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ADS Chapter 490

Agency Administrative Grievance Procedure

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ADS Chapter 490 - Agency Administrative Grievance Procedure

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ADS 490 – Agency Administrative Grievance Procedure

490.1 OVERVIEW

Effective Date: 02/07/1986

This chapter states the policy directives and required procedures regarding the Agency's [grievance](#) system. This 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 fair and orderly procedure for processing and resolving individual employee grievances.

*490.2 PRIMARY RESPONSIBILITIES

Effective Date: 07/13/2009

- *a. The **Chief, Employee and Labor Relations Division, Office of Human Resources (OHR/ELR)** is responsible for providing advice and assistance to USAID managers as requested; investigating and preparing written grievance decisions; and serving as the [Decision Officer](#) (Chief, OHR/ELR) on all grievances. The Chief, OHR/ELR also provides staffing support to the [fact-finder](#), as needed; assures that all time limits specified herein are observed; and maintains custody of [grievance files](#).
- b. The **Supervisor** is responsible for meeting with the [Grievant](#) and ascertaining the facts of the grievance; seeking advice, as necessary, from OHR/ELR or other appropriate office; and responding to the grievance within the time limits.
- c. The **Grievant and/or Grievant's representative** is responsible for complying with time limits established by the Agency; providing sufficient detail to clearly identify the matter being grieved; and specifying the [personal relief](#) being requested.

*490.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 07/13/2009

490.3.1 Grievance Procedures

Effective Date: 02/07/1986

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

490.3.2 Grievance Coverage

Effective Date: 02/07/1986

Except as provided in ADS **490.3.2.1**, 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.

***490.3.2.1 Matters Excluded From the Grievance Process**

Effective Date: 07/13/2009

The grievance procedure does not apply to the following:

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 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 United States Code \(USC\) Section 3592](#);
5. A reassignment of an SES appointee following the appointee's receipt of an unsatisfactory rating under [5 USC Section 4314](#);
6. The termination, under [5 Code of Federal Regulations \(CFR\) subpart D of part 359](#), of a SES career appointee during probation for unsatisfactory performance;
7. An action taken in accordance with the terms of a formal agreement, voluntarily entered into by an employee, that assigns the employee from one geographic location to another or returns the employee from an overseas assignment;
8. 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;
9. 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 he or she was promoted or to a different position of equivalent grade and pay;
10. 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 [5 CFR Part 430](#);

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11. The granting of, or failure to grant, an employee a performance award or quality step increase; or the adoption of, 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](#);
12. The termination under [5 CFR 315, subpart H](#) of a probationer for unsatisfactory performance;
13. A performance evaluation under [Title 5, USC, Chapter 43, Subchapter II](#);
14. 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 [5 USC 3321\(a\)\(2\)](#) and [5 CFR 315 Subpart I](#); and

***490.3.3 Rights of the Grievant**

Effective Date: 07/13/2009

The Grievant will be free from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance and may be accompanied, represented, and advised by a representative of the Grievant's choice. The Grievant must be allowed a reasonable amount of official time to present the grievance and have the right to communicate with OHR/ELR and/or an Equal Opportunity Counselor.

490.3.4 Rights of the Representative

Effective Date: 02/07/1986

It is acceptable for any employee to represent a Grievant, unless the Agency determines that the Grievant 's choice poses:

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

The Grievant 's representative will 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.

***490.3.5 Grievance Process**

Effective Date: 07/13/2009

USAID encourages management and employees 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 unless the matter is excluded as provided in section **490.3.2.1**. The grievance must be considered and acted upon in a timely manner.

***490.3.5.1 Grievance Procedures**

Effective Date: 07/13/2009

a. An employee must follow both the informal and formal grievance procedures described in this section. USAID encourages employees to resolve any grievance matter by initially discussing the problem with their immediate Supervisor or Responsible Official. The Responsible Official is defined as any official having immediate jurisdiction over the matter being grieved.

***b.** If the employee believes there is reason to take 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:

- The Office of Human Resources, Employee and Labor Relations Division (OHR/ELR).
- Office of Equal Opportunity Programs (EOP) or any Equal Opportunity Officer or Counselor designated by the Director of EOP.
- A supervisory or management official who is of higher rank than the employee's immediate supervisor. The Agency will give each grievance full, impartial, and prompt consideration and will require that decisions be issued within the established time limits.

