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Please see below.

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## ARTICLE 15

### **Grievance Procedure**

#### **Section 1 - Purpose**

The purpose of this Article is to provide a mutually acceptable method for prompt and equitable settlement of grievances. The parties have a mutual interest in resolving grievances at the lowest level in a timely manner. To promote conflict resolution, supervisors, stewards, and employees should deal with the issue(s) and not personalities.

- A. Efforts should be made to resolve disputes informally prior to filing a formal grievance. Education and training in dispute resolution is a means to achieve this interest. Interest-based problem

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solving should be utilized as much as possible to resolve disputes. Both managers and Union Representatives should become familiar with interest-based problem solving techniques. The parties remain committed to forging new Alternative Dispute Resolution (ADR) procedures. See Article 11.

- B. Supervisors and NCFLL Stewards are encouraged to meet periodically to discuss matters of mutual concern. If informal discussions do not resolve the issue(s) and a grievance is filed, a face-to-face meeting at Step 1 may be unnecessary and can be waived by mutual agreement. In reaching the agreement, the parties will consider the complexity of the grievance and travel related costs. At any step of the process, the use of a facilitator may be useful and agreed to mutually.
- C. Nothing in this Agreement shall be construed as precluding discussion between a bargaining unit employee and/or his/her designated NCFLL Representative and his/her immediate supervisor about a matter of concern to either of them.
- D. Once a matter has been made the subject of a grievance under this procedure, nothing in this Agreement shall preclude either party to this Agreement from attempting to resolve the grievance informally.
- E. The parties agree to utilize technology to the maximum extent possible. Absent unusual circumstances, grievances will be filed, acknowledged, and responded to electronically. Grievances submitted electronically will be considered to have been signed.

## **Section 2 - Definition of a Grievance (Coverage and Scope)**

- A. A grievance by a bargaining unit employee(s), including probationary employees, is a request for personal relief in any matter of concern or dissatisfaction to the employee or group of employees concerning the interpretation, application, and/or violation of this Agreement; or the interpretation or application of Departmental regulations, and the application of Government-wide regulations with respect to personnel policies, practices, and other matters affecting working conditions.
- B. Exclusions from the Grievance Procedure
  - 1. This Article does not apply to:

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- a. a matter which is subject to a statutory appeal procedure (except as provided in Subsection 2. below) outside the Department under law or the regulations of the Office of Personnel Management and/or EEOC including but not limited to the following:

<b>Actions or Decisions</b>	<b>Available Procedure</b>
Reduction in Force	5 CFR 351
EEO Discrimination	29 CFR 1614
Personnel Security	5 CFR 732 & 736
Classification	5 CFR 511
Performance Based Reduction in Grade and Removal Actions	5 CFR 432 or 5 CFR 752

- b. a binding decision made by an authority outside the Department;
  - c. non-selection from a properly prepared Merit Staffing Certificate;
  - d. failure to recommend or disapproval of a recommended quality step increase, individual performance award, or other kind of honorary or other discretionary award;
  - e. failure to adopt a suggestion submitted under the Incentive Awards Program;
  - f. summary rating on appraisal of Highly Effective or Outstanding;
  - g. termination and/or separation of probationary employees; and
  - h. individual participation in a Flexiplace Program.
  - i. decisions of the Leave Bank Board
2. The Article does apply to coverage, status, and back pay claims under the Fair Labor Standards Act and to the denial of a within-grade increase. The parties agree to the following for denial of a within-grade increase:

In a grievance over a reconsideration official's decision to sustain a determination made by an employee's supervisor to withhold a within-grade increase, the parties will waive Steps

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1 and 2 of the negotiated grievance procedure. The grievance may only be appealed directly to the Department's Labor-Management Relations Center within seven workdays after receipt by the employee of the reconsideration decision.

3. With regard to filling any position outside the bargaining unit, employees must utilize the Department's Administrative Grievance Procedure in this regard. (See DPR 771)

### C. Matters Subject to Pending EEO Complaint

In the event that an employee files a grievance and also files or pursues an informal EEO complaint concerning the same matter, the grievance will be held in abeyance. If the matter is not resolved during the informal EEO process, the employee can resurrect the grievance concerning non-EEO matters or pursue a formal EEO complaint. If the employee files a formal EEO complaint, the grievance will be terminated.

