



OFFICE OF INSPECTOR GENERAL

JUNE 5, 2020

Evaluation of the Architect of the Capitol's Compliance with Its Discipline Order

Evaluation Report 2019-0001-IE-P

MISSION

The OIG promotes efficiency and effectiveness to deter and prevent fraud, waste and mismanagement in AOC operations and programs. Through value added, transparent and independent audits, evaluations and investigations, we strive to positively affect the AOC and benefit the taxpayer while keeping the AOC and Congress fully informed.

VISION

The OIG is a high-performing team, promoting positive change and striving for continuous improvement in AOC management and operations. We foster an environment that inspires AOC workforce trust and confidence in our work.



Results in Brief

Evaluation of the Architect of the Capitol's Compliance with Its Discipline Order

June 5, 2020

Objective

The objective of this evaluation was to determine if the Architect of the Capitol (AOC) disciplinary actions taken from Fiscal Years (FY) 2015 - 2019 in response to employee misconduct were in compliance with established policy and penalty guidance, and if disciplinary actions were applied consistently based on appropriate criteria and evidence. To answer our objective we determined:

- If procedures for data collection and recordkeeping for disciplinary actions were adequate and effectively communicated;
- If guidance and training for supervisors and human resources staff on how to address misconduct was adequate;
- What procedures were in place to report and track disciplinary actions;
- What procedures were in place to ensure compliance with policy on discipline; and
- What factors, if any, affected the outcome of jurisdictional responses to misconduct.

It is the AOC Office of Inspector General's (OIG) internal procedure to obtain a management representation letter associated with the issuance of an inspection or evaluation. We requested the AOC sign an AOC OIG management representation letter March 3, 2020, a copy of which is included in this report as Appendix F. AOC management refused to sign the AOC OIG management representation letter provided and instead provided a letter, included as Appendix G, stating that the information provided in support of our evaluation was complete and accurate.

Findings

Based on our evaluation we found that the AOC's discipline response program was generally strong, although improvements could be made to address

inconsistencies with the disciplinary processes and recordkeeping. We found that:

- The AOC's guidance, training and recordkeeping were inadequate and did not ensure discipline actions were consistently and appropriately implemented, communicated and recorded;
- Human resources codes used on the Standard Form 50s (SF 50s) of employees that were removed or resigned after incurring disciplinary actions were inconsistent or incorrect; and
- There is no discipline policy for Senior Rated (SR) employees, which resulted in a lack of penalty determination data.

Recommendations

We recommend that:

- The AOC develop a system of accountability that regularly assesses agency performance and that provides clarity in roles as well as expected outcomes;
- The Human Capital Management Division (HCMD) revise Order 752-1, *Discipline*, and AOC's *Management Toolkit for Discipline* to direct that jurisdictions provide documentation to the HCMD on all formal disciplinary actions before the actions are implemented;
- The AOC conduct a feasibility study for centralizing all discipline actions in the HCMD;
- The HCMD retrain Employee Labor Relations Branch (ELRB) Human Resource (HR) Specialists in the assignment of SF 50 codes. The AOC should also seek affirmation from the Office of Personnel Management that its use of the "RUM" code is appropriate in cases where employees with appeal rights waive these rights in order to fulfill settlement terms for a clean discipline record as a factor in separation; and
- The AOC develop and publish discipline policy for SR personnel, for transparency and consistency with other employee groups.



Results in Brief

Evaluation of the Architect of the Capitol's Compliance with Its Discipline Order

Management Comments

We requested that the AOC provide comments in response to this report.

The AOC provided comments on May 28, 2020, see Appendix E. Overall, AOC management agrees with the conclusion that while we found that the AOC's discipline response program was generally strong, improvements could be made to address inconsistencies with the disciplinary processes and recordkeeping. AOC management concurred with the five recommendations.

Please see the Recommendations Table following this page.



INSPECTOR GENERAL

Recommendations Table

Responsible Entity	Recommendation Resolved	Recommendation Unresolved	Recommendations Closed
CAO	A-1, A-2- A-3, B, and C		

Note: The following categories are used to describe agency management’s comments to individual recommendations.

- **Unresolved** - Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** - Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** - The Office of Inspector General (OIG) verified that the agreed upon corrective actions were implemented.



INSPECTOR GENERAL

DATE: June 5, 2020

TO: J. Brett Blanton
Architect of the Capitol

FROM: Christopher P. Failla, CIG *C. Failla*
Inspector General

SUBJECT: Evaluation of the Architect of the Capitol's Compliance with Its
Discipline Policy (2019-0001-IE-P)

Please see the attached final report for our evaluation of the Architect of the Capitol's (AOC) Compliance with Its Discipline Policy, which was announced on August 14, 2019. We found that the AOC's discipline response program was generally strong, although improvements could be made to address inconsistencies with the disciplinary processes and recordkeeping. This report includes five recommendations for improvements to the AOC's discipline processes.

In your response to our official draft report (Appendix E), you concurred with each of our recommendations. Based on your response, we feel the proposed corrective actions address each of our recommendations. However, the status of each recommendation will remain open until final corrective action is taken. We will contact you within 90 days to follow-up on the progress of your proposed management decisions.

I appreciate the assistance you and your staff provided throughout the evaluation. Please direct questions to Evaluator Audrey Cree at 202.593.1941 or acree@aoc.gov, or Assistant Inspector General for Evaluations Joshua Rowell at 202.593.1949 or joshua.rowell@aoc.gov.

Distribution List:

Thomas J. Carroll III, Assistant to the Architect
Pete Bahm, Chief of Staff
William O'Donnell, Chief Administrative Officer
Teresa R. Bailey, Chief Human Capital Officer
Jason Baltimore, General Counsel
Mary Jean Pajak, Senior Advisor

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Introduction

Objective

The objective of this evaluation was to determine whether the AOC's administration of discipline actions was in compliance with its Discipline policy (Order 752-1, March 31, 2014) and if these actions were consistently implemented across the agency based on appropriate criteria and evidence. We reviewed agency policy, training and recordkeeping to determine the adequacy of the AOC oversight of established disciplinary processes.

It is the AOC OIG's internal procedure that we obtain a management representation letter associated with the issuance of an inspection or evaluation. The

representation letters are intended to confirm representations, both oral and written, made to us during the evaluation. We requested a management representation letter from the AOC on March 3, 2020, a copy of which is included in this report as Appendix F. AOC management refused to sign the management representation letter that was provided and instead provided a separate letter, included as Appendix G, stating that, "The information the AOC provided for this evaluation is complete and accurate to the best of our knowledge." AOC management did not explain why they refused to sign the management representation letter provided nor why they were unable to make the requested representations that included routine representations such as their knowledge of any fraud or suspected fraud or instances of noncompliance with laws or regulations.

Background

We initiated this evaluation after OIG investigations into theft raised concerns that AOC discipline actions may be inconsistent and disparate. In our Semiannual Report to Congress in April 2019 (SAR-19-1), we reported on OIG investigations that substantiated the unauthorized possession (i.e., theft) of AOC-owned property by two separate individuals.¹ Although the theft amounts were similar (between \$1,500 and

Commonly Used Terms

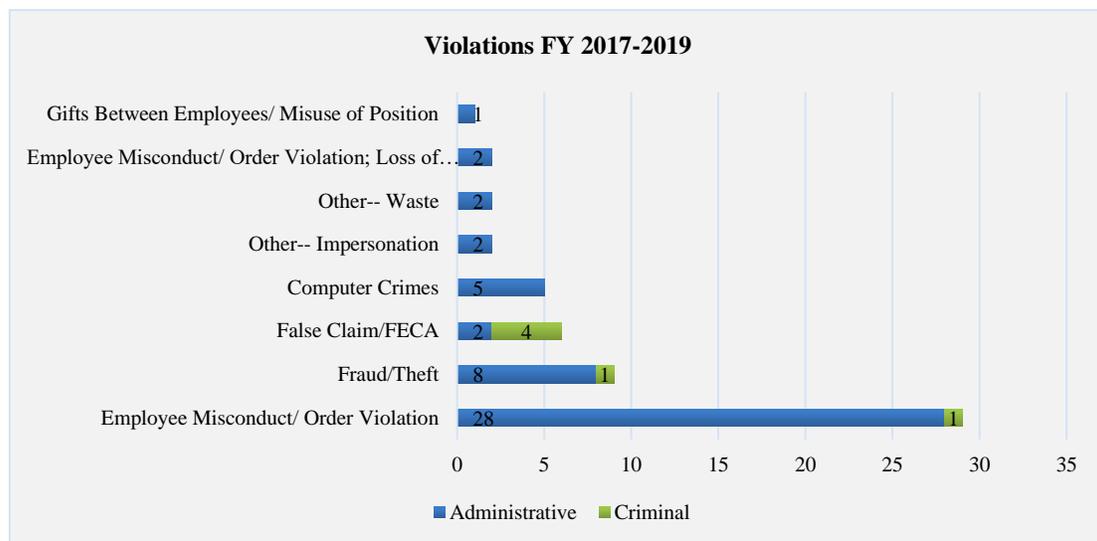
- **Collective Bargaining Unit** - The AOC has five active (having Collective Bargaining Agreements (CBAs)) unions; only two of these apply to AOC employee categories under review for this evaluation (permanent employees, not temporary or contractor employees).
- **Disciplinary Action** - An action taken by management to address employee misconduct.
- **Removal** - An involuntary separation of an employee from the AOC for disciplinary reasons.
- **Standard Form 50 (SF 50)** - This form is generally used for personnel action documentation and long-term retention in employee Official Personnel Folders.

¹ OIG Investigations 2018-0012-INVI-P and 2018-0021-INVI-P.

\$2,000), one individual received a two-day suspension, and the other a notice of termination for reasons of misconduct, after which the second individual abruptly resigned. The OIG was also concerned about the AOC disciplinary actions taken as a result of other OIG investigations, more serious in nature, in which one SR employee resigned prior to being disciplined or terminated. In this example, this employee subsequently obtained federal employment in another agency with no formal documentation of misconduct included in their official personnel file. These inconsistencies may deteriorate faith in AOC leadership and set a poor standard of conduct for the organization, which may impair agency efforts to address employee misconduct and unethical behavior at the AOC.

For FY 2017 through 2019, OIG Investigations Division substantiated 56 violations, ranging from theft to employee misconduct.² In response to these violations the AOC implemented 20 discipline actions with three determinations still pending. These actions include five terminations, six resignations, six counseling's, two retirements and two suspensions (Figure 1).

FIGURE 1: OIG SUBSTANTIATED INVESTIGATIONS



Data capture includes only 2017-2019 due to OIG transition to electronic case tracking in 2017.

Additionally, concerns were raised after an OIG review of the AOC's response to sexual harassment issues, conducted at the request of Congress ("*Congressional Request: Office of Inspector General, Sexual Harassment Inquiry,*" March 15, 2019; 2019-0001-INVQ-P). Our inquiry found that the AOC departments responsible for addressing sexual harassment had inadequate reporting and tracking mechanisms, and that these departments were resistant to the OIG requests for complete and original records. We also found poorly defined victim advocacy procedures and significantly disparate award amounts in the responses to two sexual harassment cases bracketing

² OIG investigations substantiate or do not substantiate AOC violations based on the preponderance of evidence; the agency is responsible for assignment of discipline action on a case-by-case basis.

the time period reviewed. These issues raised concerns about the potential for similar deficiencies in other personnel practices at the AOC.

As a Legislative Branch agency, discipline and adverse actions at the AOC are governed by the AOC Human Resources Act, 2 USC § 1831, which gives the AOC the authority to institute a human resources system consistent with the practices common to other Federal and private sector agencies; and 2 USC § 4101, which provides the AOC the authority to remove or otherwise discipline any employee. The AOC is also subject to the Congressional Accountability Act of 1995 (CAA), as amended by the CAA Reform Act, which applies employment, labor, safety and health, and accessibility laws to the legislative branch.

Although the AOC adopts an agency-wide approach to discipline issues, with each case treated and evaluated on a “case-by-case” basis under the law according to appropriate criteria and evidence, the AOC’s HCMD is responsible for oversight of performance and discipline issues. Within the HCMD, day-to-day administration of the agency’s response to misconduct is conducted by the ELRB, which is overseen by a Supervisory Human Resources Specialist who reports to the Chief Human Capital Officer (CHCO). The ELRB also has four HR Specialists who serve as jurisdictional liaisons to advise and guide jurisdictions on the appropriate application of discipline actions, with one HR Specialist tasked as the liaison for discipline actions involving Collective Bargaining Agreement (CBA) employees.

AOC policy directs the application of discipline actions following a progressive process, with infractions of lesser severity addressed within each jurisdiction by the infracting employee’s immediate supervisor. Supervisors acting in this capacity also serve as the “Proposing Official” for actions proposed in response to continued or severe misconduct. Other personnel assigned responsibility for the discipline process are jurisdiction heads, who serve as the “Deciding Official” tasked with final decision making authority for proposed discipline actions. Proposing and Deciding Officials are not the same individual. In addition to these formal roles, some jurisdictions assign a front office staff member to serve as their point of contact for discipline actions, although the grades, roles, and levels of responsibility of these employees vary from jurisdiction to jurisdiction. These employees work closely with the ELRB HR Specialist assigned to their jurisdiction.

The AOC processes for applying discipline and penalties for misconduct are governed by AOC Order 752-1, which includes a table of “Typical Penalties for Infractions.” The purpose of this table is to prescribe the “progressively stringent pattern”³ of disciplinary actions to be imposed per the type, frequency, and severity of misconduct. This order is applicable to all permanent AOC employees at the GS-15 grade and below. In instances where Collective Bargaining Unit provisions are in

³ AOC Order 752-1, March 31, 2014, Section 7.1.4.

conflict with the policy, CBA provisions prevail.⁴ The AOC has no discipline policy for SR employees.

