

CBP Discipline Overview

Fiscal Year 2015



U.S. Customs and
Border Protection

Office of Human Resources Management

CBP Discipline Overview for Fiscal Year 2015

The release of the inaugural CBP Discipline Overview for Fiscal Year 2015 (FY15) supports U.S. Customs and Border Protection (CBP) Commissioner R. Gil Kerlikowske's goal to improve transparency by informing the public about the agency's handling of allegations of misconduct. As the largest law enforcement agency in the nation, CBP is focused on recruiting, training, and retaining exceptional personnel to meet the demands of its increasingly complex mission. All CBP employees are held to the highest standards of integrity and professional conduct.

Since Commissioner Kerlikowske's Senate confirmation in 2014, CBP has implemented and continues to implement significant policy, procedural, and programmatic reforms. During the past two years, efforts to promote integrity, accountability, and transparency include:

- Exercising authority granted by the Department of Homeland Security to initiate and conduct investigations of alleged criminal misconduct;
- Enhancing systems for tracking allegations and consolidating systems for receiving public comments and complaints;
- Adding staff and Spanish-language capabilities at the CBP Information Center to improve responsiveness to the public;
- Revising and releasing CBP's [Use of Force Policy Handbook](#);
- Emphasizing use of force training and creating specially trained teams to investigate use of force incidents;
- Implementing new procedures to release information to the public immediately following use of force incidents and publishing monthly use of force statistics;
- Releasing the revised [CBP Policy on Zero Tolerance of Sexual Abuse and Assault](#);
- Releasing [CBP's National Standards on Transport, Escort, Detention, and Search](#); and
- Utilizing the Border Community Liaison program to improve CBP's understanding of community concerns and to help communities learn about CBP's mission, functions, authorities, and responsibilities.

In September 2014, CBP commissioned Pivotal Practices Consulting LLC to conduct an [independent review](#) of CBP complaints and discipline systems. Based on this review's recommendations, as well as recommendations from the Homeland Security Advisory Committee's [CBP Integrity Advisory Panel](#) and other external stakeholders, CBP created a Complaints and Discipline Steering Committee and Working Group to guide agency efforts. CBP is actively working to enhance the efficiency of the investigative and disciplinary process, make reporting allegations of misconduct more accessible to employees and the public, ensure uniform and consistent administration of the disciplinary process, and increase transparency and accountability on employee misconduct.

The FY15 Discipline Overview includes a comprehensive statistical analysis of all disciplinary actions taken against CBP employees in FY15, compared to FY14 data, with specific sections addressing:

- Disciplinary Breakdown by Program Office
- Employee Arrests
- Use of Force Allegations
- CBP Information Center
- Drug-Free Workplace
- Mandatory Removals of Law Enforcement Officers

Agency-wide Actions at a Glance

The FY15 Discipline Overview includes statistical information on allegations of employee misconduct referred for investigation or review and the outcome. In FY15, the Office of Human Resources Management (HRM) opened 7,912 discipline cases CBP-wide and closed 7920.

Table 1 includes a detailed breakdown of the outcomes for all cases closed in FY15.

Table 1: Agency-wide outcomes by quarter for FY15					
Types of Actions Taken:	FY15 Q1	FY15 Q2	FY15 Q3	FY15 Q4	FY15 Totals
Counseling	335	359	291	432	1,417
Written Reprimand	236	231	287	230	984
Suspension 1-14 days*	116	119	121	141	497
Suspension 15 days or more*	13	12	13	11	49
Demotion	5	4	2	3	14
Resignation before decision	9	9	16	17	51
Retirement before decision	10	8	4	10	32
Removal**	34	40	32	35	141
Probationary Termination	20	10	21	29	80
Indefinite Suspensions	9	12	11	13	45
Discipline Not Warranted***	1,289	1,018	973	1,330	4,610

*Includes 11 suspensions with abeyance agreements.

