



Office of the Inspector General
U.S. Department of Justice



**Bonuses and Other Favorable
Personnel Actions for Drug
Enforcement Administration
Employees Involved in Alleged Sexual
Misconduct Incidents Referenced in
the OIG's March 2015 Report**

EXECUTIVE SUMMARY

In March 2015, the Department of Justice Office of the Inspector General (OIG) released the *Review of the Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*.¹ In that report, we described several incidents involving alleged sexual misconduct of Drug Enforcement Administration (DEA) employees. Following the OIG review, the Chairman of the U.S. House of Representatives Committee on Oversight and Government Reform asked the OIG to determine whether any promotions, bonuses, awards, or new job assignments were given to the DEA personnel involved in the incidents described in our report.

DEA policy generally prohibits employees from receiving promotions, awards, or other favorable personnel actions for a period of 3 years after being subject to discipline for significant misconduct or while a misconduct investigation is pending, absent a specifically approved exception reflecting the basis for going forward.

Fourteen DEA employees were involved in the incidents we described in our report.² Although none of those 14 employees were promoted between the initiation of their respective misconduct investigations and the date we requested this information from the DEA, we found 10 instances where, contrary to DEA policy, DEA officials approved bonuses and a time-off award for these individuals even though they had been subject to discipline for significant misconduct within 3 years or while a misconduct investigation was still in progress. We also found three instances in which there was no documentation reflecting the basis for going forward with a favorable personnel action under these circumstances. In addition, we found seven instances in which the DEA followed policy and appropriately issued awards and bonuses to these employees.

We make two recommendations to ensure the DEA consistently follows policy and its integrity check process for approving favorable personnel actions for employees who committed significant misconduct in the past or are subjects in ongoing misconduct investigations.

¹ U.S. Department of Justice Office of the Inspector General, *Review of the Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*, Evaluation and Inspections Report 15-04 (March 2015).

² One of the 14 employees is now retired from the DEA.

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INTRODUCTION

Background

The Department of Justice Office of the Inspector General's (OIG) March 2015 *Review of the Handling of Sexual Harassment and Misconduct Allegations in the Law Enforcement Components* described the security, reporting, investigation, and adjudication of sexual harassment and misconduct allegations in the Department's four law enforcement components.³ As part of our review, we examined the circumstances of 14 Drug Enforcement Administration (DEA) employees involved in 3 incidents of sexual misconduct investigated between 2005 and 2012.

Following our review, the Chairman of the U.S. House of Representatives Committee on Oversight and Government Reform asked the OIG to determine whether any promotions, bonuses, awards, or new job assignments were given to the DEA personnel involved in the three incidents described in our report. The DEA provided the OIG with information and documents regarding promotions, bonuses, awards, and transfers received for the 14 subjects of these investigations. The OIG reviewed the material to determine whether the personnel actions were consistent with DEA policy and procedures.

DEA Disciplinary Process

The DEA internal disciplinary process is carried out at three levels: (1) the Office of Professional Responsibility (OPR), (2) the Board of Professional Conduct (HRB), and (3) the DEA Deciding Officials. DEA OPR investigates misconduct, while the HRB and the Deciding Officials, respectively, propose and render discipline decisions.

When a misconduct allegation is made against a DEA employee, the Associate Deputy Chief Inspector within OPR assigns the case to an Inspector for investigation.⁴ The Inspector gathers evidence and conducts interviews. If the

³ U.S. Department of Justice OIG, *Review of the Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*, Evaluation and Inspections Report 15-04 (March 2015).

⁴ Although the DEA has an internal disciplinary process, all non-frivolous allegations of criminal wrongdoing or serious administrative misconduct by Department employees, including DEA employees, must be reported to the OIG. The OIG generally will investigate all allegations of criminal or serious administrative misconduct or misconduct by high-ranking employees or others in which the impartiality of a component's internal investigation might be open to question. For the cases the OIG investigates, it issues a final report of investigation that is provided to the component to be used as the basis for the component's disciplinary decision.

See generally 28 C.F.R. Parts 0 and 45, which require the law enforcement components to refer all non-frivolous allegations of employee misconduct to the OIG. See also the *Inspector General Act of 1978*, as amended, 5 U.S.C. App § 8(E) (b) (2), providing the Inspector General the authority to investigate any Department employee misconduct.

assigned Inspector determines there is no indication of misconduct, or that the DEA employee was not involved, the matter is administratively closed and sent back to the referring DEA field office for any additional action that may be warranted. If a full investigation is warranted, the assigned Inspector will gather additional evidence, conduct interviews, and complete a final report of investigation. The Associate Deputy Chief Inspector and the Deputy Chief Inspector review the report and make any necessary changes.

Once the report is reviewed and approved, it is sent to the HRB. The HRB reviews the report of investigation, drafts a proposal letter, and issues it to the employee. The proposal letter describes the alleged conduct, the proposed penalty, and the right of the employee to provide an oral or written statement prior to discipline being imposed. Once the proposal letter is issued, a DEA Deciding Official reviews the proposal letter, the report of investigation, oral or written statements from the employee, and the Douglas Factors to determine the appropriate penalty to be imposed.⁵ At the close of the review, the Deciding Official issues a decision letter to the employee. DEA employees have a right to grieve a suspension of 14 days or less with the official designated in the decision letter or to appeal a suspension of 15 days or more to the U.S. Merit Systems Protection Board (MSPB).⁶

DEA Policy on Significant Misconduct and Its Effect on Personnel Actions

On May 28, 2002, the DEA formalized its policy regarding when an employee may be promoted, receive an award, or receive a favorable personnel action after having been disciplined for misconduct.⁷ According to the DEA policy memorandum, the DEA generally would continue its prior practice of requiring a 3-year waiting period from the time an employee is disciplined for "significant misconduct" before that employee can be promoted, transferred, or given an award or other favorable personnel action. In the memorandum, the DEA abandoned the prior definition of "significant misconduct" that required a suspension of 14 days or more in favor of a more "pragmatic" definition requiring a 3-year waiting period following discipline for "misconduct that is of such a nature that would create questions as to whether or not the person could function properly in the new position, and/or is of such significant issue to the agency that to take the action would be inconsistent with the best interest of the agency and/or its mission."

⁵ Under civil service laws, 12 factors, known as the Douglas Factors, should be considered in determining the appropriateness of a disciplinary penalty. See *Douglas v. Veterans Administration*, 5 MSPB 313 (1981).

⁶ The MSPB is an independent, quasi-judicial agency of the Executive Branch established by Reorganization Plan No. 2 of 1978, which was codified by the *Civil Service Reform Act of 1978* (CSRA), Pub. L. No. 95-454, 92 Stat. 1111 (CSRA) (1978). The CSRA authorized the MSPB to hear appeals of various agency decisions, most of which are appeals from agencies' adverse employment actions.

⁷ See John B. Brown III, Deputy Administrator, memorandum to All SACs [Special Agents in Charge] and Office Heads, Policy for Promotion of Employees with Adverse Actions (FFS 570-10), May 28, 2002 (Appendix 1).

The memorandum describes several factors for DEA managers to consider in determining whether misconduct is significant. These include when the offense and discipline occurred, whether the offense involved integrity or sexual harassment issues, whether the misconduct affected the employee's position, whether the misconduct occurred during on-duty or off-duty hours, and whether the employee was a supervisor or manager.

The DEA policy also states that if an employee is found to be under an ongoing OPR investigation, the proposed personnel action will be held "in abeyance" until the disciplinary process is completed. According to the policy, an ongoing OPR investigation includes an ongoing investigation, an investigation being drafted, and an investigation still under consideration by the HRB or the Deciding Officials. The policy permits an exception if the OPR investigation has progressed sufficiently to allow DEA officials to make a determination as to the likely outcome of the specific case. DEA officials told us that an investigation is considered closed upon the issuance of the final decision letter.

For the purposes of this review, the OIG did not independently evaluate the 3-year waiting period or how it compared with the policies and procedures of the other law enforcement components.⁸ (For informational purposes, we describe our understanding of the latter in Appendix 3.)

DEA Integrity Check Process

DEA officials proposing favorable personnel actions are also responsible for ensuring that an "integrity check" is conducted for, among other things, all promotions, bonuses, awards, foreign assignments, tour extensions, and exemptions to mandatory retirement. The DEA office proposing a favorable personnel action must submit an integrity check request to OPR, the HRB, and the Human Resources Employee Relations Unit (HRER), which are each responsible for receiving the requests and querying their databases to determine whether the employee was subject to disciplinary action or pending disciplinary action within the previous 3 years.

