

BPA Human Resources Directive 410-11

Administrative Grievances

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1. Purpose & Background

Communicates BPA-wide guidance on BPA's Administrative Grievance Procedure.

2. Policy Owner

The Chief Administrative Officer, through Human Capital Management's (HCM) Planning, Audit, and Governance Division (NHI), has overall responsibility for monitoring, reporting, executing and maintaining this BPA HR Directive.

3. Applicability

A. **Applies to:** All BPA employees, including the following: Career Senior Executive Service (SES), Senior-Level (SL), Scientific or Professional (ST), and Excepted Service Pay Band IV (when the employee's basic pay exceeds GS-15 Step 10), and Pay Band V employees.

B. **Does not apply to:**

1. Contract Personnel
2. Noncitizens appointed under Title 5 CFR, Part 8.3, Appointment of persons not citizens of the United States
3. Aliens appointed under Title 22 U.S.C., Section 1471(5)
4. Noncareer SES, including limited term and limited emergency appointments
5. Schedule C employees
6. Employees who are members of a bargaining unit represented by a union which is recognized as the exclusive representative and who are covered by a negotiated grievance procedure
7. Experts and consultants
8. Applicants for employment with BPA

C. **Matters excluded:** Specific matters excluded from coverage of the Administrative Grievance Process are listed in Attachment 1.

4. Terms & Definitions

A. **Administrative Grievance:** See Formal Grievance and Informal Grievance.

B. **Administrative Grievance System:** The formal system for addressing employee concerns and disputes on employment-related matters established by the Department of Energy (DOE) through DOE Order 342.1, Grievance Policy and Procedures, dated February 2, 2006, and this BPA HR Directive.

C. **Days:** Calendar days.

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- D. **Deciding Official:** A Management official at the appropriate level of the organization to make a decision on an informal and/or a formal grievance. The informal grievance deciding official is normally the employee’s immediate supervisor. The formal grievance deciding official is normally an official at a higher organizational level (not necessarily higher grade) than any other individual directly involved in the grievance who has been delegated the authority to make the final decision on the formal grievance.
- E. **Fact-Finding:** An inquiry suitable to ascertain the relevant circumstances surrounding a grievance and to provide the basis appropriate recommendations on the matter being examined and reasons for the recommendations.
- F. **Formal Grievance:** A written request by an employee or a group of employees with a consolidated cause of action for personal relief in a matter of concern or dissatisfaction relating to the conditions of employment of the employee that is subject to the control of BPA management.
- Formal grievances must be in writing, signed and dated by the employee, and contain the following:
1. Sufficient data to identify and clarify the basis for the grievance;
 2. Description of the employee’s efforts to resolve the grievance informally;
 3. The description of the relief sought by the employee; and
 4. Name, address and phone number of the employee’s representative, if applicable.
- G. **Grievance File:** A separate file that contains all documents related to a grievance.
- H. **Informal Grievance:** A written grievance related to matters/conditions of employment under the control of BPA management presented by an employee or group of employees with a consolidated cause of action to his/her/their immediate supervisor for discussion and informal resolution. A timely informal grievance must be filed in order to advance to the formal grievance stage.
- I. **Mediation (a form of Alternative Dispute Resolution (ADR)):** A confidential and speedy process whereby a trained professional mediator assists the parties in reaching a voluntary solution to their dispute. The mediator is not a judge and does not make any decisions about fault. If the parties reach resolution, a binding settlement agreement is signed with a copy forwarded to the servicing Human Resources Director. Mediation may be used at any stage of the grievance process. Once mediation is elected, the time limits of the grievance process are held in abeyance pending the completion and/or termination of the mediation.
- J. **Personal Relief:** A specific remedy within the control of management sought by the grievant and/or approved by management. Personal relief may not include a request for disciplinary or other action affecting another employee. Relief cannot constitute a violation of laws, regulations, DOE policy, or BPA HR Directive.

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- K. **Reviewing Official:** The management official assigned to review a formal grievance decision when the formal grievance deciding official does not accept the grievance examiner’s recommendations. The Reviewing Official is normally the formal deciding official’s supervisor; however, a different Reviewing Official may be appointed based upon the circumstances. The Reviewing Official’s decision on the grievance is final.

