

**SBA**

SOP 37 71 2

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# **Employee Dispute Resolution Process**

Office of Human Resources

U.S. Small Business Administration



**SMALL BUSINESS ADMINISTRATION  
STANDARD OPERATING PROCEDURE**

National

SUBJECT: Employee Dispute Resolution Process	S.O.P.		REV
	SECTION 37	NO. 71	2

INTRODUCTION

1. Purpose. To outline the Agency's employee dispute resolution process.
2. Personnel Concerned. All SBA employees.
3. Directives Canceled. SOP 37 71 2.
4. Originator. Guidance, Innovation, and Review Division, Office of Human Resources.

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# EMPLOYEE DISPUTE RESOLUTION PROCESS

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## Chapter 1

### General Information

#### 1. What Is the Purpose of the Employee Dispute Resolution Process?

SBA's Employee Dispute Resolution Process (Process) provides SBA employees with a vehicle that ensures fair treatment and handles their concerns quickly and constructively, as required by 5 CFR part 771.

- a. Should you feel you were treated unfairly by SBA, you may use this Process to obtain a quick and fair response. The Process is designed to be straightforward and user-friendly. You should not fear retaliation or coercion because you use this Process.
- b. A key component of this Process is "Mediation." Mediation, which is detailed in chapter 2, is a method of alternative dispute resolution (ADR) used in both the private and public sectors. Mediation is a fast and cost-effective alternative to the adversarial process of the former Agency Grievance Procedure.

#### 2. Who Is Authorized to Update this SOP?

The Assistant Administrator for Human Resources (AA/HR) is authorized with legal and other concurrences to update this SOP.

#### 3. Who May Use this Process?

Any non-bargaining unit employee (GS-1 through SES), or any employee in a bargaining unit that does not have or is ineligible to use a negotiated grievance procedure may use this Process. Employees covered by a collective bargaining agreement must use that agreement's negotiated grievance procedure. If you are not sure whether you may use this Process, discuss it with your supervisor or contact your servicing personnel office. Former employees may continue to use this Process if their dispute was initiated while employed by the SBA and if a remedy can still be provided. If no relief is possible after an employee's departure, the issue becomes moot.

#### 4. How Does the Process Define “Employee Dispute” or “Dispute?”

An “employee dispute” or “dispute” (as used in this Process) is any dissatisfaction, grievance, or complaint that is not specifically excluded by this Process (see ¶¶ 1-6 and 1-7, below) that an employee brings to the attention of the employee’s immediate supervisor or the appropriate management official (AMO)(see definition in appendix 2) having the authority to grant the requested relief.

## 5. What Issues Are Covered?

You may dispute:

- a. Conditions of employment under the control of SBA management which you believe to be unfair (except for the issues in ¶ 1-7);
- b. The application of a particular SBA regulation, policy, or procedure in a way which you believe is unfair to you; or
- c. Management actions that force you to do something you believe you should not have to do, or management retaliation against you for doing something that was proper for you to do.

## 6. What Types of Disputes Are Excluded from this Process?

Disputes for which no further relief is possible, or for claims that are now moot in some other fashion, are barred from this Process. The Office of Hearings and Appeals (OHA) will dismiss an appeal petition if an employee covered by this SOP fails to follow the procedures of this SOP at any step of the Process.

## 7. What Issues Are Not Covered?

- a. You cannot use the Process to resolve the following:
  - (1) A Prohibited Personnel Practice filed with the Office of Special Counsel (see chapter 4);
  - (2) A complaint of discrimination (see SOP 37 13);
  - (3) An issue which is appealable to the Merit Systems Protection Board (MSPB);
  - (4) Any matter under the jurisdiction of the Office of Personnel Management (OPM), Such as:
    - i. Retirement, life insurance, and health insurance;
    - ii. Any determinations made by OPM (or by SBA under delegated examining authority) pertaining to initial appointments; or
    - iii. The title, series, grade, or pay schedule of your position; however, if you are unable to resolve a concern with your supervisor and your servicing personnel office, you may file a Classification Appeal with SBA or OPM (see SOP 35 00);
  - (5) A decision made by the General Accounting Office, the Office of

Workers' Compensation Programs, or any other Federal agency;

