

**Office of the District of Columbia Auditor**

**PERFORMANCE POLICY**

**Effective Date: October 7, 2016**

# **Performance Policy**

## **Performance Assessment Policies**

The following comprises ODCA's performance assessment policies with regard to:

- ◆ Performance Plans
- ◆ Mid-Year Reviews
- ◆ Annual Performance Assessments
- ◆ Project Performance Assessments
- ◆ Non-Satisfactory Performance
- ◆ Misconduct and Inappropriate Conduct
- ◆ Sanctions (e.g. Written Reprimand, Employee Improvement Plan, Suspension, Removal from Office, Summary Suspension or Removal)
- ◆ Appeals

The purpose of this Performance Policy is to ensure that:

- Every ODCA employee has documented goals and competencies in his or her Performance Plan, giving a clear understanding of what is expected;
- Every ODCA employee receives substantive feedback throughout the performance period, in the form of Project Performance Assessments and a Mid-Year Assessment, so the employee knows if he or she is meeting performance expectations and the requirements of the position;
- If performance improvements are needed, ODCA employees will have sufficient time and, where appropriate, a documented Employee Improvement Plan, to help them improve their performance, successfully complete the Employee Improvement Plan period, and earn a positive Performance Assessment rating;
- There is an open and transparent progressive system to address performance issues and misconduct or inappropriate conduct in a fair and uniform manner;
- Employees are on notice as to the potential sanctions in the event of performance issues, misconduct, or inappropriate conduct; and
- There is fairness and uniformity in the performance assessment process, with rights to an internal appeal of the Annual Performance Assessment and/or the outcome of an Employee Improvement Plan.

## **Performance Assessments**

The ODCA Performance Assessment process shall include an Annual Performance Assessment for each calendar year,<sup>1</sup> a Mid-Year Review conducted in June of each year, and Project Assessments completed within 30 days of the conclusion of a project, which generally is the issuance of a final report.

### **Annual Performance Assessments**

The schedule for Annual Performance Assessments shall be as follows:

December 1<sup>st</sup> through December 10<sup>th</sup> - - employees will write self-assessments for the performance period (the current calendar year) and provide the self-assessments to their managers no later than December 10<sup>th</sup>.

December 10<sup>th</sup> through December 20<sup>th</sup> - - managers will complete draft employee Annual Performance Assessments, including responsive comments on employee self-assessments, where appropriate, and provide the employee Annual Performance Assessments to the D.C. Auditor (or designee) for review no later than December 20<sup>th</sup>.

December 10<sup>th</sup> through December 31<sup>st</sup> - - the D.C. Auditor (or designee) will review employee Annual Performance Assessments.

December 1<sup>st</sup> through December 31<sup>st</sup> - - ODCA managers will meet (as a group) at least one time, but as many times as is necessary, to discuss employee Annual Performance Assessments. Particular emphasis will be on those employees whose managers have rated them (or intend to rate them) "Role Model" or "Needs Improvement" in the draft Annual Performance Assessment. During this period, the D.C. Auditor (or designee) also may meet with any of the managers about all or particular employee Annual Performance Assessments drafted by the manager and work with the manager on revisions, as needed. Employee Annual Performance Assessments will be provided to individual employees as they are completed and finalized.

By January 15<sup>th</sup> - - all employee Annual Performance Assessments will be provided to individual employees and completed no later than January 15<sup>th</sup>. Managers will hold individual performance conferences with employees to discuss the employee's Annual Performance Assessment and any other performance-related matters. Employees will sign the Annual Performance Assessment acknowledging receipt. (If the employee refuses to acknowledge

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<sup>1</sup> Note that for CY 2016, the performance assessment year will be 15-months long, covering the period October 1, 2015, through December 31, 2016, because of the transition from a fiscal year performance assessment period to a calendar year performance assessment period.

receipt in writing, the manager or other witness shall note on the Annual Performance Assessment that the employee refused to acknowledge receipt and include his or her printed name and title, signature, and date). The manager and D.C. Auditor also will sign the Annual Performance Assessment. The signed Annual Performance Assessment will be provided to the D.C. Auditor's designee no later than January 15<sup>th</sup> so that the Annual Performance Assessment can be placed in the employee's personnel file.