5. Policy

BPA’s Administrative Grievance Procedure provides a fair, equitable, and timely forum for internal review and resolution of disputes on employment-related matters and to address matters of employee concern or dissatisfaction relating to employment that are subject to the control of management and for which employees seek personal relief that is not otherwise excluded from the procedure. The requirements set forth in this BPA HR Directive are administered in a manner which ensures the orderly, expeditious, and equitable handling of grievances. Supervisors will fully cooperate and will be held accountable for their participation in this process.

6. Policy Exceptions

The following matters are **excluded** from BPA HR Directive 410-11, Administrative Grievances:

- A. The content of published DOE regulations and policy or BPA HR Directive.
- B. A decision, complaint, or other formal challenge to a third party including, but not limited to, the Merit Systems Protection Board (MSPB) or subject to final administrative review by the Office of Personnel Management (OPM) or the Equal Employment Opportunity Commission (EEOC), the Federal Labor Relations Authority (FLRA), the Occupational Safety and Health Administration (OSHA), and/or the U.S. Office of Special Counsel (OSC).
- C. Matters administered by the Government Accountability Office (GAO) and the Office of Workers’ Compensation Programs (OWCP), Department of Labor (DOL).
- D. Grievances with issues included in a complaint filed with the OSC will not be processed until the allegation filed with the OSC is resolved.
- E. The use or non-use of Alternative Discipline procedures or the substance of an Alternative Discipline decision and agreement.
- F. The establishment of a Performance Assistance Plan or Performance Improvement Plan.
- G. Nonparticipation in the mediation process.
- H. Nonselection for promotion from a group of properly ranked and certified candidates.
- I. A preliminary warning notice of an action which, if effected, would be covered under the grievance system or excluded from coverage by paragraph 2. above.

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- J. A return of an officer or employee from the Senior Executive Service (SES) to the General Schedule during the one-year period of probation or for less than fully successful executive performance under Title 5 U.S.C., Section 3592.
- K. A performance evaluation under Title 5 U.S.C., Chapter 43, Subchapter II (performance appraisal of the SES).
- L. Reassignment of a career SES appointee to another SES position or a position outside the SES following receipt of an unsatisfactory rating.
- M. Failure to grant an SES pay rate increase.
- N. The payment of, failure to pay, or amount of critical position pay under Title 5 U.S.C., Section 5377.
- O. The granting of or failure to grant an employee performance award or the adopting of or failure to adopt an employee suggestion or invention under Title 5 U.S.C., Sections 4503 through 4505 or the granting of or failure to grant an award of the rank of meritorious or distinguished executive under Title 5 U.S.C., Section 4507 or the failure to grant a performance award (bonus) approved by the Secretary or his/her designee.
- P. An action that terminates a temporary promotion within a maximum period of 5 years and returns the employee to the position from which the employee was temporarily promoted.
- Q. An action that terminates a term promotion at the completion of a specified period, 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 in accordance with Title 5 CFR, Part 335.
- R. The receipt of or failure to receive a quality step increase under Title 5 U.S.C., Section 5336.
- S. The granting or non-granting of any monetary or non-monetary award.
- T. Failure to receive a noncompetitive promotion.
- U. The payment of, failure to pay, or amount of a recruitment bonus, relocation bonus, retention allowance, or voluntary separation incentive pay (buyout).
- V. A decision to include or exclude an employee's position on or from the eligibility lists for Voluntary Separation Incentives (VSI) and/or Voluntary Early Retirement Authority (VERA).
- W. The substance of the critical elements and performance standards of an employee's position which have been established in accordance with the requirements of Title 5 U.S.C., Chapter 43, Subchapter I and 5 CFR, Part 430 (including SES).
- X. The termination under Title 5 CFR, Part 315, Subpart H of a probationer for unsatisfactory performance or conduct.

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- Y. Return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period under Title 5 U.S.C., Section 3321(a)(2) and 5 CFR, part 315, subpart I.
- Z. A request for personal relief that, if granted through the grievance procedure, would result in violation of specific provisions of laws or Government-wide regulations.
- AA. An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which assigns the employee from one geographical location to another.
- BB. Any other separation action not excluded above by this Attachment.
- CC. Matters regarding employee benefits such as retirement, life insurance, or health insurance benefits or contributions.
- DD. A suspension or removal under 5 U.S.C., Section 7532.
- EE. The classification of any position which does not result in the reduction in grade or pay of an employee.

