

**Statement of Director Joseph P. Clancy  
United States Secret Service  
Department of Homeland Security**

**Before the Committee on Oversight and Government Reform  
United States House of Representatives**

**March 24, 2015**

**Introduction**

Good morning, Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee. Thank you for the opportunity to be here to discuss the recent allegations of employee misconduct on March 4, 2015, and the agency's progress in fulfilling the recommendations of the independent U.S. Secret Service Protective Mission Panel ("the Panel"). As Director, I am honored to lead the men and women of this important agency through this challenging time.

The Secret Service's statutory mission is clear. Of all the agency's authorities, nothing is more important than the protection of the President and Vice President. Thousands of special agents and Uniformed Division ("UD") officers successfully fulfill this mission every day throughout the world. While there has been deserved attention paid to the security of the White House Complex, much of the protection mission occurs outside the 18-acres of that complex. Since my arrival on October 1, 2014, the Secret Service successfully performed Presidential protective missions to 287 domestic stops and 25 international stops, including visits to Australia, Indonesia, India, and most recently, Saudi Arabia. The decision to visit Saudi Arabia was made only days before the trip occurred, giving the Presidential Protective Division advance team members a mere 48 hours to formulate a successful security plan. Vice Presidential protective missions during this same time period included 276 domestic and 15 international trips, with international stops in Morocco, Turkey, Ukraine, Belgium, and Germany. Typically, for the President and Vice President, each foreign trip requires more than two weeks of advance preparation in addition to the operational activities that occur during the actual visits of our protectees.

Over the course of the next year, we will continue our preparations for additional international travel and National Special Security Events ("NSSEs"). Opening ceremonies for the 70th United Nations General Assembly ("UNGA") are scheduled for September 15, 2015, with the majority of the events surrounding UNGA 70 scheduled for September 22<sup>nd</sup> through September 28<sup>th</sup>, in New York, NY. Additionally, Pope Francis is expected to visit Washington, DC, New York, NY, and Philadelphia, PA from September 24<sup>th</sup> through September 27<sup>th</sup>. Already, the World Meeting of Families event in Philadelphia, which is expected to draw 2.1 million people, has been designated an NSSE by Secretary Johnson. NSSE designations require the Secret Service to take the lead role in the planning, coordination, and implementation of security operations for these events.

The UNGA is always a challenge for the Secret Service, as it recurs annually in the final weeks of the fiscal year, but with its 70<sup>th</sup> anniversary coinciding with the Papal visit, I expect this year to be especially demanding on our front-line employees. Special agents from across the field and headquarters will be called upon to establish temporary protective details for an expected record number of visiting heads of state and government, UD officers will provide magnetometer support and protective site security for multiple venues, special operations teams will be assigned to high-level visiting dignitaries, and technical security and communications teams will be working weeks in advance to ensure mission success.

Superior performance by the men and women on the front lines begins with superior leadership. To that end, I have worked to open the lines of communication between the rank and file, their supervisors, and executive leadership. I made significant changes in top leadership positions across the Secret Service to inspire a renewed focus on human capital, training, protective operations, investigations, budgeting, and professional responsibility. Part of this effort included the creation of a standalone Office of Training, which will have a direct impact on the way the agency plans for and conducts operational training for special agents and UD officers by creating a stakeholder seat on the Secret Service's Executive Review Board. This restructuring will allow the agency to set clear priorities and better align training requirements with the demands of the mission. It is critically important that the Secret Service get back to basics not only by staffing the agency at levels commensurate with the workload but also by incorporating the required training to ensure optimal performance at all times.

When I talk about optimal performance, I want to be clear that I expect all employees in the Secret Service to conduct themselves in a manner consistent with the oath they swore to uphold when they entered the agency, and with the individual responsibility and core values that have guided many generations of employees before them.

### **Allegations of Employee Misconduct**

With respect to the recent allegations of employee misconduct on March 4, 2015, I personally became aware of the incident on March 9<sup>th</sup> when I received a phone call from a former agent informing me of an email that was circulating. On that same date, I determined that the allegations should be referred to the Department of Homeland Security's ("the Department") Office of the Inspector General ("OIG").

I made this decision because allegations of misconduct involving employees at the GS-15 level and higher must be referred to the OIG in accordance with Departmental policy (Appendix A). I trust the OIG's investigation will be swift yet thorough. I have committed the Secret Service's full cooperation to the OIG and eagerly await the findings of their investigation.

The fact that I did not learn of this allegation until five days later is unacceptable. I called my senior staff together the week before last and made clear my expectations for prompt notification of allegations of misconduct that could impact our mission or that

violate the agency's standards of conduct. Additionally, I have sent an Agency wide memorandum expressing my disappointment in the failure to timely report this allegation of misconduct, advising all employees of their responsibility to report allegations of misconduct through their chain of command, reminding employees that failure to report allegations of misconduct is dereliction of duty and a disciplinable offense, and finally that any of retaliation against an employee who reports misconduct will also be the subject of disciplinary action. If it is determined in this case that any of our employees failed to report information about this alleged incident, they will be held appropriately accountable. This is something that I communicated to all of my employees through an agency-wide message. Our mission is too important for this to happen. It undermines my leadership, and I won't stand for it.

As it stands now, the next step in this process is to wait for the issuance of the OIG report, at which point we will determine the appropriate disciplinary actions consistent with our established Table of Penalties. Once again, if the OIG investigation reveals misconduct, those involved will be punished.

I have personally reviewed video footage from the evening of March 4<sup>th</sup> with Members of this Committee. The initial reports of a crash are inaccurate – there was no crash. The video shows a vehicle entering the White House Complex at a speed of approximately 1-2 mph and pushing aside a plastic barrel. There was no damage to the vehicle.

