



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

6.771.1

SEPTEMBER 29, 2021

EFFECTIVE DATE

(09-29-2021)

PURPOSE

- (1) This transmits revised IRM 6.771.1, Internal Revenue Service (IRS), Agency Grievance System (AGS).

MATERIAL CHANGES

- (1) This revised IRM incorporates Interim Guidance HCO-06-0320-0005 dated September 28, 2020.
- (2) This revised IRM changed references within IRM from LR/ER Strategic Policy Office to Associate Director, LR/ER Field Operations, Labor/ Employee Relations and Negotiations Division based on current organizational changes.
- (3) IRM 6.771.1.1 incorporates the Program Scope and Objectives subsection as required by the Internal Management Documents (IMD) System outlined in IRM 1.11.2, Internal Revenue Manual (IRM) Process.
- (4) IRM 6.771.1.6 added definitions for Grievance Deciding Official, Formal Grievance, and Informal Grievance; removed definitions for Alternative Dispute Resolution and Deciding Official; and modified definitions for Days and Disciplinary Actions.
- (5) This revised IRM adjusts the timing within the reconsideration process.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 6.771.1 Internal Revenue Service, Agency Grievance System, dated October 23, 2012.

AUDIENCE

All Business Units.

Sheila D. Wright, Ed.D.

Director, Office of HR Strategy, Human Capital Office (HCO)

6.771.1

Agency Grievance System (AGS)

Table of Contents

6.771.1.1 Program Scope and Objectives

6.771.1.1.1 Background

6.771.1.1.2 Authority

6.771.1.1.3 Responsibilities

6.771.1.1.4 Program Management and Review

6.771.1.1.5 Program Controls

6.771.1.1.6 Terms/Definitions/Acronyms

6.771.1.1.7 Related Resources

6.771.1.2 Policy

6.771.1.3 Grievant's Representative

6.771.1.4 Disallowing Grievant's Representative

6.771.1.5 Employee Coverage

6.771.1.6 Grievance Coverage

6.771.1.6.1 Appealable Decisions Excluded from the AGS

6.771.1.7 Grievance - Step 1

6.771.1.7.1 Threshold Issues

6.771.1.7.2 Threshold Denials

6.771.1.7.3 Threshold Decisions

6.771.1.8 Grievance - Step 2

6.771.1.9 Factfinding

6.771.1.10 Grievance Process - Performance Grievances for Payband Employees

6.771.1.11 Grievance - Step 3, Final Appeal (for payband performance grievances see IRM 6.771.1.10)

6.771.1.12 Cancellation or Rejection of a Grievance

Exhibits

6.771.1-1 Agency Grievance System Grievance Deciding Official Request for Factfinder

6.771.1.1
(09-29-2021)
Program Scope and Objectives

- (1) **Purpose:** This IRM provides guidance on processing Non-Bargaining Unit (NBU) employee grievances.
 - a. For Bargaining Unit (BU) employees covered by the 2019 National Agreement (NA), Internal Revenue Service (IRS) and National Treasury Employees Union (NTEU) available at: <http://publish.no.irs.gov/cat12.cgi?request=CAT1&catnum=32781>, review appropriate NA provisions. The AGS is only available to BU employees seeking relief for matters not covered in the NA.
 - b. Should this IRM guidance conflict with provisions of the NA, the agreement prevails.
- (2) **Audience:** The policies, authorities, procedures, and instructions contained in this IRM apply to all business units excluding Chief Counsel. This policy applies to NBU employees and BU employees with matters not covered by the NA.
- (3) **Policy Owner:** The Human Capital Office (HCO).
- (4) **Program Owner:** Director, HCO Policy and Audits (P&A) and Labor/Employee Relations and Negotiations (LERN) divisions.
- (5) **Primary Stakeholders:** HCO P&A and LERN divisions.
- (6) **Program Objectives:** This IRM establishes the IRS Agency Grievance policy and procedures for employees to raise matters of concern or dissatisfaction to management for consideration.

6.771.1.1.1
(09-29-2021)
Background

- (1) Title 5 of the Code of Federal Regulations (CFR), Part 771 (5 CFR 771) describes the Agency Administrative Grievance System.
- (2) Department of Treasury Transmittal Number 68(TN-68), Administrative Grievance System, describes the minimum policy and procedures bureaus must meet to establish an Agency Grievance System (AGS).

