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**NATIONAL SECURITY AGENCY/CENTRAL SECURITY  
SERVICE**



**INSPECTOR GENERAL  
REPORT OF INVESTIGATION**

**20 May 2015**

**IV-13-0047**

**Alleged Reprisal**

(U) This report might not be releasable under the Freedom of Information Act or other statutes and regulations. Consult the NSA/CSS Inspector General Chief of Staff before releasing or posting all or part of this report.

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Approved for Release by NSA on 31 October 2022, FOIA Case # 85643 Litigation

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## **(U) OFFICE OF THE INSPECTOR GENERAL**

(U) Chartered by the NSA Director and by statute, the Office of the Inspector General conducts audits, investigations, inspections, and special studies. Its mission is to ensure the integrity, efficiency, and effectiveness of NSA operations, provide intelligence oversight, protect against fraud, waste, and mismanagement of resources by the Agency and its affiliates, and ensure that NSA activities comply with the law. The OIG also serves as an ombudsman, assisting NSA/CSS employees, civilian and military.

### **(U) AUDITS**

(U) The audit function provides independent assessments of programs and organizations. Performance audits evaluate the effectiveness and efficiency of entities and programs and their internal controls. Financial audits determine the accuracy of the Agency's financial statements. All audits are conducted in accordance with standards established by the Comptroller General of the United States.

### **(U) INVESTIGATIONS**

(U) The OIG administers a system for receiving complaints (including anonymous tips) about fraud, waste, and mismanagement. Investigations may be undertaken in response to those complaints, at the request of management, as the result of irregularities that surface during inspections and audits, or at the initiative of the Inspector General.

### **(U) INTELLIGENCE OVERSIGHT**

(U) Intelligence oversight is designed to insure that Agency intelligence functions comply with federal law, executive orders, and DoD and NSA policies. The IO mission is grounded in Executive Order 12333, which establishes broad principles under which IC components must accomplish their missions.

### **(U) FIELD INSPECTIONS**

(U) Inspections are organizational reviews that assess the effectiveness and efficiency of Agency components. The Field Inspections Division also partners with Inspectors General of the Service Cryptologic Elements and other IC entities to jointly inspect consolidated cryptologic facilities.

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I. (U) SUMMARY

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(U//~~FOUO~~) This investigation was conducted in response to a complaint alleging that [redacted] GG-15, reprised against [redacted] [redacted] for making a protected communication to the OIG.

(U//~~FOUO~~) On 4 May 2011, [redacted] contacted the OIG and alleged that her Uniform Services Employment and Reemployments Rights Act (USERRA) rights were violated in comments made to her during her 2011 NSA civilian promotion feedback session regarding why her promotion package was not forwarded for consideration for promotion. During that investigation, the OIG determined that [redacted] [redacted] was not appropriately considered for promotion from 2008 through 2010 in accordance with NSA/CSS Personnel Management Manual procedures pertaining to USERRA. In response to the OIG's findings, the Agency allowed [redacted] to submit promotion packages for FY2008, 2009, and 2010. On 12 June 2012 [redacted] [redacted] submitted a promotion package for FY2009. She had not yet submitted a promotion packages for FY2008 or 2010.

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(U//~~FOUO~~) [redacted] was the second-tier rating official for promotion in [redacted] [redacted] organization in FY2009. [redacted] was directed by NSA Human Resources to rate [redacted] FY2009 promotion package applying the same criteria used that year. After receiving a promotion nomination from [redacted] immediate supervisor and first-tier rating official, [redacted] scored [redacted] promotion package and then compared it to the lowest score of the employee promoted to [redacted] in FY2009. [redacted] score was below that score. Per the instructions [redacted] had received from NSA Human Resources, [redacted] did not forward [redacted] promotion package on to the final promotion authority for review.

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(U//~~FOUO~~) On 7 March 2013, after being informed of her non-selection for promotion for FY2009, [redacted] again contacted the OIG and alleged that the reviewing official for her FY2009 promotion package, [redacted] had reprised against her. [redacted] alleged that [redacted] failed to score her FY2009 promotion package fairly due to [redacted] May 2011 allegation that her USERRA rights had been violated.

(U//~~FOUO~~) The OIG found no evidence to support the allegation that [redacted] failed to score [redacted] FY2009 promotion package fairly due to [redacted] May 2011 allegation regarding her USERRA rights.

(U//~~FOUO~~) [redacted] and [redacted] will be notified of the results of the OIG investigation. No further action is necessary.

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## II. (U) BACKGROUND

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### (U) Introduction

(U//FOUO) [redacted] entered on duty (EOD) with NSA on [redacted] within the Signals Intelligence Directorate (SID). She has remained within SID as an NSA civilian. [redacted] is currently assigned to [redacted] as [redacted]

(U//FOUO) [redacted] is also a member of the United States [redacted] Reserves and holds the rank of [redacted]. [redacted] has been on military orders since [redacted]. She is assigned to [redacted] with a designated duty location within NSA facilities.

(U//FOUO) In response to the OIG's previous finding that [redacted] was not appropriately considered for promotion from 2008 through 2010, NSA Human Resources (HR) gave [redacted] an opportunity to submit promotion packages retroactively for FY2008, 2009, and 2010. [redacted] submitted a promotion package for FY2009. [redacted] was the second-tier promotion rater for FY2009 and was required to review and rate [redacted] FY2009 promotion package as part of the Agency approved USERRA remedy. [redacted] was instructed by HR to use the same criteria she used in FY2009 when reviewing and rating [redacted] FY2009 promotion package in 2012. If [redacted] promotion score was higher than the score of the last promoted employee to [redacted] then [redacted] was to forward [redacted] promotion package to the third-tier, final promotion authority for consideration.

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### (U) Scope and Authorities

(U) Section 7(c) of the Inspector General Act of 1978, as amended, states that “[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to the Inspector General...”

(U//FOUO) Additionally, NSA/CSS Policy 1-62, Whistleblower Protection (Policy 1-62), issued 6 July 2005, (Appendix A), provides protection to NSA employees who make a “protected communication.” A protected communication is any lawful communication to a member of Congress or an IG, or a “lawful communication of information which the communicant reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to a member of Congress, an IG, or any other person or organization (including any person or organization in the chain of command) designated under Agency policy or other established administrative procedures to receive such communications.”

(U//~~FOUO~~) Policy 1-62, paragraph 11, prohibits taking, or threatening to take, an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making a protected communication. Paragraph 9 defines a “personnel action” as an action that affects, or has the potential to affect, the employment opportunities, the current position, or the career of the employee.

(U//~~FOUO~~) The NSA/CSS OIG employs a two stage process in conducting whistleblower reprisal investigations.<sup>1</sup> The first stage focuses on the alleged protected disclosures, personnel action(s), and acting official’s knowledge of the protected disclosure. The second stage focuses on whether or not the Agency would have taken, withheld, or threatened the personnel actions absent the protected disclosure. The first stage of the whistleblower reprisal analysis is judged based on the preponderance of the evidence. “Preponderance” of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

(U//~~FOUO~~) In order to progress to the second stage of the investigative process, there must be sufficient evidence, based on proof by a preponderance of the evidence, to make three findings:

1. (U//~~FOUO~~) The complainant made a protected communication;
2. (U//~~FOUO~~) The complainant was the subject of a personnel action; and
3. (U//~~FOUO~~) The protected communication was a contributing factor in the personnel action.<sup>2</sup>

(U//~~FOUO~~) If a preponderance of the evidence supports these three findings, the investigation will proceed to the second stage of the analysis. At that point, the Agency must provide evidence that establishes that the Agency would have taken, withheld, or threatened the personnel action against the complainant absent the protected disclosure. The second stage of the analysis is judged based on a clear and convincing standard. “Clear and convincing evidence is that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established. It is a higher standard than preponderance of the evidence,<sup>3</sup> but a lower standard than beyond a reasonable doubt.

(U//~~FOUO~~) To address the fourth element, we consider the following three factors:

1. (U//~~FOUO~~) The strength of the Agency’s evidence in support of its personnel action;

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<sup>1</sup> This process is based on DOD IG’s implementation of the Whistleblower Protection Act, 5 U.S.C. § 2302. Although 5 U.S. Code 2302(a)(2)(C)(ii)(I) exempts National Security Agency employees from statutory whistleblower protections, we still use the guidance found in Merit Systems Protection Board, Office of Special Counsel, and DoD decisions and regulations under that title.

<sup>2</sup> (U//~~FOUO~~) This third finding may be established where the acting official had knowledge, actual or imputed, of the complainant’s disclosure and the personnel action took place within a period of time subsequent to the disclosure, such that a reasonable person could conclude that the disclosure was a contributing factor in the decision to take the action.

<sup>3</sup> 5 C.F.R. 1209.4(d).

2. (U//~~FOUO~~) The existence and strength of any motive to retaliate on the part of the Agency officials who were involved in the decision; and

3. (U//~~FOUO~~) Any evidence that the Agency takes similar actions against employees who are not whistleblowers but who are otherwise similarly situated.

(U//~~FOUO~~) We interviewed six witnesses, including the complainant, [redacted], and the responsible management official (RMO), [redacted]. We also obtained and reviewed relevant emails, promotion, and other documents from various sources, including [redacted] and [redacted].

**(U) Sequence of Events**

(U//~~FOUO~~) [redacted] - [redacted] EOD with NSA as a civilian employee.

(U//~~FOUO~~) [redacted] - [redacted] received military orders directing her to active duty in support of [redacted] Ft. Meade, MD.

(U//~~FOUO~~) 6 January 2011 - [redacted] was asked by [redacted] management if she planned to submit a promotion package for FY2011.

(U//~~FOUO~~) 4 May 2011 - [redacted] made a complaint to the OIG that her USERRA rights had been violated because of comments made to her during her 2011 NSA civilian promotion feedback session regarding why her promotion package was not forwarded for consideration for promotion.

(U//~~FOUO~~) 22 December 2011 - OIG report issued with recommendation that [redacted] be retroactively considered for FY2008, 2009, and 2010 promotions.

(U//~~FOUO~~) 20 March 2012 - NSA Human Resources informed [redacted] that the suspense for submission of her FY 2008, 2009 and 2010 promotion packages was 27 April 2012.

