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Office of Inspector General  
United States Department of State

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ESP-20-06

Office of Evaluations and Special Projects

September 2020

# **Evaluation of the Department's Handling of Sexual Harassment Reports**

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# HIGHLIGHTS

Office of Inspector General  
United States Department of State

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## What OIG Reviewed

The Department of State (Department) is required by the Foreign Affairs Manual (FAM) to promptly address and investigate reports of sexual harassment. The Department's Office of Civil Rights (OCR) and the Bureau of Diplomatic Security Office of Special Investigations (OSI) are responsible for investigating reports of sexual harassment and sexual assault. The Bureau of Global Talent Management (GTM) reviews sexual harassment investigations and determines the appropriate disciplinary action, if any, for cases that OCR and OSI refer.

The Office of Inspector General (OIG) conducted an evaluation of the Department's handling of sexual harassment reports. Specifically, OIG reviewed (1) the extent to which employees report sexual harassment; (2) how the Department addresses employees' reports of sexual harassment; and (3) the extent to which the Department ensures consistent outcomes for individuals who were found to have engaged in sexual harassment. Because the FAM definition of sexual harassment encompasses sexual assault as well, OIG took the same approach and separately discussed sexual assault only if the Department's own policies or procedures did so.

## What OIG Recommends

OIG made six recommendations to the Department related to updating supervisory guidance to include reporting sexual harassment; developing and implementing guidance for coordinating sexual harassment cases; developing and implementing timeliness standards; and developing and implementing a common tracking mechanism for the length to resolution and outcomes of sexual harassment reports. The Department concurred with all of the recommendations.

September 2020

OFFICE OF EVALUATIONS AND SPECIAL PROJECTS

## Evaluation of the Department's Handling of Sexual Harassment Reports

### What OIG Found

OCR received 636 reports of sexual harassment from 2014 to 2017. However, sexual harassment is likely underreported at the Department. According to an OIG survey of direct-hire employees selected on a random basis, 47 percent of employees who stated that they had experienced or observed sexual harassment within the last 2 years responded that they did not report the harassment to OCR or OSI.

The Department has taken steps to address sexual harassment but lacks coordination and guidance on the investigative and disciplinary processes for these reports. The Department does not have joint guidance that coordinates OCR, OSI, and GTM's Conduct, Suitability, and Discipline Division (CSD) activities throughout the investigation and disciplinary review of sexual harassment cases and has not updated supervisory guides to include sexual harassment reporting. OCR, OSI, and CSD have internal policies for their roles in the investigative and disciplinary processes for sexual harassment cases, but the policies do not discuss coordination with all relevant bureaus and offices. Because guidance is lacking, coordination among the offices is inconsistent. For example, OIG reviewed 20 sexual harassment cases and found two cases that CSD did not review for discipline because of inconsistent coordination.

Additionally, the Department lacks data on the consistency of the investigative and disciplinary processes. For example, OIG could not assess the timeliness of sexual harassment cases from 2014 to 2017 as CSD and OCR did not have timeliness standards that guided work on sexual harassment reports. Additionally, OIG could not assess the length and outcomes of sexual harassment cases during the same timeframe because the Department does not have a mechanism to consistently track outcomes of sexual harassment reports.

## CONTENTS

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OBJECTIVE .....	1
BACKGROUND.....	1
The Department’s Process for Reporting and Investigating Sexual Harassment .....	2
The Department’s Process for Reporting and Investigating Sexual Assault.....	4
The Department’s Processes for Administering Discipline for Sexual Harassment and Appealing Discipline Decisions .....	5
RESULTS .....	10
Reports of Sexual Harassment Have Increased, though Employees and Stakeholders Raised Concerns About Underreporting .....	10
The Department Has Made Efforts to Increase Accountability Related to Sexual Harassment, but Coordination and Guidance are Lacking.....	16
The Department Considers Comparable Cases and Other Factors to Ensure Consistent Discipline, but Data on the Sexual Harassment Investigation and Disciplinary Process is Limited .....	22
CONCLUSIONS.....	32
RECOMMENDATIONS.....	33
APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY.....	35
APPENDIX B: DEPARTMENT COMMENTS .....	37
ABBREVIATIONS .....	41
OIG TEAM MEMBERS .....	43

## OBJECTIVE

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The Foreign Affairs Manual (FAM) requires the Department of State (Department) to promptly address and investigate reports of sexual harassment.<sup>1</sup> In 2017, several news articles and blog posts identified employee concerns with the Department's handling of complaints of sexual harassment. In addition, in January 2018, the Ranking Member of the Senate Foreign Relations Committee and other members of the committee sent a letter to the Secretary of State asking for a review and analysis of data on sexual harassment at the Department. Based on these events, the Office of Inspector General (OIG) initiated this evaluation to determine (1) the extent to which employees report sexual harassment; (2) how the Department addresses employees' reports of sexual harassment where the subjects were direct-hire Foreign Service or civil service employees; and (3) the outcomes of reports made to the Office of Civil Rights (OCR) and the Bureau of Diplomatic Security (DS) Office of Special Investigations (OSI), and whether the Department provides consistent discipline for direct-hire employees who were found to have engaged in sexual harassment. OIG conducted this evaluation in accordance with the Quality Standards for Inspection and Evaluation as issued by the Council of the Inspectors General on Integrity and Efficiency.

## BACKGROUND

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Sexual harassment is a form of unlawful sex discrimination prohibited by Title VII of the Civil Rights Act of 1964. Workplace harassment, including sexual harassment, causes psychological, physical, and economic harms to employees and financial costs to employers.<sup>2</sup> According to a 2016 survey of Federal employees, approximately 1 in 7 Federal employees experienced one or more types of sexual harassment behaviors during the 2 years preceding the survey, and women were more than twice as likely as men to experience sexual harassment.<sup>3</sup> The FAM states that the Department "is committed to providing a workplace that is free from sexual harassment."<sup>4</sup> For Department employees, sexual harassment is inconsistent with the Department's Professional Ethos pledge to serve with unfailing professionalism in both demeanor and actions and to show unstinting respect in word and deed for their colleagues.<sup>5</sup>

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<sup>1</sup> 3 FAM 1525.2-1(a). Pursuant to the FAM, sexual assault is a form of sexual harassment. See 3 FAM 1711.2 & 3 FAM 1752. Accordingly, unless specifically so stated, references in this report to sexual harassment also encompass sexual assault. However, where the Department specifically addresses sexual assault as distinct from sexual harassment (for example, in certain policies), OIG similarly addresses the two issues separately.

<sup>2</sup> Equal Employment Opportunity Commission (EEOC), Report of Co-Chairs Chai R. Feldblum and Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace* (June 2016).

<sup>3</sup> U.S. Merit Systems Protection Board (MSPB), Office of Policy and Evaluation, *Research Brief: Update on Sexual Harassment in the Federal Workplace* (March 2018).

<sup>4</sup> 3 FAM 1525(a).

<sup>5</sup> U.S. Department of State, *U.S. Department of State Professional Ethos*, <https://www.state.gov/about/professional-ethos>.

The Department's policies against sexual harassment are rooted in the principles of Title VII and EEOC regulations.<sup>6</sup> The FAM defines sexual harassment as "[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) [a]n employment decision affecting that individual is made because the individual submitted to or rejected the unwelcome conduct; or (2) [t]he unwelcome conduct unreasonably interferes with an [individual's] work performance or creates an intimidating, hostile, or abusive work environment."<sup>7</sup> The FAM further identifies certain actions that may be considered sexual harassment, including sexual pranks, verbal abuse of a sexual nature, touching or grabbing of a sexual nature, or repeatedly making sexually suggestive gestures.<sup>8</sup> The term "sexual harassment" includes sexual assault, which the FAM defines as "[a]ny type of sexual contact that occurs without the explicit consent of the recipient."<sup>9</sup> Policies related to sexual harassment apply to all Department employees, including supervisors and senior officials. As noted later in this report, however, there are in some cases separate policies and procedures specifically applicable to claims of sexual assault.

## **The Department's Process for Reporting and Investigating Sexual Harassment**

OCR oversees the Department's compliance with anti-harassment laws and policies and is responsible for reviewing concerns it receives about sexual harassment.<sup>10</sup> While OCR is the primary venue for employees to report sexual harassment, employees who experience or observe sexual harassment may report incidents to responsible Department officials, including first- or second-line supervisors, the offending person's supervisor, the post's management officers, or the bureau's Executive Director.<sup>11</sup> The FAM requires supervisors and other responsible Department officials who observe, are informed of, or reasonably suspect incidents of possible sexual harassment to immediately report such incidents to OCR for investigation.<sup>12</sup> The Department may impose disciplinary action on supervisors and other responsible Department officials who fail to report such incidents. OCR's website contains a form for reporting harassment that includes a section specifically for sexual harassment and a checklist for employees to identify the specific type of harassment at issue (such as unwelcome touching).

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<sup>6</sup> The EEOC, the enforcer of employment discrimination laws such as Title VII, assesses the compliance of federal agencies' anti-harassment programs with relevant federal laws and regulations.

<sup>7</sup> 3 FAM 1525.1(a).

<sup>8</sup> 3 FAM 1525.1(c).

<sup>9</sup> The FAM defines sexual contact as the "intentional touching, or the forcing of another to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person." 3 FAM 1711.2 (outside the U.S.) and 3 FAM 1752 (in the U.S.).

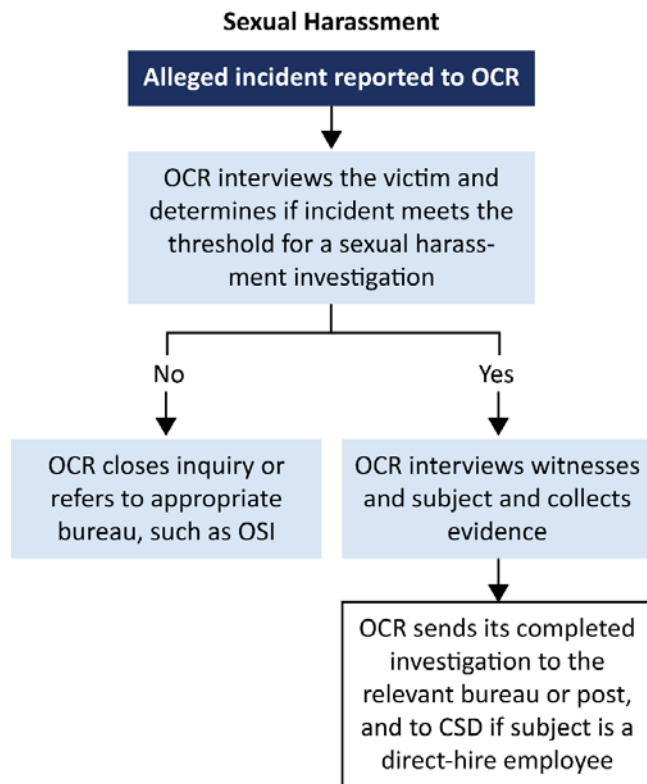
<sup>10</sup> In addition to sexual harassment, OCR receives complaints about other forms of harassment, such as behavior that is targeted due to age, religion, color, and other factors, but this report focuses exclusively on sexual harassment.

<sup>11</sup> Employees may also report sexual harassment to OIG. OIG does not generally investigate claims of sexual harassment itself because OCR is specifically designated in the FAM as the responsible entity for investigating alleged sexual harassment. OIG does, however, occasionally receive complaints. When employees report such incidents of sexual harassment or assault to OIG, their complaints are typically referred to OCR or DS, respectively, for further action. In addition, in some cases, OIG might examine pertinent issues that pertain to a senior Department employee or potentially to a more systemic concern, as well as other underlying matters within OIG's purview.

<sup>12</sup> 3 FAM 1525.2-1(c).

OCR's Legal Section is responsible for receiving reports of sexual harassment, investigating these reports, and referring summaries of the investigation for potential disciplinary action.<sup>13</sup> After receiving a report of sexual harassment, OCR's Legal Section reviews the complaint and almost always interviews the alleged victim to determine whether it would be appropriate to investigate.<sup>14</sup> OCR refers reports that do not meet the threshold for a sexual harassment investigation to the appropriate office and closes the inquiry. If OCR decides to investigate a report, the Senior Attorney-Adviser who leads the Legal Section's Anti-Harassment Program assigns an investigator to conduct the inquiry. OCR interviews the alleged victim(s), subject(s), and witnesses and drafts a report on the investigation. If the subject is a direct-hire employee, OCR sends the report to the Conduct, Suitability and Discipline (CSD) Division within the Bureau of Global Talent Management's (GTM) (formerly, the Bureau of Human Resources) Office of Employee Relations (GTM/ER), which works with the appropriately authorized officials to determine whether further action, including possible discipline, is warranted. OCR also sends the report to the subject's bureau or post management, as applicable. Figure 1 outlines OCR's process for investigating sexual harassment reports if the subject is a direct-hire employee.

**Figure 1: OCR Process for Investigating Sexual Harassment Reports**



**Source:** OIG analysis of OCR process.

<sup>13</sup> OCR developed and delivered the Department's mandatory in-person harassment training in 2018, and, in coordination with the Foreign Service Institute, created an online training to be permanently available. Additionally, OCR is responsible for administering the Department's Equal Employment Opportunity (EEO) complaint process, which its Intake and Resolution Section oversees. OCR's Legal Section handles harassment investigations to maintain, within OCR, a firewall with the EEO process side.

<sup>14</sup> OIG discusses the factors used in making this determination later in this report.

## **The Department's Process for Reporting and Investigating Sexual Assault**

OSI is the Department entity authorized to conduct sexual assault investigations.<sup>15</sup> Employees who experience or observe sexual assault may report the assault to OSI or OCR. Those employees working abroad can also report the sexual assault to the Regional Security Officer (RSO)<sup>16</sup> at their overseas post or to the Chief of Mission (COM).<sup>17</sup> OSI is responsible for conducting criminal investigations, including investigations of sexual assault that have occurred on Department property abroad or in which any executive branch employee, dependent, or contractor under COM authority is either subject or victim.<sup>18</sup> Local and state law enforcement investigate reports of sexual assault that occur within the United States. For domestic cases, OSI agents conduct administrative investigations concurrently and in support of local or state law enforcement as needed. For certain sexual assault investigations that fall within federal extraterritorial laws, the OSI case agent or supervisor also notifies the Department of Justice, Human Rights and Special Prosecutions Section (DOJ-HRSP) and DOJ-HRSP may accept the case for further investigation or criminal prosecution in the U.S.<sup>19</sup> According to OSI officials, if DOJ-HRSP declines prosecution, OSI moves forward with an administrative investigation of the alleged assault.

