

DRAFT

ADMINISTRATIVE GRIEVANCE SYSTEM

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ADMINISTRATIVE GRIEVANCE SYSTEM

1. PURPOSE

The purpose of this section is to set forth Farm Services Agency (FSA), Rural Development (RD), Natural Resources Conservation Service (NRCS) and the Support Services Bureau (SSB) procedures for filing and consideration of employee grievances. This system gives employees an opportunity to present grievances and to seek a resolution. It incorporates and supplements Chapter 771 of the Department Personnel Manual (DPM).

2. DELEGATIONS OF AUTHORITY

Authority to resolve a grievance is delegated to the lowest level individual who can make a decision on the matter being resolved.

3. ADMINISTRATIVE GRIEVANCE COVERAGE

The following describes the employees and the subject matter covered by these procedures.

- a. Employees covered. This grievance system applies to all non-bargaining unit employees of the FSA, RD, NRCS, and the SSB and to all bargaining unit employees not covered by a negotiated grievance

procedure.

- b. Employees excluded from coverage. This grievance system excludes from coverage all applicants for employment; all bargaining unit employees covered by a contract; and all members of the Foreign Service of the United States covered under the Foreign Service Grievance System as defined by the Foreign Service Act of 1980.
- c. Subject matter covered. The administrative grievance system applies to any matter of concern or dissatisfaction relating to the employment of an employee that is subject to the control of management, including but not limited to:
 - (1) Improper application of or failure to follow rules and regulations.
 - (2) Prohibited Personnel Practices except discrimination based on race, religion, national origin, etc., (covered by the EEO complaint system).
 - (3) Performance appraisals.
 - (4) Nonselection for training.
 - (5) Suspension from duty without pay for fourteen (14) calendar days or less and letters of reprimand.
 - (6) Changes in assignments, including details and reassignments.
 - (7) Allegations of partisan political discrimination.
- d. Subject matter not covered. The administrative grievance system does not apply to:
 - (1) Separation of employees serving under Schedule A, Schedule B, or Schedule C appointments.
 - (2) The content of published Agency procedures and policy.
 - (3) Matters appealable to the Equal Employment Opportunity Commission, Merit Systems Protection Board, Office of Personnel Management, the Federal Labor Relations Authority, or the Comptroller General. Such decisions include:
 - (a) Adverse action, except suspension of 14 days or less.

- (b) Level-of-competence decision.
 - (c) Separation of a probationary employee
 - (d) Position classification action.
 - (e) Allegation or complaint of discrimination or sexual harassment.
 - (f) Reduction-in-force action.
 - (g) Violation of reemployment priority rights.
 - (h) Violation of reemployment or reinstatement rights.
 - (i) Violation of military restoration rights.
 - (j) Salary-retention decision.
 - (k) Fitness-for-duty examination.
 - (l) Life insurance decision.
 - (m) Health benefits decision.
- (4) Nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.
- (5) A preliminary warning notice of an action which, if effected, would be covered or excluded from coverage under the grievance system.
- (6) An action that terminates a temporary or term promotion, and returns the employee to the position from which the employee was temporarily promoted, or to a different position (not lower in grade) where the employee is informed in advance that the promotion is only temporary.
- (7) Return of an officer or employee from the Senior Executive Service to the General Schedule during the one (1) year period of probation or for less than fully successful executive performance.
- (8) The substance of the critical elements and standards of an employee's position.

- (9) Performance appraisal of a member of the Senior Executive Service, per 5 USC 4312(d).
- (10) Return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period.
- (11) Termination of a probationer for unsatisfactory performance or misconduct.
- (12) Reassignment of a SES employee after the employee receives an unsatisfactory rating.
- (13) Granting or failure to grant an employee performance award or the adoption or failure to adopt an employee suggestion.
- (14) Receipt or failure to receive a performance award or a quality salary increase.
- (15) The termination of a SES career appointee during probation for unsatisfactory performance.
- (16) An action taken according to the terms of a formal agreement voluntarily entered into by an employee that does either of the following:
 - (a) Assigns the employee from one geographical assignment to another.
 - (b) Returns an employee from an overseas assignment.
- (17) A salary offset determination that is reviewed under separate procedures under the Debt Collection Act of 1982, Pub.L. 97-365.

1. DEFINITIONS

Specialized terms applicable to the Administrative Grievance System are defined as follows:

- a. 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.