(U//~~FOUO~~) 5 April 2012 - [redacted] requested an extension to the FY2008, 2009, and 2010 promotion package suspense. [redacted] was granted extensions to 30 April 2012 for her FY2008 package, 28 May 2012 for her FY2009 package, and 25 June 2012 for her FY2010 package.

(U//~~FOUO~~) 18 May 2012 - [redacted] requested and was granted an extension to 12 June 2012 to submit her FY2009 package.

(U//~~FOUO~~) 12 June 2012 - [redacted] submitted her promotion package for FY2009 to her former supervisor, [redacted].

(U//~~FOUO~~) 1 August 2012 - [redacted] signed the recommendation to promote [redacted].

(U//~~FOUO~~) 9 August 2012 - [redacted] forwarded [redacted] FY2009 promotion package to [redacted].

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(U//~~FOUO~~) September 2012 – [redacted] scored [redacted] promotion package for FY2009.

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(U//~~FOUO~~) 1 October 2012 – [redacted] attended a promotion feedback meeting on her FY2009 promotion package. Attendees included [redacted] and [redacted] Deputy Chief. [redacted] was informed she would not be promoted for FY2009.

(U//~~FOUO~~) 7 March 2013 – [redacted] contacted the OIG and alleged [redacted] reprisal against her by the non-selection for FY2009 promotion due to the initial USERRA complaint made to the OIG on 4 May 2011.

**(U//~~FOUO~~) ALLEGATION: Did [redacted] fail to support [redacted] for promotion after reviewing her FY2009 promotion package as reprisal for [redacted] USERRA complaint to the OIG?**

**(U//~~FOUO~~) CONCLUSION: Unsubstantiated. We found no evidence to support the allegation that [redacted] failed to support [redacted] promotion in reprisal for [redacted] USERRA complaint to the OIG.**

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**(U) Documentary Evidence**

(U//~~FOUO~~) **Promotion Evaluation Scoresheet for FY2009 promotee to [redacted]** The promotion package for promotion to [redacted] for this employee was reviewed by [redacted] on 13 February 2009. This package was rated 67 of 100 (Appendix B).

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(U//~~FOUO~~) **Promotion Evaluation Scoresheet for FY2009 promotee to [redacted]** The promotion package for promotion to [redacted] for this employee was reviewed by [redacted] on 13 February 2009. This package was rated 66 of 100 (Appendix C).

(U//~~FOUO~~) **Promotion Evaluation Scoresheet for Promotion to [redacted]** The package for promotion to [redacted] for [redacted] was reviewed by [redacted] in September 2012. [redacted] package was rated 65 of 100 (Appendix D).

(U//~~FOUO~~) **1 October 2012 Feedback Meeting Notes.** [redacted] Deputy Chief, [redacted] attended the feedback meeting between [redacted] and [redacted]. [redacted] also attended as [redacted] representative. [redacted] took detailed notes of the meeting (Appendix E).

(U//~~FOUO~~) **Promotion Nomination Priority List for 2009.** This list contains the employees who had submitted a promotion package and were nominated as well as those who were not nominated for promotion (Appendix F).

**(U) Testimonial Evidence**

(U//~~FOUO~~) [redacted] was interviewed on 7 March and 4 June 2013 and provided the following sworn testimony.

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(U//~~FOUO~~) [redacted] believes that [redacted] reprised against her for making a USERRA complaint to the OIG by failing to properly evaluate her FY2009 promotion package. She met with [redacted] on 1 October 2012 to receive feedback from the FY2009 promotion evaluation. This feedback was inadequate because it was not provided to her in writing and [redacted] only said that her promotion package lacked the necessary achievements to justify a promotion.

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(U//~~FOUO~~) [redacted] **Signals Intelligence Directorate, S, GG-15.** [redacted] was interviewed on 12 June 2013 and provided the following sworn testimony.

(U//~~FOUO~~) [redacted] was the chief of staff for the [redacted] from September 2008 through December 2012. [redacted] was assigned to an organization within this group. [redacted] duties included oversight of manpower and staffing issues. In approximately January 2009 she noticed [redacted] name on an internal staffing list and realized that she did not know who she was. She wanted to introduce herself to [redacted]. She began asking around to see if anyone knew [redacted] and was eventually told that [redacted] was a [redacted] Reservist on active duty but working within NSA spaces. [redacted] called [redacted] and introduced herself. During this conversation [redacted] told her that she was on military duty and would not be returning to [redacted].

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(U//~~FOUO~~) [redacted] then began trying to find out if anything could be done with the billet that was occupied by [redacted]. She found out that the billet had to remain encumbered by [redacted] even though she was working for another organization. She also found out that the [redacted] organization was responsible for putting forward promotion packages each year for [redacted] even though [redacted] was not working in the [redacted]. She found out about this in approximately 2010.

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(U//~~FOUO~~) She immediately contacted [redacted] manager of record, and told him that he needed to contact [redacted] to see if she intended to submit a promotion package for FY2011. [redacted] contacted [redacted] and informed her of her promotion eligibility. [redacted] was added to the [redacted] promotion alias so that she would receive news and guidance regarding promotions. [redacted] was given full access to all promotion information once it was discovered that [redacted] was eligible for civilian promotion consideration. Prior to this, [redacted] was unaware that she could be considered for civilian promotion despite having been recalled to active duty military service.

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(U//~~FOUO~~) In approximately January 2012 [redacted] received information from Human Resources (HR) that HR, with guidance from General Counsel, would be looking into [redacted] promotion situation for FY2008, FY2009, and FY2010. She was tasked with going back to determine the promotion process [redacted] used for those years and to provide that information to [redacted] the HR point of contact, which she did. [redacted] was told by [redacted] that the promotion processes for those years would be recreated to consider [redacted] for retroactive promotion. [redacted] determined that for FY2009 promotion consideration, [redacted] was [redacted] immediate supervisor and [redacted] was the reviewer/evaluator for promotion packages. This information was provided to HR.

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(U//~~FOUO~~) [redacted] agreed to a deadline of 28 May 2012 to submit her FY2009 promotion package. On 18 May 2012 [redacted] asked for an extension to 12 June 2012, which was granted. On 12 June [redacted] received [redacted] FY2009 promotion package. That same day she forwarded the package to [redacted] for review. On 9 August 2012 [redacted] sent an email to [redacted], telling her that he was recommending [redacted] for promotion and was forwarding [redacted] FY2009 promotion package to her for review. [redacted] completed her review of [redacted] promotion package on 24 September 2012.

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(U//~~FOUO~~) [redacted] saw no evidence that [redacted] acted with ill-intent toward [redacted] promotion package received more time and attention than any other she has known. Once it became clear that [redacted] had an obligation to submit promotion packages on [redacted] behalf, everyone involved made sure things were done correctly and the process followed. [redacted] put in significant effort to give [redacted] a fair evaluation. [redacted] is a manager who cares about all of her people and knows how important promotions are.

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(U//~~FOUO~~) [redacted] called [redacted] after she had completed the review of [redacted] promotion package. [redacted] told her she was finished and asked for the lowest score of the [redacted] employee promoted to [redacted] in FY2009. [redacted] did not know what the cutoff score was until she had finished scoring [redacted] promotion package. [redacted] needed to know the score of the lowest promote to determine if [redacted] scored above or below the lowest score for a [redacted] promotion from FY2009. [redacted] gave [redacted] copies of the score sheets for the two people promoted to [redacted]. [redacted] score was lower than the two people who were promoted in FY2009. [redacted] then contacted [redacted] to set up a feedback session.

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(U//~~FOUO~~) HR should have done a better job letting managers know what their responsibilities are for submitting promotion packages for employees who get called to active duty. [redacted] is in the Reserves, and was [redacted] manager. After this issue with [redacted] was discovered, [redacted] told her [redacted] that [redacted] "had a case." He said he knew a promotion package had to be submitted for her when he was her supervisor but he never told anybody or submitted one for her. He said he didn't submit one because HR told

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him he could not rate her performance since she was only assigned to him for a short period, but a performance rating and a promotion package are two different things.

(U//FOUO) [redacted] GG-14 [redacted] was interviewed on 25 March 2013 and provided the following sworn testimony.

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(U//FOUO) [redacted] was [redacted] supervisor in 2008 and 2009. Although [redacted] was on military duty, he believed that she was performing work at the [redacted] level. [redacted] is also in the [redacted] Reserves and he tried to look after [redacted] while she was on her military assignment. [redacted] was mobilized in 2008 to [redacted] Ft. Meade. [redacted] has continued to receive military orders extending her active duty assignment.

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(U//FOUO) [redacted] should have been promoted to [redacted] in FY2009. He was comfortable in how he rated her performance and recommended to [redacted] that [redacted] be promoted.

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(U//FOUO) [redacted] GG-14 [redacted] was interviewed on 11 June 2013 and provided the following sworn testimony.

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(U//FOUO) [redacted] was the chief of [redacted] from August 2010 to September 2012. She was in this position when [redacted] made a complaint sometime in April or May 2012 that the Agency had not notified her that she had an opportunity to submit promotion packages for FY2008, FY2009, and FY 2010 despite being recalled to active duty during this time. [redacted] claimed that her USERRA rights had been "denied."

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(U//FOUO) [redacted] was given explicit instructions on the process to follow when reviewing [redacted] promotion package for FY2009 from the HR Strategies office. They provided her the timeline by which [redacted] had to submit her EPA and by which [redacted] had to review that EPA.

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(U//FOUO) [redacted] USERRA case was the first ever received by HR. [redacted] and her staff worked with General Counsel to find a solution "to make [redacted] whole." General Counsel determined that [redacted] should be allowed to submit promotion packages for each year she had been deployed and a package had not been submitted. Each promotion package would be processed as though it had originally been submitted on-time. General Counsel provided instructions as to how to complete this process. She provided the instructions to [redacted] who was the chief of staff for the organization that employed [redacted].

(U//FOUO) [redacted] requested multiple extensions to deadlines for submitting her FY2009 promotion package and HR approved those requests. Once [redacted] FY2009 promotion package was received by HR, the package was passed to her organization with instructions that it be scored using the same chain of command promotion review process that was used in FY2009.

