

Internal Revenue Service

Guide to Penalty Determinations

IRM 6.751.12, Exhibit 6



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**INTERNAL REVENUE SERVICE
GUIDE FOR PENALTY DETERMINATIONS
INTERNAL REVENUE MANUAL 6.751
EXHIBIT 6**

INTRODUCTION

This Guide to Penalty Determinations is included as an Exhibit to Internal Revenue Manual 6.751 (formerly 0751). The Guide represents possible code of conduct violations that could be committed and a range of suggested reasonable penalties for each of the offenses. It is not intended to be an exhaustive listing of all offenses. The situation of both the employee's position and the offense must be considered on a case by case basis. Progressive discipline should be based on individual mitigating and/or aggravating circumstances. The penalties are graduated in severity based on numerous factors including prior disciplinary actions or statutory requirements. In those instances, requiring proposed mandatory removal for a first offense, such as a violation of the Restructuring and Reform Act (RRA'98) §1203, a graduated range of penalties cannot be applied as only the Commissioner can mitigate the penalty.

The Guide does not apply to employees serving a probationary or trial period. Failure to demonstrate fitness for continued employment may result in termination during the probationary or trial period (5 CFR §315).

Downgrades may be effected when appropriate, absent a statutory requirement for removal. Downgrades should be considered when the offense would not reasonably impair successful performance in another position within the IRS, if available.

CONCEPT OF DISCIPLINE PER IRM 6.751.12

Discipline is adherence by all employees to known conditions and standards of conduct established to provide for the orderly and efficient administration of the Internal Revenue Service (IRS). No employee will be the subject of a disciplinary or adverse action except for such cause as will promote the efficiency of the Service (i.e., if the conduct may reasonably be expected to interfere with the ability of the person to function in the position or the agency's ability to discharge it's responsibility).

Disciplinary action is designed to correct the conduct. The proposed corrective action in each case must be fair, equitable, impartial, as timely as possible, and should not be taken to punish but to correct and motivate the individual to become a productive employee.

CHOOSING AN APPROPRIATE ACTION UNDER THESE GUIDELINES

In considering whether corrective action is warranted, the proposing official must review and analyze all the evidence of record. Proof beyond a reasonable doubt is the criterion for adjudication of a criminal case. An adverse action must be supported by a preponderance of evidence and a lesser disciplinary action or a disciplinary suspension must be supported by substantial evidence. Please refer to IRM 6.751.15 for definitions.

Choosing a corrective action that is reasonable and appropriate for the circumstances involved is extremely important. All relevant factors must be given careful consideration. This document serves as a guide for determining the proper corrective action and is not intended to establish a rigid standard or to imply that a greater or lesser corrective action is inappropriate.

A corrective action that is below the range indicated could be appropriate for minor or technical violations, or for cases where there are compelling mitigating factors.

Counseling, though not disciplinary in nature, is the first appropriate step in the succession leading up to progressive discipline. Counseling must be conducted on an ongoing basis and completed in a timely manner. The employee must be on advanced notice that the conduct is unacceptable. The problem areas must be identified and the employee given sufficient time to correct the action.

A corrective action that is above the range indicated could be appropriate for particularly egregious misconduct, or for cases where there are significant aggravating factors. Even for offenses where removal is not listed, removal for a first offense is not precluded.

This guide may be deviated from depending on the individual circumstances that may be involved. Each case will be considered individually and dealt with on its own merit with due consideration to the supporting evidence as well as information supporting the employee's position. Mitigating factors including the Douglas Factors must be considered when proposing and deciding disciplinary and adverse actions. These factors are listed on page 3, in IRM 6.752.43(12)(4)(c) and in the negotiated agreement for bargaining unit employees. Multiple offenses or offenses that violate more than one law, rule, regulation, or practice, normally will be grounds for more severe action than indicated for a single offense. Repeated offenses, whether or not they are of the same kind or directly related, normally will be grounds for more severe action than indicated, including removal.

WHAT IS PROGRESSIVE DISCIPLINE?

If it is necessary to take a disciplinary action against an employee, the penalty selected should generally be progressive in nature, if appropriate. The Service endorses the principle of progressive discipline, which means that management should take the least severe action that will produce the desired corrective effect. However, not all instances support progressive discipline. In particular actions that require statutory minimum mandatory corrective action (e.g., Misuse of Government Vehicle, RRA'98, §1203), an egregious singular act of misconduct, or a pattern or sequence of similar misconduct.

WHAT ARE DOUGLAS FACTORS?

The Merit Systems Protection Board (MSPB) set out guidelines explaining the types of factors agencies must consider in selecting a corrective action. The Douglas Factors, page 3, are the relevant factors that the agency must consider. Not all of the factors apply in every case and not all factors will be given equal weight. Before deciding upon a corrective action, the deciding official must consider the relevant factors given the circumstances of each individual case, and strike a responsible balance within the tolerable limits of reasonableness. The list of factors included herein for purposes of illustration, are neither meant to be exhaustive nor intended to be applied mechanically by formula, but rather to outline the tolerable limits of reasonableness. Factors need not have equal weight in a specific case. Considerable judgement must be used in determining the appropriate penalty. There is no simple or mechanical system or method that managers should apply. Therefore, the rationale upon which the decision is based must be justified, documented in writing, and be explainable in a third party review. All relevant provisions of the master collective bargaining agreement continue to apply to bargaining unit employees.

