

U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, DC 20250

<b>DEPARTMENTAL REGULATION</b>	NUMBER: DR 4070-771-001
SUBJECT: Administrative Grievance System	DATE: September 10, 2019
OPI: Office of Human Resources Management	EXPIRATION DATE: September 10, 2024

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1. PURPOSE

This Directive sets forth the USDA’s policy and procedures for the filing, reviewing, and disposition of administrative grievances.

The Administrative Grievance System (AGS) provides a fair, equitable, and timely forum for the internal review and resolution of disputes over employment related matters. An efficient and effective AGS is in the best interests of both the agency and the employee in that it provides a means for the agency to identify and track employee concerns.

2. AUTHORITY

This Departmental Regulation (DR) is issued pursuant to [Title 5, Code of Federal Regulations \(CFR\) Part 771](#), *Agency Administrative Grievance System*.

### 3. SCOPE

This DR applies to all USDA Mission Areas, agency, and staff office employees identified in section 6a below and not excluded by section 6b below.

### 4. SPECIAL INSTRUCTIONS/CANCELLATIONS

- a. This DR supersedes DR 4070-771-001, *Administrative Grievance System*, dated October 6, 2010.
- b. This DR is in effect upon publication and remains in effect until it is superseded or reaches its expiration date.
- c. All Mission Areas, agencies, and staff offices will align their AGS policies and procedures with this DR within 6 months of the publication date.
- d. The term “agency” or phrase “agency and staff office” will be considered to encompass the Mission Areas, agencies, and staff offices of the USDA unless otherwise noted in the document.

### 5. POLICY

The USDA recognizes that disagreements occur in the workplace from time to time and that it is to the benefit of all concerned to resolve these conflicts as promptly and equitably as possible. Accordingly, it is USDA’s policy that administrative grievances be addressed and, whenever possible, resolved at the lowest level of administrative authority and within established timeframes. Agencies and employees are encouraged to consider the use of [DR 4710-001](#), *Alternate Dispute Resolution (ADR)*, to bring about resolution of workplace conflicts.

### 6. GRIEVANCE SYSTEM COVERAGE:

- a. Employees Covered. Except as provided below, the administrative grievance process applies to all USDA employees regardless of the type of appointment held. Coverage also applies to former employees of USDA for whom a remedy can legally be provided and presented by the former employee within the time limits specified by this directive.
- b. Employees Excluded. The following categories of employees are excluded from the AGS: Schedule C employees, bargaining unit employees on matters covered by a negotiated grievance or arbitration procedure, employees covered by the Foreign Service Grievance System, employees within the Office of Inspector General, individuals who hold a Federal appointment but serve without Federal compensation, and reinstatement and transfer eligible employees applying for positions under a merit promotion plan.

- c. Subject Matter Covered. Except as listed in subsection 6d, the AGS applies to any concern or dissatisfaction that is subject to the control of Mission Area, agency, or staff office management, relating to the employment of an employee covered by this directive, and which is not a matter that is pending in any other forum. Examples of covered matters include, but are not limited to: working conditions, improper application of or failure to follow rules and regulations, unfair treatment, performance appraisals, suspension from duty without pay for 14 days or less, letters of reprimand, and reassignments.
- d. Subject Matter Excluded. The following matters are excluded from the AGS:
- (1) The content of published agency regulations and policy may not be grieved; however, the application of an agency regulation or policy to an individual may be grieved.
  - (2) Separation of employees serving under Schedule A, B, or C appointments.
  - (3) Matters within the jurisdiction of:
    - (a) The Equal Employment Opportunity Commission (EEOC), including informal or formal complaints that are or have been raised and adjudicated or which are subject to adjudication within the EEOC administrative system;
    - (b) The Office of Personnel Management (OPM) (such as pay matters);
    - (c) The Merit Systems Protection Board (MSPB), including any adverse action or other claim within the jurisdiction of the MSPB such as removals, suspensions of more than 14 calendar days, reductions in force, demotions, within-grade increase withholding, claims based on service in a branch of the military, or whistleblowing;
    - (d) The Comptroller General;
    - (e) The Federal Labor Relations Administration (FLRA);
    - (f) The Federal Mediation Conciliation Service;
    - (g) The Office of Special Counsel (OSC); or
    - (h) Worker Compensation claims within the jurisdiction of the Department of Labor (DOL).
  - (4) Non-selection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.

