



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

March 2, 2015

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

Dear Chairman Grassley:

This responds to your letter to Director Comey dated September 26, 2014, requesting additional information concerning the use of loss of effectiveness (LOE) transfers within the FBI and restating certain questions from an earlier letter on the same topic. We responded to your initial letter on September 25, 2014, and provide this second letter to answer the new questions raised in your latest correspondence and to update you on the new manner in which LOE transfers will be effectuated within the FBI.

As noted in prior correspondence, the FBI uses LOE transfers to maximize the efficiency and effectiveness of the workforce. It is vital for FBI management to be able to identify and quickly reassign supervisors and others who, for whatever reason (including reasons beyond the control of the employee), cannot effectively fulfill their official duties and responsibilities

The FBI recently adopted an important, new policy directive concerning LOE transfers. In order to initiate the transfer process, a written justification must be provided to the Human Resources Division (HRD) from senior executive management or the Inspection Division. The affected employee will also be provided with the written justification and will be given seven business days to provide a written response. HRD will consider the recommendation and the employee's response in determining whether the standard for the LOE transfer has been met. An LOE transfer is warranted when under the totality of the circumstances, the employee cannot satisfactorily perform his or her duties and the employee's ability to perform his or her duties cannot be brought to a satisfactory level. If HRD makes such a determination, the Associate Deputy Director will be advised and must concur in the transfer.

In your letter, you referenced a report prepared by the Office of Integrity and Compliance (OIC) related to LOE transfers. That report was prepared for the internal deliberations of FBI senior management in considering potential changes to the LOE transfer policy, and the report does not express any opinion on the merits of any individual case. As an internal deliberative document, we would decline to provide the report. However, as discussed above, the FBI has instituted a new LOE policy and we would welcome the opportunity to brief you or your staff on the policy changes.

In your amended request, you restated questions from your earlier correspondence related to LOE ECs from the Inspection Division (INSD), and specifically asked how many LOE ECs from INSD did not result in removal, suspension for more than 14 days, reductions in grade or pay, or a furlough of 30 days or less. As of March 1, 2015, INSD has issued LOE ECs concerning twenty-three individuals. Three individuals chose to retire after issuance of an INSD EC. Four individuals were returned or assigned to lower grade positions for various reasons.¹ None of the INSD ECs resulted in an individual's removal, suspension for more than 14 days, or furlough of 30 days or less.

You also referred to circumstances surrounding an FBI Special Agent in Charge (SAC) who was referred for discipline to the FBI's Office of Professional Responsibility (OPR). Because OPR dismissed the SAC from the rolls of the FBI, an LOE transfer was not considered.

As noted in prior correspondence, information pertaining to an individual's exercise of protected activity (such as an EEO claim or a whistleblower complaint of fraud, waste, abuse or mismanagement) is not reviewed, commented upon, included, or otherwise considered by any FBI official during any stage of the LOE process. Further, we do not maintain statistics concerning protected status in connection with LOE transfers.

Finally, given that the FBI employee identified in your letter is engaged in litigation challenging his LOE transfer, the issues pertaining to that transfer will be resolved in the context of that litigation. As a result, and as noted in prior correspondence, the Director will be unable to meet with him at this time.

As always, we appreciate your continued support of the FBI.

Sincerely,



Stephen D. Kelly
Assistant Director
Office of Congressional Affairs

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

¹ One individual was in a non-permanent, term position and returned to his original grade at the end of the term. Another individual requested a transfer to his office of preference, which resulted in a reduction in grade. A third individual agreed to step down in grade in order to remain in her office of assignment. A fourth individual was reallocated from Headquarters to a position in a local field office.