7. Responsibilities

A. Deciding Officials:

1. Receive and attempt to resolve informal and formal grievances, encouraging mediation when appropriate;
2. Request advisory assistance from HCM during the grievance process and submit a memoranda request for grievance examiner when the formal grievance is not resolved to the employee's satisfaction;
3. Make decisions regarding the allowance or disallowance of a representative under Section 8.1 of this BPA HR Directive;
4. Issue final decisions on informal and formal grievances and decide whether to accept or not accept the recommendations in the grievance examiner's report in appropriate formal grievance cases; and
5. Consult with the Director of the Department of Energy's Office of Human Capital Management on all grievances involving members of the career SES, Excepted Service Pay Band IV (when the employee's basic pay exceeds GS-15 Step-10) and Pay Band V employees, and SL or ST employees.

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B. Informal Grievance Deciding Officials:

1. Promptly discuss matters of concern with employees under their immediate supervision when grievances are presented informally; try to clarify misunderstandings and make reasonable adjustments to resolve the matters; and encouraging mediation when appropriate;
2. Promptly refer performance appraisal grievances and/or disciplinary grievances (above reprimands) to the deciding official for discussions and/or resolution with the employees.
3. Promptly obtain answers from appropriate sources when employees under their supervision present informal grievances that are not within the supervisors' authority to resolve.
4. Make decisions regarding the allowance or disallowance of a representative under Section 8.1 of this BPA HR Directive.
5. At their discretion, request mediation at the informal stage should discussions with employees not resolve issues.
6. Participate if mediation is requested by the employee following discussions with the BPA ADR Coordinator.

C. Employees: Comply with all requirements of this BPA HR Directive when engaging in grievance actions, including all time limits and steps associated with the informal and formal grievance processes.

D. Human Capital Management Employee Relations:

1. Advises management on all aspects of the grievance process;
2. Informs individual employees, employee representatives, and other interested parties as to the application and details of the grievance provisions, including mediation;
3. If mediation is requested, notifies BPA's ADR Coordinator within 5 calendar days after receipt of the grievance;
4. Maintain necessary records, arrange for grievance examining, follow up at all stages to ensure timely processing, and assist with any other procedural matters; and
5. Provide recommendations, comments, and suggestions to the reviewing official when the formal grievance deciding official does not accept the recommendations contained in the grievance examiner's report.

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8. Standards & Procedures

8.1. Representation

- A. An employee has the right to be accompanied, represented, and advised by a representative of his or her choice at any stage of the proceeding; however, this right does not accord the grievant or the representative the right to appear personally before the Reviewing Official.
- B. The designation of a representative must be in writing and provided to the employee's supervisor or the deciding official.
 - 1. If the grievant chooses another DOE employee as a representative and that person is willing to serve, the representative's supervisor, acting independently or in concert with the grievant's supervisor, may disallow the employee's choice of a representative in a grievance on the basis of one of the following:
 - a. Priority needs of the BPA/DOE mission. It is not intended that any one employee serve as a representative when doing so would interfere with the priority needs of the BPA/DOE mission;
 - b. Unreasonable cost to DOE; or
 - c. Conflict of interest or conflict of position.
 - 2. The disallowance of the employee's representative by the representative's supervisor must be made part of the official file.
 - 3. BPA will not designate representatives for grievants nor will BPA or DOE require any employee or individual to serve as a representative of another. All arrangements for a representative must be made by the grievant.

8.2. Communication

An employee has a right to communicate with HCM, the mediation advisor, or any BPA or DOE counselor, e.g., employee assistance counselor or Ombuds, at any stage of the grievance process.

8.3. Use of Duty Time

- A. An employee and the employee's representative (if employed by DOE) are entitled to a reasonable amount of duty time (typically, up to 8 duty hours, excluding official travel) to present a grievance. They are not entitled to duty time to prepare the grievance except to the extent necessary to obtain information and interview witnesses not otherwise available during nonwork hours.
 - 1. "Presenting" includes discussions with supervisors and attendance at any hearing, inquiry, or meeting in the formal stage; and
 - 2. Employees must obtain approval from their supervisors before use of duty time.

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- B. When the deciding official hearing the formal grievance deems it necessary to the presentation of the grievance, the employee and the representative (if employed by DOE) will be permitted “official travel,” and travel time will not be charged to leave.