- b. Factfinder or Agency grievance examiner. A person appointed to conduct appropriate inquiry into a formal grievance and recommend a decision on the issue(s) of the grievance.
- c. Bargaining Unit Employee. An employee included in an appropriate exclusive bargaining unit as determined by the Federal Labor Relations Authority for which a labor organization has been granted exclusive recognition.
- d. Personal Relief. A specific remedy directly benefiting the grievant(s). A request for disciplinary action against another employee is not a request for personal relief. Failure to request personal relief in a grievance may be grounds for rejection of the grievance.
- e. Grievance File. A file established expressly for the purpose of creating and preserving a record of all documents and evidence pertinent to a grievance. This includes, but is not limited to, letters and memoranda generated by the person filing the grievance and by the involved supervisors, statements of witnesses and official records and documents upon which the proposed and final dispositions of the grievance are based. The grievance file may not contain any document or item not made available to the grievant for review prior to a final decision on the grievance.

5. GENERAL PROCESSING REQUIREMENTS

- a. Employees are entitled to be accompanied, represented, and advised at any stage of a grievance by a representative of their choice. The representative chosen by an employee may be disallowed if the representative:
 - (1) Has a conflict of interest or conflict of position.
 - (2) Is required for other work to meet priority needs of the Agency.
 - (3) Would create unreasonable costs for the Government.

An employee may request review of any disallowance of a representative by the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA, who will make a final decision in the matter. This review should be requested within seven (7) days of the disallowance.

- b. The grieving employee and his or her representative shall be granted a reasonable amount of official time, not to exceed eight (8)

hours, to prepare and present the grievance. The reasonable amount of official time shall be determined at the discretion of the employee's supervisor.

- c. Grievants and their representatives shall be free from restraint, coercion, intimidation, or reprisal. At the grievant's option, allegations of such actions may be added to the grievance or presented for review to the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA. These regulations apply with equal force after a grievance has been adjudicated.
- d. Nothing shall prohibit reasonable attempts by managers to resolve, at a time, a grievance that is being processed. Informal resolutions are encouraged at any stage of the system. The employee may withdraw the formal grievance, at any time, for any reason by notifying in writing the official who is considering the grievance. Any successful resolution or withdrawal of the grievance shall be in writing and communicated to the official who is then considering the grievance.
- e. EEO Complaints, MSPB, Federal Labor Relations Authority, or OPM Appeals.
 - (1) To avoid dual processing, a dispute over a matter for which an employee has an entitlement to file an appeal, grievance, or formal challenge in some other forum will be rejected under the Administrative Grievance System for that aspect of a matter.
 - (2) The official considering the formal grievance shall inform the grievant that the grievance is rejected and return the grievance to the grievant.
- a. Cancellation.
 - (1) A formal grievance may be cancelled at any step of the grievance process by the considering official if:
 - (a) No relief can be granted because of the separation of the grievant.
 - (b) The relief requested by the grievant is granted.
 - (c) The matter is raised in another

forum in addition to the Administrative Grievance System.

- (2) The cancellation of a grievance must:
- (a) Be communicated to the grievant in writing.
 - (b) Advise the grievant of the right to have the cancellation reviewed by the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA.
- a. Freedom from Reprisal. Grievants and their representatives shall be free from restraint, coercion, intimidation or reprisal in presenting a grievance.
- (1) Allegations of these actions may, at the option of the grievant, be handled according to either of the following:
 - (a) Added immediately to the grievance being presented for review.
 - (b) Submitted directly to the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA.
 - (1) These regulations apply with equal force after a grievance is adjudicated.
- a. Attorney Fees. Employees may request payment of attorney fees in cases where back pay is awarded and the employee's representative otherwise meets the requirements for attorney fees as provided in part 550 of Title 5 of the Code of Federal Regulations. Fees are not payable under any other circumstances.

