

U.S. DEPARTMENT OF AGRICULTURE
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	OPI: Office of Human Resources Management	

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1. PURPOSE

This Departmental Regulation (DR) establishes the Department of Agriculture’s (USDA) policy and assigns responsibility to implement a Department-wide accountability system that contributes to Mission Area, Agency, and Staff Office performance by:

- a. Aligning human capital goals and programs with USDA’s mission and priorities;
- b. Systematically monitoring and evaluating the results of human capital management policies, programs, and activities;
- c. Analyzing compliance with merit system principles; and

- d. Identifying necessary improvements and promoting best practices.

2. BACKGROUND

USDA is committed to accomplishing its mission through the strategic management of human capital. The quality and effectiveness of USDA's human capital management programs directly impact the productivity, efficiency, and mission accomplishment of each Mission Area, Agency, and Staff Office.

This DR establishes USDA policy for human capital assessment and accountability and is established consistent with the requirements in Civil Service Rule X, codified as 5 CFR 10.2; the Homeland Security Act of 2002 (Public Law 107-296 and also known as the Chief Human Capital Officers Act); 5 CFR Part 250; delegated examining authority as set forth in Interagency Delegated Examining Agreement, DOA-1; and the Demonstration Project Authority (Public Law 105-277). As necessary and appropriate, the Department will coordinate accountability activities with other oversight entities including, but not limited to, the Office of Personnel Management (OPM), Office of Special Counsel (OSC), and the Government Accountability Office (GAO). The Director, Office of Human Resources Management (OHRM), has authority to ensure executives, managers, supervisors, and each USDA servicing human resources (HR) office adheres to this DR and to the merit system principles.

This DR is to be used with the USDA Accountability Handbook, which provides necessary details about the conduct and requirements of accountability review activities.

3. SPECIAL INSTRUCTIONS

This policy supersedes the Departmental Regulation DR 4020-250-001 *USDA Human Capital Accountability System*, dated September 22, 2006.

4. REFERENCES

This DR relies upon the following authorities, which provide the framework for human capital management and accountability within the Federal government:

- a. Public Law 107-296, Chief Human Capital Officers Act of 2002, codified in title 5 U.S.C. §1103 (c);
- b. Public Law 105-277, Demonstration Project Authority;
- c. Title 5 United States Code (U.S.C.) §1104, "Delegation of authority for personnel management;"
- d. Title 5 U.S.C. §1402, "Authority and functions of agency Chief Human Capital

Officers;”

- e. Title 5 U.S.C. §2301, “Merit system principles;” (see Appendix A)
- f. Title 5 U.S.C. §2302, “Prohibited personnel practices;” (see Appendix B)
- g. Title 5 U.S.C. §305, “Systematic agency review of operations;”
- h. Title 31 U.S.C. §1115, “Performance plans;”
- i. Title 5 Code of Federal Regulations (CFR) Part 250, “Personnel management in agencies;”
- j. Title 7 CFR Part 2.92, “Director, Office of Human Resources Management;”
- k. Office of Management and Budget (OMB) Circular A-11 (2006), Sections 51.8, 85.1 and 85.3; and
- l. Interagency Delegated Examining Agreement, DOA-1, dated March, 2011.

5. APPLICABILITY

This DR is applicable Department-wide throughout USDA and incorporates all Mission Area, Agency, and Staff Office human resources offices, programs, functions wherever located and where ever HR activities are conducted. The scope includes both the Civil Service and the Foreign Service.

The Accountability System contributes to Departmental performance by ensuring each of the Human Capital Framework (HCF) systems is fully operational and effective throughout USDA.

6. RESPONSIBILITIES

- a. Responsibility and authority of the U. S. Secretary of Agriculture, Sub Cabinet Officials, and Agency Administrators:
 - (1) Establish and communicate the Department’s commitment to the merit system principles and human capital accountability; and
 - (2) Provide leadership and direction to implement the Administration’s goals and provide overall direction for transformational activities, especially those activities related to human capital management.
- b. Responsibility of the Chief Human Capital Officer (CHCO)

