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AND THE BROADCASTING BOARD OF GOVERNORS
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Review of the Department of State Disciplinary Process

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PURPOSE, SCOPE, AND METHODOLOGY OF THE INSPECTION

This inspection was conducted in accordance with the Quality Standards for Inspection and Evaluation, as issued in 2012 by the Council of the Inspectors General on Integrity and Efficiency, and the Inspector's Handbook, as issued by the Office of Inspector General for the U.S. Department of State (Department) and the Broadcasting Board of Governors (BBG).

PURPOSE AND SCOPE

The Office of Inspections provides the Secretary of State, the Chairman of the BBG, and Congress with systematic and independent evaluations of the operations of the Department and the BBG. Inspections cover three broad areas, consistent with Section 209 of the Foreign Service Act of 1980:

- **Policy Implementation:** whether policy goals and objectives are being effectively achieved; whether U.S. interests are being accurately and effectively represented; and whether all elements of an office or mission are being adequately coordinated.
- **Resource Management:** whether resources are being used and managed with maximum efficiency, effectiveness, and economy and whether financial transactions and accounts are properly conducted, maintained, and reported.
- **Management Controls:** whether the administration of activities and operations meets the requirements of applicable laws and regulations; whether internal management controls have been instituted to ensure quality of performance and reduce the likelihood of mismanagement; whether instances of fraud, waste, or abuse exist; and whether adequate steps for detection, correction, and prevention have been taken.

METHODOLOGY

In conducting this inspection, the inspectors: reviewed pertinent records; as appropriate, circulated, reviewed, and compiled the results of survey instruments; conducted on-site interviews; and reviewed the substance of the report and its findings and recommendations with offices, individuals, organizations, and activities affected by this review.



United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

PREFACE

This report was prepared by the Office of Inspector General (OIG) pursuant to the Inspector General Act of 1978, as amended, and Section 209 of the Foreign Service Act of 1980, as amended. It is one of a series of audit, inspection, investigative, and special reports prepared by OIG periodically as part of its responsibility to promote effective management, accountability, and positive change in the Department of State and the Broadcasting Board of Governors.

This report is the result of an assessment of the strengths and weaknesses of the office, post, or function under review. It is based on interviews with employees and officials of relevant agencies and institutions, direct observation, and a review of applicable documents.

The recommendations therein have been developed on the basis of the best knowledge available to the OIG and, as appropriate, have been discussed in draft with those responsible for implementation. It is my hope that these recommendations will result in more effective, efficient, and/or economical operations.

I express my appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Robert B. Peterson".

Robert B. Peterson
Assistant Inspector General for Inspections

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Key Findings

- The Office of Inspector General team's review of 136 documentary files and 1,039 electronic case records did not reveal major issues with processing of disciplinary actions.
- The Department of State has taken steps to inform employees about various aspects of its policies on conduct and discipline but has missed opportunities to communicate to all employees throughout their careers its expectations with regard to conduct; reporting and addressing misconduct; and the real-life consequences of misconduct, including on promotions and careers.
- The Department of State advised its managers and supervisors in 2007 that failure to identify misconduct or take corrective action could result in disciplinary action against them. However, in reviewing about 1,700 case records from 2007 to 2013, the inspection team did not find a single instance of a supervisor being held responsible through the disciplinary process for failing to do so.
- The Department of State has neither assessed the impact of its messages and training on conduct and discipline nor surveyed supervisor and employee attitudes toward the disciplinary process. Such information can be used to shape an action plan to address what impediments may exist to dealing with misconduct more effectively within the Department of State's organizational culture.
- The Department of State does not have the knowledge management tools to produce readily and reliably comprehensive statistics on disciplinary processes across the Department of State; to manage document and work flow; and to track trends in discipline that might suggest areas for increased management attention, communication, and training.
- The Bureau of Human Resources has not conducted evaluations of the disciplinary programs of the bureaus over which it has delegated disciplinary authority.

The review took place in Washington, DC, between April 7 and July 11, 2014. Ambassador Peter A. Prahar (team leader), Jacqueline James (deputy team leader), Leo Hession, Ralph Kwong, Kris McMinn, Brian Mohler, and Scott Thayer conducted the inspection.

Context

The Department of State's (Department) disciplinary processes are perceived by some of its constituencies as operating slowly, producing inconsistent outcomes, and being biased in favor of Foreign Service versus Civil Service employees. The OIG team set out in this review to test the accuracy of these perceptions to the extent possible through interviews, direct observations, reviews of disciplinary case files, and statistical analyses when data were available. The case file review was limited to determining whether the files were complete and examining the adequacy of information used to make disciplinary decisions. The OIG team did not readjudicate cases or perform in-depth comparisons of the disposition of cases. Appendix I describes the methodology the OIG team used for this review. OIG's last inspection report concerning the disciplinary process was in 1998.¹

Disciplinary Proposal and Decision Process

Foreign Service and Civil Service employees in the Department have separate disciplinary regulations, each with its own statutory bases² and union representation. This lack of uniformity between the two services can result in disparate outcomes. Appendix II provides flowcharts of the Department's disciplinary processes for Foreign Service and Civil Service employees.

The Bureau of Human Resources (DGHR) processes all Foreign Service disciplinary cases in which suspension, termination, or reduction in pay grade are proposed. DGHR has delegated disciplinary authority to eight bureaus,³ from letters of reprimand to removal for Civil Service employees up to the grade of GS-13 or GS-15, depending on the bureau.

The Bureau of Diplomatic Security, OIG, and/or the Office of Civil Rights (S/OCR) may initially investigate misconduct involving both Foreign Service and Civil Service employees, depending on the nature of the allegation. If an investigation suggests a possible disciplinary issue, the case is forwarded to the Bureau of Human Resources Conduct, Suitability, and Discipline Division, Office of Employee Relations (HR/ER/CSD). Similarly, when a bureau without delegated disciplinary authority or post management determines that misconduct by an employee warrants more than admonishment, they forward documentation to HR/ER/CSD for consideration of disciplinary action. HR/ER/CSD, which has eight staff members, receives about 240 referrals per year.

HR/ER/CSD and bureaus with delegated disciplinary authority are responsible for determining whether disciplinary action is warranted and for developing disciplinary proposals.

¹ *The Adequacy of Disciplinary Actions in the Department of State, U.S. Arms Control and Disarmament Agency, and U.S. Information Agency, including the International Broadcasting Bureau*, Report No. ISP-I-98-11, January 1998.

² The Foreign Service Act of 1980 (22 U.S.C. §§ 3901-4226) and 5 U.S.C. §§ 7501-7543 provide the legal authority for the Department's Discipline Program.

³ The Bureaus of Consular Affairs, Educational and Cultural Affairs, Administration, Overseas Buildings Operations, Diplomatic Security, and International Security and Nonproliferation; the Foreign Service Institute; and the Joint Executive Office for the Bureaus of European and Eurasian Affairs and International Organization Affairs.

The “preponderant evidence” standard is used rather than the higher standard of “beyond a reasonable doubt” used in criminal cases.⁴ The Department is additionally required to establish a nexus between the disciplinary action and the promotion of the efficiency of the service.⁵ For both Civil Service and Foreign Service disciplinary cases, a proposed penalty is based on the review of similar past discipline cases and the application of the Douglas Factors,⁶ listed in Appendix IV.

The Office of the Legal Adviser, Employment Law (L/EMP), and DGHR’s Grievance Staff, along with the Office of Medical Services, the Bureau of Diplomatic Security, OIG, DGHR’s Office of Career Development and Assignments, and domestic bureaus or overseas posts, as necessary, cooperate in developing a factual basis for a disciplinary case. HR/ER/CSD and L/EMP clear proposed disciplinary actions from the bureaus with delegated disciplinary authority that involve suspension, termination, or reduction in pay grade for Civil Service employees. HR/ER/CSD, bureau executive directors, and supervisors may also issue letters of admonishment or warning. An admonishment or warning is not a formal disciplinary action. It may be oral or written. In neither case is it included in the Official Personnel File, and supervisors are required to destroy any written letter or admonishment after no more than 1 year.⁷

Before a Foreign Service employee can be reprimanded, or before a Foreign Service or Civil Service employee can be suspended from duty, reduced in pay grade, or removed permanently from employment, a proposing official⁸ sends the employee a letter explaining the action, describing the proposed penalty, and providing a copy of the information used to support the proposal. Overseas Foreign Service employees have 30 calendar days to respond; domestic employees have 15 calendar days. Civil Service employees have 10 or 15 calendar days to respond to the proposed action, depending upon the collective bargaining agreement covering the employee. Employees can respond to the deciding official⁹ in writing, orally, or both and are entitled to representation during the process. The deciding official can grant an employee’s request for more time to respond if that official believes the request is reasonable. After reviewing the file, including the employee response, the comparators, and the Douglas Factors, the deciding official makes a final decision. If the employee provides convincing mitigating circumstances or successfully refutes some or all of the reasons for the proposed penalty, the

⁴ Preponderant evidence is that degree of relevant evidence that a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. 5 CFR §1201.56(c).

⁵ Title 5 U.S.C. 75, Chapter 75, Subchapter I, as amended, and 5 CFR, Part 752, Chapter 75, Subchapter I, cover suspensions for 14 calendar days or less for such cause as will promote the efficiency of the service; and Title 5 U.S.C. 75, Chapter 75, Subchapter II, as amended, and 5 CFR, Part 752, Chapter 75, Subchapter II, cover suspensions for more than 14 calendar days, removal, reduction in grade or pay, furloughs without pay for 30 calendar days or less for such cause as will promote the efficiency of the service.

