

SBA

SOP 37 11 5

Discipline and Adverse Actions

Office of Human Resources

U.S. Small Business Administration

Effective Date: August 31, 2001

Page

1



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**
National

SUBJECT: Discipline and Adverse Actions	S.O.P.		REV
	SECTION 37	NO. 52	2

INTRODUCTION

1. Purpose. To set-forth SBA's policy regarding the seriousness of, and appropriate response to, employee misconduct situations.
2. Personnel Concerned. All SBA employees, except where excluded.
3. Directives Canceled. SOP 37 52, 37 52 1A, 37 52 1B
4. Originator. Office of Human Resources.

AUTHORIZED BY: Nancy Q. Raum Assistant Administrator for Human Resources		EFFECTIVE DATE 08/31/01
		PAGE 1

SBA Form 989 (5-90) Ref: SOP 00 23 Federal Recycling Program Printed on Recycled Paper

This form was electronically produced by Elite Federal Forms, Inc.

Effective Date: August 31, 2001

2

Page

DISCIPLINE AND ADVERSE ACTIONS

Table of Contents

Paragraph	Page
Chapter 1.....	5
General Information.....	5
1. What is the Purpose of this Standard Operating Procedure (SOP)?.....	5
2. What is SBA’s Policy on Workplace Violence?	5
3. Which Employees are Covered by this SOP?.....	5
4. What Actions are Excluded from this SOP?.....	6
5. What if this SOP Conflicts with a Negotiated Agreement?	7
6. What is the Supervisor's Role?	7
7. What is the Office of Human Resources' Role?	7
8. What is the Servicing Personnel Office's Role?	8
9. What Should a Supervisor Do If He or She Suspects that an.....	8
10. When May an Employee Have a Representative?.....	8
11. What is the Disciplinary Review Committee?.....	10
12. What Factors Should Supervisors Consider When Determining the Appropriate Corrective Action?.....	11
13. What is an Employee's Duty Status During an Advance Notice Period?	11
14. What if an Employee Raises a Medical Condition as a Defense Against Alleged Performance or Conduct Deficiencies?	12
15. What is the Definition of "Disabling Condition"?.....	12
16. What is Reasonable Accommodation?	12
Chapter 2.....	14
Non-Disciplinary Actions.....	14
1. What are Non-Disciplinary Actions?	14
2. What Steps Should be Taken Before Initiating a Non-Disciplinary	14
3. Can an Employee Grieve or Dispute a Non-Disciplinary Action?.....	15
4. How Long are Non-Disciplinary Actions Maintained?.....	15
Chapter 3.....	16
Alternative Discipline.....	16
1. What is Alternative Discipline?.....	16
2. When is it Appropriate to Use Alternative Discipline?.....	16

Effective Date: August 31, 2001

3. When is it Inappropriate to Use Alternative Discipline?.....	16
4. Why Use Alternative Discipline?	17
5. What Forms of Alternative Discipline are Available?	17
6. What Procedures Must be Followed for Implementing an Alternative Discipline Agreement?.....	18
7. What Must be Included in an Alternative Discipline Agreement?.....	21
 Chapter 4.....	 23
Disciplinary Actions	23
1. What are Disciplinary Actions?.....	23
2. What is the Procedure for Proposing a Disciplinary Action?.....	24
3. What is the Deciding Official's Role?	25
4. What Must the Decision Letter Contain?	26
 Chapter 5.....	 27
Adverse Actions.....	27
1. What is an Adverse Action?	27
2. What is the Procedure for Proposing an Adverse Action?	27
3. What are an Employee's Rights Regarding a Proposed Adverse Action?.....	29
4. What is the Procedure for Issuing a Decision Letter?	29
5. What Must the Decision Letter Contain?	30
6. When is an Adverse Action Effective?.....	32
 Appendix 1.....	 33
Workplace Violence Policy Statement	33
SBA Headquarters'	35
Emergency Situations:	36
 Appendix 3.....	 41
Douglas Factors	41
 Appendix 4.....	 42
Sample.....	42
Alternative Discipline Agreement	42
 Appendix 5.....	 46
Table of Recommended Corrective Action	46

Effective Date: August 31, 2001

Chapter 1

General Information

1. What is the Purpose of this Standard Operating Procedure (SOP)?

This SOP provides guidance to SBA supervisors and managers in effecting disciplinary and adverse personnel actions. It also advises employees of their rights and entitlement with regard to actions initiated under this procedure and of the Agency's policy regarding the seriousness of, and appropriate response to, employee misconduct situations.

2. What is SBA's Policy on Workplace Violence?

SBA has a "zero tolerance" policy for violence, threats, harassment, intimidation, and other disruptive behavior. (See appendix 1 for the Administrator's policy statement.)

Headquarters supervisors and managers who receive reports of workplace violence or witness disruptive behavior should contact the supervisory employee relations specialist in Headquarters on (202) 205-6779. Field supervisors and managers should contact their office director. Headquarters and each district, area, and loan servicing or processing center should have a Critical Incidents Response Team (CIRT) in place to deal properly and swiftly with serious incidents of workplace violence. (See appendix 2.)

3. Which Employees are Covered by this SOP?

This SOP covers an employee:

- a. In the competitive service who has completed a probationary or trial period;
- b. In the competitive service serving in an appointment which requires no probationary or trial period who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;
- c. With competitive status who occupies a position under Schedule B;
- d. Who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position;

- e. In the excepted service who is preference eligible in an Executive agency who has completed 1 year of current continuous service in the same or similar positions; or
- f. In the excepted service who is a nonpreference eligible in an Executive agency who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less.

4. What Actions are Excluded from this SOP?

This SOP does not cover the following actions:

- a. The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is to the grade held immediately before becoming a supervisor or manager;
- b. A reduction-in-force action under 5 U.S.C. 3502;
- c. A reduction in grade or removal under 5 U.S.C. 4303;
- d. An action against an administrative law judge under 5 U.S.C. 7521;
- e. Action that entitles an employee to grade retention under part 536 and an action to terminate this entitlement;
- f. A voluntary action by the employee;
- g. A suitability action taken or directed by the Office of Personnel Management under 5 CFR § 731;
- h. Termination of an appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;
- i. Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if SBA informed the employee that it was to be of limited duration;
- j. Cancellation of a promotion to a position not classified prior to the promotion;
- k. Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment;

- l. Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation; or
- m. A suspension for 14 days or less of a reemployed annuitant.

5. What if this SOP Conflicts with a Negotiated Agreement?

To the extent that this SOP conflicts with a negotiated agreement, the negotiated agreement shall prevail for bargaining unit employees.

6. What is the Supervisor's Role?

- a. First level or higher supervisors may:
 - (1) Issue a non-disciplinary action or letter of reprimand (See Chapter 2);
 - (2) Enter into an Alternative Discipline Agreement (See Chapter 3); or
 - (3) Propose to suspend, demote or remove a subordinate employee. (See Chapters 4 and 5.)
- b. Management Board members, and district and area directors, in addition to the actions in 6a above, may issue a decision on a suspension, demotion or removal proposed by a subordinate supervisor.