- (6) A requirement to cooperate and render assistance in the Office of the Inspector General's (OIG) audits and investigations;
  - (7) Termination of a probationary employee;
  - (8) Expiration of a temporary appointment;
  - (9) An action taken consistent with a formal agreement, into which you voluntarily entered, assigning you from one geographic area to another;
  - (10) Your return from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position after failing to satisfactorily complete a supervisory or management probationary period;
  - (11) The content and adequacy of the definitions of the critical elements and performance standards of your position;
  - (12) The content of published SBA regulation, policy, or procedure;
  - (13) A final decision on your choice of a representative in a dispute when the SBA concludes that the representative's representation constitutes a conflict of interest;
  - (14) A decision of an SBA Standards of Conduct Counselor or the Standards of Conduct Committee;
  - (15) Non-selection for promotion from properly ranked and certified candidates; however, you may use this Process if you believe you were not ranked properly;
  - (16) The failure to receive a non-competitive promotion; however, if you are in a career ladder position, assuming that you are otherwise eligible, you may try to show promotion entitlement by demonstrating satisfactory performance of higher level work;
  - (17) The termination of a time-limited promotion; and
  - (18) The failure to receive an award or the amount of an award you received.
- b. You cannot challenge personnel actions until they take effect. For example, you may not dispute:
- (1) A *proposed* disciplinary action;
  - (2) A *notification* of pending reassignment; or



- (3) An *interim* performance rating.

However, you can dispute a final action once it becomes effective, or when a final performance rating is given.

- c. Senior Executives cannot use this process to question or challenge:
  - (1) Being returned to the excepted or competitive service during their probationary period;
  - (2) Receiving a less than fully successful performance rating; or
  - (3) Being reassigned following receipt of an unsatisfactory rating.
- d. Senior Executives should refer to SOP 39 20 for information on appeals to OPM or MSPB.

## **8. May I Have Someone Assist Me With My Dispute?**

You may request that any individual assist you, including a fellow employee or an attorney you have hired. If your representative is an employee, your representative must be acceptable to the SBA. Your representative may assist or represent you throughout the Process. SBA's decision to disallow an employee's choice of representative is final and may not be the subject of another employee dispute. If your representative is disallowed, you may select another representative that is acceptable to the SBA. The Standards of Conduct Counselor servicing your office decides conflict of interest questions. SBA will not pay for the charges an employee incurred by selecting a representative or an attorney whom he/she must pay.

## **9. May Administrative Leave Be Allotted for Me or My Representative to Prepare and Present My Dispute?**

You and your representative (if a current SBA employee) are entitled to a reasonable amount of administrative leave to prepare and present the dispute at each step of the Process (including mediation). Using a SF 71, Application for Leave, you and your representative must both request and receive approval from your respective supervisors before you use administrative leave. In addition to time, employees and their representatives may reasonably use Government computers and facsimile machines to request mediation, and file and process disputes under this process. You cannot use **E-mail, "Official Business - Penalty for Private Use" mail, and Government prepaid Federal Express or other Government prepaid overnight mail services** at any step of this process. If you wish, you may add denied administrative leave as a new issue at any step of the Process.

**10. What Is a Reasonable Amount of Administrative Leave?**

Supervisors may grant no more than 4 hours of on-the-clock time per step of the Process, unless you can document the need for a greater amount of time.

**11. Is My Privacy Guaranteed When I Use SBA's Electronic Equipment?**

SBA cannot guarantee privacy if you choose to use any electronic equipment provided for your use, such as Government computers or facsimile machines, to file and process your dispute.

**12. How Is Administrative Leave Recorded?**

Time and attendance clerks must record this time for non-bargaining unit employees as transaction code (TC 65 AD) other leave, administrative leave.

**13. Who Is Responsible for the Costs of Processing My Dispute?**

You are responsible for your costs (if any) in processing your dispute. Your office is responsible for all costs related to a Mediator's expenses, if any.

**a. Who Pays for Travel Costs of My Attorney Representative?**

The employee filing the dispute must pay all costs associated with his/her own representation.

**b. Who Pays for Travel Costs of an Employee to Meet with His or Her Attorney or Representative?**

The employee will pay all travel costs except when a Mediator requests a mediation session, or OHA proffers mediation, or OHA schedules a dispute hearing.

## **Chapter 2 Mediation**

### **1. What Is Mediation?**

Mediation is a voluntary, confidential, informal and prompt procedure, that uses a neutral party (the Mediator) to resolve differences. The Mediation process helps people communicate with each other and create their own solutions.

#### **a. Why Is Mediation a Good Idea?**

Mediation enables you to work out the disagreement yourself, without having to rely on a third party decision-maker. You have influence over the outcome. You don't have to agree to anything that is not in your best interest. If you don't resolve the matter through Mediation, the dispute may proceed to the next step of the Dispute Resolution Process. Neither party has anything to lose.