Should the EEO complaint be dismissed on a technicality or for a non-substantive reason, the Union or the affected employee may resurrect the grievance in connection with any non-EEO issues within 30 calendar days of receipt of the Department's EEO complaint decision by notifying the appropriate Management Official at the last processed step of the grievance procedure.

### D. Matters Subject to Other Statutory Appeals

If the Department determines that the issue(s) raised in a grievance under this negotiated procedure is subject to a statutory appeals procedure, and is therefore not grievable under this procedure, it shall immediately notify the grievant(s) and/or his designated NCFLL Representative.

## Section 3 - Exclusive Procedure

This shall be the exclusive procedure available to unit employees for the resolution of grievances as defined in Section 7 of this Article and for the Union as defined in Section 7D of this Article. With respect to conduct-based adverse actions as defined by Article 14, if the Department's final decision is to effect an adverse action against a bargaining unit employee, the employee may elect either to appeal the decision to the Merit Systems Protection Board (MSPB) or to file a grievance as clarified in Article 15. Under no condition may an employee appeal an adverse action to the MSPB and file a grievance.

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## Section 4 - Representation

- A. Filing a grievance:
1. Bargaining unit employee(s), filing a grievance under this procedure, may be represented only by a designated NCFLL Steward, Regional NCFLL Official, or National NCFLL Official, or a personal representative endorsed by the NCFLL.
  2. Any bargaining unit employee or group of bargaining unit employees may present a grievance under this procedure without representation as long as the resolution is not inconsistent with the terms of this Agreement and the NCFLL is given an opportunity to be present at any discussion or attempts at resolution of the grievance with the grievant(s). Official time will be granted and travel expenses will be paid in accordance with Article 8.
- B. At each step of the grievance procedure, one representative at a time shall be entitled to official time for purposes of preparation and presentation of the grievance. Travel expenses will be paid in accordance with Article 8.
- C. Where the grievant(s) has designated an NCFLL Representative, all communications with regard to the grievance and attempts at resolution of the grievance shall be made through the designated NCFLL Representative or simultaneously to the representative and the grievant(s).
- D. The grievance meeting will be with the contractually designated Management Official and the employee with his/her designated Union Representative. The designated Management Official may have necessary staff support for a full and accurate discussion of the grievance.

## Section 5 - Who May Initiate Grievance

- A. **Employee** - A grievance under this Article may be initiated by unit employees either singly or jointly. Any such grievance must bear the signature(s) of all the aggrieved employee(s).
- B. **Union (Institutional/Employee)** - The NCFLL or its designee may initiate a grievance on its own behalf. Any such grievance must bear the signature of the grievant. The NCFLL will provide to the Director, OELMR, the names of all NCFLL Representatives authorized to file a Union grievance as defined in Section 7, Union Grievances.
- C. Department of Labor (See Section 8)

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## Section 6 – Grievance Form

The grievance form is a critical component to the grievance process. It is intended to put the agency on notice of all the issues and the specific allegations of the grievance so that it may resolve the dispute at the lowest possible level.

- A. An employee grievance shall be presented on the negotiated standard grievance form. The filing of grievances can be done electronically. It shall be signed by the grievant(s), dated, and at a minimum shall contain:
  - 1. date filed;
  - 2. the names(s) of the grievant(s);
  - 3. the name of the NCFLL Representative, if any;
  - 4. specification of the Article(s), Section(s), and Subsection(s) of this Agreement or the Department regulations or working conditions which are alleged to have been violated;
  - 5. the nature and facts of the grievance;
  - 6. the remedy desired; and
  - 7. signature(s) of grievant(s).
- B. An appeal of a grievance to a higher Step of this procedure shall include a copy of the grievance form plus copies of all replies received at all previous Steps. In addition, the appeal shall specify any elements of the grievance which have been resolved at a lower Step.
- C. Except by mutual consent of the parties, no allegations shall be raised in the appeal of a grievance which were not contained in the Step 2 grievance.