- (1) Provides overall direction and guidance in support of the strategic management of human capital for the Department; and
 - (2) Directs the development and implementation of the Department's human capital strategy.
- c. Responsibility and authority of the Director, OHRM
- (1) Directs and executes all authorities related to human capital management;
 - (2) Aligns USDA human capital policies and programs with the organizational mission, strategic goals, and expected performance outcomes;
 - (3) Allocates required resources (people, time, funds, materials), as appropriate, to implement the USDA Strategic Human Capital Plan and Human Capital Accountability System;
 - (4) Ensures that initiatives are consistent and coordinated USDA-wide and support the Secretary's priorities; and
 - (5) Provides information to the Secretary and Sub Cabinet Executives through the Assistant Secretary for Administration outlining human capital accountability assessment results and significant human capital issues.
- d. Responsibility and authority of the Strategic Human Resources Planning and Accountability Division, OHRM:
- (1) Provides direction, assistance, and policy interpretation to the Mission Area, Agency, and Staff Office HR offices on all new and existing laws, regulations, and initiatives affecting human capital management and accountability. Ensures periodic communication with HR offices, and works with HR staff throughout USDA to resolve issues;
 - (2) Develops, implements, and interprets human capital policies, procedures, standards, and systems for effective utilization and management of HR to accomplish the overall USDA mission;
 - (3) Coordinates internal and external management of the USDA human capital initiatives and provides guidance and direction to various stakeholders;
 - (4) Develops, implements, manages, and monitors the USDA Human Capital Accountability System, recommends needed changes or modifications and evaluates the effectiveness and efficiency of HR management throughout USDA;
 - (5) Develops and implements Department-wide audit schedules and evaluation

priorities for conducting accountability audits, including auditing of the administration of the USDA Delegated Examining and DEMO authorities and completes evaluation of each of the HCF systems within a 3 year cycle or other alternative cycle based upon OPM requirements;

- (6) Determines the targeted areas of emphasis for each accountability review cycle, conducts data analyses, and prepares objective measurable standards;
 - (7) Communicates findings from accountability reviews, which include recommendations to strengthen and improve human capital activities; follows up on actions required to correct any discrepancies, and shares lessons learned and innovative ideas;
 - (8) Reviews and makes recommendations regarding Departmental policies and procedures in light of findings from accountability reviews and makes necessary modifications to update or improve such policies and procedures;
 - (9) Monitors all issues or problems resulting from OPM, OHRM, or agency self-audits or when discovered by other investigations, i.e., OIG, OSC, etc.; and
 - (10) Retains authority to rescind the delegated human resources authority of any Mission Area, Agency, or Staff Office at any location.
- e. Responsibility and authority of Deputy Administrators for Management and Mission Area, Agency, and Staff Office HR Directors:
- (1) Ensure the integrity of human capital programs consistent with the merit system principles;
 - (2) Conduct evaluation of their own HR management programs annually at whatever geographical area that such HR activity is conducted within the agency, whether or not that activity includes merit promotion or delegated examining, and forward findings and corrected actions to OHRM;
 - (3) Cooperate with and support USDA human capital accountability program by participating in on-site and off-site audits; including pre- and post-audit meetings;
 - (a) Ensure reimbursement of funds for of travel for the USDA audit team members whenever USDA- or OPM-led audits are conducted within an HR Director's own organization; and
 - (b) Provide properly trained senior staff to participate as members of an accountability audit team when USDA- or OPM-led audits are conducted in other USDA HR offices.

- (4) Take timely and effective action to remediate deficiencies;
 - (5) Conduct annual DEU self-audits and forward findings to OHRM (if authorized to use USDA's delegated examining authority);
 - (6) Conduct annual DEMO self-audits and forward findings to OHRM (if authorized to use USDA's DEMO authority);
 - (7) Collect and analyze data in support of program assessment activities;
 - (8) Educate executives, managers, and supervisors on merit system principles and their accountability for human capital integrity and share information on systemic issues, as appropriate;
 - (9) Provide information or systems access to OHRM representatives for on-going oversight activities and to OPM representatives as necessary to conduct an accountability audit;
 - (10) Furnish necessary support to OHRM representatives in support of their assessment and evaluation of requirements;
 - (11) Respond to OHRM and OPM evaluation findings, recommendations, and required actions within required timeframes; and
 - (12) Initiate appropriate corrective and/or adverse action for violations of merit system principles and/or the commission of prohibited personnel practices within required timeframes.
- f. Responsibility and authority of USDA Executives, Senior Managers, and Supervisors:
- (1) Integrate human capital goals and other accountability initiatives into Agency Performance Plans;
 - (2) Promote the merit system principles in all HR decisions and actions; and
 - (3) Ensure timely decisions on disciplinary or adverse actions proposed for violations of merit system principles and/or the commission of prohibited personnel practices.
- g. Responsibility and authority of the Office of Budget and Program Analysis:
- (1) Shares quarterly performance information with OHRM; and
 - (2) Monitors human capital coordination from a budgetary standpoint.