From FY 2015 through FY 2019, the AOC had 320 disciplinary actions (Table 1). These actions included 125 reprimands, 120 suspensions and 30 employees were removed. In addition, 21 received negotiated settlement terms: 16 employees received a settlement agreement allowing them to resign with no record of impending removal, one employee retired with no record of impending removal, and four received an abeyance of penalty. In addition, one employee received a verbal counseling, one appears to have resigned in lieu of removal due to pending disciplinary action, one retired voluntarily, and 21 did not get final disciplinary actions, but instead have other case outcomes (retirements, disability retirement, memoranda of counseling, suspension, reprimand).

TABLE 1: AOC DISCIPLINARY ACTIONS BY FISCAL YEAR

Disciplinary Actions	2015	2016	2017	2018	2019	Grand Total
None	3	4	4	4	6	21
Reprimand	22	23	18	29	33	125
Resignation	1					1
Retirement (Voluntary)				1		1
See severance info	2	3	5	5	6	21
Suspension	24	25	30	21	20	120
Termination	5	4	7	11	3	30
Verbal Counseling	1					1
Grand Total	58	59	64	71	68	320

We evaluated the AOC disciplinary actions against the following metrics:

- For the AOC as a whole, review of:
 - Disciplinary actions
 - Recordkeeping
 - Disciplinary action timeframes
 - SF 50 documentation (in cases of removal)
 - Difference in penalties for Bargaining Unit versus non-Bargaining Unit Employees
 - Employee demographics
 - Training/training materials
 - Policy sufficiency
 - Trends in discipline actions

⁴ This policy, issued March 31, 2014, includes a memorandum of the same date advising that Local 626 and 658 (AOC has two types of Collective Bargaining agreement (“union”) employees) will be subject to the prior Order 752-1 of September 2, 2003, until a new Collective Bargaining Agreement is signed and implemented.

- Per jurisdiction, review of:
 - Disciplinary action processes
 - Recordkeeping
 - Training

Review of Internal Controls

We evaluated the AOC’s internal controls for its discipline program. While the agency has established policies and procedures for taking disciplinary action to address misconduct, guidance and accountability measures for the discipline process are insufficient to ensure consistency and appropriate implementation of discipline actions. As a result, the lack of uniform AOC-wide guidance for processes and recordkeeping inhibit the agency’s ability to regularly assess performance and ensure consistent implementation of the program.

Criteria

The following criteria were used during this evaluation:

- AOC Order 752-1, Discipline, March 31, 2014;
- Policy Memorandum 752-1, December 18, 2015;
- Order 752-2, Standards of Conduct, April 25, 2014;
- AOC Order 430-1, Performance, Communication, and Evaluation System March 28, 2014; and
- Order 38-1, Government Ethics, May 30, 2014 and November 1, 2018.

Overview of the AOC Workforce and Discipline Actions

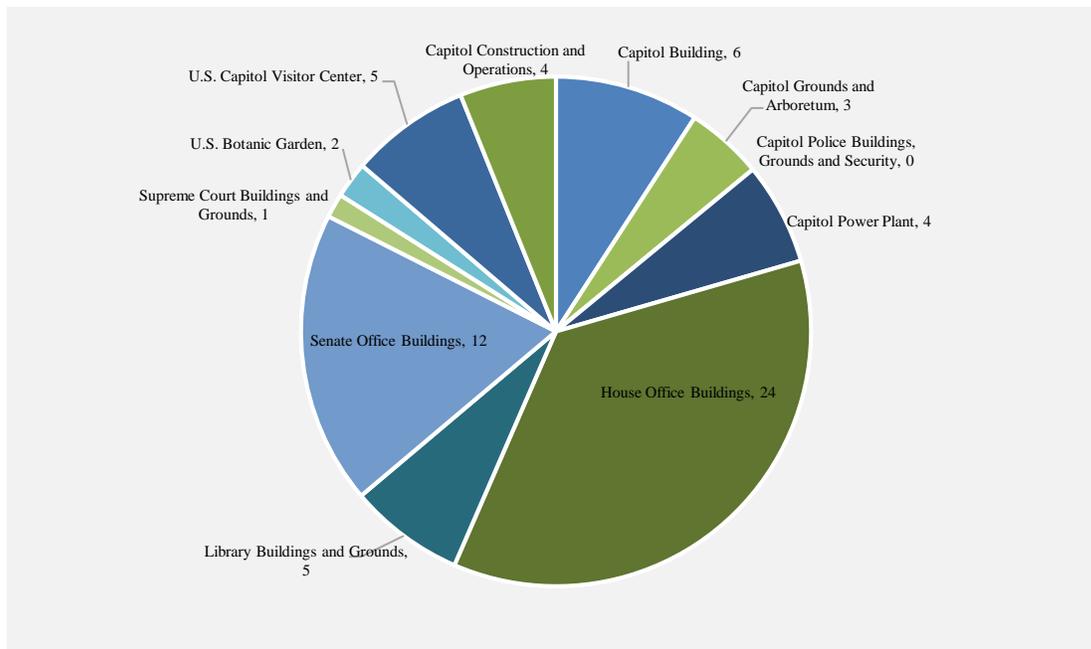
The AOC manages 10 primary jurisdictions, each funded by a separate appropriation. The AOC also receives appropriated funds for the Capital Construction and Operations jurisdiction, which supports multiple functional areas within the agency such as specialized construction and management and administrative functions. The bulk of the AOC population (1,832 personnel on average from the five-year period of review) works in one of the 10 jurisdictions, with the remaining population (566 on average) in Capitol Construction and Operations (Table 2).

TABLE 2: TOTAL AOC PERSONNEL

	2015	2016	2017	2018	2019	Avg.	% Avg.
AOC Jurisdictions							
Capitol Building	230	225	229	227	229	228	12%
Capitol Grounds and Arboretum	64	66	67	75	71	69	4%
Capitol Police Buildings, Grounds and Security	15	15	16	18	23	17	1%
Capitol Power Plant	77	76	77	73	77	76	4%

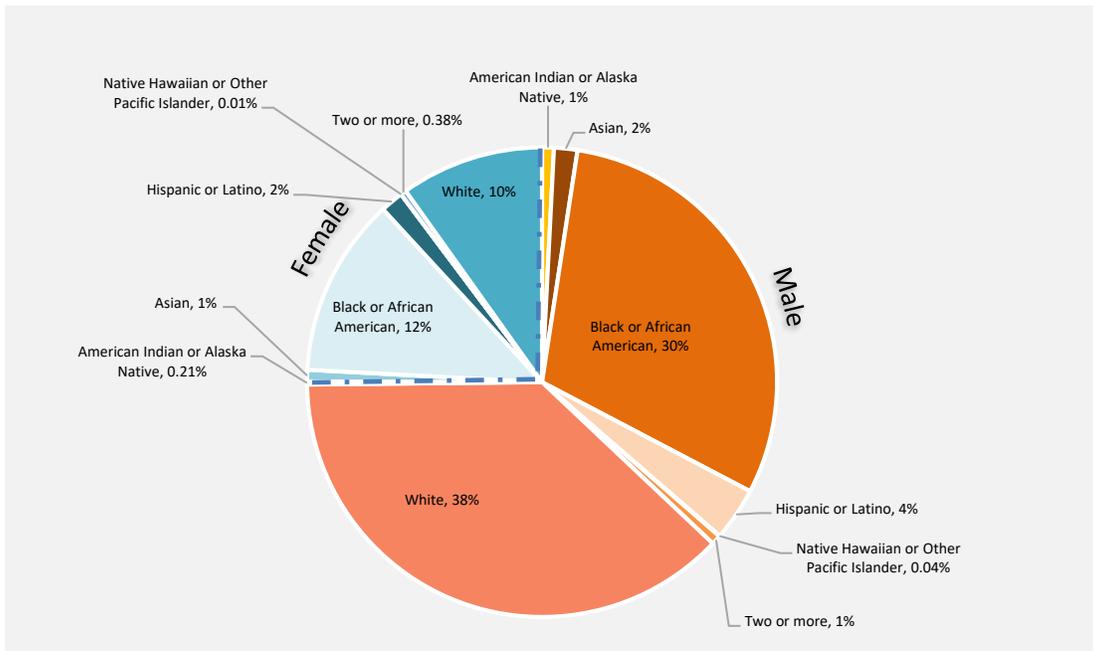
House Office Buildings	468	492	511	514	516	500	27%
Library Buildings and Grounds	146	152	166	166	154	157	9%
Senate Office Buildings	467	466	481	490	491	479	26%
Supreme Court Buildings and Grounds	44	45	45	46	51	46	3%
U.S. Botanic Garden	62	66	66	64	69	65	4%
U.S. Capitol Visitor Center	192	181	189	197	211	194	11%
AOC Jurisdictions, Subtotal	1,765	1,784	1,847	1,870	1,892	1,832	100%
Capitol Construction and Operations							
Director, Planning and Project Management	333	335	286	311	322	317	56%
Office of Communications and Congressional Relations	6	7	8	8	8	7	1%
Office of Safety, Fire and Environmental Programs	23	22	24	24	23	23	4%
Office of the Architect of the Capitol	5	5	4	4	2	4	1%
Office of the Chief Administrative Officer	128	121	123	122	117	122	22%
Office of the Chief Financial Officer	35	35	35	32	37	35	6%
Office of the Chief Operating Officer	10	8	9	8	8	9	2%
Office of the Inspector General	10	10	9	12	14	11	2%
Office of Diversity, Inclusion and Dispute Resolution					3	3	1%
Office of the Attending Physician	22	22	19	23	24	22	4%
Office of the General Counsel	15	15	14	14	16	15	3%
Capitol Construction and Operations, Subtotal	587	580	531	558	574	566	100%
Total	2,352	2,364	2,378	2,428	2,466	2,398	

FIGURE 2: AVERAGE ANNUAL INFRACTIONS BY JURISDICTION



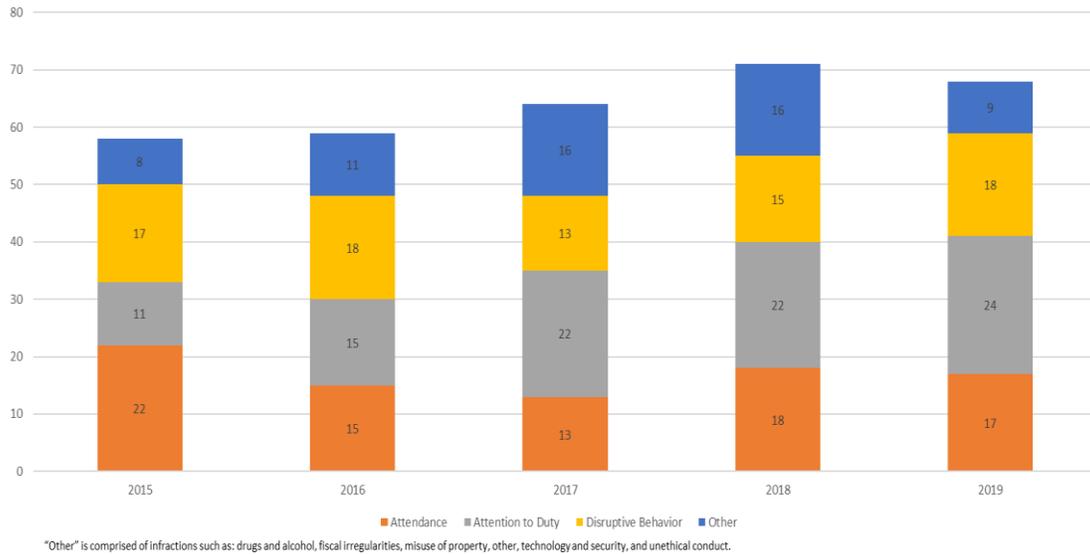
Over the period of review, the AOC total population was comprised of a predominantly male workforce (75 percent), with a staff composition that is approximately 48 percent white and 43 percent black or African American. Staff are 38 percent white males, 30 percent black males, 12 percent black females, and 10 percent white females (Figure 3), with the remaining workforce comprised of significantly smaller populations of other or mixed ethnic groups.

FIGURE 3: AOC POPULATION BY GENDER AND RACE



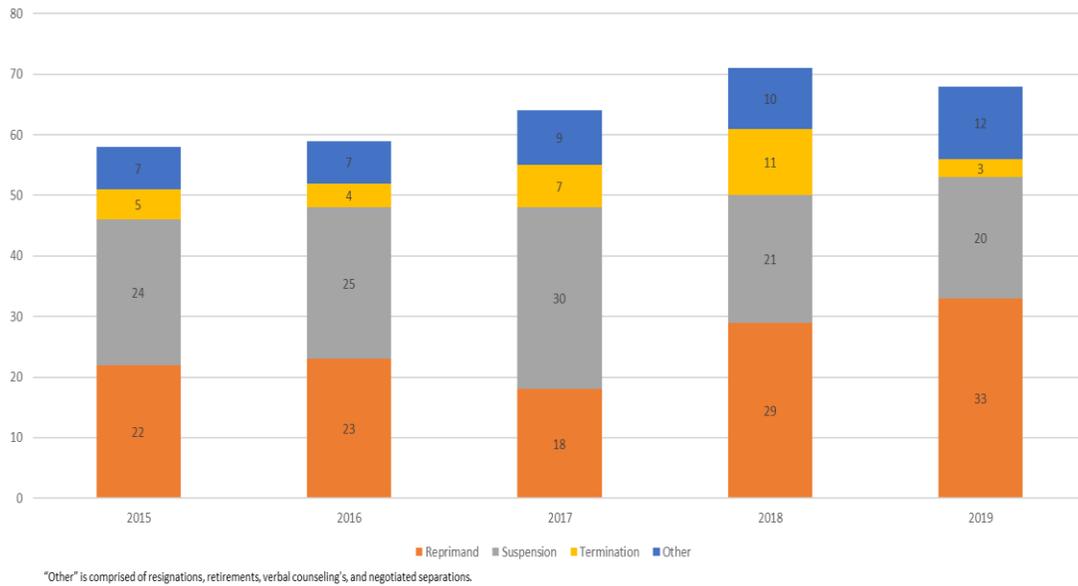
The majority of the 320 infractions reported for this evaluation were for attention to duty (94), attendance issues (85), and disruptive behavior (81), with attention to duty infractions roughly doubling over the review period (Figure 4).

