



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

March 3, 2015

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley:

This is in further response to your letter to Director Comey dated September 26, 2014 concerning the use of loss of effectiveness (LOE) transfers within the FBI.

In our response dated March 2, 2015, we advised that the FBI recently adopted a new policy directive concerning LOE transfers. A copy of the policy directive is enclosed. This internal document is provided in furtherance of the Committee's oversight activities and should not be further disseminated without prior consultation with the FBI.

We appreciate your interest in this issue and your continued support of the FBI.

Sincerely,

Stephen D. Kelly
Assistant Director
Office of Congressional Affairs

Enclosure

1 – The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

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FEDERAL BUREAU OF INVESTIGATION
POLICY DIRECTIVE

0773D

1. Policy Directive Title.	Loss of Effectiveness Transfers
2. Publication Date.	2015-03-01
3. Effective Date.	2015-03-01
4. Review Date.	2018-03-01

5. Primary Strategic Objective.

T3-Link skills and competencies to needs.

6. Authorities:

6.1. Title 5 United States Code (U.S.C.) Section (§) 301

6.2. 28 Code of Federal Regulations (CFR) § 0.138

7. Purpose:

The purpose of this policy is to provide an effective but fair process under which employees may be reassigned for loss of effectiveness.

8. Policy Statement:

8.1. It is vital to the effective and efficient operation of the FBI for management to be able to reassign supervisors and others who, for whatever reason (including reasons beyond the employee's control), are determined by management to be unable to effectively fulfill their official duties and responsibilities while in their currently assigned positions.

8.2. Transfers of personnel that are directed based upon the findings set out in subsection 8.4.1. below are "loss of effectiveness" (LOE) transfers. An LOE transfer is an FBI management-directed reassignment; it may be ordered without the consent of the affected employee and is not an "adverse action" as that term is used in Title 5 of the U.S.C. or in related law and regulation.

8.3. An employee may not be recommended for an LOE transfer if the individual's ability to perform his or her duties can be brought to a satisfactory level through managerial action—including, but not limited to, through counseling, mentoring, or the use of a performance improvement plan while in his or her current position.

8.4. An LOE transfer may be recommended by the Inspection Division (INSD), an assistant director in charge (ADIC), a special agent in charge (SAC), an assistant director (AD), or an executive assistant director (EAD).

8.4.1. The recommendation must be sent to the AD, Human Resources Division (HRD) via electronic communication (EC) and be documented as follows:

8.4.1.1. All documentation resulting from an INSD LOE transfer recommendation must be serialized to the restricted file number being utilized for the particular inspection and to the personnel file of the affected employee.

8.4.1.2. All documentation resulting from an LOE transfer recommendation initiated by an ADIC, an SAC, an AD, or an EAD must be serialized to the personnel file of the affected employee.

8.4.2. The recommending official must set out in the EC the basis for the LOE transfer, including the circumstances, factors, and details that support the LOE recommendation. The EC must address why the employee meets the following standards for an LOE transfer:

8.4.2.1. The employee cannot satisfactorily perform his or her duties.

8.4.2.2. The employee's ability to perform his or her duties cannot be brought to a satisfactory level while remaining in that position.

8.4.2.3. The employee must, consequently, be removed from that position for the effectiveness and efficiency of the FBI.

8.4.3. The recommendation EC must include any other relevant information or attachments to support the recommendation. A copy of the recommendation EC, along with any supporting attachments or other information, must be provided to the affected employee concurrently with its submission to the AD, HRD.

8.5. The affected employee may respond in writing in an EC to the AD, HRD within seven business days of receiving the recommendation. The employee must provide a copy of his or her response to the proponent official at the same time his or her EC is submitted to the AD, HRD. The seven-day period begins on the first day after the employee's receipt of the recommendation for LOE transfer.

8.6. Using the standards listed in subsection 8.4.1., and after considering both the proponent's basis for the LOE recommendation and the employee's response, if any, the AD, HRD must approve or deny the LOE transfer recommendation. The AD, HRD must discuss the matter with the associate deputy director (ADD) and obtain the ADD's concurrence with the proposed course of action. If concurrence is obtained, the AD, HRD and ADD must notify the proponent official and affected employee of the approved LOE transfer and subsequent course of action via EC, using the above file number. No approved LOE transfer recommendation may be finalized without the concurrence of the ADD. Approved recommendations are final.

8.7. Upon denial of the LOE transfer recommendation, the AD, HRD will notify the proponent official and the affected employee of the decision via an EC, using the appropriate file number from subsection 8.4.1.

8.8. If the LOE recommendation is not approved, no reference to the recommendation in a name-check or similar process is permitted.

8.9. Denial of an LOE transfer recommendation does not preclude other appropriate action.

9. Scope:

9.1. This policy applies to FBI employees only. It does not apply to contractors, task force personnel, or other non-employees.

9.2. This policy applies only to management-directed reassignments which, because of the circumstances under which they are initiated, are designated as LOE transfers; that is, transfers not so designated are not within the scope of this directive even if they are otherwise management-directed.

10. Proponent:

Human Resources Division

11. Roles and Responsibilities:

11.1. The INSD, SACs, ADs, and EADs will recommend an employee for LOE transfer when, in their opinion, the standards set forth in subsection 8.4.1. are met.

11.2. AD, HRD must:

11.2.1. Receive and process all recommendations for LOE transfer in accordance with subsections 8.6., 8.7., and 8.8.

11.2.2. Take the following actions if the recommendation is approved: (a) determine where the employee should be placed after considering the employee's previous work history, education, skills, prior climate surveys, performance appraisals, awards, and other background information, and after making any necessary and appropriate consultations; (b) document the decision in an EC to the employee, with a copy to the proponent; (c) take any necessary action to reassign the employee; and

(d) coordinate with the employee's new management any appropriate follow-up action to assist the employee in succeeding in his or her new assignment.

11.2.3. Document the decision in an EC to the proponent, with a copy to the employee, if the recommendation is not approved.

12. Exemptions:

Because the Director is responsible to the Attorney General (AG) and, through the AG, to the President, for executing the duties of his office through the actions of his subordinates, the Director must be able to remove from a position any FBI employee in whom he no longer reposes trust or confidence. Consequently, the Director or Deputy Director (DD) may order the reassignment of any employee without adhering to the process and procedures set forth in this policy.

13. Supersession:

None

14. References, Links, and Forms:

None

15. Key Words, Definitions, and Acronyms:

15.1. Key Words

15.1.1. None

15.2. Definition

15.2.1. Adverse action: a personnel action that results in a loss of grade or pay (including suspensions without pay and furloughs of less than 30 days) or removal from employment. Because an LOE transfer is not initiated to and does not reduce in grade, suspend, furlough, or remove an employee, it is not an adverse action.

15.3. Acronyms

15.3.1. AD: assistant director

15.3.2. ADD: associate deputy director

15.3.3. ADIC: assistant director in charge

15.3.4. AG: Attorney General

15.3.5. CFR: Code of Federal Regulations

15.3.6. DD: Deputy Director

15.3.7. EAD: executive assistant director

15.3.8. EC: electronic communication

15.3.9. HRD: Human Resources Division

15.3.10. INSD: Inspection Division

15.3.11. LOE: loss of effectiveness

15.3.12. SAC: special agent in charge

15.3.13. U.S.C.: United States Code

16. Appendices and Attachments:

None

Sponsoring Executive Approval

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