WHEN CAN ALTERNATIVE DISCIPLINE BE UTILIZED?

Alternative discipline may be used as an alternative to the traditional disciplinary process to positively change an employee's conduct (NORD/NC V, Article 38, Section 2). The employee will be informed that "traditional" discipline is being contemplated and that the employee may request consideration of an alternative form of discipline. This applies to any and all cases for which a reprimand or suspension of less than 14 days is a possibility. Under no circumstances is alternative discipline required to be used. However, if used, the provisions of the NORD/NC Agreement must be met. Alternative discipline cannot be offered or pursued in adverse actions including removals.

WHAT ABOUT PENALTIES FOR SENIOR EXECUTIVE SERVICE PERSONNEL?

Title 5 USC §7541-7543 mandates that a suspension action against individuals in the Senior Executive Service (SES) must be for a duration of more than fourteen (14) days. There is no restriction, however, on issuing a written reprimand for offenses that do not warrant suspensions.

ESTABLISHMENT OF NEXUS IN OFF-DUTY MISCONDUCT CASES

In cases of off-duty misconduct, the nexus **must** be stated. Nexus is a description of why and how there is a connection between the specific off-duty misconduct and the efficiency of the Service. For example, how would drunk driving that led to an arrest interfere with the efficiency of the Service so as to warrant a disciplinary or adverse action? It is a good idea to begin the Nexus statement as follows: "Such conduct seriously impairs the efficiency of the Service because...". See Article 38, Section 6 and Article 39, Section 3 of NORD/NC V for additional information concerning nexus statements. Additional guidance on the preparation of nexus statements may be found in Exhibits 6.752-1 and 6.752.3, in IRM 6.752 (formerly 0752), Disciplinary Suspensions and Adverse Actions.

Listed below are the Douglas Factors, for management's use in determining a penalty.

DOUGLAS FACTORS

- 1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional, inadvertent, or was committed maliciously or for gain or was frequently repeated;**
- 2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;**
- 3. The employee's past disciplinary record;**
- 4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;**
- 5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;**
- 6. Consistency of the penalty with those imposed upon other employees for the same or similar offense;**
- 7. The notoriety of the offense or its impact upon the reputation of the Agency;**
- 8. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;**
- 9. Potential for the employee's rehabilitation;**
- 10. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and**
- 11. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.**

OFFENSE I	NATURE OF OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	KEY PENALTY FACTORS
INSUBORDINATION 5 CFR 2635.101 - 107	a. Refusal to obey orders; willful failure to follow supervisory instructions or requirements; defiance of authority and other such acts of insubordination	Written Reprimand to Removal	5 Day Suspension to Removal	Removal	Work related consequences, reasons for failure to comply.
CREATING A DISTURBANCE/ WORKPLACE DISRUPTION 5 CFR 2635.101 - 107	a. Creating a disturbance resulting in an adverse effect on morale, production or maintenance of proper discipline including use of language or gestures, which are abusive or offensive to a reasonable person. b. Creating a disturbance resulting in a significant interruption in the work or where there was taxpayer (Public) involvement or awareness	Written Reprimand to 5 Day Suspension Written Reprimand to 15 Day Suspension	5 to 14 Day Suspension 15 Day Suspension to Removal	15 Day Suspension to Removal Removal	Impact on the person relative to the culture in the local environment. Degree of public impact or work interruption.
FIGHTING/PHYSICAL ASSAULTS/THREATS	a. Threatening another employee with physical harm. b. Hitting, pushing or other acts against another without causing injury c. Hitting, pushing or other provocation, acts against another causing injury	Written Reprimand to Removal Written Reprimand to 14 Day Suspension Written Reprimand to Removal	15 Day Suspension to Removal 15 Day Suspension to Removal 30 Day Suspension to Removal	Removal Removal Removal	Impact on person threatened, provocation, severity of threat, effect on work.

OFFENSE I	NATURE OF OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	KEY PENALTY FACTORS
RRA '98 §1203(b)(5)	<p>d. Assault or battery on a taxpayer or taxpayer representative or other employee of the IRS.</p> <p>(1) All matters, other than (2) below involving assault and battery.</p> <p>(2) When there has been a criminal conviction or a final adverse judgment by a court in a civil case.</p>	<p>Written Reprimand to 14 Day Suspension</p> <p>Removal</p>	<p>15 Day Suspension to Removal</p>	<p>Removal</p>	<p>Willful, intentional, egregious.</p>
ATTENDANCE RELATED OFFENSES	<p>a. Multiple absences without leave generally for a period of one hour or more; repeated tardiness, misuse of official time (includes failure to observe duty hours, lunch periods, conducting personal business during duty hours)</p> <p>b. Repeated failure to follow established leave procedures which is not considered insubordination</p>	<p>Admonishment to 5 Day Suspension</p> <p>Admonishment to 5-Day Suspension</p>	<p>5-14 Day Suspension</p> <p>1-14 Day Suspension</p>	<p>Removal</p> <p>Removal</p>	<p>Length and frequency of absences; suspensions or removal may be appropriate for frequent or extended absences (if progressive discipline has not corrected the problem) or for a prolonged absence.</p>
NEGLIGENCE OR CARELESSNESS IN CARRYING OUT DUTIES	<p>a. Negligence or carelessness in carrying out or failure to carry out duties including failure to protect a statute, failure to act which results in compromise of taxpayer rights, or a violation of work</p>	<p>Written Reprimand to 3 Day Suspension</p>	<p>1-5 Day Suspension</p>	<p>5 Day Suspension to removal</p>	<p>Penalty depends on cost to the government, extent of actual or potential loss, damage or injury to the employee or the taxpayer.</p>

OFFENSE I	NATURE OF OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	KEY PENALTY FACTORS
	or safety rules.				