However, many people have expressed serious concerns that the available video footage from that night does not provide a full picture relative to the alleged misconduct. While the primary function of the camera systems at the White House Complex is operational security, it is imperative that specific video footage is retained for investigative and protective intelligence purposes.

I share the concerns raised by this Committee and others that more video footage from the night of March 4<sup>th</sup> was not preserved. After receiving consent from the OIG, the Secret Service contacted the manufacturers of the digital storage unit and is leveraging its capabilities in cyber forensics to make every attempt to recover additional video clips from that night. Although it predates my appointment as Director, Secret Service practice has been to retain video footage of camera systems at the White House Complex for a period of 72 hours. I have directed that, effective immediately, the video footage storage period be increased to seven days. I have also directed that we continue to explore further preservation capabilities.

### **Discipline and Hiring Efficiencies**

I am resolved to holding people accountable for their actions. But I want to make clear that I do not have the ability to simply terminate employees based solely on allegations of misconduct. This is not because I am being lenient, but because tenured Federal government employees have certain constitutional due process rights which are implemented through statutory procedures provided for in disciplinary Title 5 of the United States Code and OPM regulations (Appendix B).

With respect to hiring, our unique mission requires a very high level of scrutiny throughout the hiring process. The onboarding of new employees is time intensive and involves multiple interviews, polygraph examinations, and extensive background investigations. However, the agency has already made strides in reducing the time required to hire special agent and UD officer applicants by leveraging its excepted service hiring authorities granted by the Office of Personnel Management through title 5 of the Code of Federal Regulations section 213.3201. With approval from the Office of Personnel Management and our Chief Counsel, we are streamlining the process to get better qualified and diverse applicants identified earlier in the process.

### **Fulfilling the Independent Protective Mission Panel's Recommendations**

In response to the September 19, 2014 White House incursion, Secretary Johnson made the determination that two independent reviews should be conducted, first to evaluate the incident on September 19<sup>th</sup> and then to assess the broader protective mission of the agency at the White House Complex. The details of that egregious security breach were documented in a report prepared by Deputy Secretary Mayorkas ("Mayorkas Report"), which was followed by recommendations from the independent Protective Mission Panel that were included in a report to Secretary Johnson on December 15, 2014. Taken in sum, these two reports provide a consistent assessment of what went wrong on September 19, 2014, and steps the Secret Service must take to ensure a breach of that magnitude never happens again. The Panel's recommendations in particular have brought focus to staffing, training, leadership, and technology and perimeter security requirements at the White House Complex. However, since the Secret Service's mission extends beyond the issues addressed in the Panel's report, I am committed to zero-basing the agency's budget to determine the full extent of our operational requirements.

One of the most well publicized recommendations of the Panel was to replace the fence around the White House as quickly as possible. As documented in their report, "the ease with which 'pranksters' and the mentally ill can climb the current fence puts Secret Service personnel in a precarious position: When someone jumps the fence, they must decide, in a split-second, whether to use lethal force on a person who may not pose a viable threat to the President or the White House."<sup>1</sup>

I have said in previous testimony before Congress that if someone does attempt to scale the White House fence, I want to ensure they are met with immediate and forceful resistance. But I also view the fence itself as a needed deterrent for would-be fence-jumpers. The Secret Service recognizes the need for protective enhancements to the White House Complex fence and is currently working with stakeholders to create a viable, long-term solution. This multi-phase project began with the formation of requirements that are guiding a formal study aimed at identifying various fence options.

---

<sup>1</sup> United States Secret Service Protective Mission Panel, Executive Summary to [the] Report from the United States Secret Service Protective Mission Panel to the Secretary of Homeland Security, December 15, 2014. Available at: [http://www.dhs.gov/sites/default/files/publications/14\\_1218\\_ussp\\_pmp.pdf](http://www.dhs.gov/sites/default/files/publications/14_1218_ussp_pmp.pdf).

As previously briefed to this Committee, these requirements encompassed security concerns identified by the Secret Service, including efforts to delay intruders, as well as aesthetic and historic concerns put forward by the National Park Service (NPS).

The contract for this study was awarded in January 2015 and will culminate in approximately April 2015 with a report identifying three options that meet the requirements I referenced. At that time, the U.S. Commission of Fine Arts will be given the opportunity to review and provide comment on the final options prior to a decision being made by me, as the Director of the Secret Service and the NPS's Superintendent of President's Park.

The selection of a final fence option will be followed by a design phase; a contracting, procurement, and acquisition phase; and a construction phase. It should be noted, however, that this schedule is approximate and will be contingent upon the selection of a final option and available funding.

The Secret Service acknowledges the need for interim measures addressing vulnerabilities with the current fence during the design and construction of the new fence. As discussed in the classified briefing, our Technical Security Division conducted testing, research, and development for short and long-term enhancements. We plan to deploy mitigating measures we selected in the coming months in order to enhance our security posture in the interim.

While much of the Panel's recommendations pertaining to technology included classified material, their public report made clear that, "[technology] systems used on the [White House Complex] must always remain cutting edge, and the [Secret Service] must invest in technology, including becoming a driver of research and development that may assist its mission."<sup>2</sup> To address this recommendation, our FY 2016 Budget requests necessary upgrades to radio communication infrastructure to modernize and improve the reliability of audio communications at the White House Complex and throughout the National Capital Region. As noted by the Panel, these systems are obsolete and need to be upgraded. It also includes funding to update all communication, video, and data systems at the Secret Service's Joint Operations Center, which functions as the command-and-control center for protective operations at the White House Complex.