OSI officials stated that after completing an investigation, OSI refers cases with any substantiated misconduct by a direct-hire employee to CSD regardless of whether the sexual assault allegation is substantiated. Additionally, OSI sends substantiated cases to the DS Office of Personnel Security and Suitability (PSS) for the review and adjudication of the subject's security clearance eligibility. Figure 2 depicts OSI's process for investigating sexual assault reports.

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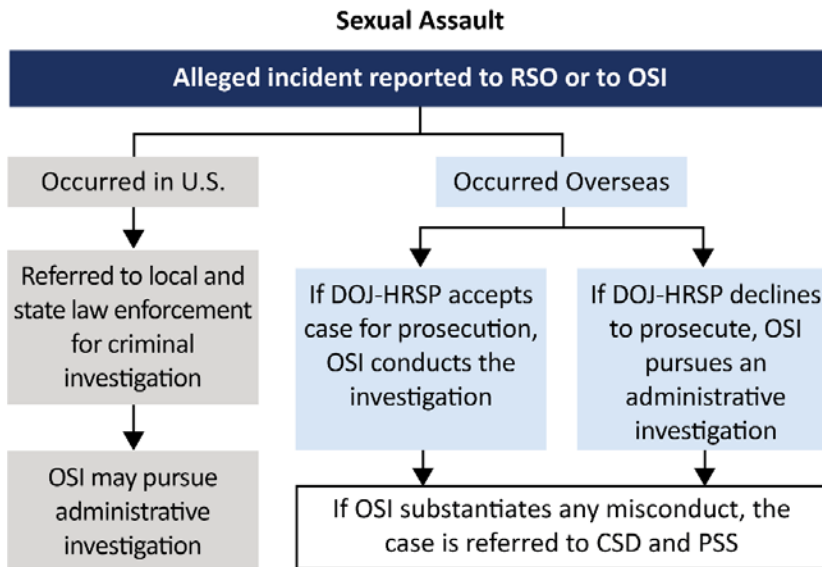
<sup>15</sup> The Department's sexual assault policies are outlined in 3 FAM 1710 (outside the U.S.) and 3 FAM 1750 (within the U.S.). OSI maintains a sexual assault credentialing program to certify all OSI case agents as sexual assault investigators.

<sup>16</sup> The RSO is the federal law enforcement officer responsible for the safety and security of COM facilities and anyone under COM authority.

<sup>17</sup> 3 FAM 1713.1(a) and 3 FAM 1756.1(b). According to officials, OSI refers sexual harassment complaints that do not include assault claims to OCR. If a complaint contains both assault and harassment allegations, OCR will wait for OSI to complete the assault investigation before proceeding with an investigation of harassment allegations.

<sup>18</sup> OSI is primarily responsible for investigations that take place overseas within the special maritime and territorial jurisdiction of the United States.

<sup>19</sup> DOJ-HRSP is the primary DOJ office responsible for prosecuting extraterritorial adult sexual assault allegations. Extraterritorial jurisdiction is the legal authority of the United States to prosecute criminal conduct that took place outside its borders. OSI notifies DOJ-HRSP of a sexual assault investigation when one of the following occurs: (1) probable cause has been established, (2) the victim is in immediate danger, or (3) OSI needs DOJ legal assistance to further the investigation (e.g., search warrants, subpoenas, etc.). Once the case is accepted by DOJ-HRSP for further investigation or prosecution, the OSI case agent will follow the direction of the DOJ-HRSP trial attorney through the conclusion of the criminal case.

**Figure 2: OSI Process for Investigating Sexual Assault Reports**

Source: OIG analysis of OSI process.

## The Department's Processes for Administering Discipline for Sexual Harassment and Appealing Discipline Decisions

CSD reviews sexual harassment cases referred by OCR and OSI and works with GTM management to help proposing and deciding officials determine whether disciplinary action is warranted. Types of disciplinary action include:

- **Letters of Reprimand (LOR)** – A written rebuke, censure, or registration of disapproval of a specific action or actions by the employee that is entered into the employee's Official Personnel Folder for a specified period of time.
- **Suspension** – The placement of an employee, for disciplinary reasons, in a temporary status without duties or pay for a specified period of time.
- **Removal or Separation for Cause** – Removal of an employee from his or her position.

GTM can also issue Letters of Admonishment, but these letters serve as a warning and do not constitute disciplinary action.

When determining whether disciplinary action is warranted, the proposing official and deciding official consider whether the preponderance of the evidence supports a conclusion that the misconduct (such as sexual harassment) occurred. They do not apply the higher standard of "beyond a reasonable doubt" used in criminal cases. The Department is additionally required "to establish a nexus between the disciplinary action and the promotion of the efficiency of the



service as well as the reasonableness of the penalty decided.”<sup>20</sup> Generally, the Department also pursues progressive discipline—the penalties increase if misconduct continues.

CSD supports proposing and deciding officials as they consider whether to propose or impose discipline.<sup>21</sup> If CSD’s case review determines discipline is warranted, the proposing official proposes disciplinary action to the subject in writing.<sup>22</sup> The proposal letter is sent to the subject along with a copy of the information used to support the proposal, such as investigative records. For sexual harassment cases, the subject receives the OCR report that includes witness interviews; for sexual assault cases, the discipline package includes OSI’s report of investigation.

The subject has the opportunity to respond to the proposal by addressing the deciding official in writing, orally, or both and is entitled to representation during the process.<sup>23</sup> The deciding official reviews the file and the subject’s response and considers any mitigating and aggravating factors to determine the appropriate penalty for misconduct.<sup>24</sup> After completing this review, the deciding official makes the decision whether to uphold the proposed penalty, substitute a lesser penalty, or withdraw the penalty proposal. See Figure 3 below for a simplified outline of GTM’s process for reviewing sexual harassment investigation reports.

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<sup>20</sup> Cable 17 STATE 47646 (May 16, 2017). MSPB stated that the efficiency of the service standard requires an agency to show a clear and direct relationship between the articulated grounds for disciplinary action and either the employee's ability to accomplish his or her duties satisfactorily or some other legitimate government interest. *Lamour v. Dep’t of Justice*, 2007 M.S.P.B. \*185, \*11 (Aug. 10, 2007).

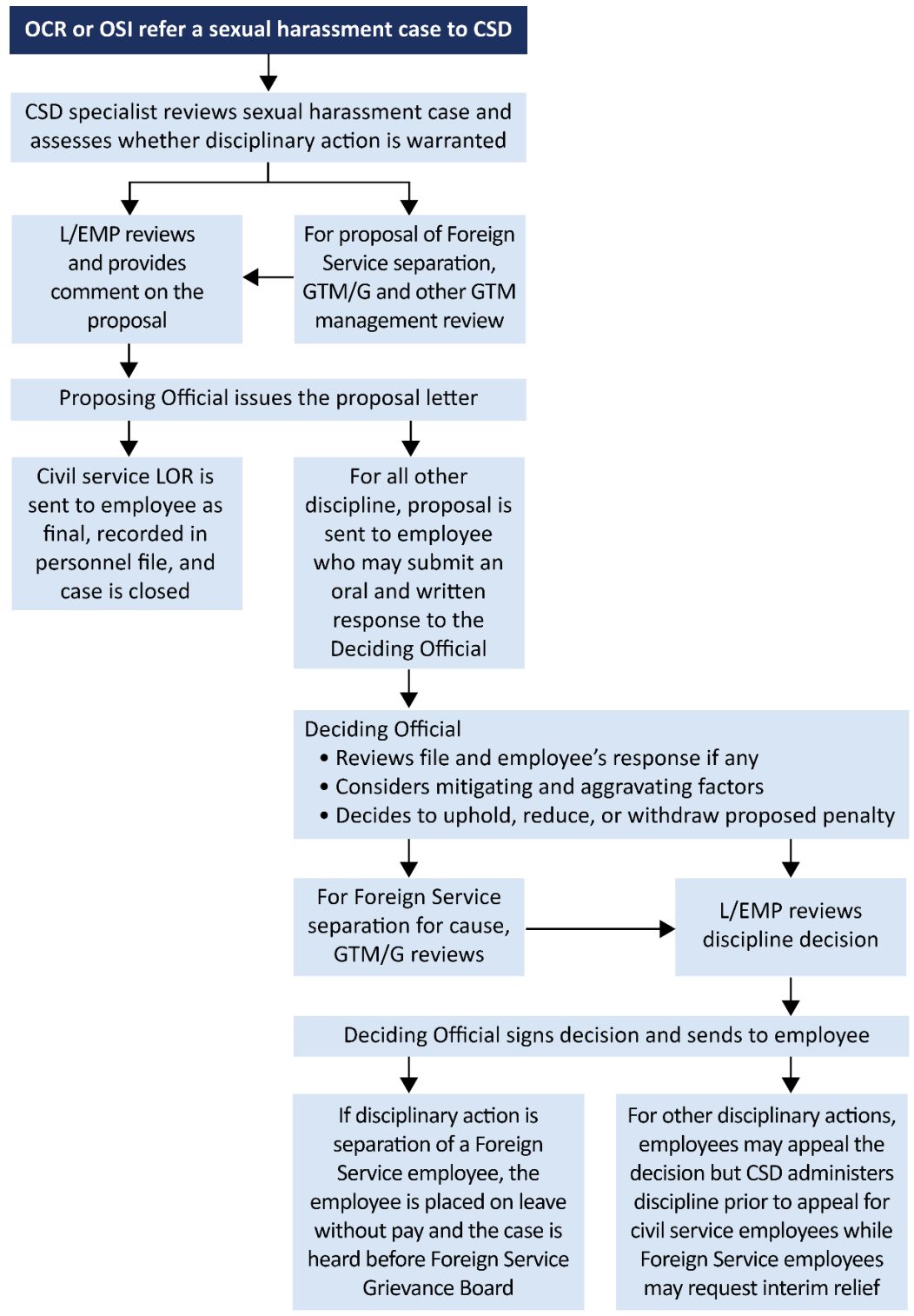
<sup>21</sup> Generally, the proposing official is the GTM/ER Director or, for separation for cause of a Foreign Service employee, the Director General. The deciding official is the GTM/ER Deputy Assistant Secretary or the Director General, as appropriate.

<sup>22</sup> The letter is reviewed by the Office of Employment Law within the Office of the Legal Adviser (L/EMP). For proposals of separation for cause for a Foreign Service employee, a Grievance Staff (GTM/G) attorney, the GTM/ER Director, and the GTM Deputy Assistant Secretary also review the proposed decision letter.

<sup>23</sup> The process varies between civil service and Foreign Service regarding LORs. LORs imposed on civil service employees are issued as final decisions and employees do not have the opportunity to respond to the LOR prior to issuance. In Foreign Service LOR cases, a proposal is issued, and the employee can respond before a decision is made.

<sup>24</sup> The mitigating and aggravating factors are generally known as the Douglas factors. The term comes from the MBPB decision, *Douglas vs. Veterans Administration* (5 M.S.P.R. 280 (1981)), that established criteria that officials must consider in determining an appropriate penalty to impose for an act of employee misconduct. The factors include the nature and seriousness of the offense, the level and type of employment, past discipline record, effectiveness of alternative options to deter future conduct, and others. See 3 FAM 4545 (Civil Service); 3 FAM 4375 (Foreign Service).

**Figure 3: GTM Process for Reviewing Sexual Harassment Investigation Reports**



Source: OIG analysis of GTM process.

After receiving the final decision letter, Foreign Service and most civil service employees, depending on the severity of the penalty, may grieve the disciplinary action internally in GTM.<sup>25</sup> The Director of the Grievance Staff (GTM/G) is responsible for administering and consulting on the grievance procedures and maintains the records on all formal grievances. GTM/G staff review the grievance on the basis of available documentary evidence and may interview persons having knowledge of the facts. While GTM/G is reviewing the grievance, Foreign Service employees may request interim relief from disciplinary action other than separation for cause.<sup>26</sup> Civil service employees, however, are not eligible to seek suspension of disciplinary actions during the grievance process. Based on its investigation, GTM/G prepares a recommendation for the resolution of the grievance, in the form of decision letters and settlement agreements, for the signature of the deciding official.<sup>27</sup>

A Foreign Service employee may appeal a grievance decision to the Foreign Service Grievance Board (FSGB), which is the permanent grievance system established by the Foreign Service Act of 1980.<sup>28</sup> At the employee's request, the FSGB may grant interim relief to suspend disciplinary action while the Board reviews the appeal. The FSGB may uphold the Department's decision, mandate a lesser penalty, remand for a variety of reasons, or dismiss the case entirely.

A civil service employee may appeal certain disciplinary decisions, including suspensions of 15 or more calendar days or removals, to the Merit Systems Protection Board (MSPB),<sup>29</sup> or file a grievance under the procedures of any applicable collective bargaining agreements. Unlike Foreign Service employees, interim relief is not available to civil service employees during the appeal process.<sup>30</sup> An MSPB Administrative Judge decides whether to dismiss an appeal. If the judge does not dismiss the appeal, the Department and the employee may voluntarily settle, and MSPB can enforce the settlement. In appeals that are not dismissed or settled, the judge may affirm the agency's action, reverse the action, or modify the penalty imposed by the agency. Figure 4 below outlines the appeals process for disciplinary decisions.

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<sup>25</sup> In addition to the Foreign Service grievance system, GTM/G administers the civil service administrative grievance process for non-bargaining unit member civil service employees, as well as the American Federation of Government Employees (AFGE) Local 1534 negotiated grievance procedures. Disciplinary actions that can be appealed to the MSPB are generally excluded from the internal grievance process.