#### **b. How Do I Request Mediation?**

Resolution of employee disputes through Mediation requires the written agreement of both parties. Mediation is an appropriate alternative at any stage of the Dispute Process. Invoking Mediation does not waive any deadlines; it merely "tolls" or stays them, pending resolution of the Mediation. The parties must submit a joint written Request for Mediation (see appendix 3) to the Labor Relations Officer in the Office of Human Resources, Guidance, Innovation and Review Division (HR/GIRD), attaching your written Statement of Dispute. You may personally deliver; or send your dated request via facsimile **(202) 205-6154**, first-class mail, commercial delivery service, or express mail, for which you personally paid; addressed to the Office of Human Resources, Guidance, Innovation and Review Division; 409 Third Street, SW; Washington, DC 20416.

Mediation may occur for the following reasons:

- (1) You and the management official (MO) who took the action you wish to dispute submit a joint written Joint Request for Mediation and Agreement to Participate in Mediation, SBA Form 1995 (see appendix 3).
- (2) You and the AMO (lowest level management official who has the authority to grant the relief you request who is above the management official (described above)) submit a joint written Request for Mediation. See ¶ 3-5b, "Employee Dispute Resolution Process."
- (3) OHA may proffer mediation upon receipt of a Petition of Appeal of an AMO's decision (see ¶ 3-6a).

**b. Does Mediation Mean Compromise?**

Requesting Mediation means you are interested in talking in a confidential setting with the other party to find out if it is possible to resolve the problem quickly without litigation. You retain complete control over the outcome while in Mediation. You need not to agree to anything which you do not believe is in your best interests.

**d. How Is the Mediator Selected?**

HR/GIRD selects your Mediator from a pool of qualified Mediators. The Mediator may be a Federal employee, or from some outside source. Mediators are trained and skilled in conflict resolution. The Mediator must not have a personal friendship with any party to the Mediation, nor have an actual or apparent conflict of interest for any other reason. Personal friend is defined as someone you know well and with whom you socialize.

**e. What Happens to My Request for Mediation?**

Within 10 calendar days of receipt of the Mediation request, HR will designate a Mediator and convey the appropriate information to you, the appropriate management official and your servicing personnel office. The Mediator assigned to your case will contact the parties to begin Mediation proceedings within 5 calendar days of the Mediator's appointment.

**f. How Long Will Mediation Last?**

The Mediation process will consist of one or more sessions normally within a week from the date of the Mediator's initial contact with you and the MO. To encourage the informal and speedy resolution of your concerns, the Mediator may conduct the Mediation sessions over the telephone or in person, using E-mail and facsimile where reasonable and practical.

**g. When Does Mediation End?**

Mediation ends when the Mediator either:

- (1) Receives confirmation that a signed settlement agreement was cleared for legal and regulatory sufficiency review by HR/GIRD and the Office of General Law; or in cases involving OIG employees, the OIG has cleared the settlement for legal sufficiency;
- (2) Forwards to HR/GIRD a written request to end mediation by either party to the dispute; or
- (3) Notifies the HR/GIRD and the parties in writing that there is no settlement.

**h. What Happens if We Reach Agreement?**

HR/GIRD and Office of the General Counsel (OGC) or OIG, as appropriate, have 7 calendar days to review settlements to ensure that the SBA has the legal authority to comply with its terms, and that the signing management official(s) acted within their delegated authority. Within 7 calendar days of HR/OGC clearance, the settlement agreement will be forwarded to the parties for implementation (if approved), or referred back to the parties for further action.

**i. What Happens if We Do Not Reach Agreement?**

If Mediation does not resolve your dispute, HR/GIRD will forward your written Statement of Dispute to the next step in the dispute process. Your dispute will proceed as if you had filed it directly with this person. If you filed the request for Mediation in a timely manner, then the submission to the AMO by HR/GIRD is also timely. No “mediation record” is made available to the parties to a dispute and may not be used as evidence in any dispute resolution process.

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## **Chapter 3**

### **Employee Dispute Resolution Process**

#### **1. What Is the Employee Dispute Resolution Process?**

The Employee Dispute Resolution Process (Process) is a two-step procedure that also includes optional Mediation as a mechanism for resolving employee complaints or disputes.

#### **2. How Do I Start the Employee Dispute Resolution Process?**

First, make an attempt to resolve the disputed matter with the MO who took the action you dispute. This person may or may not be your immediate supervisor. Only then may you file a written “Statement of Dispute” with the lowest level MO who has authority to grant the relief you request and is above the MO who took the action you wish to dispute.

