

# ARS □ CSREES □ ERS □ NASS

## *Policies and Procedures*

**Title:** Administrative Grievance System

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This P&P establishes procedures and time limits for filing and resolving grievances under the REE Administrative Grievance System.

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## 1. Introduction

This Policy and Procedure establishes procedures and time limits for filing and resolving grievances under the Research, Education, and Economics (REE) Administrative Grievance System. The Employee Relations Branch (ERB), Human Resources Division (HRD), AFM, is available to provide more detailed guidance to employees and supervisors concerning grievances.

A glossary of terms is provided at the end of this P&P.

## 2. References

Title 5, Code of Federal Regulations, Chapter 771

## 3. Policies

The following policies apply to all REE agencies:

- Employee grievances will receive prompt consideration. Employees, supervisors, and managers must observe time limits in the grievance process.
- Use of the grievance system is a protected activity. There must be no restraint, interference, coercion, discrimination, or reprisal against an employee or an employee's designated representative because of the filing of a grievance. Employees who provide information concerning matters related to grievances are similarly protected. An individual who engages in restrictive activities may be committing a **prohibited personnel practice** which could warrant serious disciplinary action. A grievant has the option of presenting such an allegation to the Office of Special Counsel (OSC).

## 4. Employee Coverage

The following coverage applies to all REE employees:

### Employees covered

All nonbargaining unit REE employees, or former employees for whom personal relief can properly be provided, except as specifically excluded below.

## **Employees excluded**

Noncitizens, aliens, and employees appointed and paid under special and relatively rare authorities not common to the USDA.

Applicants for employment.

Bargaining unit employees covered by a contract except as related to matters specifically excluded from coverage by the negotiated grievance procedure. The agreement must specifically and affirmatively exclude any matters that will not be covered under the negotiated grievance procedure.

## **5. Grievable and Nongrievable Matters**

This section defines what matters are grievable and what matters are not grievable.

### **Grievable Matters**

Except as discussed under Nongrievable Matters, the grievance system is available to resolve matters of concern or dissatisfaction relating to the employment of an individual and under the control of agency management. This includes any matter in which an employee alleges that coercion, reprisal, or retaliation has occurred for using the grievance system.

### **Nongrievable Matters**

This Policies and Procedures issuance does not apply to the following:

- The content of established agency regulations and policies.
- A dispute over a matter for which an employee has an entitlement to file an appeal, grievance, or formal challenge in some other forum. This includes matters that are reviewable by the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the Office of Personnel Management (OPM), the Comptroller General (CG), the Federal Labor Relations Authority (FLRA), or the Federal Mediation Conciliation Service (FMCS).
- Separation of employees serving under Schedule A, Schedule B, or Schedule C appointments (excepted service appointments).
- Failure of an agency to select an employee for promotion from a group of properly ranked and certified candidates, or failure to grant a noncompetitive promotion.

- Separation or termination of an employee for unsatisfactory performance or misconduct during a probationary or trial period.
- A notice of proposed action which, if effected, would be covered under the grievance system or excluded from coverage as a matter appealable or reviewable by EEOC, MSPB, OPM, CG, FLRA, or FMCS.
- An action which terminates a temporary or term promotion and which returns the employee to the position from which the employee was temporarily promoted or to a similar position at the same grade where the employee was informed in advance that the promotion is only temporary.
- The return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to complete the supervisory or managerial probationary period satisfactorily.
- Senior Executive Service (SES) performance-based actions such as performance evaluations or the return of an SES career appointee to the General Schedule or another pay system during the 1-year probationary period.
- The content or substance of performance elements and standards established by an agency for an employee's position.
- Nonreceipt of an award or the amount of an award.
- A decision to grant or deny an SES pay rate increase.
- Failure to grant a recruitment, retention, or relocation bonus.
- Establishment of a Performance Improvement Plan following an unacceptable rating.
- The issuance of a letter of caution or counseling.
- A disputed action that is filed in another forum first shall be considered an election to proceed in that forum.