- (5) A proposed notice or warning, such as notices of proposed disciplinary action, a letter of caution, or performance improvement plan notice.
- (6) An action terminating a temporary or term appointment, or promotion that returns an employee to their former position or one of an equivalent grade and pay in accordance with provisions made known to the employee before the appointment or promotion.
- (7) A Senior Executive Service (SES) appointee's performance evaluation, an SES appointee's reassignment following receipt of an unsatisfactory rating, the return of an SES career appointee to the General Schedule or other pay system during a probationary period or for less than fully successful executive performance, SES recertification decisions, and the termination of an SES career appointee during probation for unacceptable performance.
- (8) The substance of the job elements, performance standards, and work objectives of an employee's position.
- (9) The granting, or failure to grant, an award, rank, pay rate increase, performance bonus, quality step increase, or employee suggestion.
- (10) The separation or termination of a probationary employee based on performance or conduct.
- (11) The return of an employee from an initial appointment as a supervisor to a non-supervisory position for unsatisfactory completion of a supervisory probationary period.
- (12) An action taken in accordance with the terms of a formal agreement entered into by an employee.
- (13) A salary offset determination that is reviewable under separate procedures established pursuant to the *Debt Collection Act*, or other statutes applicable to employee debts to the Government.
- (14) Freedom of Information Act disputes.
- (15) Recruitment and relocation bonuses, retention allowances, supervisory differentials, critical position pay, and waivers of dual compensation restrictions.
- (16) Pay setting decisions, insofar as they are determined by the OPM.
- (17) Allegations of a prohibited personnel practice(s) (PPP) that could be included in a complaint to the OSC or that must first be presented to the OSC as a pre-requisite to MSPB jurisdiction.

(18) Any disputes over the assignment of a performance rating of record.

## 7. GENERAL PROVISIONS

### a. Representation

- (1) At any stage of an administrative grievance, the grievant is entitled to be accompanied and advised by a representative of the grievant's choice. The grievant must notify the agency or staff office in writing of the designation of a representative and any change in that designation.
- (2) A representative may be disallowed if the agency determines that the representation would create a conflict of interest or position, would conflict with priority work of the agency/staff office, or would create unreasonable expenses for the agency/staff office.
- (3) Any disallowance of a representative must be communicated to the grievant in writing and inform the grievant that the agency/staff office decision may be appealed to OHRM within 10 days of the disallowance. A written decision on the appeal will be issued by OHRM.

### b. Official Time

- (1) The grievant and the grievant's designated representative, if they are an employee of the USDA, are entitled to a reasonable amount of official time to present the grievance after requesting and receiving their respective supervisors' approval prior to any use of official time for this purpose.
- (2) An agency's regulations may permit employees to use official time to prepare a grievance. If an agency includes this provision in its regulations, the grievant must obtain advance approval to use official time

### c. Freedom from Reprisal

- (1) Use of the grievance system is a protected activity. Any restraint, interference, duress, coercion, or reprisal against a grievant, or against a grievant's designated representative, or employees who cooperate in a grievance inquiry, may constitute a PPP and will not be tolerated.
- (2) Reprisal includes any action that could dissuade an employee from seeking redress through the AGS, even if such action does not involve a term or condition of employment, a monetary loss, or is otherwise excluded from the AGS.
- (3) Proven coercion, intimidation, duress, restraint, or reprisal in response to grievance activity is a form of misconduct and may subject the offender to disciplinary or adverse action.