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(U//FOUO) [redacted] advised that agency managers are not required to provide written promotion feedback to employees.

(U//FOUO) [redacted] Deputy Chief, [redacted] GG-15 [redacted] was interviewed on 11 June 2013 and provided the following sworn testimony.

(U//FOUO) [redacted] has been the deputy chief of [redacted] since approximately 2010 but had not met [redacted] until the promotion feedback session that took place on 1 October 2012.

(U//FOUO) [redacted] saw no evidence that [redacted] complaint to the OIG had any impact upon the decision whether or not to promote [redacted]. [redacted] reviewed [redacted] FY2009 promotion package following the guidance given her from HR. [redacted] did an initial scoring then followed up a few days later to reach a final score. [redacted] used the promotion worksheets to make notes and comments as she usually does when evaluating candidates for promotion. [redacted] used the same process to score [redacted] FY2009 promotion package that she used for other FY2009 candidates.

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(U//FOUO) [redacted] the chief of staff for [redacted] found out that the organization failed to consider [redacted] for civilian promotion for FY2008, FY2009, and FY 2010 while [redacted] was on military orders. [redacted] informed [redacted] management that an employee on military orders has the right to submit a promotion package and, if for logistical reasons the employee is unable to submit the package, the organization must prepare and submit one on behalf of the employee so that they are considered for promotion. This was "news" to [redacted] management. [redacted] management contacted HR to get guidance on how to address this problem. [redacted] was the main point of contact for [redacted] and she worked with [redacted] from HR. [redacted] received guidance from General Counsel on the steps the Agency needed to take to remedy this situation. Instructions were passed from HR to [redacted] regarding the process to be followed in evaluating [redacted] promotion packages, and dates when the various steps of the process should be completed.

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(U//FOUO) HR and [redacted] had to recreate the actual promotion criteria and evaluation process that existed in previous years and have [redacted] provide promotion packages with

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her accomplishments corresponding to each year. HR started working with [redacted] to have her submit promotion packages. Initially HR asked [redacted] to provide all three promotion packages at the same time. HR later changed to stagger the dates when the promotion packages were due from [redacted]. This negotiation occurred directly between HR and [redacted] was not involved in setting any deadlines.

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(U//FOUO) [redacted] FY2009 promotion package was initially reviewed by [redacted]. He then passed this package to [redacted] for review. [redacted] scored the package and then checked the FY2009 promotion records to compare [redacted] score to that of the lowest graded person that was promoted. [redacted] score was below the score received by the "last" person promoted. [redacted] instructions from HR were to recommend [redacted] for promotion if her score was higher than the "last" person promoted and to not recommend her for promotion if her score was lower.

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(U//FOUO) [redacted] promotion package contained information about the successful programs she worked but failed to provide details about her specific accomplishments. [redacted] ignored various invitations to have her promotion package reviewed by [redacted] managers. Reviews are offered to all [redacted] employees and would have been helpful to her.

(U//FOUO) On 1 October 2012 he attended [redacted] feedback session for her FY2009 promotion package. [redacted], [redacted] and [redacted] also attended the meeting. [redacted] was acting as [redacted] representative. The feedback session was cordial and typical. [redacted] pointed out both good and "weak" elements of [redacted] promotion package and told her she would not be promoted for FY2009. [redacted] asked a few questions about what procedures were followed and received answers for each question from [redacted].

(U//FOUO) [redacted], Chief [redacted] GG-15, [redacted] was interviewed on 7 June 2013 and provided the following sworn testimony.

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(U//FOUO) [redacted] said that the [redacted] organization as a whole was "in the wrong on the USERRA issue in the beginning" by neglecting to notify [redacted] that she could have submitted a promotion package while [redacted] was deployed. Once discovering this error, the office "worked with the IG, OGC and HR to give her a fair and full evaluation for promotion for the years she missed." The USERRA rules were "something we didn't know about" at the time. [redacted] did not consider [redacted] IG complaint during her scoring of her promotion package. "I am not going after her. She was treated the same as everyone." Once HR and the General Counsel decided to allow [redacted] to submit a promotion package for FY2009, [redacted] followed their instructions and time lines. She received instructions to evaluate and score [redacted] FY2009 promotion package just as she had done in FY2009. She received these instructions from [redacted] on behalf of HR and General Counsel. She reviewed [redacted] promotion package sometime during September 2012.

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(U//FOUO) For the FY2009 promotion year, [redacted] was the second tier reviewer. She was not the final promotion decision maker. If she thought a person was ready for promotion, she would forward her recommendation to the Office Chief for a final decision. [redacted] did make the decision whether to advance a candidate to the next level of review for a promotion to [redacted]

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(b) (6)

(U//FOUO) [redacted] used the same review process for [redacted] promotion package that she has used for the last nine years of reviewing promotion packages. She did an initial read through of the package and awarded an initial score. She then did a second reading and scoring of the package. This second review typically occurred between one and three days after her first review. In her review of [redacted] package, the first score given was 60. The second review resulted in a final score of 65.

(U//FOUO) In accordance with the instructions she received, she then asked for the score sheet of the person with the lowest score promoted to a [redacted] in FY2009. This person received a score of 66, one point higher than the score for [redacted]. She did not know that the score of the "last" person promoted to [redacted] was a 66 until after she had scored [redacted] promotion package.

(b) (3) -P.L., 86-36

(U//FOUO) She met with [redacted] on 1 October 2012 and provided her feedback. In addition to [redacted] and [redacted] attended the feedback session. [redacted] acted as [redacted] representative.

III. (U) FINDINGS

1. (U//~~FOUO~~) Did [redacted] make a protected communication? YES

(U//~~FOUO~~) Policy 1-62 prohibits the Agency from taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold, a favorable personnel action, against an employee, for making a protected communication. Policy 1-62, Paragraph 10, defines a protected communication as:

1. Any lawful communication to a member of Congress or an IG; or
2. A lawful communication of information which the employee reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to a member of Congress, an IG, or any other person or organization (including any person or organization in the chain of command) designated under Agency policy or other established administrative procedures to receive such communications.

(b) (3) - P.L. 86-36

(U//~~FOUO~~) On 4 May 2011 [redacted] made a complaint to the OIG. She alleged that her USERRA rights were violated through comments made to her during her 2011 NSA civilian promotion feedback session regarding why her promotion package was not forwarded for consideration for promotion. Because this complaint was made to the OIG it is a protected communication as defined by NSA/CSS Policy 1-62.

2. (U) Was an unfavorable personnel action taken or threatened, or was a favorable action withheld or threatened to be withheld following the protected disclosure? YES

(U//~~FOUO~~) On 22 December 2011 the OIG found that the agency had failed to follow USERRA by not notifying [redacted] that she could submit civilian promotion packages while she was deployed. As a remedy for that failure, [redacted] was allowed to retroactively submit promotion packages for 2008 through 2010. After submitting her 2009 package, [redacted] evaluated [redacted] promotion package using the guidance provided to her by the agency. [redacted] did not recommend [redacted] for promotion. By failing to recommend [redacted] for promotion, [redacted] withheld a favorable personnel action from [redacted].

(b) (3) - P.L. 86-36

(b) (3) - P.L. 86-36  
(b) (6)

**(U) Was the protected communication a contributing factor in the personnel action?  
YES**

(U//~~FOUO~~) One of the ways to satisfy the contributing factor standard is through the “knowledge/timing” test. Under this test, a contributing factor exists when Agency officials had knowledge of the disclosure and acted within such a period of time that a reasonable person could conclude that the disclosures were a contributing factor. Typically, if the personnel action occurred within a year of the disclosure, and the Agency official knew of the disclosure, the test is met, although the Merit Systems Protection Board has held that time periods as long as 21 months are sufficient.<sup>4</sup> In this case, [redacted] testified that she was aware of [redacted] communication to the OIG in May 2011. The personnel action occurred 16 months later, in September 2012. Although this is longer than the year, we conclude that the knowledge timing test is met because the reason [redacted] had the opportunity to even submit a promotion package was due to her communication to the OIG, and a reasonable person could conclude that the disclosures were a contributing factor, since without them, the promotion would not even be under consideration.

(b) (3) - P.L. 86-36

**(U) Does the evidence establish that the personnel action would have been taken absent the protected communication? YES**

(U//~~FOUO~~) After [redacted] protected communication, the Agency created an opportunity for [redacted] which allowed her to submit promotion packages for FY2008, FY2009, and FY 2010. In 2012, [redacted] submitted a promotion package for FY2009. The Agency then recreated the promotion process as it existed in FY2009. Because she would have reviewed [redacted] package in 2009, [redacted] was directed to review and score [redacted] promotion package as part of recreation of the exact process that existed in FY2009.

(b) (3) - P.L. 86-36  
(b) (6)

(U//~~FOUO~~) Because [redacted] was a second-tier rater for promotion packages in FY2009, she was required by HR to provide a second-tier review of [redacted] promotion package. [redacted] was directed to, and did, review [redacted] FY2009 package using the same process and scoring criteria she used in FY2009. Furthermore, [redacted] used the same process she had used for the nine previous years she reviewed promotion packages. [redacted] had been instructed that after completing the scoring, she should compare the score of the lowest graded employee promoted to [redacted] in FY2009 to [redacted] score to determine if [redacted] met the criteria to have her promotion package forwarded to the Office Chief for final promotion consideration. It was not until this point that [redacted] knew the score of the lowest graded employee promoted to [redacted] in FY2009. Had [redacted] scored [redacted] package equal to or higher than the lowest graded employee, she would have forwarded the package.

(b) (3) - P.L. 86-36  
(b) (6)

(b) (6)

(b) (3) - P.L. 86-36

<sup>4</sup> See, e.g., *Mogyorossy v. Dep't of the Air Force*, 96 M.S.P.R. 652 (2004).

(U//~~FOUO~~) When determining whether the Agency has demonstrated by clear and convinced evidence that it would have taken the same action in the absence of the protected disclosure, the following factors are considered:

- a. The strength of the Agency's evidence in support of the action;
- b. The existence and strength of any motive to retaliate on the part of Agency officials involved in the action; and
- c. Evidence that the Agency takes similar actions against similarly situated employees who have not made protected disclosures.

