



February 2024

# DHS EMPLOYEE MISCONDUCT

## Actions Needed to Better Assess Differences in Supervisor and Non-Supervisor Discipline

# GAO Highlights

Highlights of [GAO-24-105820](#), a report to congressional committees

## Why GAO Did This Study

Employee misconduct can detract from an agency's mission, negatively impact employee morale, and damage an agency's reputation. DHS is the third-largest cabinet-level department, employing more than 240,000 staff in a broad range of jobs. As such, it is important for DHS to effectively address misconduct, while also respecting employees' due process rights.

The National Defense Authorization Act for Fiscal Year 2022 includes a provision for GAO to review DHS's disciplinary outcomes for supervisors and non-supervisors. This report examines the extent that (1) selected DHS components have controls to ensure consistent and equitable adjudication of misconduct cases for employees and (2) DHS has assessed for any differences in disciplinary outcomes for supervisors and non-supervisors. GAO selected four DHS components based on factors such as mission type, variation in workforce size, unionization, and hiring authorities. GAO reviewed their disciplinary processes, interviewed officials, and analyzed data on disciplinary outcomes for fiscal years 2020 through 2022.

## What GAO Recommends

GAO is making six recommendations, including that CBP document its disciplinary process for all employees; that USCIS periodically monitor and analyze misconduct data; and that DHS clarify guidance for reporting misconduct data, require components to report data on supervisory status, and analyze data by supervisory status. DHS concurred with the recommendations.

View [GAO-24-105820](#). For more information, contact Christopher P. Currie at (404) 679-1875 or [CurrieC@gao.gov](mailto:CurrieC@gao.gov).

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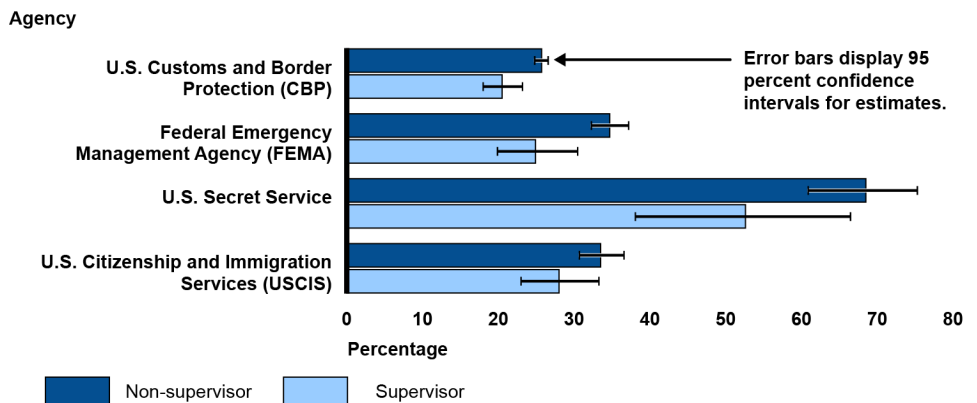
## Actions Needed to Better Assess Differences in Supervisor and Non-Supervisor Discipline

### What GAO Found

Selected Department of Homeland Security (DHS) components have some controls in place to ensure consistent adjudication of employee misconduct, but gaps exist. GAO assessed selected components' controls for (1) documenting the disciplinary adjudication process, (2) training employees responsible for the disciplinary adjudication process, (3) evaluating these employees' performance, and (4) monitoring misconduct data. Of the four selected DHS components, the Federal Emergency Management Agency and U.S. Secret Service have implemented all four controls. U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS) have not. GAO found that CBP policies do not fully detail the disciplinary process for all employees. USCIS lacks a process to periodically monitor and analyze misconduct data. By strengthening these controls, the agencies can better ensure consistent and fair adjudication of employee discipline cases.

DHS has not assessed disciplinary outcomes between supervisors and non-supervisors. However, GAO's analysis of selected DHS components' data for cases of alleged misconduct found that supervisors were less likely to be disciplined than non-supervisors. DHS officials noted possible explanations, including that allegations brought against supervisors may not be substantiated or may be unfounded. Although DHS requires components to provide data to the department on whether an allegation was substantiated, the components did not report complete or consistent information on this to DHS. Because DHS also does not require components to report data on supervisory status, it is not positioned to analyze substantiation to better identify and address reasons for the differences in disciplinary outcomes. By clarifying guidance for reporting misconduct data, DHS could better position components to report complete and consistent information. By also requiring components to report data on supervisory status and analyzing these data, DHS would be positioned to better identify the reasons for any differences in disciplinary outcomes.

**Estimated Average Chance of Discipline by Supervisory Status at Selected Department of Homeland Security (DHS) Components, Fiscal Years 2020–2022**



Source: GAO analysis of CBP, FEMA, Secret Service, and USCIS data. | GAO-24-105820

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### Abbreviations

CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
FEMA	Federal Emergency Management Agency
LER	Labor and Employee Relations
MSPB	Merit Systems Protection Board
OCHCO	Office of the Chief Human Capital Officer
OPM	U.S. Office of Personnel Management
USCIS	U.S. Citizenship and Immigration Services

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February 14, 2024

The Honorable Gary C. Peters  
Chairman  
The Honorable Rand Paul, M.D.  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate

The Honorable Mark E. Green, M.D.  
Chairman  
The Honorable Bennie G. Thompson  
Ranking Member  
Committee on Homeland Security  
House of Representatives

Federal law requires employees to “maintain high standards of integrity, conduct, and concern for the public interest.”<sup>1</sup> In 2018, we reported<sup>2</sup> that an average of less than 1 percent of the federal civilian workforce is formally disciplined for misconduct each year.<sup>3</sup> Such formal discipline includes disciplinary action (letters of reprimand and suspensions of 14 days or less) and adverse action (suspensions of more than 14 days, reduction in grade or pay, or removal).<sup>4</sup> Even a few incidents of employee misconduct can detract from an agency’s mission, impact workplace morale, damage an agency’s reputation, and hamper the agency’s ability to maintain public trust if not effectively managed. It is important for agencies to timely and effectively address cases of employee misconduct while simultaneously respecting employees’ procedural and due process rights.

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<sup>1</sup>5 U.S.C. § 2301(b)(4).

<sup>2</sup>See *Federal Employee Misconduct: Actions Needed to Ensure Agencies Have Tools to Effectively Address Misconduct*, [GAO-18-48](#) (Washington, D.C.: July 16, 2018).

<sup>3</sup>Formal discipline generally refers to the legal process under Chapter 75 of Title 5 of the United States Code and agency authority under 5 U.S.C. §§ 301-302.

<sup>4</sup>See 5 U.S.C. §§ 7502, 7512, 7542 (establishing the actions considered as “adverse actions”). We define “discipline” to include both disciplinary actions (i.e., letters of reprimand or suspensions of 14 days or less) and adverse actions (i.e., suspensions of more than 14 days, reductions in pay or grade, or removal).

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The Department of Homeland Security (DHS) is the third-largest federal department with 15 operational and support components, approximately 240,000 employees, and tens of billions of dollars in annual budgetary resources. DHS and its components' operations include counterterrorism; cybersecurity; border security; administration of our immigration laws; disaster response and recovery; and physical protection for the President, the Vice President, and their immediate families.

Merit Systems Protection Board (MSPB)<sup>5</sup> case law has recognized that supervisors may be held to a higher standard of conduct because they hold positions of trust and responsibility.<sup>6</sup> Therefore, it is critical that agencies effectively and consistently address supervisors' misconduct to prevent the perception that agencies favor supervisory employees. However, based on its 2021 Merit Principles Survey, the MSPB estimated that about 21 percent of DHS non-supervisory employees believed senior leaders tolerate unethical supervisors.<sup>7</sup>

We have previously reported on DHS components' disciplinary processes. In July 2018, we identified key practices that can help agencies better prevent and respond to misconduct, including actions to ensure misconduct cases are addressed effectively and consistently.<sup>8</sup> We

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<sup>5</sup>MSPB is an independent, quasi-judicial agency that serves the interests of prompt, procedurally simple dispute resolution. MSPB carries out its statutory responsibilities and authorities primarily by adjudicating individual employee appeals and by conducting merit systems studies. See 5 U.S.C. § 1204.

<sup>6</sup>*Edwards v. U.S. Postal Service*, 116 M.S.P.R. 173, ¶ 14 (2010). For the purpose of this report, we use the Office of Personnel Management's (OPM) definition of supervisor as an individual employed by an agency having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment. See also 5 U.S.C. § 7103(a)(10).

<sup>7</sup>The Merit Principles Survey is a government-wide survey of federal employees that covered a variety of workforce issues, prohibited personnel practices, and selected aspects of their work experience and work environment.

<sup>8</sup>[GAO-18-48](#). In addition to identifying key practices that can help agencies better prevent and respond to misconduct, we recommended that OPM (1) explore the feasibility of improving the quality of data collected on misconduct, (2) leverage lessons learned to help agencies address misconduct, and (3) improve guidance on training supervisors and human resources staff on addressing misconduct. OPM disagreed with the first recommendation, identifying barriers to collecting additional data. We agreed with OPM's concerns and closed the recommendation as not implemented. OPM has taken actions that fully address the second recommendation. OPM partially agreed with the third recommendation, and as of February 2023, OPM officials reported that they continue to take steps to address it.

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also reported in July 2018 that DHS’s U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement, and the Transportation Security Administration had not consistently documented or monitored key control activities related to their employee misconduct processes.<sup>9</sup>

Further, in July 2017, we reported on misconduct at DHS’s Federal Emergency Management Agency (FEMA). We made six recommendations, including that FEMA improve the quality and usefulness of its misconduct data and develop reconciliation procedures to consistently track referred cases.<sup>10</sup> FEMA has taken actions that fully address all six of our recommendations from that report.

The National Defense Authorization Act for Fiscal Year 2022 includes a provision for us to review whether DHS implements disciplinary and adverse actions for supervisors and non-supervisors in an equitable manner and the extent to which the department’s disciplinary process results in disparate outcomes for supervisors and non-supervisors.<sup>11</sup> This report examines the extent to which

1. selected DHS components have implemented controls to ensure consistent adjudication of misconduct cases for employees; and
2. DHS has assessed for any differences in disciplinary outcomes for supervisors and non-supervisors.

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<sup>9</sup>In our report, we made 18 recommendations to strengthen their employee misconduct internal controls and improve monitoring of the timeliness of the employee misconduct process. As of December 2023, the component agencies have taken actions that fully address 10 of the 18 recommendations. For six of the recommendations, the agencies have taken actions that partially address the recommendations, but additional actions are needed to fully address them. U.S. Immigration and Customs Enforcement has not yet taken actions to fully address the remaining two recommendations. See GAO, *Department of Homeland Security: Components Could Improve Monitoring of the Employee Misconduct Process*, [GAO-18-405](#) (Washington, D.C.: July 31, 2018).

<sup>10</sup>GAO, *Federal Emergency Management Agency: Additional Actions Needed to Improve Handling of Employee Misconduct Allegations*, [GAO-17-613](#) (Washington, D.C.: July 18, 2017).

<sup>11</sup>Pub. L. No. 117-81, § 6404, 135 Stat. 1541, 2401 (2021). The act includes a provision for us to study the outcomes of discipline and adverse actions for managers and non-managers within DHS. In this report, we use the terms “supervisors” and “non-supervisors” because this is the terminology DHS components use in their systems of record.

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To address our objectives, we selected four DHS components to include a range of employment characteristics across the department—CBP, FEMA, the U.S. Secret Service, and U.S. Citizenship and Immigration Services (USCIS). Specifically, we selected these components based on their differing mission types, workforce characteristics (i.e., workforce size, unionization), and hiring authorities. In addition, these components' disciplinary data systems include a data field indicating whether the employee who allegedly engaged in misconduct was a supervisor (i.e., supervisory indicator).

For both objectives, we reviewed statutes, regulations, and MSPB case law that define the formal process agencies must follow when addressing employee misconduct, and employees' rights throughout the process. We also reviewed MSPB studies and publications and U.S. Office of Personnel Management (OPM) guidance relating to addressing employee misconduct.

In addition, we reviewed policies and procedures related to addressing misconduct from DHS's Office of the Chief Human Capital Officer (OCHCO) and four selected components. These documents included management directives, guidance, and standard operating procedures outlining how DHS components are to propose and decide disciplinary and adverse actions and define the key roles and responsibilities for officials when doing so. We also interviewed human capital, employee relations, and other component officials responsible for overseeing, administering, or supporting the adjudication of allegations of employee misconduct. In addition, we interviewed representatives from bargaining units within the selected components, as applicable, to obtain employee perspectives on the components' disciplinary processes and the consistency and equity of disciplinary outcomes.

To address the first objective, we compared selected components' policies and procedures for addressing employee misconduct against *Standards for Internal Control in the Federal Government*.<sup>12</sup> Specifically, we determined that the control environment, control activities, and monitoring components of internal control were significant to this objective. We analyzed component policies and procedures pertaining to administration, oversight, and coordination of the disciplinary process;

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<sup>12</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014). Internal controls provide reasonable assurance that an agency will comply with applicable laws and regulations, such as those related to employee misconduct and discipline.



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proposing and deciding disciplinary and adverse actions; monitoring of the disciplinary adjudication process and employee misconduct data; and training and performance evaluation for those with routine responsibilities in the disciplinary adjudication process. We also interviewed officials from each component to discuss the controls implemented for ensuring consistent and equitable disciplinary outcomes.

To address the second objective, we obtained and analyzed misconduct data from the four selected components. Specifically, we analyzed data elements related to cases of alleged misconduct and employees alleged to have engaged in misconduct, including supervisory status, grade, history of misconduct, length of service, location, assigned officials, proposed actions, and disciplinary outcomes.<sup>13</sup> Based on the data we received, a case of alleged misconduct can include more than one alleged offense and does not reflect whether the component found the offense(s) to be substantiated. We analyzed record-level data for cases of alleged misconduct that selected components closed in fiscal years 2020 through 2022—the three most recent fiscal years for which complete data were available at the time of our analysis.

To assess the reliability of selected components' misconduct data, we analyzed documentation about the data and data systems and interviewed relevant component officials. We also performed electronic testing and manual reviews for obvious errors in accuracy and completeness. When our electronic testing or manual reviews of the data identified potential concerns, such as potential data entry errors, we consulted with component officials and made corrections to the data, as needed, based on information officials provided.

After taking these steps, we determined that all data elements we assessed for FEMA were sufficiently reliable for the purpose of determining whether disciplinary outcomes differed between supervisors and non-supervisors. For CBP, the Secret Service, and USCIS, we determined that some of the data elements were sufficiently reliable. We excluded from our analyses data elements that were not sufficiently reliable. For example, we found that these three components' data do not

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<sup>13</sup>For the purposes of our review, a case of alleged misconduct refers to allegations reported to an office with responsibility for addressing misconduct within each selected component.

