

SBA

SOP 37 71 04

Employee Dispute Resolution Process

Office of Human Resources Solutions
U.S. Small Business Administration

SMALL BUSINESS ADMINISTRATION STANDARD OPERATING PROCEDURE (SOP)

SOP: 37 71
Revision: 04
Subject: Employee Dispute Resolution Process

Purpose:

To update this SOP to comply with Executive Order 13839, Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles. Technical corrections were also made to remove the grievant from the list of parties who could initiate a Petition for Review of an Office of Hearings and Appeals (OHA) decision. This correction achieves alignment with regulatory requirements provided in 13 CFR 134.801-809.

Personnel Concerned:

This SOP applies to all SBA employees, except as described under the scope section of this policy.

Summary of Changes:

- Changes made throughout to remove performance ratings of record, incentive awards such as performance awards, cash awards, recruitment, relocation, and retention incentives from the Agency's grievance procedures.
- Changes made throughout to clarify servicing human resources office roles and responsibilities in the procedures.

Cancellations: This SOP supersedes:

- SOP 37 71 3 Employee Dispute Resolution Process dated August 24, 2017

Originator: Office of Human Resources Solutions (OHRS)

Authorized By: Elias Hernandez, Chief Human Capital Officer (CHCO)

Effective Date:

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EMPLOYEE DISPUTE RESOLUTION PROCESS

I. PURPOSE

The Employee Dispute Resolution Process (Process) is a three-step procedure for resolving employee complaints and disputes. The purpose of this Process is to provide a fair, equitable, and timely forum for internal review and resolution of disputes on employment-related matters. An efficient and effective administrative dispute system is in the best interest of both the Agency and the employee, as it provides a means for the Agency to identify, track, and resolve employee concerns. Because SBA seeks to offer managers and employees the tools to improve communication and resolve conflict in a productive manner, this Process encourages mediation.

II. ELIGIBLE EMPLOYEES

Any non-bargaining unit employee may use this Process.

Employees covered by a collective bargaining agreement are not eligible and must use the negotiated dispute procedure provided for under their collective bargaining agreement. Employees who are unsure of whether they may use this Process may discuss their eligibility with their supervisors or contact their Servicing Human Resources Office (SHRO).

III. ISSUES AN EMPLOYEE MAY DISPUTE THROUGH THIS PROCESS

An employee dispute (as used in this Process) is any matter of concern or dissatisfaction, subject to the control of Agency management and relating to the employment of an employee.

Examples of covered matters include, but are not limited to: working conditions; improper application of, or failure to follow, rules and regulations; pay-setting decisions; failure to receive a career-ladder promotion when an employee has satisfactorily performed higher-level work; suspension from duty without pay for 14 days or less; letters of reprimand; and local, involuntary, or directed reassignments.

IV. ISSUES EXCLUDED FROM THIS PROCESS

Disputes for which no personal relief is possible and claims that are moot are barred from this Process.

In addition, an employee may not dispute:

- A. An action that is not final, such as a proposed disciplinary action, a notification of pending reassignment, an interim performance rating, a progress review, or a performance improvement plan;
- B. A Prohibited Personnel Practice;
- C. A complaint of discrimination arising under Title VII of the Civil Rights Act of 1964 or other authorities enforceable by following the procedures in 29 CFR Part 1614;

Note: This paragraph does not require management or the Office of Hearings and Appeals (OHA) to dismiss grievances that merely mention discrimination. However, the Equal Employment Opportunity (EEO) process is the sole recourse for seeking statutory remedies, and it imposes binding time limits. Pursuing a dispute through this Process does not satisfy or toll deadlines in the EEO process, nor does it make an employee eligible for those statutory remedies, including monetary relief. Employees should

consult the Agency's Avenues of Redress Chart (Appendix C) for more information on how to pursue statutory remedies for complaints of discrimination.

