



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

FREEDOM OF INFORMATION ACT PROGRAM

December 15, 2023

In reply refer to: BPA-2024-00159-F

SENT VIA EMAIL ONLY TO:

PII

Colin Aamot

PII

Dear Mr. Aamot,

The Bonneville Power Administration (BPA) has received your request for agency records made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). The agency received your request on October 22, 2023, and assigned tracking number BPA-2024-00159-F to your request. Please use that tracking number in any correspondence with the agency regarding your FOIA request. This communication is the agency's formal acknowledgment and response to your information request.

### Request

“Documents sufficient to account for all agency policies, memorandums, or directives pertaining to gender identity, or the implementation of Executive Order 13988: 'Preventing and Combating Discrimination On The Basis Of Gender Identity or Sexual Orientation'. Please limit the timeframe of the search from January 20, 2021 to present.”

### Response

BPA searched for and gathered records responsive to your request. BPA collected 182 pages of responsive records from knowledgeable agency personnel in the Equal Employment Office. We note that the “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation” is Executive Order 13988 set in place by President Joseph Biden, and not Executive Order 1398. The 182 pages of records accompany this communication, released in full with no redactions applied.

**Fees**

There are no fees associated with processing your FOIA request.

**Certification**

Pursuant to 10 C.F.R. § 1004.7, I am the individual responsible for the records search and information described above. Your FOIA request BPA-2024-00159-F is now closed with the responsive agency information provided.

**Appeal**

Note that the records release certified above is final. Pursuant to 10 C.F.R. § 1004.8, you may appeal the adequacy of the records search, and the completeness of this final records release, within 90 calendar days from the date of this communication. Appeals should be addressed to:

Director, Office of Hearings and Appeals  
HG-1, L'Enfant Plaza  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to [OHA.filings@hq.doe.gov](mailto:OHA.filings@hq.doe.gov), including the phrase "Freedom of Information Appeal" in the subject line. (The Office of Hearings and Appeals prefers to receive appeals by email.) The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE's records are situated, or (4) in the District of Columbia.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

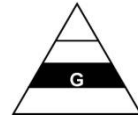
Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Phone: 202-741-5770  
Toll-free: 1-877-684-6448  
Fax: 202-741-5769

Questions about this communication may be directed to the FOIA Public Liaison James King at [jjking@bpa.gov](mailto:jjking@bpa.gov) or 503-230-7621. Questions may also be directed to Case Coordinator Brian Roth at [bsroth@bpa.gov](mailto:bsroth@bpa.gov) or 503-230-4383. Thank you for your interest in the Bonneville Power Administration.

Sincerely,

Rachel L. Hull  
Freedom of Information/Privacy Act Officer

Responsive agency information accompanies this communication.



**NOT  
MEASUREMENT  
SENSITIVE**

**DOE G 444.1-1  
4-22-2015**

# **GUIDE ON PREVENTING AND RESPONDING TO ALL FORMS OF VIOLENCE IN THE WORKPLACE**

*[This Guide describes acceptable, but not mandatory means for complying with requirements. Guides are not requirements documents and are not to be construed as requirements in any audit or appraisal for compliance with associated rule or directives.]*



**U.S. DEPARTMENT OF ENERGY  
Office of the Chief Human Capital Officer**

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**AVAILABLE ONLINE AT:**  
[www.directives.doe.gov](http://www.directives.doe.gov)

**INITIATED BY:**  
Office of Human Capital Management



## FOREWORD

DOE POLICY 444.1, “PREVENTING AND RESPONDING TO ALL FORMS OF VIOLENCE IN THE WORKPLACE”: STATES, THE DEPARTMENT OF ENERGY IS COMMITTED TO:

- promoting a safe environment for its employees, by working with its employees to prevent workplace violence. Violence, domestic violence, sexual assault, stalking, threats of violence, harassment, intimidation, bullying and other disruptive behaviors interfering with a civil workplace will not be tolerated; all reports of incidents or concerns will be taken seriously and will be dealt with appropriately; and
- providing appropriate resources to address and prevent inappropriate behavior, maintaining multi-program response teams to help supervisors assess and address these behaviors and incidents, and assisting employees who have been adversely affected by such behaviors on or off-site.

To ensure all sites have the tools to implement processes, we have created this guide. Each site is expected to develop its own site specific set of procedures/processes to implement DOE Policy 444.1 Preventing and Responding to All Forms of Violence in the Workplace.

This guide is a broad overview of the basic tools for a site to develop its site specific procedures. It is not intended to define, address, and explain in detail all aspects of workplace violence and actions to take once it occurs. This guide is provided to assist each site with the development of their site procedures/process that will serve that specific site and the workforce. This guide and the additional references (see Section 7.2) should provide the necessary tools for a site to develop site specific procedures. Each site is encouraged to use as much detail as necessary to define and address all aspects of workplace violence when developing their procedures. As part of those procedures, it needs to be emphasized in the site-specific protocol and clear what supervisors and employees need to know to do in emergency situations, such as call 911 or the site emergency number and the steps to take for non-emergency situations.

### Security

For the purposes of this document “security” is used in general broad terms and may be defined differently depending on the category, manner in which it is used and the interpretation the reader has. It is incumbent upon the site/office to define “security” at the local level in terms of how it is used and how it applies to the site/office employees.



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## **1 INTRODUCTION**

### **1.1 General**

Each employee has a responsibility to help make the Department of Energy (DOE) a safe workplace. The Department's expectation is that each employee will treat all other employees, as well as customers and potential customers of DOE's programs, with dignity and respect. Employees can and should expect management to care about your safety and to provide as safe a working environment as possible by having preventive measures in place to immediately deal with threatening or potentially violent situations that may occur. This includes but is not limited to: violence, domestic violence, sexual assault, stalking, threats of violence, harassment, intimidation, bullying and disruptive behavior that may affect personnel in the workplace.

Supervisors, in coordination with Labor Management and Employee Relations (LMER), Security, the Employee Assistance Program (EAP), Office of General Counsel (OGC) and any other appropriate local resources, have the obligation to deal with inappropriate behavior by employees, to provide employees with information and training on workplace violence prevention, and to ensure employees are aware of emergency procedures or steps to be taken in case of an emergency.

### **1.2 Applicability**

This guide provides information that is generally applicable to the entire DOE workforce, regardless of duty station or level of seniority, and its customers, and visitors.

### **1.3 Using This Guide**

This document is an overview of guidelines for workplace violence issues. For ease of readability by all personnel, this guide is arranged in sections by topic, with paragraph titles written as questions. Policies and other information regarding workplace violence can be found in **Section 7.2, "Where can I find more information on workplace violence?"** Throughout this Guide there are references to a myriad of published documents that organizations may leverage for more detailed information on violence in the workplace, domestic violence, sexual assault and stalking. Used in conjunction with information and instructions from the organizational level and/or at each individual site, this guide will assist DOE employees in preventing and responding to workplace violence.

## **2 TERMS**

This section provides basic explanations for some of the terms commonly used. These descriptions are not meant to be legal descriptions of the terms, nor do they encompass all possible meanings. They are provided for general reference.

## **2.1 What is workplace violence?**

Workplace violence can be any threat or act of violence against persons or property; or verbal threats, intimidation, harassment, bullying; or other inappropriate, disruptive behavior that causes fear for personal safety inside or outside of the work site.

A number of different actions in the work environment can trigger or cause workplace violence (e.g., anger over disciplinary actions or the loss of a job, resistance by a customer to regulatory actions, disagreement by a member of the public with DOE policy or practices, etc.). It may even be the result of non-work-related situations, such as domestic violence, road rage, or hate crimes (i.e., violence, intolerance or bigotry, intend to hurt and/or physically/psychologically intimidate someone because of their age, race, ethnicity, national origin, religion, sexual orientation, or disability). Workplace violence can be inflicted by an abusive employee, supervisor, co-worker, customer, family member, or even a stranger. Whatever the cause or whoever the perpetrator, workplace violence is not acceptable and will not be tolerated at any DOE location.

There is no sure way to predict human behavior, and while there may be warning signs, there is no specific profile of a potentially dangerous individual. The best prevention comes from identifying and addressing any possible problems early. The United States Office of Personnel Management's (OPM) has specific guidance dealing with Violence in their guide "Dealing with Workplace Violence: A Guide for Agency Planners in Part 1, Section 3 and the Interagency Security Committee (ISC) has issued guidance titled "Violence in the Workplace; A Guide for Prevention and Response" in Section 4.3.

## **2.2. What is Domestic Violence, Sexual Assault and Stalking?**

There are behaviors which can take place that can lead to disruption in the workplace that supervisors should be aware of and can deal with if the situation arises. Domestic violence, sexual assault, and stalking are serious problems that can affect individuals, families, and communities. The effects of domestic violence, sexual assault, and stalking spill over to the workplace in numerous ways, introducing significant costs and safety concerns. Domestic violence, sexual assault, and stalking have the potential to affect every Federal workplace across the United States. It is the policy of the Federal Government to promote the health and safety of its employees by acting to prevent domestic violence, sexual assault, and stalking within the workplace and by providing support and assistance to Federal employees whose working lives are affected by such violence. To obtain comprehensive information related to Domestic Violence, Sexual Assault, and Stalking, OPM has issued "Guidance for Agency-Specific Domestic Violence, Sexual Assault, and Stalking Policies" in Section 1.0.

- **Domestic Violence:** Domestic violence is a pattern of coercive behavior, including acts or threatened acts, that are used by a perpetrator to gain power and control over a current or former spouse, family member, current or former intimate partner, current or former dating partner, or person with whom the perpetrator shares a child in common. This behavior includes, but is not limited to, physical or sexual violence, emotional and/or

psychological intimidation, verbal abuse, stalking, economic control, harassment, threats, physical intimidation, or injury.

- **Sexual Assault:** Sexual assault refers to a range of behaviors, including but not limited to, a completed nonconsensual sex act (e.g., rape, sodomy, and child molestation), an attempted nonconsensual sex act, and/or abusive sexual contact. Sexual assault includes any sexual act or behavior that is perpetrated when someone does not or cannot consent.
- **Stalking:** Stalking refers to harassing, unwanted, or threatening conduct that causes the victim to fear for his or her safety or the safety of a family member.

### **2.3. What are some behaviors of concern?**

The continuum of violent acts ranges from the more common non-physical acts such as bullying, verbal threats to the less common physical acts such as battery, aggravated assault, and even homicide; these may include those listed below. More information can be found in OPM's "Dealing with Workplace Violence: A Guide for Agency Planners" in, Part 1, Section 3; The ISC has provided a list of behavior of concerns in the "Violence in the Federal Workplace: A Guide for Prevention and Response" in Section 4.3.2; and Robert A Gardner's "Preventing Workplace Violence: Management Considerations" in the Identifying Threats portion.

- **Stalking:** As stated above, this can happen at the workplace or the effects of outside stalking may impact productivity of an employee.
- **Bullying:** Bullying occurs when people use their power, via verbal, physical or other means to control or harm others. Workplace bullying occurs when a person or group of people in a workplace single out another person for unreasonable, embarrassing or intimidating treatment.
- **Harassment:** Occurs when unwelcome comments or conduct unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment. A conduct is unwelcome if the employee did not solicit, instigate or provoke it, and the employee regarded the conduct as undesirable or offensive.
- **Active Shooter:** Is an individual actively engaged in killing or attempting to kill a person or persons in a confined and populated area, through the use of firearms. The overriding objective of an active shooter is to commit mass murder, rather than other criminal conduct such as robbery, hostage taking, terrorism, etc. In the event the Department experiences an Active Shooter, the objective is to minimize casualties. Events happen quickly and are often over before law enforcement or other help arrives. The FBI has developed a Quick Reference Guide that is available for sites that would like to implement processes and procedures specific to an Active Shooter.  
<http://www.fbi.gov/about-us/cirg/active-shooter-and-mass-casualty-incidents/active-shooter-tent-card-090513.pdf>

**Note:** Harassment on the basis of race, color, sex (including pregnancy and gender identity), religion, national origin, age, disability (physical or mental), protected genetic information, sexual orientation, or status as a parent is prohibited. Employees who wish to file an equal employment opportunity (EEO) complaint regarding harassment on one of these protect bases

must contact an EEO Counselor within 45 calendar days of the date of the alleged harassment, or 45 calendar days from the date on which they reasonably become aware of the harassment.

### **Employment Situations and Triggers**

The organization and individual sites should be sensitive to “trigger situations.” These are events that could serve as a catalyst to push a violence prone employee over the edge. Normal, emotionally stable employees may show little or no reaction to “trigger situations.” If they do react, it is usually in a controlled and reasonable manner. The “at risk” employee on the other hand, may view trigger situations as events that justify a violent response. It would be impossible to list every conceivable “trigger situation” but there are some events which are common to the workplace and should always be viewed as potentially dangerous. The ISC’s “Violence in the Federal Workplace: A Guide for Prevention and Response” provides additional resources in Section 4.3.2.1; Robert A Gardner’s “Preventing Workplace Violence: Management Considerations” in the Identifying Threats portion and Virginia Tech University’s “Campus and Workplace Violence Prevention and Crisis Management Resource Manual” in Section 5.

The most common types of employment triggers are:

- Job reassignment;
- Disciplinary action;
- Downsizing or workforce cutbacks;
- Non-selection for a lateral or promotional opportunity;
- Termination;
- Work environment deterioration.

Site/Office must carefully manage these and other “trigger situations.” In many of the above situations, the organization and/or site has considerable control over the conditions under which interaction with the employee occurs with assistance from HR, GC and/or security. Through preplanning, it is possible to exercise control in a manner that ensures that the possibility of a violent reaction will be markedly reduced.

### **2.4 What is the purpose of a Threat Assessment Team?**

The purpose of a threat assessment is to determine the seriousness of a potentially violent or stressful situation and how best to intervene. Since it is impossible to know with any certainty whether a threat is going to be carried out, management should always treat threats in a serious manner and act as though the person may carry out the threat. Threat Assessment Team is an interdisciplinary team that works with management to assess the potential and evaluate the risk of potential workplace violence. The approach and the timing of these evaluations will be specific to the circumstances of the potentially violent situation. Threats from sources outside the agency may require additional actions and/or coordination with local law enforcement agencies.

When necessary, a Threat Assessment Team will be convened at the direction of the site’s leadership. The purpose of the Threat Assessment Team is to evaluate the risk of potential violence and provide guidance on managing the situation in a way that protects employees.

Members of a Threat Assessment Team will vary, but typically include representatives from:

- Management;
- Representative from Human Resources (HR)/Labor Management and Employee Relations (LMER) and Employee Assistance Program (EAP);
- Security Office and/or Local Law Enforcement;
- Office of General Counsel (GC).

Once a threat assessment is completed, site security, in coordination with HR and management, will decide whether additional measures are needed to close any security gaps. To the extent feasible and where appropriate and to help alleviate misunderstanding and confusion, management shall explain to employees and customers the course of action being taken and why. The ISC has provided additional information in the “Violence in the Federal Workplace: A Guide for Prevention and Response” Section 5.3.

## **2.5 What is an Emergency Response Team?**

The Emergency Response Team (ERT) usually consists of many of the same individuals who make up the Threat Assessment Team, but its purpose is to deal with the immediate consequences/ramifications of a violent situation and the aftermath, as well as take the necessary steps to prevent similar future occurrences. The ERT provides guidance on managing a situation in a way that protects the employees and others involved in an undesirable incident or situation. The team assists management and employees by:

- Assisting with attempts to de-escalate and manage the situation;
- Facilitating and coordinating response actions to ensure that appropriate follow-up action is taken (e.g., investigations, union notification, victim assistance, preventive and corrective actions);
- Serving as a resource and information source in regards to workplace violence concerns;
- Communicating with employees so that they are informed;
- Coordinating with the media (this would be done through the Public Affairs staff);
- Addressing administrative issues;
- Provide recommendations for supervisory action, documentation, and plan development for resolving identified situations.

## **3 DOE ACTIONS**

This section provides some of the measures DOE employs with regard to workplace violence issues.

### **3.1 What programs are in place to prevent workplace violence?**

DOE has many programs in place to help prevent workplace violence. Some of the options available to help ensure a safe workplace are:

- **Pre-Employment Screening** – DOE has a comprehensive, federally mandated pre-employment screening requirement which consists of background investigations based on position risk, sensitivity levels and reference checks. Applicant or pre-employment drug testing is also conducted as appropriate in accordance with DOE O 343.1, Federal Substance Abuse Testing Program, January 30, 2014, and consistent with Federal laws and regulations.
- **Security** – There are a variety of ways that DOE helps to ensure safety and security, including: employee photo identification badges, security systems, security officers, police, guard services, and individually coded key cards for access to buildings and grounds.
- **Alternative Dispute Resolution (ADR)** – ADR techniques are most effective in resolving disputes when a conflict is identified early and one of the following is used: facilitation, mediation, shuttle diplomacy, interest-based problem solving, and peer review. OPM provides additional information in “Dealing with Workplace Violence: A Guide for Agency Planners” on ADR on Page 23 and the ISC’s “Violence in the Federal Workplace: A Guide for Prevention and Response” in Section 4.3.6.
- **Employee Assistance Program (EAP)** – This program provides professional counselors who are available to discuss problems that may be affecting work or home. EAP counselors help employees deal with stress, marital, financial, substance abuse, and communication issues that may underlie potentially violent situations. EAP counselors also consult with managers and supervisors regarding challenging employee and workgroup issues. OPM provides additional information regarding EAP in “Dealing with Workplace Violence: A Guide for Agency Planners” in Section 4 and the Interagency Security Committee (ISC) has provided information in their “Violence in the Workplace: A Guide for Prevention and Response” in Section 5.5.
- **Threat Assessment Team** – This interdisciplinary team will work with management to assess the potential for workplace violence and, as appropriate, develop and execute a plan to address it.
- **DOE Work and Family Life Programs** – Various types of flexibilities and programs are available to an employee and/or employee’s family member(s) who are victims of workplace violence (e.g., child care, maxi-flex, telework, annual, sick, and advanced leave, Family Medical Leave Act and the Leave Transfer programs, etc.) To the greatest extent possible, site/offices should work in collaboration with the employee to provide leave and/or other workplace flexibilities to help the employee remain safe and maintain his or her work performance. OPM’s “Guidance for Agency-Specific Domestic Violence, Sexual Assault, and Stalking Policies” in Section 3.0; and in the Presidential Memorandum “Enhancing Workplace Flexibilities and Work-Life Program”.

**Note:** It is important to remember that different measures may be appropriate for different locations and work settings. For this reason, all employees should be familiar with DOE’s

procedures on workplace violence, be familiar with local procedures for dealing with workplace threats, emergencies and policies on workplace flexibilities. In addition to dealing with immediate situations, timely intervention may include assistance from the local union and adherence to local collective bargaining agreements (CBA). Depending on the situation, a Threat Assessment Team or Emergency Response Team may be convened by site/office management or any team member. Some sites/offices may include contractors who should be engaged in developing local policies/procedures.

### **3.2 What emergency plans are in place to help ensure a safe work environment?**

Each site has emergency plans (also called Occupant Emergency Plans (OEP)) that describe procedures to follow during a fire or other emergency. These plans should also include provisions for incidents of workplace violence. The facility/site emergency plan, required by DOE O 151.1C, Comprehensive Emergency Management System must also address serious incidents of workplace violence, such as active shooters and other malevolent acts. The plan should be specific to the facility/site, the workers it covers and should be available to all employees working at a facility or site. The plan should also describe:

- Procedures for calling for help;
- Procedures for calling for medical assistance;
- Procedures for notifying the proper authorities or whoever is acting in their place (e.g., security personnel, the police, other law enforcement organizations);
- Emergency escape procedures and routes;
- Procedures for evacuation of special needs employees/visitors;
- Safe places to congregate inside and outside of the facility;
- Procedures for shelter in place;
- Procedures to secure the work area where an incident took place;
- Procedures to account for all employees if a facility is evacuated;
- Procedures for identifying personnel who may be called upon to perform medical or rescue duties;
- Training and education for employees regarding incidents of workplace violence and the emergency action plan;
- Procedures for regularly evaluating and updating the plan;
- Procedures for debriefing participants to identify lessons learned.

### **3.3 How are workplace violence issues addressed?**

No matter how effective DOE and Site policies and plans are in detecting and preventing incidents, there are no guarantees against workplace violence. Even the most responsive employers face this issue. When a violent incident does occur, it is essential the response: be timely, appropriate to the situation, and understanding of employees' perspectives. While the actual procedures may vary based on each organization's and individual site needs and specific workplace violence issues, the following table is a general outline of workplace violence issues and how they may be addressed. Management and supervisors may refer to the workforce discipline order for assistance in employee discipline:



<b>Table 3-01</b>			
<b>Addressing Workplace Violence Issues</b>			
<b>Categories/Levels</b>	<b>Examples</b>	<b>Intervention</b>	<b>Who to Call</b>
<b>LEVEL I –</b> • Implied (Covert) Threats • Verbal/Mental Abuse • Bullying/ Harassment/Badgering • Inappropriate Tones (threatening) or Gestures (menacing)	<ul style="list-style-type: none"> <li>• Screaming, yelling, disruptive behavior</li> <li>• “You’ll pay for this.”</li> <li>• “You’ll be sorry.”</li> <li>• Name calling, berating, belittling, sarcasm</li> <li>• Unfounded criticism – “You can’t do anything right.”</li> </ul>	<u>Employees:</u> <ul style="list-style-type: none"> <li>• Report to Supervisor or 2nd level Supervisor</li> <li>• Document</li> </ul> <u>Supervisors:</u> <ul style="list-style-type: none"> <li>• Report to your Supervisor</li> <li>• Consult with Security, LMER, and EAP</li> <li>• Define/Address the Problem</li> <li>• Document</li> </ul>	Supervisor, Security LMER, EAP, Office of the Ombudsman, Employee Concerns Program (ECP)
<b>LEVEL II –</b> • Threatening Gestures • Specific (Overt) Written or Verbal Threats • Property Abuse/Mishandling • Stalking	<ul style="list-style-type: none"> <li>• Raising hand or object to strike someone</li> <li>• Any written or verbal threat to harm, avenge, or retaliate</li> <li>• Throwing objects, slamming doors, slamming fists on desk, hitting or kicking walls or objects</li> <li>• Monitoring a co-worker’s activities to satisfy personal objectives (unwarranted attention)</li> <li>• Refusing to leave an area (office) when asked to do so</li> <li>• Intentionally crowding to intimidate</li> <li>• Blocking access to or exit from the area</li> </ul>	<u>Employees:</u> <ul style="list-style-type: none"> <li>• Report to Supervisor or 2nd level Supervisor</li> <li>• Document</li> </ul> <u>Supervisors:</u> <ul style="list-style-type: none"> <li>• Report to your Supervisor</li> <li>• Consult with Security, LMER, and EAP</li> <li>• Make a plan of action (propose discipline, mandatory anger management referral, victim assistance) through EAP</li> <li>• Document</li> </ul>	Supervisor, Security LMER, EAP, Office of the Ombudsman, Employee Concerns Program (ECP)
<b>LEVEL III –</b> • “Scuffles” (Physical Contact) • Destruction of property • Assault – Physical, Sexual, Armed • A presently occurring loss-of-	<ul style="list-style-type: none"> <li>• Shoving, grabbing, jabbing, poking, or prodding</li> <li>• Tripping or intentionally bumping or jostling</li> <li>• Breaking equipment</li> <li>• Breaking or putting holes in doors, walls,</li> </ul>	Any/All Staff <ul style="list-style-type: none"> <li>• Activate Emergency Response Procedures – Do NOT try to handle on your own.</li> <li>• Report to a Supervisor or Manager</li> <li>• Assist in maintaining calm if possible</li> </ul>	Supervisor, Security, LMER, EAP, Office of the Ombudsman, Police/Protective Force

Table 3-01			
Addressing Workplace Violence Issues			
Categories/Levels	Examples	Intervention	Who to Call
control event creating fear of imminent harm • Unauthorized possession of firearms or other weapons on government premises	windows, etc. • Intentional use of objects for purpose of destruction – fire, bombs, chemicals, vehicles, etc. • Any intentional harmful physical contact • Unremitting rampage of loud, threatening, or incoherent speech • Bringing an unauthorized weapon on site	<ul style="list-style-type: none"> <li>• Assist in victim care if possible</li> <li>• Leave the area if necessary for your safety</li> <li>• Document</li> </ul> Supervisors: <ul style="list-style-type: none"> <li>• Arrange for debriefing after resolved (all persons impacted)</li> <li>• Coordinate plan of action (disciplinary action, mandatory anger management referral, victim assistance) with LMER, and EAP after the incident.</li> </ul>	

Timely intervention is key, depending on the situation, a Threat Assessment Team or Emergency Response Team may be convened by Site Management or a team member.

### 3.4 Are workplace violence issues kept confidential?

All incidents of workplace violence are kept confidential to the extent possible. Information obtained during a threat assessment will be released to individuals needing the information to conduct an appropriate investigation into the situation, protect Department personnel, or confront the person making the threat. Typically, this includes: security staff, GC (legal), employee relations staff, medical personnel (as necessary), and management/supervisory personnel.

**Note:** EAP counselors are prohibited by confidentiality regulations from disclosing information obtained from employees without their written consent unless an employee poses a threat to self or others (such as specifically threatening another). (Refer to the Code of Federal Regulations (CFR) Title 42, Public Health, Part 2.) All employee clients are informed of the limits of the confidentiality on their first visit and specifically told that threats of harm to self or others must be reported.

**Note:** Questions from the news media related to incidents of workplace violence must be forwarded to the appropriate Public Affairs Office.

## 4 ROLES

This section provides a listing of some of the major roles as they relate to workplace violence issues.

#### **4.1 What is Security's role regarding workplace violence?**

In most organizations, the Site Security Office is the front line for addressing workplace violence. The local Security Office should have response procedures in place for actual and potential acts of workplace violence. In accordance with the local policies, the Security Office may also do the following and for additional resources regarding Security's role regarding workplace violence, refer to OPM's "Dealing with Workplace Violence: A Guide for Agency Planners" in Part 3 section 5 and the ISC's "Violence in the Federal Workplace: A Guide for Prevention and Response: in section 5.6:

- Participate on the Threat Assessment Team;
- Provide properly trained and equipped security forces to prevent, deter, and respond to threats and/or incidents of workplace violence;
- Conduct investigations into threats and incidents, as appropriate;
- Conduct regular threat assessment surveys of the organization and individual sites to determine emergency plans, evaluate the level of security preparedness, and detect and cure any gaps in security policies and procedures;
- Serve as the facility security expert by keeping management advised of the risk of violence, the security gaps identified by threat assessments, and the means to close those gaps, including use of latest technology;
- Work with facility management personnel to improve the physical security aspects of the buildings, grounds, parking lots, etc;
- Train facility personnel in security measures and violence prevention techniques;
- Work closely with facility personnel to ensure buildings, areas, and grounds are safe for employees and visitors;
- Determine jurisdictional restrictions and identify alternative law enforcement agencies that may be able to provide assistance, including notification and liaison planning;
- Provide threat assessment personnel who can assist the organization and individual sites in determining the best way to protect personnel;
- Suggest safety and security measures that need to be implemented;
- Escort potentially violent individuals safely off the premises, suspending access to the premises until they have been cleared for re-entry, and escort individuals who have been removed or terminated.

#### **4.2 What is the Human Resources role regarding workplace violence?**

The Human Resources office works closely with the Security Office, Supervisors, and the EAP to help prevent and respond to workplace violence by:

- Participating on the Threat Assessment Team;
- Providing supervisory training which may include basic leadership skills (e.g., setting clear standards of conduct and performance, addressing employee problems promptly with referral to EAP for early intervention, and using probationary periods effectively), performance management, counseling, discipline, ADR, and other management tools;

- Providing technical expertise and consultation to help supervisors determine what course of administrative action is most appropriate in specific situations;
- Collaborating with the LMER to determine whether sufficient evidence exists to justify taking disciplinary or corrective action (once the investigation of any misconduct is complete) and advising management accordingly;
- Helping supervisors, in collaboration with the employee and the Disability Program Manager, determine reasonable accommodation as appropriate;
- Encouraging the use of workplace flexibilities and advising supervisors and employees what options are available.

### **4.3 What is EAP's role regarding workplace violence?**

The Employee Assistance Program (EAP) plays a significant role in workplace violence prevention and response. Below are a few examples of how the EAP may be useful to an organization or individual sites. For additional information regarding EAP, please refer to OPM's "Dealing with Workplace Violence: A Guide for Agency Planners" section 4 and the ISC's "Violence in the Federal Workplace: A Guide for Prevention and Response: in section 5.5:

- Participating on a Threat Assessment Team;
- Providing short-term counseling and referral services to employees;
- Consulting with the Threat Assessment Team when a potential for violence exists or an actual incident is reported;
- Consulting with supervisors to identify specific problem areas, develop action plans to resolve issues in the early stages, and encourage employees to contact the EAP when personal problems have adversely affected job performance or conduct;
- Assisting in the prevention of workplace violence through:
  - Early involvement in organizational changes including downsizing, reorganization, and transition;
  - Training employees to deal with angry co-workers and customers, conflict resolution, and communication skills;
  - Training supervisors to consult with EAP and LMER regarding individual employee issues as soon as they surface without diagnosing the cause.

Each site has access to trained EAP counselors who can assess and make recommendations to address workplace stress and violence issues. Supervisors can utilize the skills of EAP specialists to assess whether a situation needs to be brought to the attention of management. EAP counselors can also be used to strategize ways to deal with uncomfortable or potentially threatening situations. Seemingly insignificant conflicts between co-workers or supervisors can sometimes erupt into dangerous situations, especially if the problem goes unchecked. In many cases of worker-on-worker violence, minor non-violent conflicts went unresolved and built up until they were no longer manageable. By intervening early in an interpersonal conflict, whether it is among co-workers or an employee and a supervisor, the situation may be resolved before it gets out of control.

Employees may also contact EAP specialists directly for counseling regarding home or workplace issues. Issues such as: interpersonal conflict, finances, substance abuse, eldercare, stress, or anxiety/depression may negatively impact an employee's job performance or attendance and could also underlie potentially violent situations. EAP specialists often refer employees to other professional services and resources within the community for further information, assistance, or long-term counseling.

Confidentiality is an essential component of EAP services. Employees who seek EAP services are afforded considerable privacy by laws, policies, and professional ethics of EAP providers. It is common practice for the EAP to inform employees in writing about the limits of confidentiality at the first meeting.

#### **4.4 What is the role of ADR with regard to workplace violence?**

Alternate Dispute Resolution (ADR) is comprised of processes designed to help parties resolve conflicts with the assistance of neutral third parties. ADR can be used as an alternative to address employee disputes and/or concerns in administrative and/or negotiated venues, - i.e. EEO, or to help disputing parties resolve a problem that they cannot resolve on their own. Some ADR processes include facilitation, mediation, shuttle diplomacy, and group support.

Information concerning the Department's ADR can be obtained by contacting the Office of Conflict Prevention and Resolution. (<http://energy.gov/oha/services/applications-exceptions/alternative-dispute-resolution>) ADR can help prevent the escalation of conflict into violent or potentially violent situations. The key is using ADR early, before emotions or conduct make discussion a non-option. For example, a mediator properly trained in listening and communicating can defuse tensions, clear up misunderstandings, and open the door to further productive dialogue. By helping uncover misunderstandings or enabling an individual to discuss issues fully in a safe setting, the result may be not only immediate resolution of an issue, but improved relations and communications for the future. Additional resources regarding ADR can be found in OPM's "Dealing with Workplace Violence: A Guide for Agency Planners" on page 23 and the ISC's "Violence in the Federal Workplace: A Guide for Prevention and Response" in section 4.3.2.

If you would like to utilize a form of ADR to address a workplace issue, you may begin by contacting your Supervisor, the Office of Conflict Prevention and Resolution or the Office of the Ombudsman at 202-586-0500 or [ombudsman@hq.doe.gov](mailto:ombudsman@hq.doe.gov).

#### **4.5 What is the role of General Counsel?**

General Counsel will work with Security, Human Resources, supervisors, and the EAP to help prevent and respond to workplace violence by:

- Participating on a Threat Assessment Team;
- Providing technical expertise and consultation to help supervisors determine what course of administrative action is most appropriate in specific situations;

- Collaborating with the site's security office to determine whether sufficient evidence exists to justify taking disciplinary or corrective action (once the investigation of any misconduct is complete) and advising management accordingly.
- Collaborating with the HR office to encouraging the use of workplace flexibilities and advising managers and employees what options are available.

#### **4.6 What is the role of the Employee Concerns Program (ECP)?**

Employees Concerns Program (ECP) provides for and encourages the free and open expression of employee concerns; and provides employees with an independent avenue to raise any concerns related to but not limited, to safety, health, security, quality and management, as well as harassment, intimidation, retaliation, and discrimination. The ECP is one of several Departmental assurance systems used to promote the effectiveness and efficiency of operations and programs, including a site/office safety culture and safety conscious work environment. The ECP is intended to supplement, not replace existing processes designed to address concerns. Employees are encouraged to first report concerns to their line management at the lowest level possible. See the Department's ECP Order, DOE O 442.1A for additional information.

#### **4.7 What is the Site/Office's Management Role?**

The Site/Office Managers is responsible for the establishment and the overall viability of the workplace violence prevention program for their site/office. This would include ensuring the availability of adequate resources to ensure an effective program is in place. Site/Office Managers should refer to Virginia Tech University's "Campus and Workplace Violence Prevention and Crisis Management Resource Manual" in Section 3 for additional information.

#### **4.8 What is Facility Management's role regarding workplace violence?**

Facility Management should work closely with the site security office and/or appropriate agency HR representatives to help maintain a safe environment for all people who access the worksite. This includes not only keeping buildings and grounds well maintained, but: participating with security personnel in threat assessment surveys; keeping management informed of the physical status of the site or facility; and supporting budget requests with justification for security upgrades, when appropriate.

#### **4.9 What is the Supervisor's roles regarding workplace violence?**

Robust sources of information are available to assist supervisors and their role regarding workplace violence. For comprehensive listings, refer to OPM's "Dealing with Workplace Violence: A Guide for Agency Planners" on Page 20 and the Virginia Tech University's "Campus and Workplace Violence Prevention and Crisis Management Resource Manual" in Section 3. At a minimum, supervisors should:

- Take immediate action as necessary to reduce or prevent a violence situation, follow established procedures and/or contact security or local Police (if required);

- Take all threats seriously. If any doubts arise as to the seriousness of a threat, contact the site security office and/or LMER and/or EAP for consultation and/or advice (Refer to Table 3-01, Addressing Workplace Violence Issues, for additional information.);
- Inform employees of workplace violence prevention policies and procedures;
- Ensure that employees know specific procedures for dealing with workplace threats and emergencies, and how to contact police, fire, and other safety and security officials;
- Review all applicable provisions in your respective CBA;
- Ensure that employees with special needs are aware of emergency evacuation procedures and have assistance as necessary regarding emergency evacuation situations;
- Promptly report all threats to management, LMER, and the EAP if necessary;
- Ensure that events are properly investigated, appropriate labor considerations will be taken for bargaining unit employees with regard to Weingarten rights in accordance with 5 U.S.C. 7114(a)(2)(B), NLRB v. J. Weingarten., 420 U.S. 251 (1975);
- Become familiar with contacts in the site's security office, LMER, and the EAP staff;
- Coordinate with the site's security office and LMER regarding the services they can provide for prevention, response, and follow-up;
- Become familiar with all the employee flexibilities available at your site through DOE's worklife programs (e.g., flexiplace, child care, maxi-flex, telework, annual/sick/advanced leave, etc.);
- Know that timely response is a measure that leads to success in the prevention of workplace violence.
- Document all reports of threats or incidents. Maintaining this documentation in a confidential and secure manner.

## **5 EMPLOYEE ACTIONS**

This section provides some of the measures employees can take with regard to workplace violence issues. In addition, employees may refer to OPM's "Dealing with Workplace Violence: A Guide for Agency Planners" on Page 18; ISC's "Violence in the Federal Workplace: A Guide for Prevention and Response" in Section 5.6.7.1 and Virginia Tech University's "Campus and Workplace Violence Prevention and Crisis Management Resource Manual" in Sections 3 and 6.

### **5.1 How are potential workplace violence situations identified?**

Sometimes it's difficult to identify workplace violence before it occurs, but recognizing and addressing some of the possible early warning signs is a key step to prevent violence in the workplace. Some early signs of potential workplace violence include but are not limited to:

- Misconduct, see workforce discipline order;
- Acting angry or withdrawn;
- Threatening or intimidating words or behavior;
- Direct or veiled threats of harm;
- Intimidating, belligerent, harassing, bullying, or other inappropriate and aggressive behavior;
- Numerous conflicts with supervisors and other employees;

- Bringing a weapon to the workplace, brandishing a weapon in the workplace, making inappropriate references to guns, or fascination with weapons;
- Statements showing fascination with incidents of workplace violence, statements indicating approval of the use of violence to resolve a problem, or statements indicating identification with perpetrators of workplace homicides;
- Statements indicating desperation (over family, financial, and other personal problems) to the point of contemplating suicide;
- Stressful or derogatory statements from pending layoff/furlough notification;
- Drug/alcohol abuse;
- Extreme changes in behavior.

## **5.2 What can each employee do to help prevent workplace violence?**

Every employee is responsible for helping to prevent workplace violence. The following are a few things that may help prevent workplace violence:

- Become familiar with DOE's and site's policy regarding workplace violence;
- Be familiar with organizational and/or local procedures for dealing with workplace threats and emergencies;
- Question unknown visitors and/or report strangers to supervisors and security;
- Be aware of any threats, physical or verbal, and/or any disruptive behavior of any individual and report these threats or behavior to supervisor/security;
- Be familiar with and take advantage of the resources of the EAP;
- Take all threats seriously;
- Be familiar with local emergency and evacuation plans and procedures. Do so immediately, when notified to evacuate, shelter in place, or to take other protection measures. Warn, but do not wait for others, and follow the directions of emergency services personnel.

## **5.3 To whom should employees report workplace violence?**

Employees should be aware of and follow the procedures each site has established on workplace violence. In general, workplace violence should be reported to your supervisor, security, and LMER. In addition, an employee may contact the Office of the Ombudsman at 202-586-0500 or [ombudsman@hq.doe.gov](mailto:ombudsman@hq.doe.gov) if there are no procedures or the employee feels management is non-responsive to the reported threat.

Some organizations may establish hotlines that employees can use to make non-emergency referrals to government and contractor human resource departments, EAP staff, and security forces, and may be appropriate to report workplace violence. Refer to Table 3-01, Addressing Workplace Violence Issues, for additional information.