<sup>26</sup> Foreign Service separation for cause determinations are directly referred to the FSGB for a hearing and are not subject to the standard grievance process, including interim relief.

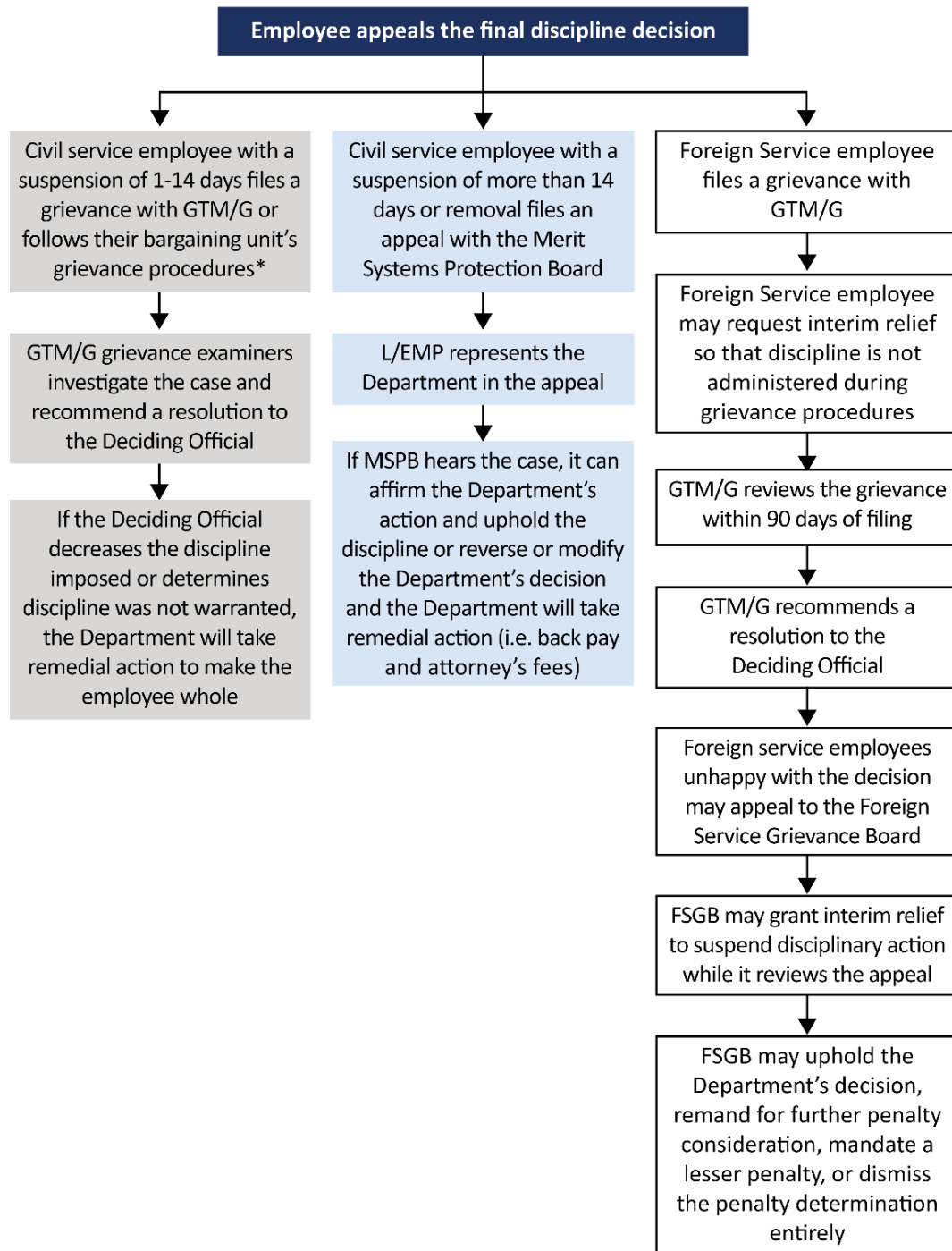
<sup>27</sup> The deciding official is the GTM Deputy Assistant Secretary with the grievance portfolio.

<sup>28</sup> If the deciding official decides to separate a Foreign Service employee for cause based on misconduct, in most cases the employee has a right to a pre-termination hearing before the FSGB. At that hearing, the FSGB will determine whether cause has been established. 3 FAM 4361(b).

<sup>29</sup> The MSPB is an independent quasi-judicial agency established by the Civil Service Reform Act of 1978.

<sup>30</sup> Civil service employees who are disciplined and then win their appeal are entitled to back pay, interest, and attorney fees that make the employee financially whole. See 5 U.S.C. § 5596.

**Figure 4: Appeals Processes for Discipline Related to Sexual Harassment Reports**



\* GTM/G does not administer the negotiated grievance procedures for employees represented by the National Federation of Federal Employees. For civil service employees covered by collective bargaining agreements, all disciplinary action can be appealed to an arbitrator.

Source: OIG analysis of GTM/G, MSPB and FSGB appeals processes

## RESULTS

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### **Reports of Sexual Harassment Have Increased, though Employees and Stakeholders Raised Concerns About Underreporting**

According to information obtained by OIG, both through data collection and through interviews with Department employees, reports of sexual harassment increased from 2014 to 2017. OCR officials told OIG that this trend appears to be continuing. Additionally, one employee group expressed concern that sexual harassment is significantly underreported at the Department. OIG identified a number of factors that may contribute to employees' reluctance to report.

#### ***Reports of Sexual Harassment Increased from 2014 to 2017***

According to OCR data, reports of sexual harassment increased by 63 percent from 2014 to 2017, from 128 reports in 2014 to 209 reports in 2017. An OCR official told OIG that this increase may reflect an increased willingness to report sexual harassment based on an increased focus within the Department on the issue. Reports of sexual assault have increased as well; OSI data shows a 71 percent increase in the number of reports of sexual assault from 2014 to 2017.

#### ***Employees and Stakeholders Identified Factors that May Contribute to Underreporting***

Although reports of sexual harassment have increased since 2014, OIG's survey results and interviews with employees suggest that only a fraction of alleged sexual harassment is reported to OCR or DS.<sup>31</sup> OIG surveyed a random sample of 2,000 direct-hire Department employees.<sup>32</sup> From this sample, 479 employees responded, and 154 said they had experienced or observed sexual harassment within the last 2 years. Of the 154 survey respondents who said they experienced or observed sexual harassment, 47 percent responded that they did not report the harassment to OCR or DS, and 18 percent responded that they reported the harassment to OCR or DS (see Table 1).<sup>33</sup>

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<sup>31</sup> To help identify reasons why Department employees may refrain from reporting sexual harassment, OIG spoke to employee groups, and a nongeneralizable sample of employees who contacted us to discuss their personal experiences with sexual harassment. OIG also surveyed a random sample of 2,000 direct-hire Department employees. OIG's survey did not specifically include questions related to sexual assault because the FAM definition of "sexual harassment" encompasses sexual assault.

<sup>32</sup> The survey was sent to the selected employees in November 2018 and, due to the lapse in OIG's appropriations that occurred from December 21, 2018, through January 25, 2019, OIG extended the time to complete the survey to February 2019. See Appendix A for further details on the survey, selection of the sample, and the response rate.

<sup>33</sup> In addition to reporting to OCR or DS, employees may report sexual harassment and sexual assault to responsible Department officials, such as their supervisors, and supervisors are required to report sexual harassment allegations to OCR. Because employees may not know whether their supervisors or other responsible Department officials reported sexual harassment to OCR or OSI, OIG focused its survey analysis on employees who reported to OCR or DS.

**Table 1: Survey Respondents' Reporting of Experienced or Observed Sexual Harassment Within the Previous 2 Years**

<b>Survey Question</b>	<b>Number of Respondents who Experienced or Observed Sexual Harassment</b>	<b>Percentage</b>
Reported to the Office of Civil Rights (OCR) or the Bureau of Diplomatic Security (DS)	28	18%
Did Not Report the Sexual Harassment to OCR or DS	73	47%
Don't Know/Did Not Respond	53	34%
<b>Total</b>	<b>154</b>	<b>100%<sup>a</sup></b>

<sup>a</sup> Percentages may not add up to 100 percent due to rounding.

**Source:** OIG survey of Department employees.

Based on interviews and the survey of Department employees, OIG identified a number of factors that may contribute to underreporting, including lack of confidence in the Department's ability to resolve complaints, fear of retaliation, and reluctance to discuss the harassment with others. Of the 154 survey respondents who responded that they experienced or observed sexual harassment within the last 2 years, 73 responded that they did not report the incident to OCR or DS. When asked why they had not reported incidents, of those 73, 25 employees agreed that they did not think that reporting would stop the sexual harassment; 19 employees agreed that they were afraid of retaliation; and 25 employees agreed that they did not want to discuss the incident (see Table 2).

**Table 2: Survey Respondents' Reasons for Not Reporting Sexual Harassment<sup>a</sup>**

<b>Reason for Not Reporting</b>	<b>Number of Respondents in Agreement</b>
I did not want to discuss the incident	25
I did not think that reporting would stop the sexual harassment	25
I was afraid of retaliation	19
I did not understand the process for reporting sexual harassment	5
I was advised against reporting the sexual harassment	4
Other	14
<b>Total Responses for 73 Respondents</b>	<b>92</b>

<sup>a</sup> Note: The 73 respondents to this question chose from a list of possible reasons for not reporting. Respondents were given the option to select more than one response.

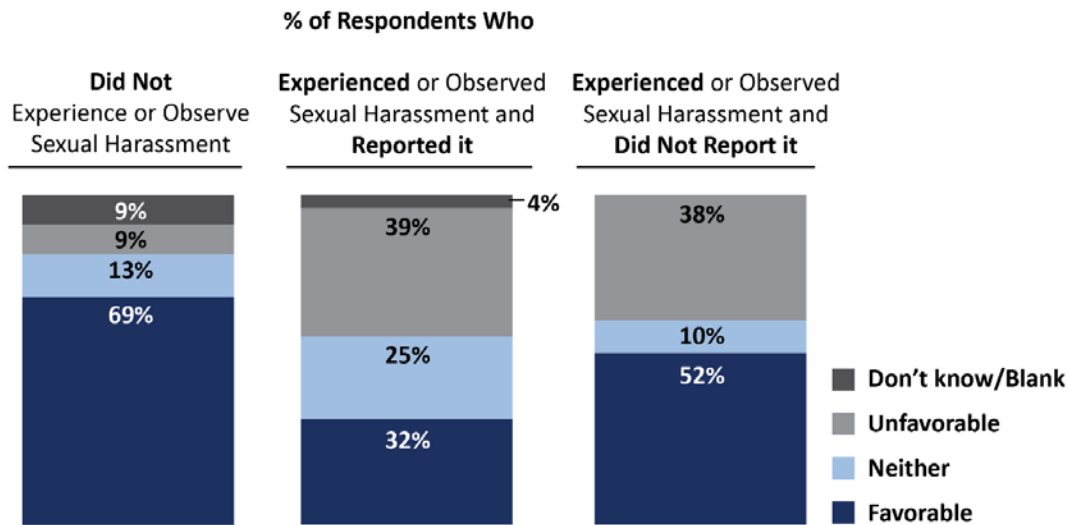
**Source:** OIG survey of Department employees.

#### *Lack of Confidence in the Department's Ability to Resolve Sexual Harassment Complaints*

OIG found that reluctance to report may stem from a lack of confidence in the Department's ability to resolve sexual harassment complaints. For example, survey results showed that people who responded that they experienced or observed sexual harassment in the last 2 years were more likely to answer unfavorably on whether they believe the Department will be fair and

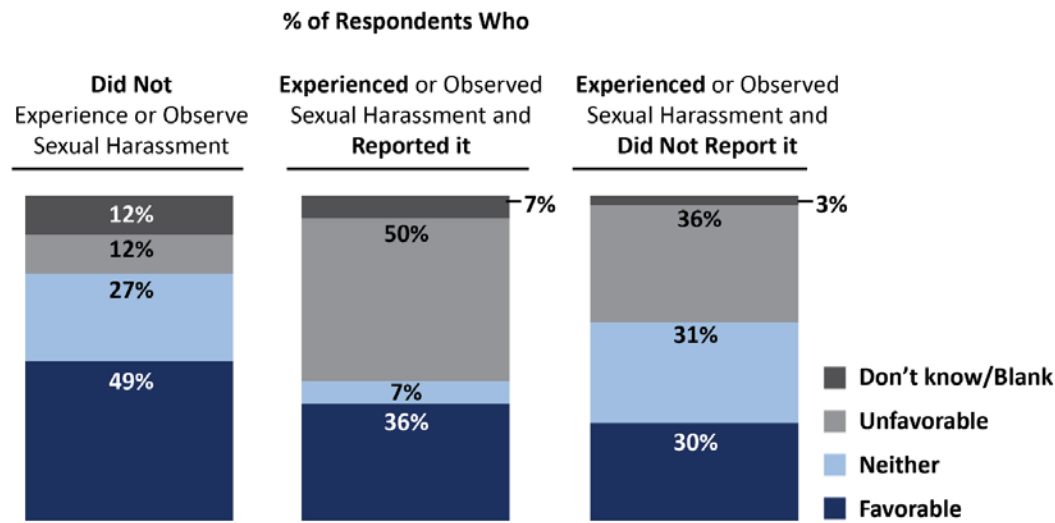
just in the resolution of a sexual harassment complaint when compared to those who responded they had not experienced or observed sexual harassment (see Figure 5). Those who responded that they experienced or observed sexual harassment were also less likely to believe that appropriate action would be taken against a manager found to have committed sexual harassment (see Figure 6). Current and former Department employees interviewed by OIG expressed the belief that, for employees serving overseas, there are no mechanisms in place to hold embassy management accountable for failing to address sexual harassment at post.

**Figure 5: Survey Respondents' Views on the Whether the Department Would Resolve a Sexual Harassment Report in a Fair and Just Manner**



Source: OIG survey of Department employees.

**Figure 6: Survey Respondents’ Views on Whether the Department Would Take Appropriate Action Against a Manager Found to Have Committed Sexual Harassment**



Source: OIG survey of Department employees.