FIGURE 4: MOST COMMON INFRACTIONS BY FISCAL YEAR



Discipline actions applied to infractions were predominantly reprimands (125) and suspensions (120); there were also 30 terminations, which were most frequently applied to attendance infractions (Figure 5).

FIGURE 5: MOST COMMON DISCIPLINARY ACTIONS BY FISCAL YEAR



While the House and Senate jurisdictions are similar in overall population size, each averaging nearly 500 employees over the review period, most infractions were attributed to House Office Building staff, with 118 of the 320 total infractions (Table 3). Forty-seven percent of the House infractions were committed by night shift staff at the WG-04, -05 and -08 grades.

TABLE 3: COUNT OF INFRACTIONS BY JURISDICTION

	2015	2016	2017	2018	2019	Total
AOC Jurisdictions						
Capitol Building	7	2	4	10	7	30
Capitol Grounds and Arboretum	3	6	4	2	1	16
Capitol Police Buildings, Grounds and Security						
Capitol Power Plant	3		1	8	5	17
House Office Buildings	22	26	27	16	27	118
Library Buildings and Grounds	2	2	7	10	3	24
Senate Office Buildings	7	12	13	15	14	61
Supreme Court Building and Grounds	1	1			1	3
U.S. Botanic Garden	1		2	1	2	6
U.S. Capitol Visitor Center	9	7	5	3	1	25
AOC Jurisdictions, Subtotal	55	56	63	65	61	300
Capitol Construction and Operations						
Director, Planning and Project Management	1	2		2	3	8
Office of Communications and Congressional Relations						
Office of Safety, Fire and Environmental Programs	1					1
Office of the Architect of the Capitol						
Office of the Chief Administrative Officer	1	1	1	3	4	10
Office of the Chief Financial Officer				1		1
Office of the Chief Operating Officer						
Office of the Inspector General						
Office of Diversity, Inclusion and Dispute Resolution						
Office of the Attending Physician						
Office of the General Counsel						
Capitol Construction and Operations, Subtotal	3	3	1	6	7	20
Total	58	59	64	71	68	320

TABLE 4: PERCENT OF INFRACTIONS ACCORDING TO PERCENT OF POPULATION

Grade	Percent of Population	Percent of Infractions
WG 04	16%	33%
WG 11	10%	10%
WG 10	8%	6%
GS 06	2%	6%
WG 08	3%	6%
WG 05	2%	5%
GS 08	4%	3%
GS 13	9%	3%
GS 12	4%	1%

Nearly 48 percent of AOC employees are wage grade (WG) employees, while 35 percent are General Schedule (GS) employees. WG-04 employees, on average, account for 16 percent of the population and 33 percent of infractions and disciplinary actions (Table 4). This population is 85 percent black or African American and makes up 30 percent of reprimands, 35 percent of suspensions and 60 percent of terminations (Table 5).

TABLE 5: WG 04 PERCENT OF TOTAL DISCIPLINARY ACTIONS

Disciplinary Action	WG 04	Total Actions	Percent of Total Actions
Reprimand	38	125	30%
Suspension	42	120	35%
Termination ¹	18	30	60%

The majority of WG-04 employees are CBA employees; CBA employees with disciplinary infractions are removed (termination) twice as much as non-CBA employees, and receive negotiated terms (see severance info) twice as often as non-CBA employees (Table 6).

TABLE 6: IMPACT OF CBA REPRESENTATION ON OUTCOMES

Disciplinary Action	Non-CBA	CBA	Grand Total
None ¹	12	9	21
Reprimand	68	57	125
Resignation		1	1
Retirement (Voluntary)		1	1
See severance info	7	14	21
Suspension	50	70	120
Termination	10	20	30
Verbal Counseling	1		1
Grand Total	148	172	320

¹"None" is an indicator used to identify instances where an employee commonly retired or resigned prior to receiving a disciplinary action from the jurisdiction.

Finding A

The AOC's Oversight of Its Discipline Program Lacks Appropriate and Consistent Disciplinary Action Processes, Penalty Determinations and Recordkeeping

We found that the AOC guidance, training and recordkeeping were inadequate and did not ensure discipline actions were consistently and appropriately implemented, communicated and recorded. As a result, the lack of uniform implementation and recording of discipline actions inhibit the Agency's ability to provide effective oversight of this program.

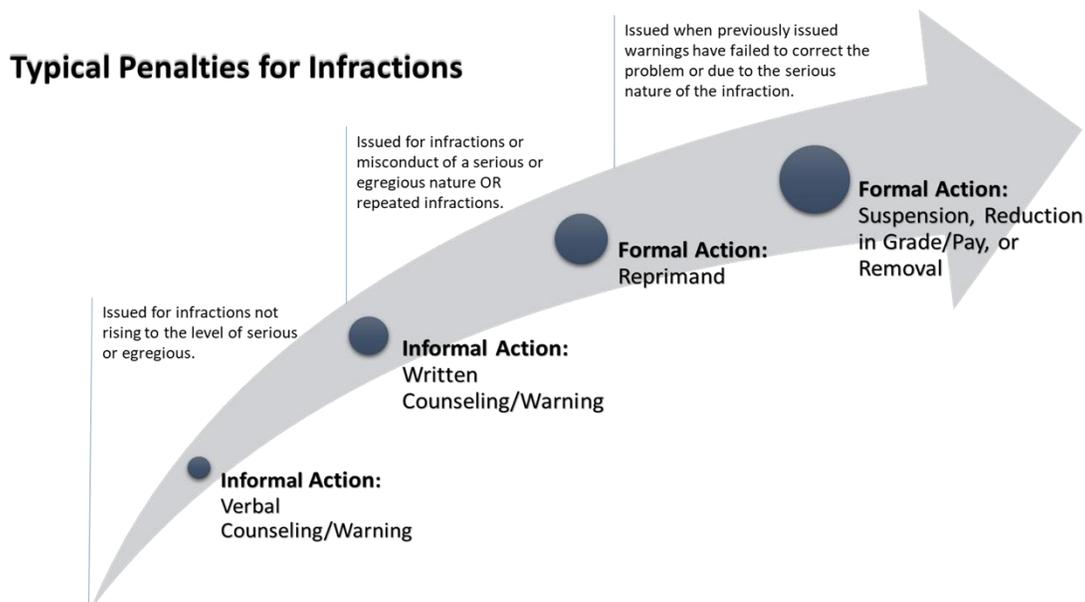
Discussion

AOC Order 752-1, Discipline, dated March 31, 2014, with amendments implemented December 18, 2015, is the authoritative reference for implementing disciplinary actions to address and prevent reoccurrence of employee misconduct. It sets forth procedural guidance for all AOC jurisdictions and offices for applying disciplinary actions for WG and GS-15 and below, non-probationary, permanent AOC employees. In instances where employees are subject to CBA provisions, those provisions take precedence.

Policies and Procedures

AOC policy directs the use of a progressive discipline process (Figure 6) and specifies uniform procedures for its application. Discipline actions begin with “informal” actions (verbal and/or written counseling or warnings) for less severe infractions, and progress to “formal” actions for more severe infractions.

FIGURE 6: PROGRESSIVE DISCIPLINE



Application of informal discipline actions is largely left to jurisdictional oversight and documentation processes. Although the policy states that supervisors “should” consult with their ELRB HR Specialist for guidance, this is not mandatory. Order 752-1 includes a table of “Typical Penalties for Infractions,” which provides guidance for the order in which progressively stringent discipline actions should be imposed per infraction type (see Appendix B). While Order 752-1 directs that “Supervisors proposing suspension or termination must develop and consider aggravating and mitigating factors in determining the appropriate penalty in response to employee misconduct” it does not provide guidance on what these factors are, although they are included in both of the AOC CBA agreements discussed in this evaluation. The

factors are not listed on the Supervisory training materials, and our interviews revealed insufficient understanding of policies. In interviews, the ELRB management stated the factors will be included in the upcoming policy revision, which should result in greater clarity for supervisory personnel. Policy also directs that supervisors retain documentation of informal discipline actions for specified time periods, and refers to retention of documentation of formal actions in employee electronic Official Personnel Files (eOPF), also for specified time periods, but is otherwise silent on jurisdictional recordkeeping for discipline actions.

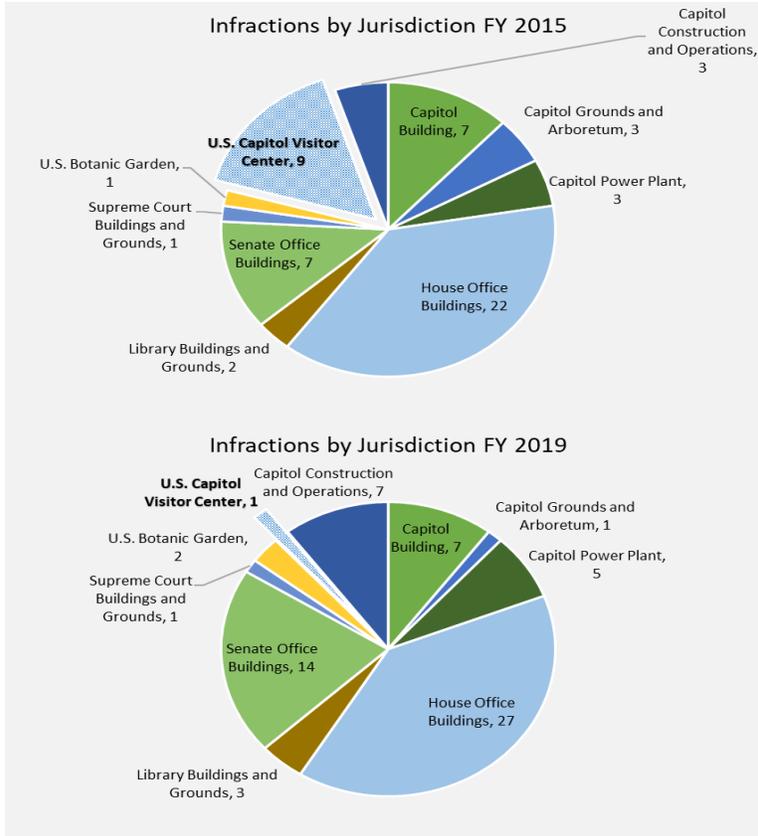
Discipline Processing

In interviews with jurisdiction personnel, we found limited internal controls for oversight of their discipline actions for lower level (informal) infractions. Order 752-1 provides inadequate guidance on how to process informal actions beyond oral or written warnings. This has resulted in jurisdictions relying on internally derived approaches, insufficient supervisory training, and references to a “Management Toolkit for Discipline” that is no longer circulated by HCMD, despite being highlighted as a guidance document by jurisdictions and a reference tool by ELRB HR Specialists. The toolkit lacks process details by role, and evidence standards for common offenses. It states that informal actions are not considered actions, but instead are “tools,” which may hamper a consistent, agency-wide understanding of discipline processes. This may result in unreported offenses and disciplinary actions that do not conform to the agency’s progressive discipline policy.

The ELRB provides each jurisdiction with an “HR Specialist” liaison tasked with providing guidance on discipline and other human resources matters. Although HR Specialists meet regularly with their jurisdictions, the extent of their involvement in discipline actions is heavily dependent on the strength of working relationships and their physical presence in their jurisdiction, which can vary. Interviews revealed that guidance provided is regularly dependent upon ad hoc conversations within the work unit and historical records of discipline actions as opposed to written agency policies. This may result in determinations that are dependent on the institutional knowledge of the longest-serving HR Specialist and incomplete records of discipline actions. This creates a vulnerability for actions to be applied that are consistent in interpretation but potentially inaccurate in determination, and may inhibit a fresh and unbiased approach to case review, penalty determination and final outcome.

One jurisdiction, the U.S. Capitol Visitor Center, has seen a significant drop in discipline actions over the review period, from nine in FY 2015 to one in FY 2019 (Figure 7). Processes in this jurisdiction are overseen by a jurisdictional coordinator

FIGURE 7: CHANGE IN INFRACTIONS BY JURISDICTION



with a strong HR background who regularly communicates case actions to the HCMD. Discipline oversight in this jurisdiction includes proactive and ongoing coaching/counseling, manager training, reinforcement of good behavior, a jurisdictional Standard Operating Procedure, and a multi-team approach to case management. While all the ELRB HR Specialist interviews reflected high levels of interaction with jurisdictions and conscientious case management, the combination of early intervention, reinforcement of good behavior and

comprehensive case management in this jurisdiction may provide a best practices model for addressing program deficiencies.

Recordkeeping and Training

We found that many jurisdictions developed their own recordkeeping processes, resulting in reporting variance across the agency. These varied processes may negatively affect the ELRB's ability to ensure appropriate and consistent assignment of discipline actions, and hamper their ability to record, analyze and report on these actions. Gaps in recordkeeping and reporting may also result in a lost opportunity for more intensive early intervention since many of the informal discipline actions are not visible to the ELRB and may include those within the workforce incurring the highest number of infractions (WG-04s). In interviews, an ELRB HR Specialist noted that there are work force issues for this particular group of WG employees. Many work the night shift, have labor intensive roles, work more than one job, and they may experience difficulty getting to work.

We were informed that the HCMD acquired a new case management/reporting system for employee and labor relations, which is currently undergoing testing and configuration. The AOC should ensure this system includes capabilities to address the recording issues highlighted above.

We also found that the HCMD discipline refresher training for jurisdictions was lacking or inconsistent. For example, some jurisdictions received targeted training addressing issues such as absenteeism, whereas other jurisdictions did not. This was reflected in interviews with jurisdictional processing personnel, the ELRB HR liaisons, and jurisdiction Deciding Officials, with staff at all levels identifying a need for a training refresher and guidance documents that clarify the standards of evidence for common infractions. As a result, some jurisdictions across the AOC implement their own training to address identified issues and cover gaps, which may result in an increasingly inconsistent application of the discipline system.