⁶ In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), the Merit Systems Protection Board established criteria that supervisors must consider in determining an appropriate penalty for misconduct. See the Office of Personnel Management Web site for a complete list (<https://www.opm.gov/policy-data-oversight/employee-relations/reference-materials/douglas-factors.pdf>).

⁷ 3 FAM 4330 – Admonishments; transmittal date 05-18-11.

⁸ For Foreign Service cases, the proposing official is the Director, Office of Employee Relations, DGHR. The deciding official is a deputy assistant secretary in DGHR.

⁹ For Civil Service cases, the proposing official is the Director, Office of Employee Relations, DGHR. The deciding official is a deputy assistant secretary in DGHR.

deciding official may withdraw the proposal or mitigate it (substitute a lesser penalty) without issuing a new proposal letter.

Grievance Process

Foreign Service and Civil Service employees have the right to file a grievance to contest the penalty in the letter from the deciding official. Initially, the Grievance Staff reviews grievances for the Department and reexamines all case materials. The Grievance Staff reviews about 130 Foreign Service and 20 Civil Service grievances of all types each year. A deputy assistant secretary for DGHR makes a determination on each grievance. That agency-level decision can be further appealed through separate Foreign Service and Civil Service processes. Under 3 *Foreign Affairs Manual* (FAM) 4430, “upon request of the grievant, the agency shall suspend its action” in cases involving suspension, separation, or termination during the review process. This provision applies only to the Foreign Service.

Foreign Service Appeals Process

A Foreign Service employee may appeal an agency-level decision to the Foreign Service Grievance Board (FSGB), an independent grievance appeals forum established through the Foreign Service Act of 1980. Foreign Service employees facing separation on grounds of misconduct have a right to an automatic hearing before the FSGB. Attorneys or American Foreign Service Association representatives may represent the employee. The FSGB may uphold the agency-level decision, mandate a lesser penalty, or dismiss the case entirely. In 2013, it took an average of 43 weeks for the FSGB to process a case from filing date to final decision.

Foreign Service employees may request and the FSGB may grant “interim relief” (sometimes called “prescriptive relief”) to suspend disciplinary action while an appeal is in process.

The 1995 OIG audit of the FSGB, in addressing the perception that the FSGB routinely overturns the Department’s disciplinary actions, found that “the grievance system is used by a relatively small number of employees, the majority of whom do not prevail.”¹⁰ Data from the 2008–2013 FSGB annual reports indicate that this conclusion remains valid. During this 6-year period, the FSGB adjudicated 63 appeals of disciplinary actions. The FSGB partially upheld and partially reversed the Department in 15 cases and fully reversed the Department in only 4 cases. In eight cases, the nature of the FSGB’s decision is not reported in the annual report.

Civil Service Appeals Process

Civil Service employees suspended for more than 14 calendar days or removed or reduced in grade or pay may appeal to the Merit Systems Protection Board (MSPB), an independent quasi-judicial agency established in 1979 to protect Civil Service employees. Employees covered by a collective bargaining agreement with the American Federation of

¹⁰ *U.S. Department of State Office of Inspector General Report of Audit: Review of the Foreign Service Grievance Process*, Report No. 5-SP-014, April 1995, p. 13.

~~SENSITIVE BUT UNCLASSIFIED~~

Government Employees or the National Federation of Federal Employees may file a grievance under the agreement or appeal to the MSPB, but not both. The Civil Service appeals process has no mechanism for interim relief.

MSPB data concerning cases originating in the Department do not disaggregate appeals related to disciplinary matters from appeals of all types. However, relatively few Civil Service cases of all types originating in the Department reach the MSPB. In FY 2012, the MSPB received 29 appeals from Department Civil Service employees: 21 were dismissed for lack of jurisdiction or timeliness, and 4 were settled. The MSPB adjudicated only four and upheld the Department in all cases.

Department Leadership's Role in Disciplinary Process

Although the Department has taken steps to inform employees about various aspects of its policies on conduct and discipline, the Department has missed opportunities to communicate to all employees throughout their careers its expectations with regard to conduct; the proper way to report and address misconduct; and the real-life consequences of misconduct, including on promotions and careers. Beyond impairing employee efficiency and effectiveness, misconduct can be damaging to national security, employee safety and morale, public and congressional confidence, and diplomatic relations.

On the other hand, the Department has not been entirely silent on the issue and has increased its messaging regarding conduct and discipline over the past year:

- The Director General of the Foreign Service provides annual guidance to chiefs of mission regarding their responsibilities and authorities to provide an effective and impartial process to address conduct, suitability, and discipline at U.S. diplomatic posts overseas. The instruction outlines the steps to be taken when a potential performance or misconduct issue arises. Chiefs of mission are also asked to share this guidance with post management staff as well with those in supervisory positions. DGHR officials address the Foreign Service Institute's (FSI) Deputy Chief of Mission/Principal Officers course, the Ambassadorial Seminar, and the Management and Human Resources Officers courses, all of which offer opportunities to address misconduct-related issues.
- The OIG team commends the recent series of cables DGHR has sent to the field addressing sexual activity (including sexual misconduct and prostitution), alcohol, drugs, tax obligations, and other topics. The OIG team urged DGHR to continue this effort to inform supervisors and employees about complex and perhaps frequently misunderstood misconduct issues.
- FSI has incorporated training on dealing with misconduct into several of its leadership and management courses. FSI also offers shorter online courses relevant to discipline, which are helpful to supervisors in managing employee conduct issues.

Communication

The Department could do more to communicate that addressing misconduct is a priority and to support supervisors in dealing with this issue.

The 2010 Quadrennial Diplomacy and Development Review, which serves in part as a precursor to core institutional reforms and corrective changes, underscores the need to improve performance management but makes no mention of misconduct. FSI reports 40,380 enrollments completed between October 1, 2010, and April 8, 2014, in courses that appear to include instruction related to misconduct, such as ethics, personnel management, supervision, and leadership. Many of these courses are part of the Department's mandatory supervisory and leadership training continuum. Courses that address misconduct issues specifically, though, are not heavily subscribed. Only 20 enrollments were recorded in the Documenting Discipline online course during the same period. The Workplace Harassment for Supervisors and Managers course

had 26 enrollments. Additionally, the OIG team noted during the review that the DGHR Web site on discipline was not up to date and that the relevant information was distributed among a variety of sources. DGHR committed to updating the site.

DGHR has published separate guides to supervisors of Foreign Service (2004) and Civil Service (2007) employees that explain how to identify and address misconduct issues. However, these guides have not been updated to incorporate the latest Department guidance on areas such as drug and alcohol abuse, workplace violence, sexual harassment, prostitution, and tax obligations. This lapse hampers supervisors' ability to take disciplinary action in a timely and informed manner.

Recommendation 1: The Bureau of Human Resources should update the guides for supervisors of Foreign Service and Civil Service employees so that they contain the latest Department of State guidance on disciplinary issues. (Action: DGHR)

Publicizing Disciplinary Actions

The Department has not communicated to its employees the real-life consequences of misconduct. Without such information, employees may question the credibility, or even the existence, of the disciplinary process and the deterrent effect may be lost.

The Department shares little information with employees about the nature and numbers of disciplinary actions and who is subject to those actions. Between 2000 and 2004, the Department issued only three management notices on the subject.

- Department Notice 2000-10-010, dated October 5, 2000, provided information about the misconduct cases processed from June 1999 to June 2000 and included the nature of the misconduct (such as "falsification of claims"), the penalty imposed ("5-day suspension"), and the bureau to which the Civil Service or Foreign Service employee was assigned.
- Management Notice 2003-02-049, dated February 28, 2003, reported total cases in 2002 involving Foreign Service (198) and Civil Service (72) employees, highlighted misconduct involving travel card abuse and security violations, and reported the number of employees separated for cause (5 Foreign Service and 19 Civil Service).
- Department Notice 2004-02-2004, dated February 17, 2004, reported total cases in 2003 involving Foreign Service (205) and Civil Service (127) employees and commented that 61 percent of Foreign Service cases were based on security violations and infractions.

All three management notices were offered as "a reminder to all employees of the Department's Discipline Program." The practice of issuing such reminders lapsed in 2004. Currently, the DGHR Web site offers only "combined statistics of cases closed" (the most recent dated 2012), which consists of a pie chart indicating the percentage of each type of penalty administered (such as, 5 percent were for suspension of 6 days or longer). No indication is given of the numbers of Foreign Service and Civil Service employees disciplined, the penalties imposed, the prevalent types of misconduct, and trends.

The Department has not published information concerning the impact of a disciplinary action on a Foreign Service officer's career. To determine the effect of such action on the Foreign Service competitive promotion process, the OIG team reviewed the electronic official personnel folders of 171 Foreign Service employees with disciplinary actions dating from 2007 who were reviewed for promotion by the 2011, 2012, and/or 2013 selection boards. A comparison of the disciplinary data in the Grievance, Appeals, and Disciplinary Tracking and Reporting System (GADTRK) and official personnel folders revealed that only five of these employees (two Foreign Service generalists and three Foreign Service specialists) were promoted during that 3-year period. Furthermore, the consequences for Foreign Service employees can extend to the career itself. According to GADTRK and official personnel records, another 35 Foreign Service employees elected to resign or retire, thereby stopping the disciplinary action.

Although many factors may play into an employee's decision to retire or resign—or into a selection board's decision—the OIG team believes these results indicate a strong correlation between disciplinary actions and negative career consequences for Foreign Service employees.

Stakeholders suggested that publishing even minimal amounts of information regarding disciplinary actions may have been halted out of a concern to protect personally identifiable information. The OIG team believes privacy concerns can be addressed in publicizing the results of the disciplinary process. The team notes that the FSGB posts information concerning its actions on its Web site (www.fsgb.gov) and that Department disciplinary cases can become public if the Department of Justice prosecutes the case. Some Federal agencies and state licensing boards make information concerning their disciplinary actions available publicly. Such information, provided in *State Magazine* or in Department notices, would inform employees about the rules, give fair warning of the consequences of violating them, and respect personally identifiable information.

