

HUMAN RESOURCES MANUAL
Instruction 752: Discipline and Adverse Action
Issuance Date: 03/20/2009

Material Transmitted:

Department of Health and Human Services (HHS) Instruction 752, Corrective Action, Discipline and Adverse Actions, dated March 20, 2009.

Material Superseded:

This constitutes new policy.

Background:

Consistent with the continuous improvement initiatives, the Department is issuing Instruction 752, Corrective Action, Discipline and Adverse Actions, which is established under the authority of regulations issued by the Office of Personnel Management (OPM) found at Title 5, Code of Federal Regulations, Part 752, Adverse Actions.

The Instruction clarifies roles and responsibilities for managers when addressing employee misconduct in the workplace. It also establishes guidance and criteria to ensure that corrective action is consistent with good management practices.

This issuance is effective immediately. Implementation under this issuance must be carried out in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

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INSTRUCTION 752

Subject: Chapter 752 Corrective Action, Discipline and Adverse Actions

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752-1-00 **Purpose**

This instruction sets forth the Department of Health and Human Services (HHS) policy and guidelines for administering employee discipline and adverse actions, including resolution through alternative discipline. This instruction also establishes the authority and responsibility for taking appropriate corrective action for disciplinary or certain non-disciplinary reasons, when it is determined that such actions will promote the efficiency of the service. Discipline, including alternative discipline, is meant, where possible, to prevent recurrence of inappropriate conduct while maintaining good supervisor-employee relationships and retaining valued staff.

This Instruction, also communicates guidance for penalty considerations. Requirements stated in this Instruction are consistent with law, regulations and other Departmental policies applicable at the time of its issuance. Actions taken through the application of this Instruction must comply with the requirements of pertinent laws, rules and regulations, as well as the lawful provisions of applicable negotiated agreements for employees in exclusive bargaining units.

752-1-10 **Authority**

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

752-1-20 **Coverage.**

- A. This Instruction applies to all Operating Divisions (OPDIVs) and offices of HHS, although those OPDIVs with an existing Table of Penalties may refer to those in conjunction with the attached Disciplinary Guide in Appendix B. In instances where an OPDIV Table of Penalties and the Department Disciplinary Guide differ, the

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stricter penalty will apply. Employees covered by a collective bargaining agreement may be subject to additional procedures which may supersede/supplement those described in this Instruction.

- B. The disciplinary/adverse action procedures described in this Instruction do not apply to an Administrative Law Judge (ALJ) or the U.S. Public Health Service Commissioned Corps, whose discipline is governed by separate regulatory and statutory requirements.
- C. Department appointees in the Senior Executive Service (SES) are covered by Part 752-1-60B of this instruction.
- D. Management must consult with the servicing Human Resources Office/Center (HRO/HRC) for guidance regarding employee/action coverage.

752-1-30 **Definitions.**

- A. Administrative Leave. An excused absence from duty without charge to leave or loss of pay.
- B. Adverse Action. For purposes of this Instruction, a personnel action taken by management, appealable to the Merit Systems Protection Board (MSPB), to effect an employee's removal, suspension for more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay.
- C. Alternative discipline (AD). An alternative to traditional discipline, usually when the traditional penalty would be less than removal.
- D. Day. A calendar day (except where otherwise specified).
- E. Deciding Official. A Department supervisor or manager who makes a decision on proposed adverse action or disciplinary action.
- F. Disciplinary Action. For purposes of this Instruction, an action taken by management, not appealable to the MSPB (i.e., written reprimand; suspension for 14 days or less) to address employee misconduct.
- G. Enforced Leave. Making the employee use his or her own sick or annual leave (after the 30-day notice period with pay) pending investigation, inquiry, or further agency action.
- H. Furlough. The placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.
- I. Grade. A level of classification under a position classification system.

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- J. Indefinite Suspension. The placement of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.
- K. Last Chance Agreements. Terms agreed to by an employee (or former employee) and an employer under which the employee will be given a last opportunity to keep or get back his or her employment, usually when the agency would otherwise remove (or has removed) the employee for performance, conduct, or leave deficiencies. Usually, though not always, such agreements provide for some waiver of appeal or complaint rights.
- L. Pay. The rate of basic pay fixed by law or administrative action for the position held by an employee.
- M. Preponderance of the Evidence. That degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as sufficient to find that a contested fact is more likely to be true than untrue.
- N. Proposing Official. A Department supervisor or manager who proposes an adverse or disciplinary action.
- O. Removal. The involuntary separation of an employee from employment with the Department and Federal service, except when effected due to a reduction-in-force or the expiration of an appointment.
- P. Suspension. The involuntary placement of an employee in a temporary non-duty, non-pay status for disciplinary reasons.

752-1-40 **Abbreviations**

- AWOL Absent Without Leave
- CFR Code of Federal Regulations
- EAP Employee Assistance Program
- ERS Employee Relations Specialist
- GS General Schedule
- HRO/HRC Human Resources Office/Center
- MSPB Merit Systems Protection Board
- OGC Office of General Counsel
- OIG Office of Inspector General
- OPDIV Operational Division
- OPF Official Personnel Folder
- OPM Office of Personnel Management

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- OSC Office of the Special Counsel
- SES Senior Executive Service
- STAFFDIV Staff Division
- U.S.C. United States Code

752-1-50 **Responsibilities**

A. Heads of OPDIV and Offices are Responsible for:

- (1) Implementing, supporting and providing oversight for the effective management of employee conduct and discipline;
- (2) Communicating information to the workforce regarding conduct requirements and disciplinary parameters;
- (3) Informing all employees of the existence of the OIG Hotline (Appendix C) which they can use to report violations of laws and regulations directly to OIG if they believe the normal supervisory channels are not appropriate;
- (4) Ensuring the promulgation of and adherence to the policy and procedural requirements of this Instruction, as well as the applicable provisions of established collective bargaining agreements as appropriate; and
- (5) Providing and implementing OPDIV/Office-wide guidance and instructions other than those outlined in this Instruction, as appropriate.

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

- (1) Developing and issuing Departmental policy and guidance regarding employee conduct and discipline;
- (2) Monitoring and evaluating the administration of discipline throughout the Department, and revising the disciplinary policy and procedures as appropriate;
- (3) Providing advice and assistance to OPDIV/Offices on the provisions of this Instruction (as well as related laws, rules and regulations) and on managing employee conduct and discipline;
- (4) Establishing and implementing reporting requirements for actions taken under this Instruction, as well as complying with reporting requirements established by OPM; and
- (5) Establishing overall parameters for Department-wide conduct/discipline training and coordinating the availability of related training opportunities.

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

- (1) Advising supervisors on employee conduct issues and disciplinary options (including procedural/regulatory parameters);
- (2) Drafting or reviewing all disciplinary notices prior to issuance and applicable case files, to ensure reasonableness of penalty and statutory/regulatory compliance;
- (3) Advising employees and supervisors of their procedural rights and responsibilities relative to this Instruction (and applicable laws, regulations and negotiated agreements);
- (4) As necessary, consulting for legal sufficiency with the OGC on adverse action proposals and decisions, and providing technical assistance to the OGC on actions taken under this Instruction;
- (5) Maintaining disciplinary and adverse action files and an information system for tracking and periodically reporting the actions effected; and
- (6) Providing operational training support to ensure the workforce is sufficiently aware of the provisions of this Instruction.

