DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Human Resources
Washington, DC 20201

Administrative Grievance Policy 771-1

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Material Superseded

This Instruction establishes the Department of Health and Human Services (HHS) Administrative Grievance Procedure (AGP) and supersedes all previous Department instructions on internal grievance procedures for non-bargaining unit (NBU) employees. This Instruction is effective immediately.

Background

This instruction has been established under the authority of regulations issued by the Office of Personnel Management (OPM) found at Title 5, Code of Federal Regulations, Part 771 , Agency Administrative Grievance System. The instruction clarifies roles and responsibilities for managers when addressing employee grievances. It provides guidance to employees for filing an administrative grievance. It more specifically identifies which matters are grievable and non-grievable through the Administrative Grievance Procedure.

This issuance is effective immediately. Implementation under this issuance must be carried out in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

771-1-00 PURPOSE

This instruction sets forth the Department's AGP. It does not pertain to grievances of bargaining unit employees which are covered by the negotiated grievance procedure in a collective bargaining agreement or to Commissioned Corps Officers. Departmental grievance procedures have been established under the authority of regulations issued by the Office of Personnel Management (OPM) found at Title 5, Code of Federal Regulations, Part 771, Agency Administrative Grievance System.

771-1-10 COVERAGE AND EXCLUSIONS

Coverage

This instruction applies to all HHS civil service employees who are not part of a bargaining unit, regardless of grade or tenure. It is the policy of the Department to resolve workplace concerns at the lowest level and through administrative processes where possible. For non-bargaining unit employees, the AGP is the preferred avenue for resolving workplace disputes which are grievable under this policy. HHS Operating Divisions may supplement the provisions of this instruction with Operating or Staff Division (OPDiv, StaffDiv) administrative grievance procedures. Any local administrative grievance procedures must fully comply with the provisions of this instruction, and this instruction is overriding as to matters of administrative grievance policy.

Exclusions

For bargaining unit employees, the negotiated grievance procedure contained in their respective collective bargaining agreement, not the AGP, is the proper forum to address matters of concern or dissatisfaction.

The AGP does not cover Commissioned Corps Officers. Commissioned Corps Officers must seek relief through grievance, complaint, or redress mechanisms established under the Commissioned Corps Personnel Manual (CCPM) and related Commissioned Corps directives for matters within the exclusive jurisdiction of the Commissioned Corps.

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 which are under the control of agency management. This includes any matter in which an employee alleges that they were subjected to coercion, reprisal, or retaliation for using the grievance system. Where an employee files an Equal Employment Opportunity (EEO) complaint on the same matter, the administrative grievance will be dismissed.

Nongrievable Matters

This grievance procedure does not cover the following matters:

- Complaints, disclosures, or allegations within the jurisdiction of the U.S. Office of Special Counsel (OSC), including claims of prohibited personnel practices or whistleblower retaliation under 5 U.S.C. §§ 1211–1219 and 5 U.S.C. § 2302(b).
- Such matters are excluded from the Administrative Grievance Procedure regardless of whether the employee has filed a complaint with OSC.
- Matters that are covered under a negotiated grievance procedure as governed by 5 U.S.C. Chapter 71.
- Personnel actions taken pursuant to 5 U.S.C. Chapters 43 or 75, that are appealable to the Merit Systems Protection Board.
- Non-selection for a position when the employee was not selected from a properly conducted

merit promotion or competitive hiring process. Challenges to a non-selection decision itself are not covered by the Administrative Grievance Procedure.