6.771.1.1.2
(09-29-2021)
Authority

- (1) Regulation: Title 5, Code of Federal Regulations (CFR) Part 771, Agency Administrative Grievance System, (5 CFR 771) at: <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=b79e04740b2c4da0d88efb45132f442e&ty=HTML&h=L&mc=true&r=PART&n=pt5.2.771>.
- (2) Treasury Human Resources Issuance System: Chapter 771, Treasury Transmittal Number TN-68, Treasury Grievance System, at: https://my.treas.gov/Collab/dashr/supportdocs/treas_admin_grievance_system_771.pdf#search=tn%2D68 .

6.771.1.1.3
(09-29-2021)
Responsibilities

- (1) The IRS Human Capital Officer is the executive responsible for this IRM and the Servicewide policy for agency grievances.
- (2) The HCO Office of HR Strategy's Policy and Audits (P&A) division is responsible for developing, updating, publishing, and socializing this IRM content.
- (3) The HCO Office of HR Operations' Labor/Employee Relations and Negotiations division collaborates with P&A on the IRM content and related communica-

tions, ensures adherence to these IRM procedures, assists managers addressing agency grievances, and conducts periodic assessments of the effectiveness of the AGS.

- (4) Supervisors (managers) will:
 - a. Resolve an employee's concern(s) at the lowest level possible.
 - b. Upon receipt of a grievance, forward a copy to the servicing Labor Relations Specialist (LRS) who will assist with processing the grievance. To find the LRS point of contact (POC), refer to *Labor Relations Contact Guide*, HCO Staff Directory, LR Contact Guide.
 - c. Determine if the grievance meets threshold issues (e.g., timely, grievable). Refer to IRM 6.771.1.1.6 (22) and IRM 6.771.1.7.1.
 - d. Accept/Deny employee's requested representative, if applicable.
 - e. Determine if which manager is the appropriate Grievance Deciding Official (GDO) to resolve grievance. See IRM 6.771.1.1.6 (5).
- (5) Employees will:
 - a. Attempt to resolve their concern(s) with the immediate manager if they have authority to provide relief as an informal grievance prior to submitting IRS Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records.
 - b. Comply with time limits in this IRM.
 - c. Submit IRS Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, with enough detail and supporting documentation (if applicable) to clearly describe the matter (issue).
 - d. Specify the personal relief they are requesting.

6.771.1.1.4
(09-29-2021)
**Program Management
and Review**

- (1) This IRM provides policy guidance on the IRS Agency Grievance System.
- (2) The HCO P&A and LERN organizations gauge the effectiveness of this guidance by considering feedback from customers and stakeholders about subjects contained in this IRM. During the review and publishing of this IRM, sections are added, revised, or removed based on statutory and/or regulatory changes and based in part on this process.

6.771.1.1.5
(09-29-2021)
Program Controls

- (1) The P&A organization develops and deploys policies, materials, and programs to increase Servicewide awareness and understanding of the contents of this IRM. Additionally, P&A collaborates with other HCO organizations and Servicewide stakeholders to support education and outreach activities as they relate to the AGS.
- (2) To ensure this IRM policy and procedures remain current and compliant with regulations, the policy and program owners will annually review for changes.

6.771.1.1.6
(09-29-2021)
**Terms/Definitions/
Acronyms**

- (1) **Alternative Dispute Resolution (ADR):** ADR is a phrase used to describe methods to resolve issues that are expeditious, less formal, and more cost effective than a court trial (e.g., negotiation, conciliation, mediation, etc.). ADR is available for Equal Employment Opportunity (EEO) matters; however, it is not available for agency grievances.
- (2) **Control of IRS Management:** a decision exclusively within the delegated authority of the IRS.