- D. An issue which is appealable to the Merit Systems Protection Board (MSPB), such as a suspension for more than 14 days or a reduction in pay;
- E. Any matter under the jurisdiction of the Office of Personnel Management (OPM), such as:
 - 1. Retirement, life insurance, and health insurance;
 - 2. Any determination made by OPM (or by SBA under delegated examining authority) pertaining to initial appointments; or
 - 3. The title, series, grade, or pay schedule of an employee's position; however, if an employee is unable to resolve a concern with his/her supervisor and SHRO, the employee may file a classification appeal with SBA or OPM (see [SOP 35 00](#));
- F. A decision made by the Government Accountability Office, the Office of Workers' Compensation Programs, or any other federal agency;
- G. A requirement to cooperate and render assistance in the Office of Inspector General's (OIG) audits and investigations;
- H. Termination of an appointment while an employee is serving a probationary or trial period;
- I. Termination or Expiration of a temporary or term appointment;
- J. An action taken consistent with a formal agreement, into which the employee voluntarily entered, assigning the employee from one geographic area to another;
- K. An employee's return from an initial appointment as a supervisor or manager to a nonsupervisory or non-managerial position after failing to satisfactorily complete a supervisory or management probationary period;
- L. The content and adequacy of the definitions of the critical elements and performance standards of the employee's position or the assignment of performance rating of record;
- M. The content of published SBA regulation, policy, or procedure;
- N. A final decision on an employee's choice of representative in a dispute when the SBA concludes that the representation constitutes a conflict of interest;
- O. A decision of an SBA Standards of Conduct Counselor or the Standards of Conduct Committee;
- P. Non-selection for promotion or reassignment;
- Q. Failure to receive a non-competitive promotion or reassignment where there is documented evidence that policies and procedures have been appropriately applied;
- R. The termination of a time-limited promotion;
- S. Failure to receive a performance or incentive award including, cash awards and quality step increases;
- T. An SES appointee's performance evaluation;
- U. An SES appointee's reassignment following receipt of an unsatisfactory rating;

- V. The return of an SES career appointee to the General Schedule or other pay system during a probationary period or for less than fully successful executive performance;
- W. The termination of an SES career appointee during probation for unacceptable performance; and
- X. The award of any form of incentive pay including recruitment, retention, or relocation payments.

For matters that cannot be addressed through this Process, employees should refer to the Agency's Avenues of Redress Chart (Appendix C) to learn about other forums available for resolving workplace disputes and complaints.

V. CANCELLATION OF DISPUTE

The Agency may cancel a dispute in whole or in relevant part:

- A. At the employee's request;
- B. If the employee is not eligible to participate in this process;
- C. If the employee has already disputed the matter or has filed or files a challenge on the same matter in any other forum;
- D. If the employee is not requesting personal relief; or
- E. If the employee fails to identify or support a basis for overturning or requiring management action.

VI. REPRESENTATIVES

Individuals, including fellow SBA employees or an attorney, may assist or represent the employee throughout the Process with the exceptions set forth below. If the employee hires an attorney, the Office of General Counsel (OGC) for SBA or the Counsel to the Inspector General (IG) may represent the management official. SBA will not pay for any attorney's fees incurred by an employee. If the employee's representative is another SBA employee, the representative must not present a conflict of interest. Employees who work in the Office of Diversity, Inclusion & Civil Rights (ODI&CR), the Office of Human Resources Solutions (OHRS), OGC, as well as human resource management staff in the Office of Disaster Assistance (ODA) and the Office of Inspector General (OIG) present a conflict of interest and may not represent other employees.

VII. DUTY TIME

This policy allows employees a reasonable amount of duty time, up to four hours, to prepare the dispute at each step of the Process. A current SBA employee representing an employee may also use a reasonable amount of duty time, up to four hours per step. The employee and representative may also give an oral reply or speak with employees of OHRS or SHRO during duty time. Employees must request permission from their supervisors, with as much advance notice as possible, to be excused from other duties. Supervisors

receiving requests in compliance with this section must be mindful of the short deadlines and adjust other assignments if necessary and possible.

VIII. PRIVACY

Employees may use government-provided electronic equipment, such as government computers, email, or facsimile machines, to file and process a dispute. SBA, however, cannot guarantee privacy and confidentiality if an employee chooses to use such government-provided electronic equipment.

IX. THE PROCESS

The Process is a three-step procedure. After consulting this Section, employees should consult the example in Appendix B. The example follows a fictitious employee navigating the three steps of the Process.

A. PREPARING THE STATEMENT OF DISPUTE

To begin the Process, the employee must prepare a written statement of dispute, using pages 1 and 2 of the [SBA Dispute Form 2457](#).

The statement must include:

1. A specific and clear explanation of each action, lack of action, or other matter disputed;
2. The reason why the disputed action or inaction is incorrect, or why the matter should be changed;
3. All supporting evidence, which may include:
 - a. Pre-existing documentation accessible to the employee;
 - b. The employee's own sworn or affirmed declaration;
 - c. Written statements (preferably sworn or affirmed) from other employee-witnesses; and
 - d. Specific references to documents or witnesses under the control of the Agency but not equally available to the employee;
4. The requested remedy providing personal relief to the employee; and
5. A declaration that the matter has not already been challenged in another forum.