- Classification appeals and determinations under 5 U.S.C. § 5112 or § 5346, including requests for review of position title, series, grade, or pay system.
- Requests for a retroactive promotion or retroactive adjustment of a promotion effective date, where the employee does not meet the criteria established by applicable OPM authority for granting such relief (e.g., the correction of an administrative or clerical error, or unjustified or unwarranted personnel action).
- A dispute is not covered by the Administrative Grievance Procedure (AGP) if it concerns a matter for which the employee has filed, or has the right to file, an appeal, complaint, grievance, or other legal challenge in another adjudicative or administrative forum (e.g., MSPB, EEOC, FLRA, negotiated grievance procedure), regardless of whether a final decision has been issued in that forum. However, where an employee has not initiated action in another forum**,** and the matter pertains to general workplace treatment, conditions of employment, or alleged misconduct not based on a protected EEO basis**,** the AGP may be used.
- A performance progress review, documentation of performance, the methods used to appraise performance during the appraisal period (including the methods used to conduct and document a performance progress review), as well as any tentative or preliminary appraisal.
- Complaints about the content of published Department policy when the complaint is a disagreement with the policy rather than a complaint that a policy has been misinterpreted or misapplied. "Department" policy means a policy or regulation issued at either the Department level or the Operating Division level. "Published" policy means a policy issued for distribution in writing by a legitimate authority and does not include unwritten practices or customs.
- Complaints about failure to receive a noncompetitive promotion or non-selection for competitive promotion from a group of properly ranked and certified candidates under the merit promotion program. However, when the complaint alleges impropriety in the competitive rating, ranking, certification, or selection process, the complaint is covered. (i.e., it is not excluded).
- A Performance Management Appraisal Program (PMAP) rating for which the employee has previously requested reconsideration under the Department's PMAP reconsideration process. Once a reconsideration request has been initiated for a PMAP rating, the rating is not subject to further review under the AGP.
- Failure to receive cash, time off, or honorary award.
- Matters of concern or dissatisfaction on the part of Officers of the Commissioned Corps of the U.S. Public Health Service.
- The Administrative Grievance Procedure may not be used to make findings regarding discrimination, award EEO-related remedies, or serve as an alternative or preliminary forum to the EEO complaint process.
- 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.
- A decision to grant or deny an SES pay rate increase.

- The Establishment of a Performance Improvement Plan following an unacceptable rating.
- 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.
- Failure to grant recruitment, retention, or relocation bonus.
- Separation or termination of an employee for unsatisfactory performance or misconduct during a probationary or trial period, or due to the Agency's determination not to certify that the employee's continued appointment advances public interest.
- 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 complete the supervisor or managerial probationary period satisfactorily.
- Separation of employees serving under Schedule A, B, or C appointments (excepted service appointments).
- A supervisor's decision not to remove a reprimand earlier than the expiration date.

771-1-20 DEFINITIONS

- **Grievance:** A matter of concern or dissatisfaction presented by an employee for which personal relief is requested and could be granted. Personal relief must constitute action concerning the employee presenting the grievance and cannot be an action concerning or against another employee.
- **Informal Grievance:** A matter of concern or dissatisfaction presented by an employee at the first stage of the grievance process.
- **Formal Grievance:** A matter of concern or dissatisfaction presented by an employee in writing at the final stage of the grievance process.
- **Stage One Official:** The first-level official within the Department with authority over the matter at issue in the grievance. (It is the matter at issue rather than the relief sought that determines Stage One Official)
- **Stage Two Official:** The official with delegated authority to issue the formal grievance decision. This official must be at a higher level than any employee involved in any phase of the grievance, except when the Head of a Staff Division or Operating Division has been involved. Similarly, for performance appraisal grievances, this official must be a person at a higher level in the organization than the appraising, reviewing, or approving official.

771-1-30 RESPONSIBILITIES, REPORTING, AND ACCOUNTABILITY

Office of Human Resources (OHR), Human Capital Accountability (HCA)

- Update and maintain this instruction.
- Advise Operating Human Resources Organizations on administration and operation of grievance systems.
- Review and approve all Alternative Dispute Resolution (ADR) systems prior to implementation, ensuring compliance with statutes, regulations, and policies. Employees are encouraged to use ADR as a faster, confidential alternative to formal AGP processing, particularly where the dispute does not involve a protected basis. Supervisors and HR staff

should promote the use of ADR to resolve general workplace disputes through the AGP process.
- Triage incoming grievances to see if they meet the criteria for a grievance or if they are better suited for another venue (EEO, harassment, etc.).