- (4) Allegations of reprisal should be made as a part of a pending grievance. Reprisal that occurs prior to submission for review by the grievance examiner should be submitted to the management official designated as the responding official to a formal grievance (or informal grievance if no formal grievance has yet been submitted). Allegations of reprisal raised while the grievance examiner is reviewing the grievance must be submitted directly to the grievance examiner with all supporting evidence and argument. If no grievance is pending, the allegations should be raised as a new grievance.
- d. Alternative Dispute Resolution (ADR)
- (1) The USDA encourages employees to take advantage of available ADR processes aimed at resolving claims, conflicts, disputes, and controversies in a non-adversarial manner. ADR may benefit agency management and employees through effective and mutually satisfactory resolutions of disputes. ADR is designed to decrease time, cost, and other resources expended in resolving disputes. ADR fosters a culture of respect and trust between supervisors and employees; and increases employee morale. Therefore, consistent with Departmental policy promoting ADR, USDA managers and supervisors are encouraged to respond favorably to an employee's request for ADR and cooperating in the ADR process.
  - (2) ADR includes an array of techniques and methods to achieve consensual resolution of disputes, and often involves the assistance of a neutral third party. ADR includes settlement discussions, mediation, facilitation, neutral evaluation, conciliation, and use of an ombudsmen.
  - (3) ADR should be initiated at the earliest stage possible and is available at any time during the grievance process. A request for ADR may be made by the grievant prior to the agency's deadline to issue a final decision on a formal grievance. The request must be made in writing submitted to the grievant's immediate supervisor or other official designated by the agency.
  - (4) A grievant's election to engage in ADR prior to the filing of an informal grievance (or a formal grievance if no informal grievance is required) will suspend the time limits for filing a grievance. A grievant must provide documentation that supports the election to ensure accurate compliance with grievance filing time limits. A request for ADR made after the filing of a formal grievance does not toll the time limits imposed by this directive to conclude the grievance process within 90 days unless the grievant consents to an extension in writing. In the absence of such consent, the agency must timely complete the processing of the Grievance even though ADR is pending and not yet concluded.

e. EEOC Complaints and other Administrative Procedures

- (1) If a grievance raises or includes allegations of prohibited discrimination the agency must notify the grievant in writing that such allegations should be raised in an EEO complaint and cancel the grievance. This notice must inform the grievant of the telephone number or other contact information for an EEO counselor and upon request provide the grievant with the agency's or Department's policies on civil rights.
- (2) Duplicate reviews of the same claims and issues in different forums are not permitted. A grievant makes an irrevocable election to pursue a claim or issue outside of the AGS the same or similar claim or issue is raised in another forum, such as an EEO complaint, an MSPB appeal, or a complaint with the Office of Special Counsel (OSC). In such instances, the agency reviewing the grievance will cancel the grievance pursuant to this directive and it will not be further reviewed.

f. Cancellation

- (1) In addition to any other grounds for cancellation that are specifically identified in this directive, a grievance may be cancelled, in whole or in part, at any step of the process and without review of the merits of the grievance when:
  - (a) The grievant specifically withdraws the grievance or otherwise requests cancellation of the grievance. A "global" settlement agreement entered into by the grievant in an EEO complaint, an MSPB appeal, or any other judicial or administrative proceeding that identifies "grievances" within the scope of its releases is deemed to be a voluntary request for the cancellation of an administrative grievance under this directive.
  - (b) The grievant or matter at issue is not covered by or is excluded from the AGS.
  - (c) The grievant fails to specify the personal relief requested.
  - (d) A deciding official or grievance examiner finds that no relief can be provided because the requested relief or any possible relief would violate a law, regulation, directive, or policy, or because it would not be possible to provide the grievant with the requested relief.
  - (e) The grievant or designated representative fails to comply with appropriate timeframes and procedures.
  - (f) The grievant does not cooperate in the review of the grievance.
  - (g) The grievant filed an EEO complaint or other duplicative action that encompasses the matter(s) at issue in a pending administrative grievance or

raises claims that are alleged to be based on discrimination, harassment, or reprisal within the jurisdiction of the EEOC.

(h) The claim has been rendered moot because of intervening events following the filing of the grievance.

(2) In the event of a cancellation of an informal or formal grievance, the grievant will be notified by the agency in writing of the cancellation and be advised of the right to request OHRM to review the decision. The grievant must present the request for review within 10 days of receipt of the notice of cancellation.

