

Chapter 16: Conduct

Topic 1: Introduction

Introduction

Unacceptable conduct covers a range of employee work behaviors and includes:

- tardiness
- insubordination (employee's refusal to obey an order)
- leave abuse
- creation of work disturbances
- hitting or striking another employee or respondent (this is its own charge)
- falsification of data on employee application
- falsification of Census Bureau data

In cases of insubordination, the burden is on the supervisor to phrase the order in such a way that there are no options. Make it very clear that the work must be finished by a certain time. For example, "I need you to type this by the end of the day."

If and when a situation occurs, counseling the employee should be the immediate starting point for dealing with conduct problems. When these problems are such that discipline/termination will occur if improvements are not seen, then the supervisors need to be explicit in their discussions with the employee. Such counseling should include clear specifications of the problem, the standard of conduct that is expected from the employee, and the possibility of discipline should conduct continue. Counseling sessions are not considered to be disciplinary actions.

When counseling is ineffective, supervisors will need to decide what type of disciplinary action will best remedy the problem. There are four types of disciplinary actions: oral admonishment, written reprimand, suspension, and termination or removal.

Some situations will warrant starting with a lighter action but progressing to harsher ones if the conduct problem continues. Other serious or egregious situations may warrant going directly to termination as the most appropriate action.

The statutory and regulatory provisions that apply to conduct and performance-based actions are different. Refer to Chapter 17 for instructions on Performance-based problems. However, there are some basic "rules of thumb" to follow when dealing with either conduct or performance:

- respond in a timely manner to a conduct or performance problem. Often this will mean having a counseling discussion with the employee. Try to secure the employee's commitment to positive change;
- select a response that fits the problem, that is, consider the nature and seriousness of the problem, including any history of a similar problem and the action, if any, taken at the time;
- be as consistent as possible in responding to similar problems;
- be sure employees are aware of what is expected of them and the possible consequences for not improving their conduct or performance; and
- keep good supervisory notes documenting your discussion(s), including when it took place, the matters discussed, your responses, and those of the employee. Keep these notes in a notebook or file which does not uniquely identify the employee.

When proposing an action: (See Illustrations 16A-1 and 16A-2 for flowcharts which show the review process for the various actions.)

- Discuss the situation with the Human Resources Division's Employee Relations Branch (ERB) specialist before taking action and/or drafting and transmitting employee correspondence.
- Select and draft action letters using the sample letters within this chapter.
- Send all draft correspondence, with the exception of Falsification of Data cases, directly to ERB specialist by electronic mail. Falsification of Data cases should be sent to Field Division, Decennial Administrative Branch (DAB) using the procedures in Chapter 16, Topic 9. Your ERB specialist should review all conduct-based action cases prior to sending to the employee.
- Forward a complete copy of any documentation (i.e., Documentation of Termination for Performance and/or Conduct Problems, falsification cases, letters, supervisory

notes, etc.) directly to your ERB specialist by facsimile or mail (see Illustration 16A-3). Reproduce documents as necessary. Response from ERB specialist can usually be expected within 7-10 working days.

For general questions about this guidance or about operating procedures in processing conduct-based actions, contact DAB. For guidance on specific cases, contact ERB.

For an overview of conduct-based actions, see Illustration 16A-4. See Illustration 16A-5 for a listing of specific Nature of Action Codes.

This manual applies to all Schedule A Regional Census Center (RCC) employees, Coverage Measurement employees, and leave-earning employees in the Local Census Offices (LCO) (i.e., LCO Managers, Assistant Managers, and Administrative Assistants). All other LCO employees are covered by procedures in the DX-501, Local Census Office Administrative Manual.

Topic 2: Counseling

Counseling is not a prerequisite to the consideration of taking disciplinary action. However, it should be the immediate starting point for dealing with conduct problems. Supervisors routinely should discuss problems with employees. The supervisor(s) needs to be explicit in his/her discussions with the employee. Such counseling should include clear identification of the problem, the standard of conduct expected from the employee, and where appropriate, notice that disciplinary action(s) may result if problems persist. Counseling sessions are not disciplinary actions. However, supervisors/managers should document the date and general content of the counseling in their supervisory notes. These notes should not be forwarded to Headquarters/Human Resources Division for inclusion in the employee Official Personnel Files; keep them in a **secure** notebook or file which does not uniquely identify the employee.

Topic 3: Disciplinary/Adverse Action

When counseling is ineffective, or when a serious offense has occurred warranting immediate consideration of disciplinary action, supervisors will need to decide what type of disciplinary action will remedy the problem. The purpose of disciplinary action is to correct behavior. It is to get the "employee's attention." When an employee exhibits misconduct, you will need to assess whether the employee shows potential for correcting his/her behavior or whether the behavior is so serious it cannot be corrected. It is essential that the Regional Director (RD) be informed before any disciplinary actions are taken.

Disciplinary action is corrective in nature and should be administered in a constructive, progressive, consistent, and timely manner. Disciplinary actions range from oral admonishment to removal from the Federal service. All disciplinary action must be coordinated with your ERB specialist.

Oral Admonishment	A formal and documented disciplinary action delivered verbally to the employee.
Written Reprimand	A written notice to the employee, in the form of a letter, signed by the Regional Director.
Suspension	A placement of an employee in a temporary nonpay and nonduty status for disciplinary reasons.
Termination/Removal	Removal from your current position or from the Federal service for cause and for the efficiency of the service. When a termination and/or removal of an employee is recommended, the supervisor must consider the type of appointment and length of service.

Topic 4: Determining Penalties

Table of Offenses and Penalties

The Table of Offenses and Penalties in the Department of Commerce Administrative Order 202-751, (see Illustration 16D-1 for a copy of the DAO 202-751). These are guidelines to consider along with other factors described below. The Census Bureau's policy is that discipline will be progressive. While the penalty determined appropriate will need to be based on the facts in the particular case, generally it will begin with the minimum penalty considered appropriate to deter recurrence of the employee misconduct. Penalties may range from an oral admonishment warning the employee that he/she needs to correct some behavior to termination/removal for a first offense of serious misconduct.

In selecting an appropriate penalty, consider the following factors, as appropriate to the situation. Not all of these factors will be pertinent in every case. Some may weigh in the employee's favor while others may not, or may be aggravating factors. They 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 accidental, or was committed maliciously or for gain, or was frequently repeated.
- The employee's job level and type of employment, including supervisory or public trust role, contacts with the public, and prominence of the position.
- The employee's past disciplinary record.
- The employee's past work record, including length of service, performance on the job, ability to get along with coworkers, and dependability.
- 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.
- The consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- The consistency of the penalty with the Department of Commerce Table of Penalties.

- The notoriety of the offense or its impact upon the reputation of the agency.
- The clarity with which the employee was on notice of any rules violated in committing the offense, or had been warned about the conduct in question.
- The potential for the employee's rehabilitation.
- Any 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.
- The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Topic 5: Record Keeping Requirements

Documentation of Performance and/or Conduct based Problems

Record any type of disciplinary action, i.e., oral admonishments, written reprimands, suspensions, or terminations, on Form DX-282, Documentation of Unacceptable Performance and/or Conduct (see Appendix H).

In addition to discussing the situations with the employee and/or notifying the employee in writing of decision to terminate, the supervisor is required to document each unacceptable performance or conduct action by immediately completing a DX-282. In Section II, block A, the supervisor must document the employee's conduct and/or performance problem, date the incident occurred, and the supervisory action. In Section III, block A, the supervisor must state the performance standards and related employee's deficiencies. The DX-282 must have a date and name identifying the employee and the signature of the supervisor initiating the request, in the event this material is released under the Privacy Act or Freedom of Information Act.

Forward copies of written reprimands to ERB specialist for filing in the employee's OPF (under the Employee Performance Folder) along with SF-50, Notification of Personnel Action, documenting the action taken, if applicable. The supervisor should contact ERB specialist for guidance when contemplating taking a conduct-based action for employees with procedural protections and appeal rights. They can be reached on (301) 763-3701.

An employee is not entitled to view Form DX-282 unless an action is taken where they would have rights to view the material relied on to take the action, i.e., proposed suspension or removal; or if the employee files an EEO complaint or grievance. They would then have access to the DX-282 since this documentation would be given to the investigator of either forum.

Establishment of Disciplinary/Adverse Action Files (DAAF)

Establish a DAAF for each employee (by name) involved in a performance or conduct-based action. Documentation, including the DX-282, written reprimands, and all other supporting documents should be filed in the employee's DAAF. The RCC will maintain the DAAF for the LCO managerial positions and all RCC and Coverage Measurement positions in a locked file cabinet.

Keep all the information relied upon to take a disciplinary action in the DAAF. This includes: DX-282 or other written documentation; medical or other documentation supplied by the employee pertinent to the case; reports of investigation; witness statements or other documentary evidence; copies of letters of reprimand and/or proposal and decision notices, as appropriate; and any other materials documenting the reason(s) for the disciplinary action. Supervisory notes should not be a part of the DAAF.

Label and forward the DAAFs to the RO when the RCC closes. The RO will maintain the DAAFs in a locked file cabinet for seven years from the date of the last action. If the action is appealed, the DAAFs must be maintained for seven years after the date of the final decision.

Topic 6: Taking Specific Disciplinary Action

Oral Admonishment

Oral admonishment discussions should be administered by the ARCM, ARD, or designate as appropriate, in a suitable setting that allows for relative privacy and freedom from interruption. Tell the employee that the oral admonishment is a formal and documented disciplinary action which will be considered if conduct problems continue and that further instances may result in additional disciplinary adverse action including removal. In Section II, block B of the DX-282, document the admonishment, who gave it, and the date. Obtain the RD's signature and date in Section V, block D, E, and F before the oral admonishment is given showing his/her approval of the action. File the completed form in the DAAF.

Written Reprimand

The written reprimand should identify the offense. Explain to the employee that such conduct is unacceptable and that further disciplinary/adverse action may result if the conduct recurs. Explain the employee's grievance and EEO rights. Request that the employee sign a receipt for the reprimand letter showing the date of delivery. If delivered by mail, send it by certified mail with return receipt requested. Also, send as a trailer copy a "second copy" of the letter by regular first class mail.

Forward a copy of the written reprimand to your ERB Specialist to be filed on the left side of the employee's OPF (under the Employee Performance Folder). Also, keep a copy of the letter, the applicable record of receipt, form DX-282, and other supporting material in the DAAF. See Illustration 16C2-1 for a sample letter of reprimand.

Suspensions of More than 14 Calendar Days and Removal/Termination Actions for Excepted Service Employees Covered by 5 U.S.C. Chapter 75.

Coverage: Preference eligibles in the excepted service with 1 year of current continuous service in the same or similar positions and non-preference eligible excepted service employees with 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less.

For suspensions of more than 14 calendar days and removal/termination, covered excepted service employees are entitled to 30 days advance written notice, the right to reply, a

written decision, and the right to appeal the suspension or removal/termination to the Merit Systems Protection Board (MSPB).

As the servicing personnel office for competitive and excepted service employees, ERB will review the required proposal and prepare the decision notices using the information you provide to them. Be sure to provide the documentation of the misconduct, including supervisory statements, witness statements, copies of written instructions to the employee, counseling memos, etc., along with a copy of the employee's most recent SF-50. These actions must be reviewed by a representative of the Commerce Department's Office of General Counsel (OGC). ERB will coordinate this review.

All proposal and decision notices for these employees will be signed by the RD. See Illustrations 16E3-1 and 16E3-3 for sample proposal and decision notices.

**For Proposed Removal
for Conduct**

1. Copy of signed and dated proposal letter, if not already received.
2. Copy of employee's written reply (if any).
3. Brief summary prepared by the RCC responding to the issues the employee raised in his/her oral reply (if any).

These actions are documented by HRD in the employee's OPF with a Notification of Personnel Action, SF-50. No other information relating to these actions will appear in the OPF. Keep copies of all supporting documentation, including the proposal and decision notices, with proof of employee receipt, in the DAAF.

**Removal/Termination
of Excepted Service
Employees Not
Covered by 5 U.S.C.
Chapter 75**

Coverage: Preference eligibles with less than 1 year of continuous service and non-preference eligibles with less than 2 years of continuous service in a non-temporary appointment.

A termination letter should be sent to a first year employee if conduct/performance does not improve. The letter should remind the employee that he/she was previously notified that his/her conduct or performance was unacceptable, and since improvement has not been demonstrated, this letter is informing him/her they will be terminated on a specific date. The letter should be supported by documentation which will be needed for future reference when responding to inquiries regarding the

employee. See Illustration 16E3-2 and 16E3-4 for sample removal/termination notice.

These actions do not require review by Headquarters. However, DAB and ERB are available to assist as needed. The employee has no right to appeal to the MSPB or to grieve their separation action through the Decennial Administrative Grievance Procedure. They may, however, pursue an allegation of discrimination under the Census Bureau's Equal Employment Opportunity (EEO) Complaint Process.

