



Transportation Security Administration
Office of Human Capital

TSA HCM 771-4, Handbook

National Resolution Center

Policy Effective: January 6, 2013

Handbook Published: January 6, 2013

APPROVAL

Signed

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Transportation
Security
Administration

***NOTE:** This Handbook and all related Appendices and/or Attachments contain provisions to implement the provisions of [TSA HCM 771-4, National Resolution Center](#). Until such time as TSA HCM No.771-4 is rescinded, the Human Capital Policy, Handbook, Appendices, and any Attachments are considered TSA policy, and must be applied accordingly.*

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PART 1. DEFINITIONS:

- A. Adverse Action: A suspension of more than 14 days, including an indefinite suspension, an involuntary demotion for performance or conduct, or a removal.
- B. Affected Employee: For the purposes of this directive, a TSA employee requesting or seeking resolution through the NRC.
- C. Alternative Dispute Resolution (ADR): An alternative method to traditional, formal means of resolving workplace disputes or issues by using a variety of approaches to arrive at resolution. ADR methods emphasize flexibility, creativity, cooperation, and interest-based problem solving.
- D. American Federation of Government Employees (AFGE): The union certified by the Federal Labor Relations Authority to carry out the rights and responsibilities of the exclusive representative of covered bargaining unit employees as set forth in the Determination.
- E. Appellant: A TSA employee within the scope of this policy appealing an adverse action.
- F. Bargaining Unit Employee (BUE): The following full-time and part-time non-supervisory personnel carrying out screening functions under 49 U.S.C. § 44901, as that term is used in the Aviation and Transportation Security Act of 2001, § 111(d):
 - 1. Transportation Security Officers (TSOs);
 - 2. Lead Transportation Security Officers (LTSOs);
 - 3. Master Transportation Security Officers (MTSOs) (which include Behavior Detection Officers, Security Training Instructors, and Equipment Maintenance Technicians); and
 - 4. Expert Transportation Security Officers (ETSOs) (which include Behavior Detection Officers, Security Training Instructors, and Equipment Maintenance Technicians).

NOTE: Coordination Center Officers (CCOs) and Supervisory Transportation Security Officers (STSOs) are not BUEs.
- G. Charge: A description or labeling of the specific act(s) of unacceptable conduct or performance that forms the basis for a proposed adverse or disciplinary action.
- H. Collective Bargaining Agreement (CBA): A binding agreement between TSA and AFGE, when approved by referendum by BUEs, as defined above, consistent with the requirements of the Determination.

- I. Collective Bargaining Agreement Violation Allegation: An allegation of non-compliance with a provision(s) of the Collective Bargaining Agreement.
- J. Confidentiality: The duty to maintain confidence, including the obligation to withhold specified information from others, usually to keep sensitive information private, and assure participants' trust and confidence in the integrity of a process. This duty is subject to a few narrow exceptions.
- K. Concerned party: A party to a potential dispute who brings a concern to the attention of an individual or organization with the authority to resolve the concern, generally through informal means. A concerned party may be an employee, TSA or AFGE.
- L. Conflict Management Coach: A neutral individual who helps a person to improve his or her conflict management skills to resolve disputes more effectively and prevent unnecessary conflict in his/her work life.
- M. Day: Calendar day.
- N. Designated Grievance Official (DGO): The DGO has the authority to grant, in whole or in part, modify or deny the relief sought. The DGO shall not have been involved in the matter being grieved. The DGO must be at a J Band level or above and equal to or above the level of the official who made the decision, took the action, or failed to take the action, unless designated and approved by the Federal Security Director (FSD), Office Director, or Assistant Administrator (AA).
- O. Designated Personal Representative: An individual designated in writing by the employee to present or to assist the employee in presenting his/her matter through the UDRS, responding to an administrative action, or participating in any meeting in which a representative is authorized to do so.
- P. Determination: The Administrator's Determination on Transportation Security Officers and Collective Bargaining, dated February 4, 2011.
- Q. Determination-Related Allegation: An alleged issue/disagreement, concerning matters specified in Section V.C.9 of the Determination.
- R. Disciplinary Action: Actions consisting of a Letter of Reprimand to a suspension of 14 days or less.
- S. Ex Parte Communication: One party's communication with a third party neutral or decision maker without the knowledge and/or consent of the other party to the dispute.
- T. Expedited Arbitration: A means of deciding a dispute or issue regarding a disciplinary action or other covered dispute in which parties submit the dispute or issue to a neutral third party to make a decision. Only bargaining unit employees have the right to request that AFGE invoke expedited arbitration.

- U. Facilitator: An employee or other individual with appropriate skills and training who helps manage the process of effective information exchange and group discussion as well as cooperative problem solving.
- V. Filing Party:
 - 1. An employee;
 - 2. An employee's properly designated personal representative;
 - 3. AFGE (either in its own capacity where appropriate or as the covered employee's properly designated personal representative); or
 - 4. TSA.
- W. Final Decision: A management decision regarding a workplace dispute, a disciplinary action, or an adverse action.
- X. Grievance: A request by an employee for personal relief in a matter of concern or dissatisfaction relating to his/her employment with TSA.
- Y. Grievant: The employee who files a grievance.
- Z. Intake: A process used by the NRC to record relevant information relating to a request from an employee, AFGE or TSA to initiate a grievance, appeal or dispute resolution process.
- AA. Management Official: Any TSA employee in an employee's chain of supervision such as a supervisor or manager (e.g., Transportation Security Manager (TSM), Assistant FSD, FSD, Supervisory Air Marshal In-Charge (SAC), Assistant Administrator, etc.).
- BB. Mediation: A structured ADR process in which a mediator assists two or more parties attempting to reach a mutually agreeable resolution of a conflict or dispute. For purposes of this HCM and Handbook, mediation is generally a confidential process that is voluntary for all participants.
- CC. Mediator: A neutral third-party trained to assist two or more parties in mediation.
- DD. National Resolution Center (NRC): The TSA office within the Office of Human Capital (OHC) responsible for managing the Unitary Dispute Resolution System (UDRS), the Integrated Conflict Management System (ICMS), the TSA non-EEO mediation program, third party review of covered matters, and other alternative dispute resolution services.
- EE. Neutral: A qualified individual acceptable to a party or parties who functions specifically to aid a party or parties in resolving an issue in controversy (e.g. mediators, facilitators,

and conflict management coaches help parties reach an agreeable resolution; arbitrators render decisions on disputed issues).

- FF. Non-Bargaining Unit Employee (non-BUEs): All TSA employees not listed in definition Part 1.F above.
- GG. Official Time: Time authorized by a TSA supervisor or manager to allow an employee, when otherwise in a duty status, to participate in certain authorized activities that are not related to the employee's official duties.
- HH. Request for Review (RFR): A process used by a party to seek review of a Determination-Related Allegation.
- II. Remedy: The specific personal relief directly benefiting the affected party. It may not include a disciplinary or other action affecting a third party, including the employment or reassignment of another employee.
- JJ. Roster of Neutrals: A list of names of neutrals, mutually agreed upon by TSA and AFGE, and maintained by the NRC. Third party neutrals may be selected from this roster for individual cases.
- KK. Senior Official Reviewer: A headquarters employee at the K Band level or above who reviews Determination-Related allegations and renders a decision.
- LL. Settlement Agreement: A voluntary agreement between TSA and an employee or AFGE resolving a covered matter. Settlement agreements are used to resolve many issues without resorting to litigation or other protracted administrative procedures. Settlement agreements do not constitute admissions of wrongdoing, evidence of misconduct or liability on the part of any party or officials with respect to the subject matter of the underlying controversy.
- MM. Table of Offenses and Penalties: The Table lists potential charges, applicable policies, and penalty ranges for common offenses, and is intended to provide guidance for determining appropriate corrective, disciplinary, and adverse actions. See [Table of Offenses and Penalties](#).
- NN. Workplace Dispute: As applied to BUEs, consistent with the Determination, an alleged violation or misapplication of an employment related policy that does not involve security-related matters or challenging or altering any TSA Standard Operating Procedures. For purposes of this definition, "security-related" shall mean: any matter involving security policies, procedures, directives and instructions, or any matter involving statutory or TSA required certification, eligibility, qualification or training standards or requirements. As applied to non-BUEs, a matter of concern or dissatisfaction relating to employment with TSA that is subject to the control of TSA.

PART 2. UNITARY DISPUTE RESOLUTION SYSTEM:

A. General Principles:

NOTE: For an Executive Summary of the UDRS, please see Appendix A.