OFFENSE I	NATURE OF OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	KEY PENALTY FACTORS
GAMBLING 5 CFR 735.201	a. Participating in gambling activity while on government premises or in a duty status b. Operating, assisting or promoting gambling activity while on government premises, in a duty status, or with other employees who are on duty status	Admonishment to Written Reprimand Written Reprimand to Removal	1-14 Day Suspension Suspension to Removal	15 Day Suspension to Removal Removal	Type and extent of activity, impact on performance of duty, notoriety.
INDEBTEDNESS OGE STANDARD – SUBPART A & H	a. Failure to manage or honor private financial affairs where agency operations or reputation are affected b. Misuse of or failure to properly make payments on a government issued charge card c. Failure to satisfy in good faith just financial obligations.	Admonishment to Written Reprimand Written Reprimand to 5 Day Suspension Written Reprimand to 5 Day Suspension	Written Reprimand to 5 Day Suspension 5-14 Day Suspension 5-14 Day Suspension	5-Day Suspension to Removal 15 Day Suspension to Removal 15 Day Suspension to Removal	Degree of employee's ability to control the situation. Financial hardship.
DISCOURTESY 5 CFR 2635	a. The making of remarks or gestures that a reasonable person would consider to be rude, abusive, or discourteous. b. The making of remarks or gestures to the public that a reasonable person would consider to be rude, abusive,	Admonishment to 1 Day Suspension Written Reprimand to 14 Day Suspension	1-5 Day Suspension 15 Day Suspension to Removal	5 Day Suspension to Removal Removal	Provocation, local cultural environment.

OFFENSE I	NATURE OF OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	KEY PENALTY FACTORS
	or discourteous.				

OFFENSE I	NATURE OF OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	KEY PENALTY FACTORS
<p>PROHIBITED GIFTS AND GRATUITIES</p> <p>OGE STANDARD SUBPART B & C</p> <p>TERoC §0.203</p>	<p>a. Creating a conflict of interest or the appearance of a conflict of interest by soliciting or accepting gifts, favors, gratuities, entertainment, or other things of a monetary value from an outside source, other employee, or subordinate in the performance of official duties except as authorized by law, regulation or agency policy;</p>	<p>Written Reprimand to 14 Day Suspension</p>	<p>15 Day Suspension to Removal</p>	<p>Removal</p>	<p>Extent of personal gain.</p>
<p>CONFLICTS OF INTEREST</p> <p>OGE STANDARD – SUBPART D</p> <p>18 USC 208</p> <p>5 CFR 2640</p>	<p>a. Performance of duty when personal circumstances, interests, or relationships make it likely for a reasonable person to question an employee's impartiality, such as involvement in a particular matter when an employee has a financial or personal interest</p> <p>(1) When the employee's impartiality was not affected</p> <p>(2) When the employee's impartiality was affected or a significant benefit was received or sought</p> <p>b. Failure to report or notify</p>	<p>Admonishment to 14 Day Suspension</p> <p>Written Reprimand to Removal</p> <p>Written Reprimand</p>	<p>15 Day Suspension to Removal</p> <p>Removal</p> <p>15-30 Day</p>	<p>Removal</p> <p>30 Day</p>	

OFFENSE I	NATURE OF OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	KEY PENALTY FACTORS
	<p>manager of a personal conflict or potential conflict of interest in the performance of one's duty.</p> <p>c. Failure to follow prohibitions against the purchase of government property, such as purchasing or attempting to purchase property under the direction of or incident to the function of the IRS; without first receiving a waiver from the IRS' Designated Ethics Official.</p>	<p>to 14 Day Suspension</p> <p>Written Reprimand to 14 Day Suspension</p>	<p>Suspension to Removal</p> <p>15 Day Suspension to Removal</p>	<p>Suspension to Removal</p> <p>Removal</p>	<p>Extent of personal gain.</p>
<p>OUTSIDE EMPLOYMENT VIOLATIONS</p> <p>OGE STANDARD – SUBPART H 5 CFR 2635.801 – 809 TSS §3101.106 TSS §3101.104</p>	<p>a. Failure to request approval for outside employment that would otherwise be approved</p> <p>b. Engaging in prohibited outside employment</p>	<p>Admonishment to 5 Day Suspension</p> <p>Written Reprimand to 14 Day Suspension</p>	<p>5-14 Day Suspension</p> <p>15-30 Day Suspension</p>	<p>15 Day Suspension to Removal</p> <p>30 Day Suspension to Removal</p>	<p>Extent and type of activity, intentional violation of rules, impact of the activity on the employee and the Service.</p>