- h. Responsibility and authority of the Office of the Chief Financial Officer:
 - (1) Shares Government Performance and Results Act results with OHRM; and,
 - (2) Shares Competitive Sourcing information with OHRM.

7. DEFINITIONS

- a. Accountability System. A set of related policies and practices that contributes to USDA's human capital management performance by ensuring that each HCF system is fully operational and effective throughout USDA. This is done through (1) systematic monitoring and evaluating of the results of human capital management policies, programs, and activities; (2) by analyzing compliance with merit system principles; and (3) by identifying, implementing and monitoring necessary improvements.
- b. Audit. A systematic, independent process of reviewing and evaluating documents and processes to determine the extent to which criteria are fulfilled; i.e., the USDA strategic human capital goals and objectives; OPM criteria for achieving HCF standards; merit system principles; veterans' preference rules; and laws, regulations, and policies enacted to prevent prohibited personnel practices.
- c. Chief Human Capital Officers' Act of 2002 (CHCO Act). The Act that established the agency CHCO, strategic human capital management systems, the relationship of strategic human capital management to agency performance plans and reports, and HR flexibilities. The Act clarifies management accountability for managing HR.
- d. Delegated Examining. Authority delegated from OPM to the Department allowing USDA to advertise and examine applicants for positions in the civil service when a) the applicant is applying from outside the Federal workforce, b) the applicant is a Federal employee but does not have competitive status, or, c) the applicant is a Federal employee and does have competitive service. Appointments made through delegated examining authority are subject to civil service laws and regulation in order to ensure fair and open competition, recruitment from all segments of society, and selection on the basis of the applicant's merit (competencies, knowledge, skills, and abilities (5 U.S.C. § 2301)).
- e. Demonstration Project (DEMO). Legislative authority granted to USDA allowing the Agricultural Research Service and the Forest Service to advertise and examine applicants for positions in the civil service when a) the applicant is applying from outside of the Federal workforce, b) the applicant is a Federal employee but does not have competitive status, or c) the applicant is a Federal employee and does have competitive status. Appointments made through DEMO are subject to civil service laws and regulations to ensure fair and open competition, recruitment from all segments of society, and selection based on merit (competencies, knowledge, skills,

and abilities.

- f. Human Capital Accountability. The responsibility shared by USDA senior leadership including the CHCO, all levels of management, and HR practitioners to ensure that people are managed efficiently and effectively in support of agency mission accomplishment and in accordance with merit system principles.
- g. Human Capital Framework: The HCF establishes and defines human capital systems, including critical success factors and metrics for those systems that together provide a single, consistent definition of human capital management for the Federal Government. HCF fuses human capital management to the merit system principles and other civil service laws, rules, and regulations.
- h. Merit System Principles. The nine principles codified in 5 U.S.C. 2301, by which Federal personnel management is to be implemented. The merit system principles provide supervisory guidance on managing HR. These principles are foundational to the Federal human capital management system and ensure that selections for Federal jobs are fair, open, competitive, and free of political coercion or illegal discrimination.
- i. Metrics. Standards of measurement which provide a basis for comparison. Strategic human capital management requires a reliable and valid set of metrics that provides an accurate baseline against which individual agency progress can be assessed.
- j. Program Assessments. One of the two core components of the USDA Human Capital Accountability System that identifies how and when progress on meeting standards associated with the HCF systems will be measured. Assessments are based upon a cyclical review schedule that identifies specific measures, methods, and timeframes for assessing results.
- k. Prohibited Personnel Practices. These 13 practices are codified in 5 U.S.C. 2302 are to be avoided and describe results of outcomes of poor (illegal) management practices that never should occur. Executives, managers, supervisors, and HR practitioners are held accountable for making HR decisions free of prohibited personnel practices.
- l. Program Compliance Audits. One of the two core components of the USDA Human Capital Accountability System that establishes a structured and formal method for conducting independent compliance audits of HR office operations. Audits are based upon a cyclical review schedule that identifies specific audit sites, scope, methodologies, and close out procedures.
- m. Strategic Human Capital Plan. A plan that ensures the alignment between human capital management strategies and the USDA mission, goals, and objectives through analysis, planning, investment, and management of human capital programs. The plan prescribes Departmental procedures to ensure that its employees have the mission-critical competencies required to carry out the Department's strategic goals