1. An employee who seeks resolution through the NRC and its UDRS shall not be subject to restraint, coercion, discrimination, or reprisal as a result of, or in connection with, filing a grievance and/or seeking resolution through the UDRS.
2. Time limits set forth in the UDRS for matters within TSA's control can be extended upon mutual agreement of the parties or upon the NRC determination that a party has demonstrated good cause for an extension. Individual requests for extensions of time limits for matters within TSA's control must be submitted in writing and received by the NRC prior to the expiration of the established time limit. The denial of a requested extension is not grievable.

NOTE: For cases under OPR jurisdiction, requests for time limit extensions must be made directly to OPR.

3. The filing of a matter does not stay any action from being proposed and/or implemented/effectuated.
4. If requested, mediation must be agreed to by both parties. Generally, participating in mediation will not extend time limits for filing RFRs and grievances through the NRC, EEO-related concerns and complaints with CRD. External third party filings must comply with the timeframes applicable to each process. Participation in mediation may suspend the calendar for UDRS processes under TSA's direct control, once the matter has been timely filed.
5. The parties are prohibited from disclosing information obtained through a UDRS resolution process to non-authorized parties unless either both parties agree to the disclosure or if the disclosure is required by law, regulation or policy. Some examples of information constituting agreed-upon or required disclosures may include:
 - (a) Information concerning theft relating to TSA activities or property;
 - (b) TSA employee drug or alcohol use;
 - (c) Breaches of TSA security procedures,
 - (d) Criminal activity related to TSA operations, personnel or property;
 - (e) Allegations of prohibited discrimination or sexual harassment; and

- (f) Communications needed to resolve a dispute between the two or more parties.
- 6. A party who submits a request to the NRC for resolution assistance/processing shall make an election of forum for the matter at issue; e.g., Senior Official Review (Determination-related matters); Grievance Process (workplace disputes/disciplinary actions). If the chosen forum is appropriate for the matter, the party may not subsequently elect a different forum. The election shall be made concurrent with filing the request with the NRC. This election of forum requirement does not apply to processes contained in parts 3, 4 and 5.
- 7. In matters for which employee representation is permitted pursuant to Human Capital Management Policy (HCM) 771-4 and this related Handbook, the applicable policy and procedures are set forth in [TSA MD 1100.63-3, *Employee Representation*](#).

B. Exclusions: The UDRS does not cover the following matters: (see note below)

- 1. Decisions made by other agencies or third parties, such as courts, the Office of Personnel Management (OPM), or the Department of Labor's Office of Workers' Compensation Programs (OWCP).
- 2. Matters for which there is another avenue of redress not specifically set forth in the UDRS, including but not limited to:
 - (a) Decisions of the TSES Performance Review Board (PRB);
 - (b) Concerns alleging prohibited discrimination, which are processed in accordance with TSA's discrimination complaint procedure and administered by the Civil Rights Division (CRD), with the exception of mixed case appeals filed with MSPB as appropriate;
 - (c) Complaints that have been filed with the Office of Special Counsel (OSC).
- 3. Retirement, or life or health insurance.
- 4. Adjudication of the results of personnel security investigations and suitability determinations made by the Office of Personnel Security.
- 5. Oral or written counseling(s).
- 6. The content of performance discussions including progress reviews (i.e., quarterly and/or mid-year) under a TSA performance management system. However, the employee may file a RFR or grievance that management failed to conduct the required reviews per TSA policy or CBA.

7. The content or receipt of Improvement Period Notices (IPNs) and Performance Improvement Plans (PIPs) that put employees on notice of deficient performance. However, the employee may file a RFR or grievance that the notice or process was deficient per TSA policy or CBA.
8. The content of performance elements and standards.
9. Notices proposing a disciplinary or adverse action.
10. Non-selection for promotion or reassignment from a list of eligibles.
11. Failure to receive a non-competitive promotion or reassignment when documented evidence exists that the relevant policies and procedures have been appropriately applied.
12. Reassignment without loss in band or rate of pay from one position to another (including a reassignment from a supervisory to a non-supervisory position, within or outside the local commuting area, in connection with a reorganization and/or realignment).
13. Removal from a supervisory or managerial position during the supervisory or managerial trial period.
14. Change of position or organizational title (e.g. classification changes).
15. Involuntary Workforce Reduction.
16. Failure to receive a performance or incentive award, when documented evidence exists that the relevant policies and procedures have been appropriately applied.
17. The monetary amount or value of a performance or incentive award.
18. Pay setting (includes any action relating to the setting of initial pay upon appointment or the setting of pay connected with an internal action; e.g., promotion, voluntary/involuntary pay band changes).
19. Approval, continuation, reduction or termination of a recruitment, referral, relocation or retention incentive.
20. Receipt or non-receipt of an In-position Increase (IPI), or amount of an IPI.
21. Non-adoption of a suggestion.
22. The content of any law, rule, regulation, policy, instruction, or directive; although the TSA's implementation as it relates to an individual employee may be grieved by that employee.

23. The termination or expiration of a time-limited (i.e., temporary or term) appointment, or promotion.
24. Any signed agreement between affected parties, except for allegations of settlement breaches raised in accordance with the appropriate UDRS breach allegation procedure.
25. Separation or termination of employment during the trial period.
26. Termination of a reemployed annuitant.
27. Furlough of any length.
28. The test results and/or the scores of any/all Technical Proficiency assessment, including Practical Skills Evaluation (PSE) assessment. However, if the affected employee demonstrates that the assessment is flawed (e.g., an equipment malfunction or the content material is not aligned with the applicable security screening standard operating procedures), the matter may be grieved.
29. Work assignments.
30. AFGE's decision not to invoke expedited arbitration or the RFR neutral process.
31. All matters listed in Section III.B.3 of the Determination.

NOTE: This list of exclusions is not applicable if the matter is subject to review under a ratified collective bargaining agreement (CBA).

C. NRC Intake Process Overview

NOTE: Intake for the mediation and grievance processes is available to all TSA employees through the NRC. Intake for Requests for Review (RFR) processes for Determination-related allegations is also through the NRC. However, eligible employees may directly appeal to MSPB or OPR Appellate Board, where applicable (see Appendix C Placeholder).

1. The party seeking review of a covered workplace dispute or disciplinary action must file a written grievance with the NRC. The filing party must submit documents identified in the grievance form and those requested by the NRC. The written grievance can be filed by email or facsimile using TSA Form 1115-1, *Grievance-Mediation Request*.
2. The party seeking review of a CBA or Determination-related violation allegation covered by this policy must file a RFR, using TSA Form 1123-2, *Request for Review*, with the NRC. The filing party must submit documents as instructed in TSA Form

1123-2 and provide any additional documents and/or information as requested by the NRC.

3. The *Request for Review* or *Grievance-Mediation Request* form and associated documents must be submitted to the NRC within the time limits provided in the applicable dispute resolution process set forth below and must be complete.
4. Upon receipt of the RFR or grievance and associated documents, the NRC will review the information submitted in order to ensure the issue being challenged is covered by the UDRS. RFRs and/or grievances filed for matters not covered by the UDRS will be dismissed by the NRC which will provide written notification including the basis for the dismissal to the filing party.
5. The NRC may reject intake documents that are incomplete or not submitted in a timely manner as required (see following sections for filing requirements).
6. The NRC will ensure that the RFR or grievance is referred to the appropriate resolution process for review and further action, if applicable.
7. When mediation is requested, the NRC will inquire as to whether the other party to the dispute will agree to mediation. If all parties agree, the NRC will schedule the mediation before further processing.
8. If any party does not agree to mediation, the NRC will inform the other party to the dispute that mediation will not occur and the RFR or grievance will be processed.

D. Resolution Process for Determination-Related Allegations

NOTE: This section applies to TSA, AFGE and BUEs only.

1. General: This resolution process provides for review of disputes arising under section V.C.9 of the Determination, hereinafter referred to as Determination Violations. These include allegations of:
 - (a) Failure to agree on ground rules;
 - (b) Failure by TSA and/or AFGE to bargain in good faith;
 - (c) Failure to agree on terms of the collective bargaining agreement.
 - (d) Management or the exclusive representative has interfered with, restrained, or coerced any employee for exercising their rights regarding union activity as set forth in the Determination or rights established under a binding collective bargaining agreement;
 - (e) Management or AFGE failed to act in a manner consistent with the Determination;

- (f) AFGE coerced, disciplined, fined or attempted to coerce a unit employee as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance, productivity as an employee, or the discharge of the member's duties as an employee; and
- (g) Management or AFGE failed or refused to comply with a binding collective bargaining agreement.

NOTE: Determination-related allegations that are local in scope and/or effect (e.g., related to an airport/hub or within the jurisdiction of an FSD) shall utilize the Single Neutral Hearing Process (see Part 2.D.6.e. below). These matters may include alleged CBA violations which concern the misinterpretation and/or misapplication of specific CBA provisions at the local level.