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include reliable information about their allegation substantiation decisions, which we discuss later in this report.<sup>14</sup>

To examine the association between supervisory status and disciplinary outcomes, we developed multivariate statistical models (logistic regression) that held constant multiple factors relevant to discipline.<sup>15</sup> These factors differed by component, based on the availability and reliability of data. Our models allowed us to estimate the average chance for disciplinary or adverse action for supervisors and non-supervisors, holding constant the factors above. This regression analysis did not allow us to estimate how, if at all, supervisory status was causally related to disciplinary outcomes. However, it did allow us to estimate the unique association between supervisory status and the chance of discipline for alleged misconduct, controlling for relevant factors we could reliably measure using component data.

In addition, we reviewed relevant documentation, including DHS's Misconduct Governance Board's charter, the board's guidance that established requirements for components to report misconduct data to OCHCO, and OCHCO's accompanying spreadsheet that components are to use for reporting data.<sup>16</sup> We also reviewed misconduct data from the first quarter of fiscal year 2023 that selected components reported to OCHCO, as well as the results of OCHCO's analysis of these misconduct data.<sup>17</sup> Further, we interviewed officials from OCHCO and the selected components to determine the extent components reported quarterly misconduct data as intended. We compared these documents and officials' testimonial evidence to the Misconduct Governance Board's role

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<sup>14</sup>FEMA did not record data on allegation substantiation from fiscal year 2020 through fiscal year 2022.

<sup>15</sup>We define "discipline" to include both disciplinary actions (i.e., letters of reprimand or suspensions of 14 days or less) and adverse actions (i.e., suspensions of more than 14 days, reductions in pay or grade, or removal).

<sup>16</sup>OCHCO established the Misconduct Governance Board in September 2020. According to its charter, the board is to identify, evaluate, and implement department-wide improvements in policies and processes related to misconduct, among other things. Department of Homeland Security, *Department of Homeland Security Misconduct Governance Board Charter* (Sept. 2, 2020).

<sup>17</sup>In February 2023, the Misconduct Governance Board finalized guidance that requires components to report misconduct data to OCHCO for analysis. In April 2023, OCHCO collected and analyzed misconduct data from DHS components for the first quarter of fiscal year 2023, the only data collection and analysis OCHCO had completed at the time of our review.

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and responsibilities as set in its charter against internal control standards. Specifically, we determined that the monitoring and information and communication components of internal control were significant to this objective.<sup>18</sup>

We conducted this performance audit from February 2022 to February 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

For additional details of our scope and methodology, see appendix I. For additional details on our regression analyses, see appendix II.

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## Background

### Federal Statute, Case Law, and Regulations for Misconduct

Employee misconduct in the federal government is generally governed by a well-developed body of statutes and regulations, as well as decisions from the MSPB. For example, when an agency, such as DHS and its components, takes disciplinary or adverse action against an employee for inappropriate behavior, it must do so “for such cause as will promote the efficiency of the service.”<sup>19</sup>

One of the nine merit system principles, which govern the management of the federal workforce, states that federal employees “should maintain high standards of integrity, conduct, and concern for the public interest.”<sup>20</sup> Further, according to these principles, employees should receive fair and equitable treatment in all aspects of personnel management, which

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<sup>18</sup>[GAO-14-704G](#).

<sup>19</sup>See, e.g., 5 U.S.C. §§ 7503, 7513. Throughout this report, we generally refer to federal employees as those employed under Title 5 of the U.S. Code, which establishes the law for managing human resources in the federal government. Some DHS components, such as FEMA, have workforce categories in addition to Title 5, such as temporary employees hired under the Stafford Act, and such component’s procedures regarding discipline for non-Title 5 employees may differ from the procedures described in our report under Title 5.

<sup>20</sup>5 U.S.C. § 2301(b)(4).

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include the disciplinary process and deciding disciplinary outcomes.<sup>21</sup> In addition, OPM has prescribed some regulations on procedural requirements an agency must follow if it elects to take an adverse action against an employee for the efficiency of the service.<sup>22</sup> MSPB case law has also stated that agencies may hold supervisors to a higher standard of conduct given their responsibilities.<sup>23</sup> Lastly, DHS policy also states that senior executives, managers, and supervisors must be held to a higher standard.

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## DHS Roles, Responsibilities, and Process for Addressing Misconduct

Within DHS, OCHCO is responsible for overseeing policies, processes, and guidance on addressing misconduct across the department. DHS components are to set the conditions of disciplinary measures they determine necessary for their respective employees, consistent with applicable law and regulation. Components are also responsible for administering their disciplinary policies and procedures, consistent with DHS policy and applicable laws and regulations.<sup>24</sup>

Within each component, managers, supervisors, and other designees are responsible for assessing the conduct of subordinate employees and providing appropriate assistance or feedback or taking corrective action, when warranted, in response to misconduct. Additionally, labor and employee relations (LER) specialists, typically within a component's human capital or human resource office, provide guidance, advice, and technical support to managers and supervisors in the execution of these responsibilities. They are also generally responsible for maintaining case files and other documentation.

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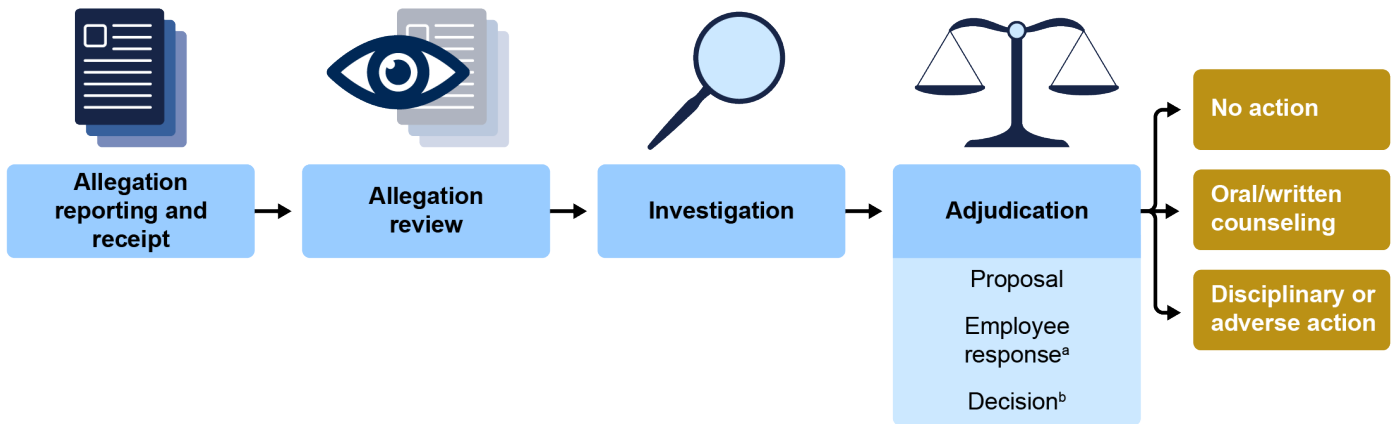
<sup>21</sup>See 5 U.S.C. § 2301(b)(2). According to OPM, Congress—in codifying these principles—intended that they guide federal agencies in carrying out their responsibilities.

<sup>22</sup>See generally 5 C.F.R. part 752.

<sup>23</sup>See, e.g., *Edwards v. U.S. Postal Service*, 116 M.S.P.R. at ¶ 14; DHS, *Discipline and Adverse Actions Program* (250-09-001), (July 28, 2018: Washington, D.C.).

<sup>24</sup>OCHCO is responsible for administering human capital services, including discipline, to all support components except the Office of Inspector General, the Cybersecurity and Infrastructure Security Agency, and the Federal Law Enforcement Training Centers.

Figure 1: Department of Homeland Security (DHS) Process for Addressing Misconduct



Source: GAO analysis of DHS documents. | GAO-24-105820

<sup>a</sup>According to federal statute and regulations, federal agencies are required to provide an opportunity for an employee response for suspensions, reductions in pay or grade, or removals. For other actions that do not require the agency to offer an opportunity for employee response, such as letters of reprimand, the adjudication process may only involve a single decision step. When there is the opportunity for an employee to respond, such a response is optional for the employee.

<sup>b</sup>For some proposed actions, the proposal and the decision step may be the same, such as when the proposal is to take no action or informal action.

As illustrated in figure 1, the steps in components' disciplinary processes are generally:

- **Allegation reporting and receipt:** Components receive allegations of employee misconduct from a variety of sources, including the general public, agency staff, and the DHS Office of Inspector General. As established in MSPB and federal case law, employee misconduct can occur within and outside of the workplace.<sup>25</sup> For example, components can investigate local arrests of employees for domestic violence or driving under the influence of alcohol.
- **Allegation review:** Each component has an intake or hotline function that initially assesses the reported information and seriousness of each allegation and determines who will investigate, if warranted. In accordance with DHS policy, for any allegation of criminal or serious misconduct received, the relevant component's intake function must provide the DHS Office of Inspector General with the right of first refusal. If the Office of Inspector General declines to investigate, the component's intake function is to assign the case to the appropriate

<sup>25</sup>See, e.g., *Doe v. Dep't of Justice*, 565 F.3d 1375, 1379 (Fed. Cir. 2009); *Masino v. U.S.*, 589 F.2d 1048, 1056 (Ct. Cl. 1978); *Gibbs v. Dep't of Treasury*, 21 M.S.P.R. 646 (1984).

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office within the component depending on the nature of the allegation. For the purposes of our review, regardless of its outcome, a case of alleged misconduct refers to allegations for which selected components completed an investigation or inquiry and completed the adjudication or determination of outcome, and closed the case.

- **Investigation:** The investigative process involves fact-finding to the extent necessary to make an informed decision on the merit of an allegation.
- **Adjudication:** One or more delegated officials (proposing official) first determines whether an allegation is substantiated or unsubstantiated based on the evidence gathered by the investigation.<sup>26</sup> This determination is made with the advice of an LER specialist and agency counsel. For substantiated cases, the proposing official may issue a proposal for corrective action, if any.<sup>27</sup> For some proposed actions, regulations or agency policies may provide the employee an opportunity to respond. Lastly, a deciding official issues a final decision in writing, to include the employee's avenues for appeal or grievance.<sup>28</sup>

Proposing and deciding officials are to use their respective agencies' guidance on determining appropriate penalties. They also can consider guidance from an LER specialist and agency counsel, which can include information about actions taken previously in similar cases. Proposing and deciding officials must consider a number of factors specific to the employee, circumstances, and type of misconduct when considering the appropriate penalty for each case. Specifically, proposing officials must consider particular aggravating factors, and deciding officials must consider both aggravating and mitigating factors when determining the

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<sup>26</sup>DHS components may designate a central body—generally known as a discipline review board—composed of supervisors or managers to serve as the proposing official. An allegation is to be designated “unsubstantiated” in cases of insufficient evidence. An allegation is “substantiated” when a reasonable person would find that the evidence supporting the allegation makes it more likely than not that the agency's findings regarding the misconduct are correct. 5 C.F.R. § 1201.4(q).

<sup>27</sup>Proposing or deciding officials may determine based on the facts and circumstances of a case that no action or an informal action (such as verbal counseling) is warranted.

<sup>28</sup>The deciding official is often, but not necessarily, distinct from the proposing official.

appropriate penalty.<sup>29</sup> For example, a proposing or deciding official may consider an employee’s job level and type of employment, such as supervisory or law enforcement, as aggravating factors. They may also consider the employee’s history of high job performance as a mitigating factor. Table 1 shows the types of actions deciding officials may agree upon or impose.

**Table 1: Types of Misconduct Case Outcomes**

<b>No action</b>	A proposing official can determine that it is appropriate to take no action in response to the allegations, such as in cases for which that official determines the allegations are unsubstantiated.
<b>Informal action</b>	Some DHS component policies include guidance on informal corrective action, such as verbal or written counseling. Statute, regulations, and DHS-wide guidance do not define or address informal action.
<b>Disciplinary action</b>	This category includes reprimands and suspensions of 14 days or less. A letter of reprimand describes the unacceptable conduct that is the basis for a disciplinary action and represents the least severe form of disciplinary action. Suspensions in this category include placing of an employee in a nonduty, nonpay status for up to and including 14 days.
<b>Adverse action</b>	This involves a suspension of more than 14 days, including an indefinite suspension, an involuntary demotion for conduct, or a removal. <sup>a</sup>
<b>Alternative discipline</b>	Alternative discipline is an effort to address employee misconduct using a method other than the traditional disciplinary measures above. <sup>b</sup> In general, alternative discipline involves a legally binding written agreement between the employee and the agency. For example, an agreement could hold some portion, or all, of a disciplinary or adverse action in abeyance so long as the employee does not engage in further misconduct for a prescribed period of time. Alternatively, an agreement could also include a reduced traditional disciplinary action (e.g., reprimand, shorter suspension) and a requirement for the employee to provide community service, take additional training, or receive counseling.

Source: GAO review of statute, regulations, and DHS and component policies. | GAO-24-105820

<sup>a</sup>An indefinite suspension is appropriate when evidence exists to demonstrate misconduct of a serious nature, such as an employee has been indicted or has been arrested pursuant to a judge’s warrant for a crime involving potential imprisonment, if an employee’s security clearance has been suspended, or an allegation of misconduct that, if proven, represents a threat to life, property, safety, or the effective operation of the workplace.

<sup>b</sup>The types of such discipline vary for each case and by agency. For example, agencies may refer to these as alternative discipline, abeyance agreements, or last chance agreements.

When proposing a suspension, reduction in pay or grade, or removal, each component must provide employees with written notice and an opportunity to respond to proposed discipline before issuing a final

<sup>29</sup>These are generally referred to as the Douglas Factors, based on a MSPB case that established criteria supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. Examples of Douglas Factors that must be considered include the employee’s past disciplinary record; their past work record, including length of service; consistency of the penalty with those imposed on other employees for the same or similar offenses; and the notoriety of the offense or its impact upon the reputation of the agency. See *Douglas v. Veterans Admin.*, 5 M.S.P.R. 280 (1981).

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decision.<sup>30</sup> This notice must also inform the employee of any information that deciding officials may consider. In addition, employees are entitled representation by an attorney or other representative, including a union steward if the employee is a bargaining unit member.

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## DHS Oversight of the Disciplinary Process

In recent years, DHS has initiated efforts to oversee disciplinary processes and outcomes across the department.

- **Misconduct Governance Board.** In 2020, in response to DHS Office of Inspector General recommendations, DHS established the Misconduct Governance Board to oversee the disciplinary processes across the department.<sup>31</sup> The board is to evaluate, recommend, and implement actions to ensure communication, collaboration, and transparency among component offices that investigate employee misconduct and support or affect disciplinary decisions. The board is composed of senior management officials, or their designees, from DHS components or offices, responsible for, among other things, supporting or affecting disciplinary actions. OCHCO staff provide support to the board in executing its responsibilities.