- a.** Speaking with this MO is **NOT** a step in the Employee Dispute Resolution Process, it is a prerequisite to filing a dispute. You must inform the MO who took the action you are disputing before you are able to file a formal dispute.
- b.** Your written “Statement of Dispute” should explain your concern. It must include your certification that you have attempted to resolve the dispute with the MO who took the action, and identify that official by name, the date you contacted that official about your concern, and a summary of your discussion.
- c.** File your statement with the lowest level MO who has authority to grant the relief you request who is above the MO who took the action you wish to dispute. This official will be the AMO. The AMO for a dispute of your performance rating is your reviewing official. If you are uncertain as to the identity of the AMO, contact your servicing personnel office for assistance.

#### **3. May I Get Help In Resolving the Issue Before Filing My Dispute?**

Yes. If you and the MO who took the action you wish to dispute agree, you may jointly request Mediation (see chapter 2).

#### **4. Can I Be Certain That the Management Official to Whom I Send My Dispute Will Actually Decide It?**

No. When the Administrator, Deputy Administrator, or Inspector General (IG) is the AMO in your dispute, that person may designate another SBA Management Board member to act on your dispute. If you submit your dispute to a who is unavailable, or who has a conflict of interest, the MO, with the concurrence of your servicing personnel office, will name another MO to respond to your dispute. If you timely submit your dispute to the wrong MO who is not in your chain-of-command, that official will return it to you. You will have 5 calendar days from receipt of the returned dispute to file it on time and with the correct MO. You may contact your servicing personnel office for assistance in determining with whom you should file your dispute. When the IG is the AMO, the IG may name a manager to respond to disputes filed by OIG employees.

#### **5. What Procedural Rules Must I Follow?**

If discussions with the MO who took the action that is in dispute, including Mediation when used, have not resolved the dispute to your satisfaction, you may file a written "Statement of Dispute" with the AMO. If you request Mediation, you must do so within the time frames stated below.

You must adhere to the following rules.

##### **a. What Is My Time Limit for Step 1?**

You must file your dispute with the AMO within 15 calendar days of the occurrence or action you are disputing or within 15 calendar days after you became aware of the act or occurrence, by personal delivery, first-class mail, express mail, or commercial delivery service for which you have personally paid (see ¶ 1-9). When you believe that there has been a pattern of acts against you, the event that is the subject of your dispute must have occurred or have become known to you within 15 calendar days of the filing of your dispute. Furthermore, only event(s) that occurred within that time frame can form the basis for a remedy.

##### **b. What Is My Time Limit for Step 2?**

You may file your Step 2 Dispute (appeal of the AMO decision) within 15 calendar days from receipt of the AMO's decision. See ¶3-6 below.



**c. How Are the Time Limits Calculated?**

You calculate the 15 calendar day filing time frame by adding 15 calendar days to the date of the event you dispute or receipt of the AMO's decision (for an appeal) to determine the last day on which to file. The deadlines for each step expire at midnight of the 15<sup>th</sup> day. A "Statement of Dispute" postmarked by the 15<sup>th</sup> is considered timely filed. If the 15<sup>th</sup> falls on a Saturday, Sunday, or Federal holiday, the next business day is counted as the 15<sup>th</sup> day. SBA may waive these deadlines, upon good cause shown, provided SBA does so in writing.

**d. What Remedy May I Request?**

You must request a remedy that is personal to you, i.e., it affects you personally. If you request a disciplinary or other action against another employee, or a remedy prohibited by governing law or regulation, your dispute may be returned to you or dismissed at any stage.

**e. What Information Must I Provide?**

You must include the following information in your written submission:

- (1) Your name, title, office telephone, facsimile number, and office mailing address;
- (2) The name(s) of the individual(s) you believe is (are) responsible for your dissatisfaction or for the disputed action;
- (3) The date the event giving rise to your dispute occurred, and the date you became aware of the event if different;
- (4) A description of the event(s), and the specific facts supporting your position;
- (5) The specific section(s) of law, regulation, policy, or procedure allegedly violated if known;
- (6) The specific personal relief you request (if you ask for relief that is not personal to you, your dispute may be returned or dismissed) (see ¶ 3-5(d)).
- (7) A statement of the attempt you made to resolve the matter directly with the MO who took the action you dispute and certification of such attempt (pursuant to ¶ 3-2);
- (8) A list of anyone you believe to be a witness and a statement of what information you believe each such person could provide; and

(9) Your choice of a representative, if you decide to have one.

**f. What Happens If I Allege a Prohibited Personnel Practice?**

If you specifically allege that you have been the subject of a prohibited personnel practice (see 5 U.S.C. § 2302 for a complete list), your dispute must be processed in a different manner. Your allegation is a “mixed case” and you must separate any other issue in dispute from the alleged prohibited personnel practice.