D. Office of the General Counsel is Responsible for:

- (1) As necessary, providing reviews for legal sufficiency and overall appropriateness of adverse actions being considered, proposed, or taken under this Instruction, as necessary;
- (2) When appropriate, representing the Department during settlement negotiations, MSPB appeals, arbitrations and other activities related to the administrative and federal personnel litigation process; in accordance with established Departmental policy, coordinating settlements of actions taken under this Instruction which impose a financial obligation on the Department; and
- (3) As requested, reviewing and providing input on conduct/discipline training and related instructional guidance for Department supervisors and employees as needed.

E. Supervisors are Responsible for:

- (1) Establishing and maintaining a safe, productive, supportive and well-ordered work environment;

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- (2) Providing a work environment free of prohibited personnel practices, including discrimination;
- (3) Advising employees regarding assigned duties and conduct expectations, which includes observing employee performance and conduct to ensure compliance with the standards of ethical conduct and other established work requirements;
- (4) Promptly investigating and documenting circumstances related to incidents of employee misconduct with guidance from the servicing HRO/HRC;
- (5) Counseling or disciplining, as appropriate, subordinate employees in a timely manner concerning questionable conduct, pointing out specific areas of deficiency or incident, impact of the behavior, specific improvements required, and the possible consequences of continued conduct deficiencies. Supervisory counseling should include an offer to assist the employee in improving his/her conduct and to be available, within reasonable limitations, for any further consultation that the employee may request. Advise the employee of the availability of the EAP for assistance in managing any alcohol, drug, or any other personal or work related problem including stress, financial, marital, family, legal or emotional difficulties. Refrain from making a determination as to whether or not the employee actually has a problem, diagnosing a suspected problem, and assuming the role of an EAP Counselor in dealing directly with the employee's problem.
- (6) Consult with an EAP Counselor, when appropriate, to obtain assistance in the process of referring an employee to EAP. The ERS will provide guidance in this area;
- (7) Consulting with the servicing HRO/HRC regarding employee misconduct and initiating appropriate, timely and relatively consistent corrective action as warranted; and
- (8) Recognizing and complying with the requirements of this Instruction and the applicable provisions of established collective bargaining agreements, as appropriate.
- (9) Any supervisor or management official who fails to report known or suspected criminal misconduct may be subject to disciplinary action. The supervisor must report misconduct to their supervisor, any management official, or directly to the OIG. Even though he/she may believe that disciplinary action is not warranted based upon circumstances of the case. (HHS Standards of Conduct, 45 CFR Part 73, Subpart M, Reporting Violations).

F. Employees are Responsible for:

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

Employees will refrain from activity which is contrary to or in violation of the requirements of laws, rules, or regulations and report to his/her immediate supervisor (to other authority when appropriate) acts of misconduct by other U.S. Government employees.

Any employee who fails to adhere to the above is subject to disciplinary action.

752-1-60 **Policy**

A. General. Employees of the Department are expected to demonstrate high standards of integrity, both on and off the job, abiding by the Department's Standards of Conduct regulations (45 CFR Part 73) and other Federal and Departmental laws, rules and regulations. When established standards of conduct are violated, or the rules of the workplace are disregarded, corrective action is warranted to motivate employees to conform to acceptable behavioral standards and prevent prohibited and/or unsafe activities. Such corrective actions, when taken under this Instruction, should comport with applicable laws and regulations, should be administered with relative consistency and should be taken for such cause as will promote the efficiency of the service. Whenever appropriate, supervisors should consider using alternative discipline procedures in order to correct behavior while maintaining good and respectful working relationships.

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

(1)**SES:** In taking a corrective action against an appointee in the SES, management's options are limited to a written reprimand or an adverse action covered by this Instruction (i.e., suspension for more than 14 days; removal from the Federal service); management may take an

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adverse action against an SES employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

C. Use and Choice of Discipline. Discipline should be imposed to correct improper employee conduct and to maintain order, morale and workplace safety throughout the workforce. After determining that misconduct occurred and that corrective action is warranted, discipline should be initiated as soon as practicable after the misconduct which prompted it and effected on a progressive and equitable basis as much as possible. These progressive applications of penalties are known as progressive discipline. This concept should be applied in all cases except where penalties are prescribed by law, rule, or regulation; or instances where management deems the misconduct is egregious enough to warrant more serious action up to and including removal.

Management officials must exercise reasonable judgment and consider all relevant factors, both mitigating and aggravating (as reflected in the guidance found at Appendix A), in determining the most appropriate corrective action for each situation, including whether alternative discipline should be an option in a given situation. As a guide for considering disciplinary options, the Department's *Guide to Corrective Action* is included as Appendix B to this Instruction, as is the *Guide to Alternative Discipline*. These *Guides* do not mandate the use of specific penalties in most disciplinary situations. Supervisors/managers retain full authority, except in limited circumstances (i.e., discipline prescribed by statute or the MSPB), to set penalties as they deem appropriate, based on the particular circumstances and specifications of the offense. Consultation and close coordination with the servicing HRO/HRC should ensure that a particular penalty is proportional to the offense and employees who commit similar offenses are treated with relative consistency.

752-1-70 **Guidelines**

A. General. Taking a corrective action against an employee is appropriate only when the employee has engaged in identifiable misconduct adversely affecting the efficiency of the service. Before initiating such action, management should conduct a thorough inquiry into any apparent offense (collecting information to the greatest extent practicable directly from the subject employee) to ensure the objective consideration of all relevant facts and aspects of the situation. Ordinarily, this inquiry will be conducted by the appropriate line supervisor or designee, with guidance from the servicing HRO/HRC. However, certain situations (particularly those involving possible criminal activity) warrant an investigation by the OIG or other law enforcement such as the Office of Internal Affairs, Federal Protective service or local police department.

Once it is established that an employee engaged in misconduct necessitating corrective action, a supervisor or other management official (using the guidance at Appendices A and B, and in consultation with the servicing HRO/HRC) must determine the action/penalty required to deter the recurrence of the unacceptable behavior.

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Under the best of circumstances, minor misconduct should be corrected through informal supervisory counseling advising the employee promptly after the first instance of unacceptable behavior. The supervisor also may rely on notices of warning/admonishment and alternative discipline to convince the employee to change the undesirable behavior. These actions are less severe than or equivalent to the disciplinary and adverse actions described below, are less subject to review by third parties, and do not become part of the employee's permanent official employment record. Notices of warning/admonishment document the employee's misconduct, place the employee on notice regarding the behavior expected by management, and advise the employee that more serious corrective action (e.g., reprimand; suspension; removal) will result if the unacceptable behavior is not corrected. The use of such corrective actions does not constitute a "prior penalty" for disciplinary purposes to increase the severity of penalty for a subsequent offense; however, such corrective actions may be viewed as "prior notice." The use of alternative discipline, however, can constitute "prior penalty," either for a specific timeframe or for an indefinite period.

B. Means of Handling Misconduct

1) **Counseling or Verbal Warnings** should be used by the supervisor when:

- Infractions are minor and infrequent; and
- The supervisor determines that counseling and/or verbal warnings will likely preclude a recurrence of the misconduct.
- Formal discipline is not warranted.
- Warns that disciplinary action may result if the unacceptable conduct continues.
- Is not a formal disciplinary action.
- Is not maintained in the employee's OPF. That he/she may grieve the issuance of the letter of admonishment, caution or warning, by following the grievance procedures in HHS Instruction 771-3 or a negotiated grievance procedure, whichever is applicable.

2) **A Letter of Admonishment, Caution, or Warning** issued by the supervisor:

- Serves as a written notice, and/or confirmation of counseling, and/or verbal warning that conduct is unacceptable.
- Warns that disciplinary action may result if the unacceptable conduct continues.
- Is not a formal disciplinary action (however may be considered appropriate corrective action).
- Is not maintained in the employee's OPF.

