

CHAPTER 1. GENERAL

1-1. Purpose. This Handbook contains policies and procedures to be followed by an employee wishing to file a grievance and by managers resolving grievances.

1-2. Employee Coverage. This Handbook covers all employees not covered by a union-management contract or those whose contract does not provide for a grievance procedure. Employees who are covered by a union-management contract may use this procedure to address issues not covered by the union-management contract. Employees who have grievances pending when they leave HUD may be entitled to a Final Grievance decision.

1-3. Authority. This Handbook implements Office of Personnel Management (OPM) requirements contained in 5 CFR, Part 771, which require the Department to establish and administer a grievance system applicable to its employees.

1-4. Exceptions to Handbook Provisions. The Department's Director of Human Resources may authorize waivers of the provisions of this Handbook upon presentation of adequate written justification.

1-5. Availability of Handbook. A copy of this Handbook is available for review in servicing Human Resources offices or program administrative offices. This Handbook is also available online at HUD's official website for HUD employees.

1-6. Delegation of Authority. The delegations in this Handbook identify the flow and level of placement of administrative grievance authorities from the Secretary/Deputy Secretary through the Assistant Secretary for Administration to Program Assistant Secretaries or equivalents. As the next step, each Assistant Secretary or equivalent should develop delegations specific to their organizations. Where a separate program office delegation does not exist, the delegations in this Handbook shall be followed.

1-7. Definitions.

A. Bargaining Unit Employee - an employee included in an appropriate exclusive bargaining unit as determined by the Federal Labor Relations Authority.

B. Days - calendar days.

C. Employee - any current employee, for whom a remedy can be provided. A former employee falls under this definition when the grievance was initiated while still an employee provided the remedy sought can still be granted consistent with law.

D. Fact Finder - an impartial third party appointed by a Grievance Officer to conduct an investigation/inquiry into the issues of a grievance and to develop findings and recommendations. The Fact Finder must not have been involved in the matter being grieved, and must 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.

E. Final Grievance Officer - the supervisor/manager who is responsible for rendering

the Department's final decision on a grievance, i.e., usually the second level supervisor.

F. 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 with the Department and over which the Department has control. The range of matters is limited to those for which no other means of administrative review is provided by law, executive order, OPM regulation, Departmental regulation or policy, or union-management contract.

G. Grievance File - a file containing all documents or copies of documents related to the grievance, including but not limited, to written grievance, any statements of witnesses, fact-finding notes and reports when a Fact Finder is used, statements made by the parties to the grievance, and the Department's decision(s).

H. Initial Grievance Officer - the supervisor/manager who is responsible for attempting to resolve a grievance during the initial stage of the grievance process, i.e., usually the immediate supervisor.

I. Personal Relief - a specific remedy requested by the grievant(s) to resolve the issue(s) of the grievance that directly benefits a grievant. The relief sought may not include a request for disciplinary or other action affecting an agency official or another employee.

J. Preponderance of the Evidence { the degree of relevant evidence required in an adverse action that proves more likely than not that the alleged misconduct occurred.

K. Servicing Human Resources Office - the ASC Human Resources Division, in the case of Field employees, and the Office of Human Resources, in the case of Headquarters employees. Administrative offices in Field Offices may serve in this capacity if delegated authority by Headquarters.

L. Substantial Evidence { the degree of relevant evidence required in a performance-based action which a reasonable mind, considering the record as a whole, might accept as adequate to support a conclusion that the matter asserted is true.

M. Term Promotion - the promotion of an employee (with OPM's formal agreement) for a period in excess of two years but not more than four years, to complete a designated project, or as part of a planned rotational system.

1-8. Grievance Coverage.

A. Matters Covered. Any matter of concern or dissatisfaction related to an employee's employment with the Department, and over which the Department has control. Also covered is any matter in which an employee alleges that coercion, reprisal, or retaliation has been practiced against him or her for filing a grievance under this Handbook.

B. Matters Not Covered.

1. Matters that may be grieved under a negotiated grievance process of an exclusive bargaining unit agreement and those matters that are reviewable by a third party reviewing authority;

