are a guide to those managers responsible for disciplining employees, including discipline rising to the level of an adverse action, with suggested penalties graduated in severity based on whether an employee has no previous record of misconduct, has a single previous incident of misconduct, has two previous incidents of misconduct, etc. More serious types of misconduct have a more serious suggested penalty or range of penalties for a first offense. Decisions concerning the imposition of penalties are within the discretion of the responsible manager, in consultation with WRC/HCO, and should be made on a case-by-case basis, taking into consideration all relevant facts.

Probationers or employees serving a trial period do not meet the definition of employee for the purpose of this guide (see, also, 5 C.F.R. 75).

When should disciplinary action be taken? What action?

In deciding what, if any, action to take, the official with authority to take the action should look to the guide for assistance. In addition, the official should contact WRC/HCO.

In many cases, it is appropriate to take informal action (e.g., oral or written admonishment, oral or written counseling, memo or letter of warning, letter of requirement). However, no record of such action is placed in the employee's official personnel folder. If the employee later commits other offenses, the prior action is useful as support for a higher level of disciplinary action.

How should the guide be used?

The guide lists offenses by category. For each offense, it indicates a suggested range of penalties for the first offense, the second offense, and subsequent offenses.

An offense can be a single occurrence of misconduct, or several connected occurrences, that results in a single disciplinary action. For example, an employee on leave restriction who is absent without leave (AWOL) for 3 days (consecutive or not) has committed a single offense, not three offenses, unless disciplinary action was taken after the first or second day of AWOL. If disciplinary action (e.g., a reprimand) is taken against the employee as a result of the 3 days of AWOL and the employee subsequently is AWOL for another 3 days, those absences collectively constitute a second offense.

What about penalties for offenses not listed in the guide?

The guide does not include every potential cause for taking disciplinary action. If the official with authority to take disciplinary action believes there is reason to take disciplinary action

against an employee, but the offense is not listed in the guide, the official should contact WRC/HCO.

Type of offense	Suggested penalty for first disciplinary action	Suggested penalty for second disciplinary action	Suggested penalty for subsequent disciplinary action
1. Attendance^a			
a. Unauthorized absence on scheduled day of work. ^b	Reprimand to 5-day suspension	Reprimand to 14-day suspension	14-day suspension to removal
b. Recurring or unwarranted tardiness ^c	Reprimand	Reprimand to 5-day suspension	5-day suspension to removal
c. Violation of properly imposed leave restrictions	3-day suspension	5- to 14-day suspension	14-day suspension to removal
d. Improper use of sick leave for any reason other than incapacitation, medical care, or other reasons permitted under GAO Order 2630.1	Reprimand to 5-day suspension	Reprimand to 14-day suspension	10-day suspension to removal
2. Fiscal irregularities			
a. Unauthorized or improper use of government funds or of other funds that come into an employee's possession by reason of employment	14-day suspension to removal	Removal	
b. Submission of, abusing, or allowing the submission of falsely stated travel, payroll, loan, or purchase vouchers or their supporting documents (e.g., application for leave)	Reprimand to removal	Removal	
c. Failure to properly account for or make proper distribution of any money, property, or other thing of value received by or coming into employee's custody as a result of employment	Reprimand to removal	Removal	
d. Making or authorizing obligation or expenditure of funds against any allotment if in excess of amount available (violation of Anti-Deficiency Act)	Reprimand to 5-day suspension	Reprimand to 14-day suspension	14-day suspension to removal
3. Conduct prejudicial to the best interests of the government			
a. Conduct that causes the employee to be convicted of a criminal charge relating to the employee's position and the mission of the agency	14-day suspension to removal	Removal	
b. Actual or attempted theft	5-day suspension to removal	Removal	
c. Unauthorized removal of government-owned or -leased	Reprimand to 14-day suspension	5-day suspension to removal	Removal

Type of offense	Suggested penalty for first disciplinary action	Suggested penalty for second disciplinary action	Suggested penalty for subsequent disciplinary action
property or property over which governmental custody is exercised ^d			
d. Concealing, removing, mutilating, altering, or destroying government records	Reprimand to removal	7-day suspension to removal	Removal
e. Unauthorized use of, or authorizing the use of, government property, facilities, or services for other than official purposes ^e	Reprimand to removal	5-day suspension to removal	Removal
f. Conducting nonauthorized personal business while in duty status	Reprimand to 10-day suspension	Reprimand to removal	5-day suspension to removal
g. Willful use, or authorizing use, of any government-owned or -leased passenger vehicle for other than official business; carries mandatory penalty of 1-month suspension. See 31 USC 1349.	1-month suspension to removal	Removal	
h. Unauthorized use of federal telecommunication system, commercial long-distance facilities, or misuse of the Internet ^f	Reprimand to 5-day suspension	Reprimand to 14-day suspension	Removal
i. Unauthorized or improper use of government charge cards (e.g., cards issued to purchase office supplies or gift awards or for motor vehicle operators to buy gas)	Reprimand to removal	5-day suspension to removal	Removal
j. Failure to timely pay government-issued travel charge card bill within 90 days from the billing statement date	Reprimand to 5-day suspension	Reprimand to 10-day suspension	5-day suspension to removal
k. Misuse or inappropriate personal use of government-issued travel charge card, such as making unauthorized purchases or obtaining cash advances while not in a travel status or where unrelated to official government travel (\$500 or less)	Reprimand to 5-day suspension	Reprimand to 14-day suspension	14-day suspension to removal
l. Misuse or inappropriate personal use of government-issued travel charge card, such as making unauthorized purchases or obtaining cash advances while not in a travel status or where unrelated to official government travel (over \$500)	14-day suspension to removal	Removal	

Type of offense	Suggested penalty for first disciplinary action	Suggested penalty for second disciplinary action	Suggested penalty for subsequent disciplinary action
m. Loss of, deliberate damage to, or unauthorized destruction of government property, records, or information	Reprimand to 10-day suspension	2-day suspension to removal	5-day suspension to removal
n. Discourteous conduct to the public (see 4 C.F.R. 7.5)	Reprimand to 1-day suspension	Reprimand to 5-day suspension	1- to 14-day suspension
o. Fighting, inflicting, or attempting to inflict bodily injury or otherwise creating a public disturbance while on duty or on government premises	Reprimand to removal	Reprimand to removal	5-day suspension to removal
p. Unprofessional conduct: conduct unbecoming a GAO employee	Reprimand to removal	5-day suspension to removal	Removal
q. Placement on a GAO computer of nonapproved hardware, software, special applications, or peripherals	Reprimand to 3-day suspension	Reprimand to 14-day suspension	5-day suspension to removal
4. Sexual harassment⁹			
a. Sexual harassment	3-day suspension to removal	14-day suspension to removal	Removal
b. Unprofessional conduct of a sexual nature	Reprimand to 10-day suspension	5-day suspension to removal	Removal
c. Retaliation against an employee arising from or in connection with an allegation of sexual harassment	3-day suspension to removal	14-day suspension to removal	Removal
5. Insubordination			
a. Refusal or failure to comply with legitimate supervisory instructions	Reprimand to 14-day suspension	14-day suspension to removal	Removal
b. Willful failure to complete Continuing Professional Education credits as required (see GAO Order 2410.2)	Reprimand to 14-day suspension	14-day suspension to removal	Removal
c. Failure to submit required background forms within prescribed time frame or to attend scheduled security briefing	Reprimand to 1-day suspension	Reprimand to 5-day suspension	5-day suspension to removal
6. Negligent performance of duties			
a. Where waste or other cost is insubstantial	Reprimand to 1-day suspension	Reprimand to 5-day suspension	5- to 30-day suspension
b. Where waste or other cost is substantial	Reprimand to 5-day suspension	5-day suspension to removal	30-day suspension to removal
7. Deliberate misrepresentation,	Reprimand to 30-	5-day suspension	14-day suspension

Type of offense	Suggested penalty for first disciplinary action	Suggested penalty for second disciplinary action	Suggested penalty for subsequent disciplinary action
falsification, exaggeration, or concealment of material facts in connection with any official document, employment document, time and attendance report, or matter under official investigation	day suspension	to removal	to removal
8. Failure to respond to or cooperate with an official investigation, such as, but not limited to, an investigation by the Office of Inspector General, Office of Opportunity and Inclusiveness, Office of Security, and WRC/HCO, including failure to submit to interviews and to provide requested documents	Reprimand to removal	5-day suspension to removal	Removal
9. Sleeping on duty	Reprimand to 5-day suspension	Reprimand to 14-day suspension	10-day suspension to removal
10. Gambling on government premises or while in duty status	Reprimand to 5-day suspension	Reprimand to 10-day suspension	10-day suspension to removal
11. Soliciting or accepting gifts, loans, favors, etc., from GAO subordinates or from persons, firms, or corporations with whom official relations exist, have existed, or may exist ^h	Reprimand to removal	14-day suspension to removal	Removal
12. Engaging in outside employment without securing prior written approval			
a. Where no conflict of interest is involved	Reprimand	Reprimand to 3-day suspension	5-day suspension to removal
b. Where conflict of interest is involved	Reprimand to removal	30-day suspension to removal	Removal
13. Violations of financial disclosure requirements			
a. Willful failure to file financial disclosure reports or requested amendments	14-day suspension to removal	Removal	
b. Untimely filing of financial disclosure reports or requested amendment ⁱ	Reprimand to 1-day suspension	Reprimand to 3-day suspension	5- to 14-day suspension
c. Falsifying financial disclosure reports or failing to report required information in such reports			
1) Where conflict of interest is involved	5-day suspension to removal	Removal	
2) Where no conflict of interest is involved	Reprimand to 5-day suspension	Reprimand to 14-day suspension	5-day suspension to removal
14. Discrimination ^j			

Type of offense	Suggested penalty for first disciplinary action	Suggested penalty for second disciplinary action	Suggested penalty for subsequent disciplinary action
a. Discrimination against an employee or applicant for employment because of race, color, religion, sex (including pregnancy), national origin, age (40 or over), disability, genetic information, sexual orientation, or gender identity	3-day suspension to removal	14-day suspension to removal	Removal
b. Retaliation against an employee for having engaged in a protected activity or in reprisal for the exercise of an appeal right granted by any law, rule, or regulation or for engaging in whistleblowing	3-day suspension to removal	14-day suspension to removal	Removal
15. Intoxicants and illegal drugs			
a. Using or being under the influence of intoxicants or illegal drugs while on official duty or reporting for duty or being on duty under the influence of intoxicants or drugs	3- to 30-day suspension	14-day suspension to removal	Removal
b. Operating a government-owned or -leased vehicle while under the influence of intoxicants or illegal drugs	5-day suspension to removal	Removal	
c. Selling or distributing of illegal drugs on government-owned or -leased premises	14-day suspension to removal	Removal	
16. Safety and health violations			
Failure to observe safety and health regulations, instructions, and/or posted rules	Reprimand to 30-day suspension	Reprimand to removal	5-day suspension to removal
17. Security violations			
a. Failure to safeguard classified material			
(1) Where such does not result in actual compromise of the material	Reprimand to 5-day suspension	5- to 30-day suspension	10-day suspension to removal
(2) Where such does result in compromise of the material	14-day suspension to removal	30-day suspension to removal	Removal
b. Unauthorized release of draft or restricted GAO reports or other official information contrary to law and regulation	Reprimand to 30-day suspension	30-day suspension to removal	Removal

Notes:

^aAbsence must be carried on the time and attendance reports or WebTA time and attendance system as absences without leave (AWOL).

^bExcept where unauthorized absence is for 5 or more consecutive days; first offense does not occur until after employee has been counseled.

^cFirst offense does not occur until after employee has been counseled.

^dIn addition, see 18 U.S.C. 641, 643, and 654 for possible criminal penalties.

^eSee 18 U.S.C. 1719 for criminal penalties in cases of misuse of franking privileges.

^fSee GAO Order 0645.1, Limited Personal Use of Government-Provided Office and IT Equipment, Including Internet.

^gSexual harassment is defined in Title VII of the Civil Rights Act of 1964, as amended. Although in some circumstances certain behaviors of a sexual nature may not meet the Title VII definition, they may violate agency conduct standards. These behaviors constitute unprofessional conduct of a sexual nature. The following list provides a few examples of behaviors that would violate agency conduct standards, even though they may not meet the legal definition of sexual harassment: unwelcome whistling, staring, or leering at another person; making pejorative comments or taking actions based upon another employee's sexual orientation; unwelcome questions or comments about another person's sexual activities, dating, or personal or intimate relationships or appearance; unwelcome sexually suggestive or flirtatious gifts; conduct or remarks that are sexually suggestive or that demean or show hostility to a person because of the person's gender; displays or circulation of pictures, videos, objects, or written materials that are sexually suggestive or explicit or that demean or show hostility to a person because of the person's gender; unwelcome sexually suggestive, explicit, or flirtatious letters, notes, e-mails or voicemails; and meetings or entertainment of GAO personnel at an establishment with personnel attired sexually, suggestively, or explicitly or providing entertainment of a sexually suggestive or explicit nature. Regardless of whether an employee's actions violate Title VII or agency conduct standards, disciplinary action may be taken after unit management has determined that the misconduct has occurred. It does not require a formal sexual harassment complaint, or a decision by GAO, the GAO Personnel Appeals Board, or a federal court on a complaint.

^hSee chapter 3 of GAO Order 2735.1, Code of Ethics Including Employee Responsibilities and Conduct for detailed information, including exceptions to basic prohibitions on solicitation and acceptance of gifts.

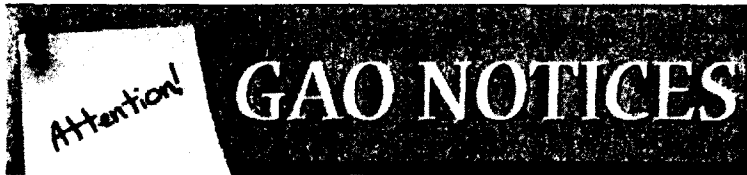
ⁱIn addition, late filers of Senate Public Financial Disclosure Report are subject to fines of \$200.

^jDisciplinary action may be taken after an appropriate GAO manager has determined that misconduct has occurred. It does not require a decision by GAO, the GAO Personnel Appeals Board, or a federal court on a formal discrimination or reprisal complaint.

GAOWeb

Everything

Search



[Home](#) | [About Notices](#) | [GAO Acronyms](#)

Browse Individual Notices

[« Previous Notice](#) | [Home](#) | [Next Notice »](#)

February 10, 2015

Annual Notice of Right to Request Union Representation During Investigation

As required by Chapter 2, paragraph 4.(1)(b) of GAO Order 2711.1, "Labor-Management Relations" (August 14, 2013), and consistent with the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7114(a)(3), bargaining unit employees are hereby notified that they have a representational right with regard to certain investigations conducted by the Agency. Specifically the statute provides as follows:

(2) An exclusive representative of an appropriate unit shall be given the opportunity to be represented at --

(B) any examination of an employee in the unit by a representative of GAO in connection with an investigation if --

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee and

(ii) the employee requests representation.

Additional Information and Questions

Contact [Shannon Schmidt](#) at 202-512-8007.

Posted to [Policy/Prgram Updates](#) at 3:36 PM

Find Notices By...

► Keyword



► Category

Select Category

► Month

Select Month

[Subscribe to feed](#)

GAO FY 2015 Plan for Staff Training
on Antidiscrimination and Whistleblower Protection Laws

Pursuant to 5 C.F.R. § 724.203, GAO has adopted the following training plan:

A. Instructional materials and method of training:

GAO has developed a Powerpoint presentation of slides that describe the rights and remedies available to GAO employees under the antidiscrimination laws and whistleblower protection laws. This is a web-based course available to all employees through SkillSoft, GAO's on line training system. The training course is called "Rights and Protections under Antidiscrimination and Whistleblower Protection Laws". The course includes references to GAO Orders and policies such as on the discrimination complaint processing system, the Americans with Disabilities Act, and sexual harassment protections, each of which are available to all employees on GAO's intranet.