#### **5.4 What should employees do if they feel they are in imminent danger?**

If employees feel they are in immediate danger, they should remove themselves from the immediate area or dangerous situation, once reaching a safe area call their organization's security office, 911 or as outlined in the local procedures. If unable to exit the area, have someone else go or call for help. It is better to err on the side of safety than to risk having a situation escalate. Employees should check with their organization or individual site to identify the recommended emergency number and if an outside line is required to dial that number. For additional information on situations where employees are in imminent danger, refer to ISC's "Violence in the Federal Workplace: A Guide for Prevention and Response" in section 5.6.7; FBI's "Active Shooter Quick Reference Guide" and Virginia Tech University's "Campus and Workplace Violence Prevention and Crisis Management Resource Manual" in section 3.

If employees ever have concerns about a situation that may turn violent, employees should notify their supervisor or a member of leadership immediately, and follow the specific reporting procedures provided each organization or local site's procedures.

**Important: Unless there is no other alternative, employees should NOT confront individuals who appear to be an immediate threat. Employees should contact their organizations or local site's security office or 911 immediately.**

#### **5.5 What if employees work in a remote location or overseas?**

DOE has a number of employees who work in the field or in places around the world, sometimes alone. Like other U.S. workers and citizens, DOE field employees are not immune to crime perpetrated against them while on the job, whether the crime is job related or not. Some DOE employees could possibly be threatened and/or attacked while working on non-government property or overseas environments. Each organization's or local site's security office, in coordination with the U.S. Department of State, should provide employees with specific safety guidelines appropriate to situations likely to be encountered by employees traveling in or assigned to an overseas environment.

In general, employees working alone and away from the office should prepare daily work plans and keep a contact person informed of their locations throughout their tour of duty. When necessary and feasible, management can implement a "buddy system" policy or provide for back-up, such as police assistance, so that workers do not enter a potentially dangerous situation alone.

### **6 RECOVERY After a Workplace Violence Incident**

Returning the workplace to a functional condition after an incident occurs is a critical part of workplace normalcy. Management, leaders of the organization should lead the efforts in returning the workplace back to normal. They should seek the assistance and guidance of the resources available within and outside of the organization. Although the hope is that violence will not occur, the office/site must be prepared to initiate healing and recovery efforts if a

situation does occur. For additional recovery related information, refer to OPM's "Dealing with Workplace Violence" A Guide for Agency Planners" in Part 3, Section 6 and the ISC's "Violence in the Federal Workplace: A Guide for Prevention and Response" Section 5.7

### **6.1 What are the factors that may influence the intensity of the trauma and recovery?**

- Duration of the event;
- Amount of fear the employee(s) or victim(s) experienced;
- The level of personal control experienced by the employee or victim during the incident. Extent of injury or loss the employee or victim experienced (i.e., loss of property, self-esteem, physical or psychological well-being, etc.);
- Other variables including previous traumatic experiences, recent losses or deaths, and other intense, emotional stresses.
- In some cases, the employee requires flexibilities to recover from an incident whether an incident occurred on site or off-site (such as domestic violence, sexual assault or stalking) but is impacting the working environment. These flexibilities may include are listed below and can also be referred to in OPM's "Guidance for Agency Specific Domestic Violence, Sexual Assault, and Stalking Policies" in Section 3 and the Presidential Memorandum "Enhancing Workplace Flexibilities and Work-Life Program":
  - Annual Leave;
  - Advanced Annual Leave;
  - Sick Leave;
  - Advanced Sick Leave;
  - Leave Without Pay;
  - Family Medical Leave Act (FMLA);
  - Leave Transfer Program;
  - Telework;
  - Flexible Work Schedules.

Employees and supervisors should work with their HR office to see what flexibilities may work for any of these situations.

### **6.2 How can the organization overcome the impact of an incident?**

- Have management present at the work site: Employees need to be reassured and be able to ask questions of first line supervisors, supported by senior level management.
- Provide Information to Employees: LMER office in conjunction with management may assist in reassuring and communicating with employees.
- Have Crisis Response Professionals: After major traumatic incidents, employee assistance services may need to be supplemented by response teams of professional emergency mental health consultants.

## 7 TRAINING AND ADDITIONAL INFORMATION

This section provides training information, as well as documents and references for obtaining additional information relating to workplace violence. A comprehensive list is provided in OPM's "Dealing with Workplace Violence: A Guide for Agency Planners: Part 1, Section 3.

### 7.1 What training is available regarding workplace violence and who should be trained?

Workplace violence awareness and training are a critical part of workplace violence prevention. Training is necessary for all employees, as well as for the staff in offices that may be involved in responding to an incident of workplace violence. Each site will provide appropriate training according to local policies developed to address workplace violence. Such training may be administered collaboratively by HR, EAP, Federal Employee Occupational Safety and Health (FEOSH), security or other stakeholders and offered to employees.

#### Employees

All employees should be trained on how to recognize and report incidents of violent, intimidating, threatening, bullying, and disruptive behavior. Refer to Table 3-01, *Addressing Workplace Violence Issues*, for additional information on defining incidents and determining who an employee should call in the event of any act of violence. All employees should have phone numbers for quick reference during a crisis or an emergency. Refer to Appendix A, Workplace Violence Quick Reference Phone List, for a chart that may be helpful in collecting and maintaining these numbers.

Training on workplace violence is crucial to maintaining an informed workforce. Workplace violence training for employees may include the following topics:

- Department and organizational workplace violence policy;
- Encouragement to report incidents and the procedures to do so;
- Ways of preventing or defusing volatile situations or aggressive behavior if possible;
- Diversity training to promote understanding, acceptance, and tolerance of co-workers and customers from different races, genders, religions, abilities, ethnic backgrounds, and sexual orientations;
- Ways to deal with hostile persons;
- Managing anger;
- Techniques and skills to resolve conflicts;
- Stress management, relaxation techniques, and wellness training;
- Security procedures (e.g., the location and operation of safety devices such as alarm systems);
- Personal security measures;
- Programs operating within the Organization and local sites that can assist employees in resolving conflicts (e.g., EAP, ADR, union etc.).

## **Supervisors**

In addition to the training suggested above for employees, special attention should be paid to general supervisory training. The same approaches that create a healthy, respectful and productive workplace can also help prevent potentially violent situations. It is important that supervisory training include basic leadership skills such as setting clear and consistent standards, addressing employee problems promptly, referring employees to EAP to assist with workplace productivity, and using probationary periods, performance counseling, discipline, and other management tools fairly and conscientiously. These interventions can keep difficult situations from turning into workplace violence. Supervisors do not need to be experts in dealing with violent behavior, but need to know which experts to call, and be committed and willing to seek advice and assistance from those experts.

The following are areas that may be included in supervisory training:

- Ways to encourage employees to report incidents in which they feel threatened for any reason by anyone inside or outside the organization or local site;
- Ways to identify and respond to behaviors and triggers that may lead to acts of violence;
- Procedures for consulting HR, EAP, Security, or the Federal Protective Services, with any questions regarding the seriousness of a reported incident;
- Skills in behaving compassionately and supportively towards employees who report incidents;
- Procedures for taking disciplinary actions and how to ensure that decisions are made fairly and applied consistently across the organization;
- Basic skills in handling crisis situations;
- Basic emergency procedures, including who to call and what support resources and services are available;
- Appropriate screening of pre-employment references;
- Basic skills in conflict resolution.

## **Responders to Workplace Violence Issues**

Security, HR (LMER), and EAP staff that may respond to workplace violence issues should be trained on how to respond to such issues. This training will also allow site personnel to know experts throughout the organization or local site who can help when confronted with potentially violent situations.

Agency personnel who serve on assessment and response teams need to be competent in the skill area they are representing and need to know when and who to call for additional help. Participating in programs and training sessions sponsored by government and professional organizations, reading professional journals or other literature, and networking with others in the profession they are representing, are all helpful tools for team members to use in preparing to deal with workplace violence situations. In some cases where participation on a team is a collateral duty, employees may need special supplemental training.

These staff members also need to understand enough about each other's professions to allow them to work together effectively. Assessment and response team training should include discussion of policies, legal constraints, technical vocabulary, and other considerations that each profession brings to the interdisciplinary group.

## 7.2 Where can I find more information on workplace violence?

Each site is required to ensure that a local workplace violence policy is in place. This document is meant as a guide, to work in coordination with the organization's procedures. There are regulations that govern workplace violence, as well as a number of other publications that are helpful references and were used in the development of this guide. It is recommended the site/office consider using the case studies in the references as training material and as part of the discussions. Refer to the case studies when developing the site/local training and procedures. Additional information on preventing and responding to workplace violence can be obtained in the references below:

1. Dealing with Workplace Violence: A Guide for Agency Planners, United States Office of Personnel Management, OWR-09, February 1998, <http://www.opm.gov/policy-data-oversight/worklife/reference-materials/workplaceviolence.pdf>
2. Violence in the Federal Workplace: A Guide for Prevention and Response issued in April 2013, by the Interagency Security Committee (ISC). <http://www.dhs.gov/sites/default/files/publications/ISC%20Violence%20in%20the%20Federal%20Workplace%20Guide%20April%202013.pdf>
3. Guidance for Agency-Specific Domestic Violence, Sexual Assault, and Stalking Policies, issued in February 2013, by the Office of Personnel Management (OPM), on behalf of an interagency workgroup. <http://www.opm.gov/policy-data-oversight/worklife/reference-materials/guidance-for-agency-specific-dvsas-policies.pdf>
4. Presidential Memorandum – Enhancing Workplace Flexibilities and Work-Life Program, <http://www.whitehouse.gov/the-press-office/2014/06/23/presidential-memorandum-enhancing-workplace-flexibilities-and-work-life->
5. DOE Order 151.1C, Comprehensive Emergency Management System; <https://www.directives.doe.gov/directives-documents/100-series/0151.1-BOrder-c>
6. DOE Policy 444.1, PREVENTING AND RESPONDING TO ALL FORMS OF VIOLENCE IN THE WORKPLACE, <https://www.directives.doe.gov/directives-documents/400-series/0444.1-APolicy>
7. Active Shooter Quick Reference Guide, Federal Bureau of Investigation, <http://www.fbi.gov/about-us/cirg/active-shooter-and-mass-casualty-incidents/active-shooter-event-quick-reference-guide-04-29-14>
8. Preventing Workplace Violence: Management Considerations, Robert A. Gardner, CPP, <http://www.crimewise.com/library/wpv.html>
9. Campus and Workplace Violence Prevention and Crisis Management Resource Manual, Virginia Tech University, [http://www.hr.vt.edu/employeescorner/files/file\\_hr\\_Criss\\_Mgmt\\_Rsrc\\_Mnl.pdf](http://www.hr.vt.edu/employeescorner/files/file_hr_Criss_Mgmt_Rsrc_Mnl.pdf)
10. National Domestic Violence National Hotline: 1-800-799-7233 | 1-800-787-3224 (TTY), <http://www.thehotline.org/>

**APPENDIX A**

**WORKPLACE VIOLENCE QUICK REFERENCE PHONE LIST**

This appendix is provided as a guide for employees to collect all contact information relevant to workplace violence issues. This page can be printed and filled in with information applicable to your department and local site. It is recommended that you keep this information readily available.

<b>QUICK REFERENCE PHONE LIST FOR WORKPLACE VIOLENCE ISSUES</b>		
<b>Title</b>	<b>Name</b>	<b>Phone</b>
EMERGENCY NUMBER (911 OR XXX)		
Workplace Violence Hotline		
First Line Supervisor		
Second Line Manager		
LMER Office		
Security Office		
EAP Office		
Health Unit		
Remote/Overseas Assistance		
HR Office		
General Council (Legal, GC)		

# memorandum

DATE: April 1, 2022

REPLY TO  
ATTN OF: DE-1

SUBJECT: Fiscal Year 2022 Equal Employment Opportunity (EEO) Anti-Harassment and Retaliation Policy

TO: All BPA

Valuing people is essential to Bonneville Power Administration's culture and success. Equal Employment Opportunity (EEO) is not only the law, but advances the inclusion of others to propel the BPA mission to address energy and environmental challenges on behalf of the American people.

Adherence to the principles of equal employment opportunity creates a positive work environment where all employees can reach their full potential. These principles are essential to being a model organization that promotes operational excellence.

No applicant or employee will be subjected to harassment (sexual or non-sexual). Non-sexual harassment is any unwelcome conduct (verbal, written, or physical) based on discrimination that: (1) has the purpose or effect of unreasonably interfering with an employee's work performance; (2) creates an intimidating, hostile, or offensive work environment; or (3) affects an employee's employment opportunities or compensation.

Sexual harassment is any unwelcome behavior of a sexual nature. This includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, physical conduct of a sexual nature, or other similar behavior. Sexual harassment is not limited to prohibited conduct by a male employee toward a female employee; a male may also be a victim of sexual harassment. Similarly, sexual harassment is not limited to the actions of a supervisory employee toward a nonsupervisory employee; the harasser may be an agent of the employer, a supervisory employee who does not supervise the victim, a coworker, or a non-employee.

This protection against discrimination and harassment extends to all management practices and decisions, including, but not limited to, recruitment and hiring practices, merit promotions, training, career development programs, benefits, transfers, reassignments, and separations from the agency. This means that employment-related decisions must be based on merit and not on discriminatory factors.

Employees are encouraged to promptly report harassment to any management official or directly to the Civil Rights & EEO office. To preserve their right to utilize the EEO complaint process, employees or applicants for employment must initiate contact with their respective Civil Rights and EEO office within 45 calendar days of the date of the alleged discrimination, or within 45 calendar days from the date on which they reasonably became aware of the discrimination. Employees or applicants for employment should contact the Civil Rights & EEO office, via email [creeo@bpa.gov](mailto:creeo@bpa.gov) or call 503-230-4725. To initiate a prompt impartial inquiry into a claim of (non-EEO) harassment, contact the Anti-Harassment Program by email [reportharassment@bpa.gov](mailto:reportharassment@bpa.gov) or call 360-418-2100. Claims of non-EEO harassment do not affect

an employee's right to file an EEO complaint, nor do they alter the required timelines for filing. If an Anti-Harassment complaint is filed a prompt, thorough, and impartial inquiry will be conducted. It is important to note that BPA seeks to protect the confidentiality of harassment allegations to the fullest extent possible, and shares information only with those who have a need to know in the performance of their official duties.

Employees and applicants for employment have the right to report incidents of harassment without fear of retaliation. Retaliation is a form of discrimination where an employee is subjected to an adverse employment action or harassment, solely because he or she filed a charge of harassment; participated in an Anti-Harassment limited inquiry, or other protected activity in opposition to unlawful harassment.

It is the responsibility of the Agency to prevent the harassment of employees by addressing matters as soon as possible. Therefore, BPA may conduct an inquiry into a matter, even in the absence of an Anti-Harassment complaint.

BPA fully supports the use of Alternative Dispute Resolution (ADR) as a way to resolve conflict constructively and at the earliest opportunity. For more information regarding ADR resources, contact the ADR Office at 503-230-3054, the Department's Office of the Ombudsman at (202) 586-0500, or ask the Civil Rights and EEO office for details.

Unlawful harassment in the workplace undermines our ability to achieve our mission. Accordingly, I expect each employee to honor the principles of EEO in the workplace. Any employee who engages in harassment in violation of the law or this policy may be subject to disciplinary action, including suspension or dismissal. Managers must act promptly and appropriately to eliminate and prevent harassment in the workplace. Managers who have knowledge of an act of possible harassment should contact the Civil Rights & EEO Office or the Anti-Harassment Office for guidance.

For more information regarding harassment in the workplace, or additional information on how to file an Anti-Harassment complaint, please visit the Civil Rights & EEO Work Environment Program webpage: [Work Environment Program](#).

Creating and maintaining an environment free from discrimination, harassment and retaliation will help us attract, develop and retain outstanding employees, while motivating and inspiring employee engagement and loyalty. Thank you in advance for your efforts as we work together to ensure a harassment free work culture at BPA.

John L. Hairston  
Administrator and Chief Executive Officer






## The Secretary of Energy

Washington, DC 20585

October 4, 2021

MEMORANDUM FOR ALL DEPARTMENT OF ENERGY EMPLOYEES

FROM: JENNIFER GRANHOLM 

SUBJECT: Policy Statement on Equal Employment Opportunity,  
Harassment, and Retaliation

It is the policy of this Administration to prevent and combat discrimination and to address overlapping and intersecting forms of discrimination. In line with this policy, the U.S. Department of Energy (DOE) is committed to a workplace free of unlawful discrimination, harassment, and retaliation. As Secretary, I am honored to affirm DOE's commitment to the principles of equal employment opportunity (EEO) in the workplace. As you know, I am also committed to a more diverse workforce that yields creative and effective solutions, prioritizing an inclusive workplace so that when we hire people, they feel valued.

Equal employment opportunity in the workplace ensures that all employees have the freedom to compete on a fair and level playing field. This policy statement serves to remind all employees and applicants for employment of their rights and responsibilities under the law, and provides information on how you can seek assistance if you believe that you have experienced employment discrimination or harassment.

First, no applicant or employee will be subjected to discrimination in any aspect of employment on the basis of race, color, sex (including pregnancy, gender identity, and sexual orientation), religion, national origin, age, disability (physical or mental), genetic information, or retaliation for participation in protected EEO activity.

Second, no applicant or employee will be subjected to harassment (sexual or non-sexual). Non-sexual harassment is any unwelcome conduct (verbal, written, or physical) based on discrimination that: (1) has the purpose or effect of unreasonably interfering with an employee's work performance; (2) creates an intimidating, hostile, or offensive work environment; or (3) affects an employee's employment opportunities or compensation.

Sexual harassment is any unwelcome behavior of a sexual nature. This includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, physical conduct of a sexual nature, or other similar behavior. Sexual harassment is not limited to prohibited conduct by a male employee toward a female employee; a male may also be a victim of sexual harassment. Similarly, sexual harassment is not limited to the actions of a supervisory employee toward a nonsupervisory employee; the harasser may be an agent of the employer, a supervisory employee who does not supervise the victim, a coworker, or a non-employee.

This protection against discrimination and harassment extends to all management practices and decisions, including, but not limited to, recruitment and hiring practices, merit promotions, training, career development programs, benefits, transfers, reassignments, and separations from the Department. This means that employment-related decisions must be based on merit and not on discriminatory factors.

Employees are encouraged to promptly report discrimination or harassment to any management official or directly to their EEO office. To preserve their right to utilize the EEO complaint process, employees or applicants for employment must initiate contact with their respective EEO office within 45 calendar days of the date of the alleged discrimination, or within 45 calendar days from the date on which they reasonably became aware of the discrimination. Headquarters employees or applicants for employment should contact the Department's Office of Civil Rights and Diversity, at (202) 586-2218, regarding discrimination or harassment complaints. Field Site employees or applicants for employment should contact their local EEO office regarding discrimination or harassment complaints.<sup>1</sup> If a formal EEO complaint is filed and accepted (after completing the informal stage of the EEO process), a prompt, thorough, and impartial investigation will be conducted. It is important to note that the Department seeks to protect the confidentiality of discrimination and harassment allegations to the fullest extent possible, and shares information only with those who have a need to know in the performance of their official duties.

Employees and applicants for employment have the right to report incidents of discrimination or harassment without fear of retaliation. Retaliation is a form of discrimination where an employee is subjected to an adverse employment action or harassment, solely because he or she filed a charge of discrimination or harassment; participated in an EEO investigation, proceeding, or hearing; or participated in other protected activity in opposition to unlawful discrimination or harassment.

It is the responsibility of the Department to address matters before they reach the level of severe or pervasive harassment, with the goal of preventing harassment before employees have been subjected to actionable harm. As a result, the Department may conduct an inquiry into the matter, even in the absence of an EEO complaint.

The Department fully supports the use of Alternative Dispute Resolution (ADR) as a way to resolve conflict constructively and at the earliest opportunity. For more information regarding ADR resources, contact the ADR Office at (202) 586-4002, the Office of the Ombudsman at (202) 586-0500, or ask your local EEO office for details.

Combating the climate crisis, creating clean energy union jobs, promoting energy justice, and maintaining a secure nuclear deterrent is critical to our Nation. Unlawful discrimination and harassment in the workplace undermine our ability to achieve our mission. Accordingly, I expect each employee to honor the principles of EEO in the workplace. Any employee who engages in discrimination or harassment in violation of

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<sup>1</sup> Contact information for local EEO offices can be found by clicking on the hyperlink contained in the last paragraph of this policy statement.

the law or this policy may be subject to disciplinary action, including suspension or dismissal. Managers must act promptly and appropriately to eliminate and prevent discrimination and harassment in the workplace. Managers who have knowledge of an act of possible discrimination or harassment should contact their local EEO or [Labor and Employee Relations Office](#) for guidance.

For more information regarding discrimination or harassment in the workplace, or additional information on how to file an EEO complaint, please visit the Office of Civil Rights and Diversity webpage: [EEO Complaint Process | Department of Energy](#).



## Department of Energy

Washington, DC 20585

March 3, 2022

### MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM:

ERIN MOORE   
CHIEF HUMAN CAPITAL OFFICER

SUBJECT:

Policy Memorandum #102, *Prevention and Elimination of Prohibited Harassing Conduct*

This Policy Memorandum (PM) establishes the Department of Energy's (DOE) guidance for providing an environment free from unlawful harassment by defining prohibited harassing conduct and outlining the rights and responsibilities of Federal employees and Management Officials (i.e., Supervisors and Managers). It also establishes reporting procedures and accountability measures to ensure appropriate officials are notified of and can promptly correct unwanted conduct that is, or has the potential to become, so severe or pervasive as to constitute illegal harassment.

The objective of this memorandum is to eliminate prohibited harassing conduct and ensure DOE takes immediate and appropriate corrective action, including disciplinary or adverse action, when such conduct is confirmed.

Questions concerning this Policy Memorandum should be directed to Kim Edens, Employee Relations Policy Manager, Office of Policy, Labor and Employee Relations, at (202) 368-5012 or [Kim.Edens@hq.doe.gov](mailto:Kim.Edens@hq.doe.gov).





INTEGRITY - INNOVATION - COLLABORATION - ACCOUNTABILITY - RESPECT - EXCELLENCE

# POLICY MEMORANDUM #102

## PREVENTION AND ELIMINATION OF PROHIBITED HARASSING CONDUCT



U.S. DEPARTMENT OF  
**ENERGY**

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## PURPOSE

This Policy Memorandum (PM) establishes the Department of Energy's (DOE) guidance for providing a work environment free of unlawful harassment and retaliation for engaging in protected activity. It defines prohibited harassing conduct and outlines the rights and responsibilities of Federal employees and Management Officials (i.e., Supervisors, and Managers). It also establishes reporting procedures and accountability measures. The objective of this PM is to:

1. Establish a process for Management Officials to address employee allegations of prohibited harassment and ensure DOE takes immediate and appropriate corrective action, including disciplinary or adverse action, when prohibited harassing conduct or prohibited retaliatory conduct is confirmed; and
2. Address unwanted conduct at the earliest possible stage before it can become conduct that is "severe or pervasive" and therefore meets the legal definition of harassment.

## APPLICABILITY

- 1) This PM applies to all DOE Federal employees.
- 2) National Nuclear Security Administration (NNSA) employees must also comply with the authority set forth under this PM. Nothing in this PM will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of P.L. 106-65, *National Nuclear Security Administration Act*, to establish Administration specific policies, unless disapproved by the Secretary.

## EXEMPTIONS

There are no exemptions to this PM.

## BACKGROUND

DOE is committed to providing a work environment free of unlawful harassment and [retaliation](#) for engaging in [protected activity](#). This PM covers reports of alleged harassment based on [protected status](#) occurring on duty, off duty, face-to-face, or remotely via all electronic means of communication. The Department's goal is to report and appropriately address prohibited harassing conduct at the earliest possible stage before it can become "severe or pervasive" conduct that meets the legal definition of harassment. If the preliminary inquiry determines that the reported conduct is not prohibited harassing conduct within the scope of this PM, the Management Official must work with their servicing ER Specialist consistent with DOE O 333.1 to determine what, if any, action is necessary.

This PM does not replace or affect an employee's right to file an Equal Employment Opportunity (EEO) complaint, an appeal with the Merit Systems Protection Board (MSPB), negotiated grievance (if applicable), a complaint with the Office of Special Counsel (OSC), or other available reporting processes. The process within this PM is entirely separate and apart from other available administrative avenues of redress. This PM seeks to address and resolve harassing conduct before it ever reaches the level of discrimination, as defined under the anti-discrimination laws, and to hold those responsible for the prohibited conduct accountable.

An employee who reports allegations of prohibited harassment in accordance with this PM is not required to file an EEO complaint or any other administrative complaint. Furthermore, an employee who reports allegations of harassment in accordance with this PM has not, by the report, contacted an EEO counselor or filed an EEO complaint. An employee who wishes to file a discrimination complaint is required to contact their EEO Office within 45 days of the alleged harassing conduct. An employee may pursue both avenues of redress simultaneously. Reporting alleged prohibited harassing behavior through this PM does not alter the required timelines to submit an EEO complaint or any other administrative complaint.

## REQUIREMENTS

### A. GENERAL REQUIREMENTS:

- 1) [Prohibited harassing conduct](#) is unwelcome conduct including intimidation, ridicule, insult, offensive comments, jokes, physical conduct, or sexual harassment based on an individual's protected activities or status (race, color, religion, sex (pregnancy, sexual orientation, gender identity), national origin, age (over 40), disability, genetic information, or reprisal/retaliation, when:
  - a. The conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee's employment, or otherwise create a hostile or abusive work environment; or
  - b. An employee's acceptance or rejection of such conduct explicitly or implicitly forms the basis for a tangible employment action affecting the employee (e.g., the employee must accept harassment to be promoted).
- 2) Harassing conduct can occur in-person, online or by email, on social media, or in another manner (please see [Attachment 2, Examples of Harassing Conduct](#)).
- 3) DOE will not tolerate any DOE Federal employee engaging in prohibited behavior against any other Federal employee, contractor, other non-Federal employee, visitor, or member of the public.
- 4) DOE will not tolerate prohibited retaliatory conduct towards an employee because they reported prohibited harassing conduct or provided information related to such reports.
- 5) Management Officials must ensure prompt initiation of objective and thorough investigations into allegations of prohibited harassment and take timely action to ensure the conduct is appropriately addressed. Management is likewise tasked with deterring further misconduct, which may include taking disciplinary or adverse action, if appropriate.
- 6) Management Officials will appropriately evaluate and hold accountable subordinate Management Officials for their performance under this PM. Appropriate corrective action, including disciplinary or adverse action, up to and including removal from Federal service, will be taken against any Management Official who fails to perform their obligations, including failure to report alleged violations of this PM.
- 7) A report under this PM does not satisfy the requirements for filing an EEO complaint, negotiated grievance, or other administrative claim, nor does it delay the time limits for initiating those procedures.



- 8) Engaging in additional processes and using available support services, such as getting advice from a union representative, consulting the Alternative Dispute Resolution (ADR) Office or the Office of the Ombudsman, or contacting the Employee Assistance Program (EAP) or Employee Concerns Program (ECP) does not constitute a report under this PM. Please see Attachment 3 - Employee Resources for additional information on these offices/programs.
- 9) All Management Officials, HR Officials, EEO Officials, and other appropriate DOE officials must follow their processes and procedures for reporting threats of violence, acts of violence, and assaults through their Occupant Emergency Plan (OEP), as required under [DOE G 444.1-1, Guide on Preventing and Responding to All Form of Violence in the Workplace](#).
- 10) If a report of alleged harassing conduct does not fall within the scope of this PM, Management Officials will work with their servicing Employee Relations (ER) Specialist to determine what, if any, action is necessary, consistent with [DOE O 333.1, Administering Workforce Discipline, Adverse, and Performance Based Actions](#).

## B. REPORTING HARASSING CONDUCT:

- 1) Any employee who believes they have been subjected to prohibited harassing conduct or [prohibited retaliatory conduct](#), or who witnesses what they believe to be prohibited harassing conduct, is encouraged to inform the person(s) responsible for the unwelcome and offensive conduct and request that the conduct stop if they feel comfortable doing so.
- 2) If the prohibited harassing conduct continues or is severe, or if the employee is uncomfortable addressing the responsible person(s), they are encouraged to report the matter to:
  - a. The appropriate “Report Harassment” email box, by completing and submitting Attachment 4, *Anti-Harassment Intake Form/Report*;
  - b. Their Supervisor or the Supervisor of the alleged harasser; or
  - c. Another Manager or Supervisor.
- 3) Management Officials who observe or to whom complaints of prohibited harassing conduct are made must:
  - a. **Within three (3) business days**, report the matter to the applicable “Report Harassment” email box of the alleged victim by completing and submitting Attachment 4; and
  - b. Immediately notify the alleged victim/reporting employee of the submission of Attachment.

## C. PRELIMINARY INQUIRIES INTO REPORTS OF HARASSING CONDUCT:

- 1) The Anti-Harassment POC<sup>1</sup> who receives a report through the applicable “Report Harassment” email box must conduct a preliminary inquiry **within two (2) business days** as follows:
  - a. Identify who is involved in the reported incident(s) and determine whether it is necessary to alert additional offices;

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<sup>1</sup> The Anti-Harassment POC who receives the report of harassment may assign the report to the appropriate staff member (e.g., Employee Relations Specialist) for action. For the purposes of this PM, Anti-Harassment POC refers to any staff monitoring report intake, assigning reports for action, and conducting inquiries.

- b. Contact the first-level Supervisor of the alleged harasser to serve as the responsible Management Official in the inquiry;
    - i. In the event a conflict of interest makes it impossible for the alleged harasser’s first-level Supervisor to serve as the Management Official in the inquiry, the Anti-Harassment POC will assist the organization in designating an appropriate Management Official **within two (2) business days** of receiving the report.
  - c. In consultation with the alleged harasser’s Management Official and the local Office of the General Counsel (GC), determine whether the reported conduct is prohibited harassing conduct within the scope of this PM, whether it is potentially criminal in nature, and if so, report it to the appropriate authority;
  - d. Evaluate whether the reported prohibited conduct poses a security or safety risk, and follow the appropriate process and procedures outlined in DOE G 444.1-1 as needed; and
  - e. Consider any interim measures necessary to deter continuing prohibited harassing conduct.
- 2) If the preliminary inquiry determines that the reported conduct is not prohibited harassing conduct within the scope of this PM, this determination should be documented by the Management Official and filed in the Labor Management and Employee Relations (LMER) Case Management System (CMS) by the servicing ER Specialist. In such cases, the Management Official must work with their servicing ER Specialist consistent with DOE O 333.1 to determine what, if any, action is necessary.
  - 3) If the preliminary inquiry determines that the reported conduct may be prohibited harassing conduct within the scope of this PM, the Management Official will consult with the Anti-Harassment POC to determine whether further investigation is required, or if the preliminary inquiry is sufficient to issue immediate and appropriate corrective action.
    - a. These decisions are fact-specific and must be made on a case-by-case basis.
    - b. The Anti-Harassment POC will raise issues to an appropriate, higher-level Management Official as necessary.

#### **D. INVESTIGATIONS INTO REPORTS OF HARASSING CONDUCT:**

- 1) If it is determined that further investigation is warranted, the Management Official must initiate the investigative process **within three (3) business days** of receiving the initial report either by beginning their own fact-finding process or by contacting the Anti-Harassment POC for assistance.
- 2) The investigative process should take place at the lowest and most efficient level possible, usually by the Management Official of the alleged harasser. All inquiries or investigations must be conducted promptly, impartially, and in a manner appropriate to the allegation(s).
  - a. If a report pertains to an isolated matter with limited witnesses, a supervisory inquiry with those individuals would normally be sufficient.
  - b. If a report pertains to a complex set of facts, or a series of ongoing violations, a third-party fact-finding investigation may be warranted.
    - i. To initiate a third-party fact-finding investigation, the Management Official should work through their Anti-Harassment POC to contact the Fact-Finding Services (FFS) Program

Manager in the Office of Policy, Labor, and Employee Relations (OPLER). Departmental Elements may use another third-party fact-finding investigators than the one provided by OPLER, if appropriate, but must inform the Anti-Harassment POC.

- ii. Costs associated with third-party fact-finding investigations are the responsibility of the applicable Departmental Element.
      - c. Investigations into allegations of harassment involving bargaining unit employees must be done in accordance with the applicable Collective Bargaining Agreement (CBA).
- 3) If facts uncovered during the investigation demonstrate that misconduct occurred, the Management Official *must* issue immediate and appropriate corrective action, typically within 60 calendar days of receiving notice of harassment allegations, in consultation with their servicing ER Specialist and GC, as needed. Adverse actions require coordination and concurrence from GC before being issued.
  - a. The appropriate corrective action will be determined through an individualized fact-based assessment of the incident, associated circumstances, and relevant factors. Corrective action may take the form of disciplinary or adverse action, EEO training, Professional Skills Training, counseling, etc.
  - b. Failure of the Management Official to issue immediate and appropriate corrective action may result in disciplinary action for the Management Official.
- 4) If the investigation results in a finding of no misconduct, the Management Official must work with their servicing ER Specialist to document this finding in a memorandum detailing why no action was warranted. This memorandum must be included in the case file maintained by their servicing ER Specialist.

## E. INTERIM MEASURES TO DETER CONTINUING HARASSMENT:

- 1) Before investigating allegations of prohibited harassing conduct, Management Officials must take all necessary interim measures to ensure the alleged prohibited harassing conduct does not continue. Interim measures will depend on the severity of the alleged prohibited harassing conduct and the circumstances surrounding it. The interim measures listed below are required in cases of alleged serious prohibited harassing conduct. Management Officials must consult with their servicing ER Specialist and GC for advice and guidance.
  - a. **Separation of the Alleged Harasser from the Alleged Victim:** If the alleged conduct is severe or pervasive, including but not limited to, physically threatening behavior, touching, punching, or other similar harassing behavior, the Management Official should separate the employee alleged of harassing conduct from the alleged victim until the matter can be resolved. Management should not move the alleged victim of the harassing conduct unless specifically requested by the employee. If the alleged victim requests such a move or transfer, Management should inform the employee they are not required to move, and instead, the employee alleged to be responsible for the harassing conduct may be moved. If the alleged victim of the harassing conduct still wishes to be moved, Management should honor the alleged victim's request to the greatest extent possible. Appropriate temporary steps to separate the alleged victim from the alleged harasser may include but are not limited to:
    - i. Assigning the alleged harasser to a telework status or a temporary detail;

- ii. Moving the alleged harasser to another office space, desk, or location; or
- iii. Placing the alleged harasser on administrative or investigative leave.

In all instances, applicable CBAs must be followed.

- b. **Issuing No Contact Instructions:** The Management Official may instruct the alleged harasser to have no further contact or communication with the alleged victim. If assigned duties normally require contact between the impacted employees, the Management Official must make the necessary adjustments for them to avoid all contact.

## F. CONFIDENTIALITY:

- 1) Management Officials must take action to investigate all allegations of harassing conduct. In order to properly investigate such allegations, the confidentiality of the employee raising the allegation cannot be maintained during the investigative process.
- 2) Management Officials will disclose the identities of alleged victims and harassers and the details of investigations only to individuals with a need-to-know.
- 3) Upon inquiry from the alleged victim, the Management Official must coordinate responses with the servicing ER Specialist and GC before updating them on the status of their report to the extent permitted under the Privacy Act.
- 4) The alleged victim is not entitled to information relating to any action taken against the alleged harassing employee or a copy of the fact-finding report. The Management Official must consult with their Anti-Harassment POC before discussing or providing the alleged victim certain information regarding the alleged harassing employee or the fact-finding report.

## G. RECORD KEEPING AND TRACKING ALLEGATIONS OF HARASSING CONDUCT:

- 1) The Anti-Harassment POC is responsible for tracking information related to allegations of prohibited harassing conduct and reporting cases to the servicing ER Specialist, as needed, for filing in the appropriate system.
- 2) All cases must be filed in the LMER CMS or, for the Bonneville Power Administration (BPA), the Human Resources Management Information System (HRMIS).
- 3) The status of allegations, including their final resolution, must be tracked to monitor compliance with this PM, understand trends related to harassing conduct, and ensure swift resolution of complaints.

# ROLES AND RESPONSIBILITIES

## A. HEADS OF DEPARTMENTAL ELEMENTS (OR DESIGNEES) WILL:

- 1) Ensure Departmental Elements are in full compliance with the requirements of this PM; and
- 2) Monitor the work environment following a report alleging a violation of this PM to ensure there are no incidents of retaliation against any employee who has reported harassment or participated in an investigation.

## **B. OFFICE OF GENERAL COUNSEL WILL:**

- 1) Provide legal advice and guidance to Anti-Harassment POCs when requested;
- 2) Provide advice in determining whether reported conduct is considered harassing conduct and whether it is potentially criminal in nature;
- 3) If reported conduct is found to be criminal in nature, advise and recommend referral to the appropriate authority; and
- 4) Advise ER Specialists in determining whether immediate and appropriate corrective and/or disciplinary action is warranted and concur on all adverse actions before being issued. Advise proposing and deciding officials on subsequent disciplinary decisions.

## **C. OFFICE OF POLICY, LABOR, AND EMPLOYEE RELATIONS WILL:**

- 1) Maintain this PM in accordance with applicable regulations and best practices;
- 2) Respond to technical questions regarding this PM;
- 3) Disseminate anti-harassment information on HCnet to applicants, employees, and Supervisors;
- 4) Designate ER Specialists to serve as Anti-Harassment POCs for Departmental Elements serviced by the Oak Ridge Human Resources Shared Service Center (ORSSC);
- 5) Designate an FFS Program Manager;
- 6) Maintain and provide training on this PM; and
- 7) Collect and analyze data on the Anti-Harassment Program.

## **D. SERVICING HUMAN RESOURCES OFFICES/SHARED SERVICE CENTERS WILL:**

- 1) Designate human resources employees to serve as Anti-Harassment POCs for Departmental Elements not serviced by ORSSC.

## **E. ANTI-HARASSMENT POCs WILL:**

- 1) Monitor and respond to all reports submitted to the "Report Harassment" email box **within two (2) business days**;
- 2) Conduct a preliminary inquiry into reports of harassment in accordance with the requirements of this PM;
- 3) Consult with Management Officials to determine whether an investigation into a report of harassment is required;
- 4) Track allegations of harassment; and
- 5) Provide reports on data and cases as requested.

## **F. FACT-FINDING SERVICES PROGRAM MANAGER WILL:**

- 1) Facilitate third-party fact-finding investigations by coordinating the logistics to put a third-party investigator in place.