Recommendation 2: The Bureau of Human Resources should regularly publicize the results of disciplinary actions, including statistics regarding numbers of Foreign Service and Civil Service employees disciplined, the penalties imposed, the prevalent types of misconduct, and trends, in a manner that respects the privacy of personally identifiable information. (Action: DGHR)

Outreach to Stakeholders

HR/ER/CSD staff told the OIG team that it understands the importance and value of regular communication with the bureaus with delegated disciplinary authority and other stakeholders, including posts overseas. The division is trying to open and maintain communication with the stakeholders, in part to head off problematic actions and poor draft proposals in advance. Although communication between HR/ER/CSD and its customer bureaus has improved, the bureaus are sometimes frustrated when trying to verify the status of cases and often require clarifications of required disciplinary procedures. To facilitate better communication, the current division director has assigned to each bureau a specific case specialist to serve as a point of contact. Each case specialist is to meet with the assigned client on a monthly basis (or on a less frequent but regular basis, if preferred by client bureau) to discuss employee relations trends and challenges in order to determine training and other needs and to provide status updates on disciplinary cases. The OIG team also commends HR/ER/CSD's 1-

hour webinar on disciplinary matters that a senior case specialist delivered in March 2014 to the DGHR community.

According to HR/ER/CSD staff, the case specialists spend considerable time counseling supervisors who are trying to address misconduct issues and the press of incoming cases limits the division's ability to reach out on a regular basis. The OIG team urged HR/ER/CSD to continue its outreach activities and to collect workload statistics in order to support possible future resource requests.

Survey of Department Employees

The Department has not conducted a survey of staff to determine the impact of its messages and training on conduct and discipline nor surveyed supervisor and employee attitudes toward the disciplinary process. Such information is essential to shaping an action plan for addressing what impediments may exist to dealing with misconduct more effectively within the Department's organizational culture. According to the Ethics Resource Center's *National Government Ethics Survey*,¹¹ nonreporting of misconduct across Federal, state, and local government agencies is high, in part due to fear of retaliation and a belief that reporting will not effect change.

A survey of Department employees would reveal whether they have similar perceptions of or bias toward the disciplinary process and whether, to what extent, and why misconduct may be underreported. The survey would also allow the Department to measure the impact of its mandatory supervisor and leadership training programs and the recent series of messages regarding conduct and disciplinary matters. The Department could use such survey data to fashion an action plan for addressing impediments to dealing with misconduct and to suggest ways in which the current disciplinary system can be made more credible, effective, timely, and fair—and be seen to be so.

Recommendation 3: The Bureau of Human Resources should conduct a survey of supervisors and employees to determine their perceptions of the disciplinary system and to shape an action plan for addressing what impediments may exist to dealing more effectively with misconduct within the Department of State. (Action: DGHR)

Holding Supervisors Accountable

The Department advised its managers and supervisors in 2007 that failure to identify misconduct or take corrective action could result in disciplinary action against them. DGHR informed the OIG team that the reference to "disciplinary action" may have been incorrect, as failure to address misconduct is a performance, rather than a disciplinary, issue for supervisors. In reviewing about 1,700 case records from 2007 to 2013, the OIG team did not find a single instance of a supervisor being held responsible for failing to do so. Officials involved in the disciplinary process could not provide the OIG team with examples, either. In interviews with key stakeholders, the OIG team was told that some supervisors have little understanding of disciplinary regulations and processes as applied to their Civil Service subordinates and are

¹¹ *Fourth National Government Ethics Survey*, Ethics Resource Center, 2007.

reluctant to exercise their authority in dealing with misconduct on the part of either Foreign Service or Civil Service subordinates. As a result, employee misconduct may be underreported and not be subject to the disciplinary process. Absent deterrence and correction, employees may continue or even escalate their misconduct.

The OIG team commends DGHR for its guidance to chiefs of mission (13 State 110958) regarding involuntary (formerly known as “loss of confidence”) curtailments in cases of serious misconduct, criminal activities, or actions that have serious security implications. The cable guidance states clearly that, in such cases, voluntary curtailments should no longer be available as an option for addressing performance issues. The OIG team suggested DGHR collect statistics on and report the number of conduct-related involuntary curtailment actions.

The *Guide for Supervisors of Foreign Service Employees*¹² states that “the fundamental intent of the Department’s discipline program is not punitive; it is corrective.” For this reason, the OIG team discussed with DGHR the value of establishing a monitoring and mentoring program for employees who have committed misconduct in order to reduce the likelihood of recidivism.

The OIG team also urged DGHR to review reports of investigation to assess whether the employee’s supervisor was negligent in failing to address the employee’s misconduct and, if so, whether the supervisor should be held responsible.

Managers have supervisory responsibilities for which they are held accountable. Department regulation 3 FAM 4322.1, which applies to Foreign Service personnel, states that “a supervisor or other management officer who is aware of incidents or allegations that may serve as grounds for disciplinary action against an employee is responsible for taking action or reporting such incidents or allegations to the appropriate proposing official.” Department Notice 2007-03-111, dated March 26, 2007, addressed to all Department supervisors, also stated that supervisors are responsible for addressing misconduct. This notice added that “[f]ailure of a supervisor or manager to identify misconduct or performance problems, or to take corrective actions, could result in disciplinary action against the manager or supervisor, could be reflected in his or her performance appraisals, or both.” As noted above, DGHR stated to the OIG team that the reference to “disciplinary action” may have been incorrect. A corrected announcement has not been issued.

Recommendation 4: The Bureau of Human Resources should reissue guidance concerning every supervisor’s responsibility to identify misconduct and take corrective action. (Action: DGHR)

The Decision Criteria for Tenure and Promotion in the Foreign Service,¹³ a strong performance incentive for Foreign Service officers, makes no mention of the responsibility of mid- and senior-level Foreign Service Officers to deal with misconduct on the part of their subordinates. However, Department Notice 2007-03-111 is clear: supervisors and managers who

¹² U.S. Department of State, *Guide for Supervisors of Foreign Service Employees*, 2004, p. 15.

¹³ Form DS-1829-CP (2013).

fail to address misconduct on the part of a subordinate have neither followed proper procedures nor met their proper responsibilities as management officials.

Foreign Service supervisors may follow the path of least resistance, either waiting until the assignment process removes a problem employee or, in more extreme cases, offering the employee the opportunity to leave an assignment voluntarily. This is a practice that all but guarantees continued misconduct, albeit in different locations.

Recommendation 5: The Bureau of Human Resources should revise the Decision Criteria for Tenure and Promotion in the Foreign Service to include the responsibility to deal with misconduct. (Action: DGHR)

Consistency of Penalties

HR/ER/CSD staff told the OIG team that it does its best to recommend consistent penalties for similar misconduct for “similarly situated” employees. The staff noted, however, that each case is unique, exact comparable cases are not always available, and the Foreign Service and Civil Service systems differ in fundamental ways.

The Department has wide latitude to decide on penalties for misconduct. Although 3 FAM 4377 (Foreign Service) and 3 FAM 4542 (Civil Service) provide lists of offenses subject to disciplinary action, these are not intended to be all inclusive. Most types of misconduct have no specific penalties associated with them but can range from a letter of reprimand, to suspension, or to termination. Penalties for some offenses are set forth in statutes (see Appendix III).¹⁴ Additionally, an employee may be disciplined for actions not specifically listed, such as for exercising poor judgment.

Consequently, much depends on the experience and judgment of the case specialist, whose work is reviewed by L/EMP and, for Foreign Service employee separation cases, by the Grievance Staff. To determine a range of penalties for a case under review, case specialists first identify similar disciplinary cases (“comparators”) during the previous 5 years. Civil Service employees are compared with Civil Service employees; Foreign Service employees are compared with Foreign Service employees.

The identification of relevant comparators is key to the consistent administration of disciplinary actions. In fact, the FSGB in its 2009 and 2010 annual reports commented that in challenges to disciplinary action brought before it, many of the appeals included questions as to whether the penalty meted out to the grievant was consistent with penalties issued to employees in prior similar cases. Finally, the case specialists consider the Douglas Factors, some of which require making subjective and qualitative judgments about an employee.

Documenting Decisions

After HR/ER/CSD case specialists prepare a proposed disciplinary action based on comparators and the Douglas Factors, regulations permit the deciding official to mitigate (reduce) the proposed disciplinary action or withdraw the proposed disciplinary action entirely.

Deciding officials frequently mitigate or withdraw proposed disciplinary actions. Of the 1,039 discipline cases that the OIG team was able to isolate for analysis (see Appendix V), 439 could be examined for mitigation.¹⁵ This examination revealed that 117 of 266 (44 percent) proposed Foreign Service disciplinary actions were mitigated or withdrawn in comparison to 69

¹⁴ Improper political activity, willful misuse of a government vehicle, acceptance of voluntary services contrary to statute, violation of the “no strike” affidavit, misappropriation or misapplication of funds, and improper gifts to official supervisors all carry specific penalties or ranges of penalties.

¹⁵ From the total of 1,039 cases, the OIG team excluded 600 cases in which the data entry was not complete; disciplinary action was still pending; disciplinary action was not proposed; the Foreign Service or Civil Service employee resigned or retired while disciplinary action was pending; or cases ended by settlements, which are covered by confidentiality clauses.

of 173 (40 percent) proposed Civil Service disciplinary actions. Of 18 actions involving Senior Foreign Service officers, 7 (39 percent) were mitigated or withdrawn. For Senior Executive Service employees, all four proposed disciplinary actions were mitigated or withdrawn.