Additionally, of the survey participants who experienced or observed sexual harassment but did not report it to OCR or DS, 34 percent stated that they did not do so because they did not think reporting would stop the harassment (see Table 3).

**Table 3: Survey Respondents’ Reasons for Not Reporting: “I did not think that reporting would stop the sexual harassment”**

Response	Number of Respondents	Percentage of Respondents
Agree	25	34%
Neither Agree nor Disagree	8	11%
Disagree	20	27%
Don't Know/Blank	20	27%
<b>Total</b>	<b>73</b>	<b>100%<sup>a</sup></b>

<sup>a</sup> Percentages may not add up to 100 percent due to rounding.

Source: OIG survey of Department employees

*Fear of Retaliation*

Employees who were interviewed and survey respondents stated that another likely cause of underreporting is fear of retaliation. Interviewees told OIG that they do not believe that OCR will protect their identities during the course of the investigation if they do decide to speak out.<sup>34</sup> Additionally, of the survey respondents who stated that they experienced or observed

<sup>34</sup> According to the FAM, “the Department will seek to protect the identities of the alleged victim and harasser, except as reasonably necessary (for example, to complete an investigation successfully).” 3 FAM 1525.2-1(d). According to OCR’s guidance for harassment inquiries, however, upper-level management (such as CSD) may need to know the victim’s identity in order to assess the disciplinary action. CSD and L/EMP officials told OIG that employees accused of sexual harassment are entitled to procedural due process if CSD proposes discipline. For sexual harassment cases, this means that the accused receive



sexual harassment but did not report it to OCR or DS, 26 percent stated that they did not report it due to a fear of retaliation (see Table 4). Employees in interviews also expressed fear that reporting sexual harassment could harm their careers, either through overt retaliation or through the creation of a negative stigma and damage to the reporter’s “corridor reputation.” One group representing Department employees told OIG that employees who experience sexual harassment are fearful that reporting it will cause their colleagues to view them as “troublemakers.” Another employee group told OIG that the Foreign Service is a fairly small organization and reporting sexual harassment could give employees a poor reputation that will “follow them to future posts.”

**Table 4: Survey Respondents’ Reasons for Not Reporting: “I was afraid of retaliation”**

Response	Number of Respondents	Percentage of Respondents
Agree	19	26%
Neither Agree nor Disagree	10	14%
Disagree	25	34%
Don’t Know/Blank	19	26%
<b>Total</b>	<b>73</b>	<b>100%</b>

Source: OIG survey of Department employees

#### *Reluctance to Discuss Sexual Harassment with Others*

Survey results suggested that employees may not report sexual harassment simply because they do not wish to talk about the experience. Thirty-four percent of survey participants who did not report experienced or observed sexual harassment responded that they did not do so because they did not want to discuss the incident (see Table 5).

**Table 5: Survey Respondent’s Reasons for Not Reporting: “I did not want to discuss the incident”**

Response	Number of Respondents	Percentage of Respondents
Agree	25	34%
Neither Agree nor Disagree	12	16%
Disagree	16	22%
Don’t Know/Blank	20	27%
<b>Total</b>	<b>73</b>	<b>100%<sup>a</sup></b>

<sup>a</sup> Percentages may not add up to 100 percent due to rounding.

Source: OIG survey of Department employees

Similarly, employees told OIG that victims of sexual harassment may not report because they may not be confident when certain behaviors or interactions are significant enough to justify reporting. In OIG’s survey, the majority of respondents said they understood what behaviors constituted sexual harassment according to the FAM. However, in some cases, it may be difficult

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the OCR investigative file that includes all victim and witness statements, including their names; for sexual assault cases, the discipline package includes OSI’s report of investigation.

for employees to apply these definitions clearly to their own personal experiences. For example, one employee group told OIG that employees may be reluctant to report because they believe that the harassment that they experienced was not sufficiently serious to warrant doing so.

### *Lack of Understanding of the Reporting Processes*

Survey respondents reported being generally familiar with the Department’s reporting processes; with 52 percent of the survey respondents saying they knew what Department office to contact if they experienced or observed sexual harassment in the workplace. Survey results also indicate that only 7 percent cited a lack of understanding as a reason for not reporting sexual harassment (see Table 6). However, some employees who OIG interviewed expressed uncertainty about the process. One Department employee told OIG that he had difficulty navigating the reporting process, despite having worked in a human resources capacity in the past. Another employee did not know until her interview with OIG that the FAM requires supervisors or managers to report to OCR any sexual harassment that they observe, are informed of, or reasonably suspect. Additionally, three employees stationed overseas noted that, for employees at post who experience sexual harassment, it is unclear to whom such conduct should be reported. Recent Department efforts to educate employees about sexual harassment, including the reporting process, may help to improve this issue going forward. Those efforts are discussed in more detail in the following section.

**Table 6: Survey Respondents’ Reasons for Not Reporting: “I did not understand the process for reporting sexual harassment”**

<b>Response</b>	<b>Number of Respondents</b>	<b>Percentage of Respondents</b>
Agree	5	7%
Neither Agree nor Disagree	7	10%
Disagree	40	55%
Don’t Know/Blank	21	29%
<b>Total</b>	<b>73</b>	<b>100%<sup>a</sup></b>

<sup>a</sup> Percentages may not add up to 100 percent due to rounding.

**Source:** OIG survey of Department employees

### *Advised Against Reporting Sexual Harassment*

Additionally, some Department employees told OIG that they were advised not to report the harassment that they experienced. Four survey respondents who experienced or observed sexual harassment stated that they did not report after being told not to do so (see Table 7). One interviewee told OIG that a former Department employee with whom she spoke about this issue advised against reporting, stating that the Department “would not care” about her allegations. Although this is a relatively small number of cases, it is concerning that any Department employee would advise another not to report allegations of harassment. This is particularly true in light of 3 FAM 1525.2-1(c), which requires “[s]upervisors and other responsible Department officials” themselves to report any sexual harassment that they observe, are informed of, or reasonably suspect to OCR.

**Table 7: Survey Respondents’ Reasons for Not Reporting: “I was advised against reporting the sexual harassment”**

<b>Response</b>	<b>Number of Respondents</b>	<b>Percentage of Respondents</b>
Agree	4	5%
Neither Agree nor Disagree	7	10%
Disagree	37	51%
Don’t Know/Blank	25	34%
<b>Total</b>	<b>73</b>	<b>100%</b>

Source: OIG survey of Department employees

### **The Department Has Made Efforts to Increase Accountability Related to Sexual Harassment, but Coordination and Guidance are Lacking**

The Department addresses sexual harassment by educating employees, investigating complaints, and referring investigated complaints for disciplinary review, among other efforts. OCR and OSI investigate allegations of sexual harassment and sexual assault and refer findings to CSD for potential disciplinary action. The Department has taken steps to increase awareness but it has not updated guidance for supervisors with respect to reporting sexual harassment and sexual assault and lacks guidance on coordination among OCR, OSI, CSD and other relevant bureaus and posts.<sup>35</sup>

#### ***The Department Has Taken Steps to Increase Awareness and Accountability related to Sexual Harassment***

Since OIG’s inspections of OCR in 2014 and CSD in 2015, the Department has taken steps to increase awareness and accountability related to sexual harassment. Following are some examples of the changes. In 2016, the Department launched an inter-bureau task force to create a new FAM section to address sexual assault.<sup>36</sup> According to OSI officials, the task force concluded that the Department had fragmented policies for addressing sexual assault and that the policies did not always align among bureaus. Additionally, the Department did not train RSOs to report sexual assault cases. Based on the task force’s findings, in June and July 2017, the FAM was updated with 3 FAM 1710 (“Sexual Assaults Involving Chief of Mission Personnel and Facilities Outside the United States”) and 3 FAM 1750 (“Sexual Assaults Involving Department Personnel and Facilities in the United States”). The task force also required that RSOs investigate and report sexual assaults to OSI.

In 2018, Secretary Tillerson addressed sexual harassment at the Department and required all Department employees to undergo sexual harassment training. While sexual harassment

<sup>35</sup> The evaluation of the Department’s response to sexual harassment allegations examined case studies and the policies and procedures in effect from 2014 to 2018. In June 2020, OCR notified OIG that it had updated and modified some of its standard operating procedures, effective February 2020. While OIG did not assess these policies for this review, the report notes where OCR’s policies have changed from 2018 to 2020.

<sup>36</sup> The task force included DS, CSD, the Bureau of Medical Services (MED), and the Undersecretary for Political Affairs.

training had been in effect prior to the Secretary’s announcement, the Department mandated that the entire workforce take training within 90 days. On May 1, 2019, the Department announced a new mandatory online course, *Preventing Harassment at State*, which covers sexual and discriminatory harassment, relevant Department policies and procedures, and mandatory reporting requirements for supervisors and responsible management officials.

Additionally, in May 2018, the Department issued a cable stating that the members of the Deputy Chief of Mission Committee removed individuals from consideration for Deputy Chief of Mission, Principal Officer, and senior Foreign Policy Advisor positions for the 2018 assignment cycle if they were subjects of harassment complaints pending OCR investigation.<sup>37</sup> The cable also noted that employees with serious conduct issues “were not competitive for these important leadership positions.”

### ***OCR Investigated About 22 percent of the Sexual Harassment Reports It Received From 2014 to 2017 and Referred All Investigations to CSD for Action***

OCR’s Legal Section aims to address sexual harassment primarily through its investigations of complaints. According to OCR data, OCR received 636 complaints of sexual harassment from 2014 to 2017. The highest number of complaints—representing 22 percent of total complaints—came from five entities: DS, Consular Affairs (CA), Embassy Baghdad, Embassy Kabul, and the Foreign Service Institute (FSI) (see Table 8). Of the 636 complaints, 441 originated at overseas posts.

**Table 8: Top Five Bureaus and Posts With the Highest Number of Complaints From 2014 to 2017**

<b>Bureau or Post</b>	<b>Number of Complaints</b>	<b>Percentage of Overall Complaints</b>
Consular Affairs	44	7%
Diplomatic Security	30	5%
Embassy Baghdad	25	4%
Embassy Kabul	24	4%
Foreign Service Institute	19	3%
<b>Total</b>	<b>142</b>	<b>22%<sup>a</sup></b>

<sup>a</sup> Percentages may not add up due to rounding. The overall percentage is 22 percent.

**Source:** OIG analysis of Department data.

According to OCR, not every complaint results in an investigation. To determine whether an investigation is warranted, OCR considers a number of factors: the subject’s employer;<sup>38</sup> whether the allegation relates to the EEO protected classes (e.g., race, color, religion, sex); and whether the complaint alleges behavior that constitutes sexual harassment pursuant to

<sup>37</sup> Cable 18 STATE 42514.

<sup>38</sup> If the accused works for another agency, OCR may refer the matter to that agency for investigation. Some agencies, such as the Department of Defense, want to conduct their own investigation, and OCR will request a copy of the decision once it is complete.

Department policy.<sup>39</sup> If a complaint does not meet OCR’s threshold for conducting an investigation, OCR either closes the case or refers the report to the relevant post, bureau, or office for action. Of the 636 complaints of sexual harassment that OCR received from 2014 to 2017, OCR investigated 142 (22 percent) as possible violations of Department policy. CA, DS, Embassy Kabul, Chennai Consulate, and the Bureau of Overseas Building Operations represented the five bureaus and posts with the highest number of investigations (see Table 9).

**Table 9: Top Five Bureaus and Posts With the Highest Number of Investigations From 2014 to 2017**

Bureau or Post	Number of Investigations	Percentage of Overall Investigations
Consular Affairs	11	8%
Diplomatic Security	10	7%
Embassy Kabul	7	5%
Consulate (Madras) General Chennai	6	4%
Bureau of Overseas Buildings Operations	5	4%
<b>Total</b>	<b>39</b>	<b>28%</b>

Source: OIG analysis of Department data.

If the complaint does meet its investigatory threshold, OCR collects documentary evidence such as emails, recordings, and telephone records, and interviews the alleged victim, the subject, and witnesses. OCR prepares a report of investigation that includes a summary of the facts, witness interviews, and any documentary evidence, and sends the report to CSD and relevant posts or bureaus.<sup>40</sup>

### ***OSI Investigated All Reports of Sexual Assault but Referred Only Investigations With Substantiated Allegations to CSD***

OSI addresses sexual assault through its investigations and by connecting victims with resources at the Department. Because the Department’s operations span global locations and time zones, OSI has investigators on-call 24 hours a day to respond to reports. After receiving a report of sexual assault overseas, a DS agent who is overseas, such as an RSO, conducts a preliminary interview with the victim and encourages the victim to seek medical assistance. The RSO also sends the report to OSI, which opens a case and assigns a designated sexual assault investigator. Occasionally, MED will send OSI a report of sexual assault if MED has the victim’s consent. In such cases, the OSI agent conducts an initial formal interview and any follow-up interviews with the victim. OSI employs a “victim-centric approach,” and if the victim does not want to proceed, OSI will close the investigation.

<sup>39</sup> 3 FAM 1525.1 “What Is Sexual Harassment?” is predicated on the EEOC’s definition of sexual harassment, which states, in part, that harassment becomes unlawful when “the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.” EEOC, *Harassment*, <https://www.eeoc.gov/laws/types/harassment.cfm>.

<sup>40</sup> As of February 2020, OCR’s report of investigation includes an analysis of whether the allegations were substantiated, and, as appropriate, will notify the alleged victim when the report of investigation has been submitted.

As stated previously, OSI coordinates with DOJ-HRSP so the latter can determine if a sexual assault case can be pursued as a domestic criminal case. If DOJ-HRSP does not accept the case, OSI conducts an administrative investigation and if any of the allegations are substantiated, the case is sent to CSD for review and possible disciplinary action. OSI also refers substantiated cases to PSS as a potential consideration in the eligibility of employees for a security clearance. From the beginning of 2014 until the end of 2017, OSI received 106 reports of alleged sexual assault. (see Table 10).