- The employee may grieve the issuance of the letter of admonishment, caution or warning, by following the grievance procedures in HHS Instruction 771-3 or a negotiated grievance procedure, whichever is applicable.

3) A Letter of Reprimand:

- Is a formal disciplinary action.
- May be issued without formal advance notice or proposal.
- Will inform the employee:
 - Of the specific acts for which he/she is being reprimanded.
 - That a copy will be maintained in his/her OPF for determined length of time not to exceed 2 years.
 - That s/he may grieve the issuance of the letter of reprimand, by following the grievance procedures in HHS Instruction 771-3, or a negotiated grievance procedure, whichever is applicable.
 - That a repetition of the offense or other improper conduct may lead to more severe disciplinary action, up to and including removal from the Federal service.

4) A Disciplinary Action for a Suspension of 14 Calendar Days or Less, the employee is entitled to:

- A written notice which states the charge(s) and reason(s) for the proposed suspension specifically and in detail.
- Be represented by an attorney or other eligible representative.
- An amount of official time, up to 4 hours or in compliance with the applicable negotiated agreements, to secure affidavits and prepare a written and/or oral answer.
- The opportunity to review all material relied upon to support the reason(s) for the proposal.
- The opportunity to submit a written and/or oral reply, up to 7 days or in compliance with the applicable negotiated agreements, to the proposal and consideration of the reply before a decision is made.

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- A written decision before the effective date of the suspension (and at the earliest practicable date) which provides the reason(s) for the suspension, and the right to file a grievance or EEO complaint.

5) An Adverse Action for a Suspension of More Than 14 Calendar days, the employee is entitled to:

- A written notice stating all charge(s) and all reason(s) for the proposed suspension at least 30 calendar days in advance of the effective date of any decision.
- Be represented by an attorney or other eligible representative.
- An amount of official time, up to 4 hours or in compliance with the applicable negotiated agreements, to secure affidavits and prepare a written and/or oral answer.
- The opportunity to review all materials relied upon to support the reason(s) for the proposal.
- The opportunity to submit a written and/or oral reply, up to 14 days or in compliance with the applicable negotiated agreements, to the proposal and consideration of the reply before a decision is made.
- A written decision before the suspension is effective (and at the earliest practicable date) stating which of the reasons in the advance notice have been sustained, and which have not been sustained.
- The right to appeal a decision to suspend for more than 14 calendar days to the MSPB or to grieve the matter through a negotiated grievance procedure when applicable, but not both.
- The right to file an EEO complaint if the employee believes the action was taken as the result of discrimination.

X Reduction in Grade and Pay may be warranted as a result of misconduct:

- When the employee cannot be continued in his/her present position;
- Reassignment at his/her present grade is not possible or practical; and
- When there is a reasonable belief that the misconduct will not or cannot continue at a lower grade level.

NOTE: Alternative discipline may be considered in all the above instances of discipline.

X **Removal** action is taken only:

- Where removal is specified by law; or
- As warranted by the misconduct in question.
- Removal action is taken by following the procedures described above for A **Suspension of More Than 14 Calendar Days**.
- In certain cases, Last Chance Agreement may be an appropriate option to consider.

NOTE: The procedural requirements described above for **A suspension of More Than 14 Calendar Days and Removal**, apply in processing a demotion as a result of misconduct. (These procedures do not apply to a demotion which is a result of a reclassification of a position or a voluntary downgrade.) **The above actions are taken only to promote the efficiency of the service and must be in consultation with the ERS.**

- **Status During Notice Period.** Except as noted below, an employee will remain in an active duty status during the notice period provided he/she reports for duty to his/her assigned post of duty or requests leave in accordance with standard procedures.
- **Nonduty, Pay Status.** When there is a reasonable cause to believe an employee has committed a crime for which sentence of imprisonment may be imposed, the Agency may place an employee in a nonduty status with pay for a time not to exceed 10 calendar days and provide the employee a reasonable time, but not less than 7 calendar days, to respond to a proposed action. This shortened notice period is commonly known as the crime provision. Upon being informed of such a crime, the supervisor should consult with their HRO/HRC before placing the employee in a non-duty status.

There may be other situations, such as where there is a threat to employees or property (or information/databases), when placing an employee in a nonduty, pay status is appropriate. In such cases, HRO/HRC should be consulted.

- **Enforced Leave.** Placing an employee on leave without his/her consent usually constitutes a disciplinary action subject to the notice requirements described above. There are few exceptions. No supervisor should impose leave without first consulting the HRO/HRC.

752-1-80 **Records.** The servicing HRO/HRC shall maintain confidential disciplinary/adverse action case files; each file shall contain copies of the notice of proposed action, any written answer, a summary of any oral answer, the notice of decision (including the reasons for it), any order effecting the action, and any supporting material (e.g., witness statements; affidavits;

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documents; investigative reports). Disciplinary/adverse action files must be provided to various parties (e.g., the MSPB; the affected employee and/or designated representative; a grievance examiner), but need only be furnished in response to a specific request. Records must be maintained and disposed of in accordance with government wide rule or regulation. This will include any management database maintained by the HRO/HRCs.

PENALTY DETERMINATION

After establishing a sufficient basis for taking action (i.e., a preponderance of the evidence to support the charge(s); a nexus between the offense(s) and the employee's job or the agency's mission), the supervisor/manager, in consultation with the servicing HRO/HRC, must determine the appropriate penalty for the employee's misconduct.

The MSPB has determined that mitigation of an agency-imposed adverse action (removal, suspension of more than 14 calendar days, reduction in grade or pay, and furlough of less than 30 calendar days), is appropriate when the penalty is determined by the MSPB to be excessive, disproportionate to sustained charges, or arbitrary, capricious, or unreasonable. The MSPB in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), the MSPB identified a number of factors -- generally referred to as the "*Douglas Factors*" that must be considered in taking an adverse action. For all formal disciplinary actions, but especially adverse actions, supervisors/managers should be prepared to demonstrate that the following were considered:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's 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 supervisors' confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
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;

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10. Potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Not all 12 *Douglas* factors will apply in every case. The relevant factors must be balanced in each case to arrive at the appropriate penalty. Frequently, some of the pertinent factors will weigh in the employee's favor while others may not (or even constitute aggravating factors).

It is advisable that when addressing an adverse action case and considering the pertinent mitigating and/or aggravating factors, you do so in conjunction with the assistance of your servicing HRO/HRC.

APPENDIX B

Guide for Corrective Action

This Guide is intended for use in determining the most appropriate charges and penalties for behavior(s) or action(s) which warrant corrective/remedial action and helps to ensure a relative consistency of penalties for like offenses. Users should consider the *Nature of Offense* column as a listing of general categories of offenses and **not use it as the specific terminology in framing charges; it is not all-inclusive and is not intended to address every conceivable disciplinary situation**. Managers should be careful to avoid force-fitting an offense or charge into an existing category. Rather, the Table is to be used as a guide for selecting a charge and penalty that fits a particular situation.

The Guide lists only formal disciplinary actions (i.e., those which become a matter of record in the employee's OPF). It does not mention oral warnings, counseling letters, and similar actions which are considered informal disciplinary actions and may be more appropriate for correcting minor offenses. The *First Offense* column, therefore, refers to the first offense for which formal discipline is being administered, although it may not be the first time a violation has occurred.

The offenses need not be identical or similar in order to support progressively more severe action against an employee. A second offense need not be related to the first offense to support a more severe penalty. The penalties suggested in the Guide are guidelines only; nothing precludes management from proposing and then imposing no penalty, or a lesser or more severe penalty than that offered by the Guide, as circumstances warrant. Such circumstances, however, should be fully documented in the decision letter. (Note that a deciding official cannot impose a more severe penalty than that originally proposed in the proposal letter.)