- (3) **Days:** the grievant's workdays per their tour of duty. Workdays excludes holidays and official office closure days.
- (4) **Disciplinary Actions:** for the purpose the AGS, includes admonishments, reprimands, and per Article 38 of the NA <http://publish.no.irs.gov/cat12.cgi?request=CAT1&catnum=32781>, for BU employees, suspensions of 14 days or less.
- (5) **Employee:** an individual currently or formerly employed by the IRS for whom a remedy (personal relief) is available including a bargaining unit employees for matters not covered by the NA <http://publish.no.irs.gov/cat12.cgi?request=CAT1&catnum=32781>.
- (6) **Executive Misconduct Unit (EMU) Employees:** Employees covered by EMU include: Executives (ES; SL; AD); Executive Officers (IR-01); Senior Managers (IR-01); Frontline Managers (IR-03); and NBU GS-15. This does not include those serving in an EMU position via a detail or a temporary promotion.
- (7) **Factfinder:** an individual assigned to a grievance case, upon request from the Step 2 or Step 3 GDO. A factfinder gathers information and provides an independent, unbiased report documenting the relevant facts enabling the GDO to make an informed decision. Factfinding may only be performed by persons not involved in the grievance matter. Factfinders may not occupy a position subordinate to the manager(s) involved in the grievance; however, they may be in a position subordinate to the GDO. Refer to IRM 6.771.1.9I, Factfinding.
- (8) **Factfinding:** the process of investigating factual disputes about a grievance.
- (9) **Factual Disputes:** fact(s) in the grievance preventing the parties from resolving the concern(s).
- (10) **Formal Grievance:** begins when an employee completes and submits Form 5877 , Agency Grievance and Authorization for Representative's Access to Official Records to their First Level Manager.
- (11) **Grievance:** a request by an employee, or 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 IRS management. This includes any allegation of coercion, reprisal (except in Equal Employment Opportunity [EEO] cases) or retaliation, or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
- (12) **Grievance Deciding Official:** a manager designated to decide the outcome of a formal grievance (submitted on Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records). The grievance process starts with the submission of Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, to the frontline manager to determine the appropriate GDO. The GDO is the lowest level official who has authority to provide the requested relief and who was not involved in the grievance matter unless they are the Head of the Agency. In each step of the AGS, the GDO must be a higher grade than the GDO at the previous step.
- (13) **Grievance Examiner:** there is no provision for a grievance examiner in the AGS (except for disciplinary actions processed by the EMU). Refer inquiries on EMU matters to Director, LERN

- (14) **Grievance File/Case File:** a file required and maintained by LERN, containing documents related to the grievance, including, but not limited to the informal grievance attempts to resolve, Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, and supporting documentation, such as witness statements, factfinder/grievance examiner report(s), related correspondence, and all decisions (e.g., threshold, representative, grievance).
- (15) **Grievant:** an employee or former IRS employee who files an informal/formal grievance.
- (16) **Group Grievance:** a group of employees submit a grievance about a subject affecting all members of the group. The group will identify a spokesperson to present the grievance and participate in meetings on their behalf. The decision in a group grievance is binding on all. All participants must be identified by name and signature, indicating their voluntary participation at each step of the grievance and their agreement to accept the finality of the administrative decision ultimately rendered.
- (17) **Informal Grievance:** begins when an employee attempts to resolve their concern(s) with management without filing a formal grievance (Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records).
- (18) **Payband:** commonly known as performance-based pay or pay for performance. IRS managers (excluding executives) are on this pay system.
- Note:** For Payband Employees with Performance concerns, refer to IRM 6.771.1.10, Grievance Process-Performance Grievances for Payband Employees.
- (19) **Personal Relief (remedy):** a specific remedy/resolution directly benefiting the grievant.
- (20) **Representative:** a person the grievant designates in writing (and allowed by the GDO; refer to IRM 6.771.1.3, Grievant's Representative, to act on their behalf in the agency grievance process.
- (21) **Senior Executive Services:** A pay system for IRS executives.
- (22) **Threshold Issue:** a procedural determination of grievability, timeliness, and completeness of a grievance decided prior to considering the merits of the grievance. Refer to IRM 6.771.1.7.1, Threshold Issues.

6.771.1.1.7
(09-29-2021)

Related Resources

- (1) Title 5, Code of Federal Regulations (CFR), Part 771, Agency Administrative Grievance System, at: <https://ecfr.io/Title-5/Part>.
- (2) Department of Treasury Transmittal Number 68 (TN-68), at: https://my.treas.gov/Collab/dashr/supportdocs/treas_admin_grievance_system_771.pdf#search=tn%2D68.
- (3) Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, at: http://publish.no.irs.gov/cat12.cgi?request=CAT2&itemtyp=F&itemb=5877&items=*.

- (4) Article 32, National Agreement, <http://publish.no.irs.gov/cat12.cgi?request=CAT1&catum=32781>.
- (5) 5 CFR 294, Subpart A, Procedures for Disclosure of Records Under the Freedom of Information Act
- (6) 5 CFR 297, Subpart B, Privacy Procedures for Personnel Records
- (7) 5 CFR 330, Subpart B, Recruitment, Selection, and Placement (General)
- (8) 5 CFR 351, Subpart B, Reduction in Force
- (9) 5 CFR 352, Subpart B, Reemployment Rights
- (10) 5 CFR 353, Subpart B, Restoration to Duty from Uniformed Service or Compensable Injury
- (11) 5 CFR 430, Subpart B, Performance Management
- (12) 5 CFR 432, Subpart B, Performance Based Reduction in Grade and Removal Actions
- (13) 5 CFR 511, Subpart B, Classification under the General Schedule
- (14) 5 CFR 532, Subpart G, Prevailing Rate System
- (15) 5 CFR 536, Subpart B, Grade and Pay Retention
- (16) 5 CFR 551, Subpart B, Pay Administration under the Fair Labor Standards Act
- (17) 5 CFR 752, Subpart B, Adverse Actions
- (18) 5 CFR 870, Subpart B, Federal Employees Group Life Insurance Program
- (19) 5 CFR 890, Subpart B, Federal Employees Health Benefit Program
- (20) 29 CFR 1614, Federal Sector Equal Employment Opportunity