B. Training schedule:

In the winter of 2016 GAO conducted its sixth cycle of training, which was concluded in March 2016. All employees (including supervisors and managers) other than those covered by paragraph D below, are required to take the training.

C. Means of documenting completion of training:

SkillSoft, GAO's web-based training system, provides a mechanism for determining who has taken the training and the date of its completion. GAO will run periodic reports to obtain this information.

D. New employee training:

As part of mandatory new employee orientation sessions, all new employees are required to take the No Fear course within their first 90 days at GAO. GAO's Learning Center will monitor the data with regard to new employees to ensure compliance with this requirement.



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

August 22, 2016

The Honorable Loretta Lynch
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

RECEIVED
DEPT. OF JUSTICE
EXECUTIVE SECRETARIAT
AUG 23 2016

Dear Attorney General Lynch:

The purpose of this letter is to provide an update on the overall status of the Department of Justice's (DOJ) implementation of GAO's recommendations and to call your continued personal attention to areas where open recommendations should be given high priority. In our 2015 Performance and Accountability Report, we reported that on a government wide basis, 79 percent of our recommendations were implemented.¹ DOJ has implemented about 76 percent of our recommendations and has 132 open recommendations. Fully implementing these open recommendations could significantly improve agency operations.

Since our January 20, 2016 letter to you that first outlined eight priority recommendations, DOJ has implemented three of them—two related to grants management and one related to incarceration. Specifically, DOJ has taken actions to (1) identify and assess its grant programs to gain a better understanding of the extent to which those programs overlap and (2) implement a shared grantmaking system so that DOJ granting agencies can more effectively coordinate grant activities. These efforts will help the department mitigate the risks of future unnecessary duplication in its grant making activities, as well as inform its development of grantmaking policies and procedures. DOJ has also developed an updated evaluation plan of the Bureau of Prison's (BOP) 18 national reentry programs. This plan identifies the factors BOP considered in developing the priority order for each evaluation and describes the resources required and the targeted dates for completing each one. This updated plan will position BOP to comprehensively measure the effectiveness of its reentry related efforts.

At this time, we have identified four additional priority recommendations related to the Federal Bureau of Investigation (FBI) whistleblower retaliation complaints, bringing the total number of open priority recommendations to nine. These new priority recommendations as well as the ones that remain open fall into the following four major areas listed below. (See enclosure I for a list of open recommendations related to these new areas and the status of the January 2016 priority recommendations that remain open.) While you may have already taken some actions towards addressing the recommendations, we outline additional actions that need to be taken for us to consider the recommendation fully addressed.

¹Experience has shown that it takes time for some recommendation to be implemented. For this reason, we measure the percentage rate of recommendations implemented made 4 years prior to a given fiscal year (e.g., the fiscal year 2015 implementation rate is the percentage of recommendations made in fiscal year 2011 products that were implemented by the end of fiscal year 2015).

- **Grants Management.** We have one priority recommendation open in this area. Our prior letter noted that, in July 2012, we made three priority recommendations to the department, two of which have since been implemented. The recommendation that remains open relates to the establishment of policies and procedures to govern the coordination across the department's three granting agencies. In early July 2016, the department reported that it had drafted policies and procedures and had sent them to management for signature. However, the policies and procedures are not yet final. Finalizing such policies and procedures will provide guidance to DOJ granting agencies to help ensure they take action to mitigate the risks of unnecessary duplication before finalizing award decisions.
- **Incarceration.** We have two priority recommendations open in this area. Our prior letter noted that, in June 2015, we recommended that DOJ better measure its progress in addressing the federal incarceration challenges of crowding, rising costs, and offender recidivism through three key initiatives that it had recently implemented. The department has addressed one of our recommendations—related to evaluating reentry programs—and we have closed this recommendation as implemented. However, it has not provided any further status update for how it plans to enhance Smart on Crime performance indicators or track delays for reviewing petitions of sentence commutations. By fully implementing these recommendations, DOJ will be better positioned to measure the progress of its initiatives and the degree to which each is effectively addressing crowding, rising costs, and recidivism.
- **Information Sharing.** We have two priority recommendations in this area. In April 2013, we recommended that DOJ, the Department of Homeland Security (DHS), and the Office of National Drug Control Policy (ONDCP) collaborate to develop a mechanism—such as performance metrics—to hold five types of field-based information sharing entities with overlapping activities accountable for coordinating with one another.² Such a mechanism could help the 268 units of these field-based entities across the country avoid unnecessary overlap in conducting analytical and investigative support activities related to combatting terrorism and other crimes and leverage existing resources. We also recommended that DOJ, DHS, and ONDCP collaborate to identify characteristics of field-based information sharing entities that could enhance coordination and reduce unnecessary overlap—such as cross-entity participation on governance boards and colocation of entities—and assess specific geographic areas in which such practices could be further applied. A collaborative assessment of where practices that enhance coordination can be applied to reduce overlap and leverage resources would allow DOJ, DHS, and ONDCP to provide recommendations or guidance to field-based entities on implementing these practices.
- **FBI Whistleblower Retaliation Complaints.** We have four priority recommendations in this area. In January 2015, we recommended improvements to DOJ's handling of FBI whistleblower retaliation complaints. Specifically, we recommended that DOJ clarify guidance to clearly convey to whom FBI employees can make protected disclosures,

²The five types of field-based information sharing entities we reviewed that support law enforcement and counterterrorism-related efforts are Joint Terrorism Task Forces, Field Intelligence Groups, Regional Information Sharing Systems centers, state and major urban area fusion centers, and High Intensity Drug Trafficking Area Investigative Support Centers.

provide complainants with estimated complaint decision timeframes, and develop an oversight mechanism to monitor DOJ's regulatory compliance. Committing to specific time frames for returning DOJ decisions on the outcomes of FBI whistleblower retaliation cases could help DOJ achieve its commitment to improving efficiency in handling these complaints. Further, establishing an oversight mechanism to monitor DOJ Office of Professional Responsibility (OPR) investigators' compliance with regulatory reporting requirements can assist DOJ in ensuring that complainants receive timely information they need to make informed decisions regarding their complaints. We also recommended that DOJ's OPR, Office of the Inspector General, Office of Attorney Recruitment and Management, and Office of the Deputy Attorney General—the four entities responsible for handling these complaints—jointly assess the impact of ongoing and planned efforts to reduce the duration of FBI whistleblower retaliation complaints to ensure that these changes are in fact shortening total complaint length, without sacrificing quality. DOJ concurred with each of these recommendations but has not responded to our requests for updates on any efforts taken to address them.

Since 1990, we have maintained a High Risk List to call attention to government operations that are high risk due to their vulnerabilities to fraud, waste, abuse, and mismanagement, or that are in need of transformation.³ Our High Risk program has served to identify and help resolve serious weaknesses in areas that involve substantial resources and provide critical service to the public. Progress has been possible through the concerted actions and efforts of the administration, Congress, and agencies. One area that the department touches upon that is included in our High Risk list is the area of Terrorism-Related Information Sharing. In addition to maintaining leadership commitment and capacity, key departments, such as DOJ (and the FBI), will need to continue working to address remaining action items, including enhancing monitoring of ongoing initiatives, and demonstrating progress meeting established timeframes and milestones. These implemented actions would contribute to addressing the high risk area. We hope that progress can continue to be made in this important area. Two recommendations from our 2013 report on field-based information sharing entities are included in this high-risk area.

We also call your attention to three other government-wide High Risk areas that pertain to the department's operations—(1) ensuring the security of federal information systems and cyber critical infrastructure and protecting the privacy of personally identifiable information, (2) strategic human capital management, for which we offer GAO's work on best practices, and (3) improving the management of IT acquisitions and operations.⁴ Continuing management attention in these three areas is needed.

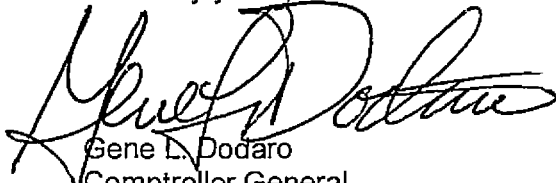
I appreciate the Department of Justice's continued commitment to these important issues. If you have any questions or would like to discuss any of the issues outlined in this letter, please do

³ GAO, *High Risk Series: An Update*, GAO-15-290 (Washington, D.C.), Feb. 11, 2015.

⁴ See, for example, GAO's web page on these leading practices at http://www.gao.gov/key_issues/leading_practices_in_human_capital_management/issue_summary. See also, GAO, *Federal Workforce: Additional Analysis and Sharing of Promising Practices Could Improve Employee Engagement and Performance*, GAO-15-585 (Washington, D.C.), July 14, 2015.

not hesitate to contact me or George A. Scott, Managing Director, Homeland Security and Justice Team at ScottG@gao.gov or (202) 512-5932. We will continue to coordinate with your staff on all of the 132 open recommendations.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gene L. Dodaro". The signature is fluid and cursive, with the first name "Gene" being more prominent.

Gene L. Dodaro
Comptroller General
of the United States

Enclosure

cc: George A. Scott

DOJ Priority Recommendations

Grants Management Area

Justice Grant Programs: DOJ Should Do More to Reduce the Risk of Unnecessary Duplication and Enhance Program Assessment, GAO-12-517, Washington, D.C.: July 12, 2012

Action needed: Establish policies and procedures to guide coordination across the granting agencies

Recommendation: To ensure that the Department of Justice (DOJ) can identify overlapping grant programs to either consolidate or coordinate similar programs, mitigate the risk of unnecessary grant award duplication in its programs, and enhance DOJ's ability to gauge grant program effectiveness, we recommend that the Attorney General coordinate within and among granting agencies on a consistent basis to review potential or recent grant awards from grant programs that DOJ identifies as overlapping, including subgrant awards reported by prime grant awardees, to the extent possible, before awarding grants. DOJ should also take steps to establish written policies and procedures to govern this coordination and help ensure that it occurs.

Status: DOJ has a number of ongoing activities across its granting agencies to facilitate greater coordination, particularly during the application and award processes. According to DOJ officials, they drafted policies and procedures and sent them to management for signature in July, 2016. However, the policies and procedures are not yet final and it will take some time to incorporate them into the existing grants management manual. Once the granting agencies have finalized these policies and incorporated them into existing documents that guide their grants management efforts, they should be better positioned to ensure the consistency and continuity of their practices.

Director: Diana C. Maurer

Contact information: MaurerD@gao.gov and (202) 512-9627

Incarceration Area

Federal Prison System: Justice Could Better Measure Progress Addressing Incarceration Challenges, GAO-15-454, Washington, D.C.: June 19, 2015

Action needed: Explore additional data collection opportunities and modify performance indicators for the Smart on Crime initiative—a multi-component DOJ initiative that aims to comprehensively reform the criminal justice system.

Recommendation: To ensure that DOJ effectively measures its efforts to address incarceration challenges, the Attorney General should explore additional data collection opportunities and modify its Smart on Crime indicators to incorporate key elements of successful performance measurement systems.

Status: In June 2015, we reported that DOJ had created key indicators intended to measure the success of the Smart on Crime Initiative. However, when we reviewed these indicators, we found them to be lacking three key elements of successful performance measurement systems

that we have reported on in the past, including clarity, measurable targets, and the inclusion of appropriate contextual information, such as factors inside or outside the agency's control that might affect the measure. DOJ agreed that its indicators should be clearer and contain appropriate contextual information, and in August 2015, DOJ reported that it has taken steps to obtain new, more granular data elements that it hopes to incorporate into its indicators. However, as of May 2016, DOJ had not provided us with updated indicators. Until DOJ provides this information, we cannot determine whether its efforts resulted in indicators that incorporate key elements of successful performance measurement systems.

In addition, in August 2015, DOJ stated that it did not believe that measurable targets are appropriate for its Smart on Crime indicators because prosecutors need to make case by case decisions without regard to targets or concerns for any other incentive. We agree that prosecutors should not be forced to choose between charging an individual and failing to advance a measurable target, and would not advocate developing or implementing performance measures in a manner that creates perverse incentives for prosecutorial decision-making. At the same time, performance measures and associated measurable targets have been a helpful tool in ensuring federal programs are making progress toward their stated goals. Measurable performance targets that are properly developed, communicated, and managed could help DOJ better assess the progress of its Smart on Crime Initiative.

Action needed: Track the average time for commutation of sentencing petitions to clear the steps in the review process under DOJ's control, and identify and assess, to the extent possible, processes that may contribute to unnecessary delays.

Recommendation: To ensure that DOJ effectively measures its efforts to address incarceration challenges, the Attorney General should direct the Office of the Pardon Attorney, in conjunction with the Office of the Deputy Attorney General (ODAG), to (1) track how long it takes, on average, for commutation of sentencing petitions to clear each step in the review process under DOJ's control, and (2) identify and address, to the extent possible, any processes that may contribute to unnecessary delays.

Status: We reported in June 2015 that, for its new Clemency Initiative—which encourages federal inmates meeting DOJ established criteria to petition to have their sentences commuted, or reduced, by the President—DOJ tracks the number of petitions received, the status of each petition in the review process, and the disposition of each petition, but it does not track how long it takes for petitions to clear each step in the review process before it sends petitions to the White House. In August 2015, DOJ reported that tracking the steps of its review would not provide meaningful data because the department prioritizes those cases for review that appear likely to meet the Clemency Initiative factors announced in April 2014. Nevertheless, DOJ stated in its comments on our report that it agrees that identifying and addressing unnecessary delays in the review process is important, and regularly works to identify and address such delays. To fully address this recommendation, DOJ would need to begin to track the time it takes for petitions to clear each step in the review process. Doing so would better position DOJ to determine how well it is meeting the key goal of the new Clemency Initiative—to expeditiously identify and review especially meritorious petitions. Moreover, such tracking would help DOJ better identify and address any processes that may be contributing to delays to improve its overall review process.

Director: Diana C. Maurer

Contact information: MaurerD@gao.gov and (202) 512-9627

Information Sharing Area

Information Sharing: Agencies Could Better Coordinate to Reduce Overlap in Field-Based Activities, GAO-13-471, Washington, D.C.: April 4, 2013

Action needed: Improve coordination to reduce overlap in analytical and investigative support activities of five field-based information sharing entities that may collect, process, analyze, or disseminate information in support of law enforcement and counterterrorism-related efforts—Joint Terrorism Task Forces (JTTF), Field Intelligence Groups (FIG), Regional Information Sharing Systems (RISS) centers, state and major urban area fusion centers, and High Intensity Drug Trafficking Area (HIDTA) Investigative Support Centers.

Recommendation: To promote coordination as a practice to help avoid overlap, the Secretary of Homeland Security, the Attorney General, and the Director of the Office of National Drug Control Policy (ONDCP) should collaborate to develop a mechanism—such as performance metrics related to coordination—that will allow them to hold field-based information-sharing entities accountable for coordinating with each other and monitor and evaluate the coordination results achieved.

Status: DOJ, in coordination with the Department of Homeland Security (DHS) and ONDCP, has made progress toward addressing our April 2013 recommendation but has not included all of the relevant field-based information sharing entities in its efforts. Through their involvement in an interagency policy committee within the Executive Office of the President, DHS, DOJ, and ONDCP have developed a mechanism to hold state and urban area fusion centers, RISS centers, and HIDTA Investigative Support Centers accountable for coordinating their analytical and investigative activities. However, the agencies have not fully addressed the action because DOJ's Federal Bureau of Investigation's (FBI) JTTFs and FIGs, two of the five field-based entities included in our April 2013 report, have not participated in the assessment on which the mechanism is based.