OFFENSE I	NATURE OF OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	KEY PENALTY FACTORS
<p>FALSE STATEMENTS TERoC §0.208 18 USC 1001</p>	<p>a. False Statements, misrepresentation, or fraud in entitlement, including providing false information concerning time, leave, travel, or other entitlements.</p> <p>b. False statements or misrepresentation on a job application concerning other documents or matters pertaining to qualifications or concerning any official record or proceeding not otherwise enumerated in (a) above (e.g., background investigations, etc.)</p>	<p>Written Reprimand to Removal</p> <p>Written Reprimand to Removal</p>	<p>30 Day Suspension to Removal</p> <p>30 Day Suspension to Removal</p>	<p>Removal</p> <p>Removal</p>	<p>False statement means a statement or assertion known to be untrue and intended to deceive. Degree of materiality to the decision. Extent of personal gain, intent to deceive.</p> <p>NOTE: Mistakes are not false statements.</p>

<p>RRA '98 §1203(b)(4)</p> <p>RRA '98 §1203(b)(2)</p>	<p>c. False statements, failure to respond to questions or cooperate in a conduct or other investigation concerning a matter of official interest</p> <p>d. Falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or a taxpayer's representative</p> <p>e. Providing false statement under oath with respect to a material matter involving a taxpayer or taxpayer's representative</p>	<p>1 Day Suspension to Removal</p> <p>Removal</p> <p>Removal</p>	<p>Removal</p>		
<p>ALCOHOL OR SUBSTANCE RELATED OFFENSES</p> <p>TERoC §0.204</p>	<p>a. Unauthorized possession or use of alcoholic beverages, drugs or a controlled substance on government premises or while in duty status</p> <p>b. Unauthorized possession or use of alcoholic beverages, drugs, or a controlled substance, while off-duty, provided a nexus can be established.</p> <p>c. Reporting for or being on duty while under the influence of alcohol, drugs, or</p>	<p>Written Reprimand to 14 Day Suspension</p> <p>Written Reprimand to 14 Day Suspension</p> <p>14 Day Suspension to Removal</p>	<p>15-30 Day Suspension</p> <p>15-30 Day Suspension</p> <p>Removal</p>	<p>30 Day Suspension to Removal</p> <p>30 Day Suspension to Removal</p>	<p>Actions involving abuse of alcohol, drugs, or controlled substances must take into account the requirements of applicable drug/alcohol abuse programs, statutes, and regulations.</p>

	<p>a controlled substance</p> <p>d. Sale or distribution of a drug or controlled substance whether on or off duty.</p> <p>e. Failure to report for drug testing, refusal to take a drug test or tampering with a specimen when required to take a drug test as a condition of employment</p>	<p>Removal</p> <p>Removal</p>			<p>Establishment of a nexus is required for off-duty conduct.</p>
<p>DISCRIMINATORY CONDUCT AND SEXUAL HARRASSMENT</p> <p>RRA '98 §1203(b)(3)</p>	<p>a. With respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of:</p> <p>(1) any right under the Constitution of the United States; or</p> <p>(2) any civil right established under –</p> <p>(i) title VI or VII of the Civil Rights Act of 1964;</p> <p>(ii) title IX of the Education Amendments of 1972;</p> <p>(iii) the Age Discrimination in Employment Act of 1967;</p> <p>(iv) the Age Discrimination Act of 1975;</p> <p>(v) section 501 or 504 of</p>	<p>Removal</p>			<p>Violation of clearly established constitutional rights of which a reasonable person would be aware. Conduct must be motivated by discrimination (i.e., treating employees, taxpayers, or taxpayer representatives differently on the basis of race, sex, color, religion, national origin, age, or disability as defined by the civil rights statutes).</p>

	<p>the Rehabilitation Act of 1973; or (vi)title I of the Americans with Disabilities Act of 1990.</p> <p>b. Sexual misconduct that does not rise to the level of a Title VII violation., such as deliberate or repeated offensive conduct comments, gestures, or physical contact of a sexual nature)</p> <p>(1) Not involving a subordinate</p> <p>(2) Involving a subordinate</p> <p>d. Taking reprisal for valid disclosures of misconduct by other employees or for the exercise of employee rights.</p>	<p>1-14 Day Suspension</p> <p>Removal</p> <p>1-14 Day Suspension</p>	<p>15-30 Day Suspension</p> <p>15-30 Day Suspension</p>	<p>Removal</p> <p>Removal</p>	<p>Extent to which employee was impacted.</p> <p>NOTE: If violation is by a manager, the penalty will normally include removal from the managerial position.</p>
<p>THREATS TO AUDIT A TAXPAYER RRA '98 §1203(b)(10)</p>	<p>a. Threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.</p> <p>b. Threatening to audit a taxpayer when personal gain is not involved.</p>	<p>Removal</p> <p>1-14 Day Suspension</p>	<p>15-30 Day Suspension</p> <p>15-30 Day Suspension</p>	<p>Removal</p> <p>Removal</p>	<p>Willful, intentional, egregious</p>