7. What is the Office of Human Resources' Role?

The Assistant Administrator for Human Resources (AA/HR) is authorized to:

- a. Establish and maintain an effective employee relations program throughout the Agency;
- b. Issue or initiate disciplinary or adverse actions when warranted against any SBA employee;
- c. Cancel, correct, or direct the reissuance of any disciplinary or adverse action which, upon review, is found improper; and
- d. Issue new and revised appendices to this SOP.

To the extent that this SOP is applied to Office of Inspector General (OIG) employees, nothing in this SOP shall be construed to modify, revise, or limit the personnel authority vested in the IG by the IG Act of 1978.

Effective Date: August 31, 2001

8. What is the Servicing Personnel Office's Role?

The servicing personnel office:

- a. Provides advice, guidance and assistance to employees, supervisors and managers in applying the provisions of this SOP;
- b. Maintains proper and confidential disciplinary/adverse action files; and
- c. Recommends appropriate action to the Inspector General, Assistant Administrator for Human Resources, or the Associate Administrator for Disaster Assistance respectively, and provides service to supervisors and managers.

9. What Should a Supervisor Do If He or She Suspects that an Employee's Personal Problems are Contributing to Performance or Conduct Deficiencies?

When a supervisor suspects that an employee's personal problems, i.e., substance abuse, financial, etc., may be contributing to conduct or performance deficiencies, the supervisor should advise the employee of the Employee Assistance Program (EAP).

10. When May an Employee Have a Representative?

- a. When subject to a disciplinary or adverse action, an employee may designate a representative to assist in:
 - (1) Preparing and/or presenting a reply to a proposal notice;
 - (2) Disputing or appealing a decision to effect such an action; or
 - (3) Fact-finding in connection with an investigation, if the employee requests representation because he or she reasonably believes he or she may be subject to disciplinary or adverse action.
- b. An employee's choice of a representative may be declined by the Agency when such representation would result in a conflict of interest or position, conflict with the

priority needs of the Agency, or give rise to an unreasonable cost to the Government.

11. What is the Disciplinary Review Committee?

The Disciplinary Review Committee is an advisory panel, which reviews certain allegations of employee misconduct, and makes non-binding recommendations to appropriate Agency officials.

a. What Kinds of Matters Does the Committee Review?

Typically the Committee reviews:

- (1) Cases involving sensitive subject matter; and
- (2) Other matters deemed appropriate by the Committee members or referred by the Inspector General.

b. What is the Composition of the Committee?

- (1) The following officials, or their designees, are permanent committee members:

- (a) Assistant Administrator for Human Resources (Chair);
- (b) General Counsel;
- (c) Associate Administrator for Disaster Assistance; and
- (d) Chief Information Officer (Alternate).

- (2) The following officials, or their designees, serve as advisors to the Committee:

- (a) Assistant Administrator for Equal Employment Opportunity & Civil Rights Compliance;
- (b) Associate General Counsel for General Law (Legal Advisor);
- (c) Assistant Inspector General for Investigations; and
- (c) Director of Human Resources Operations.

- (4) Upon request of the Committee, other Agency officials may participate on

the Committee in an ad hoc advisory capacity.

12. What Factors Should Supervisors Consider When Determining the Appropriate Corrective Action?

Supervisors and managers must consider a variety of factors in determining the appropriate level of corrective action when proposing or deciding disciplinary actions. In a case called *Douglas v. Veterans Administration*, the Merit Systems Protection Board (MSPB) identified the factors that a deciding official must consider in determining the appropriate degree of discipline for an employee's particular misconduct. They have become known as the "Douglas Factors" (See appendix 3.) All the Douglas Factors may not be relevant in every case; however, each should be examined and given appropriate weight. In addition, deciding officials may summarize their deliberations on each of these factors in the decision letter and must be prepared to discuss them in detail at any ensuing administrative hearing.

13. What is an Employee's Duty Status During an Advance Notice Period?

Normally, employees continue to work in their position of record during the notice period after receiving a notice of proposed action. In rare instances when an employee's presence at the worksite may be injurious to the employee or others; result in loss of or damage to Government property; or may otherwise jeopardize legitimate Government interest, SBA may:

- a. Assign the employee to duties where the employee is not a threat to safety; Government property, or SBA's mission;
- b. Allow the employee to take leave or carry him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave);
- c. Shorten the notice period to as few as 7 calendar days when the "crime provision"¹ can be invoked (5 CFR § 752.404(d)(1), 5 U.S.C. § 7513(b)); or
- d. Place the employee in a paid, nonduty status for such time as is necessary to effect the action.

¹ The crime provision is invoked when SBA 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.)

14. What if an Employee Raises a Medical Condition as a Defense Against Alleged Performance or Conduct Deficiencies?

The burden is on the employee to provide SBA with medical documentation (within the time limits set by SBA), which establishes that:

- a. The employee has a medical or disabling condition, which SBA should take into account; and
- b. The medical or disabling condition is causally related to the performance or conduct deficiency.

The employee must articulate any necessary accommodation. See 29 CFR § 1614.203 for types of reasonable accommodations.

15. What is the Definition of "Disabling Condition"?

A disabling condition is one, which substantially limits one or more of an employee's major life activities. The ability to perform the duties of one's job is considered to be one such major life activity. Employees must prove not only that they have such an impairment, but also that they are able to perform the essential functions of the position, either with or without accommodation. If the employee makes such a showing, supervisors must either provide the requested accommodation, or prove that the requested accommodation is not "reasonable," and would impose an undue hardship on the Agency. (29 CFR § 1614.203)

16. What is Reasonable Accommodation?

Reasonable accommodation is making certain adjustments in the conditions of employment for qualified individuals with a disability. Reasonable accommodation may include, but is not limited to:

- a. Physically altering the work area (e.g., installing ramps and special restroom facilities for a wheelchair-bound employee);
- b. Providing special services (e.g., sign language interpreter for a hearing-impaired employee);
- c. Eliminating certain assignments which the employee is physically unable to perform safely (e.g., eliminating typing for an employee with a severe arthritic condition affecting the fingers); or

- d. Adjusting work hours or workdays for an employee physically unable to work the normally required business hours (e.g., shifting from full-time to part-time tour of duty for an employee suffering from a debilitating disease).

Chapter 2

Non-Disciplinary Actions

1. What are Non-Disciplinary Actions?

Non-disciplinary actions are informal actions taken when, in the supervisor's judgment; there exists reasonable assurance that the recurrence of misconduct can be prevented without formal action. Documentation of these actions should indicate they are not filed in the employee's Official Personnel Folder (OPF). Supervisors may choose from the following:

- a. **Counseling.** A verbal communication with the employee in private. Supervisors should clearly identify the misconduct to the extent that the employee knows that the discussion is an oral admonishment and warn the employee of potential consequences should the misconduct continue. Supervisors should document the date of the misconduct and counseling session for future reference.
- b. **Letter of Requirements/Warning.** A written communication to the employee clearly identifying the date and nature of misconduct, the supervisor's expectations, and the consequences of future misconduct.

2. What Steps Should be Taken Before Initiating a Non-Disciplinary Action?

Supervisors should:

- a. Conduct an inquiry to determine the facts surrounding the incident to determine what action, if any, is warranted;
- b. Review this SOP, the provisions of any applicable negotiated agreement and any other pertinent SOPs or directives; and
- c. Contact the servicing personnel specialist to discuss the reasons for the non-disciplinary action and to ensure that they are consistent with SBA past practice and pertinent laws.