The notice of removal/termination should be signed by the RD. Keep appropriate records on these actions in the DAAF. Obtain a record of the employee's receipt of the removal/termination notice.

Topic 7: Formal Meetings with Employees to Discuss Performance and Conduct

Employees have no rights to representation at these meetings. We strongly discourage managers from allowing representatives to be present. If you do it for one employee you will set a precedent and must then do it for all employees.

1. Do not encourage invitation of a third party representative.
2. If employee requests representation, and supervisor determines that such representation would not be disruptive, third party may be permitted at supervisor's discretion.
3. If third party representation is permitted then:
4. The employee should sign a statement designating the third party as his/her representative in connection with the meeting. This allows the manager to discuss information of a confidential nature, such as performance appraisals and ratings, etc. during the meeting. Be sure you state the entire issue being discussed at the meeting. Do not discuss any other subject not covered on the form.
5. The employee should be told that it is his or her responsibility to notify the third party of the time and location of the meeting.

Topic 8: Reporting Conduct Problems

You must contact Headquarters ERB specialist for guidance when contemplating taking a conduct action, except for an oral admonishment, against an employee who has completed a trial/probationary period or an employee who is a preference eligible with at least one year current continuous service with the Census Bureau, or in combination with another Federal agency, in the same line of work, or a non-preference eligible with at least two years of service in a non-temporary position.

Topic 9: Falsification of Data

Report all cases of suspected falsification of data (Title 13, payroll/personnel) to the Chief, Field Division. AFTER the following administrative procedures have been performed.

1. Send a letter (see Illustrations 16E3-5 and 16EF-1) to the employee who is suspected of falsifying Title 13 data. The letter should:
 - a. list the suspected falsification cases, including addresses (if applicable);
 - b. request an explanation in writing from the employee within 5 working days of the receipt letter; and inform the employee that no work will be assigned until the matter is resolved.

Send the letter to the employee Certified-Return Receipt Requested and a trailer copy via First Class Mail.

If at any stage, the employee(s) offer his/her resignation, you may accept the resignation, and forward a SF-52 to HRD/PPSB for processing. However, you still must report the suspected falsification to the RD/ARD and Chief, Field Division, in a memorandum which includes documentation that lists the suspected falsification, including copies of the 5-day letter and the SF-50, and the effective date of the employee's resignation. The Chief of Field Division, will notify OGC, who will forward to IG for consideration of criminal prosecution.

When you receive the employee's response and you determine data was falsified or if you do not receive a response within 5 working days from the time of the signed receipt, notify the RD/ARD and ERB, by facsimile. (Do not report if you determine the data is not falsified.) Use the FAX Transmittal Sheet (see Illustration 16F-2) for suspected falsification cases and attach the required data:

- a. A memorandum to Chief, Field Division, Attention: DAB, which reports the suspected falsification cases and requests notification of the Office of the Inspector General. Include the action the RD/ARCM wishes to initiate, e.g., terminate the employee.
- b. A copy of the signed 5-day letter to the employee.
- c. A copy of the employee's written response.
- d. If no reply is received, send a copy of the signed receipt. If a returned signed receipt was not received, allow 10 working days from date of letter and state in the memorandum to the Chief, Field Division.
- e. If warranted by the circumstances, draft a Proposal Notice Letter (for Schedule A Employees with Appeal Rights) or a draft Termination Letter (for Schedule A Employees without Appeal Rights -- see Illustration 16E3-4)

NOTE: Termination letters for employees without appeal rights do not need prior approval from ERB. However ERB will review at RCC request.

1. Proposed Removal for Title 13 Falsification

- a. (a) Proposal Letter -- RCC will draft proposal letter and forward to ERB for approval.
- b. Most recent rating of record (Douglas Purposes: only need copy of back page).
- c. Copy of interview and re-interview results and/or any other pertinent information, i.e., trace files, dump files, memos for the record, etc.
- d. Copy of the letter sent to employee explaining the discrepancies found, giving him/her time to respond to the discrepancies.
- e. Copy of the employee's response to the letter mentioned in d, above.
- f. Copy of the letter sent to Chief, Field Division, from the RCC.
- g. Copy of the letter sent to the Legal Office from Chief, Field Division.
- h. Copy of the letter sent to the OIG from the Legal Office.

2. Decision to Remove for Title 13 Falsification

- a. Decision Letter -- RCC will draft decision letter and forward to ERB for approval.
- b. Copy of signed and dated proposal notice.
- c. Copy of receipt of proposal notice.
- c. Copy of employee's reply (if any).

Brief summary prepared by the RCC responding to the issues the employee raised in his/her reply (if any).

In addition to the above documents, any document leading to the agency's decision needs to be included in the materials sent to ERB. ERB requires all materials related to the case for their files because their files will be reviewed by the Administrative Law judge, the employee's attorney, and the Bureau's attorney in the event of an appeal or hearing. Any material harmful to the Bureau's position also needs to be sent to ERB so the Bureau will be aware of the material and can prepare its case accordingly.

The Chief of Field Division, will notify the Associate Director for Field Operations, the Office of the Deputy Chief Counsel, and the Chief, Financial Administrative Systems Division. The Office of the Deputy Chief Counsel will notify the Office of the Inspector General.

HRD will obtain OGCs review where appropriate and notify the RCC when the RCC can begin action by returning the draft Proposal/Decision Letters to the RD to send to the employee. Letters should be signed by the RD.

Topic 10: Procedural and Appeals Rights

If any RCC/LCO employee feels he or she has been discriminated against because of race, color, religion, gender, sexual orientation, national origin, age (40 years of age and over), or physical/mental disability, they have the right to appeal through the Equal Employment Opportunity Commission. The Equal Employment Opportunity (EEO) Specialist located in the RCC will be able to assist an employee in the EEO process.

RCC Schedule A Appeal Rights

An RCC Schedule A employee against whom a performance-based demotion or termination action is proposed is entitled to specific procedural rights if he/she has completed a trial/probation period, if applicable, or one continuous year of service with the Census Bureau, or one year of continuous employment in combination with another Federal agency, in the same line of work. Such rights include an advance written notice of the proposed action and an opportunity to respond to the notice. If such an employee also is a preference eligible, or if an employee is a non-preference eligible with at least two years of service in a non-temporary appointment, he/she may appeal the action to the Merit System Protection Board (MSPB).

An RCC Schedule A employee against whom a conduct-based termination is proposed is entitled to similar procedural rights and MSPB appeal rights only if he/she is a preference eligible and has completed one continuous year of service in the same line of work or a non-preference eligible employee with at least two years of service in a non-temporary appointment.

Local Census Office Employee Appeals Rights

LCO Schedule A full-time employees, i.e., LCO manager, assistant managers, and administrative assistants have the same appeal rights as RCC Schedule A employees mentioned above. LCO Schedule A intermittent employees do not have appeal rights due to the temporary nature of their employment.

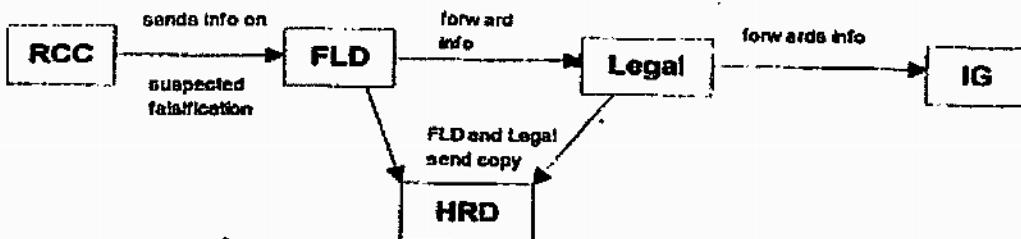
NOTE: An exception to the rule would be when a veteran in a LCO intermittent position who has one continuous year of service with the Census Bureau or one year of continuous employment in combination with another Federal agency, in the same line of work. In this case, the veteran would be eligible for the appeal rights mentioned above for RCC Schedule A employees.

Topic 11: Quarterly Summary Report of Termination for Decennial Employees of a Serious Nature

Each RCC will provide FLD, DAB with a quarterly summary report of terminations of a more serious nature, e.g., false payroll claims, theft, and assault. The report must list employees against whom we took personnel actions for providing false information and/or failure to follow proper procedures.

ILLUSTRATION 16A-1

REVIEW PROCESS - CONDUCT CASES (TITLE 13 FALSIFICATION)



If employee has MSPB appeal rights:

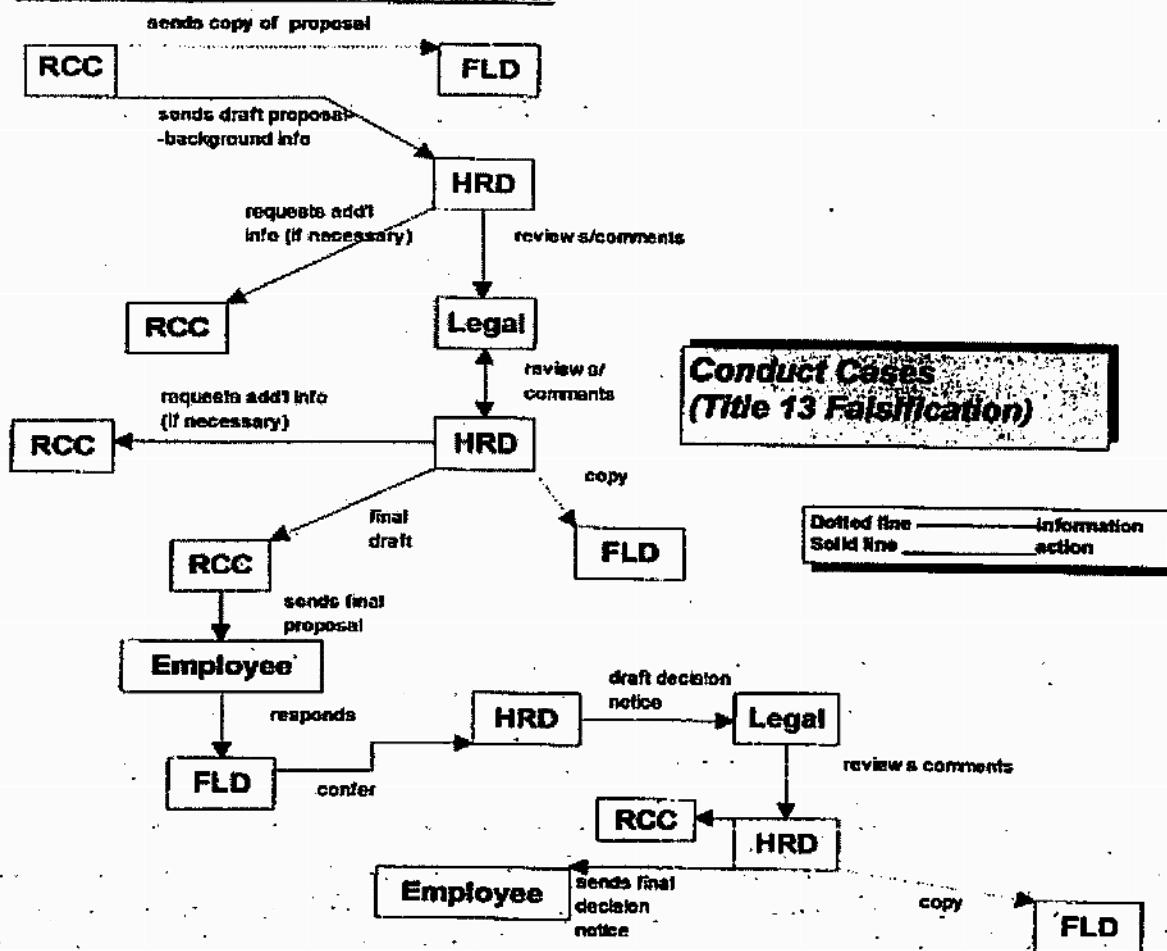


ILLUSTRATION 16A-2

REVIEW PROCESS - CONDUCT CASES (OTHER THAN TITLE 13)