8.4. Mediation

- A. Mediation communications are confidential and may not be disclosed either by the parties or by the mediator.
- B. Mediators will be trained and experienced neutral third parties.
 - 1. The mediator’s role is to help the parties discuss the issues in a nonthreatening environment and suggest possible options to reach resolution of the issues.
 - 2. The mediator is not a judge and will not decide who is right or wrong.
- C. An employee who files a grievance may request mediation concerning a continuing practice or condition or a particular act or occurrence at any time during the grievance process.
 - 1. The employee’s request for mediation must be in writing.
 - 2. The immediate supervisor should discuss participation in mediation with BPA’s ADR Coordinator. The BPA Administrator or designee will make the determination as to whether participation of the immediate supervisor is appropriate.
- D. Once the employee elects to use mediation, HCM Employee Relations will contact BPA’s ADR coordinator within 5 days of the employee’s written request.
- E. The mediator selected will attempt to complete the mediation in 15 to 30 days from the date the mediation begins.
- F. Time limits may be extended if both parties agree and actual resolution is near.
- G. Employees and supervisors cannot be forced to reach agreement.
 - 1. Either party may terminate the mediation at any time during the process.
 - 2. If an agreement is not reached, the employee may proceed with the administrative grievance process. (The 21-day response period of the informal grievance will begin the day after receipt of the mediator’s written termination of the mediation by HCM.)
- H. If the mediation is successful, the mediator will prepare a written agreement for the parties, obtain signatures of all involved parties, and provide a copy to HCM. This agreement must be reviewed by BPA’s General Counsel (for legal concurrence) and the BPA Human Resources Director or his/her designee (for regulatory and execution practicality concurrence), and it becomes binding upon completion of these concurrences.

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- I. Regardless of the outcome of the grievance process, the deciding official can suggest mediation to enhance the parties' ability to work together in the future.

8.5. Cancellation or Rejection of Grievances

- A. Grievances may be cancelled under the following circumstances:
 - 1. At the employee's written request to HCM;
 - 2. Upon termination of the employee's employment with DOE; or
 - 3. Upon death of the employee.
- B. Grievances may be rejected if any of the following apply (the rejection must be in writing and state the reason for rejection):
 - 1. The grievance was not filed within the time limits specified for filing under the informal or formal process;
 - 2. The grievance consists wholly of a matter or matters excluded from coverage of the grievance system; or
 - 3. There is no personal relief to grant the employee.

Note: Where it is determined that a formal grievance was not filed within the time limits, the deciding official may, nevertheless, accept the grievance, provided the employee furnishes, and the deciding official approves, a written explanation showing that the delay was caused by uncontrollable circumstances.

8.6. Grievance Files

- A. A grievance file will be established and maintained by HCM for each grievance that becomes formal. The following items, as applicable, will be included in the grievance file:
 - 1. The written formal grievance;
 - 2. A written summary of actions and results during the informal procedure;
 - 3. Copies of the proposed notice, replies, and final decision notice where a suspension of 14 days or less is involved;
 - 4. Copies of letters of reprimand or warning where such matters are at issue;
 - 5. Copies of personnel action documents associated with the grievance;
 - 6. Statements of witnesses and statements made by the parties to the grievance;
 - 7. Final grievance decision or mediation settlement agreement; and
 - 8. All other documents pertinent to the case.
- B. Grievance records will be maintained in individual grievance folders.

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1. Access to these records will be on a need-to-know basis and in accordance with the provisions of 5 CFR 294, Availability of Official Information.
 2. Information that cannot be disclosed to grievants or their representatives cannot be included in the files.
 3. Particular information relevant to the grievance that has been gained through fact-finding procedures or mediation, which cannot be disclosed, cannot be used in adjudicating grievances.
- C. Grievance files will be disposed of in accordance with DOE G 1324.5B, Implementation Guide for Use with 36 CFR Chapter XII—Subchapter B, Records Management, dated July 19, 1996.