<p>MISUSE OR ABUSE OF GOVERNMENT PROPERTY</p> <p>31 USC §1349</p>	<p>a. Misuse of government property (supplies, computers or other government equipment)</p> <p>b. Loss or damage of government property,</p> <p>c. Willfully using or authorizing the use of a government owned or leased vehicle for other than official purposes</p> <p>d. Unintentionally using or authorizing the use of a government owned or leased vehicle for other than official purposes.</p>	<p>Written Reprimand to 14 day Suspension</p> <p>Written Reprimand to 14 Day Suspension</p> <p>30 Day Suspension to Removal</p> <p>Written Reprimand to 14 Day Suspension</p>	<p>15-30 Day Suspension</p> <p>15-30 Day Suspension</p> <p>Removal</p> <p>15-30 Day Suspension</p>	<p>Removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p>	<p>Actual or potential cost to government, including lost work time.</p> <p>Significance of and impact on agency of destroyed or lost property, whether violation was deliberate or caused by negligence or carelessness.</p> <p>Minimum 30 Day suspension in accordance with 31 USC §1349.</p> <p>Cost or potential cost to the government, liability or possible exposure to liability of the government.</p>
<p>MISUSE OR ABUSE OF RECORDS OR INFORMATION</p> <p>RRA'98 §1203(b)(1)</p> <p>RRA '98 §1203(b)(4)</p>	<p>a. Willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings or business assets</p> <p>b. Falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer's representative.</p>	<p>Removal</p> <p>Removal</p>	<p></p> <p></p>	<p></p> <p></p>	<p>Willful, negligent and egregious</p> <p>Falsification or destruction must have been done to conceal mistakes.</p>

<p>RRA '98 §1203(b)(7)</p> <p>18 USC 2071</p>	<p>c. Willful misuse of the provisions of §6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry.</p> <p>d. Willfully and unlawfully concealing, mutilating, obliterating, falsifying, or destroying a record, proceeding, map, book, document, paper or other thing deposited or filed with the IRS.</p> <p>e. Loss or destruction of government documents, records.</p>	<p>Removal</p> <p>Removal</p> <p>Written Reprimand to 14 Day Suspension</p>	<p>15-30 Day Suspension</p>	<p>Removal</p>	<p>Willful, intentional, egregious</p> <p>Upon criminal conviction.</p> <p>Actual or potential cost to the government, including lost work time.</p>
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<p>FAILURE TO OBSERVE WRITTEN REGULATIONS, ORDERS, RULES, OR IRS PROCEDURES</p> <p>RRA '98 §1203 (b)(6)</p>	<p>a. Violation of administrative rules or regulations where persons or property are not endangered</p> <p>b. Violation of administrative rules or regulations where safety to persons or property are endangered</p> <p>c. Violation of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the IRS (including the IRM) for the purpose of retaliating against, or harassing, a taxpayer, a taxpayer's representative, or other employee of the IRS</p>	<p>Written Reprimand to 1 Day Suspension</p> <p>Written Reprimand to 29 Day Suspension</p> <p>Removal</p>	<p>1-14 Day Suspension</p> <p>30 Day Suspension to Removal</p>	<p>15 Day Suspension to Removal</p> <p>Removal</p>	<p>Consequences of failure to follow rules or regulations. Willfulness of violation.</p> <p>Intentional</p>
<p>COMPUTER SECURITY, RECORDS, AND TAXPAYER PRIVACY VIOLATIONS</p> <p>26 USC §6103 5 USC §552a</p>	<p>a. Unauthorized disclosure of tax return or return information and other protected information, including information protected by the Privacy Act.</p> <p>(1) Where disclosure is due to carelessness or negligence.</p> <p>(2) Where disclosure is intentional.</p>	<p>Written Reprimand to 14 Day Suspension</p> <p>Removal</p>	<p>15 Day Suspension to Removal</p>	<p>Removal</p>	<p>Extent of and type of information disclosed, whether or not for personal gain, or degree of notoriety.</p>

<p>UNAUTHORIZED ACCESSES/UPDATES</p>	<p>a. Unauthorized access or causing an unauthorized access of one's own or another's personnel account information, including OPFs, TIMIS, TAPS, etc.</p> <p>b. An unauthorized update or causing an unauthorized update to personnel account information, including OPFs, TIMIS, TAPS, etc.</p> <p>(1) Not done for personal gain, harmful intent</p> <p>(2) When done for personal gain, harmful, intent</p>	<p>Written Reprimand to Removal</p> <p>Written Reprimand to Removal</p> <p>Removal</p>	<p>Removal</p> <p>Removal</p>		<p>Extent of personal gain; willful, intentional, harmful intent. Number of accesses, sensitivity of information, reason for accessing.</p> <p>NOTE: Taxpayer Browsing Act is not applicable to accesses to OPFs, TIMIS, TAPS, etc.</p>
<p>Taxpayer Browsing Act – 26 USC 7213(A)</p>	<p>c. Attempted unauthorized access to tax return or tax return information</p> <p>d. Unauthorized access or causing an unauthorized access of one's own or another's tax account information.</p> <p>e. Unauthorized update or causing an unauthorized update to tax account information.</p>	<p>Removal</p> <p>Removal</p> <p>Removal</p>			<p>Removal is required by law if the employee is convicted under 26 USC 7213(A) for unauthorized access or attempted unauthorized access to tax account information. The seriousness of the offense, impact on public confidence in tax administration and the clarity of notice through annual UNAX training will, in most cases, support removal even in the absence of a criminal conviction for willful unauthorized access or attempted unauthorized access.</p>