2. A decision which is appealable, by law or regulation, to the Merit Systems Protection Board or subject to final administrative review by the Office of Personnel Management, Federal Labor Relations Authority, or the Equal Employment Opportunity Commission;
3. A suspension or removal under Section 7532 of Title 5 relating to national security matters;
4. The content of published Department regulations and policy;
5. Non-selection for promotion from a group of properly ranked and certified candidates, or failure to receive a noncompetitive promotion;
6. The classification of any position which does not result in the reduction in grade or pay of an employee;
7. A progress review rating;
8. A notice of a delay or denial of Within Grade Increase;
9. A performance counseling memorandum or performance improvement plan for marginal performance;
10. An opportunity to improve plan or performance improvement plan (PACS) for unacceptable performance;
11. A performance evaluation of a Senior Executive Service (SES) career appointee;
12. A reassignment of an SES career appointee following the appointee's receipt of an unsatisfactory rating;
13. The return of an SES career appointee to the General Schedule or another pay system during the one year probationary period or for less than fully successful executive performance at any time during appointment to an SES position;
14. The termination or expiration of a career SES limited emergency or limited term appointment on the date specified as a condition of employment at the time the appointment or promotion was made;
15. The return of an employee to a non-supervisory/managerial position for failure to satisfactorily complete the supervisory probationary period. The employee will be placed in a position at no lower grade and pay than the position occupied before the supervisory/managerial appointment;
16. The termination of an employee serving a probationary or trial period;
17. The termination or expiration of a time-limited excepted appointment, a temporary or term appointment, or promotion on the date specified as a condition of employment at the time the appointment or promotion was made;
18. The termination of a temporary promotion where there is no allegation of a violation of law, rule, or regulation;
19. An action terminating a temporary or term promotion within a maximum period of two

(2) years and returning the employee to the position from which he or she was temporarily promoted or similar position from which he or she was temporarily promoted;

20. An action which terminates a temporary or term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of 2 years but not more than 5 years and returns the employee to the position from which promoted or to a different position of equivalent grade and pay;

21. The termination of a temporary appointment where the Standard Form 50 states that the termination was based on a lack of work or lack of funds;

22. Complaints by employees with temporary appointments not to exceed six (6) months;

23. An action taken in accordance with terms of a formal agreement voluntarily entered into by an employee which assigns the employee from one geographic location to another;

24. The granting of, or failure to grant, or the amount of , any incentive award; an employee performance award; an additional step increase for outstanding performance; SES meritorious or distinguished executive award, performance award or SES pay rate increase; or cash, time off award, or honorary recognition;

25. The adoption of, or failure to adopt, an employee suggestion or invention;

26. The substance of the critical elements and performance standards of an employee's position;

27. A verbal warning;

28. A preliminary warning or notice of an action that, if effected, would be covered under the grievance system or excluded from coverage under paragraph 1-8.B.1. Such matters include, for example, notices of proposed adverse actions and oral or written warnings of actions that might be taken and which would be grievable or appealable if taken. These matters would continue to be excluded from the administrative grievance process whether or not the Department takes the action threatened in the notice or warning;

29. The payment of, failure to pay, or the amount of a recruitment bonus, a relocation bonus, student loan repayment, or retention allowance, or a supervisory differential;

30. The failure to request or grant an exception to the dual compensation restrictions;

31. Financial disclosure;

32. The selection and appointment of a Fact Finder by an Initial and/or Final Grievance Officer; and

33. The Initial and/or Final Grievance Officer's decision to not appoint a Fact Finder when that Officer has determined that fact finding will not contribute to further clarification of the issue(s) raised by the grievant.

1-9. Responsibilities of Participants in the Process.

A. Each grievant is responsible for making a maximum effort to achieve informal settlement of a personal grievance. The grievant must bring the matter to the attention of management in accordance with the time limits specified in paragraph 2-2. of this Handbook.

B. When a grievance is well founded, supervisors and managers have both a duty and a need to eliminate the cause. When a grievance is not well founded, it is equally important to reach an understanding based on the full facts, because a dissatisfied employee often is an unproductive employee.

C. The servicing Human Resources office serves as the primary adviser to management in the administrative grievance process. Officials participating in the process are expected to obtain technical advice and assistance from human resources specialists at all stages of the process. The servicing Human Resources office is also responsible for making this Handbook available to employees and responding to procedural questions raised about the Department's grievance process.

1-10. Responsibilities of the Grievant. In exercising the entitlement to present a grievance, an employee shall:

A. File the grievance in writing, in a timely manner;

B. Provide a clear statement of the issues, and furnish sufficient detail and specificity to clearly identify the matter(s) being grieved, including the date of the alleged event;

C. Specify the personal relief being requested; and

D. Provide a copy of the grievance to the servicing Human Resources office upon filing the grievance.

1-11.

Right of Access to Counselors. In presenting a grievance, an employee is entitled to communicate with, and seek advice from:

A. The servicing Human Resources office for clarification on the process;

B. An Equal Employment Opportunity Officer or Counselor;

C. A HUD ethics counselor or official on matters which may involve a conflict with the employee's official duties, or other prohibited conduct; or

D. A coordinator or counselor for the Department's Employee Assistance Program.

1-12. Responsibilities of the Initial and Final Grievance Officer.

A. Determining whether to accept, reject, or remand all or part of the grievance. These determinations are explained at paragraphs 2-4. and 3-6.

B. Determining which issues, if any, will be investigated if the grievance is accepted.

C. Determining whether to allow grievant's choice of representative.

D. Giving fair and objective consideration to the grievance.

E. Determining which of the following methods will be used to resolve the grievance:

1. Utilizing the facts presented in the written grievance;
2. A fact-finding inquiry conducted by the Grievance Officer;
3. Third party fact-finding with a report of the findings of fact to the Grievance Officer. The Grievance Officer may request the Fact Finder to make recommendations. This process is available during both the Initial and Final Grievance process; and

F. Issuing a grievance decision within the time limits set forth.

1-13. Right to Present a Grievance, Representation, and Official Time.

