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## CHAPTER 2. PROCEDURES FOR SUSPENSIONS OF 14 DAYS OR LESS

### 2-1 General Provisions

- A. The official authorized to propose a disciplinary action (paragraph 1-10A) must obtain advice and assistance of a personnel specialist from the servicing human resources office when drafting the notice. This assistance is required to ensure the procedural adequacy of the notice with respect to OPM and HUD requirements. The assistance includes the personnel specialist's advice on the reasons for taking the action, adequacy of the evidence, as well as the appropriateness of the action and penalty selected. The supervisor or manager and the servicing personnel specialist must refer to Chapter 4, HUD Table of Offenses and Penalties, and Appendix 1 for guidance.
- B. The servicing personnel specialist and the Proposing Official are responsible for consulting with the Assistant General Counsel for Human Resources Law in Headquarters about the legal sufficiency of a proposal to take the actions described below.
  - 1. Any disciplinary action against a Headquarters or Field employee at the GS-14 level or higher, or a HUD attorney.
  - 2. Any disciplinary action against a Headquarters employee at the GS-13 level or below when the facts or issues are controversial or precedent-setting.
- C. The servicing personnel specialist and the Proposing Official are responsible for consulting with the Field Assistant General Counsel about the legal sufficiency of disciplinary actions to be taken against a Field employee at the GS-13 level or below (except a HUD attorney) when the facts or issues are controversial or precedent-setting.
- D. In actions involving off-duty misconduct, whether or not specifically related to official duties, the MSPB requires proof of nexus.

### 2-2 Notice of Proposed Suspension

The Notice shall include the following information:

- A. A statement of proposal to suspend the employee for a specific number of calendar days. When the proposed penalty is at the upper end of the range in one of the offense

categories of the Table of Offenses and Penalties, or is a second or third offense, "aggravating factors" (refer to paragraph 4-2B) on which the Proposing Official relies to elevate the penalty should be included in the proposal notice, so the employee will have a fair opportunity to respond to them.

- B. A statement that the proposed action will not become effective until 15 calendar days following the date the employee receives the notice.
  - C. The specific charge(s) and specification(s)/reason(s) for the proposed suspension.
  - D. A statement that a copy of the material relied upon to support this proposed action is attached.
  - E. Any aggravating factors considered in selecting the penalty in order to afford the employee a full opportunity to reply.
  - F. A statement identifying the Deciding Official.
  - G. The employee has 14 calendar days following the date the employee receives the notice to answer orally and/or in writing. Official time for the preparation of oral and written responses is not allowed. The employee is entitled to official time to present the oral response. (The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted.)
    - 1. If the employee wishes additional time in which to answer, he or she must submit a request in writing to the Deciding Official (or designee) before the expiration of the answer period. The request must include the amount of time needed and state a good reason for needing the extension.
    - 2. The Deciding Official shall respond to the employee, in writing, either granting or denying the time extension request.
  - H. A statement that the employee's answer, if any, should be addressed to the Deciding Official or designee.
  - I. Notification that the employee may be represented by an attorney or other representative. The representative must be designated, in writing, to the Deciding Official prior to any oral or written reply. If employed by HUD, the representative is also entitled to official time, but only for the oral reply.
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1. The Department may disallow, as an employee's representative, an individual whose activities as a representative could cause a conflict of interest or position; an employee who cannot be released from his/her official duties because of a priority work assignment; or an employee whose release would result in unreasonable costs to the Government. Under no circumstances may a management official or supervisor use a union representative.
  2. A HUD human resources employee, Administrative Officer, supervisor, manager, or HUD attorney whose duties include representation of management in administrative cases is considered to be part of management. As such they may be called upon to testify for management in an MSPB or other third party hearing. Therefore, they shall not accept a request to represent, or assist in representing, an employee in connection with a disciplinary or adverse action.
  3. A statement whether the employee will or will not remain in a duty status during the advance notice period. Under ordinary circumstances, the employee shall remain in a duty status in his/her regular position. An employee will not be carried in a duty status when the Proposing Official determines that the employee constitutes a threat to himself/herself, to other employees, to the program operation, or to HUD's mission. In such cases, the employee will voluntarily use their leave, be on enforced leave, or administrative leave.
- J. Notification that the employee's answer, if any, will be considered in reaching a decision.
- K. A statement informing the employee where this Handbook, pertinent statutes, and OPM regulations are available for review.
- L. Notification that a written decision and the specific reasons for that decision will be issued within 35 calendar days of receipt of employees response, or expiration of notice period if no response is given.

### **2-3 Employee's Reply**

- A. The Deciding Official may designate an individual to hear the employee's oral reply. The designee may not be the official who issued the Notice of Proposed Action. In addition, the designee must not be subordinate to the official who proposed the action. The designee must, however, be in a position to effectively recommend or actually decide on the proposed action.

- B. The Deciding Official or designee who hears the oral reply is reminded that the employee or his or her designated representative has the right to say whatever he or she wishes to influence the decision on the proposed action.
- C. If the employee makes an oral reply, the Deciding Official, or his or her designee, shall prepare a written summary or arrange for a verbatim transcript of the meeting. If a court reporter is used, the cost will be incurred by the HUD program office. The summary or transcript shall become part of HUD's official case file.
- D. The employee's oral and written replies, if made, shall both become a part of HUD's official case file.

#### **2-4 Decision and Notice of Decision**

At the earliest practicable date after receipt of the employee's answer, or following expiration of the period within which the employee was given the opportunity to answer, the Deciding Official (refer to paragraph 1-10B) shall:

- A. Obtain advice and assistance of personnel specialists from the servicing human resources office regarding the decision and the appropriateness of the penalty. The Deciding Official should exercise caution in discussing the merits of the case with the Proposing Official. His/her decision must be based on the evidence relied upon to support the proposal, and not on "ex parte" (only one side present) communication, i.e., conversation that provides additional evidence that is not provided to the employee for comment or response.
- B. Consider the employee's answer, if any.
- C. Issue a decision notice to the employee at or before the time the action will be made effective with a copy to the employee's representative, if any. If a bargaining agreement has different requirements, follow the direction outlined in the Agreement. Such a decision will be made within 35 days of the receipt of the employee's response, or following expiration of the notice period. If the Deciding Official determines that further investigation is necessary, the time limit for issuance will be extended for an appropriate amount of time. The employee is to be notified of such an extension. The decision notice shall include the following information:
  - 1. Whether the action to be taken is the same as proposed, a less severe action than proposed (and if so, the specific action to be taken), or no action. The decision

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notice must specify any mitigating and aggravating factors that were considered in reaching a decision. When aggravating factors considered are the same as those included in the notice of proposed disciplinary action, the decision notice should indicate that consideration was given to those factors.

2. Which charge(s) and specification(s)/reason(s) in the proposed suspension notice were sustained and which were not sustained. (If only one specification is sustained, the charge is sustained)
3. The effective date of the suspension, which must not be before the advance notice period expires. If a Saturday, Sunday, or holiday is the last day of the notice period, the notice period is extended to the next workday.
4. The notice shall inform the employee of the right to grieve the merits and procedures of the suspension in accordance with HUD Handbook 771.2 REV-3, Administrative Grievances. Bargaining unit employees must be notified of the right to invoke arbitration/grieve as outlined in the bargaining agreement.
5. If, during the disciplinary process, the employee alleges that the action is motivated by or the result of illegal discrimination or some other prohibited personnel practice, the employee must be given the right to appeal such action in the appropriate arena.