Impact

Although Order 752-1 directs jurisdictions to forward copies of all completed informal actions to the HCMD, the HCMD may receive these after discipline action terms have been completed, thereby hampering their ability to assure appropriateness and consistency across the agency. Conflicting messaging from current guidance documents may also deter the consistent application of discipline actions. The reliance on institutional knowledge rather than written policy represents a barrier to accomplishing the agency goal of “strengthen[ing] employee performance through improved development and accountability practices,” as outlined in the AOC's Strategic Plan.⁵

Conclusion

Although internal controls are in place for the administration of discipline actions at the AOC, these controls are lacking in the areas of policy, training and recordkeeping.

⁵ Architect of the Capitol Strategic Plan 2017-2021, p. 14, Strategic Goal 3, item 1, retrieved January 31, 2020, from https://www.aoc.gov/sites/default/files/strategic_plan_2017_508_verified.pdf

Jurisdictions have expressed a need for greater clarity of processes, evidence standards and case examples, and recordkeeping is inconsistent from jurisdiction to jurisdiction. The case management system in place during the review period was also inadequate for recording and reporting purposes, and lacked key data, thus inhibiting effective oversight of the application of discipline actions throughout the AOC. Without an effective case management system, the ELRB was hampered in its ability to report data and track and analyze key metrics to address deficiencies and trends. While the ELRB HR Specialists may be the best tool to assist in the consistent implementation of policy, the HCMD may want to consider training them to clearly and consistently communicate expectations down to all supervisors implementing the policy.

Recommendation

Recommendation A.1

Interviews have shown that the HCMD is in the process of implementing a new case management/reporting system and of revising its discipline policy. We recommend that the AOC develop a system of accountability that regularly assesses agency performance and that provides clarity in roles, as well as expected outcomes, to include:

- a) That the HCMD implement a case management system to ensure regular assessment and reporting of agency performance and trends with easily retrievable data;
- b) Improved training practices for the HCMD ELRB and AOC management staff;
- c) Updated guidance documents that clarify roles as well as expected outcomes; and
- d) Development of a knowledge management plan for all personnel involved in disciplinary process.

AOC Comment:

Recommendation A.1. The AOC concurs with the OIG recommendation to develop a system of accountability that regularly assesses agency performance and provides clarity in roles as well as expected outcomes.

a. Implement a case management system. Before the OIG's impending evaluation of the AOC's Discipline Order, our Human Capital Management Division (HCMD) began efforts to acquire a case management/reporting system to support its employee and labor relations programs. An agile system was acquired last year, and we are currently in the configuration and testing phases. Implementation is imminent. Additionally, it should be noted that the current system enables the HCMD Employee and Labor Relations Branch (ELRB) the ability to report disciplinary data (including metrics and trends) which are shared and discussed with the Architect on a quarterly basis.

b. Improved training practices. The AOC concurs that training can be enhanced. We will review and look for ways to improve training practices. It is important to put the finding and recommendation into perspective by providing the following context:

(1) Current training conducted. HCMD is a strong proponent for continuous learning and provides regular training for its staff to stay abreast of current trends and best practices in its field. HCMD hosted Supervisory Academy training for all current AOC supervisors this past fall, and will continue this practice. Additionally, comprehensive training for all supervisors was conducted when changes to the AOC's disciplinary process were effected in December 2015.

(2) Agency expertise utilized to provide guidance to supervisors. ELRB's ongoing practice is to employ the Discipline Order, mitigating and aggravating factors, and past disciplinary actions involving similar infractions to ensure consistency when providing guidance to supervisors. HCMD leadership and the Office of General Counsel also provide guidance where necessary, and both of these entities meet regularly with AOC jurisdictions to discuss disciplinary matters.

c. Updated guidance documents. The AOC agrees that evidence standards to assist jurisdictions with determining the appropriate disciplinary actions, as well as current process details by role, should be outlined in the next versions of the Discipline Order and/or any supporting guidance materials.

d. Development of a knowledge management plan. The AOC will review current practices to ensure an adequate knowledge management plan exists for personnel involved in the disciplinary process.

OIG Response: We reviewed the management comments and determined they address the finding and recommendation.

Recommendation A.2

We recommend that the HCMD revise Order 752-1, Discipline, and AOC's *Management Toolkit for Discipline* to direct that jurisdictions provide documentation to the HCMD on all formal disciplinary actions before the actions are implemented.

AOC Comment:

Recommendation A.2. The AOC concurs with the OIG recommendation for HCMD to revise the Discipline Order and the Management Toolkit for Discipline. The AOC agrees that all formal disciplinary actions should be coordinated with HCMD before implementation. This is already occurring. HCMD was in the process of updating the Discipline Order before the OIG's evaluation was announced, but postponed it to include any pertinent OIG recommendations. Standard Operating Procedures for HCMD staff will also be developed and implemented once the Discipline Order is updated.

OIG Response: We reviewed the management comments and determined they address the finding and recommendation.

Recommendation A.3

We recommend that the AOC conduct a feasibility study for centralizing all discipline actions in the HCMD.

AOC Comment:

Recommendation A.3. The AOC concurs and will conduct a feasibility study for centralizing all discipline actions in HCMD.

OIG Response: We reviewed the management comment and determined it addresses the finding and recommendation.

Finding B

Coding of Standard Form 50s for Employees Departing After Incurring Discipline Actions is Inconsistent

The OPM directs the use of the SF 50 to document personnel actions. We found that in some instances, codes used on the SF 50s of employees that were removed or resigned after incurring disciplinary actions were inconsistent or incorrect.

Discussion

The HCMD follows OPM guidance for processing and recording personnel actions, which instructs the use of SF 50s for recording personnel actions and explanatory remarks. SF 50s contain information on the nature of the personnel action undertaken (such as an appointment or removal) with each nature of action assigned a unique numerical code that identifies, for statistical and data processing purposes, the particular nature of the action. This data is used by the OPM to make decisions about employees, such as eligibility for promotion or reinstatement, and it is also used by the OPM's Data Analysis office to generate statistics on a wide variety of information on the Federal workforce. The President, Congress, agencies and the OPM personnel program managers use this data when making policy decisions on personnel programs. OPM guidance includes instruction for documenting removal actions and directs the preparation of an SF 50 for all separation actions. The OPM's guidance also directs that "no remarks" (agency action explanations) be included for employees who either have no appeal rights (such as probationary employees) or in cases where employees with appeal rights submit their resignation prior to receiving written notice of proposed disciplinary or other adverse action. Per OPM, each

Federal employee's eOPF is the central repository for Notification of Personnel Actions and is used as a system of personnel record that may follow a federal employee as they move from agency to agency across the federal government. The CBA for Local 626 employees directs the inclusion of SF 50s for discipline actions in employee eOPFs; the CBA for Local 658 states that disciplinary and adverse action records will be maintained in the employee's eOPF but does not specifically reference the SF 50. (Local 626 and 658 employees are the CBA employee groups that fall under the scope of this review.)

In a significant number of separations from the agency following disciplinary actions, employees have negotiated with the AOC that they receive a "clean record agreement" (CRA). CRA's⁶ are a negotiated settlement agreement under which an agency is obligated to change, remove or protect potentially negative information about an individual in exchange for resolution of that individual's employment-related claims against the agency. Formal disciplinary actions applied to the AOC employees in response to misconduct are documented on a SF 50 generated for this purpose. A CRA as part of a settlement agreement is in essence a request to remove negative actions from the eOPF and that misconduct not be reflected in codes applied to the final SF 50 upon separation from the agency.

Coding Processes for SF 50s

The HCMD staff assign SF 50 codes but while some use guidance provided by the OPM, others use a list of codes provided by the CHCO. We found that interpretation and application of these codes was not consistent and in some cases was incorrect, as confirmed in interviews with ELRB personnel. In addition, the list provided by the CHCO also included the use of a code that may not be appropriate for AOC employees ("RUM"), which the HCMD appears to apply to accommodate CRA's with employees facing removal for misconduct. The HCMD was unable to provide information on when the agency determined that the code was appropriate for use by the AOC. OPM guidance directs the use of this code for employees "serving under an appointment that does not afford appeal rights"; however, the majority of permanent AOC employees serve in appointments that have appeal rights, and while individual employees may waive this right as part of a settlement agreement, a waiver does not change the nature of the appointment.

Conclusion

As a result, the AOC has inconsistently and in some cases incorrectly coded SF 50s for departing employees, and in some cases has used a code that may or may not be appropriate for the AOC.

⁶ U.S. Merit Systems Protection Board, Clean Record Settlement Agreements and the Law, December 2013. Retrieved from <https://www.mspb.gov/mspbsearch/viewdocs.aspx?docnumber=938820&version=942573&application=ACROBAT>

Recommendation

Recommendation B

We recommend that the HCMD retrain ELRB HR Specialists in the assignment of SF 50 codes. The AOC should also seek affirmation from the Office of Personnel Management that its use of the “RUM” code is appropriate in cases where employees with appeal rights waive these rights in order to fulfill settlement terms for a clean discipline record as a factor in separation.

AOC Comment:

Recommendation B. The AOC concurs that regular training is important. We believe ELRB specialists have been adequately trained but we will review their training requirements to ensure they are up to date. The AOC has verified with OPM that when a resignation is received after a proposed notice of adverse action, the Guide to Processing Personnel Actions (OPM Guide) indicates there is coding to reflect this situation as a “resignation in lieu of” action. However, OPM advised that it is appropriate to document the action as a resignation (which means using the RUM code) if an agency enters into a settlement agreement where the terms stipulate a “clean” resignation.

OIG Response: We reviewed the management comments and determined they address the finding and recommendation.

Finding C

The AOC Lacks a Discipline Policy for Senior Rated (SR) Employees

Agency SR employees serve at the pleasure of the Architect. These individuals serve at-will, and can be removed by the Architect for any reason consistent with the law. This notion provides maximum flexibility to the Architect to hold employees accountable for performance and conduct issues. However, we found that there is no discipline policy for SR employees, which resulted in a lack of penalty response data for us to determine if consistent discipline methods are applied when addressing SR employee misconduct.

Discussion

The AOC discipline policy consists of Order 752-1, Discipline; AOC Order 752-2 (April 25, 2014), Standards of Conduct; and AOC Order 430-1 (March 28, 2014), Performance, Communication and Evaluation. Order 752-1 does not apply to temporary and contract employees, or to Exempt Personnel positions, such as SR

positions, as defined in AOC Order 213-1 (May 1, 2009), Exempt Personnel. Order 213-1 provides the Architect with the sole authority to designate positions as exempt, with all such positions “established with the SR pay plan.” This order is silent on discipline processes for these employees, although it states that they are appointed to “exempt positions as Excepted Appointments under the SR pay plan,” that their SF 50s include the notation that they “serve at the pleasure of the Architect of the Capitol,” and that they are required “to sign a letter prior to appointment acknowledging the nature of the appointment.”

Although Order 752-1 states that it is the policy of the Architect to “inform all employees of the policies, regulations and procedures which govern their actions and employment,” there is no similar language in Order 213-1, and no policy that discusses the agency’s responses to conduct issues for SR employees.

Discipline Processes for Senior Rated Employees

The HCMD’s response to our request for information did not include information on discipline actions for exempt personnel due to the lack of policy for this group of employees. The HCMD did not have records for discipline actions for them and we therefore had no means for determining whether penalties were consistent and appropriate. Interviews revealed that SR employees do not have a clear or consistent idea of what penalties for their misconduct would be. Although the HCMD did not provide information on discipline actions for SR employees, interviews revealed that an ELRB HR Specialist was involved in processing at least one such action. Further, the AOC’s discipline response to the investigation into misconduct by an SR employee, as provided in the background section of this report, resulted in no data reported to the OIG for either the SR or the subordinate employee involved in the misconduct. The subordinate received a formal discipline action that should have been included in the data provided to the OIG in response to our request for information. Further, there was no SF 50 documentation in eOPF of the SR employee who resigned (or otherwise separated from the AOC), although SF 50 eOPF documentation is required for all significant personnel actions. Finally, the misconduct of the SR employee resulted in a cost to taxpayers of over \$265,000,⁷ not inclusive of administrative and personnel costs for the OIG investigation, or the Agency and Office of Congressional Workplace Rights processes. The lack of policy for addressing SR misconduct provides no assurances to AOC employees that personnel at this grade are subject to the same degree of accountability and consequences as other AOC employees, which may have negative impacts on agency culture. As an example, the SR in this case was soon employed by another Federal agency with significant visibility to AOC employees. This is problematic in terms of the effectiveness of discipline processes for SRs, in the message it sends to the AOC workforce about equitable treatment, and the AOC’s commitment to its larger responsibilities as a Federal hiring authority.

⁷ OIG Report 2019-0001-INVQ-P.

Impact

The AOC's lack of a discipline policy for SR employees resulted in our inability, due to lack of agency data, to fully evaluate or report on discipline actions for all classes of employees at the AOC, or to ensure that disparate treatment is not occurring. Concerns about the lack of accountability for supervisory personnel were raised in two interviews during this evaluation. Because there is no policy, the agency is left vulnerable to significant financial and reputational risk.

Conclusion

We found a lack of reportable data surrounding discipline processes and actions for SR employees. This results in a gap in accountability for these employees and provides no assurances that discipline actions for them are assigned fairly and appropriately as applicable to other classes of AOC personnel. The lack of reportable data may also have effected appropriate reporting of discipline actions for subordinate employees involved in or affected by their misconduct. Taken altogether, these issues could present a negative effect, such as mistrust among the AOC's workforce and culture.

Recommendation

Recommendation C

We recommend that the AOC develop and publish a discipline policy for exempt personnel, for transparency and consistency with other employee groups.

AOC Comment:

Recommendation C. The AOC concurs with the OIG recommendation to develop and publish a discipline policy for Senior Rated (SR) personnel, for transparency and consistency with other employee groups.

OIG Response: We reviewed the management comments and determined they address the finding and recommendation.