### **Appeals of Annual Performance Assessments**

With respect to Annual Performance Assessments, an employee may appeal his or her Annual Performance Assessment to the D.C. Auditor within 15 calendar days of receiving his or her Annual Performance Assessment. The appeal shall be filed directly with the D.C. Auditor, in writing, and shall include a summary of the reason(s) for the appeal, and, where possible, specific examples of how the Annual Performance Assessment is inaccurate or omits pertinent information. The employee may provide documentation to support his or her appeal.

Upon receipt of an appeal to an Annual Performance Assessment, the D.C. Auditor may, at his or her sole discretion, meet with the employee, the manager, other ODCA managers who have worked with the employee, or anyone else who may be able to provide pertinent information regarding the employee's performance, and/or request from any persons identified above any pertinent information and/or documentation. The D.C. Auditor, in his or her sole discretion, may determine that the Annual Performance Assessment is appropriate as is or requires revisions. The D.C. Auditor's decision shall be rendered, in writing, and provided to the employee and manager, within 30 calendar days, unless the D.C. Auditor has notified the employee that he or she will need an extension of up to 30 calendar days to complete the review of the appeal and render a decision. The D.C. Auditor's written decision on the appeal shall constitute the final decision of ODCA and all agency administrative remedies shall have been exhausted at that time.

### **Mid-Year Assessments**

Mid-Year Assessments will be held between June 1<sup>st</sup> and June 30<sup>th</sup> of each year. The Mid-Year Assessments will be individual meetings between an employee and his or her manager to discuss expectations, employee performance and progress-to-date, strengths and weaknesses, areas that may need improvement before the end of the performance period, training needs and goals, areas for professional growth, and any other relevant information. Mid-Year Assessments should be documented in that performance period's Annual Performance Assessment. It is sufficient to note that a Mid-Year Assessment was held and the date. Comments may be included if desired by the employee or the manager.

### **Performance Plans**

December 1<sup>st</sup> through December 20<sup>th</sup> - - each employee will draft or revise his or her individual performance plan for the upcoming calendar year, in consultation with his or her manager. Individual performance plans will be completed and submitted to the D.C. Auditor (or designee) for review no later than December 20<sup>th</sup> of each year.

December 20<sup>th</sup> through January 10<sup>th</sup> - - the D.C. Auditor (or designee) will review the individual performance plans and either approve them or work with the employees and managers to revise them until they are approved. All individual performance plans will be completed and approved by the D.C. Auditor (or designee) no later than January 31st of each year. Upon completion, individual performance plans will be distributed to employees, signed, and submitted to the D.C. Auditor's designee for placement into each employee's personnel file no later than January 31st of each year.

New Employees: New employees will work with their managers to write performance plans within 90 days of starting work at ODCA. That performance plan will be effective for the remainder of that performance period/calendar year. If an employee begins working less than 90 days before the end of the performance period/calendar year, the performance plan shall be for the next performance period and the employee will not receive a formal, written performance assessment for the current performance period. The employee and his or her manager, however, will hold a verbal conference at which the manager will discuss with the employee expectations, performance to date, strengths and weaknesses, areas that may need improvement, training needs and goals, areas for professional growth, and any other relevant information. The manager will write up a brief summary of that verbal conference, either in memorandum form or on the performance plan, for placement in the employee's personnel file.

### **Project Performance Assessments**

Within 30 calendar days of the conclusion of each audit, program evaluation, or project, the Audit Supervisor will complete a Project Performance Assessment form to evaluate the work of the Auditor-in-Charge (AIC) and each Team Member, including the legal advisor and the communications employee. "Conclusion" refers to issuance of the final report.

The draft Project Performance Assessment form will be provided to the D.C. Auditor for review, the addition of comments if the D.C. Auditor wants to comment, discussion with the Audit Supervisor, and/or changes. After the draft Project Performance Assessment form has been approved by the D.C. Auditor, the Audit Supervisor will provide it to the employee. The Audit Supervisor and employee may meet and discuss the Project Performance Assessment, but this is not required.