(Note: Union representation for a bargaining unit employee is not required at a meeting where you deliver a non-disciplinary action, since such a meeting does not meet the requirements for representation under existing labor law.)

3. Can an Employee Grieve or Dispute a Non-Disciplinary Action?

An employee *may not* grieve or dispute verbal counseling or a letter of requirements/warning since no action was taken against the employee.

4. How Long are Non-Disciplinary Actions Maintained?

Supervisors may maintain records of non-disciplinary actions for up to 2 years from the date of issuance. At the end of that period, the records should be destroyed unless they are being used as evidence in a subsequent action.

Chapter 3

Alternative Discipline

1. What is Alternative Discipline?

Alternative discipline is a form of dispute resolution that uses non-traditional measures to correct employee misconduct. The goal of alternative discipline is to change the focus of the traditional disciplinary system to a more constructive and flexible approach. Alternative discipline can be used effectively to resolve, reduce, or even eliminate workplace disputes that might arise as a result of traditional disciplinary action.

A distinguishing feature of alternative discipline is its emphasis on the creation of mutually satisfactory resolutions by the supervisor and the employee. Alternative discipline is designed by its users to serve their particular needs best, and may or may not use third-party neutrals to help the parties develop solutions. Alternative discipline should only be used in instances where the supervisor and the servicing personnelist agree that it will be an effective method of correcting the employee's misconduct. However, it may not be used unless the employee agrees to participate.

2. When is it Appropriate to Use Alternative Discipline?

As the term suggests, alternative discipline is an alternative to traditional discipline—when the traditional penalty would be less than removal. Alternative discipline is only available for the first instance of misconduct warranting a disciplinary action. Supervisors may also use alternative discipline procedures as a settlement to employee grievances and EEO complaints that are a result of traditional disciplinary actions that an employee has already received.

3. When is it Inappropriate to Use Alternative Discipline?

Alternative discipline is not appropriate in the following instances:

- a. Misconduct that warrants removal;
- b. Criminal offenses;
- c. Misconduct where statute dictates the penalty; and
- d. Misconduct where the employee's continued presence in the workplace may pose a threat to the employee or others, may result in loss of or damage to Government

property, or may otherwise jeopardize legitimate Government interests.

4. Why Use Alternative Discipline?

Too often the use of traditional discipline methods, such as reprimand and suspension, leads to resistance and bad feelings by both a supervisor and an employee. Consequently, supervisors are reluctant to initiate action, even when they know conduct must be changed. Allowing the misbehavior to continue can result in more serious issues and have an impact on the efficiency of the service.

Instead of using punitive measures to penalize employees for misconduct, the parties to an alternative discipline agreement concentrate on the problem and how best to correct it for the benefit of all. SBA's alternative discipline procedures can facilitate correction of misconduct at early stages while leaving the supervisor-employee relationship intact. Benefits of alternative discipline include:

- a. Opportunities for creative solutions, productive and rehabilitated employees;
- b. Reduced time spent solving problems and decreased costs (indirect and direct) associated with disciplining employees;
- c. Reduced negative impact on morale and productivity in the workplace;
- d. Improved communications between parties;
- e. Increased productivity of supervisors, deciding officials, witnesses, and others; and
- f. Discipline becomes joint responsibility of supervisor and offending employee.

5. What Forms of Alternative Discipline are Available?

To determine an appropriate alternative discipline, supervisors are encouraged to take a creative and flexible approach, assuring that reasonableness, fairness, equity, and promotion of the efficiency of the service are exercised. Alternatives generally are limited only by the supervisor's and employee's creativity. Some examples of possible alternatives are:

- a. Annual leave donation to the leave transfer program (possible discipline for attendance-related misconduct). Note: To assure compliance with the law which

prohibits coercion of an employee to contribute annual leave under the Voluntary Leave Transfer Program, an employee, and not the supervisor, must pursue the

transfer of annual leave with his/her servicing personnel office Leave Transfer Program Coordinator;

- b. Leave without pay in lieu of suspensions (suspensions result in documentation of adverse personnel actions in the employee's OPF; leave without pay does not);
- c. Incrementally served suspensions (1 day a week, or over the weekend to minimize loss of pay);
- d. Hold the suspension in abeyance for an established period of time while the employee demonstrates that he or she has been rehabilitated;
- e. Combination of reduced traditional penalty and a non-traditional penalty, (e.g., If an employee's traditional penalty is a 10 day suspension, suspend the employee for 2 of the 10 days, and hold 8 days in abeyance while the employee demonstrates over an established period of time that he or she has been rehabilitated²);
- f. Combination of leave without pay and traditional discipline;
- g. Counseling on own time and at own expense in lieu of suspension;
- h. Community service, i.e., Adopt-a-School program, etc.; and
- i. Restitution.

Because each incident of misconduct can be unique, numerous examples are not listed. Supervisors are encouraged to exercise creativity and work with their servicing personnel office in utilizing alternative discipline.

6. What Procedures Must be Followed for Implementing an Alternative Discipline Agreement?

The following alternative discipline procedures must be followed:

- a. The supervisor and employee must agree upon the use of alternative discipline. The supervisor cannot decide unilaterally to impose alternative discipline. There must be good faith commitment by both parties to resolve the issue at hand;
- b. The supervisor must consult with the servicing personnel specialist for advice on all misconduct cases for which the use of alternative discipline procedures is being

² The supervisor and employee must set forth in their agreement in lieu of discipline the precise terms, which would constitute evidence of rehabilitation.

considered to ensure alternative discipline agreements promote the efficiency of the service;

- c. The supervisor must prepare a written analysis that identifies the employee's misconduct, the violated rule(s), regulation(s), and/or law(s), and management's selected penalty from Appendix 5 that would have been proposed if traditional discipline were used. (If alternative discipline is initiated before the decision stage, the proposed penalty will be the penalty listed in the alternative discipline agreement);
- d. The employee must acknowledge in writing that the alternative discipline agreement is entered into voluntarily;
- e. The supervisor, employee, and the employee's representative, if applicable, must decide (with the advice and consent of the servicing personnelist) the appropriate alternative discipline for a given offense – including the specific terms and conditions that the employee agrees to fulfill. The terms and conditions are non-precedential, meaning they are specific to the employee, and they cannot be cited, for any reason, including comparison, in another employee's alternative discipline agreement or traditional disciplinary documents. Accordingly, identical offenses committed by different employees may result in different forms of alternative or traditional discipline, since each case is distinctive and alternative discipline is uniquely designed to meet the goals of corrective action on an individual basis;
- f. The employee must admit in writing that he/she is guilty of the misconduct, recognizes that the misconduct is unacceptable, and promises not to repeat the misconduct or any other act of misconduct in the future. Misconduct addressed through an alternative discipline agreement and admitted to by an employee, constitutes an "offense" supporting any future progressive disciplinary action(s);

See: 85 FMSR 5235; Bias v. EEOC, 84 FMSR 5283; Gober v. Department of Navy, 83 FMSR 5120; Coughlan v. Department of Navy, 82 FMSR 5486.