DISCIPLINARY GUIDE

HHS GUIDE FOR DISCIPLINARY PENALTIES		
NATURE OF OFFENSE	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
1. FISCAL IRREGULARITIES (Penalty depends on the monetary value, position held, personal benefit, and/or other pertinent factors.)		
a. Submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s).	Letter of Reprimand to Removal, if for administrative convenience or to avoid following required procedures.	Removal
	14-Day Suspension, if it results in personal benefit to another.	Removal
	Removal, if it results in personal benefit.	
b. Unauthorized and/or improper use of property, Government or other funds, or any other thing of value coming into an employee's custody as a result of employment.	14-Day Suspension to Removal	Removal
c. Failure to properly account for or make proper distribution of any property, Government or other funds, or any other thing of value coming into an employee's custody as a result of employment.	Letter of Reprimand to Removal	Removal
d. Concealment of (or failing to report) missing, lost, or misappropriated funds, or other fiscal irregularities.	Letter of Reprimand to Removal	14-Day Suspension to Removal

2. FALSE STATEMENT(S)/INCORRECT OFFICIAL DOCUMENTS (False statements or entries in connection with fiscal matters and documents are covered in 1. above.)		
a. Deliberate falsification of an application for employment, or other personal history record by omission or by making a false entry. Note: If an incorrect or inaccurate entry or statement is determined to be unintentional, other (non-disciplinary) action should be taken.	Removal, if it would have adversely affected selection for appointment or promotion.	
	Letter of Reprimand to 14-Day Suspension, if it would not have adversely affected selection for appointment or promotion.	14-Day Suspension to Removal
b. Misrepresentation, falsification, or concealment of material facts or documents in connection with an official matter, including an investigation.	Letter of Reprimand to Removal	Removal
c. Knowingly and willfully making an incorrect entry on an official document or approving an incorrect official document.	Letter of Reprimand to Removal	14-Day Suspension to Removal
3. CONDUCT PREJUDICIAL TO THE BEST INTERESTS OF THE SERVICE		
a. Conduct which causes the employee to be indicted or charged with a criminal offense which is related directly to the duties of the employee's position or the mission of the Agency and for which a sentence of imprisonment may be imposed.	Indefinite Suspension (Until the outcome of the legal action is known and/or until the completion of appropriate administrative action.)	
b. Conduct which causes the employee to be convicted of a criminal charge which is related directly to the duties of the employee's position or the mission of the Agency.	Removal	
c. Off duty conduct which adversely affects the	Letter of Reprimand	Removal

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employee's job performance or trustworthiness, or adversely affects the ability of the Agency to accomplish its mission or otherwise identifiable nexus to the employee's position.	to Removal	
d. Infamous or notoriously disgraceful conduct.	Removal	
e. Concealing, removing, mutilating, altering or destroying Government records.	Letter of Reprimand to Removal	14-Day Suspension to Removal
f. Malicious or intentional damage or loss of Government- owned or Government-leased property.	Letter of Reprimand to Removal	14-Day Suspension to Removal
g. Using public office for private gain.	14-Day Suspension to Removal	Removal
h. Unethical or improper use of official authority or credentials.	Letter of Reprimand to Removal	Removal
i. Unauthorized disclosure or use of (or failure to safeguard) information protected by the Privacy Act or other official, sensitive, or confidential information.	Letter of Reprimand to Removal	Removal
j. Having a direct or indirect financial interest that an employee could reasonably expect to be in conflict or appear to be in conflict with his or her official duties and responsibilities. (When a conflict of financial interest occurs that is inadvertent and that could not be reasonably anticipated by the employee, the situation would normally be handled by divestiture or recusation rather than disciplinary action.)	Letter of Reprimand to Removal	Removal
k. Engaging in outside employment or other activities without required prior approval.	Letter of Reprimand to 5- Day Suspension	14-Day Suspension to Removal
l. Improperly soliciting or accepting, directly or indirectly, a gift from any individual or establishment seeking or having a contractual or business relationship with the Department.	5-Day Suspension to Removal	Removal
m. Improperly soliciting a contribution from another employee for a gift to an official superior, making a donation as a gift to an official superior, or accepting a gift from an employee receiving less	Letter of Reprimand to Removal	Removal

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pay.		
n. Borrowing money from a subordinate employee, securing a subordinate's endorsement on a loan, or otherwise having a subordinate assume the financial responsibility of a superior.	Letter of Reprimand to Removal	Removal
o. Use of (or authorizing the use of) employees, or Government owned, leased or provided property, facilities, services or credit cards, for inappropriate or non-official purposes.	Letter of Reprimand to Removal	5-Day Suspension to Removal
p. Willful use of (or authorizing the use of) any Government-owned or Government-leased passenger vehicles or aircraft for other than official purposes.	30-Day Suspension to Removal [31 U.S.C. 1349(b) mandates a <u>minimum</u> penalty of a one month suspension for unofficial use of Government passenger carrying vehicles or aircraft.]	Removal
q. Use of (or authorizing the use of) other Government- owned or Government-leased vehicles such as trucks, aircraft, boats or other motor vehicles for other than official purposes.	30-Day Suspension to Removal	Removal
r. Carrying of unauthorized passengers in Government- owned or Government-leased vehicles such as trucks, aircraft, boats or other motor vehicles for other than official purposes.	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal
s. Unauthorized use, removal or possession of a thing of value belonging to another employee or private citizen.	Letter of Reprimand to Removal	Removal
t. Misuse of the internet; misuse of the electronic mail; visiting websites or downloading material from the internet during duty time for non-official use; sending electronic mail for unauthorized purposes; misuse of data bases and other software for personal gain.	Reprimand to Removal	3-Day Suspension to Removal
u. Fighting, threatening, attempting to inflict or	5-Day Suspension to	14-Day Suspension to

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inflicting bodily harm while on Government premises and/or when in a duty status.	Removal	Removal
v. Use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or horseplay.	Letter of Reprimand to 14-Day Suspension	5-Day Suspension to Removal
w. Use of slanderous, malicious, derogatory, discourteous, or otherwise inappropriate language, gestures, or other conduct toward employees, supervisors, or the public.	Letter of Reprimand to Removal	5-Day Suspension to Removal
x. Failure to pay just debts in a timely and proper manner.	Letter of Reprimand to 14-Day Suspension	1-Day Suspension to Removal
y. Gambling on duty or in work areas.	Letter of Reprimand to Removal	Removal
z. Participating in a strike, work stoppage, slowdown, sickout, or similar activity.	Removal	
4. FAILURE/REFUSAL TO FOLLOW INSTRUCTION		
a. Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions.	Letter of Reprimand to 14-Day Suspension	5-Day Suspension to Removal
b. Deliberate or malicious refusal to comply with rules, regulations, written procedures, or proper supervisory instructions.	Letter of Reprimand to Removal	14-Day Suspension to Removal
c. Refusal to provide information to authorized representatives of the Department or other Government Agencies when called upon, when the inquiry relates to official matters and the information is obtained in the course of employment or as the result of relationships incident to such employment.	Letter of Reprimand to Removal	Removal
d. Failure to report for duty as detailed, transferred, or reassigned.	Removal	
e. Failure to submit required statements of financial interests and outside employment.	Letter of Reprimand to 3-Day Suspension	5-Day Suspension to Removal