## **G. MANAGEMENT OFFICIALS WILL:**

- 1) Make every effort to provide a work environment free from unlawful harassment;
- 2) Ensure employees are aware of this PM and its requirements;
- 3) Act promptly and effectively in response to all reports of alleged prohibited harassment and hold employees who have engaged in prohibited harassing conduct accountable;
- 4) Complete and submit Attachment 4 to the appropriate "Report Harassment" email box;
- 5) Understand their obligation is to take immediate action to investigate all allegations of harassing conduct;
- 6) Explain to the alleged victim that, in order to properly investigate allegations of harassing conduct, their confidentiality cannot be maintained;
- 7) Disclose the identities of alleged victims and harassers and the details of investigations only to individuals with a need-to-know;
- 8) Ensure investigations of reports of alleged harassment, document the investigative findings, and take immediate and appropriate corrective action, typically within 60 calendar days of receiving notice of harassment allegation(s);
- 9) Appropriately evaluate and hold all subordinates accountable for their performance under this PM;
- 10) Take steps to prevent retaliation against those who allege workplace harassment or those who are involved in management inquiries;
- 11) Understand their failure to act could lead to DOE's liability and result in possible disciplinary action against them; and
- 12) Review case files and provide case data, as requested.

## **H. SERVICING EMPLOYEE RELATIONS SPECIALISTS WILL:**

- 1) Advise Management Officials on the appropriate actions for the reported conduct;
- 2) Advise Management Officials on provisions of the respective CBA and other applicable laws, rules, regulations, policies, procedures; and
- 3) File all cases in the LMER CMS or HRMIS.

## **I. DOE FEDERAL EMPLOYEES WILL:**

- 1) Refrain from engaging in prohibited harassing conduct;
- 2) Participate in required training under this PM;
- 3) Cooperate fully in any inquiry or investigation;
- 4) Understand the Management Official must take action to investigate all allegations of harassing conduct, and their confidentiality cannot be maintained during the investigative process; and
- 5) Understand their rights and responsibilities under this PM.

## ADDITIONAL INFORMATION

Questions concerning this PM should be directed to Kim Edens, Employee Relations Policy Manager, Office of Policy, Labor, and Employee Relations, at (202) 368-5012 or [Kim.Edens@Hq.Doe.Gov](mailto:Kim.Edens@Hq.Doe.Gov).

## REFERENCES

- 1) [DOE O 331.1](#), *Administering Work Force Discipline, Adverse and Performance Based Actions*
- 2) [DOE O 342.1A](#), *Agency Administrative Grievance Guidance and Procedures*
- 3) [DOE O 442.1B](#), *Department of Energy Employee Concerns Program*
- 4) [DOE P 444.1](#), *Preventing and Responding to all Forms of Violence in the Workplace*
- 5) [DOE G 444.1-1](#), *Guide on Preventing and Responding to all Forms of Violence in the Workplace*
- 6) [Employee Assistance Program Desk Reference](#)
- 7) [Title VII of the Civil Rights Act of 1964](#) (Pub. L. 88-352), as amended, Enacted December 10, 2015
- 8) [Title 42 of the United States Code \(U.S.C.\) § 2000e-16](#) – Employment by Federal Government
- 9) [29 U.S.C. 633a](#) – Nondiscrimination on account of age in Federal Government employment
- 10) [29 U.S.C. § 791\(f\)](#) – Employment of individuals with disabilities
- 11) [Title 29 of the Code of Federal Regulations \(CFR\) § 1604.11](#) – Sexual harassment
- 12) [29 CFR Part 1614](#) – Federal Sector Equal Employment Opportunity
- 13) [5 U.S.C. § 2302\(b\)](#) – Prohibited personnel practices
- 14) [5 U.S.C. Chapter 75](#) – Adverse Actions, and substantially similar authorities covering employees in alternate personnel systems
- 15) [Executive Order 11478](#), *Equal Employment Opportunity in the Federal Government* (as amended)

## LIST OF ATTACHMENTS

- 1) [Key Terms and Definitions](#)
- 2) [Examples of Harassing Conduct](#)
- 3) [Employee Resources](#)
- 4) [Anti-Harassment Intake Form/Report](#)

## ATTACHMENT 1 KEY TERMS AND DEFINITIONS

### **ALLEGED HARASSER:**

Any person alleged to have subjected another person to prohibited conduct, including harassment.

### **ALLEGED VICTIM:**

Any person who believes they have been subjected to prohibited conduct, including harassment.

### **MANAGEMENT OFFICIAL:**

A Supervisor or Manager required to report and investigate all allegations of prohibited harassing conduct and take immediate and appropriate corrective action, typically within 60 calendar days of receiving notice of harassment allegations, when allegations have been substantiated.

### **PROHIBITED HARASSING CONDUCT (UNLAWFUL HARASSMENT):**

Unwelcome conduct that includes but is not limited to intimidation, ridicule, insult, offensive comments, jokes, physical conduct, or sexual harassment based on an individual's protected activities or status (race, color, religion, sex (pregnancy, sexual orientation, gender identity), national origin, age (over 40), disability, genetic information, or reprisal/retaliation), when:

- 1) The conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee's employment, or otherwise create a hostile or abusive work environment; or
- 2) An employee's acceptance or rejection of such conduct explicitly or implicitly forms the basis for a tangible employment action affecting the employee (e.g., the employee must accept harassment in order to be promoted).

Harassing conduct can occur in-person, online or by email, on social media, or in another manner. The conduct prohibited by this PM includes, but is broader than, the legal definitions of harassment. Absent other aggravating factors, assignment of work by a Management Official, a difference of opinion, a disagreement on a work-related matter, performance feedback, exercise of a management or employee right, or other similar communication is not considered to be harassment under this PM. This type of harassment also does not involve discrete personnel actions such as a denial of promotion or termination.

### **PROHIBITED RETALIATORY CONDUCT:**

An action taken or not taken against an individual solely based on reporting an allegation of unlawful harassing conduct.

### **PROTECTED ACTIVITY:**

Protected activities include reporting or addressing unlawful harassing, discriminatory, or retaliatory conduct; filing a claim of unlawful harassment; providing evidence in an investigation of unlawful



harassment; or intervening to protect others who may have suffered unlawful harassing, discriminatory, or retaliatory conduct.

**PROTECTED STATUS:**

An individual's race, color, religion, sex (including pregnancy, sexual orientation, gender identity), national origin, age (40 or older), disability, genetic information (including family medical history), or reprisal/retaliation because of protected EEO activity.

**WITNESS:**

A person who is present at the time an event occurs such that this person has direct knowledge of an event.

## ATTACHMENT 2

### EXAMPLES OF HARASSING CONDUCT

Conduct that may constitute harassment includes, but is not limited to the following:

- 1) Epithets, slurs, jokes, teasing, gestures, or negative stereotyping related to a person's race, color, religion, sex, national origin, age, disability, EEO activity, or genetic information;
- 2) Threatening, intimidating, or hostile acts related to a person's race, color, religion, sex, national origin, age, disability, EEO activity, or genetic information; and
- 3) Written or graphic material posted on walls, bulletin boards, email, or elsewhere on the Department's facility or forums that demeans or shows hostility or aversion toward an individual or group because of race, color, religion, sex, national origin, age, disability, EEO activity, or genetic information.

## ATTACHMENT 3 EMPLOYEE RESOURCES

### ALTERNATIVE DISPUTE RESOLUTION (ADR) OFFICE:

(202) 586-4002 | [ADR Webpage](#)

ADR serves as a resource to all DOE components and contractors to explore efficient and cost-effective means of managing conflicts and resolving disputes without the formalities and costs of litigation. ADR's mission is to promote the use of conflict management and alternative dispute resolution techniques at all levels of the DOE complex.

### EMPLOYEE ASSISTANCE PROGRAM (EAP):

Espȳr (877) 801-5752 | Forrestal (202) 586-4995 | Germantown (301) 903-4995 | [EAP Webpage](#)

DOE partners with Espȳr to provide Federal employees and their family members with an array of services and resources aimed at supporting and enhancing personal well-being and work-life balance. EAP services are free and confidential within the bounds of the law and are available 24/7/365.

### EMPLOYEE CONCERNS PROGRAM (ECP):

[ECP Webpage](#) on Energy.gov | [ECP Contact List](#)

DOE ECP encourages the free and open expression of employee concerns and provides DOE Federal, contractor, and subcontractor employees with an independent avenue to raise any concerns related, but not limited, to the environment, safety, health, and management.

### EQUAL EMPLOYMENT OPPORTUNITY (EEO):

(202) 586-2218 | [EEO Webpage](#)

The mission of EEO is to promote an inclusive work environment that ensures equal opportunity for all, fosters a culture that values fairness and equality, and empowers individuals to participate to their fullest potential to support the DOE mission.

### OFFICE OF INSPECTOR GENERAL (OIG):

(202) 586-1818 | [OIG Webpage](#)

The OIG maintains a Hotline to facilitate the reporting of allegations of fraud, waste, abuse, or mismanagement. Priority is given to investigations of suspected violations of criminal and civil statutes, as well as serious administrative misconduct.

### OFFICE OF THE OMBUDSMAN (OMBUDS):

(202) 586-0500 | [Ombuds Webpage](#)

Ombuds is a confidential, informal, independent, and neutral resource that assists DOE Federal employees in resolving concerns about the workplace. All Ombuds services are voluntary, free, and available to any DOE Federal employee or Management Official.

## ATTACHMENT 4 ANTI-HARASSMENT REPORT/INTAKE FORM

Attachment 4 is available on the PM #102 page on HCnet.

Approved: 5-14-2015

**SUBJECT: ADMINISTERING WORK FORCE DISCIPLINE**

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1. PURPOSE.

- a. To provide requirements and responsibilities for administering work force discipline that includes disciplinary, adverse, and alternative corrective actions in the Department of Energy (DOE).
- b. To maintain high standards of employee integrity, conduct, effectiveness, and service to the public.
- c. To ensure prompt and just corrective action is taken to promote standards of conduct and efficiency in the best interest of the service with line managers bearing responsibility for the good order and conduct of their organizations.
- d. To ensure disciplinary and adverse actions are governed by three basic principles:
  - (1) An employee must be informed in writing specifically why a disciplinary or adverse action is being issued against him or her;
  - (2) An employee must be given a reasonable opportunity to present his or her position of the case;
  - (3) The employee and representative must be free from restraint, interference, coercion, discrimination, or reprisal in discussing, preparing, and presenting their defense to a proposed action and/or filing a grievance over a final action.

2. CANCELLATION. DOE O 3750.1, *Work Force Discipline*, dated 03-23-83.

3. APPLICABILITY.

- a. Departmental Applicability. This Order applies to all Departmental elements, including the Bonneville Power Administration.
- c. Employees covered by collective bargaining agreements may be subject to additional procedures that supplement those described in this Order.
- d. The Administrator of National Nuclear Security Administration (NNSA) must ensure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of P.L. 106-65, *National Nuclear Security Administration Act*, to establish Administration specific policies, unless disapproved by the Secretary.

- e. DOE Contractors. This Order does not apply to contractors.
- f. Equivalencies/Exemptions. Requests for exemption to this Order must be submitted in memorandum form to the Director, Office of Human Capital Policy and Accountability, Office of the Chief Human Capital Officer. The memorandum must include the basis for the exemption, identify the requirement for which the exemption is sought, and request a timeframe, as applicable.
  - (1) Exemption. Persons exempted from this Order are those specifically excluded by law or Executive Order, such as employees excluded from procedural protections under 5 U.S.C. § 7511, to include the following types of appointments:
    - (a) Presidential;
    - (b) Career and Noncareer Senior Executive Service (SES);
    - (c) Schedule C;
    - (d) Re-employed annuitants.
  - (2) Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this directive for activities under the Director's cognizance, as deemed appropriate.

#### 4. REQUIREMENTS.

- a. Disciplinary actions must be taken in accordance with the requirements of the pertinent topical area found in [Appendix A](#) of this Order.
- b. An action covered under this Order must be in conformance with the merit system principles in 5 U.S.C. § 2301 and must not be based on any of the prohibited personnel practices listed in 5 U.S.C. § 2302.
- c. Actions covered under this Order must not be based on prohibited discrimination because of race, color, sex (including pregnancy and gender identity), religion, national origin, age, disability (physical or mental), protected genetic information, sexual orientation, or status as a parent. An action taken under this Order must not be taken against an employee because of marital status or partisan political reasons.
- d. Actions covered under this Order must not be taken as reprisal for the proper exercise of an employee's legal or administrative appeal rights, or exercise of rights guaranteed by 5 U.S.C. § 7102 or other laws.

- e. Protections and entitlements under the Whistleblower Protection Act and the Whistleblower Protection Enhancement Act will be afforded to employees who allege reprisal for having engaged in whistle blowing activities.
- f. In taking actions under this Order, when practicable, like penalties must be considered for like offenses. However, full consideration should be given to the Douglas Factors found at [Appendix B](#), when determining what action is appropriate for an adverse action, including the nature and gravity of the offense, existence of either mitigating or aggravating circumstances, the frequency of the offense and the employee's position and so forth.
- g. Disciplinary actions will be taken on a preponderance of the evidence standard, with the exception of indefinite suspensions which only require a reasonable cause burden of proof.
- h. When practicable, the concept of progressive discipline will be administered. Progressive discipline can include informal and formal disciplinary actions. Informal disciplinary actions which are not considered official discipline at DOE include: oral or written letters of counseling, sick leave restrictions, an oral or written admonishment and other notices/actions of a progressive nature. Formal/official disciplinary actions at DOE include: reprimands, suspensions, demotions and removals.
- i. When applicable, progressive discipline, to include informal and formal disciplinary action, adverse actions, and alternative corrective actions, should be taken for:
  - (1) The purpose of rehabilitating the employee by correcting unacceptable conduct at work;
  - (2) Behavior that adversely affects job performance;
  - (3) Violations of laws, rules or regulations; or
  - (4) Off duty misconduct when there is a nexus between the misconduct and employment with DOE.
- j. All disciplinary and adverse actions must promote the efficiency of the service.
- k. Any applicable provisions of labor-management agreements should be consulted to determine the possible effect on the processing of disciplinary/adverse actions, notices of such actions, and employee rights.
- l. Where necessary, Department elements may supplement this Order with prior approval of the Director, Office of Human Capital Policy and Accountability, Office of the Chief Human Capital Officer. Supplemental policies and procedures

may not conflict with, but may expand upon and/or be more restrictive than, the contents of this Order.

5. RESPONSIBILITIES.

a. Secretary/Under Secretary, or their Designee(s).

- (1) Delegate Human Resources Authority to Chief Human Capital Officer and NNSA Human Capital to ensure compliance with statute, regulation and policy;
- (2) Redesignate disciplinary authority to that level of personnel management that has clearly demonstrated the knowledge, experience and capability to take the action. This shall not preclude, however, the Secretary/Under Secretary from exercising the authority delegated above on a case-by-case basis and/or from serving as the deciding official for any corrective actions.

b. Office of the Chief Human Capital Officer/NNSA Human Capital Management.

- (1) Office of the Chief Human Capital Officer (OCHCO):
  - (a) Develop policy and guidance and is responsible for administration of this Order;
  - (b) Disseminate policy initiated by the OCHCO to all Servicing Human Resources Offices (SHRO) and Human Resources Shared Service Centers (SSC) for compliance;
  - (c) Provide staff assistance, advice, and oversight to all non-NNSA SSCs and SHROs;
  - (d) Has the authority to correct any non-NNSA disciplinary or adverse action taken in the Department that does not conform to statute, regulation, or this Order.
- (2) NNSA Human Capital Management (HCM):
  - (a) Develop NNSA specific policy and guidance and is responsible for administration of this Order;
  - (b) Disseminate NNSA human capital policy;
  - (c) Ensure all employee relations staff is appropriately trained;
  - (d) Advise, assist, and ensure consistency in the drafting and reviewing of corrective and adverse actions and decisions;



- (e) Coordinate with NNSA legal to obtain legal advice and review of appropriate disciplinary and all adverse actions. This includes, but is not limited: to all actions appealable to the Merit System Protection Board (MSPB), actions with Equal Employment Opportunity (EEO) implications, requests to OPM to seek judicial review of MSPB decisions, actions resulting from a prohibited personnel practice, violations of statute, regulation, policy, or other legal requirements, and Office of Special Counsel (OSC) investigations;
  - (f) Keep NNSA legal staff informed of developing disciplinary and adverse actions when appropriate;
  - (g) Respond to questions from employees and their representatives regarding the disciplinary process and employee rights and responsibilities;
  - (h) Implement actions directed by Office of Personnel Management (OPM) and/or respond to other outside authorities, such as the OCHCO, MSPB or Equal Employment Opportunity Commission (EEOC), in coordination with advice from NNSA legal staff;
  - (i) Retain records of actions in accordance with applicable federal law and Departmental requirements;
  - (j) Respond to all NNSA reporting requirements;
  - (k) Ensure that documented workplace policies and procedures and other conditions of employment can be made readily available upon request by an employees and their representative.
- c. Office of General Counsel/NNSA Office of General Counsel.
- (1) Office of General Counsel (OGC)-oversight applies to all legal offices with the exception of NNSA:
    - (a) Provide legal advice and assistance to the OCHCO, other legal staffs, and to management officials;
    - (b) Keep the OCHCO and other legal staffs informed of relevant decisions of interest or decisions that may affect policy;
    - (c) Assist other legal staffs in representing their organizations before the MSPB, the EEOC, and the Federal Labor Relations Authority (FLRA);
    - (d) Review and concur on all petitions for payment of attorney's fees for *compliance* with statutory and regulatory requirements;

- (e) Advise on the correction of any disciplinary or adverse action(s) taken that does not conform to statute, regulation, or this Order.

(2) NNSA OGC (applies exclusively to NNSA):

- (a) Provide legal advice and assistance to the NNSA HCM Office, and to NNSA management officials;
- (b) Keep the NNSA HCM and other legal staffs informed of relevant decisions of interest or decisions that may affect policy;
- (c) Represent NNSA before the MSPB, the EEOC, and the FLRA and determine whether to appeal initial third-party decisions (such as a petition for review of an initial MSPB or EEOC decision, or appeal of a decision on such requests);
- (d) Review and concur on all NNSA petitions for payment of attorney's fees for compliance with statutory and regulatory requirements;
- (e) Review and concur on evidentiary standards of all NNSA adverse actions and assist with any other requested legal reviews.
- (f) Advise on the correction of any disciplinary or adverse action(s) taken within NNSA that does not conform to statute, regulation, or this Order.

d. Heads of Departmental Elements/Heads of Organizations/Administrators.

- (1) Ensure all managers and employees are aware of this Order and its requirements with the assistance of the SSC and/or SHRO;
- (2) May issue implementing instructions or supplemental policy with OCHO's approval, in conformance with the provisions of this Order;
- (3) Administer equitable, impartial, and regulatory, and policy compliant corrective actions throughout their element in consultation with their SHRO and legal office, when appropriate;
- (4) Ensure that supervisors and management officials comply with the provisions of this Order and consider the Table of Offenses and Penalties for all actions. Also consider Douglas Factors found at [Appendix B](#) for all adverse actions, and consult with their SHRO when initiating corrective actions;
- (5) Ensure all disciplinary and adverse actions are coordinated with their SHRO and legal office as appropriate.

e. Servicing Human Resources Offices.

- (1) Ensure all labor management and employee relations (LMER) staff is appropriately trained;
- (2) Advise, assist, and ensure consistency in the drafting and reviewing of corrective and adverse actions and decisions;
- (3) Coordinate with servicing legal staff to obtain legal advice and review of appropriate disciplinary and all adverse actions. This includes, but is not limited to: all actions appealable to the MSPB, actions with EEO implications, requests to OPM to seek judicial review of MSPB decisions, actions resulting from a prohibited personnel practice, violations of statute, regulation, policy, or other legal requirements, and OSC investigations;
- (4) Keep the respective legal staff and Insider Threat Program informed of developing disciplinary and adverse actions when appropriate;
- (5) Respond to questions from employees and their representatives regarding the disciplinary process and employee rights and responsibilities;
- (6) Implement actions directed by OPM and/or respond to other outside authorities, such as the MSPB or EEOC, in coordination with advice from the respective legal staff;
- (7) Retain records of actions in accordance with applicable federal law and Departmental requirements;
- (8) Respond to all Departmental reporting requirements;
- (9) Ensure that documented work place policies and procedures and other conditions of employment can be made readily available upon request by employees and their representatives.

f. Office of General Counsel (OGC) and Non-NNSA Chief Counsels of Field Elements.

- (1) Provide legal advice and assistance to the applicable SHRO and management officials; in coordination with the SHRO, represent or participate in the preparation for representation of DOE before the MSPB, EEOC, FLRA and other third party entities;
- (2) In coordination with the OGC, determine whether to appeal initial third-party decisions (such as a petition for review of an initial MSPB or EEOC decision, or appeal of a decision on such requests); keep the applicable SHRO informed of relevant decisions;

- (3) Consult with the OGC when an adverse action involves a Headquarters Deciding Official;
- (4) Ensure legal staffs must review and advise on all adverse actions and supporting evidence, and assist with any other requested legal reviews.

g. Supervisors and Managers.

- (1) Consult with the SHRO and servicing legal staff as appropriate, before initiating alternative corrective actions/alternative discipline, letters of reprimand, notices of proposed disciplinary or adverse actions, and decisions;
- (2) Consider the Table of Offenses and Penalties for all actions and consider relevant Douglas Factors required for adverse actions found at [Appendix B](#), in determining the appropriateness of a penalty;
- (3) Consider an employee's rights and requirements established by law, regulation, policy, and/or the applicable collective bargaining agreement for bargaining unit employees (BUEs) when administering corrective actions;
- (4) Review and approve or disapprove requests for DOE employees to serve as representatives for non-BUEs, based on operational needs;
- (5) Approve or disapprove requests to extend the time to answer notices of proposed action;
- (6) Approve or disapprove requests to extend the effective date of a decision notice;
- (7) Issue proposals and notices of decision for disciplinary and adverse actions in a timely manner.

6. REFERENCES.

- a. P.L. 112-194 *Government Charge Card Abuse Prevention Act of 2012*: <http://www.gpo.gov/fdsys/pkg/plaw-112publ194/pdf/plaw-112publ194.pdf>.
- b. Title 5, United States Code (5 U.S.C.), 75 (*Adverse Actions*), and 77 (*Appeals*): <http://uscode.house.gov/search/criteria.shtml>.
- c. *Title VII of the Civil Rights Act of 1964*, as amended: <http://www.eeoc.gov/laws/statutes/titlevii.cfm>; 29 Code of Federal Regulation Part 1614, *Federal Sector Equal Employment Opportunity*: [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr1614\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr1614_main_02.tpl); and Executive Order 11478,

*Equal Employment Opportunity in the Federal Government:*

<http://www.archives.gov/federal-register/codification/executive-order/11478.html>.

- d. *Title II Genetic Information Non Discrimination Act (GINA) of 2008:*  
<http://www.eeoc.gov/laws/statutes/gina.cfm>.
- e. *Whistleblower Protection Act of 1989 (Public Law 101-12 ):*  
<http://www.gpo.gov/fdsys/pkg/STATUTE-103/pdf/STATUTE-103-Pg16.pdf>;  
*Whistle blower Protection Act expansion of 1994 (Public Law103-424):*  
<http://www.gpo.gov/fdsys/pkg/STATUTE-108/pdf/STATUTE-108-Pg4361.pdf>; 5  
U.S.C. Section 1201: <http://uscode.house.gov/search/criteria.shtml>; and  
*Whistleblower Protection Enhancement Act, (Public Law 112-199):*  
<http://www.gpo.gov/fdsys/pkg/PLAW-112publ199/content-detail.html>.
- f. 31 United States Code 1344 (*Passenger Carrier Use*) and 31 United States Code 1349 (*Adverse Personnel Actions*): <http://uscode.house.gov/search/criteria.shtml>.
- g. Title 5 Code of Federal Regulations (5 CFR) Parts 735 (*Employee Responsibilities and Conduct*), 752 (*Adverse Actions*), and 1201 (*Merit Systems Protection Board Practices and Procedures*):  
<http://www.gpo.gov/fdsys/search/submitcitation.action?publication=CFR>.
- h. 10 CFR, Parts 710 (Eligibility for Access to Classified Information), 712 (Human Reliability Program), 1017 (Identification and Protection of Unclassified Controlled Nuclear Information), and 1045 (Nuclear Classification and Declassification):  
<http://www.gpo.gov/fdsys/search/submitcitation.action?publication=CFR>.
- i. *Office of Personnel Management (OPM) Guide to Personnel Recordkeeping:*  
<http://www.opm.gov/feddata/recguide2011.pdf>.
- j. DOE O 203.1, *Limited Personal Use of Government Office Equipment Including Information Technology*, dated 1-7-2005:  
<https://www.directives.doe.gov/directives/0203.1-BOrder/view>.
- k. DOE O 342.1, *Grievance Policy and Procedures*, dated 2-2-2006:  
<https://www.directives.doe.gov/directives/0342.1-BOrder/view>.
- l. DOE O 471.3, *Identifying and Protecting Official Use Only Information*, dated 4-9-2003: <https://www.directives.doe.gov/directives-documents/400-series/0471.3-BOrder-admchg1>; and DOE M 471.3-1, *Manual for Identifying and Protecting Official Use Only Information*, dated 4-9-2003:  
<https://www.directives.doe.gov/directives-documents/400-series/0471.3-DManual-1-admchg1>.

- m. DOE O 471.1B, *Identification and Protection of Unclassified Controlled Nuclear Information*, dated 3-1-2010: <https://www.directives.doe.gov/directives-documents/400-series/0471.1-BOrder-b>.
- n. DOE O 475.2A, *Identifying Classified Information*, dated 2-1-2011: <https://www.directives.doe.gov/directives-documents/400-series/0475.2-BOrder-a>.
- o. DOE O 343.1, *Federal Substance Abuse Testing Program*, dated 1-30-2014: <https://www.directives.doe.gov/directives-documents/0343.1-BOrder>.
- p. DOE O 470.5, *Insider Threat Program*, dated 6-02-2014: <https://www.directives.doe.gov/directives-documents/400-series/0470.5-BOrder>
- q. Merit Systems Protection Board (MSPB) report, *Navigating the Probationary Period After Van Wersch and McCormick* (2006): <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=276106&version=276415&application=ACROBAT>.
- r. Merit Systems Protection Board (MSPB) report, *Alternative Discipline: Creative Solutions for Agencies to Effectively Address Employee Misconduct* (2008): <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=373026&version=373689&application=ACROBAT>.
- s. Merit Systems Protection Board (MSPB) report, *Whistleblower Protections for Federal Employees* (2010): <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=557972&version=559604&application=ACROBAT>.
- t. Merit Systems Protection Board (MSPB) report, *Prohibited Personnel Practices—A Study Retrospective*. (2010): <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=506980&version=508422&application=ACROBAT>.
- u. Merit Systems Protection Board (MSPB) report, *Clean Record Settlement Agreements and the Law*. (2013): <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=938820&version=942573&application=ACROBAT>.

## 7. DEFINITIONS.

- a. Abeyance Agreement. A written and signed agreement in which a Deciding Official agrees to withhold implementation of a decision on a disciplinary action in abeyance for a specific period of time, in exchange for terms agreed to by the parties.
- b. Adverse Action. A removal, suspension of more than 14 days, indefinite suspension, furlough for 30 consecutive calendar days (22 discontinuous work days) or less, reduction in grade or pay effected by management for either

disciplinary or non-disciplinary reasons, except for those which are excluded by law or regulation (see 5 CFR Part 752).

- c. Alternative Discipline. An effort, undertaken by a supervisor/manager, to address employee misconduct using a method other than traditional discipline.
- d. Bargaining Unit Employee. A bargaining unit employee (BUE) is an employee who is covered by a collective bargaining agreement recognized by FLRA within the Department.
- e. Breach or Offense. A violation of rules or policies, a failure to observe the terms of employment, or a criminal or civil offense or infraction with a nexus to the DOE's mission.
- f. Charge. A description of the offense in a disciplinary or adverse action, as stated in the proposed action and final decision.
- g. Conflict of Interest. As defined for purposes of this Order, a conflict of interest exists for individuals with a personal interest in the investigation or outcome of the action, or whose position creates the appearance of actual or perceived conflict of interest due to their participation as a representative; conflict of interest also applies to an employee of the Department whose release from his/her official position to act as a representative would give rise to unreasonable costs or whose priority work assignments preclude his/her release.
- h. Crime Provision. An exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension, including indefinite suspension. This provision may be invoked even in the absence of judicial action.
- i. Day. Calendar day unless otherwise noted.
- j. Deciding Official. The management official designated to make the final decision on a proposed disciplinary or adverse action.
- k. Disciplinary Action. A formal disciplinary action taken to correct misconduct or other offenses and to enforce prescribed rules of behavior. At DOE it includes reprimands and suspensions of 14 days or less.
- l. Douglas Factors. Factors established by the Merit Systems Protection Board (MSPB) via case law, that must be considered by Deciding Officials in determining the appropriate penalty for Federal employee misconduct for adverse actions. *Douglas v. Veterans Administration*, 5 MSPR 280 (at 305-6), 1981.
- m. Duty Status. For the purposes of this order, pay status including authorized overtime, holiday pay, or premium pay.

- n. Duty Time for Employee Reply. Often referred to as official time, is time granted to an employee and/or employee non-labor representative, to review the material relied on to support a proposed action, to prepare an answer and secure affidavits while the employee or non-labor representative is otherwise in a pay status.
- o. Furlough. The placing of an employee in a temporary status without duties and pay due to lack of work or funds, or other non-disciplinary reasons.
- p. Heads of Departmental Elements/Heads of Organizations/Administrators. For purposes of this order, this person is the Senior Management Official for a departmental element/organization/administration.
- q. Indefinite Suspension. The placement of an employee in an involuntary, non-pay status for a temporary indeterminate period of time pending investigation, inquiry, or further management action.
- r. Last Chance Agreement. A written agreement executed by the employee and agency where the employee agrees to refrain from future specified misconduct in exchange for the agency's agreement not to remove them for the offense being settled.
- s. Official Time. For the purposes of this order, is paid time off from assigned Government duties to represent a union or a BUE.
- t. Pay. The rate of basic pay fixed by law or administrative action, for the position held by the employee.
- u. Preponderance of the Evidence Standard. A burden of proof where it is more likely than not that the charged misconduct occurred (i.e. more than 50% likely the misconduct occurred).
- v. Probationary Employee under a:
  - (1) *Probationary Period*: in competitive service, is the first year of employment after initial appointment during which an individual is generally excluded from the definition of "employee" in 5 U.S.C. § 7511(a)(1)(A). During this probationary period, these individuals generally do not have appeal rights to the MSPB for adverse actions.
  - (2) *Trial Period*: in excepted service, this period generally may last from one year (or up to two years for certain excepted appointments). During an individual's trial period, the individual is generally excluded from the definition of "employee" in 5 U.S.C. § 7511(a)(1)(C). During this probationary period, these individuals generally do not have appeal rights to the MSPB for adverse actions.



- w. Progressive Discipline. A system of escalating communications (both oral and written) for behavior that does not meet expected and communicated work conduct standards and/or has a nexus to employment with the Department. Progressive discipline may or may not be considered formal disciplinary action and is applied where practicable to place employee on notice of desired behavior and/or rehabilitate the employee. Examples of informal progressive discipline include, but are not limited to: letters of counseling; oral and/or written admonishments; leave restrictions; and Absent Without Leave (AWOL) notices. Examples of formal progressive discipline include, but are not limited to: a reprimand, various levels of suspension and a removal from federal service.
  - x. Proposing Official. The management official (normally the first line supervisor) who issues a notice of proposed disciplinary or adverse action (*i.e.* suspension, removal, reduction in pay or grade, or furlough for 30 days or less).
  - y. Reasonable Cause. A standard of proof that is applied to a set of facts or actions to prove whether a reasonable person would have come to the same conclusion or acted in the same way given the totality of the circumstances.
  - z. Reprimand. A formal written letter of censure for misconduct normally issued by the employee's immediate supervisor and placed in the temporary area of an employee's official personnel file.
  - aa. Removal. Discharge from Federal service. This occurs when an employee is separated as a result of adverse action procedures, to include poor performance and misconduct issues; the loss of a security clearance; and in some special circumstances, such as furlough.
  - bb. Suspension. The placement of an employee in a temporary non-pay status non-duty (or absence from duty) for a disciplinary reason not covered under 5 U.S.C. sections 7521 or 7532.
  - cc. Termination. A decision to terminate from Federal service probationary or trial-period employees, temporarily appointed employees, and employees removed due to background investigation determinations of negative suitability.
8. CONTACT. Questions concerning this Order should be addressed to the Office of Human Capital Policy, Accountability and Technology, Office of Chief Human Capital Officer, at 202-586-9239.

BY ORDER OF THE SECRETARY OF ENERGY:



ELIZABETH SHERWOOD-RANDALL  
Deputy Secretary



## **APPENDIX A. ADMINISTERING WORK FORCE DISCIPLINE**

This Appendix establishes the U.S. Department of Energy (DOE) procedural requirements for taking disciplinary and other related actions



**SECTION I. DISCIPLINARY AND ADVERSE ACTIONS  
UNDER TITLE 5 GENERAL INFORMATION**

1. GENERAL. Disciplinary and adverse actions are taken to maintain high standards of employee integrity, conduct, effectiveness, and service to the public. The purpose of disciplinary and adverse actions is to ensure prompt and just corrective action is taken in order to promote the efficiency of the service.
  - a. All disciplinary and adverse actions, to include progressive discipline considered informal actions, will be taken in accordance with paragraph 4. Requirements, of this Order.
  - b. While the reply period after a proposed action entitles employee to a reasonable time to provide a reply, orally and/or in writing, and to furnish affidavits or other documentary evidence in support of their answer, the employee reply period does not provide a right to conduct a hearing or depose witnesses.
  - c. Applicable labor management agreements should be consulted to determine the possible effect on the processing of disciplinary/adverse actions, notices of such actions, and employee rights.
2. GENERAL PROHIBITIONS (a not-all inclusive list). Employees are prohibited from:
  - a. Engaging in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government at any time;
  - b. Conducting or participating in any gambling activity, including operating a gambling device, conducting a lottery or pool, playing a game for money or property, or selling or purchasing a numbers slip or ticket while on Government-owned or Government-leased property or while on duty for the Government. This does not preclude:
    - (1) Activities necessitated by an employee's official duties; or
    - (2) Fundraising permitted under section 7 of Executive Order 12353 and similar agency-approved authorities;
  - c. Engaging in, teaching, lecturing, or writing, with or without compensation, to prepare a person or class of persons for an examination administered by the Office of Personnel Management (OPM) or the Board of Examiners for the Foreign Service that depends on information obtained as a result of the employee's government employment. This does not preclude such teaching, lecturing, or writing if:
    - (1) Prior written authorization is obtained from the Director of OPM, or his or her designee, or by the Director General of the Foreign Service or his

or her designee, as applicable. Employees should seek advice from the Office of General Counsel concerning the application of the restrictions on compensated teaching, speaking, and writing under the Standards (5 CFR §2635.807); or

- (2) The information upon which the preparation is based has been made available to the general public or will be made available to the general public on request;
- d. Using or possessing alcohol on Government-owned or Government-leased property without proper authorization from the element head;
  - e. Using or possessing substances illegal under federal law on or off duty.
  - f. Harassing employees by word or action, engaging in any threatening or intimidating behavior, or knowingly making false accusations against employees;
  - g. Unauthorized monitoring or recording telephone/digital conversations (not limited to video conference, Instant Message, and so forth). Recording of telephone/digital conversations by the use of any recording device (voice, video, image, or otherwise), or authorizing or permitting others under their administrative control to monitor or record conversations by the use of any device (voice, video, image or otherwise), except:
    - (1) As authorized by law, regulation or policy.
    - (2) As authorized by the Inspector General or his or her designee, with the prior consent of one party to a telephone conversation and when necessary in a criminal investigation;
    - (3) When all parties agree in advance; or
    - (4) In the context of a telephone/digital call center (not limited to video conference, Instant Message and so forth) or similar operations (i.e. energy trade centers). In such situations, supervisors may monitor or record conversations for the purpose of evaluating performance of employees with proper notice to all parties to the communication.
  - h. Utilizing any device (voice, video, image, or otherwise), to monitor, record, or capture the likeness of others except:
    - (1) As authorized by law, regulation or policy.
    - (2) As authorized by the Inspector General or his or her designee, with the prior consent of one party to a non-telephone conversation and when necessary in a criminal investigation;
    - (3) When all parties agree in advance; or

- (4) When in the context of telephone/digital call center (not limited to video conference, Instant Message and so forth), or similar operation. In such situations, supervisors may monitor or record conversations for the purpose of evaluating performance of employees with proper notice to all parties to the communication.
- i. Soliciting for the sale of any article, or selling any article, including but not limited to candy or other items for schools or charities, kitchenware or other home furnishings, paper products, cosmetic products; or any other items whatsoever, in person or by distributing or posting literature, advertising material, or any other graphic matter, in or on Government-owned or leased property, or property occupied by DOE, unless authorized by law or regulation;
  - j. Engaging in sexual misconduct including, but not limited to, unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment;
  - k. Failing to take appropriate action on complaints or proven acts of sexual harassment (this applies to supervisors or managers who know or should have known of those acts);
  - l. Displaying discourteous or disrespectful conduct to a coworker, another Federal employee, or a member of the public when acting in an official capacity;
  - m. Failing to wear or use specified safety equipment, or failing to report obvious unsafe conditions while on official duty;
  - n. Making threats against other employees, members of the public, or Government property;
  - o. Unless specifically authorized, every employee is prohibited from storing Government-owned or Government-leased motor vehicles at or near their private residence or at other unauthorized locations including, but not limited to, homes of relatives or friends, or from using such vehicles for transportation between their residence and place of employment;
  - p. Using Government-owned or Government-leased vehicles to transport unauthorized passengers;
  - q. Using Government-owned or Government-leased vehicles to transport firearms, other weapons or explosives, unless authorized to do so in the performance of official duties;

- r. Accessing any DOE or Federal government electronic, laser, or magnetic system of storing information, or computer software, not expressly identified for public or general access, unless provided with specific authorization in the course of his/her duties and the purpose of the access is pursuant to that authorization. This prohibition includes, but is not limited to computers of all types, floppy diskettes, compact or laser discs, and magnetic tapes, shared drives, cloud storage and any other information storing system. Employees without specific authorization may be subject to disciplinary or adverse action regardless of whether they use, damage, or make alterations to the stored information;
- s. Retaliating against another employee, by word or action, for filing complaints about safety problems, for filing grievances under either the negotiated or administrative grievance system, for filing complaints of discrimination, for assisting the investigators of DOE, or for engaging in any other protected activity;
- t. Knowingly possessing or causing the presence of a firearm or other weapon in a Federal facility (i.e. a building or part thereof, owned, or leased by the Federal government), where Federal employees are regularly present except for the purpose of performing their official duties, as set forth in 18 USC §930;
- u. Violating 5 U.S.C. §2302 (b), which applies to employees who have the authority to take, direct others to take, recommend, or approve any personnel action, by:
  - (1) Discriminating on the basis of race, color, sex (including pregnancy and gender identity), religion, national origin, age disability (physical or mental), protected genetic information, sexual orientation, status as a parent, marital status, or political affiliation;
  - (2) Soliciting or considering employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
  - (3) Coercing the political activity of any person;
  - (4) Deceiving or willfully obstructing any person from competing for employment;
  - (5) Influencing any person to withdraw from job competition for the purpose of improving or injuring the prospects of any other person for employment;
  - (6) Granting any preference or advantage not authorized by law, rule, or regulation to improve or injure the prospects of any particular person for employment;
  - (7) Engaging in nepotism (hiring, promoting, or advancing relatives);



- (8) Taking reprisal for whistleblowing;
  - (9) Taking reprisal for the exercise of an appeal;
  - (10) Discriminating based on personal conduct which does not adversely affect the performance of the employee, applicant, or others;
  - (11) Violating veteran's preference requirements; and/or
  - (12) Violating any law, rule, or regulation implementing or directly concerning merit system principles.
- v. Engaging in any prohibited political activities as set forth in the Hatch Act and current law, regulation and policy;
  - w. Discrimination based on genetic information (Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)); on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791);
  - x. Discrimination on the basis of marital status or political affiliation.
3. OBLIGATIONS (a not-all inclusive list). Employees are required to:
- a. Observe designated duty hours and be punctual in reporting for work and returning from lunch periods. Tardiness can result in employees being placed in a non-pay status for unauthorized absence; i.e., absence without leave (AWOL).
  - b. Obtain advance authorization for any absence from duty. In most cases approval of leave is a discretionary matter reserved to the supervisor and an employee is required to notify his or her supervisor or other appropriate person as soon as possible in accordance with applicable leave request procedures. When an employee fails to properly notify his or her supervisor, the absence may be charged as AWOL.
  - c. Safeguard and protect classified and other restricted information (confidential, FOUO, and so forth) from unauthorized disclosure or compromise.
  - d. Safeguard and protect from unauthorized disclosure personally identifiable information (PII) of other employees, contractors, or the general public accessed through the course of his or her employment at DOE.
  - e. Report immediately any known or suspected breach of the PII safeguards or policies, or actual unauthorized disclosure of PII to his or her supervisor.
  - f. Follow prohibitions on texting and using hand held communication or entertainment devices or any government handheld device while driving a government owned, leased or rented vehicle; while driving a privately owned

- vehicle while on government business; or when using government supplied electronic equipment.
- g. Wear seat belts whenever riding as an operator or as a passenger in a truck, automobile or other passenger vehicle in the performance of official duties or while on official time.
  - h. Report actions by other employees that they know, or have a reasonable basis to believe, are violations of law or regulation. A report may be made to the DOE Office of Inspector General, DOE's Office of General Counsel, the employee's supervisor, or any appropriate DOE management official. Violations may include but are not limited to:
    - (1) Fraud, waste, and abuse of Government resources;
    - (2) Criminal activity of any kind;
    - (3) Violations of Federal personnel rules;
    - (4) Sexual harassment;
    - (5) Prohibited personnel practices; and
  - i. Account for, deposit, appropriately secure, properly maintain, or otherwise dispose of in accordance with established procedures any money, property, or other item of value received by or coming into the custody of an employee in connection with the discharge of his or her duties. Fiscal responsibility includes the proper use of Government-issued credit cards and the timely payment of claims, statements or indebtedness.
  - j. Provide all information he or she possesses to authorized representatives of DOE when called upon, if the inquiry relates to official matters and the information is obtained in the course of employment or as a result of relationships incident to such employment. Such activities include participating in interviews requested by authorized representatives of DOE and furnishing signed sworn/affirmed statements to the authorized representatives. Failure to respond to requests for information, including the furnishing of signed sworn/affirmed statements in a timely manner, or failure to appear as a witness in official proceedings may result in disciplinary action. (Nothing set forth herein shall be deemed to infringe upon an employee's right to invoke the protection of the Fifth Amendment to the United States Constitution with respect to self-incrimination in a criminal investigation or for a bargaining unit employee to request union representation in accordance with his or her rights under 5 U.S.C. §7114 (a)(2)(B), known as Weingarten Rights.)
  - k. Provide OPM, MSPB, EEOC, OSC, FLRA and any other appropriate third party and their authorized representatives, all information and testimony in regard to matters arising under laws, rules, and regulations administered by OPM, MSPB,

EEOC, OSC, FLRA, and other appropriate third party, the disclosure of which is not otherwise prohibited by law or regulation.