We learned from the DEA Office of Chief Counsel that if an employee is found to be under an ongoing OPR investigation during the integrity check process, the proposed favorable personnel action will be held in abeyance until the completion of the disciplinary process. If the Deputy Chief Inspector or the HRB Chairman

⁸ We asked a DEA official when the 3-year waiting period for a favorable personnel action begins when an employee has been previously disciplined for "significant misconduct." We were told that the period begins from the date of the decision letter but that the final decision maker, the Chief Inspector, has "latitude" in determining when the period begins based on the policy memorandum. By contrast, the former Associate Deputy Chief Inspector for DEA OPR told us that in his view, the 3-year waiting period begins from the date of the offense. Based on this information, there seems to be a lack of consistency in the understanding among DEA personnel responsible for making these determinations as to when the waiting period begins. For the purposes of our review, we calculated the inception of the 3-year waiting period from the date of the decision letter.

determines there is no indication of misconduct on the part of the employee, that information is referred to the HRER and the favorable personnel action is approved, provided the HRER has approved the action as well.⁹

If the integrity check reveals that the employee was disciplined within 3 years, the request is forwarded to the appropriate Assistant Administrator for a recommendation. The recommendation is then referred to the Chief Inspector, who makes the final decision on whether to approve or disapprove the proposed personnel action. Appendix 2 contains a more detailed discussion of this process and the vetting process the other law enforcement components use when a favorable personnel action is proposed.¹⁰

Scope and Methodology of the OIG Review

We did not undertake a formal evaluation of the DEA's integrity check process in this review. Instead, in response to the congressional request, we focused on the results of the integrity checks for proposed bonuses, awards, and other favorable personnel actions for the DEA employees who were involved in the incidents described in our prior report to determine the extent of such actions and whether they were consistent with DEA policy.

In order to conduct this review, we obtained and considered information from the DEA about each respective action for the period between initiation of the misconduct investigation and April 21, 2015. For each proposed action, we examined the results of the database queries conducted by DEA personnel in OPR, HRB, and HRER during the integrity check process; the recommendations of various DEA officials on whether to approve or disapprove the proposed action; and the final decision of the Chief Inspector when an employee had been disciplined within 3 years of the award proposal.¹¹ We also reviewed the DEA's policy regarding the approval of certain personnel actions when an employee is the subject of an OPR investigation or has received a disciplinary action. Finally, we interviewed DEA officials to obtain an understanding of the integrity check process and their recollection of specific award decisions discussed in our report.

⁹ While holding a personnel action "in abeyance" may be a HRER policy, as a practical matter, the Deputy Chief Inspector recommends either approval or disapproval.

¹⁰ In December 2013, the DEA instituted an electronic Integrity Check Application system. This system is capable of indefinitely retaining integrity checks with related and supporting documentation.

¹¹ In most cases, the integrity check information the DEA provided to the OIG was incomplete. In addition, there were several instances in which the DEA told us it could not provide the information we requested because the information did not exist. Therefore, the OIG was unable to fully review all of the integrity check results and the basis for the recommendations and decisions DEA officials made to approve or disapprove a request. The results we report represent the best conclusions we were able to draw based on the existing and available information.

RESULTS OF THE REVIEW

None of the 14 DEA Employees Involved in the 3 Misconduct Incidents Described in Our Report Received Promotions; But in 10 Instances, 8 of the 14 Employees Received Bonuses or Awards Contrary to DEA Policy

In the 2015 report on the handling of sexual harassment and misconduct allegations by the Department's law enforcement components, the OIG reviewed three misconduct cases involving 14 subjects. For this review, we requested promotion, bonus, and award information and documents for each of the 14 employees.

Our review found there were 20 award requests made in connection with the 14 individuals described in our report. Although none of the 14 individuals received promotions, we found that in 10 instances, 8 employees received bonuses, awards, or other favorable personnel actions, contrary to DEA policy. We also found three instances in which there was no documentation reflecting the basis for going forward with a favorable personnel action under these circumstances and seven instances in which the DEA followed policy for these employees.

The eight employees who received awards were subjects in an ongoing OPR investigation in which the offenses involved integrity and/or sexual harassment issues, with some of the employees serving as supervisors and managers. In many instances, we could not determine the reason why exceptions were made and we were unable to determine when, or if, an integrity check was performed, the results of the integrity check, or the reason for the approval of the proposed personnel action, because the DEA was unable to provide the OIG with complete documentation.

Finally, we found that one of the 14 individuals is now retired from the DEA, two individuals remain in the same overseas positions they were in at the time of the incidents, and the 11 remaining employees are currently agents or supervisory agents assigned to various DEA offices. We discuss each DEA case in more detail below.

First Incident: Special Agents Involved in Patronizing Prostitutes and Frequenting a Brothel while Assigned Overseas

As we described in our previous report, a Regional Director, an Acting Assistant Regional Director, and a Group Supervisor failed to report through their chain of command or to OPR repeated allegations (between 2005 and 2009) that DEA Special Agents serving as Criminal Investigators patronized prostitutes and frequented a brothel while posted overseas. In addition, one of the subjects allegedly assaulted a prostitute following a payment dispute. In August 2009, the State Department Regional Security Officer notified the Regional Director about this incident. At the time, the supervisors treated these allegations as local management issues.

In June 2010, the allegations were ultimately reported to OPR through an anonymous letter. OPR initiated an investigation on June 7, 2010, identifying two subjects (the two agents); an additional subject, the Regional Director, was named in October 2010. OPR completed the investigation on April 7, 2011, and forwarded the investigative case file through the DEA disciplinary system. Ultimately, one agent received a 14-day suspension, the Regional Director was counseled by the DEA Administrator and Deputy Administrator, and the other agent was cleared.

Although none of these individuals received promotions during the period between initiation of the misconduct investigation in 2010 and the time we requested this information from DEA, we determined that all three individuals received performance awards. The amount of the awards ranged from \$1,500 to almost \$32,000.

We discuss below the performance awards each individual received, the dates related to the investigation process, the integrity check process, and the results of the integrity checks the DEA conducted.

Regional Director (Subject 1)

As described in our prior report, the Regional Director failed to report to OPR allegations concerning his subordinates' (Agent 1 and Agent 2, discussed below) involvement with prostitutes at government-leased quarters, as DEA policy required. Instead of reporting the allegations to OPR, the Regional Director treated the allegations as a local management issue. OPR officials told us that the Regional Director was orally counseled by both the DEA Administrator and Deputy Administrator for failing to report these serious allegations.

DEA officials informed us that counseling does not constitute formal discipline. According to the DEA's Personnel Manual, counseling or "oral admonishment" consists of a face-to-face meeting where the supervisor puts the employee on notice about his misconduct, describes management expectations, and warns the employee about the consequences of failing to correct the behavior. An oral admonishment is non-grievable, and any records relating to the admonishment are not filed in the employee's official personnel folder (OPF). Since a record of an oral admonishment or counseling is not maintained in an employee's OPF, it would not be considered in determining whether the employee is eligible for a favorable personnel action.¹²

The DEA also told us that it was unable to provide us with any documents that reflect when the counseling session occurred with the Regional Director, the DEA Administrator, and the Deputy Administrator, or what matters they discussed. Given the gravity of the allegations, and the importance of keeping records related to misconduct reviews, we are concerned that the DEA was unable to provide any

¹² According to the DEA Personnel Manual, section 2752.4.B.1.

written documentation confirming that the counseling occurred and the substance of the counseling.¹³

According to the limited information the DEA provided, OPR concluded its investigation in April 2011. Other than a counseling session, the Regional Director was not disciplined for failing to report these allegations to OPR. Thus, because the DEA does not consider “counseling” to constitute formal discipline, it appears that the DEA’s policy generally requiring a 3-year waiting period before an award or promotion can be given to an employee disciplined for “significant misconduct” did not apply to the Regional Director.

During the time period between October 2010, when the Regional Director was named a subject in the OPR investigation, and April 2014, approximately when the 3-year waiting period would have expired had the DEA considered the Regional Director’s actions “significant misconduct,” the Regional Director received four performance awards: three Senior Executive Service (SES) bonus awards and one SES Meritorious Executive Rank award.¹⁴ In total, these four awards totaled approximately \$68,600.¹⁵

The DEA was unable to provide complete information related to any integrity checks conducted for these awards. However, the Acting Chief Inspector responsible for reviewing this award request told us that he “never received information on the adjudication [for failure to report allegations], nor approved or disapproved an integrity check for the Regional Director’s SES bonus award in December 2011.” Moreover, since the Regional Director was not subject to formal discipline, it is doubtful that anything adverse would have been reflected in such checks based on the counseling he received following the underlying incident. Table 1 illustrates the timeline of the misconduct investigation and the personnel actions that the DEA considered for the Regional Director.