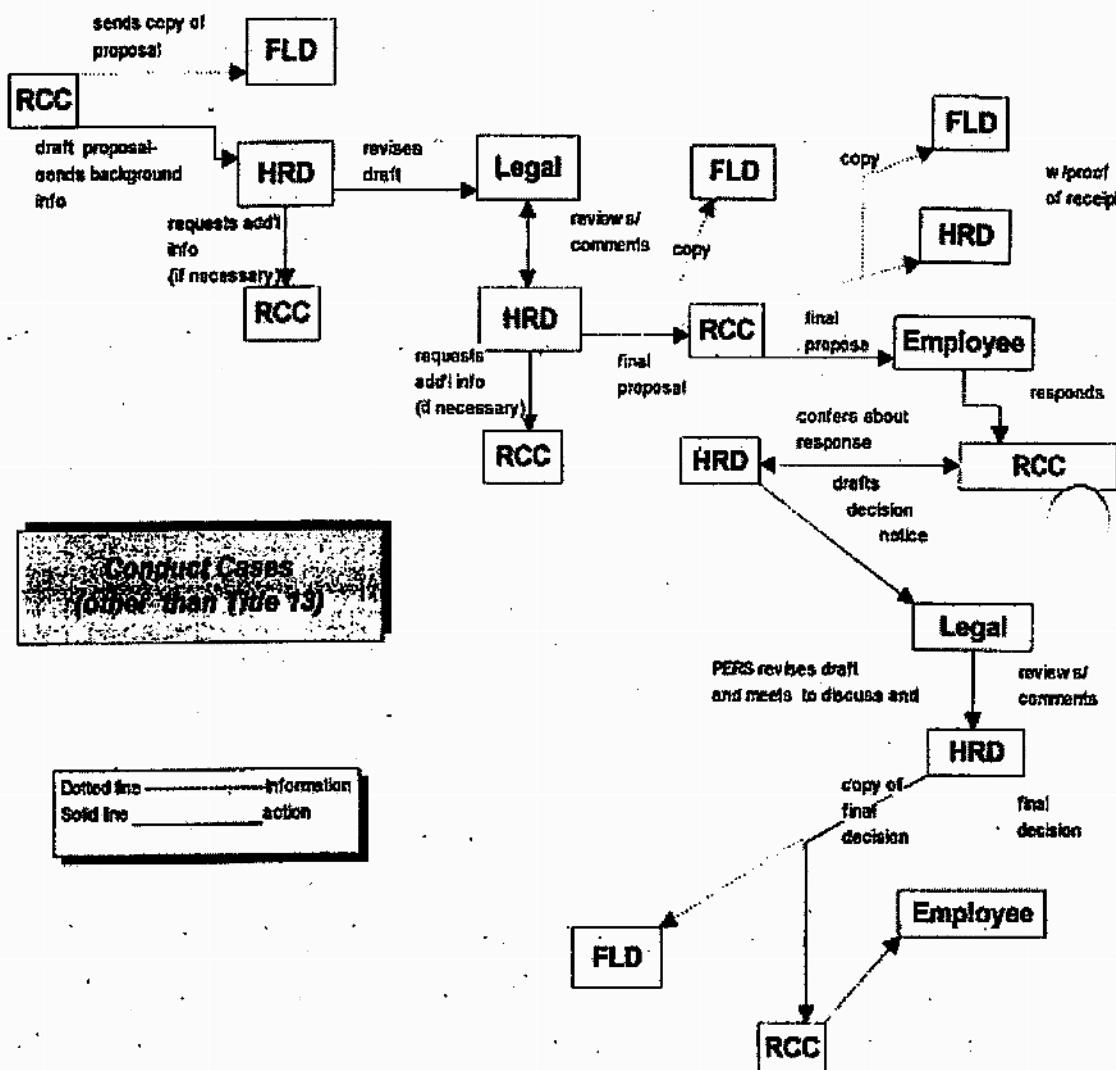


ILLUSTRATION 16A-3

**EMPLOYEE RELATIONS
HUMAN RESOURCES DIVISION
FAX TRANSMITTAL SHEET FOR PERFORMANCE/CONDUCT
FAX NO. (301) 457-3742**

REGIONAL CENSUS CENTER: _____
EMPLOYEE NAME: _____

PROPOSED ACTION (CHECK APPROPRIATE SPACE)

PERFORMANCE-BASED ACTION:

- PERFORMANCE IMPROVEMENT PERIOD
- PIP FEEDBACK LETTER
- PROPOSED REMOVAL
- REMOVAL
- DENIAL OF WITHIN GRADE INCREASE

DOCUMENTATION: (MUST BE SUBMITTED AT TIME OF REFERRAL)

PERFORMANCE-BASED ACTIONS (CHECK APPROPRIATE SPACE OF ITEMS BELOW)

- COPY OF PERFORMANCE APPRAISAL RECORD (BC-1804(F))
- COPY OF NEW RATING OF RECORD FOR WGI DENIAL PURPOSES (REQUIRED WHEN RATING OF RECORD MEETS OR EXCEEDS EXPECTATION).

PROPOSED ACTION (CHECK APPROPRIATE SPACE)

CONDUCT-BASED ACTION:

- DX-282, DOCUMENTATION OF PERFORMANCE AND/OR CONDUCT PROBLEMS
- LETTER OF REPRIMAND
- PROPOSED REMOVAL
- REMOVAL

DOCUMENTATION: (MUST BE SUBMITTED AT TIME OF REFERRAL)

CONDUCT-BASED ACTIONS (CHECK APPROPRIATE SPACE OF ITEMS BELOW)

- SUPERVISOR'S MEMORANDUM FOR THE RECORD
- WITNESS STATEMENTS (IF ANY)
- WRITTEN INSTRUCTIONS TO EMPLOYEE
- EMPLOYEE COUNSELING DOCUMENTATION
- DOCUMENTATION OF OPERATING PROCEDURES/POLICIES
- LEAVE RECORDS (if applicable)
- PAYROLL RECORDS (if applicable)

ILLUSTRATION 16A-4**SUMMARY OF CONDUCT-BASED ACTIONS****1. Conduct-based Disciplinary/Adverse Actions****ORAL ADMONISHMENTS**

- Normally conducted by the ARD, ARCM, program coordinator, or program supervisor.
- Needs to be documented, but not in the Official Personnel Folder (OPF). Use Form DX-282, Documentation of Performance and/or Conduct problems. Keep the completed DX-282 in the Disciplinary/Adverse Action File (DAAF).
- Employee Relations Branch (ERB), Human Resources Division, concurrence is not required, but ERB is available to assist with any questions.

WRITTEN REPRIMANDS

- Signed by the Regional Director (RD).
- RD may either draft the letter of reprimand and forward it for ERB review or ERB will prepare the letter for signature based on information provided.
- They are temporary documents, a copy of which is placed in the Employee's Personnel Folder on the left-hand side for up to 3 years. The employee can request its removal after 1 year. Keep a copy, along with the supporting documentation, in the DAAF.

SUSPENSIONS OF MORE THAN 14 CALENDAR DAYS AND REMOVAL/TERMINATION ACTIONS FOR EXCEPTED SERVICE EMPLOYEES COVERED BY 5 U.S.C. CHAPTER 75

Based on information provided, ERB will draft the proposal and decision notices. ERB will get Office of General Counsel (OGC) concurrence as required for employees with specific right of appeal to the Merit Systems Protection Board (MSPB).

ILLUSTRATION 16A-5**NATURE OF ACTION CODES**

<u>ACTION</u>	<u>NOAC</u>	<u>NATURE OF ACTION (NOA)</u>	<u>AUTHORITY CODE</u>	<u>LEGAL AUTHORITY</u>
Separation based on misconduct (no appeal rights)	357	Termination	ZLJ	REG 213.3113(d)(1) or REG 213.3114(d)(2) Based on employee's current appointing authority
Separation based on suitability (no appeal rights) <u>before</u> the employee's entrance on duty	357	Termination	UXM	REG 213.3114(d)(1) or REG 213.3114(d)(2) Based on employee's current appointing authority
Separation based on unacceptable performance or other factors unrelated to misconduct or delinquency	357	Termination	ZLK	Same as appointing authority

*Letter notifying employee of reason(s) (performance and/or conduct) is required.

NOTE: for employees under NFC, please provide the 52 and a copy of letter to ERB for processing.

ILLUSTRATION 16C2-1**SAMPLE LETTER OF WRITTEN REPRIMAND
(USE FOR CONDUCT PROBLEMS ONLY)**

Date

Name

Address

Dear Mr./Ms.:

[Example of narrative describing an infraction. Modify as appropriate in describing/documenting other kinds of misconduct:] On May 4, 2007, you reported to work at 10:30 a.m., two hours past your starting time of 8:30 a.m. You did not have prior approval for your absence nor did you call in that morning to request emergency leave. Your supervisor determined that the reason for your absence was unwarranted. Accordingly, we charged you with 2 hours of absence without leave (AWOL) and with failure to follow proper leave procedures on May 4, 2007.

Before this instance of misconduct you were orally admonished on [Date] for reporting to work late [Date] and [statement of previous action taken, such as:] charged 1 hour of AWOL.

You are to consider this a letter of official reprimand for [statement of the infraction, for example:] unauthorized absence from work and for failure to follow proper leave procedures. These are serious offenses and I want you to realize that further instances of such misconduct may result in more severe disciplinary action, including suspension or removal.

A copy of this letter is being placed in your Official Personnel Folder (OPF), where it will remain for a minimum of 1 year, but no longer than 3 years from the date of issuance. After 1 year minimum, you can request removal of this letter from your OPF. You should make your request, preferable in writing, to me. Written Reprimands are removed from OPFs upon separation.

If you believe this action was based on discrimination on the basis of race, color, religion, sex, national origin, age (at least 40 years of age), or handicap, you may raise such allegations through filing an Equal Employment Opportunity (EEO) complaint under the EEO complaint process as set forth in Title 29, Code of Federal Regulations, Part 1614. To initiate an EEO complaint, you must bring the matter to the attention of an EEO counselor within 45 calendar days of the date of your receiving this written reprimand. For information concerning the filing of an EEO complaint, you should contact the EEO Office, Bureau of the Census, toll-free on 1-800-872-6096 or (301) 763-2853/(TDD (301) 763-2540).

You also have the right to grieve this action, except if you are alleging discrimination, under the administrative grievance procedure, as outlined in the Regional Administrative Manual, Chapter 12. Your grievance must be filed within 15 calendar days of your receiving this written reprimand. If you wish more information regarding the grievance procedure and process, you may contact the Decennial Administrative Branch on 301-763-4899.

Sincerely,

[NAME]
[Regional Director]

cc: Official Personnel Folder

ILLUSTRATION 16D-1
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DEPARTMENT ADMINISTRATIVE ORDER (DAO)

DISCIPLINE

- Section 1. Purpose
 - Section 2. General Provisions
 - Section 3. Policy
 - Section 4. Specific Disciplinary Situations
 - Section 5. Effect on the Other Orders

Section 1. PURPOSE

- .01 The purpose of this order is to state the policy of the Department of Commerce with respect to discipline.

.02 The purpose of this revision is to omit material covered adequately in other sources, to provide more guidance in the application of appropriate and progressive discipline in individual cases, and to update the Table of Offenses and Penalties.

Section 2. GENERAL PROVISIONS

- .01 This order supplements the basic provisions of law and regulations governing disciplinary action.

.02 The basic authority for disciplinary actions by agencies is set forth in Executive order 9830, as amended, and chapters 43 and 75 of Title 5, U.S. Code, and is regulated by Parts 432, 752, 771 and 772 of Title 5 of the Code of Federal Regulations. Additional guidance is found in Federal Personnel Manual, chapters 751, 752 and 771, and in Department Administrative Orders 202-752 "Adverse Actions" and 202-432 "Reduction in Grade and Removal Based on Unacceptable Performance," which will be issued shortly.

SECTION 3. POLICY

- .01 General Policy

 - a. As used in this order, "discipline" means corrective measures intended to maintain the efficiency of the service and encourage employee performance and conduct compatible with the appropriate and lawful goals, practices, policies and procedures of the organization.

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- b. It is the policy of the Department that disciplinary action be taken whenever it is warranted by the employee's conduct or performance; and that discipline be administered in a constructive, progressive, consistent and timely manner.
- c. Any official or supervisor who is considering taking an adverse action shall consult the servicing personnel officer or his/her designee to assure that the action being considered is appropriate. Before an adverse action, other than a suspension of 14 calendar days or less, is proposed, the personnel officer shall consult with an appropriate staff attorney of the Department regarding any issues of law that may be involved. Consultation with legal counsel may also be appropriate in taking lesser disciplinary actions. In any case where an employee's conduct may involve violations of criminal law, no disciplinary action shall be taken until after consultation with legal counsel.

.02 Selection of Appropriate Disciplinary Action

To aid in the selection of an appropriate disciplinary action, consideration shall be given to the table of selected offenses and suggested penalties which is appended to this order as Appendix B. The penalties suggested there are guidelines only and are not mandatory. Each situation shall be considered on its own merits. Appendix A provides additional guidance on the selection of a penalty.

.03 Use of Enforced Leave

- a. In general, an employee may be placed on enforced leave (i.e., required to absent him or herself from duty) when:
 1. The employee is not ready, willing, or able to work; or
 2. An emergency situation exists, i.e., the employee's conduct or mental or physical condition is such that his/her presence on the job constitutes an immediate threat to Government property or to the well-being of the employee, co-worker, or the public.
- b. Emergency situations
 1. In an emergency situation as described in subparagraph .03a2. of this section, in which a responsible official has not had an opportunity to appraise the situation and decide whether to initiate disciplinary action, an employee may be placed on enforced leave during the pendency of the emergency.