6. INFORMAL GRIEVANCE PROCEDURE

- a. Procedure. An employee, who has a grievance, shall present the matter as an informal grievance to the lowest level individual who can make a decision on the matter being grieved. If this individual is unknown to the employee, the grievance shall be submitted to the employee's immediate supervisor.
- b. Form. An informal grievance may be presented either orally or

in writing. A written explanation should not be required from the employee. However, in presenting a grievance, **it is the employee's responsibility to identify the matter of concern, the corrective action sought, clearly identify that he or she is initiating the grievance process.**

- c. Time Limit for Presentation. An employee shall present an informal grievance within fifteen (15) calendar days after either of the following:
- (1) The date of the act or occurrence that is the basis for the grievance.
 - (2) The date he or she became aware of the act or occurrence.
- a. Waiver of Informal Process. The informal grievance procedure shall be waived and a formal grievance may be filed in the case of a suspension of fourteen (14) days or less. In this situation, an employee may file a formal grievance within fifteen (15) days of the effective date of the suspension.
- e. Resolution.
- (1) The individual receiving the informal grievance shall determine whether he or she has the authority to resolve the grievance. If the individual does not have the authority to resolve the grievance, the individual shall forward the grievance to the proper level where the grievance can be resolved and inform the grievant of this action.
 - (2) The official who has the authority to resolve the informal grievance shall make a determination as to whether it is possible to resolve the informal grievance through corrective action, clarification, or other adjustments.
 - (3) If the informal grievance cannot be resolved according to subparagraph (2), the official who is considering the grievance shall prepare a memorandum to the grievant that includes:
 - (a) The grievance issues.
 - (b) The attempts to resolve the grievance issues.

- (c) The termination of the informal grievance process.
 - (d) The right to file a formal grievance.
 - (e) That a formal grievance may be filed with the supervisor of the official who considered the informal grievance (second level supervisor).
 - (f) The ten (10) calendar-day time limit in which a formal grievance should be filed.
 - (g) That the grievant may elevate the grievance to the Director, Appeals and Grievances Staff, Office of Human Resources Management, if the grievance action is not completed within 90 calendar days after initiating the informal grievance.
- (1) The informal process must be completed by issuing a memorandum or resolution of the grievance within twenty (20) calendar days after its initial presentation. If this deadline is not met, the employee may file a formal grievance.
 - (2) The informal grievance should be addressed whether or not it is presented within the time limit, although it may be rejected as a formal grievance, if filed.

7. FORMAL GRIEVANCE PROCEDURE

a. Filing and Acceptance.

- (1) All formal grievances shall be filed by submitting the grievance to the supervisor of the official who considered the informal grievance (second level supervisor).
- (2) The second level supervisor shall inform the employee of acceptance of the formal grievance or reject it as:
 - (a) Untimely.
 - (b) A matter excluded from coverage.
 - (c) Not meeting a requirement for processing.

- (d) A matter not presented as a part of the informal grievance, except as specified in subparagraph 5. g.
 - (e) A matter excluded from coverage because it was filed by an employee excluded from coverage.
- (1) The second level supervisor shall send a copy of the formal grievance to the Employee and Labor Relations Branch, within five (5) calendar days after receiving the formal grievance.
 - (2) The grievant shall be allowed to have any rejection of a grievance at this stage to be reviewed by the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA, within seven (7) calendar days after receiving the rejection at the employees request.
- b. Form. A formal grievance must be submitted in writing. To be acceptable as a grievance, it must be signed by the employee or the designated representative; state the subject of the grievance; and specify the corrective action being sought.
- c. Time Limit for Filing. A formal grievance must be filed within ten (10) calendars after receiving either of the following:
- (1) The memorandum closing the informal process.
 - (2) Notification of the ten (10) calendar-day time limit.
- d. Cancellation. A formal grievance may be canceled at any step of the formal process by the person then considering the grievance if no relief can be provided because of:
- (1) Separation of the employee.
 - (2) Granting of other relief.
 - (3) Any other action or circumstance that results in there being no other basis for other retroactive relief or monetary reward.
- b. Grievance Examination. If a grievance is accepted, a representative will be designated to review and attempt to resolve the

grievance. This will normally be a member of the Employee Relations Staff. A proposed disposition will be issued which will:

- (1) Include reasons for any determination on the grievance.
 - (2) Specify what corrective actions, if any, are to be implemented.
 - (3) Notify the grievant of:
 - (a) The right to a final decision by a Departmental factfinder, if the matter has not been resolved to the employee's satisfaction.
 - (b) The ten (10) calendar-day limit to request a final decision.
 - (c) The need to indicate which matters are unresolved, the corrective action being sought, and any additional arguments and evidence the grievant wishes to have considered.
 - (d) New issues that may not be raised as a part of the grievance at this time, except as stated in subparagraph 5. g.
 - (e) The Agency's intention to close out the grievance with no further action if the employee does not submit a request for further review within the allotted timeframe, and that the proposed disposition will become the Department's final decision on the grievance.
 - (f) Upon request the grievant will be provided a copy of any documents in the grievance file, which have not previously been given to him/her.
- b. Grievance File Availability. Upon request all of the material and information, which has not been previously provided to the grievant, on which the proposed disposition is based, shall be provided to the grievant or an authorized representative along with the proposed disposition.
- c. Referral to USDA Factfinder. If the grievance is not resolved to the satisfaction of the employee, the employee may file a request for factfinding within 10 calendar days after receiving the proposed disposition, to the Director, Appeals and Grievances Staff, Office of