Operating Divisions (OPDIVs) and Staff Divisions (STAFFDIVs)

- Ensure grievances receive thorough, meaningful review and that employees receive a final written decision explaining whether requested relief is granted and the agency's reasons for granting or denying the requested relief.
- Make final decisions on grievances submitted by their employees.
- Draft any local supplemental grievance procedures.
- Design, implement, and maintain any optional ADR systems as supplements to the Administrative Grievance System. Submit proposed ADR systems to the Assistant Secretary for Administration for review before implementation.
- Establish a grievance file at the time of the first decision and maintain it throughout the process, and in compliance with all records retention requirements.
- Include all relevant materials in the file and ensure employees may submit materials at all stages of the grievance process.

Operating Human Resources Organizations

- Administer the Administrative Grievance System for their components.
- Ensure formal grievances are processed in accordance with this instruction and any local procedures.
- Make these instructions and local grievance procedures available to all serviced employees.
- Advise employees on grievance procedures, rights, responsibilities, and representative designation.
- Advise managers on grievance issues and the permissibility of requested relief.
- Draft correspondence and decision letters for managerial use in grievance processing.
- Ensure compliance with all grievance system provisions.
- Retain the final grievance file following Stage Two or grievance closure, in compliance with all record retention requirements.
- Prepare required reports regarding the administrative grievance system.

HHS Employees

- Follow the provisions of this instruction when submitting grievances.
- Adhere to prescribed time limits at each stage.
- Designate representatives in writing when applicable.
- Cooperate in the grievance process and provide relevant information or testimony.

771-1-40 FORMAL GRIEVANCE PROCEDURE

The HHS Administrative Grievance System consists of two formal stages. The previously informal procedure (Stage One) is now formal. All grievances must be submitted in writing; oral presentations are not required unless mutually agreed upon and must be followed by a written

submission.

General Provisions

- Grievances must clearly state the issue, provide supporting documentation when applicable, and specify the personal relief sought (i.e., a specific, viable remedy benefiting the grievant).
- Employees are authorized reasonable duty time to prepare and present grievances.
- Exhibits A and B provide sample formats for submitting and responding to grievances.

Stage One – Initial Formal Review

Eligibility and Initiation

- All grievances begin at Stage One, unless they involve non-appealable adverse actions, separations, or reassignments, which begin at Stage Two.
- A written grievance must be submitted to the Stage One Official within 15 calendar days[1] of the effective date of the action or the date the employee becomes aware of the issue. A copy should be sent to the immediate supervisor if they are not the Stage One Official.

Stage One Official

- Typically, the official responsible for the decision or action being grieved.
- For performance rating issues: the approving official.
- For HR decisions (e.g., qualifications, rankings): the responsible HR official.

Grievance Requirements

- Clearly labeled as a Stage One grievance.
- Identification of the issue, explanation of the grievance, requested relief, and supporting evidence.

Decision Timeline

- A decision must be issued within 15 calendar days, extendable up to 30 calendar days for good cause (e.g., leave, mission requirements). The decision must notify the employee of their right to file a Stage Two grievance if unresolved.

Failure to Respond

- If no decision is provided within the timeline, the employee may file at Stage Two within 15 calendar days of the missed deadline.

[1] Unless otherwise stated the word "days" will always refer to calendar days.

Stage Two – Final Departmental Review

Initiation

- A written grievance must be submitted to the Stage Two Official within 15 calendar days of:
    - Receipt of the Stage One decision,
    - Expiration of the Stage One deadline, or
    - The effective date of action (for grievances filed regarding involving non-appealable adverse actions, separations, or reassignments which begin at Stage Two).
- A copy must also be provided to the immediate supervisor, if appropriate.

Stage Two Official

- Typically, the official that is directly above the Stage One Official in the Delegated Line of Authority.

Grievance Requirements

- Must include: identification of the issue, requested relief, supporting documentation, and disagreement with the Stage One decision (if applicable).

Resolution Options

- May be resolved through a written decision granting full relief or by a written settlement agreement signed by both parties.