In December 2015, DHS developed a field-based partners report in which DHS, DOJ and ONDCP reported data for state and urban area fusion centers, RISS centers, and HIDTA Investigative Support Centers. These data were focused on field-based collaboration, including governance, colocation, and other information sharing, analytic, and deconfliction-focused topics. However, the report did not include data for DOJ's JTTFs or FIGs. DOJ has noted that JTTFs and FIGs are different from the other entities because JTTFs are operational law enforcement investigative entities and FIGs provide intelligence support to FBI Field Offices. However, our April 2013 report identified areas in which the missions and activities of JTTFs and FIGs overlapped with those of the other entities and that coordination with other field based entities was important to prevent unnecessary overlap and potential duplication. Considering the exclusion of two of the five entities, the agencies do not have a collective mechanism that can hold FIGs and JTTFs accountable for coordinating with the other field-based information sharing entities and allow the agencies to monitor progress and evaluate results across entities. Such a mechanism can help entities maintain effective relationships when new leadership is assigned and avoid unnecessary overlap in activities, which in turn can help entities to leverage scarce resources. As of August 2016, DOJ has not provided any updated information on actions taken.

Recommendation: To help identify where agencies and the field-based entities they support could apply coordination mechanisms to enhance information sharing and reduce inefficiencies

resulting from overlap, the Secretary of Homeland Security, the Attorney General, and the Director of ONDCP should collaborate to identify characteristics of entities that could enhance coordination and reduce unnecessary overlap—such as cross-entity participation on governance boards and colocation of entities—and assess specific geographic areas in which such practices could be further applied, and use the results to provide recommendations or guidance to the entities on implementing these practices.

Status: DOJ, in coordination with DHS and ONDCP, has made progress toward addressing our April 2013 recommendation but has not included all of the relevant field-based information sharing entities in its efforts. The three agencies have taken the necessary steps to assess the extent to which practices that can enhance coordination are being implemented at state and urban area fusion centers, RISS centers, and HIDTA Investigative Support Centers through their involvement in an interagency policy committee within the Executive Office of the President. However, the assessment did not include DOJ's FBI's JTTFs or FIGs, two of the five field-based entities included in GAO's April 2013 report. In December 2015, DHS, DOJ, and ONDCP developed a field-based partners report in which DOJ and ONDCP collected and reported data elements for RISS centers and HIDTA Investigative Support Centers similar to those DHS uses in its annual fusion center assessment. These data were focused on field-based collaboration, including governance, colocation, and other information sharing, analytic, and deconfliction-focused topics. However, the report did not include data for DOJ's FBI JTTFs or FIGs. A collaborative assessment of where practices that enhance coordination can be applied to reduce overlap, collaborate, and leverage resources for all five field-based information-sharing entities would allow the agencies to provide recommendations or guidance to the entities on implementing these practices. As of August 2016, DOJ has not provided any updated information on actions taken.

Director: Diana C. Maurer

Contact information: MaurerD@gao.gov and (202) 512-9627

Whistleblower Protection Area

Whistleblower Protection: Additional Actions Needed to Improve DOJ's Handling of FBI Retaliation Complaints, GAO-15-112, Washington, D.C.: January 23, 2015

Action needed: Clarify guidance to clearly convey to whom FBI employees can make protected disclosures.

Recommendation: To better ensure that FBI whistleblowers have access to recourse under DOJ's regulations should the individuals experience retaliation, and to minimize the possibility of discouraging future potential whistleblowers, we recommend that the Attorney General clarify in all current relevant DOJ guidance and communications, including FBI guidance and communications, to whom FBI employees may make protected disclosures and, further, explicitly state that employees will not have access to recourse if they experience retaliation for reporting alleged wrongdoing to someone not designated in DOJ's regulations.

Status: DOJ concurred with this recommendation but, as of August 2016, has not responded to our requests for updates on any efforts taken to address it.

Action needed: Provide complainants with estimated time frames for returning decisions in FBI whistleblower retaliation cases.

Recommendation: To better ensure that DOJ is fulfilling its commitment to improving efficiency in handling these complaints, we recommend that the heads of Office of Attorney Recruitment and Management (OARM) and ODAG provide parties with an estimated time frame for returning each decision, including whether the complaint meets threshold regulatory requirements, merits, and appeals. If the time frame shifts, OARM and ODAG should timely communicate a revised estimate to the parties.

Status: DOJ concurred with this recommendation but, as of August 2016, has not responded to our requests for updates on any efforts taken to address it.

Action needed: Assess the impact of ongoing and planned efforts to reduce the duration of FBI whistleblower retaliation complaints.

Recommendation: To better ensure that DOJ is fulfilling its commitment to improving efficiency in handling these complaints, we recommend that the heads of the DOJ Office of Professional Responsibility (DOJ-OPR), Office of the Inspector General, OARM, and ODAG jointly assess the impact of ongoing and planned efforts to reduce the duration of FBI whistleblower retaliation complaints throughout the entire investigation, adjudication, and appeal process to ensure that these changes are in fact shortening total complaint length, without sacrificing quality.

Status: DOJ concurred with this recommendation but, as of August 2016, has not responded to our requests for updates on any efforts taken to address it.

Action needed: Develop an oversight mechanism to monitor DOJ-OPR's compliance with regulatory requirements and use that information to identify opportunities for improvement.

Recommendation: To ensure that complainants receive the periodic updates that they are entitled to and need to determine next steps for their complaint, such as whether or not to seek corrective action from OARM, we recommend that Counsel, DOJ-OPR tailor its new case management system or otherwise develop an oversight mechanism to capture information on the office's compliance with regulatory requirements and, further, use that information to monitor and identify opportunities to improve DOJ-OPR's compliance with regulatory requirements.

Status: DOJ concurred with this recommendation but, as of August 2016, has not responded to our requests for updates on any efforts taken to address it.

Director: Diana C. Maurer

Contact information: MaurerD@gao.gov and (202) 512-9627



441 G St. N.W.
Washington, DC 20548

March 24, 2017

Congressional Recipients
The Attorney General
Chair, Equal Employment Opportunity Commission

Enclosed please find the information required pursuant to the annual reporting requirement set forth in section 203 of the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002" (No Fear Act), Pub. L. No. 107-174 (May 15, 2002).

Attachment A contains the information required under section 203(a)(1) through (a)(3) of the No Fear Act. The chart includes data for Fiscal Year (FY) 2016, as required in section 203(a)(5). Attachment B contains the final year-end data as required in section 203(a)(5).

Section 203(a)(4) requires that GAO submit data on the number of employees disciplined for discrimination, harassment, or any other infraction of the laws referred to in section 203(a)(1) for FY 2016. During the fiscal year in question, there were no findings of discrimination or other infractions of law and therefore no employees were disciplined for such actions.

Section 203(a)(6) requires that GAO provide a description of its policy relating to appropriate discipline against any employee who violates any of the laws cited under section 201(a)(1) or (2) or commits another prohibited personnel practice revealed in the investigation of a complaint alleging a violation of any of the laws cited in section 201(a)(1) or (2). GAO's policy is set forth in GAO Order 2751.1, Discipline and Adverse Actions (Jan. 16, 2013), Attachment C, which sets forth the procedural steps and due process rights of employees who are disciplined at GAO. Appendix 1 of this Order provides the types of disciplinary actions that can be taken and chapter 2, para. 1b of the Order lists the factors to be considered prior to taking action. The appendix contains a table of penalties ranging from suspension to removal for individuals in violation of the laws covered by the No Fear Act (see Appendix, paragraphs 4 and 14). Because a portion of GAO employees are represented by the GAO Employees Organization, International Federation of Professional and Technical Engineers, GAO posts each year a notice providing additional rights for bargaining unit employees during certain investigations conducted by the agency. See Attachment D.

Section 203(a)(7) requires that GAO provide an analysis of the information described in paragraphs 1 through 6, including an examination of trends, practical knowledge gained through experience and any actions planned or taken to improve complaint or civil rights programs of the agency. As indicated in Attachment A in FY 2016, 1 case was filed in district court and, as indicated in Attachment B, 3 complaints were filed with GAO's Office of Opportunity and Inclusiveness (O&I) (its EEO office). Of the 3 cases filed in O&I in FY 2016, 1 remained open at the end of FY 2016. Overall, given GAO's population of approximately 3000 employees in FY 2016, the complaint filings in O&I in FY 2016 remain quite low.

As required by the No Fear Act and regulations, GAO continued to provide training to its staff in a course entitled "Rights and Protections Under Antidiscrimination and Whistleblower Protection Laws." All new employees were provided this training as part of their orientation session or

2017 MAR 28 AM 10:52

RECEIVED
DEPT OF JUSTICE
SECRETARIAT

within 90 days of their start date at GAO. It concluded its sixth cycle of training in March 2016. Attachment E contains GAO's training plan. GAO also maintains a No Fear Act Notice posted on the internet and its intranet, which informs employees, former employees, and applicants of the rights and protections available to them under antidiscrimination and whistleblower protection laws.

As part of GAO's commitment to equal opportunity, diversity, and inclusion, in FY 2016 we continued to monitor the composition of our workforce, outcomes from key human capital processes and the views of our employees. We continued to have a diverse workforce. At the end of FY 2016, 33.0 percent of the GAO staff were minorities, 57.0 percent were women, 59.0 percent were 40 years old and over and 4.0 percent identified themselves as having a disability. We continued our reviews of employee performance appraisal and promotion data—a program initially started in FY 2003. Hence, as in past years, the Chief Human Capital Officer (CHCO) and the Managing Director for Opportunity and Inclusiveness reviewed performance appraisal and promotion data from each team. They examined the data by protected class for consistency within teams and to provide reasonable assurance that the systems were operating in a fair, merit-based and non-discriminatory manner. Where concerns were noted, the Managing Director for Opportunity and Inclusiveness conducted individual assessments, and if necessary, met with team Managing Directors or the heads of promotion panels in an effort to reconcile any concerns regarding the sufficiency of merit-based support for appraisals and promotion determinations. Additionally, managers from the Human Capital Office analyzed the appraisal and promotion data. Based on these reviews, we determined that no remedial efforts were needed. As for employee views, our FY 2016 employee survey results show that over 80 percent of the employees who responded gave positive responses to the three diversity and inclusion questions. Also, based on the employee survey results, the Partnership for Public Service rated GAO number one in support of diversity in its 2016 best places to work rankings.

We continued to offer and support training and activities designed to enhance understanding of diversity and inclusion issues in FY 2016. For example, we began offering the "Creating and Sustaining a More Inclusive Organization" to all of our mid-level managers in the late spring of 2016. Our executive and senior leaders had already completed this course in FY14-15. This course helps our leaders and managers explore and share thoughts and personal experiences about race and culture in order to deepen their awareness and understanding of the dynamics of diversity and inclusion and to examine the impact on leaders, employees, and the organization. By the end of 2016, half of our managers had completed this course. In 2016, we also continued to provide information, through panels and guest speakers, on gender identity.

Additionally, in FY 2016 we took other steps to demonstrate the agency's continued commitment to remaining a leader in promoting a diverse and inclusive workplace. For example, we held 28 employee focus group sessions to help determine the best way to operationalize our "People Values" initiative. Through these people values, we seek to create and maintain a work environment where every employee is respected, valued, and treated fairly, and all are provided opportunities to develop to their full potential. Our Gender Identity and Inclusion Group established in FY 2015 to examine issues relevant to gender identity and gender transition in the workplace led the agency's effort to implement new Gender Identity and Expression Guidelines and Transition policies. Finally, we continued to provide reasonable accommodations to staff and applicants, host our month long diversity and inclusion celebration in June (FY 2016 was the 20th Anniversary) and support our employee groups.

Section 203(a)(8) requires that GAO provide information concerning any adjustment to the budget that has been needed to comply with section 201, which requires reimbursement to the Judgment Fund of monies paid in judgments or settlements in connection with proceedings brought under the laws cited therein. Since GAO did not make any payments to the Judgment Fund in FY 2016, it has not made any adjustment to its budget to comply with this provision.

We trust this information is responsive to the reporting requirements of the No Fear Act. Please contact Joan M. Hollenbach, Managing Associate General Counsel, at 512-8404 if you have questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "S. Poling".

Susan A. Poling
General Counsel

Enclosures

List of Recipients

The Honorable Michael R. Pence
The President of the Senate

The Honorable Paul Ryan
Speaker of the House of Representatives

The Honorable Orrin G. Hatch
President Pro Tempore
United States Senate

The Honorable Thad Cochran
Chairman
The Honorable Patrick Leahy
Ranking Member
Committee on Appropriations
United States Senate

The Honorable Ron Johnson
Chairman
The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable James Lankford
Chairman
The Honorable Christopher Murphy
Ranking Member
Subcommittee on Legislative Branch
Committee on Appropriations
United States Senate

The Honorable Rodney Frelinghuysen
Chairman
The Honorable Nita Lowey
Ranking Member
Committee on Appropriations
House of Representatives

The Honorable Jason Chaffetz
Chairman
The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

The Honorable Kevin Yoder
Chairman
The Honorable Timothy Ryan
Ranking Member
Subcommittee on Legislative Branch
Committee on Appropriations
House of Representatives

The Honorable Jeff B. Sessions ✓
The Attorney General

The Honorable Victoria Lipnic
Acting Chair
Equal Employment Opportunity Commission

The Honorable Kathleen McGettingan
Acting Director
Office of Personnel Management

**SUMMARY OF ALLEGATIONS IN FEDERAL CASES PENDING DURING
FISCAL YEAR 2016 BY LAWS COVERED IN SECTION 203**

(October 1, 2015 thru September 30, 2016)

Laws Alleged to have been Violated	Number of Allegations*
42 U.S.C. § 2000e-16	1
5 U.S.C. § 2302(b)(1)	0
5 U.S.C. § 2302(b)(8)	0
5 U.S.C. § 2302(b)(9)	0
29 U.S.C. §§ 631, 633a	3
42 U.S.C. § 12101**	1
29 U.S.C. § 206(d)	0
29 U.S.C. § 791	0
5 U.S.C. § 2302(d)(5)	0

*One new case was filed in FY 2016, one previously filed case was dismissed, and three previously filed cases remain pending in FY 2016. As shown above, these four cases contained five allegations of violation of three of the laws listed above.

**GAO is covered by the Americans with Disabilities Act, 42 U.S.C. § 12101, rather than the Rehabilitation Act, 29 U.S.C. § 791.

U.S. GOVERNMENT ACCOUNTABILITY OFFICE (GAO) SECTION 203 NO FEAR REPORT

FEDERAL CASES PENDING DURING FISCAL YEAR 2016 (October 1, 2015 thru September 30, 2016)

Case	Laws Alleged To Have Been Violated	Year Filed	Status/Disposition	Amount Reimbursed to Judgment Fund
A	42 U.S.C. § 12101	2016	Parties are currently in discovery until October 2, 2017.	0
B	42 U.S.C. § 2000e-16	2015	On November 24, 2015, Judge Colleen Kollar-Kotelly granted GAO's motion to dismiss. Plaintiff had until January 25, 2016 to file an appeal, but did not do so.	0
C	29 U.S.C. §§ 631, 633a	2006	On January 12, 2012, Judge Royce C. Lamberth granted GAO's motion for summary judgment. On February 9, 2012, Plaintiff filed a motion to alter or amend the January 12, 2012 judgment. GAO filed a response February 26, 2012. An order denying motion to alter or amend judgment was issued on April 20, 2012. Plaintiff filed an appeal on June 22, 2012, in the U.S. Court of Appeals for the District of Columbia. GAO filed a motion for summary affirmance on September 27, 2012, in the Court of Appeals. GAO's motion was denied on March 25, 2013. The case is fully briefed and the parties are waiting for a decision on the merits.	0
D	42 U.S.C. § 2000e-16 29 U.S.C. §§ 631, 633a	2000	Pending	0
E	29 U.S.C. §§ 631, 633a	1987	Motion to dismiss granted on March 30, 2012. Plaintiff filed an appeal on May 31, 2012, in the U.S. Court of Appeals for the District of Columbia. GAO filed a motion for summary affirmance on August 15, 2012, in the Court of Appeals. GAO's motion was denied on March 25, 2013. The case is fully briefed and the parties are waiting for a decision on the merits.	0

*GAO is covered by the Americans with Disabilities Act, 42 U.S.C. § 12101, rather than the Rehabilitation Act, 29 U.S.C. § 791.