In February 2023, the board began requiring components to provide misconduct data to OCHCO and specified which data elements are to be included in these reports. OCHCO staff are responsible for consolidating data across components and providing a report to the board for discussion at quarterly meetings. In April 2023, OCHCO collected and analyzed data for the first quarter of fiscal year 2023.

- **Departmental review.** In April 2022, the Secretary of Homeland Security ordered a review of employee disciplinary processes across the department. In August 2022, the Secretary issued a memo regarding employee accountability. The Secretary's memo referenced a departmental priority to champion its workforce and create a culture of excellence, openness, and accountability. Within that context, the memo directed DHS offices and components to take several actions. These included (1) updating the department's policies and developing

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<sup>30</sup>Employees are entitled to receive an advance written notice stating the specific reasons for the proposed action. The employee is entitled to be represented by an attorney or other representative and must be given a reasonable time, not less than 24 hours (for suspensions 14 days or less) or no less than 30 days (for suspension more than 14 days, reductions in grade or pay, and removals), to answer orally and in writing and to furnish affidavits and other supporting evidence. See 5 U.S.C. §§ 7503(b)(1)-(4), 7513(b); 5 C.F.R. §§ 752.203(a)-(e), 752.404(b).

<sup>31</sup>Department of Homeland Security Office of Inspector General, *DHS Needs to Improve Its Oversight of Misconduct and Discipline*, OIG-19-48 (Washington, D.C.: June 17, 2019).



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an information resource for employees and supervisors on the disciplinary process and (2) ensuring that policies, at both the department and component levels, include periodic communication with the workforce identifying high-priority categories of misconduct and track misconduct cases from allegation to final resolution.<sup>32</sup>

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## Selected DHS Components Have Implemented Some Controls to Ensure Consistent Adjudication, but Gaps Exist

We found variation in the extent to which selected DHS components have implemented controls to adjudicate misconduct cases in a consistent manner, which can provide assurance of consistent adjudication. We evaluated the extent to which components have implemented controls related to (1) documentation of the disciplinary adjudication process, (2) training for employees involved in the disciplinary adjudication process, (3) performance evaluations for those employees, and (4) monitoring of employee misconduct data. FEMA and the Secret Service have implemented all four of these controls. However, gaps exist for CBP and USCIS.

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## FEMA, the Secret Service, and USCIS Have Documented their Disciplinary Adjudication Processes, but CBP Has Not Fully Done So

All four selected components have documented and communicated policy documents, such as standards of conduct, and the consequences of misconduct. However, CBP has not documented its process for addressing allegations of employee misconduct in detail for employees not in a collective bargaining unit (i.e., those not covered by collective bargaining agreements negotiated by employee unions).

Federal internal control standards state that agencies should establish standards of conduct to communicate expectations concerning integrity and ethical values and communicate these expectations and the consequences for failing to meet them by issuing policies or guidance.<sup>33</sup> Federal internal control standards also state that management should establish a process for evaluations of adherence to standards of conduct—which would include documenting processes for addressing allegations of employee misconduct. In addition, these standards state that management should document an agency’s policies in an appropriate

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<sup>32</sup>Department of Homeland Security, Employee Accountability Processes, Memorandum to DHS and Office Leaders (Aug. 18, 2022).

<sup>33</sup>[GAO-14-704G](#).

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level of detail, clearly define the key roles and assign responsibilities, and communicate its policies to personnel.<sup>34</sup>

For their disciplinary adjudication processes, FEMA, the Secret Service, and USCIS have policy documents, such as discipline manuals and directives, detailing how their disciplinary adjudication processes are to occur, including roles and responsibilities. For example, USCIS's *Discipline and Adverse Actions* directive documents the procedures for administering disciplinary and adverse actions, including the rights of the employee throughout the disciplinary adjudication process.<sup>35</sup> This directive includes procedures on how proposing and deciding officials should incorporate the Douglas Factors and identify past comparable cases for reference.<sup>36</sup> It also assigns responsibility for the key duties related to the disciplinary adjudication process, including administration of the process and for proposing and deciding disciplinary and adverse actions. In addition, USCIS's directive includes a Table of Offenses and Penalties that outlines a range of suggested penalties for different types of misconduct. USCIS officials told us that new employees receive a copy of the directive during the onboarding process and receive ethics training that includes examples of misconduct and potential penalties. The directive is also available to employees on the USCIS intranet.

CBP has four policy documents that generally outline its disciplinary adjudication process. Specifically:

- CBP's Discipline Review Board directive defines key roles and assigns responsibilities related to the disciplinary adjudication process. The directive also outlines the disciplinary adjudication process for cases the Discipline Review Board reviews. Under the policy, the Discipline Review Board is to review cases that involve any

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<sup>34</sup>GAO-14-704G. For the purposes of our report, we define key roles and responsibilities as those related to ensuring equitable discipline adjudication and minimizing the risk or inequitable discipline.

<sup>35</sup>U.S. Citizenship and Immigration Services, *Management Directive: Discipline and Adverse Actions*, 51735-014B (Washington, D.C.: June 28, 2010).

<sup>36</sup>The Douglas Factors refer to criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. Examples of Douglas Factors that must be considered include the employee's past disciplinary record; their past work record, including length of service; consistency of the penalty with those imposed on other employees for the same or similar offenses; and the notoriety of the offense or its impact upon the reputation of the agency.

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serious on or off-duty misconduct that, among other things, broadly harms the agency or cuts across geographic lines.<sup>37</sup>

- CBP's Table of Offenses and Penalties includes a general overview of the disciplinary process with broad guidance for how supervisors are to address misconduct.<sup>38</sup>
- CBP's delegation order assigns the proposing and deciding officials in various circumstances and further specifies the misconduct cases that are reviewed by the Discipline Review Board.<sup>39</sup> For example, the order states that the board is to hear any misconduct case involving a Senior Executive Service employee.
- CBP's collective bargaining agreements outline the disciplinary procedures and the rights of employees in detail, including guidance on providing advance notice of proposed actions to employees, the length of employees' response period to proposed actions, and the grievance process.<sup>40</sup>

CBP's policy documents partially address applicable internal control standards related to documentation of the disciplinary adjudication process. In particular, they assign key roles and responsibilities for some aspects of the disciplinary adjudication process and communicate consequences of misconduct. However, as of November 2023, these documents do not detail the disciplinary adjudication process for employees not covered by collective bargaining agreements (i.e., non-bargaining unit employees) who allegedly engage in minor misconduct.<sup>41</sup> Specifically, CBP policy documents do not detail the adjudication process for non-bargaining unit employee cases that do not meet its definition of

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<sup>37</sup>U.S. Customs and Border Protection, U.S. Customs and Border Protection, *U.S. Customs and Border Protection Discipline Review Board*, 51735-014B (Washington, D.C.: July 2023).

<sup>38</sup>U.S. Customs and Border Protection, *U.S. Customs and Border Protection Table of Offenses and Penalties*, (Washington, D.C.: Dec. 9, 2020). A Table of Offenses and Penalties is a listing of types of misconduct and the corresponding potential disciplinary action employees may face for such misconduct.

<sup>39</sup>U.S. Customs and Border Protection, *U.S. Customs and Border Protection Disciplinary and Adverse Actions Delegation Order*, 23-014, (Washington, D.C.: Aug. 24, 2023).

<sup>40</sup>The National Border Patrol Council represents all nonprofessional U.S. Border Patrol employees who are assigned to Border Patrol sectors. The National Treasury Employees Union represents all other CBP employees excluding those in the Office of Chief Counsel and management officials and supervisors.

<sup>41</sup>CBP's Discipline Review Board directive and process applies to all cases of serious misconduct, including cases involving bargaining unit and non-bargaining unit employees.

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“serious misconduct” and would not be reviewed by CBP’s Discipline Review Board.”<sup>42</sup> Such non-bargaining unit employees include many first-level supervisors. As a result, it is unclear how CBP addresses cases of misconduct for employees who are in a supervisory role and are neither in the bargaining unit nor in the Senior Executive Service.

CBP officials told us that CBP has not developed a policy that documents the disciplinary adjudication policy for all employees, including non-bargaining unit employees, because they view the statute as communicating the steps in the process. However, the statute does not specify how the disciplinary adjudication process occurs at CBP. For example, statutes and regulations do not address specific timelines for a CBP employee’s right to reply to the proposed action.<sup>43</sup> CBP officials told us that developing a policy to cover all employees would increase employees’ awareness of the disciplinary adjudication process, regardless of their position. By revising its disciplinary policies to ensure they collectively document the disciplinary adjudication process for all employees, including non-bargaining unit employees, CBP would better ensure that the disciplinary adjudication process is implemented consistently, and that all employees involved understand how the disciplinary adjudication process should be implemented.

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<sup>42</sup>CBP’s Discipline Review Board directive and process applies to all cases of serious misconduct, including cases involving bargaining unit and non-bargaining unit employees. According to CBP policy, examples of serious misconduct include misconduct that would attract significant public, Congressional, or media attention; drug use, possession, or trafficking; bribery; dishonesty; domestic abuse; and human smuggling. See CBP *Disciplinary and Adverse Actions Delegation Order*.

<sup>43</sup>Federal statutes and regulations specify a minimum of 24 hours for an employee’s right to respond to a proposed suspension of up to 14 days and a minimum of 7 days to respond to a proposed adverse action. See, e.g., 5 U.S.C. §§ 7503, 7513; 5 C.F.R. §§ 752.203, 752.404. Agencies may establish policies and procedures that allow for more than the minimum amount of time established in regulation. For bargaining unit employees, CBP’s collective bargaining agreements provide more than the minimum amount of time. Specifically, employees represented by the National Border Patrol Council are guaranteed 10 days to respond to a proposed action; employees represented by the National Treasury Employees Union are guaranteed 14 days to respond to a proposed action.

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## FEMA, the Secret Service, and USCIS Have LER Training Programs, But CBP Does Not Ensure Consistent Training for LER Specialists

FEMA, the Secret Service, and USCIS have training programs that consistently train LER specialists, but CBP does not ensure that supervisors consistently train LER specialists for their role in the disciplinary adjudication process. Federal internal control standards state that management should demonstrate a commitment to developing and retaining competent individuals that have the knowledge, skills, and abilities to carry out assigned responsibilities, which are gained largely from professional experience and training. Furthermore, these standards state that it is essential for agencies to provide relevant training to allow employees to develop the necessary knowledge, skills, and abilities that make operational success possible. Consistent training provides assurance that employees serving in the same function have the same understanding of their roles and responsibilities and have the skills to achieve organizational goals.

FEMA, the Secret Service, and USCIS have training programs for officials with routine responsibilities related to the disciplinary adjudication process. These training programs provide consistent training for LER specialists. For example, according to USCIS officials, new USCIS LER specialists are to receive mentoring from experienced employees and all LER staff receive annual external training on topics such as case law updates. Further, FEMA LER specialists are to attend a standard course-based training program when they are hired and annual refresher training thereafter. This includes courses on topics such as penalties in disciplinary cases, adverse conduct and performance-based actions, and managing employee conduct and performance. Similarly, the Secret Service requires staff who serve in a role like LER staff in other components to attend external training courses on topics such as workplace investigations, MSPB case law, and employee relations regulations.

In contrast, CBP provides consistent training for members of its Discipline Review Board but not for its LER specialists. CBP has standard training for members of the board that covers topics such as the case review timeline, changes in the disciplinary adjudication process, and reviewing evidence. CBP officials told us that this training is provided every other year for new and returning board members.

In addition, CBP has developed training materials that LER supervisors can use when onboarding new LER specialists, but CBP does not ensure consistent use of these materials. Specifically, CBP developed training slides that cover a range of topics related to the disciplinary adjudication process. The topics include drafting proposal and decision letters, the role

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of the Discipline Review Board, and factors to consider when determining the appropriate penalty. According to CBP officials, these training materials are meant to serve as a guide for LER supervisors when training new employees; however using these training materials is optional for LER supervisors training new LER specialists. Specifically, CBP officials told us LER supervisors may tailor training based on trainees' prior experience, and therefore, LER training may be taught differently for each new employee. CBP also told us that LER supervisors may individually develop their own training materials.

Therefore, because using CBP's established training materials is optional and reliant on the discretion of the supervisor, supervisors may not consistently cover the same topics when onboarding employees. Further, CBP does not track how often—if at all—the materials are used, and therefore lacks awareness regarding what training supervisors provide to LER specialists. By requiring LER supervisors to consistently use its training materials for training new LER specialists, CBP could better ensure the consistency of the training provided.

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**All Selected Components Evaluate Employee Performance Related to the Disciplinary Adjudication Process**

All four selected components conduct annual competency-based performance evaluations for officials with routine responsibilities in the disciplinary adjudication process. These evaluations document and examine the knowledge, skills, and abilities related to the disciplinary adjudication process. Federal internal control standards state that it is essential to evaluate performance, assess competence, and hold individuals accountable for their control responsibilities. In the context of the disciplinary adjudication process, this means agency management should evaluate the performance of employees who are assigned routine duties and responsibilities in the disciplinary adjudication process through regular performance evaluations with relevant competencies.<sup>44</sup> For example, employees with routine duties and responsibilities in the disciplinary process include LER specialists who routinely advise management throughout the process.

As discussed above, all four selected components conduct annual competency-based performance evaluations for officials with routine responsibilities in the disciplinary adjudication process. For example, FEMA evaluates LER specialists on five general core competencies:

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<sup>44</sup>Our analysis assessed whether agencies had a process for performance evaluations as an internal control. We did not review the results of individual performance evaluations or the extent to which agencies had taken any actions in response to individual performance evaluations.

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communication, customer service, representing the agency, teamwork and cooperation, and technical proficiency. FEMA LER specialists have individual performance goals that are related to the disciplinary adjudication process, including the accuracy of disciplinary actions, timely and accurate data entry and status reports, quality of guidance and services provided, and timeliness for taking action. CBP assesses LER specialists on similar competencies, with an emphasis on advising proposing and deciding officials throughout the disciplinary adjudication process. USCIS also evaluates LER specialists against competencies that include how well they communicate the guidelines, rules, and regulations related to the disciplinary adjudication process and the fairness and consistency in which the disciplinary process is managed. The Secret Service evaluates employees' role in the disciplinary process, including use of guidance to make recommendations on the appropriate level of discipline.

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### CBP, FEMA, and the Secret Service Periodically Monitor and Analyze Data for Trends in Misconduct, but USCIS Does Not

CBP, FEMA, and the Secret Service periodically monitor and analyze employee misconduct data to identify and address potential trends in misconduct. However, USCIS does not have a process for periodically monitoring and analyzing its data for this purpose. Federal internal control standards require management to periodically monitor to ensure controls remain aligned with risk and remediate any identified deficiencies through corrective action. Employee misconduct presents a risk to the agency. Monitoring the agency's controls to ensure they are aligned with risks can include analyzing misconduct data to identify and address potential issues, such as common types of misconduct.