## **6. Representation**

An employee has a right to be represented at any stage of a grievance by a personally chosen representative. The grievant must designate his or her chosen representative in writing, providing the representative's name, complete mailing address, and telephone number. A designated representative must be willing to represent the employee and must be available to do

so. An agency may disallow a representative if the agency determines that the representative would:

- be in a position which is a conflict-of-interest,
- be required to perform other priority work for the agency, or
- give rise to unreasonable delays in the processing of the grievance and/or unreasonable costs to the agency.

Agency officials must communicate the disallowance of a representative to the employee in writing along with notification that the employee may request that the decision to disallow a representative will be reviewed by the Director, Appeals and Grievances Staff (AGS), Office of Human Resources Management (OHRM), USDA, if the employee files a written request within 10 days. The Director, AGS, OHRM, USDA, will make a final decision regarding the disallowance of an employee's choice of representative before the merits of the grievance are considered.

## **7. Official Time**

Employees and their representatives, if employees of USDA and in active duty status, are entitled to a reasonable amount of official time to present a grievance. Arrangements for use of official time must be made with the appropriate supervisor(s) prior to presentation. The time allowed will depend on the facts and circumstances of each case.

Presentation of a grievance does not include compilation of facts or preparation of written documents, and no official time will be allowed for such purposes.

## **8. Informal Resolution**

Employees must first seek informal resolution of a grievance except when the agency head has been substantially involved in the matter leading to the grievance or when the grievance is in response to a disciplinary action (suspension of 14 days or less).

The Cooperative Resolution Program (CRP) is available to help resolve disputes quickly at the earliest possible stage. CRP is a voluntary program that uses mediation to provide an opportunity to be heard and to facilitate resolution of a dispute in a manner satisfactory to all involved. Any employee, supervisor, or manager can request mediation if they face an issue or concern that needs to be resolved. Participation in CRP is voluntary and confidential.

## 9. Grievance Procedures

### Informal Grievance

Employees must submit an informal grievance within 15 days of the act or occurrence that is the basis of the grievance or within 15 days of the date the employee became aware of the act or occurrence.

The grievance must:

- be submitted in writing,
- clearly indicate that it is a grievance,
- clearly describe the matter(s) being grieved, and
- specify the personal relief or corrective action being sought.

An informal grievance must be filed at the lowest level within the agency with authority to grant the relief or corrective action sought. Generally, this will be the employee's immediate supervisor. If the individual who receives the grievance does not have the authority to resolve the grievance, that official must forward the grievance to the official who has the authority to do so. The official attempting to resolve the informal grievance becomes the Informal Deciding Official (IDO) who attempts resolution within 30 days through corrective action, clarification, or other adjustments. The IDO responds to the grievance in writing.

If the informal grievance is resolved, the IDO issues a memorandum to the employee which:

- outlines the issues in the grievance,
- describes the resolution that was reached, and
- contains the employee's signature acknowledging that their grievance is resolved.

If the informal grievance is not resolved to the grievant's satisfaction, the IDO issues a memorandum to the employee which:

- outlines the issues in the grievance and the efforts made to resolve them;
- informs the grievant of the attempted resolution;
- advises the employee that a **formal** grievance may be filed, identifies the official with whom it must be filed, and specifies the 15-day time limit to file a formal grievance;



- advises the employee that if the agency has not completed processing the grievance within 90 days of the initiation of the informal grievance, the employee may forward the grievance directly to the Director, AGS, OHRM, USDA; and
- is delivered with proof of the date of delivery (i.e., either by having the employee sign for receipt, by certified mail, or by copy of FedEx tracking report).

The informal procedure will be waived and a formal grievance may be filed when:

- the Administrator has been substantively involved in the matter with which the grievance is concerned,
- the matter being grieved is an Official Reprimand or a suspension of 14 days or less, or
- The IDO fails to notify the grievant of attempted resolution after 30 days.