Processing of your alleged prohibited personnel practice will follow the process described in chapter 4. If you have issues capable of processing under this SOP, they will go forward; otherwise, the appeal will be dismissed. The definition of “mixed case” is found in appendix 2.

**g. What Will the Appropriate Management Official Do With My Dispute?**

The AMO will read your dispute and, if the AMO deems it appropriate, may discuss it with you (and/or your representative), the witnesses you listed, your supervisors, and/or other witnesses. The AMO may also obtain technical and legal advice from appropriate management officials including your servicing personnel office.

**h. When Will the Appropriate Management Official Reach a Decision?**

The AMO, no later than 15 calendar days after receiving your dispute, will either advise you that more time is needed to prepare a decision or will issue you a written decision. The AMO notification for the need for more time automatically extends the AMO's deadline to a total of 45 calendar days after receiving the dispute. Your servicing personnel office and the Office of General Law (OGL) or OIG, as appropriate, will review the AMO's ultimate decision for legal and regulatory sufficiency before it is released to you.

**6. May I Appeal the Appropriate Management Official's Decision?**

Yes. You can appeal the AMO's resolution of your dispute to OHA by filing a petition of appeal within 15 calendar days from receipt of the AMO's decision. In the absence of an AMO decision, you must file the petition of appeal no sooner than 16 calendar days from the date you filed your dispute with the AMO and no later than the 55th calendar day following the date on which you filed your original dispute with the AMO.

**a. What Method Do I Use to File a Petition of Appeal?**

You must timely file with OHA, in person, or by either facsimile (202-205-7059) (date and sign your petition), first-class mail, express mail, or commercial delivery service for which you personally paid, addressed to the Assistant Administrator for Hearings and Appeals (AA/OHA) at 409 Third Street, SW.; Mail Code 2441; Washington, DC 20416. Also, you must send a copy of your petition to the AMO who then has 15 calendar days from receipt of the petition of appeal to provide the OHA Judge with a response, if any, to your appeal. Appeals sent by first-class mail are considered filed as of the date of postmark; those sent by commercial delivery service or facsimile are considered filed as of the date received. Once OHA receives an appeal, the AA/OHA will provide a copy of the appeal file to the appropriate servicing personnel office and the OGL or the OIG in cases of OIG employees and may proffer mediation of the dispute by appointing an OHA Judge as mediator. If the OHA Judge acting as a mediator cannot guide the parties to settlement, the AA/OHA will appoint another OHA Judge to decide the dispute. The Judge will render a decision to affirm, modify, remand or reverse the AMO's decision within 45 calendar days from the close of the record of your appeal.

**b. Under What Conditions Would OHA Dismiss a Petition of Appeal?**

OHA will dismiss appeals of prohibited personnel practices in which you have not first filed your allegations with appropriate SBA officials. The OHA has no jurisdiction over Special Counsel proceedings or grievances filed by bargaining unit members. See paragraphs 1-7(a)(1) and 1-7(a)(3).

**c. What Do I Include in My Petition of Appeal?**

Your petition of appeal must include a copy of:

- (1) The Statement of Dispute you previously attached to your Request for Mediation or sent to the AMO;
- (2) A copy of any response from the AMO;
- (3) A statement of why you think the AMO's decision is incorrect;
- (4) A statement certifying that you sent the AMO a copy of your appeal; and

- (5) Any other pertinent information you want the OHA Judge to consider, including arguments based on OHA's prior grievance case law. You may not add new issues or expand your requested relief at this point, except that you may contest any denial of administrative leave you or your representative requested to prepare or present your dispute. OHA's prior grievance cases are available, in redacted form, on YES, the Agency's Internet.

**d. What Procedures Will the Judge Follow in Processing My Appeal?**

The OHA Judge will review the complete record and issue a written decision based on that record. If the record is incomplete, the OHA Judge may request additional information from you or from management. The requested party will have 15 calendar days to respond unless the Judge grants additional time for response. If either party submits additional information, the other party will have 15 calendar days to submit a rebuttal. The Judge will issue a written decision within 45 calendar days from the date the appellate file closes.

**e. How and When Will I Be Notified of the Office of Hearings and Appeals' Decision?**

OHA will forward copies of the Judge's decision to you, the AA/HR, Associate General Counsel for General Law or IG, as appropriate), the AMO, HR/GIRD, and your servicing personnel officer. The Judge's decision becomes final 30 calendar days after it is signed and dated by the Judge unless the AA/HR or the General Counsel (or IG) files a petition for review as set forth below.