- g. All affected parties must sign the alternative discipline agreement. Specific parties include the employee, the employee's representative (if applicable), the supervisor who is authorized to enter into such an agreement, the servicing personnelist, and a representative of the Office of General Law if an action is pending in an administrative forum;
- h. When the terms and conditions of an alternative discipline agreement are satisfied, the supervisor must certify such in writing to the employee. Note: See the "Final Disposition" Section of the sample alternative discipline agreement;

- i. If the employee is unable to fulfill the terms and conditions of the alternative discipline agreement due to circumstances beyond his/her control, the supervisor and employee may revise the agreement.

For example, an employee would be unable to meet the terms of an agreement if it required the employee to attend certain training within a 6 month period, and the course was cancelled or the employee was hospitalized during the time of the scheduled course, etc.; and

- j. If the terms and conditions of an alternative discipline agreement are not satisfied, the supervisor must issue immediately a violation notice - not a traditional decision letter to the employee. Such notice is to inform the employee that the agreement has been breached and the penalty specified in the agreement will be effected immediately.

7. What Must be Included in an Alternative Discipline Agreement?

An alternative discipline agreement specifies the type of agreement entered into by management and the employee (See appendix 4). It is not necessary to follow Appendix 4 exactly. All alternative discipline agreements must include similar information as follows:

- a. A written analysis that identifies the misconduct, the violated rule(s), regulation(s), and/or law(s), and management's selected penalty from Appendix 5 that would have been proposed if traditional discipline were used. (If alternative discipline is initiated before the decision stage, the proposed penalty will be the penalty listed in the alternative discipline agreement);
- b. A written admission of guilt by the employee stating that he/she engaged in misconduct, recognizes the misconduct is unacceptable, and promises not to repeat the misconduct, or other acts of misconduct, in the future;
- c. All terms and conditions that the employee agrees to fulfill. The terms must include the time frame within which the employee must satisfy the agreement;
- d. A statement that the employee's failure to satisfy the terms of the agreement will result in the supervisor immediately implementing the traditional penalty that is identified in the agreement;

- e. An acknowledgment by the employee that the agreement is entered into voluntarily and that the employee waives all grievance and/or appeal rights, including EEO rights, and these rights are waived even if the traditional discipline is imposed because of a failure to satisfy the terms of the agreement (the waiver of EEO rights does not bar the employee from citing the incident and/or punishment as background in a later complaint);
- f. A statement that the agreement does not preclude the supervisor from taking appropriate action regarding any other misconduct not covered by the agreement;
- g. An acknowledgment that the misconduct addressed through the agreement constitutes an offense and may be used to support any future progressive disciplinary action(s);
- h. An acknowledgment that the agreement will be retained for 5 years in the employee's OPF on the non-permanent side of the file; and
- i. A statement that the terms and conditions of the agreement may be discussed with parties who have an official "need to know" (e.g., personnelists, managers, and representatives from the Office of General Counsel).

Chapter 4

Disciplinary Actions

1. What are Disciplinary Actions?

Disciplinary actions are formal actions up to and including suspensions³ of 14 calendar days or less, which are filed in the employee's OPF. Whether it is maintained permanently or temporarily depends on the severity of the action. The following are disciplinary actions:

- a. **Letter of Reprimand.** This is a written communication to an employee documenting a formal disciplinary response to an act of misconduct. It is filed on the left side of the employee's OPF for 2 years from the date of issuance, unless the supervisor removes it before that date. The letter must contain:
 - (1) A description of the misconduct;
 - (2) Any laws, rules, regulations and/or Agency policies violated;
 - (3) A statement regarding the EAP, if applicable;
 - (4) A warning about the consequences of future misconduct; and
 - (5) The employee's grievance or dispute rights.

- b. **Suspension for 14 Calendar Days or Less.** This is a temporary, enforced absence from duty in a nonpay status for a specified period of time for misconduct. An employee against whom a supervisor proposes a suspension for 14 calendar days or less is entitled to:
 - (1) Advance written notice generally stating the specific reasons for the proposed action and a statement regarding the EAP;
 - (2) A reasonable time (generally 7 calendar days) to answer orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer;
 - (3) Representation by an attorney or other representative;
 - (4) Review and /or a copy, upon the employee's request, of the material relied on

³ Suspension means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

- to support the action;
- (5) The name, address, and telephone number of the deciding official or designee responsible for receiving and/or hearing the employee's reply or granting an extension of time to prepare the reply; and
 - (6) A written decision including specific reasons for the decision at the earliest practicable date after the reply period has ended.

2. What is the Procedure for Proposing a Disciplinary Action?

Supervisors should:

- a. Conduct a thorough inquiry to gather information and documentation from all appropriate sources, including the subject employee. *If potential violations of criminal or civil law or regulations are suspected, supervisors should refer the matter to the OIG Investigations Division. (Remember that bargaining unit employees are entitled to union representation, upon request, at any examination in connection with an investigation, if they reasonably believe that discipline may result. Consult the applicable labor agreement under "Discipline" or "Representation" for further details.)*
- b. Review the provisions of this SOP, any applicable labor agreement and other pertinent laws, rules and regulations to determine the extent and seriousness of the infraction(s).
- c. Provide a copy of the evidence gathered to the servicing personnel specialist and consult on such questions as:
 - (1) Is the misconduct supported by a preponderance of the evidence⁴?
 - (2) Is there a connection or "nexus" between the misconduct and the efficiency of the service?
 - (3) Should we consider an offer of alternative discipline? (See chapter 3.)
 - (4) Are there any indications of personal problems or a handicapping condition, which may warrant an EAP referral and possibly reasonable accommodation?
 - (5) What is the recommended range of discipline specified in the Agency Table

⁴ The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely true than untrue.

of Recommended Corrective Actions (Appendix 5) and what is the organization's and the Agency's past practice in similar cases?

- d. Draft the proposal letter in consultation with the servicing personnel specialist.
- e. Deliver the letter to the employee, where practical, in person in a private meeting. *(Refer to any applicable labor agreement for representation rights.)*
- f. Obtain the employee's signature on the "receipt acknowledgment" copy and send it to the servicing personnel specialist. *If the employee declines to sign, annotate the copy that the employee declined to sign and send it to the servicing personnel specialist.*

3. What is the Deciding Official's Role?

After the employee's reply period expires, the deciding official, in consultation with the servicing personnel specialist, evaluates the evidence. This includes all documentation in support of the charges, as well as any evidence favorable to the employee and all information and argument submitted by the employee and/or his or her representative. After careful examination of all of the material, the deciding official will:

- a. Determine which, if any, of the charges are proven by a preponderance of the evidence;
- b. Decide if there is a nexus between the misconduct and the efficiency of the service;
- c. Identify the appropriate corrective action for the proven misconduct by:
 - (1) Examining all aggravating and mitigating factors pertaining to the employee (See Douglas Factors, Appendix 3.);
 - (2) Researching case law; and
 - (3) Considering SBA past practice.
- d. Decide to either sustain the proposed remedy or mitigate to something less severe. *(The deciding official may dismiss the proposed action; sustain the proposed action; or mitigate to something less severe, but may not decide on a remedy that is more severe than that proposed. If the deciding official believes the proposal is too lenient, the deciding official may rescind the proposal and issue a new one. In that case, someone higher in the chain of command will normally be the deciding official);*
- e. Draft the decision letter in consultation with the servicing personnel specialist;