B. STEP ONE

The first step of the Process is for the employee to try to resolve the issue with the person who took or failed to take the action the employee is disputing (Step One Official). In most cases, the Step One Official will be the employee's immediate supervisor, but it could be a management official higher in the chain of command or an official outside the chain of command.

To initiate Step One of the Process, the employee must complete numbers 1 through 9 of the [SBA Dispute Form 2457](#), and email, or hand deliver, the [SBA Dispute Form 2457](#) to the Step One Official within 15 calendar days of learning of the action giving rise to the dispute. If the 15th day falls on a weekend, Federal Holiday, or date that OPM or SBA has closed the employee's office, then the next business day is the 15th day.

Upon receiving the [SBA Dispute Form 2457](#), the Step One Official may meet with the employee to obtain additional information or to explore possible resolution of the dispute. In seeking to resolve the dispute, the Step One Official and employee may request mediation under Section X of this SOP.

The Step One Official has 15 calendar days from receiving the [SBA Dispute Form 2457](#) to agree to mediation or respond in writing by completing Box 10 of the [SBA Dispute Form 2457](#) and returning it to the employee, via email or hand delivery, along with the decision attached. If the 15th day falls on a weekend, Federal Holiday, or date that OPM or SBA has closed the Step One Official's office, then the next business day is the 15th day.

Requesting mediation tolls, or stays, the Step One Official's timeline for responding to the employee's dispute. This means that when mediation is requested, the 15-calendar-day period is paused until mediation concludes. In the event mediation is unsuccessful, the Step One Official then has the remainder of the 15-calendar-day period to respond in writing to the employee's dispute.

If the Step One Official does not have the authority to resolve the matter, the employee must refer it to the appropriate management or supervisory official who can resolve it. That official will become the Step One Official and will then have 15 calendar days from the date the [SBA Dispute Form 2457](#) was received to respond. The employee must be notified, in writing, by email or hand delivery, as soon as the dispute has been referred to another management official.

If the Step One Official denies the dispute in whole or in part, the written decision must advise the employee of the option to advance the dispute to the second step. The notice must provide the name and email address of the Step Two Official and state the 15-calendar-day time limit for advancing the dispute to the second step.

If the Step One Official does not issue a decision within 15 calendar days of receipt of the [SBA Dispute Form 2457](#), the employee may proceed to the second step. The employee should not wait for a response from the Step One Official after the 15-calendar-day period has passed. To preserve the right to continue the Process to Step Two, the employee must appeal the matter to the Step Two Official no later than 15 calendar days from the date the Step One decision was due. The employee may receive clarification as to the name and email address of the Step Two Official from the SHRO.

C. STEP TWO

Step Two of the Process is to appeal the matter to the Step Two Official. The Step Two Official is a higher-level official than the Step One Official and, in most cases, is the Step One Official's immediate supervisor. The Step Two Official must have the authority to resolve the dispute.

To initiate Step Two, the employee must complete numbers 11 and 12 of the [SBA Dispute Form 2457](#) and email it to the Step Two Official within 15 calendar days of receiving the Step One decision, or within 15 calendar days of when the Step One decision was due if no Step One decision was received. If the 15th day falls on a weekend, Federal Holiday, or date that OPM or SBA has closed the employee's office, then the next business day is the 15th day.

When the Administrator or Deputy Administrator is the Step Two Official, that person may designate another SBA management board member to review the second step appeal. When the Inspector General (IG) is the Step Two Official, the IG may name another official to respond to the second step appeal.

The Step Two Official will read the SBA Dispute Form and may discuss it with the employee, the representative, any witnesses, or the employee's supervisor. The Step Two Official may also obtain advice from the SHRO.

The Step Two Official has 15 calendar days from receiving the [SBA Dispute Form 2457](#) to respond in writing by completing Box 13 of the [SBA Dispute Form 2457](#) and returning it, via email or hand delivery, to the employee along with the attached decision. If the 15th day falls on a weekend, Federal

Holiday, or date that OPM or SBA has closed the Step Two Official's office, then the next business day is the 15th day.

If the Step Two Official does not have the authority to resolve the matter, the Step Two Official must refer it to the appropriate management or supervisory official who can resolve it, and that person will become the Step Two Official. The new Step Two Official will then have 15 calendar days from the date the [SBA Dispute Form 2457](#) is received to respond. The employee must be notified in writing within 2 calendar days when the dispute has been referred to another management official.

If the Step Two Official denies the dispute in whole or in part, the written decision must advise the employee of the option to appeal the matter to OHA. The notice must state that any appeal must be received at OHA no later than 5 p.m. eastern time on the 15th calendar day from the date the employee received the Step Two decision.