**f. Is the Office of Hearings and Appeals' Decision Subject to Review?**

Should either the AA/HR or the General Counsel (or IG) object to the Judge's decision based on a belief that the decision is contrary to law, rule, regulation, or SBA policy, either official may request the AA/OHA provide them with a complete copy of the dispute file. The AA/OHA will provide a copy within 5 days of the request. After reviewing the file, the Office of General Counsel or AA/HR may file a Petition for Review (PFR) with the Deputy Administrator (or IG for disputes by OIG employees) for a Final SBA Decision. A PFR must be filed within 20 calendar days of receipt of the OHA dispute file. A copy of the PFR must be provided to you or your representative, if you have one. The PFR must specify the objections to the Judge's decision. You must attach a complete copy of the dispute file.

**g. May I Request a Review of an Office of Hearings and Appeals' Decision?**

No, you may not.

**h. Do I Have an Opportunity to Respond to a Petition for Review?**

Yes. You have 15 calendar days from the date you receive the PFR to submit a written rebuttal to the Deputy Administrator or designee (or IG, if you are an OIG employee).

**i. When Will a Final Decision Be Made?**

The Deputy Administrator or designee (or IG) should make a final decision within 30 calendar days of receipt of the PFR or your rebuttal, if any. The Deputy Administrator's or IG's decision is final and there is no further right of administrative review.

**j. Do Office of Hearings and Appeals' Decisions Set Precedent?**

OHA decisions set precedent unless the Deputy Administrator or the IG reverses them before they become final. The IG reviews the decisions on appeal from OIG employees only. There is no right to judicial review either of OHA's decision or a final decision issued by the Deputy Administrator or the IG.

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## **Chapter 4**

### **Prohibited Personnel Practices**

#### **1. What Is a Prohibited Personnel Practice?**

A Prohibited Personnel Practice (PPP) is a violation of the Merit System Principles. See 5 U.S.C. § 2301 and 2302, Merit Systems Principles, for a complete listing and further information on Prohibited Personnel Practices. See appendices 4 and 5 for a plain English version of 5 U.S.C. §§ 2301 and 2302.

#### **2. Where May I File an Allegation of Prohibited Personnel Practice?**

You have a statutory right to file allegations of prohibited personnel practices with the Office of Special Counsel (OSC), an independent Federal agency located at 1730 M Street, NW., Washington, DC 20036-4505. 5 CFR part 1800.1b.1-6 describes the information required by the OSC to conduct an investigation of your allegation. You may file a written allegation directly with the Assistant Administrator for Human Resources, 409 Third Street, SW.; Washington, DC 20416. If you are an IG employee, you should file your allegation directly with the IG, 409 Third Street, SW., Mail Code 4114, Washington, DC 20416.

#### **3. What Is the Procedure for Resolving My Allegation of Prohibited Personnel Practice Within the Agency?**

When you file your allegation of PPP with the AA/HR, or IG, these officials may exercise one of three options within 30 calendar days of receipt of your allegation.

- a. Appoint an objective party to investigate your allegation and present the findings of the investigation to the Prohibited Personnel Practices Panel for a decision.
- b. Determine that your allegation is not a PPP and inform you, in writing, of the determination. (You can then raise your dispute with the AMO. The filing of your written dispute will be timely if it is made within 7 calendar days of the date you receive the AA/HR's or IG. You may decide to file with the OSC, at this point.)
  - a. Refer your allegation to the OSC.

#### **4. Who Are the Members of the Prohibited Personnel Practices Panel?**

- a. The following four Agency officials, or their designees, serve on the Panel:
  - (1) The Assistant Administrator for Human Resources, as Chair;
  - (2) The General Counsel;
  - (3) The Assistant Administrator for Hearings and Appeals; and
  - (4) The Deputy Inspector General.
- b. Panel Members must not have any actual or apparent conflict of interest. Should

a Panel member be materially involved in the substance of the dispute, that member will recuse him or herself and name a senior level alternate to participate in the Panel process on the recused member's behalf.

## **5. What Procedure Does the Prohibited Personnel Practices Panel Use?**

- a.** Provide management with 10 calendar days from date of receipt to provide a written response to your allegation.
- b.** Provide you access to management's response, and give you 10 calendar days after you receive management's response to submit your reply. You and your representative (if a SBA employee) may use a reasonable amount of administrative leave to prepare your response. However, you and your representative must have prior approval for such leave from your respective immediate supervisors, who may deny your request for administrative leave when necessary to accomplish the Agency's mission.
- c.** Gather additional information as deemed necessary to reach a decision.
- d.** Issue a final decision as soon as practicable. Although the Panel's decision binds the SBA, you may still exercise your right to file a prohibited personnel practice allegation with the Office of Special Counsel; Complaints Examining Unit; 1730 M Street, NW.; Suite 300; Washington, DC 20036-4505.
- e.** The Panel has authority to direct appropriate Agency officials to correct any improper Agency action related to a prohibited personnel practice, and to refer any misconduct issues to a supervisor for appropriate action or to the Disciplinary Review Committee.