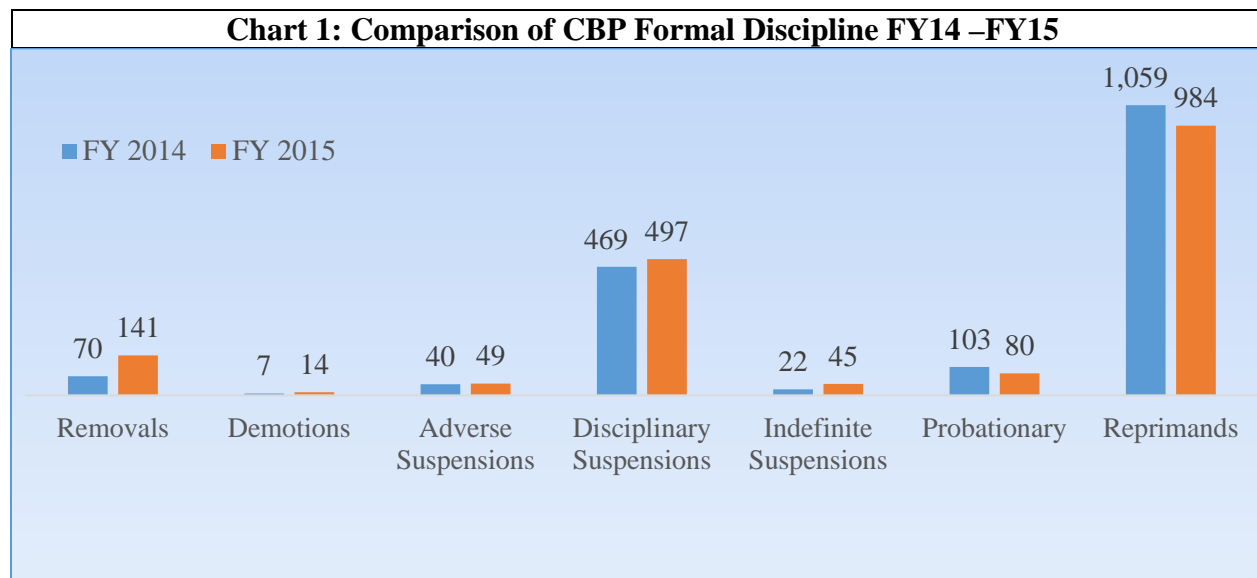
**Includes 6 removals with last chance agreements.

***Note: Current CBP reporting requirements mandate or recommend employees report a variety of issues to the Joint Intake Center, regardless of whether the issue involves actionable misconduct. Additionally, a substantial number of outcomes reported as “discipline not warranted” include allegations of misconduct deemed to be unsubstantiated or unfounded.

It is important to note that the number of discipline cases closed in a particular quarter may have been received in a previous quarter or in a previous fiscal year. These cases may traverse quarters or fiscal years due to several factors, including but not limited to due process timeframes, requests for extensions granted by deciding officials, investigative lead time, legal review timeframes, time to respond to requests for information, and review time needed for presentation to the CBP Discipline Review Board (DRB). The primary function of the DRB is to review investigative reports of misconduct and propose adverse actions, when appropriate.

Comparison of Actions Taken in FY15 to FY14

In FY15, CBP reviewed and processed 7,920 cases, which represented a 13.6 percent increase from FY14 totals. The following chart illustrates and compares FY14 and FY15 disciplinary actions taken by CBP.



When comparing the FY15 discipline data to FY14 data, the following trends were noted:

- Removal decisions increased by 101.4 percent; 141 removals in FY15 compared to 70 removals in FY14. This may be attributed to the increase in the number of cases presented to a greater number of DRB panels in FY15.
- Adverse suspension decisions (15 days or more) increased by 22.5 percent.
- Disciplinary suspension decisions (14 days or less) increased by 6.39 percent.
- Indefinite suspension decisions increased by 104.5 percent.
- Agency-wide, CBP processed 80 probationary terminations; a decline of 22.3 percent when compared to FY14.
- Written reprimands declined by 7.2 percent from FY14 totals.