including workforce planning and analysis and deployment; succession management and planning; talent management; identification of performance measures and milestones; and addressing unique programmatic challenges. The plan is an instrument that supports accountability throughout the Department.

8. POLICY

The Secretary; the Director, OHRM; the Mission Areas, Agencies, and Staff Offices within USDA are committed to the continuous improvement of human capital programs through a robust human capital accountability system that aligns with and supports mission accomplishment. It is, therefore, USDA policy to:

- a. Comply with all applicable laws, rules, Federal-wide regulations, and OPM policies governing accountability, merit system principles, and Departmental regulations;
- b. Provide HR offices with policy and guidance to improve the efficiency and effectiveness of their human capital programs and adhere to merit system principles;
- c. Initiate appropriate corrective action for violations of merit system principles and/or the commission of prohibited personnel practices.
- d. Place HR Offices that receive unsatisfactory audits on an Administrative Improvement Plan and/or rescind certain HR authorities pending remediation.

9. HUMAN CAPITAL ACCOUNTABILITY AT USDA

The foundation of USDA's human capital accountability system is comprised of Civil Service laws, rules, merit system principles, Federal-wide regulations, OPM guidance, third-party decisions, and USDA Departmental Regulations. Upon this foundation, rest three "pillars" of accountability:

- a. The first pillar of accountability is the integrity of each USDA Executive, Manager, and Supervisor as they engage in day-to-day merit-based human capital activities. The Department's leadership establishes human capital goals and objectives, determines measures and resource needs, and modifies initiatives based upon results and changing requirements. USDA leadership accountability is ensured through the Department's Senior Executive Service (SES) Performance Management System which links performance requirements to Departmental strategic management objectives. Performance requirements for human capital management and merit system principles are integrated through all levels of management and supervision.
- b. The second pillar of accountability is comprised of each HR Office and each individual HR practitioner working within that office. It is incumbent upon the HR Office and practitioner to work in close concert with USDA executives, managers,

and supervisors to ensure the efficient and effective delivery of the full range of HR programs, policies, and processes are consistent with merit system principles. HR Offices are required to have an internal accountability and oversight function to review and ensure the work of the office meets or exceeds the standards established by statute, Federal-wide regulation, OPM instructions, and USDA Departmental Regulations.

- c. The third pillar of accountability is OHRM's oversight of all HR activities, Department-wide, to ensure human capital strategies are effective and that all human capital activities are merit-based. OHRM provides leadership, coordination, guidance, and technical expertise in all areas related to the management of USDA's human capital programs.

The effective and efficient accomplishment of USDA's mission rests upon these three pillars. Weakness in one pillar jeopardizes mission accomplishment as a whole and erodes the public's confidence in their government.

The USDA Human Capital Accountability System defines the Department's role in human capital accountability, but does not replace the Mission Area, Agency, or Staff Office HR Directors' or line managers' responsibilities for merit-based human capital decisions. OPM and/or Department-led program assessments and program compliance audits evaluating human capital programs will constitute the core components of the USDA Human Capital Accountability System. As part of the compliance audit process, each Mission Area, Agency, or Staff Office HR office will perform recurring internal accountability reviews of all HR activities (DE, DEMO, performance management, awards, personnel processing, training, etc.) to ensure that its practices are consistent with merit system principles, statutory and regulatory requirements, OPM's HCF, and USDA policies.