### **Emerging Threats**

While recent events have raised public concerns with the operation of small unmanned aircraft systems (UAS), the Secret Service's interest in this issue did not begin with a wayward UAS landing on the South Grounds of the White House in the early morning hours of January 26, 2015. The Secret Service recognized this threat prior to that incident and has been working with government and private sector partners for some time to develop policies and procedures to effectively counter this threat. We have

---

<sup>2</sup> *Id.*

initiated an evaluation and investment into current and future technologies to initially detect and eventually mitigate against UAS incursions. The Secret Service has conducted real-world testing with the United States Capitol Police and Department of Defense in recent weeks. The systems tested are designed to detect the operation of UAS in proximity to permanent protective sites. I can tell you today that the preliminary results of this testing were very positive, and we intend to continue refining our approach to this growing concern through additional research, development, and testing.

To address longer-range future technology needs, the Secret Service will continue to partner with the Department's Science and Technology Directorate to ensure we are researching, developing, and deploying cutting-edge technology.

### **Conclusion**

Over the past several months I have made extensive personnel changes in senior leadership in an effort to bring about positive change. These were not easy decisions, and many of the people who left served the agency and our country honorably during their careers. But as the leader of this organization, I will do what is necessary to put us back on the right track.

In closing, I would like to make clear that I am proud of our workforce and would be remiss if I did not recognize that the vast majority of these men and women perform their duties with honor and distinction. They deserve strong leadership, clear and consistent policies, and appropriate resources to support the important work they do every day. It is my life's work to ensure that they get it.

Chairman Chaffetz, Ranking Member Cummings, and members of the Committee, this concludes my written testimony. I welcome any questions you have at this time.

# **APPENDIX A**

## **Management Directive & MOU**

Issue Date: 6/10/2004

## THE OFFICE OF INSPECTOR GENERAL

---

### I. Purpose

This directive established Department of Homeland Security (DHS) policy regarding the Office of Inspector General (OIG). Any prior Management Directive and any instruction or agreement of any kind issued by or entered into by any DHS official or Component that is inconsistent in any respect with this directive is hereby superseded to the extent it is inconsistent with this directive.

### II. Scope

This directive applies to all DHS organizational elements (OEs), including all employees, contractors, and grantees.

### III. Authorities

- A. The Inspector General Act of 1978, as amended
- B. The Homeland Security Act of 2002, as amended, codified in Title 6, US Code

### IV. Definitions

- A. **OE Offices** – As used in this Management Directive, the term OE offices include all Organizational Elements offices of internal affairs, inspections, audits or Professional Responsibility. This term also includes the DHS Office of Security.
- B. **DHS Organizational Element** – As used in this directive, the term DHS Organizational Element (OE) shall have the meaning given to the term DHS Organizational Element in DHS MD 0010.1, Management Directives System and DHS Announcements. This includes Elements such as the Bureau of Customs and Border Protection, the United States Coast Guard, the Federal Emergency Management Agency, etc. It also includes entities that report to DHS Organizational Elements, such as National Laboratories.

## V. Responsibilities

A. *The Heads of DHS Organizational Elements* shall:

1. Promptly advise the OIG of allegations of misconduct in accordance with the procedures described in Appendix A, and when they become aware of any audit, inspection or investigative work being performed or contemplated within their offices by or on behalf of an OIG from outside DHS, the General Accounting Office, or any other law enforcement authority, unless restricted by law;
2. Ensure that, upon request, OIG personnel are provided with adequate and appropriate office space, equipment, computer support services, temporary clerical support and other services to effectively accomplish their mission;
3. Provide prompt access for auditors, inspectors, investigators, and other personnel authorized by the OIG to any files, records, reports, or other information that may be requested either orally or in writing;
4. Assure the widest possible dissemination of this directive within their OEs. They may issue further instructions as necessary to implement this policy. Any such further instructions shall not conflict with this MD and shall be provided to the OIG immediately upon issuance;
5. Assist in arranging private interviews by auditors, inspectors, investigators, and other officers authorized by the OIG with staff members and other appropriate persons;
6. Advise the OIG when providing classified or sensitive information to the OIG to ensure proper handling.

B. *DHS employees* shall report suspicions of violations of law or regulation to the DHS Office of Inspector General or the appropriate OE offices, and will likewise:

1. Cooperate fully by disclosing complete and accurate information pertaining to matters under investigation or review;
2. Inform the investigating entity of any other areas or activities they believe require special attention;
3. Not conceal information or obstruct audits, inspections, investigations, or other official inquiries;

4. Be subject to criminal prosecution and disciplinary action, up to and including removal, for knowingly and willfully furnishing false or misleading information to investigating officials; and

5. Be subject to disciplinary action for refusing to provide documents or information or to answer questions posed by investigating officials or to provide a signed sworn statement if requested by the OIG, unless questioned as the subject of an investigation that can lead to criminal prosecution.

## **VI. Policy and Procedures**

A. The OIG, while organizationally a Component of the DHS, operates independent of the DHS and all offices within it. The OIG reports to the Secretary. Under circumstances specified by statute, the Secretary, upon written notification to the OIG which then must be transmitted to Congress, can circumscribe the OIG's access to certain types of sensitive information and exercise of audit, investigative, or other authority. The DHS Inspector General is the head of the OIG.