Determination-related allegations which are generally systemic in nature and/or nationwide in scope and effect shall utilize the Panel of Neutrals Hearing Process (see Part 2.D.6.f. below).

2. Informal Resolution

- (a) This process provides for an informal interest-based discussion.
- (b) When AFGE, a BUE, or TSA wishes to raise an issue under this process, the concerned party will attempt resolution with the other party through informal, interest-based discussions. This informal interest-based discussion must be held within 30 days of the date the party became aware of the issue. The expectation is that the concerned party will bring the matter to the attention of the party with the authority to resolve the matter (generally TSA or AFGE, depending on the issue) and that the matter will be resolved through the informal interest-based discussions. For local issues that are narrow in scope, the concerned party will bring the matter to the attention of the TSA official with the authority to resolve the matter at the lowest appropriate organizational level for the matter presented.
- (c) If the issue is not resolved, the concerned party may proceed to the Intake Process (see below).

3. Intake Process:

- (a) Within seven days of the expiration of the 30-day period for informal resolution, if resolution is not achieved with the informal interest-based discussion(s), the concerned party may file TSA Form 1123-2 with the NRC.
- (b) The filing party must include:

- (i) A detailed description of the matter submitted including the applicable CBA or Determination provision(s) alleged to be at issue;
- (ii) Identification of individuals who may have relevant information (if any);
- (iii) Documentation, which may include evidence and/or a written statement in support of the allegation; and
- (iv) The remedy sought.

NOTE: Failure to provide this information may result in the RFR being dismissed.

- (c) Within seven days of receipt, the NRC will review the intake to determine whether the matter is appropriate for resolution under this process. If the matter is excluded from UDRS under Part 2.B., the NRC will notify the filing party of the dismissal.
- (d) Within seven days of receiving a notice of dismissal, the filing party may request the NRC to reconsider the dismissal.
- (e) If NRC reconsideration is requested, the Director of the NRC or his/her designee will review the request to determine if the dismissal was warranted. Within 10 days of receipt of the request for reconsideration, the NRC will notify the filing party of its decision.
- (f) If the NRC determines the matter should not have been dismissed, it will reinstate the matter in accordance with the procedures below. The reconsideration decision of the NRC is final.
- (g) The NRC will enter case-related information into the UDRS database.

4. Step 1- Facilitated/Interest-Based Discussion/Mediation

- (a) Within 10 days of the receipt of the NRC decision to accept the RFR, the NRC will contact the parties to determine if they are mutually agreeable to having a facilitated interest-based discussion or mediation. If parties do not agree to a facilitated interest-based discussion or mediation, the NRC will advise filing party and process the RFR in Step 2 (see Part 2, Section D.5).
- (b) If the parties mutually agree to the interest-based discussion, the NRC will notify the designated POCs. Within 15 days, the designated POCs will coordinate meeting logistics including obtaining the work schedules of the parties and any TSA employee representatives to ensure that the interest-based discussions occur, to the extent feasible, during the normal work hours of the participants.

- (c) The designated POC will notify the parties of the date, time and location of the meeting. If the NRC determines that meeting at a local site is not feasible, the NRC will notify the parties of the meeting logistics including whether the meeting will be held by electronic and/or telephonic means. The NRC is also responsible for assigning a facilitator or mediator to assist the parties.
 - (d) The participants at the interest-based discussion shall be limited to the parties to the dispute and their representatives, if any, and the facilitator or mediator, unless the parties mutually agree otherwise. To promote open and meaningful dialogue, the discussion will remain confidential and shall not be referenced in any other forum, including but not limited to Senior and/or Neutral Review as discussed below. Confidentiality breaches, by either party, will be reviewed by the NRC and the appropriate action will be taken, which may include dismissal of the dispute.
 - (e) If the parties mutually agree, additional interest-based discussions can be held, and will generally conclude no later than 30 days from the request for additional discussions.
 - (f) If the parties reach a mutual agreement to resolve the issue, the NRC and the involved management official will coordinate with OCC to ensure that a legal review of a proposed settlement agreement is completed prior to final signature by the parties. The facilitator or mediator will be responsible for notifying the local POC and the NRC of the discussion outcome for case closure. The settlement agreement must be prepared in accordance with [TSA MD 1100.55-9, Settlement Agreements](#).
 - (g) If the matter is resolved, the NRC will close the matter and update the UDRS database.
 - (h) Within five days of the conclusion of the interest-based discussion, if the matter is not resolved and the filing party wishes to pursue the matter to the next step, it must notify the NRC of that intent.
5. Step 2 - Senior Official Review:
- (a) Within seven days of receiving the request for Senior Official Review, the NRC will notify the non-filing party of the request. If the filing party requests Senior Official Review, this step is mandatory and cannot be waived by the parties, unless the parties resolve the matter before a decision is issued.
 - (b) NRC will coordinate with appropriate offices to identify a Senior Official Reviewer to adjudicate the matter and will ensure that all associated documents are available for him or her.
 - (c) The Senior Official Reviewer will review the matter and consult with the Partnership Office concerning interpretation of the CBA and/or Determination

language when interpretation is an issue. The Senior Official Reviewer has discretion to gather any information and/or documents deemed helpful for understanding and/or resolving the matter being reviewed.

- (d) Within 30 days of receipt of the request for Senior Official Review and any associated documents, the Senior Official Reviewer will issue a written decision to the parties and the NRC. The decision will include the reasons/rationale supporting the decision.

6. Step 3 - Neutral Review:

(a) General:

- (i) Within 15 days of receiving the Senior Official Reviewer's decision, only AFGE or TSA may submit a written request for neutral review with the NRC.
- (ii) The NRC arranges for the random selection of a single neutral or panel of three neutrals, as appropriate, from the roster of neutrals described in Part 2.G below. The selection will generally occur within 30 days of the receipt of the request for neutral review.
- (iii) Generally, within 30 days of receiving the case information cited above, the neutral convenes a hearing or requests further written information from the parties, as appropriate.
- (iv) The process for selecting neutrals from the roster shall be in accordance with Part 2.G. The parties may be present at the selection in person, by telephone or other appropriate means. The parties can mutually agree to make alternate/additional selections to be used in case of neutral scheduling conflicts.
- (v) The NRC will forward the RFR and the Senior Official Reviewer's decision to the selected single neutral or panel of neutrals and will coordinate hearing dates and logistics with the parties.
 - (a) Panel hearings will take place at TSA headquarters or at the Federal Mediation and Conciliation Service (FMCS) headquarters or another location if mutually agreed upon by AFGE and the TSA.
 - (b) Single neutral hearings may be scheduled regionally and/or by video teleconference.
- (vi) A proceeding before a single neutral or a panel of neutrals may be postponed when jointly requested by both parties or for good cause when requested by a single party.

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- (vii) No party, or any person acting on behalf of a party, will engage in or attempt to engage in ex parte communications with any neutral serving on the roster. NRC communications with neutrals concerning hearing logistics, hearing schedules and other process related matters which have no bearing on the issue(s) being challenged are not considered ex parte communications and are permitted. With respect to written communications regarding logistics and scheduling, the NRC will copy the applicable AFGE POC.
- (viii) Discussions between the parties during previous interest-based discussions, mediation and/or attempted resolution will not be used by the parties in presenting their respective cases or otherwise considered by single/panel of neutrals.
- (ix) Exhaustion. Steps 1 and 2 must be exhausted by the parties before requesting Step 3-Neutral Review. To satisfy the exhaustion requirement, the precise allegations must have been raised in the interest- and rights-based processes in Steps 1 and 2 such that the parties had a sufficient basis upon which to attempt resolution on those issues in Step 1 and such that the Senior Official Reviewer had a sufficient basis upon which to issue a decision on the allegations. No new allegations may be raised by either party during the Step 3 process for which the interest- and rights-based processes in Steps 1 and 2 have not been exhausted.
- (x) The parties may mutually agree to waive a hearing and have the matter adjudicated on the basis of the information of record including written briefs.
- (xi) If either TSA or AFGE wishes to have a stenographic transcript of the hearing proceedings, that party is responsible for making arrangements directly with a stenographer and shall notify the other party of such arrangements seven days in advance of the hearing that a stenographer will be present. The transcript is not an official record of the proceedings unless the neutral and the parties mutually agree. The party requesting the stenographic record will pay the cost of the stenographer's fees and costs. However, the non-requesting party may purchase a copy of the transcript from the stenographer.
- (xii) Each party shall bear its own costs for attorneys, staff, experts, etc.
- (xiii) The costs of the neutral(s) shall be split evenly between the parties. Any obligation to pay these costs will not be dependent on the neutral's decision.
- (xiv) Costs for a neutral's services that are associated with a dispute between a BUE and AFGE will not be shared with the TSA.