## **Formal Grievance**

Employees who wish to proceed with a formal grievance must file it with the Designated Official (DO) within the 15-day time limit specified in the memorandum terminating the informal grievance or within 15 days of the effective date of a disciplinary action. Requests for extensions of time limits must be addressed to the DO.

The formal grievance must:

- be in writing;
- include the grievant's name, position, title, grade, organizational unit, and location;
- include the grievant's designation of a representative, if applicable;
- be signed by the employee or a designated representative;
- identify the matter(s) still unresolved;
- specify the personal relief being sought; and
- explain why the proposed resolution at the informal level was not acceptable.

The formal grievance may not concern any matter that was not presented as part of the informal grievance, except for allegation of reprisal for filing the informal grievance.

The DO will either accept or reject the grievance.

If the grievance is accepted, the DO will make whatever inquiries are necessary to obtain sufficient facts to fairly adjudicate the matter(s) being grieved. The DO will issue a proposed disposition within 90 days from the initiation of the informal grievance that advises the employee of the following:

- the agency's position on the grievance matter(s) and whether any corrective action will be implemented;
- the right to request a final decision by the agency administrator, with or without review by a departmental Factfinder (Grievance Examiner);
- the 15-day time limit within which to request a final agency decision;
- the agency's intention to close the grievance without further action, if the employee does not submit a request for a final agency decision within the 15-day time limit (in such an event, the proposed disposition becomes the agency's final decision); and
- that a copy of the grievance file is attached for the grievant's review.

If the grievance is rejected, the DO must inform the employee in writing of the reason(s) for the rejection and that the rejection may be appealed to the Director, AGS, OHRM, USDA, within 10 days of receipt of the rejection notice. If appealed, the Director, AGS, OHRM, USDA, will review the rejection and either uphold the rejection or remand the grievance to the agency for consideration.

Grievances can be rejected if they:

- are filed untimely,
- concern a matter excluded from coverage,
- are filed by employees excluded from coverage,
- concern a matter over which the DO has no control,
- do not conform to the filing requirements of a formal grievance, or
- fail to request personal relief.

## **10. Final Agency Decision**

If an employee does not agree with the proposed disposition of the DO, the employee may request a final agency decision within 15 days of receiving the proposed disposition.

The request must:

- indicate the issue(s) over which disagreement remains,

- include any and all evidence to support the continued request for personal relief, and
- state whether further review and a recommendation by a Factfinder (Grievance Examiner) is requested.

The Agency Deciding Official is the Administrator of the agency, except where that individual has had prior substantive involvement with any aspect of the grievance. In such a situation, the final decision must be made by a higher-level official.

If a final agency decision is requested, without a Factfinder, the Agency Administrator will review the grievance file and consider additional arguments. Within 60 days of receiving the formal grievance, the agency administrator will issue the employee a written decision which will be the final agency decision on the grievance.

If a Factfinder is requested, the agency administrator, with assistance from the ARS, Employee Relations Branch (ERB), will forward the grievance file and the employee's request to the Director, AGS, OHRM, USDA.

The Factfinder will conduct appropriate inquiries within the scope of the grievance and prepare a written recommended decision. The recommended decision will be sent to the employee and/or the employee's representative and the agency head or higher level official as appropriate.

After receiving the recommended decision, the Agency Administrator will issue the employee a written decision which may either:

- adopt the recommendation of the Factfinder as the final agency decision on the grievance;
- modify the recommendation of the Factfinder and issue the final agency decision on the grievance; or
- appeal the recommendation to the Director, Office of Human Resources Management (OHRM), USDA, within 20 days of the date of the Factfinder's recommendation in the event that the Agency Administrator cannot accept the recommendation.

The Director, OHRM, USDA, will make the final decision on any referred grievance. There is no further administrative review.