No Fear Report
FY 2016

[illegible]

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					FY 2016 thru 9/30/16
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	
Total complaints from previous Fiscal Years	2	2	6	5	2	0
Total Complainants	1	2	6	5	2	1
Number complaints pending						
Investigation	0	1	0	0	0	1
Hearing	0	0	0	0	0	0
Final Action	3	2	1	1	2	0
Appeal with PAB/GC	6	2	2	3	4	4

Complaint Investigations	Comparative Data					FY 2016 thru 9/30/16
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	
Pending Complaints Where Investigations Exceeds Required Time Frames	0	0	0	0	0	0

No Fear Report
FY 2016

Complaint Activity	Comparative Data					FY 2016 thru 9/30/16
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	
Number of Complaints Filed	16	8	8	6	7	3
Number of Complainants	12	12	8	6	7	3
Repeat Filers	3	0	0	0	1	0

Complaints by Basis	Comparative Data					FY 2016 thru 9/30/16
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed .</i>						
Race	10	3	5	1	3	1
Color	1	1	3	0	0	0
Religion	1	0	0	0	0	0
Reprisal	7	3	2	1	2	1
Sex	9	0	4	4	4	2
National Origin	2	4	3	0	0	1
Equal Pay Act	0	0	0	0	0	1
Age	2	2	4	1	5	1
Disability	4	4	2	3	2	2
Genetic Information	0	0	0	0	0	0
Pregnancy Discrimination	0	0	0	0	0	0
Non-EEO	1	0	2	2	0	0

Complaints by Issue	Comparative Data					FY 2016 thru 9/30/16
	Previous Fiscal Year Data					
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>	2011	2012	2013	2014	2015	
Appointment/Hire	0	0	0	0	1	0
Assignment of Duties	0	1	3	1	1	0
Awards	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0
Removal	0	0	0	0	0	0
Suspension	0	0	0	0	0	0
Other	0	0	0	1	0	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	0	0	4	3	4	1
Examination/Test	0	0	0	0	0	0
Harassment						
Non-Sexual	3	1	2	0	2	2
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	7	0	0	0	0	1
Promotion/Non-Selection	0	2	1	2	3	0
Reassignment						
Denied	0	0	0	0	1	2
Directed	0	0	0	0	0	0
Reasonable Accommodation	0	3	1	1	2	2
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	1	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	2	1
Time and Attendance	0	0	0	0	0	0
Training	0	0	0	1	0	0
Other	11	2	7	2	0	0

No Fear Report
FY 2016

Processing Time	Comparative Data					FY 2016 thru 9/30/16
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	
Complaints pending (for any length of time) during fiscal year						
Average number of days in investigation stage	282	95	0	0	156	127
Average number of days in final action stage	61	54	334	384	337	138
Complaint pending (for any length of time) during fiscal year where hearing was requested						
Average number of days in investigation stage						
Average number of days in final action stage						
Complaint pending (for any length of time) during fiscal year where hearing was not requested						
Average number of days in investigation stage	282	95	0	0	156	127
Average number of days in final action stage	61	54	334	384	337	138

Complaints Dismissed by Agency	Comparative Data					FY 2016 thru 9/30/16
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	
Total Complaints Dismissed by Agency	13	7	5	3	10	3
Average days pending prior to dismissal						
	42	62	42	36	297	138
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	1	1	1	1	0	0

No Fear Report
FY 2016

Total Final Actions Finding Discrimination	Comparative Data										FY 2016 thru 9/30/16	
	Previous Fiscal Year Data											
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings												
Without Hearing												
With Hearing												

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data											
											FY 2016 thru 9/30/16	
2011		2012		2013		2014		2015				
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings												
Race												
Color												
Religion												
Reprisal												
Sex												
National Origin												
Equal Pay Act												
Age												
Disability												
Genetic Information												
Non-EEO												
Findings After Hearing												
Race												
Color												
Religion												
Reprisal												
Sex												
National Origin												
Equal Pay Act												
Age												
Disability												
Genetic Information												
Non-EEO												
Findings Without Hearing												
Race												
Color												
Religion												
Reprisal												
Sex												
National Origin												
Equal Pay Act												
Age												
Disability												
Genetic Information												
Non-EEO												

No Fear Report
FY 2016

Findings of Discrimination Rendered by Issue	Comparative Data Previous Fiscal Year Data										FY 2016 thru 9/30/16	
	2011		2012		2013		2014		2015		#	%
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings												
Appointment/Hire												
Assignment of Duties												
Awards												
Conversion to Full-time												
Disciplinary Action												
Demotion												
Reprimand												
Suspension												
Removal												
Other												
Duty Hours												
Evaluation Appraisal												
Examination/Test												
Harassment												
Non-Sexual												
Sexual												
Medical Examination												
Pay (Including Overtime)												
Promotion/Non-Selection												
Reassignment												
Denied												
Directed												
Reasonable Accommodation												
Reinstatement												
Retirement												
Termination												
Terms/Conditions of												
Time and Attendance												
Training												
Other												
Findings After Hearing												
Appointment/Hire												
Assignment of Duties												
Awards												
Conversion to Full-time												
Disciplinary Action												
Demotion												
Reprimand												
Suspension												
Removal												
Other												
Evaluation Appraisal												
Examination/Test												
Harassment												
Non-Sexual												
Sexual												
Medical Examination												
Pay (Including Overtime)												
Promotion/Non-Selection												
Reassignment												
Denied												
Directed												
Reasonable Accommodation												
Reinstatement												
Retirement												
Termination												
Terms/Conditions of												
Employment												
Time and Attendance												
Training												
Other												



Order

2751.1

January 16, 2013*

Subject: DISCIPLINE AND ADVERSE ACTIONS

Chapter 1.	Purpose and General Information.....	3
	1. Purpose.....	3
	2. Supersession.....	3
	3. References.....	5
	4. Definitions.....	6
	5. Advice and Assistance from the Human Capital Office/Workforce Relations Center.....	8
	6. Alternative Discipline.....	8
	7. Timing of Disciplinary Actions.....	8
	8. Disciplinary Action Based on Off-Duty Misconduct.....	8
	9. Documentation.....	8
	10. Prohibition on Coerced Resignations or Retirements.....	9
	11. Standards for Taking Disciplinary and Adverse Actions.....	9
	12. Grievances and Appeals.....	9
	13. Actions Covered by Other Orders.....	9
Chapter 2.	Choosing among Disciplinary Actions	10
	1. Factors to Be Considered in Determining an Appropriate Penalty.....	10
	2. Letters of Reprimand.....	11
	3. Suspensions from Duty and Pay.....	11
	4. Reductions in Grade, Band, or Pay.....	12
	5. Removals.....	12
Chapter 3.	Suspensions for 14 Days or Less.....	12
	1. Purpose and Scope.....	12
	2. Employee Coverage.....	13
	3. Step 1—Proposing a Suspension.....	13
	4. Step 2—Deciding the Proposed Suspension.....	14
	5. Identification of Proposing and Deciding Officials.....	15
	6. Employees' Appeal Rights.....	15
	7. Documentation of Suspension.....	16
Chapter 4.	Removals, Reductions in Grade or Band, Reductions in Pay, Suspensions for More Than 14 Days, and Furloughs for 30 or Fewer Days	16
	1. Types of Adverse Actions Covered.....	16
	2. Types of Actions Not Covered.....	16
	3. Employee Coverage.....	17
	4. Step 1—Proposing an Adverse Action.....	17
	5. Step 2—Deciding the Proposed Adverse Action.....	19
	6. Identification of Proposing and Deciding Officials.....	19

	7. Employees' Appeal Rights.....	19
	8. Documentation of Adverse Actions.....	20
Appendix 1.	GAO Guide—Table of Penalties for Various Offenses.....	21

Chapter 1. Purpose and General Information

1. Purpose.

This order establishes the policies for initiating and taking disciplinary actions at the U.S. Government Accountability Office (GAO) and provides general management guidelines for discipline and adverse actions.

2. Supersession.

This order supersedes GAO Order 2751.1, Discipline, dated September 26, 2005, and GAO Order 2752.1, Adverse Actions, dated July 23, 2001. These orders have been combined.

- a. Changes have been made throughout this order to update organizational and title changes as a result of the Human Capital Office (HCO) reorganization and creation of the Workforce Relations Center (WRC). Changes have been made to clarify the role of WRC advisory services and GAO Counseling Services. Other edits have been for clarification purposes, including some within the definitions, or to update citations. For example,
 - (1) The definition of “removal” now includes performance as a factor that may result in an involuntary separation of an employee.
 - (2) The definition of “adverse action” references suspensions of more than 14 days (including suspensions or furloughs of 30 or fewer days).
 - (3) The definition of “indefinite suspension” has added the word “agency” to clarify that it is further agency action being referenced.
 - (4) The definition of “furlough” now clarifies that an employee can be placed in a temporary status without duty and pay “because of lack of work or funds.”
- b. The section on Alternative Discipline has been updated to provide examples of lesser disciplinary action and to allow alternative discipline only when agreed upon as appropriate by GAO and the employee.
- c. Several paragraphs in the section on “Prohibition on Coerced Resignations or Retirements” have been deleted regarding actions based on the status of the employee to reflect the advisory nature of WRC.
- d. In Chapter 2, paragraph 1, it is noted that managers should use certain factors as a guide for determining the penalty. It is also noted, however, that the list is not all-inclusive and some factors may not apply to every situation.
- e. Language has been added to reflect the establishment of bargaining units and that employees may have union representation when appropriate or may be required to use the negotiated grievance procedure contained within a collective bargaining agreement (CBA).
- f. In Chapter 2, the Letters of Reprimand section has been updated to reflect that the letter shall also inform the employee regarding his or her appeal rights concerning allegations of discrimination.
- g. Suspensions from Duty and Pay has been edited to clarify that an employee can be suspended, in part, when there is a reasonable cause to believe a crime has been committed for which a sentence of imprisonment may be imposed. In addition, GAO may

proceed with appropriate disciplinary action based on the underlying misconduct that led to the arrest regardless of whether there is a plea or conviction. Managers must consult with WRC/HCO before implementing any indefinite suspension.

- h.** In Chapter 3, Paragraph 2 and Chapter 4, paragraph 3 on Employee Coverage

 - (1)** Language has been added to indicate that both employees who have not completed the 2-year probationary period or, newly, that those employees who have not completed their 1-year probationary period due to prior federal service, are not covered.
 - (2)** Employees who are covered by a CBA are not covered by this chapter to the extent that the provisions of this chapter conflict with the CBA.
- i.** Employees now have 5 days, where feasible, to reply to the notice regarding a proposed suspension rather than the 3 days previously provided.
- j.** Language has been added to clarify that employees are allowed up to 4 hours of official time to review materials provided in support of a suspension or adverse action. Employees may also now present an oral and written reply to these notices rather than just an oral reply as previously provided.
- k.** Sections on contributory medical conditions have been deleted.
- l.** Chapter 3, paragraph 5, has been revised to provide the Chief Operating Officer (COO) with the authority, if deemed appropriate, to designate to the Chief Administrative Officer/Chief Financial Officer (CAO/CFO) the responsibility of acting as the deciding official in actions involving suspensions where the COO is supposed to perform this function. This chapter has been further revised to provide the CAO/CFO with the authority to designate the Director of Workforce Relations as the proposing official. Finally, this chapter has been further revised to clarify that the deciding official may be below the level of a managing director or equivalent if the proposing official is below the level of a director or equivalent.
- m.** Clarifies that the Personnel Appeals Board (PAB) regulations govern who can file charges of prohibited personnel practices. Employees who wish to file a prohibited personnel claim with the PAB should consult those regulations.
- n.** Updates have been made to reflect that WRC is responsible for maintaining the contents of official files related to discipline and adverse actions.
- o.** Several changes have been made to the Appendix 1. GAO Guide—Table of Penalties for Various Offenses.

 - (1)** Footnote 7 has been eliminated as it pertains to WRC guidance. The table has been clarified to differentiate and list separate penalty sections for government travel charge cards to include a delinquent or nonpayment offense, a misuse of card offense of \$500 or less value, and a misuse of card offense of greater than \$500 value.
 - (2)** The table has also been modified to include an offense concerning an employee's duty to cooperate with official investigations.
 - (3)** Further, the lowest level of formal penalty is now a reprimand, rather than an admonishment. Several types of offense have been updated to reflect this change. In

addition, because of this change, the first disciplinary action for the following offenses has changed from “admonishment to reprimand” to “reprimand to 1-day suspension.”

- (a) Insubordination – failure to submit required background forms within prescribed time frame or to attend scheduled security briefing.
 - (b) Negligent performance of duties – where waste or other cost is insubstantial.
 - (c) Violations of financial disclosure requirements – untimely filing of financial disclosure reports or requested amendment.
- p. Given the potential severity of the penalty, the time frame for failure to timely pay government-issued travel charge card bills has been defined to be within 90 days rather than 60 days.
- q. In addition, changes were made throughout the order for clarity, including:
 - (1) A definition was added for “Managers,” and the “Unit Head” definition was clarified. The order was updated throughout for consistent use of these terms and to eliminate use of “supervisor.”
 - (2) In Chapter 3, paragraph 2 and Chapter 4, paragraph 3 employees of the Office of Inspector General are now covered by this order.
 - (3) Chapter 3(2)(a)(3) has been added to note employees who are covered by a CBA are not covered by this chapter only to the extent that the provisions of this chapter conflict with a provision of the CBA.
 - (4) Chapter 3(3)(d)(2) clarifies that a written reply should be submitted no later than the oral reply meeting.
 - (5) Chapter 3(6)(b) clarifies that employees who are members of a bargaining unit covered by a collective bargaining agreement may grieve under the applicable negotiated grievance procedure.
 - (6) Chapter 4(3)(2) has been added to note employees who are covered by a CBA are not covered by this chapter to the extent that the provisions of this chapter conflict with the CBA.
 - (7) Chapter 4(4)(d) clarifies that a written reply should be submitted no later than the oral reply meeting.
 - (8) Appendix 1 has been updated for clarity, tone, and the word “illegal” added to the section on using or being under the influence of intoxicants or drugs while on official duty or reporting for duty or being on duty under the influence of intoxicants or drugs.

* Note: This order was updated on September 28, 2015, to include the protections from discrimination based on genetic information, pregnancy, or gender identity. No other updates were made.

3. References.

- a. 5 U.S.C. Chapter 75.
- b. 5 C.F.R. Part 752—Adverse Actions.

