

**DEFENSE INTELLIGENCE AGENCY  
REGULATION NO. 22-7**

**HEADQUARTERS, DEFENSE <sup>X-4</sup>  
INTELLIGENCE AGENCY 2-2  
WASHINGTON DC 20340  
7 April 1986**

**CIVILIAN PERSONNEL**

**Adverse Actions**

**SECTION A—Definitions, Policy, Authorities and Responsibilities**

	<i>paragraph</i>
Purpose .....	1
References .....	2
Applicability .....	3
Supersession .....	4
Definitions .....	5
Policy .....	6
Authorities .....	7
Responsibilities .....	8

**SECTION B—Suspension for 14 Days or Less**

Coverage .....	9
Exclusions .....	10
Standard for Action .....	11
Employee Entitlements .....	12
Procedures .....	13

**SECTION C—Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough of 30 Days or Less**

Coverage .....	14
Exclusions .....	15
Standard for Action .....	16
Employee Entitlements .....	17
Procedures .....	18

**SECTION D—Suspension and Termination of Employment for Reasons of National Security and Termination of Employment in the Interest of the United States**

General .....	19
Use of Suspension and Removal Authorities .....	20
Suspension Under 5 U.S.C. 7532 .....	21
Termination Under 5 U.S.C. 7532 .....	22
Termination Under 10 U.S.C. 1604(e) .....	23

OPR: RHR-1

DIAR 22-7

## Section A

### Purpose, Definitions, Policy, Authorities, and Responsibilities

**1. Purpose:** To establish policy and procedures for the suspension, removal, termination, reduction in grade or pay and furlough for 30 days or less of civilian employees.

**2. References:**

- a. Title 5, United States Code, Chapter 75.
- b. Title 10, United States Code, Chapter 83.
- c. Veterans' Preference Act of 1944, as amended.
- d. DoD Directive 5105.21, "Defense Intelligence Agency," 19 May 1977.
- e. Executive Order 10450, 27 April 1943, as amended.
- f. DoD 5200.2-R, "Personnel Security Program," December 1979.
- g. Director of Central Intelligence Directive (DCID) 1/14.

**3. Applicability:** This regulation applies to all U.S. civilian employees of the Defense Intelligence Agency (DIA). Specific adverse actions procedures for Defense Intelligence Senior Executive Service (DISES) employees supplement this regulation and are published in DIA Manual 22-33. Trial period terminations are covered in DIA Regulation 22-31.

**4. Supersession:** This regulation supersedes DIAR 22-7, 12 February 1980 and DIA Regulation 22-17, "Appeals From Adverse Actions," 15 August 1975. Because changes are extensive, black lines in the margins, indicating changes, have been omitted.

**5. Definitions:**

- a. "Employee"—an individual in the excepted service who is not serving a trial period under an initial appointment or who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less.
- b. "Preference eligible"—an individual meeting the criteria of 5 U.S.C. 2108 who is entitled to certain employment and/or retention considerations.
- c. "Suspension"—the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.
- d. "Grade"—a level of classification under a position classification system.
- e. "Pay"—the rate of basic pay fixed by law or administrative action for the position held by an employee.
- f. "Furlough"—the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.
- g. "Day"—means calendar day.
- h. "Adverse action"—means a removal, suspension, reduction in grade, reduction in pay or a furlough of 30 day or less. It does not include a reduction-in-force action under DIA Regulation 22-24, "Reduction in Force."

**6. Policy:**

a. *Employment and Access*—No person shall be employed in, detailed to, or assigned to the Defense Intelligence Agency, or continue to be so employed, detailed or assigned, and no person so employed, detailed, or assigned shall have access to any classified information unless such employment, detail, assignment, or access to classified information is clearly consistent with the national security.

b. *Employment Suitability and Clearance Standards*—The employment standards of Executive Order 10450, as amended, and clearance standards of DoD 5200.2-R and DCID 1/14 shall be used as a basis for employment suitability and access determinations in the Defense Intelligence Agency.

c. *Employment Pending Final Determination*—Nothing contained herein limits or affects the responsibility and authority of the DIA to reassign or detail persons to temporary positions where access to classified information is limited or suspended pending final determination of employability or eligibility for access to classified information.