The OIG is authorized, among other things, to:

1. Administer oaths;
2. Initiate, conduct, supervise and coordinate audits, investigations, inspections and other reviews relating to the programs and operations of the DHS;
3. Inform the Secretary, Deputy Secretary, and the Congress fully and currently about any problems and deficiencies relating to the administration of any DHS program or operation and the need for, and progress of, corrective action;
4. Review and comment on existing and proposed legislation and regulations relating to DHS programs, operations, and personnel;
5. Distribute final audit and inspection reports to appropriate authorizing and oversight committees of the Congress, to all headquarters and field officials responsible for taking corrective action on matters covered by the reports and to Secretarial officers, office heads, and other officials who have an official interest in the subject matter of the report;

6. Receive and investigate complaints or information from employees, contractors, and other individuals concerning the possible existence of criminal or other misconduct constituting a violation of law, rules, or regulations, a cause for suspension or debarment, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety, and report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law;

7. Protect the identity of any complainant or anyone who provides information to the OIG, unless the OIG determines that disclosure of the identity during the course of the investigation is unavoidable.

Further, the OIG shall:

8. Follow up on report recommendations to ensure that corrective actions have been completed and are effective;

9. Prepare a semiannual report to the Secretary and the Congress, summarizing OIG audit and investigative activities within DHS. Section 5(a) of the Inspector General Act of 1978, as amended, requires this report.

B. Allegations received by the OIG or OE offices shall be retained or referred in accordance with Appendix A of this MD. The only exception to this requirement is that the OIG and the United States Secret Service will adhere to the terms of the Memorandum of Understanding entered into between those two entities on December 8, 2003, and as may be amended from time to time.

C. **Standards**. Audits shall be conducted consistent with the standards issued by the Comptroller General of the United States. Inspections and investigations shall be conducted consistent with the quality standards issued by the President's Council on Integrity and Efficiency (PCIE).

D. **Questions or Concerns**. Any questions or concerns regarding this directive should be addressed to the OIG.

## APPENDIX A

### MD 0810.1

The categories of misconduct identified below shall be referred to the OIG. Such referrals shall be transmitted by the OE offices immediately upon receipt of the allegation, and no investigation shall be conducted by the OE offices prior to referral unless failure to do so would pose an imminent threat to human life, health or safety, or result in the irretrievable loss or destruction of critical evidence or witness testimony. In such extraordinary situations, the OIG will be contacted as soon as practical, and all information and evidence collected by the OE office shall then be provided to the OIG as part of the OE referral to the OIG. The OIG will accept and retain all such allegations for investigation subsumed under this exigent circumstance exception.

- All allegations of criminal misconduct against a DHS employee;
- All allegations of misconduct against employees at the GS-15, GM-15 level or higher, or against employees in the OE offices;
- All allegations of serious, noncriminal misconduct against a law enforcement officer. "Serious, noncriminal misconduct" is conduct that, if proved, would constitute perjury or material dishonesty, warrant suspension as discipline for a first offense, or result in loss of law enforcement authority. For purposes of this directive, a "law enforcement officer" is defined as any individual who is authorized to carry a weapon, make arrests, or conduct searches;
- All instances regarding discharge of a firearm that results in death or personal injury or otherwise warrants referral to the Civil Rights Criminal Division of the Department of Justice;
- All allegations of fraud by contractors, grantees or other individuals or entities receiving DHS funds or otherwise engaged in the operation of DHS programs or operations;
- All allegations of visa fraud by DHS employees working in the visa issuance process.

In addition, the OIG will investigate allegations against individuals or entities that do not fit into the categories identified above if the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial and ethnic profiling, serious management problems within the department, or otherwise represent a serious danger to public health and safety.

## APPENDIX A

With regard to categories not specified above, the OE offices will initiate the investigation upon receipt of the allegation, and shall notify within five business days the OIG's Office of Investigations of such allegations. The OIG shall notify the OE offices if the OIG intends to assume control over or become involved in such an investigation, but absent such notification, the OE office shall maintain full responsibility for these investigations.

Any allegations received by the OIG that do not come within the categories specified above, or that the OIG determines not to investigate, will be referred within five business days of receipt of the allegation by the OIG to the appropriate OE office along with any confidentiality protections deemed necessary by the OIG.

The OE offices shall provide monthly reports to the OIG on all open investigations. In addition, upon request, the OE offices shall provide the OIG with a complete copy of the Report of Investigation, including all exhibits, at the completion of the investigation. Similarly, the OIG shall provide the OE offices, upon request, with a complete copy of any Report of Investigation relating to its OE, including all exhibits, at the completion of the investigation. The OIG shall have the right to request more frequent or detailed reports on any investigations and to reassert at any time exclusive authority or other involvement over any matter within its jurisdiction.

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNITED STATES SECRET SERVICE  
AND THE OFFICE OF THE INSPECTOR GENERAL  
DEPARTMENT OF HOMELAND SECURITY

The United States Secret Service (USSS), an organizational component of the Department of Homeland Security (DHS), operates within the Department under the authority and responsibilities enumerated in Title VIII, Subtitle C of the Homeland Security Act of 2002, as amended (the Act), and includes those responsibilities described generally in Section 1512 of the Act, as well as in various delegations of authority issued by the Secretary of DHS (the Secretary). The agency's dual statutory missions of protection and criminal investigations are more fully enumerated at Title 18, United States Codes, Section 3056 (Section 3056), and Title 3, United States Code, Section 202 (Section 202), and various other statutes.

The Office of the Inspector General (OIG), an organizational component of DHS, operates within the Department under the authority and responsibilities enumerated in Title VIII, Subtitle B of the Act, as amended, and the Inspector General Act of 1978, as amended, and includes authority and responsibility acquired pursuant to Section 1512 of the Act.

To prevent duplication of effort and ensure the most effective, efficient and appropriate use of resources, the Secret Service and the OIG enter into this Memorandum of Understanding.