- c. 31 U.S.C. 732.
- d. 4 C.F.R., Subchapter A, Parts 2, 4, and 7.
- e. GAO Order 2315.1, Status, Tenure, and Trial Periods.
- f. GAO Order 2432.1, Dealing with Unacceptable Performance.
- g. GAO Order 2531.3, Within-Grade Salary Increases.
- h. GAO Order 2713.2, Discrimination Complaint Resolution Process.
- i. GAO Order 2731.1, Personnel Suitability for Employment.
- j. GAO Order 2752.2, Suspensions and Removals Taken in the Interest of National Security.
- k. GAO Order 2771.1, Administrative Grievance Procedure.
- l. GAO Order 2211.1, Veterans' Preference.
- m. GAO Order 2213.1, Positions Covered by Non-Competitive Appointments.
- n. GAO Order 2307.1, Veterans Readjustment Appointments.
- o. GAO Order 2316.1, Competitive Time Limited Employment.
- p. GAO Order 2317.1, GAO's Senior Executive Service and Senior Level Positions.
- q. GAO Order 2339.1, Medical Determinations.
- r. GAO Order 2351.1, Workforce Restructuring Procedures for the Government Accountability Office.
- s. GAO Order 2536.1, Pay Retention in the GAO.
- t. 42 U.S.C. §§ 2000ff, Genetic Information Nondiscrimination Act (GINA).
- u. 42 U.S.C. § 2000e(k), amended by the Pregnancy Discrimination Act, 925 Stat. 2026.

4. Definitions.

For purposes of this order, the following definitions apply:

- a. "Admonishment" means a warning to an employee by a supervisor concerning the employee's behavior. It may be oral or written. It may also be called a warning or caution.
- b. "Reprimand" means a written disciplinary action against an employee. A reprimand is placed in the employee's official personnel folder for a period of at least 1 year but not more than 3 years.
- c. "Suspension" means the placement of an employee, for disciplinary reasons, in a temporary status without duty and pay.
- d. "Removal" means the involuntary separation of an employee based on misconduct or performance.
- e. "Reduction in pay" means the involuntary reduction in the rate of basic pay of an employee.

- f. "Reduction in band" means the involuntary change of an employee in GAO's broad banded performance-based compensation system to a lower band.
- g. "Reduction in grade" means the involuntary change of a General Schedule system employee to a lower grade.
- h. "Adverse action" means the personnel action of removal; reduction in grade, band, or pay; or suspension of more than 14 days (including suspensions or furloughs of 30 or fewer days) against an employee for such cause as will promote the efficiency of the federal service.
- i. "Alternative Discipline" means a form of corrective action other than traditional disciplinary procedures and actions.
- j. "Indefinite suspension" means a suspension pending GAO investigation or further agency action. The indefinite suspension is of unspecified length and ends when conditions set forth in a proposal notice have been met.
- k. "Day" means a calendar day.
- l. "Demotion" means the involuntary reduction in pay level of a GAO Senior Executive Service or GAO Senior Level employee, involuntary reduction in band of an employee who is under GAO's broad banded performance-based compensation system to a position in a lower band, or involuntary reduction in grade of a General Schedule -equivalent or Wage Grade employee to a position at a lower grade level.
- m. "Resignation" means a separation, other than retirement, at an employee's request. It is a voluntary expression of the employee's desire to leave the organization that is normally made in writing.
- n. "Band" is a level of classification under GAO's performance-based compensation system.
- o. "Current continuous service" means civilian service in the same position or similar positions without a break of a workday.
- p. "Furlough" means an employee is placed in a temporary status without duty and pay because of lack of work or funds or other nondisciplinary reasons.
- q. "Grade" is a rank of positions under the General Schedule classification system.
- r. "Pay" means the basic pay rate set by the Comptroller General (CG) for a position before any deductions and additional compensation, such as overtime.
- s. "Preference eligible" means a veteran or a relative of a veteran as defined in GAO Order 2211.1.
- t. "Similar positions" mean positions in which the duties performed are similar in nature and require substantially the same or similar qualifications, so that the incumbent could be interchanged without significant training or undue work interruption.
- u. "Unit head" means managing directors, regional directors, or heads of mission support offices or staff offices.
- v. "Manager" means an assistant director, assistant general counsel, and MS-II or MS-I.

5. Advice and Assistance from the Human Capital Office/Workforce Relations Center.

- a. Managers and human capital consultants should seek advice and assistance regarding possible disciplinary and adverse actions (which may include performance actions consistent with 5 U.S.C. Chapter 75), as well as procedures to be followed, from WRC/HCO. WRC/HCO provides guidance, consultation, and assistance to management on labor and employee relations matters, including grievances and appeals, employee discipline, adverse actions, and related matters.
- b. HCO's Counseling Services is a GAO resource for managers and employees. It works collaboratively with WRC/HCO to manage employee issues. The Counseling Center provides free, confidential, short-term counseling for all GAO employees about work-related and personal issues.
- c. Certain documents (e.g., reprimands, proposals, decision letters) require review and clearance by WRC/HCO prior to issuance.

6. Alternative Discipline.

With guidance from and the concurrence of the Director of Workforce Relations Center, a GAO manager or unit head may take lesser disciplinary action, such as a permanent letter of reprimand, suspension held in abeyance, or last chance agreement, in lieu of a suspension described in chapter 3. Alternative discipline will only be used when agreed upon as appropriate by GAO and the employee.

7. Timing of Disciplinary Actions.

Because circumstances vary with each case, no specific deadlines can be established. It is important that all disciplinary actions be taken in a timely manner—that is, as close as possible to the event or management's awareness of it.

8. Disciplinary Action Based on Off-Duty Misconduct.

Under some circumstances, GAO can and should initiate disciplinary action for off-duty misconduct. Action is appropriate when a nexus (i.e., a link) exists between the misconduct and the efficiency of the service. The misconduct must, among other things, affect the employee's job performance or that of co-workers or management's confidence in the employee's performance, or interfere with GAO's mission. The nature of the employee's duties may be critical to determining a nexus. While previous cases should be considered in making a nexus determination, each case must be examined carefully as differences between cases can be subtle. WRC/HCO should be contacted for assistance in making nexus determinations.

9. Documentation.

In order to support a disciplinary action, it is critical that managers maintain specific detailed documentation of the facts. Such documentation may take a variety of forms, including notes of conversations or events; documents such as telephone messages and official documents (for example, performance appraisals and records of performance reviews, time and attendance reports, travel vouchers, or work products); records of previously imposed disciplinary action; and, where applicable, reports of findings. Any documentation containing confidential or privileged information must be maintained in secure areas to protect its confidentiality.

10. Prohibition on Coerced Resignations or Retirements.

Under no circumstances shall coercion be used for the purpose of securing resignation or retirement. Managers are urged to seek the advice of WRC/HCO before engaging in a discussion of possible resignation or retirement with an employee but particularly when disciplinary or adverse action has been initiated against the employee.

11. Standards for Taking Disciplinary and Adverse Actions.

GAO may take a disciplinary or adverse action, including a performance-based adverse action consistent with 5 U.S.C. 75, against an employee only "for such cause as will promote the efficiency of the service" (5 U.S.C. 7521).

12. Grievances and Appeals.

- a. As a general rule, employees against whom disciplinary actions are taken have a right to protest the actions formally. The type of disciplinary action involved and the status of the employee (e.g., whether covered under a CBA) determines whether the recourse is a grievance under GAO Order 2771.1, Administrative Grievance Procedure, a grievance under the negotiated grievance procedure for bargaining unit employees, or an appeal to the GAO PAB. See GAO Order 2771.1 and PAB regulations, 4 C.F.R. Part 28, for further guidance. Employees are not entitled to grieve or appeal warnings of possible future disciplinary actions.
- b. Employees may file complaints under GAO Order 2713.2, Discrimination Complaint Process, concerning any disciplinary action if they contend that the action is the result of discrimination on the basis of race, color, religion, sex (including pregnancy), national origin, age (40 or over), disability, genetic information, sexual orientation, gender identity, or retaliation for protected activities.

13. Actions Covered by Other Orders.

Procedures applicable to a variety of actions not covered by GAO Order 2751.1, both disciplinary and nondisciplinary, are discussed in other GAO orders. Table 1 provides references to these other orders.

Table 1: Actions Covered by Other Orders

Action	GAO order where information is found
Removals or reductions in grade or band based solely on unacceptable performance.	2432.1
Terminations during probationary or trial period.	2315.1 chapter 7, 2315.1 (A-90), (A-04)
Removals and suspensions taken in the interests of national security.	2752.2
Suitability disqualifications.	2731.1

Chapter 2. Choosing among Disciplinary Actions

1. Factors to Be Considered in Determining an Appropriate Penalty.

- a. Reasonableness of action. No disciplinary action shall be taken against an employee unless the allegations against the employee are supported by a preponderance of the evidence.
- b. Factors to be considered in selecting penalties. In selecting a penalty to propose or deciding what penalty to impose for an offense, managers should use the following factors as a guide for determining the penalty. However, this list is not all-inclusive and some factors may not apply to every situation. The manager considers such factors as
 - (1) the nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical, or inadvertent, was committed maliciously or for gain, or was frequently repeated;
 - (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
 - (3) the employee's past disciplinary record;
 - (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
 - (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
 - (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;

- (7) consistency of the penalty with Appendix 1. GAO Guide—Table of Penalties for Various Offenses;
 - (8) the notoriety of the offense or its impact upon the reputation of GAO;
 - (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense or had been warned about the conduct in question;
 - (10) potential for the employee's rehabilitation;
 - (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others (including managers) involved in the matter; and
 - (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
- c. Nondiscrimination. In no event shall GAO discriminate against an employee by taking disciplinary action on the basis of any of the following:
- (1) race, color, religion, sex (including pregnancy), national origin, age (40 or over), disability, or genetic information;
 - (2) partisan political beliefs, affiliations, or activities;
 - (3) marital status; or
 - (4) sexual orientation or gender identity.
- d. Retaliation and reprisal. GAO shall not take disciplinary action against an employee on the basis of any of the following:
- (1) in retaliation for the employee's having engaged in protected activity;
 - (2) in reprisal for the employee's exercise of any appeal right granted by any law, rule, or regulation; or
 - (3) in reprisal for the employee's engaging in whistleblowing as described in 5 U.S.C. 2302(b)(8).

2. Letters of Reprimand.

Letters of reprimand shall cite the specific acts for which the employee is reprimanded and shall include a warning that repetition of the offense or other improper action may lead to a recommendation for more severe disciplinary action. The letter shall inform the employee that the reprimand may be grieved through GAO's administrative grievance procedure or the negotiated grievance procedure contained within a CBA for bargaining unit employees. It shall also inform the employee regarding his or her appeal rights concerning allegations of discrimination. It shall inform the employee that a copy of the letter will be filed in the employee's official personnel folder for a period of at least 1 year but not more than 3 years, and that the employee can ask, after 1 year, that the letter be removed from the official personnel folder.

3. Suspensions from Duty and Pay.

- a. Suspension as a disciplinary action is effected when it is believed that the employee may be worthy of retention in the service but action more severe than a letter of reprimand is

warranted. It is mandatory to impose a disciplinary suspension in certain situations prescribed by law. For example, under the U.S. Code, a suspension for at least 1 month must be imposed for willfully using or authorizing use of any government-owned or government-leased passenger vehicle for other than official purposes. (The U.S. Code provision does not cover use of employee-rented vehicles for the purpose of carrying out official duties.)

- b. A GAO employee may be indefinitely suspended pending an initial adjudication in the judicial process if the employee has been arrested or indicted, it is determined that there is reasonable cause to believe that a crime has been committed for which a sentence of imprisonment may be imposed, and the alleged misconduct that led to the arrest or indictment bears a sufficient relationship to the employee's duties to warrant the action as promoting the efficiency of the service. If the employee pleads guilty or is convicted, the agency may proceed with appropriate disciplinary action on the basis of the misconduct that led to the conviction without returning the employee to duty from the indefinite suspension. In the alternative, GAO may proceed with appropriate disciplinary action based on the underlying misconduct that led to the arrest regardless of whether there is a plea or conviction. Managers must consult with WRC/HCO before implementing any indefinite suspension both as to the advisability of taking such action and the length of such suspension.

4. Reductions in Grade, Band, or Pay.

- a. Reduction in grade, band, or pay as a disciplinary action may be effected when action more severe than a suspension is required, but it is believed that the employee may be worthy of retention in the service. In appropriate circumstances, the reduction in grade or band may include placement in a different series or movement to a nonsupervisory position. Similarly, a supervisory employee who is reduced in grade as discipline for an abuse of supervisory authority may be placed in a nonsupervisory position.
- b. For more information about reduction in grade, band, or pay solely for unacceptable performance, see GAO Order 2432.1, *Dealing with Unacceptable Performance*.

5. Removals.

- a. Action to remove an employee is taken when the removal is for such cause as will promote the efficiency of the service.
- b. For more information about offenses warranting removal, see Appendix 1. GAO Guide—Table of Penalties for Various Offenses. For information about removal, reduction in grade, band, or pay solely for unacceptable performance, see GAO Order 2432.1, *Dealing with Unacceptable Performance*.

Chapter 3. Suspensions for 14 Days or Less

1. Purpose and Scope.

This chapter covers suspensions of 14 days or less, except suspensions taken for national security reasons (see GAO Order 2752.2).

2. Employee Coverage.

- a. Employees in administrative, professional, and support staff (APSS) and attorney positions are covered, except as follows:
 - (1) Employees who are required to complete a 1-year probationary period, but have not yet done so, are not covered by this chapter (see GAO Order 2315.1).
 - (2) Employees whose appointments do not require a probationary period are not covered by this chapter until they have completed 1 year of current, continuous service in the same position or similar positions.
 - (3) Employees who are covered by a CBA are not covered by this chapter only to the extent that the provisions of this chapter conflict with a provision of the CBA.
- b. Employees in GAO analyst positions are covered, except as follows:
 - (1) Employees who are required to complete either a 2-year probationary period or 1-year probationary period (with prior federal service), but have not yet done so, are not covered by this chapter.
 - (2) Employees whose appointments do not require a probationary period are not covered by this chapter until they have completed 2 years of current, continuous service in the same position or similar positions.
 - (3) Employees who are covered by a CBA are not covered by this chapter only to the extent that the provisions of this chapter conflict with the CBA.
- c. The following employees are not covered by this chapter:
 - (1) The CG and the Deputy CG.
 - (2) Members of GAO's Senior Executive Service (see GAO Order 2317.1).
 - (3) Experts and consultants.
 - (4) Re-employed annuitants.
 - (5) Employees on time-limited appointments of 1 year or less (see GAO Order 2316.1).
 - (6) Employees on Veterans Recruitment Act appointments (see GAO Order 2307.1).¹
 - (7) Employees on noncompetitive appointments, except for attorneys and CG appointees (see GAO Order 2213.1).

3. Step 1—Proposing a Suspension.

- a. Written proposal. Before employees may be suspended, the proposing official (see ch. 3, para. 5) shall give employees a written proposal.
- b. Contents. Proposals shall
 - (1) state the specific reasons for the proposed suspension;

¹ Employees on Veterans Recruitment Act appointments and employees on noncompetitive appointments (except for attorneys and CG appointees) are excluded from coverage by this chapter consistent with 5 U.S.C. Chapter 75, Subchapter 1.