(3) When a grievance is cancelled by OHRM, the cancellation notice will be sent to the agency's office responsible for processing grievances, who in turn must notify the grievant in writing. Cancellation by OHRM is final and other than providing notice to the grievant, no other action may be taken by the employing agency concerning the grievance. Neither the agency nor the grievant may appeal a cancellation of a grievance by OHRM.

g. Attorney Fees

(1) A grievant may request payment of attorney fees only in cases when back pay is specifically awarded and the grievant's representative otherwise meets the requirements for attorney fees provided in 5 CFR Part 550.807 (covering pay administration, back pay).

(2) The Mission Area, agency, or staff office will provide a written decision in response to the grievant's request for attorney fees and advise the grievant that a request for OHRM review of the decision must be filed within 10 days of receipt of the decision.

h. Electronic Delivery of Grievances, Notices, Decisions, and Recommendations

Any grievance, notice, decision, or recommendation required by this directive is presumed timely on the date it is mailed, emailed, or otherwise delivered by the sending party. Any writing required by this directive may be electronically delivered by email and it is presumed to be received by the addressee when transmitted. Delivery by any other method (e.g., U.S. Postal Service, courier, Federal Express, United Parcel Service) will be presumed to be received no later than 5 days after the date it is given to such delivery service unless the sending party provides proof of an earlier receipt by the addressee.

## 8. PROCEDURES

Mission Areas, agencies, and staff offices may structure internal grievance procedures as appropriate, taking into account organizational and geographic considerations. Agency

grievance procedures must incorporate the time limits specified in this directive and the following minimum provisions:

a. Informal Grievance Procedure

- (1) The grievant must present an informal grievance (or a formal grievance if no informal grievance is required) within 15 days of the act or occurrence that is the basis for the grievance or within 15 days of the date that the grievant learned or was placed on notice of the act or occurrence that is the basis for the grievance. A former employee must present an informal grievance (or a formal grievance if no informal grievance is required) within the time limits specified herein and in no case later than 6 months after the separation from service with the USDA.
- (2) In all cases, the grievant has the burden of proving that the informal grievance was timely presented.
- (3) Except as provided below, a grievant must timely present the matter(s) at issue clearly identified as an informal grievance. The presentation must be made in writing, it must identify the claims or other specific matters at issue, it must identify or otherwise include any evidence or argument in support of the informal grievance, and describe the personal relief or remedy requested. The failure to comply with these requirements may be grounds for rejection of a subsequent formal grievance or cancellation of the grievance.
- (4) An informal grievance must be presented to the Grievant's immediate supervisor unless otherwise directed by the Agency. The supervisor will either respond to the grievance or forward it to the proper official in the agency and inform the grievant of this action in writing.
- (5) The official considering the informal grievance will issue a memorandum informing the grievant if it is possible to resolve the informal grievance through corrective action, clarification, or other adjustment. If resolution is not otherwise achieved, or if the grievance is denied in whole or in part on its merits, or cancelled pursuant to this directive, the official will provide the grievant a memorandum or letter which:
  - (a) Outlines the matter(s) at issue in the grievance and the attempts made to resolve them;
  - (b) Informs the grievant that the informal stage has been terminated;
  - (c) Advises the grievant that a formal grievance may be filed;
  - (d) Identifies the official with whom it may be filed; and
  - (e) Specifies the time limit for filing the formal grievance.

The informal grievance procedure is waived when the issues or claims raised in the informal grievance include substantive involvement by the head of the grievant's agency or when the matter being grieved is a disciplinary action (i.e., a letter of reprimand to a 14-day suspension).