In the case files the OIG team reviewed that included letters from deciding officials, it was evident that the current deciding official in DGHR clearly documents the reasons for decisions. However, the team noted several examples of previous deciding officials who had not documented their reasons for reducing the penalty or withdrawing the disciplinary proposal. Absent a full documentary record, the OIG team cannot comment on the possible reasons for these decisions. The team also notes that mitigation affects future decisions by establishing new, lower levels of imposed penalties for comparison purposes.

Recommendation 6: The Bureau of Human Resources should establish a written standard operating procedure that requires the deciding official to provide a decision letter that documents fully the reasons for the decision, including the proposal, the discussion of the Douglas Factors, and the consideration given to the employee's statements and submissions. (Action: DGHR)

In contesting a disciplinary action, employees may make claims to the deciding official that contradict, in whole or in part, the investigation on which the referral was based. However, if the Bureau of Diplomatic Security, S/OCR, and the OIG investigators do not have an opportunity to comment on employee claims made subsequent to the initial investigation, deciding officials risk making mitigation decisions based on an employee's unverified, unchallenged claims.

The 1998 OIG inspection report on disciplinary actions noted in making a formal recommendation that "this lack of communication often prevents the reviewing [deciding] official or the grievance officer from having all the information needed to make an accurate decision. As a result, sanctions are at times based on information that appears to be not verified and/or the investigative record may contradict. This information has led to proposed sanctions that sometimes are more lenient than the facts of the case warrant."¹⁶

The OIG team suggested DGHR establish a written policy that, when the employee's claims vary considerably from the investigative record and when mitigation or withdrawal of the proposed discipline is being considered, the investigative office be given a reasonable period of time to comment on the employee's submissions. If the deciding official receives new material after the employee has responded, all such matters would then be referred to the employee with an opportunity to comment/rebut.

The OIG team also discussed with HR/ER/CSD the value of having case specialists, especially new staff, attend introductory and continuing education courses on standards of evidence, investigative techniques, new legal decisions, and other issues they are likely to encounter in reports of investigations from the Bureau of Diplomatic Security, OIG, and elsewhere. Such background, which most new case specialists would initially lack, would be helpful during reviews of investigative documents.

¹⁶ *The Adequacy of Disciplinary Actions in the Department of State, U.S. Arms Control and Disarmament Agency, and U.S. Information Agency, Including the International Broadcasting Bureau*, Report No. ISP-I-98-11, January 1998, p. 21.

Civil Service and Foreign Service Discipline Compared

According to the Department’s most recent figures, 56 percent of its employees are Foreign Service and 44 percent are Civil Service. GADTRK records indicate that HR/ER/CSD and the eight bureaus with delegated disciplinary authority processed disciplinary actions against approximately 1,039 employees between January 2010 and May 2014: 620 (60 percent) Foreign Service employees and 419 (40 percent) Civil Service employees. However, not all discipline information pertaining to Civil Service employees is captured in GADTRK because HR/ER/CSD does not collect and enter into the database data concerning the number of letters of reprimand (the lowest level of discipline) that the bureaus with delegated authority issue or the number of cases that they close on their own authority. As a result, Civil Service cases are underreported in the GADTRK database by an amount that cannot be determined. The types of misconduct charges against Civil Service and Foreign Service employees varied as well (see Appendix V).

The OIG team did not observe examples or patterns of inconsistent or preferential treatment in the case files it reviewed. However, the different statutory bases and the inherent difference between the rank-in-position (Civil Service) and rank-in-person with time-in-class limitations (Foreign Service) personnel systems may lead to some variation in outcomes. For this reason, different procedures and protections are built into the two systems.

For Foreign Service employees, records of disciplinary actions are placed in their official personnel folders and are available for review by selection and commissioning and tenure boards. How long the record remains on file depends on the severity of the discipline. In contrast, the official personnel folders of Civil Service employees are not reviewed for promotions, as theirs is a rank-in-position system.

Removal of Disciplinary Letters from Official Personnel Folders		
If discipline is ...	AND employee is ...	THEN Remove...
Reprimand	Foreign Service & Civil Service	1–2 years after e-OPF filing
Suspension ≤ 5 days	Foreign Service	2 years after e-OPF filing
Suspension > 5 days	Untenured Foreign Service	After tenured
	Tenured Foreign Service	When promoted

A security clearance suspension during an often lengthy security investigation affects Civil Service and Foreign Service employees differently because of the different statutory bases for their employment. If a security clearance is a required qualification for employment in the specific position a Civil Service employee holds, the employee is, by definition, no longer qualified for the position. If the clearance is suspended, the employee must be put on administrative leave and/or indefinite suspension without pay until the investigation is completed. Should this process take a long time, the Civil Service employee may eventually resign. By contrast, a Foreign Service employee can be reassigned and continue to work in an unclassified environment and be paid while the security clearance investigation continues.

~~SENSITIVE BUT UNCLASSIFIED~~

Department employees outside the United States (typically, though not always, Foreign Service employees) are considered to be on duty 24 hours a day, 7 days a week. Department regulation 3 FAM 4114 states that “[g]iven the representational nature of employment in the [Foreign] Service and the diplomatic privileges and immunities granted employees in the Service abroad, it is necessary that employees observe such standards [of conduct] during and after working hours or when the employee is on leave or in travel status.” This requirement exposes Foreign Service employees to a greater range of possible disciplinary actions.

Knowledge Management System Lacks Statistical and Workflow Functionality

The Department does not have the knowledge management tools to produce readily and reliably comprehensive statistics on disciplinary processes across the Department; to manage document and workflow; and to track trends in discipline, which might suggest areas for increased management attention, communication, and training.

HR/ER/CSD uses the GADTRK case management system to track disciplinary case files and processing. As envisaged, GADTRK would be integrated with the Department's personnel information management systems and provide comprehensive, automated case management through all post-investigative phases. GADTRK-1, the first of five planned phases, was developed using in-house resources and implemented in 2010. The then-Director General approved further development of GADTRK in 2011, but higher priority uses for DGHR's limited in-house resources intervened. HR/ER/CSD renewed its request for GADTRK enhancement in May 2014. A decision was pending at the time of this inspection.

GADTRK does not interface with other DGHR information management systems. Therefore, DGHR cannot readily compare data on disciplinary actions with data on other employee characteristics, such as gender, race, ethnicity, disability, or other classes protected from discrimination, as the Department can and does with regard to, for example, promotions. The 1998 OIG inspection team extracted such information from 575 separately maintained files to assess the possible disparate impact in 162 disciplinary cases.

Little progress has been made since then in integrating this process. A 2003 U.S. General Accounting Office¹⁷ review of an agency's employment and disciplinary processes underscored the importance of a methodologically sound, statistical basis for judging the process to be fair and nondiscriminatory.¹⁸ In its current configuration, GADTRK has serious deficiencies in capabilities and scope in managing documents and workflow:

- GADTRK lacks document storage and tracking capability. As a result, case-related documents are maintained in hard-copy files that must be physically transported among various Department annexes in Washington, DC, and in Virginia. When documents are received electronically or scanned, they are stored on an HR/ER/CSD local shared drive.
- The lack of integration with other DGHR information management systems means that insertion and removal of disciplinary documents from personnel files must be performed manually. DGHR has identified cases where this has not been done accurately.
- Key offices involved in the disciplinary process do not have access to GADTRK, including investigating offices, delegated bureaus, or offices that routinely contribute to the development of disciplinary proposals and decisions, such as L/EMP staff and the

¹⁷ Name changed to U.S. Government Accountability Office in 2004.

¹⁸ *Equal Employment Opportunity: Hiring, Promotion and Discipline Process at DEA*, Report No. GAO-03-413, June 2003, pp. 34–40.

Grievance Staff. In addition, bureaus with delegated disciplinary authority cannot use GADTRK to develop case comparators. They rely, instead, on their organization's narrower experience. Only if HR/ER/CSD clears the case is a broader perspective applied.

Recommendation 7: The Bureau of Human Resources should complete the full implementation of the Grievance, Appeals, and Disciplinary Tracking and Reporting System. (Action: DGHR)

Knowledge Management System Not Used Consistently

The OIG team observed that the quality of the data entered in GADTRK is uneven. Required fields in some case records are blank, and gaps exist between sequential, system-generated case numbers. GADTRK was implemented in part to assist case specialists in identifying comparators, but a lack of consistency among case specialists in describing disciplinary cases in the system means that a query of the database may or may not result in the identification of comparable cases. Although data entry has become more complete since the introduction of the system in 2010, and noticeably so in the past year or so, DGHR officials acknowledged the need to improve the quality and consistency of data populating GADTRK.

Departmentwide Data Not Captured

GADTRK is not being used to capture information on all disciplinary matters the Department undertakes. Bureaus with delegated disciplinary authority clear proposed suspensions, reductions in grade, and removals of Civil Service employees with HR/ER/CSD, which records the clearance action in GADTRK. However, the bureaus are not required to clear or report letters of reprimand placed in a Civil Service employee's official personnel folder. Nor do they report cases that they decide to close after deciding not to propose disciplinary action. As a result, Department management does not have a complete picture of the disciplinary process, including the total number of cases or the trends in discipline categories. The OIG team counseled DGHR on the value of collecting such information from the bureaus with delegated disciplinary authority and recording it in GADTRK.

All Files Not Retained

The OIG team review was limited by the fact that HR/ER/CSD does not retain files for cases closed without adverse action in accordance with the record retention requirements of 5 Code of Federal Regulations 752 (Adverse Action Files). In some instances, though, HR/ER/CSD case specialists have retained files for cases closed without adverse action. The OIG team noted that a decision to close a case without taking action is a "decision" and suggested HR/ER/CSD establish a policy regarding retention of records of these cases as well.