(U//~~FOUO~~) [redacted] reviewed [redacted] package using identical criteria and process used during the initial promotion cycle. This was done in a fashion to avoid untoward influence – by ensuring that [redacted] did not know the “cutoff” score, the Agency ensured that she could not skew the results even if she were inclined to do so, and there is no evidence that she was so inclined. Furthermore, [redacted] had no motive to retaliate. The protected communication was not directed at her, nor was there any evidence that she faced any repercussions from the initial communication or any outcome of her review. In fact, Agency officials were proactive in recreating the promotion process as it existed in FY2009. [redacted] was not involved in establishing what process would be used by the agency to afford [redacted] a promotion review. Once this process was established by others, [redacted] was directed to perform a promotion package review since she was the management official who had reviewed other promotion packages during the affected years. [redacted] and others, testified that she completed the review of [redacted] package in the same way as she had done all other reviews for the last nine years and the OIG was unable to find any evidence to the contrary. Finally, the evidence showed that [redacted] was treated the same as other similarly situated employees who had not made protected disclosures. There were 22 other employees in the same organization as [redacted] who had submitted Performance Review Packages that were reviewed for promotion, yet not recommended or forwarded for promotion. In fact, only 5 of the initial 27 (19%) who submitted packages for FY2009 were nominated for promotion.

(U//~~FOUO~~) In short, the Agency demonstrated by clear and convincing evidence that [redacted] would not have been forwarded for promotion even absent the protected disclosure. Therefore, the allegation that [redacted] was not forwarded for promotion as reprisal for a protected communication is not substantiated.

(b) (3) - P.L. 86-36  
(b) (6)

(b) (3) - P.L. 86-36  
(b) (6)

(b) (3) - P.L. 86-36



### IV. (U) ABUSE OF AUTHORITY

(U//~~FOUO~~) Although the reprisal allegation is unsubstantiated, we looked further to ensure [redacted] actions were not an abuse of authority. For standards in assessing the behavior of the responsible management officials, investigators use the definition supplied by the M.S.P.B., "an abuse of authority occurs when there is an arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or results in personal gain or advantage to himself or preferred other persons...A supervisor's use of his influence to denigrate other staff members in an abusive manner and to threaten the careers of staff members with whom he disagrees constitutes abuse of authority."<sup>5</sup>

(b) (3) - P.L. 86-36  
(b) (6)

(b) (3) - P.L. 86-36

(U//~~FOUO~~) [redacted] was directed by Agency officials to review [redacted] FY2009 promotion package. [redacted] was directed to do so because of her position as a manager who had previously reviewed FY2009 promotion packages. This action was within the scope of [redacted] authority as a manager.

(U//~~FOUO~~) [redacted] actions did not result in a gain for herself or preferred other persons. In fact, only [redacted] promotion package was reviewed. No one else stood to gain from [redacted] rating of [redacted] promotion package. [redacted] review of [redacted] promotion package was not arbitrary or capricious. [redacted] was given instructions by agency officials to use the same process when evaluating [redacted] package as she has used for the past nine years.

(b) (3) - P.L. 86-36

(b) (3) - P.L. 86-36  
(b) (6)

(U//~~FOUO~~) There is no evidence to conclude that [redacted] engaged in an abuse of authority when reviewing [redacted] FY2009 promotion package.

### V. (U) ANALYSIS AND CONCLUSIONS

(U//~~FOUO~~) The OIG finds that [redacted] did make a protected communication. Additionally, the OIG finds that a favorable personnel action (a promotion) was withheld from [redacted] after she made a protected communication. Furthermore, the OIG finds that the protected communication was *per se* a factor in the personnel action due to the knowledge/timing test. However, by clear and convincing evidence, the Agency demonstrated that the personnel action would have been taken absent [redacted] protected communication, therefore the allegation of reprisal is unsubstantiated.

(b) (3) - P.L. 86-36

<sup>5</sup> See *Jessup v. Dep't of Homeland Security*, 107 M.S.P.R. 1 ¶ 8 (2007)

(b) (3) -P.L. 86-36  
(b) (6)

**VI. (U) DISPOSITION**

(U//~~FOUO~~) We recommend that [redacted] and [redacted] be informed of the results of our investigation.

[redacted]

Senior Investigator

[redacted]

Assistant Inspector General for Investigations

(b) (3) -P.L. 86-36

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**APPENDIX A**

**NSA/CSS POLICY 1-62**

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NATIONAL SECURITY AGENCY  
CENTRAL SECURITY SERVICE

NSA/CSS POLICY 1-62

Issue Date: 6 July 2005

Revised:

Content Verified Current on 02 August 2010



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(U) WHISTLEBLOWER PROTECTION

(U) PURPOSE AND SCOPE

(U) This policy implements References a-p and establishes the responsibilities and rights of individuals employed, assigned, or detailed to the NSA/CSS, or *applicants for employment*, who disclose information they reasonably believe is evidence of unlawful or improper conduct. This policy does not affect the Equal Employment Opportunity (EEO) rights and responsibilities of *NSA/CSS employees*.

(U) This policy applies to any *employee of the NSA/CSS*, any qualified applicant for employment, members of the Armed Forces assigned, attached, or detailed to the NSA/CSS, and Nonappropriated Fund Instrumentality (NAFI) employees and applicants.

WILLIAM B. BLACK, JR.  
Acting Director

Endorsed by  
Associate Director for Policy

DISTRIBUTION

D14  
DJP1  
DJP6 (VR)  
DJP6 (Archives)

(U) This Policy supersedes NSA/CSS Regulation 30-3, dated 1 April 1996.

(U) OPI: Office of the Inspector General, D14, 963-0925s).

(U) The compilation of the information contained in this document is ~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~. No section of this document shall be released without approval from the Office of Policy and Records (DJP).

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Policy 1-62

Dated: 6 July 2005

**(U) POLICY**

1. (U) All employees of the NSA/CSS and applicants for employment, members of the Armed Forces assigned, attached, or detailed to the NSA/CSS, and NAFI employees and applicants shall be free from *reprisal* for making or preparing to make a *protected communication*. Contractors shall not discriminate against or discharge an employee for disclosing to an appropriate government official information relating to a substantial violation of a law related to a contract (References a, b, c and e-j).

2. (U) No person shall restrict or intimidate another NSA/CSS employee or applicant, NAFI employee or applicant, or member of the Armed Forces assigned, attached, or detailed to the NSA/CSS, who wishes to make or prepare a protected communication in accordance with References b, and d-j.

3. (U) The NSA/CSS IG shall investigate and report, or refer allegations of reprisal against individuals to the appropriate Inspector General organization or other government entity, in accordance with this policy and Reference k.

**(U) RESPONSIBILITIES**

4. (U) The Office of the Inspector General (OIG) shall:

a. (U) Receive all allegations and evidence of reprisal consistent with the provisions of this policy and in accordance with Reference k;

b. (U) Conduct an investigation of the allegation (unless obviously frivolous) and prepare a Report of the Investigation (ROI) within 180 days of receipt of the allegation. The ROI shall include a thorough review of the facts and circumstances surrounding the allegation, the relevant documents acquired during the investigation and summaries of interviews conducted;

c. (U) If the ROI cannot be issued within 180 days of receipt of the allegation, notify the complainant and all management parties concerned of the reason(s) why the ROI will not be issued within that time period, and provide an estimate as to when the ROI will be issued;

d. (U) Obtain legal review of the ROI. In cases of substantiated reprisal, forward the ROI to the Associate Directorate for Human Resource Services, Employee Relations (MR) office for disciplinary action;

e. (U) Notify the complainant of the investigative findings after the issuance of the ROI;

f. (U) Refer to the Department of Defense Inspector General (DoD IG), any

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Policy 1-62

Dated: 6 July 2005

allegations of reprisal submitted by military members of the NSA/CSS or military applicants for employment. At the request of the DoD IG, investigate such allegations, and provide DoD IG with an ROI within 180 days of the request in accordance with Reference f:

g. (U) Refer to the DoD IG any allegations of reprisal submitted by NAFI employees or applicants in accordance with References g and h:

h. (U) Refer to the DoD IG any complainants who seek to submit a complaint to Congress under the provisions of the Intelligence Community Whistleblower Protection Act in accordance with References l, m, n and o; and

i. (U) In accordance with Reference p, report to the DoD IG any allegations that an NSA senior official has engaged in reprisal.

5. (U) The Office of General Counsel (OGC) shall provide legal review of investigative findings and recommendations, if requested to do so by the IG.

**(U) REFERENCES**

6. (U) References:

a. (U) DoD Inspector General Memorandum, "Policy on Whistleblower Protection for DoD Employees, Standards Applied to Complaints," dated 7 January 2005.

b. (U) IG Act of 1978, Section 7, DoD IG Guidance Memorandum, dated 05 October 2009.

c. (U) Title 5, United States Code, Section 2301(c)(2).

d. (U) Title 5, United States Code, Section 2302, "Prohibited Personnel Practices."

e. (U) Title 10, United States Code, Section 1034, "Protected Communications: Prohibition of Retaliatory Personnel Actions."

f. (U) DoD Directive 7050.6, "Military Whistleblower Protection," dated 23 July 2007.

g. (U) Title 10, United States Code, Section 1587, "Employees of Nonappropriated Fund Instrumentalities: Reprisals."

h. (U) Department of Defense Directive 1401.03, "DoD Nonappropriated Fund Instrumentality Employee Whistleblower Protection," dated 23 April 2008.

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Dated: 6 July 2005

i. (U) Title 10, United States Code, Section 2409, "Contractor Employees: Protection From Reprisal for Disclosure of Certain Information."

j. (U) Federal Acquisition Regulation, Subpart 3.9, "Whistleblower Protections for Contractor Employees."

k. (U) NSA/CSS Policy 1-60, "NSA/CSS Office of the Inspector General," dated 6 July 2005

l. (U) The IG Act of 1978, Title 5, United States Code, Appendix III, as amended by the Intelligence Community Whistleblower Protection Act of 1998.

m. (U) DOD Inspector General Memorandum, "Implementation of the Intelligence Community Whistleblower Protection Act of 1998," dated 11 March 1999.

n. (U) DOD Inspector General Memorandum, "Change to the Intelligence Community Whistleblower Protection Act of 1998," dated 5 March 2002.

o. (U) DOD Inspector General Memorandum, "Inspector General Implementation of the Intelligence Community Whistleblower Protection Act of 1998," dated 27 February 2004.

p. (U) DoD Directive 5505.06, "Investigations of Allegations Against Senior Officials of the Department of Defense," dated 10 April 2006.