1. Accept a transfer, detail, or reassignment whenever the employee's supervisor deems it necessary to meet mission accomplishment, subject to applicable regulations and collective bargaining agreement provisions. Failure to accept a transfer, detail, or reassignment may result in an adverse action including removal from federal service.
4. PROGRESSIVE DISCIPLINE.

When appropriate and/or applicable to the particular circumstances of an action, supervisors may administer informal actions such as oral or written letters of counseling, sick leave restrictions, AWOL notices, and/or an oral or written admonishment to put the employee on notice of inappropriate conduct. However, there will be occasions where such progressive discipline does not promote the efficiency of the Federal service and formal disciplinary or adverse action will be administered without its use.



**SECTION II. DISCIPLINARY AND ADVERSE ACTIONS  
UNDER TITLE 5 PROBATIONARY/TRIAL PERIOD EMPLOYEES**

1. GENERAL. Non-probationary employees in the competitive service who have completed more than one year of current continuous service are subject to the procedures of Section III of this Order for both non-adverse and adverse actions.

Employees in the excepted service, serving in a trial period are generally not afforded adverse action procedural rights unless:

- a. They have completed two years of current continuous service; or
  - b. They are a preference eligible employee who has completed one year of current continuous service.
2. TERMINATIONS OF PROBATIONERS/TRIAL PERIOD EMPLOYEES FOR UNSATISFACTORY PERFORMANCE AND/OR CONDUCT.
    - a. If the employee fails to demonstrate fitness for or qualifications for continued employment because of poor work performance or misconduct, the probationary/trial period employee shall be terminated.
    - b. Probationary/trial period employment must be terminated by notifying employee in writing as to why he/she is being separated and the effective date of the action. The termination notice must set forth the performance and/or conduct inadequacies for the termination.
    - c. The probationary/trial period ends when the employee completes his/her scheduled tour of duty on the last business day of the employee's probationary/trial period as defined by 5 C.F.R. 315.802.
  3. TERMINATION OF PROBATIONER/TRIAL PERIOD EMPLOYEES FOR CONDITIONS ARISING BEFORE AN APPOINTMENT.
    - a. When terminating a probationary/trial period employee for reasons in whole or in part for conditions arising before employment, the probationer is entitled to a specific and detailed Notice of Adverse Action and is entitled to provide a timely written reply, including affidavits or other evidence in support of his/her reply. The deciding official must consider this reply in reaching his/her decision. The probationary employee is entitled to the deciding official's written decision at the earliest practicable date. In addition, a termination decision for conditions arising before appointment must inform the probationary employee of the time limits by which his/her appeal must be submitted to the Merit System Protection Board (MSPB), as provided for under 5 C.F.R. §315.806 (d).

4. PROBATIONARY/TRIAL PERIOD EMPLOYEE APPEAL RIGHTS TO THE MSPB.

- a. A probationary/Trial Period employee has limited appeal rights, but may appeal in writing to the MSPB the Department's decision to terminate him/her for unsatisfactory performance and/or conduct for discrimination based on partisan political reasons and/or marital status.
- b. Or, may appeal in writing to the MSPB the Department's decision to terminate him/her for conditions arising before appointment not effected in accordance to the procedural requirements of 5 C.F.R. 315.805.

5. OTHER PROBATIONARY/TRIAL EMPLOYEE APPEAL RIGHTS.

- a. A probationary employee served a termination notice has the right to file, when appropriate, an EEO complaint, or a request for corrective action with the OSC.
- b. Normally selection of a specific venue of appeal/redress constitutes an "election of remedy" that may limit or preclude other review options.

**SECTION III. DISCIPLINARY AND ADVERSE ACTIONS  
UNDER TITLE 5 DISCIPLINARY ACTIONS**

1. LETTER OF REPRIMAND. A reprimand is a written letter of censure for misconduct, normally issued by the employee's immediate supervisor, although, on occasion, circumstances or delegations of authority may dictate a reprimand by a higher level official. The letter of reprimand is placed in the employee's electronic personnel file (eOPF) for no more than three (3) years after issuance of the letter. This is the Department's lowest form of formal disciplinary action.
  - a. A reprimand must be in the form of an official memorandum or letter, as appropriate, to the employee describing the reason for the action.
  - b. The supporting documentation/evidence file must be provided upon request to the employee where available and practicable.
  - c. The reprimand must advise the employee that a copy of the action will be placed in the temporary area of the employee's personnel folder.
  - d. The reprimand must contain a statement of avenues of appeal under the Department's administrative grievance procedure or the negotiated grievance procedure, as appropriate.
  - e. The reprimand must also contain a statement informing the employee of when the reprimand will be withdrawn and give the name and telephone number of the person in the servicing human resources office who may be contacted for procedural information.
  - f. The retention period begins the day the reprimand is delivered to the employee, even if it is not actually filed in the eOPF until later.
  - g. Reprimands may be retained for no longer than three (3) years in the eOPF and will be withdrawn from the eOPF after that time period or whatever timeframe is specified in any applicable bargaining unit employee labor-management agreement. Reprimands that have expired may only be considered for clarity of notice and not be considered as a step for progressive discipline in selection of a subsequent penalty.
  - h. A reprimand may be withdrawn early by the employee's supervisory official for good cause. In determining whether a reprimand should be withdrawn early, consideration should be given to the fact that after its withdrawal, it may not be used as a basis for progressive discipline in connection with any future proposed disciplinary or adverse actions.
  - i. A reprimand may be grieved under the Department's administrative grievance procedure or under the negotiated grievance procedure as appropriate.

- j. Because the reprimand may be grieved and because it is automatically removed from the employee's eOPF upon expiration of the reprimand timeframe (or when the employee leaves government service or transfers to another agency, whichever occurs first); a grievance may not be filed on a supervisor's decision not to remove the reprimand early.
  - k. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied for BUE's.
  - l. Copies of removed reprimands may be maintained for statistical purposes by the SHRO, and can be used in certain circumstances (i.e. notice) to support more serious discipline for later offenses.
2. SUSPENSION OF 14 DAYS OR LESS. The placement of an employee in a temporary non-pay status (or absence from duty) for a disciplinary reason not covered under 5 U.S.C. § 7532 (suspension and removals for national security).
- a. An employee is entitled to advance notice, stating the reason for proposed suspension. Absent extraordinary circumstances, this advance notice period should be no less than 7 days.
  - b. Under ordinary circumstances an employee whose suspension has been proposed will remain in a duty status in his/her regular position during the advance notice period. Where the Department determines that the employee's continued presence in the workplace during the notice period may become disruptive, pose a threat to the employee or others, result in the loss of or damage to Government property, or otherwise jeopardize legitimate government interests, the organization/element may elect one or a combination of the following alternatives:
    - (1) Assigning the employee to duties where he/she is no longer a threat to safety, to the Department's mission, or to Government property;
    - (2) Allowing the employee to take leave, or carrying him/her in an appropriate leave status (annual, sick, leave without pay –if requested) or AWOL if the employee has absented him/herself from the worksite without properly requesting leave;
    - (3) Placing the employee on paid administrative leave. Where possible, every consideration should be made to ensure the employee remains in a work status before providing paid administrative leave, and even while on paid administrative leave, the employee should be required to be available for contact/work at the Department's request.
  - c. An employee is entitled to a reasonable time to provide a reply (7 calendar days after issuance of the proposal), orally and/or in writing, and to furnish affidavits or other documentary evidence in support of the answer. Extensions may be requested and granted for good cause.



- d. An employee is entitled to be represented by an attorney or other representative, at his/her own cost. A bargaining unit employee is entitled to union representation, when desired and requested. Where an employee is represented by another DOE employee in a non-negotiated capacity, the priority needs of the service and conflict of interest will be assessed by the deciding official.
- e. All designations of representative/Privacy Act Waiver Notice must be received in writing by the deciding official prior to the representative acting in any way on behalf of the employee.
- f. An employee has the right to review evidence relied upon to support the proposed action (evidence that is not disclosed to the employee or the employee's representative may not be used to support the proposed suspension). The suspension file and evidence must be maintained by the local SHRO.
- g. A reasonable amount of duty time, often referred to as official time, must be afforded to the employee, if requested, for reviewing and responding to the material relied upon to support the proposed action, and for preparing and presenting a written and/or oral reply. This also applies to the employee's representative, if a DOE employee. Union representatives will request and use official time in accordance with their CBA requirements. While the complexity of the case and amount of evidence to review should be taken into consideration when assessing what is a reasonable amount of review time, normally 4-8 hours is reasonable, depending on the complexity of the allegations.
- h. A deciding official will make his/her decision only after considering all evidence included to support the proposal and provided to the employee, and only after considering the employee's oral and/or written reply(ies), if provided. If additional information/evidence not previously provided to the employee or his/her representative is considered, the deciding official must provide that information/evidence to the employee and his/her representative and re-open a reasonable reply period to address any concerns on the new evidence. A deciding official must remain objective to the action and evidence and not be improperly influenced by any person to include the proposing official. If a deciding official feels that he/she has been improperly influenced or tainted, he/she must recuse him/herself and another deciding official who has authority to make or recommend a final decision should be assigned to review and decide upon the proposed action.
- i. A decision will contain:
  - (1) A statement of the deciding official's determinations regarding what charges were sustained and/or what charges were not sustained.
  - (2) If a record of prior disciplinary action(s) was cited in the advance notice, a statement that the action takes the past record, as cited, into consideration in determining proper action. Disciplinary actions no longer in the

employee's eOPF may not be considered in determining appropriate penalty for the current action, however such prior disciplinary actions can be considered for purposes of notice.

- (3) A statement that an employee's reply(ies) have been considered if timely submitted.
  - (4) A statement of the suspension date(s) where practicable.
  - (5) A statement advising the employee that a further explanation of the employee's grievance rights or other avenues of redress may be obtained by consulting the local operational SHRO Employee Relations (ER) Specialist or union in the case of a BUE.
- j. Before a suspension decision is issued, it must be reviewed by the SHRO ER and legal staff if appropriate.
  - k. Deciding officials may consider mitigation of the actions where appropriate. The deciding official must ensure the purpose of the discipline is served to assist in rehabilitating the employee, as well as promoting the efficiency of the service.
  - l. The decision will be delivered to the employee at least five (5) days prior to the effective date of the suspension whenever possible.
  - m. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied for BUE's.
  - n. A suspension of 14 days or less may be grieved under the administrative grievance procedure or under the negotiated grievance procedure as appropriate.

## **SECTION IV. DISCIPLINARY AND ADVERSE ACTIONS UNDER TITLE 5 ADVERSE ACTIONS**

1. ADVERSE DISCIPLINARY ACTIONS. The provisions of this section apply to removals to include separations for medical inability to perform, suspension of more than 14 days, indefinite suspensions, furlough for 30 consecutive work days (22 discontinuous work days) or less, reduction in grade or pay effected by management for either disciplinary or non-disciplinary reasons, except for those which are excluded by law or regulation (see 5 CFR Part 752).

- a. A Suspension of More than 14 Calendar Days. A suspension for more than 14 calendar days is an enforced temporary non-pay status and absence from duty. Such action is given for serious misconduct. It may also be given for continued repeated acts of misconduct of a less serious nature.
- b. Reduction in Grade for Disciplinary Reasons. A reduction in grade imposed for disciplinary reasons is proper when such an action would be effective in correcting a situation and thus serve to retain a trained and valuable employee. For example, a reduction in grade may be appropriate when the offense indicates unsuitability for supervisory duties but not for duties of a non-supervisory nature.

Removal for disciplinary reasons is an involuntary separation from Federal service, taken for serious misconduct or for continued and repeated acts of misconduct of a less serious nature.

- c. Non-Disciplinary Reasons Resulting in Removal or Reduction in Grade or Pay. An action may be non-disciplinary but at the same time adverse to the employee. For example, removal of an employee for refusal to accompany an activity to a new location is an adverse action even though no disciplinary element is involved. Demotion or separation for failure to meet the physical requirements of the position is another example of an adverse action that did not grow out of a disciplinary situation. Removal of an employee due to his or her medical inability to perform duties is also an adverse action that is not a result of misconduct.
- d. Indefinite Suspension. The placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action. The use of indefinite suspensions is generally limited to three types of situations. These include situations where: (1) the agency has reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment could be imposed, pending the outcome of the criminal proceeding or any subsequent agency action following the conclusion of the criminal process; (2) the agency has legitimate concerns that an employee's medical condition makes his or her continued presence in the workplace dangerous or inappropriate, pending a determination that the employee is fit for duty; or (3) an employee's access to

classified information has been suspended and the employee must have such access to perform his or her job, pending a final determination on the employee's access to classified information.

- e. Demotion or Removal Based on a Combination of Performance and Non-Performance Related Factors. Adverse actions based on a combination of performance and either misconduct or an inability to do the work of the position may be processed as Chapter 75 actions, please note performance matters taken under Chapter 75 must meet Chapter 43 procedures if performance is at the fails to meet expectations (FME) performance level in compliance with the Department's performance policy.
- f. Furlough for 30 Days or Less. This is a non-disciplinary adverse action taken on the basis of an emergency situation, lack of work or funds, or other non-disciplinary reason. See staffing procedures or discuss with a staffing specialist how to identify employees for furlough and furlough authority.

## 2. ADVERSE ACTION PROCEDURES.

- a. Prior to initiating an adverse action, officials involved in making that determination should, upon advice of the SHRO and legal office, consider the burden of proof which must be met in order to sustain the adverse action on appeal. That burden of proof lies with the Department and must meet the requirements of 5 U.S.C. § 7701(c) (1) on all reasons and issues that form the basis of the adverse action.
- b. An employee is entitled to advance notice, supplied in the Notice of Proposed Action, which states the reason(s) for the proposed adverse action. The advance notice will set forth the charges and specifications that provide sufficient detail for the employee to understand the reasons for the proposed action. The employee will then have a minimum 30 day advance notice before the adverse action can be implemented, unless the Department invokes the crime provision, places the employee on indefinite suspension, or requires furloughs without pay due to unforeseeable circumstances.
- c. Under ordinary circumstances, with the exception of removals, an employee whose adverse action has been proposed will remain in a duty status in his/her regular position during the advance notice period. Where the Department determines that the employee's continued presence in the workplace during the notice period may be disruptive, pose a threat to the employee or others, result in the loss of or damage to Government property, or otherwise jeopardize legitimate government interests, the organization/element may elect one or a combination of the following alternatives:
  - (1) Assign the employee to duties where he/she is no longer a threat to safety, the Department's mission, or to Government property;

- (2) Allow employee to take leave, or carrying him/her in an appropriate leave status (annual, sick, leave without pay –if requested) or absence without leave (AWOL) if the employee has absented him/herself from the worksite without properly requesting leave;
  - (3) Curtail the notice period if the crime provision applies;
  - (4) Place the employee on paid administrative leave. Where possible, every consideration should be made to ensure the employee remains in a work status before considering paid administrative leave, and even while on paid administrative leave, the employee should be required to be available for contact/work at the Department's request.
- d. An employee is entitled to a reasonable time to provide a reply (no less than 7 calendar days after issuance of the proposal), orally and/or in writing, and to furnish affidavits or other documentary evidence in support of the answer. Extensions may be requested and granted for good cause.
  - e. An employee is entitled to be represented by an attorney or other representative, at his/her own cost. A BUE is entitled to union representation, as provided for under 5 U.S.C. Chapter 71 or under the applicable CBA. Where a non-bargaining unit employee seeks to be represented by another DOE employee, the priority needs of the service and potential conflict of interest will be assessed by the deciding official to allow such representation.
  - f. All designations of representative/Privacy Act waiver notice must be received in writing by the deciding official prior to the representative acting in any way on behalf of the employee.
  - g. An employee has the right to review evidence relied upon to support the proposed action (evidence that is not disclosed to the employee or the employee's representative may not be used to support the proposed action). The action file and evidence must be maintained by the local operational SHRO.
  - h. A reasonable amount of duty time, often referred to as official time, must be afforded to the employee for reviewing and responding to the material relied upon to support the proposed action, and for preparing and presenting a written and/or oral reply. This also applies to the employee's representative, if a DOE employee. Union representatives will request and use official time in accordance with their CBA requirements. While the complexity of the case and amount of evidence to review should be taken into consideration when assessing what is a reasonable amount of review time, normally eight (8) hours is reasonable.
  - i. A deciding official will make his/her decision only after considering 1) all evidence used to support the proposal and that was provided to the employee; 2) the employee's oral and/or written reply(ies), if provided; and, 3) relevant *Douglas* Factors. If additional information/evidence not previously provided to

the employee or his/her representative is considered, the deciding official must provide that information/evidence to the employee and his/her representative and re-open a reasonable reply period to address any concerns on evidence. A deciding official must remain objective to the action and evidence and not be unduly influenced by any person to include the proposing official. If a deciding official feels that he/she has been unduly influenced or tainted, he/she must recuse him/herself and another deciding official who has authority to make or recommend a final decision should be assigned to review and decide upon the proposed action.

- j. A decision will contain:
- (1) A statement of the deciding official's determinations regarding what charges were sustained and/or what charges were not sustained.
  - (2) If a record of prior disciplinary action(s) was cited in the advance notice, a statement that the action takes the past record, as cited, into consideration in determining proper action. Disciplinary actions no longer in the employee's eOPF may not be considered in determining a penalty for the current action.
  - (3) A statement that an employee's reply(ies) have been considered if timely submitted.
  - (4) A statement regarding the aggravating and mitigating *Douglas* Factors considered in making the decision
  - (5) A statement of the effective date of the action (not less than 30 days after receipt of notice of the proposed action), if the penalty imposed is a demotion or removal; or the inclusive date(s) if the penalty is a suspension. In the case of an indefinite suspension, the ending date is determined by the completion of specified conditions and/or events.
  - (6) A statement advising the employee that a further explanation of the employee's grievance rights or other avenues of appeal may be obtained by consulting the local operational SHRO ER Specialist or union in the case of a BUE.
  - (7) A statement concerning the employee's appeal rights to MSPB and/or rights under a negotiated grievance procedure, if that procedure covers appeals of adverse actions and the member is a BUE; and/or a statement on appeal rights for a discrimination complaint under 29 CFR Part 1614 of the EEOC regulations if the employee has raised an allegation of discrimination during the advance notice period of the adverse action. Only one of the above options may be elected. An employee shall be deemed to have made an election to raise a matter under one of the procedures when the employee timely files in one of these venues.

- k. With the exception of removals, the decision will be delivered to the employee at least five (5) days prior to the effective date of the action whenever possible. The five day period does not apply in cases where it is believed the employee has committed a crime for which a sentence of imprisonment may be imposed.
- l. Deciding officials may mitigate the proposed adverse action where appropriate. The deciding official must ensure the purpose of the discipline is served to promote the efficiency of the service.
- m. Before an adverse action decision is issued, it must be reviewed by the local operational SHRO ER and field legal counsel.
- n. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied.





**SECTION V. DISCIPLINARY AND ADVERSE ACTIONS  
UNDER TITLE 5 OTHER DISCIPLINARY ACTION CONSIDERATIONS**

**GENERAL: The use of alternative discipline is not mandatory, but instead may be evaluated as a Douglas Factor consideration for mitigation or used as a settlement tool. However, if utilized, alternative discipline actions should contain the below minimum requirements.**

1. LETTERS OF ALTERNATIVE DISCIPLINE. When considered as part of the Douglas Factors analysis in an effort to address employee misconduct in lieu of using traditional discipline, or when considered as an option for settlement of a grievance or claim, considerations for using alternative discipline must include the efficiency and best interest of the service, adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee, the need to maintain an established past disciplinary record, the severity of the misconduct, and fairness to the employee.
  - a. In most cases alternative discipline should be offered with the decision notice of the sustained misconduct. This way the evidence of the misconduct and the employee's response have already been considered (due process) and it is clear that a decision was reached as to which charges were supported by the evidence, and the specific penalty the deciding official has determined is appropriate.
  - b. The following criteria must be met to establish conditions for alternative discipline (due process):
    - (1) The employee was informed of the disciplinary action in writing;
    - (2) The disciplinary action is a matter of record; and
    - (3) The employee was given the opportunity to dispute the charges to a higher level official than the official who proposed the discipline.
  - c. A letter of alternative discipline must at minimum contain:
    - (1) The specific offense that was committed and is therefore covered by the agreement (state the charges/ specifications sustained);
    - (2) The specific form of alternative discipline that will be used and its duration;
    - (3) Any expiration date for the record of discipline;
    - (4) The employee's agreement that the employee was offered an opportunity to seek advice from an attorney or representative and is voluntarily entering the agreement free from duress and coercion. NOTE: Agreements entered into with persons 40 years and older require compliance with the Older Worker Benefit Protection Act (29 U.S.C. § 626(f)), including a 21-day consideration period and a 7-day revocation period;

- (5) A statement that the letter of alternative discipline is non-precedential;
  - (6) The employee's agreement that he or she understood what the traditional penalty would have been and understood that he or she could have elected to proceed with the traditional penalty but chooses to waive the traditional discipline and any appeal rights that went with it;
  - (7) The employee's agreement that should he/she repeat the behavior that is the subject of the letter of alternative discipline and/or commit another act of misconduct, the letter of alternative discipline will serve as proof of the sustainment of the original disciplinary action and may be used as consideration for progressive discipline in determining the appropriate penalty for the newly committed misconduct;
  - (8) A clear statement of all the deciding official's requirements of the employee in addition to satisfactory conduct;
  - (9) Where the record of the discipline and alternative discipline will be kept (generally the disciplinary action is removed from the employee's eOPF and is replaced with the letter of alternative discipline which will remain in the eOPF for the agreed duration);
  - (10) What will happen to all records of the action if the employee leaves the organization or the Department (be clear if offering to remove records from the eOPF or supervisory files and/or provide a clean reference, etc.)
- d. Early removal of the letter of alternative discipline may only be considered after sufficient time has passed for the employee to truly prove the offense is unlikely to reoccur and only if the supervisor or deciding official believes removing the action is in the Department's best interest. Once removed, the letter of alternative discipline or original disciplinary action cannot be used in a future action to establish the repeated nature of an employee's offense or to demonstrate the employee's lack of capacity for rehabilitation.
- MSPB guidelines recommend not using the phrase "clean record" in an agreement; instead relay that specific records will be removed from a specific location (i.e. eOPF) and leave room for records kept by SHRO for statistical purposes.
- e. A letter of alternative discipline cannot commit the Department to concealing or not reporting a crime (there is an affirmative obligation to do so), and cannot promise confidentiality or non-disclosure of incident for purposes of security clearance investigations. Promises of confidentiality should be carefully weighed and at least provide a caveat for those exposed to the letter of alternative discipline in the course of their normal duties.

- f. An admission of wrongdoing is preferred but not required for a letter of alternative discipline.
  - g. The duration of a letter of alternative discipline replacing a permanent eOPF action (suspension/adverse action) should be considered for a minimum five years, to account for the seriousness of replacing an otherwise permanent action in the eOPF.
  - h. Recommendations by the Office of General Counsel or element legal staffs to deviate from any of the minimum requirements of a letter of alternative discipline will override this Order.
  - i. Considerations of waiver for grievance, current EEOC appeal rights, Older Worker Benefit Protection Act (for those 40 and older), actionability of related MSPB cases or other avenues of redress and/or appeal should be included when applicable.
  - j. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied.
2. ABEYANCE AGREEMENTS. An abeyance (period before instituting an action decision) must be based on equity, good will and best interest of the Department.
- a. Such letters are generally used to allow time for the employee to seek counseling or treatment for a condition covered under the Rehabilitation Act of 1973 (see 29 U.S.C. Section 701). If an abeyance is considered for this reason:  
  
An employee must provide acceptable documentation for this request, which at a minimum, establishes both a qualifying disabling condition and a connection between the disabling condition and the cited misconduct and/or deficiency in performance.
  - b. A letter of abeyance must at minimum contain:
    - (1) The action penalty and sustained charge(s)/specification(s) that were sustained and are being held in abeyance;
    - (2) The specific duration time of the abeyance;
    - (3) A citation as to the considerations for the abeyance;
    - (4) The employee's agreement that the employee was offered an opportunity to seek advice from an attorney or representative and is voluntarily entering the abeyance agreement free from duress and coercion. Agreements entered into for persons 40 years and older require compliance with the Older Worker Benefit Protection Act (29 U.S.C. § 626(f)), including a 21-day consideration period and a 7-day revocation period;

- (5) A statement that the abeyance letter is non-precedential;
  - (6) The employee's agreement that he or she understands that upon completion of the abeyance period the sustained action will be instituted and the employee has waived his/her right to appeal/redress the action;
  - (7) The employee's agreement that he/she understands there will be no extensions of the abeyance period;
  - (8) The employee's agreement that any misconduct will result in immediate termination of the abeyance period and will result in immediate implementation of the action placed in abeyance;
  - (9) A clear statement of all the deciding official's requirements of the employee in addition to satisfactory conduct;
  - (10) Where the record of the discipline and abeyance letter will be kept (the record of discipline should be maintained in the employee's eOPF along with the abeyance letter);
  - (11) What will happen to all records of the action if the employee leaves the organization or the Department (be clear that discipline records will remain in the eOPF and be clear whether the abeyance letter will follow the employee to another organization/element within DOE and advise that the abeyance agreement will be presumed completed and the action effected if the employee leaves the Department prior to completion of the abeyance period);
- c. A letter of abeyance should not exceed six months.
  - d. Justifications for abeyance actions in excess of six months must be submitted to the Human Capital Policy & Accountability Division, LMER for review and concurrence.
  - e. Recommendations by the Office of General Counsel or element legal staff to deviate from any of the minimum requirements of the abeyance letter will override this Order.
  - f. Considerations of waiver for grievance, current EEOC appeal rights, Older Worker Benefit Protection Act (for those 40 and older), future actionability of related MSPB cases or other avenues of redress and/or appeal should be included when applicable.
  - g. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied.
3. LAST CHANCE AGREEMENTS . A last chance agreement is normally offered in lieu of instituting a removal action, and is normally offered as settlement for actions pending

before MSPB. In considering a last chance agreement, the efficiency and best interest of the Department and Federal civil service, the severity of the misconduct, and fairness to the employee must be considered.

- a. The following criteria must be met to establish conditions for a last chance agreement:
  - (1) The employee was informed of the removal in writing;
  - (2) The removal is a matter of record; and
  - (3) The employee was given the opportunity to dispute the charges to a higher level than the official who imposed the discipline.
  
- b. Last chance agreements must contain the following:
  - (1) Statement of the specific adverse action and offense that was committed and is covered by the agreement (state the charges/ specifications sustained);
  - (2) Any expiration date for the last chance agreement;
  - (3) The employee's agreement that the employee was offered an opportunity to seek advice from an attorney or representative and is voluntarily entering the agreement free from duress and coercion. Agreements entered into for persons 40 years and older require compliance with the Older Worker Benefit Protection Act (29 U.S.C. § 626(f)), including a 21-day consideration period and a 7-day revocation period;
  - (4) A statement that the last chance agreement is non-precedential;
  - (5) The employee's agreement that he or she understood what the traditional penalty would have been and understood that he or she could have elected to proceed with the traditional penalty but chooses to waive the traditional discipline and any appeal rights that went with it;
  - (6) The employee's agreement that should he/she repeat the behavior which is subject of the last chance agreement and/or commit another act of misconduct, the last chance agreement will be considered revoked and the employee will be immediately removed without further avenue of redress or appeal for the current misconduct as well as the original action misconduct;
  - (7) A clear statement of all the deciding official's requirements of the employee in addition to satisfactory conduct.
  - (8) Where the record of the discipline and last chance agreement will be kept (generally the disciplinary action is removed from the employees eOPF

and is replaced with the last chance agreement which will remain in the eOPF for the agreed duration, violation of the last chance agreement will result in effectuation of the original removal action giving rise to the last chance agreement);

- (9) What will happen to all records of the action if the employee leaves the organization or the Department (be clear if offering to remove records from the eOPF and/or provide a clean reference, be clear if there is a debarment from the Department/Federal service, etc.);
- c. Early removal of the last chance agreement may only be considered after sufficient time has passed for the employee to truly prove the offense is unlikely to recur and if the deciding official believes removing the action is in the Department's best interest. Once removed, the last chance agreement or original disciplinary action cannot be used in a future action to establish the repeated nature of an employee's offense or to demonstrate the employee's lack of capacity for rehabilitation.

It is recommended to not use the phrase "clean record" in an agreement, instead relay that specific records will be removed from a specific location (i.e. eOPF) and leave room for records kept by SHRO for statistical purposes.

- d. A last chance agreement cannot commit the Department to concealing or not reporting a crime (there is an affirmative obligation to do so), and cannot promise confidentiality or non-disclosure of the incident for purposes of security clearance investigations. Promises of confidentiality should be carefully weighed and at least provide a caveat for those exposed to the last chance agreement in the course of their normal duties.
- e. An admission of wrongdoing is preferred but not required for a last chance agreement.
- f. The duration of a last chance agreement replacing a permanent eOPF action (suspension/adverse action) should be considered for a minimum five years, to account for the seriousness of replacing an otherwise permanent action in the eOPF.
- g. Recommendations by the Office of General Counsel or element legal staff to deviate from any of the minimum requirements of a last chance agreement will override this Order.
- h. Considerations of waiver for grievance, current EEOC appeal rights, Older Worker Benefit Protection Act (for those 40 and older), future actionability of related MSPB cases or other avenues of redress and/or appeal should be included when applicable.

- i. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied when applicable.
4. CRIME PROVISION. Invoking the crime provision overrides the minimum 30 day advance notice period to whatever is reasonable under the circumstances, but not less than seven (7) days, to allow the employee to reply orally and/or in writing to a notice of proposed adverse action.
  - a. If there is need for immediate action and it is in the public interest to keep the employee off duty, he/she may be placed in a non-duty status with pay during the advance notice period of a proposed indefinite suspension or removal, including any period of investigation. To invoke the crime provision and process a removal or indefinite suspension with a curtailed notice period, the following actions must be taken:
    - (1) Notify the employee in writing that he/she is being put immediately in a non-duty status with pay.
    - (2) Give the employee a notice of either proposed indefinite suspension pending further investigation or disposition of a criminal action, or of proposed removal where there is sufficient evidence to warrant removal. The notice must advise the employee of the reasonable period to respond orally and/or in writing (not less than 7 days).
    - (3) Issue a decision on the proposed action after the employee has had the stated opportunity to respond orally and/or in writing, and the response has been considered.
    - (4) With the exception of the shortened notice period and any enforced non-duty status, the proposed adverse action and decision notices must conform in all other aspects to the requirements for initiating and taking adverse actions.
  - b. All actions involving the crime provision must be taken in consultation with your SHRO and element legal staff before implementation.
  - c. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied.
5. OTHER DISCIPLINARY ACTION CONSIDERATIONS.
  - a. Threat Assessment. When determining whether a threat has been made, consult workplace violence or related policies and conduct a threat assessment. Determine whether the words used would constitute a threat to a reasonable person and consider the:
    - (1) Listener's reaction;

- (2) Listener's apprehension of harm;
  - (3) Speaker's intent;
  - (4) Conditional nature of the statements; and
  - (5) Attendant circumstances.
- b. Prior Offenses. Whenever a prior offense(s) is used to support a more severe penalty, the offense(s) must be cited in the notice of proposed action.
- c. Service of Documents. Absent an unusual circumstance, a reasonable attempt must be made to personally deliver a letter of reprimand or notice of a proposed disciplinary or adverse action or decision to the employee and obtain the employee's dated written acknowledgement.
- (1) If the employee refuses to sign, the supervisor or deciding official, should so note on the acknowledgement copy.
  - (2) In those instances where the letter cannot be personally delivered to the employee, it should be sent by certified or registered mail, return receipt requested, or by other means which provide proof or confirmation of delivery with a copy sent via regular mail. Date of service will be presumed 5 days after posting of the letter. In addition to mailing, when possible, an encrypted email and/or FAX copy may also be sent.
- d. Recordkeeping. All documentation related to any actions taken under this Order must be sent to the SHRO ER for retention including, but not be limited to,
- (1) A copy of the notice or letter of proposed action, with supporting evidence that was relied upon in proposing the action;
  - (2) The employee's written response to the proposed action;
  - (3) The decision notice;
  - (4) A complete record of all relevant information about the case, including the sequence of any pertinent events; and
  - (5) Any other supporting material.
- e. Substance Abuse/Medical Considerations. Alcohol and drug addiction are considered diseases and may be subject to reasonable accommodation. However, not all persons with alcoholism are "individuals with disabilities." Furthermore, current illegal users of drugs are not "individuals with disabilities" under the ADAAA. Alcoholics and persons addicted to drugs who are no longer using drugs illegally and are receiving treatment for drug or alcohol addiction or who have



been rehabilitated successfully, are protected by the ADAAA from discrimination on the basis of past alcohol or drug addiction.

- (1) Neither alcohol nor drug abuse excuse misconduct; however, it is important to consider non-traditional disciplinary measures aimed at rehabilitation. If the employee refuses to accept assistance offered or to otherwise correct conduct, disciplinary measures should be invoked on the basis of the specific misconduct of the employee.
  - (2) In offering rehabilitative assistance, the employee should not be confronted with the belief that he/she has a drinking or drug abuse problem. Instead the employee should be made aware in writing that a problem exists with his/her conduct by providing a description of the problem and any related observations, and advising that he/she seek assistance through the Employee Assistance Program (EAP).
  - (3) There may be situations where a meaningful offer of assistance is not possible and appropriate disciplinary action, to include removal, is required (e.g. employee is incarcerated for a significant period of time, or misconduct is egregious and/or places others in harm's way). Some cases may justify immediate removal from the workplace while the action is investigated. However, normally an employee will remain in a paid duty status until a decision is made.
  - (4) Continuing misconduct while an employee is in a rehabilitation program may be dealt with by taking appropriate disciplinary or adverse action. However, the length of time in the program, the employee's demonstrable progress in treatment and the type of rehabilitation program undertaken by the employee, may be considered as possible mitigating or aggravating factors.
  - (5) When appropriate (i.e. employee holds DOE access authorization (security clearance)), Personnel Security organizations with a need to know, should be notified of employee substance abuse in accordance to statute, regulation and policy.
- f. Processing of Disciplinary and Related Actions. All actions will be processed and placed into the eOPF in accordance with law, regulation and departmental policy. Relevant Standard Form 52's and 50's will be processed and contain remarks in accordance to the Guide for Processing Personnel Actions.



## **APPENDIX B. ADMINISTERING WORK FORCE DISCIPLINE**

This Appendix establishes the U.S. Department of Energy (DOE) Guide for Disciplinary Penalties.