- f. Deliver the letter to the employee, where practical, in person in a private meeting. *(Refer to any applicable labor agreement for representation rights); and*
- g. Obtain the employee's signature on the "receipt acknowledgment" copy of the letter and return it to the servicing personnelist. *If the employee declines to sign, annotate the copy that the employee declined to sign and send it to the servicing personnel specialist.*

4. What Must the Decision Letter Contain?

The decision to suspend for 14 calendar days or less must contain:

- a. A statement of the specific misconduct charges cited in the proposal notice;
- b. References to the date of the proposal notice, the formal disciplinary action proposed, a discussion of the Douglas Factors as they relate to the misconduct at issue, consideration of the employee's oral and/or written response, and any other relevant information concerning the process of arriving at the decision;
- c. The specific dates, participants, places, etc., connected with the employee's response(s), if any, to the proposal notice;
- d. A statement whether the action is sustained, mitigated, or dismissed;
- e. A statement of how the decision promotes the efficiency of the service; and
- f. Any appropriate grievance (bargaining unit employees) or dispute (non-bargaining unit employee) rights, and the identity of the person the employee may contact for clarification of grievance or dispute rights.

Chapter 5

Adverse Actions

1. What is an Adverse Action⁵?

Adverse actions are suspensions for more than 14 calendar days, a furlough for 30 calendar days or less (i.e., due to a lapse in appropriation or lack of work), reduction in grade or pay; or removal. The documentation of an adverse action becomes a permanent record in the employee's OPF.

2. What is the Procedure for Proposing an Adverse Action?

Supervisors should:

- a. Conduct a thorough inquiry, gathering information and documentation from all appropriate sources, including the subject employee. If potential violations of criminal or civil law or regulations are suspected, supervisors should refer the matter to the OIG Investigations Division. *(Bargaining unit employees are entitled to union representation, upon request, at any examination in connection with an investigation, if they reasonably believe that discipline may result. Consult the applicable labor agreement under "Discipline" or "Representation" for further details.)*
- b. Review the provisions of any applicable labor agreement and any other pertinent laws, regulations and SBA policy to determine the extent and seriousness of the infraction(s).
- c. Provide a copy of the evidence to the servicing personnel specialist. Discuss that material with your servicing personnelist and such questions as:
 - (1) Is the misconduct supported by a preponderance of the evidence? (see chapter 4, paragraph 2c (1)).
 - (2) Is there a connection or "nexus" between the misconduct and the efficiency of the service?

⁵ Separation for failure to accept a directed reassignment to a position outside the commuting area or to accompany a position outside such area pursuant to a transfer of function is not considered removal for cause on charges of misconduct.

- (3) What is the recommended range of corrective action specified in SBA's Table of Recommended Corrective Actions, and what is your office's and SBA's past practice in any similar cases?
 - (4) Is there a lesser sanction that has a reasonably good chance of correcting the misconduct?
 - (5) Are there any indications of personal problem(s) or a disabling condition?
- d. Draft the proposal letter in consultation with your servicing personnelist. The proposal letter must contain:
- (1) The degree of adverse action you propose;
 - (2) The charges described in specific detail;
 - (3) The laws, rules, regulations and/or SBA policies allegedly violated;
 - (4) The employee's reply period (normally 15 calendar days unless the crime provision is invoked), reply rights, official time and representation rights. (See Chapter 1, paragraph 10.);
 - (5) The name of the person to contact for review of the material relied on to support the charges, and the name of the management official the employee should contact for clarification or to arrange an oral reply; and
 - (6) A statement regarding the employee's status during the notice period.
- e. Deliver the letter to the employee, where practical, in person in a private meeting. (Refer to any applicable labor agreement for representation rights.)
- f. Obtain the employee's signature on the "receipt acknowledgment" copy of the letter and return it to the servicing personnelist. *If the employee declines to sign, annotate the copy that the employee declined to sign and send it to the servicing personnel specialist.*

3. What are an Employee's Rights Regarding a Proposed Adverse Action?

The employee is entitled to:

- a. Advance written notice stating the specific reasons for the proposed action;
- b. A reasonable time (normally not less than 15 calendar days) to answer orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer;
- c. Representation by an attorney or other representative. (See Chapter 1, paragraph 10);
- d. The right to a copy and review of the material relied on to support the reason(s) for the action;
- e. A written decision and the specific reason(s) therefore at the earliest practicable date after the reply period has ended. Such decision may consider only the reasons specified in the notice and any answer made by the employee and/or the employee's representative;
- f. Delivery of the decision at or before the time the action will be effective; and
- g. Appeal to the Merit Systems Protection Board.

4. What is the Procedure for Issuing a Decision Letter?

After the employee's reply period expires, the deciding official, in consultation with the servicing personnel specialist, will evaluate the evidence of record. This includes all documentation in support of the charges, as well as any evidence favorable to the employee and all information and argument submitted by the employee and/or his or her representative. After careful examination of all the material and consultation with the servicing personnel specialist, the deciding official will:

- a. Determine which, if any, of the charges are proven by a preponderance of the evidence;
- b. Decide if there is a nexus between the misconduct and the efficiency of the service;
- c. Identify the appropriate corrective action for the proven charges by examining:
 - (1) The seriousness of the misconduct;

- (2) Applicable aggravating and mitigating circumstances ("Douglas Factors," Appendix 3); and
 - (3) Pertinent case law and prior SBA decisions in similar cases. *(The deciding official may dismiss the proposed action; sustain the proposed action; or mitigate to something less severe, but may not decide on a remedy that is more severe than that proposed. If the deciding official believes the proposal is too lenient, the deciding official may rescind the proposal and issue a new one. In that case, someone higher in the chain of command will normally be the deciding official);*
- d. Draft the decision letter in consultation with your servicing personnelist;
 - e. Deliver the letter to the subject employee, where practical, in person in a private meeting. (Refer to any applicable labor agreement for representation rights); and
 - f. Obtain the employee's signature on the "receipt acknowledgment" copy of the letter and return it to the servicing personnel specialist. *(If the employee declines to sign, annotate the copy that the employee declined to sign and send it to the servicing personnel specialist).*

5. What Must the Decision Letter Contain?

The decision letter on a proposed adverse action must contain:

- a. The deciding official's decision and rationale on each of the reasons and specifications;
- b. A discussion of the evidence of record relied on, and consideration of any information the employee submitted in an oral and/or written reply;
- c. A statement of the aggravating and mitigating circumstances. (See "Douglas Factors," Appendix 3);
- d. An explanation of how the decision promotes the efficiency of the service;
- e. An EAP referral, if appropriate;
- f. The appropriate grievance or MSPB appeal rights, and the identity of the person the employee may contact for further information or clarification of their rights; and
- g. A copy of the MSPB regulations and appeal form.