- (2) inform employees that they and their representative, if applicable, may review the materials relied upon to support the proposed suspension; and
 - (3) inform employees that they may reply, orally or in writing, as set as forth in chapter 3, paragraph 3d1.
- c. Representation. Employees may be represented by an attorney or other person. Bargaining unit employees may choose to be represented by a union. The deciding official (see ch. 3, para. 5) may disallow as representatives individuals whose activities as a representative would cause a conflict of interest or position; whose release from their position would give rise to unreasonable costs; or whose priority work assignments preclude release. In such cases, the deciding official will notify employees in writing of the reasons for the denial.
- d. Reply. The proposing official shall provide employees a reasonable time (i.e., at least 5 days, where feasible, but in any event not less than 24 hours) to reply to the notice.
 - (1) Employees may reply orally, in writing, or both and furnish affidavits and other documentary evidence to support their reply.
 - (2) If the employee elects to make an oral reply, any written reply may be submitted no later than the oral reply meeting. The deciding official may hear the reply or designate someone (other than the proposing official) to hear and prepare a written summary.
 - (3) Employees are entitled to a reasonable amount of official time (up to 4 hours) to review the supporting materials and to present an oral reply, written reply, or both to the deciding official or designee. Official time shall not be authorized for any other activity related to the reply.

4. Step 2—Deciding the Proposed Suspension.

- a. In deciding on proposed suspensions, deciding officials shall consider
 - (1) only the reasons specified in the notice of proposed action; and
 - (2) the reply, if any, employees and their representatives gave to the notice.
- b. The decision shall contain specific findings as to whether the deciding official has sustained or not sustained each charge in the proposal. In addition, the decision shall specify the factors considered in selecting the penalty.
- c. The agency shall deliver the decision notice to the employee before the time the action will be effective.

5. Identification of Proposing and Deciding Officials.

Table 2: Identification of Proposing and Deciding Officials

If the employee against whom the suspension action is being taken	The proposing official is	The deciding official is
reports to a manager who is below a director or unit head	that manager or a higher-level management official	the next higher-level management official
reports to a unit head	the unit head or director	—the managing director, or equivalent, if the unit head reports to a managing director —the COO, if the unit head reports to the COO —the General Counsel (GC) if the unit head reports to the GC —CAO/CFO if the unit head reports to the CAO/CFO
reports to the COO	COO	CG or Deputy CG (DCG)
reports to the CG	CG	CG or DCG
reports to the GC	GC	CG or DCG
reports to the CAO/CFO	CAO/CFO	CG or DCG

Note: If the CAO/CFO deems it appropriate, the Director of Workforce Relations may be designated to act as the proposing official. If the CAO/CFO deems it appropriate, the Chief Human Capital Officer may be designated to act as the deciding official. If the COO deems it appropriate, the CAO/CFO may be designated to act as the deciding official when the COO is supposed to perform this function.

6. Employees' Appeal Rights.

- a. Employees may grieve a suspension of 14 days or less under the administrative grievance procedure, GAO Order 2771.1, Administrative Grievance Procedure.
- b. Employees who are members of a bargaining unit covered by a collective bargaining agreement may grieve under the applicable negotiated grievance procedure.
- c. Employees who believe that a suspension of 14 days or less is discriminatory on the basis of race, color, religion, sex (including pregnancy), national origin, age (40 or over),

disability, genetic information, sexual orientation, gender identity, or retaliation for protected activities may file a complaint with GAO's Opportunity and Inclusiveness Office under GAO Order 2713.2. To do so, employees must contact an equal employment opportunity counselor in the office for precomplaint counseling within 45 days of the effective date of the suspension.

- d. The PAB regulations at 4 C.F.R. Part 28 govern who can file charges of prohibited personnel practices with the PAB. Employees who wish to file a prohibited personnel practice claim with the PAB should consult those regulations.

7. Documentation of Suspension.

WRC/HCO maintains the official suspension files.

Chapter 4. Removals, Reductions in Grade or Band, Reductions in Pay, Suspensions for More Than 14 Days, and Furloughs for 30 or Fewer Days

1. Types of Adverse Actions Covered.

This chapter covers the following types of adverse actions:

- a. Removals.
- b. Suspensions for more than 14 days.
- c. Indefinite suspensions.
- d. Reductions in grade or band.
- e. Reductions in pay.
- f. Furloughs for 30 days or less.

2. Types of Actions Not Covered.

This chapter does not cover the following types of actions:

- a. Suspensions or removals taken for national security reasons under GAO Order 2752.2.
- b. Reductions in grade or band of supervisors or managers who have not completed the required supervisory or managerial probationary periods (see GAO Order 2315.1).
- c. Reductions in grade or band or removals taken under GAO Order 2432.1.
- d. Reduction-in-force actions taken under GAO Order 2351.1.
- e. Terminations of appointments on their established expiration dates.
- f. Terminations of time-limited promotions.
- g. Reductions of employees' pay because the pay is contrary to law or regulation.
- h. Actions that entitle employees to grade and pay retention and actions to end these entitlements (see GAO Order 2536.1).

- i. Placement of intermittent or seasonal employees in nonduty, nonpay status in accordance with conditions established at the times of their appointments.
- j. Voluntary employee actions.
- k. Actions ordered by the PAB.

3. Employee Coverage.

- a. Employees in APSS and attorney positions are covered, except as follows:
 - (1) Employees, who are required to complete a 1-year probationary period, but have not yet done so, are not covered by this chapter (see GAO Order 2315.1).
 - (2) Employees whose appointments do not require a probationary period are not covered by this chapter until they have completed 1 year of current continuous service in the same position or similar positions.
 - (3) Employees who are covered by a CBA are not covered by this chapter only to the extent that the provisions of this chapter conflict with the CBA.
- b. Employees in GAO analyst positions are covered, except as follows:
 - (1) Employees who are required to complete either a 2-year probationary period or 1-year probationary period (with prior federal service), but have not yet done so, are not covered by this chapter (see GAO Order 2315.1).
 - (2) Employees whose appointments do not require a probationary period are not covered by this chapter until they have completed 2 years of current, continuous service in the same position or similar positions.
 - (3) Employees who are covered by a CBA are not covered by this chapter only to the extent the provisions of this chapter conflict with the CBA.
- c. The following employees are not covered by this chapter:
 - (1) The CG and the Deputy CG.
 - (2) Experts and consultants.
 - (3) Re-employed annuitants.
 - (4) Employees on time-limited appointments of 1 year or less (see GAO Order 2316.1).
 - (5) Nonpreference eligible employees on noncompetitive appointments, except for attorneys and CG appointees (see GAO Order 2213.1).

Note: Nonpreference eligible employees on noncompetitive appointments (except for attorneys and CG appointees) are excluded from coverage by this chapter consistent with 5 U.S.C. Section 7511. Section 7511 covers nonpreference eligible "excepted service" employees only if they (1) are not serving probationary periods pending conversion to the "competitive service" or (2) have completed 2 years of current, continuous service under other than a temporary appointment limited to 2 years or less.

4. Step 1—Proposing an Adverse Action.

- a. Advance written notice. Except as set forth in paragraph 4f of this chapter, the proposing official (see ch. 3, para. 5) shall give employees written notice of the action to be taken no

less than thirty (30) calendar days from the date the proposal letter is served on the employee. The proposal shall state the specific reasons for the proposed action; inform employees that they and their representatives may review the materials relied upon to support the proposed action; and inform employees that they may reply, orally or in writing, as set forth below.

- b.** Furloughs. If GAO furloughs some but not all employees in a competitive level, the advance written notice must explain the basis for the furlough and why the employees to be furloughed were selected.
- c.** Representation. Employees may be represented by an attorney or other person. Bargaining unit employees may choose to be represented by the union. Deciding officials (see ch. 3, para. 5) may disallow as representatives individuals whose activities as a representative would cause a conflict of interest or position; whose release from their position would give rise to unreasonable costs; or whose priority work assignments preclude release. In such cases, the deciding officials will notify employees in writing of the reasons for the denial.
- d.** Reply. The proposing official shall provide employees with at least 7 days to reply to the notice.
 - (1)** Employees may reply orally, in writing, or both, and furnish affidavits and other documentary evidence to support their reply.
 - (2)** If the employee elects to make an oral reply, any written reply may be submitted no later than the oral reply meeting. The deciding official may hear the reply or designate someone else (other than the proposing official) to hear and prepare a written summary.
 - (3)** Employees are entitled to a reasonable amount of official time (up to 4 hours) to review the supporting materials and to present an oral reply, written reply, or both to the deciding official or designee. Official time shall not be authorized for any other activity related to the reply.
- e.** Employee status during notice period.
 - (1)** Employees whose removal or suspension has been proposed generally shall remain in a duty status in their regular position during the notice period. However, if employees' presence at work would pose a threat to them or others, result in the loss of or damage to government property, or otherwise jeopardize legitimate government interests, the proposing official may, in consultation with the Chief Human Capital Officer,
 - (a)** assign employees to duties that would not present a threat to safety, GAO's mission, or government property;
 - (b)** allow employees to take annual leave, sick leave, or leave without pay, as appropriate;
 - (c)** charge employees with absence without leave for unapproved absences; or
 - (d)** place employees in a paid, nonduty status, such as administrative leave, for such time as is necessary to effect the action.

- f. The deciding official may give less than 30 days' advance written notice for a proposed removal or suspension when there is reasonable cause to believe that an employee has committed a crime for which the employee may be imprisoned. In such cases, the employee is entitled to reply to the proposal notice within a reasonable time, but not less than 7 days. GAO may forgo the advance written notice and opportunity to answer when it furloughs employees because of unforeseeable circumstances, such as sudden equipment breakdowns, acts of God, or emergencies requiring the immediate curtailment of activities.

5. Step 2—Deciding the Proposed Adverse Action.

- a. In deciding on proposed adverse actions, the deciding official shall consider
 - (1) the reasons specified in the notice of proposed action and
 - (2) the reply, if any, employees and their representatives gave to the notice.
- b. The decision shall
 - (1) contain specific findings as to whether each charge (and, where applicable, each specification of a charge) in the proposal is or is not sustained,
 - (2) specify the factors considered in selecting the penalty (see ch. 2, para. 1), and
 - (3) confirm that the action is "for such cause as will promote the efficiency of the service (5 U.S.C. 7521)."
- c. The agency shall deliver the decision notice to the employee at or before the time the action will be effective.

6. Identification of Proposing and Deciding Officials.

See chapter 3, paragraph 5.

7. Employees' Appeal Rights.

- a. Employees may appeal an adverse action under this chapter to the GAO PAB by filing a written charge with the PAB's General Counsel's office within 30 days of the effective date of the action. Employees may raise allegations of prohibited personnel practices in the appeal.

Employees who believe that an adverse action under this chapter is discriminatory on the basis of race, color, religion, sex (including pregnancy), national origin, age (40 or over), disability, genetic information, sexual orientation, gender identity, or retaliation for activities protected by the antidiscrimination statutes may elect to do either (but not both) of the following:

- (1) File a charge directly with the General Counsel of the PAB within 30 days of the effective date of the action and raise the issue of discrimination in the course of proceedings before the board.
- (2) File a complaint under GAO Order 2713.2. To do so, employees must contact a counselor in the Opportunities and Inclusiveness Office within 45 days of the effective date of the action.

- b.** Employees may file a complaint of discrimination on the basis of sexual orientation under GAO Order 2713.2. To do so, employees must contact a counselor in the Opportunities and Inclusiveness Office within 45 days of the effective date of the action.

8. Documentation of Adverse Actions.

WRC maintains the official adverse action files.

Appendix 1. Appendix 1. GAO Guide—Table of Penalties for Various Offenses

What is the purpose of the guide?

The GAO Guide—Table of Penalties for Various Offenses is a list of infractions along with a suggested range of penalties. The actions described in the table are not mandatory but are a guide to those managers responsible for disciplining employees, including discipline rising to the level of an adverse action, with suggested penalties graduated in severity based on whether an employee has no previous record of misconduct, has a single previous incident of misconduct, has two previous incidents of misconduct, etc. More serious types of misconduct have a more serious suggested penalty or range of penalties for a first offense. Decisions concerning the imposition of penalties are within the discretion of the responsible manager, in consultation with WRC/HCO, and should be made on a case-by-case basis, taking into consideration all relevant facts.

Probationers or employees serving a trial period do not meet the definition of employee for the purpose of this guide (see, also, 5 C.F.R. 75).

When should disciplinary action be taken? What action?

In deciding what, if any, action to take, the official with authority to take the action should look to the guide for assistance. In addition, the official should contact WRC/HCO.

In many cases, it is appropriate to take informal action (e.g., oral or written admonishment, oral or written counseling, memo or letter of warning, letter of requirement). However, no record of such action is placed in the employee's official personnel folder. If the employee later commits other offenses, the prior action is useful as support for a higher level of disciplinary action.

How should the guide be used?

The guide lists offenses by category. For each offense, it indicates a suggested range of penalties for the first offense, the second offense, and subsequent offenses.

An offense can be a single occurrence of misconduct, or several connected occurrences, that results in a single disciplinary action. For example, an employee on leave restriction who is absent without leave (AWOL) for 3 days (consecutive or not) has committed a single offense, not three offenses, unless disciplinary action was taken after the first or second day of AWOL. If disciplinary action (e.g., a reprimand) is taken against the employee as a result of the 3 days of AWOL and the employee subsequently is AWOL for another 3 days, those absences collectively constitute a second offense.

What about penalties for offenses not listed in the guide?

The guide does not include every potential cause for taking disciplinary action. If the official with authority to take disciplinary action believes there is reason to take disciplinary action

against an employee, but the offense is not listed in the guide, the official should contact WRC/HCO.

Type of offense	Suggested penalty for first disciplinary action	Suggested penalty for second disciplinary action	Suggested penalty for subsequent disciplinary action
1. Attendance^a			
a. Unauthorized absence on scheduled day of work. ^b	Reprimand to 5-day suspension	Reprimand to 14-day suspension	14-day suspension to removal
b. Recurring or unwarranted tardiness ^c	Reprimand	Reprimand to 5-day suspension	5-day suspension to removal
c. Violation of properly imposed leave restrictions	3-day suspension	5- to 14-day suspension	14-day suspension to removal
d. Improper use of sick leave for any reason other than incapacitation, medical care, or other reasons permitted under GAO Order 2630.1	Reprimand to 5-day suspension	Reprimand to 14-day suspension	10-day suspension to removal
2. Fiscal irregularities			
a. Unauthorized or improper use of government funds or of other funds that come into an employee's possession by reason of employment	14-day suspension to removal	Removal	
b. Submission of, abusing, or allowing the submission of falsely stated travel, payroll, loan, or purchase vouchers or their supporting documents (e.g., application for leave)	Reprimand to removal	Removal	
c. Failure to properly account for or make proper distribution of any money, property, or other thing of value received by or coming into employee's custody as a result of employment	Reprimand to removal	Removal	
d. Making or authorizing obligation or expenditure of funds against any allotment if in excess of amount available (violation of Anti-Deficiency Act)	Reprimand to 5-day suspension	Reprimand to 14-day suspension	14-day suspension to removal
3. Conduct prejudicial to the best interests of the government			
a. Conduct that causes the employee to be convicted of a criminal charge relating to the employee's position and the mission of the agency	14-day suspension to removal	Removal	
b. Actual or attempted theft	5-day suspension to removal	Removal	
c. Unauthorized removal of government-owned or -leased	Reprimand to 14-day suspension	5-day suspension to removal	Removal