5. NEGLECT OF DUTY		
Careless/negligent work, loafing, sleeping on duty, wasting time, conducting personal business while on duty.	Letter of Reprimand to Removal	5-Day Suspension to Removal
6. ATTENDANCE-RELATED OFFENSES (Penalty will depend on the circumstances, including length, frequency, and nature of position. To support disciplinary action, tardiness and unauthorized absences from the work place must be charged to AWOL on the employee's Time and Attendance (T &A) Report.)		
a. Unexcused tardiness, including delay in: (1) reporting at the scheduled starting time, (2) returning from lunch or break periods, and (3) returning from an authorized absence from the work station.	Letter of Reprimand to 1-Day Suspension	5-Day Suspension to Removal
b. Unauthorized absence, including leaving the workstation without permission or before the end of the workday. [Time periods at right refer to the accumulated total amount of AWOL for each offense (i.e., disciplinary action proposed) rather than for each instance or occurrence of unauthorized absence. For example, if an employee is AWOL on three separate occasions and the total amount of AWOL shown on the T&As is more than 8 hours but less than 5 workdays, the proposed penalty for a first offense would normally be a suspension of from 1 to 14 days.]	Absences of 8 Hours or Less	
	Letter of Reprimand to 5- Day Suspension	5-Day Suspension to Removal
	Absences of More Than 8 Hours But Less Than 5 Workdays	
	1-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
	Absences of 5 Workdays or More	
	14-Day Suspension to Removal	Removal
7. INTOXICANTS -- Alcohol and Spirits (Agencies must assure the requirements of alcohol abuse programs are met before taking action.)		
a. Unauthorized use of intoxicants while on duty, on Government property or Government-controlled property or premises where official duties are performed.	Letter of Reprimand to 14-Day Suspension	30-Day Suspension to Removal
b. Reporting to or being on duty while under the influence of intoxicants.	Letter of Reprimand to 30-Day Suspension	30-Day Suspension to Removal
c. Operating a Government-owned or Government-leased vehicle (or privately-owned vehicle on official business) while under the influence of	Removal [If a penalty of less than removal is	

intoxicants.	determined to be appropriate, agencies should (at a minimum) suspend the employee's official driving privileges for a period of one year.]	
<p>8. ILLEGAL DRUGS/DRUG PARAPHERNALIA/CONTROLLED SUBSTANCES (HHS will <u>not</u> initiate disciplinary action when an employee -- (1) Voluntarily identifies him/herself as a user of illegal drugs prior to being identified through other means, (2) Obtains counseling and rehabilitation through EAP and (3) Thereafter refrains from illegal drug use. In <u>all</u> other circumstances, agencies must make appropriate referrals to the EAP <u>and</u> initiate appropriate disciplinary action.)</p>		
a. Possession of an illegal drug, drug paraphernalia, or unauthorized controlled substance while on duty, on Government property or Government-controlled property, or on premises where official duties are performed.	5-Day Suspension to Removal	Removal
b. Use of an illegal drug or unauthorized controlled substance while on duty, on Government property or Government-controlled property, or on premises where official duties are performed.	14-Day Suspension to Removal	Removal
c. Reporting to or being on duty while under the influence of an illegal drug or unauthorized controlled substance.	14-Day Suspension to Removal	Removal
d. Sale or distribution of an illegal drug or controlled substance.	Removal	
e. Operating a Government-owned or Government-leased vehicle (or privately-owned vehicle on official business) while under the influence of an illegal drug.	Removal	
f. Interfering with, or refusing or failing to submit to a properly ordered or authorized drug test, including substituting, adulterating, or otherwise tampering with a urine sample.	Removal	
g. Use of an illegal drug or unauthorized controlled substance during non-duty hours and on non-work premises.	Letter of Reprimand to Removal	Removal

9. PROHIBITED POLITICAL ACTIVITY		
Engaging in the types of political activity prohibited by law or by Office of Personnel Management regulations.	Removal, 5 U.S.C. 7326	Note: Referral to Office of Special Counsel is required. Only the MSPB may mitigated to a penalty of not less than 30 days;
10. SAFETY AND HEALTH VIOLATIONS (Penalty should take into consideration whether danger to persons or property is involved.)		
a. Failure to report an accident and/or injury as required.	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal
b. Failure or refusal to wear/use required protective equipment (e.g., seat belts, earplugs, eye protection, etc.).	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal
c. Operation of a Government-owned or Government- leased vehicle (or privately-owned vehicle while on official business) without an appropriate State driver's license.	5-Day Suspension to Removal	Removal
d. Failure or refusal to observe and/or enforce Safety and Health regulations or to perform duties in a safe manner.	Letter of Reprimand to Removal	5-Day Suspension to Removal
11. DISCRIMINATORY PRACTICES (Penalty should take into consideration whether violation is willful/deliberate, or careless/negligent.)		
a. Acting or failing to act on an official matter (including a personnel action) in a manner which improperly takes into consideration an individual's political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition. [This includes discrimination for or against any employee or applicant for employment prohibited by 42 U.S.C. 2000e-16; 29 U.S.C. 631 or 633a; 29 U.S.C. 206(d); 29 U.S.C. 791; or any other law, rule, or regulation.]	5-Day Suspension to Removal	Removal
b. Any reprisal or retaliation action against an individual involved in the EEO complaint process.	5-Day Suspension to Removal	Removal
c. Use of remarks which relate to and insult or	Letter of Reprimand	14-Day Suspension to

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denigrate an individual's race, color, religion, national origin, sex, marital status, age, or handicapping condition.	to 30-Day Suspension	Removal
d. Negligence or insensitive conduct with respect to an individual's race, color, religion, national origin, sex, marital status, age, or handicapping condition which is determined to be discriminatory and where there is no other finding of overt discrimination.	Letter of Reprimand to 5-Day Suspension	5-Day Suspension to Removal
e. Failure to take appropriate action regarding allegations or findings of discriminatory practices.	5-Day Suspension to Removal	Removal
12. SEXUAL MISCONDUCT		
a. Actual or attempted sexual assault (e.g., rape)	Removal	
b. Inappropriate and/or unwelcome touching or other physical contact.	14-Day Suspension to Removal	30-Day Suspension to Removal
c. Pressure for (or official action based on) sexual favors, including taking action favorable to an employee because of the granting of a sexual favor or denying an action favorable to an employee because of the withholding of a sexual favor.	30-Day Suspension to Removal	Removal
d. Inappropriate and/or unwelcome teasing, jokes, actions, gestures, display of visual material of a sexual nature or remarks of a sexual nature.	Letter of Reprimand to 30-Day Suspension	14-Day Suspension to Removal
13. PROHIBITED PERSONNEL PRACTICES (Not elsewhere covered.)		
Abuse of authority and commission of a prohibited personnel practice covered by 5 U.S.C. 2302.	Letter of Reprimand to Removal	Removal
14. SCIENTIFIC MISCONDUCT	Letter of Reprimand to Removal	Removal

OFFICE OF INSPECTOR GENERAL INFORMATION

Report Fraud

Phone: 1-800-HHS-TIPS (1-800-447-8477)	E-Mail: HHS Tips@oig.hhs.gov
Fax: 1-800-223-8164	Mail: Office of Inspector General Department of Health and Human Services Attn: HOTLINE
TTY: 1-800-377-4950	PO Box 23489 Washington, DC 20026

Reporting Fraud

All HHS and contractor employees have a responsibility to assist in combating fraud, waste and abuse in all departmental programs. As such you are encouraged to report matters involving fraud, waste and mismanagement in any departmental program(s) to OIG. To assist you, OIG maintains a hotline which offers a confidential means for reporting vital information.

Information is for official use only (For information on confidentiality please contact the hotline and ask about our confidentiality source program).

Each caller is encouraged to assist the OIG by providing information on how they can be contacted for additional information but **caller may remain anonymous**.