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2. A period of enforced leave that began in an emergency situation shall not be continued indefinitely. Thus, if the employee presents him/herself for duty after the immediate emergency has ceased and it is determined by the responsible official that the employee is ready, willing and able to perform duty, continued use of enforced leave is not appropriate. However, the employee may be placed in a non-duty status, with pay and without charge to leave (administrative leave) for up to ten calendar days to allow time to effect suspension and for other disciplinary action.

c. Disciplinary

Except as provide in paragraph .03b1. above, use of enforced leave in a disciplinary situation (i.e., an incident or set of circumstances which will or may result in a disciplinary action being proposed or taken against an employee) constitutes a suspension and the procedures set forth in Department Administrative order 202-752 shall be followed.

d. Non-disciplinary situations

In a non-disciplinary situation, where no emergency exists, any employee who is not "ready, willing and able" to work may be placed on enforced leave (annual, sick or leave without pay) and this action will not be considered a suspension.

e. Alternatives to enforced leave

In situations where it is not in the interest of the Government for an employee to remain in his/her position in an active duty and pay status, a number of options are available depending on the circumstances, in addition to or in lieu of enforced leave:

1. The employee may be assigned to other suitable duties,
2. The employee may be placed on excused absence (administrative leave),
3. The employee may be placed on voluntary leave (i.e., annual leave, sick leave, or leave without pay as appropriate in accordance with applicable regulations and policies), or
4. The employee may be considered absent without leave (AWOL)

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SECTION 4. SPECIFIC DISCIPLINARY SITUATIONS

.01 Absence Without Leave (AWOL) (see DAO 202-630, Section 7.05)

a. **General**

If an employee (1) has failed to obtain advance approval for absence on any type of leave (except in instances of emergency here it is impracticable for the employee to obtain advance leave), or (2) has been denied a request for leave, or (3) has obtained approval of leave by fraud or deception, or (4) has failed to submit a required physician's statement upon return to duty showing that the employee was incapacitated for duty (when previously advised that a medical certificate would be required) or (5) has failed to follow prescribed leave procedures, the employee shall be considered absent with leave (AWOL) for the period of absence unless authorized official finds special justification exists to approve the absence as leave after consideration of the circumstances.

b. **Prolonged Absence and Failure to Return from Leave or Furlough**

When an appointing officer is unable to ascertain that an absent employee intends to return to duty, and the employee is entitled to adverse action procedures, the separation should ordinarily be processed as an adverse action for absence without leave rather than as an abandonment of position.

.02 Unacceptable Performance

- a. In accordance with Chapter 43 of title 5, U.S. Code, an employee covered by that chapter whose performance continues to be unacceptable may be reassigned, removed, or demoted only after an opportunity to demonstrate acceptable performance.
- b. As a matter of sound personnel management, when an employee's performance is less than satisfactory, a timely warning should normally be given to afford the employee the opportunity to improve before any disciplinary actions is effected.

SECTION 5 EFFECT ON OTHER ORDERS

This order supersedes Administrative order 202-751 dated July 26, 1967

(Signed) Acting Director of Personnel

Approved:

(signed) Acting Assistant Secretary for Administration

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Appendix A

DAO 202-751

A. SELECTING A PENALTY

.01 A preliminary judgment should be made as to an appropriate penalty without regard to any consideration other than the nature of the offense, its seriousness and consequences, the nature of the employee's position, and the disciplinary effect of the penalty. On the basis of these considerations and "everything else being equal," select the penalty appropriate for the offense in ordinary circumstances.

.02 Then consider any aspects of the situation that would tend to suggest a greater or lesser penalty than would ordinarily be imposed. Possible considerations include:

a. Situation:

1. Possibility of genuine misunderstanding
2. Enticements or provocations
3. Culpabilities of others
4. Other mitigations or extenuating circumstances

b. Employee:

1. Length of Service
2. Quality of Work History
3. Personal Reputation
4. Past Contributions
5. Record of Cooperativeness
6. Record of Achievements
7. Past Disciplinary Record (nature, frequency and recency of past offenses)

.03 On the basis of all of the above, select the appropriate disciplinary action.

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.04 For adverse actions and other disciplinary actions for which the employee receives notice and the opportunity to reply in advance, there are actually two separate penalty considerations: the first, on the basis of available evidence when the action is proposed; and the second, in consideration of the employee's reply and all other evidence, when the final decision to take action is made.

Appendix B.

TABLE OF OFFENSES AND PENALTIES

.01 The purpose of this table is to assist supervisors and managers in selecting appropriate penalties and to provide a framework for constructive discipline. In selecting an appropriate disciplinary action, it should be remembered that discipline has a constructive purpose, and is intended to:

- a. Correct the unacceptable conduct, attitude or work habits
- b. Help maintain morale and the efficiency of the service; and
- c. Be fair and reasonable in its degree of severity

.02 This table does not cover every possible offense but it describes the more common types of offenses and the range of penalties normally assessed for those offenses.

.03 The range of penalties described in the table is intended to serve as a guide only, and greater or lesser penalties than suggested may be imposed as circumstances warrant. For example, removal on the first offense may be warranted for extended periods of absence without leave.

ILLUSTRATION 16D-1**Page 7 of 11****TABLE OF OFFENSES AND PENALTIES**

OFFENSES	First Offense	Second Offense	Subsequent Offense
<u>Relationships with Public</u>			
1. Failure to obtain an required clearance of official speech or article (See DAO 219-1).	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
<u>Security Regulations</u>			
2. Violation of a security regulation	Oral admonishment to removal	5 days suspension to removal	30 days suspension to removal
<u>Outside Employment & Interests</u>			
3. Engaging in private business activities of a prohibited or unethical nature (See DAO 202-273 for details).	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
4. Acceptance of improper dual employment or dual compensation by U.S. Government.	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
5. Acceptance by an employee of gratuity which might reasonably be interpreted as tending to affect the performance of official duties.	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
6. Acceptance of foreign employment without prior authorization.	5 days suspension to removal	30 days suspension to removal	Removal
<u>Political Activity</u>			
7. Improper political activities (See DAO 202-731)	Suspension or removal as determined by the Merit Systems Protection Board or the Department		
<u>Conduct on the Job</u>			
8. Unauthorized absence from the job during working hours or on any scheduled day of work.	Oral admonishment to 3 days suspension	Written reprimand to 5 days suspension	5 days suspension to removal
9. Tardiness	Oral admonishment to 1 day suspension	Written reprimand to 5 days suspension	5 days suspension to removal
10. Improper use of Sick Leave	Written reprimand to 10 days suspension	5 days suspension to removal	30 days suspension to removal

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OFFENSES	First Offense	Second Offense	Subsequent Offense
11. Intoxication caused by alcohol or other drugs:			
a. Intoxication while on duty which impairs the ability to perform duties properly	5 days suspension to removal	30 days suspension to removal	Removal
b. Selling intoxicants on premises occupied by the Department	Removal		
c. Unauthorized possession or use of intoxicants on premises of the Department	3 days suspension to 30 days suspension	10 days suspension to removal	30 days suspension to removal
12. Promotion of gambling or lotteries on Government premises or while on duty status	5 days suspension to removal	30 days suspension to removal	Removal
13. Gambling on Government premises or while on duty status	Written reprimand to 10 days suspension	5 days suspension to removal	30 days suspension to removal
14. Lending and borrowing:			
a. Borrowing money or obtaining co-signature from subordinates.	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
b. Lending of money to other employees at usurious rates	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
15. Creating a disturbance in the work place or on premises of the Department	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
16. Fighting	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
17. Conduct which violates common decency or morality including use of improper or obscene language	Written reprimand to 10 days suspension	5 days suspension to removal	30 days suspension to removal
18. Making vicious, malicious or knowingly false statements concerning another officer or employee of the Government.	Written reprimand to 10 days suspension	5 days suspension to removal	30 days suspension to removal
19. Negligent or intentional injury to person or property of other employees	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal

ILLUSTRATION 16D-1**Page 9 of 11**

OFFENSES	First Offense	Second Offense	Subsequent Offense
20. Safety (non-motor Vehicle): Violation of safety regulations, instructions, or prescribed safe practices, including failure to report accident or injury.	Oral admonishment to 3 days suspension	Written reprimand to 5 days suspension	5 days suspension to removal
21. Safety (Government Motor Vehicle Operation): Violation of traffic laws, safety regulations or instructions, or safe driving practices, including failure to report accident or injury	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
22. Government Property: a. Willful or negligent damage or defacement.	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
b. Use of or allowing the use of Government motor vehicles, aircraft or water craft for other than official purposes.	30 days suspension (mandatory) to removal	Removal	
23. Act of negligence or careless workmanship in performance of duty resulting in waste of public funds or inefficiency.	Oral admonishment to 3 days suspension	Written reprimand to 5 days suspension	5 days suspension or removal
24. Use of or allowing use of Government funds, property, personnel, or other resources for unauthorized purposes.	5 days suspension to removal	30 days suspension to removal	Removal
25. Conducting personal affairs while in duty status.	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
26. Loafing, willful idleness, wasting time.	Oral admonishment to 3 days suspension	Written reprimand to 5 days suspension	
27. Sleeping on duty: a. Where safety or persons or property is not endangered.	Written reprimand to 10 days suspension	5 days suspension to removal	30 days suspension to removal
b. Where safety of person or property is endangered	5 days suspension to removal	30 days suspension to removal	Removal
28. Failure or excessive delay in carrying out orders or assignments	Written reprimand to 10 days suspension	5 days suspension to removal	30 days suspension to removal
29. Insubordination	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
30. Improper use of official authority or information	3 days suspension to 30 days suspension	10 days suspension to removal	30 days suspension to removal
31. Unethical use of official authority or information	30 days suspension to removal	Removal	

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OFFENSES	First Offense	Second Offense	Subsequent Offense
32. Acceptance of voluntary services for the Government contrary to statute.	Removal (required by statute 31 U.S.C. 665)		
33. Attempted use of influence or pressure to secure favor in the appointment, transfer, advancement or retention of a relative in the Department.	5 days suspension to removal	30 days suspension to removal	Removal
34. Violation of "no strike" affidavit	Removal		
35. Unauthorized canvassing, soliciting or peddling on Department premises.	Oral admonishment to 3 days suspension	Written reprimand to 5 days suspension	5 days suspension to removal
36. Deliberate or grossly negligent	Written reprimand to 10 days suspension	5 days suspension to removal	30 days suspension to removal
37. Harassing, threatening or taking reprisal action against an employee as a result of or in anticipation of a grievance, appeal, complaint, or other exercise of rights.	5 days suspension to removal	30 days suspension to removal	Removal
38. Misappropriation	Removal		
39. Inefficiency	Demotion or separation (as authorized by Chapter 43 of Title 5, U.S. Code)		
40. Gifts to official supervisors soliciting contributions for gift or present to those in superior official positions, accepting gifts or presents from Government employees receiving lower salary, or making donations as a gift or present to official supervisors.	Removal (required by 5 U.S.C. 7351, see also 5CFR 735.202(d))		
<u>Personal conduct or Character</u>			
41. Misconduct generally criminal, infamous, dishonest, or notoriously disgraceful conduct.	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
42. Misrepresentation, falsification, or omission of material fact in connection with application, employment or any record, report, investigation or other proceedings.	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
43. Certification to the accuracy of a position description containing substantial inaccuracies which may be grade controlling	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal

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OFFENSES	First Offense	Second Offense	Subsequent Offense
44. Conduct demonstration untrustworthiness or unreliability.	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
45. Discrimination	5 days suspension to removal	30 days suspension to removal	Removal
46. Refusal to answer appropriate interrogation in properly authorized inquiry	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
47. Failure to pay a just financial obligation in a proper and timely manner (See DAO 202-735A)	Written reprimand to removal	5 days suspension to removal	30 days suspension to removal
<p>* As used in this table, discrimination refers to specific acts taken by an employee in the performance of his/her official duties which discriminates against one or more individuals on the basis of race, sex, religion, color, age, national origin, handicapping condition, marital status, or political affiliation.</p>			
OFFENSES	First Offense	Second Offense	Subsequent Offense
<u>Miscellaneous Offenses</u>			
48. Violation on any administrative regulation which does not provide a penalty:			
a. Minor Offense	Oral admonishment to 3 days suspension	Written reprimand to 5 days suspension	5 days suspension to removal
b. Major Offense	5 days suspension to removal	30 days suspension to removal	Removal

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REGIONAL CENSUS CENTERS**SAMPLE PROPOSAL NOTICE LETTER
FOR CONDUCT
FOR SCHEDULE A EMPLOYEES WITH APPEAL RIGHTS**

FOR PREFERENCE ELIGIBLES
WITH ONE OR MORE CONTINUOUS
YEARS OF SERVICE
AND
NON-PREFERENCE ELIGIBLES WITH
TWO OR MORE YEARS OF SERVICE

Date

Name

Address

Dear Mr./Ms. :

I propose to remove you from your position as a [job title, pay plan/series/grade/step] and from the Federal service no earlier than 30 calendar days from the date you receive this notice for your [nature of misconduct]. I am proposing this action pursuant to Title 5, Code of Federal Regulations, Part 752, to promote the efficiency of the service.