The categories of misconduct listed below shall be referred to the OIG. Such referrals shall be transmitted by the USSS Office of Inspection immediately upon the receipt of adequate information or allegations by the USSS Office of Inspection to reasonably conclude that misconduct may have occurred, and no investigation shall be conducted by the USSS Office of Inspection prior to the referral. In cases involving exigent circumstances, if the OIG decides to investigate the allegation but is unable to do so immediately, the USSS Office of Inspection will conduct the investigation until the OIG is able to take it over. In cases not involving exigent circumstances, the OIG will determine within one business day of the referral whether to investigate the allegation itself or to refer the matter back to the USSS Office of Inspection for investigation. If no determination is communicated to the USSS Office of Inspection within one business day of the referral, the USSS Office of Inspection may initiate the investigation. The acceptance of a referral by the OIG reflects a determination that available investigative resources will be able to conclude the referred investigation within a reasonable time. This will afford the agency a reasonable opportunity to act expeditiously, if necessary, regarding the allegations.

- All allegations of criminal misconduct against a USSS employee;
- All allegations of misconduct against employees at the GS-15, GM-15 level or higher, or against employees in the USSS Office of Inspection;
- All allegations regarding misuse or improper discharge of a firearm (other than accidental discharge during training, qualifying or practice);

- All allegations of fraud by contractors, grantees or other individuals or entities receiving Department funds or otherwise engaged in the operation of Department programs or operations.

In addition, the IG will investigate allegations against individuals or entities who do not fit into the categories identified above if the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial and ethnic profiling; serious management problems within the Department, or otherwise represent a serious danger to public health and safety.

With regard to categories of misconduct not specified above, the USSS Office of Inspection should initiate investigation upon receipt of the allegation, and shall notify within five business days the OIG's Office of Investigations of such allegation. The OIG shall notify the USSS Office of Inspection if the OIG intends to assume control or become involved in an investigation, but absent such notification, the USSS Office of Inspection shall maintain full responsibility for these investigations.

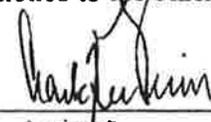
Pursuant to Section 811(a) of the Act, OIG audits, investigations, and subpoenas which, in the Secretary's judgment, constitute a serious threat to the protection of any person or property afforded protection pursuant to Section 3056 or Section 202, or any provision of the Presidential Protection Assistance Act of 1976, may be prohibited. Accordingly, to assure proper and timely responses to OIG requests for information or records, all OIG plans for audits involving the Secret Service shall be communicated via entrance letter by the OIG either directly to the USSS Office of Inspection or to the Office of the Deputy Director; any OIG investigation shall be communicated orally or via e-mail to the same entities. Any Secret Service Headquarters' concern under section 811(a) regarding the scope or direction of a planned audit or investigation will be raised and resolved expeditiously with OIG officials, or immediately communicated to the Secretary in the absence of resolution.

The USSS Office of Inspection shall provide a monthly report to the OIG on all open investigations. In addition, the USSS Office of Inspection, upon request, shall provide the OIG with a complete copy of the Report of Investigation, including all exhibits, at the completion of the investigation. Similarly, the OIG shall provide the USSS Office of Inspection, upon request, with a complete copy of any Report of Investigation relating to the Secret Service, including all exhibits, at the completion of the investigation. The OIG shall have the right to request more frequent or detailed reports on any investigations and to reassert at any time exclusive authority or other involvement over any matter within its jurisdiction.

This MOU shall be effective upon the signature of both parties and shall remain in effect until revoked by one party upon thirty day's written notice to the other.

  
\_\_\_\_\_  
Director of the United States  
Secret Service

Dated: 12/5/03

  
\_\_\_\_\_  
Acting Inspector General

Dated: 12/8/03

# **APPENDIX B**

## **Legal Basis for Adverse Actions Against Government Employees**

[Code of Federal Regulations]  
 [Title 5, Volume 2]  
 [Revised as of January 1, 2014]  
 [CITE: 5CFR752.201]  
 [Page 64-65]

Title 5—Administrative Personnel  
 CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
 PART 752—ADVERSE ACTIONS  
 Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

**§ 752.201**  
**Coverage.**

- (a) *Adverse actions covered.* This subpart covers suspension for 14 days or less.
- (b) *Employees covered.* This subpart covers:
- (1) An employee in the competitive service who has completed a probationary or trial period;
  - (2) An employee in the competitive service serving in an appointment which requires no probationary or trial period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;
  - (3) An employee with competitive status who occupies a position under Schedule B of part 213 of this chapter;
  - (4) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position;
  - (5) An employee of the Department of Veterans Affairs appointed under section 7401(3) of title 38, United States Code; and
  - (6) An employee of the Government Printing Office.
- (c) *Exclusions.* This subpart does not apply to a suspension for 14 days or less:
- (1) Of an administrative law judge under 5 U.S.C. 7521;
  - (2) Taken for national security reasons under 5 U.S.C. 7532;
  - (3) Taken under any other provision of law which excepts the action from subchapter I, chapter 75, of title 5, U.S. Code;
  - (4) Of a reemployed annuitant; or
  - (5) Of a National Guard Technician.
- (d) *Definitions.* In this subpart—

*Current continuous employment* means a period of employment immediately preceding a suspension action without a break in Federal civilian employment of a workday.

*Day* means a calendar day.

*Similar positions* means positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

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

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.202]  
[Page 65]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS  
Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

**§ 752.202**

**Standard for action.**

(a) An agency may take action under this subpart for such cause as will promote the efficiency of the service as set forth in 5 U.S.C. 7503(a).