¹³ SES employees are not subject to the disciplinary system. The Board of Professional Conduct (HRB) would not be responsible for SES discipline and would not have access to disciplinary information in regard to an integrity check for an SES employee.

¹⁴ The DEA could not provide the OIG with an exact date of when the Regional Director was named the subject of the OPR investigation. Based on the DEA’s review of its documents on this case, the DEA hypothesized that the date was on or about October 2010.

¹⁵ Although the DEA indicated that the investigation involving the Regional Director concluded in April 2011, the DEA was unable to provide information regarding when he received oral counseling from the DEA Administrator and Deputy Administrator. Therefore, we included in Table 1 the December 2011 bonus he received. In addition, the Regional Director received a May 2013 bonus (\$31,938.80) and a February 2014 bonus (\$12,163) outside the period of ineligibility. These awards were not in violation of DEA policy because the DEA did not consider the Regional Director’s conduct “significant misconduct.” Had the DEA considered the Regional Director’s conduct “significant misconduct,” he would not have been eligible for an award until April 2014.

Table 1
Regional Director Awards Timeline

Date	Event
October 2010	The Regional Director is named a subject of an ongoing OPR investigation. <i>The period of ineligibility for a favorable personnel action begins.</i>
April 4, 2011	OPR completes its investigation and prepares a summary memorandum from the Acting Chief Inspector to the DEA Administrator for review.
Unknown Dates	The Deputy DEA Administrator and DEA Administrator counsel the Regional Director. <i>The period of ineligibility ends.</i>
December 3, 2011	The Regional Director receives an SES bonus award of \$12,000.

Source: DEA

The Regional Director presently serves the DEA at the same overseas office.

Agent 1 (Subject 2)

This Special Agent, who served in an office overseen by the Regional Director, was one of the Special Agents alleged to have patronized prostitutes and frequented brothels while in an overseas posting. He ultimately received a letter of clearance on this matter. During the period between when Agent 1 was named the subject of an OPR investigation on June 7, 2010, and January 19, 2012, he received one performance award of \$2,000 and was nominated for two other awards. Table 2 illustrates the timeline of the misconduct investigation and the personnel actions that the DEA considered for Agent 1.

Table 2
Agent 1 Awards Timeline

Date	Event
June 7, 2010	Agent 1 is named a subject of an OPR investigation. <i>The period of ineligibility for a favorable personnel action begins.</i>
July 4, 2010	Agent 1 receives a performance award of \$2,000. <i>An integrity check is conducted prior to the OPR investigation.</i>
January 2011	Agent 1's name is submitted for an Administrator's Group Award. The request appears to have been disapproved by at least one of the three offices that conducted the integrity checks. We found no evidence indicating that Agent 1 received this award.
March 30, 2011	Agent 1 is nominated for a group award from an outside agency. The DEA provided no information showing that Agent 1 received this award.
April 7, 2011	OPR completes its investigation and forwards its report to the HRB.
November 14, 2011	The HRB issues a proposal letter for a letter of clearance.
January 19, 2012	A final decision letter is issued. Agent 1 receives a letter of clearance. <i>The period of ineligibility ends.</i>

Source: DEA

For the July 4, 2010, performance award, DEA policy required that the proposed personnel action be held in abeyance until the completion of the OPR investigation, absent a finding that the OPR investigation had progressed sufficiently to allow DEA officials to make a determination as to the likely outcome of the case. However, we found that the DEA conducted the integrity check on Agent 1 in January 2010, which well pre-dated the initiation of the misconduct investigation. Consequently, Agent 1's status as a subject of the misconduct investigation was not identified during the integrity check process.

When we asked for more information regarding the July 2010 award request, the DEA was unable to provide any further explanation. We believe that the DEA should consider conducting integrity checks in closer proximity to the date the favorable personnel action is issued to ensure that employees are not given awards while they are subjects of an investigation that has not progressed sufficiently for DEA officials to determine the likely outcome.

For the January 2011 award request, OPR recommended disapproval and noted the ongoing investigation in the case file. The Deputy Chief Inspector who reviewed this award request told us he disapproved this award because of the ongoing investigation. We found no evidence indicating that Agent 1 received this award. OPR recommended approval of the March 2011 award request, while noting in the case file the ongoing investigation on Agent 1, which was completed 1 week later. However, the DEA stated that it had no information that Agent 1 actually received this award.¹⁶ Agent 1 is currently assigned to a DEA office in the United States.

Agent 2 (Subject 3)

Agent 2 is the other Special Agent who served in an office overseen by the Regional Director and was alleged to have patronized prostitutes and frequented brothels while in an overseas posting. In addition, Agent 2 allegedly entertained prostitutes at his government-leased quarters on a frequent basis and on one occasion reportedly assaulted a prostitute. Agent 2 served a 14-day suspension for his actions. During the period beginning June 7, 2010, when Agent 2 was named the subject of an OPR investigation, to January 19, 2015, when the 3-year waiting period expired following the imposition of discipline, he received one performance award of \$1,500. Table 3 illustrates the timeline of the misconduct investigation and the personnel action that the DEA considered for Agent 2.

¹⁶ In addition, Agent 1 received an Attorney General's Distinguished Service Award (April 2013), a \$2000 performance award (June 2013), and a quality step increase (May 2014).

Table 3
Agent 2 Awards Timeline

Date	Event
June 7, 2010	Agent 2 is named a subject of an OPR investigation. <i>The period of ineligibility for a favorable personnel action begins.</i>
July 4, 2010	Agent 2 receives a performance award of \$1,500. <i>An integrity check is conducted prior to the OPR investigation.</i>
April 7, 2011	OPR completes its investigation and forwards its report to the HRB for review.
November 14, 2011	The HRB issues a proposal letter for a 14-day suspension.
January 19, 2012	A final decision letter is issued. Agent 2 served a 14-day suspension. <i>Ineligibility expired on January 19, 2015.</i>

Source: DEA

Agent 2 received a performance award while he was the subject of an ongoing misconduct investigation, which should not have occurred pursuant to DEA policy. We found that this occurred because the integrity check for the performance award was completed in January 2010, predating Agent 2's status as a subject of the unrelated OPR investigation. The Deputy Chief Inspector at the time confirmed that the integrity check for this award request was conducted 5 months prior to issuance of the award. As noted above, we believe the DEA should consider conducting integrity checks in closer proximity to the issuance of a favorable personnel action. Agent 2 is currently assigned to another DEA office in the United States.

Second Incident: Assistant Regional Director's Harassment of a Foreign Service National

In this case, the DEA received a complaint through the Department of State, Diplomatic Security Service, regarding an Assistant Regional Director (ARD) in an overseas Country Office. According to the report of investigation, a Foreign Service National who served as the ARD's Assistant alleged that between January 2009 and May 2010, the ARD made numerous inappropriate sexual comments; asked the Assistant to watch pornographic movies; and, among other allegations, routinely threw items, yelled at employees, and used other vulgarities in the office and at official functions. As a result of the misconduct investigation, the ARD received a letter of reprimand.¹⁷

During the period beginning May 10, 2010, when the ARD was named the subject of the OPR investigation, to October 26, 2014, when the 3-year period following the issuance of the letter of reprimand expired, he received one

¹⁷ According to the DEA Personnel Manual, section 2752.4.C.2., a letter of reprimand must be filed in the employee's OPF and remain there for a period not to exceed 2 years.

performance award of \$5,000. Table 4 illustrates the timeline of the misconduct investigation and the personnel action that the DEA considered for the ARD.

Table 4
ARD Awards Timeline

Date	Event
May 10, 2010	The ARD is named the subject of an OPR investigation. <i>The period of ineligibility for a favorable personnel action begins.</i>
September 29, 2010	OPR completes its investigation and forwards its report to the HRB for review.
May 8, 2011	The ARD receives a performance award of \$5,000. <i>The ARD receives a performance award while the subject of an ongoing investigation.</i>
June 20, 2011	The HRB issues a proposal letter for a letter of reprimand.
October 26, 2011	A final decision letter is issued. The ARD receives a letter of reprimand. <i>Ineligibility expired on October 26, 2014.</i>

Source: DEA

The ARD received the performance award from the Acting Regional Director of the overseas office at which he worked for performance unrelated to the misconduct under investigation while the HRB was determining what discipline to propose in that matter. According to the documents the DEA provided to the OIG, OPR approved the request but noted that there was an open investigation on the ARD. The Deputy Chief Inspector at the time, who approved this award request, told us “the integrity check was probably approved because of the time taken to adjudicate the case upon it being forwarded to HRB. I can only guess that a conversation may have occurred between me and the former HRB Chairman as to the ‘likely’ outcome of the investigation which was a letter of reprimand.”