In FY15, CBP took a total of 1,810 formal disciplinary actions impacting approximately 3 percent of the CBP workforce. Formal discipline includes written reprimands, suspensions, demotions, and removals. After review of the data, the following trends were noted:

- Written reprimands accounted for 30.4 percent of the actions taken in FY15.
- CBP processed 1,417 cases where management elected to address the misconduct with a formal counseling, which represents an increase from 1,215 cases in FY14.
- The number of cases where management determined disciplinary action was not warranted totaled 4,610, an increase of 19.6 percent from 3,854 cases in FY14.
Typically, cases are closed in this manner when the evidence shows the allegation is unsubstantiated or unfounded and therefore does not support taking an action.

In FY15, CBP had three major operational components: Office of Field Operations (OFO), the U.S. Border Patrol (USBP), and Air and Marine Operations (AMO).

- 94.8 percent of the actions processed were on employees from OFO and USBP, the two largest program offices which comprise approximately 85 percent of the CBP workforce.
- Employees assigned to AMO accounted for the third largest number of disciplinary actions, with a total of 60 cases.

A detailed discipline breakdown by CBP program office can be found on the next page, followed by a discipline breakdown by geographic location for OFO and USBP.

Acronym Key for CBP Program Offices

Acronym	CBP Office
OA	Office of Administration
AMO	Air and Marine Operations
USBP	U.S. Border Patrol
OCC	Office of Chief Counsel
OC	Office of the Commissioner
OCA	Office of Congressional Affairs
OFO	Office of Field Operations
HRM	Office of Human Resource Management
OIT	Office of Information and Technology
OI	Office of Intelligence
IA	Office of Internal Affairs
INA	Office of International Affairs
OT	Office of Trade
OPA	Office of Public Affairs
OTIA	Office of Technology Innovation and Acquisition
OTD	Office of Training and Development

A comprehensive breakdown of discipline by program office is found in Table 2. This table includes a breakdown of discipline by program office, average number of employees in FY15, type of discipline, and percentage of employees disciplined by office.

Table 2: CBP Disciplinary Breakdown by Program Office for FY15

Office	Average # of Employees	Removals	Demotions	Adverse Suspensions	Disciplinary Suspensions	Indefinite Suspensions	Probationary Terminations	Letter of Reprimand	Oral/Written Counseling	Total	% Disciplined by Office
OA	1,042	1	0	0	1	0	0	5	16	23	2.20%
OAM	1,662	5	2	2	7	1	0	19	24	60	3.61%
USBP	21,949	87	7	26	315	25	51	557	562	1,630	7.43%
OCC	310	0	0	0	0	0	0	0	0	0	0.00%
OC*	234	2	0	1	1	0	0	1	21	26	11.11%
OCA	18	0	0	0	0	0	0	0	0	0	0.00%
OFO	28,846	40	5	20	159	18	25	387	718	1,372	4.76%
HRM	530	2	0	0	1	0	0	2	12	17	3.20%
OIT	2,240	1	0	0	6	0	3	6	27	43	1.92%
OI	264	1	0	0	1	1	1	1	2	7	2.65%
IA	550	0	0	0	1	0	0	0	11	12	2.18%
INA	168	2	0	0	0	0	0	0	4	6	3.57%
OT	873	0	0	0	1	0	0	2	8	11	1.26%
OPA	93	0	0	0	2	0	0	1	0	3	3.22%
OTIA	153	0	0	0	0	0	0	0	1	1	0.65%
OTD	546	0	0	0	2	0	0	3	11	16	2.93%
Totals:	59,478	141	14	49	497	45	80	984	1417	3,227	5.43%

*OC totals include all program offices aligned under the Office of the Commissioner in FY15.