Observations

In the course of this review, the Agency's CHCO shared October 2019 OPM Guidance on Progressive Discipline and Tables of Penalties. While the guidance was directed to Executive Branch agencies, its applicability to the AOC merits attention as the agency revises its discipline policy. The document provides the following information (Appendix C):

“Agencies should be mindful that neither the use of progressive discipline nor the adoption of a Table of Penalties is required by statute, case law, or U.S. Office of Personnel Management (OPM) regulations. Further, the use of these approaches presents challenges the agencies should consider prior to adoption.”

Accompanying guidance cited the potential for progressive discipline and tables of penalties to inhibit management’s statutory right to use its discretion in addressing misconduct, with a parallel concern for CBA employees. Collectively, these documents advocate for the application of Douglas Factors and management’s best judgment after considering the totality of circumstances over the “pitfalls” of progressive discipline and tables of penalties.

Guidance further argues that “penalties should also be reasonably consistent with the discipline applied to similarly situated employees in the same work unit, with the same supervisor, and who were subject to the same standards governing discipline.” Within the Executive Branch, disproportionate penalties are subject to reduction to a lesser penalty or reversal under Merit Board protections; however, as Legislative Branch employees, the AOC workforce lacks outside appeal protections equivalent to those offered by the Merit Systems Protections Board and also lacks whistleblower protections. Implementation of this policy could potentially expose AOC employees to disciplinary outcomes that are significantly dependent upon work jurisdiction, with governing principles subject to individual work units and supervisors.

The OIG makes no determination on the utility of this guidance for the AOC, other than to note that while the Agency is authorized to determine its own discipline processes, it should be mindful of the human element, and the resultant costs from low morale and organizational distrust.

Settlement Agreements

In the course of our fieldwork, we sought to review data on cases involving settlement agreements, which would have included discipline actions for SR employees had there been a policy for this group of employees. The Office of General Counsel (OGC) and the HCMD informed the OIG that data concerning settlement agreements was confidential, and the HCMD was unable to provide information on SR disciplinary actions due to a lack of involvement in the process. Because of this, and because AOC settlement agreements are a separate program matter, the OIG did not pursue this data as doing so would have required an expansion of our original evaluation objective. This issue may warrant future review.

Of the 320 discipline actions reported, 21 resulted in settlement agreements, with 16 of these including a CRA, also known as a “clean SF 50.” Data also suggests that CBA employees may be slightly advantaged in obtaining clean record agreements, which may indicate disparate outcomes for employees due to unequal access to representation. A Government Accountability Office (GAO) review of Executive Branch agency responses to misconduct⁸ noted that the number of employees who separated under alternative means such as settlement agreements is unknown because this data is not reported or not recorded as misconduct. This report notes:

⁸ Government Accountability Office, Report to Congressional Requesters, Federal Employee Misconduct, Actions Needed to Ensure Agencies Have Tools to Effectively Address Misconduct, July 2018, GAO-18-48.

“While there are costs to addressing misconduct, agencies also incur indirect costs when misconduct goes unaddressed in the workplace. These indirect costs include corrosive effects on other employees’ morale, higher employee turnover, reduced productivity, and lower employee commitment to their work or agency.”

An additional GAO report⁹ found that agencies were increasingly settling performance-related actions and discrimination complaints with financial awards instead of litigation. That report also noted that in interviews organizations cautioned that settlement agreements “must be used judiciously” in order to avoid making the employee “another agency’s problem.” Interviews with the OGC revealed that determinations on whether or not to implement a settlement agreement are largely based on an undocumented calculation of fiscal and/or reputational risks to the agency, and not on more formalized criteria and processes that could also address other AOC responsibilities.

Finally, although the AOC is not bound by it, an Executive Order issued in 2018¹⁰, directed that:

“Agencies shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee’s performance or conduct in that employee’s official personnel records and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse personnel action.”

In additional interpretive guidance issued for the order¹¹, the Acting Director of the OPM advised that the order’s intentions are to ensure that personnel records are not altered in connection with adverse personnel actions, to ensure:

“agencies can make appropriate and informed decisions regarding an employee’s qualification, fitness and suitability as applicable to future employment.”

An evaluation of the AOC’s use of settlement agreements is beyond the scope of this report; however, this practice has the consequence of inhibiting the government’s ability to protect itself from re-hiring bad actors, and may impair Federal efforts to accurately evaluate issues related to misconduct. While the AOC is not statutorily required to comply with the OPM and Executive Branch processes and guidance, outcomes of Agency actions impact employee data reported to the OPM, with

9 Government Accountability Office, Federal Workforce, Improved Supervision and Better Use of Probationary Periods are Needed to Address Substandard Employee Performance, February 2015, GAO-15-191.

¹⁰ Executive Order 13839 Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles, Section 5, May 25, 2018. Retrieved from <https://www.whitehouse.gov/presidential-actions/executive-order-promoting-accountability-streamlining-removal-procedures-consistent-merit-system-principles/>

¹¹ U.S. Office of Personnel Management, Memorandum for Heads of Executive Departments and Agencies, Interpretive Guidance on Section 5 Ensuring Integrity of Personnel Files Contained in Executive Order 13839, October 10, 2019. Retrieved from <https://chcoc.gov/content/interpretive-guidance-section-5-ensuring-integrity-personnel-files-contained-executive-order>

subsequent use by agencies who hire them. AOC organizational impacts and responsibilities to federal hiring overall may merit consideration as part of the decision-making process involving settlement agreements.

Appendix A – Scope and Methodology

We conducted this evaluation from September 2019, through February 2020, in accordance with Council of Inspectors General on Integrity and Efficiency’s *Quality Standards for Inspection and Evaluation*. These standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our evaluation objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our evaluation objectives.

We interviewed key HCMD and jurisdictional personnel responsible for determination and administration of the AOC misconduct penalties. We also reviewed all penalties for FY 2015 through 2019 for compliance with Order 752-1 Table of Penalty recommended penalties, disparate enforcement of penalties for similar infractions, and employee grade level and other demographic information.

The scope of this evaluation consisted of all discipline penalties applied for FY 2015 through 2019; which totaled 320, and the policies and procedures applicable during this time period. To accomplish the evaluation objective, we performed the following:

- Gained an understanding of the AOC disciplinary policies, processes and oversight;
- Obtained information on all disciplinary actions applied in FY 2015 through 2019;
- Obtained information on disciplinary action documentation processes;
- Performed data sampling to develop sampling methodology for testing;
- Reviewed documentary evidence from all penalty determinations to ensure compliance with AOC Order 752-1’s Table of Penalties; and
- Evaluated for consistency of penalty determinations according to similar infractions, demographics and employee grades.

Use of Computer-Processed Data

We used computer-processed data to perform this evaluation. Excel software was used to organize and analyze data.

Prior Coverage

Prior OIG reports relevant to this evaluation of AOC compliance with its discipline order processes included AOC OIG Congressional Request: OIG, *Sexual Harassment Inquiry* (2019-0001-INVQ-P), issued March 15, 2019; and an OIG Management Advisory MA (I)-12-06, issued October 22, 2012.

Appendix B – AOC Table of Penalties

APPENDIX A.

**Architect of the Capitol
Table 1. Typical Penalties for Infractions**

Infraction	First Offense	Second Offense	Subsequent Offenses
Attendance			
Absence without leave (AWOL) / unauthorized absence from duty; or failure to follow established leave procedures.	Reprimand	Suspension	Removal
Attention to Duty			
Insubordination.	Reprimand	Suspension	Removal
Sleeping on duty.	Reprimand - Suspension	Suspension	Removal
Delay in carrying out: orders, work assignments, and instruction of superiors. Failure to work on assignments.	Reprimand	Suspension	Suspension - Removal
Failure to follow applicable rules, laws, regulations or policies in the performance of duties.	Reprimand	Suspension	Removal
Failure to observe and/or enforce safety and health rules, regulations, and instructions, or to perform duties in a safe manner.	Reprimand - Suspension	Suspension	Removal
Failure to report accident or injury when there is an obligation to make such report.	Reprimand - Suspension	Suspension	Removal
Disruptive Behavior			
Unprofessional or discourteous conduct toward supervisors, co-workers, or the public. Angry outbursts, disrespectful comments, provoking quarrels, inappropriate remarks, use of abusive and/or foul language.	Reprimand	Suspension	Suspension - Removal
Creating a disturbance.	Reprimand	Suspension	Removal
Fighting, attempting to inflict, or inflicting bodily harm to another.	Suspension - Removal	Removal	
Endangering or threatening members of Congress, their staffs, members of the general public or employees of or under the administrative jurisdiction of the AOC.	Removal		
Drugs and Alcohol - Intoxicants			
Violation of Alcohol and/or Drug-free Workplace programs.	Reprimand - Removal	Suspension - Removal	Removal
Unauthorized possession, sale or receipt of a controlled substance.	Removal		
Operating a government-owned or leased vehicle on or off duty, or a privately-owned vehicle, on duty, while under the influence of drugs and/or alcohol.	Suspension - Removal	Removal	
Failure to submit to or interfering with an authorized drug or alcohol test.	Suspension - Removal	Suspension - Removal	Removal
Fiscal Irregularities			
Failure, through negligence, to account properly for government funds.	Reprimand	Suspension	Removal
Misuse of Metro SmarTrip Card or violation of parking program policies.	Reprimand - Removal	Suspension - Removal	Suspension - Removal
Submission of (or causing/allowing submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan or other fiscal documents.	Reprimand - Removal	Removal	
Knowing and willful misappropriation of government funds or other funds which come into employee's possession by reason of his or her official position.	Removal		
Knowing and willful misstatement of one or more claims (travel vouchers, imprest fund vouchers, time and attendance records, Department of Labor Office of Workers' Compensation forms, etc.) [Penalty depends on the value of the property or amount of employee time involved, the nature of the position held by the offending employee, and other factors.]	Reprimand - Removal	Removal	

APPENDIX A.

Architect of the Capitol
Table 1. Typical Penalties for Infractions

Knowing and willful misstatement or omission of material facts, forms, unlawful concealment, removal, alteration, mutilation, or destruction of any official document, contract files, or records.	Reprimand - Removal	Removal	
Misuse of Property			
Loss of, or damage to, government property			
a. Through carelessness or negligence, or when property involved is of small value.	Reprimand - Suspension	Suspension - Removal	Removal
b. Through maliciousness or intent, or when property involved is of significant value.	Suspension - Removal	Suspension - Removal	Removal
Using government property or AOC employees in a duty status for other than official purposes. [Penalty depends on the value of the property or amount of employee time involved, the nature of the position held by the offending employee, and other factors.]	Reprimand	Suspension	Removal
Unauthorized use or removal of government property, funds, services, supplies, or materials, including use or permitting the improper use of government charge cards, or the property of other employees. [In arriving at the penalty, consideration should be given to the value of the property involved and whether voluntary restitution was made.]	Reprimand - Removal	Removal	
Technology and Security			
Misuse of the Internet in violation of AOC Internet and Email Policy, and other inappropriate use of the Internet, such as blogging during duty time for unofficial purposes.	Reprimand - Removal	Reprimand - Removal	Suspension - Removal
Violating or ignoring security regulations and/or practices.	Removal		
Misuse of government communication systems and equipment for other than official purposes.	Reprimand - Suspension	Reprimand - Suspension	Suspension - Removal
Misuse of identification or investigative cards or credentials.	Suspension - Removal	Suspension - Removal	Removal
Theft			
Actual or attempted theft, unauthorized possession of government property or property of others.	Removal		
Unethical Conduct			
Prohibited personnel practice in any aspect of employment or application for employment.	Suspension - Removal	Suspension - Removal	Removal
Violation of Standards of Conduct and Government Ethics policies.	Reprimand	Suspension	Removal
Acceptance or solicitation of a bribe or agreeing to accept or solicit a bribe.	Reprimand - Removal	Suspension - Removal	Removal
Misrepresentation or providing false information on an application for employment or other personal history record by omission or by making false entry.	Suspension - Removal	Suspension - Removal	Removal
Knowing and willful use of public office for private gain.	Removal		
Violations of ethics regulations, statutes applicable to federal employees and/or AOC policies.	Reprimand - Removal	Suspension - Removal	Removal
Conducting personal affairs while in duty status.	Reprimand - Suspension	Reprimand - Suspension	Suspension - Removal
Material and/or intentional falsification or alteration of a document.	Suspension - Removal	Suspension - Removal	Removal
Participating in an unauthorized gambling activity on government premises or in a duty status.	Reprimand	Reprimand - Suspension	Suspension - Removal
Operating, assisting, or promoting unauthorized gambling activity on government premises or in a duty status or while others are in a duty status.	Suspension - Removal	Suspension - Removal	Removal

APPENDIX A.