Although the investigation of this case took approximately 1 year, there is nothing in the policy memorandum to indicate that the amount of time for an investigation to be completed is a relevant factor to be considered when determining whether to approve an award request while an employee is a subject in an ongoing investigation. The “likely” outcome of a letter of reprimand for conduct amounting to sexual harassment, especially given the ARD’s supervisory position, would not have made him eligible for an award in any event.¹⁸ Therefore, it appears that the ARD’s receipt of a performance award while he was the subject of an ongoing OPR investigation involving “integrity and sexual harassment issues” was inconsistent with DEA policy and the ARD’s performance award should have been held in abeyance. The ARD is still serving in that position at the same overseas Country Office.

¹⁸ The DEA confirmed to the OIG that a letter of reprimand constitutes formal discipline.

Third Incident: Special Agents Soliciting Prostitutes and Attending Sex Parties

In this case, former host-country police officers alleged that numerous DEA employees formerly assigned to an overseas office solicited prostitutes and engaged in other serious misconduct while abroad from 2001 to 2004. During this period, the foreign police officer allegedly arranged "sex parties" with prostitutes at their government-leased quarters. DEA OPR began its investigation in February 2010.

DEA OPR identified 10 of these employees as subjects of the investigation. Seven of the subjects received suspensions ranging from 1 to 10 days; one subject was cleared of all wrongdoing; another received a letter of caution; and the remaining subject retired before the investigation was completed.¹⁹

Based on our review, we determined that between the initiation of the OPR investigation in 2010 through the 3-year period of ineligibility following the imposition of the suspensions, none of the subjects received promotions but 5 of the 10 individuals received performance awards and/or a time-off award. The monetary awards ranged from \$1,900 to \$4,500. The time-off award of 40 hours of paid leave was given to a General Schedule (GS)-13 level employee. By 2010, all of the subjects of the investigation were no longer working at the overseas office where the misconduct allegedly occurred and the favorable personnel actions that were subsequently proposed were for performance unrelated to the misconduct. The subjects who received formal discipline decisions on March 31, 2014, would be ineligible for a favorable personnel action for 3 years following this date if the DEA had considered their conduct to be "significant misconduct."

We discuss below the performance awards and the time-off award that seven of the DEA employees received, the dates related to the investigation process and the integrity check process, and the results of the integrity checks the DEA conducted.

Group Supervisor (GS) 2 (Subject 1)

This employee was a Supervisory Special Agent who ultimately served a 3-day suspension for the misconduct discussed above. He was named a subject of the OPR investigation on June 8, 2010, and the 3-year period of ineligibility following the issuance of his final suspension letter in March 2014 will expire on March 31, 2017. During this period, he received one performance award of \$2,500 for conduct unrelated to the subject of the misconduct investigation. The following table illustrates the timeline of the misconduct investigation and the personnel action that the DEA considered for GS 2.

¹⁹ One of the subjects of the allegations (Agent 3) who received a 1-day suspension did not receive any awards, bonuses, or other favorable personnel actions during the period we examined and thus is not discussed below. For the subject who retired under investigation (Group Supervisor (GS) 1), the DEA stated, "There are no records to indicate GS 1 was submitted or received any awards after being named a subject." The subject who was cleared of all wrongdoing (Agent 4) received a performance award for \$3,000 on March 22, 2015, outside the period of ineligibility.

Table 5
GS 2 Awards Timeline

Date	Event
June 8, 2010	GS 2 is named a subject of an OPR investigation. <i>The period of ineligibility for a favorable personnel action begins.</i>
June 3, 2012	GS 2 receives a performance award of \$2,500. <i>GS 2 receives a performance award while the subject of an ongoing OPR investigation.</i>
February 5, 2013	OPR completes its investigation and forwards its report to the HRB for review.
August 15, 2013	The HRB issues a proposal letter for a 5-day suspension.
March 31, 2014	A final decision letter is issued. The proposed 5-day suspension is mitigated to a 3-day suspension. GS 2 served a 3-day suspension. <i>Ineligibility will expire on March 31, 2017.</i>

Source: DEA

On June 3, 2012, GS 2 received a performance award of \$2,500. Although OPR recommended disapproval, the HRER recommended approving the award. According to DEA policy, the Chief Inspector makes the final decision regarding the approval or disapproval of a performance award.²⁰ In this case, the Acting Chief Inspector disapproved the award and the case file contained information supporting that decision. The Acting Chief Inspector told us that the performance award was disapproved because of GS 2's admissions during an interview with OPR regarding the ongoing investigation. Nevertheless, GS 2 received the award over the Acting Chief Inspector's objection; there was no documentation in the file to explain why this occurred.

The Acting Chief Inspector also told us that he could "only guess that the award was granted based on the approved integrity check by HR[ER]." We concluded that issuing a performance award to GS 2 while he was the subject of an ongoing OPR investigation was inconsistent with DEA policy. There is no evidence that DEA officials believed that the outcome of the investigation would be favorable to GS 2 at the time, which would have been inconsistent with their ultimate decision to impose a 3-day suspension. GS 2 is currently a supervisor assigned to a DEA office in the United States.

GS 3 (Subject 2)

GS 3 was a Supervisory Special Agent who received a letter of caution on March 31, 2014.²¹ During the period beginning June 8, 2010, when GS 3 was

²⁰ See John B. Brown III, Deputy Administrator, memorandum to All SACs [Special Agents in Charge] and Office Heads, Policy for Promotion of Employees with Adverse Actions (FFS 570-10), May 28, 2002, 2 (Appendix 1).

²¹ According to the DEA Personnel Manual, section 2752.4.C.1., a letter of caution, signed by the Deciding Official, is the most minor form of discipline. The letter of caution provides the reasons for the reprimand in enough detail so that a reasonable person would understand the basis for the

(Cont'd.)

named a subject of the misconduct investigation, until the matter was resolved when he received a non-disciplinary letter of caution on March 31, 2014, he received three performance awards, totaling \$8,400, for conduct unrelated to the subject matter of the misconduct investigation. Table 6 illustrates the timeline of the misconduct investigation and the personnel actions that the DEA considered for GS 3.

Table 6
GS 3 Awards Timeline

Date	Event
June 8, 2010	GS 3 is named a subject of an OPR investigation. <i>The period of ineligibility for a favorable personnel action begins.</i>
August 1, 2010	GS 3 receives a performance award of \$2,000. <i>GS 3 receives a performance award while the subject of an ongoing OPR investigation.</i>
February 16, 2011	GS 3 receives a performance award of \$1,900. <i>GS 3 receives a performance award while the subject of an ongoing OPR investigation.</i>
February 5, 2013	OPR completes its investigation and forwards its report to the HRB for review.
August 11, 2013	GS 3 receives a performance award of \$4,500. <i>GS 3 receives a performance award while the subject of an ongoing investigation.</i>
August 14, 2013	The HRB issues a proposal letter for a letter of caution.
March 31, 2014	A final decision letter is issued. GS 3 receives a letter of caution. <i>The period of ineligibility ends.</i>

Source: DEA

Both the August 1, 2010, performance award of \$2,000 and the February 16, 2011, performance award of \$1,900 were approved while the misconduct investigation was still ongoing. The DEA told the OIG that it was unable to provide the complete integrity check information related to these two matters. The limited information the DEA provided showed that for the August 1, 2010, award, OPR recommended approval even though it noted the ongoing investigation of GS 3. The Acting Chief Inspector told us GS 3 may have received the award while under investigation because his name might not have been entered as a subject in DEA OPR's misconduct database until sometime after the completion of the initial integrity check.

The DEA was unable to provide any information on whether an integrity check for the February 16, 2011, award request was conducted. However, the Acting Chief Inspector speculated that based on witness statements, interviews, and other information learned during the OPR investigation, he may have anticipated that GS 3 would be cleared or would receive a letter of caution. Thus,

action. The letter is not filed in the employee's OPF, and, the DEA stated, does not constitute formal discipline.

he believes he approved the integrity check based on the “likely” outcome of the investigation.

We were unable to confirm whether all of the required DEA officials conducted integrity checks for these two award requests and, if so, what they recommended in light of the DEA’s policy, which proscribes performance awards during pending misconduct investigations unless a favorable outcome is likely. In light of the ongoing investigation, the OIG determined that the awards appear to be inconsistent with DEA policy. OPR did not complete its portion of the investigation and submit its report to the HRB for a final decision on disciplinary action until February 5, 2013.