Table 3: OFO Discipline Breakdown by Field Office in FY15

Field Office	Average # of Employees	Removals	Demotions	Adverse Suspensions	Disciplinary Suspensions	Indefinite Suspensions	Probationary Terminations	Letter of Reprimand	Oral/Written Counseling	Total	% Disciplined by Field Office
Atlanta	1,111	0	0	2	3	0	1	14	10	30	2.7%
Baltimore	795	0	0	0	7	0	0	9	11	27	3.4%
Boston	1,021	1	0	0	6	0	0	10	33	50	4.9%
Buffalo	1,416	3	0	0	1	0	2	5	24	35	2.5%
Chicago	1,121	3	0	1	8	0	1	13	13	39	3.5%
Detroit	1,328	2	0	4	10	2	0	6	23	47	3.5%
El Paso	1,449	0	0	1	11	3	1	28	30	74	5.1%
Houston	1,183	3	0	1	18	2	1	24	18	67	5.7%
Laredo	2,635	10	3	6	16	2	7	53	82	179	6.8%
Los Angeles	1,954	3	1	0	5	1	2	26	32	70	3.6%
Miami	2,159	1	0	1	10	3	3	27	78	123	5.7%
New Orleans	410	2	0	0	2	1	0	3	5	13	3.2%
New York	2,837	4	0	2	17	0	0	26	36	85	3.0%
Portland	246	0	0	0	1	0	1	2	2	6	2.4%
Preclearance	597	0	0	0	5	0	0	7	17	29	4.9%
San Diego	2,183	2	1	1	15	0	2	58	61	140	6.4%
San Francisco	1,248	1	0	1	3	0	2	9	16	32	2.6%
San Juan	612	1	0	0	0	0	0	7	15	23	3.8%
Seattle	1,682	1	0	0	11	1	2	27	43	85	5.1%
Tampa	539	0	0	0	2	0	0	7	5	14	2.6%
Tucson	1,061	2	0	0	6	3	0	21	147	179	16.9%
Headquarters	1,259	1	0	0	2	0	0	5	17	25	2.0%
Totals:	28,846	40	5	20	159	18	25	387	718	1,372	4.8%

Table 4: USBP Discipline Breakdown by Sector in FY15

Sector:	Average # of Employees	Removals	Demotions	Adverse Suspensions	Disciplinary Suspensions	Indefinite Suspensions	Probationary Terminations	Letter of Reprimand	Oral/Written Counseling	Total	% Disciplined by Sector
Big Bend	600	4	2	2	21	0	5	50	7	91	15.16%
Blaine	338	3	0	0	23	0	0	10	3	39	11.53%
Buffalo	327	1	0	1	3	0	0	3	2	10	3.05%
Del Rio	1,641	3	0	0	16	2	18	35	16	90	5.48%
Detroit	451	2	0	0	5	2	0	5	6	20	4.43%
El Centro	1,111	4	0	2	17	0	0	38	22	83	7.47%
El Paso	2,626	13	1	2	28	5	0	88	37	174	6.62%
Grand Forks	217	0	0	0	5	0	0	2	2	9	4.14%
Havre	197	0	0	1	2	0	0	1	6	10	5.07%
Houlton	227	0	0	0	4	0	0	3	11	18	7.92%
Laredo	1,842	6	0	0	27	4	5	39	89	170	9.22%
Miami	119	2	0	0	1	0	1	2	5	11	9.24%
New Orleans	82	0	0	0	1	0	0	2	0	3	3.65%
Ramey	69	0	0	0	1	0	0	2	4	7	10.14%
Rio Grande Valley	3,228	19	3	8	44	2	7	91	152	326	10.09%
San Diego	2,648	4	0	1	41	2	3	58	66	175	6.60%
Special Operations	141	0	0	2	0	0	0	1	0	3	2.12%
Spokane	272	0	0	0	9	0	0	3	5	17	6.25%
Swanton	334	0	0	1	0	0	0	1	5	7	2.09%
Tucson	4,267	22	0	3	58	6	11	93	110	303	7.10%
Yuma	901	4	1	3	9	2	0	23	14	56	6.22%
Headquarters	311	0	0	0	0	0	1	7	0	8	2.57%
Totals:	21,949	87	7	26	315	25	51	557	562	1,630	7.43%