**7. Authorities:** The authority to remove, suspend, furlough, or reduce an employee's grade or pay is inherent in the DIA appointing authority. The DIA may take actions covered in Sections B and C of this regulation only for such cause as will promote the efficiency of the service. Actions covered by Section D may be taken only when the action is considered to be in the interests of national security or, in the interests of the United States and when the procedure prescribed in Section C of this regulation cannot be invoked consistent with the national security. Unless extended by the Congress, authority to take action under 10 U.S.C. 1604(e) expires on 30 September 1986.

**8. Responsibilities:**

a. *Supervisors and Directorate Management Officials*—in the exercise of their normal supervisory and managerial duties—are responsible for maintaining order, discipline, and high standards of work performance and employee conduct within their organizational elements. Accordingly, they are responsible for initiating corrective action when an employee's work performance or on-the-job conduct falls below established Agency standards. Such action may include closer supervision, letters of instruction, counseling, training, and oral admonishments or written reprimands (see DIAR 22-6, "Conduct of Employees"). When corrective action of this type fails or the employee's conduct or work performance requires a more severe action, it may be necessary to process a personnel action, such as suspension or removal. In no instance may disciplinary or adverse actions of suspension, removal, furlough, or reduction in grade or pay, as discussed herein and in DIAR 22-6, be initiated without the prior consultation of the personnel representative assigned by the Directorate for Human Resources.

b. *The Assistant Deputy Director for Human Resources (RHR)*—has the general responsibility and

authority for reviewing, processing, and record-keeping of all personnel actions related to both on-the-job and off-the-job offenses. With regard to actions taken on behalf of the DIA which are based on investigative reports and/or other derogatory material developed or obtained by the Assistant Deputy Director for Security and Counterintelligence (OS), the DIA Inspector General (IG) or the DIA General Counsel (GC), the Assistant Deputy Director for Human Resources or his/her designee is responsible for:

- (1) Considering the facts.
  - (2) Performing or requesting additional investigation required to make a sound judgment.
  - (3) Proposing an appropriate action to be taken.
  - (4) Preparing the advance notice, if required.
  - (5) Forwarding the total case file through the chain of command to the Command Element for decision.
- c. *Management*—responsibilities for final decisions on proposed adverse actions are stipulated by separate paragraphs in Sections B through D of this regulation.

## Section B

### Suspension for 14 Days or Less

9. **Coverage:** All DIA employees who are not serving a trial period under an initial appointment or who have completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less.

10. **Exclusions:** This section does not apply to Experts and Consultants or reemployed Federal annuitants, nor does it apply to suspensions taken in the interest of national security (5 U.S.C. 7532), which are covered in Section D of this regulation.

11. **Standard for Action:** The DIA may suspend an employee for 14 days or less for such cause as will promote the efficiency of the service.

#### 12. Employee Entitlements:

a. An advance written notice stating the specific reasons for the proposed action. The minimum notice is a 24-hour notice.

b. A reasonable time to answer orally and in writing and to furnish affidavits or other documentary evidence in support of the answer. In no case will the time to answer be less than 24 hours from receipt of notice.

c. Be represented by an attorney (not at Government expense) or other representative.

d. A written decision and the specific reasons therefor at the earliest practicable date.

#### 13. Procedures:

a. *Notice of Proposed action*—The notice shall be prepared by a management official or supervisor subordinate to an official designated in d., below. The notice shall contain a statement of reasons for taking suspension action in accordance with enclosure 2 and shall inform the employee of his/her right to

review the supporting material. Additionally, the notice may include but is not limited to:

(1) The name of the person or organization to whom employee's response is to be addressed.

(2) Date response is to be submitted by employee.

(3) Amount of official time authorized for preparation of employee response. Normally, up to 4 hours of official time will be granted.

b. *Employee's Response*—An official listed in d., below, or his/her designated representative, shall hear the employee's reply on a proposed suspension. The principal points of an oral reply will be recorded. The official to whom the reply is made will consider all facts presented by the employee either verbally or in writing and will determine whether the proposed suspension should stand, be modified, or withdrawn.

c. *Representation*—An employee may be represented by an attorney (not at Government expense) or other representative. The employee must designate the name of the representative in writing. The DIA may disallow as an employee's representative:

(1) Any individual whose activities as a representative would cause a conflict of interest.

(2) An individual whose release from his/her official position would give rise to unreasonable cost to the Government or whose priority work assignment preclude his/her release.