**Architect of the Capitol
Table 1. Typical Penalties for Infractions**

Contracting / Purchasing Irregularities			
Negligent or willful mismanagement of a contract, or failure to administer provisions thereof, whether or not it results in a loss to the government.	Reprimand	Suspension	Removal
Negligent or willful failure to maintain contract files or contracts in accordance with applicable regulations.	Reprimand	Suspension	Removal
Knowing and willful failure to secure adequate and required competition for contracts in accordance with applicable regulations.	Reprimand	Suspension	Removal
Awarding of more than one contract/purchase order with the intent of avoiding limitations on contracting authority or the requirements of applicable regulations.	Reprimand	Suspension	Removal
Negligent or willful: a. Acceptance of incomplete services, supplies, or materials b. Misrepresentation of contract inspections and certification for work not performed or services, supplies, or materials not received.	Reprimand - Removal	Removal	Removal
Negligently or willfully preparing or issuing a contract for quantities which exceed reasonable requirements.	Suspension	Removal	
Negligently preparing an inaccurate government estimate resulting in the acceptance of a given bid/price proposal from a contractor which thereby causes loss to the government.	Suspension	Removal	
Other			
Any reprisal or retaliatory action against an individual involved in an official complaint process, e.g., EEO or grievance.	Suspension - Removal	Suspension - Removal	Removal
Deliberate misrepresentation, concealment or withholding of a material fact or refusal to testify or cooperate in an official proceeding.	Reprimand - Removal	Removal	
Refusing, interfering with, or failing to cooperate in an official investigation or inquiry.	Reprimand - Suspension	Suspension - Removal	Removal
Refusal to provide information in connection with an authorized investigation, and to furnish a signed statement when required, except where such refusal is based upon grounds of self-incrimination in potential criminal prosecution or privileged communications.	Reprimand - Removal	Suspension - Removal	Removal
Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, offensive jokes, offensive sexual banter, offensive gesture, unwelcome physical touching, unwanted sexual advances.	Suspension - Removal	Suspension - Removal	Removal
Soliciting or making a contribution for a gift (as defined by AOC Standards of Conduct and Ethics) to an official superior.	Reprimand	Suspension	Removal
Improper solicitation or acceptance of gifts, loans, gratuities, favors, etc., from persons, firms or corporations.	Reprimand	Suspension	Removal
Misconduct, whether or not in violation of a criminal statute, which impairs job performance or trustworthiness of the employee or otherwise affects the ability of AOC to perform its mission.	Reprimand - Removal	Removal	
Unprofessional relationships between supervisors and subordinates.	Reprimand - Removal	Suspension - Removal	Removal

Appendix C - OPM Memorandum



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Thursday, October 10, 2019

MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

From: DALE CABANISS, DIRECTOR

Subject: Guidance on Progressive Discipline and Tables of Penalties

The President's Management Agenda calls for agencies to establish processes that help agencies retain top employees and efficiently remove those who fail to perform or to uphold the public's trust. Executive Order (EO) 13839, signed by the President on May 25, 2018, requires agencies to further facilitate a Federal supervisor's ability to promote civil servant accountability while simultaneously recognizing each employee's procedural rights and protections. Agencies should recognize and reward good performers, while unacceptable performers should be removed if they are provided the opportunity to improve but do not do so. Employee misconduct should be addressed promptly and consistently in the Federal workforce.

A number of agencies have established policies that require progressive discipline when determining penalties for employee misconduct. Progressive discipline is the imposition of the least serious disciplinary or adverse action applicable to correct misconduct with penalties imposed at an escalating level of subsequent offenses. Many agencies have also implemented a table of penalties which provides a list of common infractions along with a suggested range of penalties for each infraction. Finally, agencies often receive collective bargaining proposals from labor unions seeking to impose the use of progressive discipline and tables of penalties and have adopted related provisions in collective bargaining agreements.

Agencies should be mindful that neither the use of progressive discipline nor the adoption of a table of penalties is required by statute, case law or U.S. Office of Personnel Management (OPM) regulations. Further, the use of these approaches presents challenges that agencies should consider prior to adoption. In enacting current law, Congress provided managers with maximum flexibility to pursue adverse actions, whether the underlying impetus is a conduct issue, a failure to perform, or any other reasons related to Federal employment, as needed for the efficiency of the service. Moreover, E.O. 13839 itself, as discussed in the annexed memorandum, provides that supervisors and deciding officials should not be required to use progressive discipline and should calibrate penalties to the specific facts of the particular situation. OPM is aware that agencies have argued to arbitrators that it is inconceivable that the conduct at issue could have resulted in any penalty less than removal. Arbitrators have pointed to the existence of tables of penalties for that type of misconduct as a basis for mitigating the penalty. The attachment to this memorandum provides guidance on progressive discipline and tables of penalties for agencies to consider when updating disciplinary policies or engaging in collective bargaining.

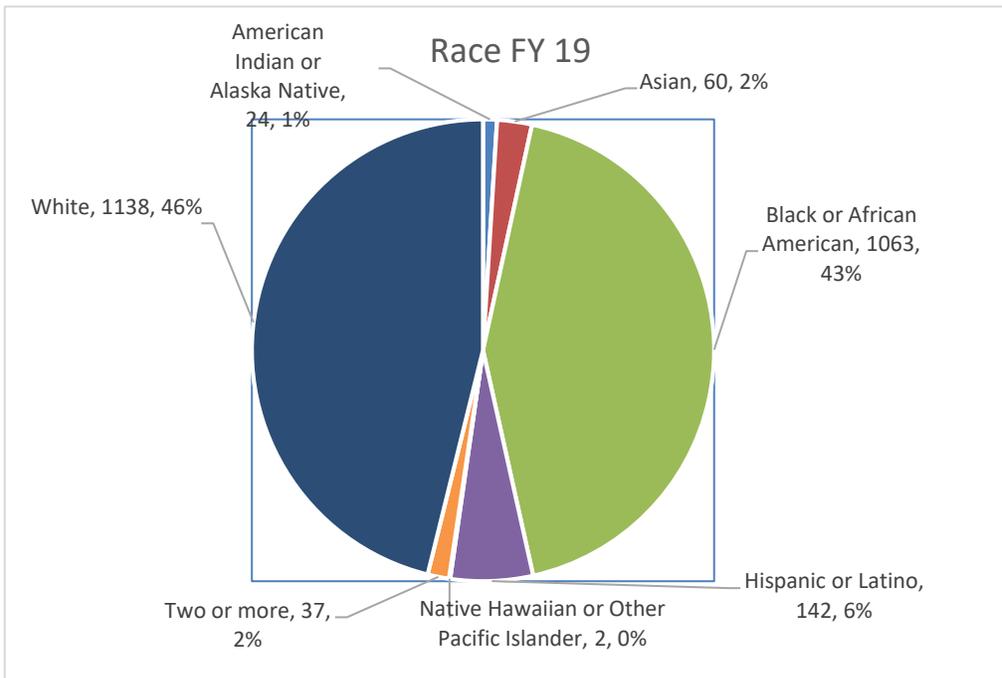
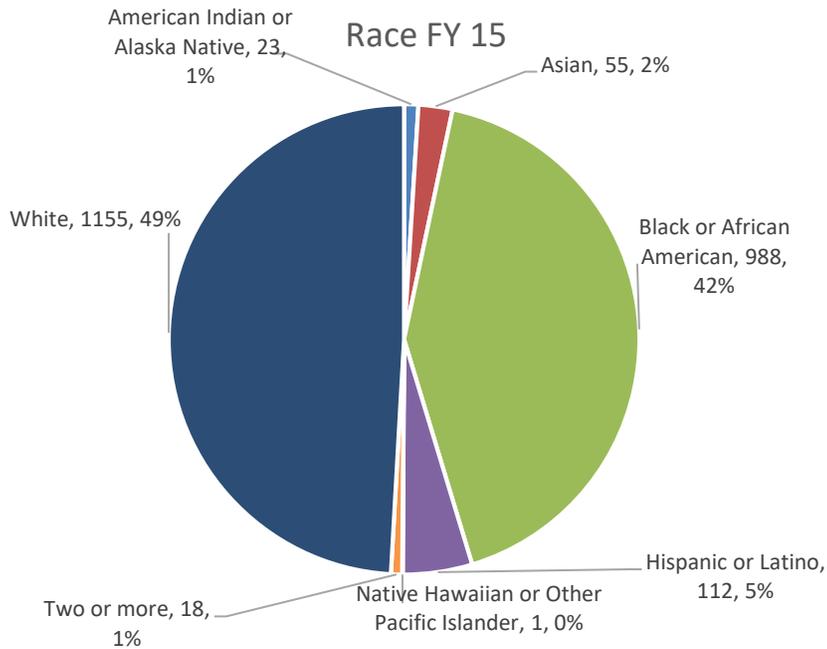
Agency headquarters-level human resources offices may contact OPM's Accountability and Workforce Relations office at employeeaccountability@opm.gov or 202-606-2930. Other agency employees should contact their agency human resources offices for assistance.

Attachment: Guidance on the Use of Progressive Discipline and Tables of Penalties (See 508-conformant PDF below)

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors

Appendix D – AOC Population and Discipline Data

AOC Total Population: Δ in Race FY 15/19



AOC Total Population: Personnel

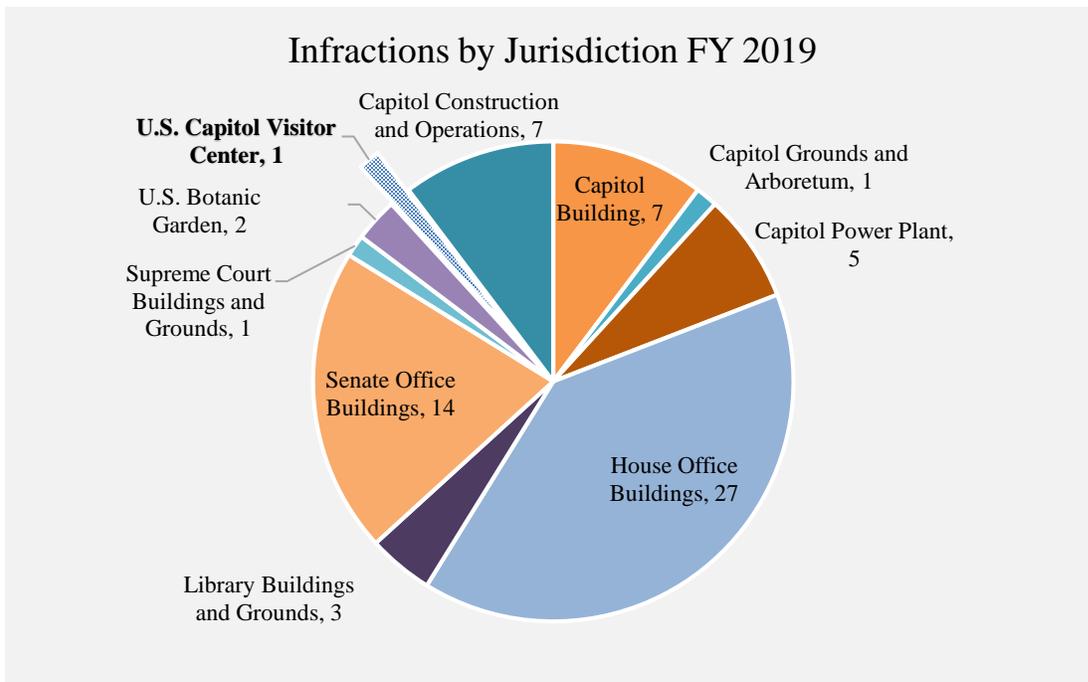
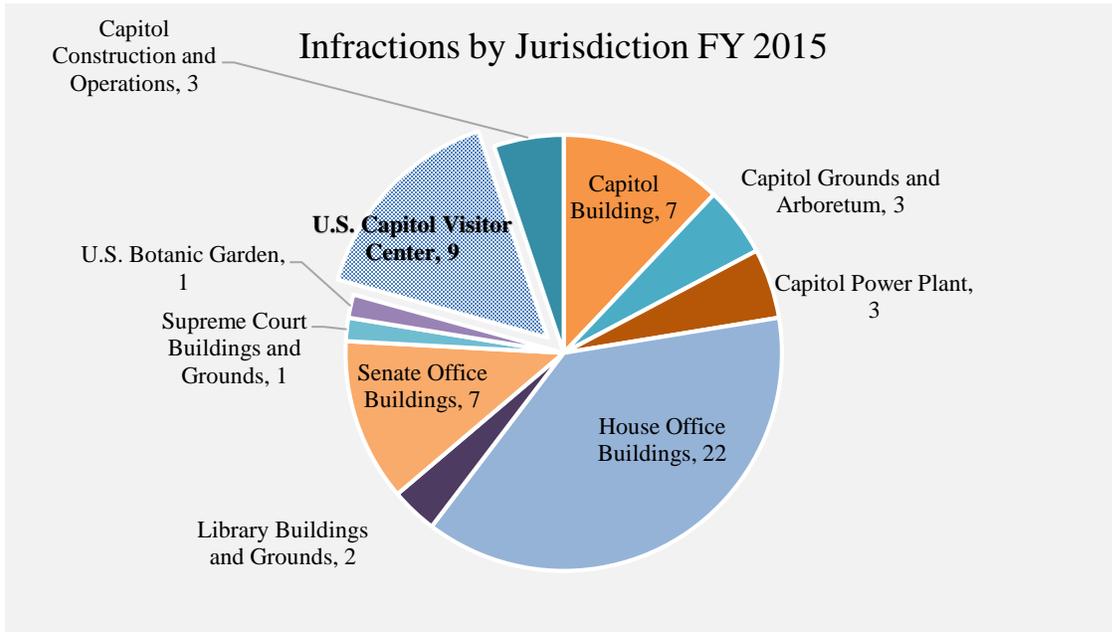
	2015	2016	2017	2018	2019	Avg.	% Avg.
AOC Jurisdictions							
Capitol Building	230	225	229	227	229	228	12%
Capitol Grounds and Arboretum	64	66	67	75	71	69	4%
Capitol Police Buildings, Grounds and Security	15	15	16	18	23	17	1%
Capitol Power Plant	77	76	77	73	77	76	4%
House Office Buildings	468	492	511	514	516	500	27%
Library Buildings and Grounds	146	152	166	166	154	157	9%
Senate Office Buildings	467	466	481	490	491	479	26%
Supreme Court Buildings and Grounds	44	45	45	46	51	46	3%
U.S. Botanic Garden	62	66	66	64	69	65	4%
U.S. Capitol Visitor Center	192	181	189	197	211	194	11%
AOC Jurisdictions, Subtotal	1,765	1,784	1,847	1,870	1,892	1,832	100%
Capitol Construction and Operations							
Director, Planning and Project Management	333	335	286	311	322	317	56%
Office of Communications and Congressional Relations	6	7	8	8	8	7	1%
Office of Safety, Fire and Environmental Programs	23	22	24	24	23	23	4%
Office of the Architect of the Capitol	5	5	4	4	2	4	1%
Office of the Chief Administrative Officer	128	121	123	122	117	122	22%
Office of the Chief Financial Officer	35	35	35	32	37	35	6%
Office of the Chief Operating Officer	10	8	9	8	8	9	2%
Office of the Inspector General	10	10	9	12	14	11	2%
Office of Diversity, Inclusion and Dispute Resolution					3	3	1%
Office of the Attending Physician	22	22	19	23	24	22	4%
Office of the General Counsel	15	15	14	14	16	15	3%
Capitol Construction and Operations, Subtotal	587	580	531	558	574	566	100%
Total	2,352	2,364	2,378	2,428	2,466	2,398	