Specifically, the reasons for the proposed action are:

[Give the misconduct, for example, absence without leave, insubordination, failure to carry out an assignment. Provide a narrative statement of the specifics of the misconduct, the effect of the misconduct, and the effect of the misconduct on the Regional Census Center.]

In proposing this penalty, I considered your:

- (1) [mitigating circumstances, such as, lack of previous discipline, meets or exceeds expectations, length of service, unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter], excellent work record, or lack of discipline over a long period of employment.]

However, I also considered: (choose as appropriate - not all will be applicable each time).

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- (2) The nature and seriousness of the offense and its relation to your duties, position and responsibilities: [May include whether the offense was intentional or technical or accidental, or was committed maliciously or for gain, or was frequently repeated].
- (3) The effect of the offense upon your ability to perform at a satisfactory level and its effect upon your supervisor's confidence in your ability to perform assigned duties: [with narrative].
- (4) Your job level and type of employment: [May include supervisory or public trust role, contacts with the public, and prominence of the position].
- (5) Your past work record: [May include performance on the job, ability to get along with coworkers, and dependability].
- (6) Your past disciplinary record: [specify date(s), type of disciplinary action, and reason(s) for disciplinary action].
- (7) Consistency of the penalty with agency guidance: The Table of Offenses and Penalties for the Department of Commerce recommends [specify maximum penalty for first, second, or additional instance of an infraction].
- (8) Consistency of the penalty with other agency actions: [Note the history of similar penalties for similar misconduct].
- (9) The clarity with which you were on notice of any rules violated in committing the offense, or had been warned about the conduct in question: [with narrative: include instances of counseling as appropriate].
- (10) The notoriety of the offense and its impact upon the reputation of the agency: [with narrative].
- (11) Your potential for rehabilitation: Despite counseling on many occasions and notification of discipline for similar misconduct, your pattern of [misconduct] has not improved, but rather has deteriorated. As a result, I seriously question your potential for rehabilitation.
- (12) Adequacy and effectiveness of alternative sanctions to deter similar misconduct by you or others: [with reasoning]

If you believe that you have a personal or medical problem that caused these offenses, you may wish to raise it as a potential defense for your unsatisfactory conduct. If you need information on the defense of a handicapping condition and the necessity to connect the misconduct and a

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handicapped condition, you may contact the Census Bureau's Employee Assistance Program (EAP) on 1-800-227-1060. For more information on the EAP see Chapter 15.

If you prove that you have a handicapping condition and that the handicapping condition caused your misconduct, then the RD/ARCM will take that into consideration in making his/her decision on this proposed action. The responsibility is yours, however, to pursue this matter.

You have the following rights in connection with the proposed action:

1. **To Reply:** You may answer this notice orally, in writing, or both. You should make any written reply to:

[Name]
RD/ARCM
Bureau of the Census
Room Number
City, State, Zip

Should you wish to make an oral reply, you may arrange an appointment by calling the RD/ARCM [RCC phone number].

You also may submit affidavits and other documentary evidence in support of your answer. You will be allowed 7 calendar days from the date you receive this notice to submit your answer. If you need an extension of the time limit for reply, you may submit a written request with the reason for it to the Chief, Field Division. He/she will give full consideration to any reply you submit.

2. **To be Represented:** You are entitled to be represented by an attorney or other representative in this matter. Both you and your representative must complete and sign the enclosed statement and return it to:

[Name]
Personnel Management Specialist
Human Resources Division
Bureau of the Census
Washington, DC 20233

You may contact [name] on (301) 763-3701

If your representative is not a sworn Census Bureau employee, please remember that Title 13 of the United States Code prohibits the disclosure of any identifying

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information about a respondent including names, addresses, and survey data, to that representative.

3. **To Review Materials:** You and/or your representative may review all of the material relied on to support the reasons contained in this notice. You may arrange to do so by contacting me at:

[Regional Census Center Address]

Or you may call my office on [telephone number].

4. **To Use Official Time:** If you are in a duty status, you may use a reasonable amount of time to review the supporting material, secure affidavits or other evidence, and to answer this notice. However, you will not be reimbursed for any mileage or other expenses you incur. Arrangements for the use of official time should be made through your supervisor [name].

As soon as possible after the RD/ARD receives your reply, or after the 7-day limit if you do not answer, you will receive a written decision from him/her.

If you have any questions about the contents of this proposal notice, or if you have questions about your rights in connection with it, you may call [name], Personnel Management Specialist, Human Resources Division, on (301) 763-3701.

Sincerely,

[NAME]
Regional Director
Bureau of the Census

Enclosure

ILLUSTRATION 16E3-2 Page 1 of 2

**SAMPLE TERMINATION LETTER
FOR UNACCEPTABLE CONDUCT
FOR SCHEDULE A EMPLOYEES WITHOUT APPEAL RIGHTS
AND WITHOUT PROCEDURAL RIGHTS**

**PREFERENCE ELIGIBLES WITH
LESS THAN ONE YEAR OF SERVICE
AND
NONPREFERENCE ELIGIBLES WITH
LESS THAN 2 YEARS OF SERVICE IN A
NON-TEMPORARY POSITION**

[Date]

[Employee Name]
[Employee Address]

Dear Mr./Ms. [Name]:

On [date], you were given a temporary appointment [not to exceed [date]] as a [Position Title] with the Bureau of the Census. I have decided to terminate your appointment because of your unsatisfactory conduct.

[Provide a narrative regarding specific type of misconduct. For example: Your first level supervisor [name], has counseled you on several occasions regarding your frequent unauthorized absences. On [date], you failed to call or report for work. You did not have prior approval of leave, nor did you provide a reason for your absence. You were charged with 8 hours of absence without leave (AWOL). Your repeated absences have interfered with our work and have led us to question your reliability.]

Based on the deficiencies in your conduct, I do not consider it in the interest of the Government to retain you in the Federal service. Therefore, I have decided to terminate your appointment as a [Position Title,] [pay plan-series-grade/step,] as of close of business on [date]. Please return your identification card, together with a signed copy of the Separation Clearance Certificate, Form CD-126, using the enclosed envelope. Please return any other Census Bureau property, including maps, program manuals, portfolios, and so forth. Also, please submit your payroll forms so we can process your final pay check.

If you believe this action is a result of race, color, religion, sex, national origin, age (at least 40 years of age), physical or mental handicap or reprisal, you have the right to raise the matter through an Equal Employment Opportunity (EEO) complaint under the EEO complaint process as set forth in Title 29, Code of Federal Regulations (CFR), Part 1614. If you elect to file an EEO complaint under Title 29, Code of Federal Regulations, Part 1614, you should contact an Equal Employment Opportunity counselor within 45 calendar days of the effective date of your removal.

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If you do not submit an appeal within the time set by statute, regulations, or order of a judge, it will be dismissed as untimely filed unless you show a good reason for the delay. Your appeal must be in writing and give reasons for contesting the action, with any offer of proof and pertinent documents that you are able to submit. Any appeal should be addressed to:

Regional Director
Merit Systems Protection Board
[MSPB Regional Office Address]

The requirements for an appeal are set forth in detail in the Merit Systems Protection Board's regulations, a copy of which is enclosed. Also enclosed in a copy of the MSPB appeal form which you may use in presenting an appeal.

[For an employee who has MSPB appeal rights, whose action is appealable to the MSPB, and who has either orally or in writing raised the issue of discrimination, insert the following:

In your response to my [date] letter, you raised the matter of [race, color, religion, sex, national origin, age, or handicap] discrimination for my consideration. If you wish to file an MSPB appeal or a complaint on the basis of race, color, religion, sex, national origin, age, or handicap, you have the right to raise the matter by either filing an MSPB appeal identified above or through filing an EEO complaint process as set forth in Title 29, Code of Federal Regulations, Part 1614, but you may not do both. If you file an EEO complaint under 29 CFR 1614, you may not thereafter file an appeal on the same matter. Similarly, if you elect to proceed under the MSPB appeal process, you may not, thereafter, file an EEO complaint on the same matter under the Part 1614 regulation. Selection of the MSPB appeal process in no manner prejudices the right of an aggrieved employee to appeal the final MSPB decision on the matter of discrimination to the Equal Employment Opportunity Commission.

If you elect to file an EEO complaint under Title 29, CFR, Part 1614, you should contact an EEO Counselor within 45 days of the effective date of your removal. For information concerning the filing of an EEO complaint, you should contact the EEO Office, Bureau of the Census, toll free on 1-800-872-6096, or (301) 763-2853/TDD (301) 763-2540.

If you have any questions about the contents of this decision notice or your rights in connection with it, you may call [name], Personnel Management Specialist, Human Resources Division, on (301) 763-3701.

Sincerely,

[Name]
RD/ARCM
Bureau of the Census
Enclosure

ILLUSTRATION 16E3-4 Page 1 of 2

**SAMPLE TERMINATION LETTER
FOR CONDUCT
FOR SCHEDULE A EMPLOYEES WITHOUT APPEAL RIGHTS**

PREFERENCE ELIGIBLES
WITH LESS THAN ONE
YEAR OF SERVICE
AND
NON-PREFERENCE ELIGIBLES WITH
LESS THAN TWO YEARS OF SERVICE

Name
Address

Dear Mr./Ms.:

On [Date] you were given an appointment, [not to exceed [Date]] as a [title, pay plan/series/grade/step] with the Bureau of the Census.

I am terminating your temporary appointment for [Type of misconduct, with a narrative description of the misconduct. The following is an example for absence without leave:] Specifically, on May 9, 2007, you failed to call or report for work. You did not have prior approval of leave, nor did you provide a reason for your absence. You were charged with 8 hours of absence without leave (AWOL). Before this instance of misconduct, you received a written reprimand on May 6, 2007, for AWOL on May 4, 2007, and an oral admonishment on May 3, 2007, for AWOL on May 2, 2007. Also, you were counseled about your leave usage on April 17, 2007. Your repeated absence have interfered with our work and have lead us to question your reliability.

Because of the seriousness of these incidents, we do not consider it in the best interest of the government to retain you in the Federal service. Accordingly, we are removing you from the Federal service effective [Date]. Please return your identification card together with a signed copy of Separation Clearance Certification, Form CD-126, using the enclosed envelope. Also, we have enclosed envelopes for you to return your portfolio, survey manual, and all other survey materials.

If you believe the decision to end your appointment was based on race, color, religion, sex, national origin, age (at least 40 years of age), physical or mental handicap, you may pursue a complaint through the Census Bureau's discrimination complaint process. You must bring the matter to the attention of an Equal Employment Opportunity (EEO) counselor within 45 days of the effective date of your termination. If you wish to do so, or would like additional information, you should contact the EEO Office, Bureau of The Census, toll-free on 1-800-872-6096 or (301) 763-2853/(TDD (301) 763-2540.

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If you have any questions about the contents of this notice, or your rights in connection with it, please contact me or [Name] [Assistant Regional Census Manager], on [Telephone Number].

Sincerely,

[NAME]
[Regional Director]
Enclosures

ILLUSTRATION 16E3-5 Page 1 of 2

**SAMPLE TERMINATION LETTER
FOR TITLE 13 FALSIFICATION
SCHEDULE A EMPLOYEES WITHOUT APPEAL RIGHTS
PREFERENCE ELIGIBLES WITH
LESS THAN ONE YEAR OF SERVICE
AND
NON-PREFERENCE ELIGIBLES WITH
LESS THAN TWO YEARS OF SERVICE**

Date

Name
Address

Dear Mr./Ms. :

On [date], you were given an appointment [not to exceed date] as a [enter title] with the Bureau of the Census. [if applicable: Subsequently, you were converted to a non-temporary appointment effective {date}].

In a letter to you dated [date], I told you that during [enter assignment] of your [date] [assignments], we discovered discrepancies. I told you about our findings. You responded in a letter dated [date]. I have reviewed all the information available to me, including your response, and find that discrepancies remain. Accordingly, I have determined that you used false information to complete [work assignment], in violation of Title 13, United States Code, section 213.

Based on this misconduct, I do not consider it in the interest of the Government to retain you in the Federal service. Therefore, I decided to terminate your appointment effective [date] from your position as [job title, pay plan/series/grade/step]. I am taking this action to promote the efficiency of the service. Please return your identification card, together with a signed copy of the Separation Clearance Certificate, Form CD-126, using the enclosed envelope. Please return any other Census Bureau property, including maps, program manuals, portfolios, and so forth. Also, please submit your payroll forms so we can process your final pay check.