- (xv) Videotaping and/or recording, other than a stenographic record of the proceedings, will not be permitted.
- (b) Authority of the Neutral(s). Single neutrals and panels of neutrals will conduct fair and impartial hearings and will take all necessary action to avoid delay in proceedings. Neutrals will have all powers necessary to that end unless those powers are otherwise limited by law. Neutrals must adhere to TSA policies and the Determination. Specifically, neutrals have the authority to:
 - (i) Administer oaths and affirmations;
 - (ii) Rule on offers of proof and receive relevant evidence:
 - (a) To resolve an important issue of credibility;
 - (b) To ensure that the record on significant issues is fully developed; or
 - (c) To otherwise ensure a fair and just adjudication of the case.
 - (iii) Regulate the course of the hearing, maintain decorum, and exclude any disruptive persons from the hearing;
 - (iv) Rule on all motions, witness and exhibit lists, and proposed findings;
 - (v) Require the parties to file memoranda of law and to present oral argument with respect to any question of law;
 - (vi) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and non-repetitious consistent with Part 2.D.6.c. below;
 - (vii) Hold prehearing conferences for the settlement and simplification of issues; and
 - (viii) Issue decisions and remedial orders consistent with Part 2.D.6.d. below.
- (c) Evidence. Single neutrals and panels of neutrals will abide by the following:
 - (i) The Federal Rules of Evidence and Federal Rules of Civil Procedures are not binding to the proceedings before the neutral(s) but may be used to provide guidance for proper hearing practice. Hearsay testimony is admissible before the neutral.
 - (ii) The neutral(s) should only allow evidence and testimony into the record that is relevant, material and non-repetitious. The neutral(s) has the authority to

exclude any evidence of witness testimony that is not relevant or material, or is repetitive.

- (iii) There will be no discovery.
 - (iv) Witnesses may not be present when other witnesses are testifying unless the parties mutually agree.
 - (v) Cross-examination of witnesses is allowed provided the questioning is relevant to the matter being reviewed. The neutral(s) may limit or terminate cross-examination that is not respectful or relevant.
 - (vi) **Credibility.** If a neutral must discern the credibility of a witness, the neutral must apply the following factors in assessing witness credibility: 1) the witness's opportunity and capacity to observe the event or act in question; 2) the witness's character; 3) any prior inconsistent statement by the witness; 4) a witness's bias, or lack of bias; 5) the contradiction of the witness's version of events by other evidence or its consistency with other evidence; 6) the inherent improbability of the witness's version of events; and 7) the witness's demeanor. These factors must be addressed in the neutral's written decision when credibility is at issue.
- (d) **Decision and Remedies.** Single neutrals and panels of neutrals will abide by the following:
- (i) In rendering a decision, the neutral(s) must apply precedent from the Federal court system regarding the interpretation of the TSA's enabling statute.
 - (ii) The decision of the neutral(s) must be consistent with the TSA's enabling statute and the Determination. Decisions issued by a) other administrative tribunals and b) other neutrals in TSA cases brought under the UDRS processes are not binding precedent but may be used as analytical guidance as long as the decision issued by the single neutral or panel of neutrals is consistent with the TSA's enabling statute and the Determination.
 - (iii) The burden of proof to be applied by the neutral(s) in determining whether an alleged violation occurred is preponderant evidence.
 - (iv) **Remedies.** Any remedies awarded by the neutral(s), including make-whole remedies, must be consistent with TSA policy, including [TSA MD 1100.55-10, *Back Pay*](#). Remedies shall not include:
 - (a) Compensatory or punitive damages;
 - (b) Payment of attorneys' fees or costs;

- (c) Changes or alterations to TSA policies or procedures, the Determination or agreed-upon provisions of the CBA; or
- (d) Disciplinary or other action affecting a third party, including the employment or reassignment of another employee.
- (e) Single Neutral Hearing Process. In addition to Part 2.D.6.(a) through (d), the following provisions apply to the single neutral hearing process:
 - (i) Generally, within 30 days of receiving the case information cited above, the neutral convenes a hearing or requests further written information from the parties, as appropriate.
 - (ii) The neutral will assess the necessity for further fact-finding if requested to do so by AFGE or the TSA.
 - (iii) After both AFGE and the TSA have presented their evidence, including written and oral submissions, if any, the matter will be closed to further submissions.

NOTE: Opening and closing written briefs may be submitted at the discretion of the parties or as requested by the neutral.
 - (iv) The BUE grievant and one TSA employee representative, if applicable, shall each be entitled to up to four hours of official time per case to prepare for and attend single neutral hearings (in addition to any other official time authorized or permitted by TSA for internal RFR procedures). Any other TSA employee providing evidence as a witness during a hearing shall be entitled to up to two hours of official time to prepare for and participate in the hearing at which his/her evidence will be presented (in addition to any other official time authorized or permitted by the TSA for internal RFR procedures).
 - (v) TSA may grant additional official time upon request at the sole discretion of TSA if warranted due to the complexity or scope of a given case.
 - (vi) Hearings before the neutral shall be limited to two hours (one hour per side), unless extended by mutual agreement.
 - (vii) Within 15 days of closing the record, the neutral will issue a written decision explaining his or her rationale for the decision. The neutral's decision is final.
- (f) Panel of Neutrals Hearing Process. In addition to Part 2.D.6(a) through (d), the following provisions apply to the panel of neutrals hearing process:

- (i) Generally, within 30 days of receiving the case information cited above, the panel will convene a hearing or request further written information from the parties, as appropriate.
- (ii) Written briefs may be submitted at the discretion of either party. At its discretion, the panel of neutrals may direct the parties to file briefing papers and/or provide oral presentations.
- (iii) Absent extraordinary circumstances, the panel of neutrals will hold only one hearing to receive evidence, testimony, and/or the parties' oral presentations.
- (iv) The hearing will go forward as scheduled in the absence of any party or party's representative if, after due notice, the party or party's representative is not present at the time the hearing is scheduled to take place.
- (v) TSA will approve reasonable amounts of official time for TSA employees to participate in hearings before the panel. Generally, a TSA employee providing evidence as a witness during a hearing shall be entitled to up to two hours of official time to prepare for and participate in the hearing at which his/her evidence will be presented. Employee should be either an elected AFGE official (i.e., Regional VP), or be a direct party to the matter being brought forward for resolution. TSA may grant additional official time upon request at the sole discretion of TSA if warranted due to the complexity or scope of a given case.
- (vi) After discussion with the parties, the panel of neutrals will determine the order and manner of presentations, the number and scope of witness testimony, any limitations on the length and scope of briefing papers.
- (vii) After both parties have presented their evidence and written and oral submissions and arguments, as permitted by these rules and/or directed by the panel of neutrals, the matter will be closed to further submissions.
- (viii) Within 30 days of this closure, the panel will issue a written decision agreed upon by the majority of panel members. Written or oral dissenting or concurring opinions will not be issued. The panel of neutrals' decision is final and binding on both parties.

E. Resolution Process for Workplace Disputes and Disciplinary Actions (Grievance Procedures):

1. General

- (a) Employees and their designated personal representatives may submit grievances concerning workplace disputes and disciplinary actions as defined in Part 1, Definitions.

- (b) A grievance concerning a covered matter must be submitted to the NRC, using TSA form 1115-1, *Grievance-Mediation Request*, within 15 days of when the employee first learned or may reasonably have been expected to learn of the covered matter or issue being grieved. Grievances are considered timely filed when they are hand-delivered, postmarked, faxed, or e-mailed to the appropriate official on or before the due date.
- (c) The grievance must include a statement of:
 - (i) The action or matter being grieved;
 - (ii) The reasons and any supporting documentation for the grievance;
 - (iii) The remedy being sought; and
 - (iv) Whether the matter has already been raised in another forum.
- (d) Employees may request mediation, using TSA Form 1115-1, *Grievance-Mediation Request*, in accordance with Part 3 of this Handbook below.

2. DGO Review

- (a) Within three days of receiving the grievance, the NRC will enter appropriate information into the UDRS database and will forward the grievance with supporting documentation to the local POC who will arrange a meeting with the DGO unless the grievant waives that meeting.
- (b) The DGO meeting will generally be scheduled to occur no later than 10 days after the local POC receives the grievance and associated documents from the NRC.
- (c) Employee grievances may be heard in person, and the meeting between the grievant and DGO shall include the grievant and his or her designated personal representative (if any). If the NRC determines that an in-person meeting is logistically difficult or not cost effective, the meeting may be conducted telephonically or by video conference. Other than the DGO, management representatives shall not be present at or otherwise participate in the meeting unless requested by the grievant and agreed to by the DGO.