6. When is an Adverse Action Effective?

An adverse action may not take effect for at least 30 calendar days after the date the proposal letter was delivered to the employee, unless the "crime provision" is invoked. (See chapter 1, paragraph 13). A non-bargaining unit employee may request a stay of up to 30 calendar days if the employee requests mediation in accordance with the provisions of SOP 37 71, "Employee Dispute Resolution Process." The employee must file the request prior to the effective date of the decision.

The decision as to whether or not to enter into mediation, however, is at SBA's discretion. If the Agency agrees, implementation of the adverse action decision will be held in abeyance until either a resolution is reached, or 30 calendar days has elapsed from the employee's request, whichever occurs first.

Appendix 1
(paragraph 1-2)

SBA's
Workplace Violence Policy Statement

I am committed to maintaining a work environment free from violence or other disruptive behavior that interferes with accomplishing SBA's mission. You are our most important resource and protecting you from violence in the workforce is paramount.

SBA has a "*zero tolerance*" policy for violence, threats, harassment, intimidation, and other disruptive behavior in our workplace. Such behavior can include oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical harm. We will take reports of incidents seriously and will address the situation appropriately. (See appendix 2.) Individuals who commit such acts are subject to removal from the premises, possible disciplinary action and/or criminal penalties. I will support efforts made by supervisors and managers to promptly and effectively deal with disruptive behavior in our workplace.

Preventing violence in the workplace is a team effort. I need everyone's cooperation to maintain a safe working environment. Do not ignore violent, threatening, harassing, intimidating, or other disruptive behavior. If you observe or experience such behavior by anyone on SBA owned or leased premises, whether he or she is a SBA employee or not, report it immediately to a supervisor or manager. By informing your supervisor of potentially disruptive behavior, you may be protecting yourself and others from physical harm.

Headquarters supervisors and managers who receive reports of workplace violence or witness disruptive behavior should contact the supervisory employee relations specialist in Headquarters on (202) 205-6779. Field supervisors and managers should contact their office director. Headquarters and each district, area, and loan servicing or processing center should have a Critical Incidents Response Team (CIRT) in place to deal properly and swiftly with serious incidents of workplace violence. (See appendix 2.)

Please report all threats or assaults that require immediate attention by security personnel or police to the security personnel in your building and/or the local police at 911.

Hector V. Barreto
Administrator

Effective Date: August 31, 2001

33

Page

Appendix 2
(paragraph 1-2)

SBA Headquarters'
Critical Incidents Response Team (CIRT) Plan

The CIRT is responsible for coordinating the medical, administrative, law enforcement, and legal efforts required when a workplace violence incident occurs. The CIRT will evaluate the incident; determine the appropriate course of action; advise the Administrator; and initiate appropriate intervention to ensure the immediate welfare of SBA employees subject to, or at risk of, being subject to an act of violence.

The CIRT includes the:

- a. Assistant Administrator for Human Resources, Chair of the CIRT;
- b. General Counsel or a representative;
- c. Assistant Administrator for Administration;
- d. Associate Administrator for Communications and Public Liaison;
- e. Assistant Inspector General for Investigations (AIG/I);
- f. Supervisory Employee Relations Specialist;
- g. Physical Security Officer;
- h. Supervisor(s) of the affected employee(s);
- i. Employee Assistance Program (EAP) Counselor; and
- j. A union representative (only for issues impacting the bargaining unit).

The entire team may not always convene because there may be issues that will require the involvement of only one or two members of the team. In such cases, the member(s) will take the appropriate action and keep the Chair of the CIRT informed.

Upon receiving a call from a supervisor regarding a critical incident in the workplace, the supervisory employee relations specialist will:

- a. Take the supervisor's assessment of the incident;
- b. Determine whether appropriate emergency personnel were called, if applicable; and
- c. Consult with the Chair of the CIRT before convening the CIRT.

The following emergency and non-emergency incidents are not all inclusive and the solutions are not exhaustive.

Effective Date: August 31, 2001

35

Page

Emergency Situations:**a. A situation where an SBA employee killed an SBA employee(s) and then fled the scene.****CIRT will:**

- ◆ Consider granting administrative leave to all employees for the rest of the day.
- ◆ Determine appropriate way to notify victims' families or emergency contact person.
- ◆ Draft a notice for the Administrator's signature to (1) inform employees of all actions being taken, (2) encourage supervisors to grant leave requests in the weeks to follow, and (3) instruct employees to refer media inquiries to the Office of Communications and Public Liaison.
- ◆ Consider relocating employees who worked in the area of the incident.

Physical Security Officer will:

- ◆ Deactivate the subject's FACSCARD.
- ◆ Provide building security with the subject's picture with instructions to detain the employee should he/she return to the building.
- ◆ Assist the police.

Employee Relations Specialist will:

- ◆ Make a written record of the incident and draft an appropriate letter to the subject pending the outcome of the criminal proceedings.
- ◆ In conjunction with the AIG/I, maintain contact with the United States Attorney's office to ensure timely administrative action.

Employee Assistance Program Counselor will:

- ◆ Provide counseling to affected employees.

Press Officer will:

- ◆ Coordinate all media contacts in consultation with the AIG/I.

b. A vicious beating, wounding, or sexual assault of a coworker by an SBA employee who fled the scene.

Physical Security Officer will:

- ◆ Deactivate the subject's FACSCARD.
- ◆ Provide building security personnel with the subject's picture and instructions to stop the employee should he/she return to the building.
- ◆ Coordinate all efforts with local police.
- ◆ Give the victim personal safety information and the name of local victims' organizations that may assist him/her.

Employee Relations Specialist will:

- ◆ Contact the Employee Assistance Program Counselor to arrange for an on site visit to counsel employee(s).
- ◆ In conjunction with the AIG/I, maintain contact with the United States Attorney's Office to ensure timely administrative action.
- ◆ Assist the supervisor in developing the appropriate administrative action.

Supervisor will:

- ◆ Assist the employee in filing an Office of Workers Compensation Programs (OWCP) claim, if necessary.

Press Officer will:

- ◆ Coordinate all media contacts in consultation with the AIG/I.

c. A suicide attempt by an employee.

Employee Relations Specialist will:

- ◆ Contact the Health Unit for immediate assistance.
- ◆ Contact the local police and ambulance if immediate danger exists.
- ◆ Contact the EAP counselor to immediately assess the situation, and provide assistance, if immediate danger does not exist.
- ◆ Prepare a report of the incident.

Supervisor will:

- ◆ Contact the employee's family or emergency contact person and inform them of the incident.
- ◆ Consider reasonable accommodation for the employee. (For example: alternative work schedule to accommodate doctor's appointments, telecommuting arrangements, etc.)

Non-Emergency Situations

- a. **A direct threat by an employee to bring in a firearm to resolve a problem, or statements such as, "you will pay for it with your life," or "you haven't seen the last of me," etc.**

Employee Relations Specialist will:

- ◆ Conduct an immediate investigation and report to the Chair of the CIRT.

CIRT will:

- ◆ Consider placing the disruptive employee on administrative leave pending an Agency's determination regarding the employee's behavior.
- ◆ Consider administrative leave for affected employees.
- ◆ Arrange for increased security by the Federal Protective Service (FPS).
- ◆ Consult with FPS to determine whether the situation warrants a criminal investigation.
- ◆ Determine the appropriate administrative action.