CBP Information Center

The CBP Information Center (CIC) serves as CBP's customer service liaison to the public. The CIC provides the public with a convenient way to ask questions and register comments, compliments, and complaints related to travel, immigration, and trade issues involving CBP. The CIC also receives tips about illegal activity or allegations of misconduct, and refers them appropriately. Additionally, the CIC analyzes trends and patterns for both compliments and complaints, and uses this data to inform leadership of possible opportunities for customer service improvements.

CBP's Joint Intake Center (JIC) opened 143 cases in its case management system based upon a referral from the CIC. Of those cases, all but 33 were sent to HRM for review and action. As of September 30, 2015, the discipline outcomes for the referred cases were as follows:

- 6 cases were closed with a counseling.
- 1 case was closed with a written reprimand.
- 105 cases were closed without disciplinary action.
- 31 cases remained open.

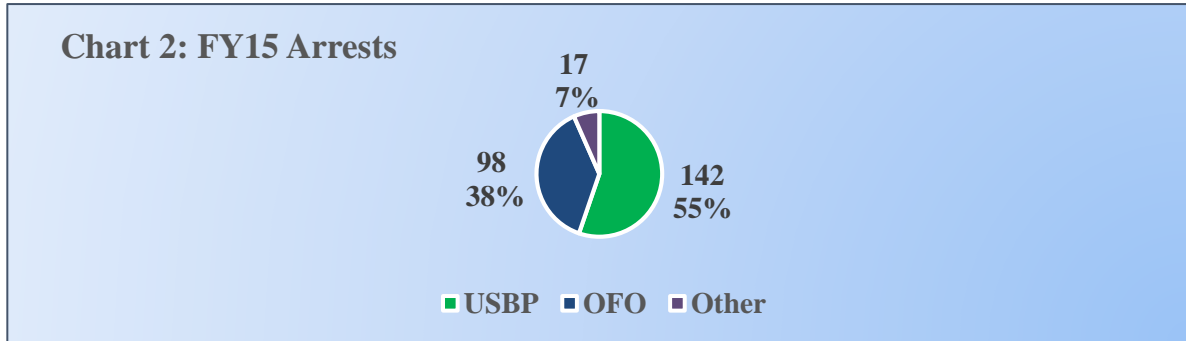
Employee Arrests

The CBP Standards of Conduct provide that any violation of law by a CBP employee is deemed inconsistent with and contrary to the agency's law enforcement mission. As such, employees are expected to refrain from engaging in any activities that violate local, state, and/or federal laws. These standards serve as notice to all CBP employees of the agency's expectations for employee conduct, both on and off duty.

The number of employees arrested in FY15 represents a very small portion of the overall CBP workforce. A closer examination of the employees arrested in FY15 revealed the following:

- 257 CBP employees were arrested in FY15, which represents a 5 percent decline in the number of employees arrested for off-duty criminal conduct in FY14.
- 55 percent of all CBP arrests were attributable to criminal conduct allegedly committed by USBP employees; 142 in total.
- 38 percent of all CBP arrests were attributable to criminal conduct allegedly committed by OFO employees; 98 in total.
- 7 percent of all CBP arrests were attributable to criminal conduct allegedly committed by employees assigned to other CBP program offices; 17 in total. The other program offices with employees who were arrested in FY15 include OIT, AMO, OT, IA, OCC, HRM, OI, and OTIA.
- 25 female employees and 232 male employees were arrested.

Chart 2 illustrates the breakdown of CBP employee arrests by program office.