b. Formal Grievance Procedure

- (1) The formal grievance must be in writing, signed by the grievant or a designated representative, identify the matters being grieved, and specify the personal relief or remedy sought.
- (2) The formal grievance may not raise any issue, claim, or request any relief that was not presented as part of the informal grievance.
- (3) Agencies and staff offices may determine their own time limits for filing and responding to a formal grievance. However, except as otherwise provided by this directive, the total time for the agency or staff office to complete the processing of a grievance may not exceed 90 days from the time the informal grievance is first presented (or a formal grievance if no informal grievance is required) to the date of the issuance of a decision on the formal Grievance.
- (4) If the agency has not or will not complete the processing of the grievance within 90 days from the date of the filing of the informal grievance (or formal grievance when no informal grievance is required), then the grievant may elect to have the grievance processed as a final decision with a review and recommendation by a grievance examiner appointed by the Director, OHRM, or the Director's designee. In such instances, the agency shall timely notify the grievant of the right elevate the grievance to OHRM. The grievant has 10 days from receipt of such notice to make the request and must do so in writing to the agency. If no notice is given by the agency, the grievant must still make a request to the agency to elevate the grievance to OHRM and must do so within a reasonable time after the expiration of the 90-day processing period. In the event that a grievance is elevated to OHRM because the agency or staff office has not completed processing within 90 days, then the agency shall prepare the grievance file and deliver it to OHRM.
- (5) The grievant must file the formal grievance with the official designated by the agency in the memorandum or letter terminating or otherwise deciding the informal grievance. The formal grievance must be filed within the time limits specified in the memorandum or letter terminating or otherwise deciding the informal grievance or in the agency's grievance regulations, directive, or policy.
- (6) The designated official will either accept the grievance for review or will reject or cancel the grievance in accordance with the provisions of this directive. Any rejection or cancellation of a grievance must contain notification that the decision may be appealed to OHRM within 10 days of receipt of such notice.

- (7) When a designated official accepts the grievance, a review of the evidence presented will be conducted to resolve the matter(s) grieved. If additional evidence is required, an inquiry may be conducted to obtain new facts or documents. The designated official has the authority pursuant to subsection 20c of [DR 4070-735-001](#), *Employee Responsibilities and Conduct*, to request and obtain additional information, documents, and evidence from the grievant or other agency employee(s).
- (8) The failure of the grievant or their representative to provide the additional information or documents may, in the discretion of the designated official, be grounds to cancel or dismiss the grievance or take such other action that may be appropriate based solely on the submitted evidence. In the event that unusual and unforeseen delays have arisen in securing the additional information or documents, and with the written consent of the grievant, the designated official may suspend the 90-day time limit for processing grievances for a specified period not to exceed 30 days.
- (9) The designated official will issue a written decision or cancellation to the grievant and the grievant's representative. The decision or cancellation must advise the grievant as to the agency's findings on the matter(s) grieved, whether any corrective actions will be implemented, and provide the grievant or their representative a copy of the grievance file. The disposition will also notify the grievant and the grievant's representative of the right to request a final decision by the head of the agency or other appropriate official with or without review by a grievance examiner as discussed in subsection 8c below, the time limits, and procedures for requesting a final decision.

c. Final Decision and Grievance Examining

- (1) A grievant who has received a written disposition of a formal grievance will have 10 days to request a final decision by the agency head with or without review, fact finding, and recommendation by a grievance examiner appointed by the Director, OHRM or the Director's designee.
- (2) When a grievant requests a final decision from the agency head with a review by a grievance examiner, the grievant will file the request with the agency as provided by the notice provisions included in the disposition of the formal grievance.
- (3) Upon receipt of a request for review by a grievance examiner, the agency will promptly forward the request for review and a copy of the grievance file to OHRM. The agency transmittal letter must clearly identify the claims or issues presented, list all relevant events and the dates of such events, and address the merits of any additional arguments or evidence presented by the grievant in the request for review.