If you believe the decision to terminate your appointment was based on race, color, religion, sex, national origin, age (at least 40 years of age), physical or mental handicap, you may pursue a complaint through the Census Bureau's discrimination complaint process. You must bring the matter to the attention of an Equal Employment Opportunity (EEO) counselor within 45 days of the effective date of your termination. If you wish to do so, or would like additional information, you should contact the EEO Office, Bureau of The Census, toll-free on 1-800-872-6096 or (301) 763-2853/(TDD (301) 763-2540.

ILLUSTRATION 16E3-5 Page 2 of 2

If you have any questions about the contents of this notice, or your rights in connection with it, please contact me or [name] Assistant Regional Census Manager/[name], on [telephone number].

Sincerely,

Name
Regional Director
Bureau of the Census

Enclosure

ILLUSTRATION 16F-1 Page 1 of 2

**SAMPLE TERMINATION LETTER
FOR TITLE 13 FALSIFICATION
FOR SCHEDULE A EMPLOYEES WITHOUT APPEAL RIGHTS
AND WITHOUT PROCEDURAL RIGHTS**

**PREFERENCE ELIGIBLES WITH
LESS THAN ONE YEAR OF SERVICE
AND
NONPREFERENCE ELIGIBLES WITH
LESS THAN TWO YEARS OF SERVICE IN A
NON-TEMPORARY POSITIONS**

[Date]

[Employee Name]
[Employee Address]

Dear Mr./Ms. [Name]:

On [date], you were given a temporary appointment [not to exceed date] as a [enter position title] with the bureau of the census.

In a letter to you dated [date], I told you about our findings. [You responded in a letter dated [date]. [or] You did not respond to this letter.] I have reviewed all the information available to me, including your response, and find that discrepancies remain. Accordingly, I have determined that you used false information.

Based on this misconduct, I do not consider it in the interest of the Government to retain you in the Federal service. Therefore, I have decided to terminate your appointment effective [date] from your position as [job title, pay plan-series-grade/step]. I am taking this action to promote the efficiency of the Federal service. Please return your identification card, together with a signed copy of the Separation Clearance Certificate, Form CD-126, using the enclosed envelope. Please return any other Census Bureau property, including maps, program manuals, portfolios, and so forth. Also, please submit your payroll forms so we can process your final pay check.

If you believe this action is a result of race, color, religion, sex, national origin, age (at least 40 years of age), physical or mental handicap or reprisal, you may pursue a complaint through the Census Bureau's discrimination complaint process. You must bring the matter to the attention of an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the effective date of your termination. If you wish to do so, or would like additional information, you should contact the EEO Office, Bureau of The Census, toll-free on 1-800-872-6096 or (301) 763-2853/(TDD (301) 763-2540.

ILLUSTRATION 16F-1 Page 2 of 2

If you have any questions about the contents of this notice, or your rights in connection with it, please contact me [name] or Assistant Regional Census Manager, on [telephone number].

Sincerely,

[Name]
Regional Director/Regional Census Manager
Bureau of the Census

Enclosures ["Separation Clearance Certificate," CD-126]

ILLUSTRATION 16F-2**FIELD DIVISION - MANAGEMENT SERVICES BRANCH
FAX TRANSMITTAL SHEET
FOR
SUSPECTED FALSIFICATION CASES****FAX NO. (301) 457-3701****Regional Census Center:****EMPLOYEE NAME:****DOCUMENTATION REQUIRED (MUST BE ATTACHED AT TIME OF SUBMISSION):**

- * MEMO TO LEAD ADC FOR CENSUSES, FIELD DIVISION THAT REPORTS THE SUSPECTED FALSIFICATION, REQUESTS AN IG INVESTIGATION AND THE ACTION THE RCC WISHES TO INITIATE.
- * COPY OF Regional Census Center LETTER TO EMPLOYEE WHICH LISTS DISCREPANCIES AND REQUESTS 7 DAY RESPONSE
- * COPY OF EMPLOYEE'S RESPONSE (IF NO EMPLOYEE RESPONSE - INDICATE)
- * DRAFT PROPOSED TERMINATION

OR

- * DRAFT TERMINATION FOR SCHEDULE A WITHOUT APPEAL (IF APPLICABLE)
-

REVIEWED BY:

Regional Census Center

INITIALS

DATE

Chapter 17: Performance

There are some legal and policy changes currently under review for this section, more specifically changes that will affect the sample letters and the WIGI. The revisions pending new legal and policy changes.

Topic 1: Introduction

The statutory and regulatory provisions that apply to conduct and performance-based actions are different. Refer to Chapter 16 for instructions on conduct-based problems.

Basic Rules

However, there are some basic "rules of thumb" to follow when dealing with either conduct or performance:

- Respond in a timely manner to a conduct or performance problem. Often this will mean having a counseling discussion with the employee. Try to secure the employee's commitment to positive change;
- Select a response that fits the problem; that is, consider the nature and seriousness of the problem, including any history of a similar problem and the action, if any, taken at the time;
- Be as consistent as possible in responding to similar problems;
- Be sure employees are aware of what is expected of them and the possible consequences for not improving their conduct or performance; and
- Keep good supervisory notes documenting your discussion(s), including when it took place, the matters discussed, your responses, and those of the employee. Keep these notes in a notebook or file which does not uniquely identify the employee.

When proposing an Action: (see Illustrations 17A-1, 17A-2, and 17A-3 for flowcharts which show the review process for the various actions):

- Discuss the situation with the Human Resources Division's Employee Relations Branch (ERB) specialist before taking any action and/or drafting and transmitting employee correspondence.
- Select and draft action letters using the sample letters

within this chapter.

- Forward a complete copy of any documentation (i.e., Documentation of Termination for Conduct and/or Performance Problems, letters, supervisory notes, etc.) directly to ERB specialist by facsimile or mail (see Illustration 17A-4). Reproduce documents as necessary. Response from an ERB specialist can usually be expected within 7-10 working days.

For general questions about this guidance or about operating procedures in proposing performance actions, contact DAB. For guidance on specific cases, contact ERB.

For an overview of performance-based actions, see Illustration 17A-5. See Illustration 17A-6 for a listing of Specific Nature of Action Codes.

Topic 2: Counseling

General

Performance deficiencies, like misconduct problems, require timely attention. They also are similar in terms of the need for supervisors to explain to the employees orally or in writing that performance is unacceptable, specifically how his/her performance is unacceptable; what is expected from him/her; what he/she needs to do to improve; and what may happen if acceptable performance is not reached. When an employee has performance deficiencies, supervisory counseling and perhaps closer supervision and/or additional training may resolve the problem. Supervisors should allow sufficient time, within reason, after the counseling for the employee to improve.

Topic 3: Reassignment

General

The supervisor has the option of reassigning or converting an employee (as appropriate) at any time to an equivalent position with the same full performance level (FPL) for which the employee is qualified and in which you think the employee will perform at an acceptable level, and such a position is available. However, for most Schedule A employees this may not be a practical option. You are not required to consider reassignment or converting of an employee with performance deficiencies. However, if you decide to reassign/convert the employee, you may do so without going through the procedures discussed in the following section, including providing the unacceptable worker with an opportunity to demonstrate acceptable performance. If this option is not feasible, the personnel actions available in dealing with a performance problem are demotion or removal.

Topic 4: Removal/Termination or Reduction in grade for Unacceptable Performance

When an employee is Unacceptable in one or more critical element(s) of his/her General Workforce Performance Plan, then he/she is subject to removal/termination or reduction in grade for performance deficiencies. Acceptable performance for a General Workforce employee is performance which "Meets or Exceeds Expectations."

Unacceptable Performance

Occasionally, the work performance of an employee will be unacceptable. If so, the employee may not:

- Understand the job
- Be capable of doing the job
- Be putting in enough time to keep the work on schedule, or
- Be interested in the job.

There are several indications of unacceptable work performance. They include, but are not limited to:

- Unacceptable production/quantity or quality (either excessive errors or low production)
- Undependability (not keeping appointments, not keeping work on schedule, etc.)

Prior to taking an action, supervisors should focus on providing counseling, closer supervision and/or additional training to avoid taking a performance-based adverse action. Employees should be given an appropriate amount of time, within reason, to improve his/her performance.

Topic 5: Coverage Under 5 U.S.C. Part 43

Covered Employees

If an excepted service employee, whether preference or non-preference, has completed 1-year of current continuous employment in the same or similar positions, then he/she is covered. This means that he/she must be given a reasonable opportunity to demonstrate acceptable performance before being removed/terminated or reduced in grade for unacceptable performance. For non-preference eligible employees in the excepted service with less than two years of continuous service, no Performance Improvement Plan (PIP) should be given.

The employee who has **not** completed this 1-year service requirement is not covered and can be removed/terminated without the formal opportunity period.

These procedural requirements predate the Civil Service Due Process Amendments. However, Public Law 101-376 gave the right of appeal to the Merit Systems Protection Board (MSPB) for the first time to nonpreference excepted service employees who have 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. A preference eligible employee in the excepted service can appeal to MSPB once they have met the 1 year service requirement.

These procedures apply to all RCC and Coverage Measurement employees and leave-earning employees in the LCOs (i.e., LCO Managers, Assistant Managers, and the Administrative Assistants.)

Topic 6: Employees With Less Than 1 Year Service

Covered Employees

Excepted service employees with less than 1 year of service may be terminated for unacceptable performance at any time. Intermittent employees go by calendar year.

Headquarters review of documentation before issuance to the employee is not required. Documentation releasing an employee must be signed by the Regional Director or Deputy Director, if delegated. DAB is available to discuss operating procedures in such cases, while ERB is available to discuss specific cases with you at your request.

Topic 7: Employees With 1 Year of Service

The Performance Improvement Period/Plan (PIP)

At any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable, **and before** taking action to remove or reduce in grade, the supervisor must:

- a. inform the employee of the critical element(s) in which performance is unacceptable;
- b. inform the employee of the performance standard(s) required to demonstrate acceptable performance;
- c. inform the employee that unless he/she improves performance to an acceptable level he/she will be removed or reduced in grade; and
- d. give the employee an opportunity to demonstrate acceptable performance.

NOTE: If the employee has no deficiencies in other performance areas going into the PIP and we do not tell him/her the standards in the other indicators, and then the employee's performance in another of the indicators falters during the PIP, you must give an opportunity to improve in the other area(s).

An excepted service, non-preference eligible employee, with two years of continuous service in a non-temporary position should receive a PIP. Preference eligible employees with one year of continuous service should also receive a PIP.

If an employee's performance is rated as unacceptable at the end of the appraisal cycle or is determined to be working at the unacceptable level at any time before the end of the appraisal cycle, he/she must be placed in a PIP.

Acceptable performance during a PIP for a General Workforce employee is performance at level 3, 4, or 5. For each critical element in which performance is unacceptable, afford a reasonable opportunity to demonstrate acceptable performance. The PIP needs to specify the minimum improvement period for example, not less than 30 days.

At least initially, the draft PIP must be forwarded to Headquarters

ERB specialist for review prior to delivery to the employee. The ERB strives to respond to a request for establishing a PIP in 7-10 working days. This will give everyone an opportunity to gain experience with these cases, since the PIP is the basis for any subsequent performance-based action. Eventually, depending on demonstrated capability, RCCs will be individually certified to issue PIP letters without prior Headquarters clearance.

Evaluation during the PIP

During this period, the supervisor must offer assistance, including verbal and written feedback, to the employee in improving unacceptable performance. Supervisor must give the employee formal written evaluations during the PIP. The frequency/number of these evaluations depends upon the length of the PIP. For example, if the PIP is 30 days in length, there should be an evaluation at the mid-point (15 days) as well as at the close; if it is for 60 days, evaluations should be done at 30 and 60 days. The supervisor/manager who issued the PIP notice should sign these evaluations. Send ERB specialist a copy of your evaluation upon delivery to employee.

Action upon completion of the PIP

If by the end of the PIP, the employee's performance improves to an acceptable level of performance, the employee has met the requirements of the PIP and cannot be terminated/removed or reduced in grade at that time. Notify the employee, in writing, that his/her performance has improved.

However, if the employee does not maintain his/her performance in the critical element(s) at an acceptable level for 1 year from the beginning of the PIP, for which he/she was placed in a PIP, he/she may be removed without the benefit of another PIP. Should this occur, ERB specialist can assist you in writing the termination notice.

If the performance during the PIP remained unacceptable, the employee must be removed from his/her current position through termination/ removal, reduction in grade, or reassignment.

Proposed Removal for Performance

To show that the employee's rating is not acceptable and is based on the employee's performance and that the employee knew the standards on which the rating was based send the following information to the ERB specialist by cc:mail or facsimile:

1. Draft letter (using samples within this chapter) — Send

- the draft letter to the ERB who services your region.
2. Copy of the signed and dated PIP letter.
 3. Copy of all signed and dated PIP evaluation letters (15, 30, and 60 day final).
 4. Copy of D-341A, B, or C Performance Report, for the PIP period (unless already at Headquarters).
 5. Dates of any observations conducted during the PIP period and copies of the reports of those observations.