NOTE: Any such meetings with an OPR DGO shall be conducted telephonically or by video conference.

- (d) The employee has the right to file a written submission with the DGO in lieu of a meeting, but may choose to do both. If the employee elects not to have a meeting, he or she should notify the DGO as soon as possible. The DGO will then decide the grievance based on the information of record including, but not limited to, the employee's written submission.

- (e) When there is insufficient information to support a decision, the DGO may appoint a fact-finder to obtain additional information as necessary. If a fact finder is appointed, a written report will be prepared and will be considered in the DGO's decision. The grievant will have seven days upon receipt of the fact finding report to review it and provide an additional written submission and/or request an additional meeting with the DGO prior to the final decision.
- (f) Within seven days of the deadline for the employee's final written submission or within seven days of the final meeting, whichever is later, the DGO will issue a written decision which explains the rationale for the decision. The decision will reference any supporting documentation submitted for consideration by the DGO, including the fact-finder's report, if any. The DGO may grant, in whole or in part, or deny, the relief sought.
- (g) The DGO shall send a copy of his or her written decision to the grievant, the local Human Resources Specialist, and the NRC. Upon receipt of the DGO decision package, the NRC will update the case disposition status in the UDRS data base.
- (h) Using TSA Form 1123-1, *Expedited Arbitration Request*, AFGE may give timely notice to the NRC that it may seek expedited arbitration for grievances filed by BUEs as set forth in Part 2.E.6. below. If notice for expedited arbitration is not timely or not provided, and for all grievances filed by non-BUEs, the decision of the DGO concerning workplace disputes or disciplinary actions is final.

3. Cancellation of a Grievance:

- (a) The employee or employee's designated personal representative may request cancellation of the grievance at any stage of the process.
- (b) The DGO may cancel a grievance under the following circumstances:
 - (i) If the employee's employment with TSA ends, unless the grievance concerns relief which may be granted after termination of employment;
 - (ii) If the employee dies, unless the grievance concerns a financial consideration which may have been due the employee;
 - (iii) For failure to pursue, if the employee fails to furnish required information within the timeframes and procedures contained in this directive; or
 - (iv) The grievant has filed the matter in another avenue of redress or has listed an exclusion covered by Part 2.B of this Handbook. DGO will coordinate with NRC and will notify employee of dismissal.

4. Record Keeping:

- (a) The local airport/office shall maintain a grievance file on each grievance in a secured location. These are Privacy Act records and must be maintained in accordance with 5 U.S.C. § 552a and [TSA MD 3700.4, Handling Sensitive Personally Identifiable Information](#).
- (b) Grievance files shall be maintained in accordance with the appropriate Records Disposition Schedule.

5. Expedited Arbitration

(a) Prerequisites:

- (i) Subject to the timelines and procedures contained in the Memorandum of Agreement between TSA and AFGE and reiterated below, any BUE may request that AFGE invoke expedited arbitration in his or her case which AFGE may or may not grant in its discretion. AFGE's decision not to invoke expedited arbitration is not grievable.
- (ii) Employees must first exhaust the grievance process set forth above before expedited arbitration may be invoked unless any step of that process has been waived through mutual agreement between TSA and AFGE.
- (iii) AFGE may not invoke expedited arbitration in any matter for which the BUE has elected another avenue of external redress, e.g., by filing an Equal Employment Opportunity (EEO) complaint with the CRD or by filing a complaint with the Office of Special Counsel (OSC). Allegations of discrimination or whistleblower retaliation will not be heard in expedited arbitration, nor will any single expedited arbitration case be used for a class action or similar proceeding.
- (iv) For efficiency, and to ensure time limits are met to the maximum extent possible, expedited arbitration hearings may be scheduled regionally and/or by video teleconference. TSA and AFGE may (but are not required to) agree that witnesses will participate in expedited arbitration hearings by teleconference.
- (v) AFGE will provide the NRC with a national single point of contact (POC) to which TSOs may be referred concerning questions about cases noticed for possible expedited arbitration or cases for which expedited arbitration has been invoked.
- (vi) The process for selecting arbitrators from the roster of neutrals shall be by mutual agreement of TSA and AFGE. The parties will jointly consult with the arbitrators regarding the schedule of cases based on notification from AFGE as to which cases will be heard. TSA will be represented in this process by

the NRC and AFGE will be represented by a POC designated by AFGE (see above).

(vii) The total number of expedited arbitrations shall not exceed 120 cases per year.

(b) Process

- (i) After TSA has issued a final decision as a result of the internal process, AFGE may give notice that it may seek expedited arbitration. Such notice must be provided electronically to the NRC within 15 calendar days of the BUE's receipt of the final internal TSA decision, using TSA Form 1123-1, *Expedited Arbitration Request*. Failure to comply with these requirements shall render the decision of TSA final with no further review.
- (ii) On a bimonthly basis, AFGE will identify the 20 cases to the NRC for which it is invoking an expedited arbitration hearing.
- (iii) Upon AFGE's request, the parties will schedule expedited arbitration hearings every two (2) months, with sufficient dates and arbitrators selected to hear the anticipated number of cases (20 cases on average).
- (iv) If there are an insufficient number of hearings scheduled to accommodate every request for expedited arbitration in any two-month period, excess cases shall be scheduled for a subsequent hearing session, subject to the limitations in the Memorandum of Agreement (MOA) reached between TSA and AFGE, dated July 24, 2012, entitled Dispute Resolution Process for Adverse Actions, Disciplinary Actions and Other Covered Disputes (see Appendix B Placeholder).
- (v) If AFGE invokes the expedited arbitration process, the respective Points of Contact (POCs) for TSA and AFGE will arrange for the expedited arbitration hearing. This will include consulting with the arbitrator selected to hear the case as well as with the other participants to ensure that, to the maximum extent feasible, the hearing occurs during regularly scheduled duty hours of the employees (grievant, the grievant's designated personal representative, if any, and any witnesses). These discussions will not include any discussion of the substance of matter to be adjudicated.
- (vi) The NRC will give advance notice of the scheduled dates, times and locations for the hearings to the designated local POCs for TSA and AFGE, who will then be responsible for notifying the respective participants. A roster of local POCs will be maintained by the NRC.

(c) Expedited Arbitration Hearings and Official Time

- (i) For each case, hearings before the arbitrator shall be limited to two hours, (one hour per side), unless extended by mutual agreement. The hearing process shall be informal, with relaxed rules of evidence and procedure, no written briefs (unless the parties mutually agree otherwise), and no discovery.
 - (ii) The BUE grievant and one TSA employee representative, if applicable, shall each be entitled to up to four hours of official time per case to prepare for and attend expedited arbitration hearings (in addition to any other official time authorized or permitted by TSA for internal grievance and appeal procedures).
 - (iii) Any other employee providing evidence as a witness during an expedited arbitration hearing shall be entitled to up to two hours of official time to prepare for and attend the hearing at which his/her evidence will be presented (in addition to any other official time authorized or permitted by TSA for internal grievance and appeal procedures).
 - (iv) TSA may grant additional official time upon request at the sole discretion of TSA if warranted due to the complexity or scope of a given case.
 - (v) If an expedited arbitration hearing requires temporary duty (TDY) travel, TSA will authorize travel for the BUE grievant and up to two employees who will serve as witnesses for the grievant. Travel and per diem for these employees will be reimbursed in accordance with [TSA MD 1000.6, Temporary Duty Travel](#). TSA shall not be responsible for the cost of travel for the grievant's representative or any additional TSA employees.
 - (vi) Each party shall bear its own costs for attorneys, staff, experts, etc. The cost of the arbitrator shall be split evenly between the parties.
 - (vii) For challenges to covered disciplinary actions, arbitrators may hear only material factual disputes and/or determine whether the TSA decision is supported by a preponderance of evidence.
- (d) Arbitrator Opinions
- (i) For challenges to covered disciplinary actions:
 - (a) Arbitrators shall agree to adhere to TSA's policies, including the [Table of Offenses and Penalties](#) in effect at the time of the offense.
 - (b) If the arbitrator determines that the final decision is supported by a preponderance of the evidence, and if the disciplinary penalty is within that appropriate range set forth in the Table of Offenses and Penalties, the penalty shall be presumed reasonable.