Supervisor and Physical Security Officer will:

- ◆ Meet with the employee and try to obtain SBA property (office keys, FACSCARD, etc.).

Federal Protective Service will:

- ◆ Escort the employee out of the building.

Employee Assistance Program Counselor will:

- ◆ Counsel affected employees.

b. Veiled threat to a supervisor by an employee. (For example: “I know where you live,” or “I see you every day on your way to work,” said with an intimidating tone of voice)

CIRT will:

- ◆ Consult with FPS to conduct a threat assessment.
- ◆ Analyze the threat assessment report.
- ◆ Formally place employee on administrative leave pending an Agency determination about the employee’s behavior, if the threat assessment report determines a real threat exists.
- ◆ Advise the supervisor about personal safety; encourage the supervisor to get a restraining order and use the EAP.
- ◆ Determine appropriate administrative action.

c. Stalking of an SBA employee by a former employee.

Physical Security Officer will:

- ◆ Check periodically with the appropriate law enforcement agency to determine status of former employee.
- ◆ Provide periodic updates to the employee on action being taken.
- ◆ Provide support and advice to the employee including points of contact for local law enforcement and victims’ assistance organizations.
- ◆ Consider increasing building security.

Supervisor will:

- ◆ Meet with security and police to consider options for encouraging the former employee to stop his/her activities and to determine if former employee’s behavior constitutes a crime.
- ◆ Encourage the employee to use the EAP.
- ◆ Consider allowing the employee to work at home or at an alternate worksite.

d. Stalking of an SBA employee by a relative or friend.

Physical Security Officer will:

- ◆ Report the incident to the local police.
- ◆ Arrange for the police to provide surveillance of the building and get advice on the steps that SBA can take to help the employee.
- ◆ Attempt to get a photograph of the stalker and give it to the building guard with instructions to stop the stalker if he/she shows up at the building.

Effective Date: August 31, 2001

39

Page

- ◆ In the event of harassing phone calls, contact the phone company to monitor the employee's incoming calls.
- ◆ Provide the employee with personal safety tips.

Employee Relations Specialist will:

- ◆ Contact the EAP counselor to meet with the employee and supervisor.
- ◆ Make a written report of the situation.
- ◆ Keep the CIRT informed.

- e. **Frightening behavior by an employee that causes other employees to fear for their safety or the safety of the individual. (For example: An employee making remarks about aliens holding him/her prisoner, people putting something in his/her food to control thoughts, etc.)**

Employee Relations Specialist will:

- ◆ Conduct an investigation.
- ◆ Consult with the Chair of the CIRT before convening the CIRT.

CIRT will:

- ◆ Consider placing the employee on administrative leave pending an Agency decision regarding the employee's behavior.
- ◆ Consider offering the employee a medical examination.
- ◆ Consider offering the employee leave for treatment.
- ◆ Consider removal if the employee refuses the offer of a medical examination and/or leave for treatment after taking into consideration the seriousness of the employee's behavior.

Appendix 3 (paragraph 1-12)

Douglas Factors

SBA has the burden of persuading an arbitrator or an administrative judge of the Merit Systems Protection Board (or other third party having jurisdiction over the matter) that the sanction imposed for the sustained charges meets the preponderance of the evidence standard. SBA must show that it is within the bounds of reasonableness. Not all of the Douglas factors apply in every case; however, both the proposing and deciding official should review each of the factors and attach appropriate weight to each that is relevant. The specific factors are 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;
- ◆ Employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- ◆ Employee's past disciplinary record;
- ◆ Employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- ◆ Effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
- ◆ Consistency of the penalty with those imposed on other employees for similar offense(s);
- ◆ Notoriety of the offense or its impact upon the reputation of the Agency;
- ◆ 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;
- ◆ Potential for the employee's rehabilitation;
- ◆ Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malice or provocation on the part of others involved in the matter; and
- ◆ Adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Appendix 4
(paragraphs 5-4, 4-7)
Sample
Alternative Discipline Agreement

Employee's Name, Title, Series, and Grade:

Name and Location of Office:

Employee's Representative (if applicable):

Supervisor's Name, Title, Series, and Grade:

Name of Servicing Personnelist:

Description of Misconduct and the Violated Rule(s), Regulation(s), and/or Law(s): (Attach an additional sheet(s) if needed)

Description of Traditional Discipline (Attach copies of proposal and decision letters, if any): (Attach an additional sheet(s) if needed)

Description of Negotiated Alternative Discipline (include all terms and conditions): (Attach an additional sheet(s) if needed)

Employee Admission and Acknowledgment:

I, _____, willingly admit to the misconduct/wrongdoing described above, and recognize it is unacceptable behavior. I fully understand and realize that management would have imposed the above traditional discipline listed above, had I not elected to participate in the alternative discipline system.

I agree to not repeat this misconduct, or other acts of misconduct, in the future. Further, I understand management will deal more harshly with any further misconduct/wrongdoing in accordance with the progressive discipline principle.

I understand that this agreement does not preclude my supervisor from taking appropriate action against me for any other misconduct not covered by this agreement.

Effective Date: August 31, 2001

42

Page

I understand if I fail to fulfill the terms of this agreement within the time frame established therein, except for circumstances outside my control, the traditional discipline described above will be imposed immediately by written notification.

I understand that this agreement may be used to support any future progressive disciplinary action(s).

I understand that this agreement and related documentation will be retained in a case file during my tenure with the Agency and will be maintained in my Official Personnel Folder for 5 years as a temporary document. I further understand that if I fulfill my obligations under this agreement, the documents contained in the temporary section of my Official Personnel Folder will be removed and the originals will be maintained in a case file.

I enter into this agreement voluntarily without undue influence and fully understand and agree with its terms. I have had enough time to consider my decision and have had an opportunity to consult counsel and or a representative. I know and understand that if I had not participated in the alternative discipline system and been subjected to the traditional discipline action, I would have grievance, appeal, and/or equal employment opportunity (EEO) rights with respect to the charge and penalty discussed above. I fully understand that my election to participate in this agreement signifies my knowing waiver of any right to grieve, appeal, and/or file an EEO complaint, even if, after executing the alternative discipline agreement, traditional discipline is imposed because of my failure to satisfy the terms of the agreement. I also understand that my waiving my EEO rights does not bar me from citing this incident and/or punishment as background in a later complaint. I understand that the provisions of this agreement may be discussed with parties such as management, personnelists, and representatives from the Office of General Counsel on a need-to-know basis.

Employee's Signature: _____ **Date:** _____

Supervisor's Acknowledgment:

I, _____, believe that the content of this agreement promotes the efficiency of the Government service and it will not negatively impact other employees. I enter into this agreement voluntarily.

Effective Date of Agreement: _____

Supervisor's Signature: _____ **Date:** _____

Effective Date: August 31, 2001

Representative's Acknowledgment (if applicable):

I, _____, agree with the terms and conditions of this agreement.