**(U) DEFINITIONS**

7. (U) Applicant for Employment: Any person who is applying for employment with, or who is seeking assignment or detail to the NSA/CSS, other than an applicant who is a member of the Armed Forces or an applicant for a NAFI position.

8. (U) Employee of the NSA/CSS: Any civilian who is an assignee, detailee, or employee with the NSA/CSS.

9. (U) Personnel Action: Any action that affects or has the potential to affect the employment opportunities, the current position or the career of any employee of the NSA/CSS, any qualified applicant for employment, members of the Armed Forces assigned, attached, or detailed to the NSA/CSS, and NAFI employees and applicants. Such actions include a promotion; a disciplinary or corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards or training; and any other significant change in duties or responsibilities inconsistent with the employee's salary or grade level.

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Policy 1-62

Dated: 6 July 2005

10. (U) Protected Communication:

a. (U) Any lawful communication of information to a Member of Congress or an IG: or

b. (U) A lawful communication of information which the communicant reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to a member of Congress, an IG, or any other person or organization (including any person or organization in the chain of command) designated under Agency policy or other established administrative procedures to receive such communications.

11. (U) Reprisal: Taking or threatening to take an unfavorable *personnel action*, or withholding or threatening to withhold a favorable personnel action, for making or preparing a protected communication.

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**APPENDIX B**

**Employee FY2009 Promotion Scoresheet**

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A

Promotion Evaluation Score sheet  
For Promotion to [redacted]



DATE: [redacted]

(b) (3) - P.L. 86-36

(b) (6)

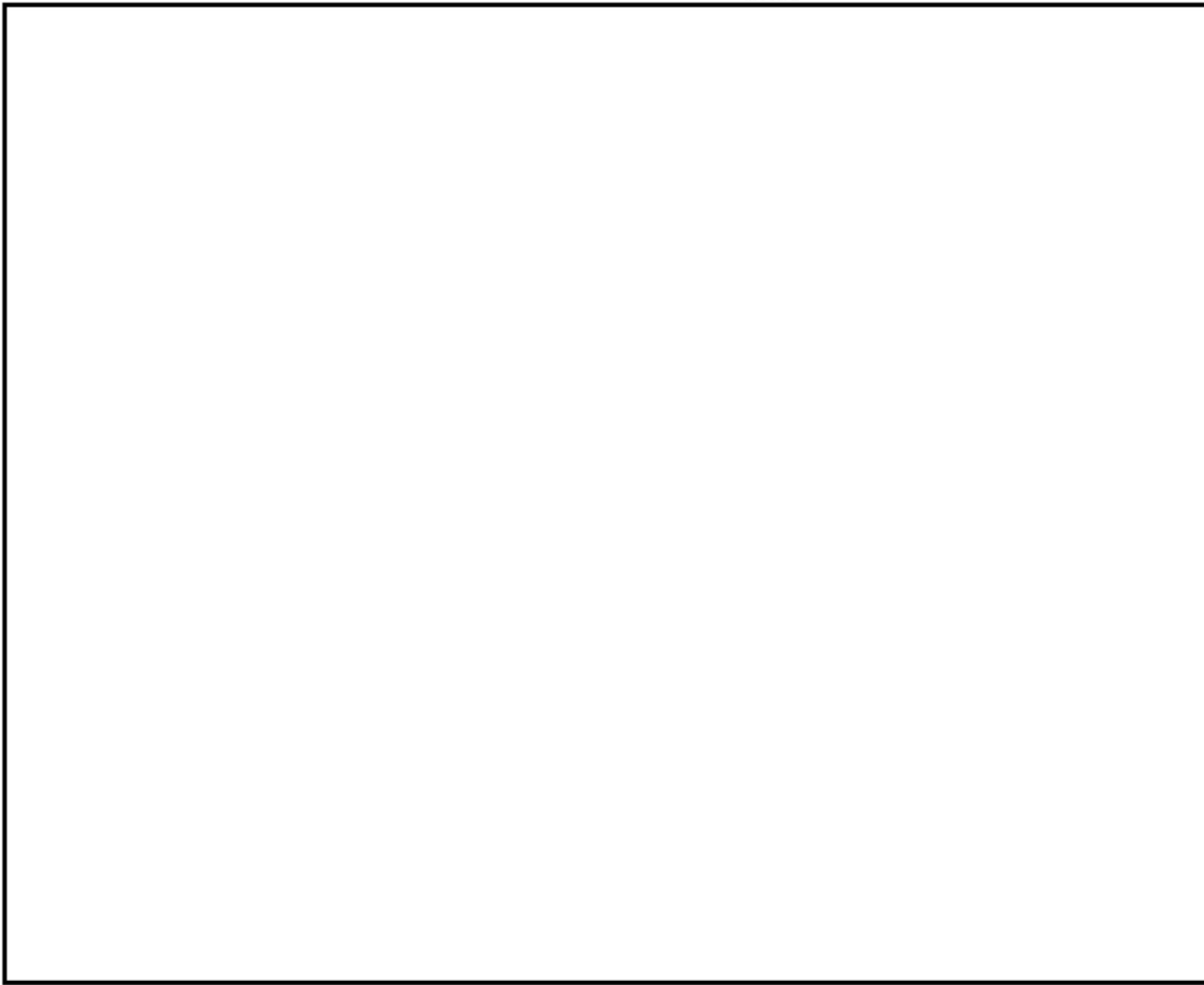
EMPLOYEE'S NAME: [redacted]

EVALUATOR'S CODE: [redacted]

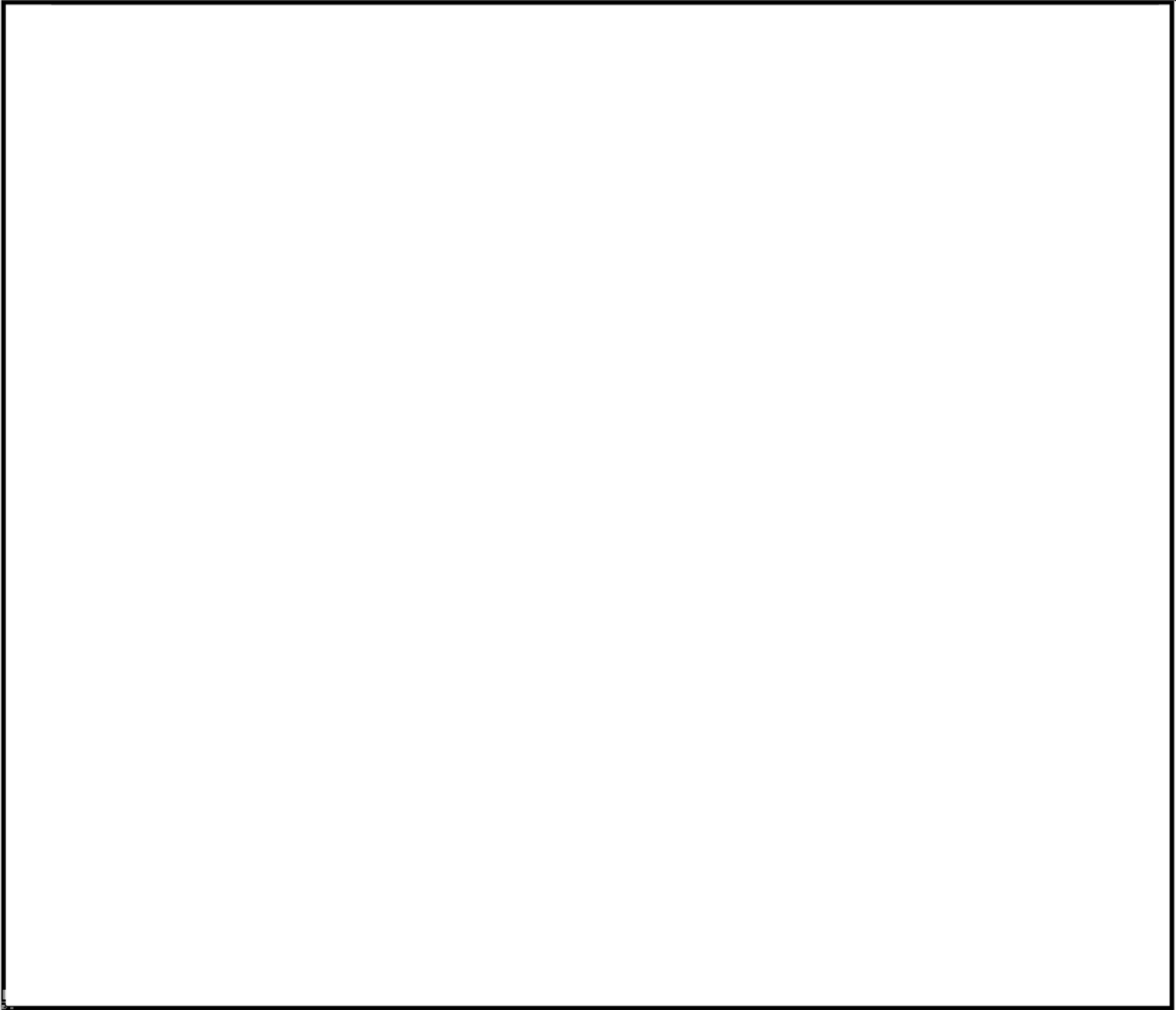
PROMOTION TO GRADE: [redacted]

(b) (3) - P.L. 86-36  
(b) (6)

Evaluator's Assessment of Employee  
(Score)



(b) (3) - P.L. 86-36  
(b) (6)



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## APPENDIX C

### Employee FY2009 Promotion Scoresheet

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

B

Promotion Evaluation Semesters  
For Promotion to [redacted]

(b) (6)