- (c) If the arbitrator finds that some or all of the charges in the final decision are not supported by a preponderance of the evidence, or that there are applicable mitigating factors not considered by the deciding official, the arbitrator may issue an advisory opinion overturning or mitigating the penalty.
- (d) Arbitrators' advisory opinions may include remedies such as expungement of a disciplinary action from the BUE's personnel record and any make-whole remedies provided for by [TSA MD 1100.55-10, *Back Pay*](#), but shall not include payment of attorneys' fees or costs.
- (ii) For other covered disputes, consistent with the Determination, arbitrators must consider whether there was a violation or misapplication of an employment-related policy for which remedies may be awarded consistent with TSA policy.
- (iii) Arbitrators shall issue advisory opinions in writing within two business days after the expedited arbitration hearings are concluded.
- (iv) The arbitrators' advisory opinions shall be final, except that TSA may, within 15 calendar days after receipt of an advisory opinion, submit a written request to the NRC for review of the advisory opinion by the TSA Administrator or Acting Administrator ("Administrator").
- (v) Upon receipt of a request for Administrator Review of an arbitrator's advisory opinion, the NRC will notify AFGE. AFGE may respond to the request for Administrator Review in writing within 15 days of the NRC notification.
- (vi) The Administrator has sole discretion to modify or overturn the advisory opinion if he or she determines that:
 - (a) The advisory opinion is contrary to law, contrary to public policy, or for reasons of national security; or
 - (b) The case does not involve a covered disciplinary action or other covered dispute within the meaning of paragraphs 2.a or 2.b of the Memorandum of Agreement (MOA) reached between TSA and AFGE, dated July 24, 2012, entitled Dispute Resolution Process for Adverse Actions, Disciplinary Actions, and Other Covered Disputes. Refer to Appendix B for additional information.
- (vii) The Administrator's decision will be issued in writing within 45 days of the request for Administrator Review. The Administrator's decision shall be final and unreviewable.

6. Expedited Arbitration Case Management

- (a) In January of each calendar year, AFGE may elect, at its discretion, to carry over cases from the prior year, subject to the following limitations:
 - (i) No more than fifty (50) cases shall be carried over in any given year.
 - (ii) No case shall be carried over more than once, and
 - (iii) This carryover of cases, if any, will count against the limit in Part 2.E.6.a.vii. that “the total number of expedited arbitrations shall not exceed 120 cases per year.”
- (b) In January of each calendar year, if the docket of pending expedited arbitration notices from the prior year exceeds 100 cases, AFGE and TSA will enter into a mediation/arbitration (med/arb) settlement conference(s) with the assistance of a mediator/arbitrator to address up to 100 cases and settle cases to the extent possible. The parties shall determine the schedule for that settlement conference(s). The mediator/arbitrator shall determine the procedures for the settlement conference and shall have the authority to resolve cases. In establishing the procedures for the settlement conference, the mediator/arbitrator shall abide by the following:
 - (i) The record developed during the internal process and written evidence exchanged by the parties in advance of the settlement conference will be provided to the mediator/arbitrator;
 - (ii) The parties can make any relevant argument;
 - (iii) The mediator/arbitrator will not hear witnesses or receive witness statements; and,
 - (iv) There will be no requirement for pre- or post-hearing briefs.
- (c) Any remedy determined under Part 2.E.6(b) of this Handbook shall be subject to review by the Administrator or Acting Administrator (see Part 2.E.5(d) (iv)-(vii)).
- (d) Class action type cases are not suitable for med/arb process.
- (e) Any remaining cases that were noticed in the prior year for expedited arbitration that are not carried over or resolved in accordance with this section, shall be dismissed with prejudice.

F. Adverse Actions Resolution Process:

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G. Roster of Neutrals:

**TSA HANDBOOK TO
HCM LETTER 771-4**

1. A roster of neutrals will be maintained by the NRC containing the names of mutually agreed upon neutrals.
 - (a) The roster of neutrals will be compiled by randomly selecting the names of neutrals and adding the names in the sequence drawn.
 - (b) Each neutral will be assigned a successive number, starting with number one for the name drawn and continuing until all neutrals have been assigned a number.
 - (c) The order of the roster will not change except to remove names of neutrals who no longer are willing or able to serve as neutrals. All neutrals, whether active or inactive, will retain original number assigned.
 - (d) Any neutrals added to the list will be assigned the next number after the number of the last neutral on the roster. If several new neutrals are added at one time, the random selection process described above will be used to assign numbers on the roster.
2. Panels of neutrals will be selected by their assigned numbers randomly drawn by a computer program maintained by TSA. AFGE may attend the drawing of numbers in person or by telephone.
3. If, after being assigned to a panel of neutrals, a neutral on the panel resigns, dies, or otherwise becomes unable to serve on that panel, another neutral will be selected at random to serve as a replacement neutral. The remaining members of the panel will determine whether, and if so, to what extent, oral presentations for other matters that occurred prior to selection of the replacement neutral must be repeated to enable the replacement neutral to decide the dispute before the panel of neutrals.

PART 3. MEDIATION PROGRAM:

A. General Principles:

1. Mediation is an alternative method to the traditional, formal means of resolving disputes. It uses a variety of approaches to arrive at a resolution that is mutually acceptable to all parties. Mediation is a confidential and voluntary process and all parties to the dispute must agree to participate in the process.
2. If the parties do not reach agreement, the affected employee may:
 - (a) Proceed with available options, as applicable; or
 - (b) Withdraw from the process.

B. Responsibilities: Alternative Dispute Resolution specialists, to include mediators, facilitators, conflict management coaches, and resolution specialists are responsible for:

1. Assisting affected employees and management officials in their attempt to reach a resolution of matters in accordance with this Human Capital Management Policy (HCM);
2. Adhering to professional standards and codes of ethics;
3. Meeting application certification standards and continuing requirements to maintain certification; and
4. Protecting the confidentiality of dispute resolution communications that occur during the mediation process, consistent with the Administrative Dispute Resolution Act and any other specifically applicable statutes and policies.

C. Exceptions:

1. Since mediation is voluntary, any employment matter can be mediated if mediation is agreed to by the parties with the exception of the following:
 - (a) TSO offenses for which removal is required under the provisions of the [Handbook to TSA MD 1100.75-3, Addressing Performance and Conduct Problems](#), Appendix A;
 - (b) Indefinite suspensions;
 - (c) Termination of employment based on failure to meet reemployment requirements under the provisions of [TSA MD 1100.30-17, Uniformed Services Employment and Reemployment](#);

- (d) Involuntary Workforce Reductions in accordance with [HCM 351-2, *Transportation Security Officer \(TSO\) Involuntary Workforce Reduction Procedures*](#), or [HCM 351-3, *Involuntary Workforce Reduction Procedures for Non-TSES, Non-TSO Positions*](#);
 - (e) An employee's physical/mental inability to perform the duties of his or her position;
 - (f) Removal actions involving suitability/security clearance determinations, felony arrests;
 - (g) Any matter previously mediated by either party;
 - (h) Any matter already formally adjudicated or in the process of being adjudicated through a UDRS rights-based process and decisions/dispositions rendered in these processes; and
 - (i) Any matter for which a decision was made by another agency or third party, such as courts, the Department of Homeland Security, the Equal Employment Opportunity Commission, the Office of Personnel Management, the Department of Labor's Office of Workers' Compensation Programs, the United States Merit Systems Protection Board, Office of Special Counsel, and any matter excluded from coverage under this HCM and Handbook.
2. Under normal circumstances, relationship issues between employees will not be eligible for mediation. However, relationship issues may be addressed using a facilitator or conflict management coaching as described in Part 4, Other Alternative Dispute Resolution Processes, of this Handbook.
 3. If it is determined that a relationship issue between employees is having a detrimental effect on checkpoint operations and/or mission accomplishment, an FSD, Supervisory Air Marshal in Charge, Area Director, Division Head, or Assistant Administrator or designee may request targeted support consideration, in accordance with Part 4.B of this Handbook, by calling the NRC Intake Center at (571) 227-5097 or by email to the ResolutionCenter@tsa.dhs.gov.

D. Program Procedures:

1. Participating in mediation will not extend filing time limits (see Part 2.A.4).
2. The mediators are prohibited from disclosing information obtained through the mediation process, except for disclosures agreed to by the parties to resolve a dispute.
3. The mediators are prohibited from disclosing information obtained through the mediation process, except for disclosures required by law and/or TSA policy; e.g., allegations of discrimination, sexual harassment, a real or perceived threat of injury by an employee to others or himself/herself.

