

Major Functional Series 400: Personnel
ADS Chapter 490 - AGENCY ADMINISTRATIVE GRIEVANCE PROCEDURE

Table of Contents

<u>490.1</u>	<u>Authority</u>	<u>2</u>
<u>490.2</u>	<u>Objective</u>	<u>2</u>
<u>490.3</u>	<u>Responsibility</u>	<u>2</u>
<u>490.4</u>	<u>Definitions</u>	<u>3</u>
<u>490.5</u>	<u>POLICY</u>	<u>3</u>
<u>490.5.1</u>	<u>GRIEVANCE PROCEDURE</u>	<u>3</u>
<u>E490.5.1</u>	<u>Grievance Procedure</u>	<u>3</u>
<u>490.5.2</u>	<u>GRIEVANCE COVERAGE</u>	<u>4</u>
<u>E490.5.2</u>	<u>Grievance Coverage</u>	<u>4</u>
<u>490.5.2a</u>	<u>MATTERS EXCLUDED</u>	<u>4</u>
<u>E490.5.2a</u>	<u>Matters Excluded - N/A</u>	<u>6</u>
<u>490.5.3</u>	<u>RIGHTS OF THE GRIEVANT</u>	<u>6</u>
<u>E490.5.3</u>	<u>Rights of the Grievant</u>	<u>6</u>
<u>490.5.4</u>	<u>RIGHTS OF THE REPRESENTATIVE</u>	<u>6</u>
<u>E490.5.4</u>	<u>Rights of the Representative</u>	<u>6</u>
<u>490.5.5</u>	<u>GRIEVANCE PROCESS</u>	<u>6</u>
<u>E490.5.5</u>	<u>Grievance Process</u>	<u>6</u>
<u>E490.5.5a</u>	<u>Informal Procedure</u>	<u>7</u>
<u>E490.5.5b</u>	<u>Formal Procedure</u>	<u>7</u>
<u>E490.5.5</u>	<u>Fact-finding</u>	<u>8</u>
<u>E490.5.5d</u>	<u>Final Agency Decision</u>	<u>9</u>
<u>E490.5.5e</u>	<u>Cancellation of a Grievance</u>	<u>9</u>
<u>490.6</u>	<u>Supplementary Reference</u>	<u>9</u>
<u>490.7</u>	<u>Mandatory Reference</u>	<u>9</u>

(THIS ADS CHAPTER REPLACES HANDBOOK 29, CHAPTER 3 IN ITS ENTIRETY)

Major Functional Series 400: Personnel

ADS Chapter 490 - AGENCY ADMINISTRATIVE GRIEVANCE PROCEDURE

490.1 Authority

1. [5 CFR 771](#)
2. [5 USC 2302](#), [3301](#), [3302](#), 7302
3. [EO 9830](#)
4. [3 CFR 2945-2948](#)
5. [EO 11222](#)
6. [3 CFR 1964-1969](#)

490.2 Objective

This chapter states the policy and procedures regarding the Agency's grievance system. The grievance system covers all Civil Service (CS) and Administratively Determined (AD) employees who are not members of a bargaining unit represented by an exclusive representative.

This chapter establishes a procedure for processing and resolving individual grievances.

490.3 Responsibility

1. The Chief, Bureau for Management, Office of Human Resources, Labor and Employee Relations Branch (M/HR/LERPM/LER) is responsible for:
 - a. Providing advice and assistance to USAID managers as requested;
 - b. Investigating and preparing written grievance decisions;
 - c. Being the Decision Officer (Chief, M/HR/LERPM/LER) on all grievances;
 - d. Staffing support to the fact-finder, as needed;
 - e. Assuring that time limits on filings and decision issuances are observed; and
 - f. Custody of grievance files.
2. The supervisor or delegated person is responsible for:

- a. Meeting with the grievant and ascertaining the facts of the grievance;
 - b. Seeking advice, as necessary, from M/HR/LERPM/LER or other appropriate office; and
 - c. Responding to the grievance within the time limits.
3. The grievant and representative are responsible for complying with three requirements in the presentation of a grievance:
- a. To comply with appropriate time limits established by the Agency;
 - b. To furnish sufficient detail to clearly identify the matter being grieved; and
 - c. To specify the personal relief being requested.

490.4 Definitions (See [ADS GLOSSARY](#))

DECISION OFFICER
FACT-FINDER
GRIEVANCE
GRIEVANCE FILE
GRIEVANT
PERSONAL RELIEF
RESPONSIBLE OFFICIAL

490.5 POLICY

The statements contained within the .5 section of this ADS chapter are the official Agency policies and corresponding essential procedures.