AOC Total Population: Infractions as a Percent of Relevant Population (Infractions/Personnel)

	2015	2016	2017	2018	2019
AOC Jurisdictions					
Capitol Building	3.0%	0.9%	1.7%	4.4%	3.1%
Capitol Grounds and Arboretum	4.7%	9.1%	6.0%	2.7%	1.4%
Capitol Police Buildings, Grounds and Security					
Capitol Power Plant	3.9%		1.3%	11.0%	6.5%
House Office Buildings	4.7%	5.3%	5.3%	3.1%	5.2%
Library Buildings and Grounds	1.4%	1.3%	4.2%	6.0%	1.9%
Senate Office Buildings	1.5%	2.6%	2.7%	3.1%	2.9%
Supreme Court Building and Grounds	2.3%	2.2%			2.0%
U.S. Botanic Garden	1.6%		3.0%	1.6%	2.9%
U.S. Capitol Visitor Center	4.7%	3.9%	2.6%	1.5%	0.5%
AOC Jurisdictions, Average Annual Percent	3.1%	3.6%	3.4%	4.2%	2.9%
Capitol Construction and Operations					
Director, Planning and Project Management	0.3%	0.6%		0.6%	0.9%
Office of Communications and Congressional Relations					
Safety, Fire and Environmental Programs	4.3%				
Office of the Architect of the Capitol					
Chief Administrative Officer	0.8%	0.8%	0.8%	2.6%	3.6%
Office of the Chief Financial Officer				3.1%	
Office of the Chief Operating Officer					
Office of the Inspector General					
Office of Diversity, Inclusion and Dispute Resolution					
Office of the Attending Physician					
Office of the General Counsel					
Capitol Construction and Operations, Average Annual Percent	1.8%	0.7%	0.4%	2.1%	2.2%
AOC Total Population, Annual Percent	2.5%	2.5%	2.7%	2.9%	2.8%

- The Capitol Visitor Center experienced a significant decrease in the number of infractions committed between FY 2015 and FY 2019.
- Best practices center around training and coaching beyond the AOC supervisory training, clarifying guidance documents, and intra-agency communication/information sharing.

Δ FY 15/19 Infractions by Jurisdiction



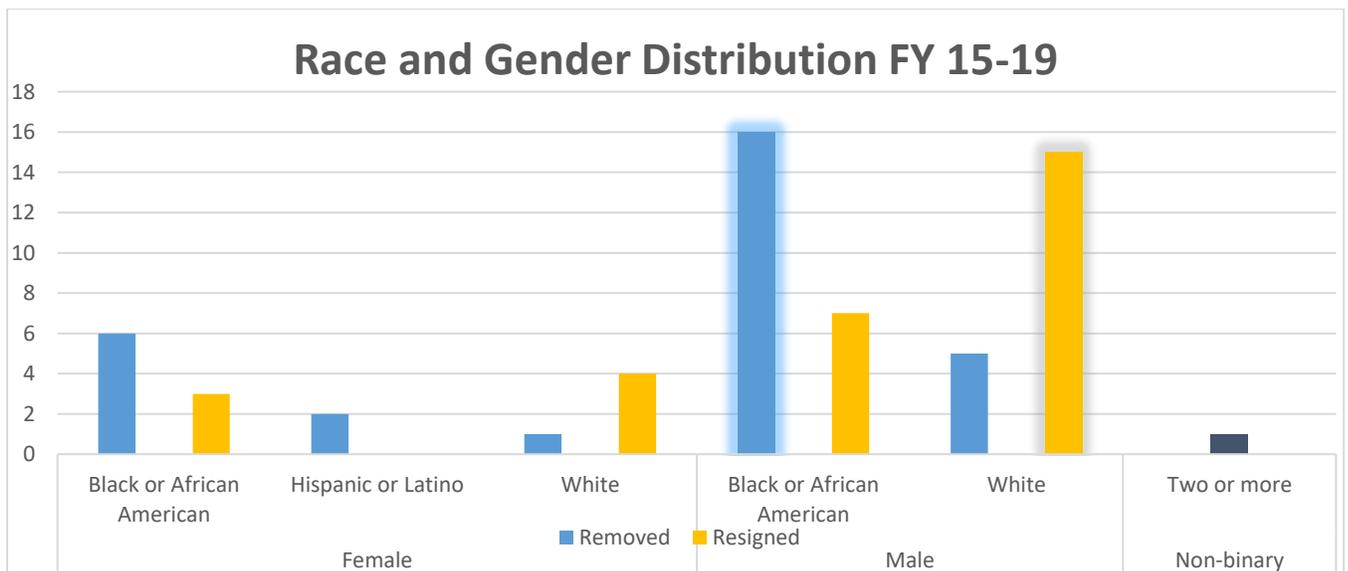
- Two jurisdictions experienced decreases in the number of infractions: Capitol Grounds and Arboretum (-2) and U.S. Capitol Visitor Center (-8). The CVC decrease amounts to an 89 percent improvement over FY 2015.
- As of FY 2019, infractions have doubled amongst the Senate Office Building staff when compared to FY 2015, but have remained essentially unchanged over the last three years.
- As of FY 2019, the number of infractions committed by the House Office Building staff has increased by five (23 percent) compared to FY 2015.
- Infractions committed by Capitol Constructions and Operation have more than doubled over the last five years. Offenses were committed by GS 06 and GS 11- 15 level employees primarily located in CAO and PPM.

Annual Infractions by Type

Infraction	2015	2016	2017	2018	2019	Grand Total
Attendance	22	15	13	18	17	85
Attention to Duty	11	15	22	22	24	94
Disruptive Behavior	17	18	13	15	18	81
Drugs and Alcohol - Intoxicants		1		1	1	3
Fiscal Irregularities		1		1		2
Misuse of Property	1	1	3	5	1	11
Other		1	2	3	1	7
Technology and Security			2	1	1	4
Unethical Conduct	7	7	9	5	5	33
Grand Total	58	59	64	71	68	320

- Attention to Duty 94 (29 percent), Attendance 85 (27 percent), and Disruptive Behavior 81 (25 percent) are the most common infraction types committed.

Permanent/Non-Probationary Employees Who Were Disciplined and Resigned or Were Removed



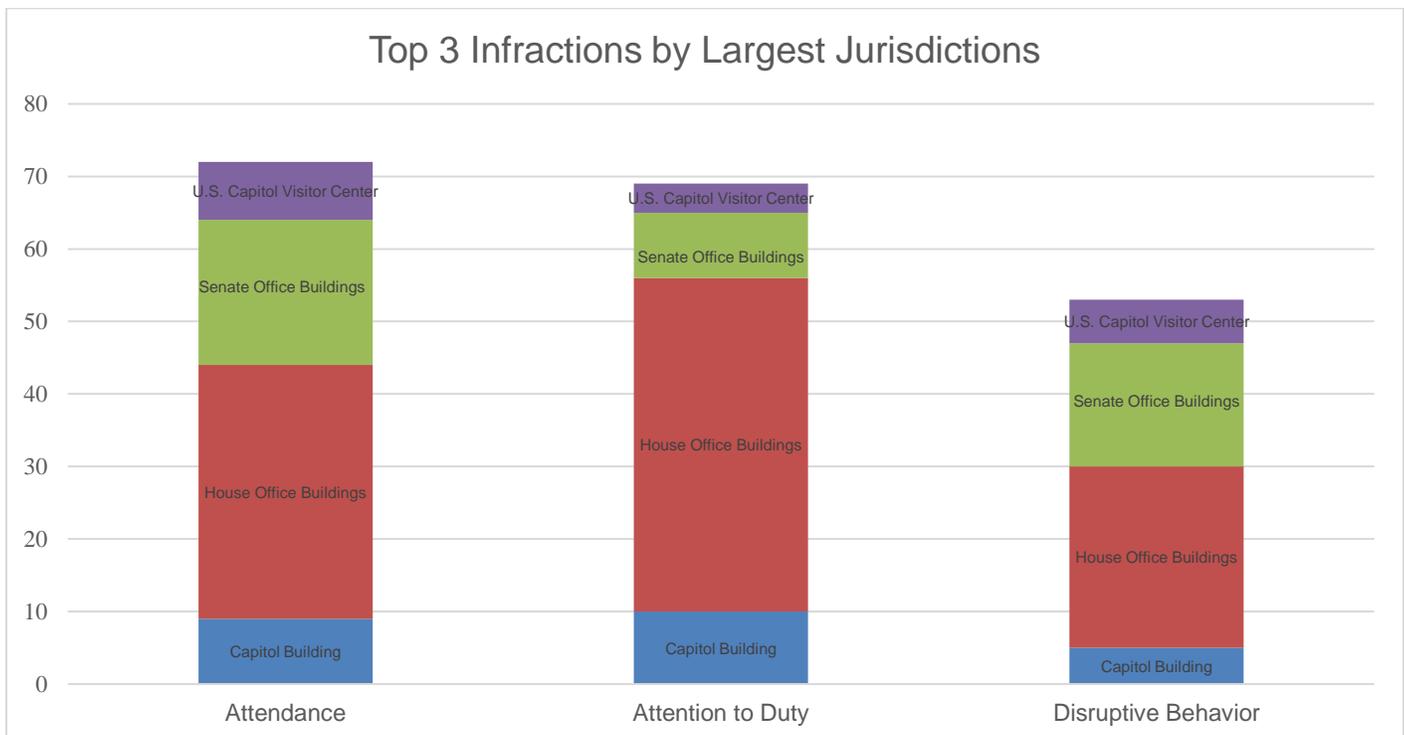
- Post disciplinary action, Black male staff are more likely to be removed; White male staff are more likely to resign.

Disciplinary Actions

Disciplinary Actions	2015	2016	2017	2018	2019	Grand Total
None	3	4	4	4	6	21
Reprimand	22	23	18	29	33	125
Resignation	1					1
Retirement (Voluntary)				1		1
See severance info	2	3	5	5	6	21
Suspension	24	25	30	21	20	120
Termination	5	4	7	11	3	30
Verbal Counseling	1					1
Grand Total	58	59	64	71	68	320

- Reprimand is the most common disciplinary action at 125 (38.7 percent) total actions, Suspension 120 (37.2 percent), and Terminations 30 (9.3 percent).
- Terminations most frequently occur as a result of attendance infractions. Other common justifications for termination are disruptive behavior and misuse of property infractions.

Infractions and Jurisdictions



“Largest” refers to the most populated jurisdictions.

Recommended Terminations and Final Jurisdiction Actions

Final Jurisdiction Action	2015	2016	2017	2018	2019	Grand Total
None ¹	3	3	2		2	10
Resignation	1					1
Terms Negotiated ²	1	3	5	5	5	19
Suspension	1	1	3		1	6
Termination	5	4	7	11	3	30
Grand Total	11	11	17	16	11	66

¹In instances where “None” was used as the indicator, remarks were provided. In each of the ten instances, the individual either resigned or retired.

²In instances where “Terms Negotiated” was used as the indicator, remarks reflect language input by OGC.

- Of the 66 instances where termination was listed as “Proposed Discipline,” 30 (45 percent) resulted in termination.
- Six (nine percent) resulted in suspension.
- The remaining 30 (45 percent) break out as follows: 23 resigned, 4 retired, and 3 negotiated terms of abeyance.
- None: 3 Retired, 7 Resigned
- Terms Negotiated: 1 Retired, 15 Resigned, 3 Terms of Abeyance
- One resignation

Pay Plan and Race

Pay Plan	2015	2016	2017	2018	2019	Grand Total	% Total
AD	16	17	14	6	6	59	0.49%
DB	8	8	6	6	6	34	0.28%
GS	821	805	827	859	887	4,199	35.03%
SR	30	29	31	28	28	146	1.22%
UT	54	46	24	38	44	206	1.72%
WG	1,130	1,162	1,153	1,161	1,169	5,775	48.17%
WL	81	90	103	103	99	476	3.97%
WS	212	207	220	227	227	1,093	9.12%
Total	2,352	2,364	2,378	2,428	2,466	11,988	

- The majority of AOC employees are WG (48%).
Note: WG is the pay plan designator for nonsupervisory prevailing rate employees.
- The next highest in representation is GS at 35%.
- 35% of the total AOC population consists of three PP/Grades: WG 04, WG 11, and GS 13.
- The majority of WG 04’s are Black or African American (85 percent).
- The majority of WG 11’s are White (60 percent).
- The majority of GS 13’s are White (65 percent).