Based on the information the DEA provided for the August 2013 award, it appeared that some of the integrity checks were completed in late June 2013. By then, the HRB was reviewing OPR’s report of investigation on this matter. According to the information the DEA provided to the OIG, OPR recommended approval based on the HRB’s records that noted the HRB was proposing a clearance letter for GS 3. However, the HRB eventually proposed that GS 3 be given a letter of caution (which in any event was not considered discipline), rather than a letter of clearance, for this matter. The file also shows that the HRER recommended approval of the award request. The Acting Deputy Chief Inspector told us that he spoke with the HRB Chairman on June 23, 2013, regarding this integrity check and approved the request based on the likely outcome that GS 3 would be cleared.

On these facts, we concluded that the August 2013 performance award did not appear to be inconsistent with the DEA’s policy because it appears that the HRB did not anticipate formal discipline in GS 3’s case, as confirmed by the subsequently issued letter of caution. However, this conclusion would be more certain had DEA OPR and the HRB kept better documentation of the decision-making process.²² GS 3 is currently a supervisor assigned to a DEA office in the United States.

Agent 5 (Subject 3)

Agent 5 was a Supervisory Special Agent involved in this matter. He served an 8-day suspension as a result of the misconduct he was found to have committed. Agent 5 was identified as a subject of an OPR investigation on June 8, 2010, and the 3-year period of ineligibility following imposition of his suspension will expire on March 31, 2017. During this period, he received one performance award of \$2,000 in 2011 and the DEA disapproved two other proposed awards, in 2013 and 2014, all of which were for conduct unrelated to the subject of the

²² In addition, on May 18, 2014, and April 19, 2015, GS 3 received performance awards for \$4,500 and \$5,000, respectively. He received these awards outside the period of ineligibility, which we found ended on March 31, 2014. According to the file, although the integrity check request for the May 2014 performance award was made on March 13, 2014, before the period of ineligibility ended, by that time, DEA officials knew that GS 3 was not going to receive formal discipline. Consequently, the HRER and the Assistant Administrator recommended approval and the Chief Inspector made the final decision to approve the May 2014 award request. The 2015 award was well beyond the period of ineligibility.

misconduct investigation. Table 7 illustrates the timeline of the misconduct investigation and the personnel actions that the DEA considered for Agent 5.

Table 7
Agent 5 Awards Timetable

Date	Event
June 8, 2010	Agent 5 is named a subject of an OPR investigation. <i>The period of ineligibility for a favorable personnel action begins.</i>
April 10, 2011	Agent 5 receives a performance award of \$2,000. <i>Agent 5 receives performance award while the subject of an ongoing OPR investigation.</i>
February 5, 2013	OPR completes its investigation and forwards its report to the HRB for review.
June 2013	Agent 5 is disapproved for an award. The DEA could not provide any information regarding the office that disapproved the award.
August 14, 2013	The HRB issues a proposal letter for a 14-day suspension.
March 13, 2014	Agent 5 is disapproved for a proposed performance award. The DEA could not provide any information regarding the office that disapproved the award.
March 31, 2014	A final decision letter is issued. The proposed 14-day suspension is mitigated to an 8-day suspension. Agent 5 served an 8-day suspension. <i>Ineligibility will expire on March 31, 2017.</i>

Source: DEA

The DEA said it was unable to provide all of the information or documents related to the integrity checks it conducted for the April 2011 performance award. According to the documents the DEA was able to provide to the OIG, Agent 5 was still a subject of the ongoing investigation when the integrity check was conducted on this matter, though OPR recommended approval of the award request. However, the DEA was unable to provide information regarding the integrity check results, if any, conducted by the HRB and HRER. The Acting Chief Inspector told us that it appears he approved the integrity check for this award on March 11, 2011, when the Office Assistant placed the Acting Chief Inspector's signature stamp on the integrity check approval and initialed the form. However, the Acting Chief Inspector never signed the final approval/disapproval form. Since Agent 5 was still the subject of an ongoing investigation, the performance award should have been held in abeyance or disapproved and issuance of the award violated the DEA's policy.

By contrast, it appears that the two disapproved matters were handled consistently with the DEA's policy. According to the information the DEA provided, OPR recommended disapproval of the June 2013 request because of the ongoing misconduct investigation unrelated to the performance award. For the March 2014 request that was disapproved, the integrity checks noted the misconduct investigation and the proposed disciplinary action. The file further shows that the appropriate Assistant Administrator and Acting Chief Inspector reviewed the matter. The Assistant Administrator recommended that the award request be approved, but

the Acting Deputy Chief Inspector made the final decision to disapprove it. When we asked for more information regarding the rationale for this disapproval, the DEA was unable to provide any further explanation.

In sum, we could not determine why DEA officials approved the 2011 award, which was inconsistent with the DEA’s policy in light of the ongoing investigation, and then disapproved the 2013 and 2014 awards, consistent with the DEA’s policy. Agent 5 is currently a supervisor assigned to a DEA office in the United States.

Agent 6 (Subject 4)

Agent 6 was another Supervisory Special Agent involved in this matter. He served a 9-day suspension as a result of the misconduct he was found to have committed. He was named a subject on February 7, 2010, and the 3-year period of ineligibility following imposition of his suspension will expire on March 31, 2017. During this period, he received one performance award of \$3,000 in January 2011 for conduct unrelated to the subject of the misconduct investigation. In July 2012, the DEA disapproved another proposed award for Agent 6 for performance that was also unrelated to the investigation. Table 8 illustrates the timeline of the misconduct investigation and the personnel actions that the DEA considered for Agent 6.

Table 8
Agent 6 Awards Timeline

Date	Event
February 17, 2010	Agent 6 is named a subject of an OPR investigation. <i>The period of ineligibility for a favorable personnel action begins.</i>
January 23, 2011	Agent 6 receives a performance award of \$3,000. <i>Agent 6 receives a performance award while the subject of an ongoing OPR investigation.</i>
July 6, 2012	A proposed award is disapproved.
February 5, 2013	OPR completes its investigation and forwards its report to the HRB for review.
August 15, 2013	The HRB issues a proposal letter for a 14-day suspension.
March 31, 2014	A final decision letter is issued. The proposed 14-day suspension is mitigated to a 9-day suspension. Agent 6 served a 9-day suspension. <i>Ineligibility will expire on March 31, 2017.</i>

Source: DEA

Because the DEA was not able to provide the OIG any information or documents showing integrity checks performed for the January 2011 performance award of \$3,000, we were unable to determine why the DEA gave Agent 6 a performance award while the misconduct investigation was still ongoing. In addition, we were unable to determine whether DEA officials conducted integrity checks and, if so, what they recommended. When we asked for more information regarding the January 2011 award request, the DEA was unable to provide any further explanation. Based on the information provided, the approval of the award

appears to be inconsistent with DEA policy, especially considering that the seriousness of his conduct resulted in a 9-day suspension.

According to the files we received regarding the proposed award the DEA disapproved on July 6, 2012, OPR recommended disapproval in this case because Agent 6 was a subject of the ongoing investigation. Therefore, the disapproval of this award appears to be consistent with DEA policy. Agent 6 is a currently assigned to a DEA office in the United States.

Agent 7 (Subject 5)

Agent 7 was a GS-13 level Special Agent involved in this matter who served a 10-day suspension as a result of the misconduct he committed. He was named a subject of an OPR investigation on June 8, 2010, and the 3-year period of ineligibility following imposition of his suspension will expire on March 31, 2017. Even though OPR did not complete the misconduct investigation until February 5, 2013, Agent 7 received a performance award in of \$2,000 in February 2011 and a time-off award of 40 hours in April 2011. Both awards were for performance unrelated to the subject of the misconduct investigation. The DEA disapproved another proposed award for Agent 7 in May 2013. Table 9 illustrates the timeline of the misconduct investigation and the personnel actions that the DEA considered for Agent 7.

Table 9
Agent 7 Awards Timeline

Date	Event
June 8, 2010	Agent 7 is named a subject of an OPR investigation. <i>The period of ineligibility for a favorable personnel action begins.</i>
February 27, 2011	Agent 7 receives a performance award of \$2,000. <i>Agent 7 receives a performance award while the subject of an ongoing OPR investigation.</i>
April 10, 2011	Agent 7 receives a time-off award of 40 hours. <i>Agent 7 receives a time-off award while the subject of an ongoing OPR investigation.</i>
February 5, 2013	OPR completes its investigation and forwards its report to the HRB for review.
May 2013	A proposed award is disapproved.
August 15, 2013	The HRB issues a proposal letter for a 14-day suspension.
March 31, 2014	A final decision letter is issued. The proposed 14-day suspension is mitigated to a 10-day suspension. Agent 7 served a 10-day suspension. <i>Ineligibility will expire on March 31, 2017.</i>

Source: DEA

The files the DEA provided us for these two award requests were incomplete. According to the files, OPR recommended approval of the February 2011 performance award despite noting the open investigation of Agent 7. The DEA was unable to provide information showing the HRB's and the HRER's integrity check

results. When we asked for more information regarding the February 2011 award request, the Acting Chief Inspector told us that “the OPR integrity check on Agent 7 should not have been approved. No explanation.”