If the Step Two Official does not issue a decision within 15 calendar days of receiving the SBA Dispute Form, the employee may proceed to Step Three. The employee should not wait for a response from the Step Two Official after the 15-calendar-day period has passed. To preserve the right to appeal to OHA, the employee must file the appeal with OHA no later than 15 calendar days from the date the Step Two decision was due.

D. STEP THREE

Step Three of the Process is an appeal to OHA. The regulations for appeals to OHA can be found at 13 C.F.R. Part 134. To initiate Step Three, the employee must email or hand deliver the appeal to OHA within 15 calendar days of receiving the Step Two decision, or if no Step Two decision was received, within 15 calendar days of the date on which the Step Two decision was due. If the 15th day falls on a weekend, Federal Holiday, or date that OPM or SBA has closed the employee's office, then the next business day is the 15th day. The appeal is due at OHA by 5 p.m. eastern time on the 15th day.

In the appeal, the employee must state why the Step One and Step Two Officials' decisions were in error and provide any other pertinent information the employee wishes OHA to consider. The employee must attach copies of the Step One and Step Two decisions or indicate that a decision was not received. The employee must complete numbers 14 and 15 of the [SBA Dispute Form 2457](#) and email or hand-deliver it along with the appeal, the Step One and Step Two decisions, and any other attachments to ohafilings@sba.gov by 5 p.m. on the 15th day. The employee must also email these documents to the Step Two Official, Chief Human Capital Officer, Director of Office of Disaster Strategic Engagement and Effectiveness (ODSEE) for ODA employees and, OGLService@sba.gov. If the employee works in the OIG, the documents must be emailed to ig.counseldiv@sba.gov instead of OGLService@sba.gov. After sending the appeal and supporting documents to OHA, the employee should call OHA at (202) 401-8200 to confirm receipt.

Upon receiving an appeal, if OHA deems appropriate, OHA may offer mediation. Mediation at OHA is separate from the mediation process described in Section X of this SOP and is usually conducted by an OHA judge or staff attorney with mediation training. If all parties agree to mediation and OHA offers to facilitate/conduct the mediation, then management will designate a management board member with the authority to enter into a binding settlement agreement if the parties reach resolution.

E. STANDARD OF REVIEW AND BURDEN OF PROOF

In most cases, the party asserting a claim or proposition has the burden of proving that claim or proposition by a Preponderance of the Evidence. OHA will dismiss an appeal that is not supported by argument or evidence showing that a remedy personal to the employee exists and that there is a reasonable chance the remedy will be granted.

Discipline

Disciplinary action should be tailored to the specific facts and circumstances of each individual employee's situation. When an employee disputes a disciplinary matter, the Agency has the burden of proving by a Preponderance of the Evidence that an employee engaged in the misconduct charged and that the penalty imposed promotes the efficiency of the service.

F. PETITION FOR REVIEW OF AN OHA DECISION

If the Chief Human Capital Officer, General Counsel for SBA, or Counsel to the IG believes OHA's decision is contrary to law, rule, regulation, or SBA policy, they may file a Petition for Review (PFR) of the decision with the Deputy Administrator, or designee, (or IG for disputes by OIG employees) for a final SBA Decision.

To request a PFR, a party must request a complete copy of the dispute file from the Assistant Administrator for OHA (AA/OHA) within 5 calendar days of receiving the decision. The AA/OHA will provide a copy of the dispute file to all parties within 5 calendar days of the request. The PFR is due no later than 15 calendar days from the date the party receives the dispute file. The PFR must specify the objections to OHA's decision.

X. MEDIATION

Mediation is a voluntary, confidential, informal, and prompt procedure that uses a neutral party (Mediator) to help parties resolve differences. Because mediation seeks to empower parties to craft mutually acceptable solutions, it is most appropriate at the initial stage of the Process. Accordingly, the Agency offers it only at Step One. Mediation stays or "tolls" the Step One Official's deadline for responding to the Statement of Dispute, pending resolution of the mediation. *See* Section IX.B.

A. BENEFITS OF MEDIATION

Mediation enables employees and managers to work out disputes on their own, without having to rely on a third-party decision-maker. The parties to mediation determine the outcome, and no party must agree to anything that is not in his/her best interest.

B. HOW TO REQUEST MEDIATION

To request mediation, the parties must email a joint written [SBA Form 1995](#), Request for Mediation, to their respective SHRO, HR4U@sba.gov, attaching the first two pages of the [SBA Form 2457](#), that the employee submitted to the Step One Official in addition to any other required documents.