WG 04 Disciplinary Actions

Grade	2015	2016	2017	2018	2019	Grand Total	% of Total
WG 04	20	20	20	19	28	107	33.44%
WG 11	1	5	9	11	6	32	10.00%
WG 10	5	4	7	2	2	20	6.25%
GS 06	7	6	5			18	5.63%
WG 08	3	5	4	3	3	18	5.63%
WG 05	2	4	5	2	3	16	5.00%
GS 08	2	3	1	3	1	10	3.13%
WG 12	2	2		3	2	9	2.81%
GS 13		2	1	3	2	8	2.50%
WS 11	2	1	2	3		8	2.50%
GS 07	2	1		3	1	7	2.19%
WS 04	1	2	2		1	6	1.88%
WS 10	1		3	2		6	1.88%
WG 06		2		1	2	5	1.56%
WG 09	1			2	2	5	1.56%
WL 12				2	3	5	1.56%
GS 05	2		1	1		4	1.25%
GS 11	1		1	1	1	4	1.25%
GS 12				2	2	4	1.25%
GS 14				1	2	3	0.94%
GS 15	1			1	1	3	0.94%
WL 10					3	3	0.94%
WS 09			1	1	1	3	0.94%
AD 00	1			1		2	0.63%
GS 09	1		1			2	0.63%
WL 04				1	1	2	0.63%
WL 11	2					2	0.63%
WS 05		1	1			2	0.63%
WS 06	1			1		2	0.63%
WS 12				1	1	2	0.63%
GS 04				1		1	0.31%
WS 08		1				1	0.31%
Grand Total	58	59	64	71	68	320	100.00%

Jurisdiction	2015	2016	2017	2018	2019	Grand Total
Capitol Building	1	1	2		1	5
Capitol Grounds and Arboretum		1		1		2
House Office Buildings	16	12	14	12	20	74
Senate Office Buildings	3	6	4	6	7	26
Grand Total	20	20	20	19	28	107

Top Six Grades with the Highest Rates of Disciplinary Actions

Grade	2015	2016	2017	2018	2019	Grand Total	% of Total
WG 04	20	20	20	19	28	107	33.44%
WG 11	1	5	9	11	6	32	10.00%
WG 10	5	4	7	2	2	20	6.25%
GS 06	7	6	5			18	5.63%
WG 08	3	5	4	3	3	18	5.63%
WG 05	2	4	5	2	3	16	5.00%



WG 04

Job Titles	2015	2016	2017	2018	2019	Grand Total
Custodial Worker	10	11	4	11	18	54
Electrical Helper (AMP)	1		1			2
Laborer		2		1		3
Laborer (Day)	1	1	1		1	4
Laborer (Recycler)	7	6	13	7	9	42
Subway Car Operator	1		1			2
Grand Total	20	20	20	19	28	107

Disciplinary Action	WG 04	Total Actions	Percent of Total Actions
Reprimand	38	125	30%
Suspension	42	120	35%
Termination1	18	30	60%

- WG 04, on average, account for **16 percent of the AOC population**. 33 percent of infractions and resultant disciplinary actions take place at the WG 04 level.
- WG 11, on average, account for **10 percent of the AOC population**. 10 percent of infractions and resultant disciplinary actions take place at the WG 11 level.
- GS 13, on average, account for **9 percent of the AOC population**. 2.5 percent of infractions and resultant disciplinary actions take place at the GS 13 level.

WG 04 makes up:

- 30 percent of all reprimands
- 35 percent of all suspensions
- 60 percent of all terminations

HOB Infraction by Shift Breakout

House Office Buildings • Grade and Infraction	Shift		
	Day	Evening	Night
WG 04	16	12	46
Ambiguous	0	1	0
Attendance	4	9	19
Attention to Duty	7	1	15
Disruptive Behavior	4	1	8
Drugs and Alcohol - Intoxicants	1	0	0
Other	0	0	1
Unethical Conduct	0	0	3
WG 05	1	2	8
Attendance	0	0	1
Attention to Duty	0	1	2
Disruptive Behavior	1	1	3
Drugs and Alcohol - Intoxicants	0	0	1
Unethical Conduct	0	0	1
WG 08	0	0	1
Attention to Duty	0	0	1
Grand Total	17	14	55

House Office Buildings • Grade and Infraction	Shift		
	Day	Evening	Night
WG 04	16	12	46
Ambiguous	0	1	0
Attendance	4	9	19
Attention to Duty	7	1	15
Disruptive Behavior	4	1	8
Drugs and Alcohol - Intoxicants	1	0	0
Other	0	0	1
Unethical Conduct	0	0	3
WG 05	1	2	8
Attendance	0	0	1
Attention to Duty	0	1	2
Disruptive Behavior	1	1	3
Drugs and Alcohol - Intoxicants	0	0	1
Unethical Conduct	0	0	1
WG 08	0	0	1
Attention to Duty	0	0	1
Grand Total	17	14	55

- House staff committed 118 infractions over the identified timeframe.
- 78 percent of House infractions were committed by WG 04, 05, 08 staff.
- 47 percent of House infractions were committed by night shift staff.

Shift	Count	% of House Infractions
Day	17	14%
Evening	14	12%
Night	55	47%
Not reported	32	27%
Total	118	100%

Appendix E - Management Comments



Architect of the Capitol
U.S. Capitol, Room SB-15
Washington, DC 20515
202.228.1793
www.aoc.gov

United States Government

MEMORANDUM

DATE: May 28, 2020

TO: Christopher Failla
Inspector General

FROM: J. Brett Blanton 
Architect of the Capitol

SUBJECT: Official Response to Evaluation of the Architect of the Capitol's Compliance with its Discipline Order Evaluation Report 2019-001-IE-P

The Architect of the Capitol (AOC) thanks you for the opportunity to review and provide a response on the Office of Inspector General (OIG) subject report in accordance with sections 5.2.6 and 8 of AOC Order 40-1.

The AOC concurs with your overall assessment that the AOC's discipline response program was generally strong. Below is our response to the recommendations in the report.

1. Recommendation A.1. The AOC concurs with the OIG recommendation to develop a system of accountability that regularly assesses agency performance and provides clarity in roles as well as expected outcomes.

a. Implement a case management system. Before the OIG's impending evaluation of the AOC's Discipline Order, the Human Capital Management Division (HCMD) began efforts to acquire a case management/reporting system to support its employee and labor relations programs. An agile system was acquired last year, and we are currently in the configuration and testing phases. Implementation is imminent. Additionally, it should be noted that the current system enables the HCMD Employee and Labor Relations Branch (ELRB) the ability to report disciplinary data (including metrics and trends) which are shared and discussed with the Architect on a quarterly basis.

b. Improved training practices. The AOC concurs that training can be enhanced. We will review and look for ways to improve training practices. It is important to put the finding and recommendation into perspective by providing the following context:

(1) Current training conducted. HCMD is a strong proponent for continuous learning and provides regular training for its staff to stay abreast of current trends and best practices in its field. HCMD hosted Supervisory Academy training for all current AOC supervisors this past fall and will continue this practice. Additionally, comprehensive training for all supervisors was conducted when changes to the AOC's disciplinary process were effected in December 2015.

(2) Agency expertise utilized to provide guidance to supervisors. ELRB's ongoing practice is to employ the Discipline Order, mitigating and aggravating factors, and past disciplinary actions involving similar infractions to ensure consistency when providing guidance to supervisors. HCMD leadership and the Office of General Counsel also provide guidance where necessary, and both of these entities meet regularly with AOC jurisdictions to discuss disciplinary matters.

c. Updated guidance documents. The AOC agrees that evidence standards to assist jurisdictions with determining the appropriate disciplinary actions, as well as current process details by role, should be outlined in the next versions of the Discipline Order and/or any supporting guidance materials.

d. Development of a knowledge management plan. The AOC will review current practices to ensure an adequate knowledge management plan exists for personnel involved in the disciplinary process.

2. Recommendation A.2. The AOC concurs with the OIG recommendation for HCMD to revise the Discipline Order and the Management Toolkit for Discipline. The AOC agrees that all formal disciplinary actions should be coordinated with HCMD before implementation. This is already occurring. HCMD was in the process of updating the Discipline Order before the OIG's evaluation was announced, but postponed it to include any pertinent OIG recommendations. Standard Operating Procedures for HCMD staff will also be developed and implemented once the Discipline Order is updated.

3. Recommendation A.3. The AOC concurs and will conduct a feasibility study for centralizing all discipline actions in HCMD.

4. Recommendation B. The AOC concurs that regular training is important. We believe ELRB specialists have been adequately trained, but we will review their training requirements to ensure they are up to date. It is important to put the finding and recommendation into perspective by providing the following context:

a. Use of resignation without Appeal Rights (RUM) code. During the period under review, 15 of 16 cases used the RUM code correctly. The AOC has verified with OPM that when a resignation is received after a proposed notice of adverse action, the Guide to Processing Personnel Actions (OPM Guide) indicates there is coding to reflect this situation as a "resignation in lieu of" action. However, OPM advised that it is appropriate to document the action as a resignation (which means using the RUM code) if an agency enters into a settlement agreement where the terms stipulate a "clean" resignation.

b. SF-50 and separation action codes appropriately used. The AOC has the authority to institute a human resources system consistent with the practices common to other federal and private sector agencies as noted by the OIG. Although the AOC is an excepted service agency not subject to Title 5 of the U.S. Code, the AOC has chosen to follow the OPM

Guide. The OIG individuals conducting this evaluation were advised that the SF-50 and separation action codes were derived from the OPM Guide.

5. Recommendation C. The AOC concurs with the OIG recommendation to develop and publish a discipline policy for exempt personnel, for transparency and consistency with other employee groups. It is important to put the finding and recommendation into perspective by providing the following context:

a. The AOC did not provide data on SR discipline because there were no discipline actions taken during the time period being evaluated.

b. There is a policy (AOC Order 213-1, "Exempt Personnel") pursuant to which SR employees are at-will employees serving at the pleasure of the Architect. SR employees do not have the same procedural protections as other AOC employees. However, the OIG correctly assesses that this order does not include specific disciplinary policy.

c. Senior Rated (SR) employees can be removed at the pleasure of the Architect. This means the SR employee is at-will and can be removed for any reason consistent with the law (anti-discrimination laws still apply). This provides maximum flexibility to the Architect to hold employees accountable for their performance and conduct.

Thank you for the opportunity to provide comments to the draft report. Please contact William O'Donnell at 202.226.0007 or william.odonnell@aoc.gov if you have any questions.

Doc. No. 200416-02-01

Appendix F - OIG's Management Representation Letter

[Letterhead of the Auditee/Evaluated]

February 27, 2020

To the Inspector General

We are providing this letter in connection with your **evaluation** of the AOC's Discipline Order (2019-0001-IE-P) as of August 14, 2019 and for the review scope period of Fiscal Years 2015 through 2019. We confirm, to the best of our knowledge and belief, the following representations made to you during your evaluation.

1. We have made available to you **all** the financial and/or management information associated with the OIG's evaluation, including complete, accurate, and factual data and policy information.
2. For the administration and oversight of the AOC's Discipline Program, we are responsible for
 - a. The internal control system,
 - b. Compliance with applicable laws and regulations, and
 - c. The fairness and accuracy of the accounting and/or management information.
3. We acknowledge our responsibility for the design and implementation of programs and controls to prevent and detect fraud.
4. We have no knowledge of any fraud or suspected fraud affecting the entity involving
 - a. Management.
 - b. Employees who have significant roles in internal control.
 - c. Others where the fraud could have a material effect on completeness or accuracy of data and other information provided to the OIG.
5. We have no knowledge of any allegations of fraud or suspected fraud affecting the entity received in communication from employees, former employees or others.

-
6. There are no material instances where financial and/or management information has not been properly and accurately recorded and reported.
 7. For the evaluation, there have been no
 - a. Instances of noncompliance with Agency policies and procedures for the collection and submittal of data provided to the OIG.
 - b. Violations or possible violations of laws or regulations.
 8. No events have occurred subsequent to the period under review that would affect the above representations.

William O'Donnell, Chief Administrative Officer

Teresa Bailey, Chief Human Capital Officer, Human Capital Management Division

Angela Freeman, Deputy General Counsel

Appendix G - AOC's Management Representation Letter



Architect of the Capitol
U.S. Capitol, Room SB-16
Washington, DC 20515
202.228.1793
www.aoc.gov

May 28, 2020

Mr. Chris Failla
Inspector General
Architect of the Capitol Office of the Inspector General
Washington, DC 20515

Dear Mr. Failla,

We are providing this management representation letter in connection with your evaluation of the Architect of the Capitol's (AOC) Discipline Order (OIG Project number 2019-0001-IE-P) as of August 14, 2019, and for the review scope period of Fiscal Years 2015 through 2019.

The information the AOC provided for this evaluation is complete and accurate to the best of our knowledge.

Sincerely,

Bill O'Donnell
Chief Administrative Officer

Doc. No. 200416-02-01A

Appendix H - Announcement Memo



Office of Inspector General
Fairchild Bldg.
499 S. Capitol St., SW, Suite 518
Washington, D.C. 20515
202.593.1948
www.aoc.gov

United States Government
MEMORANDUM

DATE: August 14, 2019

TO: Christine A. Merdon, P.E, CCM
Acting Architect of the Capitol

FROM: Christopher P. Failla, CIG *C. Failla*
Inspector General

SUBJECT: Announcement of Evaluation of the Architect of the Capitol's (AOC) Compliance with Its Discipline Order (Project No: 2019-0001-IE-P)

This is to notify you that the Office of Inspector General is initiating an evaluation of the AOC's compliance with its Discipline Order, Order 752-1. Our objective is to determine if AOC disciplinary actions taken in response to employee misconduct were in compliance with established policy and penalty guidance, and if disciplinary actions were applied consistently.

Please provide an Agency point of contact for this evaluation. We will coordinate with the appropriate AOC offices to schedule an entrance conference in the upcoming weeks. If you have any questions, please contact Audrey Cree, Evaluator, at 202.593.1941.

Distribution List:

Thomas Carroll, Assistant to the Architect of the Capitol
James O'Keefe, Acting Chief Administrative Officer
Teresa Bailey, Chief Human Capital Officer
Mary Jean Pajak, Senior Advisor to the Chief Operating Officer

Acronyms and Abbreviations

AOC	Architect of the Capitol
CAA	Congressional Accountability Act
CBA	Collective Bargaining Agreement
CHCO	Chief Human Capital Officer
CRA	Clean Record Agreement
ELRB	Employee and Labor Relations Branch
eOPF	electronic Official Personnel Files
FY	Fiscal Year
GAO	Government Accountability Office
GS	General Schedule
HCMD	Human Capital Management Division
HR	Human Resources
OGC	Office of General Counsel
OIG	Office of Inspector General
OPM	Office of Personnel Management
SF	Standard Form
SR	Senior Rated
WG	Wage Grade



OFFICE OF THE INSPECTOR GENERAL

Fairchild Building, Suite 518
499 South Capitol Street, SW
Washington, DC 20515
(202) 593-1948
hotline@aac-oig.org