- (4) The agency or staff office is responsible for preparing a full and complete grievance file for delivery to OHRM and certify that a copy of the entire grievance file has been delivered to the grievant. The grievance file must be well organized and complete. The grievance file must be tabbed, indexed, and dated so that all documents and actions are clearly identified and presented in chronological order.
- (5) The grievance file must include the entire history of the informal and formal grievances and all related documentation and evidence including, but without limitation, copies of the informal and formal grievances, any decision, response, instruction, termination, or cancellation of the informal and the formal grievances, all documentation, decisions, communications and actions related to the grievance process, the entire body of unredacted evidence including any investigation reports, submissions by the grievant, responses to inquiries, and any other documentation relied upon to make a decision in the earlier stages of the grievance process.
- (6) The grievance examiner will conduct an analysis of the entire grievance record. The methods employed to review the grievance and grievance file may, at the grievance examiner's discretion, include, but are not limited to, the review of records, documentation, personal interviews, written inquiries, group meetings, or hearings.
- (7) The grievance examiner may, at the grievance examiner's sole discretion, conduct an inquiry or fact finding to collect any additional information, documents, or other evidence the grievance examiner considers necessary or helpful to resolve factual disputes or sufficiently develop the record.
- (8) The grievance examiner has the authority under section 20c of DR 4070-735-001 to request and obtain additional information and/or documents from the grievant, the agency or any agency employee, including, but not limited to the grievant's supervisors, designated representative, and co-workers, all of whom must promptly and fully comply with any request for additional information, documentation, or evidence. The Mission Area, agency or staff office must issue such instructions or directions to agency employees that are needed to secure complete cooperation and compliance with any request by the grievance examiner.
- (9) The failure of the agency, the grievant, the grievant's representative, or any USDA employee to provide the requested information or documentation may be deemed a violation of DR 4070-735-001, subsection 20c, and may, at the sole discretion of the grievance examiner, be grounds to sustain, cancel, or terminate the grievance or to recommend such other action as may be appropriate including drawing an adverse inference against the non-compliant party.
- (10) The grievance examiner may remand the grievance back to the agency in the event the agency has improperly cancelled or terminated the informal or formal grievance; has failed to completely or properly decide all of the claims, issues, and requests for relief; or if the agency has failed to fully develop the grievance file to a

point upon which a review can reasonably be conducted and a decision properly made. In such instance, the agency must complete its review and issue to the grievant an amended decision or other disposition on the formal grievance as provided by this directive and must do so within 30 days of receipt of the remand notice by the grievance examiner.

(11) Except in cases of a remand, the grievance examiner will prepare a written recommendation that presents an appropriate disposition of the grievance, including any corrective action that may be necessary or appropriate. The recommendation must be supported by the evidence of record and include an analysis of the issues and claims, findings of relevant facts, and when appropriate, conclusions of law. In addition:

- (a) The recommendation by the grievance examiner may be supported by relevant or analogous legal authority including agency policies and directives, statutes, Federal court cases, and opinions and decisions from the EEOC and MSPB.
- (b) A remand or cancellation by the grievance examiner will be sent to the agency's office that is responsible for the processing of administrative grievances.

(12) Except in instances of a remand or cancellation, the grievance examiner will send a written recommended decision on the merits of the grievance to the agency head or other higher-level official, as the grievance examiner deems appropriate. The recommended decision will be issued within 60 days after OHRM's receipt of a complete grievance file. This time limit may be suspended by the grievance examiner when additional evidence has been requested by the grievance examiner or for other good cause or because of circumstances outside the control of the grievance examiner.

d. Final decision without grievance examination

- (1) A final decision must be issued by the head of the agency the grievance was filed with except when the agency head had previous substantive involvement with any matter leading up to the grievance. In that case, a higher-level official within the agency must make the final decision.
- (2) When a grievant requests a final decision from the agency head without review by a grievance examiner, the agency must issue the final decision no later than 60 days from the date the decision is rendered on the formal grievance. The grievant may not appeal the agency's final decision.

e. Final decision with review by a grievance examiner

- (1) When a grievance examiner issues a recommended decision, the head of the agency or other designated official must:

- (a) Issue a final decision to the grievant adopting the recommendation;
  - (b) Issue a final decision to the grievant that grants more relief to the grievant than recommended by the grievance examiner; or
  - (c) Notify the grievant that an appeal to the Director, OHRM has been filed by the agency.
- (2) The final decision must be issued to the grievant and to the grievant's designated representative, if any, within 25 days of the date after receipt of the Grievance Examiner's recommendation. A copy of the final decision must be sent to the grievance examiner.
- (3) Except as otherwise provided by this directive, the agency head may appeal the grievance examiner's recommendation. The appeal must show by clear and convincing evidence that the recommendation is: (a) contrary to law, rule, regulation, or published agency policy; and/or (b) is supported by less than substantial evidence.
- (a) Any appeal must be submitted to the Director, OHRM in writing and delivered within 25 days of receipt of the grievance examiner's recommendation.
  - (b) A copy of the appeal and all supporting documentation and argument must be provided to the grievant and the grievant's representative, if any, with proof of deliver provided to the Director, OHRM. The grievant, and the grievant's representative, will have a reasonable opportunity to review and comment on the agency's appeal.
  - (c) Upon receipt of a timely appeal from the agency, and proof of delivery to the grievant and the grievant's representative, the Director, OHRM will render a final determination on the grievance. The final decision will be rendered within 60 days of receipt of the appeal. There are no provisions for a further review of the final grievance decision by the Director, OHRM by either the agency or the grievant.
- (4) If the agency head fails to issue a decision or fails to file an appeal within the 25-day timeframe, then the recommendation by the grievance examiner will become the final decision. In that event, a copy of the recommendation must be delivered to the grievant by the agency as the final decision and neither the agency nor the grievant may appeal the recommendation since it is final.
- (5) In the event that the agency head issues a final decision accepting the recommendation by the grievance examiner or issues a final decision that provides more relief than what was recommended by the grievance examiner, or if the recommendation by the grievance examiner otherwise becomes the final decision,

then the agency must immediately implement that final decision and provide the grievant with all of the relief provided in the final decision.

- (6) A claim raised by the grievant of noncompliance by the agency may be treated as a claim of reprisal pursuant to the provisions of subsection 7c above, and if proven, the Director, OHRM, may order enforcement.
- (7) A cancellation by the grievance examiner is final and may not be appealed by the grievant and requires no final decision by the agency head.
- (8) A grievant may not appeal the grievance examiner's recommendation or the agency's final decision adopting a recommendation by the grievance examiner.

## 9. ROLES AND RESPONSIBILITIES

### a. Director, OHRM will:

- (1) Provide oversight and administration of the USDA's AGS;
- (2) Develop and interpret USDA policies and standards for the AGS;
- (3) Provide administrative grievance examining services and issue authoritative determinations on all matters associated with the AGS; and
- (4) Review the administrative grievance processing performance of USDA Mission Areas, agencies and staff offices and make recommendations for improvement to appropriate officials.

### b. Mission Area Under Secretaries, Agency Heads and Staff Office Directors will:

- (1) Develop and implement internal procedures to ensure timely and fair consideration of employee administrative grievances;
- (2) Inform employees about the availability of the AGS, answer employee questions regarding their grievance rights, and follow the USDA's AGS;
- (3) Mission Areas, agencies, and staff offices may supplement this directive to meet the particular needs of their organization but may not issue policies or directives that conflict with, expand on, or limit this directive and its procedures. For example, an agency may not recognize or accept a claim that is excluded from the AGS;
- (4) Mission Areas, agencies, and staff offices are required to publish and make available copies of their AGS policies. The means of publication may include agency policy statements, regulations, web pages, pamphlets, or brochures;

- (5) Mission Areas, agencies, and staff offices are encouraged to include their own AGS policies or directives in orientation packets and will post them at work site areas frequently visited by employees and on agency websites;
  - (6) Mission Areas, agencies, and staff offices shall provide copies to employees upon request; and
  - (7) Mission Areas and agency heads, staff office directors, and OHRM, may request advice and assistance from the Office of General Counsel on questions over Federal Employment law, including labor relations.
- c. Grievants must:
- (1) Present all administrative grievances in accordance with this directive or those published by their agency head or staff office director;
  - (2) Raise grievance issues at the lowest management level possible within established timeframes;
  - (3) Cooperate in resolution efforts; and
  - (4) Advise appropriate agency/staff office management officials, in writing, of any designated representative.