## **11. Time Limits**

The following timeframes have been established to insure that each grievance will be brought to a prompt conclusion. When the complexities of a particular case necessitate departure from these standards, the responsible agency official must advise the grievant of the reason for the delay and the date the grievant may expect action on the grievance to recommence. If the action

does not take place as stated, the grievant may, without jeopardy to the grievance, elevate the case to the next level in the process. In all instances herein, “days” mean calendar days.

<b>Action</b>	<b>By</b>	<b>Time Limit</b>
Informal Grievance Filed	Employee	Within 15 days of the act or occurrence or within 15 days of the date the employee became aware of the act or occurrence.
Resolution Attempted on Informal Grievance	Informal Deciding Official (IDO)	Within 30 days of receiving the informal grievance. Notifies the grievant in writing.
Formal Grievance Filed	Employee	Within 15 days of receiving the notice of the decision on the informal grievance or within 15 days of the effective date of a disciplinary action.
Proposed Disposition on Formal Grievance Issued	Designated Official (DO)	Within 90 days from the date the grievant originally filed the informal grievance. If the grievance is not resolved timely, notifies the employee in writing.*
Final Agency Decision Requested	Employee	Within 15 days of receiving the proposed disposition. The grievant may request a Final Agency Decision with or without a Factfinding.

If a Factfinder is requested:

Request for Factfinding	Agency Administrator	Within 30 days of receiving the request for a Final Agency Decision with Factfinding, a copy of the grievance file along with a request that a Factfinder be appointed is sent to USDA, OHRM, AGS.
Recommended Decision	USDA, OHRM, AGS	Upon completion of the Factfinder’s review, the recommended decision is issued.
Final Agency Decision with Factfinding	Agency Administrator	Within 20 days of the date of the recommended decision, the Administrator will adopt the recommended decision, grant additional relief, or exercise appeal rights.

If a Factfinder is not requested:

Final Agency Decision	Agency Administrator	Within 60 days of receiving the request for a decision from the grievance.
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\* If the 90-day period allowed for processing is exceeded, the grievant may proceed to the next step in the grievance process. However, should the agency official and the grievant jointly agree that additional time is necessary to pursue Cooperative Resolution, additional time will be granted.

## 12. Cancellation

A formal grievance may be canceled at any step of the process if:

- the grievant requests in writing that the grievance be canceled;
- no relief can be provided due to separation of the grievant;
- the grievant fails to provide sufficient detail to identify clearly the matter(s) being grieved or specify the personal relief being sought;
- the grievant requests that disciplinary or other harmful action be taken against another employee;
- the grievant (or designated representative) fails to comply with appropriate timeframes and procedures in the agency's grievance system;
- the grievant previously, or later, files an appeal, complaint, or other formal challenge on the same matter being considered in the grievance; or
- there is any other action or circumstance that results in there being no basis for additional relief or retroactive monetary award.

A cancellation of a grievance must be communicated to the grievant in writing and the grievant must at that time be advised of his or her right to have the decision to cancel reviewed by the Director, AGS, OHRM, USDA.

## 13. Attorney Fees

There are no provisions for payment of attorney fees or other expenses associated with the filing of a grievance to employees or their representatives under the administrative grievance system.

## **14. Delegation of Authority**

This section identifies the agency official with delegated authority to decide on grievances within each REE agency.

### **Informal Deciding Official (IDO)**

For all REE agencies, the IDO is usually the employee's immediate supervisor or the lowest level supervisor with authority to make a decision on the matter being grieved. In cases where the immediate supervisor has been substantially involved in the matters giving rise to the particular grievance, the second level supervisor will usually serve as the IDO.

### **Designated Official (DO)**

For ARS employees in an Area Office, the DO at the formal level is the Area Director. For ARS employees in the National Agricultural Library (NAL), the DO at the formal level is the Director, NAL. For ARS employees in AFM, the DO at the formal level is the Assistant Deputy Administrator for AFM.

For CSREES, the DO at the formal level is the Deputy Administrator. If the Deputy Administrator is the first level supervisor, then the DO must be the next level supervisor above the Deputy Administrator.