The employee is expected to sign the Project Performance Assessment to acknowledge receipt. If the employee refuses to acknowledge receipt in writing, the Audit Supervisor or other witness shall note on the Project Performance Assessment that the employee refused to

acknowledge receipt and include his or her printed name and title, signature, and date. The Audit Supervisor and the D.C. Auditor will then sign the Project Performance Assessment form.

The employee may write a comment on the Project Performance Assessment form if desired, or may submit a written comment to the Audit Supervisor within three business days of having received the Project Performance Assessment form, which will be attached to the Project Performance Assessment form.

The completed and signed Project Performance Assessment will be provided to the D.C. Auditor's designee. The Project Performance Assessment form may be completed prior to the conclusion of an audit, program evaluation, or project, where appropriate, such as where the audit, program evaluation, or project was long-term, large and complex, or took up most of an employee's work hours for a long period of time.

Employees may not appeal a Project Performance Assessment. An employee, however, may request a meeting with the D.C. Auditor regarding a Project Performance Assessment if the employee feels that the Project Performance Assessment is inaccurate, incomplete, or unfair. The D.C. Auditor's decision as to whether the Project Performance Assessment should remain as is or should be revised is in his or her sole discretion and is final.

### **Non-Satisfactory Performance and Misconduct/Inappropriate Conduct**

The following comprises ODCA's Performance Policy encompassing issues relating to non-satisfactory performance and issues relating to misconduct and inappropriate conduct.

All ODCA employees are expected to perform the duties of their positions in an effective, efficient, competent, and professional manner, to the best of their abilities. When an ODCA employee's performance does not meet performance expectations and the requirements of the position, the D.C. Auditor (or designee) may take action to address the performance issues to help the employee meet performance expectations and the requirements of the position and to achieve agency effectiveness. When an ODCA employee engages in misconduct or inappropriate conduct, the D.C. Auditor (or designee) may take disciplinary action for cause to address the misconduct or inappropriate conduct.

ODCA's policy toward achieving these goals generally includes a progressive system, described below, though it is in the D.C. Auditor's discretion to evaluate each situation and determine the appropriate course of action, with or without following a progressive system, consistent with the requirements of the D.C. Code. All disciplinary actions with regard to employees in the Excepted Service and the Management Supervisory Service are at the sole discretion of the D.C. Auditor, consistent with the D.C. Code. The following sections (Written Reprimand, Employee Improvement Plan, Appeal of Employee Improvement Plan, Outcome of Employee Improvement Plan, Exigent Circumstances, Representation, and Standard of Proof) describe the ODCA progressive discipline system pertaining to employees who are in the Career Service. The

D.C. Auditor may at his or her discretion use any of these provisions in overseeing the performance of employees in other services.

### **Written Reprimand**

An employee's supervisor (or the D.C. Auditor or designee) may issue a written reprimand to identify a specific performance deficit, or misconduct or inappropriate conduct.

- a. The written reprimand shall include:
  - i. a brief synopsis of the facts and circumstances that support the reprimand;
  - ii. identification and description of the performance standard(s) the employee failed to meet and facts and circumstances showing how the employee failed to meet those performance standards;
  - iii. a brief description of how the employee is expected to meet the performance standards identified above; and
  - iv. the potential consequences if the employee continues to fail to meet the performance standards identified above.
- b. Upon receipt of a written reprimand, the employee shall acknowledge receipt in writing. If the employee refuses to acknowledge receipt in writing, the employee's supervisor or other witness shall note on the written reprimand that the employee refused to acknowledge receipt and include his or her printed name and title, signature, and date.
- c. An employee who has received a written reprimand may submit a written response to the written reprimand within ten work days of receiving the written reprimand. The employee's response shall be maintained as an attachment to the written reprimand and shall be considered by the supervisor who issued the written reprimand. The supervisor may modify, rescind, or sustain the written reprimand based on the employee's response. If the written reprimand is modified or rescinded, the employee shall be notified in writing. If the written reprimand is sustained after the supervisor's review of the employee's written response the employee shall be notified in writing. Information regarding the right to submit a written response shall be included in the written reprimand.
- d. A final written reprimand shall remain part of the employee's official personnel record .

### **Employee Improvement Plan**

At any time during the performance period, an employee may be put on an Employee Improvement Plan if the employee's work needs improvement and/or the employee has received a prior performance rating of "Needs Improvement" in a mid-year or annual assessment. A manager seeking to put an employee on an Employee Improvement Plan shall have sufficient documentation showing that the employee meets the Needs Improvement criteria.