**Table 10: Sexual Assault Complaints by Regional Bureau From 2014 to 2017**

Regional Office	Number of Reports	Percentage of Overall Reports
South and Central Asian Affairs	23	22%
European and Eurasian Affairs	20	19%
Near Eastern Affairs	19	18%
East Asian and Pacific Affairs	14	13%
Western Hemisphere Affairs	11	10%
African Affairs	10	9%
Domestic	9	8%
<b>Total</b>	<b>106</b>	<b>100%<sup>a</sup></b>

<sup>a</sup> Percentages may not add up to 100 percent due to rounding.

**Source:** OIG analysis of Department data.

According to a DS official, OSI investigates all alleged sexual assault cases but refers to CSD only cases with substantiated misconduct in which the subject is a Department employee. Of the 106 complaints received during the relevant time period, 16 were still under investigation; of the 90 investigations OSI had completed, 24 cases (27 percent) had some kind of substantiated misconduct (see Table 11). However, this does not mean that 24 cases of sexual assault were confirmed; rather, it means that during the investigation, OSI concluded that *some type* of misconduct or criminal activity occurred and it was referred it to CSD for possible disciplinary action. In other words, OSI may receive an allegation of sexual assault and, during the investigation, obtain evidence that some other form of misconduct occurred. For cases opened before 2018, OSI did not track substantiated sexual assault allegations as a separate category so OIG could not identify the precise number of sexual assaults. The table below shows the regions in which allegations of sexual assault were made and some aspect of misconduct was substantiated.

**Table 11: Regional Bureaus and Numbers of Sexual Assault Complaints in Which Misconduct was Substantiated**

<b>Regional Bureau</b>	<b>Number of Substantiated Misconduct Allegations, including Sexual Assaults</b>	<b>Percentage of Substantiated Allegations</b>
South and Central Asian Affairs	6	25%
Western Hemisphere Affairs	5	21%
East Asian and Pacific Affairs	5	21%
Near Eastern Affairs	4	17%
African Affairs	2	8%
European and Eurasian Affairs	2	8%
Domestic	0	0%
<b>Total</b>	<b>24</b>	<b>100%</b>

Source: OIG analysis of Department data.

### ***CSD Has Not Updated Supervisory Guidance to Align with Sexual Harassment Policies***

CSD has not updated the Foreign Service supervisory guide since 2004 and the civil service supervisory guide since 2007 to reflect sexual harassment policy changes. The supervisory guides aim to help supervisors and managers identify and address conduct and performance problems. The guides discuss the supervisor's responsibilities, the disciplinary process, and certain types of misconduct. The guides do not, however, explain that supervisors are required to report allegations or observations of sexual harassment to OCR, although doing so has been a requirement in the FAM since 2010. In 2014, OIG did an inspection of CSD and the Department's disciplinary process and found that the supervisory guides had not been updated appropriately at that time. OIG accordingly recommended that CSD do so to reflect the most recent guidance on disciplinary issues. In 2016, the Department awarded a contract that included a requirement to update the guides and OIG closed the recommendation based on CSD's award of the contract.<sup>41</sup> Those guides have still not been published, however. A CSD official told OIG that there are still plans to update the guides but that CSD has not had sufficient staff to complete the work. According to CSD officials, CSD reviewed two disciplinary cases from 2015 to 2017 that related to supervisors who knew of sexual misconduct allegations against their staff and did not report them to OCR. Supervisors may not be aware of the requirement because of the outdated guidance, which may affect the Department's ability to take disciplinary action in a timely and informed manner. OIG recognizes there are other materials to inform supervisors of the requirement; however, all guidance should be current and consistent.<sup>42</sup>

<sup>41</sup> OIG, *Review of the Department of State Disciplinary Process* (ISP-I-15-04, Nov. 2014).

<sup>42</sup> These include Department Notices, cables, and training.

***Because OCR, OSI, and CSD Lack Policies for Coordination, the Department May Miss Opportunities to Take Appropriate Disciplinary Action***

The Department does not have joint guidance that coordinates activities among OCR, OSI, and CSD for the investigation and disciplinary review of sexual harassment and sexual assault cases. OCR, OSI, and CSD have internal policies and procedures for their respective roles in the investigation of sexual harassment and sexual assault and the disciplinary process for these cases, but the individual policies do not discuss overall coordination or evidence necessary to determine discipline. OCR's policies and procedures include limited information about coordination with other bureaus and offices. For example, OCR policies specify that recipients of the final investigative package include the Deputy Chief of Mission at post, the Regional or Functional Bureau's Executive Director, the office director, and the GTM/ER director (if the subject is a Department direct-hire, American employee). Even so, OCR's policies and procedures do not discuss coordination with OSI on sexual harassment reports that involve sexual assault.<sup>43</sup> OSI's investigative handbook addresses sending CSD closed cases with substantiated allegations but does not discuss coordination with OCR. Furthermore, CSD's policies do not describe the evidence required from OSI and OCR to determine discipline.

Department guidance is also unclear regarding OCR's obligation to coordinate on ongoing sexual harassment cases with the relevant bureau or post. OCR's internal policies state that the office will notify the relevant post or bureau when an investigation begins, but OCR did not provide evidence that it had notified bureaus or posts in any of the selected cases OIG reviewed.<sup>44</sup> Bureau and post officials that OIG interviewed confirmed that OCR does not typically notify them when OCR begins a sexual harassment investigation. Without consistently adhering to the notification policy, OCR risks management officials taking action and precluding CSD from recommending discipline, which has occurred and is discussed in the next section. Despite its policies, OCR told OIG that OCR would only alert post, bureau, or office management of allegations of sexual harassment if it was necessary for management to be involved from an early stage (for example, if front office assistance was necessary to address ongoing harassment).

Without clear and comprehensive guidance, the overarching concern is that CSD may not receive all referrals and therefore may not address the allegations due to inadequate coordination and unclear guidance. Of the 20 selected cases OIG reviewed, 1 had been investigated by OCR but did not reach CSD for possible disciplinary action. According to OCR's records, it was investigated and sent to CSD; however, CSD did not have a record of receiving it. In another example from the selected cases, OCR had not notified the bureau that it was investigating allegations of sexual harassment against one of its employees. However, the

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<sup>43</sup> OCR updated its harassment inquiry procedures in February 2020, but the procedures do not discuss coordination with OSI. The updated policies discuss referring cases that do not amount to harassment with other offices, including (but not limited to) MED, the Office of the Ombudsman, the informal EEO counseling process, and GTM. OCR and OSI officials told OIG that they coordinate often to determine which office investigates complaints that OCR receives that include possible sexual assault allegations or that OSI receives that include possible sexual harassment allegations.

<sup>44</sup> OIG found that in some cases, bureau or post management may have been aware of OCR's investigations through other means (e.g., because they reported the harassment, participated as witnesses, or were notified by other bureau or post staff).



relevant bureau had learned of the allegations independently of OCR's investigation, and bureau management "counseled" the subject. Because the bureau had counseled the subject, CSD stated that it "was unable to take disciplinary action" even though the subject had previously been required to attend training on similar problematic conduct.<sup>45</sup> FSGB has taken the position that the Department violates its own policy when it seeks to impose a "second round" of punishment for the "same act of misconduct."<sup>46</sup> These examples illustrate that lack of clear guidance on coordination among relevant posts, bureaus, and offices may cause the Department to miss opportunities to address sexual harassment complaints in a timely and effective manner, which may undermine employee confidence in the system and lead to underreporting. OIG does not take a position on the specific policies that OCR, OSI, and CSD should develop but points out the need to put clear policies in place, including how the offices should coordinate on these issues.

### **The Department Considers Comparable Cases and Other Factors to Ensure Consistent Discipline, but Data on the Sexual Harassment Investigation and Disciplinary Process is Limited**

The Department does not charge subjects of OCR or OSI sexual harassment investigations with "sexual harassment." CSD officials told OIG that charging an employee for violation of the Department's sexual harassment policies (which define sexual harassment based on Title VII) could require additional elements of proof than is necessary to address misconduct. As a result, the proposing official proposes charges that address the reported sexual harassment but does not charge "sexual harassment" specifically. For example, where the proposing official concludes that a subject engaged in behavior that constituted sexual harassment, the proposing official may charge "improper personal conduct" or "poor judgment." In doing so, CSD compares discipline imposed based on similar conduct in the past in an effort to ensure that disciplinary outcomes are consistent. In the selected cases reviewed for this evaluation, OIG observed disciplinary outcomes for sexual harassment cases that ranged from no action to suspension, and the selected cases took an average of 21 months from intake to final disciplinary action. OIG could not assess the timeliness of sexual harassment cases because the offices did not have timeliness standards. Additionally, lack of reliable and comprehensive data hampers the Department's ability to effectively oversee and administer efforts to address sexual harassment.

### ***The Department Disciplines Employees for General Misconduct Instead of a Specific Charge of "Sexual Harassment" or "Sexual Assault"***

The Department does not have a specific disciplinary charge for engaging in sexual harassment in its lists of offenses and instead relies upon other, broader misconduct charges. The FAM sets forth lists of offenses that may constitute grounds for CSD to take disciplinary action against an

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<sup>45</sup> Letter from Kimberly Brooks, Chief, HR/ER/CSD to Gregory B. Smith, Deputy Director, S/OCR regarding [name redacted], March 20, 2015.

<sup>46</sup> FSGB Case No. 2018-027, March 14, 2019.

employee.<sup>47</sup> The charges that CSD uses in these matters cover a wide range of misconduct. Although sexual harassment is not a listed offense in the FAM, the Department may impose discipline for conduct constituting sexual harassment on the grounds of improper personal conduct, notoriously disgraceful conduct,<sup>48</sup> or poor judgment. The list of offenses does include a charge for sexual assault. However, CSD officials told OIG that sexual assault is rarely charged because the Department has not needed to use the charge to implement discipline. CSD officials also noted that the lists of offenses provide examples and is not intended to be “all inclusive.” Also, there are instances when FAM sections or other policies can be used to charge discipline. OIG reviewed documentation from OCR, OSI, and CSD case files related to sexual harassment reports.<sup>49</sup> In its review of selected cases, OIG found that the proposing official most often charged employees with “improper personal conduct” in proposed discipline decisions and Letters of Admonishment for behavior that was reported as sexual harassment.

According to both L/EMP and CSD officials, the Department does not charge employees with sexual harassment because the officials believe that doing so may create additional elements to prove (such as the subject’s intent). For example, by charging an employee with improper personal conduct, CSD would only need to prove that inappropriate conduct occurred. To charge an employee with sexual harassment consistent with Title VII or the Department’s sexual harassment policy, however, CSD would need to prove not only that unwelcome sexual conduct occurred but that it created a hostile work environment or that enduring the conduct became a condition of continued employment.<sup>50</sup> CSD officials noted that the Department’s professional standards for what is acceptable in the workplace or actions that may affect the efficiency of the service permits it to reach more misconduct than what is covered under the Title VII standard for sexual harassment. CSD officials stated that addressing misconduct through corrective action is more important than the specific charge used.

### ***CSD Reviews Similar Cases and Considers Penalty Factors When Reviewing Discipline for Sexual Harassment***

CSD aims to ensure consistent disciplinary actions for sexual harassment cases through the review of case comparators, if any, and other penalty considerations.<sup>51</sup> The Department strives to impose like penalties for like misconduct but recognizes that determining the appropriate

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<sup>47</sup> 3 FAM 4377 (Foreign Service); 3 FAM 4546 (Civil Service).

<sup>48</sup> Notoriously disgraceful conduct is “conduct which, were it to become widely known, would embarrass, discredit, or subject to opprobrium the perpetrator, the Foreign Service, and the United States.” 3 FAM 4139.14.

<sup>49</sup> Detail related to the methodology of these selected cases can be found in Appendix A.

<sup>50</sup> The MSPB has opined that an agency may charge an employee with violating the agency’s sexual harassment policy, thus setting a lower threshold for proving that conduct violated the policy. However, the Board also concluded that if the agency’s sexual harassment policy references the Title VII standard, including creating a hostile work environment, or if the policy models the language of Title VII’s regulations, the agency must prove that the conduct violated Title VII. *See Gregory v. Dep’t of the Army*, 114 M.S.P.R. \*\*607, \*\*616 (Aug. 25, 2010).

<sup>51</sup> L/EMP officials told OIG that reviewing case comparators is one of numerous penalty factors and should not be regarded as uniquely important. In this report, OIG discusses case comparators separately from other penalty factors because CSD’s SOPs list the preparation of the case comparators as the first step in the disciplinary review process. Additionally, in OIG’s review of selected sexual harassment cases, OIG observed that CSD staff prepared case comparators before the other penalty considerations and as their own work product.

discipline is fact-sensitive and that each case is unique. According to the FAM, the disciplinary action taken should be consistent and then adjusted in light of mitigating or aggravating circumstances. Whether offenses are viewed as “alike” is based on the similarity of the underlying conduct rather than how the charge is worded.<sup>52</sup>

After CSD receives sexual harassment and sexual assault referrals from OCR and OSI, the assigned CSD specialist evaluates appropriate discipline by comparing the facts of the case to the results of similar cases from recent years (i.e., by reviewing case comparators). The specialist may draft a case comparisons worksheet that becomes part of the subject’s disciplinary file. According to CSD officials, civil service employees are compared to other similarly situated civil service employees (similar grade level, management status); Foreign Service employees are likewise compared to other Foreign Service employees. However, the case comparisons worksheet template used in OIG’s selected cases did not identify the service or level but instead included only a short summary of the misconduct, the proposed and final decision on discipline, and the date.

OIG’s review of selected sexual harassment cases found that the 11 cases that resulted in a proposed reprimand, suspension, or separation included a case comparisons worksheet. The number of comparators varied by case, with 2 worksheets having only 2 case comparators and another worksheet having 31. However, because not all worksheets included the grade level or service of the employees, OIG was not able to determine if CSD consistently compared similarly situated employees. CSD officials stated that since 2018, the case comparisons worksheets have included the pay plan, grade, and position title of the subject of the disciplinary review. CSD officials also stated that they have “in-house” meetings at least monthly and case summary reviews to ensure that all specialists treat cases similarly.