For the time-off award issued in April 2011, the DEA said it was unable to provide the OIG the complete integrity check information. The only document the DEA provided to the OIG contained the HRER’s integrity check results showing its recommendation to approve the April award. The DEA provided no integrity check results for OPR or the HRB. We asked the DEA for more information regarding the April 2011 time-off award, but it was unable to provide any additional information.

Because the DEA was unable to provide to the OIG information for OPR and the HRB related to whether integrity checks were conducted on the two performance awards the DEA approved, we were unable to determine why the DEA gave Agent 7 these two awards despite the ongoing misconduct investigation, the seriousness of which was confirmed when he eventually received a 10-day suspension for his actions. Therefore, it appears that the February and April 2011 awards were inconsistent with DEA policy.

For the May 2013 award request, OPR recommended disapproval. Although the DEA provided limited information regarding this request, based on what was provided, it appears that the decision to disapprove the May 2013 performance award was based on the pending investigation, consistent with DEA policy. Agent 7 is currently assigned to a DEA office in the United States.

Although the remaining five DEA employees who were also subjects of this investigation did not receive any bonuses, awards, or other favorable personnel actions during this period, DEA officials proposed performance awards for two of the five individuals. However, the awards were disapproved. We further discuss their cases below.

Agent 8 (Subject 6)

Agent 8 was a Special Agent at the time of this matter. He received a final decision letter imposing a 3-day suspension as a result of his actions. He was identified as a subject of the investigation on June 8, 2010, and the 3-year period of ineligibility following his suspension will expire on March 31, 2017. During this period, he did not receive any awards, bonuses, or promotions. Agent 8 was nominated for an Administrator’s Award for performance unrelated to the subject of the misconduct investigation. According to the information the DEA provided to the OIG, OPR recommended disapproval because Agent 8 was a subject of the investigation. Table 10 illustrates the timeline of the misconduct investigation and the personnel action that the DEA considered for Agent 8.

Table 10
Agent 8 Awards Timeline

Date	Event
June 8, 2010	Agent 8 is named a subject of an OPR investigation. <i>The period of ineligibility for a favorable personnel action begins.</i>
January 12, 2011	OPR disapproves a proposed Administrator's Award for Group Achievement for Agent 8.
February 5, 2013	OPR completes its investigation and forwards its report to the HRB for review.
August 14, 2013	The issues a proposal letter for a 5-day suspension.
March 31, 2014	A final decision letter is issued. The proposed 5-day suspension is mitigated to a 3-day suspension. <i>Ineligibility will expire on March 31, 2017.</i>

Source: DEA

The DEA stated that it was unable to provide the complete integrity check information for the award request disapproved in January 2011. According to the information the DEA provided, OPR recommended disapproval because of the open OPR investigation. In addition, the Acting Chief Inspector told us that he disapproved this award request "based on the status of the investigation and Agent 8's participation in the misconduct." Particularly given that Agent 8 received a 3-day suspension for his actions, this decision appears to be consistent with DEA policy. Agent 8 is currently assigned to a DEA office in the United States.

Agent 9 (Subject 7)

Agent 9 was a Special Agent involved in this matter who served a 2-day suspension as result of his misconduct. He was named a subject of the investigation on January 9, 2013, and the 3-year period of ineligibility following imposition of his suspension will expire on March 31, 2017. During this period, he did not receive any awards, bonuses, or promotions. However, he was nominated for a performance award, for performance unrelated to the subject of the misconduct investigation, which was ultimately disapproved by the Chief Inspector. Table 11 illustrates the timeline of the misconduct investigation and the personnel action that was considered for Agent 9.

Table 11
Agent 9 Award Timeline

Date	Event
March 12, 2013	Agent 9 is named a subject of an OPR investigation. <i>The period of ineligibility for a favorable personnel action begins.</i>
February 5, 2013	OPR completes its investigation and forwards its report to the HRB for review.
August 14, 2013	The HRB issues a proposal letter for a 3-day suspension.

Date	Event
March 31, 2014	A final decision letter is issued. The proposed 3-day suspension is mitigated to a 2-day suspension. Agent 9 served a 2-day suspension.
February 13, 2015	Agent 9 is disapproved for a proposed performance award. <i>Ineligibility will expire on March 31, 2017.</i>

Source: DEA

According to the information the DEA provided, on February 1, 2015, a DEA official proposed a performance award for Agent 9 for performance unrelated to the subject of the misconduct investigation. According to the file, the HRB integrity check identified the discipline Agent 9 received in 2014. Despite this, the HRER recommended approval, with OPR providing no documented recommendation. The appropriate Assistant Administrator reviewed the proposed award and recommended that the matter be disapproved. The Chief Inspector thereafter disapproved the request. It appears that the decision to disapprove the award request was consistent with DEA policy.²³ Agent 9 is currently assigned to a DEA office in the United States.

²³ In addition to the inconsistent treatment of multiple award requests for the DEA employees identified above, the OIG also found instances of inconsistent treatment among the DEA employees found to be involved in the third incident, soliciting prostitutes at their government-leased quarters. In this particular case, the OIG found that DEA officials approved performance awards for five employees (Agent 6, GS 3, Agent 7, Agent 5, and GS 2), yet the DEA disapproved an award for one employee, Agent 8, even though all of the employees were subjects of the same OPR misconduct investigation during the same period.

CONCLUSION AND RECOMMENDATIONS

Conclusion

The DEA has an established policy and an integrity check process for determining whether an employee who has committed significant misconduct or is a subject of an ongoing investigation may receive favorable personnel actions such as promotions, bonuses, and awards. However, based on our review of the 14 subjects named in 3 misconduct investigations discussed in our March 2015 report, the DEA did not consistently follow its policy or process and failed to document the rationale for its decisions.

In addition, in many of the cases we reviewed, the DEA was unable to provide the complete integrity check information. As a result, we could not determine whether DEA officials conducted the appropriate integrity checks or the basis for the recommendations and decisions various DEA officials involved in the integrity check process made on those award requests. Further, DEA officials did not always document the reasons for approving awards for individuals who were the subjects of ongoing significant misconduct investigations. Therefore, we could not determine the basis for the exceptions DEA officials made in approving such awards.

The DEA's policy states that employees who are subjects of a significant ongoing misconduct investigation are not eligible for favorable personnel action unless DEA officials are able to make a determination as to the likely outcome of the particular case. However, we found that many employees who received awards while misconduct investigations were pending were later suspended for their misconduct, making such a favorable determination very unlikely.

Recommendations

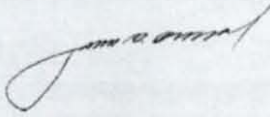
To ensure that the DEA's policy and integrity check process for approving favorable personnel actions for employees are consistently followed and applied, we recommend that:

1. DEA management should ensure that DEA officials are fully aware of and consistently comply with its awards policy for employees who have been subject to discipline for significant misconduct or who are under investigation and, if there is a basis for an exception to the policy, that it is clearly documented.
2. DEA officials should consider conducting integrity checks in close proximity to the issuance of a favorable personnel action to ensure a proposed action is not issued while an employee is the subject of a misconduct investigation. In addition, the DEA should retain for 5 years all results of the integrity checks it conducts, including documentation reflecting final determinations on all award requests and the rationale therefor.

DEA'S POLICY FOR PROMOTION OF EMPLOYEES WITH ADVERSE ACTIONS

Memorandum



<hr/>	
Subject	Date
Policy for Promotion of Employees with Adverse Actions (FFS 570-10)	May 28, 2002
<hr/>	
To	From
All SACs and Office Heads	 John B. Brown, III Deputy Administrator

Recently, issues have been raised concerning the time an employee must wait between a significant adverse action and the time the employee may be promoted, given an award, or receive other favorable personnel actions. A significant adverse action is defined as any discipline resulting in a suspension of 14 days or more.