(3) Any individual who does not possess appropriate security clearance. (DIA will not initiate security clearance action solely for the purpose of employee representation.)

d. *Suspension Decision*—Assistant Deputy Directors, Deputy Directors, Chiefs of Special Offices, the Executive Director, Deputy Director and Director, DIA, are designated to sign letters of final decision for notices issued at one level below. In arriving at a decision, the decisionmaker shall consider only the reasons specified in the notice of proposed suspension and any response of the employee or his/her representative. The suspension decision must be made with respect to the accuracy of each reason and whether or not those found valid reasonably support the proposed action. The affected employee will be furnished with a written final decision and the reasons therefor at the earliest practicable date. A copy of final adverse action decisions will be forwarded to OS-3 for possible inclusion in the individual's security dossier.

e. *Appeal Rights*—An employee may, within 7 days, appeal to an official listed at enclosure 1 who is one level higher than the deciding official in his/her chain-of-command for a final review.

(1) The appeal must:

(a) Be in writing.

(b) State the reason(s) for the review.

(c) State the remedy sought.

(d) Include any available evidence, documents or written statements that the employee decides to offer in support of the appeal.

(2) The appellate official may assign an employee to act as a factfinder and to make a recommendation

DIAR 22-7

or, he/she may act on the petition as submitted. A written decision will be issued within 15 days of the receipt of the appeal. This will be the final DIA decision which is not subject to further administrative appeal, review, or processing under the DIA Employee Grievance System.

(3) In cases where one of the Deputy Directors for, a Chief of Special Office, or member of the Command Element is the original deciding official on a suspension, the Director, DIA will render a final review according to (1) and (2) above.

f. *Effective Dates*—A suspension of 14 days or less will be effective the day after the employee receives written notice of final decision unless the letter of final decision states otherwise. In no case will the suspension be effected prior to the close of any notice period stipulated in this section or the notice period specified in the letter of proposed suspension.

g. *DIA Records*—Copies of the following will be maintained by the Directorate for Human Resources in accordance with General Records Schedule 1, item 31.b., and furnished to the affected employee upon his/her request:

- (1) Notice of proposed action.
- (2) Response of the employee, if written.
- (3) Summary of the employee's response if made orally.
- (4) Notice of final decision and reasons therefor.
- (5) SF-52 effecting the suspension, together with any supporting material.

### Section C

#### Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough of 30 Days or Less

**14. Coverage:** All DIA employees who are not serving a trial period under an initial appointment or who have completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less.

**15. Exclusions:** This section does not apply to:

- a. A suspension or removal taken in the interest of national security.
- b. A reduction-in-force action.
- c. Expert and Consultant employees.
- d. Reemployed Federal annuitants.

**16. Standard for Action:** The DIA may take adverse action covered by this section only for such cause as will promote the efficiency of the service.

**17. Employee Entitlements:**

a. At least 30 days advance written notice of the proposed action, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action.

b. A reasonable time, but no less than 7 working days, to answer orally, in writing or both, and to furnish affidavits and other documentary evidence in support of the answer.

c. Be represented by an attorney (not at Government expense) or other representative.

d. A written decision and the specific reasons therefor at the earliest practicable date.

#### 18. Procedures:

a. *Notice of Proposed Action*—The notice shall be prepared by a management official or supervisor subordinate to an official designated to make final adverse action decisions (enclosure 1). The notice shall contain a statement of the reasons for taking adverse action in accordance with enclosure 2 and shall inform the employee of his/her right to review the supporting material. Additionally, the notice may include but is not limited to:

(1) The name of the person or organization to whom employee's response is to be addressed.

(2) Date response is to be submitted by employee.

(3) Amount of official time authorized for preparation of employee's response.

b. *Disclosure of Material*—Material which cannot be disclosed to the employee, to his/her representative, or to his/her designated physician shall not be used to support the reasons in the notice.

c. *Employee's Response*—

(1) The DIA will give the employee a reasonable amount of official time to review the material relied on to support its proposal, to prepare an answer and to secure affidavits, if he/she is otherwise in a duty status.

(2) An official listed at enclosure 1, or his/her designated representative, shall hear the employee's reply on a proposed adverse action. The principal points of an oral reply will be recorded. The official to whom the reply is made will consider all facts presented by the employee either verbally or in writing and will determine whether the proposed action should stand, be modified, or be withdrawn.

d. *Exceptions*—

(1) The minimum 30 days advance written notice is not required when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. In such a case, the affected employee shall be entitled to a minimum of a combined 7 days notice and answer period.