6.771.1.2
(09-29-2021)
Policy

- (1) It is the policy of the IRS to maintain a climate of openness in which a grievant or potential grievant may express their concern(s) informally or use the AGS to seek a formal resolution.
- (2) Employees may file grievances without restraint, interference, coercion, discrimination, or reprisal. Grievances are to be fairly and objectively considered and processed expeditiously.
- (3) All grievances are addressed within the business unit's management chain.
 - a. If the Commissioner or equivalent level is the Step 1 GDO, there is only one grievance step.
 - b. A grievance will not elevate to the Commissioner of the IRS, the Deputy Commissioner (DC) for Operations Support (OS) or the DC for Services and Enforcement (SE) unless the grievant reports directly to them. For example, in the Large Business & International (LB&I) business unit, the Director of Programs and Business Solutions reports to the DC LB&I; therefore, they may file a formal grievance with the DC.
- (4) Management may grant up to a total of four hours of administrative time to the grievant and their authorized representative to discuss, prepare, and present

the grievance. The AGS allows for a total of four hours of administrative time, regardless of the number of steps the grievance involves.

- a. The Grievant and authorized representative (if applicable) must request and receive approval for administrative time in advance.
- b. Use of government equipment (e.g., copiers, printers, and computers) requires advance approval.

6.771.1.3
(09-29-2021)
**Grievant's
Representative**

- (1) Employees may choose a representative who is:
 - a. Willing to serve, and
 - b. Allowed by the GDO (refer to IRM 6.771.1.4).
- (2) Employees may designate a representative at any step of the AGS.
- (3) The grievant's designation must be in writing and submitted to the GDO.
- (4) Only one individual may act as the representative.
- (5) The grievant may change the designation of a representative at any time.

6.771.1.4
(09-29-2021)
**Disallowing Grievant's
Representative**

- (1) The IRS will allow a grievant's choice of representative unless such choice:
 - a. Conflicts with the priority needs of the IRS - The IRS mission takes precedence. The requested representative may be disallowed if releasing the named employee would have a significant negative impact on the IRS. This consideration uses the same criteria as annual leave approval.
 - b. Creates a conflict of position - This occurs when the representative's IRS duties conflict with the functions of the representative. For example, if the requested representative participated in or has special knowledge about the grievance by virtue of their assigned duties.
 - c. Creates a conflict of interest - This can take many forms. For example, when a GDO's supervisor is designated by the grievant to act as their representative.
 - d. Or, Imposes unreasonable costs to the government - This can include any travel cost, or any expenses requested by the representative to fulfill their role.
- (2) The GDO will, within ten days of receiving the grievant's designation of representative, if applicable, provide the written disallowance notice to the employee and the disallowed representative. The disallowance notice includes the grievant's appeal rights and becomes part of the case file.
- (3) A grievant (not the disallowed representative) may appeal the decision to disallow the representative by:
 - a. Submitting a written appeal (via email) within 10 days of receipt of a decision.
 - b. Including the disallowance decision notice in the appeal.
 - c. Sending the appeal to the LERN Associate Director, Field Operations (AD Field Ops). To find the name of the AD Field Ops, refer to HCO's website at <http://hco.web.irs.gov/apps/staffdir/lrcontactguide.pdf>.
- (4) Within 15 days of receiving the appeal regarding the representative decision, the AD Field Ops will make and communicate a final decision on either

allowing or disallowing the representative. This action enables the grievance process to proceed and is not grievable.

6.771.1.5
(09-29-2021)
Employee Coverage

- (1) The AGS is available to the following individuals:
 - a. Current NBU employees.
 - b. Current BU employees if the grievance issue is not covered under the NA (e.g., the ranking procedures used to fill a supervisory position).
 - c. Former IRS employees on a matter that arose during their IRS employment with a plausible remedy (e.g., pay issue) after separation.
- (2) The AGS is not available to the following individuals:
 - a. Applicants for employment
 - b. BU employees if the matter is covered in the NA
 - c. Chief Counsel employees
 - d. Deceased employees unless the grievance involves a pay-related matter.