Bureau Responsibilities for Administration of Disciplinary Actions

In the 1990s and 2000s, DGHR designated seven bureaus (Consular Affairs, Educational and Cultural Affairs, Administration, Overseas Buildings Operations, Diplomatic Security, International Security and Nonproliferation, and FSI) as Human Resources Centers of Excellence, a program to provide human resources management services on a shared basis, with improved customer satisfaction, more efficiency, and measurable performance and accountability standards.¹⁹ DGHR delegated authority to the service providers to administer human resources activities relating to position classification, staffing, recruitment, and employee relations, the latter of which includes administration of disciplinary programs. Prior to this designation, DGHR provided these services to the bureaus. Some of the service providers are responsible for providing personnel services to other bureaus under service-level agreements.

Under these agreements, the service providers have authority to initiate, administer, propose, and decide disciplinary actions for Civil Service employees up to the grade of GS-13 or GS-15, depending on the bureau. The eight bureaus with delegated disciplinary authority are authorized to issue letters of reprimand to Civil Service employees on their own authority, without need for HR/ER/CSD and L/EMP review or clearance. However, for suspensions, terminations, and reductions in pay grade, the bureaus are required to obtain concurrence from HR/ER/CSD and L/EMP.

The human resources service providers are not authorized to initiate or administer any disciplinary cases for Foreign Service employees or for Civil Service employees whose cases are referred by OIG, the Bureau of Diplomatic Security, or S/OCR; by the Office of Medical Services for positive drug test screenings; or by the Bureau of the Comptroller and Global Financial Services for credit card misuse/delinquency. In the above-noted instances, as well as for all cases in bureaus not participating in the human resources shared services program, HR/ER/CSD administers discipline cases directly, with DGHR as the deciding official.

The delegation of authority arrangement gets mixed reviews from participants, as it applies to disciplinary cases. Some delegated bureaus noted that HR/ER/CSD's service to them is helpful and has markedly improved over the past year. However, HR/ER/CSD is almost universally perceived as understaffed and somewhat "overwhelmed" by its workload. Stakeholders attribute this to the volume and complexity of cases, as well as to the varying experience levels of the case specialists who prepare and review the cases.

The quality of the product HR/ER/CSD receives for clearance from the delegated bureaus varies considerably among bureaus. Some bureaus administer very few disciplinary cases. One bureau did not seem to understand the terms and conditions of the delegation of authority, though these were described in the delegation letter to the bureau from DGHR.

¹⁹ In 2008, the Department introduced a shared services model to improve customer service, and the Joint Executive Office for the Bureau of European and Eurasian Affairs and the Bureau of International Organization Affairs became a human resources service provider.

Lack of Oversight of Bureaus with Delegated Disciplinary Authority

DGHR has not conducted evaluations of the disciplinary programs of the bureaus to which it has delegated disciplinary authority. Neither has it requested information regarding the number of letters of reprimand the bureaus issue or cases they close on their own authority. Some of the bureaus with delegated disciplinary authority were unable to provide the OIG team with reliable information regarding their own activities.

DGHR does not have a review process for the disciplinary function as it does for other delegated human resources functions. In the past, delegation memoranda for some bureaus contained a clause with a formal provision for program evaluation of the delegated personnel functions. The memoranda noted that the goal was to assess the bureaus' management and administration of the delegated functions and to determine best practices to be applied Departmentwide. DGHR removed some human resources functions from one bureau, including examination and classification because the bureau was not performing them as required. For unclear reasons, the current agreements do not contain the provision to evaluate the management of employee relations programs, including the disciplinary function, as they did previously. The OIG team believes the inclusion of such a provision in the agreements with these bureaus is warranted.

Recommendation 8: The Bureau of Human Resources should establish and implement a procedure to oversee the performance of bureaus with delegated disciplinary authority, revising agreements as required and establishing reporting and evaluation mechanisms. (Action: DGHR)

Although OIG's disciplinary program, established in accordance with the Inspector General Act of 1978, as amended,²⁰ is independent and in house, it mirrors the Department's disciplinary processes in most elements. One significant difference is that in OIG, proposing, deciding, and, in some cases, the appeals officials are ordinarily the first-, second-, and third-level supervisors, respectively, of the charged employee.

²⁰ 5 U.S.C. app. § 6.

Independence and Conflict of Interest

DGHR and the bureaus with delegated disciplinary authority lack a standard procedure to ensure that those involved in reviewing, recommending, and deciding disciplinary actions affirm independence and identify any potential personal and external impairments to their independence, such as relationships with the employee, witnesses, or other stakeholders in a grievance matter.

Personnel involved in implementing the disciplinary process denied that their inquiries, proposals, and decisions were influenced in any way by outside pressure and indicated that they understood the issue of conflict of interest and would recuse themselves from cases in which a potential conflict of interest existed. A conflict of interest or even the appearance of such can undermine the credibility of the disciplinary process. The lack of a standard recusal process could leave the disciplinary process open to accusations of inconsistency and unfairness.

Recommendation 9: The Bureau of Human Resources should institute a standard recusal process for personnel involved in implementing the disciplinary process, including those in the delegated bureaus, to affirm independence and identify any potential personal and external impairments to independence on the part of those who may influence the outcome of a disciplinary action. (Action: DGHR)

Timeliness

The length of time it takes some cases to work through the Department's disciplinary system was the most common theme raised to the OIG team; however, little consensus existed on how best to remedy this problem. Sometimes delays are unavoidable. A complex case may require extensive research, and cases involving potential criminal charges are sometimes put on hold pending the outcome of the criminal proceedings.

Delays create a frustrating and chaotic situation for all involved. When an employee under disciplinary action is prevented from performing regularly assigned duties, the involved office has limited means to make up the short staffing. An employee in "limbo" can suffer potential financial hardship and possible career damage. Witnesses may move away, or memories become foggy with time. FSGB has overturned agency-level decisions when undue delay has affected an employee's ability to present an effective defense.

HR/ER/CSD staff members acknowledge that timeliness is one of their primary challenges and that the case specialists are consistently unable to meet their performance target of 30 days from receipt of a complete referral package to proposal finalization. The OIG team's analysis of 891 discipline cases between 2010 and May 2014, for which timeliness data could be extracted from the GADTRK database, revealed that the average time from case receipt to decision letter was 114 days. However, the average had a high degree of variability; individual cases could take anywhere from a few weeks to many months or more.

One factor that appears to affect timeliness is workload. In 4 of the past 5 years, HR/ER/CSD received more cases for processing than it has been able to close. The backlog of cases in the office, whether due to insufficient resources, inefficiencies, or a combination of the two, needs to be reduced. Furthermore, the lack of clerical support in the office means that case specialists must scan, copy, and prepare paper case files, which can run to hundreds of pages. The team suggested DGHR review its allocation of resources to HR/ER/CSD to enable staff to meet its priorities of fairness, consistency, and timeliness.

It is both inaccurate and unfair to attribute accountability for delays solely to HR/ER/CSD or any other individual office. Delays, both avoidable and unavoidable, can occur at any stage of the complex and somewhat disjointed process, which can involve a half dozen Department offices and non-Department agencies, Department and non-Department appeals entities and investigative entities, private attorneys, unions and professional associations, and the charged employee.

The problem of timeliness is compounded by the fact that stakeholders do not have access to a common tracking system to determine the status of a case in real time. The resultant lack of information creates misunderstandings. When simple questions such as "Has an extension been granted?" or "Is it just sitting on someone's desk?" or "Was a decision made on the submission of 2 weeks ago?" or "Was it returned to another entity for further review?" remain unanswered over time, frustrations arise. HR/ER/CSD and offices/bureaus such as the Grievance Staff, L/EMP, the Office of Civil Rights, the Bureau of Diplomatic Security, the bureau or post that submitted the action, and DGHR would benefit from such a tracking system, as discussed previously in the report.

Role of Grievance Staff

The Grievance Staff became involved in the review of disciplinary proposals for Foreign Service employees under a pilot program agreed between the Department and the American Foreign Service Association in 1999. The program ended in 2002, and it is not clear that the Grievance Staff's continued involvement was mutually agreed. Substantively, the office's continued involvement was justified to the OIG team on the basis of its knowledge of FSGB cases. The Grievance Staff member who reviews HR/ER/CSD draft proposals is not involved in adjudicating those cases if they are grieved.

The OIG team sees value to both the Department and the employee in reviewing a disciplinary proposal to ensure that the Department can meet its burden of proof in the event of an appeal to FSGB. Proposed disciplinary actions that cannot survive the grievance and appeals process can be either strengthened or withdrawn at an early stage. However, the OIG team suggested to DGHR that this function would be better placed in the HR/ER/CSD office than in the office responsible for a neutral review of grievances.

Office of Civil Rights

S/OCR investigates all allegations of misconduct involving sexual and/or discriminatory harassment. When a possible violation of policy is identified, S/OCR refers the case to HR/ER/CSD for determination as to whether the circumstances warrant disciplinary action. However, the OIG team found no examples of cases in which discipline was administered on a charge of harassment. HR/ER/CSD explained that S/OCR reports of inquiry lack sufficient specificity to allow HR/ER/CSD staff to prepare proposals for disciplinary measures on grounds of harassment. When discipline is administered in these instances, HR/ER/CSD practice is to categorize these charges into broader misconduct categories.

The OIG team's review of GADTRK found that S/OCR had referred 79 cases to HR/ER/CSD between 2010 and April 2014 for possible disciplinary action. Of these, 13 remain open, in the grievance process, or otherwise pending.