Representative's Signature: _____ **Date:** _____

Personnelist's Signature: _____ **Date:** _____

Final Disposition:

Terms of agreement were Met /Not Met (See attached violation notice)

Supervisor's Signature: _____ **Date:** _____

Appendix 5
(paragraph 3-7, 4-2)
Table of Recommended Corrective Action

The following corrective actions serve as a guide in determining the appropriate remedial action for employee misconduct. The Table is not intended to be either all-inclusive or restrictive. There are many forms of employee misconduct, which do not fit into the categories below. Similarly, there are circumstances where the recommended range is not the appropriate action to take. In either case, Agency officials are not strictly bound by these guidelines. Agency officials should weigh such factors as the seriousness of the misconduct and the nature of the offending employee's position, which may dictate a higher standard of conduct.

Type of Misconduct	1st Offense	Subsequent Offenses
A. Hours of Duty		
1. Recurring Tardiness	Reprimand	Reprimand to 5-day suspension
2. Absent without leave (AWOL) for:		
a. 1 day or less	Reprimand	5-day suspension
b. 2 to 5 consecutive days	Reprimand to 5-day suspension	5-day suspension to removal
c. more than 5 consecutive days	5-day suspension to removal	Removal
3. Leaving the worksite without approval	Reprimand	1 to 5-day suspension
4. Failing to properly request leave	Reprimand to 5-day suspension	5-day suspension to removal
5. Misuse of sick leave	Reprimand to 5-day suspension	5-day suspension to removal
B. Government-Authorized Credit Card		
1. 60 or more days delinquent	Reprimand	1-day suspension to removal
2. Unauthorized use	Reprimand to 5 day suspension	5-day suspension to removal

Type of Misconduct	1st Offense	Subsequent Offenses
C. Substance Abuse		
1. Use of an illegal substance while on duty or on Government property	10-day suspension to removal	Removal
2. Possession with intent to distribute an illegal substance on duty or on Government property	5-day suspension to removal	Removal
3. Reporting for duty under the influence of alcohol or an unprescribed intoxicating substance	Reprimand to 5-day suspension	5-day suspension to removal
D. Prohibited Personnel Practices (5 U.S.C. 2302)		
1. Through negligence or other than willful intent	Reprimand to removal	
2. Deliberate, willful or intentional, not for personal gain	14-day suspension to removal	Removal
3. Deliberate, willful or intentional, for personal gain	Removal	
E. General Misconduct		
1. Insubordination:		
a. Failure or refusal to follow the direction of duly recognized authority	Reprimand to 5-day suspension	5-day suspension to removal
b. Failure to follow policies	Reprimand to 10-day suspension	10-day suspension to removal
c. Refusal to submit to drug tests	Removal	
d. Insolence and abusive Language	Reprimand to 30-day suspension	
2. Disorderly conduct	Reprimand to 5-day suspension	5-day suspension to removal
3. Fighting or threats of violence	Reprimand to removal	
4. Threats of legal action; publicity	Reprimand to removal	Removal
5. Neglect of duty, loafing or unreasonable delay in carrying out assignments	Reprimand to 3-day suspension	3-day suspension to removal
6. Conduct unbecoming of a Government employee	Reprimand to 30-day suspension	30-day suspension to removal

Type of Misconduct	1st Offense	Subsequent Offenses
7. Careless workmanship resulting in waste or delay	Reprimand to 5-day suspension	5-day suspension to removal
8. Sleeping on duty where safety or property: a. is not in danger b. is in danger	Reprimand to 5-day suspension	5-day suspension to removal
	10-day suspension to removal	Removal
9. Conducting personal business or non-government business on official time	Reprimand to 5-day suspension	5-day suspension to removal
10. Unauthorized use of Government equipment	Reprimand to 5-day suspension	5-day suspension to removal
11. Unauthorized possession of Government or other's property	Reprimand to 10-day suspension	Removal
12. Theft or attempted theft of Government or other's property	5-day suspension to removal	Removal
13. Use of, or authorizing the use of SBA employees for personal business or personal reasons during duty hours	5-day suspension to removal	Removal
14. False statements: a. in a matter of official interest b. with intent to slander or defame	Reprimand to removal	Removal
	5-day suspension	5-day suspension to removal
15. Refusal to answer pertinent questions in a matter of official interest ⁶	Reprimand to 5-day suspension	5-day suspension to removal
16. Falsification or concealment of records in a matter of official interest ⁷	5-day suspension to removal	Removal
17. Misappropriation of Government funds	5-day suspension to removal	Removal
18. Negligent failure to properly account for Government money or property	Reprimand to 5-day suspension	5-day suspension to removal
19. Misuse, or authorizing the misuse of a Government vehicle	30-day suspension to removal	Removal

⁶ This includes investigations conducted by SBA's Inspector General, another administrative investigation, or an outside investigation.

⁷ Ibid

Type of Misconduct	1 st Offense	Subsequent Offenses
20. Lending money, gambling or promoting gambling on Government property or while on official duty	Reprimand to removal	Removal
21. Criminal, infamous, dishonest, immoral or disgraceful conduct on or off duty	Reprimand to removal	Removal
22. Possession of firearms and dangerous weapons* in a Federal facility, or while conducting official business (18 USCS § 930) a. knowingly possesses or causes to be present** b. with intent to commit a crime	30-day suspension	Removal
	Removal	
23. Off duty misconduct which impacts negatively on SBA	Reprimand to 30-day suspension	30-day suspension to removal
24. Unethical or improper use of SBA authority or ID	Reprimand to removal	Removal
25. Violation of Privacy Act requirements a. through negligence b. with deliberate intent	Reprimand to 5-day suspension	5-day suspension to removal
	10-day suspension to removal	Removal
26. Engaging in a financial transaction or possessing interest which conflicts with official responsibilities	Reprimand to removal	Removal
27. Violations of SBA regulations requiring the immediate report of a suspected irregularity to the Office of the Inspector General	10-day suspension to removal	Removal
28. Indebtedness: (other than Government credit card) a. failure to timely pay taxes or other debts to the Government b. failure to pay a just, non-government debt in a timely manner	Reprimand to 5-day suspension	5-day suspension to removal
	Reprimand	3-day suspension to removal
<p>*A weapon, device, instrument, material, or substance, animate or inanimate that is used for or is readily capable of death or serious bodily injury, excluding a pocket knife with a blade of 2½ inches.</p> <p>**Excludes a law enforcement official if possession is authorized by law.</p>		

Type of Misconduct	1 st Offense	Subsequent Offenses
F. Discriminatory Practices		
1. Reprisal or retaliation against an individual involved in the EEO complaint process	5-day suspension to removal	Removal
2. Using remarks which relate to and insult or denigrate an individual race, color, religion, national origin, sex, marital status, age, disabling condition, or sexual orientation.	Letter of reprimand to 30-day suspension	30-day suspension to removal
3. Failure to take appropriate action regarding allegations or findings of discriminatory practices	5-day suspension to removal	Removal
G. Sexual Misconduct		
1. Inappropriate and/or unwelcome touching or other physical contact.	5-day suspension to removal	30-day suspension to removal
2. Pressure for (or official action based on) sexual favors, including taking action favorable to an employee because of the granting of a sexual favor or denying an action favorable to an employee because of the withholding of a sexual favor	30-day suspension to removal	Removal
3. Inappropriate and/or unwelcome teasing, jokes, actions, gestures, display of visual material of a sexual nature or remarks of a sexual nature.	Letter of reprimand to 30-day suspension	30-day suspension to removal

37 52 2