8.7. Process Summary

- A. The employee initiates the administrative grievance process by presenting a written informal grievance for discussion with his/her immediate supervisor. Mediation should be considered where practicable as an option by a supervisor to resolve a grievance. If the matter is not resolved in the informal stage, the employee may submit a written formal grievance to the formal grievance deciding official.
- B. The deciding official may grant the personal relief originally requested as long as it is consistent with directives, regulations, or other administrative or statutory requirements.
- C. If personal relief is not granted at the informal stage, then the employee may timely advance to the formal stage. The formal grievance deciding official will determine whether to resolve the grievance favorably to the grievant without a grievance examiner or to initiate the grievance examiner review procedures. If the grievance examiner review procedures are used, then the review will be conducted and recommendations provided to the formal grievance deciding official. The formal grievance deciding official will then either accept the recommendations of the grievance examiner or determine that the recommendations of the grievance examiner are unacceptable. If the grievance examiner recommendations are unacceptable to the formal grievance deciding official, then he/she will submit the decision to the Reviewing Official for final review.

8.8. Time Limits

1. An employee may present a grievance concerning a continuing practice or condition at any time. A grievance concerning a particular act or occurrence must be presented in writing within 15 days of the date of that act or occurrence or within 15 days of the date the employee became aware of the act or occurrence.

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2. If mediation is elected at any point in the grievance process, the following time limits will be held in abeyance until completion and/or termination of the mediation process.
3. Time limits for individual steps are described within the Informal Grievance Process (Section 8.9) and Formal Grievance Process (Section 8.10) sections of this BPA HR Directive.

8.9. Informal Grievance Process

- A. An employee must complete the informal grievance process before BPA may accept a grievance under the formal process. Following are the required steps in the informal grievance process.
- B. Discussion with Immediate Supervisor: The written grievance must first be discussed with an employee's immediate supervisor.
 1. The employee will specify that an informal grievance is being presented and inform the supervisor whether he/she will be requesting mediation through HCM, which will contact the local ADR contact to arrange the mediation (must occur within 5 days of timely submitting the informal grievance).
 2. The immediate supervisor may not refuse to consider a grievance in the informal stage for any reason. If the grievance consists of matters not covered under the grievance system (Appendix A), the employee will be so advised, but the employee must be allowed to invoke under the informal process if he/she so desires, i.e., the employee must be allowed to set forth his/her concerns or dissatisfactions to the immediate supervisor, who must listen and respond within the context of the grievance process.
- C. **Resolution by Immediate Supervisor:** The supervisor to whom a written grievance has been presented for informal resolution will attempt to resolve it as expeditiously as possible, seeking the advice and assistance of others where necessary, and will give the employee a written decision on the matter not later than 14 days after the date it was received. If the relief sought is not granted, the written decision will include an explanation of the reasons for not granting the requested relief, a statement of the employee's right to request consideration under the formal grievance process, and identification as to who will serve as the formal grievance deciding official and reviewing official for the grievance.
- D. **Grievances Involving Matters Not Under Supervisor's Cognizance:** When the grievance involves a decision or matter under the cognizance of an official outside the employee's normal supervisory line or not within the immediate supervisor's authority, the informal procedure will be administered by the employee's immediate supervisor who will confer with the appropriate official before providing the employee a response to the grievance.

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- E. **Exceptions:** The informal grievance procedure involving appeals of performance appraisals and disciplinary actions above a reprimand will begin with the appropriate higher level supervisory official's level.
1. Performance Appraisal appeals: Performance appraisal ratings are not formal or grievable until the reviewing official signs the appraisal for release to the employee. Because rating officials (the immediate supervisors) do not have the authority to override their supervisors (the reviewing officials), performance appraisal appeals will be initiated with reviewing officials, not the rating officials (immediate supervisors).
 2. Disciplinary Actions above a reprimand: The immediate supervisor proposes the disciplinary action, and the deciding official signs the action for release to the employee. The proposal is not a formal action until the deciding official signs it. Therefore, the grievance would be initiated with the deciding official, not the immediate supervisor who proposed the action.

8.10. Formal Grievance Process

A. **Submission of Grievances:** When an employee receives a decision under the informal process or when the time limit for management to respond has expired without a decision, the employee may, within 7 days, submit the grievance to formal grievance deciding official for formal consideration. The formal grievance deciding official will then contact HCM's Employee Relations. The grievance must be in writing, signed and dated by the employee, and include:

1. Sufficient information to identify and clarify the basis of the grievance;
2. An explanation of the efforts made to resolve the grievance informally;
3. A description of the relief sought by the employee; and
4. If the employee has a representative, the representative's name, address, and phone number must also be included in the grievance.