**Termination/Removal
and Reduction in
Grade**

As with other disciplinary actions, ERB specialist will help prepare the proposal and decision notices to ensure compliance with statutory and regulatory requirements. Also, ERB specialist will ensure the necessary coordination with the Office of the General Counsel (OGC).

The Assistant Regional Census Managers or Assistant Regional Directors will sign the proposal letter and the decision letter. The decision letter must have the concurrence of the RD before issuance.

**Decision to Remove for
Performance**

If upon review of the employee's response to the proposal, it is decided that the employee should be removed, by cc:mail or facsimile, send the following information to ERB specialist.

1. Copy of signed and dated proposal letter (if not previously sent).
2. A copy of proof of receipt by employee of proposal notice.
3. A copy of employee's reply (if any).
4. Brief summary prepared by the RCC responding to the issues the employee raised in his/her reply (if any).

**Documentation for
PIPS**

1. Draft PIP letter (using samples within this chapter) — Send the draft letter to the Employee Relations Specialist who services your region.
2. Copy of employee's current rating of record.
3. Copy of employee's rating of record for within-grade denial purpose, when required.

4. Copy of employee's current plan showing documentation of deficiencies provided to employee during appraisal cycle indicating that the employee received the generic standards.
5. Copy of D-341A, B, or C, Performance Report, for the time period of unacceptable performance as stated in the PIP.
6. Proof that an employee received standards and when he/she received them. A memo stating that the standards were transmitted along with the performance plan will suffice for this. If the employee does not return a signed cover page for his/her annual work plan after repeated requests, the supervisor can (and should, if the employee is a problem employee) call the employee and read the standards to the employee, and then document that this has been done and the date and time it was done.
7. Copies of survey specific numeric standards employee is deficient in. Documentation of how the rate(s) the employee is deficient in were calculated (i.e., the survey data including formula for determining specific rate.)
8. Copies of any RCC correspondence reiterating standards to the employee showing feedback. This needs to be done with any employee whose performance is observed to be falling.

Topic 8: Recordkeeping

Documentation of Performance and/or Conduct-based Problems

Record any type of disciplinary action, i.e., oral admonishments, written reprimands, suspensions, or terminations, on Form DX-282, Documentation of Unacceptable Performance and/or Conduct.

In addition to notifying the employee in writing of decision to terminate, you must document all terminations "for cause," and any reason(s) for the termination. The material must have a date and name identifying the employee and the signature of the supervisor initiating the request, in the event this material is released under the Privacy Act or Freedom of Information Act.

Filing

Establish a Disciplinary Adverse Action File (DAAF) for each employee (by name) involved in a performance or conduct-based action. Documentation, including the DX-282, written reprimands, and all other supporting documents should be filed in the employee's DAAF. (See Appendix H for example of a DX-282). The RCC will maintain the DAAF for LCO managerial positions and all RCC positions in a locked file cabinet. Forward to ERB specialist copies of the written reprimands for filing in the employees OPF (under the Employee Performance Folder) along with any SF-50, Notification of Personnel Action, documenting the action taken, if applicable.

You should contact ERB specialist for guidance when contemplating taking a conduct-based action for employees with procedural protections and appeal rights.

An employee is not entitled to view Forms DX-282 and DX-283 unless an action is taken where they would have rights to view the material relied on to take the action, i.e, proposed suspension or removal; or if the employee files an EEO complaint or grievance. They would then have access to Forms DX-282 and DX-283 since this documentation would be given to the investigator of either forum.

Label and forward these files to the RO when the RCC offices close. The RO will maintain the DAAFs in a locked file cabinet for seven years from the date of the last action. If appealed, DAAFs must be maintained for seven years after the date of the final decision.

Topic 9: Denial of within-grade increases (WGI) and reconsiderations

Denial Definition

A within-grade increase denial is considered a pay issue and is a separate action from performance-based actions. In addition to meeting the criteria established for creditable service for a WGI that is identified in Chapter 4, Personnel Administration for NFC employees, the employee's performance must be at meets or exceeds expectations for the purpose of determining whether to give an employee a periodic step increase. An acceptable level of competence under CFR Chapter 531 is defined as fully successful performance or better.

The employee's rating of record is the basis for making a determination about the level of competence. If the employee was given a does not meet expectations at the end of the appraisal period, then the Regional Directors can deny the WGI based on the current rating of record. However, if for example, the employee's last rating of record is meets or exceeds expectations then the performance drops to the does not meet expectations level after the first 4 months of the beginning of the new rating period, supervisors must give a new rating of record for within-grade purposes only; that is, a rated plan documenting the does not meet expectations level.

NOTE: an employee must serve at least 120 days in the position before you can rate the employee (or give the employee a new rating of record). This means that even if an employee's current performance is deficient, but he/she has been in a covered position for less than 120 days since the last rating of record, and the rating of record is at or above the meets or exceeds expectations level, the employee will be granted the WGI.

Within grade increase denial

To show that the employee's performance during the Within-grade Increase (WGI) waiting period does not meet expectations and the employee was appraised of the appropriate standards, send the following information by cc:mail or facsimile to ERB specialist.

1. Draft letter (using samples within this chapter) — Send the draft letter to the Employee Relations Specialist who services your region.

Within grade increase denial

2. Copy of employee's current rating of record.
3. Copy of rating of record for within-grade purposes that shows/documents unacceptable rating; rating should be completed, signed, and dated by the employee, rating official, and reviewing official prior to the end of the WGI waiting period. The dates of the rating of record must be from the beginning of the rating period to one or two weeks prior to the date the employee became eligible for the within-grade increase. The signature dates on the rating of record must be consistent with these dates.
4. Copy of employee's current plan (showing progress reviews, if applicable) or progress review memos, etc. showing deficiencies and feedback. Other forms of documented feedback to the employee which indicated to the employee that performance was substandard. The Certification for Within-grade Increase list should not be the first or only documentation to indicate that an employee is performing below standard. There should be some documentation of the situation before the list arrived and the problem had been communicated to the employee.
5. Copy of D-341A, B, or C, Performance Report, showing feedback given to employee for the time period of Does Not Meet Expectations performance as stated in the WGI denial letter. This form must be dated before the eligibility date.
6. Proof that the employee received standards and when they were received.
7. Any RCC correspondence reiterating standards to the employee or used to help make the decision to deny the WGI.
8. Census operational guidance material to help the personnel specialist understand the purpose and function of the operation on which the employee works.
9. Any written guidance to the employee showing standards applicable to the critical elements on which the performance is deficient.

Reconsideration

In addition, document in writing, the denial of the WGI. Make a new determination within 52 weeks after the effective date of denial. In addition, the employee may request a reconsideration of the denial. The reconsideration official for RCC WGI denials

is the Chief, Field Division. Employees can appeal the reconsideration of the WGI denial decision to the Merit Systems Protection Board if the decision is sustained.

Response to Request for Reconsideration of WGI Denial.

For requests for reconsideration, by cc:mail or facsimile, send the following information to the ERB specialist.

1. Copy of the employee's request for reconsideration.
2. Brief summary prepared by the RCC responding to the issues the employee raised in his/her request.
3. Copy of final dated and signed WGI denial letter, if available.

**Continuing Evaluation
of Following Initial
Denial of WGI**

When management determines an employee has demonstrated sustained performance at an acceptable level of competence following the initial denial of a WGI, a new rating of record may be prepared and a WGI granted. However, in accordance with 5 CFR.411, a determination as to whether the employee's performance is at an acceptable level of competence shall be made no more than 52 calendar weeks following the original eligibility date for the increase.

Topic 10: References

Title 5 USC Part 43

Public Law 101-376 dated August 17, 1990

CFR Chapter 430

Department Administrative Order (DAO) 202-430

CFR Chapter 531

Illustration 17-1
Review Process-Performance Cases
(Under Construction)

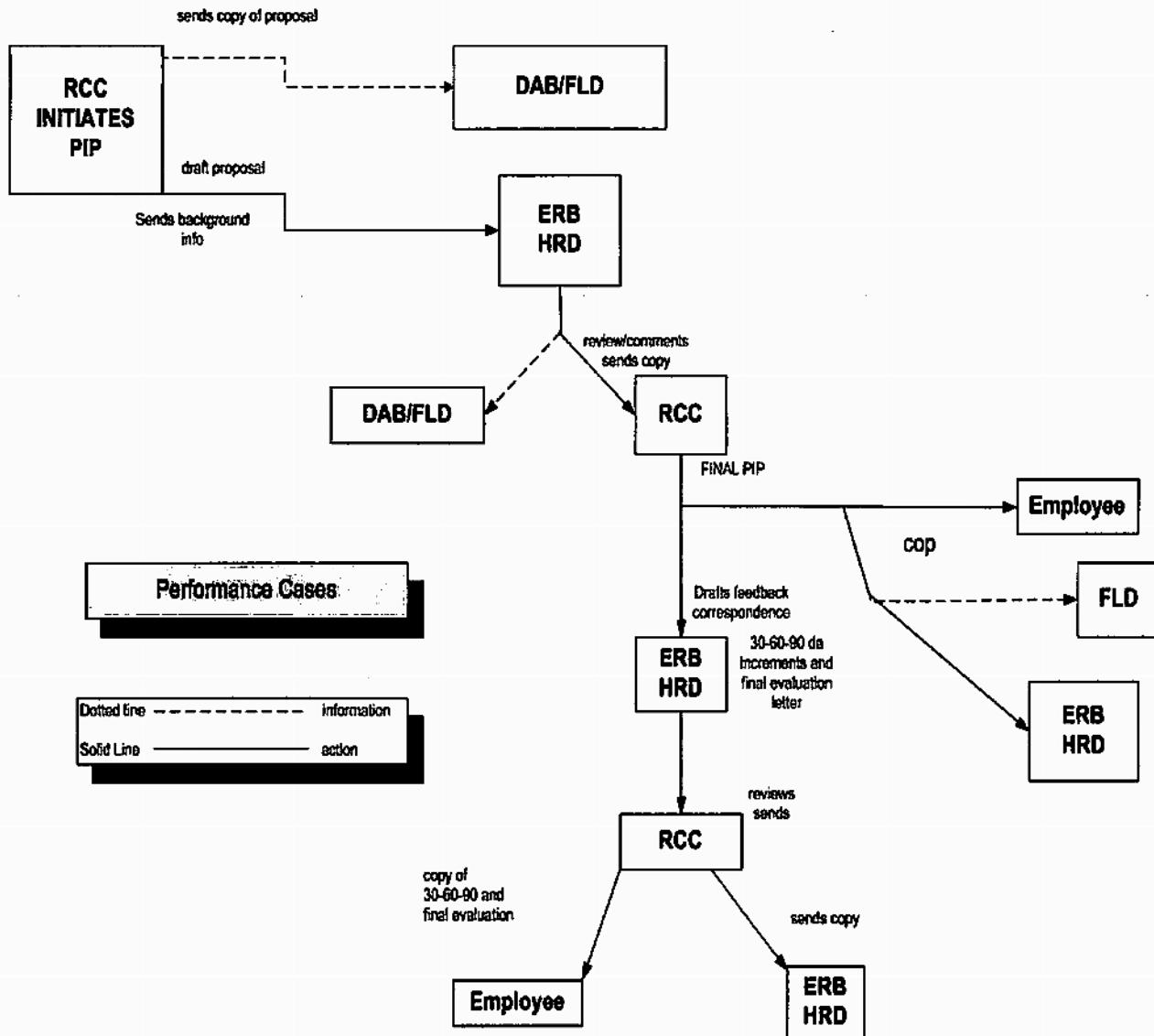


Illustration 17-2
Review Process-Within Grade Increase Denial
(Under Construction)