As a general guide, there should be documentation of at least three instances or areas where the employee meets the Needs Improvement criteria. If, however, the employee's conduct involves an "exigent circumstance," i.e. is extreme or requires immediate action to prevent a further problem (i.e. the employee's conduct threatens the integrity of government operations, constitutes an immediate hazard to the agency, other District employees, or the employee, or is detrimental to the public health, safety, or welfare), less than three instances or areas may be sufficient and/or the requirement that the employee's work needs improvement and/or that the employee has received a previous rating of Needs Improvement may be waived.

Managers shall draft an Employee Improvement Plan that will last at least 30 days. It may be extended in 30 day increments up to 90 days, but in no event shall exceed 90 days. The Employee Improvement Plan shall be designed to address the areas of specific concern/areas that need improvement for this particular employee, with a focus on helping the employee successfully complete the Employee Improvement Plan period .

In general, before an employee is placed on an Employee Improvement Plan, the manager, after documenting the instances or areas where the employee meets the Needs Improvement criteria, will present evidence to the Performance Review Committee<sup>2</sup> either in writing or in person. The manager shall provide documentation of the instances or areas in which the employee Needs Improvement, copies of previous Project Performance Assessments and/or Annual Performance Assessments, and a draft Employee Improvement Plan to the Performance Review Committee for review.

The Performance Review Committee will consist of the Deputy Auditor or Deputy Assistant Auditor or both, the Chief of Staff, and the Director of Program Evaluation. At least two members of the Performance Review Committee must be present for a meeting to occur. Performance Review Committee meetings may take place in person or electronically/telephonically. A member of the Performance Review Committee shall recuse him or herself from attendance at any particular meeting as a member of the Performance Review Committee when the Performance Review Committee is considering whether to place

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<sup>2</sup> The Performance Review Committee will consist of the Deputy Auditor, the Assistant Deputy Auditor, the Director of Program Evaluation, and the Chief of Staff. (See further details on the Performance Review Committee later in this section under "Employee Improvement Plan").



the Employee on an Employee Improvement Plan if he or she has a conflict of interest, cannot be fair and impartial, or is the manager of the employee to be discussed.

The Performance Review Committee may meet as many times as is necessary to discuss whether the employee should be placed on an Employee Improvement Plan. In addition, the Performance Review Committee may meet with and/or request information and/or documentation from anyone who may be able to provide pertinent information regarding the employee's performance and/or conduct.

The Performance Review Committee shall operate by consensus but as needed, may vote on whether an employee shall be placed on an Employee Improvement Plan. Any vote must carry by a majority. A record shall be kept of all meetings and votes of the Performance Review Committee. The record shall be maintained by the Chief of Staff or designee if the Chief of Staff is unavailable or had to recuse him or herself. The record should include the following information:

- ◆ Date of meeting and/or vote
- ◆ Members of the Performance Committee present
- ◆ Employee discussed
- ◆ Manager presenting
- ◆ Results of consensus/vote
- ◆ A brief summary of any other pertinent details

### **Appeal of Employee Improvement Plan**

With respect to an Employee Improvement Plan, an employee may appeal his or her placement on an Employee Improvement Plan to the D.C. Auditor or designee no later than 10 calendar days after receiving an Employee Improvement Plan signed by his or her manager.

The appeal shall be filed directly with the D.C. Auditor or designee, in writing, and shall include a summary of the reason(s) for the appeal, and, where possible, specific examples of how the Employee Improvement Plan was unwarranted, contains inaccuracies, omits pertinent information, or is not designed to help the employee successfully complete the Employee Improvement Plan period

The D.C. Auditor or designee, in his or her sole discretion, may determine that the Employee Improvement Plan is appropriate as is or requires revisions. The D.C. Auditor's or designee's decision shall be rendered, in writing, and provided to the employee and manager, no more than 15 calendar days after the filing of the appeal, unless the D.C. Auditor or designee has notified the employee that he or she will need an extension of up to 10 calendar days to complete the review of the appeal and render a decision. The start of the Employee Improvement Plan period shall be suspended while the appeal is pending with the D.C. Auditor

or designee. The D.C. Auditor or designee shall render a written decision on the appeal as to whether the employee shall be placed on an Employee Improvement Plan. That decision is final and there shall be no further appeals.