**Appendix 1****Index to Forms and Reports****FORM****Paragraph**

SBA Form 1995, Joint Request for Mediation and Agreement to Participate in Mediation

**2-1b(1)**

SF 71, Application for Leave

**1-9**

**REPORTS**

Reserved

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## Appendix 2

### Definitions

**AMO** - The appropriate management official is the lowest level management official above the management official who took the action the employee wishes to dispute, and who has authority to grant the relief requested by the employee.

**EEOC** - The Equal Employment Opportunity Commission enforces various statutes that prohibit workplace discrimination in the Federal sector, namely: Title VII of the Civil Rights Act of 1964, which makes it unlawful for Federal departments and agencies to discriminate against applicants or employees on the basis of race, color, religion, sex, and national origin; sect. 501 of the Rehabilitation Act of 1973, which prohibits employment discrimination on the basis of disability; and, the Age Discrimination in Employment Act and the Equal Pay Act which prohibit age discrimination and sex-based wage discrimination, respectively.

**Election of Remedies** - Is the exercise of a choice of administrative procedures by timely filing a dispute, appeal, or complaint with the appropriate administrative authority.

**Employee Dispute** - Is any dissatisfaction, grievance, or complaint that is not specifically excluded by this SOP which an employee brings to the attention of the employee's immediate supervisor or the appropriate management official who has the authority to grant the relief requested by the employee.

**Mediation** - Is a voluntary, confidential, informal and prompt procedure, which uses a neutral (the Mediator) to resolve differences.

**Mixed Case** - Is an allegation that is appealable to two administrative bodies, such as the Office of Hearings and Appeals (OHA): the Equal Employment Opportunity Commission (EEOC), the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel (OSC). "Mixed cases" occur for the purpose of this SOP when employees allege various violations of their rights redressable both by this process and another such as EEOC, MSPB, or OSC. (See also election of remedies.)

**MSPB** - The Merit Systems Protection Board established by the Civil Service Reform Act of 1978, serves as guardian of the Federal Government's merit-based system of employment, principally by hearing and deciding appeals from Federal employees of removals and other major personnel actions.

**OSC** - The Office of Special Counsel is an independent Federal investigative and prosecutorial agency. OSC's enforcement authority includes the investigation of alleged prohibited personnel practices (PPPs) and Hatch Act violations in the Federal Government.

**PFR** - A Petition for Review is a request for review of a Judge's decision based on a belief that the decision is contrary to law, rule, regulation, or SBA policy, filed with the Deputy Administrator (or IG for disputes by OIG employees) by OGC or OHR.

**PPP** - A prohibited personnel practice is a violation of the Merit System Principles. See 5

U.S.C. § 2301 and 2302, Merit Systems Principles, for a complete listing and further information on Prohibited Personnel Practices.

**Servicing Personnel Office** – SBA has eight servicing personnel offices. The OIG Headquarters personnel officer services all OIG employees. If you are an employee of a Disaster Assistance Area Office, you are to contact your Disaster Area Personnel Officer. The Human Resources Operations Division - Denver Component serves all regional, district, and branch office employees. The Human Resources Operations Division – Headquarters services all Headquarters and servicing center employees.

**Statement of Dispute** – Is a written statement describing the issue(s) in dispute and a certification that you have attempted to resolve the dispute with the lowest level MO having the authority to grant the relief you request.

**APPENDIX 3**

(paragraph 2-1b(1))

**JOINT REQUEST FOR MEDIATION AND AGREEMENT TO PARTICIPATE IN MEDIATION****PART A: JOINT REQUEST FOR MEDIATION**

We the undersigned do hereby agree and jointly request the appointment of a Mediator to assist us in resolving a matter of dispute under SBA's Dispute Resolution Process. To assist the Mediator in understanding the issue(s) in dispute, we are attaching a copy of the grievance filed.

Employee's Signature	Date:	Management Official/AMO's Signature:	Date:
Please Print Name:	Phone #	Please Print Name:	Phone #

Upon completion of PART A, fax (202) 205 6154, or regular mail to Director of the Guidance, Innovation and Review Division/Office of Human Resources; 409 Third Street, SW; Washington, D.C. 20416.