To the best of your ability, please provide the following information when contacting the Hotline:

Type of complaint:

- Medicare Part-A
- Medicare Part-B
- Child Support Enforcement
- National Institute Of Health
- Indian Health Service
- Food And Drug Administration
- Centers For Disease Control And Prevention

Substance Abuse And Mental Health Services Administration
 Health Resources And Services Administration
 Aid To Children And Families
 All Other HHS Agencies Or Related Programs

HHS department or program being affected by your allegation of fraud waste or abuse/mismanagement:

Administration for Children and Families (ACF)
 Child Support Enforcement (CSE)
 Centers for Medicare & Medicaid Services (CMS)
 Food and Drug Administration (FDA)
 National Institutes of Health (NIH)
 Office of Disease Control and Prevention (CDC)
 Indian Health Service (IHS)
 Office of Inspector General (OIG)
 Office of the Secretary (OS)
 Health Resources and Services Administration (HRSA)
 Substance Abuse and Mental Health Administration (SAMSHA)
 Administration on Aging (AOA)
 Agency for Health Care Policy and Research
 Other (please specify)

Please provide the following, if you would like your referral to be submitted anonymously please indicate in your correspondence or phone call:	Subject/Person/Business/Department that allegation is against:
Your Name Your Street Address Your City/County Your State Your Zip Code Your email Address	Name of Subject Title of Subject (if applicable) Subject's Street Address Subject's City/County Subject's State Subject's Zip Code Please provide a brief summary relating to your allegation.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
GUIDE FOR IMPLEMENTING AN ALTERNATIVE DISCIPLINE PROGRAM**

Prepared by:

**Office of Human Resources
Assistant Secretary for Administration
and Management**

September 10, 2002

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I. What is alternative discipline?

Alternative discipline is an alternative to traditional penalties for employee misconduct. It is a form of alternative dispute resolution that can be used to effectively resolve, reduce or even eliminate workplace disputes that arise from circumstances where disciplinary action is appropriate. The traditional penalties which alternative discipline generally replace are suspensions and removals. Last chance agreements (LCA) are a form of alternative discipline.

II. How does alternative discipline work?

The option to offer alternative discipline to an employee is the right of management, generally the supervisor or manager with authority to propose or decide disciplinary action against the employee. The process allows management and an employee who has committed an infraction to negotiate an alternative form of corrective action in lieu of traditional discipline, if some basic criteria are first met. The agreement between management and the employee is formalized in a written "Alternative Discipline Agreement" which details all of the terms and conditions used to resolve the situation.

III. What are the criteria for considering whether alternative discipline may be appropriate?

- The traditional penalty for the misconduct is suspension or removal, and there is not a statutory/regulatory penalty for the infraction (i.e., a 30 day suspension for a first offense of "willful misuse of a government vehicle");
- The employee acknowledges responsibility for the behavior(s) giving rise to the need for corrective/disciplinary action, expresses remorse for such behavior and agrees not repeat the behavior(s);
- The manager determines that alternative discipline has a good probability of preventing further misconduct by the employee;
- The employee agrees to waive all grievance, appeal and/or EEO complaint rights with respect to the particular action. The employee also agrees to waive grievance and appeal rights in connection with the particular instance of misconduct even if traditional discipline is later imposed because the employee fails to fulfill the terms of the alternative discipline agreement. However, an employee may not waive prospective EEO rights; and,
- The use of alternative discipline in cases involving bargaining unit employees must not be precluded by the negotiated agreement. Note: Where a term of an alternative discipline agreement affects a condition of employment of one or more bargaining unit employees (other than employee whose conduct is at issue), management is obligated to notify the Union and give it the opportunity to exercise its representational rights.

IV. How does alternative discipline benefit the organization and the employee?

- Less negative impact on supervisor/employee relationship. The interactive process of developing an alternative discipline agreement between the manager and employee can provide common ground for preserving or repairing the employer-employee relationship which is frequently unrecoverable after traditional discipline is imposed. The employee can be viewed as an individual who is willing to take responsibility for his/her actions and management can be viewed as willing to work with the employee and help restore or rebuild a cooperative work relationship. In addition, by actively participating in the process, an employee is more likely to fulfill the expectations agreed to and modify his/her behavior appropriately.
- Productivity of employee. The organization retains the services of an employee instead of losing productivity in cases where the employee would have been given a traditional suspension. There is little or no interruption to the daily flow of work and no need to temporarily inconvenience co-workers who may have to pitch in while an employee is on suspension.
- Quicker closure. Because cases resolved by alternative discipline agreements are closed more quickly than traditional cases and because they include waivers of grievance, appeal and complaint rights, the matter is resolved and closed with the signing of the agreement. There are no lingering issues or litigation to disrupt the work of the organization or the relationship between the employee, his/her supervisor and the organization as a whole.

- Addresses the real purpose of discipline. In the Federal government, discipline is meant to be remedial and corrective rather than punitive. Alternative discipline, with its focus on a collaborative, constructive outcome, is truly remedial.
- Time and resource savings. As described more fully in the next section, alternative discipline may be offered at any stage of the disciplinary process. When alternative discipline is used before a traditional penalty has been proposed or decided, a significant savings in time and resources can be realized for management, the employee and the servicing human resources office. The traditional disciplinary process can be protracted and even if alternative discipline is used after a decision has been made, additional time and resources to investigate and defend against complaints, grievances and appeals can be saved since the employee must waive all rights to contest the action.

V. What other considerations should be taken into account?

- An agency may consider excluding some forms of misconduct from the alternative discipline process altogether because of the seriousness of the infractions (e.g., workplace violence, discrimination, reprisal/retaliation, and sexual harassment).
- Decisions regarding whether to offer alternative discipline to an employee must be equitable. Like many other decisions, managers are expected to consider all relevant information and weigh the pros and cons of various options. With the criteria outlined above, a manager, with the assistance of his/her Labor/Employee Relations Specialist, should be able to arrive at an appropriate conclusion regarding whether to offer alternative discipline in a given situation.

VI. At what stage(s) of the disciplinary process may alternative discipline be considered?

Alternative discipline may be initiated instead of traditional discipline or at any stage of the traditional process.

Instead of traditional discipline: If management decides to offer an employee alternative discipline instead of initiating the traditional disciplinary process, the servicing Employee/Labor Relations Specialist must first prepare a written analysis for management and the employee which identifies: 1. the employee's misconduct; 2. the law, rule, regulation, policy or procedure that was violated; and, 3. the traditional penalty that would have been proposed in the absence of alternative discipline.

The employee must be provided an opportunity to review the written analysis in order to make an informed choice between traditional and alternative discipline. If the employee chooses alternative discipline prior to the initiation of the traditional disciplinary process, he/she must be informed that in choosing alternative discipline at this stage, he/she waives Chapter 75 due process rights. The alternative discipline agreement must contain an explicit description of these waivers. The employee must also agree that if he/she fails to fulfill any term or condition of the agreement, the traditional penalty identified in the written analysis will be imposed without additional due process, including the right to

grieve or appeal. See Exhibit 1.

During the traditional disciplinary process: Alternative discipline may also be offered at any time after the traditional disciplinary process has begun. For example, it may be offered after a notice of proposed suspension or removal has been issued, after the employee's oral and/or written reply to a proposal or after a decision has been reached. See Exhibit 2.

VII. What are some examples of alternatives to traditional disciplinary penalties?

There are a number of options that, singly or in combination, may be appropriate as alternatives to traditional penalties. These examples are not all inclusive and supervisors, employee relations offices and employees are encouraged to be creative and innovative in using the options on the following page as well as others while remaining within the confines of law and statute.