A review of the arrest data revealed the following statistics for FY15:

- CBP experienced a 5 percent decline in the number of employee arrests; 257 in FY15 compared to 265 employee arrests in FY14.
- Drug/alcohol-related offenses and domestic/family violence related offenses accounted for 41.6 and 22.6 percent of all arrests, respectively. Alcohol-related driving arrests and arrests for domestic violence declined slightly from FY14 totals.

A review of the discipline data for the 257 cases involving employee arrests revealed the following statistics as of September 30, 2015:

Table 5: Employee Arrest Totals by Arrest Type – FY15	
Workforce total for FY15 = 59,478	
Type of Arrest	Number of Arrests
Drug/Alcohol-Related Misconduct	107
Domestic/Family Misconduct	58
Impeding the Criminal Justice System	14
Assault	12
Traffic/Driving Misconduct	11
Corruption	9
Crimes Involving Children	9
Property Crimes	9
Weapons Violations	5
Sexual Misconduct	3
Threatening Behavior	3
Minor Offenses	2
Violent Crimes	2
White Collar Crime	2
Mission Related Misconduct	1
Miscellaneous Misconduct	10
Total Arrests:	257

- 158 cases involving employee arrests remained open at the end of the fiscal year. This can be attributed to several factors including pending criminal proceedings, cases warranting further investigation, or cases pending management action.
- The arrest totals included 16 cases involving employees who were removed from federal service or resigned/retired following the arrest.
- 65 cases were resolved with action ranging from a counseling to removal.
- Management determined discipline was not warranted in 25 off-duty arrest cases.

Mandatory Removals of Law Enforcement Officers for Felony Convictions

Law enforcement officers convicted of a federal or state felony are subject to mandatory removal from federal service pursuant to 5 U.S.C. § 7371. A review of the discipline data for FY15 revealed that five CBP employees were removed under this authority.

Use of Force Allegations

Each year, CBP receives and reviews hundreds of allegations pertaining to use of force incidents. When these cases involve excessive force or civil rights abuse allegations and prosecution is declined by the U.S. Attorney's Office or the local prosecutor, the matter is then subject to an administrative investigation to determine if an employee's actions, although not unlawful, violated agency policy or procedure.

In FY15, CBP implemented a new process for reporting, tracking, and investigating use of force incidents. Under this new process, use of force cases are evaluated to determine whether the amount or type of force used was either excessive or outside of policy. The National Use of Force Review Board (NUFRB) reviews all significant use of force incidents, including the use of firearms and uses of force that result in serious injury or death. The Local Use of Force Review Board (LUFRB) reviews all Less-Lethal use of force incidents not addressed by the NUFRB. If there is a determination that the use of force was outside of policy, the case is routed through OPR to HRM.

All other cases, including allegations of excessive force, are referred to OPR or component management for review and consideration of disciplinary action. In FY15, CBP LER processed 367 cases involving allegations about an employee's use of force. A review of the data revealed the following statistics:

- Close to 40 percent of the allegations processed in FY15 stemmed from an incident that took place in a prior fiscal year.
- CBP processed 9 suspensions.
- 5 employees were separated from CBP; 3 removals and 2 resignations.
- 11 employees received a counseling and 3 received written reprimands.
- 1 employee served an indefinite suspension.