CBP, FEMA, and the Secret Service periodically monitor and analyze misconduct data to identify and address potential trends. These three components routinely publish reports (annually or monthly) with misconduct metrics to allow component leadership to identify and respond to trends in employee misconduct. For example, CBP produces an annual report that summarizes all investigative activity. This report includes a breakdown of the number of disciplinary cases and disciplinary actions by office and the number of arrests by offense category and disciplinary outcome. FEMA produces monthly reports for management that track the number of open, closed, and backlogged cases throughout the year and a snapshot of the month's proportion of disciplinary cases by employee type and primary offense. Secret Service also issues an annual discipline report to all employees. This report breaks down yearly disciplinary actions by misconduct type, severity of the disciplinary action, employee job series, and supervisory status from the previous 5 years. Secret Service officials said the agency uses the trends identified in the

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annual discipline report as a guide for teaching new supervisors the best practices for responding to misconduct.

USCIS conducts some periodic monitoring and analysis of its misconduct data, specifically related to case management and workflow. USCIS produces weekly employee relations reports that contain information about the queue of open cases. USCIS officials told us that LER supervisors review these weekly reports to identify missing data, track open cases, and identify timeliness trends in case processing. USCIS also produces monthly reports that collect information on the number of open misconduct cases in each region and track the number of cases assigned per LER specialist as a workflow tool. In addition to these weekly and monthly reports, USCIS's Employee Accountability Board collects timeliness metrics on cases the board reviews.<sup>45</sup> However, these reports do not include an analysis of misconduct data or identify trends in misconduct or discipline, such as the most common types of misconduct.

Previously, USCIS had a metric dashboard that analyzed the most common types of misconduct, the number of integrity-related and criminal charges, the number of adverse and disciplinary actions, and the number of cases appealed. However, according to USCIS officials, CBP—who owns USCIS's case management system—discontinued updates to the metric dashboard in July 2022. As a result, the dashboard does not include data beyond fiscal year 2022. USCIS officials noted that the system can run reports from its data, and therefore they could analyze the data and produce the same metrics that were previously automated in the dashboard. However, USCIS has not since developed such process to ensure it periodically monitors and analyzes misconduct data.

USCIS officials said that, in the absence of the dashboard, they have analyzed misconduct data for various metrics on an as-needed basis. For example, USCIS produced a report for the newly onboarded Chief Human Capital Officer showing the misconduct cases that resulted in adverse actions over the previous 3 years. This report showed the number of demotions, removals, and suspensions and the number of sustained charges broken out by misconduct type for the past 3 years. However, USCIS does not currently run such reports on a periodic basis.

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<sup>45</sup>The Employee Accountability Board reviews misconduct cases (1) for employees grade GS-15 or higher; (2) that pertain to USCIS's core integrity, values, or ability to perform the USCIS mission; or (3) that are so egregious in nature as to warrant review.



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As stated earlier, federal internal control standards call for management to periodically monitor to ensure controls remain aligned with risk and remediate any identified deficiencies through corrective action. Further, DHS's August 2022 Employee Accountability Processes memo called for DHS components to ensure policies include periodic communication with the workforce to identify high-priority categories of misconduct.<sup>46</sup> By developing and implementing a process to periodically monitor and analyze misconduct data, USCIS could better ensure it identifies potential issues, including high-priority categories of misconduct, and effectively takes action to address any identified trends in employee misconduct issues.

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## DHS Has Not Assessed for Differences in Disciplinary Outcomes for Supervisors and Non-Supervisors

In April 2023, OCHCO began collecting and analyzing misconduct data from DHS components. However, selected components did not report complete and consistent information to OCHCO because the guidance for reporting misconduct data does not include detailed expectations, such as definitions of key terms. In addition, OCHCO does not collect or analyze misconduct data by supervisory status to assess for differences in disciplinary outcomes for supervisors compared to non-supervisors.

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## DHS Collects Misconduct Data, but Selected Components Did Not Report Complete and Consistent Information

DHS has taken steps to standardize data collection and analysis on misconduct across the department. In response to a recommendation from a 2019 DHS Office of Inspector General report, OCHCO established the Misconduct Governance Board in September 2020.<sup>47</sup> According to its charter, the board is to identify, evaluate, and implement department-wide improvements in policies and processes related to misconduct, among other things.<sup>48</sup> In February 2023, the board finalized guidance that

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<sup>46</sup>Department of Homeland Security, *Employee Accountability Processes*, (Washington, D.C.: Aug. 18, 2022).

<sup>47</sup>According to the 2019 DHS Office of Inspector General report, DHS did not effectively manage the misconduct program throughout the Department and lacked data monitoring to gauge program performance. The DHS Office of Inspector General recommended that the Under Secretary for Management designate or establish an entity with sufficient size and authority to oversee the department's entire misconduct process, from allegations to disciplinary actions. Department of Homeland Security Office of Inspector General, *DHS Needs to Improve Its Oversight of Misconduct and Discipline*, OIG-19-48 (Washington, D.C.: June 17, 2019).

<sup>48</sup>Department of Homeland Security, *Department of Homeland Security Misconduct Governance Board Charter* (Sept. 2, 2020).

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requires components to report misconduct data to OCHCO for analysis.<sup>49</sup> OCHCO also developed an accompanying spreadsheet for components to complete and report their misconduct data. According to OCHCO officials, these steps have improved data consistency across the department.

In April 2023, OCHCO collected and analyzed misconduct data from DHS components for the first quarter of fiscal year 2023. Based on the results of its analysis, OCHCO identified that the most common types of misconduct across the department during that time period were time and attendance violations, unprofessional behavior, and failure to follow instructions. In June 2023, OCHCO officials told us they expect future analyses will help to identify bottlenecks in components' disciplinary adjudication processes and ways to reduce average case processing times.

However, selected DHS components did not report complete and consistent information to OCHCO for the first quarter of fiscal year 2023. According to OCHCO officials, components should report all allegations of misconduct, including (1) allegations that were unfounded or not substantiated and (2) misconduct cases that resulted in no action or informal action. However, the Misconduct Governance Board's February 2023 guidance and OCHCO's accompanying spreadsheet that components are to use to report their data do not include detailed expectations to ensure complete and consistent information. Specifically, the guidance does not include definitions of key terms—including "unfounded" and "not substantiated." The guidance and spreadsheet also do not clearly explain how components are to report certain types of cases, including cases of alleged misconduct that resulted in no action or informal action.

As a result, officials at our four selected components told us they did not understand they were expected to report all allegations and therefore did not report complete information. In addition, component officials did not know how to interpret key terms when reporting misconduct data, and thus the data reported to OCHCO is inconsistent across components. Further, the spreadsheet does not provide an option to report that the

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<sup>49</sup>Department of Homeland Security Misconduct Governance Board, *DHS Misconduct Governance Board: Nomenclature, Process Steps, and Measures* (Washington, D.C.: Feb. 6, 2023).

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component took informal action in response to an allegation, so not all components reported such information.

- **Allegations that were unfounded or not substantiated.** Not all components use the terms “unfounded” or “not substantiated” or are familiar with the distinction between them, based on our analysis of selected components’ misconduct data and their reports to OCHCO in the first quarter of fiscal year 2023. As a result, components took different approaches in reporting such data to OCHCO. For example, based on our analysis of reported data, CBP and USCIS reported allegations that were not substantiated, but FEMA and the Secret Service did not.

Further, USCIS officials told us that they were unaware of any distinction between “unfounded” and “not substantiated,” so they used “not substantiated” in reporting data to OCHCO. The Secret Service does not use “unfounded” or “not substantiated” in its own categorization of data, according to our analysis of the component’s misconduct data. Therefore, the Secret Service reported only substantiated allegations to OCHCO. Lastly, none of the four selected components reported any unfounded allegations in the first quarter of fiscal year 2023.<sup>50</sup>

- **No action or informal action.** The four selected components did not report complete and consistent data on misconduct cases that resulted in no action or informal action. Based on our analysis of CBP’s reported data to OCHCO, the component reported both action types after modifying the accompanying spreadsheet. FEMA officials told us that they did not report either action type because they did not find the option to do so in the spreadsheet. Similarly, the Secret Service did not report either action type because officials told us that they used the spreadsheet to report only cases resulting in formal discipline. USCIS officials told us that the spreadsheet was confusing, and reporting these two action types seemed contrary to the department’s request for a disciplinary report since such cases did not result in formal discipline.

OCHCO’s analyses are hindered by incomplete and inconsistent reporting about the number of allegations of misconduct, substantiation decisions, or disciplinary outcomes across the department. According to

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<sup>50</sup>Given the lack of definitions and consistent understanding across components, it is unclear whether the lack of unfounded allegations is because there were no such allegations during the reported time frame or because components did not understand what would classify an allegation as unfounded (as opposed to not substantiated).

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the Misconduct Governance Board's guidance, OCHCO is to evaluate the percentage of misconduct allegations that were and were not substantiated. In September 2023, OCHCO officials told us that they plan to conduct such evaluations in the future. However, OCHCO cannot accurately conduct such evaluations without complete and consistent information on allegations of misconduct that were unfounded or not substantiated.

In addition, selected components also inconsistently reported data on certain types of cases of alleged misconduct:

- **Indefinite suspensions.** According to DHS's directive on disciplinary and adverse actions, an indefinite suspension is the placement of an employee in a temporary status without duties and pay, pending investigation, inquiry, or further action.<sup>51</sup> After a component completes the investigation or inquiry for an employee on indefinite suspension, the component will take additional action to reinstate or remove the employee, depending on the findings of the investigation or inquiry. Based on our analysis, there is no explanation in the Misconduct Governance Board's guidance or OCHCO's accompanying spreadsheet for how to report indefinite suspensions. As a result, CBP, FEMA, and Secret Service officials told us that they reported indefinite suspension outcomes as cases that resulted in a suspension of 15 days or more. In contrast, USCIS officials told us that they reported indefinite suspensions as alternative discipline. Therefore, OCHCO cannot identify indefinite suspensions—which could have final outcomes ranging from reinstating the employee to removal—from other outcomes and may not be accounting for them appropriately in its analyses.
- **Resignation or retirement in lieu of agency action.** In some cases, the employee who allegedly engaged in misconduct may resign or retire prior to the agency completing the disciplinary adjudication process. Or an agency may reach an agreement with the employee that involves resignation or retirement in lieu of disciplinary action. Based on our analysis, there is no explanation in the Misconduct Governance Board's guidance or OCHCO's accompanying spreadsheet for how to report data on cases of alleged misconduct

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<sup>51</sup>An indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action, which may include the completion of any subsequent administrative action. Department of Homeland Security, *Discipline and Adverse Actions Program*, Directive 250-09-001, Rev. 01.1 (Mar. 3, 2022).

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when the employee retired or resigned in lieu of agency action. CBP officials told us that they did not report these cases to OCHCO because the allegations are not substantiated in these scenarios. FEMA officials told us that they did not report these cases because they did not find a way to delineate that information in the spreadsheet. Secret Service officials told us that they did not report these cases because they reported formal discipline only. USCIS officials told us that they reported these cases as alternative discipline.

In September 2023, we discussed the components' positions and the resulting data limitation with OCHCO officials. In response, these officials told us that they will discuss with the Misconduct Governance Board the need for components to report indefinite suspension outcomes and cases when the employee resigns or retires in lieu of agency action. OCHCO officials also told us that they will discuss with the board possible changes to OCHCO's accompanying spreadsheet, for example, by adjusting the dropdown options to include these outcomes. Although such discussions are an important first step, they do not provide assurance that the Misconduct Governance Board will clarify its guidance that formally establishes the requirements for providing data.

According to its charter, the Misconduct Governance Board is to oversee the department's entire misconduct process, from allegations to disciplinary actions. The board is also to implement a formal reporting process, with documented procedures for handling and reporting all misconduct allegations. In addition, federal internal control standards state that management is to process obtained data into quality information that is appropriate, complete, and accurate. By clarifying its guidance to detail expectations for reporting misconduct data, the Misconduct Governance Board could better position components to report complete and consistent information to OCHCO for analysis.

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## Disciplinary Outcomes Differ by Supervisory Status, but DHS Does Not Collect or Analyze Data to Identify and Address Reasons

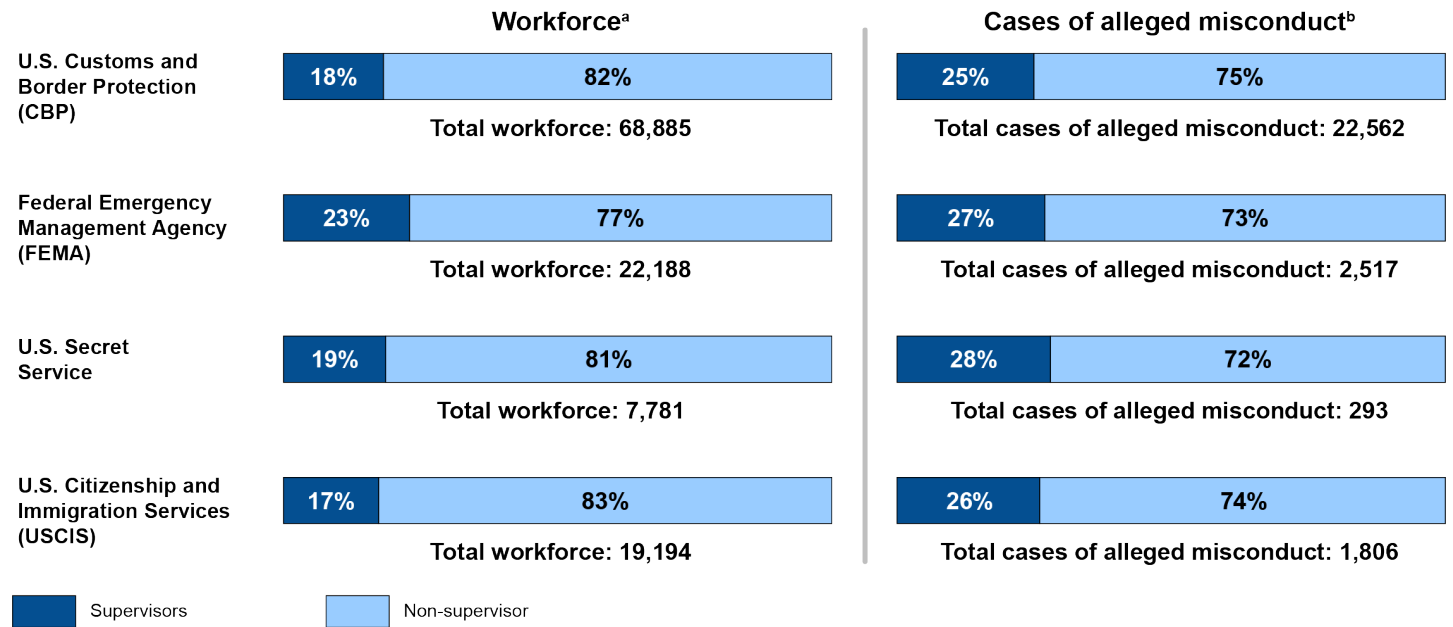
Our analyses identified differences in disciplinary outcomes between supervisors and non-supervisors.<sup>52</sup> Our statistical models accounted for other factors available in the components' data that could have been relevant to disciplinary decisions, such as history of misconduct and length of service. However, we could not measure all factors that could have influenced disciplinary outcomes—such as aggravating and mitigating factors—in our analyses. OCHCO officials noted possible explanations for the differences we identified, including allegations brought against supervisors that were unfounded and not substantiated. Allegation substantiation was not consistently available or reliable in the data we received, and as noted earlier in this report, selected components did not report complete or consistent information on substantiation to OCHCO. Furthermore, DHS is not positioned to include substantiation as part of its analysis to better identify and address reasons for the differences we identified because the Misconduct Governance Board does not require components to report supervisory status to OCHCO.