The SHRO for employees in Headquarters or Field Operations is OHRS. The SHRO for employees in the Office of Disaster Assistance (ODA) is the Office of Disaster Strategic Engagement and Effectiveness (ODSEE). The SHRO for the Office of the Inspector General (OIG) is the OIG Human Resources Office. The SHRO for employees in the Office of Advocacy is the Advocacy Office of Administration. Employees will contact their respective SHRO representatives for guidance.

C. MEDIATOR SELECTION

The Mediator may be a Federal employee or from an outside source. Mediators are trained and skilled in conflict resolution. The Mediator must not have a personal friendship with any party to the mediation, or any other actual or apparent conflict of interest.

D. BEGINNING MEDIATION

Within 10 calendar days of receipt of the mediation request, the Agency will designate a Mediator and convey the Mediator's identity and contact information to the employee, the Step One Official, and the appropriate SHRO. The Mediator assigned to the case will contact the parties to begin mediation proceedings. The date of mediation is dependent on the Mediator's availability. The parties will make themselves available for mediation as soon as practicable and in cooperation with the Mediator's schedule.

E. DURATION OF MEDIATION

Generally, mediation will consist of one session. To encourage the informal and speedy resolution of the parties' concerns, the Mediator may conduct the mediation session over the telephone or in person, using e-mail and facsimile where reasonable and practical. If, during the course of the mediation, an additional session is needed, all parties will attempt to schedule the subsequent session no later than two weeks from the initial session.

F. CONCLUDING MEDIATION

Mediation ends when the Mediator:

1. Receives confirmation that a signed settlement agreement was cleared for legal sufficiency review by OHRS and OGC for employees in headquarters and the Office of Field Operations. In cases involving OIG employees, OIG Counsel has cleared the settlement for legal sufficiency; in cases involving ODA employees, the ODSEE Workforce Relations staff has cleared the settlement; in cases involving Advocacy employees, the Advocacy Office of Administration has cleared the settlement;
2. Forwards to the appropriate SHRO a written request to end mediation by either party to the dispute; or
3. Notifies the appropriate SHRO and the parties in writing that there is no settlement.

G. REVIEWING THE SETTLEMENT AGREEMENT

OHRS and OGC or OIG, ODSEE, or Advocacy Office of Administration, as appropriate, have seven calendar days to review settlements to ensure SBA has the legal authority to comply with its terms, and that the signing management official(s) acted within their delegated authority. Within seven calendar days of OHRS/OGC, OIG, ODSEE, or Advocacy Office of Administration clearance, the settlement agreement will be forwarded to the parties for implementation (if approved) or referred to the parties for further action.

H. SIGNING THE SETTLEMENT AGREEMENT

All settlement agreements will be signed by the Step One Official and the employee, and by a Management Board Member for the respective division, the General Counsel or designee, and the Chief Human Capital Officer or designee.

I. UNSUCCESSFUL MEDIATION

If mediation does not resolve the dispute, the Step One Official must respond in writing to the employee's dispute. Because mediation tolled the timeline for responding, the Step One Official must respond within the remainder of the 15-calendar-day timeline. The remainder is calculated by

subtracting from 15 the number of calendar days between when the Step One Official received the SBA Dispute Form and when the parties requested mediation. An example of this calculation is available in Appendix D.

The employee may appeal the Step One decision, or lack thereof, to the Step Two Official following the procedures in Section IX.C.

The mediation record is not made available to the parties to a dispute and may not be used as evidence in any dispute resolution process.

APPENDIX A – ACRONYMS AND DEFINITIONS

IG – Inspector General

MSPB – Merit Systems Protection Board

ODSEE – Office of Disaster Strategic Engagement and Effectiveness

OGC – Office of General Counsel

OHA – Office of Hearings and Appeals

OHRS – Office of Human Resources Solutions

OIG – Office of Inspector General

OPM – Office of Personnel Management

WRD – Workforce Relations Division

Mediator – A neutral party selected by the appropriate SHRO to facilitate a discussion between an employee and a Step One Official.

Petition for Review (PFR) – A request for review of an OHA decision based on a belief that the decision is contrary to law, rule, regulation, or SBA policy.