Generally speaking, either officially or unofficially, the agency has been following a "3-year rule." That policy requires that an employee wait 3 years from the time of a significant adverse action until the employee can be promoted, transferred, etc. Some believe that the 3-year rule is arbitrary and does not take into account the totality of the circumstances. Others believe the 3-year rule is necessary, but that the current definition of a "significant adverse action" is too rigid. There are cases, especially with minimum mandatory penalties, where a 30-day suspension is given for behavior that is less egregious than the behavior that may result in a 10-day suspension. As an example, a person who receives a 30-day suspension based on an unauthorized use of an OGV, such as going to a movie theater in the OGV, may not be promoted while a person who gets 10 days for making inappropriate sexual comments to a fellow employee can be promoted.

To alleviate the concerns raised by our current policy, I am instituting a more pragmatic method of reviewing and approving various personnel actions. In general, the "3-year rule" will apply, but the term "significant adverse action" will no longer be used and the term "significant misconduct" will be utilized instead. Significant misconduct cannot be defined in the same concrete terms as was significant adverse action, but, in general terms, it is misconduct that is of such a nature that would create questions as to whether or not the person could function properly

in the new position, and/or is of such significant issue to the agency that to take the action would be inconsistent with the best interest of the agency and/or its mission.

In determining whether something is significant misconduct, the following factors should be considered:

1. When did the offense occur?
2. When did the discipline occur?
3. Did the offense involve integrity or sexual harassment issues?
4. Was the penalty issued based on minimum mandatory penalty?
5. Did the misconduct affect the employee's position?
6. Did the misconduct occur during duty or off duty hours?
7. Is the employee core or non-core? (Core employees are held to a higher standard than non-core.) Supervisors and managers are held to a higher standard.

These are some of the factors; there could be several others. After careful consideration of the person's misconduct, the appropriate official may determine that a person may receive the action, even though the penalty received was over 14 days.

In general, procedurally nothing will change. All actions proposed or considered that currently go through an integrity check will still go through integrity checks. When an employee is found to be under an active Office of Professional Responsibility investigation (active investigation includes those investigations still being investigated, being written up, under consideration by the Board of Professional Conduct or Deciding Official), action will be held in abeyance until the completion of the process. **Exceptions to this provision are allowable if the investigation has progressed sufficiently to allow the Deputy Chief Inspector and/or the Chairman of the Board of Professional Conduct and/or the Deciding Official to make a determination as to the likely outcome of the particular case. (50-70% of all cases end with no discipline assessed.)**

When an employee is found to have had any discipline in the past 3 years (any suspension), the details of that discipline will be forwarded along with the proposed personnel action to the appropriate Assistant Administrator who will render a preliminary decision. The appropriate official will be the Assistant Administrator for Human Resources for Professional Administrative Technical Clerical Occupations (PATCO), Assistant Administrator for Intelligence (Intelligence Research Specialists), Deputy Assistant Administrator, Office of Diversion Control (Diversion Investigators), and Assistant Administrator for Operations (Special Agents), Assistant Administrator for Operational Support (Chemists). The decisions rendered by the Assistant Administrator will be submitted to the Chief Inspector for the final review. The Deputy Administrator will make the final decision on all Career Board matters.

ACTIONS COVERED

1. Domestic Transfers
2. Field Training Nominee
3. Foreign Transfers
4. Promotions (All Job Series)
5. Voluntary Transfers
6. Training Counselor Nominee
7. Awards
8. Exemptions to Mandatory Retirement

DEA'S INTEGRITY CHECK PROCESS

During the time period of this review, the DEA processed integrity checks using two methods. Prior to December 1, 2013, the integrity check process was manual. DEA offices transmitted their integrity check requests through e-mail or fax. The Office of Personnel Responsibility (OPR), the Board of Professional Conduct (HRB), and the Human Resources Employee Relations Unit (HRER) searched the names of the proposed award recipients to determine whether they had pending investigations, discipline within the previous 3 years, performance-related matters, or performance improvement plans. Approval and disapproval decisions were similarly transmitted back to the requesting offices.

The current electronic process, known as the Integrity Check Application, became effective on December 1, 2013. Requesting offices access the Integrity Check Application through a Concorde program.²⁴ The requesting office sends an e-mail notification to OPR, HRB, and HRER personnel. Each office then queries its respective databases and records to determine whether any relevant information is identified on the DEA employee for whom the integrity check is being performed.

OPR personnel told the OIG that they go to the web-based OPR Case Tracking System to identify any relevant information on the employee. OPR personnel go back 3 years from the date of the integrity check request and identify employees who received a letter of reprimand or more serious disciplinary action. In addition, OPR personnel identify any ongoing OPR misconduct investigations. If any prior discipline (within the previous 3 years) or an ongoing misconduct investigation is identified, OPR personnel will generally recommend that the proposed personnel action be placed in a disapproved or pending status. The recommendation and any supporting documents are forwarded to the Deputy Chief Inspector for his review and recommendation.

HRB personnel told the OIG that the HRB database is queried for three types of information: (1) any pending HRB disciplinary matters on the employee, (2) any adverse discipline (i.e., discipline more severe than a letter of caution) assessed by the HRB, and (3) any disciplinary actions related to certain types of lost property incidents. HRB personnel go back 3 years from the date of the integrity check request to identify any relevant information. If any instances are identified, HRB personnel recommend that the matter be put on pending status and attach any relevant documents to the HRB narrative section of the integrity check screen.

HRER personnel told the OIG that three sources are queried during the HRER's review. HRER personnel check the HRER's internal databases, the HRER's pending matters, and the Deciding Official's databases to identify any information

²⁴ DEA personnel stated that on occasion an integrity request might still be received outside the electronic system because the requesting office might not have access to Concorde or there is a time issue on the request.

APPENDIX 2

related to the DEA employee. HRER personnel go back 3 years from the date of occurrence of the most recent disciplinary action taken on the employee. In addition to disciplinary actions associated with misconduct, HRER personnel also identify disciplinary actions associated with performance-related issues, such as performance improvement plans. If any disciplinary actions or performance-related issues are identified, HRER personnel recommend that the personnel action be put on pending status and attach any relevant documents to the HRER's narrative on the integrity check screen.

OPR, HRB, and HRER personnel told the OIG that if all three offices do not identify any information on the employee, they will all recommend approval. In these instances, the requesting office is notified electronically that all three offices have recommended approval and that the requesting office can proceed with processing the proposed personnel action. No further review is done by a Deputy Assistant Administrator, an Assistant Administrator, the Deputy Chief Inspector, or the Chief Inspector on these matters. However, if OPR disapproves at the outset, the award is denied and the requesting office is notified.

If any of the three offices recommend a "pending" status on the action, all three offices' recommendations and any supporting documents that are attached with the respective office's recommendation are forwarded to the appropriate Deputy Assistant Administrator for review and recommendation. The Deputy Assistant Administrator's recommendation and those of the three offices are then forwarded to the appropriate Assistant Administrator for review and recommendation. Once the Assistant Administrator has made a recommendation, the integrity check information is forwarded to the Chief Inspector for the final approval or disapproval on the matter. The requesting office is electronically notified about the final decision. No reason is given for those instances in which the final decision is disapproval.

Before the electronic process was activated in December 1, 2013, the integrity check process was performed manually from the submission of the request to the notification back to the requesting offices on the decision to approve or disapprove the request. Results of the integrity checks conducted and the recommendations and decisions made by OPR, HRB, HRER, Assistant Administrators, and Chief Inspectors were all recorded on hardcopy documents. Each respective office may or may not have retained the hardcopy documents. Furthermore, each office did not provide the others with a copy of their respective results. As a result, no one office would necessarily have the entire package containing all of the documents received and generated by everyone involved in the integrity check process. Because there was no central repository for all of these documents, the integrity check results, the recommendations, and the decisions made by various DEA personnel are not always readily available or are no longer maintained at the respective DEA offices.

**OTHER LAW ENFORCEMENT COMPONENT VETTING POLICIES
FOR FAVORABLE PERSONNEL ACTIONS**

As mentioned above, for informational purposes, here we provide a more detailed discussion of the vetting process the other law enforcement components use when a favorable personnel action is proposed. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); the Federal Bureau of Investigation (FBI); and the U.S. Marshals Service have varying policies for vetting employees who are candidates for a promotion, award, or other favorable personnel action.

For example, ATF Order 2311.1A, Promotions, requires the ATF Office of Professional Responsibility and Security Operations to review its files for previous or currently open integrity investigations on any applicant for merit promotion. However, the Assistant Director responsible for the employee's division or directorate may waive this requirement. ATF Order 2400.8, Performance Management and Recognition, outlines specific requirements for the type of review conducted when an employee is under consideration for an award, bonus, quality step increase, or an external award. For example, honorary award recipients must not have had any disciplinary action in the previous 3 years, unless the Deputy Director makes an exception.