-END-

## APPENDIX A

### DEFINITIONS

- a. Agency. Organizational units of the Department, other than staff offices as defined below, whose heads report to officials within the Office of the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and Assistant to the Secretary. (Source: DR 0100-001, *Departmental Directives System*)
- b. Agency head. The head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.
- c. Alternative dispute resolution (ADR). ADR includes an array of non-adversarial methods and techniques employed by mutual agreement of the parties to achieve consensual resolution of disputes, generally with the assistance of a neutral third party. ADR includes, but is not limited to, mediations, facilitated discussions, settlement conferences, and similar techniques.
- d. Bargaining unit employee. An employee included in an exclusive bargaining unit as determined by the Federal labor relations authority for which a labor organization has been granted exclusive recognition.
- e. Completion of processing. A stage in the review of a grievance where the agency has either canceled the grievance, resolved the grievance to the satisfaction of the employee or has issued a written memorandum with a decision of the formal grievance on its merits or a notice providing the grievant the option of requesting a final decision from the agency head, with or without review of the grievance by a Departmental grievance examiner appointed by the Office of Human Resources Management (OHRM).
- f. Days. Any reference to “days” in this directive shall mean calendar days.
- g. Enforcement. The authority delegated to the Assistant Secretary for Administration to impose sanctions for a failure to comply with this directive, to implement relief granted to a grievant, or to otherwise ensure compliance with this directive and any final decision rendered in accordance with this directive.
- h. Equal Employment Opportunity Commission (EEOC). The EEOC is the Federal agency empowered to decide complaints of unlawful discrimination, harassment and retaliation of statutes and regulations within its jurisdiction. An EEO complaint is a formal complaint filed with the USDA Office of the Assistant Secretary for Civil Rights or any other EEO complaint procedure, alleging any employment action or decision (including the failure to take an employment action) that is motivated by any prohibited consideration such as race, religion, sex, national origin, physical or mental disability, sexual orientation, or age, or any other bases identified by the USDA policies on civil rights. This includes contacts with an EEO counselor or the filing of a legal action with the courts that alleges discrimination.

- i. Grievance. A request by an employee, or a group of employees, for personal relief in a matter of concern related to employment and that is subject to the control of appropriate USDA management. Employees filing a group grievance must all be part of the same organizational segment, be specifically named as a grievant, and sign the grievance.
- j. Grievance Examiner. A person appointed by the Director, Office of Human Resources Management (OHRM) to analyze the complete history of a grievance, the claims and evidence presented and, if necessary, gather additional information to render a recommended decision on the issues at hand. The grievance examiner must be an individual who has not been previously involved in the matter being grieved and who does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in the matter being grieved. Only individuals appointed by OHRM may use the title “grievance examiner.”
- k. Grievance file. A tabbed and indexed file established by an employing agency or staff office for the purpose of creating and preserving a record of all documents, evidence, and actions pertinent to a grievance.
- l. Mission Area. A group of agencies with related functions that report to the same Under Secretary or Assistant Secretary. Research, education, and economics (REE) is an example of a Mission Area. (Source: DR 0100-001)
- m. Non-bargaining unit employee. An employee who is not a member of any collective bargaining unit represented by a union, either because the employees’ positions are statutorily excluded from bargaining units, or, although potentially eligible to be in a bargaining unit, a union has not sought to represent the employee’s position through a petition and election.
- n. Personal relief. A specific remedy that will directly benefit the grievant, and that management has authority to issue. Personal relief may be a request that benefits the grievant even though at the same time it collaterally benefits someone else. A statement of apology or request for disciplinary or other action affecting another employee is not a request for personal relief. Failure to request personal relief may be grounds for cancellation of a grievance.
- o. Schedule A, B and C employees. Schedule A, B and C employees are those employees hired under the hiring authority of 5 CFR §213.3101, 5 CFR §3102, and 5 CFR §3103, respectively.
- p. Staff office. Departmental administrative offices whose heads report to officials within the Office of the Secretary. (Source: DR 0100-001)
- q. Staff office head. The head of a staff office or an official who has been delegated the authority to act for the head of the staff office in the matter concerned.
- r. Time limits. The maximum period of time allowed for submitting or responding to a grievance or any procedure within the AGS process. Time limits are calculated in calendar days. When a due date falls on a non-workday, the next workday will be considered to be the

due date. A time limit identified in this directive is met based on the date that any grievance, notice, or decision is received by the party to whom it is delivered. Electronic submissions (e.g., emails) are deemed received on the date transmitted even if the electronic submission is not opened or read on the date it is delivered. Delivery by the U.S. Postal Service is deemed complete 5 days after the date it is deposited with the U.S. Postal Service. An agency may waive a grievant's filing time limits for good cause and the grievant has the burden of demonstrating that good cause for a waiver.