Prohibited Personnel Practice – A violation of the Merit System Principles (5 U.S.C. § 2301)

Preponderance of the Evidence – A sum of evidence such that it is more likely than not that the fact the party seeks to prove is true

Process – Three-step procedure described in Section IX for resolving employee complaints or disputes

Servicing Human Resources Office (SHRO) – The personnel office that responds to employee relations (ER) questions from managers and employees in the employee’s office. The SHRO for employees are:

- the Office of Human Resources Solutions (OHRS), Workforce Relations Division (WRD) for headquarters and field employees;
- the Office of Disaster Assistance (ODA), Office of Disaster Strategic Engagement and Effectiveness (ODSEE) for ODA employees;
- the Office of the Inspector General (OIG), OIG Human Resources Office for OIG employees; and
- the Office of Advocacy, Advocacy Office of Administration for Advocacy employees.

Step One – The first step of the Process. The employee brings the dispute to his/her Step One Official.

Step One Official – The person who took or failed to take the action the employee is disputing.

Step Two – The second step of the Process. The employee appeals the Step One Official's response, or lack of response, to the Step Two Official.

Step Two Official – Higher-level official than the Step One Official and, in most cases, is the Step One Official's immediate supervisor.

Step Three – The final step of the Process. The employee appeals the matter to OHA.

APPENDIX B – EXAMPLE

Today is Thursday, October 1, 2020, and Pat has received a 1-day suspension notice from his supervisor with an effective date of Friday, October 2, 2020. Pat disagrees that his conduct warranted a 1-day suspension and must decide which venue he will pick to challenge the final decision. If Pat wishes to challenge the decision utilizing the administrative grievance procedure as outlined in this SOP, he has 15 calendar days from October 2nd to do so. The 15th calendar day from October 2, 2020 is October 17, 2020. Because the 15th day falls on a weekend, Pat has until Monday, October 19, 2020, which is the next business day, to file his dispute with the Step One Official. The fact that a national holiday, Columbus Day, fell within the 15-calendar day timeline does not affect the filing date, because the fifteenth day did not fall on Columbus Day.

Pat fills out numbers 1 through 9 of the SBA Dispute Form and emails it to his supervisor, the Step One Official, on Monday, October 19, 2020. Pat describes with clarity and detail the action giving rise to the dispute. He presents facts surrounding the alleged misconduct that gave rise to the 1-day suspension. Pat attaches as much evidence as he can marshal to support his arguments. This evidence consists of his sworn statements from himself and other witnesses, his SF-50 to show his 10-year length of service with the Agency, his past performance history which reflects the exceptional ratings he received over the past four years and his personnel record which shows he has no record of past misconduct and/or disciplinary action. At the end of their sworn statements, Pat and the witnesses write, “I attest under penalty of perjury that the above statements are true.” The evidence is voluminous, so Pat organizes it and includes a table of contents.

Four calendar days later, on Friday, October 23, 2020, Pat and his supervisor decide to pursue mediation under Section X of this SOP. They sign a joint request for mediation and email it to their servicing human resources office. By requesting mediation, the supervisor has tolled the deadline for responding to Pat’s dispute. This means that the supervisor has the remainder of the 15-calendar-day timeline to respond to the dispute in the event mediation is not successful. In this case, Pat and the supervisor requested mediation four calendar days after the supervisor received the SBA Dispute Form, so in the event mediation is not successful, the supervisor would have 11 calendar days (15 days – 4 days) from the date the mediation ends to respond to the dispute.

Pat and the supervisor pursue mediation, but they cannot reach a mutually acceptable solution. On Monday, December 14, 2020, the mediator notifies Pat, the supervisor, and SHRO in writing that there is no settlement. The supervisor now has 11 calendar days from December 14, 2020 to respond in writing to Pat’s dispute. The eleventh day, however, falls on Friday, December 25, 2015, which is Christmas Day. Because the deadline falls on a national holiday, the response is due the next business day, Monday, December 28, 2020. The supervisor, though, is on leave the last two weeks of December and does not return to work until Monday, January 4, 2021. On Tuesday, January 5, 2021, the supervisor responds to Pat’s dispute, emailing him back his SBA Dispute Form with Box 10 completed, and a written decision attached. The supervisor has denied Pat’s dispute, upholding the final decision. The supervisor’s decision explains to Pat that he can appeal the decision to the Step Two Official within 15 calendar days of receiving the SBA Dispute Form and attached

Step One decision. The supervisor also provides the Step Two Official's name and email address.

Because the supervisor did not respond within the remainder of the 15-calendar-day timeline (11 calendar days from the date the mediator gave notification that mediation was not successful), and the Process does not allow for extensions based on annual leave, the supervisor's response is untimely and therefore null and void for purposes of Pat's appeal rights under this Process. To preserve his right to appeal, Pat must proceed as if he never received the response. Pat therefore has 15 calendar days from Monday, December 28, 2020, the date the supervisor's response was due, to appeal the matter to the Step Two Official.