The OIG team reviewed the remaining 66 cases. Of these,

- Forty-five (68 percent) were found not to warrant formal disciplinary action. Twenty-nine of the 45 had been closed with no action taken, primarily on the grounds of insufficient evidence, and 16 had resulted in letters of admonishment counseling the employee on the alleged misbehavior.
- Three cases (5 percent) were closed because of resignation, retirement, or settlement agreements with the Department.
- Eighteen disciplinary actions (27 percent) were administered. Six letters of reprimand were issued, and suspensions of 1 to 30 days were processed for 12 cases on charges, including improper personal conduct and failure to follow proper procedures.

Unlike the cases the Bureau of Diplomatic Security and OIG refer, which contain a report of investigation that presents detailed findings and evidence, S/OCR referrals include a report of inquiry with narrative statements from interviewed parties presented in a declaration format. As a neutral provider of information, S/OCR does not include comments on guilt, innocence, or credibility. Representatives of S/OCR, HR/ER/CSD, and L/EMP met in 2013 but were unable to identify a mutually acceptable path forward in improving the processing of harassment referrals. The OIG team urged DGHR to continue with this dialogue to ensure that serious misconduct is identified and sanctioned appropriately.²¹

²¹ OIG has scheduled an inspection of S/OCR in FY 2015.

List of Recommendations

Recommendation 1: The Bureau of Human Resources should update the guides for supervisors of Foreign Service and Civil Service employees so that they contain the latest Department of State guidance on disciplinary issues. (Action: DGHR)

Recommendation 2: The Bureau of Human Resources should regularly publicize the results of disciplinary actions, including statistics regarding numbers of Foreign Service and Civil Service employees disciplined, the penalties imposed, the prevalent types of misconduct, and trends, in a manner that respects the privacy of personally identifiable information. (Action: DGHR)

Recommendation 3: The Bureau of Human Resources should conduct a survey of supervisors and employees to determine their perceptions of the disciplinary system and to shape an action plan for addressing what impediments may exist to dealing more effectively with misconduct within the Department of State. (Action: DGHR)

Recommendation 4: The Bureau of Human Resources should reissue guidance concerning every supervisor's responsibility to identify misconduct and take corrective action. (Action: DGHR)

Recommendation 5: The Bureau of Human Resources should revise the Decision Criteria for Tenure and Promotion in the Foreign Service to include the responsibility to deal with misconduct. (Action: DGHR)

Recommendation 6: The Bureau of Human Resources should establish a written standard operating procedure that requires the deciding official to provide a decision letter that documents fully the reasons for the decision, including the proposal, the discussion of the Douglas Factors, and the consideration given to the employee's statements and submissions. (Action: DGHR)

Recommendation 7: The Bureau of Human Resources should complete the full implementation of the Grievance, Appeals, and Disciplinary Tracking and Reporting System. (Action: DGHR)

Recommendation 8: The Bureau of Human Resources should establish and implement a procedure to oversee the performance of bureaus with delegated disciplinary authority, revising agreements as required and establishing reporting and evaluation mechanisms. (Action: DGHR)

Recommendation 9: The Bureau of Human Resources should institute a standard recusal process for personnel involved in implementing the disciplinary process, including those in the delegated bureaus, to affirm independence and identify any potential personal and external impairments to independence on the part of those who may influence the outcome of a disciplinary action. (Action: DGHR)

Principal Officials

	Name	Arrival Date
Acting Director General of the Foreign Service	Hans Klemm	08/13
Deputy Assistant Secretary	Marcia S. Bernicat	05/12
Director, Office of Employee Relations	John Bernlohr	08/12
Division Director, Conduct, Suitability and Discipline	Kimberly Brooks	06/13

Abbreviations

Department	U.S. Department of State
DGHR	Bureau of Human Resources
FAM	<i>Foreign Affairs Manual</i>
FSGB	Foreign Service Grievance Board
FSI	Foreign Service Institute
GADTRK	Grievance, Appeals, and Disciplinary Tracking System
HR/ER/CSD	Bureau of Human Resources/Conduct, Suitability and Discipline Division/Office of Employee Relations
L/EMP	Office of the Legal Advisor, Employment Law
MSPB	Merit Systems Protection Board
OIG	Office of Inspector General
S/OCR	Office of Civil Rights

Appendix I: Review of Department of State Disciplinary Process—Methodology

The OIG team identified and reviewed background information on the disciplinary process within the Department and, for comparative purposes, the other agencies operating under the Foreign Service Act: the U.S. Agency for International Development, the Foreign Agricultural Service, and the U.S. and Foreign Commercial Service. To determine current practices, the OIG team reviewed the relevant policies, procedures, and practices in place in HR/ER/CSD, which is responsible for developing specific policies and for administering the Department's domestic and overseas disciplinary programs for both Civil Service and Foreign Service direct-hire employees. The OIG team also interviewed officials in other Department offices with a role in the disciplinary process, including L/EMP, S/OCR, the Bureau of Diplomatic Security, the Office of Medical Services, the Office of the Ombudsman, and OIG.

Outside the Department, the OIG team interviewed officials at the MSPB, the Office of Special Counsel, and the Office of Personnel Management to determine the consistency of Civil Service discipline processes across the entire Federal Government. The OIG team also met with officials from the FSGB, the American Foreign Service Association, the American Federation of Government Employees, and the National Federation of Federal Employees to obtain their views on the Department's disciplinary process.

The OIG team met with officials in the Department bureaus (Bureau of Consular Affairs, Bureau of Diplomatic Security, Bureau of Overseas Buildings Operations, FSI, Bureau of Administration, Bureau of International Security and Nonproliferation, and Bureau of Educational and Cultural Affairs) with delegated personnel authority for disciplinary actions to ascertain whether adverse actions handled in their systems are consistent with those handled by HR/ER/CSD.

To evaluate DGHR's administration of misconduct cases reported to it, the OIG team reviewed the division's standard operating procedures, such as procedures for issuing a letter of admonishment and for closing a case file, and the bureau's compliance with them. The OIG team also examined the adequacy and completeness of case file materials used to make disciplinary decisions, both in cases processed for disciplinary action and those closed without a recommendation for disciplinary action. The OIG team's review was limited by the fact that files for cases closed without adverse action are not always retained, in accordance with the record retention requirements of 5 CFR 752 (Adverse Action Files). In some instances, though, HR/ER/CSD case specialists have retained files for cases closed without adverse action. The OIG team noted that a decision to close a case without taking action is also a "decision" and suggested that HR/ER/CSD establish a policy regarding retention of records of these cases as well.

The OIG team examined FSI training related to the disciplinary function to determine its prevalence, thoroughness, and currency with recent Department guidance.

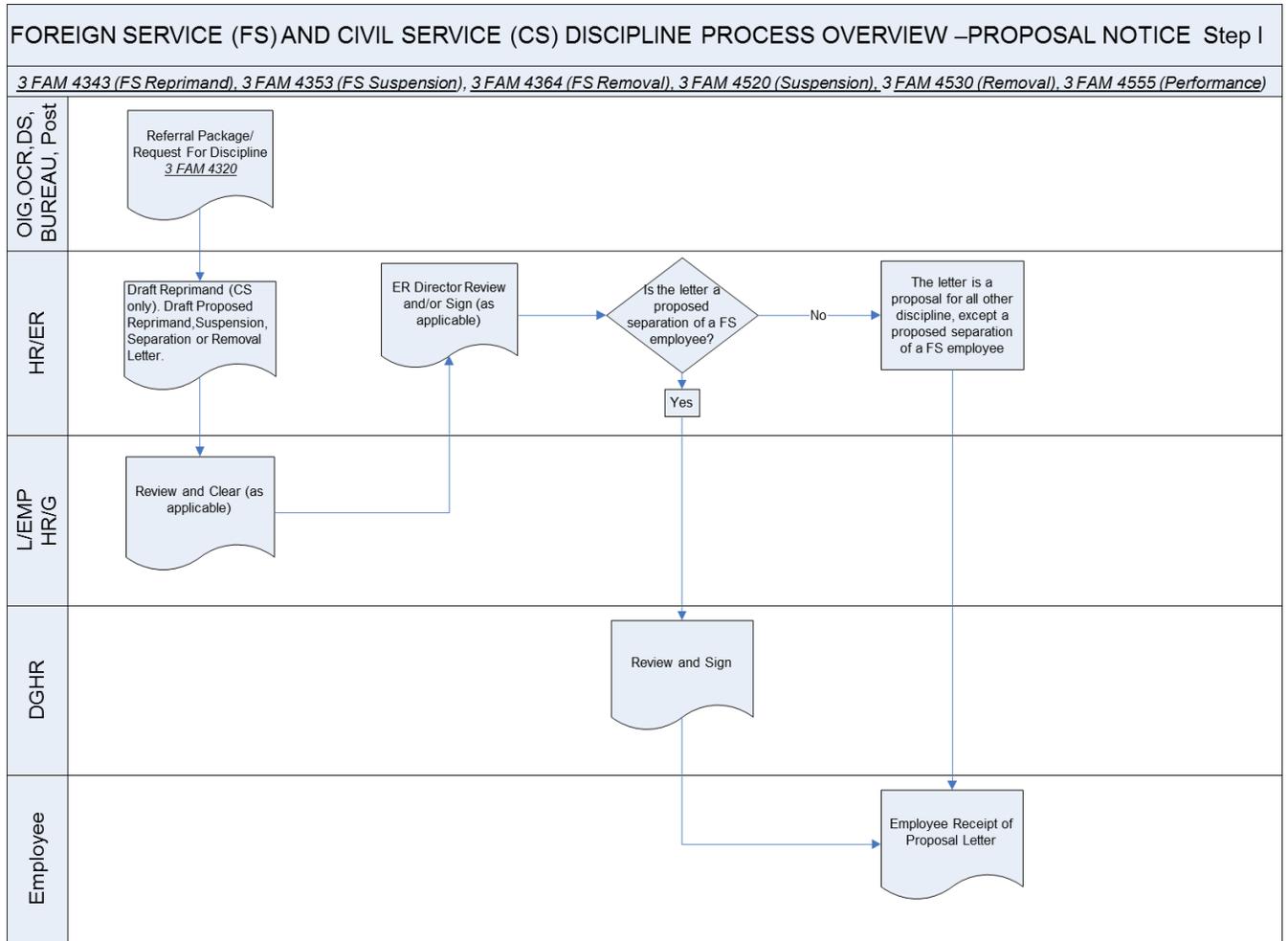
In addition to interviews and document reviews, the OIG team examined HR/ER/CSD's case tracking system and selected disciplinary cases for reviewing files to assess their completeness, using HR/ER/CSD's standard operating procedures as a benchmark (51 cases