**APPENDIX B**  
**DOE GUIDE - TABLE OF OFFENSES AND PENALTIES**

1. GENERAL.

This table is to be used as a guide for proposing and deciding officials to select the appropriate penalty for formal disciplinary or adverse actions to include demotions or removals. While this guide does not cover every possible offense, it does provide the more common types of offenses and the penalties usually assessed. Except when penalty is dictated by statute, alternative discipline may be considered, if appropriate.

In addition to procedural considerations, deciding officials must consider the Douglas Factors established by the MSPB in *Douglas v. Veterans Administration*, 81 FMSR 7037, 5 MSPR 280 (MSPB 1981), for adverse actions.

- a. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- b. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- c. The employee's past disciplinary record;
- d. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- e. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
- f. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- g. Consistency of the penalty with the Table of Offenses and suggested Penalties at Appendix B;
- h. The notoriety of the offense or its impact upon the reputation of the Department;
- i. 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;
- j. Potential for the employee's rehabilitation;
- k. Mitigating circumstances surrounding the offense, such as unusual job tension, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and

1. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

When considering past offenses, oral counseling sessions, written admonishments or expired disciplinary actions may not be counted as prior offenses in determining an adverse action. These may be cited, however, to show that the employee was informed of acceptable level of conduct and performance.

2. OFFENSE COLUMN.

The OFFENSE column is not exhaustive and does not list all potential situations requiring corrective action/discipline. Notices need not exactly replicate the language from the OFFENSE column, and should more appropriately describe the offense instead of trying to make the misconduct fit a specific offense. All element(s) of an offense/charge will have to be proven and the factors considered and an offense/charge/specification selection should be cited.

3. ACTION (PENALTY) COLUMNS.

The ACTION section establishes a range of penalties from minimum to maximum for a specific OFFENSE and is divided into columns for FIRST OFFENSE, SECOND OFFENSE, and THIRD OFFENSE. *When appropriate, a penalty may be less than the minimum or more than the maximum suggested in the table and the organizational/element/administration mission and sensitivities of that mission will also be considered in determining the appropriate penalties, notwithstanding the table of penalties.* Penalties for offenses not listed in the table are determined by the supervisor in consultation with SHRO and element legal counsel.

Note that certain offenses, such as misuse of a Government vehicle, have penalties that are set forth in law or regulation. When an employee has committed a combination or a series of offenses, a greater penalty than that for the single offense may be appropriate.

**GUIDE TABLE OF OFFENSES AND PENALTIES**

<b>OFFENSE</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<b>ATTENDANCE</b>			
1. Unexcused tardiness.	Reprimand	Suspension	Higher Grade Suspension to Removal
2. Unexcused or Unauthorized absence of  (a) up to 1 work day, i.e., the employee's tour of duty;  (b) more than 1 work day  <b>NOTE:</b> When an employee fails to report for duty and fails to notify management of his or her intentions and management has been unable to ascertain the employee's intentions concerning reporting to duty, and the employee has been documented as absent without approved leave (AWOL), a removal may be initiated in accordance with merit and procedural requirements after the passage of a reasonable time, i.e. 30 days under some circumstances.	(a) Reprimand to 5 day  (b) Reprimand to 14 day	5 day to 14 day  More than 14 day to Removal	More than 14 days to Removal  Removal
3. Failure to request leave according to established procedures or failure to abide by a valid denial of leave request.	Reprimand	Suspension	Higher Grade Suspension to Removal
4. Leaving job or DOE premise during working hours, without proper permission.	Reprimand	Reprimand to 7 day	More than 14 day to Removal
5. Obtaining or requesting leave under a false pretense.	Reprimand	Reprimand to 7 day Suspension	More than 14 day to Removal
6. Falsifying attendance record for self or another employee.	Reprimand to 7 day	7 day to 14 day	More than 14 day to Removal

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<b>GENERAL MISCONDUCT</b>			
7. Delay, failure, or refusal to comply with or to carry out orders, directions, assigned work, or instructions in a reasonable period of time.	Reprimand	Reprimand to 7 day	More than 14 day to Removal
8. Noncompliance/failure to follow policies, procedures, or rules; insubordination.	Reprimand to 7 day	7 day to 14 day	More than 14 day to Removal
9. Defiance of authority or wanton disregard of or disrespectful response to directions; insolence; or impertinence.	Reprimand to 7 day	7 day to 14 day	More than 14 days to Removal
10. Avoidance of work including, but not limited to, loafing, sleeping, watching television, “surfing” the Internet, or reading non-work-related material while on duty.	Reprimand to 7 day	7 day to 14 day	More than 14 day to Removal
11. Carelessness, inattention to duty, or negligence.  <b>NOTE:</b> Consider whether these actions/inactions resulted in a hazard to personnel or property; injury or loss and the extent of the injury or loss; disruption of mission; or created an environment where one’s credibility, competence, or effectiveness is questioned.	Reprimand to Removal	Suspension to Removal	Removal
12. Rude or boisterous play or other improper behavior which adversely affects mission accomplishment or morale; use of abusive or offensive language; or interfering with the production of others.	Reprimand to 5 day	5 day to 14 day	More than 14 day to Removal
13. Fighting, quarreling, acting aggressively, intimidating, baiting, harassing, threatening, hitting, pushing, kicking or other acts which may or may not inflict bodily harm on another.  <b>NOTE:</b> Penalty depends on such factors such as provocation, extent of any injuries and whether actions were offensive or defensive in nature.	5 day to Removal	Removal	
14. Inappropriate teasing, remarks, jokes, gestures, communications, and touching including, but not limited to, those of a sexual nature.	Reprimand to Removal	10 day to Removal	Removal
15. Discourteous or inappropriate conduct involving a co-worker, subordinate, or the public, including, but not limited to, domestic violence, sexual assault, or stalking.	Reprimand to Removal	10 day to Removal	Removal



<b>OFFENSE</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
16. Inappropriate conduct/conduct unbecoming a Federal employee.  <b>NOTE:</b> This offense should not be used if other offenses provide a more specific description of the misconduct.	Reprimand to Removal	Suspension to Removal	Removal
17. Making false, unfounded, malicious, disparaging, or highly irresponsible statements against others or DOE; making disparaging references or expressing stereotypical views that have a detrimental effect or impact.	Reprimand to 7 day	7 day to Removal	Removal
<b>SAFETY</b>			
18. Use of all tobacco products to include prohibited e-cigarette vapor products in unauthorized places.	Reprimand to 7 day	7 day to 14 day	More than 14 days to Removal
19. Failure to work in a safe manner and/or to use required safety equipment.	Reprimand to Removal	7 day to Removal	Removal
20. Failure to carry out environmental or safety responsibility or failure to obey environmental or safety law, rule, regulation, or policy.  <b>NOTE:</b> Consider whether there is possible or actual danger to the environment or public health or safety and whether an attempt is made to conceal the violation.	Suspension to Removal	Removal	
21. Failure to report personal injury or accident which occurred while on duty.	Reprimand to 7 day	7 day to 14 day	More than 14 days to Removal
22. Failure to observe precautions for personal safety, posted rules, signs, written or oral safety instructions; failure to use protective clothing or equipment; or carrying of flammable materials into a hazardous area.	Reprimand to 14 day	More than 14 day to Removal	Removal
23. Violating traffic regulations, reckless driving, or improper operation of a motor vehicle while on DOE premises or while in a duty status.	Reprimand to 14 day	More than 14 day to Removal	Removal
24. Endangering the safety of or causing injury to anyone on DOE premises.	Reprimand to Removal	More than 14 day to Removal	Removal
<b>INFORMATION &amp; SECURITY</b>			
25. Failure to safeguard confidential matter or access to such.	Reprimand to Removal	More than 14 day to Removal	Removal
26. Unauthorized use, removal, possession, disclosure or failure to safeguard Government information, documents,	Reprimand to	Suspension to Removal	Removal

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<p>or materials, including classified or controlled information, i.e., Controlled Unclassified Information (CUI) and Official Use Only (OUO) (which includes, but is not limited to, Personally Identifiable Information (PII), Privacy Act information, Export Controlled information, and commercial/proprietary information); or infraction(s) of security regulations, which includes, but is not limited to, the following occurrences:</p> <ul style="list-style-type: none"> <li>(a) improper storage of classified or controlled documents or materials;</li> <li>(b) failure to secure a classified container (safe or vault);</li> <li>(c) transmission of classified documents or materials to a non-approved facility;</li> <li>(d) failure to observe procedures for handling of classified or controlled documents or materials;</li> <li>(e) failure to transmit classified documents via a classified network or to encrypt controlled documents when required;</li> <li>(f) removal of classified documents or materials to private residences or otherwise endangering the security of classified information; and</li> <li>(g) Unauthorized release or compromise of security information.</li> </ul> <p><b>NOTE:</b> Actions involving classified or CUI that are contrary to the requirements found in DOE and national directives may result in additional civil or criminal penalties, depending on the nature and severity of the action.</p>	Removal		
27. An attempt to conceal defective work or negligence in performing work, or an unauthorized attempt to remove or destroy work.	Reprimand to Removal	Removal	
<p>28. Misrepresentation, falsification, lack of candor, forgery, plagiarism, data manipulation, or concealment of a material fact in connection with any Government document, database, process, or information system; submitting a false claim; withholding of material facts in connection with matters under official investigation; or refusal to testify or cooperate in an inquiry, investigation, or other official proceeding</p> <p>(a) through carelessness or negligence.</p>	<p>(a) Reprimand to 5 day</p> <p>(b) 10 day to Removal</p>	<p>10 day to Removal</p> <p>Removal</p>	Removal

<b>OFFENSE</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
(b) through maliciousness or intent.			
29. Except as specifically authorized, disclosing or using indirect or direct information obtained as a result of employment in DOE, which is of a confidential nature or which represents a matter of trust; or any other information obtained of such character that its disclosure or use would be contrary to the best interests of the Government, DOE, or the rate payers or other DOE beneficiaries being served by it.	Reprimand to Removal	Removal	
30. Violation of any law, regulation or policy pertaining to information disclosure.	Reprimand to 7 day	7 day to 14 day	More than 14 day to Removal
<b>USE OF GOVERNMENT PROPERTY</b>			
31. Misuse of Government issued equipment, i.e., computers, laptops, cellular telephones, blackberries, copiers, or printers, including downloading unauthorized software.	Reprimand to Removal	Suspension to Removal	Suspension to Removal
32. Loss of, damage to, unauthorized use, endangerment, removal, alteration or destruction of Government property, Government time, equipment, personnel, funds, resources, services  (a) through carelessness or negligence. (b) through maliciousness or intent.	(a) Reprimand to 14 days  (b) 10 day to Removal	More than 14 day to Removal  Removal	Removal
33. Unauthorized taking and/or possession of Government property or the property of others or colluding with others to commit such acts; giving control of Government property to others for unofficial use.	7 day Suspension to Removal	More than 14 day to Removal	
34. Attempt to bypass cyber security protections or violation of established cybersecurity procedures.  <b>NOTE:</b> Consider whether the violation results in damage or a compromise to security.	Reprimand to Removal	Suspension to Removal	Removal
35. Failure to report or address intentional cyber security infractions.	Reprimand to Suspension	Suspension to Removal	Removal
36. Accessing pornographic or offensive websites; viewing or storing offensive, pornographic or sexually explicit	Suspension to Removal	Removal	

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
material on Government-issued equipment (i.e., computers, laptops, cellular telephones, blackberries, and printers) and/or on non-Government equipment during work hours.			
37. Circulation of non-mission-related email which contains a virus or results in loss or damage to system integrity or availability.	Reprimand to Removal	Suspension to Removal	Suspension to Removal
<b>OUTSIDE ACTIVITIES/FINANCIAL INTEREST</b>			
38. Indebtedness; lack of good faith in paying just financial obligations.	Reprimand	Reprimand to 7 day	7 day to Removal
39. Gambling, unlawful betting, or the promotion thereof on DOE premises.	Reprimand to 14 day	More than 14 day to Removal	Removal
40. Participating in a strike, work stoppage, sick-out, slow-down or other job action.	Reprimand to Removal	Removal	
41. Borrowing money from, or lending money to any subordinate, rate payer, grant recipient or other person obtaining a benefit from DOE.	Reprimand to Removal	Removal	
42. Soliciting for the sale of any article, or selling any article, including but not limited to candy or other items for schools or charities, kitchenware or other home furnishings, paper products, cosmetic products; or any other items whatsoever, in person or by distributing or posting literature, advertising material, or any other graphic matter, in or on Government-owned or leased property, or property occupied by DOE, unless authorized by law or regulation.	Reprimand to 7 day	7 day to Removal	More than 14 day to Removal
43. Violations of the Standard of Ethics for accepting gifts or gratuities (whether in the form of goods, money, services, discounts, entertainment or similar favors) from beneficiaries, rate payers of DOE, or any individuals or firms doing business with or having contractual relationships with DOE.	Reprimand to Removal	Removal	
44. Participation in or conflict of interest with any type of outside activities, relationships with contractors, lenders, builders or others engaged in business with DOE, or relationships with those seeking contracts, which would be contrary to standards set by the U.S. Office of Government Ethics.	Reprimand to 7 day	7 day to Removal	Removal

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<p><b>NOTE:</b> Penalty action will be determined on the basis of whether the activities or relationships might result in a conflict between the private interest of the employee and his/her duty or obligation to DOE, or tend to create in the mind of others a suspicion of prejudice or favoritism.</p>			
<p>45. Owning any interest in, or receiving any wages, salary dividends, profits, gratuities or services from any educational institution operating for profit, where it is determined that detriment to the United States or to eligible rate payers or DOE grant recipients or other beneficiaries may occur.</p> <p><b>NOTE:</b> Seek legal counsel when using this offense.</p>	Reprimand to 7 day	7 day to Removal	Removal
<b>ALCOHOL &amp; DRUG RELATED</b>			
<p>46. Offenses related to intoxicants.</p> <p><u>Alcohol Related:</u></p> <p>(1) Unauthorized possession of alcoholic beverages while on DOE premises, and/or DOE leased premises.</p> <p>(2) Unauthorized use of alcoholic beverages while on DOE premises, and/or DOE leased premises.</p> <p>(3) Reporting to or being on duty while under the influence of alcohol.</p> <p>(4) Sale or transfer of an alcoholic beverage while on DOE premises, and/or DOE leased premises or in a DOE duty status, or while any person involved is in a duty status.</p> <p><u>Drug-Related:</u></p> <p>(1) Possession of an illegal drug or unauthorized possession of a controlled substance while on DOE premises, and/or DOE leased premises.</p>	<p>Reprimand to 7 days</p> <p>Reprimand to 14 days</p> <p>Reprimand to Removal</p> <p>14 days to Removal</p> <p>More than 7 days to Removal</p>	<p>More than 14 days to Removal</p> <p>More than 14 days to Removal</p> <p>More than 14 days to Removal</p> <p>Removal</p> <p>More than 14 days to Removal</p>	<p>Removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p>

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<p>(2) Unauthorized use of an illegal or controlled substance while on DOE premises, and/or DOE leased premises.</p> <p>(3) Reporting to or being on duty while under the influence of an illegal drug or unauthorized controlled substance.</p> <p>(4) Sale or transfer of an illegal drug or controlled substance while on DOE premises, and/or DOE leased premises. or in a DOE duty status, or while any person involved is in a duty status.</p> <p>(5) Refusal to take a drug test when properly directed to do so.</p> <p>(6) Drug use incompatible with Federal law.</p>	<p>More than 14 days to Removal</p> <p>More than 14 days to Removal</p> <p>More than 14 days to Removal</p> <p>Removal</p> <p>7 days to Removal</p>	<p>Removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p> <p>More than 14 days to Removal</p>	<p>Removal</p>
<p>47. A verified positive result to any test for use of illegal drugs.</p> <p><b>NOTE:</b> This offense pertains to employees who are in or applicants for Testing Designated Positions (TDPs) and employees who are not in TDPs who are tested for reasonable suspicion or as a result of a post-accident or an occurrence (in very specific situations), or volunteer to be tested. An employee having a verified positive test result for use of an illegal drug must be relieved of sensitive duties until cleared for return by appropriate authorities. Such employees may be issued a notice of removal from employment if he/she cannot be retained in his/her position because of a specific job requirement to perform such sensitive duties and there is no alternate work assignment available.</p> <p>Because of the serious nature that illegal drug activity can have on the Department's mission and its employees,</p>	<p>More than 14 days to Removal</p>	<p>Removal</p>	

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
supervisors should strongly consider taking the most firm action believed necessary to prevent further misconduct.			
<b>DISCRIMINATION/EEO/PROTECTED ACTIVITY</b>			
<p>48. Reprisal against an employee for providing information to an Office of Inspector General (or equivalent), or Office of Special Counsel, or to an EEO investigators, or for testifying in an official proceeding.</p> <p><b>NOTE:</b> If the Office of Special Counsel has initiated an investigation, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees. HR staffs must consult their legal staffs.</p>	More than 14 days Removal	Removal	
49. Discrimination based on race, color, sex, religion, age, marital status, political affiliation, or disability.	Reprimand to Removal	7 days to Removal	Removal
50. Sexual harassment.	Reprimand to Removal	7 days to Removal	Removal
51. Reprisal against an employee for exercising a right provided under 5 U.S.C. 71 (Federal Labor Management Relations Statute.)	Reprimand to Removal	7 days to Removal	More than 14 days to Removal
<b>OFFENSE PROSCRIBED BY STATUTE OR BY PRESIDENTIAL EXECUTIVE ORDER/MEMORANDAUM</b>			
<p>52. Engaging in a prohibited personnel practice (see 5 U.S.C. 2302).</p> <p><b>NOTE:</b> OSC has the authority to investigate and, prosecute claims of prohibited personnel practices, including reprisal for whistle blowing. HR staffs must consult their legal staffs.</p>	Suspension to Removal	Removal	
<p>53. Violations of the Standards of Conduct under 5 CFR 2635 and 3301, or violations of Federal ethics laws pertaining to, but not limited to, conflicts of interest, the Ethics in Government Act of 1978, the Hatch Act (5 U.S.C. 1501-1508), gifts and travel, and outside employment.</p> <p><b>NOTE 1:</b> HR staffs must consult with their respective legal staffs.</p> <p><b>NOTE 2:</b> If the Office of Special Counsel has initiated an investigation, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline</p>	Reprimand to Removal	Suspension to Removal	Removal

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
employees. HR staffs must consult their legal staffs.”			
54. Compromise or discrediting of examination materials or a selection process due to a discussion of a specific question(s) or available information with another employee(s) or applicant(s).	Suspension to Removal	Removal	
55. Nepotism (5 U.S.C. 3110(b) and 5 C.F.R. 2635.702).	Suspension to Removal	Removal	
56. Willfully using or authorizing the use of Government passenger motor vehicle or aircraft for other than official purposes (31 U.S.C. 1349 (b)).  <b>NOTE:</b> An officer or employee who <u>willfully uses</u> or <u>authorizes the use of a passenger motor vehicle or aircraft owned or leased by the United States Government (except for an official purpose authorized by section 1344 of this title) or otherwise violates section 1344 shall be suspended without pay by the head of the agency. The officer or employee shall be suspended for at least one month, and when circumstances warrant, for a longer period or summarily removed from office.</u>	30 days to Removal	Removal	
57. Finding by MSPB of refusal to comply with MSPB order or violation of the statute causing issuance of Special Counsel Complaint ((5 U.S.C. 1204(a) (2) and 1212(a)).  <b>NOTE:</b> Penalty needs to be coordinated with Office of Special Counsel.	Reprimand to Removal	7 day to Removal	More than 14 day to Removal
58. Prohibited Political Activity:  (a) Violation of prohibitions for the solicitation of political contributions (5 U.S.C. 7323).  (b) Violation of prohibition for influencing elections (5 U.S.C. 7324)  <b>NOTE 1:</b> Subject to the Hatch Act Modernization Act of 2012, violations of 5 U.S.C. 7323 and 7324, no longer require MSPB unanimous vote for a 30 day suspension penalty and a variety of lesser penalties to include: removal, reduction in grade, debarment from Federal	(a) Reprimand to Removal  (b) Reprimand to Removal	Removal with debarment from Federal employment not to exceed 5 years	



OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<p>employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000 have been added.</p> <p><b>NOTE 2:</b> If the Office of Special Counsel has initiated An investigation, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees. HR staffs must consult their legal staffs.</p>			
<p>59. Violations of the Standards of Ethics for soliciting contributions for a gift for a superior; making a donation to a gift of a superior; accepting a gift from an employee receiving less pay. (5 U.S.C. 7351)</p>	Reprimand to Removal	More than 14 day to Removal	Removal
<p>60. Directing, expecting, or rendering services not covered by appropriations (5 U.S.C. 3103)</p>	Removal		
<p>61. Action against National security. (5 U.S.C. 7532)</p>	30 days to Removal	Removal	
<p>62. Willful concealment, removal or mutilation of public records, as defined by 18 U.S.C. 2071.</p>	Removal		
<p>63. Entering into an unauthorized procurement commitment (FAR 1.602-3) or personal services contract (FAR 37.104); or unauthorized disclosure of proprietary source selection information (FAR 2.101 and 3.104).</p> <p><b>NOTE:</b> HR staffs must consult their legal staffs.</p>	Reprimand to Removal	7 day to Removal	More than 14 day to Removal
<p>64. Failure to operate a motor vehicle in a safe manner due to text messaging while driving resulting in possible or actual damage to property when:</p> <p>(a) Driving Government owned, Government leased, or Government rented vehicles, or when driving privately owned vehicles while on official Government business.</p> <p>(b) When using electronic equipment supplied by the government.</p> <p>(Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving-Oct 2009)</p>	<p>(a) Reprimand to Removal</p> <p>(b) 5 day to Removal</p>	<p>5 day to Removal</p> <p>Removal</p>	Removal
<p>65. <b>NOTE:</b> All offenses for misuse or failure to adhere to the rules governing the use of a government issued charge</p>	Consult-travel card/fleet/purchase	Consult-travel card/fleet/purchase	Consult-travel card/fleet/purchase

<b>OFFENSE</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
card (purchase, travel, fleet) and convenience checks, to include the delay or failure to pay the balance on time must take into consideration the travel card/fleet/purchase /convenience check card table of penalties found in Appendix C.	/convenience/ check card table of penalties found in Appendix C	/convenience/ check card table of penalties found in Appendix C	urchase /convenienc e/ check card table of penalties found in Appendix C

## **APPENDIX C. ADMINISTERING WORK FORCE DISCIPLINE**

This Appendix establishes the U.S. Department of Energy (DOE) Guide for Disciplinary Penalties.



**APPENDIX C. TRAVEL/PURCHASE/FLEET CARDS AND CONVENIENCE CHECKS  
TABLE OF OFFENSES AND PENALTIES GUIDE**

This table is a supplement to the Table of Penalties found in Appendix B. The below points system has been added to ensure greater consistency of penalty for similar travel/purchase/fleet card and convenience check misconduct. Similar to Appendix B, this table is to be used as the guide for proposing and deciding officials to select the appropriate penalty for formal disciplinary or adverse actions to include demotions or removals. While this table does not cover every possible offense, it does provide the more common types of travel/purchase/fleet card and convenience check offenses and the penalties usually assessed. Except when penalty is dictated by statute, alternative discipline may be considered, if appropriate.

In addition to procedural considerations, deciding officials must consider the Douglas Factors established by the MSPB in *Douglas v. Veterans Administration*, 81 FMSR 7037, 5 MSPR 280 (MSPB 1981), for adverse actions.

<b>NATURE OF OFFENSE</b>	<b>POINTS</b>
<b>TRAVEL CARD</b>	
Payment of bill is 60 days or up to 120 days past due	1-to-2
Payment of bill is more than 120 past due	2-to-4
Inappropriate Usage for Less than \$200	2-to-5
Inappropriate Usage for more than \$200	6-to-8
Inappropriate Usage for Less than \$200 <u>AND</u> employee is delinquent in payment (60 days or more past due)	5-to-7
Inappropriate Usage for More than \$200 <u>AND</u> employee is delinquent in payment (60 days or more past due)	7-to-8
Failure to safeguard, monitor, or allowing/enabling another to use cardholder's card or account	7-to-8
Failure to Report misuse, abuse and/or fraudulent use of travel card by management official and/or Program Coordinator	7-to-8
<b>PURCHASE CARD/CONVENIENCE CHECK/FLEET CARD</b>	
Splitting purchases	1-to-2
Cardholders not completing reconciliation of monthly cycle statement within time frame in DOE Policies and Operating Procedures	1-to-2
Approving Officials not completing reconciliation of their cardholder statements within time frame in DOE Policies and Operating Procedures	1-to-2
Cardholder making purchases without required approvals	1-to-2
Inappropriate Usage for Less than \$200	4-to-7
Inappropriate Usage for more than \$200	6-to-8
Failure to safeguard, monitor, or allowing/enabling another to use cardholder's card or account	4-to-8
Unauthorized commitments: Employees who lack authority to obligate the Government and requests cardholder to make purchases without proper reviews and approvals	6-to-8
Cardholder making purchases without funds being available (Ratification)	4-to-7

Failure to report misuse, abuse and/or fraudulent use of purchase card by management official and/or Program Coordinator	4-to-7
False statements on purchase card records by cardholders and Approving Officials	4-to-7
Convenience Checks written for 'Cash'	Reimbursement to Gov & 7-to-8
Misuse and/or conversion of Government funds for personal use	Reimbursement to Gov & 7-to-8

<b>POINTS CONVERSION TABLE</b>			
<b>POINTS</b>	<b>PENALTY</b>	<b>POINTS</b>	<b>PENALTY</b>
1 pt	Written Admonishment or other non formal action (not considered formal disciplinary action)	5 pts	4 to 6 Workday Suspension
2 pts	Reprimand	6 pts	6 to 8 Workday Suspension
3pts	Reprimand to 2 Workday Suspension	7 pts	8 to 10 Workday Suspension
4 pts	2 to 4 Workday Suspension	8 pts	10 Workday suspension to Removal

\*Previous Discipline equals 4 pts (Aggravating/Mitigating Douglas Factors should be considered and explained when varying recommended ranges of penalty)

\*Retraining and/or Card Suspension will normally follow a violation

\*Upon request, any misuse, abuse or fraudulent use of the Government purchase card is to be reported to the Level 3 Organizational Program Coordinator or directly to the Level 1 Agency Program Coordinator. At a minimum, the report must provide the following:

- A summary description of confirmed violations involving misuse of a purchase card, following the completion of agency or Inspector General Review.
- A summary description of all adverse personnel actions, disciplinary actions, or other actions taken in response to each reportable violation involving misuse of a purchase card.
- How the violation was discovered (e.g., Approving Official review, data mining, etc.).
- The dollar amount of violation.
- No Personally identifiable information will be included in this report

United States Government

Department of Energy

Bonneville Power Administration

# memorandum

DATE: September 2019

REPLY TO  
ATTN OF: CE-1

SUBJECT: 2020 Equal Employment Opportunity (EEO) Anti-Harassment and Retaliation Policy and Process

TO: All BPA Employees

This memo serves as a reminder of our commitment and obligation to eradicate harassing conduct that has occurred and to deter its occurrence in the future. Adherence to the principles of equal employment opportunity (EEO) and diversity and inclusion creates a positive work environment where all employees can reach their full potential.

This memo prohibits harassment by any BPA employee, or harassment of any BPA employee by another employee, contractor, vendor, applicant, or third-party individual with whom BPA employees come into contact by virtue of their work. It also prohibits harassing conduct that has a direct connection to the individual's position or responsibilities regardless of whether it occurs on-duty, off-duty, face-to-face, via electronic means (e.g., telephone, email, social media, chat applications, etc.), through a third party, or through other means.

## **Non-Sexual Harassment**

Harassment includes any unwelcome conduct involving a protected basis which interferes with an individual's work performance or creates an intimidating, offensive, or hostile environment. Protected bases include: race, color, religion, sex (including sexual harassment, pregnancy, gender identity, sexual orientation and equal pay), national origin, age (40 and over), protected genetic information, disability (physical and mental), including the provision of reasonable accommodation for qualified applicants and employees with disabilities, or retaliation/reprisal (for opposing what is reasonably believed to be violations of Title VII laws and for past participation in EEO proceedings).

Examples of unwelcome conduct prohibited by this Policy include, but are not limited to, epithets, slurs, stereotyping, intimidating acts, bullying, ridicule, mockery, putdowns, acts of violence, actual or implied threats of violence, and the circulation or posting of written or graphic materials that show hostility due to one's protected status.

## **Sexual Harassment**

Sexual harassment is a form of harassment and it is prohibited. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct is made explicitly or implicitly a term or condition of one's employment or is used as a basis for career or employment decisions affecting that person; or such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive work environment.

Examples of sexual harassment forbidden by this policy include, but are not limited to: (1) offensive sexually-oriented verbal kidding, teasing, or joking (2) repeated unwanted sexual

flirtations, advances, or propositions (3) verbal abuse of a sexual nature (4) graphic or degrading comments about an individual's appearance or sexual activity (5) offensive visual conduct, including leering, making sexual gestures, and the display of offensive sexually suggestive objects, pictures, cartoons, or posters (6) unwelcome pressure for sexual activity (7) offensively suggestive or obscene text or chat messages, notes, or emails (8) offensive physical contact such as patting, grabbing, pinching, or brushing against another's body or (9) disseminating internet links with sexually-themed content.

Employees are encouraged to inform any person who engages in harassing conduct in the workplace that the conduct is inappropriate and/or unwelcome. In all cases, employees aware of harassment, whether or not subjected to the harassment themselves, must promptly report any suspected violations. Supervisors and managers are required to take prompt, appropriate action to address issues of harassment. They must also take appropriate steps to proactively prevent harassment in the workplace.

### **Reporting Harassment**

A cornerstone of effective anti-harassment efforts is helping employees feel comfortable reporting perceived harassment. Employees are encouraged to report harassment to their supervisor, anyone within BPA management and/or the Office of Civil Rights and EEO. All reports of harassment must be referred for a prompt inquiry. The confidentiality of reports of harassment or information gathered during a subsequent inquiry is protected to the maximum extent possible, subject to BPA's need to investigate and take corrective action.

When necessary, management will take interim measures to make sure that harassment does not continue. If the inquiry reveals that harassment has occurred, BPA will take appropriate corrective action. Any employee found to have engaged in harassment may be subject to disciplinary action, up to and including removal.

BPA does not tolerate retaliation against any individual for:

- reporting harassment
- assisting another individual in reporting harassment
- providing information related to a report of harassment
- participating in the EEO complaint process, or
- opposing conduct that they believe is unlawfully discriminatory or harassing.

Claims of non-EEO harassment do not affect an employee's right to file an EEO complaint, nor does it alter the required timelines for filing. To initiate the EEO complaint process, an employee must contact the Office of Civil Rights and EEO via email at [CivilRightsEEO@BPASite1.bpa.gov](mailto:CivilRightsEEO@BPASite1.bpa.gov) or call 503-230-4725 within 45 calendar days of the alleged harassment.

### **Need to Know Basis**

Steps will be taken to ensure the proper handling of EEO and work environment issues. To that end, matters will be addressed discreetly and discussed only with people who have a need to know. Individuals involved in harassment claims will not be privy to final actions deemed



appropriate to rectify those matters. All involved are asked to respect the selected process for redress and adhere to the terms of confidentiality and judiciousness that pertain to the selected process.

Preserving equal employment opportunity, diversity and inclusion in our workplace requires care and vigilance from each of us. Every employee is responsible for acting professionally and not participating in discriminatory or harassing behaviors that offend, intimidate or unreasonably interfere with the work performance of others. It is expected that all BPA employees demonstrate respect toward each other, as well as those with whom we interact and serve. Our continued adherence to both the spirit and the letter of EEO law, as well as and the principles of diversity and inclusion, are fundamental to the success of the mission of our organization.

We create the environment in which we work. This policy strives to ensure a work environment free of discrimination, harassment and hostility as well as an atmosphere of dignity and respect.



Elliot E. Mainzer  
Administrator and Chief Executive Officer

# HR Desk Reference

## BPA Career Pathways Program

### HR Desk Reference: 410-03-01

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## 1. Introduction and Background

This HR Desk Reference implements BPA HR Directive 410-3: Hiring, Selecting, and Assigning Employees.

On December 27, 2010, President Obama signed Executive Order (E.O.) 13562 establishing the Internship Program, the Recent Graduates Program, and the Presidential Management Fellows (PMF) Program. The U.S. Office of Personnel Management (OPM) issued the final rule for the Pathways Programs on May 11, 2012 (77 FR 28194). The Pathways Program requirements are found in part 362 of title 5, Code of Federal Regulations (CFR). The appointing authorities for the Pathways Programs are found in 5 CFR 213.3402(a), (b), and (c). To support that objective and build bench strength, BPA uses the BPA Pathways Internship Program to employ students to help meet business challenges, achieve diversity goals, and create a source of talented high-quality candidates for career service with BPA.

The Bonneville Power Administration's (BPA) Pathways Program provides an opportunity to introduce students to BPA's environment and foster student interest in Federal careers. It is also a means to assess and develop student competencies for potential BPA careers, to address short and long term staffing needs, and to fill permanent staffing needs by allowing students to be converted to permanent positions in BPA consistent with merit system principles. The program is open to all students (high school, vocational/technical, business, college, or graduate) without regard to race, ethnicity, color, religion, sex (including pregnancy and gender identity), national origin, age, disability, sexual orientation, genetic information, or any other non-merit based factor. Permanent positions available for student conversion from the BPA Pathways Internship Program are based on needs identified through BPA's workforce planning.

- A. **Internship Program:** This program is for current students enrolled in a wide variety of educational institutions from high school to graduate level with paid opportunities to work in agencies and explore Federal careers while still in school. For more information visit: <http://www.opm.gov/HiringReform/Pathways/program/interns/>.
- B. **Recent Graduates Program:** This program is for individuals who have recently graduated from qualifying educational institutions or programs and seek a dynamic, career development program with training and mentorship. To be eligible, applicants must apply within two years of degree or certificate completion (except for veterans precluded from doing so due to their military service obligation, who will have up to six years to apply). For more information please visit: <http://www.opm.gov/HiringReform/Pathways/program/graduates/>
- C. **Presidential Management Fellows (PMF) Program:** For more than three decades, the PMF Program has been the Federal government's premier leadership development program for advanced degree candidates. This program is now for individuals who have received a qualifying advanced degree within the preceding two years. For complete

<b>Organization</b> Integrated Strategy (NHI)	<b>Title</b> BPA Career Pathways Program	<b>Unique ID</b> 410-03-01		
<b>Author</b> HCM	<b>Approved by</b> CAO	<b>Date</b> 4/18/2016	<b>Version</b> 2.0	Page 2

program information, visit: For more information please visit: <http://www.opm.gov/HiringReform/Pathways/program/fellows/>.

## 2. Purpose/Objectives

This HR Desk Reference guide establishes BPA’s policy and procedures for employing students under the BPA Pathways Program for Managers, Supervisors, and Human Resources Specialists.

## 3. Applicability

Applies to all students and recent graduates employed by BPA under the Pathways Program.

## 4. Terms & Definitions

- A. **Academic year:** Defined by the student’s academic institution, but 45 quarter hours or 30 semester hours typically constitutes an academic year.
- B. **Accredited institution:** An accredited institution or program is a secondary or post-secondary institution or program that is legally authorized to offer academic programs that lead to a diploma, certificate, or degree and is formally recognized by an accrediting agency listed as nationally recognized by the Secretary of Education. Accreditation can be verified at: <http://ope.ed.gov/accreditation/Index.aspx>. Students who take online courses are eligible to participate in the Internship Program if all other basic and additional eligibility requirements are met. Home-schooled students may participate in the Internship Program if they are either enrolled in an accredited home-school or in a State-approved home-school curriculum program. Written documentation attesting to the validity of the accreditation will be needed prior to processing the appointment and Enter-on-Duty.
- C. **Advanced degree:** A professional or graduate degree, e.g. Master’s, PhD., or J.D.
- D. **Break in program:** A break in program is defined as a period of time when a program participant is on a leave without pay status during the course of attempting to complete a Recent Graduate or Internship Program appointment. The participant may be working but unable to go to school, may be attending classes but unable to work, or may not be working or attending class. All breaks in the program must be pre-approved by the participant’s supervisor. The supervisor must provide a written valid business reason for any denials.
- E. **Certificate program:** Post-secondary education, in a qualifying educational institution, equivalent to at least one academic year of full-time study that is part of an accredited college-level, technical, trade, vocational, or business school curriculum.

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				Page 3	

- F. **Excepted service:** Appointments in the Federal Government that have been excepted from certain competitive service rules and regulations.
- G. **Good academic standing:** Defined by the student’s academic institution, but an overall or cumulative and current grade point average of 2.0 or better is typically the standard for good academic standing.
- H. **Half-time course load:** The definition of half-time enrollment as defined by OPM is enrollment in at least 6 credit hours per semester or the equivalent as defined by the school’s Registrar’s Office. An individual who needs to complete less than the equivalent of half-time enrollment as defined in this section for the semester in which graduation occurs is still considered a student for purposes of this program.
- I. **International Education:** Students who gained part of their education internationally must: (1) Meet all citizenship requirements, and (2) Have their foreign education interpreted by a credential evaluation service. For specific guidelines regarding this service, please refer to <http://www.ope.ed.gov/accreditation/>.
- J. **Internship Program:** The Pathways Internship Program is for current students accepted for enrollment in qualifying educational programs and provides students enrolled in a variety of educational institutions with paid opportunities to work in agencies and explore Federal careers while still in school.
- K. **Pathways Participant Agreement:** An agency standard and consistent outline for all students that clearly identifies expectations, including but not limited to: (a) a general description of duties; (b) work schedules; (c) the length of the appointment and termination date; (d) mentorship opportunities; (e) training requirements as applicable; (f) evaluation procedures that will be used for the participant; (g) requirements for continuation and successful completion of the program; and (h) minimum eligibility requirements for noncompetitive conversion to term or permanent competitive service employment according to the requirements of the applicable Pathways Program. If at any point in time any major changes occur, an updated Pathways Program Participant Agreement must be signed.
- L. **Presidential Management Fellows Program:** The PMF Program has been the Federal Government's premier leadership development program for advanced degree candidates. E.O. 13562 expands the eligibility window for applicants by aligning it with academic calendars and allowing those who have received a qualifying advanced degree within the preceding 2 years to participate. This is a competitive process that is administered by the Office of Personnel Management (OPM); therefore, PMF’s will not be covered in this HR Desk Reference. For more information regarding PMF’s please see: <http://www.opm.gov/HiringReform/Pathways/program/fellows/>.
- M. **Qualifying Educational Institution:**

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1. A public high school whose curriculum has been approved by a State or local governing body, a private school that provides secondary education as determined under State law, or a homeschool that is allowed to operate in a State; and
  2. Any of the following educational institutions or curricula that have been accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education:
    - a) A technical or vocational school;
    - b) A 2-year or 4-year college or university;
    - c) A graduate or professional school, e.g., law school, medical school; or
    - d) A post-secondary homeschool curriculum.
- N. **Recent Graduates Program:** The Recent Graduate Program is for individuals who have recently graduated from a qualifying educational institution or program. To be eligible for this program, applicants must apply within 2 years of degree or certificate completion, except for Veterans (as defined in 5 U.S.C. 2108) who, due to their military service obligation were precluded from participating in the Recent Graduates Program during the 2-year period after obtaining a qualifying degree or completing a qualifying program; therefore, veterans are eligible to participate in the program within 6 years of obtaining a qualifying degree or completing a qualifying program.
- O. **Student:** An individual who has been accepted for enrollment or who is currently enrolled at least half-time and seeking an accredited degree at a qualifying educational institution. This includes awardees of the Harry S. Truman Foundation Scholarship Program under Public Law 93-842. Students need not be in actual physical attendance, so long as all other requirements are met.