490.5.1 GRIEVANCE PROCEDURE

The Agency recognizes that dissatisfaction and disagreements may arise among its employees in any work situation. The Agency encourages prompt and informal settlement of these matters at the lowest possible supervisory level. USAID has established a procedure to permit resolution of formal grievances in a timely and equitable manner when informal efforts are unsuccessful. An employee who files a grievance will be free from restraint, coercion, discrimination, or reprisal.

E490.5.1 Grievance Procedure - N/A

490.5.2 GRIEVANCE COVERAGE

Except as provided in ADS 490.5.2a, the grievance procedure applies to any matter of concern or dissatisfaction relating to the employment of an employee which is subject to the control of Agency management, including any matter in which an employee alleges that coercion, reprisal, or retaliation was practiced against the employee.

E490.5.2 Grievance Coverage - N/A

490.5.2a MATTERS EXCLUDED

The grievance procedure does not apply to the following exclusions:

- 1) The content of published Agency regulations and policies;
- 2) A decision that is appealable to the Merit Systems Protection Board or subject to final administrative review by the Office of Personnel Management or the Equal Employment Opportunity Commission under law or regulations of the Office or Commission;
- 3) Non-selection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion;
- 4) A preliminary warning or notice of an action that, if effected, is covered under the grievance system or excluded from coverage;
- 5) A return of a Senior Executive Service (SES) career appointee to the General Schedule or another pay system during the one year period of probation or for unsuccessful executive performance under 5 USC Section 3592 (**See Mandatory Reference, [5 USC 3592](#)**);
- 6) A reassignment of a SES appointee following the appointee's receipt of an unsatisfactory rating under 5 USC Section 4314 (**See Mandatory Reference, [5 USC 4314](#)**);
- 7) The termination under 5 USC subpart D of part 359 of a SES career appointee during probation for unsatisfactory performance.
- 8) An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee that:
 - a. assigns the employee from one geographic location to another; or

b. returns the employee from an overseas assignment;

9) An action that terminates a temporary promotion within a maximum period of two years and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;

10) An action that terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay;

11) The substance of the critical elements and performance standards of an employee's position which were established in accordance with the requirements of Subchapter 1 of 5 USC 43, and Part 430 (**See Mandatory Reference, [5 USC 43, Subchapter 1](#)**);

12) The granting of or failure to grant an employee a performance award or the adoption or failure to adopt an employee suggestion or invention, under 5 USC 4503-4505, or the granting of or failure to grant an award of the rank of meritorious or distinguished executive under 5 USC 4507 (**See Mandatory Reference, [5 USC 4507](#)**);

13) The receipt of or failure to receive a performance award or a quality salary increase;

14) The termination under of 5 USC 315, subpart H of a probationer for unsatisfactory performance. (See Mandatory Reference, 5 USC 315);

15) A performance evaluation under Title 5, USC, Chapter 43, Subchapter II (**See Mandatory Reference, [5 USC 43](#)**);

16) The return of an employee from an initial appointment as a supervisor or manager to a non-supervisory or non-managerial position for failure to satisfactorily complete the probationary period under section 3321(a)(2) of USC 5 USC 315 and Subpart I of USC 315. (See Mandatory Reference, 5 USC 315); and

17) A separation action not excluded by ADS 490.5.2a(1) through 2a(16).

E490.5.2a Matters Excluded - N/A

490.5.3 RIGHTS OF THE GRIEVANT

The grievant shall be free from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance and may be accompanied, represented, and advised by a representative of grievant's own choice. The grievant must be allowed a reasonable amount of official time to present the grievance and have the right to communicate with the servicing personnel office or a counselor.

E490.5.3 Rights of the Grievant - N/A

490.5.4 RIGHTS OF THE REPRESENTATIVE

It is acceptable for any employee to represent a grievant, unless the Agency determines that the grievant's choice involves any of the following negative results:

- a) A conflict of interest or position;
- b) A conflict with the Agency's priority needs; or
- c) Unreasonable cost to the Government.

The grievant's representative shall be free from restraint, interference, coercion, discrimination, or reprisal and must be allowed a reasonable amount of time to present the grievance if in a duty status.

E490.5.4 Rights of the Representative - N/A

490.5.5 GRIEVANCE PROCESS

Management and employees are encouraged to resolve grievances at the lowest possible management level in the shortest possible time. A grievance submitted to a supervisor or responsible official using the informal procedure cannot be rejected by them for any reason. The grievance must be considered and acted upon in a timely manner.