(b) An agency may not take a suspension against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.203]  
[Page 65]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS  
Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

**§ 752.203**  
**Procedures.**

- (a) *Statutory entitlements.* An employee under this subpart whose suspension is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7503(b).
- (b) *Notice of proposed action.* The notice must state the specific reason(s) for the proposed action, and inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice.
- (c) *Employee's answer.* The employee must be given a reasonable time, but not less than 24 hours, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.
- (d) *Representation.* An employee covered by this subpart is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.
- (e) *Agency decision.* (1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the employee or his or her representative, or both, made to a designated official.
- (2) The agency must specify in writing the reason(s) for the decision and advise the employee of any grievance rights under paragraph (f) of this section. The agency must deliver the notice of decision to the employee on or before the effective date of the action.
- (f) *Grievances.* The employee may file a grievance through an agency administrative grievance system (if applicable) or, if the suspension falls within the coverage of an applicable negotiated grievance procedure, an employee in an exclusive bargaining unit may file a grievance only under that procedure. Sections 7114(a)(5) and 7121(b)(1)(C) of title 5, U.S. Code, and the terms of any collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a suspension under this subpart through the negotiated grievance procedure.
- (g) *Agency records.* The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the employee upon their request, the following documents:
- (1) Notice of the proposed action;
  - (2) Employee's written reply, if any;
  - (3) Summary of the employee's oral reply, if any;
  - (4) Notice of decision; and
  - (5) Any order effecting the suspension, together with any supporting material.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
 [Title 5, Volume 2]  
 [Revised as of January 1, 2014]  
 [CITE: 5CFR752.401]  
 [Page 66-67]

Title 5—Administrative Personnel  
 CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
 PART 752—ADVERSE ACTIONS

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

**§ 752.401**  
**Coverage.**

- (a) *Adverse actions covered.* This subpart applies to the following actions:
- (1) Removals;
  - (2) Suspensions for more than 14 days, including indefinite suspensions;
  - (3) Reductions in grade;
  - (4) Reductions in pay; and
  - (5) Furloughs of 30 days or less.
- (b) *Actions excluded.* This subpart does not apply to:
- (1) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1215;
  - (2) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is to the grade held immediately before becoming a supervisor or manager;
  - (3) A reduction-in-force action under 5 U.S.C. 3502;
  - (4) A reduction in grade or removal under 5 U.S.C. 4303;
  - (5) An action against an administrative law judge under 5 U.S.C. 7521;
  - (6) A suspension or removal under 5 U.S.C. 7532;
  - (7) Actions taken under any other provision of law which excepts the action from subchapter II of chapter 75 of title 5, United States Code;
  - (8) Action that entitles an employee to grade retention under part 536 of this chapter, and an action to terminate this entitlement;
  - (9) A voluntary action by the employee;
  - (10) Action taken or directed by the Office of Personnel Management under part 731 of this chapter;
  - (11) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;
  - (12) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the agency informed the employee that it was to be of limited duration;
  - (13) Cancellation of a promotion to a position not classified prior to the promotion;
  - (14) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment; or
  - (15) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation, including a reduction necessary to comply with the amendments made by Public Law 108-411, regarding pay-setting under the General Schedule and Federal Wage System and regulations implementing those amendments.
- (c) *Employees covered.* This subpart covers:
- (1) A career or career conditional employee in the competitive service who is not serving a probationary or trial period;
  - (2) An employee in the competitive service who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;
  - (3) An employee in the excepted service who is a preference eligible in an Executive agency as defined at section 105

of title 5, United States Code, the U.S. Postal Service, or the Postal Regulatory Commission and who has completed 1 year of current continuous service in the same or similar positions;

(4) A Postal Service employee covered by Public Law 100-90 who has completed 1 year of current continuous service in the same or similar positions and who is either a supervisory or management employee or an employee engaged in personnel work in other than a purely nonconfidential clerical capacity;

(5) An employee in the excepted service who is a nonpreference eligible in an Executive agency as defined at section 105 of title, 5, United States Code, and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less;

(6) An employee with competitive status who occupies a position in Schedule B of part 213 of this chapter;

(7) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and who still occupies that position;

(8) An employee of the Department of Veterans Affairs appointed under section 7401(3) of title 38, United States Code; and

(9) An employee of the Government Printing Office.

(d) *Employees excluded.* This subpart does not apply to:

(1) An employee whose appointment is made by and with the advice and consent of the Senate;

(2) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the President for a position that the President has excepted from the competitive service; the Office of Personnel Management for a position that the Office has excepted from the competitive service (Schedule C); or the President or the head of an agency for a position excepted from the competitive service by statute;

(3) A Presidential appointee;

(4) A reemployed annuitant;

(5) A technician in the National Guard described in section 8337(h)(1) of title 5, United States Code, who is employed under section 709(a) of title 32, United States Code;

(6) A Foreign Service member as described in section 103 of the Foreign Service Act of 1980;

(7) An employee of the Central Intelligence Agency or the Government Accountability Office;

(8) An employee of the Veterans Health Administration (Department of Veterans Affairs) in a position which has been excluded from the competitive service by or under a provision of title 38, United States Code, unless the employee was appointed to the position under section 7401(3) of title 38, United States Code;

(9) A nonpreference eligible employee with the U.S. Postal Service, the Postal Regulatory Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or any other intelligence component of the Department of Defense (as defined in section 1614 of title 10, United States Code), or an intelligence activity of a military department covered under subchapter I of chapter 83 of title 10, United States Code;

(10) An employee described in section 5102(c)(11) of title 5, United States Code, who is an alien or noncitizen occupying a position outside the United States;

(11) A nonpreference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service, unless he or she meets the requirements of paragraph (c)(5) of this section;

(12) An employee whose agency or position has been excluded from the appointing provisions of title 5, United States Code, by separate statutory authority in the absence of any provision to place the employee within the coverage of chapter 75 of title 5, United States Code; and

(13) An employee in the competitive service serving a probationary or trial period, unless he or she meets the requirements of paragraph (c)(2) of this section.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.402]  
[Page 67-68]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

**§ 752.402**

**Definitions.**

In this subpart—

*Current continuous employment* means a period of employment or service immediately preceding an adverse action without a break in Federal civilian employment of a workday.