## 5. Acronyms

- A. **ACWA:** Administrative Careers with America
- B. **ADTP:** Academic Degree Training Program
- C. **AOC:** Area of Consideration
- D. **BPA:** Bonneville Power Administration
- E. **CFR:** Code of Federal Regulations
- F. **CHRIS:** Corporate Human Resources Information System
- G. **EO:** Executive Order
- H. **FPL:** Full Performance Level
- I. **GPA:** Grade Point Average
- J. **GS:** General Schedule

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- K. **HCM:** Human Capital Management
- L. **HRD:** Human Resources Director
- M. **ICTAP:** Interagency Career Transition Assistance Program
- N. **IDP:** Individual Development Plan
- O. **JOA:** Job Opportunity Announcement
- P. **KSA:** Knowledge, Skills, and Ability
- Q. **LWOP:** Leave Without Pay
- R. **NTE:** Not-to-Exceed Date
- S. **OLC:** Online Learning Center
- T. **OPM:** Office of Personnel Management
- U. **PD:** Position Description
- V. **PMF:** Presidential Management Fellows
- W. **PPO:** Pathways Program Officer
- X. **RPL:** Recruitment Priority Listing
- Y. **RIF:** Reduction in Force
- Z. **SOP:** Standard Operating Procedures

## 6. Responsibilities

- A. **Pathways Program Officer (PPO)/HR Specialist/HR office (HCM):** The PPO establishes Standard Operating Procedures (SOP) that outline functions, responsibilities, and expectations as it pertains to the use of the Pathways hiring authorities. The PPO is responsible for program administration plans, including coordinating recruitment, job analysis, assessing candidates, on-boarding processes, administering and tracking the program, counseling interns, identifying positions anticipated to convert to permanent positions, providing final review of Pathways Agreements, assisting managers and students in the Pathways processes, and ensuring BPA remains compliant with Pathways Program Federal rules and regulations.
- B. **Hiring Managers/Supervisors (Program/Field/Staff/Support Office):**
  1. Provide on-boarding logistics, such as desk, phone, computer, office space, assistive technology, travel/purchasing cards (if necessary), etc.;
  2. Identify managers to serve as mentors and/or coaches for students;
  3. Identifies staffing needs that can be met by hiring interns and advises the HCM Student Program Manager;

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4. Define BPA’s performance management requirements and establish Pathways Agreements with student;
5. Provide necessary organizational orientation and arrange for any site-specific security, safety, and other related briefings for participants; and
6. Ensure development, submission, and approval of training and learning requirements and outlines career progression where specified by employment program guidance within 30 days. Determine if interns will be retained, converted, or terminated based on valid business needs.

**C. Pathways Program Participants:**

1. Sign a Pathways Program Participant Agreement with their manager/supervisor and PPO; and
2. For Interns, each semester, trimester, or quarter (depending on the academic institution’s class schedule) after the initial appointment, submit current academic transcripts as proof of enrollment to verify they continue to meet eligibility requirements. Participants must maintain good academic standing and ability to perform essential duties of the position.

## **7. Program Administration Requirements, Guidance, and Processes**

### **7.1 Pathways Programs Facts**

- A. **Agency Workforce Planning:** Before filling any positions under the Pathways Program, managers should include measures in their workforce planning to ensure that an adequate number of permanent positions will be available to convert Pathways Participants who successfully complete their programs.
- B. **Position Description:** Internship positions must be classified to a student trainee series (GS-XX99). A classified PD(s) must be established before beginning the recruitment process.
- C. **Announcing Pathways Programs Opportunities:** Agencies must meet OPM public notification requirements by providing Pathways Program opportunities and procedures for application to the general public, as provided by 5 CFR 362.105(b), 362.203(a), and 362.303(a). A vacancy announcement must be posted on [www.usajobs.gov](http://www.usajobs.gov) for all Internship appointments. Limiting recruitment to only specific academic institutions is prohibited.
- D. **Citizenship:** BPA may appoint a non-citizen to a Pathways Program position only if the student is lawfully admitted to the United States as a permanent resident or is otherwise authorized to be employed. A Pathways Intern or Recent Graduate must possess full U.S. citizenship by the end of the Program to be eligible to be converted to permanent Federal employment in the competitive service.

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- E. **Employment of relatives:** Pathways Participant may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the Participant's appointment, employment, promotion, or advancement within the agency. DOE Policy Guidance Memorandum #35A Procedures for Compliance with Nepotism and Misuse of Position was issued May 2014.
- F. **Separations or Terminations:** The PPO and HCM must be informed of any proposed action to separate a Pathways Participant. An appointment may be terminated for any of the following reasons:
1. Resignation;
  2. Suspension, expulsion, or withdrawal from his or her educational institution;
  3. Unsatisfactory work performance or conduct (must be properly documented);
  4. Failure to maintain academic standards; or
  5. Inability of the program office to retain the student in the position, e.g., budget constraints, reduction-in-force, etc.
- G. **Security Clearance:** All positions require a background investigation prior to hire date.
- H. **Veterans' Preference:** Veterans' preference applies to selection for positions in the Pathways Programs. Selections must be made in accordance with the requirements of 5 CFR part 302, Veterans' preference laws, and OPM guidance issued as a Memorandum for Chief Human Capital Officers, dated February 9, 2009 on Procedures for Passover of Compensable-Disabled Preference Eligibles in the Excepted Service. This includes, but is not limited to, ranked and unranked referral lists.
- I. **Veteran Pass-Over:** Subject to the appointment procedures in 5 CFR Part 302, and in light of the decision of the United States Court of Appeals for the Federal Circuit in *Gingery v. Department of Defense*, if the selecting official wishes to pass-over any preference eligible with a compensable, service-connected disability of 30 percent or more (CPS) who has applied for a position in the excepted service, the selecting official must follow the principle of Veterans' preference as much as administratively feasible, i.e., consider Veteran status as a positive factor when reviewing and considering applications, thus the selecting official must obtain sufficient documentation justifying the reasons why the CPS Veteran will not be selected for the position. It is important to note that for 30% or more compensable Veterans, BPA must obtain permission for pass-over from OPM while simultaneously notifying the Office of Human Capital Policy (HC-11). While requesting OPM's approval, BPA must notify the preference eligible of the proposed pass-over of the reasons thereof, and his/her right to respond. If the Veteran is a TP vet, a pass-over request may be submitted to HCM and a determination may be made at the local level. A pass-over notification must be sent in a timely manner to the preference eligible's last known address. Veteran Pass-over's are highly discouraged.

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## 7.2 Internship Program

As authorized by Executive Order 13562, the Internship Program is for current students and individuals accepted for enrollment in a qualifying educational program.

This hiring authority requires hiring managers to be proactive by integrating basic workforce planning principles to identify competencies, knowledge, skills, and abilities that are needed to achieve short-term and/or long-term projects.

The servicing human resources office will conduct a strategic recruitment discussion with the hiring manager who will need to identify upfront if the need for an intern is temporary (with a NTE date) or more long-term (without a NTE date).

The Internship Program is comprised of two paths:

- Interns with an NTE are not eligible for non-competitive conversion to the competitive service.
- Interns without an NTE date are eligible for non-competitive conversion to the competitive service.

### A. Basic Internship Program Eligibility Criteria:

Applicants appointed to the Internship Program must meet the following basic eligibility requirements:

1. Be at least 16 years old (as per 5 CFR 551.601(a)).
2. Be a U.S. Citizen.
3. The Intern must be accepted for enrollment or enrolled in and seeking a degree (diploma, certificate, etc.) in a qualifying institution, on a full or half-time basis (as defined by the institution in which the student is enrolled), including awardees of the Harry S. Truman Foundation Scholarship Program under Public Law 93-842. A student can be enrolled in an accredited high school; college (including 4-year colleges/universities, community colleges, and junior colleges); professional, technical, vocational, and trade school; advanced degree programs; or other qualifying educational institution pursuing a qualifying degree or certificate.
4. The Intern must be in good academic standing as determined by their academic institution (a GPA of 2.0 or higher). Student must submit transcripts with application and official transcripts before being appointed to a student trainee position.
  - a) For STEM-related positions, BPA and the hiring manager may establish a minimum GPA higher than 2.0. The PPO/HCM is responsible for establishing the criteria within its standard operating procedure. It must outline the GPA levels, illustrate the need for establishing a higher GPA, and identify the occupational groups within the geographic location that fall under this GPA range.

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- b) The PPO/HCM is responsible for ensuring transparency, equity, and standardization when applying this revised GPA criteria for all related positions. This means that the higher GPA must be applied consistently and with merit across the board within the STEM occupations when recruiting for Interns.
  - c) GPA cannot be used as a quality ranking factors (KSA) to determine qualifications.
5. The Intern must meet personnel suitability and physical requirements for the position to which they are applying.
  6. The Intern must meet the OPM Qualification Standard for the series and grade of the position.
  7. Male applicants for Internship program born after 12/31/59 who are required to register with the Selective Service under Section 3 of the Military Selective Service Act must be registered (or must have registered at the time that they were required to do so) in order to be eligible for appointment under this program 5 U.S.C. § 3328(a) and 5 CFR Part 300, Subpart G.

**B. Recruitment Process for an Intern Position:**

1. **Recruitment Request:** Managers/Supervisors must submit a recruitment request to HR HELP. A complete recruitment package must be submitted. This request must include:
  - a) SF-52 Request for recruitment with notes regarding announcement specifics, such as intern type (with or without NTE date), PD #'s, Manager/selecting officials name and contact information, and number of positions to be filled;
  - b) Classified PD(s) for Student Trainee for all grade levels at which the position will be announced/filled. PD(s) submitted should also include all targeted grade levels;
  - c) Advertising; if wanting to advertise to schools or a geographic location, managers must put in request with recruitment package; and
  - d) Length of time desired for announcement, minimum announcement open period is 3 business days (only in rare circumstances), otherwise announcement will default to 10 business days.
2. **Strategic Recruitment Discussion:** The PPO/HCM will review recruitment request and conduct strategic recruitment discussion with manager/selecting official. A job analysis will be created using OPM qualification standard for the specific series being announced. Rating criteria will be developed appropriate to the grade level of the position being announced in order to rate and rank candidates. Although applicants appointed under the Internship hiring authority are exempt from the rating and ranking requirements under Schedule D, HCM must apply a rating system that

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explains and defends hiring decisions to assure the process is open and fair. Internship positions are entry-level, therefore, HCM and hiring managers cannot establish criteria that overwhelmingly exceeds OPM’s basic qualification standards or establishes selective placement factors that impose unfair consideration and is not directly related to the position. Use of GPA to distinguish best qualified candidates as part of the rating and ranking or category process is not authorized. The PPO/HCM will submit draft job analysis to the manager/supervisor for review. Once the final job analysis is complete both the manager and PPO will sign the document or approve in an email notification.

3. **Job Opportunity Announcement (JOA):** PPO/HCM will then draft the Student Trainee announcement. Announcement information includes the position title, series and grade, pay range, qualifications, geographic location and how to apply or express interest. Management may select at any of the grade levels announced. Manager/Selecting official will approve final announcement before opening.

NOTE: Appointments are not subject to Interagency Career Transition Assistance Program (ICTAP), Career Transition Assistance Program (CTAP) or Reemployment Priority List (RPL) or Administrative Careers with America (ACWA) requirements.

4. **JOA period:** BPA/HCM can only accept resumes through the duration (open through close dates) of the JOA. During JOA period the manager/selecting official should be preparing for interviews, scheduling interview dates as well as gathering panel members, if applicable.
5. **Referral Certificate (Certificate of Eligibles):** When the announcement closes, PPO/HCM will review applications and adjudicate Veterans’ preference and determine those who are “preference eligible candidates” (PEC). All PECs will be reviewed first. If there are 3 or more eligible and qualified PECs on a Certificate for 1 position, only those PECs will be referred on a Certificate of Eligibles. If there are less than 3 eligible and qualified PECs for 1 position, then all applicants will be reviewed and all eligible and qualified applicants will be referred. If there are more vacant positions than eligible and qualified PECs, then all applicants will be reviewed and all eligible and qualified applicants will be referred. Applicants will be reviewed and must be determined as meeting or not meeting the minimum qualifications for the position.
6. **Interviews:** When management receives the Certificate of Eligibles, all resumes should be reviewed. Management can, and are highly encouraged to, conduct interviews and will keep all notes for records. An applicant being referred on a Certificate of Eligibles does not guarantee them an interview. Management must consider all PEC referred before considering other candidates.
7. **Declinations/Withdrawals:** If any candidate declines an interview, declines further consideration, declines an offer, or in any other way withdrawals his/her application

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during any step of the process, then it must be documented in writing. If the declination/withdrawal is given verbally, then attempts to should be made to confirm with the candidate via email. Failing that, a memo-for-record will be produced documenting the conversation. The documentation will be included in the case file.

8. **Selections:** When a selection has been made, the selecting official must return the Certificate of Eligibles to HCM with annotations on all referred applicants indicating their selection(s), non-selections, any alternate selections (if applicable) and notes on all interviewed candidates. Non-PECs may not be chosen over an eligible and qualified PEC on the certificate list, unless the PEC has declined the position or withdrawn from consideration, sufficiently documented. All documentation must be sent to the PPO/HCM for review and record. DOE’s Nepotism and Misuse of Position and Selection Checklist must be sent to the PPO/HCM for review and approval of selection.
9. **On-Boarding:** The PPO/HCM will contact the candidate to make the tentative job offer and collect all the documents necessary for on-boarding. The PPO/HCM office will determine and set pay for the selectee in accordance with established OPM pay setting standards. If selectee accepts the position the on-boarding process will be initiated. If the selectee declines the position, the job offer will be made to the alternate selection or the Certificate will be sent back to the manager/selecting official for an alternate selection. Once a selectee has been cleared by security, the PPO will make a firm job offer with an official start date.

**C. Maintaining your Pathways Intern:**

1. **Transcripts:** Each semester, trimester, or quarter (depending on the academic institution’s class schedule) after the initial appointment, the Intern must submit current academic transcripts for proof of enrollment to verify that they continue to meet eligibility requirements.
2. **Establishing assignments:** Before the Intern begins employment, the manager/supervisor should plan and establish work assignments that are tailored around the intern’s studies. The purpose of the program is to provide the student with on-the-job experience that will develop competencies and technical skills needed to excel professionally in the targeted position at the time of conversion.
3. **Probationary period:** The time spent by participants in the Internship program without a NTE date can be credited toward the mandatory 1-year probationary period, regardless of work schedule, so long as the participant is in a pay status and employment is continuous (5 CFR 315.802).
4. **Work schedules:** Students can be placed on either a part-time or full-time schedule. There are no limitations on the number of hours a student can work; however, because the Internship Program is developmental in nature and to ensure

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consistency and compliance, intermittent work schedule and/or regular remote telework, which require a change in duty station, are not authorized. The work schedule cannot interfere with the student’s academic schedule. With supervisory approval, work schedules for full-time students may be flexible or compressed, and students may be eligible for regular or situational telework.

5. **Annual and Sick Leave:** Students in the Internship Program are eligible to accrue annual and sick leave. Standard leave and accrual policies apply when determining eligibility (5 CFR 630, Subparts C & D).
6. **Training:** Interns are eligible to attend training courses and have any training-related travel reimbursed. There is not a dedicated training program required for the Internship Program. However, this should not preclude a manager from identifying and supporting investments in any job-specific training. Within 30 days of the initial appointment, the manager must determine necessary and general job-specific training for the Intern. This applies specifically toward Interns who are not serving on a NTE date. Training requirements, documented on the Participant Agreement, are contingent on funding availability and should be budgeted in advance.
7. **Pay:** Students in the Internship Program must be paid according to the criteria set forth in the appropriate General Schedule, pay band, or wage grade classification standard for the job. Typically, an Intern will be employed at Step 1 of the General Schedule grade level for which they qualify based on a combination of education attainment and relevant work experience.
8. **Performance Plans:** Managers must develop performance standards for Interns expected to be employed for six months or longer. Managers must apply the same standards under the current BPA Performance Management System for Non-Supervisory Employees, since Interns are BPA/federal employees. Performance standards will vary depending on the work required as well as any rotational assignment. All performance standards must be completed and submitted to HCM within the first 30 days following the appointment.

Performance plans and appraisals shall not deviate from the Department’s established performance management standards. Both supervisors and interns must use the forms currently established under the BPA Performance Management System. The plan must contain critical elements pertaining to the position and directly align to the organization's strategic goals and mission.

At any time during the rating period, if an Intern is falling short of “Meets Expectations” in any performance element, the manager must address the issue with the employee. If an Intern receives a performance rating for the lowest level in any critical element, the Intern must receive a rating of “Fails to Meet Expectations.” As a result, the Intern will not be eligible to receive a promotion or within-grade-

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increase or performance award. If the Intern is in a probationary period, supervisors in consultation with the PPO/HCM must consider terminating the employee. If the employee is not in a probationary period, consideration must be given to removing the employee from the internship program.

9. **Within-Grade-Increases:** Depending on the length of the appointment, interns are eligible to receive within-grade-increases.
10. **Promotions:** Promotion eligibility is based on: one-year specialized experience at the lower grade-level of federal service (or equivalent) and/or educational experience as required under initial appointment as outlined in OPM’s qualification standards for Pathways Internship Positions. Because the intent of the Intern Program is to be developmental in nature, BPA intern positions cannot exceed the Full Performance Level (FPL) of a GS-12 (or equivalent). The FPL can be less than a GS-12. This FPL must be documented on the Job Opportunity Announcement, and there must be a supporting PD for the FPL. This provision does not confer entitlement to promotion. Accelerated promotions are prohibited under the Intern Program.

An intern may only be promoted to their FPL once they have completed their requirements for conversion. Keep in mind that these dates are when interns are eligible for promotion; an intern who is eligible is not entitled to a promotion and promotions are not mandatory. Some examples are as follows:

- a) If an intern’s FPL is at the GS-12, they can only be promoted up to a GS-11 (or equivalent) before completing their requirements for conversion. Once the Intern has completed their requirements for conversion, he/she can then be promoted to the GS-12 (or equivalent) before being converted to the competitive service.
- b) If an intern’s FPL is at the GS-9, they can only be promoted to the GS-7 (or equivalent) before completing their requirements for conversion. Once the intern has completed their requirements for conversion, he can then be promoted to the GS-9 (or equivalent) before being converted to the competitive service.

Hiring managers seeking to promote an Intern must submit an SF-52 and a PD for the next grade level to the PPO and HR HELP at least 2 pay periods prior to the effective date. The PD must be classified before the promotion can be effective. If the position must be classified, then a SF-52 request must be submitted at least 2 pay periods in advance of the effective date. If the documentation is provided after the employee’s career ladder promotion eligibility date, the promotion action must be effective the next pay period. HCM is not authorized to back-date promotion actions.

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11. **Awards:** Interns are eligible to receive monetary or non-monetary awards based on a suggestion, invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork. Interns are also eligible to receive performance-based awards or bonuses assuming they meet the criteria set forth by BPA.

12. **Breaks in the Program:** If there is a period where the Intern is unable to work due to circumstances beyond their control, i.e. unforeseen health issues, family emergency, etc., a break in the program may be approved in advance by the PPO/HCM. The supervisor of the Intern must submit a written justification to HCM requesting a break in program. At this point, the individual will be placed on Leave without Pay (LWOP) for the period of the break in the program. HCM must notify the Office of Human Capital Policy (HC-11) of the break in program if it exceeds 90 days. Breaks in service cannot exceed 120 days within one calendar year.

The rationale for extensions beyond four months may include:

- a) Extreme health issue/treatment;
- b) Extended military deployment or commitment;
- c) Temporary inability to maintain student status;
- d) Unique educational opportunity not to exceed six months in duration; or
- e) Compelling departmental interest due to unique skills required in an identified mission-critical occupational series.

**If an extension beyond the three months is not granted, the intern must immediately be removed from service.**

13. **Tenure Group and Reduction in Force (RIF):** An Intern serving under an appointment for an initial period expected to last more than 1 year of service is in the excepted service Tenure Group II. A temporary Intern, serving under an appointment not to exceed 1 year of service is in excepted service Tenure Group 0. A temporary Intern who is serving under an appointment not to exceed 1 year but has exceeded 1 year of current continuous service, is in excepted service Tenure Group III. (See 362.205)

14. **Federal benefits:** Interns are eligible to receive basic life insurance, retirement benefits, and participate in the Federal Government’s Thrift Savings Plan if the appointment is 1 year or longer. All Interns with and without NTE dates are eligible for FEHB coverage. (See 5 CFR 870.202 and 5 CFR 890.102).

15. **Student Loan Repayment/Recruitment Incentives:** Interns without an NTE date may be eligible to receive recruitment incentives, i.e. advance in hire, recruitment bonus, student loan repayment, tuition reimbursement. BPA recommends that

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recruitment incentives be utilized judiciously. If a recruitment incentive is utilized, a written justification must be submitted to HCM for consideration. Some examples of acceptable justification rationales can be found in 5 CFR 531.212(c) and include, but are not limited to:

- a) Pay retention based on current or historical salary of the applicant;
- b) Proven difficulty in hiring within a particular occupational series without the use of incentives;
- c) Excessive recent turnover; or
- d) Exceptional educational or vocational achievement.

All justifications for student loan repayment and recruitment bonus should follow the guidance set forth in 5 CFR 531.212 and DOE Order 322.1C Admin Chg 1B. A continuing service agreement between the recipient and the agency must be signed and executed prior to the receipt of either a recruitment bonus or student loan repayment. Additionally, the justification must be provided to HCM prior to the job offer being made. It is critical that this document be provided in order to ensure the final job offer letter states the accurate compensation package. Because Internship positions are developmental and entry-level in nature and scope, hiring managers need to exercise sound business decision-making when offering any of these incentives. Interns with a not-to-exceed date are ineligible, since they are employed on a short-term basis. Under Pathways, most candidates will likely qualify for a position based on education alone. Any incentive should only be considered for highly qualified candidates and hard-to-fill positions. The rules and regulations governing incentives apply to Pathways appointments.

**16. Academic Degree Training Program (ADTP):** Pathways Program Interns may be eligible for ADTP. ADTP is a part of the overall planned, systemic, and coordinated program to provide employees (student employees and regular workforce employees) effective education and training to improve performance and accomplish strategic goals. ADTP is used to attract high quality individuals to BPA's student employee program (Pathways program - Internships) and raise the skill level for occupations directly related to BPA's mission; increase BPA diversity through the student employment program; hire for hard to fill jobs; meet new qualifications standards; develop skills for mission/strategic business changes including employee redeployment; prepare for technological changes and advancements; and address any other strategic business need, training need or staffing problem. ADTP program information can be found at:

<http://internal.bpa.gov/EmployeeCenter/Training/Pages/ADTP.aspx>

**17. Movement from agency to agency:** BPA Interns can move between agencies as long as they remain on an intern appointment. Interns can transfer to other agencies. BPA may accept resumes from interns outside the agency as long as the JOA is

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posted on USAJOBS for a minimum of 3 calendar days because the intern is not on the agency rolls. The gaining PPO or HR office will be accountable for the ensuring the intern meets the program requirements and is eligible for conversion. The gaining agency would absorb any financial requirements/liability associated with the initial appointment, i.e. training.

**18. Movement within BPA:** If the intern is on BPA rolls, then HCM may process a reassignment. To provide fair and equitable consideration, the process may include posting the opportunity as a JOA on USAJOBS for 3 calendar days to serve as notice to employees. However, internal advertisements for reassignment are not required unless there is a change in the type of internship. Reassignments from one intern position to another could affect any incentives the intern is receiving.

**D. Pathways Intern Program Completion:**

**1. Non-Competitive Conversion:** Interns are eligible for non-competitive conversion to a term or permanent appointment in the competitive service. If the intern is placed on a term appointment, the employee can be later converted to a permanent competitive service position as long as the conversion occurs prior to the end of the NTE date of the term position.

- a) Complete the academic study within the 120 days preceding the appointment at a qualifying institution. This means that the student does not have to be awarded the degree at time of conversion but rather have completed all of the academic requirements conferring a degree, diploma or certificate.
- b) Complete 640 hours of work experience while enrolled as a full-time or part-time degree or certificate seeking student\*\*.
- c) Be rated at the minimum a “meets expectations” under the DOE/BPA performance management system.
- d) Meet OPM qualification standards for the position. A Student trainee may be converted to the highest grade they are qualified for.
- e) Meet Pathways agreement requirements and any other agency-specific requirements.

**\*\*Note:** Not all 640 hours must be gained while the student is employed under the Internship Program appointment authority. Managers may credit up to 320 hours out of the 640 hours in three ways:

- i) Outstanding academic achievement and exceptional job performance:
- ii) Non-federally based (third party) internship provider officially established to provide internship experiences to students that are comparable to the Internship Program. This experience may be gained through a non-federally

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based internship, volunteer experience, stipend-based program, or contractor internship; or

- iii) Served as an active duty member of the Armed Forces.

A detailed work schedule under the program must be submitted to justify the number of hours credited toward the 320 hour credit.

Superior academic achievement can be achieved through one of three ways:

- a. The student is expected to graduate with at 3.5 Grade Point Average (GPA). Organizations may round out a 3.45 GPA to 3.5 to meet the criteria;
- b. The student may have graduated in the top 10% of the graduating class; or
- c. The student is a member of a nationally-recognized honor society.

In addition to superior academic achievement, the Intern must also achieve exceptional job performance during this time as well. Exceptional job performance is defined as the highest performance rating (Significantly Exceeds Expectations or SEE) for all performance elements under the established BPA performance plan system. Therefore, both superior academic achievement and exceptional performance are needed by the Intern in order to receive the 320 hour credit. Only a total of up to 320 hours total can be credited toward the mandatory 640 hours required for non-competitive conversion. Managers cannot combine these flexibilities to achieve the 640 hours requirement for non-competitive conversion.

2. **Conversion from an Intern NTE to Intern:** An Intern with a not-to-exceed date may be converted to an Intern appointment. The conversion requires public notice because the new appointment would lead to a non-competitive conversion to the competitive service. HCM must post a JOA on USAJOBS for a minimum of 3 calendar days. The minimum area of consideration (AOC) must be open to Interns within BPA.
3. **Conversion from Intern NTE to Intern NTE:** In those instances in which opportunities may arise for an Intern NTE that require a change in grade level or change in occupational series, BPA must post a JOA open for a minimum of 3 calendar days. The minimum area of consideration must be BPA.
4. **Non-Competitive Conversion Documentation:** The following documentation is required to be submitted to HCM prior to conversion.

In order to be converted, the student must:

- a) Participant’s final/official transcripts must be sent to the PPO/HCM documenting the date and degree awarded;
- b) SF-52 Conversion Action;

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- c) All PDs for any career ladder position (if applicable);
  - d) Most recent Performance Appraisal (if appointed greater than 90 days); and
  - e) Work schedule demonstrating 640 hours have been accomplished. In the event that the student receives crediting hours under an appointment other than Intern, a description of duties along with the type of appointment is necessary.
5. **Separations or Terminations:** If management is not planning to convert or continue employment of a student, the PPO/HCM must be informed of any proposed action to separate a student on account of performance or conduct. An appointment may be terminated for any of the following reasons:
- a) Resignation;
  - b) Suspension, expulsion, or withdrawal from his or her educational institution;
  - c) Unsatisfactory work performance or conduct (must be properly documented);
  - d) Failure to maintain academic standards; or
  - e) Inability of the program office to retain the student in the position, e.g., budget constraints, reduction-in-force, etc.

### 7.3 Recent Graduates Program

The Recent Graduates Program is an entry-level program designed to offer employment opportunities to recent graduates and individuals, who obtained certificates from qualified educational institutions or technical programs. The Program provides eligible participants entry-level developmental experience to prepare for a federal career at BPA.

The Recent Graduates Program serves as a supplement to BPA’s workforce pipeline development efforts. It does not replace nor substitute competitive procedures. This means that this authority should be used in conjunction with other hiring authorities based on the Office’s overall hiring.

Recent Graduates positions require career progression; therefore, appointment actions at the full-performance grade level are prohibited. Recent Graduates appointments can be made up to the GS-09 (or equivalent) grade-level. Appointments with degrees in the STEM fields (science, technology, engineering or math) can be made up to the GS-11 (or equivalent) grade-level if the individual possess a Ph.D. or equivalent degree from a qualifying institution directly related to the position being filled. The full-performance-level (FPL) of a Recent Graduate appointment should not exceed the GS-13 or equivalent levels.

#### A. Basic Recent Graduate Program Eligibility Criteria:

Applicants appointed to the Recent Graduate Program must meet the following basic eligibility requirements:

1. Be a U.S. Citizen.

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2. Completed a qualifying associates, bachelors, masters, professional, doctorate, vocational, or technical degree or certificate from a qualifying educational institution within the previous 2 years. Preference eligible Veterans who were precluded from applying due to their military service obligation begin their 2-year eligibility period upon release or discharge from active duty (see examples in Frequently Asked Questions). Eligibility for these Veterans cannot exceed 6 years from the date on which they completed their degrees (or certification).
3. The PPO/HCM may make tentative job offers to students no more than 9 months in advance. Appointments cannot be processed until the individual has completed their educational program and provides official transcripts indicating the degree has been awarded prior to the effective date of the personnel action. If the student does not graduate within the specified timeframe or produce the required documentation regarding degree completion, the tentative job offer is rescinded. The servicing human resources office must receive all of the documentation prior to processing the appointment action.
4. The participant must meet personnel suitability and any physical requirements for the position to which they are applying.
5. The participant must meet the OPM Qualification Standards for the series and grade of the position.
6. Male applicants for Recent Graduate program born after 12/31/59 who are required to register with the Selective Service under Section 3 of the Military Selective Service Act must be registered or must have registered at the time that they were required to do so in order to be eligible for appointment under this program (5 U.S.C. § 3328(a) and 5 CFR Part 300, Subpart G).
7. The Department acknowledges that hiring managers seek the most highly qualified candidates; therefore, if the GPA level is used as eligibility criteria, the PPO/HCM establish outline the process within its SOP and ensure transparency, equity and fairness to all perspective applicants in order to assure a diversified talent pool. At this point, GPA cannot be used as a quality ranking factor for qualification determination.

**B. Recruitment Process for a Recent Graduate Position:**

1. **Recruitment request:** Managers/Supervisors must put in a recruitment request to HR HELP. A complete recruitment package must be submitted. This request must include:
  - a) SF-52 Request for recruitment with notes regarding announcement specifics, such as the PD #, Manager/selecting officials name and contact information, and number of positions to be filled.

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- b) Classified PD(s) for Student Trainee for the announced grade level and PD(s) for all targeted grade levels.
  - c) Advertising: if wanting to advertise to schools or a geographic location, managers must put in request with recruitment package.
  - d) Length of time desired for announcement, minimum announcement open period is 3 business days, otherwise announcement will default to 10 business days.
2. **Strategic Recruitment Discussion:** The PPO/HCM will review recruitment request and conduct strategic recruitment discussion with manager/selecting official. A job analysis will be created using OPM qualification standard for the specific series being announced. Rating criteria will be developed appropriate to the grade level of the position being announced in order to rate and rank candidates. Under Schedule D, BPA/HCM must apply a rating system that explains and defends hiring decisions to assure the process is open and fair. It is important to note that Recent Graduates positions are entry-level; and hiring managers cannot establish criteria that will overwhelmingly exceed OPM's basic qualification standards or establish selective placement factors that impose unfair consideration and is not directly related to the position. The use of GPA to distinguish best qualified candidates as part of the rating and ranking or category process is not authorized. The use of selective placement factors must be supported and outlined in the job description. PPO/HCM will submit draft job analysis to the manager/supervisor for review. Once the final job analysis is complete both the manager and PPO will sign the document or approve in an email notification.
3. **Job Opportunity Announcement (JOA):** The PPO/HCM will then draft the Student Trainee announcement. Announcement information includes the position title, series and grade, pay range, qualifications, geographic location, and how to apply or express interest. The PPO/HCM must document both the recruitment strategy and the rating and ranking strategy (making sure to adjudicate Veterans' preference).
- a) Appointments are not subject to Interagency Career Transition Assistance Program (ICTAP), Career Transition Assistance Program (CTAP) or Reemployment Priority List (RPL) requirements.
  - b) Administrative Careers with America (ACWA) requirements apply to Recent Graduate appointments at the GS-5/7 levels depending on the occupational series. If the position is an ACWA-covered job, the PPO/HCM must contract OPM to administer ACWA examinations.
4. **JOA period:** BPA/HCM can only accept resumes through the duration (open through close dates) of the JOA. During JOA period the manager/selecting official should be preparing for interviews, scheduling interview dates as well as gathering panel members, if applicable.

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5. **Referral:** When announcement closes, the PPO/HCM will review applications and adjudicate Veterans' preference. All Veterans will be reviewed first. If there are 3 or more eligible and qualified Veterans on a Certificate for 1 position, only Veterans will be referred. If there are less than 3 eligible and qualified Veterans for 1 position then all applicants will be reviewed and all eligible and qualified applicants will be referred. If there are more vacant positions than eligible and qualified Veterans then all applicants will be reviewed and all eligible and qualified applicants will be referred. Applicants will be reviewed and must be determined as meeting or not meeting the minimum qualifications for the position. Minimum Qualification sheets must be completed for each applicant reviewed and will be kept for record purposes for up to 3 years.
6. **Interviews:** When management receives the Certificate of Eligibles, all resumes should be reviewed. An applicant being referred on a Certificate does not guarantee them an interview. Management must consider all Veterans referred before any non-Veterans. If there are any declinations, it should be documented in writing. Management can conduct interviews and will keep all notes for records.
7. **Selections:** When a selection has been made the manager/selecting official must return the Certificate to HCM with annotations on all referred applicants indicating their selection(s), non-selections, any alternate selections (if applicable) and notes on all interviewed candidates. Non-Veterans may not be chosen over an eligible and qualified Veteran on the certificate list, unless the Veteran has declined the position in writing. The PPO/HCM may make tentative job offers to students no more than 9 months in advance. Appointments cannot be processed until the individual has completed their educational program and provides official transcripts indicating the degree has been awarded prior to the effective date of the personnel action. If the student does not graduate within the specified timeframe or produce the required documentation regarding degree completion, the tentative job offer is rescinded. The servicing human resources office must receive all of the documentation prior to processing the appointment action. All documentation must be sent to the PPO for review and record. DOE's Nepotism and Misuse of Position and Selection Checklist must be sent the PPO/HCM for review and approval of selection.
8. **On-Boarding:** The PPO/HCM will contact the candidate to make the official job offer and collect all the documents necessary for on-boarding. The PPO/HCM will determine and set pay for the selectee in accordance with established OPM pay setting standards. If selectee accepts position the on-boarding process will be initiated. If the selectee declines the position, the job offer will be made to the alternate selection or the Certificate will be sent back to the manager/selecting official for an alternate selection. Once a selectee has been cleared by security and has provided copy of official transcripts for proof of graduation, the PPO/HCM will make a firm job offer with an official start date.

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**C. Maintaining your Recent Graduate:**

1. **Trial Period:** Although the Recent Graduate appointment is indefinite, the employee serves a 1-year trial period regardless of work schedule. The participant must remain in a pay status. (See 5 CFR 315.802.)
2. **Work Schedules:** Program participants may work full-time or part-time. Participants may work up to 80 hours a pay period. Because Pathways Program is developmental in nature, intermittent work schedule and/or regular remote telework, which require a change in duty station, are not authorized. With supervisory approval, work schedules for employees may be flexible or compressed, and program participants may be eligible for regular or situational telework
3. **Pay:** Participants in the Recent Graduate Program must be paid according to the General Schedule, pay band, wage grade, or other pay plan for the job. Typically, a Recent Graduate participant will be appointed at the step 1 of the General Schedule grade-level (or equivalent) for which they qualify based on a combination of education and relevant work experience.
4. **Annual and Sick Leave Accrual:** Recent Graduate participants are eligible to accrue annual and sick leave in accordance with 5 CFR Part 630.
5. **Training:** The Recent Graduate Program will provide eligible participants entry-level developmental experience to prepare for a career with BPA.

In terms of training venue, the employee should consult with the HCM Training office and hiring manager in identifying specific courses and sources for training. Some of these venues can be web-based, such as the Online Learning Center (OLC) or even webinars from outside vendors and formal classroom courses.

6. **Recent Graduate Training Requirements:**
  - a) Assign a Mentor outside of Recent Graduate’s chain of command within 90 days (5 CFR 362.301(b));
  - b) Complete 40-hours of formal interactive training (online or classroom) each year they are in the program (5 CFR 362.301(d); and
  - c) Rotational assignments 30 to 180 days (optional)
7. **Coaching and Mentoring:** Recent Graduate participants must be assigned a mentor within 90 days. Mentors serve as an unbiased confidant and advisor with whom participants may discuss work-related situations and opportunities for career growth. Mentors are expected to devote the necessary time to facilitate participant career development by:
  - a) Assisting the participant and supervisor in preparing the IDP;
  - b) Recommending quality training classes;

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- c) Identifying potential rotational and shadowing assignments;
- d) Providing the participant with regular and frequent follow-up;
- e) Identifying other technical and professional employee resources that may be consulted to provide exposure to other parts of the organization; and
- f) Exposing the participant to decision-making styles, problem solving techniques, and attributes of what it takes to succeed.

Mentors should also provide objective suggestions and recommendations for improvement of the program. Hiring managers in collaboration with the PPO are responsible for assigning a formal or informal Mentor within 90 days. The Mentor must be outside of Recent Graduates chain of command. Mentors must also sign an agreement of responsibilities.

8. **Developmental Assignments:** Because of BPA’s complex and challenging missions, participants can be given the opportunity to further develop professional skills and knowledge by participating in rotational and developmental assignments. Participants must meet with their immediate supervisors and should consult with their mentors to review and discuss appropriate rotational opportunities and the proposed length (30 to 180 days). The immediate supervisor should consult with the PPO/HCM before a final decision is made. Any rotational assignment must be approved by HCM and documented by both the gaining and losing supervisors as well as the PPO/HCM.