(2) The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or emergencies requiring immediate curtailment of activities.

e. *Representation*—An employee is entitled to be represented by an attorney (not at Government expense) or other representative. The employee must designate the name of the representative in writing. DIA may disallow as an employee's representative:

(1) An individual whose activities as a representative would cause a conflict of interest.

(2) An individual who cannot be released from official duties because of priority needs of Government.

(3) An employee whose release would give rise to unreasonable costs to the Government.

(4) Any person who does not possess appropriate security clearance. (DIA will not initiate security clearance action solely for the purpose of employee representation.)

f. *Status of Affected Employees*—During the notice period, affected employees will remain assigned to their regular jobs in a pay status unless the employee's presence at the worksite could be injurious to the employee or other individuals, or could result in loss of or damage to Government property, or could otherwise jeopardize legitimate Government interests. In these circumstances the employee may be:

(1) Assigned to temporary duties where he/she is not a threat to safety, Government property, or the DIA mission.

(2) Placed on leave with his/her consent.

(3) Placed on involuntary sick or other leave when he or she is physically or mentally incapacitated for duty.

(4) Carried on appropriate leave (annual, sick, LWOP) or AWOL if he or she has absented himself or herself for reasons not originating with the DIA. If none of the preceding alternatives is available, then the DIA may place the affected employee in a paid, nonduty status during all or part of the advance notice period.

g. *Adverse Action Decisions*—The individuals listed at enclosure 1 are designated to sign letters of final decision. In arriving at a decision, the decisionmaker shall consider only the reasons specified in the notice of proposed adverse action, its properly executed amendments (if any) and the response of the affected employee or that of his/her representative. Furthermore, the decision must be made with respect to the accuracy of each reason and whether or not those found valid reasonably support the proposed action. The affected employee will be furnished with a written final decision and reasons therefor at the earliest practicable date.

h. *Appeal Rights*—

(1) Preference eligible employees may appeal Section C adverse actions to the Merit Systems Protection Board (MSPB). As part of the decision notice, the employee shall be provided:

(a) Notice of the time limits for appealing to the MSPB and the address of the appropriate Board office for filing the appeal.

(b) A copy of the Board's regulations.

(c) A copy of the appeal form (Optional Form 283).

(d) Notice that DIAR 22-12 "Employee Grievance System" does not apply. Under established rules, the DIA has 15 days from date of receipt of request from the appropriate MSPB

Field Office to provide the case record in Federal employee appeals or the MSPB will decide cases without it.

(2) Nonpreference eligible employees may appeal Section C adverse actions under DIAR 22-12.

i. *Effective Dates*—An adverse action will be effective the day after the employee receives written notice of final decision unless the letter of final decision states otherwise. In no case will an adverse action be effected prior to the close of any notice period stipulated in this section or the notice period specified in the letter of proposed adverse action. A copy of the final adverse action decision will be forwarded to Security Programs Division (OS-3) for possible inclusion in the individual's security dossier.

j. *DIA Records*—Copies of the following will be maintained by the Directorate for Human Resources in accordance with General Records Schedule 1, item 31.b., and furnished to the affected employee upon his/her request:

(1) Notice of proposed action.

(2) Response of the employee, if written.

(3) Summary of the employee's response if made orally.

(4) Notice of final decision and reasons therefor.

(5) SF-52 effecting the adverse action together with any supporting material.

k. *DIA Representation*—The General Counsel, DIA shall represent the DIA on all appeals before the MSPB.

## Section D

### Suspension and Termination for Reasons of National Security and Termination in the Interests of the United States

19. **General:** This section prescribes rules and procedures governing:

a. Actions to suspend and/or terminate the employment of civilian personnel of the DIA for reasons of national security, and

b. Action to terminate the employment of civilian personnel of the DIA for reasons of unacceptable conduct and/or performance when in the interests of the United States and when other provisions of law that authorize termination of employment cannot be invoked in a manner consistent with the national security.

Adverse actions for reasons and/or under conditions other than those described above are governed by and shall be processed in accordance with Sections B and C of this regulation, as appropriate.

20. **Use of Suspension and Removal Authorities:**

a. The use of suspension and removal procedures authorized by 5 U.S.C. 7532 shall be limited to cases involving a threat to national security.

b. Termination procedures prescribed in 10 U.S.C. 1604(e) will be invoked only when termination or removal from employment cannot, because of paramount national security interest, be effected under

DIAR 22-7

Section C of this regulation, DIAR 22-31, "Trial Periods," or under any other provisions of law.