*Day* means a calendar day.

*Furlough* means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

*Grade* means a level of classification under a position classification system.

*Indefinite suspension* means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

*Pay* means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

*Similar positions* means positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

*Suspension* means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for more than 14 days.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.403]  
[Page 68]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or  
Furlough for 30 Days or Less

**§ 752.403**

**Standard for action.**

(a) An agency may take an adverse action, including a performance-based adverse action or an indefinite suspension, under this subpart only for such cause as will promote the efficiency of the service.

(b) An agency may not take an adverse action against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.404]  
[Page 68-69]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

**§ 752.404**  
**Procedures.**

- (a) *Statutory entitlements.* An employee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7513(b).
- (b) *Notice of proposed action.* (1) An employee against whom an action is proposed is entitled to at least 30 days' advance written notice unless there is an exception pursuant to paragraph (d) of this section. The notice must state the specific reason(s) for the proposed action, and inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice.
- (2) When some but not all employees in a given competitive level are being furloughed, the notice of proposed action must state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.
- (3) Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed will remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:
- (i) Assigning the employee to duties where he or she is no longer a threat to safety, the agency mission, or to Government property;
- (ii) Allowing the employee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented himself or herself from the worksite without requesting leave;
- (iii) Curtailing the notice period when the agency can invoke the provisions of paragraph (d)(1) of this section; or
- (iv) Placing the employee in a paid, nonduty status for such time as is necessary to effect the action.
- (c) *Employee's answer.* (1) An employee may answer orally and in writing except as provided in paragraph (c)(2) of this section. The agency must give the employee a reasonable amount of official time to review the material relied on to support its proposed action, to prepare an answer orally and in writing, and to secure affidavits, if the employee is in an active duty status. The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days.
- (2) The agency will designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides for such hearing in its regulations. Under 5 U.S.C. 7513(c), the agency may, in its regulations, provide a hearing in place of or in addition to the opportunity for written and oral answer.
- (3) If the employee wishes the agency to consider any medical condition which may contribute to a conduct, performance, or leave problem, the employee must be given a reasonable time to furnish medical documentation (as defined in § 339.104 of this chapter) of the condition. Whenever possible, the employee will supply such documentation within the time limits allowed for an answer.
- (d) *Exceptions.* (1) Section 7513(b) of title 5, U.S. Code, authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension, including indefinite suspension. This notice exception is commonly referred to as the "crime provision." This provision may be invoked even in the absence of judicial action.
- (2) The advance written notice and opportunity to answer are not required for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.
- (e) *Representation.* Section 7513(b)(3) of title 5, U.S. Code, provides that an employee covered by this part is

entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) *Agency review of medical information.* When medical information is supplied by the employee pursuant to paragraph (c)(3) of this section, the agency may, if authorized, require a medical examination under the criteria of § 339.301 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria of § 339.302 of this chapter. If the employee has the requisite years of service under the Civil Service Retirement System or the Federal Employees' Retirement System, the agency must provide information concerning disability retirement. The agency must be aware of the affirmative obligations of the provisions of 29 CFR 1614.203, which require reasonable accommodation of a qualified individual with a disability.

(g) *Agency decision.* (1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the employee or his or her representative, or both, made to a designated official and any medical documentation reviewed under paragraph (f) of this section.

(2) The notice must specify in writing the reasons for the decision and advise the employee of any appeal or grievance rights under § 752.405 of this part. The agency must deliver the notice of decision to the employee on or before the effective date of the action.

(h) *Applications for disability retirement.* Section 831.1204(e) of this chapter provides that an employee's application for disability retirement need not delay any other appropriate personnel action. Section 831.1205 and § 844.202 of this chapter set forth the basis under which an agency must file an application for disability retirement on behalf of an employee.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.405]  
[Page 69]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

**§ 752.405**

**Appeal and grievance rights.**

- (a) *Appeal rights.* Under the provisions of 5 U.S.C. 7513(d), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.
- (b) *Grievance rights.* As provided at 5 U.S.C. 7121(e)(1), if a matter covered by this subpart falls within the coverage of an applicable negotiated grievance procedure, an employee may elect to file a grievance under that procedure or appeal to the Merit Systems Protection Board under 5 U.S.C. 7701, but not both. Sections 7114(a)(5) and 7121(b)(1)(C) of title 5, U.S. Code, and the terms of an applicable collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a matter under this subpart through the negotiated grievance procedure.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.406]  
[Page 69-70]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

**§ 752.406**

**Agency records.**

The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the employee upon his or her request, the following documents:

- (a) Notice of the proposed action;
- (b) Employee's written reply, if any;
- (c) Summary of the employee's oral reply, if any;
- (d) Notice of decision; and
- (e) Any order effecting the action, together with any supporting material.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.601]  
[Page 70]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS

Subpart F—Regulatory Requirements for Taking Adverse Action Under the Senior Executive Service

**§ 752.601**  
**Coverage.**

- (a) *Adverse actions covered.* This subpart applies to suspensions for more than 14 days and removals from the civil service as set forth in 5 U.S.C. 7542.
- (b) *Actions excluded.* (1) An agency may not take a suspension action of 14 days or less.  
(2) This subpart does not apply to actions taken under 5 U.S.C. 1215, 3592, 3595, or 7532.
- (c) *Employees covered.* This subpart covers the following appointees:
- (1) A career appointee—
- (i) Who has completed the probationary period in the Senior Executive Service;
- (ii) Who is not required to serve a probationary period in the Senior Executive Service; or
- (iii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.
- (2) A limited term or limited emergency appointee—
- (i) Who received the limited appointment without a break in service in the same agency as the one in which the employee held a career or career-conditional appointment (or an appointment of equivalent tenure as determined by the Office of Personnel Management) in a permanent civil service position outside the Senior Executive Service; and
- (ii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.
- (d) *Employees excluded.* This subpart does not cover an appointee who is serving as a reemployed annuitant.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.602]  
[Page 70]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS

Subpart F—Regulatory Requirements for Taking Adverse Action Under the Senior Executive Service

**§ 752.602**  
**Definitions.**

In this subpart—

*Career appointee, limited term appointee, and limited emergency appointee* have the meaning given in 5 U.S.C. 3132(a).