<p>BRIBERY 18 USC 201(b)(2)</p>	<p>a. Acceptance and/or solicitation of a bribe in connection with an official matter</p>	<p>Removal</p>			<p>Penalty includes any acts occurring while in an off duty status</p>
<p>TERoC §107(a)</p>	<p>b. Failure to report attempts of bribery</p>	<p>Written Reprimand to 14 Day Suspension</p>	<p>15-30 Day Suspension to Removal</p>	<p>Removal</p>	
<p>MISUSE OF POSITION OGE STANDARD – SUBPART G</p>	<p>a. Misuse of one’s public office or authority, including but not limited to, using one’s position, authority, or credentials to further a private interest; using non-public information to further a private interest; advocating the employment or promotion of a relative in violation of 5 CFR 310 and/or utilizing a subordinate to perform activities other than those authorized by law or required in the performance of official duties.</p>	<p>Written Reprimand to 14 Day Suspension</p>	<p>15-30 Day Suspension</p>	<p>30 day Suspension to Removal</p>	<p>Whether and extent to which the agency or the government was brought into disrepute. Extent of interference with performance of official duties, whether for and extent of personal gain.</p>

<p>POLITICAL ACTIVITY 5 USC § 7323, 7324 , 7326</p>	<p>a. Engaging in political activity prohibited by 5 USC 7323 and 5 USC 7324.</p>	<p>Removal</p>			<p>Removal required by 5 USC 7326. Only MSPB can mitigate and then only to a 30 Day Suspension.</p>
<p>THEFT/MAKING FALSE CLAIMS/ UNAUTHORIZED POSSESSION OF PROPERTY</p>	<p>a. Stealing government property, or other on-the-job thefts, whether actual or attempted, obtaining and/or accepting money or items of value not entitled to.</p> <p>b. Unauthorized possession of government property or the property of another employee.</p> <p>c. Obtaining/accepting unentitled money or items of value where the offense adversely affects the efficiency of the service (e.g., welfare fraud, unemployment fraud).</p>	<p>14 Day Suspension to Removal</p> <p>14 Day Suspension to Removal</p> <p>14 Day Suspension to Removal</p>	<p>Removal</p> <p>Removal</p> <p>Removal</p>		<p>The value of the property, the extent of the employees participation in the theft, fraud, or unauthorized possession (where more than one person is involved) and the position held by the employee, and whether the assets were entrusted to the employee in the performance of duty.</p>
<p>FLAGRANT MISCONDUCT</p>	<p>a. Serious off-duty misconduct where there is a connection between the misconduct and the efficiency of the Service, such as offenses involving the use of deadly force, egregious sexual misconduct, or criminal misconduct demonstrating professional/moral turpitude</p>	<p>Removal</p>			
<p>ILLEGAL JOB ACTIONS 5 USC 7311 5 USC 7116(b)(7)(A) 18 USC 1918</p>	<p>a. To participate in a strike or to assert the right to strike or is a member of an organization of employees of the government of the United States</p>	<p>Removal</p>			<p>This does not include informational picketing.</p>

<p>5 USC 7116(b)(7)(A)</p>	<p>that he/she knows asserts the right to strike against the government of the United States.</p> <p>b. To call or participate in a work stoppage/slowdown or picketing of an agency in a labor management dispute if such picketing interferes with the agency's operations, or to condone any activity described above by failing to take action to prevent or stop such activity.</p>	<p>Written Reprimand to 14 Day Suspension</p>	<p>15-30 Day Suspension to Removal</p>	<p>Removal</p>	
<p>OTHER OFFENSES – NOT OTHERWISE SPECIFIED</p>	<p>a. Offenses having a minor impact on employee's ability to perform or the accomplishment of the mission of the agency.</p> <p>b. Offenses having a moderate impact on the employee's ability to perform or the accomplishment of the mission of the Agency</p>	<p>Admonishment to Written Reprimand</p> <p>Written Reprimand to 30 day Suspension</p>	<p>Written Reprimand to 14 Day Suspension</p> <p>30 Day Suspension to Removal</p>	<p>15 Day Suspension to Removal</p> <p>Removal</p>	<p>Nature and seriousness of the offense, relationship to employee's duties, position of employee, and notoriety of the offense.</p>

	c. Offenses with a substantial adverse impact on the employee's ability to perform or the accomplishment of the mission of the Agency because of the seriousness of the misconduct, the loss of trust or confidence in the ability of the employee to perform duties successfully, and/or significant actual or potential impact on the Agency.	15 Day Suspension to Removal	Removal		
<p>FAILURE TO PROPERLY AND TIMELY FILE AND PAY FEDERAL, STATE OR LOCAL TAXES</p> <p>5 CFR 2635.809</p> <p>RRA '98 §1203 (b)(8)</p>	<p>a. Unintentional failure to file tax return caused by oversight, reliance on others, etc.</p> <p>b. Unintentional understatement of federal tax liability</p> <p>c. Failure to timely pay taxes due, such as, but not limited to payments due with tax return, default on installment agreement, estimated tax payments.</p> <p>d. Offenses, other than those stated above, related to the failure to properly and timely pay Federal, State, and/or Local taxes.</p> <p>e. Willful failure to file any tax return required under the Internal Revenue Code of 1986 on the date prescribed</p>	<p>Admonishment</p> <p>Admonishment</p> <p>Admonishment</p> <p>Admonishment</p> <p>Removal</p>	<p>Written Reprimand to 14 Day Suspension</p> <p>Written Reprimand to 14 Day Suspension</p> <p>Written Reprimand to 14 Day Suspension</p> <p>Written Reprimand to 14 Day Suspension</p>	<p>Removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p>	<p>More severe actions should be considered when the position of the employee is directly related to tax administration; especially when the employee is responsible for enforcing the specific tax provisions violated by the employee.</p> <p>NOTE: Counseling may be more appropriate than initiating discipline for a first offense.</p>