Pat believes he has presented sufficient evidence and argument that he should not have received a final decision resulting in a 1-day suspension which will be placed in personnel record permanently, so Pat decides to appeal the Step One Official's effective non-response to the Step Two Official.

The Step Two Official in this case is the Step One Official's immediate supervisor. Because Pat has 15 calendar days from December 28, 2020, the date his supervisor's response was due, to appeal to the Step Two Official, Pat's appeal is due on Tuesday, January 12, 2021. Pat writes up a second-step appeal reiterating the argument and evidence that his conduct did not warrant a 1-day suspension and explaining that the Step One Official's response is untimely. He completes Boxes 11 and 12 of the SBA Dispute Form and emails it to the Step Two Official attaching the Step One Official's untimely response and his second step appeal.

The Step Two Official has 15 calendar days from the date he receives the SBA Dispute Form to respond. Because the Step Two Official received the SBA Dispute Form on Tuesday, January 12, 2021, her response is due on Wednesday, January 27, 2021.

On January 28, 2021, Pat realizes he never received a response from the Step Two Official. Pat may now appeal the matter to OHA. His appeal is due no later than 5 p.m. on Thursday, February 11, 2021, 15 calendar days from January 27, 2021, the date the Step Two decision was due. The appeal he submits to OHA reiterates the argument and evidence supporting his reasons why a 1-day suspension was unwarranted that the Step One Official's response was untimely and that the Step Two Official did not respond at all. Pat includes this appeal as an attachment to his SBA Dispute Form and completes Boxes 14 and 15 of the SBA Dispute Form. He emails the form, his updated appeal, and the Step One Official's response to ohafilings@sba.gov by 5 p.m. on February 11, 2021. Because he is not an OIG employee, he copies the following people:

- Step Two Official
- Chief Human Capital Officer
- OGLService@sba.gov

After sending the appeal and supporting documents to OHA, Pat calls OHA at (202) 401-8200 to confirm receipt.

Now let us explore a different iteration of this example. Imagine the Step Two Official responded and did so early. If she responded on Tuesday, January 19, 2021, Pat would have 15 calendar days from this date to appeal to OHA, so his appeal would be due by 5 p.m. on Wednesday, February 3, 2021. Pat's appeal would address the Step Two decision, and state why it was deficient. Pat would reiterate the evidence and argument that his conduct did not warrant a 1-day suspension and include this appeal as an attachment to his SBA Dispute Form. Pat would complete Boxes 14 and 15 of the SBA Dispute Form and email the form along with the Step One and Step Two Officials' responses to ohafilings@sba.gov by 5 p.m. on February 3, 2021. Pat would copy the Step Two Official; Chief Human Capital Officer; and OGLService@sba.gov. After sending the appeal and supporting documents to OHA, Pat would call OHA at (202) 401-8200 to confirm receipt.

APPENDIX C – AVENUES OF REDRESS

This chart is intended to assist employees and supervisors with quickly identifying the various avenues of redress that are available to address and resolve employment-related issues, concerns, and/or disputes. Employees should not rely solely on the information provided in this chart for guidance. Rather, they should refer to the relevant regulations and standard operating procedures cited within the chart to ensure that they fully understand, and do not waive, any rights made available to them under law.

Who	What is Covers	For More Information
Employee Chain of Command	All employees who wish to address work-related concerns or issues with their immediate supervisor, prior to pursuing other remedies. If after meeting with the supervisor, the employee believes the dispute has not been satisfactorily resolved, he/she may pursue his/her concern through the appropriate administrative chain of command.	Contact individuals within the supervisory chain of command.
SBA Conflict Resolution Center (CRC)	The CRC is an informal, confidential, and neutral resource for employees and supervisors who need practical tools and guidance to address a workplace conflict proactively. The CRC can facilitate informal discussions to help individuals problem solve in a way that creates better solutions for those involved. The CRC’s services include: Conflict Coaching, Facilitated Discussion and Group Facilitation.	This resource is for any type of relationship (peer-to-peer; manager-to-manger; employee-to-supervisor). Bargaining Unit employees can utilize the CRC in a manner consistent with labor agreement policies and procedures (see VI. Polices & Procedures section of SOP). To request services, contact the CRC by email or phone to schedule an initial consultation appointment: ConflictResolutionCenter@sba.gov or by calling 202-401-9272 or for more information visit the intranet at: https://sba123.sharepoint.com/resources/crc/Pages/default.aspx
Negotiated Grievance Procedure Available for bargaining unit employees	Bargaining unit employees may use this avenue to address most matters related to employment and claims of violation, misinterpretations and misapplication of the master labor agreement, laws, rules, or regulations, unless otherwise excluded. For claims of discrimination,	Copies of applicable collective bargaining agreements are available from the human resource office. Collective bargaining agreements are located on the intranet at: https://sba123.sharepoint.com/sites/COO/OHRS/Workforce Relations/WorkForce%20Relations%20Documents/MLADOCUMENT (FINAL)DATED1-11-2017%20w-signatures.pdf

