

Narrow Coverage [36]

NOTE: The content of this document has not been reviewed by legal counsel, nor does it represent a consensus view of the Design Team or indicate any kind of preference among options presented to the Senior Review Committee.

Summary Description:

This option provides narrow 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 and permanent competitive service employees with at least 2 years of service. Actions covered include long suspensions (30 days or more), reductions in grade/band/pay, removals and actions without national security implications.

Key Features:

Narrow coverage of employees and actions covered:

- Adverse action procedures in this option apply to permanent non-probationary competitive service employees and permanent excepted service preference-eligibles that have completed any trial period. (see Sub-Options for permanent employee criterion).
- 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.

Restricts and shortens timeframes for proposal notice and reply periods:

- Long suspensions (30 days or more), reductions in grade/band/pay and removal actions have shortened proposal and opportunity to reply periods; includes administrative appeal process.
- Actions that violate national security are appealable in Federal court only; no administrative appeal.

Sub-Options:

- Permanent employees must meet the following criteria:
 1. must be a competitive service employee with at least 3 years of civilian service;
 2. must have completed required probationary period; and
 3. must be a non-law enforcement employee or non-security related employee.
- Other employees not covered (e.g. probationary, temporary, law enforcement or security related, etc.) receive very short advance notice period, proposal and opportunity to reply period; no administrative appeal for long suspensions (30 days or more) and reductions in grade/band/pay actions.
- Other employees not covered (e.g. probationary, temporary, law enforcement or security related, etc.) receive no proposal notice; notice of action given after action has been taken; shortened opportunity to reply period; no administrative appeal for removals actions.
- Actions that violate national security result in immediate removal, no proposal period, and no administrative appeal.

Relation to Other Options:

This option may be used with any appeals option that allows for an administrative appeal process. However, the 'Basic Process' identified in this option may need to be modified to correspond with the processes and timeframes identified in other options.

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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.):

Possible Advantages/Benefits

- Narrow coverage might allow for greater management flexibility and take less time than the current system to resolve adverse actions.
- Simple system; might be easier to administer.
- Extended probationary periods could allow for consistency across occupations while taking into account additional probationary period which might be needed for other occupations, e.g., law enforcement.
- Might allow 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 might make DHS a less attractive workplace to current and potential employees.
- Lack of procedural due process protections might discourage whistle blowing and encourage more court litigation over due process concerns.
- Might result in more court litigation as it reduces internal dispute resolution.
- Eliminating coverage of actions of less than 30 days will not be perceived by employees as fair.

Other Implications

- By reducing and eliminating some coverage it reduces and eliminates management accountability to properly administer HR systems.
- 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.

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Performance Focused

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

Contemporary and Excellent

- This option allows for a simple, more expeditious and cost effective process than the current system.
- Adopts a more contemporary tri-partite panel model in the appeals process.

Generate Trust and Respect

- This option reflects the agency's confidence in supervisors and managers by affording them maximum flexibility to perform their duties and make sound decisions; 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 in the Summary Description under <u>Narrow Coverage</u> (also see Sub-Options).</p> <ul style="list-style-type: none"> • Limited to permanent non-probationary competitive service employees and permanent excepted service preference eligibles who have completed any trial period. • Covers long suspensions (30 days or more), reductions in grade/band/pay, removals and actions without national security implication. • Completion of a probationary period or any applicable trial period that might be deemed appropriate.
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"> • Makes 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.