

Minimal Coverage [35]

Note to reader: The content of this draft option does not represent a consensus view of the Design Team or indicate any kind of preference among options that may be presented to the Senior Review Advisory Committee.

Summary Description:

This option provides minimal coverage for employees and types of actions covered. The option is designed to replace Chapter 75 coverage for adverse actions only; it may be used in conjunction with comparable appeals processes. Employee coverage includes non-probationary preference eligibles only. Types of actions include long suspensions (30 days or more), reductions in grade/band/pay, removals, and actions without national security implications.

Key Features:

Extremely narrow coverage of employees and actions covered:

- Removes current coverage limitation from competitive service employees; excepted service preference eligibles (after one year service); and excepted service non-preference eligibles (after two years service) to non-probationary preference eligibles only.
- Restricts types of actions to long suspensions (30 days or more), reductions in grade/band/pay, and removals; eliminates 30 day or less furlough actions.

Eliminates requirement for proposal notice and limits administrative appeal process:

- Long suspensions (30 days or more) and reductions in grade/band/pay; agency decision notice is provided at or before the action is effected.

Restricts and shortens proposal and reply periods:

- Removal actions have shortened proposal and opportunity to reply periods; includes administrative appeal process.

Sub-Options:

- Other employees not covered (e.g. probationary, permanent, temporary, etc.) receive very short advance notice or proposal period for removal actions; no proposal for long suspensions and reductions.
- Other employees not covered (e.g. probationary, permanent, temporary, etc.) receive notice after action taken; no proposal.
- Actions that violate national security appealable in Federal court only; no administrative appeal.

Relation to Other Options:

This option may be used with any appeals option that allows for the administrative appeal process however, the 'Basic Process' identified in this option may need to be modified to allow for appropriate processes and timeframes that have been identified in other options.

Implications (This section contains "possible advantages/benefits" and "possible problems/challenges" and "other implications" suggested by design team members. The views expressed in these "implications" represent the opinions of one or more members of the design team and therefore reflect sometimes opposing points of view. These opinions do not reflect the collective judgment of the entire design team on any of the issues addressed, nor have they been reviewed by legal counsel.):

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Possible Advantages/Benefits

- Limited coverage could reduce management caseload allowing management to focus on day-to-day mission needs.
- Extremely narrow coverage could allow for greater management flexibility and take less time than the current system to resolve adverse actions.
- Very simple system to administer.
- Extended probationary periods could allow for consistency across occupations while taking into account additional probationary period which may be needed for other occupations, e.g., law enforcement.
- Allows management to take immediate action to resolve workplace issues that have national security implications or affect the agency mission.
- Could discourage employees from engaging in misconduct or performing poorly.

Possible Problems/Challenges

- A more flexible system that is more advantageous to management could be detrimental to generating trust and respect from the workforce.
- Requires extensive and continued workforce training to ensure manager and supervisory accountability and consistent and fair application of the process.
- Narrowing coverage could potentially channel appeals to EEO route and other avenues of redress (e.g. ADR; MSPB; EOC; OSC; courts).
- Limiting the coverage of the adverse action procedures may make DHS a less attractive workplace to current and potential employees.
- By reversing the trend of expanding coverage for groups of employees, this option may not meet the statutory requirements for a "modern" personnel system.
- Lack of procedural due process protections may discourage whistle blowing.
- Might result in disputes going the judicial route.
- Might be perceived as not progressive.

Other Implications

- The provisions of this option will have to be reviewed for consistency with the Homeland Security Act.

Cost

- Narrower coverage is less time consuming, thus, less expensive to administer than the current system.

Evaluation in Terms of Guiding/Design Principles:

Mission Centered

- More management centered than the current system allowing managers to focus on the agency mission.

Performance Focused

- This option discourages negative conduct issues because it holds its employees accountable and allows management to take immediate action without extensive time delays.

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Contemporary and Excellent

- This option allows for a simple, more expeditious and cost effective process than the current system.
- Enables the use of a more contemporary 'tri-partisan panel' model in an appeals process.

Generate Trust and Respect

- This option supports managements' confidence in their supervisors and managers by affording maximum flexibility to perform their duties and make sound decisions as required; that confidence and respect will filter down through the ranks accordingly.

Based on Merit System Principles and Fairness

- Workforce training, manager and supervisory accountability, and employee involvement will build communication and collective involvement which will increase fairness and trust in the system.

**Detailed Description
By System Component and System Element**

D		Discipline/Adverse Action System
System elements:		Summary description:
1	<p>Coverage</p> <ul style="list-style-type: none"> - Employees - Actions - Probationary/trial period 	<p>Single system for all categories of covered employees (including bargaining unit and non-bargaining unit employees) as defined under <u>Minimal Coverage</u>.</p> <ul style="list-style-type: none"> • Limited to non-probationary preference eligibles only. • Covers long suspensions (30 days or more), reductions in grade/band/pay, removals and actions without national security implication. • Extend probationary/trial period to 3 years.
2	<p>Basic Process</p> <ul style="list-style-type: none"> - Advance notice - Reply opportunity - Rep. right - Decision - Timeframes - Cause 	<ul style="list-style-type: none"> • Advance notice for long suspensions (30 days or more) and reductions in grade/band/pay, not required. • 14 days advance notice for removals. • 5 days for reply to proposal for removals. • Employee has the right to representation. • Decisions on long suspensions (30 days or more) and reductions are made by a designated DHS official, appointed by the Secretary. Decisions on removals are made by an internal DHS panel comprised of 3 members, an ADR representative; a supervisor; a manager. Internal panels are organized within each DHS component and each organizational component decides whether feasible to construct additional regional components. Decision notice required at or before removal action is effected. • Agency will maintain a written record of proposals, replies and decisions.
3	<p>Evaluation</p>	<p>Internal measures are developed to ensure that the system:</p> <ul style="list-style-type: none"> • Provides fair and consistent adverse action decisions. • Provides for a simple and expeditious process. • Contributes to a high performing 21st century workforce. • Maintains a contemporary HR system.