We found that the percentage of cases of alleged misconduct involving a supervisor was higher than the proportion of supervisors in each selected component's workforce, as shown in figure 2. For example, at the Secret Service, supervisors represent 19 percent of the employees and are the subject of 28 percent of misconduct cases, a difference of 9 percentage points. Across the four selected components, these differences ranged from 4 to 9 percentage points.

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<sup>52</sup>We analyzed misconduct data from CBP, FEMA, the Secret Service, and USCIS on cases of alleged misconduct that closed in fiscal years 2020 through 2022 to assess for differences in disciplinary outcomes between supervisors and non-supervisors.

**Figure 2: Proportions of Workforce and Closed Cases of Alleged Misconduct by Supervisory Status, Fiscal Years 2020–2022**



Source: GAO analysis of CBP, FEMA, Secret Service, and USCIS data. | GAO-24-105820

Note: For the purposes of our review, a case of alleged misconduct refers to allegations reported to an office with responsibility for addressing misconduct. A case of alleged misconduct can include more than one alleged offense. We were not able to analyze the type of alleged misconduct and whether allegations were substantiated because of the content and format of the data we received. We analyzed misconduct data that was available from each selected component, which included data on supervisory status.

<sup>a</sup>Workforce totals and proportions represent data for fiscal year 2022.

<sup>b</sup>Cases of alleged misconduct totals and proportions represent data for fiscal years 2020 through 2022.

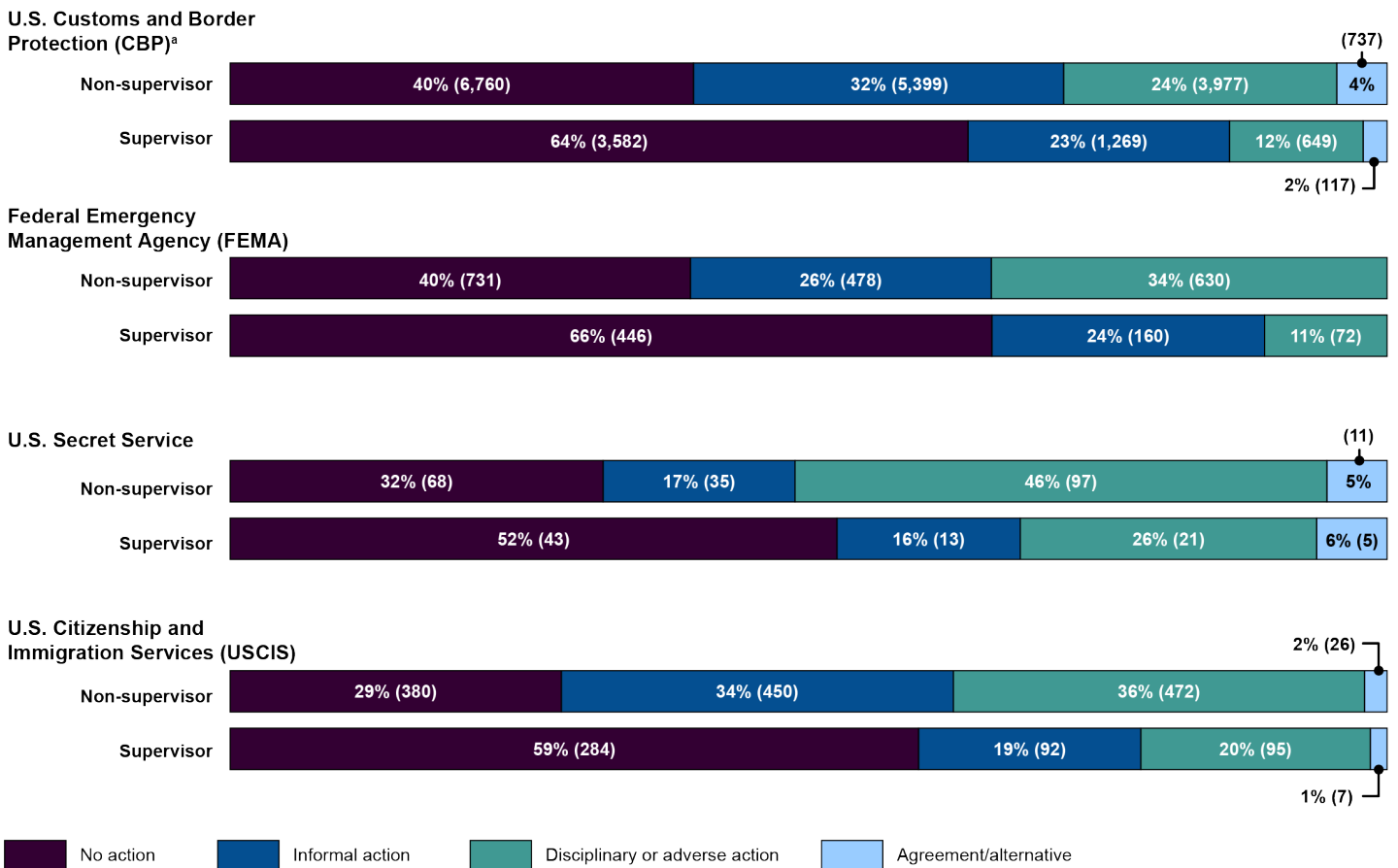
According to our analysis, supervisors in each selected component received disciplinary or adverse action less frequently than non-supervisors, as shown in figure 3.<sup>53</sup> For example, we found that the difference between non-supervisors and supervisors being disciplined ranged from 12 to 23 percentage points.<sup>54</sup> We also found that a majority

<sup>53</sup>We were not able to analyze the type of alleged misconduct and whether allegations were substantiated because of the limitations in selected components' data. However, DHS's recent steps to standardize data collection and analysis on misconduct across the department may allow OCHCO to analyze these factors that could have influenced these disciplinary outcomes.

<sup>54</sup>We define "discipline" to include both disciplinary actions (i.e., letters of reprimand or suspensions of 14 days or less) and adverse actions (i.e., suspensions of more than 14 days, reductions in pay or grade, or removal).

of cases of alleged misconduct resulted in no action or informal action for all selected components regardless of supervisory status. For example, about three-quarters of CBP and FEMA cases and about two-thirds of USCIS cases resulted in no action or informal action.

**Figure 3: Distribution of Outcomes for Cases of Alleged Misconduct by Supervisory Status, Fiscal Years 2020–2022**



Source: GAO analysis of CBP, FEMA, Secret Service, and USCIS data. | GAO-24-105820

Note: We analyzed misconduct data that was available from each selected component, which included data on supervisory status. “No action” and “informal action” outcomes could include substantiated, unfounded, or not substantiated allegations. For all cases, we were not able to analyze whether allegations were substantiated because of the content and format of the data we received. Informal action includes various actions—such as verbal or written counseling—that provide employees with instructions for ensuring that their conduct meets agency standards and complies with policy. Disciplinary action ranges from a letter of reprimand to a suspension of 14 days or less. Adverse action includes removals, suspensions for more than 14 days, and reductions in grade or pay. See 5 U.S.C. §§ 7502, 7512, 7542 (establishing the actions considered as “adverse actions”). Agreement/alternative includes a settlement agreement or alternative discipline. A settlement agreement is a contract, and the interpretation of its terms is a question of law. *Greco v. Department of the Army*, 852 F.2d 558, 560 (Fed. Cir. 1988); *McGriff v. Department of the Navy*, 118 M.S.P.R. 89,



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<sup>¶</sup> 20 (2012). Alternative discipline is an effort undertaken to address employee misconduct using a method other than traditional disciplinary measures. We were not able to analyze the details of settlement agreements or alternative discipline because the terms vary by case.

<sup>3</sup>For CBP, eight cases of alleged misconduct resulted in reassignment (six non-supervisors, two supervisors) and 64 cases had a blank decision outcome. These 72 cases are not represented in the chart above.

In addition, we found that supervisors at all four selected components were less likely to be disciplined than non-supervisors based on the results of a multivariate analysis that held constant available and relevant factors of each case of alleged misconduct.<sup>55</sup> We found that supervisors had lower average chances of discipline than non-supervisors at each selected component, ranging from 5.2 to 15.9 percentage points lower when controlling for all feasible factors, as shown in figure 4. Estimated differences for the Secret Service and USCIS were less precise, which may have reflected smaller sample sizes or factors we could not measure in the data we received, such as the substantiation of allegations.

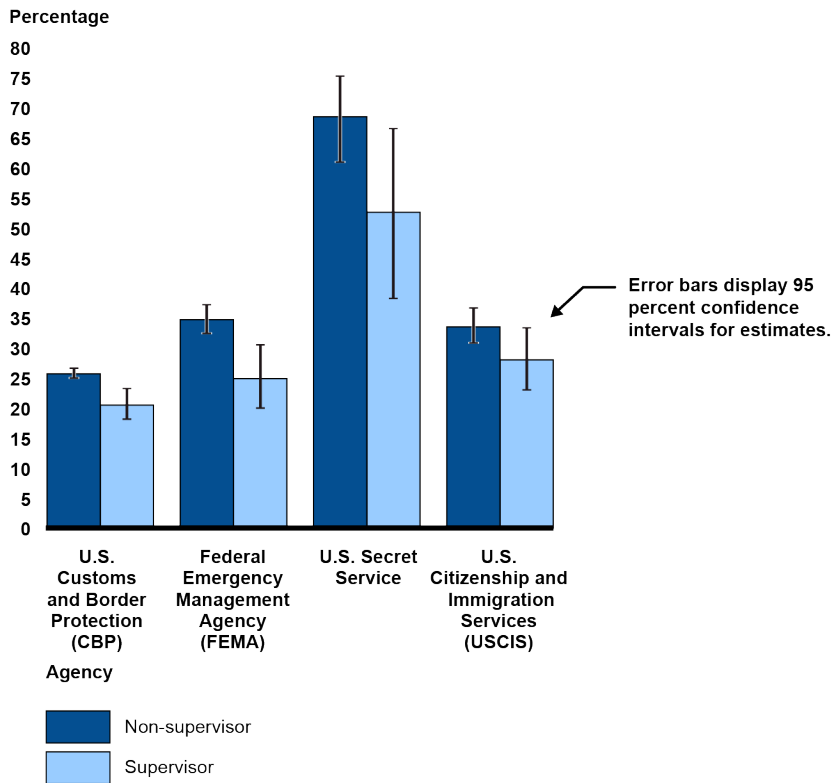
We designed the modeling primarily to isolate the effect of supervisory status—the primary factor of interest—but we could not control for all factors that could have influenced discipline decisions. As a result, differences between supervisors and non-supervisors may be partially attributable to these unmeasured factors, such as the facts and circumstances of each case. The differences in the average chance of discipline between supervisors and non-supervisors generally decreased after controlling for additional factors relevant to each case of alleged misconduct. This suggests that unmeasured factors, such as aggravating and mitigating factors, helped explain some of the differences in the frequency with which supervisors and non-supervisors received disciplinary or adverse action.<sup>56</sup>

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<sup>55</sup>We conducted a regression analysis that controlled for variables that were available in selected components' misconduct data that could have been relevant to disciplinary decisions, such as assigned labor and employee relations specialist or General Investigator, grade, history of misconduct, length of service, location, and law enforcement status. Each component had a different set of variables available. We summarized the fitted logistic regression models by predicting the probability that each case of alleged misconduct would result in disciplinary or adverse action, assuming that the entire sample were supervisors or non-supervisors, respectively, and averaging over the controlled variables. Appendixes I and II summarize the analyses in more detail.

<sup>56</sup>We isolated the discipline decision to an indicator of whether the selected component took disciplinary or adverse action, ignoring the degree of discipline, to simplify the analysis and maximize sample size.

**Figure 4: Estimated Average Chance of Discipline by Supervisory Status, Fiscal Years 2020–2022**



Source: GAO analysis of CBP, FEMA, Secret Service, and USCIS data. | GAO-24-105820

Note: These estimates are the average chances for disciplinary or adverse action among supervisors and non-supervisors, scaled in percentage points, for closed cases of alleged misconduct. Error bars display 95 percent confidence intervals for the estimates (i.e., there is a 95 percent probability that the true estimate falls within the error bar range). We derived the estimates from statistical models that held constant selected characteristics of cases, such as assigned LER specialist or General Investigator, grade, history of misconduct, length of service, location, and law enforcement status. The availability of these characteristics varied across components. We were not able to analyze whether allegations were substantiated because of the content and format of the data we received. For the purpose of our review, we define “discipline” to include both disciplinary actions (i.e., letters of reprimand or suspensions of 14 days or less) and adverse actions (i.e., suspensions of more than 14 days, reductions in pay or grade, or removal). See 5 U.S.C. §§ 7502, 7512, 7542 (establishing the actions considered as “adverse actions”). We analyzed misconduct data that was available from each selected component, which included data on supervisory status.