A. In presenting a grievance, a grievant shall:

1. Be assured freedom from restraint, interference, coercion, discrimination, and reprisal;

2. Have the right to be accompanied, represented, and advised by a representative of his/her own choosing (exceptions: refer to subparagraphs 1-13.C. and D. below); and

3. Be ensured a reasonable amount of official time for presenting the grievance if he/she is otherwise in an active duty status. Presentation of a grievance means meeting with the Initial Grievance Officer, Final Grievance Officer, and/or a Fact Finder. Official time for preparation of a grievance is not allowed. The right to present the grievance does not include a right to a formal hearing and the appearance of witnesses.

B. When a grievant designates another HUD employee as his/her representative, the representative shall have the same entitlements provided for in subparagraphs 1 13.A.1 and

3. above.

C. A Department officer or employee who occupies a position in one of the specialized personnel occupational series or who is an Administrative Officer, Support Services Specialist, Supervisory Support Services Specialist, supervisor, or manager is considered to be part of management. As such, he/she may be required to represent, or assist in representing, management in grievance cases when called upon to do so. These employees may not accept a request to represent or assist in representing a grievant.

D. The choice of a representative may also be disallowed when the choice results in a conflict of interest or position, i.e., under no circumstances may a management official or supervisor be represented by a union representative nor may a grievant be represented by a management official or supervisor. The choice of representative may also be disallowed if it conflicts with the priority needs of the Department, or gives rise to unreasonable costs to the Department.

E. Clerical or secretarial support will not be made available to the grievant during the course of preparation or presentation of the grievance. Grievants may not use Government paid postage in the course of preparation or presentation of the grievance. Grievants may use departmental facilities such as the Federal Telecommunications System (FTS), photocopiers, computers, paper and other materials, consistent with Departmental policy on limited personal use of Government resources.

1-14.

Processing Time Frames. The following time frames must be adhered to in the processing of grievances unless unforeseen circumstances interfere (e.g., serious illness, work requirements) and alternative arrangements are reached between the parties.

Appropriate approvals for time extensions must be requested and obtained in advance (see 1 15. below).

Person Responsible for Meeting Time Limit:

Time Limit

(Calendar Days):

Grievant: Files Initial Grievance, normally with immediate supervisor (see paragraph 2-2); or Final Grievance, if grieving a suspension for 14 days or less.

14

Initial Grievance Officer: Completes action on the Initial Grievance or appoints a Fact Finder.

If within twenty-one (21) days, the Initial Grievance Officer cannot resolve the grievance in a manner acceptable to the grievant and determines fact-finding may be beneficial, he/she may appoint a Fact Finder to conduct an inquiry. Initial Grievance Officer notifies grievant of appointment of Fact Finder. (Exception: refer to paragraph 1-15.A and 2-5.H.).

21

Grievant: If the grievant is not satisfied with Initial Grievance disposition, files Final Grievance after completion of action under the Initial Grievance procedure.

7

Final Grievance Officer: Completes actions on the Final Grievance or appoints a Fact Finder.

If within fourteen (14) days, the Final Grievance Officer cannot resolve the grievance in a manner acceptable to the grievant and determines fact-finding may be beneficial, he/she may appoint a Fact Finder to conduct an inquiry. Final Grievance Officer notifies grievant of appointment of Fact Finder. (Exception: refer to paragraph 1-15.B. and 3-6.I.)

14

Initial and/or Final Grievance Officer selects and appoints a Fact Finder after determining inability to resolve grievance in manner acceptable to the grievant and alerts all parties to the grievance to that effect.

7

Fact Finder: Conducts inquiry; makes the grievance file available to parties involved for review and comment.

21

Grievant and Initial/Final Grievance Officer: Reviews Fact Finder's grievance file and furnishes comments on the grievance file to the Fact Finder.

7

Fact Finder: Prepares report of findings and recommendations, and submits the finalized report, together with the grievance file, to the Initial/Final Grievance Officer for decision following receipt of or expiration of Grievant and Initial/Final Grievance Officer review.

14

Initial/Final Grievance Officer: Completes action under the Initial/Final Grievance procedure after receipt of Fact Finder report and grievance file.

14

1-15. Requests for Time Extensions.

A. Requests for extension of time by any party appropriately connected with the grievance are to be submitted to the Final Grievance Officer.

B. When the Final Grievance Officer needs an extension he/she must notify the grievant of the timeframe in which the decision is expected to be issued. The extension correspondence must be routed through the servicing Human Resources office for concurrence.

C. Copies of the extension requests and their disposition shall be made available to all parties appropriately connected with the grievance, including the servicing Human Resources office, and shall become part of the official grievance file.