Note: If allegations of discrimination related to the grievance are raised in the formal grievance procedure, processing of the grievance will be discontinued and the employee will be referred to BPA's EEO/Civil Rights office.

Note: Mediation may also be requested by either party as outlined in the informal grievance process.

B. **Acceptance, Cancellation, Rejection, or Return of Grievances:** Promptly on receipt of a grievance filed under the formal process, the formal grievance deciding official will provide a written summary of the matter grieved and the action taken or the results under the informal process and will take one of the following actions:

1. Accept the grievance and process in accordance with Section 8.10, paragraph C through E of this BPA HR Directive;

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2. Cancel the grievance in accordance with Section 8.5.A of this BPA HR Directive;
3. Reject the grievance in accordance with Section 8.5.B of this BPA HR Directive; or
4. Return the Grievance to the employee.
 - a. The formal grievance may be returned for redraft to the employee if:
 - (i) The employee has not completed the informal process;
 - (ii) The grievance consists of issues or relief not raised under the informal process; or
 - (iii) The issues in the grievance and the relief sought are not clearly described.
 - b. If the grievance must be returned because the informal grievance process was not used or was not used appropriately, insufficient or unclear information was provided, or because the relief sought cannot be properly addressed or investigated, management, in conjunction with HCM, will return the grievance and inform the employee of the process.
 - c. If the grievance must be returned because of insufficient or unclear information, the grievant will be given the opportunity to provide additional information or clarification within a specified time limit.

C. Formal Deciding Official Grievance Review and Consideration:

1. The deciding official will give the grievance fair and impartial consideration. If only a negative decision is indicated by available information, the deciding official will initiate grievance examiner review procedures within 7 days of receipt of the formal grievance.
 - a. Grievance Examiner Review procedures are initiated by sending a memorandum to the HCM Employee Relations Staff with a copy to the employee, requesting that a grievance examiner is selected to inquire into the grievance
 - b. The deciding official will not request a grievance examiner by name.
2. The formal deciding official may issue a written decision to the grievant without initiating grievance examiner review procedures if it appears likely that the decision will be acceptable to the grievant.
 - a. The written decision will contain notice to the grievant that he or she may respond to in writing within 7 days and request further consideration of the grievance if the decision is unacceptable.
 - b. If the grievant does not request further consideration in a timely written response, the decision is implemented and the grievance is closed.

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- c. If the grievant requests further consideration in a timely written response, the formal deciding official will initiate grievance examiner review procedures.

D. Grievance Examiner Review:

1. At the discretion of the person selected by the HCM Employee Relations staff to inquire into the grievance (the grievance examiner), the following grievance examiner review procedures used may consist of:
 - a. Obtaining documentary evidence relevant to the scope of the initial grievance;
 - b. Personal interviews relevant to the scope of the initial grievance;
 - c. Group meetings relevant to the scope of the initial grievance;
 - d. Hearings relevant to the scope of the initial grievance; or
 - e. Any combination of a. through d. above.

2. Grievance Examiner Review procedures will be carried out by a person who has not been involved in the matter being grieved and who does not occupy a position subordinate to any official who recommended, advised, or made a decision on, or who otherwise is or was involved in, the matter being grieved. Reports of findings and recommendations established through the grievance review must be provided to the deciding official within 30 days of receipt of notification of appointment as the grievance examiner.

3. Persons selected to carry out grievance examiner review procedures must be fair, impartial, and objective, with demonstrated analytical and fact-finding skills. They must be able to do the following:
 - a. Identify the scope of a grievance and stay within that scope;
 - b. Identify and select appropriate sources of information;
 - c. Collect, organize, analyze, and evaluate information and arrive at sound conclusions on the basis of that information;
 - d. Analyze situations, make objective and logical determinations of the pertinent facts, evaluate the facts, and develop practical recommendations or decisions on the basis of the facts;
 - e. Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;
 - f. Interpret and apply regulations and other complex written material;
 - g. Communicate effectively, orally and in writing, including the ability to prepare clear and concise written reports; and
 - h. Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.