	a bargaining unit employee may raise claims either under the EEO complaint procedure or the Negotiated Grievance Procedure, but not both. Whichever forum is first elected is the forum that must be used.	
Administrative Grievance Procedure Available for non-bargaining unit employees/SBA Office of Hearings and Appeals (OHA) Appeals Process	Non-bargaining unit employees, or any employee in a bargaining unit that does not have or is ineligible to use a negotiated grievance procedure, can use this avenue to address any dissatisfaction, grievance, or complaint that is not specifically excluded by the Chapter 1, Paragraph 7 of SOP 37 71 3. Employees who have filed an administrative grievance may appeal the Appropriate Management Official (AMO) decision to OHA by filing a petition of appeal within 15 calendar days from receipt of the AMO's decision.	Information and procedures are contained in SBA SOP 37 71. For additional information visit the intranet at: https://sba123.sharepoint.com/sops/Documents/3771/SOP37713.pdf
SBA Office of Diversity, Inclusion, and Civil Rights (formerly Equal Employment Opportunity & Civil Rights Compliance)	Covers applicants, current, and former employees who believe they have been discriminated against based on race, color, religion, national origin, sex (including sexual harassment and gender identity), age (40 and over), disability (physical or mental) and/or retaliation. A discrimination complaint in connection with an adverse action that is appealable to the EEOC may be filed with EEOC or MSPB, but not both. Whichever forum is first elected is the forum that must be used.	Claims may be filed by contacting the Office of Diversity, Inclusion, and Civil Rights by calling: 202-205-6750 or writing: US SBA, ATTN: Assistant Administrator 409 Third Street SW DC., Suite 6400 Washington DC 20416 Information and procedures are contained at 29 CFR or in SBA SOP 37 13 3. For additional information visit the intranet at: https://sba123.sharepoint.com/offices/eo/Pages/default.aspx
U.S. Office of Special Counsel (OSC)	This avenue provides protections for employees and applicants from	Information and procedures for filing complaints may be found at: https://osc.gov/ or

	<p>prohibited personnel practices, including reprisal for whistleblowing. OSC also enforces restrictions on political activity of Federal employees and protects employment and reemployment rights of veterans, guardsmen, and reservists.</p>	<p>https://osc.gov/pages/file-complaint.aspx Employees may also seek more information concerning whistleblower retaliation from the OIG Whistleblower Ombudsman by contacting OIGOmbudsman@sba.gov. The OIG Ombudsman's role is to educate Agency employees about prohibitions on retaliation for protected disclosures and educate Agency employees who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures. The Ombudsman is prohibited from acting as an employee's or former employee's legal representative, agent, or advocate.</p>
<p>SBA Office of Inspector General (OIG) (for limited whistleblower retaliation claims.)</p>	<p>Any employee who believes that the Agency has made a decision/recommendation impacting the employee's eligibility for access to classified information as reprisal for a Protected Disclosure may file a complaint of reprisal with OIG.</p>	<p>SOP 90 22 (Rev. 5B), Chapter 8, Section 22 (effective July 8, 2013). https://sba123.sharepoint.com/sops/Documents/9022/SOP%2090%2022%205B%20Chapter%20VIII.7-9-13.pdf</p>

APPENDIX D – WRITING TIPS

If you follow these rules, you make it more likely that you will get the relief you want.

- Write so that someone who does not already know what has happened can understand why you should get the remedy you are asking for. Tell who did (or did not do) what and at what time.
- Take the time to review your materials, keeping in mind that first drafts are always drafts.
- Tell the whole story. You may not be able to add new arguments or evidence later.
- Consider having a friend or family member review your draft.
- Allow time for “cooling off” and revisions.
- Do not threaten.
- Assume that if the dispute is not resolved, it will escalate. You should tell your side of the story.
- Your audience is your manager; write accordingly.
- Write dispassionately and objectively, stating events factually and chronologically.
- Write in a way that is clear and easy to understand.
- Attach supporting evidence directly linked to the claim you are making and the relief you seek.