***490.3.5.2 Informal Procedure**

Effective Date: 07/13/2009

- An employee may present a grievance either orally or in writing.
- An employee may present a grievance concerning a continuing practice or condition at any time.
- *An employee must present a grievance concerning a particular act or occurrence within 20 calendar days of the date of the act or occurrence or the date that the employee became aware of that act or occurrence. OHR/ELR may extend the time limit for good cause shown by the employee.
- *If the Supervisor or Responsible Official cannot resolve the matter to the Grievant's satisfaction within 10 calendar days from the date of the employee's presentation of the grievance, 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 also informs the Grievant of his

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or her right to present the grievance to OHR/ELR if the decision is not satisfactory to the Grievant.

***490.3.5.3 Formal Procedure**

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- An employee may submit a grievance to OHR/ELR for Agency review within 10 calendar days after receiving the informal decision. The grievance must be in writing, timely filed, and include sufficient detail so as to clearly identify the matter being grieved and specify the personal relief being requested.

- *OHR/ELR acknowledges receipt of the grievance and will provide a date by which it will deliver a decision to the Grievant. OHR/ELR will accept grievances for resolution regardless of whether they have already undergone the informal process. For those in which an informal decision has been rendered, OHR/ELR will review the grievance and informal decision and process through the formal channels.

*For those grievances received by OHR/ELR that have not yet been sent through the informal process, OHR/ELR will review the matter and determine whether it should undergo the informal process first, or decide to waive that process altogether based on the nature of the grievance.

- *The Decision Officer, normally the Chief, OHR/ELR, ensures that OHR/ELR staff conducts an investigation and provides the Grievant with a written decision within ninety calendar days. Alternatively, if the Decision Officer determines that a higher level of fact-finding is necessary to render a fair decision, 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 calendar days.

490.3.5.4 Fact-finding

Effective Date: 02/07/1986

- 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.

- 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.

- All documentation in the grievance file is made available to the Grievant and the Grievant's representative for review and comment. Their comments, if any, must be included in the file.

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- The fact-finder submits the report of findings and recommendations along with the grievance file to the Decision Officer.

***490.3.5.5 Final Agency Decision**

Effective Date: 07/13/2009

*The Decision Officer reviews the report and file and may accept, reject, or modify the recommendations of the fact-finder. The Decision Officer prepares a written decision to the grievance which is provided to the Grievant or Grievant's Representative. OHR/ELR places a copy of the decision in the grievance file.

Receipt of a written decision processed through the formal procedures constitutes the final Agency Review. The Grievant cannot appeal the decision.

490.3.5.6 Cancellation of a Grievance

Effective Date: 02/07/1986

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 following submission, the Agency may cancel a grievance under the following circumstances:

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

***490.4 MANDATORY REFERENCES**

Effective Date: 07/13/2009

***490.4.1 External Mandatory References**

Effective Date: 07/13/2009

- [5 United States Code \(USC\) 43](#)
- [5 Code of Federal Regulations \(CFR\) 315](#)
- [5 USC 3592](#)
- [5 USC 4314](#)
- [5 USC 4503 - 4505](#)
- [5 USC 4507](#)

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g. [5 CFR 771](#)

490.4.2 Internal Mandatory References

Effective Date: 02/07/1986

There are no internal mandatory references.

490.5 ADDITIONAL HELP

Effective Date: 02/07/1986

There are no additional help documents at this time.

***490.6 DEFINITIONS**

Effective Date: 07/13/2009

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

days

Calendar days, unless otherwise specified, calendar days. ([Chapter 450, 487](#))

Decision Officer

The individual who has the responsibility for making the final Agency decision, normally the Chief, Office of Human Resources, Employee and Labor Relations Division (OHR/ELR). (Chapter 490)

Fact-Finder

An individual from within or outside the Agency authorized to conduct a grievance investigation, including a hearing, and to submit a report of findings and recommendations to the Decision Officer. (Chapter 490)

grievance

A request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to their employment which is subject to the control of USAID management, except as provided by exclusion. (Chapter 490)

grievance file

A separate file retained by the Office of Human Resources, Employee and Labor Relations Division (OHR/ELR) which contains all documents related to the formal grievance, including, but not limited to, any statements of witnesses, records, or copies thereof, the report of the hearing (if one is held), statements made by the parties to the grievance, and the decision. (Chapter 490)

Grievant

A Civil Service (CS) or Administratively Determined (AD) employee, including a former employee, for whom a remedy can be provided by the Agency. (See 3 FAM 4412) ([Chapters 486](#), 490)

personal relief

A specific remedy directly benefitting the grievant(s) but may not include a request for disciplinary or other action affecting another employee. (Chapter 490)

Responsible Official

An employee's supervisor or any appropriate official who holds immediate jurisdiction over the matter being grieved. (Chapter 490)

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