The case comparisons worksheets in the cases OIG reviewed varied greatly in penalty range. For example, one case proposed a 1-day suspension after comparing the case to the other similar fact patterns that resulted in penalties ranging from a 2-day suspension to a 20-day suspension. Although the FAM outlines a list of disciplinary offenses, that list does not include a range of penalties for each offense. The list of offenses is not meant to be comprehensive. Instead, the list of offenses section in the FAM puts employees on notice that any violation of Department regulations could be deemed misconduct, regardless of whether it is specifically listed.<sup>53</sup>

### ***Final Disciplinary Actions for Selected Cases Ranged from No Action to Suspension***

Final disciplinary decisions for OIG’s selected sexual harassment cases ranged from no action to suspension. Although the Department had proposed discipline for 11 of the 20 cases, only 5 resulted in implementation of the disciplinary action. For example, one case resulted in no action taken after FSGB overturned the Department’s disciplinary decision to issue a Letter of Reprimand. For the three cases resulting in resignations, CSD had decided on either

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<sup>52</sup> 3 FAM 4374(1) (Foreign Service); 3 FAM 4544(1) (Civil Service).

<sup>53</sup> 3 FAM 4372 (Foreign Service); 3 FAM 4542 (Civil Service).

suspensions or separations but ultimately reached negotiated settlements for resignation. One individual retired after receiving CSD's proposed decision, and another retired as CSD was reviewing the case. According to CSD officials, individuals who retire before a final disciplinary decision do not have the proposal or disciplinary decision included in their official personnel file. Table 12 provides a summary of the final disciplinary decisions for selected cases.

**Table 12: Summary of Final Actions for Selected Sexual Harassment Cases**

<b>Final Action</b>	<b>Number of Selected Cases</b>
No action taken	4
Letter of Admonishment <sup>a</sup>	5
Letter of Reprimand	2
Suspension	3
Resigned	3
Retired	2
Not referred for disciplinary action	1
<b>Total</b>	<b>20</b>

<sup>a</sup> Note: Letters of Admonishment are not disciplinary actions.

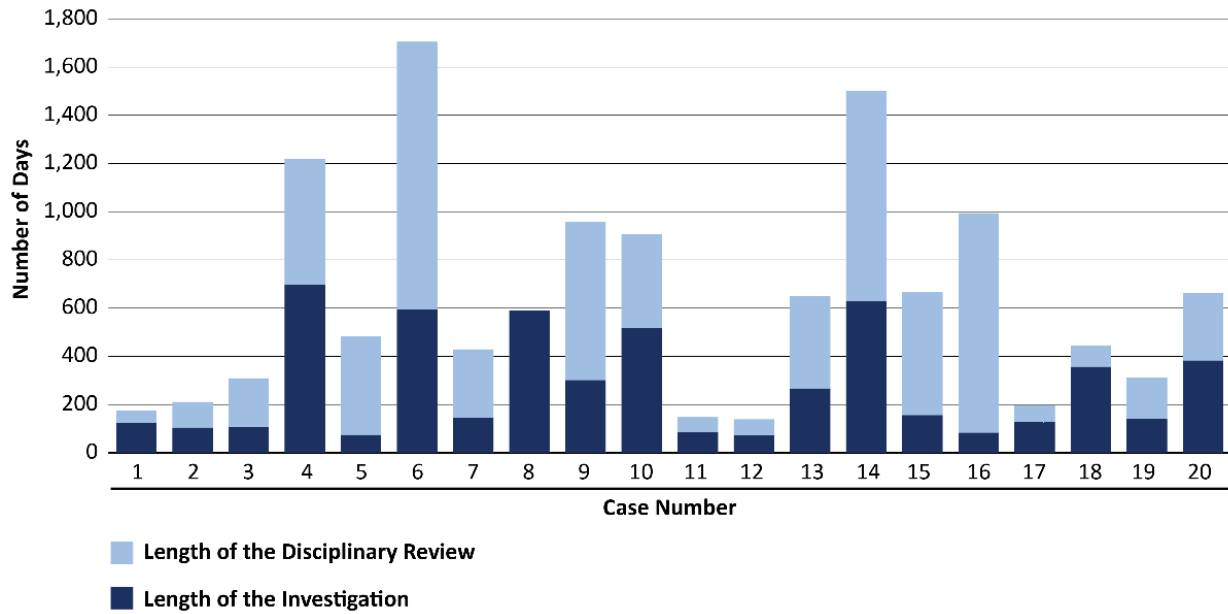
**Source:** OIG analysis of selected Department sexual harassment cases.

***Selected Cases Took an Average 21 Months from Intake until Final Action, but Lack of Standards Makes it Unclear if Investigations and Disciplinary Decisions are Timely***

On average, OIG's selected cases took 21 months to move from intake to resolution.<sup>54</sup> The length of cases varied from 139 days (i.e., almost 5 months) to 1,705 days (i.e., over 4 years) (see Figure 7).

<sup>54</sup> For the review of selected cases, OIG defined the length of the investigation as the number of days from the time that OCR or OSI received a complaint of sexual harassment and when it referred the case to CSD or closed the case without referral. OIG defined the length of the disciplinary review as the number of days from when OCR or OSI referred the case to CSD and when CSD issued the final decision letter or the final action was taken (whether by CSD, FSGB, or through the resignation or retirement of an employee).

**Figure 7: Summary of Days From Intake to Final Action for Selected Sexual Harassment Cases**



**Source:** OIG summary of selected sexual harassment cases from the Department.

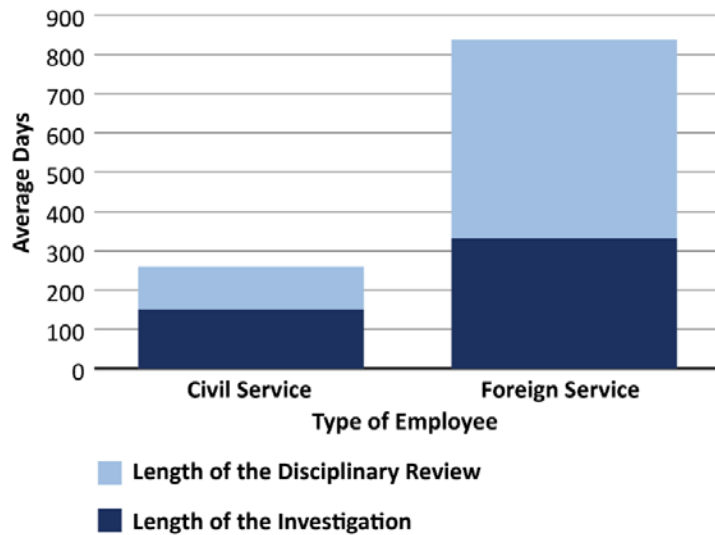
Of the selected 20 cases, those involving Foreign Service subjects took on average 558 days longer than those involving civil service subjects (see Figure 8). Foreign Service cases may take longer to reach a final disciplinary action because Foreign Service employees, unlike civil service employees, may grieve disciplinary actions and appeal decisions to the FSGB before receiving discipline.<sup>55</sup> GTM/G officials stated that Foreign Service employees usually request interim relief when filing grievances against disciplinary actions and that GTM/G grants interim relief when requested unless the matter grieved is not integral to the interim relief requested.<sup>56</sup> According to CSD officials, Foreign Service disciplinary cases are more often grieved because: (1) the discipline decision remains in the personnel folder and may affect the promotion of a Foreign Service employee; (2) Foreign Service employees can use American Foreign Service Association (AFSA) representation to assist with the grievance process; and (3) AFSA representation means that grievances are perceived as more successful, likely, and achievable and less costly for the employee. Of the selected cases that OIG reviewed, the only cases that

<sup>55</sup> CSD administers the disciplinary action for civil service employees after sending the final decision letter, regardless of whether the employee appeals the discipline. If the Department determines that the disciplinary action was inappropriate, it implements remedial action to resolve the grievance. Civil service employees may appeal the Department’s decisions to the MSPB for disciplinary actions of suspensions of over 14 days, removal, or reduction in grade or pay. Employees covered by a collective bargaining agreement with the American Federation of Government Employees or the National Federation of Federal Employees may file a grievance under the agreement or appeal to the MSPB, but not both.

<sup>56</sup> Pursuant to 3 FAM 4431(d), “The agency shall suspend the [disciplinary] actions unless the grievance is not integral to the proposed action.”

resulted in grievances or appeals were Foreign Service cases.<sup>57</sup> On average, grieved and appealed cases took about 336 days longer than other selected cases.

**Figure 8: Average Days From Intake to Final Action for Selected Sexual Harassment Cases by Civil Service and Foreign Service Employees**



**Source:** OIG summary of selected sexual harassment cases from the Department.

OIG could not determine whether the Department resolved sexual harassment cases within a timely manner because the Department did not have timeliness standards for OCR and CSD processes. As noted previously, the FAM states that “[w]hen the Department determines that an allegation of sexual harassment is credible, it will take prompt and appropriate corrective action.”<sup>58</sup> However, the Department has not defined its expectations for prompt corrective action.<sup>59</sup> OCR initially provided OIG its policies, which stated that harassment cases should be assigned within 1 week of receiving the report but did not specify timeframes for beginning or completing an investigation.<sup>60</sup> OCR officials stated that the office was not mandated to complete investigations within a certain period of time. In February 2020, OCR officials updated their policies to recommend that investigations be conducted within 90 to 120 days and

<sup>57</sup> Of the 11 selected cases that resulted in proposed disciplinary action, 3 resulted in grievances, and each of these involved Foreign Service employees. Two of the three grievance cases resulted in appeals to the FSGB. None of the civil service cases that OIG selected resulted in grievances or appeals to the MSPB.

<sup>58</sup> The FAM included objectives related to addressing sexual harassment and sexual assault through OCR, OSI, and CSD. The FAM states that the Department will carry out disciplinary procedures in a “fair, timely, and equitable manner;” it will take prompt and appropriate corrective action when it determines an allegation of sexual harassment is credible; and it is committed to holding those who commit sexual assault accountable for their actions. 3 FAM 4321, 3 FAM 1525, and 3 FAM 1711.4(a) and 3 FAM 1754(a).

<sup>59</sup> Department officials noted that “corrective action” is not limited to disciplinary action and can include counseling, training, and curtailments.

<sup>60</sup> The EEOC, which provides leadership to federal agencies’ equal employment opportunity programs, noted in its 2017 compliance letter to OCR that management inquiries into harassment should begin within 10 days of receiving notice of a harassment allegation and be completed “within a reasonable time.”

required that investigations take no longer than 180 days to complete. OCR officials stated that they have begun assessing whether they are achieving this goal and that they expect to formalize the tracking of the goal after their initial assessment.<sup>61</sup> OSI's policies provide timeframes for interviewing sexual assault victims after the assault but also do not specify timeframes for completing an investigation.<sup>62</sup> Instead, OSI officials track the percentage of closed investigations, including sexual assault investigations, for its quarterly performance report. OSI aims to close 75 percent of its cases per quarter to ensure that they are being completed in what it views as a reasonable timeframe.<sup>63</sup>

CSD previously had timeliness standards for the disciplinary review process, but CSD officials stated that the office no longer tracks the timeliness of its decisions. At the time of OIG's 2014 inspection, CSD had a performance target of 30 days from receipt of a referral package for CSD specialists to finalize a proposal of disciplinary action, and OIG found that the average time was outside of the target by 84 days. CSD officials stated that the 30-day target is not achievable because of staff shortages and even with additional staff, it would take at least 60 days to review the case, draft the proposal, and clear the proposal. They also noted that, although some specialists can complete their analyses and draft proposed decision letters within a few days for the simple discipline cases, sexual harassment cases are complex and may take relatively longer. Additionally, CSD officials explained that the length of the disciplinary review depends on external factors, such as clearance in L/EMP and coordination with OCR and OSI on additional information. CSD officials stated that in early 2020 they began a review of timeliness for cases from the point of referral to issuance of a final decision. The officials stated that after completing their analysis, they will establish timeliness standards for the disciplinary process.

Because OCR and CSD have not established timeliness standards for handling sexual harassment reports, the Department cannot compare the offices' actual performance with expected results and therefore may not have reasonable assurance that it is addressing these reports promptly.<sup>64</sup> In its review of selected sexual harassment cases, OIG found instances where the delays in the review process affected the Department's ability to promptly implement discipline. For example, OIG found that one case was in CSD's queue for 281 days without completing a case comparisons worksheet or a proposed decision letter, and the individual accused of misconduct was placed on a temporary reassignment (known in the Department as "over-complement") during this time. Ultimately, he retired without receiving discipline, even though this case was sent to CSD from OSI, which, as previously noted, refers

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<sup>61</sup> OCR officials stated that this goal is also tied to resourcing and staffing to allow for "a caseload-per-investigator commensurate with the ability to conduct timely investigations."

<sup>62</sup> OSI policies state that in accordance with DOJ Office on Violence Against Women, the initial interview with the victim should occur no sooner than 72 hours after the assault.

<sup>63</sup> OSI officials noted that once DOJ-HRSP accepts an investigation for prosecution, DOJ-HRSP drives the timeframe for the investigation. Investigative timeframes may be influenced by grand jury proceedings, the shipment of evidence from remote locations, the processing of evidence through the Federal Bureau of Investigations crime lab, and availability of witnesses worldwide. OSI cannot complete an administrative investigation if there is a criminal prosecution pending.

<sup>64</sup> Federal internal control standards state the importance for agency management to design control activities, such as comparing offices' actual performance with expected results, to achieve objectives and respond to risks. Government Accountability Office, *Standards for Internal Control in the Federal Government* 45-49 (GAO-14-704G, September 2014).

only cases in which some form of misconduct has been substantiated. CSD officials did not know the reason for delay in reviewing this case because the current staff did not work at CSD at that time. Another case involving sexual assault allegations was in CSD's queue for 571 days before the office completed the case comparisons worksheet, the first step in CSD's disciplinary review process according to CSD standard operating procedures (SOPs). CSD took an additional 38 days before it proposed separation of the employee. Although the employee was reassigned shortly after the report of the assault, he remained a Department employee for almost 3 years from the report of sexual assault until he resigned as part of a settlement. CSD officials attributed two factors to the delay in this case. First, the individual had recently received disciplinary action for a different infraction, and it was unclear at the time whether this report was a duplicate complaint. Second, the office had to obtain English translations for the supporting documentation because the incident had occurred abroad.