4. An employee interested in participating in mediation can initiate the mediation process by calling (571) 227-5097 or emailing ResolutionCenter@tsa.dhs.gov to discuss the eligibility of their case with the NRC Intake Center. Following this discussion, it is the responsibility of the individual requesting mediation to file a timely written request.
5. Written requests for mediation can be faxed to (703) 603-4057 or emailed to ResolutionCenter@tsa.dhs.gov but must be submitted within fifteen calendar days of the act or occurrence for which mediation is being requested. TSA Form 1115, *Grievance/Mediation Request*, may be used for this purpose. If the mediation is related to a formal grievance option, and the individual is requesting mediation as an option to the grievance process, the individual may check the appropriate box on TSA Form 1115, *Grievance/Mediation Request* to appropriately request mediation prior to DGO review. Regardless of the method used, the written request must give a clear, detailed description of the issue giving rise to the mediation request and must also include the desired outcome.
6. Upon receipt of a timely written request for mediation, the NRC will notify the local POC who will coordinate with local management to determine the acceptance or declination of the mediation request. The decision to accept or decline the requested mediation should be made within seven calendar days of this notification. The mediation POC will notify the NRC of management's decision. The NRC will notify the affected parties accordingly, which may also include any representatives for the parties, and will order the mediator from the TSA's mediation services provider as appropriate.
7. Employee and Management Representation:
 - (a) Mediation is intended to improve direct communication between affected employees and management in order to resolve workplace issues, including disciplinary actions. Due to the informal nature of the mediation process, employee and/or management representation is not required; however, the employee and management official may request representation.
 - (b) The affected employee may have a representative present to assist him/her during mediation meetings in accordance with [TSA MD 1100.63-3, *Employee Representation*](#). The management official may also have a representative present to assist him/her. The affected employee must provide the name of his or her representative to the mediation POC no later than seven calendar days in advance of the scheduled mediation meeting.
 - (c) Mediation scheduling should take into consideration the work schedules of the participants, including designated personal representatives, to avoid scheduling mediation meetings during non-work hours of participants.
 - (d) If the affected employee has a physical or mental disability that significantly impairs their ability to participate in the mediation, the individual may have an appropriate representative or other assistant present.

8. Settlement Agreements:

Agreements will be processed in accordance with [TSA MD 1100.55-9, Settlement Agreements](#). If mediation results in whole or in part of matters being challenged, the agreement will be considered an agreement in principle, pending OCC review to ensure that the agreement (i) reflects the specific terms resolving the matters at issue and (ii) is in accordance with applicable legal and TSA policy requirements. The NRC will dismiss the resolved issues, notify the parties of the partial dismissal and annotate the database accordingly.

9. Requests for Agreement Review:

(a) If either party to a settlement agreement reached under the Mediation Program alleges the agreement has been violated, the party can request review. The party asserting the violation must give a written detailed account of the alleged violation, including the date on which the alleged violation occurred, the date on which the party became aware of the alleged violation and the specific provision(s) of the agreement at issue.

(b) Requests for review must be sent to:

Director
National Resolution Center
Transportation Security Administration, TSA-21
601 S. 12th Street
Arlington VA 20598-6030

or

ResolutionCenter@tsa.dhs.gov

(c) Written requests for review must be received no later than 30 calendar days after the alleged violation occurred or when the party asserting the violation knew or should have known of the noncompliance. If determined necessary, the National Resolution Center Director or designee will arrange for investigation into the facts and circumstances of the alleged violation and will prepare a recommendation to the AA/OHC after coordination with the OCC. The AA/OHC will determine what, if any, corrective action/remedy is appropriate. The decision of the AA/OHC is final.

PART 4. OTHER ALTERNATIVE DISPUTE RESOLUTION PROCESSES:

A. Interest-Based Conversations:

1. The Administrator's Determination requires that conflicts and disputes be resolved closest to the issue and at the lowest possible level. In accordance with Part 5 of this Handbook, employees and management are encouraged to engage in interest-based conversations using a set of ICMS steps and skills that:
 - (a) Guide participants in the conversation to understand the issue,
 - (b) Focus on their interests related to the issue, and
 - (c) Use that knowledge to develop solutions and make a decision on how to address the issue and/or move forward.
2. The local sites' ICMS Coordinators and Conflict Management Coaches can assist employees with understanding and practicing the techniques of interest-based conversations.
3. Employees and management may opt to have difficult conversations facilitated by a conflict management practitioner or coach who can assist the parties to engage in a productive conversation with the goal of reaching a mutually acceptable resolution.

B. Targeted Support:

1. Targeted Support is designed to assist headquarters offices and field locations in providing an environment which fosters good decision making and problem solving, managing conflict and helping prevent conflict from becoming disputes. The NRC provides a variety of customized interest-based services. These customized services include facilitated interest-based problem solving, conflict management coaching, and team building activities designed to address individual, team, and/or organizational issues. In most situations requiring targeted support, there are underlying conflict and communication issues that detract from organizational effectiveness and/or performance.
2. To request targeted support assistance, contact the NRC Intake Center at (571) 227-5097 or by email to ResolutionCenter@tsa.dhs.gov. A member of the NRC will respond to the request for targeted support by reaching out to the local POC to arrange a meeting. In most cases, the meeting will be conducted via teleconference or in person with the POC and members of the leadership team.
3. The NRC will conduct intake and assessment discussions with leadership requesting support to gather information about the situation to ensure that targeted support is appropriate and that the necessary conditions are in place for effective results.

4. The overall goal of targeted support is to engage individuals and teams in the creation of environments and processes that support open communication, dialogue, teamwork and overall effectiveness. Throughout the engagement, the NRC will ensure safeguards are established to protect confidentiality and encourage full participation by all stakeholders. Below are the terms and conditions that define the NRC's ability to engage in a targeted support request:
 - (a) The engagement must have the sponsorship of senior leadership (e.g., Federal Security Director, Assistant FSD, Regional Director, Assistant Administrator).
 - (b) The request falls within the mission and services provided by the NRC.
 - (c) All affected parties are expected to engage in good faith effort to resolve identified issue(s).
 - (d) There can be no other actions pending that involve other TSA offices or other external entities.
 - (e) NRC will not provide a written assessment report.
5. The NRC Director or designee will make the final determination regarding case acceptance based on decision factors including, but not limited to:
 - (a) Information received during the intake process;
 - (b) Whether the matter falls within the scope of NRC;
 - (c) Leadership/Site Readiness (leadership team supports a good faith effort to improve the culture and conflict competence within its organization)
 - (d) Resources (e.g., workload, staff availability)
 - (e) In some instances, the NRC Director may confer with other offices to determine acceptability.
6. The NRC Director or designee will notify the requesting party about the decision to accept or decline the request. If the case is accepted, additional assessment and planning will take place between the site and the NRC service provider. Services will be tailored on a case-by-case basis to provide for successful resolution. If the request is declined, the case will be considered closed and the requestor will be notified.
7. In most cases, targeted support disputes will be confidential, unless information received indicates a likelihood of criminal activity, a threat of harm to a person or

persons, a breach of transportation security, or other serious matter such as an offense listed in Appendix A of the [Handbook to TSA MD 1100.75-3](#); and/or disclosure is required by law or policy. In this event, the Resolution Specialist is required to report such information and refer the individual to the appropriate TSA authority or service.

C. Conflict Management Coaching:

1. Conflict management coaching (CMC) is a voluntary and confidential one-on-one dialogue in which a trained coach helps individuals seeking assistance (coachee) to identify and achieve their goals. It helps employees on an individual basis to:
 - (a) Take ownership of their own workplace conflicts;
 - (b) Develop increased competency in managing conflict;
 - (c) Prevent unnecessary conflict; and
 - (d) Resolve disputes more effectively and productively.
2. CMC may be provided face-to-face at airports and at Headquarters where there are qualified coaches, or by telephone.
3. Self-determination is the cornerstone of conflict management coaching. Coaches help employees achieve self-determination by teaching skills that enable employees to resolve specific and more general workplace issues. Coaches do not intervene as an advocate or spokesperson on behalf of an employee or TSA.
4. Conflict management coaches are required to respect the confidentiality of the names of the individuals being coached (coachees) and the information they share, unless information received indicates a likelihood of criminal activity, a threat of harm to a person or persons, a breach of transportation security, or other serious matter such as an offense listed in Appendix A of the [Handbook to TSA MD 1100.75-3](#), and/or disclosure is required by law or policy. In this event, the Coach is required to report such information and refer the individual to the appropriate TSA authority or service.
5. Conflict Management Coaches serve as an impartial colleague and sounding board and will:
 - (a) Inform employees about the various conflict management service options at TSA;
 - (b) Assist employees in managing and resolving their workplace conflicts by:
 - (i) Identifying their goals and the issues;
 - (ii) Brainstorming options for reaching their goals and addressing the issues;
 - (iii) Exploring courses of action;

- (iv) Considering obstacles to taking the planned actions; and
 - (v) Committing to the action(s) the individual may choose to manage the conflict or dispute.
6. Coaching does not replace the responsibility, accountability or authority of management. CMC coaches do not challenge or interfere with the roles of line management. Coaching enhances relationships between TSA staff at all levels.
 7. CMC is not appropriate for all issues. For instance, employees raising personal issues may be referred to the Employee Assistance Program (EAP). Employees raising issues such as sexual harassment and discrimination will be referred to the appropriate office; e.g., CRD.
 8. Contact with a Coach or the CMC program coordinator does not constitute legal notice to TSA.
 9. To utilize CMC services, employees should contact their ICMS Coordinator at their field location or the NRC coaching program office at (571) 227-5097 to be referred to a qualified coach.
 10. The Coachee must request approval from his or her supervisor to attend the coaching session(s).