DATE 7/30/20

EMPLOYEE'S NAME

[redacted]

(b) (3) - P.L. 86-36

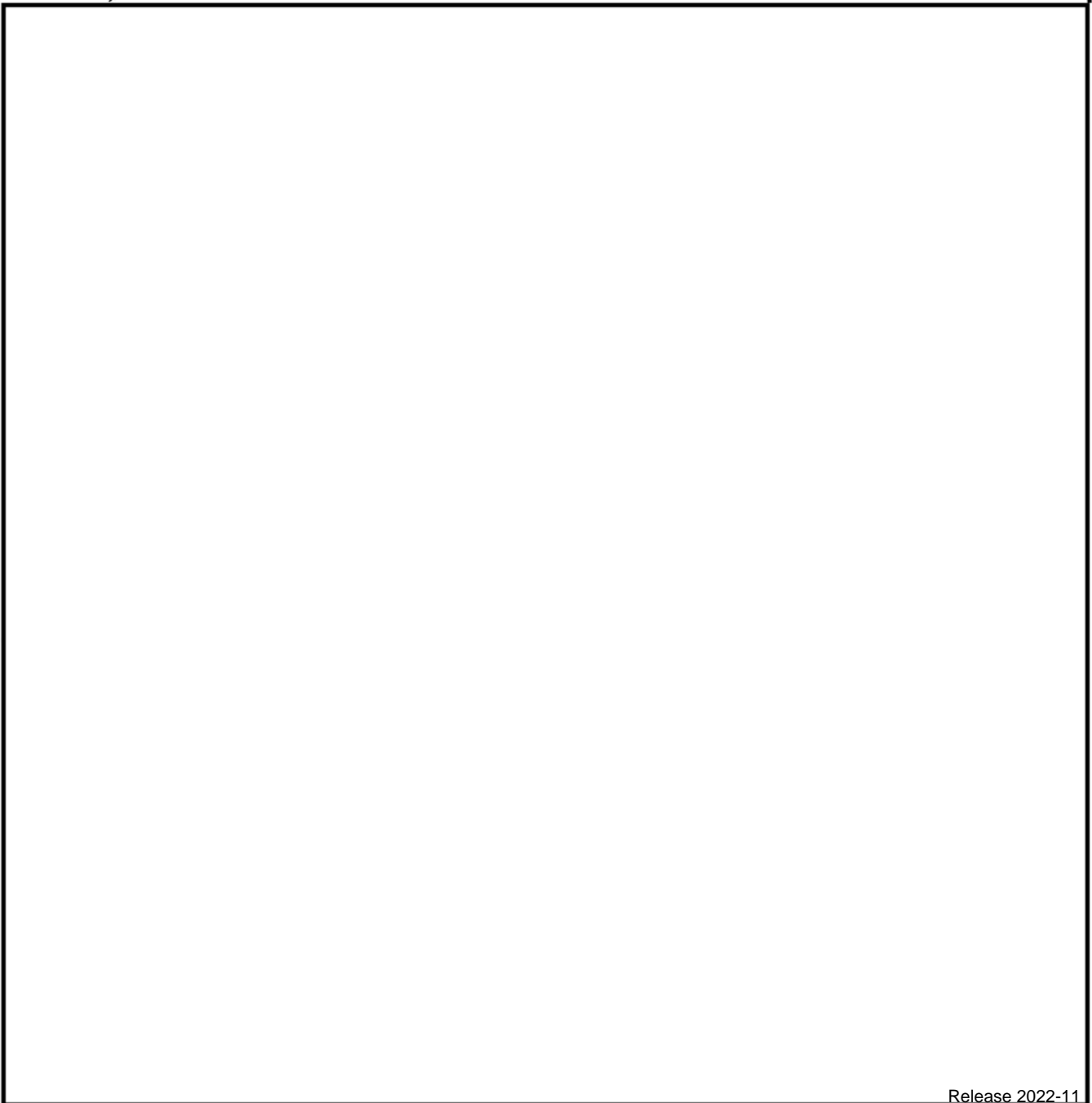
EVALUATOR'S CODE

[redacted]

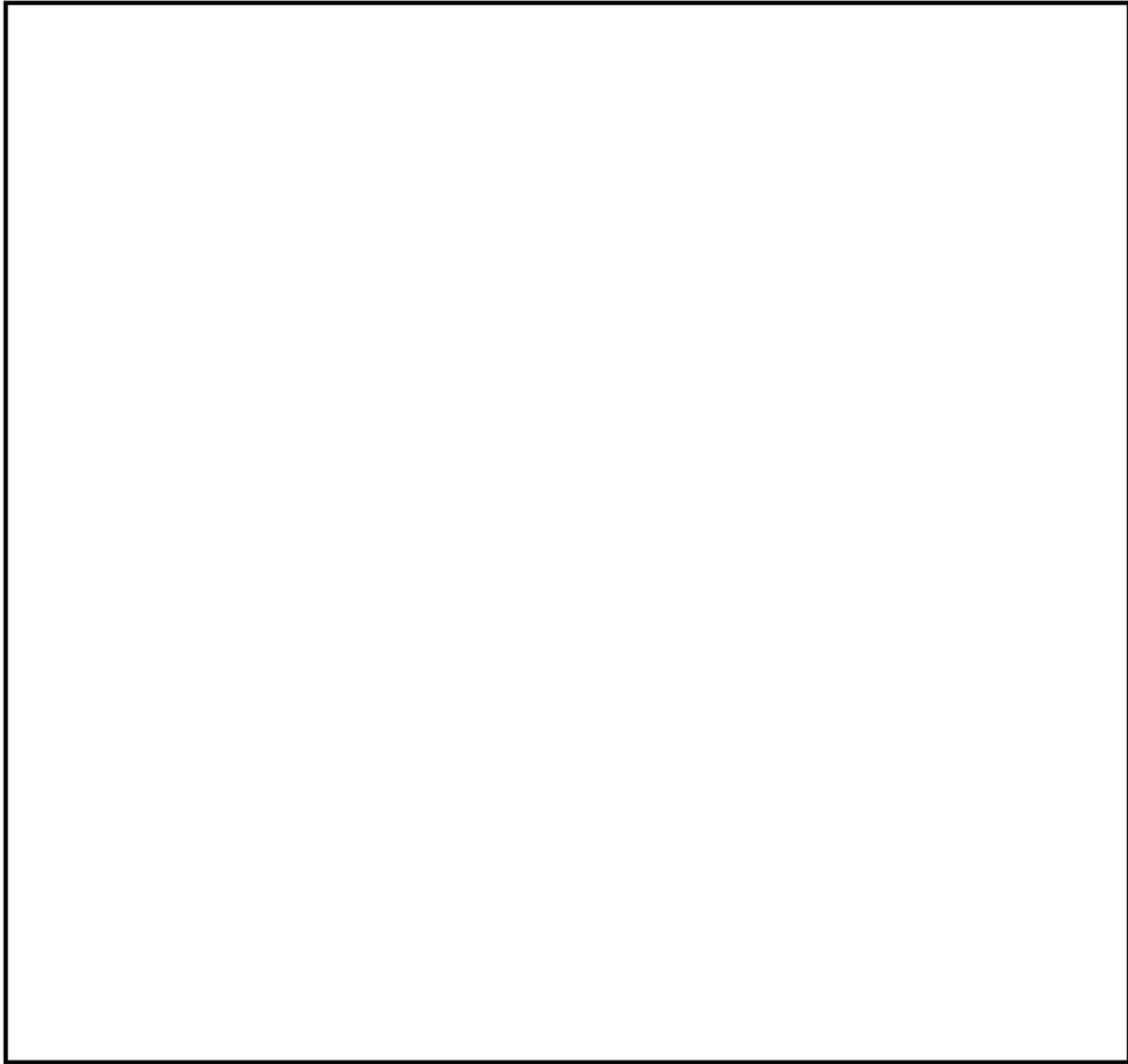
(b) (3) - P.L. 86-36  
(b) (6)

PROMOTION TO GRADE

[redacted]



(b) (3)-P.L. 86-36  
(b) (6)



APPENDIX D

(b) (3) - P.L. 86-36

FY2009 Promotion Scoresheet

C

Promotion Evaluation ScoreSheet  
For Promotion to [redacted]

(b) (6)

DATE:

(b) (3)-P.L. 86-36

EMPLOYEE'S NAME:

[redacted]

(b) (3)-P.L. 86-36  
(b) (6)

EVALUATOR'S CODE:

[redacted]

PROMOTION TO GRADE:

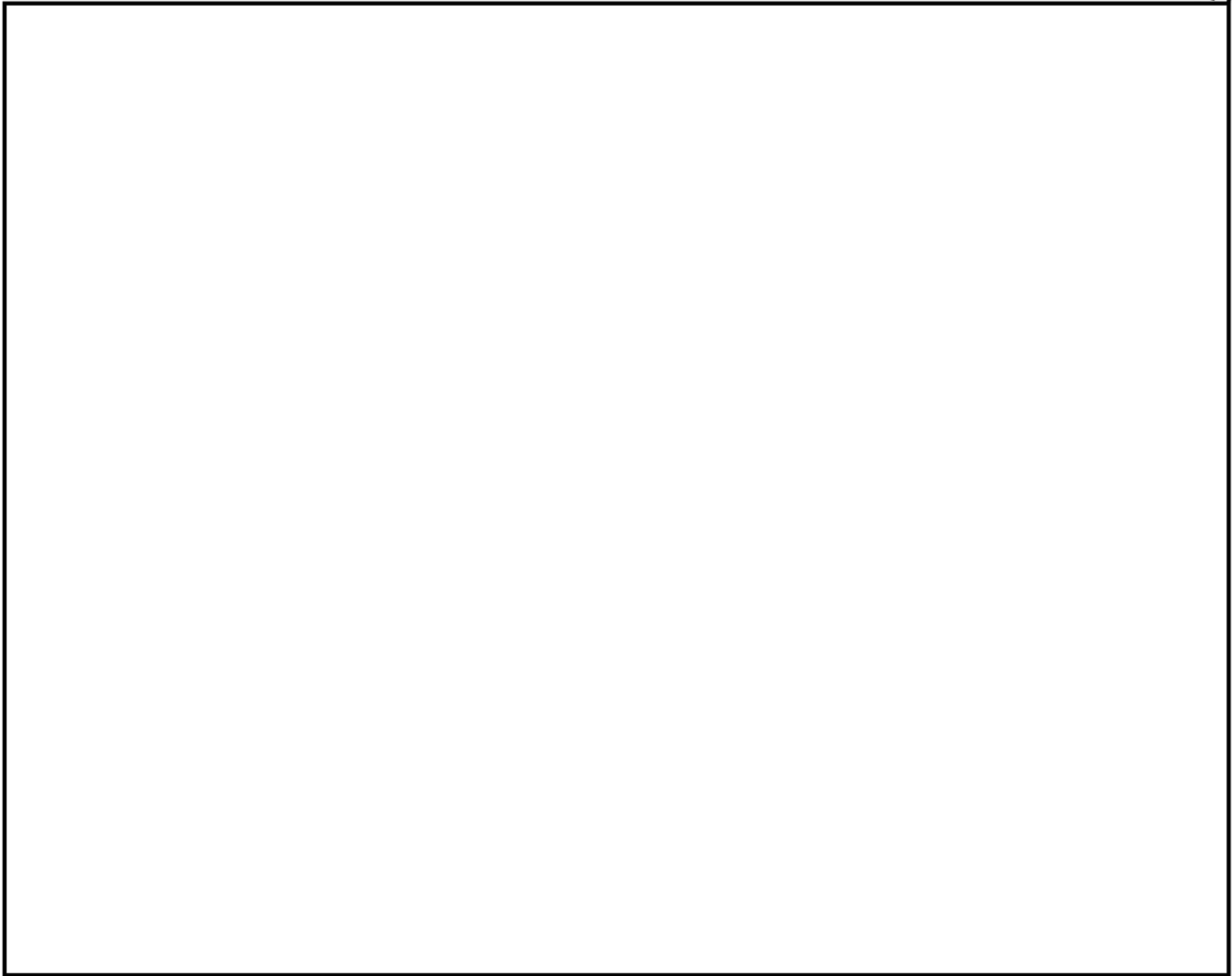
[redacted]

Evaluator's Assessment of Employee  
(Score)

[Large empty rectangular box for Evaluator's Assessment of Employee (Score)]



(b) (3) - P.L. 86-36  
(b) (6)



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## APPENDIX E

### Feedback Meeting Notes

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D

2009 Promotion Feedback to [redacted]

Employee Status [redacted] currently on orders to [redacted]

Date/Time/Place 01 OCT 12 1115-1145 NSA [redacted]

Attendance

[redacted]

[redacted] (Supervisor of Record for 2009 Promotion Cycle)

[redacted] (Reviewer of Record for 2009 Promotion Cycle)

[redacted] (Deputy to [redacted] during 2009 Promotion Cycle)

(b) (3) - P.L. 86-36

Atmosphere: Cordial and professional.

Disposition: Not Recommended for Promotion (2009)

Discussion Highlights:

(b) (3) - P.L. 86-36  
(b) (6)

(b) (6)

[redacted] opened by offering some insight into the process and criteria used during the scoring process:

- Provided [redacted] with a copy of official Agency [redacted] criteria
- Explained "first pass score", followed by a second review. Explained the value of walking away from it (perhaps as much as a day or two) and running thru the package a second time to insure that she had accounted for the totality of the PRP
- Explained the guidance from IG/OGC/HR that said [redacted] should be scored, and then compared to the lowest promoted person from that Cycle
- Explained that the assessment is about her readiness to work at the next level
- Based on the assessment she did not score as well as the lowest [redacted] person who was forwarded and promoted that year

(b) (3) - P.L. 86-36

[redacted] then offered some insight into the reasons for the score. She highlighted and pointed to specific examples in the PRP where impact was difficult to assess

[redacted] so pointed out that she saw evidence of performance and impact but not to the extent that would support readiness for the next level

[redacted] disagreed with a number of examples by saying that [redacted]

[redacted]

(b) (3) - P.L. 86-36  
(b) (6)

(b) (3) - P.L. 86-36

[Redacted]

She indicated to [Redacted] that too much time is spent on the ultimate outcome, and not enough on her performance to distinguish and score her contribution to the overall success.

(b) (6)

[Redacted] read a selection of phrases used in the PRP to illustrate their weaknesses for conveying an employee's contribution and performance. Phrases such as "she lead" "she teamed with" "she briefed" do not go far enough to garner high scores if they are not followed by some statement about the difficulties, or challenges or breakthroughs expected by [Redacted]. In [Redacted] PRP, these weaker statements were often the only reference to the actual work performed by her in a given paragraph. During this segment, [Redacted] echoed several of these terms/phrases back to [Redacted] in what appeared to be an effort to highlight them as deserving of greater consideration. [Redacted] repeated that the phrases are fine, but they are difficult to assess and score on their own merit without supporting evidence. [Redacted] continued to disagree, and believed that the phrasing and evidence was sufficient for a more robust assessment.

(b) (3) - P.L. 86-36  
(b) (6)

(b) (3) - P.L. 86-36  
(b) (6)

[Redacted] also identified some difficulty in assessing and scoring input from the multiple P3's and ACE inputs when there appeared to be repetitive language used by supervisors from year to year. [Redacted] was not aware of the repeated narratives. [Redacted] emphasized that it's not necessarily [Redacted] problem to fix, and that her previous supervisors should have done a better job of showing progress and growth in her Annual Performance Appraisals by not cutting and pasting from previous years. Nonetheless, she told [Redacted] that she should take a moment to review her PRP to identify these problem areas, and perhaps try to compensate for them in the Employee Self Evaluation or her ISR.

[Redacted] highlighted an example where [Redacted] documented experience with the [Redacted] process while assigned to [Redacted] as a civilian analyst and her efforts to improve the process. [Redacted] acknowledged that such experience is valuable and somewhat rare to the average NSA employee; but [Redacted] missed an opportunity to get into the specifics of what she improved, how she improved it, any barriers she may have encountered, and how she overcame. The basic statement that she had improved the process is good, but the promotion process is trying to identify those who are displaying and documenting requisite skills and abilities, and not just outcomes.

(b) (3) - P.L. 86-36

(b) (3) - P.L. 86-36

[Redacted] asked more than once about any "weighting criteria" in the PRP, specifically, how are the past documents like P3s and ACEs weighted against the Employee Assessment and Supervisor's Nomination? [Redacted] specifically asked if [Redacted] understood that the P3's and ACEs were read and considered in equal measure to the other documents in the PRP. [Redacted] did not realize this, and appeared to believe that more emphasis would be placed on the Employee Assessment and Supervisor's Nomination.

[Redacted] explained that the promotion process is an assessment of the entire PRP, with no weighting attached. All documents regardless of age are an accounting of [Redacted] performance and evidence that she has acquired and displays the necessary skills and competencies needed to move

(b) (3) - P.L. 86-36  
(b) (6)

(b) (6)

[redacted]  
expression by previous and current supervisors of her performance and fitness for advancement, while the Employee Self Assessment and ISR are an expression by the employee. The assessment of growth and readiness are taken from the totality of the PRP and there is no valuation of old versus new materia

[redacted] also pointed out some strengths in her PRP, highlighting the fact that [redacted] has experience in [redacted]. She also pointed to the Diversity and Learning areas as good examples of how the PRP documents should be written.

[redacted] asked if there were any remaining questions or issues to address. [redacted] then offered specific questions that she asked [redacted] to respond to. [Paraphrased with as much accuracy as possible.]

[redacted] **Did you contact my military supervisor, who is still my military supervisor today, for input on the 2009 Promotion Cycle?**

[redacted] No. As the Reviewer, I believed the information I needed for the assessment was contained in the PRP documents.

[redacted] **Did you contact [redacted] as the supervisor of record.**

[redacted] No. Again [redacted] nomination statement was in the PRP.

[redacted] **Have you received formal training in the USERRA process?**

[redacted] No. How is this germane, since we are conducting the promotion process as required?

[redacted] It's just a question.

[redacted] I processed your PRP the same way I would for any NSA employee.

[redacted] **Did you pull and review the scores of those who were promoted that year for comparison?**

[redacted] Yes. I pulled and reviewed the documentation for the lowest score who was promoted to [redacted] for the 2009 cycle.

[redacted] **During last year's feedback [for the 2008 Cycle], you said I did not possess the "political savvy" needed at the [redacted] level. Do you think I've achieved that this year?**

[redacted] I don't recall saying that?

[redacted] You did.

[redacted] I don't understand or recall under what context I would have made such a comment? Nonetheless, believe "savvy" is the ability to deal with difficult or complex problems and to show the overall ability to work thru them [redacted]

(b) (3) - P.L. 86-36  
(b) (6)

(b) (3) - P.L. 86-36

(b) (3) - P.L. 86-36

(b) (3) - P.L. 86-36  
(b) (6)

[Redacted]

trying to resolve. Again, while you might assess the qualities described, I don't believe these PRP documents provide the evidence of these qualities.

(b) (3) - P.L. 86-36  
(b) (6)

[Redacted] You also said last year that my impact was not tied to [Redacted] activities. Did I do a better job of that this year?

[Redacted] Yes, there is a closer link up to the type of work done in [Redacted] which makes the assessment easier. However, the impact statements still need to emphasize your work, and your contributions.

[Redacted] offered [Redacted] a copy of a one-page guide that has helped other employees in the past to focus more on their actual contributions and demonstration of their skills and competencies, and less on the final output or outcome of the project.

(b) (3) - P.L. 86-36

[Redacted] provided a copy of her new military "contingency" orders, and clarified that her time under these new orders does not apply to the five-year requirement as they would under "non-contingency" orders. [Redacted] was under the impression that the five-year period had already passed (AUG-SEP 2012) and [Redacted] asked if that period would require a ruling from NSA/HR before these new orders take effect. [Redacted] made it clear that she has already contacted NSA/HR and received guidance that she is no longer governed by the previous period, and that the five-year rule no longer applies. [Redacted]

[Redacted] indicated that [Redacted] had also reached out to NSA/HR for a similar ruling, and has not received a response. He also said that [Redacted] will follow up with NSA/HR.