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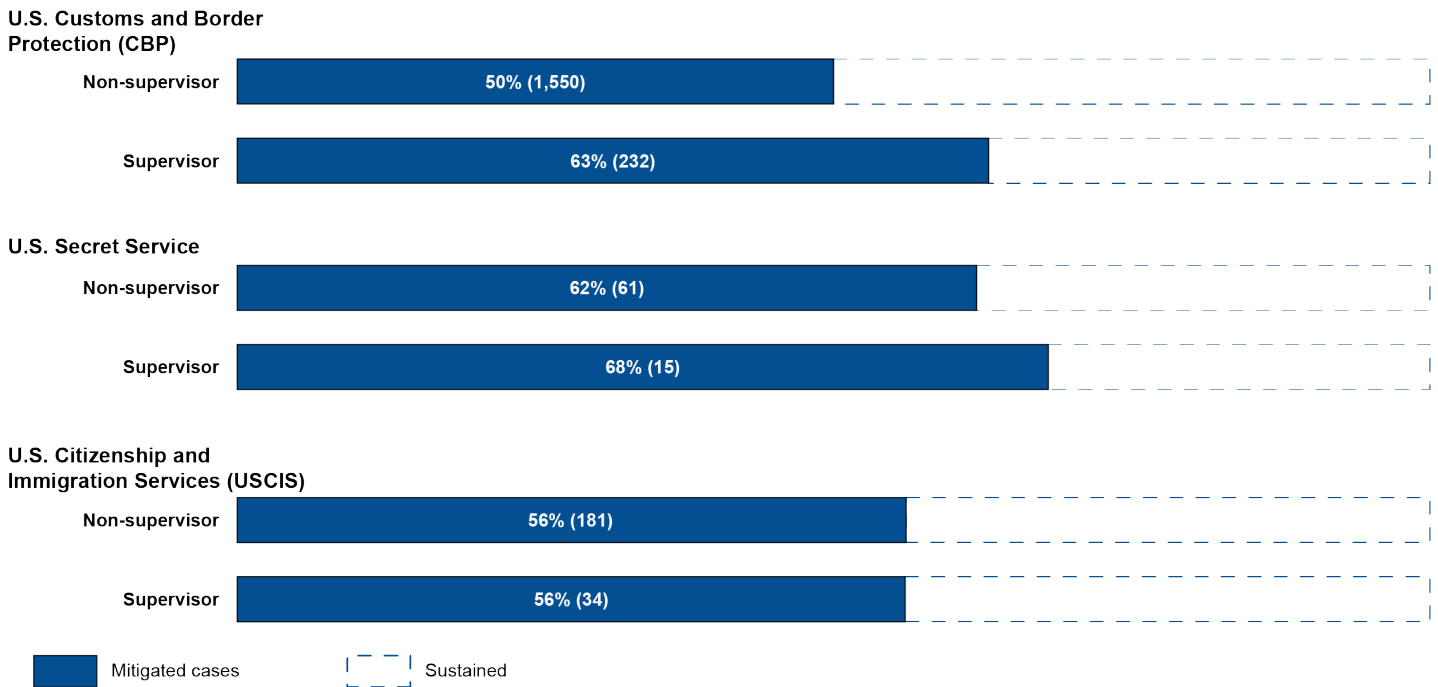
Further, we found that deciding officials in CBP, the Secret Service, and USCIS generally mitigated a majority of proposed actions (i.e., they imposed a lesser penalty compared to the initial proposed action).<sup>57</sup> We also found that the mitigation rate by supervisory status differed among these components. Specifically, we found that Secret Service and USCIS deciding officials generally mitigated actions at about the same rate for supervisors and non-supervisors. However, CBP deciding officials mitigated actions for supervisors more frequently than for non-supervisors. We found that CBP deciding officials mitigated 63 percent of proposed actions for supervisors compared to 50 percent for non-supervisors, as shown in figure 5. FEMA's data did not enable us to analyze the extent to which FEMA mitigated proposed actions because FEMA did not consistently record data on proposed actions from fiscal year 2020 through fiscal year 2022.<sup>58</sup>

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<sup>57</sup>When adjudicating discipline, federal agencies provide employees with notice of a proposed action. Agencies are required to provide an opportunity for an employee to respond to a proposed adverse action under 5 U.S.C. Chapter 75 before the deciding official makes a decision. The deciding official can sustain or mitigate the proposed action. If the deciding official wants to aggravate the proposed action, the agency would first need to re-issue a new proposed action and provide the employee with an opportunity to respond. We were unable to assess whether any proposed actions that resulted in a settlement agreement or alternative discipline were mitigated as part of the final agreement because data do not include the exact terms for settlement agreements or alternative discipline.

<sup>58</sup>In August 2023, FEMA officials told us that in response to the February 2023 requirements to report misconduct data to OCHCO, they are taking steps to ensure proposed actions are consistently recorded. FEMA officials also told us that they have begun recording data on the date when the component provides employees with a notice of proposed action and the date when employees provide a response, if any.

**Figure 5: Mitigation by Supervisory Status, Fiscal Years 2020–2022**



Source: GAO analysis of CBP, Secret Service, and USCIS data. | GAO-24-105820

Note: These results reflect cases of alleged misconduct that resulted in a proposed action. When adjudicating discipline, federal agencies provide employees with notice of a proposed action. Agencies are required to provide an opportunity for an employee to respond to a proposed adverse action under 5 U.S.C. Chapter 75 before the deciding official makes a decision. The deciding official can sustain or mitigate the proposed action. If the deciding official wants to aggravate the proposed action, the agency would first need to re-issue a new proposed action and provide the employee with an opportunity to respond. We analyzed misconduct data that was available from each selected component, which included data on supervisory status.

In addition to our data analyses, we also spoke with union officials representing bargaining unit employees within CBP, FEMA, and USCIS who told us that there is a lack of transparency in the components' disciplinary adjudication processes. According to these officials, this lack of transparency results in a perception among bargaining unit employees that disciplinary outcomes between supervisors and non-supervisors are inconsistent and inequitable. Specifically, these officials told us they believe supervisors receive favorable treatment and more lenient penalties.

In response to the differences identified in our various analyses, officials from selected components noted some possible explanations. Officials

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from OCHCO, CBP, FEMA, and USCIS told us that supervisors are more likely to be the subjects of misconduct allegations that are not substantiated and warrant taking no action. For example, these officials told us that sometimes employees make an allegation because of interpersonal conflicts with their supervisors. Additionally, CBP officials told us that although cases involving supervisors may be mitigated more often, they may not necessarily be mitigated to the same lower penalty that would have been applied to a non-supervisor. According to CBP officials, supervisors are to be held to a higher standard and may receive harsher proposed actions. CBP officials noted that even if a supervisor's penalty is mitigated, the supervisor could still receive a harsher penalty than a non-supervisor for a similar offense.

Although OCHCO and component officials suggested potential reasons for these differences, OCHCO is not positioned to validate these reasons or assess differences in disciplinary outcomes by supervisory status because it does not collect or analyze the necessary supervisory data. Although most components track supervisory status in their own data—such as the data we analyzed above—they are not providing data beyond the requirements to OCHCO for analysis. OCHCO officials told us that the Misconduct Governance Board did not require components to report supervisory data for two reasons. First, two components—the Transportation Security Administration and the U.S. Coast Guard—do not collect supervisory data. However, OCHCO officials also told us that it would not be difficult for these components to begin collecting supervisory data. Second, OCHCO and Transportation Security Administration officials told us that components may define “supervisor” or “manager” differently. However, components already code positions by supervisory status for OPM, which could serve as a common definition.

According to DHS's directive on disciplinary and adverse actions, OCHCO is to ensure that the administration of disciplinary and adverse actions is evaluated on a regular basis. DHS's directive also directs components to hold supervisors to a higher standard of conduct because they are in positions of trust and responsibility. According to its charter, the DHS Misconduct Governance Board is to identify, evaluate, and implement department-wide improvements in policies and processes related to misconduct. In addition, merit system principles state that employees should receive fair and equitable treatment in all aspects of personnel management, which include the disciplinary adjudication

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process and deciding disciplinary outcomes.<sup>59</sup> Further, federal internal controls standards call for management to evaluate the results of evaluations—such as the results of our analysis—to identify issues and determine appropriate corrective actions.<sup>60</sup>

By requiring components to report data on supervisory status and then periodically analyzing these data, OCHCO would be positioned to better identify the reasons for any differences in disciplinary outcomes between supervisors and non-supervisors, including assessing potential inequities in disciplinary adjudication processes. For example, OCHCO is already collecting data on misconduct type and allegation substantiation decisions. OCHCO could use data on supervisory status to evaluate whether the differences in outcomes by supervisory status reflect different allegation substantiation decisions, as suggested by officials. If supervisory status does not reflect different substantiation decisions, OCHCO could analyze other factors not available for our analyses—specifically, the misconduct type—to examine whether that explains the differences.

OCHCO would then be positioned to identify appropriate action in response to the results of its analyses. Requiring components to take appropriate action in response to the results of such analyses would help ensure transparency and fairness. For example, if such analyses demonstrate differences in outcomes are due to factors other than supervisory status—such as whether allegations are unfounded or not substantiated—communicating these findings to employees could improve transparency and trust in the disciplinary adjudication process. Alternatively, if such analyses identify differences after accounting for additional factors, taking action to identify and address the sources of such differences would help ensure that components are adjudicating discipline in an equitable manner.

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## Conclusions

Federal law requires employees to “maintain high standards of integrity, conduct, and concern for the public interest.”<sup>61</sup> In addition, merit systems principles state that employees should receive fair and equitable treatment in all aspects of personnel management, which include the

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<sup>59</sup>See 5 U.S.C. § 2301(b)(2). According to the U.S. Office of Personnel Management, Congress—in codifying these principles—intended that they guide federal agencies in carrying out their responsibilities.

<sup>60</sup>[GAO-14-704G](#).

<sup>61</sup>5 U.S.C. § 2301(b)(4).

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disciplinary adjudication process and deciding disciplinary outcomes. It is critical, therefore, that agencies' effectively and consistently address supervisors' misconduct to prevent the perception among employees that agencies' favor supervisory employees.

Internal controls can provide assurance that efforts to address misconduct are consistent and align with requirements to treat employees in a fair and even manner. However, we found variation in the extent to which selected DHS components have implemented controls to adjudicate misconduct cases in a consistent manner. We evaluated the extent to which components have implemented controls related to (1) documentation of the disciplinary adjudication process, (2) training employees involved in the disciplinary adjudication process, (3) performance evaluations for those employees, and (4) monitoring of employee misconduct data. While FEMA and the Secret Service have implemented all four controls, gaps exist for CBP and USCIS.

Specifically, CBP has not documented its process for addressing allegations of employee misconduct in detail for employees not in a collective bargaining unit. By revising its disciplinary policies to ensure they collectively document the disciplinary adjudication process for all employees, including non-bargaining unit employees, CBP would better ensure that the disciplinary adjudication process is implemented consistently, and that all employees involved understand how the disciplinary adjudication process should be implemented. Further, CBP has developed training materials that LER supervisors can use when onboarding new LER specialists. However, CBP does not require LER supervisors to use them for instruction. By requiring LER supervisors to consistently use its training materials for training new LER specialists, CBP could better ensure the consistency of training provided.

In addition, USCIS conducts some periodic monitoring and analysis of its misconduct data, specifically related to case management and workflow. However, USCIS has not developed a process to periodically monitor and analyze misconduct data to identify and address potential trends in misconduct. By developing and implementing such a process, USCIS could better ensure it identifies potential issues and effectively takes action to address any identified trends in employee misconduct issues.

In addition to internal controls at individual components, departmental oversight can help ensure consistency across the department. In 2020, DHS established the Misconduct Governance Board to help provide that oversight. However, the board's guidance to components for reporting

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misconduct data to OCHCO does not include detailed expectations, such as definitions of key terms and explanations for reporting certain types of cases. As a result, selected components did not report complete and consistent information to OCHCO. Additionally, our analyses of misconduct data from selected components identified differences in disciplinary outcomes for supervisors and non-supervisors, which could reflect potential inequities in disciplinary adjudication processes. However, OCHCO is not positioned to identify the reasons for the differences in disciplinary outcomes between supervisors and non-supervisors identified in our analyses because it does not collect the necessary supervisory data.

By clarifying its guidance to detail expectations for reporting misconduct data—to include definitions of key terms and explanations for reporting complete and consistent information—the Misconduct Governance Board could better position components to report complete and consistent information to OCHCO for analysis. By also requiring components to report data on supervisory status and periodically analyzing these data, OCHCO would be positioned to periodically analyze the data to assess for differences in disciplinary outcomes by supervisory status. Such analyses would enable OCHCO to better identify the reasons for any differences in disciplinary outcomes between supervisors and non-supervisors, including potential inequities in the disciplinary adjudication processes. OCHCO would then be positioned to identify appropriate action DHS or components could take in response to the results of its analyses to ensure fairness and transparency.

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## Recommendations for Executive Action

We are making a total of six recommendations, including two to CBP, one to USCIS, and three to DHS:

The Commissioner of CBP should revise CBP's disciplinary policies to ensure they collectively document the disciplinary adjudication process for all employees, including non-bargaining unit employees. (Recommendation 1)

The Commissioner of CBP should require LER supervisors to consistently use its training materials for training new LER specialists. (Recommendation 2)

The Director of USCIS should develop and implement a process to periodically monitor and analyze misconduct data to identify and address potential trends in misconduct. (Recommendation 3)



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The Secretary of Homeland Security should ensure that the DHS Misconduct Governance Board clarifies its guidance to detail expectations for components to report misconduct data to OCHCO for analysis, to include definitions of key terms and explanations for reporting complete and consistent information. (Recommendation 4)

The Secretary of Homeland Security should ensure that the DHS Misconduct Governance Board requires components to report data on supervisory status to OCHCO. (Recommendation 5)

The Secretary of Homeland Security should ensure that OCHCO periodically analyzes components' misconduct data by supervisory status, including assessing for differences in disciplinary outcomes and identifying appropriate action DHS or components could take in response. (Recommendation 6)

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## Agency Comments and Our Evaluation

We provided a draft of this report to DHS for review and comment. In its comments, reproduced in appendix III, DHS concurred with each of our six recommendations and described actions planned or underway to address them. If fully implemented, DHS's planned actions for our first, second, third, fourth, and sixth recommendations would likely address those recommendations. To fully address our fifth recommendation, in addition to DHS's plans to add a column for supervisory status in the spreadsheet that components use to report their misconduct data, DHS should ensure that the Misconduct Governance Board's guidance reflects the requirement for components to report data on supervisory status to OCHCO.

In responding to the draft report, DHS expressed concern regarding our findings based on cases of alleged misconduct, rather than cases of substantiated misconduct. Specifically, DHS noted that it believes reliance on all allegations rather than substantiated allegations does not accurately depict disciplinary procedures throughout the Department. In particular, DHS noted that if an allegation is unfounded or unsubstantiated, disciplinary action would not be taken. We recognize the importance of this distinction, however, DHS components' data were not sufficiently reliable for us to include this factor in our analyses. Therefore, our fourth, fifth, and sixth recommendations are targeted to enabling DHS to conduct further analyses that can take into account allegation substantiation.

Specifically, as noted in appendix I regarding our scope and methodology, the four selected DHS components did not reliably record

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data on whether allegations were substantiated, and thus we were unable to include this factor in our analyses. Furthermore, as discussed in our report, DHS components did not report complete and consistent information to OCHCO regarding this factor. We found that DHS Misconduct Governance Board's guidance does not include definitions of "unfounded" and "not substantiated" and not all components used these terms or are familiar with the distinction between them. Thus, our fourth recommendation is targeted to ensuring that DHS components understand definitions of key terms and expectations for reporting complete and consistent information in their data to OCHCO.