Type of offense	Suggested penalty for first disciplinary action	Suggested penalty for second disciplinary action	Suggested penalty for subsequent disciplinary action
property or property over which governmental custody is exercised ^d			
d. Concealing, removing, mutilating, altering, or destroying government records	Reprimand to removal	7-day suspension to removal	Removal
e. Unauthorized use of, or authorizing the use of, government property, facilities, or services for other than official purposes ^e	Reprimand to removal	5-day suspension to removal	Removal
f. Conducting nonauthorized personal business while in duty status	Reprimand to 10-day suspension	Reprimand to removal	5-day suspension to removal
g. Willful use, or authorizing use, of any government-owned or -leased passenger vehicle for other than official business; carries mandatory penalty of 1-month suspension. See 31 USC 1349.	1-month suspension to removal	Removal	
h. Unauthorized use of federal telecommunication system, commercial long-distance facilities, or misuse of the Internet ^f	Reprimand to 5-day suspension	Reprimand to 14-day suspension	Removal
i. Unauthorized or improper use of government charge cards (e.g., cards issued to purchase office supplies or gift awards or for motor vehicle operators to buy gas)	Reprimand to removal	5-day suspension to removal	Removal
j. Failure to timely pay government-issued travel charge card bill within 90 days from the billing statement date	Reprimand to 5-day suspension	Reprimand to 10-day suspension	5-day suspension to removal
k. Misuse or inappropriate personal use of government-issued travel charge card, such as making unauthorized purchases or obtaining cash advances while not in a travel status or where unrelated to official government travel (\$500 or less)	Reprimand to 5-day suspension	Reprimand to 14-day suspension	14-day suspension to removal
l. Misuse or inappropriate personal use of government-issued travel charge card, such as making unauthorized purchases or obtaining cash advances while not in a travel status or where unrelated to official government travel (over \$500)	14-day suspension to removal	Removal	

Type of offense	Suggested penalty for first disciplinary action	Suggested penalty for second disciplinary action	Suggested penalty for subsequent disciplinary action
m. Loss of, deliberate damage to, or unauthorized destruction of government property, records, or information	Reprimand to 10-day suspension	2-day suspension to removal	5-day suspension to removal
n. Discourteous conduct to the public (see 4 C.F.R. 7.5)	Reprimand to 1-day suspension	Reprimand to 5-day suspension	1- to 14-day suspension
o. Fighting, inflicting, or attempting to inflict bodily injury or otherwise creating a public disturbance while on duty or on government premises	Reprimand to removal	Reprimand to removal	5-day suspension to removal
p. Unprofessional conduct: conduct unbecoming a GAO employee	Reprimand to removal	5-day suspension to removal	Removal
q. Placement on a GAO computer of nonapproved hardware, software, special applications, or peripherals	Reprimand to 3-day suspension	Reprimand to 14-day suspension	5-day suspension to removal
4. Sexual harassment⁹			
a. Sexual harassment	3-day suspension to removal	14-day suspension to removal	Removal
b. Unprofessional conduct of a sexual nature	Reprimand to 10-day suspension	5-day suspension to removal	Removal
c. Retaliation against an employee arising from or in connection with an allegation of sexual harassment	3-day suspension to removal	14-day suspension to removal	Removal
5. Insubordination			
a. Refusal or failure to comply with legitimate supervisory instructions	Reprimand to 14-day suspension	14-day suspension to removal	Removal
b. Willful failure to complete Continuing Professional Education credits as required (see GAO Order 2410.2)	Reprimand to 14-day suspension	14-day suspension to removal	Removal
c. Failure to submit required background forms within prescribed time frame or to attend scheduled security briefing	Reprimand to 1-day suspension	Reprimand to 5-day suspension	5-day suspension to removal
6. Negligent performance of duties			
a. Where waste or other cost is insubstantial	Reprimand to 1-day suspension	Reprimand to 5-day suspension	5- to 30-day suspension
b. Where waste or other cost is substantial	Reprimand to 5-day suspension	5-day suspension to removal	30-day suspension to removal
7. Deliberate misrepresentation,	Reprimand to 30-	5-day suspension	14-day suspension

Type of offense	Suggested penalty for first disciplinary action	Suggested penalty for second disciplinary action	Suggested penalty for subsequent disciplinary action
falsification, exaggeration, or concealment of material facts in connection with any official document, employment document, time and attendance report, or matter under official investigation	day suspension	to removal	to removal
8. Failure to respond to or cooperate with an official investigation, such as, but not limited to, an investigation by the Office of Inspector General, Office of Opportunity and Inclusiveness, Office of Security, and WRC/HCO, including failure to submit to interviews and to provide requested documents	Reprimand to removal	5-day suspension to removal	Removal
9. Sleeping on duty	Reprimand to 5-day suspension	Reprimand to 14-day suspension	10-day suspension to removal
10. Gambling on government premises or while in duty status	Reprimand to 5-day suspension	Reprimand to 10-day suspension	10-day suspension to removal
11. Soliciting or accepting gifts, loans, favors, etc., from GAO subordinates or from persons, firms, or corporations with whom official relations exist, have existed, or may exist ^h	Reprimand to removal	14-day suspension to removal	Removal
12. Engaging in outside employment without securing prior written approval			
a. Where no conflict of interest is involved	Reprimand	Reprimand to 3-day suspension	5-day suspension to removal
b. Where conflict of interest is involved	Reprimand to removal	30-day suspension to removal	Removal
13. Violations of financial disclosure requirements			
a. Willful failure to file financial disclosure reports or requested amendments	14-day suspension to removal	Removal	
b. Untimely filing of financial disclosure reports or requested amendment ⁱ	Reprimand to 1-day suspension	Reprimand to 3-day suspension	5- to 14-day suspension
c. Falsifying financial disclosure reports or failing to report required information in such reports			
1) Where conflict of interest is involved	5-day suspension to removal	Removal	
2) Where no conflict of interest is involved	Reprimand to 5-day suspension	Reprimand to 14-day suspension	5-day suspension to removal
14. Discrimination ^j			

Type of offense	Suggested penalty for first disciplinary action	Suggested penalty for second disciplinary action	Suggested penalty for subsequent disciplinary action
a. Discrimination against an employee or applicant for employment because of race, color, religion, sex (including pregnancy), national origin, age (40 or over), disability, genetic information, sexual orientation, or gender identity	3-day suspension to removal	14-day suspension to removal	Removal
b. Retaliation against an employee for having engaged in a protected activity or in reprisal for the exercise of an appeal right granted by any law, rule, or regulation or for engaging in whistleblowing	3-day suspension to removal	14-day suspension to removal	Removal
15. Intoxicants and illegal drugs			
a. Using or being under the influence of intoxicants or illegal drugs while on official duty or reporting for duty or being on duty under the influence of intoxicants or drugs	3- to 30-day suspension	14-day suspension to removal	Removal
b. Operating a government-owned or -leased vehicle while under the influence of intoxicants or illegal drugs	5-day suspension to removal	Removal	
c. Selling or distributing of illegal drugs on government-owned or -leased premises	14-day suspension to removal	Removal	
16. Safety and health violations			
Failure to observe safety and health regulations, instructions, and/or posted rules	Reprimand to 30-day suspension	Reprimand to removal	5-day suspension to removal
17. Security violations			
a. Failure to safeguard classified material			
(1) Where such does not result in actual compromise of the material	Reprimand to 5-day suspension	5- to 30-day suspension	10-day suspension to removal
(2) Where such does result in compromise of the material	14-day suspension to removal	30-day suspension to removal	Removal
b. Unauthorized release of draft or restricted GAO reports or other official information contrary to law and regulation	Reprimand to 30-day suspension	30-day suspension to removal	Removal

Notes:

^aAbsence must be carried on the time and attendance reports or WebTA time and attendance system as absences without leave (AWOL).

^bExcept where unauthorized absence is for 5 or more consecutive days; first offense does not occur until after employee has been counseled.

^cFirst offense does not occur until after employee has been counseled.

^dIn addition, see 18 U.S.C. 641, 643, and 654 for possible criminal penalties.

^eSee 18 U.S.C. 1719 for criminal penalties in cases of misuse of franking privileges.

^fSee GAO Order 0645.1, Limited Personal Use of Government-Provided Office and IT Equipment, Including Internet.

^gSexual harassment is defined in Title VII of the Civil Rights Act of 1964, as amended. Although in some circumstances certain behaviors of a sexual nature may not meet the Title VII definition, they may violate agency conduct standards. These behaviors constitute unprofessional conduct of a sexual nature. The following list provides a few examples of behaviors that would violate agency conduct standards, even though they may not meet the legal definition of sexual harassment: unwelcome whistling, staring, or leering at another person; making pejorative comments or taking actions based upon another employee's sexual orientation; unwelcome questions or comments about another person's sexual activities, dating, or personal or intimate relationships or appearance; unwelcome sexually suggestive or flirtatious gifts; conduct or remarks that are sexually suggestive or that demean or show hostility to a person because of the person's gender; displays or circulation of pictures, videos, objects, or written materials that are sexually suggestive or explicit or that demean or show hostility to a person because of the person's gender; unwelcome sexually suggestive, explicit, or flirtatious letters, notes, e-mails or voicemails; and meetings or entertainment of GAO personnel at an establishment with personnel attired sexually, suggestively, or explicitly or providing entertainment of a sexually suggestive or explicit nature. Regardless of whether an employee's actions violate Title VII or agency conduct standards, disciplinary action may be taken after unit management has determined that the misconduct has occurred. It does not require a formal sexual harassment complaint, or a decision by GAO, the GAO Personnel Appeals Board, or a federal court on a complaint.

^hSee chapter 3 of GAO Order 2735.1, Code of Ethics Including Employee Responsibilities and Conduct for detailed information, including exceptions to basic prohibitions on solicitation and acceptance of gifts.

ⁱIn addition, late filers of Senate Public Financial Disclosure Report are subject to fines of \$200.

^jDisciplinary action may be taken after an appropriate GAO manager has determined that misconduct has occurred. It does not require a decision by GAO, the GAO Personnel Appeals Board, or a federal court on a formal discrimination or reprisal complaint.



earch

[Home](#) | [About Notices](#) | [GAO Acronyms](#)

Browse Individual Notices

[« Previous Notice](#) | [Home](#) | [Next Notice »](#)

January 6, 2016

Annual Notice of Right to Request Union Representation During Investigation

As required by Chapter 2, paragraph 4.(1)(b) of GAO Order 2711.1, "Labor-Management Relations" (August 14, 2013), and consistent with the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7114(a)(3), bargaining unit employees are hereby notified that they have a representational right with regard to certain investigations conducted by the Agency. Specifically the statute provides as follows:

(2) An exclusive representative of an appropriate unit shall be given the opportunity to be represented at --

(B) any examination of an employee in the unit by a representative of GAO in connection with an investigation if --

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee and

(ii) the employee requests representation.

Additional Information and Questions

Contact [Rhonda Mayfield](#) at 202-512-3049.

Posted to [Policy/Prgm Updates](#) at 11:51 AM

Find Notices By...

► Category

 ▼

► Month

 ▼

GAO FY 2016 Plan for Staff Training
on Antidiscrimination and Whistleblower Protection Laws

Pursuant to 5 C.F.R. § 724.203, GAO has adopted the following training plan:

A. Instructional materials and method of training:

GAO has developed a web-based course that describes the rights and remedies available to GAO employees under the antidiscrimination laws and whistleblower protection laws. This course is available to all employees through our on-line training system. The training course is called "Rights and Protections under Antidiscrimination and Whistleblower Protection Laws." The course includes references to GAO Orders and policies such as on the discrimination complaint processing system, the Americans with Disabilities Act, and sexual harassment protections, each of which are available to all employees on GAO's intranet.

B. Training schedule:

Pursuant to the No Fear training requirements, GAO is required to train its employees every other year on the Antidiscrimination and Whistleblower Protection Laws. GAO concluded its sixth cycle of training in March 2016. All employees (including supervisors and managers) other than those covered by paragraph D below, are required to take the training.

C. Means of documenting completion of training:

GAO has a learning management system which provides a mechanism for determining who has taken the training and the date of its completion. GAO runs periodic reports to obtain this information.

D. New employee training:

As part of mandatory new employee orientation sessions, all new employees are required to take the No Fear course within their first 90 days at GAO. GAO's Learning Center monitors the data with regard to new employees to ensure compliance with this requirement.



EOUSA

441 G St. N.W.
Washington, DC 20548

B-328944

March 21, 2017

The Honorable Jeff Sessions
Attorney General

Dear Mr. Attorney General:

The purpose of this letter is to remind you of the Federal Vacancies Reform Act of 1998 (Vacancies Act)¹ and, in particular, of the provisions of the Vacancies Act that require executive departments and agencies to report information about vacant positions to the Congress and to the Comptroller General.

The Vacancies Act provides rules for the temporary filling of certain vacant positions that require presidential appointment and Senate confirmation.² Under the Act, a person may serve as an acting officer in a vacant position covered by the Act for no longer than 210 days from the date of the vacancy. The Act provides for adjustments to the 210-day time limitation when the President submits a nomination to fill the position.³

The Act requires executive departments and agencies to immediately report to the Congress and to the Comptroller General when a vacancy occurs, the name of any person serving in an acting capacity, the name of any person nominated to fill the position, and the date of a rejection, withdrawal, or return of any nomination. The Act also requires the Comptroller General to report to Congress, the President, and the Office of Personnel Management if the Comptroller General determines that an acting official is serving longer than the 210-day period (including applicable extensions).⁴

GAO would also appreciate certain supplementary information to meet its statutory reporting requirements. Specifically, GAO requests that each agency report:

¹ 5 U.S.C. §§ 3345-3349d.

² The Vacancies Act applies to all presidentially-appointed, Senate-confirmed nominees, except for Article I judges, members of the Federal Energy Regulatory Commission and the Surface Transportation Board, and any appointment to a multimember board or commission that governs an independent establishment or a government corporation. 5 U.S.C. § 3349c.

³ The Department of Justice's Office of Legal Counsel provides advice to agencies on the application of the Vacancies Act to specific vacancies as well as some general guidance. See Memorandum for Agency Counsels, *Guidance on Application of Federal Vacancies Reform Act of 1998*, OLC Opinion, Mar. 22, 1999, available at: http://www.justice.gov/sites/default/files/olc/opinions/1999/03/31/op-olc-v023-p0060_0.pdf (last visited March 1, 2017).

⁴ GAO's Vacancies Act webpage, at <http://www.gao.gov/legal/federal-vacancies-act/overview>, provides information on the Act and a searchable database containing all information reported to the Comptroller General pursuant to the Act.

- the authority under which an acting officer was designated, if not the Vacancies Act;⁵
- any changes in the status of the vacant position and the effective date of the change (such as a change in title or elimination of the position);
- the discontinuation of service in an acting role; and
- the name, mailing address, telephone number, and email address for your agency's designated contact person.

GAO has created a form that agencies may use to report this information. It is available at: http://www.gao.gov/pdfs/legal/fed_vac.pdf.

If you have any questions about the reporting of vacancies to GAO, please contact Robert Cramer, Managing Associate General Counsel, on 202-512-7227, or Shirley A. Jones, Assistant General Counsel, on 202-512-8156.

Sincerely yours,



Susan A. Poling
General Counsel

cc: Arthur Gary
General Counsel of
Justice Management Division

⁵ For most vacancies, the Vacancies Act provides the exclusive means for making temporary appointments. However, there are some specific exceptions, such as where a statute expressly authorizes the President, a court, or an agency head to designate an officer or employee to temporarily perform the functions and duties of a specified office in an acting capacity. See 5 U.S.C. § 3347.



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

The Department of Justice (DOJ) and its Office of Information Policy (OIP) completed actions undertaken to address the five recommendations in the GAO Report – Freedom of Information Act: Additional Actions Can Strengthen Agency Efforts to Improve Management (GAO-12-828). DOJ's efforts began during the review, and the response to the five recommendations the GAO included in its Report issued in August of 2012 have been detailed below.

1. Recommendation: To improve the management of FOIA processing, the Secretaries of DHS, DOD, and HHS and the Attorney General should direct their respective Chief FOIA Officers to ensure that the agency components within their departments, as needed, take actions--report backlog status, redirect resources, change procedures, and negotiate to simplify requests--to reduce their backlogs of FOIA requests.