[Redacted] took notes during the feedback session and did not speak other than the the greeting and departure.

The meeting came to a cordial conclusion, and all parties departed.

(b) (3) - P.L. 86-36

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IV-13-0047

## APPENDIX F

### Nomination Priority List for 2009

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NOMINATION PRIORITY LIST FOR [redacted] FY08

- FY08 promotions

(b) (3) - P.L. 86-36

1. The following candidates are nominated, in priority order, for pro

but 2009 promo cycle

NAME	EMPLID	GRADE
[redacted]	[redacted]	GG-15
[redacted]	[redacted]	GG-15
[redacted]	[redacted]	GG-14
[redacted]	[redacted]	GG-7
[redacted]	[redacted]	GG-14

Rationale for the ordering of the candidates:

- [redacted] is a capable leader with solid technical skills and achievements. He is meticulous, effective, collaborates and learns at levels far exceeding his peers.
- [redacted] continually demonstrates the highest levels of achievement and an ever increasing technical ability to understand and direct access decisions for his targets
- [redacted] is an accomplished and solid leader, always looking for ways to increase and improve the collaboration and effectiveness of the Survey Portfolio
- [redacted] professional growth continues as she accepts more responsibility for the management of the office's business processes and provides outstanding support for the organization, the office and its personnel
- [redacted] is an unquestioned professional with a solid understanding of the tasks she is assigned. She shows strong leadership and mission commitment.

(b) (3) - P.L. 86-36

2. The following GG-07 and above employees in my organization have submitted a Performance Review Package, and have been reviewed for promotion. They are, however, not nominated for promotion at this time:

NAME	EMPLID	GRADE
[redacted]	[redacted]	GG-14
[redacted]	[redacted]	GG-14
[redacted]	[redacted]	GG-14
[redacted]	[redacted]	GG-14
[redacted]	[redacted]	GG-14
[redacted]	[redacted]	GG-13
[redacted]	[redacted]	GG-13
[redacted]	[redacted]	GG-13
[redacted]	[redacted]	GG-13
[redacted]	[redacted]	GG-13
[redacted]	[redacted]	GG-13
[redacted]	[redacted]	GG-13
[redacted]	[redacted]	GG-14
[redacted]	[redacted]	GG-12



[Redacted]

GG-13  
GG-14  
GG-13  
GG-14  
GG-13  
GG-14  
GG-11  
GG-14  
GG-12

3. The following GG-07 and above employees, assigned to my organization, did not submit a Performance Review Package for promotion review this cycle:

NAME	EMPLID	GRADE
[Redacted]	[Redacted]	GG-11
[Redacted]	[Redacted]	GG-14
[Redacted]	[Redacted]	GG-13
[Redacted]	[Redacted]	GG-14
[Redacted]	[Redacted]	GG-13
[Redacted]	[Redacted]	GG-12

4. The following GG-05 and below employees in my organization have been reviewed for promotion. They are, however, not nominated for promotion at this time: NOT APPLICABLE

5. The following employees are nominated, in priority order, for a Quality Step Increase:

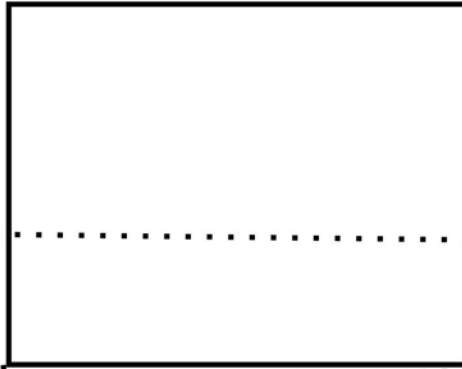
NAME	EMPLID	GRADE
[Redacted]	[Redacted]	GG-13
[Redacted]	[Redacted]	GG-13
[Redacted]	[Redacted]	GG-11
[Redacted]	[Redacted]	GG-14

6. The following employees are nominated, in priority order, for an Annual Performance Bonus (APB):

NAME	EMPLID	AMOUNT
[Redacted]	[Redacted]	\$6000*
[Redacted]	[Redacted]	\$6000*
[Redacted]	[Redacted]	\$4500*
[Redacted]	[Redacted]	\$3500*
[Redacted]	[Redacted]	\$4225*
[Redacted]	[Redacted]	\$5000* - Possible Share
[Redacted]	[Redacted]	\$5000* - Possible share
[Redacted]	[Redacted]	\$5000* - Possible Share

(b) (3) - P.L. 86-36

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\$10000  
 \$10000  
 \$5000  
 \$7500  
 \$7500  
 \$5900  
 \$5000 - Possible Share   
 \$5900  
 \$5000 - Possible Share

(b) (3) - P.L. 86-36

\* Indicates Bonus Request ONLY if not promoted

(See attached spreadsheet for rationale comments)

7. The following employees are nominated, in priority order, for a Special Achievement Award (SAA). Justification statements in the attached spreadsheet.

NAME	EMPLID	GRADE	AMOUNT
		GG15	\$5900
		GG14	\$4000
		GG11	\$2500
		GG14	\$2500
		GG13	\$3000
		GG14	\$3000
		GG14	\$3000
		GG14	\$3000
		GG15	\$3000
		GG13	\$2500
		GG14	\$2500
		GG14	\$2500
		GG14	\$2500
		GG14	\$2500
		GG14	\$2000
		GG14	\$2000
		GG13	\$750 (Team Award)
		GG11	\$750 (Team Award)
		GG13	\$2000

8. I will ensure that each employee listed above receive performance feedback.

- signed-   
 GG-15, 24 September 2012

(b) (3) - P.L. 86-36  
 (b) (6)

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NOMINATION PRIORITY LIST FOR [redacted] FY08

(b) (3) - P.L. 86-36

1. The following candidates are nominated, in priority order, for promotion:

NAME	EMPLID
[redacted]	[redacted]

GRADE  
 GG-15  
 GG-15  
 GG-14  
 GG-7  
 GG-14

[redacted]  
 [redacted]  
 [redacted]  
 [redacted]  
 [redacted]

*If scores higher than the lowest promoted then forward for promsti*

(b) (6)

Rationale for the ordering of the candidates:

- [redacted] is a capable leader with solid technical skills and achievements. He is meticulous, effective, collaborates and learns at levels far exceeding his peers.
- [redacted] continually demonstrates the highest levels of achievement and an ever increasing technical ability to understand and direct access decisions for his targets
- [redacted] is an accomplished and solid leader, always looking for ways to increase and improve the collaboration and effectiveness of the Survey Portfolio
- [redacted] professional growth continues as she accepts more responsibility for the management of the office's business processes and provides outstanding support for the organization, the office and its personnel
- [redacted] is an unquestioned professional with a solid understanding of the tasks she is assigned. She shows strong leadership and mission commitment.

(b) (3) - P.L. 86-36

2. The following GG-07 and above employees in my organization have submitted a Performance Review Package, and have been reviewed for promotion. They are, however, not nominated for promotion at this time:

NAME	EMPLID
[redacted]	[redacted]

GRADE  
 GG-14  
 GG-14  
 GG-14  
 GG-14  
 GG-14  
 GG-13  
 GG-13  
 GG-13  
 GG-13  
 GG-13  
 GG-13  
 GG-13  
 GG-14  
 GG-12  
 GG-13

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[Redacted box]

GG-14  
GG-13  
GG-14  
GG-13  
GG-14  
GG-11  
GG-14  
GG-12

3. The following GG-07 and above employees, assigned to my organization, did not submit a Performance Review Package for promotion review this cycle:

NAME                      EMPLID  
[Redacted box]

GRADE  
GG-11  
GG-13  
GG-14  
GG-13  
GG-14  
GG-13  
GG-12

4. The following GG-05 and below employees in my organization have been reviewed for promotion. They are, however, not nominated for promotion at this time: NOT APPLICABLE

5. The following employees are nominated, in priority order, for a Quality Step Increase:

NAME                      EMPLID  
[Redacted box]

GRADE  
GG-13  
GG-13  
GG-11  
GG-14

(b) (3) - P.L. 86-36

6. The following employees are nominated, in priority order, for an Annual Performance Bonus (APB):

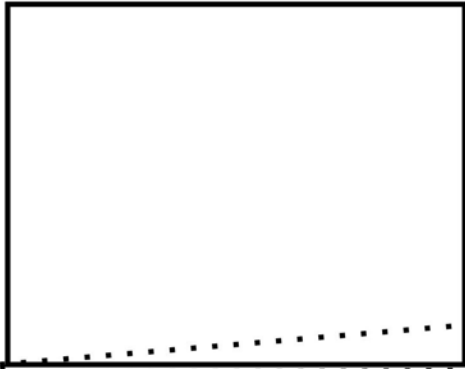
NAME                      EMPLID  
[Redacted box]

AMOUNT  
\$6000\*  
\$6000\*  
\$4500\*  
\$3500\*  
\$4225\*  
\$5000\* - Possible Share  
\$5000\* - Possible share  
\$5000\* - Possible Share

[Redacted box]

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\$10000  
 \$10000  
 \$5000  
 \$7500  
 \$7500  
 \$5900  
 \$5000 – Possible Share   
 \$5900 .....  
 \$5000 – Possible Share

(b) (3) - P.L. 86-36

\* Indicates Bonus Request ONLY if not promoted

(See attached spreadsheet for rationale comments)

7. The following employees are nominated, in priority order, for a Special Achievement Award (SAA). Justification statements in the attached spreadsheet.

NAME	EMPLID	GRADE	AMOUNT
		GG15	\$5900
		GG14	\$4000
		GG11	\$2500
		GG14	\$2500
		GG13	\$3000
		GG14	\$3000
		GG14	\$3000
		GG15	\$3000
		GG13	\$2500
		GG14	\$2500
		GG14	\$2500
		GG14	\$2500
		GG14	\$2500
		GG14	\$2000
		GG14	\$2000
		GG13	\$750 (Team Award)
		GG11	\$750 (Team Award)
		GG13	\$2000

8. I will ensure that each employee listed above receive performance feedback.

GG-15, 23 February 2009

(b) (3) - P.L. 86-36  
(b) (6)

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