Rotations should be designed to maximize the participants’ exposure to the entire office function and scope of work and enable the employee to gain a broad and better understanding of Energy’s mission and work. Assignments should provide practical, hands-on experience and the opportunity to experience interactions between the assigned organization(s) and other work elements. Before the start of each rotational assignment, participants should meet with their supervisor and the prospective rotational supervisor to establish a clear mutual understanding of the expectations of both the rotational supervisor and the participant. At the end of the rotational assignment (detail), the rotational supervisor is responsible for providing performance input to the employee’s permanent record. This feedback must be factored into the employee’s annual performance rating and noted as an advisory plan in e-Performance.

9. **Performance Plans:** Managers must develop performance standards for each Recent Graduate participant. Managers must apply the same standards under the current BPA Performance Management System for Non-Supervisory Employees. Performance standards will often vary depending on the work required of the participant for both their assigned position as well as any rotational assignment. All performance standards must be completed and submitted to the PPO/HCM within the first 30 days following the appointment.

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Performance plans and appraisals shall not deviate from the Department’s established performance management standards and forms currently set forward in the BPA Performance Management Policy. Organizations should not design a performance sub-system specifically for a Recent Graduate participant. Plans must contain critical elements pertaining to the position and be directly align to the organization's strategic goals and mission. Performance objectives for Recent Graduate participants should remain consistent with the IDP and any other on-the-job training experiences planned for the fiscal year.

At any time during the rating period, if an intern is falling short of “Meets Expectations” in any performance element, the manager should address the performance issue with the employee. If an employee receives a performance rating for the lowest level in any performance element, the employee must receive a rating of “Fails to Meet Expectations”. As a result, the Recent Graduate participant will not be eligible to receive a promotion or performance award. Since the employee is on a trial period, managers must consider if termination is appropriate. Managers can not extend the trial period or appointment period beyond one year to receive additional time for consideration. It is expected that managers conduct progress reviews and remain engaged with the employee in order to assure performance is measured accurately and timely. Managers must contact the PPO/HCM to determine the most suitable course of action.

10. **Within-Grade Increases:** Participants are eligible to receive within-grade increases in accordance with federal regulations.
11. **Promotions:** Any Recent Graduate participant who meets the qualifications requirements for the position is eligible for career ladder promotion(s). This provision does not confer entitlement to promotion. Accelerated promotions are prohibited under the Recent Graduate Program because eligibility is based on the one-year specialized experience at the lower-grade level of federal service as outlined in OPM’s qualification standards.
12. **Awards:** Recent Graduate participants are federal employees and are therefore eligible to receive monetary or non-monetary awards based on a suggestion, invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations. Recent Graduate employees are also eligible to receive performance-based awards or bonuses assuming they meet the criteria set forth by BPA.
13. **Federal Benefits:** Participants in the Recent Graduate program are eligible to receive health care benefits, basic life insurance benefits, retirement benefits, and participate in the Federal Government’s Thrift Savings Plan (see 5 CFR 870.202 and 5 CFR 890.102). Newly appointed employees, newly rehired employees, and transfers hired on or after January 1, 2013, will automatically be enrolled in Federal Employees Retirement System-Revised Annuity Employees (FERS-RAE) based on

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revisions to P.L. 112-96 unless they fall under the FERS-RAE exception rule. The servicing Human Resources Office will be responsible for determining the correct retirement coverage determinations for all employees hired on or after January 1, 2013.

Section 8401 of Title 5, United States Codes, made amendments to FERS retirement System. Adding new definition called FERS-FRAE. Beginning January 1, 2014, new employees with no prior service hired on or after that date will have to pay higher employee contributions (4.4%) for regular employees and 4.9% for special category employees.

- 14. Breaks in the Program:** If there is a period where the Recent Graduate participant is unable to work due to circumstances beyond his/her control, i.e., unforeseen health issues, family emergency, etc., a break in the program may be approved in advance by the PPO/HCM. The period of the break in program may not exceed two months (60 days) in duration. The supervisor of the Recent Graduate participant must submit a written justification to the PPO/HCM when requesting a break in program for the Recent Graduate participant. At this point, the individual will be placed on Leave without Pay (LWOP) for the period of the break in the program.

As with any LWOP personnel action, HCM must follow the guidance outlined in the Guide to Processing Personnel Actions when determining if and when a SF-50 is required. The PPO/HCM must notify the Office of Human Capital (HC-11) of the break in program and ensure the participant will meet the requirements prior to the conversion eligibility. Again, the 120-day extension restriction applies.

Any break over two months (cumulative) cannot be approved by HCM. The PPO/HCM must submit a written justification from the participant’s supervisor for extension(s) to HC-11 no later than 30 calendar days prior to the NTE date/proposed return date.

The rationale for extensions beyond four months may include:

- a) Extreme health issue/treatment;
- b) Extended military deployment or commitment;
- c) Unique educational opportunity not to exceed six months in length;
- d) Compelling departmental interest due to unique skills required in an identified mission-critical occupational series; or
- e) Impact on meeting program requirements.

If an approval is not granted and the Recent Graduate is unable to complete the program requirements within 1-year along with the 120-days extension, then employment is immediately terminated. BPA, DOE nor OPM have statutory approval to exceed the 120-days limitation.

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15. **Reduction in Force (RIF):** Participants are placed in the excepted service in Tenure Group 2. The employee does not have vested rights to be non-competitively converted to a competitive service position.
16. **Student Loan Repayment/Recruitment/Relocation Incentives:** Recent Graduate participants may be eligible to receive student loan repayments, relocation, and/or recruitment incentives, i.e., advanced pay rate, recruitment bonus, student loan repayment, tuition remission, as authorized by Federal statute or regulation. Such incentives are to be used when, in the absence of them, it would be difficult to recruit for the position. The DOE Office of the Chief Human Capital Officer recommends the incentives be utilized judiciously in keeping with budgetary constraints, critical skill needs, and fairness. It is important to note that Pathways positions are entry-level and thus applicants' skill-set would probably be limited. If an incentive is offered, it must be documented and justified accordingly. If management wishes to offer an incentive, the PPO/HCM must document the process and receive written justification from the manager as with any other incentive. Both management and HR staff must comply with BPA pay policies and procedures. Some examples of acceptable justification rationales can be found in 5 CFR 531.212(c) and include, but are not limited to:
- a) Pay retention based on current or historical salary of the applicant;
  - b) Proven difficulty in hiring within a particular occupational series without the use of incentives;
  - c) Excessive recent turnover; or
  - d) Exceptional educational or vocational achievement.
- Depending on the nature of the incentive, the recipient must sign a continuing service agreement prior to the receipt of a relocation incentive, recruitment incentive, or student loan repayment. The justification must be sent to the PPO/HCM prior to the job offer to ensure that the final job offer letter has the best compensation offer included.
17. **Tuition Assistance:** In the event that a Recent Graduate decides to continue their education, a program office may offer tuition assistance, such support is permissible under 5 CFR 213.3202(b) (17).
18. **Movement between positions:** According to 5 CFR 362.304, participants in the Recent Graduates Program are permitted to apply and transfer between agencies in the federal government, as long as the individual does not have a break in service. This means that a Recent Graduate may apply for and HCM may accept applications from other Recent Graduates who are already on the rolls at other agencies. To move between agencies and BPA to accept these applications, HCM must post a JOA on USAJOBS with the minimum area of consideration as "Current Recent Graduates from other federal agencies." If a general JOA is posted on USAJOBS and it is open

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to the general public, current Recent Graduates from other agencies are eligible to apply. However, if the Recent Graduate participant is separated, the individual does not have reinstatement rights and the former employee must reapply and the appointment would be as a new Recent Graduate.

19. **Movement from agency to agency:** If the employee is on agency rolls, the Recent Graduate must separate from the current appointment (termination appt-in) in the agency and be appointed to a new appointment (gaining) without a break in service. Time spent under the initial (previous) appointment will be credited towards meeting the Recent Graduates Program requirements. If the employee is coming from another agency outside of BPA, PPO/HCM will be responsible for ensuring the employee meets all appointment and conversion requirements. This means that BPA will absorb all of the responsibilities and accountability associated with the Recent Graduate appointment and conversion (training and development, mentors, conversion requirements, etc.). It is important to note that the Recent Graduate would not begin a new program period because of the transfer.

BPA must enter into a new Participant Agreement that reflects the requirements for Program completion and eligibility for noncompetitive conversion to the competitive service in the new appointment. Another one year waiting period for conversion or completion of new requirements do not apply. It is recommended that the PPO/HCM acquires all of the mandatory paperwork and agreement(s) from the losing organization/agency in order to ensure the conversion date is accurate and requirements will be met. For example, if the Recent Graduate was employed at Agency XYZ for 6 months and then later transferred to BPA, the employee’s remaining program eligibility would be 6 months for a total duration of 1 year; 6 months at Agency XYZ and 6 months at BPA. The employee will finish the remaining time period and receive training under BPA.

20. **Movement within BPA:** Based on the MOU agreement defines agencies under 5 U.S.C. 105, movement between sub-agencies, offices, and components of BPA are considered reassignments as long as the Recent Graduate remains on BPA rolls. Because this appointment utilizes a FTE and to ensure compliance with Merit System Principles and adherence to Prohibited Personnel Practices, BPA will announce the position opening for at least 3 days on USAJOBS. The area of consideration can be BPA Recent Graduates within the local commuting area.

**D. Pathways Recent Graduate Program Completion:**

1. **Non-competitive conversion:** Recent Graduates must be U.S. citizens to be eligible for conversion to the competitive service. An agency may convert a Recent Graduate noncompetitively to a term or permanent position in the competitive service if the Recent Graduate has:
  - a) Completed all of the Program requirements successfully;

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- b) Demonstrated successful job performance consistent with the applicable DOE performance appraisal program; and
- c) Met the OPM qualification standard for the position to which the Recent Graduate will be converted.

Once the Recent Graduate is noncompetitively appointed to a career, career-conditional or a term (NTE 1-4 years) appointment, time spent on the Recent Graduates appointment may be credited toward completion of the probationary period in accordance with 5 CFR Part 315, subpart H. If the Recent Graduate participant is converted to a term position, he/she may later be noncompetitively converted to a permanent position as long as the conversion occurs prior to the end of the Term’s NTE date.

The non-competitive conversion must occur upon successful completion of the 1-year Program period or at the end of the 120-days approved extension. Recent Graduate Program Participants should complete program requirements within the one-year period. It is the responsibility of both the hiring manager and the PPO to track and monitor progress, to address performance concerns, and to maintain engagement with the employee. If the requirements cannot be completed within one year, then the PPO must submit a request for an extension. If participants are not converted on the date of their service requirement, or at the end of the 120-day extension, their appointment must be terminated.

**2. Non-Competitive Conversion Documentation:** The following documentation must be submitted to HCM prior to conversion:

- a) SF-52 Conversion Action;
- b) Pathways Agreement;
- c) Most recent Performance Appraisal ;
- d) Rotational Assignment forms; and
- e) Letter from the rotational assignment supervisor detailing the participant’s performance

**3. Extension request of a recent graduate appointment:** The initial appointment for Recent Graduate participants is set for 1 year. BPA acknowledges that sometimes circumstances arise that may impact this requirement. As a result, a request to extend the appointment of a participant must be submitted to the Office of Human Capital Policy (HC-11).

HC-11 can authorize an extension of a Recent Graduate appointment up to an additional 120 days. Justifications must be submitted to the Office of Human Capital Policy (HC-11) and contain at a minimum:

- a) Reason for extension;

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- b) Proposed timeline to complete of training requirements justified with training dates; and
- c) If it is a personal reason, the intent of the intern and proposed return to duty date.

**NOTE:** Extensions can only be granted for up to a total of 120 days. The Executive Order prohibits OPM and agencies from extending conversion eligibility beyond a total of 120 days. This means that if HCM requests a 120-day extension and then later requests another extension even for 1 day, the total will exceed 120 days. Failure to meet the programs requirements within that 120-days window will result in the employee’s immediate termination.

**7.4 Presidential Management Fellows (PMF) Program**

The PMF Program has been the Federal Government's premier leadership development program for advanced degree candidates. E.O. 13562 expands the eligibility window for applicants by aligning it with academic calendars and allowing those who have received a qualifying advanced degree within the preceding 2 years to participate. This is a competitive process that is administered by the Office of Personnel Management (OPM); therefore PMF’s will not be covered in this HR Desk Reference. For more information regarding PMF’s please see <http://www.opm.gov/HiringReform/Pathways/program/fellows/>.

**8. Contacts**

- A. For information on the BPA Career Pathway Programs, please contact the Pathways Program Officer at 503.230.5320 or contact HR HELP.
- B. For information on Academic Degree Training Program, contact Learning and Development Supervisor at 503.230.3190 or contact HR HELP.

**9. Authorities & References**

1. BPA HR Directive 410-3: Hiring, Selecting, and Assigning Employees
2. U.S. Department of Energy/National Nuclear Security Administration Career Pathways Program, Aug. 2014.
3. Pathways Program MOU between OPM and DOE, Aug 2014
4. Pathways Program – OPM, May 11, 2012 (77 FR 28194)
5. Executive Order 13562, Dec. 2010
6. 5 CFR Part 213 – Excepted Service
7. 5 CFR Section 213.3402(a)(b)(c)

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8. 5 CFR Part 362 – Pathways Programs
9. 5 CFR Part 842 – Federal Employees Retirement System – Basic Annuity
10. 5 CFR Part 870 – Federal Employees’ Group Life Insurance Program
11. 5 CFR Part 890 – Federal Employees’ Health Benefits Program
12. 5 U.S.C. Section 2301 – Merit System Principles
13. DOE Policy Guidance Memorandum #35A Procedures for Compliance with Nepotism and Misuse of Position was issued May 2014.
14. Harry S. Truman Foundation Scholarship Program under Public Law 93-842
15. HR Desk Reference 410-04-01: Academic Degree Training Program

## 10. Revision History

Version Number	Issue Date	Description of Change or Review
1.0	1/19/2016	Initial publication.
2.0	4/18/2016	Formatting and grammar changes. Updated/corrected referenced document titles. Fixed broken web links.

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# Appendix A: Participant Agreements/Documents

## BPA Pathways Internship Program Participant Agreement

<b>Appointee's Full Name:</b>	
<b>Appointing Agency/Sub-Agency: Bonneville Power Administration</b>	
<b>Appointment Date (s):</b>	<b>Work Schedule:</b>
Entrance on Duty (EOD) Date in Student Program : _____  Appointment Not to Exceed (NTE) Date: _____  Program NTE Date: _____	Work Schedules will vary but typical schedule may include working full time during winter and summer break and part time of up to 32 hours per week during school. Personnel actions will be requested whenever changes are needed.  <p style="text-align: center;"><b>OR</b></p> Work Schedules will vary but typically will be working in a full time status while on school break and will go on LWOP while attending school. Personnel actions will be requested whenever changes are needed
<b>Position Title, Series and Grade</b>	<b>Pay</b>
<b>Intern's Responsibilities:</b>	<b>Hiring Official's/Supervisor's Responsibilities:</b>
<ul style="list-style-type: none"> <li>Provide proof of enrollment as necessary</li> <li>Notify the agency of any change in your enrollment status and/or work schedule</li> <li>Maintain at least a half-time course load as defined by the educational institution</li> <li>Remain in good academic standing Maintain a GPA of 2.0</li> <li>Adhere to an established work schedule</li> <li>Adhere to the Intern Program requirements</li> <li>Participate in agency training classes or programs</li> <li>Perform, successfully, the assigned duties listed in your</li> </ul>	<ul style="list-style-type: none"> <li>Complete a Participant Agreement with each Intern</li> <li>Verify enrollment and eligibility for continued participation in the Program</li> <li>Provide information on the Intern Program requirements</li> <li>Identify job duties and responsibilities; provide a copy of the position description.</li> <li>Provide information on any special training requirements</li> <li>Identify performance goals and evaluation criteria</li> <li>Establish a mutually agreeable work schedule that does not interfere with the Intern's academic schedule</li> <li>Supervise daily work activities of the Intern</li> </ul>

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position description <ul style="list-style-type: none"> <li>Observe all workplace rules</li> </ul>	<ul style="list-style-type: none"> <li>If position offers conversion to the competitive service, identify the eligibility requirements for conversion and ensure your Intern is converted within the applicable timeframe (120 days from completion of all academic requirements).</li> <li>Provide regular, ongoing feedback and coaching</li> </ul>
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**Work Assignments** (Enter brief description of major duties from position description or attach a position description)

**Program Requirements** (Enter requirements for continuation and successful completion of Program, including any work group specific requirements, as applicable)

**Training Requirements and if applicable rotation assignments**

**Mentoring** (Suggested for Interns on appointments lasting more than 1 year)

**Evaluation Procedures** (Interns serving on appointments expected to last more than 120-day are covered by DOE Order 330.1 with BPA Supplement)

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**Minimum Eligibility Requirements for Noncompetitive Conversion** (Include any specific requirements for your organization)

To be eligible for conversion to the competitive service, an Intern must:

- Be a U.S. citizen.
- Successfully complete academic course of study.
- Complete a minimum of 640 hours of work experience under the Internship Program.
- Meet the OPM Qualification Standard for the position the Intern may be converted to.
- Maintain acceptable performance under the BPA's approved performance management system.
- Receive favorable recommendation for conversion from supervisor.

It is important to remember that eligibility for conversion does not guarantee that BPA will decide to opt for conversion.

**SIGNATURES:**

**Intern:**

*Print Name*

*Signature  
Date*

**Hiring Official/Supervisor:**

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*Print Name*

*Signature*  
*Date*

**Pathways Program Officer:**

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*Print Name*

*Signature*  
*Date*

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## BPA Pathways Recent Graduate Program Participant Agreement

<b>Appointee's Full Name:</b>	
<b>Appointing Agency/Sub-Agency: Bonneville Power Administration</b>	
<b>Appointment Date (s):</b>	<b>Work Schedule:</b>
Entrance on Duty (EOD) Date in Student Program : _____  Program NTE Date: _____	Monday _____ Tuesday _____ Wednesday _____ Thursday _____ Friday _____
<b>Position Title, Series and Grade</b>	<b>Pay</b>
<b>Recent Graduate's Responsibilities:</b>	<b>Hiring Official's/Supervisor's Responsibilities:</b>
<ul style="list-style-type: none"> <li>Adhere to the Recent Graduate Program requirements</li> <li>Adhere to an established work schedule</li> <li>Perform, successfully, the assigned duties listed in your position description</li> <li>Participate in agency training classes or programs</li> <li>Select a mentor within 90 days of your date of hire. Your manager will assist you</li> <li>Attend regularly scheduled meetings with mentor</li> </ul>	<ul style="list-style-type: none"> <li>Complete Participant Agreement with each Recent Graduate</li> <li>Provide information on the Recent Graduate Program requirements</li> <li>Establish a mutually agreeable work schedule</li> <li>Identify performance goals and evaluation criteria</li> <li>Assist Recent Graduate with the selection of a mentor within 90 days of date of hire               <ul style="list-style-type: none"> <li>Mentor must be at an appropriate level outside of the Recent Graduate's chain of command</li> </ul> </li> <li>Provide information on any special training requirements               <ul style="list-style-type: none"> <li>Ensure Recent Graduate participates in at least 40 hours of formal interactive training per year</li> </ul> </li> <li>Supervise daily work activities</li> <li>Identify performance goals and evaluation criteria</li> </ul> <ul style="list-style-type: none"> <li>If the position offers noncompetitive conversion to the competitive service, identify the eligibility requirements for conversion and ensure the Recent Graduate is converted at the end of the Program.</li> </ul>
<b>Work Assignments (Enter brief description of duties or attach a position description)</b>	

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<b>Recent Graduates Program Requirements (Enter requirements for continuation and successful completion of Program)</b>				
<b>Recent Graduates Training Requirements (Identify any special training requirements)</b>				
40 hours of formal interactive training each year.				
<b>Mentoring (Enter instructions on process to select Mentor)</b>				
<b>Evaluation Procedures (Summarize elements on which the Recent Graduate's performance appraisal will be based)</b>				
<b>Minimum Eligibility Requirements for Noncompetitive Conversion. (If this position offers noncompetitive conversion, enter any agency specific requirements)</b>				

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To be eligible for conversion to the competitive service, the Recent Graduate must:

- Be a U.S. citizen.
- Successfully complete all Recent Graduate Program requirements.
- Meet the OPM Qualification Standard for the position to which the Recent Graduate may be converted to.
- Maintain acceptable performance under the agency's approved performance management system.

**It is important to remember that eligibility for conversion does not guarantee that BPA will decide to opt for conversion.**

**SIGNATURES:**

**Intern:**

*Print Name*

*Signature  
Date*

**Hiring Official/Supervisor:**

*Print Name*

*Signature  
Date*

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**Pathways Program Officer:**

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*Print Name*

*Signature*  
*Date*

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## MENTOR AGREEMENT AND RESPONSIBILITIES

I hereby agree to participate for a period of 12/24months as a mentor  
to \_\_\_\_\_

while he/she participates in the (Recent Graduate Program or PMF Program). I am willing  
to:

**(Insert info in this section)**

I understand that I may be released from this agreement if the participant or I decide this is  
not a productive arrangement. In this event, a confidential "Lessons Learned" evaluation  
will be prepared by the terminating party for submission to the Pathways Intern  
Coordinator.

SIGNATURE OF MENTOR: \_\_\_\_\_

DATE: \_\_\_\_\_

CC: Pathways Program Officer (PPO)

Field/Program Office

Supervisor

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## The Secretary of Energy

Washington, DC 20585

October 4, 2021

MEMORANDUM FOR ALL DEPARTMENT OF ENERGY EMPLOYEES

FROM: JENNIFER GRANHOLM 

SUBJECT: Policy Statement on Equal Employment Opportunity,  
Harassment, and Retaliation

It is the policy of this Administration to prevent and combat discrimination and to address overlapping and intersecting forms of discrimination. In line with this policy, the U.S. Department of Energy (DOE) is committed to a workplace free of unlawful discrimination, harassment, and retaliation. As Secretary, I am honored to affirm DOE's commitment to the principles of equal employment opportunity (EEO) in the workplace. As you know, I am also committed to a more diverse workforce that yields creative and effective solutions, prioritizing an inclusive workplace so that when we hire people, they feel valued.

Equal employment opportunity in the workplace ensures that all employees have the freedom to compete on a fair and level playing field. This policy statement serves to remind all employees and applicants for employment of their rights and responsibilities under the law, and provides information on how you can seek assistance if you believe that you have experienced employment discrimination or harassment.

First, no applicant or employee will be subjected to discrimination in any aspect of employment on the basis of race, color, sex (including pregnancy, gender identity, and sexual orientation), religion, national origin, age, disability (physical or mental), genetic information, or retaliation for participation in protected EEO activity.

Second, no applicant or employee will be subjected to harassment (sexual or non-sexual). Non-sexual harassment is any unwelcome conduct (verbal, written, or physical) based on discrimination that: (1) has the purpose or effect of unreasonably interfering with an employee's work performance; (2) creates an intimidating, hostile, or offensive work environment; or (3) affects an employee's employment opportunities or compensation.

Sexual harassment is any unwelcome behavior of a sexual nature. This includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, physical conduct of a sexual nature, or other similar behavior. Sexual harassment is not limited to prohibited conduct by a male employee toward a female employee; a male may also be a victim of sexual harassment. Similarly, sexual harassment is not limited to the actions of a supervisory employee toward a nonsupervisory employee; the harasser may be an agent of the employer, a supervisory employee who does not supervise the victim, a coworker, or a non-employee.

This protection against discrimination and harassment extends to all management practices and decisions, including, but not limited to, recruitment and hiring practices, merit promotions, training, career development programs, benefits, transfers, reassignments, and separations from the Department. This means that employment-related decisions must be based on merit and not on discriminatory factors.

Employees are encouraged to promptly report discrimination or harassment to any management official or directly to their EEO office. To preserve their right to utilize the EEO complaint process, employees or applicants for employment must initiate contact with their respective EEO office within 45 calendar days of the date of the alleged discrimination, or within 45 calendar days from the date on which they reasonably became aware of the discrimination. Headquarters employees or applicants for employment should contact the Department's Office of Civil Rights and Diversity, at (202) 586-2218, regarding discrimination or harassment complaints. Field Site employees or applicants for employment should contact their local EEO office regarding discrimination or harassment complaints.<sup>1</sup> If a formal EEO complaint is filed and accepted (after completing the informal stage of the EEO process), a prompt, thorough, and impartial investigation will be conducted. It is important to note that the Department seeks to protect the confidentiality of discrimination and harassment allegations to the fullest extent possible, and shares information only with those who have a need to know in the performance of their official duties.

Employees and applicants for employment have the right to report incidents of discrimination or harassment without fear of retaliation. Retaliation is a form of discrimination where an employee is subjected to an adverse employment action or harassment, solely because he or she filed a charge of discrimination or harassment; participated in an EEO investigation, proceeding, or hearing; or participated in other protected activity in opposition to unlawful discrimination or harassment.

It is the responsibility of the Department to address matters before they reach the level of severe or pervasive harassment, with the goal of preventing harassment before employees have been subjected to actionable harm. As a result, the Department may conduct an inquiry into the matter, even in the absence of an EEO complaint.

The Department fully supports the use of Alternative Dispute Resolution (ADR) as a way to resolve conflict constructively and at the earliest opportunity. For more information regarding ADR resources, contact the ADR Office at (202) 586-4002, the Office of the Ombudsman at (202) 586-0500, or ask your local EEO office for details.


Combating the climate crisis, creating clean energy union jobs, promoting energy justice, and maintaining a secure nuclear deterrent is critical to our Nation. Unlawful discrimination and harassment in the workplace undermine our ability to achieve our mission. Accordingly, I expect each employee to honor the principles of EEO in the workplace. Any employee who engages in discrimination or harassment in violation of

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<sup>1</sup> Contact information for local EEO offices can be found by clicking on the hyperlink contained in the last paragraph of this policy statement.

the law or this policy may be subject to disciplinary action, including suspension or dismissal. Managers must act promptly and appropriately to eliminate and prevent discrimination and harassment in the workplace. Managers who have knowledge of an act of possible discrimination or harassment should contact their local EEO or [Labor and Employee Relations Office](#) for guidance.

For more information regarding discrimination or harassment in the workplace, or additional information on how to file an EEO complaint, please visit the Office of Civil Rights and Diversity webpage: [EEO Complaint Process | Department of Energy](#).

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	<h2>Chapter 400/713C: BPA Equal Employment Opportunity and Non-Discrimination Policy</h2> <p>Part: Personnel</p>	<b>Date:</b> 11/30/11

### 400/713C.1 PURPOSE


This chapter establishes Bonneville Power Administration's (BPA's) equal employment opportunity and nondiscrimination policy which implements and assures compliance with Federal nondiscrimination laws, regulations, merit system principles, and related U.S. Department of Energy orders and policies.

This policy is founded on the following principles:

1. BPA employees work in an environment that fosters equal opportunity for all to reach their full potential.
2. BPA business needs, coupled with individual performance and productivity are the determining factors that guide management's employment and personnel decisions.
3. Management-based employment and personnel decisions are not compromised by personal biases that hinder sound judgment and adversely affect our work environment.

### 400/713C.2 DEFINITIONS

- A. Equal Employment Opportunity (EEO)** means that all individuals must be treated equally in the hiring process, in training, in promotions, and in employment decisions. Each person has the right to be evaluated as an individual on his or her qualifications without discrimination based upon protected characteristics.
- B. Diversity** is defined as the human differences and similarities such as language, ethnicity, race, lifestyle, talent, education, background, life experience, culture, disability, age, class, and other unique characteristics. A diverse environment is one that embraces diversity of thought, is inclusive, and promotes innovation and creativity.
- C. Discrimination** is treating individuals or groups less favorably than others in job-related matters, when an otherwise neutral policy and/or practice has a disparate impact on an individual or a particular group and/or because a decision is based on one or more protected characteristic.
- D. Job-related matters** are the terms and conditions of employment including, but not limited to, appointment, selection, work assignments, training, awards, advancement and promotional opportunities, reassignments, leave, details or temporary assignments, and performance evaluation appraisals.
- E. Genetic Information** includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.


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- F. Harassment** is adverse treatment based on an employee's race, color, sex (with or without sexual conduct), religion, national origin, age, disability, genetic information, or because the employee opposed job discrimination or participated in an investigation or complaint proceeding under the EEO statutes. Conduct must be sufficiently frequent or severe to create a hostile work environment or result in a "tangible employment action," such as hiring, firing, promotion, or demotion.
- G. Sexual harassment** is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment or unreasonably interferes with an individual's work performance. This includes quid pro quo, which is when an individual's submission to or rejection of sexual advances or conduct of a sexual nature affects employment decisions such as promotions, transfers, raises, etc.
- H. Hostile work environment harassment** is defined as unwelcome comments or conduct based on a person's sex, race, or other protected characteristic which unreasonably interferes with an employee's work performance or creates an intimidating or offensive work environment.
- I. Protected characteristic** is defined as a person's race, color, sex, national origin, religion, age (40+), disability, sexual orientation, and/or genetic information.
- J. Sexual orientation** is defined as homosexuality, bisexuality, or heterosexuality, whether such orientation is actual or perceived.
- K. Sexual orientation discrimination or harassment** is adverse treatment directed at persons who are gay, lesbian, bisexual or transgender, who are perceived to be gay, lesbian, bisexual or transgender or who associate with persons who are gay, lesbian, bisexual or transgender.
- L. Retaliation occurs** when an employment or personnel action is taken against an individual for filing an EEO informal or formal EEO complaint of discrimination, participating in a protected activity, or otherwise opposing discrimination.

**Protected activities** include seeking or participating in the EEO Counseling process; filing a formal EEO complaint; serving as a witness in an EEO investigation or at a hearing; informally protesting discriminatory employment practices; making complaints to management of perceived discrimination; writing critical letters about or protesting discrimination by industry or society in general; or expressing support of co-workers who have filed formal EEO complaints. A protected activity can also include requesting a reasonable accommodation based on religion or disability.

**400/713C.3 POLICY**

It is the policy of the Government of the United States and BPA to promote and maintain equal employment opportunity for all its employees and job applicants, and to prohibit discrimination in all aspects of agency personnel policies, operations, working conditions, and relationships with employees and applicants, including, but not limited to recruitment, hiring, retention and merit promotion. BPA policy protects against

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retaliation for participating in the EEO process or for opposing any unlawful practice, and promotes programs of affirmative recruitment and employment at all levels of the organization along with the right to work, compete, and advance on the basis of merit, ability and potential. BPA complies with, and will implement to the full extent, all applicable laws and regulations that promote equality of opportunity.

BPA prohibits all forms of harassment. BPA managers and supervisors are responsible for preventing, documenting and promptly correcting harassing conduct in the workplace. Employees are encouraged to report incidents of harassment.

BPA's managers and supervisors shall make employment decisions based upon merit. They shall not use non merit factors of race, color, religion, sex (male/female, sexual harassment, and/or pregnancy), national origin, age (40+), disability (physical/mental), genetic information (GINA), sexual orientation, retaliation or other bases prohibited by applicable law or statute to make employment decisions.

BPA adheres to Presidential Executive Orders and other laws designed to protect federal employees including the prohibitions against discrimination based on political affiliation, status as a parent, marital status and/or veteran status.

Discrimination, harassment, and/or retaliation is not acceptable and any employee, manager, supervisor or executive engaging in discrimination, harassment and/or retaliation is subject to disciplinary action, including termination from government service.


#### **400/713C.4 LOCATIONS COVERED**

This policy applies to all BPA work environments, including the areas in and around BPA buildings, facilities, fitness centers, vehicles, food service areas, break locations, day-care centers, and any other areas or conveyances where BPA employees work or where work-related activities occur, including official travel.

#### **400/713C.5 RESOURCES**

**A. BPA employees may seek information from any of the following resources in any order they choose:**

1. Any BPA management official (supervisors, managers, executives and/or strategic business partners)
2. Any member of the Civil Rights and Equal Employment Opportunity Office staff: (503) 230-4725 or (800) 305-7341
3. An EEO Counselor: (503) 230-3451 or (800) 631-1931
4. The Alternative Dispute Resolution Coordinator or The Dispute Resolution Message Line: (800) 631-1931

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5. The Employee Assistance Program : Call or visit Providence Health Services EAP at (503) 215-3561 in Portland, or (800) 255-5255 outside the Portland area
6. A Union Steward
7. BPA Ombuds (not available to AFGE union members) (800) 798-7616
8. HR Help (503) 230-3230

**B. Applicants for employment may seek information from:**

1. Any member of the Civil Rights and Equal Employment Opportunity Office staff (503) 230-4725 or (800) 305-7341
2. An EEO Counselor (503) 230-3451 or (800) 631-1931
3. HR HELP (503) 230-3230
4. Any BPA management official (supervisors, managers, executives and/or strategic business partners)

**400/713C.6 COMPLAINT PROCESS**

Any situation perceived as discrimination, harassment and/or retaliation for using the EEO process or opposing a discriminatory action or event must be brought to an EEO Counselor **within 45 calendar days** of the alleged discriminatory, harassing or retaliatory action and/or event. Completion of informal EEO Counseling is required before a formal EEO complaint of discrimination may be filed. A reasonable amount of excused absence, with management discretion and approval, is granted to pursue informal EEO counseling and for the processes associated with formal EEO complaints of discrimination.

**400/713C.7 PENALTIES**

- A. Any federal employee, manager, supervisor, or executive, engaging in discrimination, harassment and/or retaliation is subject to appropriate disciplinary actions which may include termination from government service.
- B. Contractor personnel engaging in discrimination, harassment and/or retaliation face disciplinary action which is determined and carried out by the contracting organization.

**400/713C.8 REFERENCES**

- A. Title VII, Civil Rights Act of 1964, as amended
- B. Civil Rights Act of 1991
- C. Rehabilitation Act of 1973, Sections 501 and 505, as amended
- D. Equal Employment Opportunity Act of 1972 (P.L. 92-261)
- E. Fair Labor Standards Act of 1974 (P.L. 93-259)
- F. Age Discrimination in Employment Act of 1967, as amended





# BPA MANUAL

## Chapter 400/713C: BPA Equal Employment Opportunity and Non-Discrimination Policy

Part: Personnel


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- G.** Civil Service Reform Act of 1978 (P.L. 95-454)--Merit System Principles and Prohibited Personnel Practices
- H.** Equal Pay Act of 1963, as amended
- I.** 29 CFR 1614, Federal Sector Equal Employment Opportunity
- J.** Equal Employment Opportunity Commission (EEOC) Management Directive 110--Federal Sector Complaint Processing
- K.** EEOC Notice: 915.002, Dated 6/18/99, Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors
- L.** EEOC Notice: N-915-050, dated 3/19/90, Policy Guidance on Current Issues of Sexual Harassment
- M.** Executive Order 13087, Sexual Orientation, dated May 29, 1998
- N.** Title II of the Genetic Information Non-Discrimination Act of 2008 (GINA) (effective November 2009), EEOC published final regulations on November 9, 2010
- O.** 29 CFR 1607, Uniform Guidelines on Employee Selection Procedures
- P.** Executive Order 11246, Part II, Equal Employment Opportunity--Nondiscrimination in Employment by Government Contractors and Subcontractors
- Q.** 41 CFR 60, Office of Federal Contract Compliance Programs Equal Employment Opportunity
- R.** BPA Manual Chapter 400/752A, BPA Harassment Free Workplace Policy
- S.** BPA/CPTC Collective Bargaining Agreement
- T.** BPA/CPAEC Collective Bargaining Agreement
- U.** BPA/Professional Collective Bargaining Agreement
- V.** BPA Personnel Letter 630-1-04, Excused Absences (Administrative Leave) Procedures and Requirements, See IV. Non-discretionary individual excused absences; F. Equal Employment Opportunity Activity
- W.** BPA Personnel Letter 713-01, Disability, Race/National Origin, and Sex Identification
- X.** BPA Personnel Letter 720-01, Equal Employment Opportunity (EEO) Collateral Duties
- Y.** BPA Personnel Letter 752-02, Guidance on Violent and Threatening Behavior in the Workplace
- Z.** BPA Personnel Letter 752-03, Harassment-Free Workplace Guidance
- AA.** BPA Personnel Letter 900-01, Policy on Alternative Dispute Resolution (ADR) for Workplace Disputes and Conflicts at BPA
- BB.** BPA Personnel Letter 900-02, BPA Reasonable Accommodation Plan
- CC.** BPA Personnel Letter 900-03, Application of Equal Employment Opportunity (EEO) Laws to Contractors

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**400/713C.9 REVIEW**

This BPAM Chapter is scheduled for review in 2016.

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### 1110.1 PURPOSE

To provide Cyber Security policy on the use of BPA Information Technology Services. This policy applies to all personnel who have authorized access to BPA facilities and sites, including BPA federal and contractor employees and visitors. This policy applies to all BPA IT Equipment as defined in Chapter 1110.


The misuse of BPA IT Equipment and Information Technology Services poses significant risks to mission and business of the BPA.

### 1110.2 DEFINITIONS


- A. **Authorized Systems Users** are BPA federal and contractor employees who have (1) undergone and passed a background security screening in accordance with current federal requirements; (2) been issued physical access; (3) been issued a logon account to the Bonneville User Domain (BUD) administrative network and/or access to any other BPA computer system or network; and (4) taken the mandatory annual Security and Emergency Management and Cyber Security training and have been validated as completing that training.
- B. **Blog** is short for **web Log**. A blog is a Web page that serves as a publicly accessible personal journal for an individual, group, or community, including businesses. Typically updated daily, blogs often reflect the personality of the author.
- C. **Businesslike** is practical and unemotional, purposeful and earnest; exhibiting methodical and systematic characteristics that would be useful in business.
- D. **BPA Authorized Installers** are designated personnel who are authorized to install, update and remove BPA licensed software on workstation (desktop or laptop) computing devices. In addition, BPA Authorized Installers are authorized to install, modify and move BPA IT Equipment.
- E. **BPA Cyber Security** is the official organization responsible for development, issuance, and enforcement of policy relating to BPA IT Equipment. Cyber Security's governance is based on federal laws, regulations, DOE Orders and BPA guidelines. All Cyber Security policies and other materials can be found on the [Cyber Security Office web site](#).
- F. **BPA federal employees** are employees and supervisors employed by the federal government and BPA.
- G. **BPA's Harassment-Free Workplace Policy** is provided by BPA Manual Chapter 400/700A, Appendix A.
- H. **BPA IT Equipment** includes BPA's computer networks and any authorized BPA-owned computing device or component that can be attached or connected to BPA's computer network. BPA IT Equipment includes desktop computers and monitors, laptop and portable computers, software, freeware, personal digital assistants (PDAs), telephones, digital cameras, cell phones, smart phones, facsimile machines, pagers, copiers, photocopiers, printers, scanners, servers, fixed or portable storage devices (flash drives), routers, peripheral devices and multi-purpose machines (combined facsimile, printer and copier).
- I. **BPA IT Support Staff** are designated personnel who are authorized to support and modify certain settings on workstation (desktop or laptop) computing devices. They are reached by contacting the Help Desk.
- J. **BPA Supervisors** are BPA federal employees whose position duties include performance and/or conduct supervision of other BPA federal employees.
- K. **Broadcast e-mail** is the distribution of an e-mail message to a large group (50 or more) of BPA federal and contractor employees, rather than addressing the e-mail message to a limited number of specific, individually-named BPA employees or other recipients.