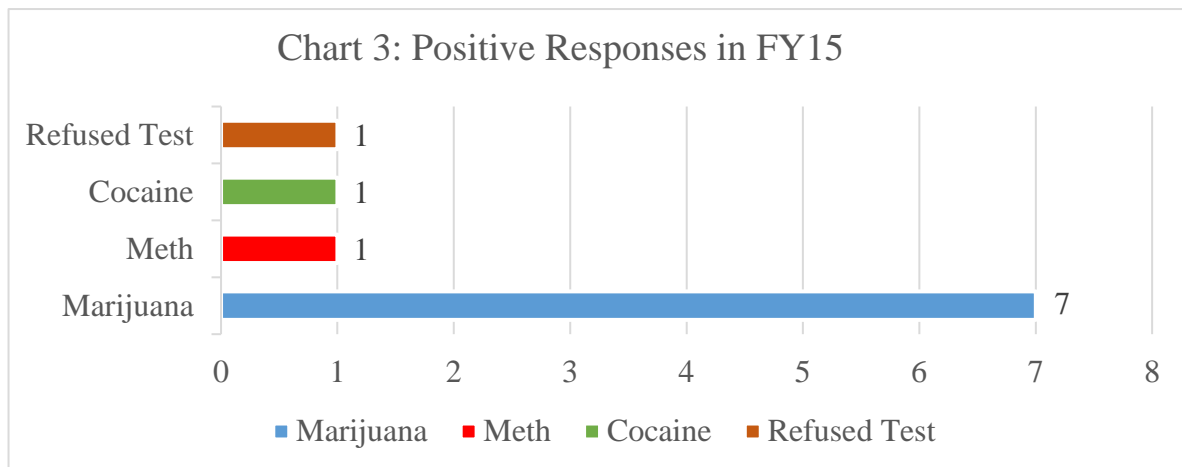
- In 338 of the cases, management determined disciplinary action was not warranted. It is important to note that in approximately 40 percent of these cases, neither the complainant nor CBP could confirm the identity of the person who allegedly used inappropriate force.

Drug-Free Workplace

CBP is committed to the federal Drug-Free Workplace Program. CBP recognizes that illegal drug use has serious effects on the federal workplace which often results in lost productivity. As the guardians of our nation’s borders, CBP is a leader among other federal agencies in the interdiction of illegal drugs. The very nature of CBP’s mission makes illegal drug use unacceptable.

In FY15, CBP performed 6,224 *random* drug tests which resulted in eight employees testing positive for drug use. Additionally, CBP performed nine *reasonable suspicion* drug tests, only two of which resulted in the employee testing positive for drug use.

The following chart illustrates the types of drugs that resulted in a positive response.



Employees who tested positive included three CBP officers, two Border Patrol agents, one Marine Interdiction agent, one supervisory CBP officer, one law enforcement communications assistant, one telecommunications specialist, and one trainee assigned to OIT. As of September 30, 2015, seven employees resigned, two were removed from their positions, and one proposed removal was pending.

Conclusion

Integrity is a core value that guides each and every CBP employee and is reflected in the work we do each and every day. The public has placed a great deal of trust in CBP and with that trust comes an expectation that CBP employees will perform their duties with integrity, transparency, accountability, and professionalism. CBP employees are guided by these principles, both on and off duty. Those who breach the public trust by engaging in misconduct will continue to be held accountable for their actions.

In summarizing agency-wide discipline for CBP, approximately 5.4 percent of the CBP workforce was subject to some type of discipline – with approximately 3 percent of that discipline being formal in nature. USBP and OFO employees represent approximately 95 percent of the CBP workforce and as such, employees assigned to these two offices accounted for the largest number of cases involving some type of discipline. The Office of Congressional Affairs (OCA) and Office of Chief Counsel (OCC) completed the fiscal year with no disciplinary actions processed against their employees.

Although the number of CBP employees arrested for off-duty misconduct declined for the second year in a row, the number of employee arrests continues to be an area of concern for CBP. CBP has been taking a more aggressive approach to addressing off-duty arrests, to include reducing the use of administrative leave and placing employees on indefinite suspension when appropriate. CBP will continue to work on strategies to reduce the number of employees arrested for off-duty offenses and work to ensure timely and appropriate disciplinary action is taken to address the underlying misconduct.

In addition to efforts to increase transparency with the public through the release of an annual discipline overview, CBP will continue to improve our complaints and discipline systems as part of the [CBP Integrity and Personal Accountability Strategy](#). These broader efforts will reduce case investigation and administrative processing timelines, and increase consistency in the handling of allegations of misconduct and discipline case decisions.