6.771.1.6
(09-29-2021)
Grievance Coverage

- (1) Except as listed below, the AGS applies to matters of concern or dissatisfaction relating to the employment of a covered employee that is subject to the control of IRS management.
- (2) Employees cannot file an EEO complaint and an agency grievance on the same issue. If an employee files a formal grievance through the AGS and also files an EEO complaint for the same issue, whichever action was filed first prevails.

Note: If an employee files an EEO complaint that is then rejected or denied, the employee may file an agency grievance within 15 workdays of receiving the EEO decision provided the matter is grievable under the AGS (see exclusions in IRM 6.771.1.6(3)).

- (3) The AGS excludes matters pertaining to:
 - a. The content of established IRS regulations and policies.
 - b. Any matter subject to review and adjudication by the Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM), the Federal Labor Relations Authority, or the Equal Employment Opportunity Commission (EEOC). See IRM 6.771.1.6.1, Appealable Decisions Excluded from the AGS.
 - c. A matter administered by the Government Accountability Office or the Office of Workers' Compensation Programs, Department of Labor.
 - d. Any matter forwarded to the IRS Deputy Ethics Official for a review and decision.
 - e. Non-selection for promotion from a group of properly ranked and certified candidates, or failure to receive a non-competitive promotion.
 - f. The termination/separation of probationary employees for performance reasons.
 - g. The termination or expiration of a time-limited excepted service appointment or term appointment unless the employee does not have appeal rights under 5 CFR 4325 CFR 432 or 5 CFR 7525 CFR 752.
 - h. A reduced penalty or other lesser action resulting from a decision on a grievance.

- i. The termination of a term or temporary promotion that returns the employee to the position from which they were temporarily promoted or reassigned or demotes the employee to a different position that is not at a lower grade or pay than the position from which they were temporarily promoted.
- j. The substance of an employee's critical job elements and performance standards established per Title 5 of the United States Code, Chapter 43 and 5 CFR 430.
- k. The granting of, or failure to grant, or the amount of any type of discretionary award or recognition.
- l. The adoption of or failure to adopt an employee suggestion or invention.
- m. Any SES performance-based action or any decision regarding SES pay, awards, or performance evaluations.
- n. The expiration of an SES limited emergency or term appointment on the date specified as a condition of employment at the time of the appointment or promotion.
- o. Return of SES members to another pay system during their one-year probationary period for less than fully successful executive performance, or failure to recertify, conditional recertification or termination during probation for unacceptable performance.
- p. A receipt of an advance notice (proposal letter) for an action that has not been decided or taken place (e.g., a proposal for a suspension, adverse action, or an intent to deny a within grade increase).
- q. A receipt of a non-disciplinary action such as a cautionary, clearance, close without action or counseling memorandum or notice.
- r. A receipt of a mid-year performance appraisal.
- s. An action taken for violating a Service Agreement per IRM 1.32.12, Servicewide Travel Policies and Procedures, IRS Relocation Travel Guide.

6.771.1.6.1
(09-29-2021)

**Appealable Decisions
Excluded from the AGS**

- (1) Appealable decisions subject to the adjudication of other Federal Agencies referred to in IRM 6.771.1.6(3)(b) include but are not limited to:
 - A denial of a Freedom of Information Act request (request for certain personnel records appealable under 5 CFR 294 Subpart A).
 - A denial of access or amendment to a personnel record in the OPM's system of records appealable under 5 CFR 297.
 - A Reduction-in-Force action appealable under 5 CFR 351.
 - An alleged violation of the reemployment priority list, appealable under 5 CFR 330 Subpart B.
 - An alleged violation of reemployment or reinstatement rights appealable under 5 CFR 352.
 - An alleged violation of military or compensable injury restoration rights appealable under 5 CFR 353.
 - A reduction in grade or removal for unacceptable performance appealable under 5 CFR 432.
 - A position classification decision appealable under 5 CFR 511.
 - A grade or salary retention decision appealable under 5 CFR 536.
 - A job-grading decision appealable under 5 CFR 532 Subpart G <https://ecfr.io/Title-5/Part-532>.
 - An action appealable under the Fair Labor Standards Act compliance and complaint procedures covered in 5 CFR 551.
 - An adverse action appealable under 5 CFR 752.
 - A life insurance decision appealable under 5 CFR 870.
 - A health benefits decision appealable under 5 CFR 890.

- An allegation or complaint of discrimination appealable under 29 CFR 1614.