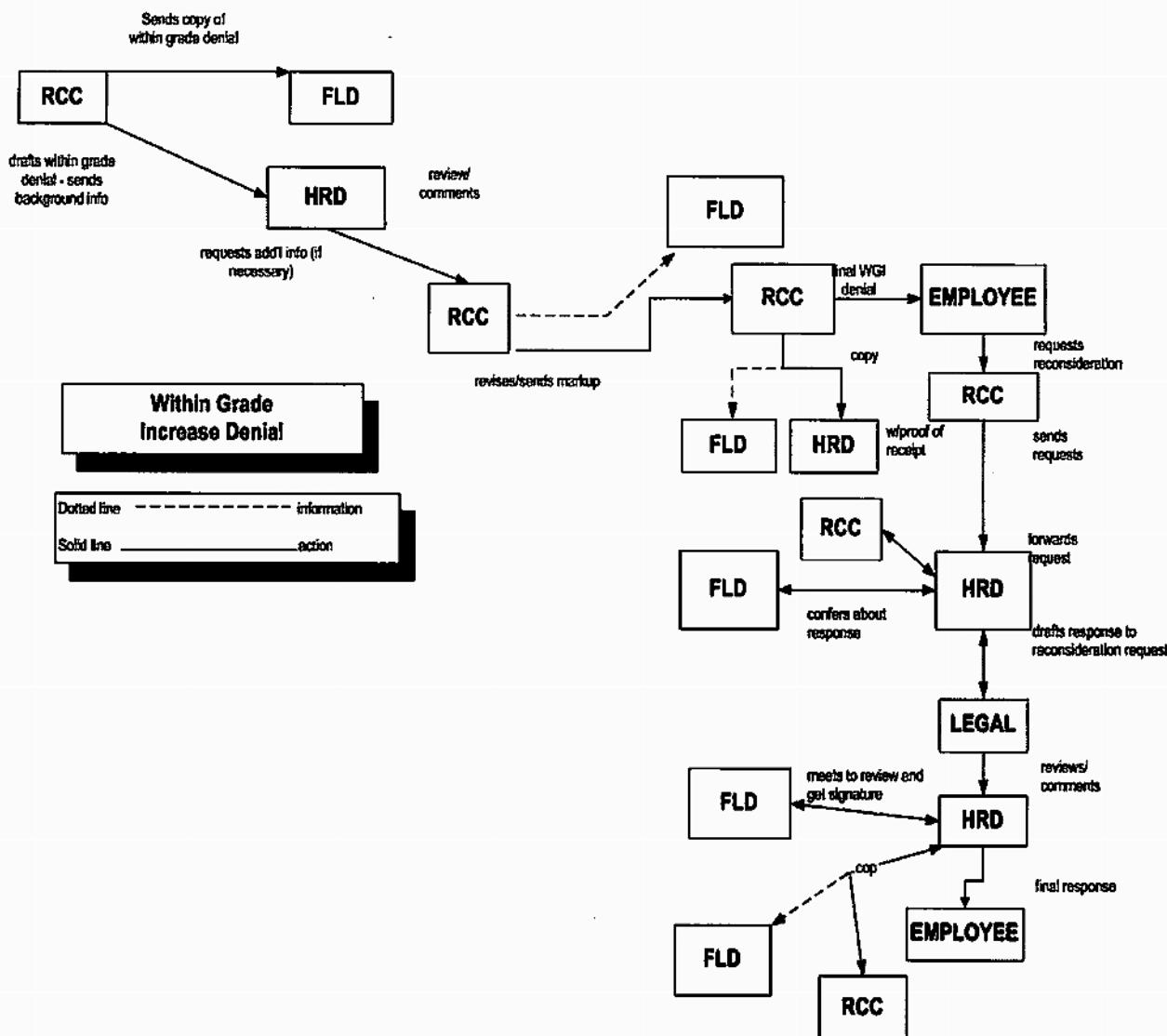


Illustration 17-3
Review Process-Employee Remains Unacceptable During PIP

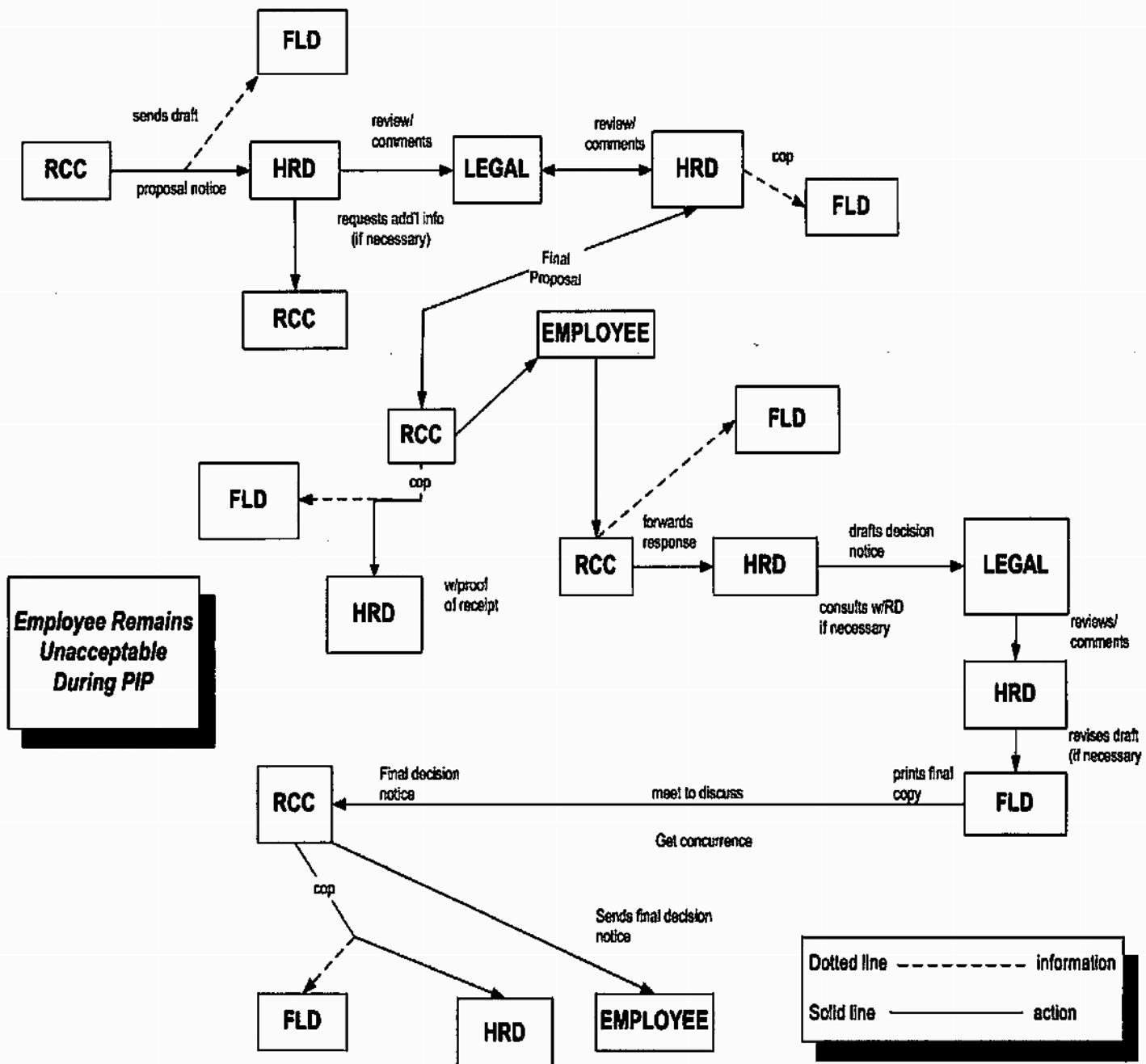


ILLUSTRATION 17-4

**EMPLOYEE RELATIONS BRANCH
HUMAN RESOURCES DIVISION
FAX TRANSMITTAL SHEET FOR PERFORMANCE/CONDUCT
FAX NO. (301) 763-3701**

**REGIONAL CENSUS CENTER/ACCURACY AND COVERAGE EVALUATION OFFICE:
EMPLOYEE NAME:**

PROPOSED ACTION (CHECK APPROPRIATE BOX)

PERFORMANCE-BASED ACTION:

- PERFORMANCE IMPROVEMENT PERIOD
- PIP FEEDBACK LETTER
- PROPOSED REMOVAL
- REMOVAL

DENIAL OF WITHIN GRADE INCREASE

DOCUMENTATION: (MUST BE SUBMITTED AT TIME OF REFERRAL)

PERFORMANCE-BASED ACTIONS (CHECK APPROPRIATE BOX OF ITEMS ATTACHED):

COPY OF RATING OF RECORD (BC-1804F)

COPY OF NEW RATING OF RECORD FOR WGI
DENIAL PURPOSES (REQUIRED WHEN RATING OF RECORD IS MEETS OR EXCEEDS EXPECTATIONS)

PROPOSED ACTION (CHECK APPROPRIATE BOX)

CONDUCT-BASED ACTION:

- BC-290, NOTICE OF INFRACTION
- LETTER OF REPRIMAND
- PROPOSED REMOVAL
- REMOVAL

DOCUMENTATION: (MUST BE SUBMITTED AT THE TIME OF REFERRAL)

CONDUCT-BASED ACTIONS (CHECK APPROPRIATE BOX OF ITEMS ATTACHED)

SUPERVISOR'S MEMORANDUM FOR THE RECORD

WITNESS STATEMENTS (IF ANY)

WRITTEN INSTRUCTIONS TO EMPLOYEE

EMPLOYEE COUNSELING DOCUMENTATION

DOCUMENTATION OF OPERATING PROCEDURES/POLICIES

LEAVE RECORDS*

PAYROLL RECORDS*

COPY OF EMPLOYEE MOST RECENT SF-50,
NOTICE OF PERSONNEL ACTION (MUST INCLUDE:
NAME, SSN, DOB, SCD, VET PREF, APPOINTMENT
TYPE, GRADE/PAY, POSITION TITLE)

*IF APPLICABLE

TRANSMITTED

DATE

TIME

NOTE: ADDITIONAL INFORMATION MAY BE REQUESTED BY HUMAN RESOURCES DIVISION

NAME OF CONTACT/TELEPHONE NUMBER

REVIEWED BY:

INITIALS

DATE

RCC

HRD/ERB

ILLUSTRATION 17-5 page 1 of 2**SUMMARY OF PERFORMANCE-BASED ACTIONS****PERFORMANCE-BASED ACTIONS - REMOVAL/TERMINATION AND REDUCTION IN GRADE BASED UPON UNACCEPTABLE PERFORMANCE****WARNING LETTERS**

Use these letters for employees with less than 1 year of current continuous employment in the same or similar positions, both preference and non-preference. Your office can prepare and issue them without review by ERB. The Regional Director can sign these letters or delegate to ARD, Program Coordinators, or Program Supervisors.

TERMINATION/REMOVAL OF EMPLOYEES FOR UNACCEPTABLE PERFORMANCE

- A. Excepted service employees with less than 1 year of current continuous employment, both preference and nonpreference, can be terminated by single written notice without the requirement to give them a formal period of opportunity to improve as is discussed below. The letter should be signed by the Regional Director. The ERB specialist does not need to review these letters but is available to assist you.
- B. Excepted service, non-preference eligible employees, who have completed 2 years of continuous service must be given a reasonable opportunity to demonstrate acceptable performance before they can be terminated/removed. We inform them of this opportunity period and other procedural rights with the Performance Improvement Period (PIP) letter. Preference eligible employees with 1 year of continuous service should also receive a PIP.
 1. Initially, ERB specialist will review all PIP letters before issuance and will be available to give guidance throughout the PIP. The intent for the long term, once we have collective experience with the process, is to limit ERB specialist review to those excepted service employees with a right to appeal to MSPB; they are preference eligibles who have completed 1 year of current continuous employment in the same or similar positions and nonpreference excepted service employees who have 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.
 2. If the employee does not improve his/her performance to an acceptable level, she/he can be removed/terminated on the basis of unacceptable performance. This is done with a proposal notice and then a decision notice.
 - a. ERB specialist will review all proposal and decision notices based on the information provided by the office and will get the necessary OGC concurrence.

ILLUSTRATION 17-5 page 2 of 2

- b. Unlike conduct-based actions, the Assistant Regional Census Manager is both the proposing and the deciding official with a performance-based action. The decision, however, requires the concurrence of the Regional Director.
- C. Preference eligible excepted service employees who have completed the 1 year of service criterion have the right to appeal to MSPB as do nonpreference excepted service employees who have completed 2 years of qualifying service in a nontemporary position.

The documentation and recordkeeping for conduct-based actions also apply to performance-based actions. The employee's OPF will contain only the Notification of Personnel Action documenting the action taken.

The DAAF will contain the correspondence and material relied on in taking the action.

ILLUSTRATION 17-6**NATURE OF ACTION CODES (NOA)****PERFORMANCE-BASED ADVERSE ACTIONS PERSONNEL PROCESSING CODES**

<u>ACTION</u>	<u>NOAC</u>	<u>(NOA)</u>	<u>CODE</u>	<u>AUTH</u>
Separation effected on the NTE of a temporary (not a distinction between conduct and performance)	355	Termination - Expiration --- of Appointment		No Entry Required
Separation based on suitability (no appeal rights) <u>before the</u> employee's entrance on duty	357	Termination	UXM	REG 213.3114(d)(1) or REG 213.3114(d)(2) based on employee's current appointing authority.
*Separation based on unacceptable performance or other factors unrelated to misconduct or delinquency	357	Termination	ZLK	Same as appointing authority

*Letter notifying employee of reason(s) (performance and/or conduct) is required.

NOTE: For employees under NFC, please provide a SF-52 and copy of letter to ERB specialist for processing.