Human Resources Management, USDA, for assignment to a factfinder. The referral shall address the merits of an additional arguments or evidence presented by the grievant, certify that the grievant has received a copy of the grievance file, and include an index of the grievance file.

- (1) The notice from the employee indicating that the proposed disposition does not resolve the grievance shall indicate:
 - (a) The matters or issues over which there remains disagreement.
 - (b) Any evidence available to the employee to support the continued request for corrective action.
- b. Appointment of a Factfinder. The Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA, will appoint a factfinder. The factfinder is responsible for conducting any inquiry necessary to resolve any disputes as to facts, and develop sufficient basis on which to recommend a decision. At the discretion of the factfinder, the inquiry may include but is not necessarily limited to any of the following:
 - (1) Review of the records and documents.
 - (2) Personal interviews.
 - (3) Written inquiries.
 - (4) Group meetings.
 - (5) Hearings.
- c. The factfinder will ensure that the employee or designated representative is given an opportunity to review all the information on which a recommended decision will be based and to comment on it. The factfinder will send the grievant and the Agency Head a recommended decision that contains a report of findings of fact; an analysis of the issues; and a recommendation of a decision on the grievance, including a corrective action that may be necessary.
- d. Final Decision. The deciding official on a formal grievance shall be the Agency Head (or his/her designee). The deciding official

may:

- (1) Issue a final decision to the grievant within sixty (60) calendar days after receiving the request for a final decision without review by a factfinder.
 - (2) Accept the factfinder's recommendation as the final decision on the grievance.
 - (3) Grant more relief to the grievant than recommended by the factfinder.
 - (4) Appeal the factfinder's recommendation to the Director, Office of Human Resources Management, USDA, when the recommendation can be shown to be an of the following:
 - (a) Contrary to law, rule, regulation, or published Agency policy.
 - (b) Supported by less than substantial evidence.
 - (c) A precedent of such wide and detrimental impact on the Agency that further review is necessary.
- (1) Appeal to the Director, Office of Human Resources Management, USDA, within fifteen (15) calendar days after the deciding official received the recommended decision.
 - (2) Appeal to the Director, Office of Human Resources Management, USDA, who will render the Department's final decision on the grievance after ensuring that the grievant has had an opportunity to review and comment on the Agency's appeal.
 - (3) Ensure that there are no provisions for further review of the final grievance decision.

6. Time Limits for Decisions on Formal Grievances

- a. The complete processing of a grievance shall not exceed ninety (90) calendar days. The ninety (90) day period begins on the date

that the employee definitely indicates that an informal grievance is being initiated. "Completion of processing" means one of the following:

- (1) Rejection of the grievance.
 - (2) Cancellation of the grievance.
 - (3) Resolution of the grievance to the satisfaction of the grievant.
 - (4) Issuance of a proposed disposition on the grievance that included the employee's rights to request further review by a Departmental factfinder.
- a. If the employee decides that the proposed disposition was not acceptable, he or she may request either of the following within ten (10) calendar days after receiving the proposed disposition.
- (1) A final decision by the Agency Head without factfinding. The Agency Head shall render the final decision.
 - (2) A further review of the grievance by a factfinder. The factfinder's recommended decision shall be issued to the Agency Head.
- a. The Agency Head shall adopt the factfinder's recommended decision, grant additional relief, or exercise the right of appeal to the Director, Office of Human Resources Management, USDA, within fifteen (15) calendar days after the recommended decision.
- b. If the ninety (90) day processing period is exceeded by the Agency, the employee may request that the grievance be assigned to a factfinder by the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA. The factfinder shall:
- (1) Determine the most appropriate method of resolving the grievance.
 - (2) Use mediation or inquiry to make a recommended decision on the grievance.
- a. The Director, Office of Human Resources Management, USDA, will issue a decision on the appeal of a recommended decision.

- b. The decision made by the Agency Head or by the Director, Office of Human Resources Management, USDA, is final.