**21. Suspension Under 5 U.S.C. 7532:**

a. 5 U.S.C. 7532 authorizes the Secretary of Defense to summarily suspend, without pay, any civilian employee when such action is deemed necessary in the interests of national security. This authority to suspend has been delegated to the Director, DIA, by DoD Directive 5105.21 (reference d.).

b. Prior to preparation of a letter of charges covering a proposed suspension action, the DIA shall consult with the General Counsel of the Department of Defense.

c. An employee who has been suspended under 5 U.S.C. 7532 and whose termination under that section is proposed, will be granted procedural benefits as follows:

(1) All suspensions will be for an indefinite period, that is, "until further notice."

(2) The 30-day time limit specified in 5 U.S.C. 7532 will be construed to mean calendar days.

(3) To the extent that the Director, DIA, determines that the interests of the national security permit, the employee concerned shall be notified of the reasons for his/her suspension. If it is determined that a statement can be given to the employee, the statement shall include all information except that which will reveal classified security information or material, investigative methods, or the identity of confidential informants.

(4) Within 30 days after the notification, the suspended employee is entitled to submit statements or affidavits to the Director, DIA, to show why he/she should be restored to duty.

**22. Termination Under 5 U.S.C. 7532:**

a. An employee may be terminated under 5 U.S.C. 7532 only by the Secretary of Defense.

b. After a person's suspension, and before termination, a permanent employee (excepted appointment without time limitation) who is a U.S. citizen is entitled to:

(1) A written statement of the charges against him/her within 30 days after suspension, which may be amended within 30 days thereafter and which shall be stated as specifically as security considerations permit.

(2) An opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits.

(3) A hearing, at the request of the employee.

(4) A review of his/her case by the Secretary of Defense or his/her designee, before a decision adverse to the employee is made final.

(5) A written statement of the decision of the Secretary of Defense.

c. The decision of the Secretary of Defense is final.

**23. Termination Under 10 U.S.C. 1604(e):**

a. 10 U.S.C. 1604(e) authorizes the Secretary of Defense to terminate the employment of any civilian officer or employee of the DIA whenever:

(1) He/she considers that action to be in the interests of the United States; and

(2) He/she determines that the procedures prescribed in other provisions of law that authorize the termination of employment of that officer or employee cannot be invoked in a manner consistent with the national security.

Authority to terminate employment under 10 U.S.C. 1604(e) has been delegated to the Director, DIA, by the Secretary of Defense as provided in SecDef memorandum, 16 January 1986, subject: Delegation of Authority to Implement Section 501(a) of Public Law 98-618.

b. The DIA shall:

(1) Consult with the General Counsel of the Department of Defense, prior to preparation of a letter of charges proposing termination of employment pursuant to 10 U.S.C. 1604(e).

(2) Subsequent to issuing a termination of employment decision, promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, through the Office of the Secretary of Defense, that this termination authority has been exercised.

c. Before terminating a person's employment under 10 U.S.C. 1604(e) the individual is entitled to:

(1) A written statement of the charges against him/her which shall be stated as specifically as security considerations permit.

(2) An opportunity to respond to the charges and submit affidavits. Unless unusual circumstances prevail, the employee will be entitled to a minimum of 7 days to respond orally, in writing, or both.

(3) To the extent that the DIA determines that the interests of the national security permit, the employee concerned shall be given an opportunity to review the evidence and/or other material relied upon to support the charges.

(4) A written decision of the Director, DIA, at the earliest practicable date.

d. Within 7 days of receipt, adverse decisions of the Director, DIA, are appealable to the Secretary of Defense. Appeals shall be in writing, addressed to the General Counsel of the Department of Defense and contain at a minimum, the following information:

(1) Name and current mailing address of the appellant.

(2) Copy of the decision letter.

(3) Statements or affidavits to show why the appellant should be reemployed.

e. Appeal decisions of the Secretary of Defense are final and may not be appealed or reviewed outside the

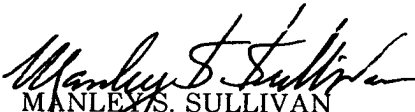
Department of Defense.

f. Any termination of employment under 10 U.S.C. 1604(e) shall not affect the right of the person involved to seek or accept employment with any other department or agency of the United States if he/she is declared eligible for such employment by the Director of the Office of Personnel Management (OPM).