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4. If the grievance examiner determines that a hearing is required to establish the facts pertinent to the grievance, the following should be considered:
 - a. Formal hearings should be limited to grievances involving complex matters or where important factual matters are in dispute.
 - b. The decision to schedule a hearing is the prerogative of the examiner.
 - c. If a hearing is held, the examiner will determine how the hearing will be recorded, and will have a verbatim transcript or written summary of the hearing prepared. The record will include all pertinent documents submitted and accepted by the examiner. The examiner will make the transcript part of the record of the proceedings.
 - d. When a verbatim transcript was not made, a summary of pertinent portions of the testimony will be made by the examiner. The summary will constitute the report of the hearing and is made part of the record of the proceedings.

5. Grievance Examiner Witnesses:
 - a. Any DOE employee witness requested and whose testimony, in the judgment of the grievance examiner, is necessary for development of the facts, must participate if called. DOE contractors are not required to cooperate under this BPA HR Directive, but may be requested through the appropriate Contracting Officer.
 - b. DOE employees participating in a grievance proceeding as witnesses will be considered to be in a duty and pay status during such participation.
 - c. If the grievance examiner determines that the presence of witnesses who are not DOE employees and not under DOE jurisdiction is relevant and in the interest of BPA, their transportation costs and per diem will be paid in accordance with existing travel regulations. Note: Such witnesses may not be compelled to appear to testify.
 - d. Each witness will be advised that full and complete testimony is expected and that the witness will not be subject to any restraint, coercion, discrimination, or reprisal as a result of such testimony.
 - e. The examiner's authority includes, but is not limited to, taking proper steps to expedite the hearing of evidence and ruling on all questions arising during the proceeding, such as admissibility of evidence and calling of witnesses.
 - f. Administering Oaths or Affirmations: For the purposes of this section, examiners are authorized to administer oaths or affirmations to those individuals providing testimony relative to the grievance.

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6. The deciding official will furnish appropriate physical facilities, clerical support (including preparation of summaries of hearing transcripts), and other resources, as necessary, to meet the requirements for grievance examination procedures.
7. Upon completion of the inquiry, the grievance examiner will ensure that a designated member of the HCM Employee Relations staff, the employee, and the employee's designated representative, if any, have an opportunity to review and comment on all documents in the grievance file. Comments are due 5 workdays after the grievance examiner report is provided for review. Any comments submitted must be included in the grievance file.
8. The grievance examiner will submit the original copy of the grievance file with a report of findings and recommendations to the deciding official with a copy to the HCM Employee Relations staff. The examiner will furnish a copy of the report to the employee and the employee's representative. The examiner's report should include the rationale for the findings and recommendations.

D. Grievance Decisions

1. Upon receipt of the report of findings and recommendations, the deciding official must ensure that the employee's point of view has received fair consideration. It is essential that all decisions at any level be based upon facts; be fully responsive to the employee's allegations, questions, or expressions of dissatisfaction; and where the recommendation is adverse to the employee, contain a detailed explanation.
2. Within 7 days of receipt of the report of findings and recommendations, the deciding official will do one of the following:
 - a. Accept the recommendations in the report and notify the employee of the decision in writing, with a copy to HCM Employee Relations. The decision will be final and contain findings on all issues covered by the grievance examining process. The employee may not request further review of the same grievance within DOE.
 - b. Reject the recommendations in the report and notify the employee of the decision in writing. The deciding official will submit the grievance package, informal and formal decisions, grievance examiner report and relevant documents to include comments provided by BPA Employee Relations and the employee to the reviewing official.
 - i. Within 14 days of receipt, the reviewing official will review the submitted grievance package and notify the employee in writing, with a copy to HCM Employee Relations, of the decision to uphold, reverse, or modify the formal deciding official's decision.
 - ii. The reviewing official's decision in the matter is final, and the employee may not obtain a further review of the same grievance within DOE.

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9. Authorities & References

- A. 5 CFR Section 771, Agency Administrative Grievance System
- B. DOE Order 342.1, Grievance Policy and Procedures
- C. DOE Memorandum, Review of Bonneville Power Administration’s Human Capital Policies, from Kenneth T. Venuto to Elliot E. Mainzer, dated 8/14/2014, with attachment: Exceptions To Department Human Capital Related Directives:

“An exception is granted to DOE Order 342.1, “Grievance Policy and Procedures,” in its entirety until the order is updated. Once the order for grievances is updated, this exception will be revisited with the expectation that BPA will be able to comply with the updated order.”