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- L. **Chain e-mail** is the electronic equivalent of the chain letter which is a letter that explicitly directs the recipient to distribute copies of the letter to others.
- M. **Chat Room** is a web site, part of a web site, or part of an online service, that provides a venue for communities of users with a common interest to communicate in real time. Forums and discussion groups, in comparison, allow users to post messages but don't have the capacity for interactive messaging.
- N. **Configuration Settings** are persistent or saved values that describe operational parameters for software, including operating systems and hardware. Configuration settings are standardized at BPA and users are prohibited from changing those settings. For example, password changes are set for every ninety days as a standard configuration setting on the BPA administrative network.
- O. **Contractor** is defined by the Bonneville Purchasing Instructions (BPI) in part 1.8, page 1-5 as a firm or individual that currently has a contract to supply goods or services to BPA.
- P. **Contractor employee** is the employee of a contractor or is an independent contractor who has a contract with BPA to provide personnel to perform specific tasks. The contractor-BPA employee relationship is governed by the BPA contract and managed by the Contracting Officer (CO) and the Contracting Officer's Technical Representative (COTR).
- Q. **Contracting Officer (CO)** is the BPA official delegated to award binding contracts on behalf of BPA to contractors and who is responsible for appointing and Contracting Officer's Technical Representative (COTR) to administer the contract.
- R. **Contracting Officer's Technical Representative (COTR)** is appointed by the Contracting Officer by a delegation letter and administers the contract after it has been awarded. For the purposes of this Chapter, the COTR is the person who performs the day-to-day management of the contract.
- S. **Controlled Access Point** is a restricted communication boundary through which an authorized software connection can be made to a computer system on the other side.
- T. **Data** are the plural of datum and are distinct or discreet pieces of information usually formatted as data types (integer, string, etc.) and can exist electronically in database files, free text files, spreadsheet files. Data typically has no syntactical or grammatical meaning with regard to human use. Computers are capable of using such data.
- U. **Database** is a collection of information stored in a computer in a systematic way, such that a computer program can consult it to answer questions. The software used to manage and query a database is known as a database management system (DBMS).
- V. **Download** is the transfer of electronic files from a source to a destination. **Downloading** is the process of transferring electronic files from a source to a destination.
- W. **Dual Use IT Equipment** is IT Equipment that is used as both Administrative/General Purpose IT Equipment and Operational and Control IT Equipment and that may be authorized for access on the BUD administrative network with Cyber Security's authorization.
- X. **Electronic mail (e-mail)** is the exchange of computer-stored messages and attachments (files) across a network, which includes the Internet, using BPA-provided IT Equipment. The author of an e-mail message creates and sends (including forwarding of and/or replying to a received e-mail message) the e-mail message to one or more recipients by specifying the recipients' e-mail address. An e-mail author can also send a message to several recipients at once using a group e-mail address. Sent and received e-mail messages are stored in electronic mailboxes until retrieved by the e-mail user.

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- Y. File** is an electronic collection of binary digits (bits) and bytes (eight bits) typically characterized by a file name and an extension, although in some operating systems, a file extension is not mandatory. A file may contain text, images, motion pictures, binary data, delimited data, audio samples, Internet pages among others.
- Z. Financial Transaction** is an exchange or transfer of money from one account to another using BPA IT Equipment.
- AA. Freeware** may be commercial or non-commercial software that is available to the public at no charge. Often the licensing agreement does not contain terms acceptable to BPA. Freeware is high risk software that is typically not supported by a formal organization nor well tested or built on industry standards. It poses a significant risk to the BPA computing environment and is only permitted with Cyber Security approval. It may not be downloaded or installed without express approval.
- BB. Gambling** (gaming, betting) is to play at any game of chance for money or other stakes using BPA IT Equipment.
- CC. Guidance** is information that provides direction or advice as to a decision or course of action.
- DD. Improper Use** is that which meets the criteria of unsuitable, improper or inappropriate as defined in this Chapter and in additional Cyber Security and Employee Relations policies currently in force.
- EE. Incremental Charges** are financial charges levied on BPA that can be traced back to the specific usage incidence and the BPA federal and contractor employee responsible for incurring that charge. An example of such a charge would be calls made via cellular phone that are itemized on the monthly bill from the cell phone provider.
- FF. Information** is data that has been processed to add or create meaning for the person who receives it.
- GG. Information Technology (IT)** is any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.
- HH. Internet (or Net or Web or World Wide Web)** is a global network connecting millions of computers in which users at any one computer can, if they have system permission, get information from any other computer (and sometimes communicate electronically directly to users at other computers). The interconnections between so many computers and computer users, makes the Internet a highly efficient tool for research and communication. It also poses significant vulnerability to Internet users from malicious software.
- II. IT Acquisition Review Board (ITARB)** - deleted 01-12-2007. The ITARB ceased functioning during the revision of this document.
- JJ. Non-work time** is defined as the time before an employee's workday begins, after the workday ends, or during lunch.
- KK. Operational and Control IT Equipment** is any standalone BPA IT Equipment dedicated full time for control of the BPA electrical system and is not authorized for access on the BUD administrative network without Cyber Security approval.
- LL. Password** is a confidential/secret string of characters (letters, numbers, and other symbols) used in conjunction with a user ID to authenticate an identity or to verify access authorization.
- MM. Personal Financial Transaction** is an exchange or transfer of funds (monies) on BPA Equipment to procure personal goods or services or to pay personal invoices or bills.

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**NN. Personal IT Equipment** is any non-BPA IT Equipment.

**OO. Personal Use** is use of BPA IT Equipment by BPA federal and/or contractor employees for non-BPA business and is defined by BPA Manual Chapter 1110A: Allowance for Limited Personal Use of BPA Information Technology Equipment.

**PP. Pornography** is pictures and/or writings of sexual activity intended solely to excite lascivious feelings, of a particularly blatant and aberrational kind such as acts involving children, animals, orgies, and all types of sexual intercourse.

**QQ. Posting** is publishing information, documents, images or audio in an online environment such as a web site, chat room, message board, blog.

**RR. Peripheral Devices** are computer devices, such as a DVD-ROM drive, flash drive or printer, that is not part of the essential computer, i.e., the memory and microprocessor. Peripheral devices can be external – such as a mouse, keyboard, printer, monitor, external hard drive or scanner – or internal, such as a DVD-ROM drive, DVD-R drive or internal modem. Internal peripheral devices are often referred to as integrated peripherals.

**SS. Personally Identifiable Information (PII)** is any information about an individual maintained by an agency, including, but not limited to education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual. [Source: [Cyber Security Policy](#) BPA-20060809-001]

**TT. Presentation Settings** refer to the Microsoft Windows Screen Saver Display Properties menu which controls the appearance of the software on the display screen. Display Properties consist of settings for screen resolution and color depth, desktop background image (wallpaper), screen saver settings, configuration, and images, and appearance of windows and buttons.


**UU. The Privacy Act of 1974, 5 U.S.C. § 552a (2000)** is generally characterized as an omnibus “code of fair information practices” that attempts to regulate the collection, maintenance, use, and dissemination of personal information by federal executive branch agencies.

**VV. Remote Access Service (RAS)** is the ability to gain authorized access to BPA IT Equipment through a controlled access point from locations outside the BPA work environment. Cisco's Virtual Private Network (VPN) is an example of software used to permit secure authorized access through a controlled access point.

**WW. Sensitive Unclassified Information (SUI)** includes unclassified information requiring protection mandated by policy or laws, such as Privacy Act Information, proprietary information, Export Control Information (ECI), Unclassified Controlled Nuclear Information (UCNI), and Personally Identifiable Information (PII). [Source: US-DOE: Protection of Sensitive Unclassified Information, Including Personally Identifiable Information, September 6, 2006.]

**XX. Shareware** is essentially non-commercial software created by independent software developers that is often free but sometimes requires users to pay a license fee. Often the licensing agreement does not contain terms acceptable to BPA. Shareware is also high risk software that is typically not supported by a formal organization and not well tested. It poses a significant risk to the BPA computing environment and is only permitted with Cyber Security approval. It may not be downloaded or installed without express approval.

**YY. Standards of Ethical Conduct for Government employees** are defined by 5 CFR § 2635.

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**ZZ. User** is any federal and/or contractor employee authorized to use BPA IT equipment.

**AAA. User ID (userid, user identification)** is one half of the authentication identifier assigned to authorized users that is required with the user's password to access computer systems that require authentication.

**BBB. Weapon** is any instrument or instrumentality used defensively for fighting, combat, and hunting such as but not limited to a semi-automatic or automatic gun (hand gun, pistol, revolver, rifle, etc.), ammunition, gun parts, sword, knife, missile, spear, bomb, explosive chemicals or parts or incendiaries.

### 1110.3 POLICY

This policy is promulgated under the authority of Title III – Information Security, Federal Information Security Management Act of 2002, Chapter 35 of Title 44, United States Code, § 3544. Federal agency responsibilities A.3.(C) “developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements.”

This policy replaces as of January 03, 2007, the existing BPA Manual Chapters 1110 and 1111 by combining them into one chapter and addressing limited personal use as a distinct subchapter for clarity.

This policy is supplemented by the Program Cyber Security Plan (PCSP) which is posted on the [Cyber Security site](#).

Questions regarding this policy should be sent to the [Cyber Security mailbox](#).

#### A. PURPOSE AND SCOPE

The purpose of this policy is to provide policy and procedures to federal and contractor employees and supervisors regarding the proper business-related use of BPA Information Technology (IT) Equipment. This policy provides notice to BPA federal and contractor employees and supervisors of the consequences for improper use of BPA IT Equipment. BPA IT Equipment represents a significant investment of BPA resources and its proper use is essential to the efficiency of the service that BPA provides.


This policy applies to all BPA federal and contractor employees. Contractor employee oversight or supervision is the responsibility of the contract company by which the contractor employee is employed. The conduct of the contractor employee in the performance of BPA business is subject to the contents of this Chapter and is managed through the contractual relationship between BPA and the contractor.

#### B. POLICY STATEMENT FOR BUSINESS-RELATED USE OF BPA IT EQUIPMENT

Except as provided by BPA Manual Chapter 1110A, BPA IT Equipment is to be used **only** by BPA federal and contractor employees who are Authorized System Users and **only** for BPA activities related to and consistent with the performance of BPA's mission and in a manner approved by this policy and consistent with Cyber Security policy or by authorized BPA personnel to determine proper use when this policy does not speak to a particular issue. This policy is intended to apply whether the work of BPA federal and contractor employees is being done within the BPA work environment or working on BPA IT Equipment from a remote location.

#### C. RESPONSIBILITY FOR PROPER AND APPROPRIATE USE OF BPA IT EQUIPMENT

BPA federal and contractor employees are responsible for knowing and understanding current BPA policy regarding the use of BPA IT Equipment, including the limits to personal use established in Chapter 1110A, and conforming their use to such policy. BPA Supervisors are responsible for ensuring that BPA federal employees, under their supervision are current in their understanding of BPA policy regarding the use of BPA

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IT Equipment, monitoring such use, and taking appropriate actions pursuant to BPA policy to correct improper use. Contracting Officers (COs)/Contracting Officer's Technical Representatives (COTRs) are responsible for ensuring that contractor employees through their contractor manager are current in their understanding of BPA policy regarding the use of BPA IT Equipment, monitoring such use, and taking appropriate actions to correct improper use.

#### **D. CONSEQUENCES OF IMPROPER USE OF BPA IT EQUIPMENT**

BPA federal and contractor employees having authorized access to BPA IT Equipment have an obligation to understand this policy and to limit their use to the activities it allows. BPA Supervisors and Contracting Officers (COs)/Contracting Officer's Technical Representatives (COTRs) have an obligation to understand this policy and monitor the activities of BPA federal and contractor employees, respectively, sufficiently to ensure that conduct is consistent with this policy. Failure of BPA federal and contractor employees or BPA Supervisors or the CO/COTR to satisfy their obligations may subject the employee to loss of authorized system use and/or in the case of BPA federal employees to possible disciplinary action. Contractor employees may be released in accordance with the contract terms. Improper use that is suspected of violating federal laws will be reported to the appropriate law enforcement agencies.

#### **E. POLICY REGARDING ALL BPA IT EQUIPMENT INVOLVING COMPUTERS**


The following guidelines are provided to BPA federal and contractor employees and BPA Supervisors as guidance for the proper use of BPA's IT Equipment. These guidelines do not constitute the totality of rules regarding proper use of BPA's IT Equipment involving computers. For circumstances not covered by these items, see BPA IT Equipment (BPAM 1110.3.B) and the [Cyber Security Office web site](#).

1. Only BPA provided and supported IT Equipment may be connected to BPA IT Equipment. This includes connections of desktop computer systems to BPA computer network and/or connections of any peripheral device to a desktop computer that is connected to the BPA computer network.
2. Only authorized BPA IT Support Staff is permitted to modify the configuration of settings for BPA IT Equipment, including computers. BPA federal and contractor employees may, however, change desktop presentation settings (e.g., wallpaper, screen resolution, speaker volume) as provided for by BPA-approved software. In addition, BPA federal and contractor employees may make modifications under the direction of the Help Desk when troubleshooting problems.
3. Only BPA Authorized Installers are permitted to install, modify, or move BPA IT Equipment. All other persons are not authorized to install, modify or move BPA IT Equipment. Unauthorized movement, modification or installation places the BPA IT Equipment being moved and the BPA computer network in jeopardy. In addition, the location of all BPA IT Equipment must be tracked under BPA's IT Equipment asset management program.
4. No software will be installed on BPA IT Equipment without proper authorization, which must include an approved Cyber Security review. This prohibition includes downloading executable files from the Internet, downloading software purchased by BPA federal and contractor employees for personal use, downloading freeware or shareware, downloading or receiving media for demonstration of Beta versions of software provided by outside vendors or provided by other BPA federal and contractor employees. A list of currently approved software is maintained by BPA's IT Program Management (NJM) organization.

#### **F. GUIDANCE SPECIFIC TO USE OF BPA'S E-MAIL SYSTEM**

Authorized system users are encouraged to communicate with others using BPA's e-mail whenever appropriate. However, its use is subject to the following guidelines which are provided to BPA federal and




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contractor employees and BPA Supervisors as guidance as to the proper use of BPA's e-mail system. These guidelines do not constitute the totality of rules regarding proper use of BPA's e-mail system. For circumstances not covered by these items, BPA federal and contractor employees and BPA Supervisors should consult the basic policy for use of BPA IT Equipment (BPAM 1110.3.B) and the [Cyber Security Office web site](#).

Cyber Security may disable an e-mail account that is in violation of BPA policy or that poses a threat to the BPA network. Cyber Security may be directed by the Supervisor to disable an e-mail account.

1. The BPA e-mail system and its contents, including attachments, are federal government property. As such, all messages sent with BPA's e-mail system, including those allowed by the Personal Use Allowance (BPAM Chapter 1110A), must be businesslike. Failure to use BPA's e-mail system in accordance with the above can put BPA and BPA federal and contractor employees at risk for legal liabilities, embarrassment, adverse business impacts, and other economic consequences. Upon request to Employee Relations, BPA Supervisors, have the right to review any e-mail messages, including attachments, put on the BPA e-mail system by BPA federal and contractor employees. Cyber Security and Cyber Security directed by law enforcement requests have the right to review any e-mail messages, including attachments, put on the BPA e-mail system by federal and contractor employees. BPA federal and contractor employees who have stored BPA e-mail on personally owned computing devices accept the obligation to make such e-mail available to Cyber Security.
2. BPA e-mail messages could become evidence in legal proceedings. If BPA federal and contractor employees' e-mail messages are requested under the Freedom of Information Act or litigation discovery process, BPA federal and contractor employees will be responsible for reviewing messages in their e-mail storage files and producing any responsive messages. If BPA federal and/or contractor employees store personal files not created for BPA work on BPA IT Equipment, then those files would be subject to disclosure.
3. BPA federal and contractor employees are responsible for the security of their individual BPA e-mail files and any e-mail messages they send using the BPA e-mail system. BPA federal and contractor employees should be aware that message recipients can forward the message to any number of individuals and messages may accidentally be delivered to the wrong recipient. In other words, when a BPA federal and/or contractor employee sends an e-mail message, the sending BPA federal and/or contractor employee has no control where the message may eventually go and who will read it. Care should be taken in both the preparation and sending of e-mail messages to minimize the risk that the messages will be received by unauthorized recipients. Messages sent using the BPA e-mail system and sent outside the BPA work environment will be identified as originating within BPA. Special care should be taken to ensure that such messages will only be received by intended recipients.
4. Because of the difficulty of ensuring complete security (see above), the BPA e-mail system should not be used to communicate sensitive unclassified information (SUI) without the proper safeguards authorized and provided by Cyber Security. When BPA e-mail is the only viable method of completing such communications, BPA federal and contractor employees should use extra care to ensure that the e-mail message is correctly addressed and that it will not be forwarded.
5. If the content of a BPA e-mail message possesses longer-term business value, BPA federal and contractor employees are encouraged to consider other methods of communicating the message, and if BPA e-mail is the appropriate method, to remove the e-mail message from the BPA e-mail system to a more permanent storage system. The minimum period of retention of BPA e-mail is thirty (30) days. All e-mail messages stored in the BPA e-mail system will be automatically purged (deleted) upon the

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expiration of that minimum period or the period established by additional policy. Some e-mail messages may constitute Official Records. Specific guidance as to the retention of Office Records is provided in the [BPA Records Manual](#).

6. Only BPA's Standard e-mail services are authorized for installation and/or use on the BPA e-mail system. BPA federal and contractor employees are not authorized to install or access any other e-mail systems (e.g., accessing an e-mail service from the Internet or third-party provider). Use of any other e-mail system or services (e.g., an e-mail service from the Internet or a web-based e-mail system via BPA Internet services) is prohibited.
7. Auto-forwarding of e-mail from the BPA's e-mail system to any other e-mail system is prohibited. Auto-forwarding of a personal e-mail into the BPA e-mail system is also prohibited.
8. Only the BPA Security and Emergency Management Office, BPA Corporate Communications, and the Office of the Chief Information Security Officer (CISO) and such BPA employees and/or organizations designated by the BPA Administrator are permitted to use the BPA e-mail system to broadcast messages. Otherwise, BPA federal and contractor employees are not permitted to use the group addressing capability of the BPA e-mail system to broadcast e-mail messages.
9. Using the BPA e-mail system for fund-raising activities other than by authorized BPA employees is prohibited.
10. Sending any passwords in an e-mail or as an attachment using the BPA e-mail system is prohibited unless the e-mail is encrypted with authorized BPA encryption software. Use of encryption must be approved by Cyber Security.
11. Sending Privacy Act of Personally Identifiable Information (PII) in an e-mail or as an attachment using the BPA e-mail system is prohibited unless the e-mail is encrypted with authorized BPA encryption software. Use of encryption must be approved by Cyber Security.
12. The BPA e-mail system may not be used for any illegal activity as defined by state or federal law, regardless of whether or not the state law applies to BPA. State laws shall include all the states in which BPA operates in which BPA is subject to by contract.
13. The BPA e-mail system may not be used to distribute chain e-mails (i.e., electronic chain letters).

### **G. GUIDANCE SPECIFIC TO USE OF BPA'S INTRA/INTERNET EQUIPMENT**

The following items are provided to BPA federal and contractor employees and BPA Supervisors as guidance to the proper use of BPA's Internet Equipment. This list of guidance items does not constitute the totality of rules regarding proper use of BPA's Internet Equipment. For circumstances not covered by these items, BPA federal and contractor employees and BPA Supervisors should consult the basic policy for use of BPA IT Equipment (BPAM 1110.3.B) and consult with their supervisors and Cyber Security.

1. Because of the continuous and dynamic risk inherent in the necessary connection between BPA Intra- and Internet and the Internet as a whole, BPA is continuously assessing, altering, adjusting and revising its policies and technologies to ensure the security of BPA's Intra- and Internet connections. Cyber Security continuously monitors Internet access and may block access to any Internet site it determines may create an unacceptable risk to BPA.
2. Upon the Supervisor's (federal employees) or the CO/COTR's (contractor employee) or law enforcement's request or as result of an intrusion detection alert or monitoring alert, Cyber Security may at its discretion review an individual's Internet usage.

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3. Internet posting of BPA business or security-related information, which includes BPA e-mail addresses, sensitive information or PII, for access either internally or externally is prohibited without authorization. This prohibition applies to static postings and to interactive postings, such as “blog” or “chat room” sites.
4. Because of the mechanics of some kinds of Internet searches, BPA federal and contractor employees who encounter data during authorized, business-related Internet searches that is reasonably likely to violate federal law and/or BPA policy regarding proper use of BPA IT Equipment, should report the occurrence to their BPA Supervisors and/or to the BPA Cyber Security organization and follow instructions from those authorities for preventing recurrence. If BPA federal and contractor employees are notified either electronically or otherwise that their search activities have encountered such data, they should immediately cease and desist from such search and, if necessary, consult with Cyber Security as to how their authorized search activity may be conducted without causing such encounters.
5. BPA federal and contractor employees’ personal (non-business-related) use of BPA Internet Equipment should strictly adhere to the limits set forth in BPAM Chapter 1110A.
6. The following use of BPA’s Internet connection is strictly prohibited and such use may result in disciplinary action: (1) accessing and/or downloading any form of pornography or sexually explicit, or offensive material; (2) accessing on-line gambling or gaming web sites and/or engaging in any on-line gambling or gaming.
7. The following use of BPA’s Internet connection is strictly prohibited unless previously approved and supported by Cyber Security policy: accessing and conducting financial transactions in any form.


#### **H. GUIDANCE SPECIFIC TO USE OF BPA’S REMOTE ACCESS EQUIPMENT**

The following items are provided to BPA federal and contractor employees and BPA Supervisors as guidance on to the proper use of BPA’s Remote Access Equipment. This guidance does not constitute the totality of rules regarding proper use of BPA’s Remote Access Equipment. For circumstances not covered by this guidance, BPA federal and contractor employees should consult the basic policy for use of BPA IT Equipment (BPAM 1110.3.B) and consult with their supervisors.

1. The office of the Chief Information Security Officer (CISO) manages the approval of Remote Access Service. Verification, provided by BPA Supervisors, of the business need for Remote Access Services will be required prior to granting authorization.
2. Using BPA IT Equipment via Remote Access Services for personal (non-business-related) use shall strictly adhere to the limits set forth in Chapter 1110A.
3. Authorized connections to BPA IT Equipment using Remote Access Services must be terminated as soon as the need for the use has ceased. Remaining connected to BPA IT Equipment using Remote Access Services for extended periods when there is no need for the connection ties up limited resources. Such connections, when detected will be terminated unless specifically authorized through Cyber Security.
4. Use of non-BPA IT Equipment for remote access is strictly prohibited.

### **Chapter 1110A: Allowance for Limited Personal Use of BPA Information Technology (IT) Equipment**

#### **A. PURPOSE**

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The purpose of this allowance and exception from BPA's otherwise business-only policy with regards to the use of BPA IT Equipment is to provide guidance to BPA federal and contractor employees and BPA Supervisors regarding the proper personal use of BPA IT Equipment. BPA IT Equipment represents a significant investment of resources by BPA and proper use is essential to the efficiency of the service which BPA was created to provide. BPA federal and contractor employees having access to BPA IT Equipment have an obligation to understand this policy and to limit their use to the activities it allows. BPA Supervisors have an obligation to understand this policy and monitor the activities of their employees sufficiently to ensure that policy limits are adhered to. Failure of BPA federal and contractor employees or BPA Supervisors to satisfy their obligations may subject them to loss of system access, disciplinary actions, and/or immediate contract termination.

This allowance does not modify the requirements of the Standards of Ethical Conduct for employees of the Executive Branch [Title 5 Code of Federal Regulations (CFR), 2635], including the employee's responsibility to protect and conserve Government property, to use it for authorized purposes only, and to use official time in an honest effort to perform official duties [5 CFR 2635.704(a) and (b)]. Nothing in BPAM Chapter 1110A pertains to or restricts use of Government property by an employee to carry out his or her official duties and responsibilities in furtherance of the mission of BPA.

### **B. POLICY STATEMENT RELATED TO PERSONAL USE OF BPA IT EQUIPMENT**

BPA IT Equipment is to be used only for supervisor-authorized activities related to and consistent with the performance of BPA's mission, subject to the limited personal use allowance provided below.

### **C. LIMITED PERSONAL USE ALLOWANCE**

Personal use of designated BPA IT Equipment is allowed within the limits and prohibitions specified in this policy. This allowance does not grant or create an inherent right to use Government resources, and one should not be inferred.

Any personal use, even if ostensibly allowed by this policy, may be further limited or revoked at any time by BPA Supervisors or Cyber Security when circumstances warrant such action.


### **D. RESPONSIBILITY FOR PROPER AND APPROPRIATE PERSONAL USE OF BPA IT EQUIPMENT**

BPA federal and contractor employees are responsible for knowing and understanding current BPA policy regarding the use of BPA IT Equipment, including the limits to the allowance for limited personal use established by BPAM Chapter 1110A, and conforming their use to such policy. BPA Supervisors are responsible for

1. ensuring that BPA federal and contractor employees under their supervision and/or direction remain continuously current in their understanding of BPA policy regarding the use of BPA IT Equipment;
2. monitoring potential misuse as appropriate in conjunction with Cyber Security and Employee Relations; and
3. taking appropriate actions pursuant to BPA policy to correct inappropriate use when inappropriate use is observed or reported.

### **E. CONSEQUENCES OF IMPROPER PERSONAL USE OF BPA IT EQUIPMENT**

Failure of BPA federal and contractor employees or BPA Supervisors to satisfy their responsibility for proper and appropriate personal use of BPA IT Equipment may subject them to loss of system access and/or possible disciplinary actions or immediate contract termination.

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### F. APPLICATION OF NATIONAL SECURITY LEVELS TO LIMITED PERSONAL USE ALLOWANCE


The limited personal use allowance stated in BPAM Chapter 1110A.C applies to all BPA IT Equipment only when the national security level has been designated as Green. The allowance is further limited when the national security levels are other than Green as follows:

1. When the national security level has been designated as Orange or Red, there shall be no personal use of BPA IT Equipment unless otherwise authorized by Cyber Security.
2. When the national security level has been designated as Yellow, personal use allowance shall be permitted on BPA IT Equipment. However, web site and e-mail blocking may increase as the result of DOE, Homeland Security and other official advisories. Should increased web site and e-mail blocking become necessary, Cyber Security shall use official communication channels to notify the workforce in general provided such advisories are not sensitive or classified.
3. When the national security level has been designated as Green or Blue, the personal use policy shall be permitted on BPA IT Equipment. However, web site and e-mail blocking may increase as the result of DOE, Homeland Security and other official advisories. Should increased web site and e-mail blocking become necessary, Cyber Security shall use official communication channels to notify the workforce in general provided such advisories are not sensitive or classified..
4. In situations, where National Security Levels are not modified but there is a credible threat reported by law enforcement, Homeland Security, or the DOE Inspector General or DOE incident response (CIAC) or other official sources, Cyber Security may revoke limited personal use authorization throughout BPA until the threat has been cleared. Prior and subsequent to revocation or the threat being cleared, Cyber Security shall notify the workforce through official BPA channels.


### G. SPECIFIC PROHIBITIONS

In all cases, personal use of BPA IT Equipment on duty time is prohibited. That is, personal use of BPA IT Equipment is only permitted before the workday begins, after the workday ends or during lunch time. The following specific restrictions apply to BPA federal and contractor employees' personal use of BPA IT Equipment:

1. BPA federal and contractor employees are specifically prohibited from using BPA IT Equipment for any personal use that interferes with employees' official duties or reflects badly on the conduct of the federal service (this prohibition includes the use of language that would reflect badly on the federal service in otherwise allowed personal use instances). The prohibition especially prohibits gambling and the viewing or correspondence about and/or trading or procurement of weapons of any kind.
2. BPA federal and contractor employees are specifically prohibited from using BPA IT Equipment for any personal use that has been made unlawful by federal, state or local law (whether or not such state or local law governs the conduct of BPA as a federal agency).
3. BPA federal and contractor employees are specifically prohibited from using BPA IT Equipment to maintain or support a personal private business or to assist family, friends or other persons in such activities.
4. BPA federal and contractor employees are specifically prohibited from using BPA IT Equipment in any personal use that violates the Standards of Ethical Conduct for Government employees.

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5. BPA federal and contractor employees are specifically prohibited from personal use of BPA IT Equipment in a way that expressly or impliedly represents that BPA or the federal government has sanctioned or endorsed the specific purpose of the personal use.
6. BPA federal and contractor employees are specifically prohibited from using BPA IT Equipment in any personal use that communicates an express or implied threat or violates BPA's Harassment-Free Workplace Policy.
7. BPA federal and contractor employees are specifically prohibited from using BPA IT Equipment in any personal use that includes communication of material (language and/or pictures) that a reasonable person would find offensive (e.g., hate speech, material that ridicules others on the basis of race, gender, color, religion, disability, national origin, sexual orientation, educational and/or economic level).
8. BPA federal and contractor employees are specifically prohibited from using BPA IT Equipment in any personal use that creates a risk to BPA IT Equipment systems (e.g., when such use creates or increases the possibility of threats to BPA IT Equipment by malicious software [Malware]).
9. BPA federal and contractor employees are specifically prohibited from personal use of Operational and Control IT Equipment such as Instrument Controllers (ICs) under any circumstances.
10. While offsite, BPA federal and contractor employees are not permitted to use BPA IT Equipment to connect "directly" to the Internet using a modem (dial up), wireless or wired connection. All connections must be made to the BPA administrative network using VPN software or authorized software. A violation may result in the revocation of remote access privileges.
11. BPA federal and contractor employees are specifically prohibited from removing BPA IT Equipment from the BPA work environment in order to use such equipment for personal use. However, when there is a BPA business requirement to relocate BPA IT Equipment, such relocation may be done through the BPA established processes.
12. BPA federal and contractor employees are specifically prohibited from making purchases of any product for personal use using BPA IT Internet Equipment.
13. BPA federal and contractor employees are specifically prohibited from personal use of any BPA IT Equipment that is designated for classified use under the National Security Act.
14. BPA federal and contractor employees are specifically prohibited from personal use of BPA IT Equipment that imposes more than minimal additional expense to BPA unless authorized by BPA.
15. BPA federal and contractor employees are specifically prohibited from any personal use of BPA IT Equipment that gives the impression that the user is acting in an official capacity.
16. BPA federal and contractor employees are specifically prohibited from any personal use that requires the downloading (i.e., copying) from any non-BPA IT or BPA IT Equipment of large files (greater than five megabytes) such as documents, attachments, motion or still images, digital audio files, and data into BPA IT Equipment.
17. BPA federal and contractor employees are specifically prohibited from any personal use of a program or Internet site that provides continuous data streams to BPA IT Equipment, even if such streams are not stored as files within BPA IT Equipment (e.g., continuous stock quotes, radio broadcasts, news headlines, weather, etc.).
18. BPA federal and contractor employees are specifically prohibited from creating, downloading, viewing, storing, copying or transmitting sexually explicit or sexually oriented materials using BPA IT Equipment.

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19. BPA federal and contractor employees are specifically prohibited from participation in fundraising for any entity or activity other than authorized activity related to the Combined federal Campaign or Associates Functions using BPA IT Equipment.
20. BPA federal and contractor employees are specifically prohibited from participation in any political activity using BPA IT Equipment.
21. BPA federal and contractor employees are specifically prohibited from modification of BPA IT Equipment in any way to facilitate personal or BPA official business use.
22. BPA federal and contractor employees are specifically prohibited from installation of any non-BPA owned software or hardware devices on BPA IT Equipment to facilitate personal use.
23. BPA federal and contractor employees are specifically prohibited from any frequent personal use that may cause congestion, delay, or disruption of service to any BPA IT Equipment, including greeting cards, audio, and streaming video and audio, etc., unless authorized by Cyber Security.
24. BPA federal and contractor employees are specifically prohibited from personal use of BPA IT Equipment that involves unauthorized acquisition, use, reproduction, transmission, or distribution of controlled information (e.g., computer software and data; classified, business sensitive, or other nonpublic data; proprietary data; export controlled software or data; or any information in violation of the Privacy Act, copyright, trademark, or other intellectual property rights beyond fair use).
25. BPA federal and contractor employees are specifically prohibited from personal use of BPA IT Equipment that involves gaining authorized access to internal or external systems or networks.

#### **H. NO PRIVACY EXPECTATION FOR PERSONAL USE**


BPA federal and contractor employees should understand that there is no right and should be no expectation of privacy. BPA federal and contractor employees' use of BPA IT Equipment is always subject to supervision and such supervision may include supervisory review, including active monitoring through the use of monitoring tools, of BPA federal and contractor employees' use of BPA IT Equipment and the content of materials stored within BPA IT Equipment. Personal use of BPA IT Equipment by BPA federal and contractor employees implies consent by such employees to such review. BPA federal and contractor employees who wish their personal use activities to be private should not use BPA IT Equipment for personal use.

BPA federal and contractor employees should further understand that the content, whether personal or work related, stored within BPA IT Equipment is the property of BPA and may be disclosed in response to a valid subpoena, warrant, court order (including litigation discovery request), Freedom of Information Act (5 USC 552) request, or other authorized direction (e.g., BPA federal and contractor employees' supervisor, Cyber Security, Inspector General, etc.).

#### **I. GUIDANCE FOR ALLOWED PERSONAL USE**

The following examples are provided solely for the purpose of guidance for BPA federal and contractor employees and BPA Supervisors to understand what may be allowed as personal use of BPA IT Equipment. BPA federal and contractor employees and BPA Supervisors should not rely on these examples as specific grants of authority for the uses described. If BPA federal and contractor employees or BPA Supervisors are in doubt about whether a specific personal use is or is not allowed by this policy, they should always seek specific authority from their supervisors and/or Cyber Security.

#### **Examples:**


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1. Occasionally during work and non-work hours using e-mail or telephone, including voice mail, to keep in touch with family members/or significant others regarding work and/or school schedules (e.g., BPA federal and contractor employees calls or e-mails spouse to inform spouse she will be required to work overtime; BPA federal and contractor employee calls or e-mails dependant's school to confirm time of parent-teacher meeting, etc.). Occasional use is less than ten minutes during duty time unless otherwise authorized by a supervisor. Occasional use in this context are times outside of the non-work time definition.
2. Using e-mail or telephone to check on status of bank, credit union or TSP accounts under the non-work time definition not to exceed two (2) continuous hours in any non-work period.
3. Preparing and storing current resume and related materials on the local hard drive only under the non-work time definition with no time limit.
4. Accessing public library, newspaper and similar publicly available data that does not include downloading (copying) significant amounts of data or printing numerous or large documents on BPA printers under the non-work time definition not to exceed two (2) continuous hours in any non-work period. Any downloading of data must be to the local hard drive and must not occupy more than fifteen (15) percent of the available hard drive storage space.
5. Conducting research regarding personal travel arrangements or consumer matters (e.g., Kelly Blue Book information) on web sites under the non-work time definition not to exceed two (2) continuous hours in any non-work period.
6. Checking current or predicted weather on web sites under the non-work time definition not to exceed two (2) continuous hours in any non-work period.
7. Personal electronic images may be stored on the local hard drive but not on the H: drive or any other network drive, provided such photographs do not occupy more than fifteen (15) percent of the total data storage on the local hard drive, have been scanned for malicious software and are not in violation of any federal or state laws, regulations, policies or DOE Orders.
8. All BPA federal and contractor employees are permitted to use BPA IT Equipment for reasonable personal use via Remote Access Services (Dial-up, Internet, Wireless) on official travel status and in conjunction with a valid telecommuting agreement. The user must access the Internet through an authorized BPA access point using either the VPN software for wired and wireless connections or the authorized software for dial-up. Failure to follow this process may result in the revocation of remote access privileges.

#### 1110.4 RESPONSIBILITIES

**A. Federal and contractor Employees** are responsible for the knowledge and the understanding of current BPA policy regarding the use of BPA IT equipment, including the limits of personal use, established in Cyber Security Chapter 1110.A, and are to conform to the use of such policy. BPA federal and contractor employees, who have authorized access to BPA IT equipment, have an obligation to understand this policy and to limit their use to the activities as allowed. Failure of BPA **federal and contractor employees** or BPA supervisors or CO/COTRs to satisfy their obligations, may subject the employee to loss of authorized system use and/or in the case of BPA federal employees to possible disciplinary action.



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- B. **Supervisors** are responsible for ensuring that BPA **federal employees**, under their supervision are current in their understanding of BPA policy regarding the use of BPA IT equipment, monitoring such use, and taking appropriate actions pursuant to BPA policy to correct improper use. BPA supervisors have an obligation to understand this policy and monitor the activities of BPA federal employees sufficiently to ensure that their conduct is consistent with this policy.
- C. **Contracting Officers (CO) and Contracting Officer Technical Representatives (COTRs)** are responsible for ensuring that **contractor employees** working through their contractor manager, are kept current in their understanding of BPA policy regarding the use of BPA IT equipment, monitoring such use, and taking appropriate actions to correct improper (inappropriate) use. BPA Contracting Officers (COs)/Contracting Officer Technical Representatives (COTRs) have an obligation to understand this policy and monitor the activities of **contractor employees** sufficiently to ensure that their conduct is consistent with this policy. **Contractor employees** who do not comply with the policy may be released in accordance with the contract terms.
- D. **Contractors** are responsible for oversight or supervision of the **contractor employees** and ensuring adherence to these policies.

### 1110.5 PROCEDURES

No information in this section.

### 1110.6 REFERENCES

- A. **Pub. L. No. 93-579, Title 5 U.S.C. § 552a**, Privacy Act of 1974 (2000)
- B. **Pub. L. No. 107-347, Title III, 44 U.S.C. § 3544 (a)(3)(C)**, Information Security, Federal Information Security Management Act of 2002
- C. **5 CFR § 2635**, Standards of Ethical Conduct for Employees of the Executive Branch
- D. **5 CFR § 2635.704(a) and (b)**, Standards of Ethical Conduct for Employees of the Executive Branch
- E. **US-DOE: Protection of Sensitive Unclassified Information, Including Personally Identifiable Information**, September 6, 2006
- F. **BPA Manual Chapter 400/700A, Appendix A**, BPA's Harassment-Free Workplace Policy
- G. **BPA Program Cyber Security Plan (PCSP)**
- H. **Cyber Security Policy BPA-20060809-001**, Personally Identifiable Information (PII)