10. THE HUMAN CAPITAL ACCOUNTABILITY SYSTEM

USDA's accountability system ensures that all aspects of human capital management policies, programs, and operations align with the USDA Strategic Plan, the USDA Strategic Human Capital Plan, and the Secretary's priorities. The Strategic Human Capital Plan reflects the Department's values and priorities in creating and sustaining a diverse, high performing, and well trained, workforce and leadership corps through the implementation of human capital programs that are mission-focused, effective, efficient, and that comply with appropriate laws, regulations, and merit system principles.

Maintaining a rigorous and continuous improvement process requires coordination across Mission Areas, Agencies, and Staff Offices. This coordination will be accomplished through the Departmental strategic planning and budget process. The successful implementation of USDA's human capital accountability system will ensure that:

- a. Human capital goals and programs are aligned with and support USDA's mission;

- b. Human capital decisions are data-driven; and routinely informed by valid, reliable, complete, and current data;
- c. Agency leaders leverage human capital data to manage risk and highlight trends before crises develop;
- d. Managers, supervisors, and employees are held accountable for effective and efficient performance;
- e. Workforce profile data, performance goals, measures and risk areas are reflected in workforce planning documents;
- f. Executives, managers, supervisors, and HR practitioners are held accountable for HR decisions and actions;
- g. The effectiveness and efficiency of the HR management function is assessed and that human capital programs and policies adhere to merit system principles and other pertinent laws and regulations; and
- h. Plans to address deficiencies identified during accountability reviews or audits are implemented timely, and in a manner that eliminates a recurrence of the same or substantially similar deficiency.

The Director, OHRM, oversees operation of the USDA Human Capital Accountability System throughout the Department. The Accountability System relies on the integration of multiple accountability activities that together form the basis for a structured and comprehensive review of human capital programs throughout the Department. It serves as the primary source for human capital performance standards, metrics, reporting requirements, and for the monitoring and evaluation process that will ensure that human capital planning and deployment is guided by data-driven results-oriented processes. Accountability activities cover all HCF systems and include a robust, independent, cyclical audit schedule. The results of these accountability activities will document the extent to which human capital goals are met and how they are used to drive continuous human capital improvement throughout the Department.

11. ACCOUNTABILITY ACTIVITIES AND METHODOLOGY

The USDA Human Capital Accountability System consists of two core components that provide an integrated approach to evaluating the results of human capital programs, policies, and processes that are coordinated at the Headquarters level but implemented comprehensively at the agency level:

- a. Program Assessments: Program assessments track, on a periodic basis, a comprehensive list of specific measures, methods, and timeframes that are aligned to

both the HCF systems and the USDA Strategic Human Capital Plan. Data collection methods include, but are not limited to, record and document reviews, data analysis, survey results, interviews, and focus groups.

- b. Program Compliance Audits: Program compliance audits consist of formal, structured, cyclical reviews of HR operations. With a focus on assessing compliance with merit system principles and other applicable laws, rules, and regulations and Department policies, evaluation methods include, but are not limited to, programmatic and transactional reviews and individual and group interviews. Program compliance audits include annual, independent audits of USDA's employment programs (DE, DEMO, Merit Promotion, Excepted Service appointments, reinstatements, transfer, etc.); cyclical, independent audits of HR offices that focus on assessing compliance with merit system principles; and annual, internal reviews conducted by human resource offices that focus on both the program compliance and program assessment aspects of human capital management. All are required.

12. REPORTING REMEDIATION AND IMPROVEMENT ACTIONS

OHRM will issue guidance on reporting and data analysis as needed. Annual requirements for human capital reporting will be updated and modified based on new or changing OPM or USDA requirements, and ongoing assessments of human capital effectiveness.

OHRM tracks the results of program assessments and corrective actions on a continuous basis. When warranted, the results and any recommendations will be presented to the Director, OHRM.

OHRM also tracks the results from program compliance audits and the corrective actions arising from them. OHRM will determine the adequacy of any responses to audit reports. Pending issues will be referred to the Director, OHRM, for final resolution which may include a directive to the mission area/agency HR Director to implement recommendations.

Innovative or outstanding HR programs or practices identified by OHRM will be shared as 'best practices' with the entire USDA human resources community.

13. EVALUATION OF AGENCY ACCOUNTABILITY SYSTEM

OHRM oversees the evaluation of the USDA Human Capital Accountability System by reviewing the results of accountability activities, assessing the state of the USDA Strategic Human Capital Plan, and directing any necessary follow up actions. After completing the evaluation, OHRM will ensure that the following year's accountability activities are updated to correspond to new and/or revised human capital goals, and improved or expanded measures to ensure that designated USDA officials are meeting

their accountability responsibilities.