10. Revision History

This chart contains a history of the revisions and reviews made to this document.

Version Number	Issue Date	Description of Change/Review
1.0	1/19/2016	Initial publication.
2.0	4/18/2016	Style, formatting, and grammar changes.

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Appendix A: Non-Grievable Matters

The following matters are *excluded* from BPA HT Directive 011, Administrative Grievances:

- A. The content of published DOE regulations and policy, or BPA HR Directive.
- B. A decision, complaint, or other formal challenge to a third party including, but not limited to, the Merit Systems Protection Board (MSPB), or subject to final administrative review by the Office of Personnel Management (OPM), or the Equal Employment Opportunity Commission (EEOC), the Federal Labor Relations Authority (FLRA), the Occupational Safety and Health Administration (OSHA), and/or the U.S. Office of Special Counsel (OSC).
- C. Matters administered by the Government Accountability Office and the Office of Workers' Compensation Programs (OWCP), Department of Labor (DOL).
- D. Grievances with issues included in a complaint filed with the OSC will not be processed until the allegation filed with the OSC is resolved.
- E. The use or non-use of Alternative Discipline procedures, or the substance of an Alternative Discipline decision and agreement.
- F. The establishment of a Performance Assistance or Performance Improvement Plan.
- G. Nonparticipation in the mediation process.
- H. Nonselection for promotion from a group of properly ranked and certified candidates.
- I. A preliminary warning notice of an action which, if effected, would be covered under the grievance system or excluded from coverage by paragraph 2. above.
- J. A return of an officer or employee from the Senior Executive Service (SES) to the General Schedule during the one-year period of probation or for less than fully successful executive performance under Title 5 U.S.C., Section 3592.
- K. A performance evaluation under Title 5 U.S.C., Chapter 43, Subchapter II (performance appraisal of the SES).
- L. Reassignment of a career SES appointee to another SES position or a position outside the SES following receipt of an unsatisfactory rating.
- M. Failure to grant an SES pay rate increase.
- N. The payment of, failure to pay, or amount of critical position pay under Title 5 U.S.C., Section 5377.
- O. The granting of or failure to grant an employee performance award or the adopting of or failure to adopt an employee suggestion or invention under Title 5 U.S.C., Sections 4503 through 4505, or the granting of or failure to grant an award of the rank of meritorious or distinguished executive under Title 5 U.S.C., Section 4507, or the failure to grant a performance award (bonus) approved by the Secretary or his/her designee.

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- P. An action that terminates a temporary promotion within a maximum period of 5 years and returns the employee to the position from which the employee was temporarily promoted.
- Q. An action that terminates a term promotion at the completion of a specified period, 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 in accordance with Title 5 CFR, Part 335.
- R. The receipt of or failure to receive a quality step increase under Title 5 U.S.C., Section 5336.
- S. The granting or non-granting of any monetary or non-monetary award.
- T. Failure to receive a noncompetitive promotion.
- U. The payment of, failure to pay, or amount of a recruitment bonus, relocation bonus, retention allowance, or voluntary separation incentive pay (buyout).
- V. A decision to include or exclude an employee's position on or from the eligibility lists for Voluntary Separation Incentives (VSI) and/or Voluntary Early Retirement Authority (VERA).
- W. The substance of the critical elements and performance standards of an employee's position which have been established in accordance with the requirements of Title 5 U.S.C., Chapter 43, Subchapter I, and 5 CFR, Part 430 (including SES).
- X. The termination under Title 5 CFR, Part 315, Subpart H, of a probationer for unsatisfactory performance or conduct.
- Y. Return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period under Title 5 U.S.C., Section 3321(a)(2), and 5 CFR, part 315, subpart I.
- Z. A request for personal relief that, if granted through the grievance procedure, would result in violation of specific provisions of laws or Government-wide regulations.
- AA. An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which assigns the employee from one geographical location to another.
- BB. Any other separation action not excluded above by this Attachment.
- CC. Matters regarding employee benefits such as retirement, life insurance, or health insurance benefits or contributions.
- DD. A suspension or removal under 5 U.S.C., Section 7532.
- EE. The classification of any position which does not result in the reduction in grade or pay of an employee.

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FF. The payment of, failure to pay, or amount of critical position pay under Title 5 U.S.C., Section 5377.

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