We agree that allegation substantiation is an important consideration for assessing differences in disciplinary outcomes for supervisors and non-supervisors. Our report notes that DHS and component officials told us that supervisors are more likely to be the subjects of misconduct allegations that are not substantiated and warrant taking no action. However, we note that OCHCO is not positioned to validate that as a reason for the differences we found because it does not collect or analyze the necessary supervisory data. As a result, in addition to recommending clarifying guidance to ensure reliable data on allegation substantiation, our fifth and sixth recommendations are targeted at ensuring DHS can conduct analyses that consider both allegation substantiation and supervisory status. Such analyses would enable OCHCO to better identify the reasons for any differences in disciplinary outcomes between supervisors and non-supervisors, which could include differences in substantiation of allegations against supervisors compared to allegations against non-supervisors.

DHS also noted that the Secret Service's analysis of its own data found that supervisors and non-supervisors received formal discipline at a rate commensurate with their employee population percentage. However, we believe analyzing only cases that result in formal discipline is misleading because it does not include cases that result in informal action. As noted in our report, an agency may choose to take informal action, such as verbal or written counseling. Our analysis of Secret Service data included 48 cases of alleged misconduct (out of 293 cases) that resulted in informal action. As discussed above, the data do not allow us to determine whether the actions taken—including informal action—were in response to the allegation being substantiated. By implementing our recommendations, DHS will be positioned to comprehensively analyze disciplinary outcomes—including both informal and formal actions—for supervisors and non-supervisors, while taking into account the

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importance of allegation substantiation, among other factors available in the data DHS components provide to OCHCO.

DHS noted that the Secret Service met with us to discuss concerns about the analysis. In response to Secret Service officials' concerns, we added language to clarify that our findings reflect analyses of cases of alleged misconduct. We also included additional language to expand on details in a figure that reflects the precision of our estimates. Specifically, we added that the estimated differences in disciplinary outcomes for the Secret Service and USCIS were less precise, which may have reflected smaller sample sizes or factors we could not measure in the data we received, such as the substantiation of allegations.

DHS also provided technical comments, which we incorporated as appropriate.

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We are sending copies of this report to the appropriate committees, the Secretary of Homeland Security, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (404) 679-1875 or [CurrieC@gao.gov](mailto:CurrieC@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Christopher P. Currie  
Director, Homeland Security and Justice

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# Appendix I: Objectives, Scope, and Methodology

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This report examines the extent to which (1) selected Department of Homeland Security (DHS) components have implemented controls to ensure consistent adjudication of misconduct cases for employees; and (2) DHS has assessed for any differences in disciplinary outcomes for supervisors and non-supervisors.

To address our objectives, we selected four DHS components to include a range of employment characteristics across the department—CBP, FEMA, the U.S. Secret Service, and U.S. Citizenship and Immigration Services (USCIS). Specifically, we selected these components based on their differing mission types, workforce characteristics (e.g., workforce size, unionization), and hiring authorities. In addition, these components' disciplinary data systems include a data field indicating whether the employee who allegedly engaged in misconduct was a supervisor (i.e., supervisory indicator).

For both objectives, we reviewed statutes, regulations, and Merit Systems Protection Board (MSPB) case law that define the formal process agencies must follow when addressing employee misconduct and employees' rights throughout the process. We also reviewed MSPB studies and publications and U.S. Office of Personnel Management (OPM) guidance relating to addressing employee misconduct. Further, we interviewed officials from the MSPB and OPM to obtain broad perspectives on federal efforts to address employee misconduct, including ensuring consistent and equitable treatment regardless of supervisory status.

In addition, we reviewed policies and procedures related to addressing misconduct from DHS's Office of the Chief Human Capital Officer (OCHCO) and four selected components. These documents included management directives, guidance, and standard operating procedures outlining how DHS components are to propose and decide disciplinary and adverse actions and define the key roles and responsibilities for officials when doing so. We also interviewed human capital, employee relations, and other component officials responsible for overseeing, administering, or supporting the adjudication of allegations of employee misconduct. In addition, we interviewed officials from OCHCO, Office of Inspector General, Office of Chief Security Officer, and Office of General Counsel to obtain broad perspectives on the disciplinary processes across the department and within its components; past issues related to adjudicating employee misconduct allegations and the status of their resolution; and ongoing departmental efforts to oversee disciplinary processes, develop and implement relevant departmental policies,

procedures, and enact reforms mandated by the Secretary of Homeland Security in 2022.<sup>1</sup> Furthermore, we interviewed representatives from bargaining units within the selected components, as applicable, to obtain employee perspectives on the components' disciplinary processes and the consistency and equity of disciplinary outcomes.

To address the first objective, we compared selected components' policies and procedures for addressing employee misconduct against *Standards for Internal Control in the Federal Government*.<sup>2</sup> Specifically, we determined that the control environment, control activities, and monitoring components of internal control were significant to this objective. We analyzed component policies and procedures pertaining to administration, oversight, and coordination of the disciplinary process; proposing and deciding disciplinary and adverse actions; monitoring of the disciplinary adjudication process and employee misconduct data; and training and performance evaluation for those with routine responsibilities in the disciplinary adjudication process. We also interviewed officials from each component to discuss the controls implemented for ensuring consistent and equitable disciplinary outcomes.

To address the second objective, we reviewed relevant documentation, including DHS's Misconduct Governance Board's charter, the board's guidance that established requirements for components to report misconduct data to OCHCO, and OCHCO's accompanying spreadsheet that components are to use for reporting data.<sup>3</sup> We also reviewed misconduct data from the first quarter of fiscal year 2023 that selected components reported to OCHCO, as well as the results of OCHCO's

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<sup>1</sup>See Department of Homeland Security, *Employee Accountability Processes*, Memorandum to DHS and Office Leaders (Aug. 18, 2022)

<sup>2</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014). Internal controls provide reasonable assurance that an agency will comply with applicable laws and regulations, such as those related to employee misconduct and discipline.

<sup>3</sup>OCHCO established the Misconduct Governance Board in September 2020. According to its charter, the board is to identify, evaluate, and implement department-wide improvements in policies and processes related to misconduct, among other things. Department of Homeland Security, *Department of Homeland Security Misconduct Governance Board Charter* (Sept. 2, 2020).

analysis of these misconduct data.<sup>4</sup> Further, we interviewed officials from OCHCO and the selected components to determine the extent components reported quarterly misconduct data as intended. We compared these documents and officials' testimonial evidence to the Misconduct Governance Board's role and responsibilities as set in its charter against internal control standards. Specifically, we determined that the monitoring and information and communication components of internal control were significant to this objective.<sup>5</sup>

In addition, we obtained and analyzed misconduct data from the four selected components. Specifically, we analyzed data elements related to cases of alleged misconduct and employees alleged to have engaged in misconduct, including supervisory status, grade, history of misconduct, length of service, location, assigned officials, proposed actions, and disciplinary outcomes.<sup>6</sup> Based on the data we received, a case of alleged misconduct can include more than one alleged offense and does not reflect whether the component found the offense(s) to be substantiated. Because the scope of our work was limited to the adjudication process, our findings do not reflect allegations of misconduct that were not reported or tracked in selected components' data systems. We analyzed record-level data for cases of alleged misconduct that selected components closed in fiscal years 2020 through 2022—the three most recent fiscal years for which complete data were available at the time of our analysis.

To assess the reliability of selected components' misconduct data, we analyzed documentation about the data and data systems, including privacy impact assessments, user guides, standard operating procedures, and documents that outlined case workflows. We also interviewed relevant component officials to determine which internal controls were in place; how they collected, stored, and processed the disciplinary data; and any known data limitations. We performed electronic testing and manual reviews for obvious errors in accuracy and completeness,

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<sup>4</sup>In February 2023, the Misconduct Governance Board finalized guidance that requires components to report misconduct data to OCHCO for analysis. In April 2023, OCHCO collected and analyzed misconduct data from DHS components for the first quarter of fiscal year 2023, the only data collection and analysis OCHCO had completed at the time of our review.

<sup>5</sup>[GAO-14-704G](#).

<sup>6</sup>For the purposes of our review, a case of alleged misconduct refers to allegations reported to an office with responsibility for addressing misconduct within each selected component.

including missing data, outliers, duplicates, and dates outside of our scope time period. When our electronic testing or manual reviews of the data identified potential concerns, such as potential data entry errors, we consulted with component officials and made corrections to the data, as needed, based on information officials provided.

After taking these steps, we determined that all data elements we assessed for FEMA were sufficiently reliable for the purpose of determining whether disciplinary outcomes differed between supervisors and non-supervisors. For CBP, the Secret Service, and USCIS, we determined that some of the data elements were sufficiently reliable. We excluded from our analyses data elements that were not sufficiently reliable. For example, we found that these three components' data do not include reliable information about their allegation substantiation decisions.<sup>7</sup> We discuss these limitations further in our report.

We excluded data on cases that did not align with the scope of our review, that is, when the agency did not or could not complete the adjudication process for a case involving alleged misconduct within the time frame for our review. Specifically, we excluded cases for which (1) the employee who allegedly engaged in misconduct had retired, resigned, or transferred to another federal agency in lieu of agency action; (2) the person who allegedly engaged in misconduct was an unidentified individual, a contractor, or a member of the public; (3) the case had a temporary outcome pending final resolution, such as an indefinite suspension, administrative leave, or administrative duties; (4) the case closed outside our scope time frame; and (5) the case was not misconduct-based (e.g., the case was performance- or medical-related).

To examine the association between supervisory status and disciplinary outcomes, we developed multivariate statistical models (logistic regression) that held constant multiple factors relevant to discipline.<sup>8</sup> These factors differed by component, based on the availability and reliability of data.

- **CBP.** We controlled for assigned labor and employee relations (LER) specialist, grade, length of service, and location. We were unable to

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<sup>7</sup>FEMA did not record data on allegation substantiation from fiscal year 2020 through fiscal year 2022.

<sup>8</sup>We define "discipline" to include both disciplinary actions (i.e., letters of reprimand or suspensions of 14 days or less) and adverse actions (i.e., suspensions of more than 14 days, reductions in pay or grade, or removal).

control for history of misconduct because those data are not reliable, according to CBP officials.

- **FEMA.** We controlled for assigned LER specialist, grade, history of misconduct, and location. We were unable to control for length of service because FEMA did not provide that data element.
- **Secret Service.** We controlled for law enforcement status, history of misconduct, length of service, and location. We were unable to control for grade, due to sample size constraints and the large number of grade types.
- **USCIS.** We controlled for assigned LER specialist, grade, history of misconduct, length of service, and location.

Our models allowed us to estimate the average chance for disciplinary or adverse action for supervisors and non-supervisors, holding constant the factors above. This regression analysis did not allow us to estimate how supervisory status was causally related to disciplinary outcomes. However, it did allow us to estimate the unique association between supervisory status and the chance of discipline, controlling for relevant factors we could reliably measure using component data.

Our multivariate models had several additional limitations. First, the models could not fully explain why disciplinary outcomes varied between supervisors and non-supervisors. We designed the models to isolate the association between supervisory status and disciplinary outcomes, but we could not control for all relevant factors. These unobservable factors, such as aggravating and mitigating factors for individual cases of alleged misconduct, may explain differences in disciplinary outcomes. Second, we did not measure the relationship between supervisory status and varying degrees of discipline severity, due to sample size constraints. Rather, we measured the relationship between supervisory status and any discipline, ranging from a letter of reprimand to removal. For additional details on our regression analyses, see appendix II.

We assessed DHS's collection and evaluation of misconduct data against the department's directives on disciplinary and adverse actions, the



Misconduct Governance Board’s charter and guidance on reporting data to OCHCO, and merit system principles.<sup>9</sup>

We conducted this performance audit from February 2022 to February 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>9</sup>Department of Homeland Security, *Discipline and Adverse Actions Program*, Directive 250-09-001, Rev. 01.1 (Mar. 3, 2022); Department of Homeland Security, *Discipline and Adverse Actions Program*, Directive 250-09, Rev. 00 (Nov. 18, 2016); Department of Homeland Security, *Department of Homeland Security Misconduct Governance Board Charter* (Sept. 2, 2020); Department of Homeland Security Misconduct Governance Board, *DHS Misconduct Governance Board: Nomenclature, Process Steps, and Measures* (Washington, D.C.: Feb. 6, 2023); and 5 U.S.C. § 2301(b)(2).

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# Appendix II: Statistical Modeling of Employee Disciplinary Outcomes

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We conducted multivariate statistical modeling of disciplinary outcomes from cases of alleged misconduct at U.S. Customs and Border Protection (CBP), the Federal Emergency Management Agency (FEMA), the U.S. Secret Service, and U.S. Citizenship and Immigration Services (USCIS) from fiscal years 2020 through 2022. Our models focused on how formal disciplinary and adverse action rates compared between supervisors and non-supervisors. We collected data for a selected sub-population of cases that met our scoping and data reliability criteria, as we discuss in appendix I.

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## Population Scoping and Data Manipulation

Our regression analysis controlled for variables that were available in the selected components' misconduct data that could have been relevant to the discipline decisions. We applied several screens to ensure that enough data were available across all the employee groups of interest for control purposes, when estimating the association between supervisory status and disciplinary outcomes. We collapsed covariates and excluded observations to ensure variation in discipline and supervisory status within each of the covariate groups.

- We put labor and employee relations (LER) specialists, proposing and deciding officials, and geographic locations and offices having less than 15 cases into a residual, "Other" category because smaller groups often had no variation in either discipline or supervisory status. We could not always control for each of these groups, depending on the component's overall sample size and the distribution of cases across the groups, supervisory status, and outcomes.
- We combined senior executive status and grade level into a single variable, depending on the component, for similar reasons. Employees at lower grade levels tended to be supervisors at much lower rates than employees at the General Schedule 11 or higher. For CBP, we combined grades 01 through 11. For FEMA, we combined grades 01 through 11, and excluded senior executive status from analysis due to their 100 percent supervisory rate. For USCIS, we excluded employees from grades 01 through 08 from analysis, due to their 100 percent non-supervisory rates.

We could not analyze senior executive status and grade level at the Secret Service. The large number of grades reduced the sample sizes within each group and made it difficult to meaningfully combine groups. All members of the Senior Executive Service were supervisors, which would have prevented separate estimation of supervisor effects.

- We could not control for the proposing or deciding official because most officials handled too few cases. At FEMA, we could not control for law enforcement official status for similar reasons.

The sample size screens excluded 0–17 percent of the original populations of interest, depending on the component. Although this further narrowed the sub-population for analysis, we designed the scoping to exclude portions of the original population where a controlled comparison was infeasible and uninformative. For example, attempting to control for senior executive status at FEMA or the Secret Service would not have been feasible because there were zero non-supervisory cases among Senior Executive Service employees to compare to supervisory cases. Estimating how a non-supervisory Senior Executive Service employee would have been disciplined would have been only marginally useful, even if it were feasible, because it was not a common practice, according to FEMA’s data.