On a biennial basis, OHRM will review this DR to ensure it is effective in achieving strategic alignment; maintaining a robust, data-driven, results-oriented process with continuous improvement; and enhancing organizational accountability.

-END-

Appendix A Merit Systems Principles

Human Resources management is based on and embodies the Merit System Principles (5 U.S.C. 2301). The merit system principles are the public's expectations of a system that is efficient, effective, fair, open to all, free from political interference, and staffed by honest, competent, and dedicated employees. The merit system principles are:

1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
2. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
3. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
4. All employees should maintain high standards of integrity, conduct, and concern for the public interest.
5. The Federal work force should be used efficiently and effectively.
6. Employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
7. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
8. Employees should be—
 - o protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
 - o prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
9. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—
 - o a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Appendix B
Prohibited Personnel Practices

Under 5 U.S.C. §2302(b)(1)-(b)(12) a Federal employee authorized to take, direct others to take, recommend or approve any personnel action may not:

1. Discriminate (including discrimination based on marital status and political affiliation).

Example: Supervisor Joe refuses to promote Employee Jane because Jane is a registered Republican; or his refusal is because she is a single mother.

2. Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics.

Example: Selecting Official Joe hires Applicant Jack based on Senator Smith's recommendation that Jack be hired because Jack is a constituent; or fails to hire Applicant Jane because of Congressman Smith's recommendation based on the Congressman's friendship with Jane's parents.

3. Coerce the political activity of any person, or take action against any employee as reprisal for refusing to engage in political activity.

Example: Supervisor Jane takes away significant job duties of Employee Jack because Jack will not make a contribution to Jane's favorite candidate.

4. Deceive or willfully obstruct any person from competing for employment.

Example: Supervisor Joe, located in Headquarters, orders that no vacancy announcements be posted in the field office where Employee Jack works because he does not want Jack to get a new job; or falsely states that there will be extensive travel in the position when he knows that there is no travel.

5. Influence any person to withdraw from competition for a position to improve or injure the employment prospects of any other person.

Example: Supervisor Jane, in an effort to hire Employee Joe, tells Employee Jack that he should not apply for a position because he is not qualified and will never be selected. Employee Jack is qualified.

6. Give an unauthorized preference to a person to improve or injure the employment prospects of any particular employee or applicant.

Example: Supervisor Jane specifies that Spanish speaking skills are necessary for a vacant position, for the purpose of selecting Employee Jack, who speaks fluent Spanish. The position, however, does not require Spanish-speaking skills.

7. Engage in nepotism.

Example: Second-level Supervisor Jane asks First-level Supervisor Joe to hire her son; or to promote her daughter.

8. Take a personnel action against an employee because of whistle-blowing.

Example: Supervisor Joe directs the geographic reassignment of Employee Jack because Jack reported safety violations to the agency's Inspector General; or because employee Jill reported a gross waste of funds to the Office of Internal Affairs.

9. Take a personnel action against any employee because of the exercise of an appeal, complaint, or grievance right.

Example: Supervisor Jane places Employee Jack on an undesirable detail because Employee Jack filed an administrative grievance about his performance rating.

10. Discriminate against an employee on the basis of conduct, which does not adversely affect the performance of the employee.

Example: Jack's employment is terminated because he attended a "Gay Pride" march; or he attended a "Pro-Life" event; or he attended an animal rights rally; or he attended a gun-owners' rights meeting.

11. Take or fail to take a personnel action, if such action would violate a veterans' preference requirement.

Example: Supervisor Jane hired Employee Jack, without considering Veteran Jennifer, who was included on the list of eligible employees. (OSC's jurisdiction is for disciplinary actions only; the Dept. of Labor has jurisdiction to investigate for corrective actions.)

12. Take a personnel action against an employee which violates a law, rule, or regulation which implements a merit system principle.

Example: Supervisor Joe terminates the probationary appointment of Employee Jack because of Jack's letter to the editor criticizing affirmative action - a valid exercise of First Amendment rights, a law implementing a Merit System Principle.

13. Implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."