<p>RRA '98 §1203 (b)(9)</p>	<p>(including any extensions), unless such failure is due to reasonable cause and not to willful neglect</p> <p>f. Willful understatement of federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect</p>	<p>Removal</p>			
<p>MISUSE OF ENFORCEMENT STATISTICS</p> <p>RRA '98 §1204 26 CFR §801.3 IRM 105.4</p>	<p>a. Using records of tax enforcement results to evaluate employees or to impose or suggest production quotas or goals with respect to such employees.</p>	<p>Reprimand to Removal</p>	<p>5 Day Suspension to Removal</p>	<p>Removal</p>	<p>Penalty of removal can be supported for first offense. Key factors in determining the extent of the penalty include: whether the employee identified the violation through self-certification; the employee's position, due diligence, extent of deviation from law or regulations on enforcement statistics, whether employee should have known that the activity was a violation, or abuse of a taxpayer, attributable to the misuse of statistics. (For additional information, see IRM 105.4, Managing Statistics in a Balanced Measurement System Handbook.)</p>

**UNAX PENALTY DETERMINATIONS
EFFECTIVE DATE: NOVEMBER 1, 2002**

This revision replaces items c, d, and e on page 16 of the IRM, 6.751.1-1, Guide to Penalty Determinations, dated 6-2001

NO CHANGES MAY BE MADE TO THIS DOCUMENT WITHOUT PRIOR APPROVAL FROM
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WASHINGTON, DC 20224

OFFENSE	NATURE OF OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	KEY PENALTY FACTORS
UNAUTHORIZED ACCESSES/ UPDATES	c. Unauthorized access of tax return or tax return information on one's own account or the account of one's spouse for joint return information or on any return or account for which the employee has responsibility in order to review account status or return information. Accesses violate IDRS security rules, but do not breach a taxpayer's privacy rights.	14 Day Suspension	Removal		Account status information includes: <ul style="list-style-type: none"> - Spouse's SSN for joint return info. - Parent accessing account to check status of dependent's account or return information (pertaining to the employee's own return, does not include the access of a dependent's return or return information when the dependents has filed a separate tax return). - Accessing IDRS to confirm a Social Security or Employee Identification Number. - Employee serving as an executor accessing IDRS to obtain information on the estate.
	d. Unauthorized access of tax return or return information when the taxpayer in a covered relationship requests assistance through official channels.	14 Day Suspension 30 Day Suspension	Removal Removal		<ul style="list-style-type: none"> - Information on the status of one's own individual or joint tax return. <p>Assistance through official channels includes: assisting a taxpayer who seeks help through Walk-in or an official telephone number (i.e. 1-800 for tax assistance). The type of assistance provided is within the scope of the employee's official duties.</p>

	<p>e. Unauthorized access of a tax return or tax return information when a covered taxpayer requests assistance through other than official channels. By assisting the covered taxpayer, the employee has created the appearance of or an actual conflict of interest and preferential treatment. The appearance has been created that the covered taxpayer has benefited from the receipt of expedited service that is unavailable to other taxpayers.</p>				<p>Assistance through unofficial channels occurs when a covered taxpayer seeks assistance directly from the employee, rather than through the 1-800 number, Walk-in, etc. The type of assistance provided is otherwise within the scope of the employee's official duties.</p> <p>Examples of improper accesses include:</p> <ul style="list-style-type: none"> • Customer Service representative checks mother's refund status after mother calls employee at home asking for refund information. • Customer Service Representative checks status of close neighbor's installment payments after neighbor asks for status information during a neighborhood picnic. • Assistance was not gained through official channels but was of the type otherwise within the employee's official duties.
	<p>f. Unauthorized access of tax return or tax return information when a covered taxpayer requests assistance and the assistance provided is of a type that is outside the scope of the employee's official duties.</p> <p>The appearance of receipt of preferential and/or expedited service by a covered taxpayer and/or a conflict of interest is exacerbated due to the fact that the type of service provided by the employee was outside the</p>	<p>Removal</p>			<p>Example of type of accesses may include:</p> <ul style="list-style-type: none"> - Secretary, whose duties are to verify Social Security Numbers on IDRS for routing of taxpayer correspondence for referral of taxpayer correspondence, accesses aunt's account at aunt's request to check on status of refund. - Tax examiner, who performs no customer service functions, accesses account, at brother's request, to see if payment was posted. - Revenue Officer researches

	<p>scope of his/her regularly assigned duties.</p> <p>g. Unauthorized access of tax return or tax return information without the taxpayer's knowledge and consent. The employee breached the taxpayer's privacy rights, the UNAX policy, and the intent of the Taxpayer Browsing Protection Act.</p>	Removal		<p>status of an on-going audit for a close friend by a Tax Auditor - at the close friend's request.</p> <p>Accesses were outside official channels and tasks performed were not otherwise within the employee's official duties.</p> <p>Example of type of accesses may include:</p> <ul style="list-style-type: none"> - Employee accessed an account out of curiosity. - Employee sought to locate spouse or ex-spouse (family members, close friends).
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Accesses that fall into the category of multiple accesses or accesses that violate the intent of the Taxpayer Browsing Act will result in removal.