These cases illustrate the delays that can occur without timeliness standards to alert the Department that it may need to take steps, such as prioritizing or redirecting resources to lengthy cases, to ensure prompt corrective action. As cases involving sexual harassment, and particularly sexual assault, may involve egregious misconduct, timeliness standards may help ensure that offenses are appropriately addressed.

### ***The Department Lacks a Mechanism to Consistently Track the Handling of Sexual Harassment Cases***

The Department does not have a mechanism to track the length and disciplinary outcomes of sexual harassment reports from OCR and OSI. OCR, OSI, and CSD have individual systems to track and monitor sexual harassment cases, but the systems do not track similar data or share data with each other. For example, each office uses different identification numbers for the cases and different names for the subject's bureau, office, or post. Additionally, OCR and CSD use different definitions when tracking sexual harassment cases. OCR officials stated that OCR uses the FAM definition of sexual harassment, but CSD officials stated that CSD uses "sexual misconduct," a broader term encompassing sexual harassment and unacceptable sexual conduct such as soliciting prostitution or consensual sexual activity that could expose the employee to the potential for coercion or blackmail. The following is a summary of the offices' systems and data elements that they track:

**OCR's SharePoint:** OCR officials stated that the office uses SharePoint to track its cases and collects information on the dates when sexual harassment incidents were reported, and when OCR closed the case (either without investigation or by referring it to CSD). According to OCR officials, the office is building a new database that should improve the office's data collection efforts, including specifying whether the report came from the victim or a supervisor. The OCR officials stated that their office is coordinating with CSD for input and feedback as it develops the system.

**OSI's SharePoint:** According to OSI officials, OSI also uses SharePoint to track sexual assault cases and collect information on dates when the cases were opened and closed and whether



OSI substantiated allegations during its investigation.<sup>65</sup> OSI officials stated that the office does not track the type of conduct resulting in substantiated allegations (for example, it does not specify whether the substantiated allegations involved sexual assault as opposed to employee misconduct).<sup>66</sup>

**CSD's Grievance, Appeals, and Disciplinary Tracking and Reporting System (GADTRK):** CSD uses GADTRK to track disciplinary cases and collects information on the dates of proposed and final disciplinary decisions, the final decision proposed by CSD, the submitting organization, and the employee's pay grade.<sup>67</sup> CSD officials stated that in November 2017, CSD began an analysis of discipline cases from 2015 to 2017 to determine the number of cases relating to sexual misconduct and identify common behaviors.<sup>68</sup> Because GADTRK does not include sexual harassment or sexual misconduct in its case type categories, CSD does not have a uniform way to track cases related to sexual harassment.<sup>69</sup> As a result, CSD officials stated they could not generate a report of sexual harassment cases for OIG using GADTRK. Instead, CSD manually reviewed approximately 820 disciplinary cases and summarized the allegations of each to identify cases related to sexual misconduct. CSD officials stated that they are continuing their analysis of discipline cases from 2018 to present.

Furthermore, the three systems do not share data among each other and the other offices relevant to the disciplinary process.<sup>70</sup> OCR, OSI, and CSD officials stated that only staff of the individual offices have access to the office's data system and that the offices do not grant access to each other. OCR officials stated that they use their data for briefings with individual bureaus as needed and informally share harassment statistics with CSD and OSI but do not share case-level data with CSD or OSI. According to CSD officials, the office closes cases internally by sending either a notification of no action taken to OCR or OSI (which explains that the proposing official closed the case without taking disciplinary action) or a copy of the final

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<sup>65</sup> OSI officials noted that for all sexual assault cases opened since the beginning of 2018, OSI has begun tracking whether the initial sexual assault was substantiated, and whether additional, developed allegations were also substantiated. They added that OSI plans to extend this tracking back to 2013. OSI officials stated that as of January 2019, OSI stores new investigative records in Power BI and Microsoft Excel instead of SharePoint.

<sup>66</sup> OIG acknowledges that, in some circumstances, OSI may have law enforcement sensitive reasons for not sharing data.

<sup>67</sup> Although GADTRK tracks the date that CSD received a referral for disciplinary action, CSD did not include this data element in its analysis of disciplinary reviews of sexual harassment and sexual assault reports provided to OIG. CSD officials stated that this information could be pulled from the system, though it would require additional staff hours. CSD officials noted that GADTRK does not track cases well, but CSD is using spreadsheets to track sexual misconduct (including sexual harassment and sexual assault) and summarizing the cases by different types of behavior. CSD is in the process of updating its intake procedures to address the types of information required for GADTRK so the data is more consistent and usable.

<sup>68</sup> CSD officials provided OIG a similar analysis for discipline cases from 2014.

<sup>69</sup> CSD specialists can add keywords to their case entries, which can be selected from a list or typed manually. "Sexual harassment," "sexual," and "sex" are included in the GADTRK keyword list. CSD officials stated that CSD is in the process of reviewing the use of keywords and other tools to more efficiently manage casework and access data.

<sup>70</sup> Although the offices' systems do not share data among each other, CSD has published discipline statistics for 2014 to 2019. CSD does so to raise employee awareness of the effects that misconduct can have on their careers. These statistics show the types of misconduct that the bureau disciplined and the types of corrective action taken. The statistics do not, however, summarize the corrective actions that correspond with specific types of misconduct in order to protect the confidentiality of the subjects.

decision letter with the disciplinary action. However, OCR and OSI officials stated that they do not track CSD's actions on sexual harassment cases in their data systems.<sup>71</sup>

Department officials noted advantages to a common tracking system for disciplinary cases. OCR and CSD officials agreed that a common tracking system for disciplinary cases could improve communication and tracking of sexual harassment cases. OCR officials stated that a common system for disciplinary cases would be helpful to track the ultimate disciplinary decisions of investigations that OCR has referred to CSD. CSD officials noted that a common system would be helpful for CSD specialists to share drafts of disciplinary cases with stakeholders, such as L/EMP; to know whether OCR and OSI have ongoing investigations related to a CSD disciplinary case; and to send notification of case closure to OCR and OSI. OSI officials agreed that a common tracking system could reduce potentially duplicative efforts and allow for consideration of other offices' administrative findings in OSI criminal investigations.

OCR, OSI, and CSD officials also agreed, however, that such a common system would need to delineate roles and access so that sensitive materials are handled appropriately. For example, OSI noted that the system would have to be a "one-way" portal to ensure that law enforcement sensitive information and materials were not potentially exposed to administrative-only investigations, and CSD officials expressed concerns about offices outside GTM having access to the disciplinary decisions and other personnel data.

Because the offices lack a mechanism for tracking sexual harassment cases from intake until the final disciplinary action, OIG was not able to determine the length and disciplinary outcomes of all sexual harassment and sexual assault reports to OCR and OSI from 2014 to 2017. OIG was also unable to determine which OCR and OSI sexual harassment and sexual assault referrals corresponded with the CSD disciplinary actions, which further limited OIG's ability to analyze all sexual harassment cases from 2014 to 2017. Additionally, OIG had concerns about the reliability of CSD's data. Because CSD does not have a uniform way to track cases related to sexual harassment, the office could not provide reasonable assurance that it provided OIG with all disciplinary cases involving investigations into sexual harassment or that the cases it provided did, in fact, involve investigations into sexual harassment.<sup>72</sup> According to federal internal control standards, management should internally communicate quality information that is necessary to achieve its objectives.<sup>73</sup> Without a mechanism for tracking sexual harassment cases throughout the entire process, the Department may not be able to effectively communicate the necessary data among relevant offices to ensure that it is responding to sexual harassment reports promptly and consistently.

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<sup>71</sup> OCR officials stated that the office plans to track CSD's actions in the new database. OSI officials noted that they upload any CSD decision memo to the case files.

<sup>72</sup> CSD officials stated that they have developed an extensive spreadsheet that categorizes by type of misconduct and that they are confident that the spreadsheet accurately captures its data. However, CSD officials acknowledged that many cases have nuances and could include misconduct across several categories.

<sup>73</sup> GAO-14-704G, at 58.

## CONCLUSIONS

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OIG found that the number of reports of sexual harassment increased by 63 percent from 2014 to 2017. Although the number of reports has increased, OIG concludes that sexual harassment is likely still underreported at the Department. Reasons for this include a lack of confidence in the Department's ability to resolve sexual harassment complaints, fear of retaliation, reluctance to discuss the harassment, lack of understanding of the reporting process, and, in some cases, specific advice not to make reports.

The Department primarily addresses sexual harassment and sexual assault by investigating allegations received by OCR and OSI, respectively, and referring investigated complaints to CSD for disciplinary review. In its review, OIG found a sexual harassment case that was not reviewed for possible investigation or discipline because of breakdowns in the referral process. Additionally, although the Department has taken affirmative steps to increase awareness, it has not updated guidance for supervisors to include mandatory reporting requirements as recommended by OIG in 2014. The Department also lacks guidance that would allow for better communication between relevant parties, including OCR, OSI, CSD, and other affected bureaus and posts.

The Department does not specifically charge individuals with sexual harassment, preferring instead to impose charges such as "improper personal conduct" to avoid the requirement to prove additional elements required by Title VII. The 20 sexual harassment cases OIG reviewed varied significantly in length; the average time from intake until final disciplinary determination was 21 months, and the longest case OIG reviewed took over 4 years from intake until final disciplinary decision. Additionally, of the selected cases, those involving Foreign Service subjects took more than 1 year longer on average to resolve, which may be due to certain appeal rights that are available to Foreign Service employees but not to civil service employees. However, OCR and CSD did not have timeliness standards for handling sexual harassment reports and the Department therefore could not assess whether it was responding to reports promptly. During the course of OIG's evaluation, OCR updated its policies to include timeliness standards and officials stated they were in the process of assessing whether the office is meeting the standards. Efforts to efficiently carry out the investigative and disciplinary processes are further complicated by the fact that CSD, OCR, and OSI have individual systems for tracking sexual harassment data, and these systems do not track like data or share information between them. With no means of measuring the consistency of its programs, and no common tracking system to analyze sexual harassment and data, Department leadership has limited ability to effectively manage these programs.

## RECOMMENDATIONS

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OIG has issued the following recommendations to the Bureau of Global Talent Management (GTM) and the Office of Civil Rights (OCR) to ensure that they are effectively and consistently addressing sexual harassment reports. The separate responses from GTM and OCR can be found in Appendix B. In addition to OCR and GTM, the Bureau of Diplomatic Security, Office of Special Investigations (OSI) and the Office of the Legal Adviser, Office of Employment Law (L/EMP) also provided technical comments that OIG incorporated as appropriate into this report.

**Recommendation 1:** OIG recommends that GTM, in conjunction with OCR and OSI, develop and implement guidance that coordinates activities for referring harassment cases (including sexual harassment cases) to GTM. Specifically, the guidance should address: (a) when and how to refer a case and (b) the investigative documentation necessary to make a disciplinary decision. GTM, OCR, and OSI should include stakeholders, such as L/EMP and OIG, in the development of this guidance.

**Management Response:** GTM concurred with this recommendation and agreed that greater coordination between relevant offices and bureaus and clear procedural guidance will improve the overall handling of sexual harassment cases. OCR also concurred with the recommendation and noted that the office has already updated several internal procedures that address coordination, collaboration, and consistency with stakeholders. OCR further noted that the process of collaboration between relevant offices and bureaus is ongoing.

**OIG Reply:** OIG considers this recommendation resolved. This recommendation can be closed when GTM provides documentation of the guidance to include instructions on case referral and necessary evidence related to sexual harassment cases.

**Recommendation 2:** OIG recommends that OCR notify posts, bureaus, and offices at the beginning of sexual harassment investigations in accordance with OCR policy.

**Management Response:** OCR concurred with this recommendation. OCR noted that the office has updated its internal harassment policy to add specificity about who should be notified and when in process to notify.

**OIG Reply:** OIG considers this recommendation resolved. This recommendation can be closed when OCR provides OIG with documentation of such notifications to posts, bureaus, or offices.

**Recommendation 3:** OIG recommends that GTM update the guides for supervisors of Foreign Service and civil service employees so that they contain the latest Department guidance on disciplinary issues, including sexual harassment generally and the obligation for supervisors to report sexual harassment.

**Management Response:** GTM concurred with this recommendation and agreed to complete updates to the supervisor guides.

**OIG Reply:** OIG considers this recommendation resolved. This recommendation can be closed with GTM provides OIG with the updated supervisor guides that include guidance on sexual harassment and mandatory reporting.

**Recommendation 4:** OIG recommends that OCR formalize its newly established timeliness standards for investigating reports of sexual harassment and assess whether the office is able to meet the standards.

**Management Response:** OCR concurred with this recommendation and has updated its standard operating procedures for harassment investigations to include timeliness standards.

**OIG Reply:** OIG considers this recommendation resolved. This recommendation can be closed when OCR provides OIG with an assessment of the office's adherence to the new standards.

**Recommendation 5:** OIG recommends that GTM establish and implement timeliness standards for determining discipline for sexual harassment cases.

**Management Responses:** GTM concurred with this recommendation and agreed to review general targets for timeliness in each part of the discipline process when resource issues are addressed. Additionally, GTM agreed with the importance of timeliness and establishing standards, but noted that cases vary in complexity and standards would need to consider these factors.

**OIG Reply:** OIG considers this recommendation resolved. While OIG appreciates the variation in cases and resource constraints, GTM should, at a minimum, determine whether timeliness standards can aid in prioritizing cases and allocating resources. This recommendation can be closed when GTM provides OIG with its review of the feasibility of targeted timelines.

**Recommendation 6:** OIG recommends that GTM, in conjunction with OCR and OSI, as well as other relevant stakeholders, develop and implement a common mechanism for tracking the length and outcomes (such as disciplinary actions) of sexual harassment allegations.

**Management Response:** GTM concurred with this recommendation. GTM stated that it supports exploring tools that bring greater efficiency to case tracking and agreed to work within its office, and with OCR and OSI, on available options. Additionally, OCR agreed to coordinate with GTM and other relevant stakeholders to create a tracking mechanism.