### **Outcome of Employee Improvement Plan**

At the conclusion of the Employee Improvement Plan, the Performance Review Committee shall meet to discuss the outcome of the Employee Improvement Plan. Except as provided below, ODCA will notify the employee of the proposed outcome of the Employee Improvement Plan within ten calendar days of its conclusion. Therefore, the Performance Review Committee shall meet as soon as possible after the conclusion of the Employee Improvement Plan (or, if that would not be possible, no more than seven calendar days before the conclusion of the Employee Improvement Plan) to allow sufficient time for the Performance Review Committee to gather and review all pertinent information and documentation, and reach a decision, so that all pertinent paperwork that needs to be prepared for notification to the employee can be prepared and provided to the employee within ten calendar days of the conclusion of the Employee Improvement Plan.

The options for the outcome of the Employee Improvement Plan are: *(1) Employee will be reassigned, demoted, or removed from service; or (2) Employee has met the requirements of the Employee Improvement Plan. No further action is required at this time.*

The Performance Review Committee or any individual member of the Performance Review Committee, may: review any pertinent paperwork and/or meet with any person, including but not limited to the employee, the employee's supervisor, and/or any employee, supervisor, or manager with whom the employee worked during the period of the Employee Improvement Plan, to ask questions or request information regarding the employee's performance and/or conduct

Upon completion of its review, the Performance Review Committee shall discuss the various options for the outcome of the Employee Improvement Plan and reach a decision as to the outcome of the Employee Improvement Plan. The Performance Review Committee shall operate by consensus but as needed, may vote on the conclusion to the Employee Improvement Plan. Any vote must carry by a majority. A record shall be kept of all meetings and votes of the Performance Review Committee. The record shall be maintained by the Chief of Staff or designee if the Chief of Staff is unavailable or had to recuse him or herself. The record should include the following information:

- ◆ Date of meeting and/or vote
- ◆ Members of the Performance Committee present
- ◆ Employee discussed
- ◆ Manager presenting
- ◆ Results of consensus/vote

- ◆ A brief summary of any other pertinent details

The decision of the Performance Review Committee shall be communicated to the D.C. Auditor or designee (verbally or in writing) and the appropriate notification will be made to the employee in a timely manner.

If the conclusion of the Employee Improvement Plan will be a proposed termination/removal from service, demotion, or reassignment, the employee shall receive a written notice of the proposed action, which shall inform the employee of:

- ◆ The nature of the proposed action;
- ◆ The specific standards the employee was expected to meet;
- ◆ The specific performance of conduct at issue;
- ◆ How the employee's performance or conduct fails to meet the appropriate standards;
- ◆ The name and contact information of the deciding official;
- ◆ The right to prepare a written response to the notice;
- ◆ The right to appeal; and
- ◆ The right to representation by an attorney or other representative.

In terms of appeal, the employee may appeal the decision or proposed action (except for an appeal of a proposed termination/removal) to the D.C. Auditor or designee within ten work days of receiving the notification of the proposed action in writing. The employee may request an extension of the time to file an appeal of up to 15 work days. The decision as to whether to grant an extension shall be up to the D.C. Auditor or designee and may be granted for good cause. If the appeal is received within 10 work days of the employee receiving the notification of the proposed action in writing, the D.C. Auditor or designee shall have five work days from the expiration of the ten work days (15 work days from the notice of the proposed action) to render a decision on the employee's appeal, but may notify the employee of the need for an extension of up to 10 work days. If an employee receives an extension of the time to file an appeal, the D.C. Auditor or designee shall have five work days from the expiration of the extended time for appeal to render a decision on the employee's appeal.

For proposed removal from office, the employee shall have the right to an administrative review of the proposed removal action. The administrative review shall be conducted by a hearing officer who shall meet the following criteria:

- ◆ Be appointed by the agency head;
- ◆ Be at a grade level of DS-13 (or equivalent) or above;
- ◆ Not be in the supervisory chain of command between the proposing office and the deciding official, nor subordinate to the proposing official;
- ◆ Have no direct and personal knowledge (other than hearsay that does not affect impartiality) of the matters contained in the proposed removal action; and

- ◆ Be an attorney authorized to practice law in any jurisdiction of the United States, if practicable.