**PART B: APPOINTMENT OF A MEDIATOR (To be completed by HR/GIRD)**

Date Received:	Mediator's Name:	Fax:
Date Mediator is Appointed:	Address:	----- Voice:
		E-mail:

**PART C: AGREEMENT TO PARTICIPATE IN MEDIATION** Date of Initial Contact by Mediator

1. This is an agreement by the parties to attempt to resolve certain issues raised under the Agency's dispute resolution procedure. Mediation is an amicable dispute resolution process that seeks to reconcile disputes between the parties. Mediation does not declare a winner or loser, but rather seeks a resolution, which is informal, quick and minimizes harm to both parties.
2. The Mediator is neutral and helps the parties reach a mutually satisfactory resolution for themselves. The Mediator has been trained and is skilled in conflict resolution techniques. If the parties cannot agree on a resolution, the Mediator will not impose a resolution nor will the Mediator offer judgment as to which party, if any, is at fault.
3. Mediation is a confidential process. Any documents submitted to the Mediator and statements made during the mediation are for settlement purposes only. The parties agree not to subpoena or request that the Mediator serve as a witness. In no event will the Mediator voluntarily testify on behalf of any party. The parties also agree not to request or use as evidence any materials prepared by the Mediator for the mediation with the exception of the signed Mediation Settlement Agreement.
4. The Mediator may conduct the mediation sessions over the telephone or in person.
5. After reaching a Mediation Agreement, the parties must carry out the signed Mediation Agreement.
6. In the event that mediation is terminated without reaching a Mediation Agreement, the grievant may file the grievance at the Formal or Appellate Step, as appropriate, within 7 calendar days of receipt of notice that mediation is terminated.
7. No admission of guilt or wrongdoing by either party is implied, and none should be inferred, by participation in this mediation.
8. The parties agree to make a sincere effort to resolve the dispute, to conduct themselves in a courteous and non-hostile manner, to use appropriate language, and to allow the Mediator to interrupt the process at any time the Mediator feels a caucus or break is needed to facilitate the mediation.
9. If the parties reach an agreement, the signed Mediation Agreement will contain the resolution the parties have reached. The issues, which were resolved, may not be brought up in a future dispute, complaint or appeal. However, the employee or management may file a formal dispute claiming failure to carry out the Mediation Agreement.

By signature below, we acknowledge that we have read, understand and agree to this **AGREEMENT TO PARTICIPATE IN MEDIATION**.

Employee's Signature:	DATE:	Management Official's Signature:	Date:
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Upon Completion Return to Mediator at the Address in PART B

**PART D: Mediator's Report (To be forwarded to the Address in Part A.)**

   /    SETTLEMENT AGREEMENT ATTACHED.

   /    No Settlement, MEDIATION CONCLUDED.

Mediator's Signature \_\_\_\_\_ Date

SBA Form 1995 (2/95)

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**Appendix 4**  
**The Merit System Principles**  
*(Plain English)*

1. Recruit qualified individuals from all segments of society, and select and advance employees on the basis of merit after fair and open competition.
2. Treat employees and applicants fairly and equitably, without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabling condition.
3. Provide equal pay for equal work and reward excellent performance.
4. Maintain high standards of integrity, conduct, and concern for the public interest.
5. Manage employees efficiently and effectively.
6. Retain or separate employees on the basis of their performance.
7. Educate and train employees when it will result in better organizational or individual performance.
8. Protect employees from improper political influence.
9. Protect employees against reprisal for lawful disclosure of information in "whistleblower" situations (i.e., protect people who report things like illegal and/or wasteful activities).

Adapted from § 2301 (b) of Title 5, United States Code

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**Appendix 5**  
**Prohibited Personnel Practices**  
*(Plain English)*

The prohibited personnel practices listed below are adopted from the statutory language that appears in section 2302(b) of title 5, United States Code.

**It is a prohibited personnel practice to:**

- Discriminate on the basis of race, color, religion, sex, national origin, age, disabling condition, marital status, or political affiliation.
- Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics.
- Coerce an employee's political activity.
- Deceive or willfully obstruct a person's right to compete for employment.
- Influence any person to withdraw from competition for a position to improve or injure the employment prospects of any other person.
- Give unauthorized preference or advantage to any person to improve or injure the employment prospects of any particular employee or applicant.
- Employ or promote a relative.
- Retaliate against a whistleblower, whether an employee or an applicant.
- Retaliate against employees or applicants who exercise any protected rights, (e.g., who file EEO complaints, etc.) testify for or cooperate with an Inspector General or the Special Counsel, or refuse to break a law or regulation.
- Discriminate based on personal conduct, which is not adverse to on-the-job performance of the employee, applicant, or others.
- Violate any law, rule, or regulation which implements or directly concerns the merit principles.