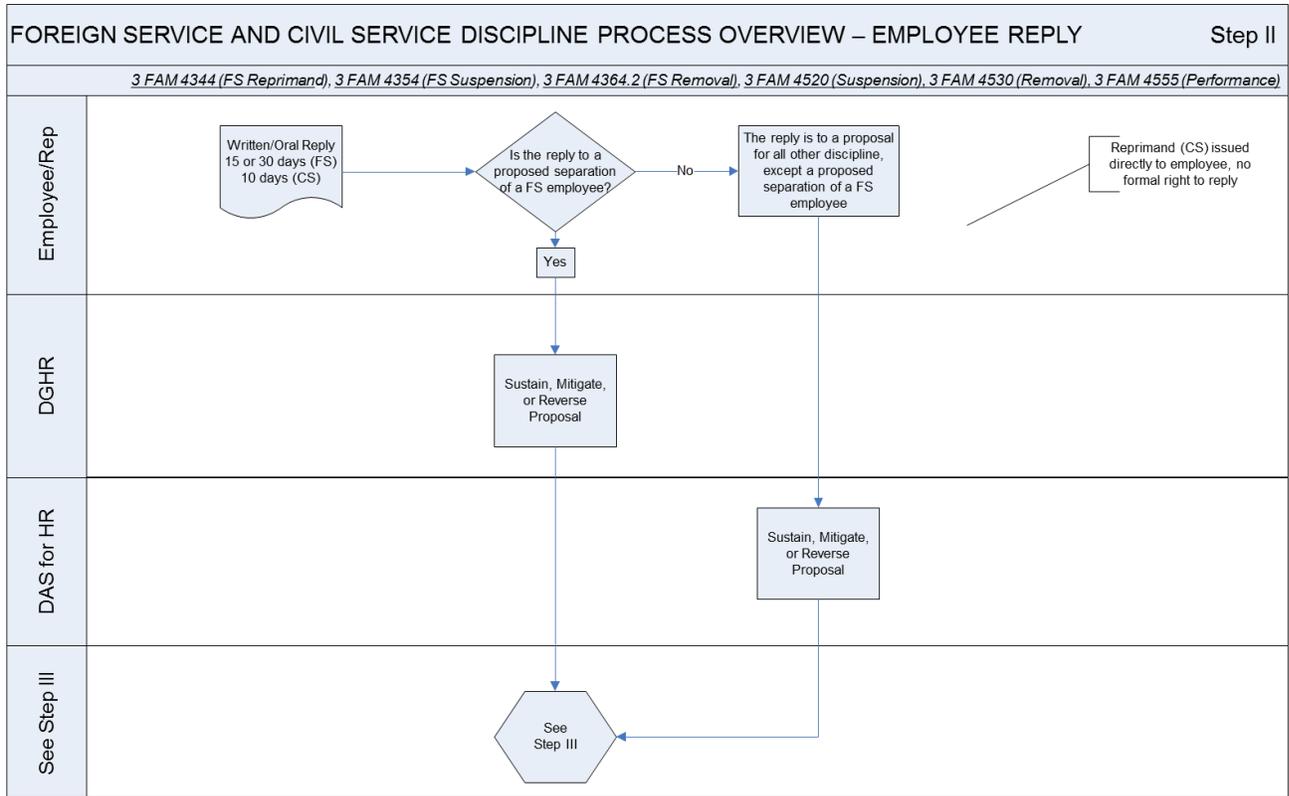
from 2012 and 2013). The OIG team reviewed 19 additional cases from 2011 to 2014 in which the proposed penalty was substantially reduced (“mitigated”) or withdrawn entirely, or those open for a long time to determine whether the files adequately documented the reasons for the seemingly unusual processing. The third group of case files reviewed included 66 closed S/OCR cases from 2010 to 2014. The OIG team did not attempt to readjudicate cases.

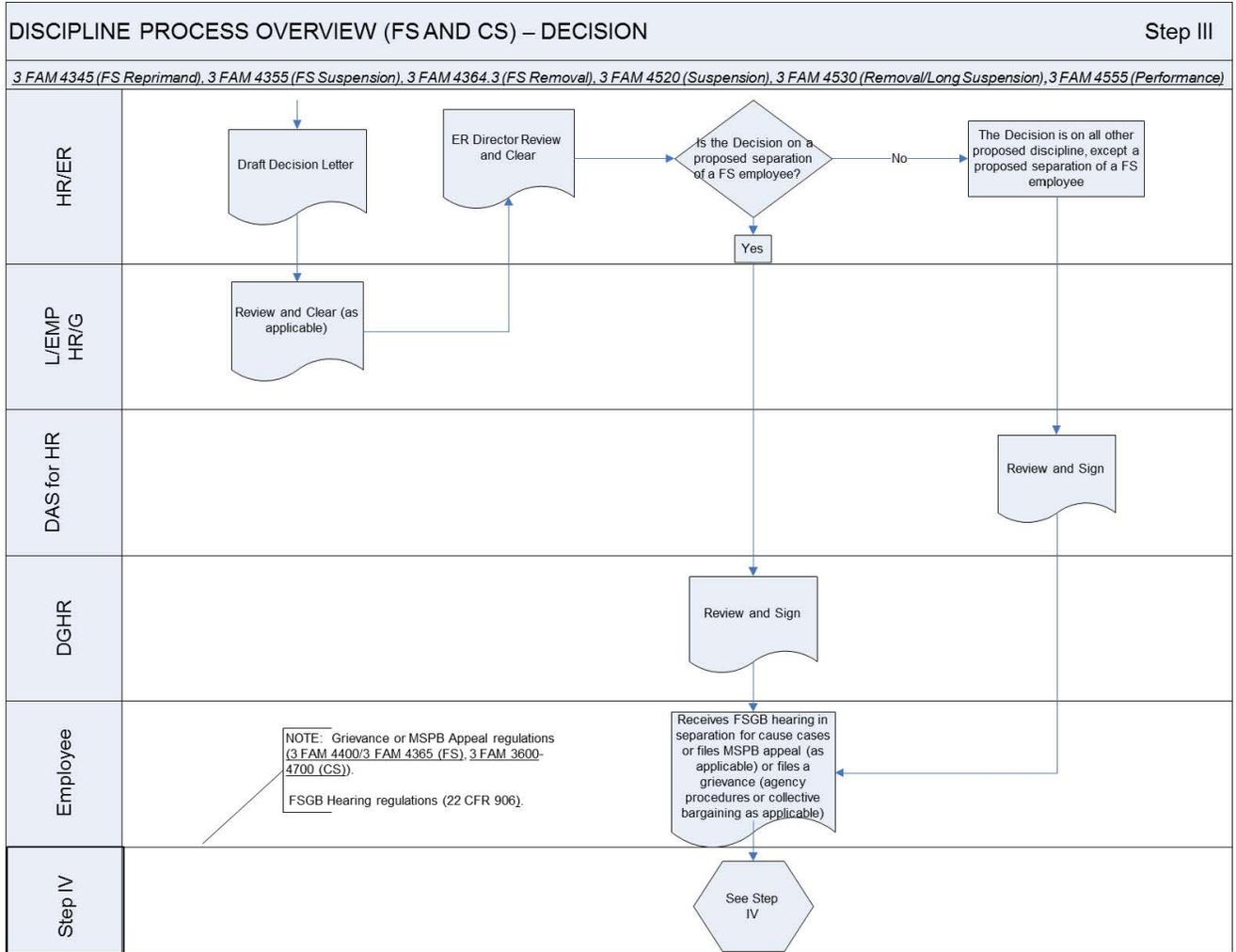
Given the number of personnel, processes, and systems involved in the Department’s complex disciplinary process and the limited time and resources available, the OIG team was unable to review in detail the procedures and practices of the bureaus with delegated disciplinary authority or to interview their serviced bureaus. Among the offices that may have a role in the disciplinary process are the Grievance Staff, L/EMP, the Office of Medical Services, and the Disability/Reasonable Accommodation Division of HR/ER/CSD. The OIG team solicited the views of these offices but did not review their performance in the disciplinary process. Finally, the OIG team met with the FSGB and reviewed its annual reports, but an assessment of FSGB operations was beyond the scope of this review. OIG last reviewed the FSGB in an audit in 1995.²²