FOR THE DIRECTOR:

OFFICIAL:

PAUL LA BAR  
Executive Director

  
MANLEY S. SULLIVAN  
Chief, Publication and  
Presentation Division

2 Enclosures

1. Officials Designated to Sign Section C Decisions and Notices and to Decide Appeals of Section B Decisions
2. Cause and Statement of Reasons to Support Adverse Action

DISTRIBUTION D&G

RHR-1 BO41 10

ASD(FM&P) A000 2

**OFFICIALS DESIGNATED TO SIGN SECTION C  
DECISIONS AND NOTICES AND TO DECIDE APPEALS OF  
SECTION B DECISIONS**

1. The following DIA personnel are designated to sign letters of final decision in cases of adverse action governed by Section C of this regulation whenever such action is based on an employee's job performance, conduct, or suitability, or for other reasons within the scope of their management responsibilities.

Director	Deputy Director for JCS Support
Deputy Director	Deputy Director for External Relations
Executive Director	Inspector General
Deputy Director for Resources and Systems	General Counsel
Deputy Director for Foreign Intelligence	Chief, General Defense Intelligence Programs Staff
Deputy Director for Operations, Plans, and Training	

2. Notices of proposed adverse action shall be signed at a lower supervisory or managerial level (except where the action is initiated by the Director, DIA), and by the Assistant Deputy Director for Human Resources for actions proposed on behalf of the DIA.

3. Officials signing notices of proposed adverse action or letters of final decision are responsible for *prior* coordination of the action with the Directorate for Human Resources (RHR), determining the appropriateness of the action, and complying with all legal and regulatory requirements.

ENCLOSURE 1



**CAUSE  
AND  
STATEMENT OF REASONS  
TO SUPPORT ADVERSE ACTION**

1. In general, adverse action is taken for cause, and by, law, "only for such cause as will promote the efficiency of the service." A cause for adverse action rests upon the DIA's determination that an unfavorable personnel action (i.e. suspension, reduction in grade or pay, furlough for 30 days or less, or removal) is necessary in the terms of the employee-employer relationship.

2. Some causes for adverse action have been specified by law, executive order, or regulation. These include but are not limited to:

(a) Physical or mental unfitness for the position to which assigned.

(b) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct on or off duty.

(c) Intention false statements or deception or fraud in initial or subsequent appointments.

(d) Habitual use of intoxicating beverages to excess.

(e) Abuse of narcotics, drugs, or other controlled substances.

(f) Reasonable doubt as to the loyalty of the person involved to the Government of the United States.

(g) Previous dismissal from employment for delinquency or misconduct.

(h) Any legal or other disqualification which makes the applicant unfit for Federal service.

(i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

Other, obviously improper, adverse actions have been *prohibited* by law, executive order or regulation (for example, actions which are based on racial, religious or age discrimination; and actions taken as a reprisal for disclosure of information concerning a violation of law or regulation, mismanagement, gross waste of funds or a substantial and specific danger to public health or safety). Between required actions and prohibited actions, what constitutes proper and valid

cause is essentially for DIA management to decide. 3. Having an identifiable cause is not by itself enough to warrant adverse action. The DIA must base any action on its conclusions that the action is warranted and reasonable in terms of the circumstances which prompted it, and that it can establish enough releasable evidence concerning the facts which support the reasons for action. Generally, the DIA's evidence must meet the standard of "preponderance of the evidence" which is defined as "evidence that a reasonable person would accept as sufficient to find a contested fact more probably true than untrue." Furthermore, the DIA must be in a position to show how or explain why it believes the proposed action will promote the efficiency of the service. In a misconduct case this usually means establishing a reasonable connection between either the misconduct and its effect on the ability of the employee to perform job tasks effectively or the misconduct and the DIA's ability to accomplish its mission effectively.

4. Reasons (or charges) supporting adverse action are statements of what the employee did that was wrong. Ordinarily, it is preferable to specify reasons without using legal terms. If legal terms such as "grand larceny," "theft," or "gross negligence" are used, the DIA may have to prove *all* the elements necessary to establish that a crime has been committed, including felonious intent. Accordingly, terms such as "dishonest conduct" vice "theft" or "failure to follow instructions" vice "insubordination" are preferred. Avoid ambiguity; reasons should be specific with regard to dates, times, places, activities, and other facts or circumstances as appropriate.

5. Finally, reasons for adverse action must be supported by material which can be released (disclosed) to the employee, his or her representative, or a designated physician. The DIA may not use material to support reasons in the notice which would violate a pledge of confidence, if disclosed, or any material which is restricted or classified.

ENCLOSURE 2