We combined disciplinary actions for modeling purposes. We obtained raw data on disciplinary actions within our scope and then mapped each agency’s actions to our own consistent categories. To ensure the statistical precision of our estimates and make them comparable across components, we combined the disciplinary outcomes into an indicator for whether the component took any “formal” action. This group combined the “No Action” and “Informal Actions” we measured from the raw component data into a “No Formal Action” outcome and combined all other responses into a “Formal Action” outcome. The large number of disciplinary outcomes recorded by each component limited our ability to estimate how action rates compared between supervisors and non-supervisors for each outcome, particularly for smaller components. The need to collapse outcomes also limited our ability to analyze associations between the severity of the offense and severity of the discipline, such as a 3-day suspension versus a 2-week suspension.

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## Statistical Models and Results

To examine the association between supervisory status and disciplinary outcomes, we developed logistic regression models that held constant multiple factors relevant to discipline. The model specifications varied across components, due to the screening of covariates above and differences in the factors that each component measured in its administrative data. We specified all covariates as sets of indicator variables, either on their natural categorical scales or combined into ordered categories. Table 2 lists the covariates in our models for each component, with estimates in the final row appearing in the body of this report.

**Appendix II: Statistical Modeling of Employee  
Disciplinary Outcomes**

**Table 2: Model Estimates of the Average Difference in Department of Homeland Security Employee Discipline Chances Between Supervisors and Non-Supervisors, by Selected Components, Fiscal Years 2020–2022**

<b>Component and model</b>	<b>Estimate</b>	<b>Lower 95% confidence interval</b>	<b>Upper 95% confidence interval</b>
<b>U.S. Customs and Border Protection (CBP)</b>			
Supervisory Status	-14.3	-15.4	-13.1
Supervisory Status + General Schedule Level	-3.8	-6.4	-0.9
Supervisory Status + Years of Service	-14.2	-15.3	-12.9
Supervisory Status + Office	-13.8	-14.9	-12.6
Supervisory Status + Labor and Employee Relations (LER) Specialist	-13.6	-14.7	-12.4
Supervisory Status + General Schedule Level + Years of Service	-4	-6.6	-1.3
Supervisory Status + General Schedule Level + Years of Service + Office + LER Specialist	-5.2	-8.4	-1.9
<b>Federal Emergency Management Agency (FEMA)</b>			
Supervisory Status	-23.2	-26.4	-19.8
Supervisory Status + General Schedule Level	-10.3	-15.5	-4.7
Supervisory Status + Prior Misconduct	-27	-30.8	-23.1
Supervisory Status + Office	-20.8	-24.2	-17.1
Supervisory Status + LER Specialist	-22.1	-25.3	-18.6
Supervisory Status + General Schedule Level + Prior Misconduct	-11.3	-17.5	-4.8
Supervisory Status + General Schedule Level + Prior Misconduct + Office + LER Specialist	-9.7	-16	-3.2
<b>U.S. Secret Service</b>			
Supervisory Status	-19.2	-31	-7.1
Supervisory Status + Prior Discipline	-17.8	-30.1	-5
Supervisory Status + Law Enforcement	-19.6	-31	-7.4
Supervisory Status + Years of Service	-20.2	-34.3	-5.3
Supervisory Status + Office	-20.1	-32	-7.3
Supervisory Status + General Investigator	-17.7	-32.8	-2.6
Supervisory Status + Prior Discipline + Law Enforcement	-18.9	-31.1	-5.9
Supervisory Status + Prior Discipline + Law Enforcement + Years of Service + Office	-21.5	-35.9	-6.5
Supervisory Status + Prior Discipline + Law Enforcement + Years of Service + Office + General Investigator	-15.9	-33.2	0.8
<b>U.S. Citizenship and Immigration Services (USCIS)</b>			
Supervisory Status	-15.9	-20.5	-11.2
Supervisory Status + General Schedule Level	-14.6	-20.3	-8.5
Supervisory Status + Prior Misconduct	-15.3	-19.9	-10.4

**Appendix II: Statistical Modeling of Employee Disciplinary Outcomes**

<b>Component and model</b>	<b>Estimate</b>	<b>Lower 95% confidence interval</b>	<b>Upper 95% confidence interval</b>
Supervisory Status + Years of Service	-15.2	-20	-10.2
Supervisory Status + LER Specialist	-10.6	-15.3	-5.7
Supervisory Status + Office	-11.4	-16.2	-6.4
Supervisory Status + General Schedule Level + Prior Misconduct + Years of Service	-13.6	-19.5	-7.5
Supervisory Status + General Schedule Level + Prior Misconduct + Years of Service + LER Specialist + Office	-5.6	-12.2	1.3

Source: GAO analysis of CBP, FEMA, Secret Service, and USCIS misconduct data. | GAO-24-105820

Note: Entries are the mean estimated formal discipline chances for supervisors and non-supervisors, scaled in percentage points, for cases of alleged misconduct that closed in fiscal years 2020 through 2022. Estimates are derived from statistical models that account for characteristics of the employee and case, as shown in the 'model' column.

Each model assumed that the disciplinary outcome was distributed as Bernoulli conditional on the covariates, identically and independently across cases. The covariates included key potential sources of clustered residual correlation, such as office and LER specialist. Controlling for higher level covariates avoided the need to use multi-level or cluster-robust variance estimation methods.

Our models allowed us to estimate the average chance for disciplinary or adverse action for supervisors and non-supervisors, holding constant the covariates. Specifically, we used the fitted models to estimate the probability of discipline for supervisors and non-supervisors, respectively, and averaged these probabilities over the sample distribution of the covariates. We calculated 95 percent confidence intervals for these quantities by drawing 10,000 values of the parameters from their estimated multivariate normal distributions, calculating the quantity for each simulate, and using the 2.5th and 97.5th quantiles as lower and upper bounds, respectively. Table 1 provides the average predicted probabilities in the "estimate" column and their confidence intervals.

Our models allowed us to estimate the average chance of disciplinary or adverse action for supervisors and non-supervisors, holding constant the factors above. Although we could not estimate how supervisory status was causally related to disciplinary outcomes, we could estimate the unique association between supervisory status and the chance of discipline, controlling for relevant factors we could reliably measure using component data.

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## Caveats and Limitations

Our models had several limitations, which affect the use and interpretation of their results.

We did not control for a large number of substantive factors that could influence discipline decisions, including the facts and circumstances of each case and selected aggravating and mitigating factors<sup>1</sup> that could have been relevant but were not measured in the available data. Allegations of misconduct against supervisors could be more likely to lack factual merit than non-supervisors, according to Department of Homeland Security (DHS) and component officials. As a result, differences between supervisors and non-supervisors may have reflected these unmeasured variables.

We designed the modeling primarily to isolate the partial association of supervisory status—the primary variable of interest—and the average chance of discipline or adverse action, holding constant relevant factors we could measure. These associations do not represent highly credible estimates of causal effects, due to the observational nature of the data and several factors we could not control, as discussed above.

We collapsed the disciplinary action to an indicator of whether DHS took any discipline or adverse action, ignoring the degree of discipline, to simplify the analysis and maximize sample sizes.

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<sup>1</sup>These are generally referred to as the Douglas Factors, based on a case decided by the Merit Systems Protection Board that established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. Examples of Douglas Factors that must be considered include the employee's past disciplinary record; their past work record, including length of service; consistency of the penalty with those imposed on other employees for the same or similar offenses; and the notoriety of the offense or its impact upon the reputation of the agency. See *Douglas v. Veterans Admin.*, 5 M.S.P.R. 280 (1981).

# Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

January 25, 2024

Christopher P. Currie  
Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548-0001

Re: Management Response to Draft Report GAO-24-105820, "DHS EMPLOYEE MISCONDUCT: Actions Needed to Better Assess Differences in Supervisor and Non-Supervisor Discipline"

Dear Mr. Currie:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

DHS leadership is pleased to note GAO's recognition that selected DHS Components have some controls in place to ensure consistent adjudication of employee misconduct, including the Federal Emergency Management Agency and U.S. Secret Service (Secret Service) having implemented controls for: (1) documenting the disciplinary adjudication process; (2) training employees responsible for the disciplinary adjudication process; (3) evaluating these employees' performance; and (4) monitoring misconduct data. The establishment of the DHS Misconduct Governance Board in 2020, which established requirements for Components to report misconduct data to the DHS Office of the Chief Human Capital Officer (OCHCO), and the subsequent collection of misconduct data is an essential part of DHS efforts to standardize data collection and analysis of misconduct across the Department. DHS remains committed to ensuring consistent adjudication of employee misconduct.

DHS is concerned, however, that GAO's draft report relies on data that may wrongly lead readers to believe that supervisors are less likely to face discipline than non-supervisors, which is not the case. Specifically, GAO's work relied on allegations of *alleged misconduct* (emphasis added) to assess differences in disciplinary outcomes between supervisors and non-supervisors. Conversely, DHS maintains that reliance on these

**Appendix III: Comments from the Department  
of Homeland Security**

allegations rather than *substantiated allegations* (emphasis added) of misconduct does not accurately depict disciplinary procedures throughout the Department. In fact, allegations of misconduct are not acted upon until an investigation is completed and a finding is made whether the allegations are substantiated, unfounded, or unsubstantiated. If an allegation is substantiated, disciplinary action is likely to be taken. However, if an allegation is unfounded or unsubstantiated, disciplinary action would not be taken. Allegations alone do not result in disciplinary action, and DHS does not agree allegations alone are appropriate to determine whether supervisors are less likely to face discipline than non-supervisors.

For example, the Secret Service conducted a separate analysis, which shows that from fiscal year (FY) 2020 to FY 2022, supervisors and non-supervisors received formal discipline at a rate commensurate with their employee population percentage. Specifically, supervisors made up 19 percent of the Agency's population in that time period and 19 percent of the cases of formal discipline during that same time period involved supervisors, while non-supervisors made up the remaining 81 percent of those receiving formal discipline. Although the Secret Service met with GAO on January 11, 2024, to discuss this analysis and concern that the data estimates for the Secret Service in this draft report are not precise, the report remains unchanged.

The draft report contains 6 recommendations with which the Department concurs. Enclosed find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracies, contextual, and other issues under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H CRUMPACKER

Digitally signed by JIM H  
CRUMPACKER  
Date: 2024.01.25 07:59:00 -05'00'

JIM H. CRUMPACKER, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

Enclosure



**Enclosure: Management Response to Recommendations  
Contained in GAO-24-105820**

GAO recommended that the U.S. Customs and Border Protection (CBP) Commissioner:

**Recommendation 1:** Revise CBP's disciplinary policies to ensure they collectively document the disciplinary adjudication process for all employees, including non-bargaining unit employees.

**Response:** Concur. CBP agrees that the disciplinary adjudication process for all employees should be collectively documented, and notes that CBP's current disciplinary policies collectively document the adjudication process for all CBP employees, to include both bargaining and non-bargaining unit employees. The CBP Director of Labor and Employee Relations will document its entire disciplinary adjudication process on the Office of Human and Resource Management's website, which is accessible to all CBP employees. Estimated Completion Date (ECD): March 29, 2024.

**Recommendation 2:** Require LER [Labor and Employee Relations] supervisors to consistently use its training materials for training new LER specialists.

**Response:** Concur. CBP LER will review and update its training materials for training new LER specialists, and will also identify specific individuals to serve as trainers to new LER specialists to ensure each new LER specialist receives the same training consistently. ECD: March 29, 2024.

GAO Recommended that the Director of U.S. Citizenship and Immigration Services (USCIS):

**Recommendation 3:** Develop and implement a process to periodically monitor and analyze misconduct data to identify and address potential trends in misconduct.

**Response:** Concur. USCIS' Office of Human Capital and Training is working on enhancing and expanding its current analysis of its employee relations data and will implement formal periodic reviews. Once implemented, these periodic reviews will include an evaluation of trends and, if applicable, development of recommendations for agency action to address trends in employee misconduct and/or discipline. ECD: September 30, 2024.

GAO recommended that the Secretary of Homeland Security:

**Recommendation 4:** Ensure that the DHS Misconduct Governance Board clarifies its guidance to detail expectations for components to report misconduct data to OCHCO for analysis, to include definitions of key terms and explanations for reporting complete and consistent information.

**Response:** Concur. OCHCO will work with the DHS Misconduct Governance Board to revise existing guidance and update, as appropriate, to include information on definitions of key terms and explanations for reporting complete and consistent information when reporting misconduct data to OCHCO for analysis. Specifically OCHCO will revise its' policy documents to clarify that—allegations which are unfounded, unsubstantiated, and substantiated, as well as cases of alleged misconduct that resulted in no action or informal action—must be included in Components' misconduct data reporting. Additionally, OCHCO will revise its' policy documents to include definitions of key terms, such as “unfounded” and “non substantiated.” Further, OCHCO will revise its' guidance to clarify how Components are to report indefinite suspensions and resignations or retirements in lieu of agency actions. ECD: October 31, 2024.

**Recommendation 5:** Ensure that the DHS Misconduct Governance Board requires components to report data on supervisory status to OCHCO.

**Response:** Concur. DHS OCHCO, in coordination with the DHS Misconduct Governance Board, will ensure Components add supervisory status to the data already provided to OCHCO. Specifically, FY 2024, Q1 reporting, an additional column for supervisory status will be added to the template spreadsheet which Components' use to report their misconduct data. ECD: March 29, 2024.

**Recommendation 6:** Ensure that OCHCO periodically analyzes components' misconduct data by supervisory status, including assessing for differences in disciplinary outcomes and identifying appropriate action DHS or components could take in response.

**Response:** Concur. DHS OCHCO will conduct biannual reviews of specific charges referred for disciplinary action for both supervisors and non-supervisors. Specifically, working with the subset of disciplinary outcomes will allow DHS OCHCO to conduct an analysis of the charges for both supervisors and non-supervisors and identify appropriate action to be taken by DHS headquarters and/or the Components. The results of this analysis and identification of needed action will be presented to the Components at the Misconduct Governance Board meetings. Future meetings will track Components' progress in accomplishing the appropriate action identified by DHS OCHCO. ECD: October 31, 2024.

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Christopher P. Currie, 404-679-1875 or [CurrieC@gao.gov](mailto:CurrieC@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Alana Finley (Assistant Director), Thorolf Lenington-Galinski (Analyst-in-Charge), Caitlin Jackson, Zachary Conti, Audrey Blumenfeld, Brady Misustin, Michele Fejfar, Minette Richardson, Jeff Tessin, Frances Tirado, Heidi Nielson, Joi Reece, Nicole Hewitt, and Dominick Dale made significant contributions to this report.

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