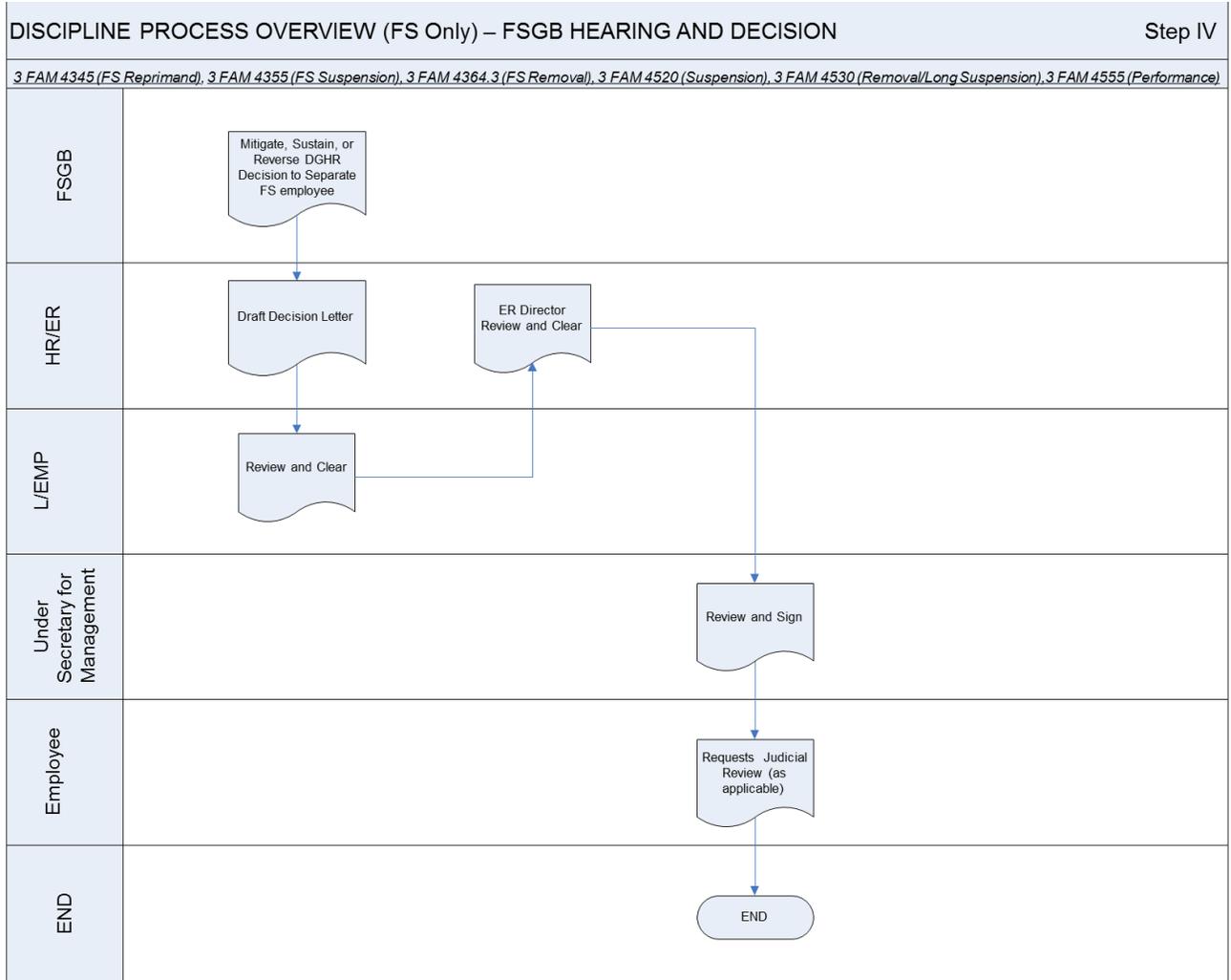
²² *Review of the Foreign Service Grievance Process*, Report No. 5-SP-014, April 1995.

Appendix II: Foreign Service and Civil Service Disciplinary Process Overview—Flowchart









Source: HR/ER/CSD Chart as of July, 2014.

Appendix III: Summary of Actions Available Within the Disciplinary Process

The various forms of disciplinary actions for Foreign Service and Civil Service employees, along with a comparison of the disciplinary processes, are described below. These include an employee's rights to advance notice of a proposed action (where applicable) and right to grieve disciplinary actions. Civil Service employees covered by Collective Bargaining Agreements adhere to union-specific negotiated grievance procedures. The information pertaining to Civil Service employees below applies solely to employees covered by the Department's Administrative Grievance procedures (3 FAM 4700).

Oral or Written Admonishment (Foreign Service, 3 FAM 4330; Civil Service, 3 FAM 4513): Serves as a warning. Not considered formal discipline, and no admonishment is placed in employee's official personnel file.

Civil Service: No advance notice. Cannot be grieved.

Foreign Service: No advance notice. Cannot be grieved.

Letters of Reprimand (Foreign Service, 3 FAM 4340; Civil Service, 3 FAM 4514): Least severe form of formal discipline.

Civil Service: No advance notice. Can be grieved.

Foreign Service: Advance notice of proposed action. Can be grieved. If agency denies grievance, employee can appeal to the FSGB.

Suspension (Foreign Service, 3 FAM 4350; Civil Service, 3 FAM 4520 and 3 FAM 4530): Involuntary, temporary placement in nonduty, nonpay status.

Civil Service: Advance written notice of proposed action. Suspension for for 14 days or less can be grieved within the agency. Employee can appeal suspensions for more than 14 days to the MSPB.

Foreign Service: Advance written notice of proposed action. Employee can appeal suspensions for any length of time. If agency denies grievance, employee can appeal to the FSGB.

Separation for Cause (Foreign Service, 3 FAM 4360; Civil Service, 3 FAM 4530): Used for such cause as will promote the efficiency of the Civil Service or the Foreign Service.

Civil Service: Cannot be grieved. Separations may be appealed to the MSPB.

Foreign Service: Advance notice of proposed action is given. The employee cannot be separated unless the employee waives right to a hearing before the FSGB, if the employee has been convicted of a crime for which a sentence of more than 1 year may be imposed, or if the FSGB finds cause for separation.

Additional and/or Different Civil Service Employee Rights Under Collective Bargaining Agreements

A Civil Service employee who is covered by the National Federation of Federal Employees and receives an adverse action may:

- file an appeal to the MSPB;
- file a formal Equal Employment Opportunity complaint with the Office of Civil Rights;
- file a complaint with the Office of Special Counsel, which can be followed by an Individual Right of Action appeal filed with the MSPB; or
- file a grievance under Articles 20 and 24 of the National Federation of Federal Employees Collective Bargaining Agreement.

An election is deemed to have been made based on which of these four actions the employee filed first.

A Civil Service employee who is covered by the American Federation of Government Employees and receives an adverse action may:

- file an appeal to the MSPB;
- file a formal Equal Employment Opportunity complaint with the Office of Civil Rights;
- file a complaint with the Office of Special Counsel, which can be followed by an Individual Right of Action appeal filed with the MSPB; or
- file a grievance under Article 21, Section 5c of the American Federation of Government Employees Collective Bargaining Agreement.

An election is deemed to have been made on the basis of which of these four actions the employee filed first.

Any employee at any time, regardless of level of disciplinary action, can file an Equal Employment Opportunity or Office of Special Counsel complaint.

An Individual Right of Action appeal refers to a special appeal right for whistleblowers.

Appendix IV: Douglas Factors

The 12 Douglas Factors are mitigating or aggravating factors that may affect the penalty imposed:

- 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 repeated frequently.
- The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
- The employee's past disciplinary record.
- The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
- 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.
- Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- Consistency of the penalty with any applicable agency table of penalties.
- The notoriety of the offense or its impact upon the reputation of the agency.
- 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.
- The potential for the employee's rehabilitation.
- Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, or malice or provocation on the part of others involved in the matter.
- The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Appendix V: Notes on Statistical Examination

The OIG team assembled a database of 1,039 disciplinary cases from the 2010–2014 period by compiling Annual Activity Reports from GADTRK. The team reviewed each case individually to identify duplicate entries; exclude cases lacking information in critical data fields; and clarify ambiguous entries, deleting 96 cases in the end. The OIG team used information from the resulting core database of 943 cases to draw broad conclusions.

Types of Cases: The OIG team divided the cases among 16 categories, using as a basis the principal offense shown in GADTRK.²³ The three largest categories involved *Conduct* (254 cases), *Security* (196), and *Failure to Follow* (122). *Conduct* encompasses criminal, personal, off-duty, unethical, sexual, verbal, and physical incidents. It is the category most susceptible to ambiguities, as similar underlying offenses are often typed in different ways in GADTRK, even under different Case Types. Similarly, *Failure to Follow* often serves as a generic type, especially when the case documentation appears insufficient for a more specific charge. *Security* includes both cyber and physical violations, as well as violations of contact reporting and fraternization rules. More than half of the Foreign Service cases involved 1-day suspensions for accumulating common security infractions with little risk of compromise. Because office spaces overseas are subject to inspection far more regularly than are domestic offices, this result is not surprising. Security infractions often result in pro forma documentation, which cannot sustain a formal disciplinary action, resulting in mitigation or as action being taken. Other statistically significant categories include *Attendance*, *Debts*, *Substance Abuse*, *Theft*, *Visas*, *Weapons*, and *Workplace Violence*. Some or all of these may be subject to further study by the OIG.

Pending: Slightly more than 14 percent of the cases (136) were Pending—either awaiting processing by an HS/ER/CSD case specialist or in various stages of decision and employee reply. This group represents less than half the typical number of new cases annually, suggesting that HR/ER/CSD has regained control of its backlog.

No Action Taken: Roughly 25 percent (216) of the cases, evenly divided between Foreign Service and Civil Service employees, had a resolution of No Action Taken, encompassing a variety of outcomes. In many of these cases, the investigative record was insufficient to sustain the charge, competing versions of an incident could not be reconciled, or the charge was unfounded (for example, motivated by a personal dispute).

²³ Two points of clarification. First, in several cases, the OIG team used its best judgment to assign cases to categories, because the GADTRK data were ambiguous. Second, “lack of candor” is often included as an additional charge if it is believed that an employee has not been forthcoming in the course of an investigation. Whenever possible, the OIG team assigned those cases to the underlying offense rather than to lack of candor.

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