6.771.1.7
(09-29-2021)
Grievance - Step 1

- (1) If an employee wishes to formally grieve a work-related issue (other than a disciplinary action or an annual performance rating), they must present it on Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, to their immediate supervisor within 15 days of the event or the date the employee became aware of the matter being grieved. Employees should present a matter of concern about a continuing practice/condition as soon as possible.
 - a. Grievances on disciplinary actions begin at Step 2 in the AGS with the Step 2 GDO. Refer to IRM 6.771.1.8.
 - b. Grievances on annual performance ratings for non-payband employees begin at Step 2 in the AGS with the rating or reviewing official. Refer to IRM 6.771.1.8.
 - c. Grievances on annual performance ratings for payband employees begin at Step 2 in the AGS with the Performance Review Board. Refer to IRM 6.771.1.10.
- (2) Within 15 days of the manager will review the Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, and determine the appropriate GDO and forward the Form 5877 and all supporting documents.
- (3) Within 10 days the GDO will review the Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, and the supporting documentation and issue a written threshold decision if any threshold issues apply. Refer to IRM 6.771.1.7.1

6.771.1.7.1
(09-29-2021)
Threshold Issues

- (1) Threshold issues include:

- Timeliness

Note: The employee has five days from receiving the threshold notice to resubmit a corrected/detailed grievance.

- Completeness (varies based on the nature of the grievance)
- Grievability - issue is excluded from AGS
- Appropriate Scope - issue falls within the scope of the AGS procedures
- Appropriateness of Representative - refer to IRM 6.771.1.4

6.771.1.7.2
(09-29-2021)
Threshold Denials

- (1) If the grievance does not meet all threshold issues, the GDO, in conjunction with the assigned LERN Associate, will provide a written threshold decision, including the steps to appeal, to the grievant within 15 days of receiving the grievance.

Note: A meeting is not required.

- a. Employees may appeal a threshold decision via e-mail to the LERN Associate Director, Field Operations (AD Field Ops), within 10 days after receipt of a threshold decision. To find the name and e-mail address of the AD Field Ops, refer to HCO's website <http://hco.web.irs.gov/apps/staffdir/lrcontactguide.pdf>.

- b. A response to the threshold appeal is issued within 15 days of receiving the appeal. The original is sent to the grievant and copies are sent to the grievant's supervisor, their representative if applicable, and the servicing LRS for inclusion in the grievance file.
- c. The Field Operations' decision on the threshold issue(s) is final, binding, and not subject to further review.

6.771.1.7.3
(09-29-2021)

Threshold Decisions

- (1) If the grievance meets all threshold issues, within 15 days of receiving the Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, the GDO will prepare and provide a memorandum response to the grievant and their representative.
- (2) The memorandum response will include:
 - A summary of the issue(s)
 - A summary of the consideration given to the issue(s)
 - The conclusion(s) reached
 - The decision on the issue(s) including any applicable remedy/remedies
 - Appeal rights (Step 2) and time limits
- (3) Additionally, the GDO will communicate (either face-to-face or via conference call) the following information with the employee and their representative (if applicable):

6.771.1.8
(09-29-2021)

Grievance - Step 2

- (1) Step 2 in the AGS involves consideration of:
 - a. Disciplinary actions

Note: If an employee wishes to grieve a disciplinary action, they must present it on Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, to their second level supervisor within 15 days.
 - b. Appeals of Step 1 decisions, and if an employee wishes to appeal the Step 1 decision, within 15 days of receiving the Step 1 decision they must prepare a memorandum or email to their second level supervisor stating the issue was not resolved at Step 1 and attach Form 5877 and all related correspondence.

Note: No new issue(s) may be added to the Step 2 (i.e., issues not raised/considered in the Step 1 decision).
 - c. Non-payband performance grievances.

Note: For payband performance grievances, refer to IRM 6.771.1.11.
- (2) Upon receipt of the Step 2 grievance, the second level supervisor will determine the appropriate GDO, and then forward the Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, and all supporting documentation. The Step 2 GDO will contact their servicing LRS to discuss the grievance and next steps.

- a. If there is no factual dispute, the Step 2 GDO will hold a meeting with the employee (and their representative if applicable) within 10 days of receiving the grievance and attempt to resolve the issue. This is referred to as the Step 2 meeting.
- b. If there is a factual dispute, refer to IRM 6.771.1.9.
- c. Within 10 days of the Step 2 meeting (and there is no factual dispute), the GDO will issue a decision.

Note: If the grievant accepts the Step 2 decision, it is final, binding, and not subject to further review. If the grievant does not accept the Step 2 decision, they may appeal it and move to Step 3 in the AGS. Refer to IRM 6.771.1.1.11 .