The provisions of this guide address violation of the Internal Revenue Service policy on unauthorized inspection of returns or return information. The provisions refer to offenses involving providing information or assistance that "the employee would routinely provide to taxpayers with whom the employee does not have a covered relationship." The term "covered relationship" refers to the relationships prohibited by IRS policy on unauthorized inspection of returns or return information.

For a 14-day suspension, IDRS access will be suspended for a 90-day period commencing with the employee's return to duty.

For a 30-day suspension, IDRS access will be suspended for a 180-day period commencing with the employee's return to duty.

Credit Card Misuse Penalty Guide

Offense	Nature Of Offense	First Offense	Second Offense	Third Offense	Key Penalty Factors
<p>MISUSE OF A GOVERNMENT ISSUED CREDIT CARD</p> <p>Travel Card</p>	<p>Misuse or inappropriate personal use of government issued credit card such as:</p> <p>a. Making unauthorized purchases, including but not limited to: obtaining a cash advance while not in an authorized travel status; making charges in excess of those authorized by travel authorization; making personal purchases [i.e., toys, electronics, clothing, etc.] and purchasing meals when not in travel status.*</p> <p>b. Failure to timely pay all charges upon receipt of the credit card statement**</p>	<p>Written Reprimand to 5 Day Suspension</p> <p>Written Reprimand to 5 Day Suspension</p>	<p>5 - 14 Day Suspension</p> <p>5 - 14 Day Suspension</p>	<p>15 Day Suspension to Removal</p> <p>15 Day Suspension to Removal</p>	<p>* Personal charges, excessive advances, or obtaining unauthorized advances may also carry a criminal penalty. Depending on the amounts or facts referral to The Treasury Inspector General for Tax Administration (TIGTA) office could be considered.</p> <p>** Failure to timely file a voucher for reimbursement is not a mitigating factor. Receipt of reimbursement and failure to pay may raise the penalty, as appropriate. Government contract requires credit card to be paid even if the employee fails to file a voucher for reimbursement. Cardholders are encouraged to use CitiDirect to view and obtain statements.</p>
<p>Purchase Card</p>	<p>a. Willful failure of Purchase Card holder or approving official to follow the procedures outlined in Document 9185, Purchase Card Guide.</p> <p>b. Use of, or allowing the use of, a government issued purchase card for unauthorized purchases, including but not limited to: purchases of a personal nature, purchases not authorized by proper authority, etc.</p> <p>c. Engaging in unethical or prohibited actions while performing purchase card holder duties, such as accepting personal discounts not available to all Federal employees, accepting personal rebates for purchases made to the government issued purchase card, etc.</p> <p>d. Allowing an unauthorized person to use purchase card for personal purchases and/or travel.</p>	<p>3 - 30 Day Suspension</p> <p>3 - 30 Day Suspension</p> <p>3 - 30 Day Suspension</p> <p>3 - 30 Day Suspension</p>	<p>30 Day Suspension to Removal</p> <p>30 Day Suspension to Removal</p> <p>30 Day Suspension to Removal</p> <p>30 Day Suspension to Removal</p>	<p>Removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p>	

Penalty Guide – Internet Misuse – 10/10/2003

Offense	Nature Of Offense	First Offense	Second Offense	Third Offense	Key Penalty Factors
<p>VIOLATION OF INTERNET LIMITED PERSONAL USE POLICY</p>	<p>Misuse or inappropriate personal use of government information technology equipment such as:</p> <ul style="list-style-type: none"> a. Accessing, creating, downloading, viewing, storing, copying, or transmitting sexually explicit or pornographic sites/materials:* b. Creating, downloading, viewing, storing, copying, or transmitting or materials related to illegal gambling and any other illegal activities; c. Using for commercial purpose or in support of “for profit” activities or in support of other outside employment or business activity. d. Unauthorized acquisition, use, reproduction, transmission, or distribution of any controlled information including computer software and data (including privacy information and copyrighted or trade marked material); e. Using government systems as a staging ground or platform to gain unauthorized access to other systems. f. Accessing personal e-mail accounts through the Internet (e.g., accessing personal AOL/MSN/Hotmail accounts through the IRS Internet firewall) or using instant messaging/streaming media technologies. 	<p>1 Day Suspension to Removal</p> <p>1 Day Suspension to Removal</p> <p>Written Reprimand to 14 Day Suspension</p> <p>Written Reprimand to 14 Day Suspension</p> <p>Written Reprimand to 5 Day Suspension</p> <p>Admonishment to 5 Day Suspension</p>	<p>Removal</p> <p>30 Day Suspension to Removal</p> <p>15 Day Suspension to Removal</p> <p>15 Day Suspension to Removal</p> <p>5-30 Day Suspension</p> <p>5-30 Day Suspension</p>	<p></p> <p>Removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p>	<p>The Limited Personal Use Policy applies to all IRS employees, including detailees, temporary employees, and interns performing work for the IRS, whether the employee is working in a Government-designated office, traveling, or working from home on behalf of the Service.</p> <p>Managers must take into consideration not only the type of access but also the frequency (hourly, daily, or occasionally), and their duration.</p> <p>*Illegal (criminal) activities connected with sexually explicit or pornographic sites (e.g., conveying child pornography) will have “Removal” as the First Offense Penalty.</p> <p>Unauthorized or improper use may result in loss of use or limitations on the use of the information technology equipment/resources, disciplinary or adverse actions, termination, criminal penalties, and/or the employee’s being held financially liable for the cost of the improper use.</p>