In response to the GAO Report and to events that began in 2009, DOJ undertook a range of efforts to reduce FOIA request backlogs both within DOJ's components as well as across all federal agencies, including the Departments of Homeland Security, Defense, and Health and Human Services. In accordance with the FOIA statute, the Department of Justice is responsible for overseeing and encouraging compliance with the FOIA government-wide. As detailed in the Attorney General's 2009 FOIA Guidelines¹, all Executive Branch agencies were tasked to "review all aspects of their agencies' FOIA administration..." and to "report to the Department of Justice each year on the steps that have been taken to improve FOIA operations and facilitate information disclosure at their agencies."

Reporting Backlog Status and Redirecting Resources:

Within DOJ, in 2014, we outlined a plan for backlog reduction in our Chief FOIA Officer (CFO) Report. The Department made substantial progress in implementing its plan.

- FY 2014 marked the seventh consecutive year that the Department closed its ten oldest requests, appeals, and consultations.
- Subsequent to the GAO's recommendation, the Associate Attorney General, the Department's Chief FOIA Officer, established a FOIA Council to manage the Department's overall FOIA administration, including the resources available to those programs, and to provide top level support for backlog reduction efforts. The Council continues to be regularly convened as described in DOJ's 2013, 2014, and 2015 Chief FOIA Officer Reports.
- In 2013, the Department implemented a Component Improvement Initiative to strengthen component FOIA programs by identifying causes contributing to any backlogs, including workflow issues and resources, and helping overcome those challenges.

¹ Links to supporting documents have been embedded throughout the document and can be viewed by selecting the highlighted text. All links can be accessed by visiting <http://www.justice.gov/oip>.

- Every year since the GAO's review, the Department has continued to hold an annual FOIA conference with representatives from each component to help identify ways to reduce backlogs and manage resources.
- Government-wide, in 2013, OIP mandated a new quarterly reporting requirement for key FOIA statistics including any backlogs to bring greater accountability to this topic.
- Additionally, beginning in 2014, OIP required agencies with a backlog of over 1,000 requests in the prior fiscal year to provide a plan for achieving backlog reduction in the year ahead. Agencies are then required to report on the status of their backlog reduction plans in the following year's report.

Guidance:

Since the GAO Report, OIP has issued guidance for agencies to strengthen their FOIA programs and achieve success in a number of different areas including backlog reduction.

- Guidance for Further Improvement from 2012 Chief FOIA Officer Report Review and Assessment (August 2012)
- Guidance for Further Improvement Based on 2013 Chief FOIA Officer Report Review and Assessment (August 2013)
- The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and Content of Requester Communications (November 2013)
- Reducing Backlogs and Improving Timeliness (August 2014)
- Guidance for Further Improvement Based on 2014 Chief FOIA Officer Report Review and Assessment (September 2014)
- Limitations on Use of "Still-Interested" Inquiries
 - Implementation Checklist for OIP Guidance on Limitations on Use of "Still-Interested" Inquiries (July 2015)
- Guidance for Further Improvement Based on 2015 Chief FOIA Officer Report Review and Assessment (July 2015)

Best Practices Workshop Series:

- The improvements initiated following the GAO Report culminated in a Best Practices Workshop Series that started with a workshop in May 2014 focused on backlog reduction and improving timeliness. Following the Workshop OIP issued new, government-wide guidance to agencies. This guidance incorporated the ideas shared at the workshop that could increase efficiencies in FOIA processing times across all agencies. Due to the success of this workshop, OIP has scheduled a second workshop on backlog reduction on December 8, 2015.
- In January 2015, OIP established a dedicated page where all the guidance and best practices from our new Best Practices Workshop series can be viewed.

DOJ Summary and Assessment:

- OIP includes the topic of timeliness and backlog reduction in its Summary and Assessment of Agency CIO Reports along with findings and guidance for improvement. Each year agencies are scored on a number of metrics focused on their backlogs, including:
 - Average number of days to process simple track requests,
 - Reduction of request and appeal backlogs,
 - Percentage of request and appeal backlogs that make up the agencies incoming FOIA demand, and
 - Status of agency's ten oldest requests, appeals and consultations.

Agency	Has a Simple Track?	Score	Simple Track		Agency Backlog		Percentage of Backlog to # of Req./App. Received in FY 2014				Agency Closed Ten Oldest Req. Appeals (App.) & Consultations (Consult.) If not, # closed in FY 2014			
			Avg. No. of Days to Process	% of Req. in Simple Track	Req. Score	App. Score	Req. %	App. %	Req. %	App. %	Req. %	App. %	Consult. %	Req. %
ACUS	Yes	1	1	100%	1	1	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
ABMC	No	22	22	N/A	22	22	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
DEPC	Yes	7.09	7.09	25%	7.09	7.09	5%	63.3%	N/A	1	0/3	N/A	N/A	N/A
AFSH	Yes	6	6	100%	6	6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
FEB	Yes	4	4	40%	4	4	1%	N/A	N/A	1	N/A	N/A	1/3	1/3
BBO	No	15	15	N/A	15	15	5%	N/A	9/10	N/A	N/A	N/A	N/A	N/A
CSB	Yes	2	2	54%	2	2	17.3%	N/A	N/A	N/A	N/A	N/A	N/A	N/A
OPPSD	No	2.34	2.34	N/A	2.34	2.34	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CFTC	Yes	30.92	30.92	11%	30.92	30.92	16%	50%	N/A	N/A	0/4	N/A	N/A	N/A
CFPB	Yes	7	7	94%	7	7	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
ENUS	Yes	9.6	9.6	59%	9.6	9.6	10.5%	N/A	5/6	N/A	N/A	N/A	N/A	N/A
CIOE	Yes	14	14	9.5%	14	14	13%	N/A	N/A	3	N/A	N/A	N/A	N/A

Changing Procedures and Negotiating to Simplify Requests:

Subsequent to the GAO's recommendation, the Department changed many of its procedures and it formalized those changes in its new FOIA regulations, which became effective May 4, 2015. The regulations contain new provisions that promote efficiency and emphasize greater communication with requesters to simplify requests. For example:

- § 16.2 adds FOIA Public Liaisons as a resource for requesters to assist in locating posted material, which might reduce or eliminate the need to make a request in the first place.
- § 16.3(b) adds resources for requesters and gives them the option of discussing their request with a component FOIA contact. For example, requesters who are attempting to modify or reformulate their requests may contact the component's FOIA Requester Service Center, FOIA Public Liaison, or OIP for assistance.
- § 16.5(b) contains procedures for components to use to proactively approach requesters to assist them in modifying their request to fit a simpler processing track.
- § 16.10(e)(4) makes FOIA Public Liaisons available to assist requesters in formulating their requests to reduce any fees.

2. Recommendation: To improve the management of FOIA processing, the Secretaries of DHS, DOD, and HHS and the Attorney General should direct their respective Chief FOIA Officers to ensure that the agency components within their departments, as appropriate, conduct training, perform foreseeable harm analyses, complete reviews, comply with the Milner decision, and distribute guidance to reduce their use of exemptions.

OIP firmly believes that FOIA professionals are the foundation of any successful FOIA program. Subsequent to GAO's recommendation, OIP and the Department have taken many steps to ensure agency FOIA professionals regularly attend training and that the FOIA law and policy are properly applied across the government.

Training:

- In FY 14, 92.9% (481 out of 518) of the Departmental FOIA professionals and staff with some FOIA responsibilities attended substantive FOIA training.
- In both 2013 and 2014, OIP issued guidance to agencies instructing them on the importance of substantive FOIA training for all FOIA professionals.
- OIP has provided numerous training programs, which have been attended by thousands of FOIA professionals across the government. Some of the training opportunities OIP has provided include: FOIA for Attorneys and Access Professionals; Advanced Freedom of Information Act Seminar; FOIA Administrative Forum; Introduction to the FOIA; FOIA Litigation Seminar; Best Practices Workshops; DOJ Component Conferences and Training. For FY 2016, two new courses have been added to OIP's curriculum— "Continuing FOIA Education," which will provide a discussion of current topics in FOIA administration, and the "FOIA Processing Workshop," which will provide attendees with a hands-on experience focused on the procedural requirements involved in processing a FOIA request from start to finish. In addition to these training sessions, OIP instructors also continue to regularly provide specialized training at the request of agencies tailored to those particular agencies' FOIA needs.
- Many Department components including the FBI have held their own FOIA trainings.
- In March 2015, OIP took its training efforts to a new level by issuing a suite of e-Learning training modules available for all agencies and designed for the entire federal workforce.
 - The new resources include: a FOIA Infographic; a Senior Executive Briefing; a FOIA e-Learning Training Module for FOIA Professionals; and a FOIA e-Learning Training Module for all Federal Employees.
- Since the GAO's recommendation, OIP expanded its assessment of agencies' training efforts by scoring agencies on a number of milestones such as if they held their own FOIA training conference and the percentage of their FOIA professionals that attended substantive training. For the 2016 Chief FOIA Officer Reports, OIP is requiring agencies that report less than 80% of their FOIA professionals attended training to explain their agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Exemption Usage, Foreseeable Harm Analysis, and *Milner* Decision:

- OIP has issued guidance to agencies on all aspects of the FOIA, including applying the President's presumption of openness, the foreseeable harm analysis, and the proper application of Exemption 2 post-*Milner*. This guidance is also embedded in all of OIP's training sessions where its experts educate thousands of FOIA professionals every year on their important responsibilities under the FOIA.
- Since the *Milner* decision and the issuance of OIP's guidance, the usage of Exemption 2 has decreased dramatically across the government. In FY 2014, Exemption 2 only accounted for 0.23% of the government's total exemption usage.
- In FY 2014, the Department's use of Exemption 5 decreased by 18.2% from FY 2013.

Review:

- All of the Department's components have added a distinct step in their FOIA processing to consider whether a discretionary release can be made.
- OIP requires agencies to report in their CFO Report on whether they have a process or system in place for reviewing material for discretionary release, a description of the material released, whether they have made any discretionary releases during the prior fiscal year, and an explanation if they had not.

3. Recommendation: To improve the management of FOIA processing, the Secretaries of DHS, DOD, and HHS and the Attorney General should direct their respective Chief FOIA Officers to ensure that the agency components within their departments address the deficiencies in their FOIA libraries by making required categories of records easier to locate, clearly indicating when records in required categories do not exist, and expanding the content of FOIA libraries.

As indicated in Table 2 of GAO's report, the FOIA Libraries of the Department of Justice components that GAO reviewed did contain the material that agencies are required to post online. Nevertheless, OIP and the Department are continuously striving to raise the bar.

FOIA Libraries:

- OIP redesigned its FOIA Library to make the information it provides more user-friendly and easier to locate.
- The new FOIA Library separates documents into two functional categories: Operational Documents and FOIA-Processed Documents and OIP's website explains the distinction between them to the public.
- Subsequent to the GAO's recommendation, as part of the Department's Component Improvement Initiative, OIP took an in-depth look at each component's FOIA website, including their FOIA Library, to ensure that each website conformed with statutory, regulatory, and policy requirements and standards and provided recommendations for improvement.

- Additionally, the Department's new FOIA regulations which took effect in May 2015 include a provision requiring components to ensure that their FOIA websites are reviewed and updated on an ongoing basis.
- To further assist requesters in this area, the Department's new regulations also contain a provision directing component FOIA Public Liaisons to serve as a resource for assisting requesters to locate posted material.
- As part of the Department's Open Government Plan 3.0 issued in June 2014, we have also committed to having Department components review their FOIA libraries on a set schedule to ensure they are being timely updated.

Proactive Disclosures and Frequently Requested Records:

In addition to the efforts described above, OIP has taken steps to improve all agency FOIA Libraries and to further encourage proactive disclosures across the government.

- As detailed in the Department's 2015 Chief FOIA Officer Report, all components of the Department have a process in place to both identify frequently requested records for posting and to make proactive disclosures in general.
- OIP dedicates an entire section of the CFO Report and its Annual Assessment to this topic.
- In March 2013, OIP issued guidance to agencies on the use of metadata tags in FOIA documents in order to lay the foundation for building a government-wide FOIA Library.
- In March 2015, OIP issued new guidance on proactive disclosures highlighting the importance of agency FOIA websites, the posting of frequently requested records, and providing a checklist for proactive disclosures.
- In addition to the workshop on Backlog Reduction, OIP held a Best Practices Workshop session on proactive disclosures. Building on this workshop, OIP co-hosted a second proactive disclosure workshop with the White House Open Government Team.
- In July 2015, OIP announced the launch of a new Proactive Disclosure pilot program designed to test the feasibility of posting most FOIA responses online.

4. Recommendation: To improve the management of FOIA processing, the Secretaries of DHS, DOD, and HHS and the Attorney General should direct their respective Chief FOIA Officers to evaluate whether the agency components within their departments could improve the efficiency of their FOIA processing by implementing each of the technology capabilities that they do not already have.

OIP has encouraged agencies to look for improvements that can be made in FOIA administration by greater use of technology and agencies have been taking a variety of steps to do so.

- As illustrated in Table 4 of GAO's report, with the exception of one capability that two components reported not having, the DOJ components that GAO reviewed had implemented all technology capabilities reviewed by GAO.
- As recently announced, OIP will begin using *FOIAonline* as its FOIA case management system this upcoming year.
- Further, the use of advanced document management software has the greatest potential in

technology to promote more efficient processing. Since the GAO's recommendation, OIP has lead strong efforts to further leverage this technology for the benefit of all agencies' FOIA administration. In 2014, OIP held a Best Practices Workshop on the very topic of advanced technologies.

- Within the Department, in 2014, OIP partnered with the Justice Management Division to utilize e-Discovery tools to streamline its FOIA process.
- OIP also convened its FOIA Technology Working Group in March 2013. The Working Group provides a forum for agencies to exchange ideas and experiences in utilizing existing technologies.
- Finally, OIP requires all agencies to address in their CFO Reports their use of technology and the steps taken to increase efficiencies.

5. Recommendation: To improve the management of FOIA processing, the Secretaries of DHS, DOD, and HHS and the Attorney General should direct their respective Chief FOIA Officers to identify and evaluate potential approaches (e.g., enhancements to or replacement of existing systems) for enabling the electronic exchange of data between the FOIA processing systems of the agency components within their departments.

- OIP continues to encourage agencies to weigh the costs and benefits of new approaches to technology that have potential for increasing the efficiency of the FOIA process.
- OIP recently posted a blog entry on *FOIA Post* emphasizing the importance of proper case management and announcing that it will begin using *FOIAonline* in 2016.
- GAO noted in its report that the FOIA referral and consultation process could be more efficient if agencies' case management systems were more interoperable. We respectfully would like to make clear that the type of system an agency uses for tracking purposes does not necessarily impact the exchange of records necessary for referrals and consultations. The primary purpose of a tracking system is to track data about the processing of a request so that the agency can manage its FOIA workflow and generate an Annual FOIA Report. Typically, an agency's case management system would not contain the records that might require a referral or consultation.
- Several agencies, including components of the Department, use technology such as shared platforms that may assist in the simultaneous review and sharing of records. We will, of course, continue to explore potential approaches for further enhancing the electronic exchange of records between components of the Department.

Thank you again for your time and for GAO's recommendations on how we can continue to strengthen our FOIA administration. I trust that the above satisfies GAO's recommendations and we look forward to continuing to build on all of these efforts in the years ahead. If you have any questions regarding this response, you or your staff may contact me at (202) 514-3642.

Sincerely,

MELANIE PUSTAY

Melanie Ann Pustay
Director

Original signed by ME, AME, PLUS "X"
OK, U.S. and U.S. Government, and Dept of Justice
on US-AM-MELAN-E PLUS "X"
Q 7342 130603C USC : 1-1501000444328
Date 2015 Oct 10 11:23:44 -0400