The FBI's Merit Promotion and Placement Plan Policy Directive and Policy Guide requires the Human Resources Division to perform name checks on all internal FBI candidates for competitive or noncompetitive promotions or reassignments to GS-14 and GS-15 professional staff positions. Name checks consist of a complete check of FBI records for any pending or past disciplinary actions and equal opportunity investigations within the previous 3 years. The FBI Special Agent Mid-Level Management System Policy Directive and Policy Guide, which governs promotions for employees at the GS-14 level or below, states that it is the division head's responsibility to determine whether there are any disciplinary issues with respect to the candidate to justify overriding the local office's selection for a promotion. Generally, an FBI employee who is the subject of a pending administrative inquiry which could result in disciplinary action should not be recommended for an award. (See the FBI Manual of Administrative Operations and Procedures, section 5-24.4, p. 1.)

U.S. Marshals Service Policy Directive 3.40(C), Discipline and Adverse Actions, prohibits promotions, bonuses, or awards for employees currently under investigation or with "recent" serious misconduct. The Policy Directive does not specify a period in which an employee is ineligible to receive a favorable personnel action following the imposition of discipline for serious misconduct.

DEA'S RESPONSE TO THE FINAL DRAFT REPORT



U. S. Department of Justice
Drug Enforcement Administration


www.dea.gov

Washington, D.C. 20537

OCT 14 2015

MEMORANDUM

TO: Nina S. Pelletier
Assistant Inspector General
Evaluations and Inspections
Office of the Inspector General

FROM: 
Michael A. Dixon
Acting Deputy Chief Inspector
Office of Inspections

SUBJECT: DEA's Response to the OIG Draft Report: *"Bonuses and Other Favorable Personnel Actions for Drug Enforcement Administration Employees Involved in Alleged Sexual Misconduct Incidents Referenced in the OIG's March 2015 Report"*

The Drug Enforcement Administration (DEA) has reviewed the Department of Justice (DOJ) Office of the Inspector General's (OIG) Draft Report entitled, *"Bonuses and Other Favorable Personnel Actions for Drug Enforcement Administration Employees Involved in Alleged Sexual Misconduct Incidents Referenced in the OIG's March 2015 Report."* DEA acknowledges OIG's efforts in providing additionally information for a Congressional request following the OIG's March 2015 report of the *"Review of the Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components."*

The DEA recognized that awards should not be granted to nominated recipients who have an open investigation for having alleged to commit or determined to have committed serious misconduct. In December 2013, DEA implemented an electronic integrity check system to track favorable personnel action nominations to provide an efficient and effective method for deciding officials to process favorable personnel action nominations. The electronic integrity check system also enables the electronic maintenance and storage of favorable personnel action decisions in accordance with requisite governmental standards.

Following a DEA award decision, there is an additional DOJ process by which favorable personnel actions are processed. This information was omitted from OIG's report. It should be noted that after DEA has made an award decision, DEA was not in full control of "when" bonuses and awards were provided to nominated recipients. DOJ conducts a fiscal authorization process for all monetary award payments for DEA. The fiscal authorization usually occurs months after the initial integrity check. Regrettably between the time of an initial integrity check and when DOJ issues the monetary award payment, some type of misconduct may have occurred. DEA instituted additional processes in 2013 to alleviate this action from occurring in future instances.

The OIG makes two recommendations in the report. DEA provides the following response to the recommendations.

Recommendation 1. DEA management should ensure that DEA officials are fully aware of and consistently comply with its awards policy for employees who have been subject to discipline for significant misconduct or who are under investigation and, if there is a basis for an exception to the policy, that it is clearly documented.

DEA Response

DEA concurs with the recommendation. DEA management involved in the favorable personnel action decisions have been provided with current policy, which instructs deciding officials of the protocols to approve or disapprove favorable personnel actions, to ensure consistent compliance with its guidance.

The December 2013 implementation of DEA's electronic integrity check system also enables an efficient and effective method for deciding officials to process favorable personnel action nominations. The system tracks favorable personnel action nominations, enables DEA Headquarters (HQ) components to attach informative and conclusionary documentation for deciding officials, and permits deciding officials the opportunity to provide explanatory comments, to include any basis for exception to the guidance, for their decision.

Based on this information, DEA requests closure of this recommendation.

Recommendation 2. DEA officials should consider conducting integrity checks in close proximity to the issuance of a favorable personnel action to ensure a proposed action is not issued while an employee is the subject of a misconduct investigation. In addition, DEA should retain for 5 years all results of the integrity checks it conducts, including documentation reflecting final determinations on all award requests and the rationale therefor.

DEA Response

DEA concurs with the recommendation and has been utilizing an electronic integrity check system since December 2013 to ensure employees nominated to receive favorable personnel actions are vetted by the proper HQ components for approval or disapproval. Once the nomination is approved by all stakeholders, the approved nomination is forwarded to the DOJ for dispensation of a monetary award or bonus. Once DOJ has authorized monetary dispensation, DEA has a limited amount of time to conduct a secondary screen of nominees to ensure employees have not had an allegation of serious misconduct since the first date of DEA's approval.

To ensure payments for favorable personnel action to employees under investigation for serious misconduct do not again occur, DEA initiated a process of conducting a second integrity check immediately prior to dispensing any award payments.

Based on this information, DEA requests closure of this recommendation.

Thank you for the opportunity to respond to the recommendations made in the OIG report. If you have any questions regarding this response, please contact the Audit Liaison Team, on 202-307-8200.

OIG ANALYSIS OF DEA'S RESPONSE

The Office of the Inspector General (OIG) provided a draft of this report to the Drug Enforcement Administration (DEA) for its comment. The DEA's response is included in Appendix 4 of this report. The OIG analysis of the DEA's response and actions necessary to close the recommendations are discussed below.

Recommendation 1: DEA management should ensure that DEA officials are fully aware of and consistently comply with its awards policy for employees who have been subject to discipline for significant misconduct or who are under investigation and, if there is a basis for an exception to the policy, that it is clearly documented.

Status: Resolved.

DEA Response: DEA concurs with the recommendation. DEA management involved in the favorable personnel action decisions have been provided with current policy, which instructs deciding officials of the protocols to approve or disapprove favorable personnel actions, to ensure consistent compliance with its guidance.

The December 2013 implementation of DEA's electronic integrity check system also enables an efficient and effective method for deciding officials to process favorable personnel action nominations. The system tracks favorable personnel action nominations, enables DEA Headquarters (HQ) components to attach informative and conclusionary documentation for deciding officials, and permits deciding officials the opportunity to provide explanatory comments, to include any basis for exception to the guidance, for their decision.

Based on this information, DEA requests closure of this recommendation

OIG Analysis: The dissemination of the DEA's current policy regarding favorable personnel actions to DEA management and the December 2013 implementation of the DEA's electronic integrity check system are partially responsive to our recommendation. By January 30, 2016, please provide specific information detailing when the current DEA policy was provided to DEA management. In addition, please provide examples (screenshots) of how the new integrity check system allows deciding officials to attach documentation and explanatory comments, particularly in cases where an exception to DEA policy was made.

Recommendation 2: DEA officials should consider conducting integrity checks in close proximity to the issuance of a favorable personnel action to ensure a proposed action is not issued while an employee is the subject of a misconduct investigation. In addition, the DEA should retain for 5 years all results of the integrity checks it conducts, including documentation reflecting final determinations on all award requests and the rationale therefor.

Status: Resolved.

DEA Response: DEA concurs with the recommendation and has been utilizing an electronic integrity check system since December 2013 to ensure employees nominated to receive favorable personnel actions are vetted by the proper HQ components for approval or disapproval. Once the nomination is approved by all stakeholders, the approved nomination is forwarded to the DOJ for dispensation of a monetary award or bonus. Once DOJ has authorized monetary dispensation, DEA has a limited amount of time to conduct a secondary screen of nominees to ensure employees have not had an allegation of serious misconduct since the first date of DEA's approval.

To ensure payments for favorable personnel action to employees under investigation for serious misconduct do not again occur, DEA initiated a process of conducting a second integrity check immediately prior to dispensing any award payments.

Based on this information, DEA requests closure of this recommendation.

OIG Analysis: The implementation of the new integrity check system and the initiation of a new process for conducting a second integrity check prior to dispensing awards are partially responsive to our recommendation. By January 30, 2016, please provide information regarding when the DEA began to conduct additional integrity checks prior to the issuance of awards. Please provide copies of any policies, guidance, or other documentation reflecting how this change in process was communicated to the appropriate officials. In addition, please provide information on how long integrity check information is maintained in the new system.

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