## DOL/NCFLG GRIEVANCE FORM

Name of Grievant(s):	Region:
	Agency:
Name of NCFLG Representative  (If Any):	Date of Alleged Violation:
Alleged Violation(s) – Contract Article(s), Section(s), Subsection(s), Regulation(s), or Working Condition(s):	
Nature and Facts of Grievance:	
Remedy Desired:	
Step 1 Grievance – Signature(s) of Grievant(s):	Date:
Step 2 Grievance – Signature(s) of Grievant(s) Or NCFLG Official:	Date:

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## Section 7 - General Procedures

The parties to a grievance at either Step 1 or Step 2 may mutually agree to use ADR to assist them in resolving the grievance. With respect to a grievance concerning a performance appraisal, the parties may mutually agree, in writing, to waive Step 1 and/or Step 2. This is applicable when the rating official and/or the reviewing official are the same officials in the grievance procedure.

At Steps 1 and 2, the discussion will be face to face unless mutually agreed to otherwise. When considering the necessity of a face to face meeting at either Steps 1 or 2, the parties will consider the complexity of the grievance and travel related costs. Official time and travel expenses for the NCFLL Representative will be in accordance with Article 8.

### A. Step 1

1. A grievance must be presented in writing on the negotiated grievance form within 30 calendar days of when the bargaining unit employee or NCFLL has learned or may reasonably be expected to have learned of its cause.
2. A grievance shall be discussed at a meeting, unless mutually agreed to otherwise between the grievant and the immediate supervisor (who prepares the aggrieved employee's performance evaluation) or with the manager whom it is alleged has violated this Agreement. The supervisor/manager shall have seven workdays in which to attempt to resolve the grievance with the aggrieved employee and/or designated NCFLL Representative and provide a written response addressing all the issues raised in the grievance.
3. If the grievance involves merit staffing procedures which prevent an applicant from being considered, the grievance shall be filed with the Regional Human Resources Officer. The grievant will discuss the issue telephonically with the Regional Human Resources Officer within 30 days of when the bargaining unit employee or NCFLL has learned of its cause. The Regional Human Resources Officer will have seven workdays in which to respond telephonically to the grievance. The grievance may be filed at Step 2 with the Regional Human Resources Officer on the negotiated grievance form within seven workdays of the response from the Regional Human Resources Officer. The procedures set forth below for processing Step 2 grievances must be followed.

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## B. Step 2

1. A grievance may be appealed to Step 2 of this procedure within seven workdays of receipt of the written response to the aggrieved employee(s) at Step 1 or, if no timely reply is made at Step 1, within 14 workdays after the grievance was presented at Step 1.

The time limit requirement of this Section will be satisfied if the grievant does any of the following:

- a. Electronically transmits or delivers to the Step 2 Official by hand the Step 2 appeal within seven workdays or 14 workdays, as the case may be, of receipt of the Step 1 reply;
  - b. Mails by Government certified mail, to the Step 2 Official, an appeal within seven or 14 workdays, as the case may be, and the mailing envelope shows a postmark with a date indicating that the appeal was mailed within the seven or 14 workday period; or
  - c. Notifies the Step 2 Official by telephone within the seven or 14 day time period, as the case may be, that an appeal is being filed, followed immediately by a written appeal mailed to the Official.
2. The Step 2 grievance appeal shall be submitted utilizing the negotiated standard grievance form, together with copies of all replies and other pertinent materials received at the previous Step, to the appropriate Agency Regional Administrator (or equivalent). The Regional Administrator (or equivalent) shall have seven workdays in which to discuss and resolve the grievance with the aggrieved employee and/or the designated NCFLL Representative and to issue a reply.
  3. Upon receipt of the reply of the Step 2 Official, the NCFLL may, within 60 calendar days, invoke arbitration as provided in Article 16 of this Agreement with the Director, OELMR.
  4. If no timely reply is issued by the Step 2 Official, the NCFLL may, within 60 calendar days from the date that the Step 2 decision was due, invoke arbitration as provided in Article 16 of this Agreement with the Director, OELMR.

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### C. Conduct-Based Adverse Actions

In the case of an employee electing to grieve a conduct-based adverse action, within 30 calendar days of the effective date of the decision, the employee shall file a signed grievance form with the Deciding Official. Steps 1 and 2 of the negotiated grievance procedure are automatically waived, and the Union may invoke arbitration. The time frame for the Union to invoke arbitration is the same time frame the employee has to file with the MSPB, namely 30 calendar days. Therefore, it is incumbent upon the affected employee to coordinate with the Union well in advance of the deadline.