*Day* means calendar day.

*Suspension* has the meaning given in 5 U.S.C. 7501(2).

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.603]  
[Page 70]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS

Subpart F—Regulatory Requirements for Taking Adverse Action Under the Senior Executive Service

**§ 752.603**

**Standard for action.**

(a) An agency may take an adverse action under this subpart only for reasons of misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An agency may not take an adverse action under this subpart on the basis of any reason prohibited by 5 U.S.C. 2302.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.604]  
[Page 70-72]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS

Subpart F—Regulatory Requirements for Taking Adverse Action Under the Senior Executive Service

**§ 752.604**  
**Procedures.**

- (a) *Statutory entitlements.* An appointee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7543(b).
- (b) *Notice of proposed action.* (1) An appointee against whom an action is proposed is entitled to at least 30 days' advance written notice unless there is an exception pursuant to paragraph (d) of this section. The notice must state the specific reason(s) for the proposed action, and inform the appointee of his or her right to review the material that is relied on to support the reasons for action given in the notice.
- (2) Under ordinary circumstances, an appointee whose removal has been proposed will remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the appointee's continued presence in the work place during the notice period may pose a threat to the appointee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:
- (i) Assigning the appointee to duties where he or she is no longer a threat to safety, the agency mission, or Government property;
- (ii) Allowing the appointee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the appointee has absented himself or herself from the worksite without requesting leave;
- (iii) Curtailing the notice period when the agency can invoke the provisions of paragraph (d) of this section; or
- (iv) Placing the appointee in a paid, nonduty status for such time as is necessary to effect the action.
- (c) *Appointee's answer.* (1) The appointee may answer orally and in writing except as provided in paragraph (c)(2) of this section. The agency must give the appointee a reasonable amount of official time to review the material relied on to support its proposed action, to prepare an answer orally and in writing, and to secure affidavits, if the appointee is in an active duty status. The agency may require the appointee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days.
- (2) The agency will designate an official to hear the appointee's oral answer who has authority either to make or to recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides for such hearing in its regulations. Under 5 U.S.C. 7543(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral answer.
- (3) If the appointee wishes the agency to consider any medical condition that may have affected the basis for the adverse action, the appointee must be given reasonable time to furnish medical documentation (as defined in § 339.104 of this chapter) of the condition. Whenever possible, the appointee will supply such documentation within the time limits allowed for an answer.
- (d) *Exception.* Section 7543(b)(1) of title 5, U.S. Code, authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the appointee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension. This notice exception is commonly referred to as the "crime provision." This provision may be invoked even in the absence of judicial action.
- (e) *Representation.* Section 7543(b)(3) of title 5, U.S. Code, provides that an appointee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an appointee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.
- (f) *Agency review of medical information.* When medical information is supplied by the appointee pursuant to paragraph (c)(3) of this section, the agency may, if authorized, require a medical examination under the criteria of § 339.301 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria of § 339.302 of this chapter. If the appointee has the requisite years of service under the Civil Service Retirement System or the Federal Employees' Retirement System, the agency must provide information concerning disability retirement.

The agency must be aware of the affirmative obligations of the provisions of 29 CFR 1614.203, which require reasonable accommodation of a qualified individual with a disability.

(g) *Agency decision.* (1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the appointee or the appointee's representative, or both, made to a designated official and any medical documentation reviewed under paragraph (f) of this section.

(2) The notice must specify in writing the reasons for the decision and advise the appointee of any appeal rights under § 752.605 of this part. The agency must deliver the notice of decision to the appointee on or before the effective date of the action.

(h) *Applications for disability retirement.* Section 831.1204(e) of this chapter provides that an appointee's application for disability retirement need not delay any other appropriate personnel action. Section 831.1205 and § 844.202 of this chapter set forth the basis under which an agency must file an application for disability retirement on behalf of an appointee.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.605]  
[Page 72]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS

Subpart F—Regulatory Requirements for Taking Adverse Action Under the Senior Executive Service

**§ 752.605**

**Appeal rights.**

(a) Under 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) A limited term or limited emergency appointee who is covered under § 752.601(c)(2) also may appeal an action taken under this subpart to the Merit Systems Protection Board.

**Copyright 2015 © LRP Publications**

[Code of Federal Regulations]  
[Title 5, Volume 2]  
[Revised as of January 1, 2014]  
[CITE: 5CFR752.606]  
[Page 72]

Title 5—Administrative Personnel  
CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT (CONTINUED)  
PART 752—ADVERSE ACTIONS

Subpart F—Regulatory Requirements for Taking Adverse Action Under the Senior Executive Service

**§ 752.606**

**Agency records.**

The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the appointee upon his or her request, the following documents:

- (a) Notice of the proposed action;
- (b) Appointee's written reply, if any;
- (c) Summary of the appointee's oral reply, if any;
- (d) Notice of decision; and
- (e) Any order effecting the action, together with any supporting material.

**Copyright 2015 © LRP Publications**