For ERS, and NASS, the DO at the formal level is usually the Division Director. If the Division Director is the grievant's first level supervisor, then the DO must be the next level supervisor above the Division Director.

### **Final Agency Decision**

For each REE agency, the final agency decision will be made by the Agency Administrator, with a recommendation from the AGS, OHRM, USDA, unless he or she has been substantially involved in the matter giving rise to the particular grievance. If an Agency Administrator has been substantially involved, then, depending on the level at which the grievance was filed, either the Under Secretary for REE, the Deputy Secretary, or the Secretary issues the final decision.

## **15. Summary of Responsibilities**

### **Employees**

- Comply with appropriate time limits established by the P&P.
- Submit grievances with sufficient detail to identify the matters being grieved and the personal relief sought.

- Cooperate and participate with agency officials to find resolutions to concerns.

### **Informal Deciding Officials (IDO' s)**

- Attempt to resolve informal grievances through corrective action, clarification, or other adjustments within 30 days of receipt of the grievance.
- Notify employees of the termination of informal grievances and the 15-day limit within which to file formal grievances when informal grievances are not resolved.
- Seek assistance from the ERB, HRD, ARS.

### **Designated Officials (DO' s)**

- Accept or reject formal grievances.
- Attempt to resolve formal grievances in a fair and impartial manner.
- Issue proposed dispositions of formal grievances within 90 days of initiation of informal grievances and notify employees of the 15-day limit within which to request final agency decisions.
- Seek assistance from the ERB, HRD, ARS.

### **Agency Administrators**

- Issue final decisions on formal grievances.
- Request that the designated official forward grievance files to the Director, AGS, OHRM, USDA, when a Factfinder has been requested.

### **Employee Relations Branch**

- Provides guidance to employees and supervisors concerning grievances.
- Assists IDO's, DO's, and Agency Administrators in responding to grievances.
- Maintains the grievance file which will contain, at a minimum, copies of the informal and formal grievances and official responses.

## 16. Glossary

**Appeals and Grievances Staff (AGS).** Staff office within the Office of Human Resources Management (OHRM), USDA, responsible for conducting appropriate inquiries into a grievance and preparing recommended final agency decisions.

**Bargaining Unit Employee.** An employee included in an appropriate exclusive bargaining unit as determined by the FLRA for which a labor organization has been granted exclusive recognition.

**Completion of Processing.** When an agency has either rejected a grievance, canceled a grievance, resolved a matter to the employee's satisfaction, or has issued a written proposed disposition or final decision of a formal grievance.

**Days.** Calendar days. If the last day of a time limit is a nonworkday (holiday or weekend), the deadline is automatically extended to the next workday.

**Designated Official (DO).** The agency official responsible for receiving a formal grievance, deciding whether it should be accepted or rejected, investigating all allegations raised to obtain sufficient facts to attempt to resolve the matter, and issuing a proposed disposition on the grievance.

**Factfinder.** (Also Grievance Examiner) a person appointed by the Director, AGS, OHRM, USDA, to conduct appropriate inquiries into a grievance and to prepare a written recommended decision.

**Grievance.** A request by an employee, or a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management, relating to the employment of the employee(s).

**Grievance Examiner.** See Factfinder.

**Grievance File.** A separate file established by an agency in connection with a grievance and contains all documents (or copies) related to the grievance.

**Informal Deciding Official (IDO).** Usually the immediate supervisor or the lowest level supervisor who has authority to make a decision on the matter being grieved at the informal level.

**Personal Relief.** A specific remedy requested by the grievant on an employment-related dispute. The requested remedy must benefit the grievant personally and may not include an action affecting another employee of the agency. Failure to request personal relief is grounds for rejection of the grievance.

**Proposed Disposition.** Issued by the DO, the agency's position on the matter being grieved and whether any corrective action will be implemented. The proposed disposition will become the



final agency decision, unless the grievant requests that the grievance be reviewed by a Departmental Factfinder or requests a final decision by the agency head without review by a Factfinder.

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