Factfinding

- If factual disputes exist, an impartial Factfinder may be designated. The fact-finding process must be completed within 15 calendar days. The Factfinder must complete a factfinding report and provide the report to both the grievant and the Stage Two Official for comment.
- The Factfinder must not occupy a position subordinate to any official who recommended, advised, influenced, or made a decision on, or otherwise is or was involved or has a personal interest in, the matter at issue in the grievance.
- The designation of an individual as grievance Factfinder will be made in writing and a copy will be furnished to the grievant at the time of the designation.

Final Decision

- The Stage Two Official must issue a written decision within 15 calendar days of receiving the factfinding report (or the grievance, if no fact-finding is required).
- The decision must include a summary of findings and the reasons for the decision.
- This decision is final and not subject to further appeal.

Additional Provisions Grievance Rejection

Grievances may be rejected at any stage if they:

- Are improperly labeled or submitted,
- Lack sufficient detail or personal relief sought,
- Address issues not under Department control or excluded by policy,
- Are filed by an ineligible party, or
- Are untimely.

Representative Disallowance

A grievance official may disallow a representative if the proposed representative:

- Is a subordinate or supervisor of the grievant, or
- Holds a position that would otherwise create a conflict of interest.

Grievance Cancellation

A grievance may be cancelled:

- By written request from the employee,
- Upon separation or death of the employee (with certain exceptions),
- For failure to provide required information or pursue the grievance process.

All cancellations must be in writing, explain the rationale, and become part of the official file.

Informal Resolution (ADR)

Operating and Staff Divisions are encouraged to offer Alternative Dispute Resolution (ADR) processes: Employees are encouraged to use ADR as a faster, confidential alternative to formal the AGP process, particularly where the dispute does not involve a protected basis. Supervisors and HR staff should promote the use of ADR to resolve general workplace disputes through the AGP process.

- ADR is voluntary, confidential, and available at any stage before a final decision.
- It may include mediation to help resolve disputes quickly and amicably.
- ADR programs must be approved before implementation and remain optional for employee use.

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Chief Human Capital Officer

Exhibit A: SAMPLE GRIEVANCE FORMAT

Date: [Insert date]

From: [Your full name]

Subject: Administrative Grievance – Stage [Insert Stage Number]

To: [Name and title of the Stage [Insert Stage Number] Official with authority over the matter. If unknown, consult your supervisor or HR.]

Statement of Grievance:

This is a Stage [Insert Stage Number] grievance under the HHS Administrative Grievance System. The event(s) giving rise to this grievance occurred on [Insert Date(s)].

Description:

[Clearly describe the incident(s). Include dates, details, documentation, and any relevant evidence that supports your grievance.]

Requested Relief:

[Specify the exact personal relief you are seeking. Ensure it benefits you directly.]

Signature:

[Your signature]
[Typed name and contact information]

Attachments (if any):

[List all documents you are submitting in support of the grievance.]
NOTE: If mailed, the postmark usually determines the filing date. If submitted by email, retain a copy for your records.

Exhibit B: SAMPLE GRIEVANCE DECISION

Date: [Insert date]

From: [Your full name]

Subject: Administrative Grievance Decision– Stage [Insert Stage Number]

To: [Employee who filed the grievance]

I received your Stage [Insert Stage Number] grievance on [Insert Date].

Decision:

[State your decision clearly. If denying or partially granting, include a concise summary of findings and rationale.]

- If you lack authority over the matter, indicate that the grievance has been forwarded to [Insert Name and Title of appropriate official].
- If the grievance is rejected or canceled, state the specific reason(s).
- If the grievance is granted, clearly describe the relief and implementation details.
- If not granted, summarize the findings and reasons.

Signature:

[Your signature]
[Typed name, title, and contact information]

Attachments (if any):

[List all documents you are submitting in support of the grievance.]

NOTE: If delivered in person on the 15-calendar day, time-limit to file a Stage Two will begin immediately. If mailed, five (5) days after the postmark, the 15-calendar day, time-limit to file a Stage Two will begin. If sent via email, the 15-calendar day, time-limit to file a Stage Two will begin immediately.