6.771.1.9
(09-29-2021)
Factfinding

- (1) If the GDO at Step 2 or Step 3 determines the grievance involves a factual dispute, the GDO will request a factfinder normally within 5 days of receipt of the Step 2 or Step 3 grievance.

Note: Management may request a factfinder at any time prior to issuing a final decision at either Step 2 or Step 3 if it is needed for consideration of the matter.

- (2) To request a factfinder, the GDO completes Exhibit 6.771.1-1, "Agency Grievance System Grievance Deciding Official Request for a Factfinder".
 - The GDO sends the request via email to the LERN Associate Director, Field Operations (AD Field Ops). To find the name of the AD Field Ops, refer to HCO's website at <http://hco.web.irs.gov/apps/staffdir/lrcontactguide.pdf>.
- (3) A factfinder may obtain the evidence necessary to address the issue(s) at their discretion.
- (4) The factfinder will provide their preliminary findings to the grievant, their representative if applicable, and the GDO.
- (5) GDO, grievant, and representative if applicable (the parties) have three days to independently review the information. The pre-meeting review gives each party an opportunity to:
 - a. suggest additional sources of evidence, and/or
 - b. deny, refute, or otherwise challenge any evidence in the factfinder's documentation

Note: If the parties have additional evidence to suggest and/or comments, they must send a written reply/email is sent to the factfinder who will add the party's reply to the grievance and investigate prior to preparing the report of findings.

- (6) After reviewing the additional source(s) of evidence and comments suggested by the parties, if any, the factfinder prepares a report of findings and sends it to the GDO with copies to the grievant, the representative if applicable, and the servicing LRS.
- (7) If the GDO determines additional fact-finding is necessary (preliminary finding are insufficient or inadequate), they may ask for additional fact-finding. If this

occurs, the GDO will inform the grievant and the representative (if applicable) of the type of additional inquiry and the approximate decision date.

- (8) Within 10 days of accepting the factfinding report, the GDO will hold a grievance meeting with the employee and their representative if applicable.
- (9) Within 10 days of the Step 2 meeting, the GDO will issue a written decision. The decision will include:
 - a. A summary of the Step 2 issue(s)
 - b. A summary of the consideration given to the issue(s)
 - c. The conclusion(s) reached
 - d. The decision on the issue(s) including any applicable remedy/remedies
 - e. Appeal rights to Step 3 and time limit
- (10) If the grievant accepts the Step 2 decision, it is final, binding, and not subject to further review.
- (11) If the grievant does not accept the Step 2 decision, they may appeal to Step 3 of the AGS. Refer to IRM 6.711.1.11.

6.771.1.10
(09-29-2021)
**Grievance Process -
Performance Grievances
for Payband Employees**

- (1) Reconsideration of Rating - Each business unit or equivalent establishes written guidelines for the Performance Review Board (PRB) grievance procedures prior to any reconsideration. The procedures will identify the GDO designated to receive and consider appeals (Step 2 of the AGS).
 - a. If a Payband employee wishes to grieve a performance rating, they must submit their request on Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, including all relevant information to their designated PRB within 15 days from receiving the rating. The grievant will provide a copy of the grievance to their supervisor and the servicing LRS' section chief. To determine which LR/ER office supports a business unit, refer to <http://hco.web.irs.gov/apps/staffdir/lrcontactguide.pdf>.
 - b. Within five days, the PRB will review Form 5877, Agency Grievance and Authorization for Representative's Access to Official Records, and supporting documentation and issue a written threshold decision if a threshold issue is not met for (e.g. Timeliness, Completeness and Grievability).

Note: Completeness must contain a signed copy of the rating being grieved, the reason(s) grievant believes the rating to be incorrect, and the remedy requested. If the grievance is incomplete, it is returned. A corrected grievance may be resubmitted within five days of the PRB's threshold notice.

Note: Grievability - only payband performance ratings are grieved through this process.

- c. The PRB will consult with the servicing LRS at <http://hco.web.irs.gov/apps/staffdir/lrcontactguide.pdf> before finalizing the decision. If the PRB determines the original or resubmitted grievance does not meet all threshold issues, the PBR will issue a written threshold decision to the grievant and send copies to the grievant's supervisor and the servicing LRS.

Note: Threshold decisions are final, binding, and not subject to further review.

Note: If the resubmitted grievance does not contain threshold issues, the PRB will consider the requested reconsideration of rating and provide a written decision within five days.

- (2) The PRB’s written grievance decision will include instructions on the time limit to submit an appeal (Step 2) and the GDO designated to receive the appeal who must not have been involved in the original reconsideration. Refer to IRM 6.771.1.8.