E490.5.5 Grievance Process

- a) An employee must follow the informal and formal grievance procedures described in this section. Employees are encouraged to

resolve any grievance matter by initially discussing the problem with their immediate supervisor or responsible official. The responsible official is defined as any appropriate official having immediate jurisdiction over the matter being grieved.

b) If the employee believes that there is reason for taking the grievance to a person or office other than the responsible official, including the immediate supervisor, the employee has the right to seek advice from any of the following units or officials.

1. The Bureau for Management, Office of Human Resources, Labor and Employee Relations Branch (M/HR/LERPM).
2. Office of Equal Opportunity Programs (EOP) or any Equal Opportunity Officer or Counselor designated by the Director of EOP.
3. Supervisory or Management Official who is of higher rank than the employee's immediate supervisor. The Agency shall give each grievance full, impartial, and prompt consideration and shall require that decisions be issued within the established time limits.

E490.5.5a Informal Procedure

- 1) An employee may present a grievance either orally or in writing.
- 2) An employee may present a grievance concerning a continuing practice or condition at any time.
- 3) An employee must present a grievance concerning a particular act or occurrence within 20 days of the date of the act or occurrence or the date that the employee became aware of that act or occurrence. M/HR/LERPM/LER may extend the time limit for good cause shown by the employee.
- 4) If the supervisor or responsible official cannot resolve the grievance matter satisfactorily within 10 days from the date of the employee's presentation, the supervisor or responsible official will write a memorandum to the employee, including a summary of the grievance, consideration given to it, and the course of action decided on or conclusions reached. The supervisor or responsible official informs the grievant regarding the grievant's right to present the grievance to M/HR/LERPM/LER if the decision is not satisfactory to the grievant.

E490.5.5b Formal Procedure

- 1) An employee may submit a grievance to M/HR/LERPM/LER for Agency review within ten days after receiving the informal decision.
- 2) M/HR/LERPM acknowledges receipt of the grievance and will provide a date by which a decision shall be provided. M/HR/LERPM/LER may waive the processing of a grievance through the informal procedure if a matter is not appropriate to that procedure.
- 3) The grievance must be in writing, include sufficient detail so as to clearly identify the matter being grieved, and specify the personal relief being requested.
- 4) The Bureau for Management, Office of Human Resources, Labor and Employee Relations Branch (M/HR/LERPM/LER) shall determine whether the grievance is timely filed, and properly pursued through the informal procedures.
- 5) The Decision Officer, normally the Chief, M/HR/LERPM/LER, ensures that an investigation is conducted by the M/HR/LERPM/LER staff and that the grievant is provided a written decision within ninety days. Alternatively, if the Decision Officer determines that fact-finding is the appropriate method for inquiry, a fact-finder must be named from within or outside USAID who must submit a report of findings and recommendations. After a review of the report and recommendations, the Decision Officer will provide the grievant with a written decision within 90 days.

E490.5.5 Fact-finding

- 1) The fact-finder conducts an inquiry which consists of securing documentary evidence, personal interviews, a group meeting, a hearing (if approved by the Decision Officer), or a combination of the above.
- 2) The fact-finder establishes a grievance file which contains all documents related to the grievance, including but not limited to any statements of witnesses, records, or copies of reports, the report of the hearing, if one is held, and statements made by the parties to the grievance.
- 3) All documentation in the grievance file is made available to the grievant and the representative for review and comment. Their comments, if any, must be included in the file.
- 4) The fact-finder submits the report of findings and recommendations along with the grievance file to the Decision Officer.

5) The Decision Officer reviews the report and file and may accept, reject, or modify the recommendations of the fact-finder. The decision will be provided to the grievant, and a copy placed in the grievance file.

6) No further appeal of the grievance is available to the grievant.

E490.5.5d Final Agency Decision

Receipt of a written decision processed through the formal procedures constitutes the final Agency Review. No further appeal is available to the grievant regarding the decision.

E490.5.5e Cancellation of a Grievance

The employee may request cancellation of the grievance at any stage of the procedure.

In addition to the employee's right to request cancellation of a grievance matter after submitting it, it is possible for the Agency to cancel a grievance under the following circumstances:

- 1) If the employee, terminates employment with USAID, unless the grievance concerns relief which may be granted after termination of employment;
- 2) If the employee dies, unless a question of pay is involved; or
- 3) For failure to pursue, if the employee fails to furnish required information.

490.6 Supplementary Reference - N/A

490.7 Mandatory Reference - N/A

[5 USC 43](#)

5 USC 315

[5 USC 3592](#)

[5 USC 4314](#)

[5 USC 4503 - 4505](#)

[5 USC 4507](#)