- Donation of accrued annual leave to an approved recipient in the leave donor program or to the Agency's leave bank.
- Leave without pay (LWOP) in lieu of suspension. (Note: an FLSA-covered employee cannot report to work during an LWOP period.)
- Paper suspension, in which an SF-50 documenting a suspension of a specific number of days is placed in the employee's Official Personnel File, but the employee does not actually serve a suspension. He/she remains in active duty status, performing work and getting paid. The SF-50 could be removed from the OPF after an agreed upon period of time (2 years, 4 years).
- Performance of unpaid, off-duty community service related to the offense. For example, instead of a 30 day suspension for drinking alcohol on the job, the employee agrees to perform 120 hours of community service in an alcohol abuse center. This must be documented to ensure that the employee performed the community service work.
- Agreement to seek and actively participate in counseling through the Employee Assistance Program or other organization. This must be documented to ensure that the employee attends and participates and can be done without violating the employee's privacy.
- Holding all or part of a suspension in abeyance for periods of time (generally one to two years) while the employee demonstrates acceptable conduct and/or performance.
- Writing, developing and/or presenting a variety of e-mails, memoranda, instructional guides, training modules, etc., that explains a specific aspect of proper conduct and the potential consequences for violating approved standards.
- Making restitution to either the Agency or the Department of Treasury for monies owed to the government for unauthorized personal long-distance phone calls, credit card charges, time and attendance abuse, "wasting" official time, etc.

VIII. What is the appropriate format for alternative discipline agreements and what standard terms should be included?

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The samples in this Guide are examples of the recommended format for such agreements. They are presented in a commonly used settlement agreement format and clearly delineate the terms agreed to by management and the employee. Alternative discipline agreements, like settlement agreements, are considered to be contracts between parties. As such, whatever is spelled out in the document frames any future argument as to the meaning of various terms. Therefore, terms should be explicit, particularly those which explain what the employee will do in lieu of traditional discipline and the rights he/she is waiving.

At a minimum, all alternative discipline agreements should include the following:

1. A description of the misconduct and a statement that the disciplinary analysis resulted in a determination that a specified "traditional" penalty is warranted under formal disciplinary procedures. If alternative discipline is agreed to after initiation of the traditional process, attach the proposal and decision letters, as appropriate, to the agreement.
2. A statement in which the employee admits that he/she engaged in the improper conduct, recognizes the misconduct was unacceptable, and promises that these acts will not occur again.
3. A description of the terms and conditions that must be met for the employee to satisfactorily fulfill the agreement. The terms must include the timeframe(s) in which the employee must satisfy the agreement.
4. A clause addressing the retention of records associated with the agreement (such as the case file and a copy of the agreement). In most HHS agencies, 4 years is the retention period for disciplinary action files. The agreement should specify the agency's retention period.
5. A statement in which the employee agrees that if he/she fails to satisfy the terms and conditions of the agreement, the traditional penalty specified in the agreement will be effected immediately.
6. A statement that the agreement was entered into voluntarily and that the employee had the opportunity to seek the advice of a personal representative.
7. A statement that the misconduct addressed through the alternative discipline agreement constitutes an offense and may be used to support any future progressive disciplinary action(s), traditional or alternative.
8. A statement that the terms and conditions of the agreement are confidential but that they may be shared with parties who have an official need to know.
9. A statement that the terms and conditions of the agreement are nonprecedential, meaning they are specific to the employee, and may not be cited for comparison purposes in any other case.
10. If applicable, an acknowledgment that no salary or wage compensation can be requested for any off-duty volunteer service and that such service is not covered by Workers' Compensation.
11. The signatures of the parties to the agreement. At a minimum, this will include the employee and the supervisor or other management official authorized to enter into such an agreement. It may also include the employee's representative and/or the Employee/Labor Relations Specialist.

IX. How do you know when an alternative discipline process has concluded?

The terms and conditions of the alternative discipline agreement are considered fulfilled when the supervisor, in consultation with the Employee/Labor Relations Specialist, determines that the employee has satisfied the terms of the agreement.

When the terms and conditions of the alternative discipline agreement are satisfied, the supervisor or Employee/Labor Relations Specialist must certify such in writing to the employee. See the "Final Disposition" section of the sample alternative discipline agreements.

If the employee is unable to fulfill the terms and conditions of the alternative discipline agreement due to circumstances beyond his/her control, the parties should revise the agreement. For example, an employee would be unable to meet the terms of an agreement if it required the employee to perform 200 hours of community service within a six-month period, but the employee became incapacitated for five or six months due to an automobile accident.

If the employee fails to satisfy the terms and conditions of the agreement, the supervisor or Employee/Labor Relations Specialist will immediately issue a violation notice to the employee. The notice will inform the employee that the agreement has been breached and the traditional penalty specified in the agreement will be effected immediately. See Exhibit 3.

EXHIBIT 1

SAMPLE ALTERNATIVE DISCIPLINE AGREEMENT

PRIOR TO INITIATION OF TRADITIONAL DISCIPLINE

ALTERNATIVE DISCIPLINE AGREEMENT BETWEEN [EMPLOYEE'S NAME] AND [OPDIV/STAFFDIV]

The PARTIES to this Agreement are [Employee's Name], title, duty station (hereafter referred to as the EMPLOYEE) and the [OpDiv/ StaffDiv] (hereafter referred to as the AGENCY).

This Agreement is entered into as an alternative to the initiation of a proposal to suspend the EMPLOYEE without pay for 3 calendar days based on the EMPLOYEE'S misconduct. Under the terms of this Agreement, the EMPLOYEE acknowledges that:

he/she was absent without approved leave (AWOL) for a total of 20 hours during pay periods 21 and 22, 2000.

Based on the above, and in consideration of other factors, the AGENCY has concluded that the issuance of a proposal to suspend the EMPLOYEE from duty without pay for 3 calendar days is warranted. Formal adverse action procedures include: the issuance of a letter of proposed suspension; the EMPLOYEE'S opportunity to reply orally and/or in writing to the charges set forth in the proposal; the issuance of a decision based on the proposal and the EMPLOYEE'S oral and/or written response to the charges (including any mitigating factors presented by the EMPLOYEE); and, the EMPLOYEE'S right to file a negotiated/administrative grievance regarding the action taken by the AGENCY.

However, the PARTIES have agreed to the following as an alternative to the AGENCY initiating formal adverse action procedures:

1. The EMPLOYEE admits that he/she committed the misconduct cited above; recognizes

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the misconduct was unacceptable; and, promises that these acts will not occur in the future.