**OIG Reply:** OIG considers this recommendation resolved. This recommendation can be closed when GTM provides documentation of a common tracking mechanism for sexual harassment with all relevant stakeholders.

## APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY

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The Office of Inspector General (OIG) initiated this evaluation to determine (1) the extent to which employees report sexual harassment; (2) how the Department addresses employees' reports of sexual harassment where the subjects were direct-hire employees; and (3) the outcomes of reports made to the Office of Civil Rights (OCR) and the Bureau of Diplomatic Security (DS) Office of Special Investigations (OSI), and whether the Department provides consistent discipline for direct-hire employees who were found to have engaged in sexual harassment.<sup>1</sup> OIG conducted this evaluation in accordance with the Quality Standards for Inspection and Evaluation as issued by the Council of the Inspectors General on Integrity and Efficiency.

For the first objective, OIG reviewed Department policies, including the Foreign Affairs Manual (FAM), related to the process for reporting sexual harassment. OIG interviewed OCR and OSI officials about their reporting processes, coordination with other offices, and training of employees on the processes. OIG analyzed OCR and OSI data from calendar years 2014 to 2017 to determine the extent to which employees reported sexual harassment. OIG determined that OCR and OSI data was sufficiently reliable for our purposes. To understand the extent to which sexual harassment occurs at the Department and employees' perspectives on Department efforts, OIG surveyed a random sample of 1,765 Department direct-hire employees who were employed as of October 1, 2018.<sup>2</sup> In consultation with the OIG statistician, the evaluation team developed the survey in part on the Merit Systems Protection Board's (MSPB) Merit Principles Survey 2016 and interviewed MSPB officials about the methodology and lessons learned.<sup>3</sup> OIG sent the survey to the selected employees in November 2018 with a deadline of January 18, 2019. Due to the lapse in OIG's appropriations that occurred from December 21, 2018, through January 25, 2019, OIG extended its survey deadline to February 2019. A total of 479 employees responded to the survey, accounting for a 27 percent response rate. Several factors may have affected the response rate: lack of access to Department e-mail during the 5-week lapse in appropriations; the sensitive nature of the subject; and employees being out of the office during the timeframe.<sup>4</sup> Additionally, due to limited resources, OIG did not select a sample of respondents to validate their survey responses. OIG's statistician analyzed the data by reviewing the responses of survey respondents. OIG also interviewed 10 employees who contacted OIG to share their personal experiences with sexual harassment at the Department. Additionally, OIG interviewed employee groups representing Department employees for additional employee perspectives on sexual harassment.

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<sup>1</sup> OIG did not review how the Department addresses sexual harassment reports through its Equal Employment Opportunity (EEO) process because OCR reviews all EEO cases related to sexual harassment through its anti-harassment program as well.

<sup>2</sup> OIG randomly selected 2,000 Department direct-hire employees who were employed as of October 1, 2018. OIG conducted a pre-test of the survey with 20 of the randomly selected employees. OIG surveyed the remaining 1,980 employees and received "undeliverable" responses from 215 email accounts.

<sup>3</sup> MSPB's Merit Principles Survey 2016 is a Government-wide survey of Federal employees and supervisors that covers a variety of workforce issues, prohibited personnel practices, and selected aspects of work experience and work environment. The survey includes a section on harassment, including sexual harassment.

<sup>4</sup> OIG did not compute how many survey recipients had set automatic replies to notify others that they were out of the office and unable to respond to email messages.

For the second objective, OIG interviewed OCR and OSI officials about their investigative processes and reviewed relevant internal standard operating procedures. Using OCR data, OIG identified the bureaus and posts with the highest number of sexual harassment reports during this timeframe: DS, the Bureau of Consular Affairs, the Foreign Service Institute, Embassy Baghdad, and Embassy Kabul. OIG interviewed officials from these bureaus and posts to understand how bureau and post management respond to reports of sexual harassment. OIG also interviewed officials from the Equal Employment Opportunity Commission (EEOC) responsible for federal agency oversight to understand EEOC guidance on sexual harassment. Using OCR, OSI, and Global Talent Management, Office of Conduct, Suitability, and Discipline (CSD) data, OIG selected a nongeneralizable sample of 20 sexual harassment cases. OIG selected nine of the cases based on investigation length and the type of disciplinary action. OIG randomly selected the other cases. OIG selected cases where the subject was a direct-hire employee. OIG obtained evidence for each case to understand how the Department investigated and administered discipline, including the length of the cases from intake to disciplinary action and steps in the process.

For the third objective, OIG reviewed FAM provisions and relevant cables related to the discipline of civil service and Foreign Service employees as well as relevant OCR, OSI, and CSD internal policies. OIG collected and analyzed documentation related to Department systems for tracking and monitoring sexual harassment investigations and disciplinary actions. OIG reviewed the selected sexual harassment cases to understand the Department's efforts to administer discipline consistently. OIG interviewed relevant officials about the disciplinary, grievance, and appeals processes, including CSD officials, attorneys from the Office of the Legal Adviser, the Director of Grievance Staff, and Foreign Service Grievance Board officials. OIG reviewed CSD data and determined that it was sufficiently reliable for selecting sexual harassment cases for review but was not sufficiently reliable for OIG to assess Departmentwide disciplinary actions for sexual harassment.

Both Acting Inspector General Stephen Akard and Acting Inspector General Matthew Klimow recused themselves from this review and delegated final clearance authority to Deputy Inspector General Diana Shaw.

The issuance of this report was delayed because of the lapse in OIG's appropriations that occurred from December 21, 2018, through January 25, 2019, as well as the COVID-19 pandemic and resulting operational challenges.

## APPENDIX B: DEPARTMENT COMMENTS



**United States Department of State**

**Washington, D.C. 20520**

UNCLASSIFIED

August 24, 2020

### MEMORANDUM

TO:           OIG – Jeffrey McDermott, Assistant Inspector General, Evaluations and Special Projects

FROM:        Office of Civil Rights

SUBJECT:     Response to Draft OIG Report – Evaluation of the Department’s Handling of Sexual Harassment Reports

Thank you for the opportunity to review the draft OIG report on the Department’s Handling of Sexual Harassment Reports. OCR provides the following comments in response to the recommendations.

**OIG Recommendation 1:** OIG recommends that CSD, in conjunction with OCR and OSI, develop and implement guidance that coordinates activities for referring harassment cases (including sexual harassment cases) to CSD. Specifically, the guidance should address: (a) when and how to refer a case and (b) the investigative documentation necessary to make a disciplinary decision. CSD, OCR, and OSI should include stakeholders, such as L/EMP and OIG, in the development of this guidance.

**OCR Response:** The Office of Civil Rights (OCR) concurs with this recommendation. OCR appreciates feedback and is continually looking for ways to improve. Most recently, OCR developed and implemented several internal procedural updates and Program improvements beginning in 2018, which was after OIG’s data collection for this inspection, but prior to the release of any findings or this Report. The changes address many concerns highlighted in the recommendations and have a special emphasis on coordination, collaboration, and consistency with stakeholders. OCR is encouraged that its developments are consistent with OIG’s recommendations.

OCR agrees that coordination and collaboration between the relevant offices is a vital component of a successful Program, and changes along these lines are well underway. Specifically, OCR coordinated with CSD, OSI, and L/EMP to improve its processes, memorialize the changes into new SOPs, and update its harassment Reports of Investigation accordingly. The process of collaboration is ongoing and will facilitate continued improvements.

**OIG Recommendation 2:** OIG recommends that OCR notify posts, bureaus, and offices at the beginning of sexual harassment investigations in accordance with OCR policy.

**OCR Response:** OCR concurs with this recommendation. Since the initial interviews with OIG, OCR updated its policy (internal harassment SOP) to add specificity about who should be notified, and when, to minimize retaliation, while maximizing the efficacy of the investigation

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and the Department's ability to discipline employees. OCR makes appropriate recommendations in accordance with its updated policy.

**OIG Recommendation 3:** OIG recommends that CSD update the guides for supervisors of Foreign Service and Civil Service employees so that they contain the latest Department guidance on disciplinary issues, including sexual harassment generally and the obligation for supervisors to report sexual harassment.

**OCR Response:** OCR concurs with this recommendation, recognizing that this recommendation is not directed to OCR.

**OIG Recommendation 4:** OIG recommends that OCR formalize its newly established timeliness standards for investigating reports of sexual harassment and assess whether the office is able to meet the standards.

**OCR Response:** OCR concurs with this recommendation. OCR updated its SOPs to include timeliness standards for harassment investigations and began implementing these changes and tracking progress. OCR is transitioning to a new case management system, which should be fully operational by 2021. The system will enable OCR to better assess timeliness standards. Given its caseload, additional staffing is needed to fully comply with the timeliness standards. Compliance with the new standards will be contingent upon appropriate increase in resources.

**OIG Recommendation 5:** OIG recommends that CSD establish and implement timeliness standards for determining discipline for sexual harassment cases.

**OCR Response:** OCR concurs with this recommendation, recognizing that this recommendation is not directed to OCR.

**OIG Recommendation 6:** OIG recommends that CSD, in conjunction with OCR and OSI, as well as other relevant stakeholders, develop and implement a common mechanism for tracking the length and outcomes (such as disciplinary actions) of sexual harassment allegations.

**OCR Response:** OCR concurs with this recommendation. OCR is implementing timelines and tracking the length of cases from initial report through final Report of Investigation. OCR will coordinate with CSD and other relevant stakeholders to create a mechanism for tracking the length and outcome of cases from initial report through final disposition.

Approved: S/OCR – Gregory Smith

Drafted: S/OCR/L – Heather Olowski  
S/OCR/L – Alayna James  
S/OCR/L – Julie Smith

Cleared:  
DS – Preliminarily cleared, but did not make its way through all channels  
GTM – Clear

UNCLASSIFIED



United States Department of State

Washington, D.C. 20520

UNCLASSIFIED

September 8, 2020

MEMORANDUM

TO: OIG Jeffrey McDermott, Assistant Inspector General, Evaluation and Special Projects

FROM: Bureau of Global Talent Management – Carol Z. Perez, Director General

SUBJECT: Response to Draft OIG Report – Evaluation of the Department’s Handling of Sexual Harassment Reports

Thank you for the opportunity to review the draft OIG report on the Department’s Handling of Sexual Harassment Reports. The Bureau of Global Talent Management provides the following comments in response to the recommendations provided by OIG.

**Recommendation 1:** OIG recommends that CSD, in conjunction with OCR and OSI, develop and implement guidance that coordinates activities for referring harassment cases (including sexual harassment cases) to CSD. Specifically, the guidance should address: (a) when and how to refer a case and (b) the investigative documentation necessary to make a disciplinary decision. CSD, OCR, and OSI should include stakeholders, such as LEMP and OIG, in the development of this guidance.

**GTM Response:** GTM concurs with this recommendation. GTM agrees that greater coordination between CSD, OCR, and OSI, along with other stakeholders, and clear procedural guidance will improve overall handling of sexual harassment cases.

**Recommendation 3:** OIG recommends that CSD update the guides for supervisors of Foreign Service and Civil Service employees so that they contain the latest Department guidance on disciplinary issues, including sexual harassment generally and the obligation for supervisors to report sexual harassment.

**GTM Response:** GTM concurs with this recommendation. GTM recognizes the value of completing the updates on the supervisor guides and will assess timelines for doing so as promptly as resources permit.

**Recommendation 5:** OIG recommends that CSD establish and implement timeliness standards for determining discipline for sexual harassment cases.

**GTM Response:** GTM concurs with this recommendation. While GTM recognizes the importance of timeliness and establishing standards in general, we also recognize that cases under review vary widely in the nature of misconduct, complexity of issues, types of materials, and other factors. Generally, in a case warranting a proposal of discipline, the process from

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-2-

initial review to discipline decision, to include due process, ordinarily will require at minimum 180 days. Therefore, any timelines would benefit from a full consideration of these nuances, and perhaps applied as an “average” over time and/or case type. Further, timelines would have to be pegged to resources available, e.g. workhours, specifically to case work. GTM agrees that as CSD resource issues are addressed, a review of general targets for timeliness in each part of the discipline process would be useful.

**Recommendation 6:** OIG recommends that CSD, in conjunction with OCR and OSI, as well as other relevant stakeholders, develop and implement a common mechanism for tracking the length and outcomes (such as disciplinary actions) of sexual harassment allegations.

**GTM Response:** GTM concurs with this recommendation. GTM supports exploring tools that would bring greater efficiency to case tracking, and establishing common definitions that would permit the relevant organizational entities (CSD, OCR, and OSI) to share information efficiently. CSD has and will continue to work with GTM/EX on available case tracking options, and concurs that including OSI and OCR to the extent data security and recordkeeping requirements permit will be valuable.

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## ABBREVIATIONS

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AFGE	American Federation of Government Employees
AFSA	American Foreign Service Association
CA	Bureau of Consular Affairs
COM	Chief of Mission
CSD	Conduct, Suitability, and Discipline Division
DEPARTMENT	Department of State
DS	Bureau of Diplomatic Security
DOJ-HSJ	Department of Justice Human Rights and Special Prosecutions
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FAM	Foreign Affairs Manual
FSGB	Foreign Service Grievance Board
FSI	Foreign Service Institute
GADTRK	Grievance, Appeals, Disciplinary Tracking and Reporting System
GTM	Global Talent Management
GTM/ER	Office of Employee Relations
GTM/G	Grievances
L/EMP	Office of the Legal Adviser, Office of Employment Law
LOR	Letter of Reprimand
MED	Bureau of Medical Services
MSPB	Merit Systems Protection Board

OCR	Office of Civil Rights
OIG	Office of Inspector General
OSI	Office of Special Investigations
PSS	Office of Personnel Security and Suitability
RSO	Regional Security Office
SOP	Standard Operating Procedures

## OIG TEAM MEMBERS

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Claire M. Barnard  
Amy R. Bowser  
Thomas McDonald  
Juliann L. Vadera  
Julie Silvers  
Bonnie Stephens

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