The hearing officer shall conduct the administrative review by reviewing the notice of proposed removal action and any attachments, review the employee's appeal, if there is one, and make a written report and recommendation to the deciding official, with a copy to the employee. The hearing officer shall conduct the administrative review within 10 work days but may notify both the deciding official and the employee of the need for an extension of up to 30 work days, if necessary. The hearing officer shall keep the proposed removal action moving to a conclusion at the earliest practicable date.

For proposed removal actions, the D.C. Auditor or designee shall render a written decision on the outcome of the Employee Improvement Plan within five work days of receipt of the hearing officer's written report and recommendation. The D.C. Auditor or designee may notify the employee of the need for an extension of up to 30 work days, if necessary. The decision of the D.C. Auditor or designee as to the outcome of the Employee Improvement Plan is the final decision of ODCA and all agency administrative remedies shall have been exhausted at that time. Once all agency administrative remedies have been exhausted, an employee may appeal the final agency decision to the Office of Employee Appeals pursuant to the procedures set forth in District Personnel Manual, Chapter 14, § 1415.6.

## **2. Exigent Circumstances**

In addition, in certain exigent circumstances, an employee may be summarily suspended or removed from his or her position. Summary suspension or removal for a performance deficit may occur when the employee's actions or failure to take appropriate actions:

- ◆ Threatens the integrity of District government operations;
- ◆ Constitutes an immediate hazard to the agency, to other District employees, or to the employee; or
- ◆ Is detrimental to the public health, safety, or welfare.

Written notice of the summary action shall be provided to the employee and shall: (1) include a brief summary of the facts relied upon by the D.C. Auditor or designee; (2) identify the specific reason, as set forth above, that is established by the facts; and (3) explain how the employee's performance deficit warrants summary suspension or removal.

Upon receipt of the written notice of summary action the employee will be asked to acknowledge its receipt in writing but if the employee refuses to do so, the employee's supervisor or other witness shall note on the written notice of summary action that the employee refused to acknowledge receipt and include his or her printed name and title, signature, and date. The summary action shall take effect immediately unless otherwise indicated in writing. In addition, the D.C. Auditor or designee may, if in the D.C. Auditor's or

designee's sole discretion it is necessary, order the employee to leave the premises immediately and/or stay away from any District government owned or occupied property. The written notice of summary action also shall provide the employee with an opportunity to respond within ten work days.

The employee's response shall be maintained as an attachment to the written notice of summary action and shall be considered by the D.C. Auditor or designee, who may modify, rescind, or sustain the written notice of summary action based on the employee's response. If the written notice of summary action is modified or rescinded, the employee shall be notified in writing. If the written notice of summary action is sustained, the written notice of summary action shall be final upon expiration of the ten work days or receipt of the employee's written response, whichever is later. Information regarding the right to submit a written response shall be included in the written notice of summary action.

If the resulting decision by the D.C. Auditor or designee is a summary suspension of less than 10 days, the decision of the D.C. Auditor or designee is final and not appealable. If the resulting decision by the D.C. Auditor or designee is a summary suspension of 10 days or more, or is a removal or reduction in grade, the D.C. Auditor's or designee's decision is the final agency action and the employee may appeal that final agency action to the Office of Employee Appeals pursuant to the procedures set forth in District Personnel Manual, Chapter 14, § 1415.6.

### **Representation**

In connection with any matter within the ODCA Performance Policy that involves paid or unpaid administrative leave, a reprimand, reassignment, suspension of less than ten work days, proposed suspension or suspension of ten work days or more, proposed removal from office, removal from office, or summary removal from office, an employee has the right to be represented by an attorney or other representative and any written notice of any of the above-listed actions shall advise the employee of the right to such representation.

### **Standard of Proof**

In any disciplinary action taken by ODCA, the District government will bear the burden of proving by a preponderance of the evidence that the action may be taken or, in the case of summary action, that the disciplinary action was taken for cause, as that term is defined above. A criminal conviction will estop the convicted party from denying the facts underlying the conviction.