2. The EMPLOYEE agrees to donate 24 hours of annual leave to an approved leave donor recipient within 30 days of the date of the last signature on this Agreement and to provide his/her supervisor, [name], with proof that such a donation was made, no later than 10 days after making the donation.
3. The EMPLOYEE acknowledges that his/her failure to comply with #2 above will result in the automatic imposition of a 3 calendar day suspension without pay (without the issuance of proposal to suspend letter, an opportunity to reply, a written decision letter and the right to grieve the AGENCY'S action).
4. The AGENCY agrees that if the EMPLOYEE fully complies with the condition specified in #2 above, the AGENCY will not impose the 3 calendar day suspension.
5. The EMPLOYEE understands that an additional offense of this nature, or any other misconduct on his/her part, may result in a proposal for more severe disciplinary action, up to and including a proposal to remove him/her from the Federal service. The EMPLOYEE further understands that the misconduct cited in this Agreement, as well as the resulting Agreement, may be cited as a first offense in determining any subsequent disciplinary action.
6. The EMPLOYEE understands that this Agreement does not preclude the AGENCY from initiating and/or taking appropriate action regarding any other misconduct not covered by this Agreement.
7. The EMPLOYEE agrees to waive any and all rights to appeal, grieve, complain of, or otherwise contest actions relating to or arising out of his/her employment prior to the effective date of this agreement. The EMPLOYEE may not in any way contest the imposition of traditional discipline arising from a breach of this Agreement; however, he/she may contest a determination that one or more terms of this Agreement has been breached. The EMPLOYEE cannot waive prospective EEO complaint rights.*
8. The EMPLOYEE understands that this Agreement will be maintained with the disciplinary files in the AGENCY'S Employee Relations office for a period of 4 years from the date of the last signature on this Agreement in compliance with Employee Relations record-keeping requirements.
9. The PARTIES understand that this Agreement is not confidential and will be used in any manner necessary to carry out the terms. However, it will be shared only with those who have an official need to know.
10. The PARTIES understand that the terms and conditions of this Agreement are nonprecedential, meaning they are specific to the EMPLOYEE, and may not be cited for comparison to another employee's alternative discipline agreement or traditional disciplinary action.
11. There are no other terms to this Agreement other than those expressly written here.
12. The EMPLOYEE agrees that he/she has had an opportunity to consult with a representative on the terms and conditions of this Agreement and has had an opportunity to clarify any terms or conditions which were not understood by him/her.
13. The EMPLOYEE understands that he/she is fully responsible for any and all attorney's fees related to his/her representation in any part of this matter.

EXHIBIT 2

SAMPLE ALTERNATIVE DISCIPLINE AGREEMENT

AFTER TRADITIONAL DISCIPLINE HAS BEEN INITIATED

ALTERNATIVE DISCIPLINE AGREEMENT BETWEEN [EMPLOYEE'S NAME]
AND [OPDIV/STAFFDIV]

The PARTIES to this Agreement are [Employee's Name], title, duty station (hereafter referred to as the EMPLOYEE) and the [OpDiv/ StaffDiv] (hereafter referred to as the AGENCY).

This Agreement is entered into as an alternative to proceeding with the formal disciplinary process already underway. Under the terms of this Agreement, the EMPLOYEE acknowledges that:

he/she used a government-owned computer and printer, as well as more than 40 hours of official time, to prepare publicity and marketing materials for a personal business venture. As the supervisor of the staff, he/she is responsible for adhering to proper standards of conduct and for being a positive role model for employees.

Based on the above, and in consideration of other factors, the AGENCY initiated formal disciplinary procedures and, on [date], issued the EMPLOYEE a notice of proposed suspension for 21 calendar days. The EMPLOYEE submitted a timely written reply to the notice of proposed suspension and, upon consideration of the EMPLOYEE'S acceptance of responsibility for his/her conduct and remorse for damaging the implicit trust placed in him/her as a supervisor, the AGENCY offered alternative discipline in lieu of completing the formal disciplinary process, which would include a written decision letter and the opportunity to appeal, grieve, complain of or otherwise contest the final action.

As a result, the PARTIES have agreed to the following as an alternative to the AGENCY completing formal adverse action procedures:

1. The EMPLOYEE admits that he/she committed the misconduct cited above; recognizes the misconduct was unacceptable; and, promises that these acts will not occur in the future.
2. The EMPLOYEE agrees to make restitution in the amount of \$1050.00 (the equivalent of one week's gross salary) within 90 days of the date of last signature on this Agreement and to provide his/her supervisor, [name], with proof that such a restitution was made, no later than 15 days after making the final restitution payment. Payment will be made to the AGENCY'S finance office at [address].
3. The EMPLOYEE agrees to perform 40 hours of off-duty, unpaid community service with a public service organization, such as Public Television, within 90 days of the date of the last signature on this Agreement. The EMPLOYEE agrees to provide the supervisor with proof that the community service was completed.
4. The EMPLOYEE agrees to write and transmit an anonymous e-mail to all AGENCY employee's at his/her location reiterating the standards of conduct with respect to his/her misconduct and describing the possible consequences of misconduct of this nature. The AGENCY agrees to provide necessary support to enable an anonymous e-mail to be sent. This e-mail will be sent within 14 days of the date of the last signature of this AGREEMENT.
5. The EMPLOYEE acknowledges that his/her failure to comply with #2, #3 and/or #4 above will result in the automatic imposition of a 21 calendar day suspension without pay

- (without a written decision letter and the right to appeal the AGENCY'S action).
6. The EMPLOYEE understands that an additional offense of this nature, or any other misconduct on his/her part, may result in a proposal for more severe disciplinary action, up to and including a proposal to remove him/her from the Federal service. The EMPLOYEE further understands that the misconduct cited in this Agreement, as well as the resulting Agreement, may be cited as a first offense in determining any subsequent disciplinary action.
 7. The EMPLOYEE understands that this Agreement does not preclude the AGENCY from initiating and/or taking appropriate action regarding any other misconduct not covered by this Agreement.
 8. The EMPLOYEE agrees to waive any and all rights to appeal, grieve, complain of, or otherwise contest actions relating to or arising out of his/her employment prior to the effective date of this agreement. The EMPLOYEE may not in any way contest the imposition of traditional discipline arising from a breach of this Agreement; however, he/she may contest a determination that one or more terms of this Agreement has been breached. The EMPLOYEE cannot waive prospective EEO complaint rights.*
 9. The EMPLOYEE understands that this Agreement will be maintained with the disciplinary files in the AGENCY'S Employee Relations office for a period of 4 years from the date of the last signature on this Agreement in compliance with Employee Relations record-keeping requirements.
 10. The PARTIES understand that this Agreement is not confidential and will be used in any manner necessary to carry out the terms. However, it will be shared only with those who have an official need to know.
 11. The PARTIES understand that the terms and conditions of this Agreement are nonprecedential, meaning they are specific to the EMPLOYEE, and may not be cited for comparison to another employee's alternative discipline agreement or traditional disciplinary action.
 12. There are no other terms to this Agreement other than those expressly written here.
 13. The EMPLOYEE agrees that he/she has had an opportunity to consult with a representative on the terms and conditions of this Agreement and has had an opportunity to clarify any terms or conditions which were not understood by him/her.
 14. The EMPLOYEE understands that he/she is fully responsible for any and all attorney's fees related to his/her representation in any part of this matter.
 15. The PARTIES understand the terms of this Agreement and willingly enter into it. This Agreement becomes effective upon the date of the last signature of the PARTIES involved.

Employee's Signature

Supervisor's Signature

Date

Date

FINAL DISPOSITION:

EXHIBIT 3
SAMPLE VIOLATION NOTICE
NOTICE OF VIOLATION OF ALTERNATIVE DISCIPLINE AGREEMENT

TO: Name of Employee
Title
Organization
Location

FROM: Name of Supervisor/Deciding Official
Title
Organization
Location

This is notice that you violated/failed to fulfill a condition of the Alternative Discipline Agreement, dated _____, in which you agreed to:

Donate 40 hours of annual leave to an approved recipient of the leave donor program by [date].
[Describe all terms and/or conditions violated/not fulfilled.]

You failed to comply with your agreement to complete this item as an alternative to your being suspended from duty and pay for [] calendar days. You did not make a good faith attempt to complete this item, nor did you come to me or the employee relations office to discuss any reasons for your noncompliance.

In accordance with the terms of the Agreement, you will be suspended from duty without pay for [] calendar days beginning [date] and will return to duty on [date]. The personnel documents reflecting this action will follow.

Last revised: November 26, 2002

U.S. Department of Health & Human Services · 200 Independence Avenue, S.W. · Washington, D.C. 20201