### D. Union Grievances

This shall constitute the exclusive procedure available to the Union for the resolution of grievances. A grievance initiated by the Union must bear one signature of an official(s) or representative(s) designated by the President or Executive Vice President of NCFLL.

For the purpose of filing this type grievance, it must be submitted within 30 calendar days of when the incident occurred, or the NCFLL has learned or may have reasonably been expected to have learned of its cause.

#### 1. Union-Filed Institutional Grievances

A grievance by the NCFLL is a request for institutional relief over the interpretation or application of this Agreement or the interpretation or application of Departmental regulations, and the application of Government-wide regulations covering personnel policies and practices and other matters affecting working conditions. In the case of a Union grievance, the parties will waive Steps 1 and 2 of this negotiated procedure; however, the parties will make an informal effort to resolve the grievance at the level of dispute. If within seven workdays the matter cannot be resolved, it will be transmitted to the Department's Office of Employee and Labor Management Relations (OELMR) in Washington, D.C. The Director, OELMR will issue a written decision within ten workdays. Upon receipt of the reply, the NCFLL, may, within 20 workdays, invoke arbitration as provided in Article 16 of this Agreement, with the Director, OELMR. If no timely reply is issued, the NCFLL may, within 20 workdays from the date the decision was due, invoke arbitration.

#### 2. Union-Filed Employee Grievance

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A Union filed employee grievance seeks personal relief for an individual employee or group of employees. The grievance(s) should be filed in accordance with the procedures and time frames delineated in Section 7, just as if the affected employee(s) had initiated the grievance(s).

- a. Where mutually agreeable by the parties, Union-filed grievances on the same matter on behalf of one (1) or more employees may be processed as a single grievance for the purpose of resolving the grievances.
  - i. If the employee grievant(s) is under the supervision of a single supervisor, the Step 1 grievances may be consolidated as a single grievance with that supervisor.
  - ii. If the employee grievant(s) are under the supervision of different supervisors within a single DOL agency, the grievances may be consolidated with the Regional Administrator, or equivalent, at Step 2.
  - iii. If the employee grievant(s) are under the supervision of different supervisors in more than one DOL Agency within a specific region, the grievances may be consolidated and filed with the OASAM Regional Administrator at Step 2.
  - iv. On a matter crossing Regional lines, the grievance shall be filed with the Director, OELMR, at Step 2.

#### A. Department of Labor Grievances

If the Department of Labor wishes to file a grievance, the Director, OELMR, will sign and file a written grievance with the NCFLR President within twenty (20) workdays of when the Department knew or should have known of the alleged violation. The grievance will detail the nature of the harm, the violation of law, rule, regulation, and/or collective bargaining agreement violated, and the relief requested. If the grievance is not resolved, the NCFLR President shall issue a written decision within ten (10) workdays. Upon receipt of the decision, the Director may, within ten (10) workdays, invoke the grievance to arbitration. The Director may also invoke the grievance to arbitration within ten (10) workdays of when the decision of the NCFLR President is due.

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## **Section 8 - Failure to Meet Requirements**

- A. Failure on the part of an aggrieved employee to prosecute his/her grievance within the stated time periods at any Step of this procedure will have the effect of nullifying the grievance unless the parties mutually agree otherwise.
- B. Failure on the part of the NCFLL to prosecute a grievance, filed in its own behalf within the stated time periods at any Step of this procedure will have the effect of nullifying the grievance unless the parties mutually agree otherwise.
- C. Failure on the part of Management to meet any of the time requirements of this procedure will permit the aggrieved employee or the NCFLL to move to the next Step.

## **Section 9 - Modification of Procedures**

- A. The time limits delineated in this Article may be extended by mutual written agreement of the parties at that Step. Absent such mutual consent, the failure to timely file an initial grievance, timely appeal the grievance to Step 2, or timely invoke the grievance to arbitration shall result in a dismissal of the grievance.
- B. The parties may mutually agree in writing to waive Step 1 or 2 of this procedure.
- C. For expeditious processing of grievances, the parties, by mutual agreement, may consolidate grievances concerning similar issues into a single grievance.
- D. No issues/allegations shall be raised in that appeal/arbitration of a grievance which were not contained in the Step 2 grievance process.

## **Section 10 - Statement of Grievability**

Management agrees to furnish the NCFLL a final written statement of grievability/arbitrability of a grievance at the earliest possible time.