Note: The total time spent in the Reconsideration process should not exceed 15 days (five days for PRB to determine threshold issues, five days for incomplete grievances to be resubmitted, and five days to consider the merits of the request). If the threshold issues are met, the PRB may use all 15 days to provide a written decision.

- (3) If the employee wishes to appeal the PRB decision, they have five days to submit the appeal to the GDO designated in the decision.

Note: Each business unit identifies the GDO to receive and consider Step 2 appeals.

- (4) An appeal must include:

- The original Form 5877, Agency Grievance and Authorization for Representative’s Access to Official Records
- The PRB decision, and
- Any other supporting documentation

- (5) The designated Step 2 GDO will:

- a. Review Form 5877, Agency Grievance and Authorization for Representative’s Access to Official Records, and the PRB decision
- b. Consider the documentation submitted to support the grievant’s position
- c. Issue a written grievance decision within ten days
- d. Provide a copy of the written decision to the grievant’s manager and the servicing LRS

- (6) The Step 2 decision is final, binding, and not subject to further review.

Note: All Payband grievances are addressed at the lowest level possible (within the business unit, operating division, or the equivalent). If the grievant is in the immediate chain of command of the Deputy Commissioner, the PRB will designate a Step 2 GDO.

6.771.1.11
(09-29-2021)
Grievance - Step 3, Final Appeal (for payband performance grievances see IRM 6.771.1.10)

- (1) If an employee wishes to grieve the Step 2 decision, they must prepare a memorandum or email stating the unresolved issue(s) from Step 2 and attach Form 5877 with supporting documentation within 10 days.
- (2) The step 3 GDO:
 - a. Will review Form 5877 and supporting documentation and contact the servicing LRS to discuss next steps.

- b. Must hold a meeting with the employee and their representative (if applicable) within 10 days of receiving the appeal of the Step 2 decision and attempt to resolve the issue.
 - c. Will issue a decision within 10 days of the meeting.
- (3) The Step 3 GDO's decision is final, binding, and not subject to further review.

6.771.1.12
(09-29-2021)

**Cancellation or
Rejection of a Grievance**

- (1) At any time prior to issuing the final decision (at any Step), a GDO may cancel or reject a grievance:
- At the employee's request.
 - Due to the grievant's termination/separation from the IRS unless a remedy for the former employee's concern may be granted after termination.
 - For failure to pursue the grievance in a timely and acceptable manner (e.g., the employee does not furnish or does not timely furnish information requested and necessary to address the concern).
 - For failure to specify the personal relief requested (remedy).
 - Because the matter(s) is not covered by the AGS or is not within management's control to resolve.
 - By an employee who is not covered by the AGS (e.g., a BU employee submits Form 5877 when they should follow the NA Article 41 grievance procedures).
 - If the procedures in this IRM are not followed.
- (2) The written notice of cancellation or rejection will include:
- a. The reason(s)
 - b. Citation(s) (e.g., an IRM section)
 - c. Appeals rights with time limit
- (3) Send the appeal via email to the LERN Associate Director, Field Operations (AD Field Ops). To find the name of the AD Field Ops, refer to HCO's website at <http://hco.web.irs.gov/apps/staffdir/lrcontactguide.pdf>.
- (4) Within 15 days of receiving the appeal, the AD Field Ops will issue a written decision to the grievant and send copies to the grievant's supervisor and the servicing LRS.
- If the decision is upheld, the grievance is closed. The decision is final, binding, and not subject to further review.
 - If the decision is in favor of the grievant, the grievance is returned to the GDO to address the grievance.

Exhibit 6.771.1-1 (09-29-2021)

Agency Grievance System Grievance Deciding Official Request for Factfinder

Date Requested:	
Grievant's Name:	
Series/Grade:	
Business Unit:	
Geographic Location:	
Phone Number:	
Email Address:	
First Level Supervisor:	
Geographic Location:	
Phone Number, Step 2:	
Email Address:	
Deciding Official:	
<i>(Grievance Deciding Official must not have been involved in any step of this grievance.)</i>	
Geographic Location:	
Phone Number:	

Exhibit 6.771.1-1 (Cont. 1) (09-29-2021)

Agency Grievance System Grievance Deciding Official Request for Factfinder

Email Address:	
Official with Authority to Grant Remedy:	_____

Geographic Location:	_____

Phone Number:	_____

Email Address:	_____
Description of Issue:	
Nature if Factual Dispute:	

Refer to IRM 6.771.1.9 for guidance on submitting the form.