NOTE: Additional information on TSA's Conflict Management Coaching program can be found [here](#) or by visiting the following iShare page:
<https://team.ishare.tsa.dhs.gov/sites/HCcapital/NRC/default.aspx?PageView=Shared>.

PART 5. INTEGRATED CONFLICT MANAGEMENT SYSTEM (ICMS):

A. General Information:

The ICMS is a system TSA built to create a work environment where issues, ideas and concerns can be respectfully raised and responsibly addressed and where decisions are made considering the inputs of stakeholders and interests of those affected. The ICMS is designed to build high levels of trust and respect by integrating principles of fairness, inclusiveness and transparency into the fabric of the organization by partnering with the Office of Training and Workforce Engagement (OTWE) to institutionalize employee engagement, cooperative problem solving, and optimal communication that will achieve the highest levels of performance. The skills, practices, processes and organizational support that make up the ICMS provide the tools, safeguards and confidence necessary at all levels of TSA to:

1. Minimize the distraction, disruption, delay and drain on resources caused by conflicts that escalate into disputes or are unaddressed;
2. Maximize TSA's access to the best ideas, vital concerns and information from anywhere within its ranks;
3. Foster the commitment and focus that is critical for continual, enterprise-wide mission readiness and enable employees, teams and work groups to work together more cooperatively to solve organizational issues; and
4. Strengthen the links in the chain of supervision by encouraging dialogue, mutual respect and strong teams while ensuring, through the system's checks and balances, that each link in the chain is fully accountable.

B. Core Principles:

1. TSA has identified Core Principles as a means to foster a culture that places high value on mutual trust, commitment, respect, inclusion, and cooperative problem solving. TSA recognizes the critical link between the internal culture of an organization and its success in achieving its mission. By focusing on how people treat each other, make decisions, and solve problems, TSA expects improvement, over time, in communication, cooperation, and conflict management resulting in continuous improvement in performance. TSA is using the ICMS to develop an organization that:
 - (a) Enables every employee to manage conflict, rather than attempt to eliminate or suppress it, and ensures that TSA has access to all perspectives and ideas.
 - (b) Reduces the possibility of conflicts escalating into disputes that undermine mission readiness by causing distraction, discord, or unnecessary cost.
 - (c) Creates a conflict competent organization through cooperative problem solving and high levels of employee engagement that:
 - (i) Enhances individual, group, and organizational performance;

- (ii) Improves TSA's quality of work and work life; and
- (iii) Enables TSA to continue to attract, retain, and support dedicated, talented, and resourceful employees.

2. ICMS Safeguards are:

- (a) **Prohibition of Retaliation.** Consistent with operational requirements and TSA policies, every employee can develop, use, and participate in ICMS. While TSA encourages employees to engage in problem-solving within their chain of supervision, TSA prohibits any form of reprisal or retaliation for engaging in ICMS activities (e.g., serving as an ICMS Coordinator, a member of a council, work group or panel, or as a witness, conflict management practitioner or coach, or a representative for a co-worker who uses the ICMS), or going outside the chain of supervision to raise issues through ICMS practices or processes. Consistent with this policy, any site, office or component-specific ICMS guidance should specifically articulate safeguards against retaliation. Retaliation or threats of retaliation against employees for participating in ICMS will not be tolerated.
- (b) **Voluntary Participation.** Employee use of ICMS processes must always be voluntary. However, in order to support system implementation, individual supervisor and manager participation in a specific ICMS process may be required where TSA has made the determination in advance for such participation.
- (c) **Protection of Confidentiality and Privacy.** Confidentiality and the privacy of all users of ICMS options and processes will be protected as required by law or TSA policy.
 - (i) In most circumstances, employees participating in ICMS processes will be confidential, and managed as such, unless information received during ICMS activities indicate a likelihood of criminal activity, a threat of harm to a person or persons, a breach of transportation security, or other serious matter such as an offense listed in Appendix A of the [Handbook to TSA MD 1100.75-3](#); and/or disclosure by law or policy. In this event, the respective ICMS Coordinator, facilitator, conflict management practitioner or coach is required to report and refer the individual(s) to the appropriate TSA authority.
 - (ii) All employees participating in ICMS processes involving sensitive personally identifiable information (PII) and/or sensitive security information (SSI) must abide by applicable laws, regulations, policies, and agreements concerning confidentiality and non-disclosure of this information.
 - (iii) Since ICMS activities often involve matters of a sensitive and private nature, all employees who are engaged in ICMS activities should strictly limit disclosure of any information about an individual case or matter to TSA personnel who have a *business need to know* in the performance of their

duties. Limited disclosure may be necessary to obtain approval or implementation of a settlement agreement or, with appropriate safeguards, for research, reporting and evaluation purposes.

- (d) **Impartiality.** Conflict management practitioners and coaches must avoid situations involving either bias or a perceived or actual conflict between their interests and the interests of a party or coachee. Those who function as Ombudsmen, Mediators, and Conflict Management Coaches must not have any stake (personal, economic, or other situational interest) in the outcome of specific disputes that they handle, nor should they generally be involved in the investigation, administrative processing, or litigation of those disputes.
 - (i) Persons acting as conflict management practitioners and coaches must disclose any prior relationships or other interests that might reasonably cause their impartiality to be questioned.
 - (ii) Persons acting as conflict management practitioners and coaches should decline to serve if they believe that for any reason they will not be able to be impartial in a particular process.
- (e) **Qualifications and Training.** Internal and external conflict management practitioners and coaches will be held to the highest professional standards to assure participants in dispute resolution and other conflict management processes that they can have confidence in the integrity of the process and its outcome. All individuals serving in this capacity must adhere to applicable professional standards and codes of ethics.
- (f) **Diversity and Accessibility.** All components of the ICMS should be structured and implemented in ways that promote inclusiveness, accessibility, and diversity. Persons with disabilities should be provided reasonable accommodations for accessing options within the system, in accordance with [TSA MD 1100.73-4, Reasonable Accommodation Program](#).
- (g) **Non-Preclusion of Statutory and Workplace Rights.** The design and operation of the ICMS must be consistent with and support statutory or other workplace rights of TSA employees. An employee who chooses to enter into an interest-based process maintains all rights to access available rights-based processes, such as the EEO process, within the timeframes and requirements applicable to those rights-based processes.
- (h) **FIT Test.** TSA expects that decisions will meet the FIT test; i.e., decision making processes and practices will be fair, inclusive and transparent.
- (i) **Collaborative Decision Making.** TSA places a high value on information sharing and collaboration, within and between organizational elements, and employee involvement. Therefore, when appropriate, TSA decisions should take into consideration input from employees or organizational units affected.

- (j) Notice. Communications or allegations made to a conflict management practitioner or coach in connection with a TSA ADR proceeding shall not constitute official or legal notice, and shall not be imputed as notice to TSA, any organizational element of TSA, or any other entity for purposes of any rights-based process. The conflict management practitioner or coach will advise the employee of the proper direction to report allegations of discrimination and the impact of reporting deadlines.

C. ICMS Components:

The following ICMS components enable TSA as a whole, TSA organizational elements, and individual employees to manage and benefit from conflict management.

1. Skills. Builds internal capacity for collaborative decision making, cooperative problem solving, interest-based conversations and conflict management.
2. Structure. Provides multiple options for employees to raise the full range of issues, concerns, and disputes without fear of retaliation.
3. Organizational Support:
 - (a) Enables all employees to use cooperative problem solving skills, processes, and practices as issues and concerns arise;
 - (b) Provides leadership in the championing and modeling of cooperative problem solving in daily practice using performance measures that reinforce expectations and reward good conflict management.
 - (c) Integrates the ICMS and its core principles into TSA's policies, plans, practices and performance management;
 - (d) Communicates, enforces, and demonstrates the ICMS core principles and promotes full knowledge and understanding of ICMS options and expectations;
 - (e) Assures program coordination, integrity, and safeguards; and
 - (f) Fosters continuous ICMS improvement through knowledge management practices and ongoing evaluation based on criteria and outcomes defined in the ICMS Sustainment Model.

NOTE: For more information about the ICMS, to include ICMS Coordinator Guide, ICMS Sustainment Model, ICMS Standards, and the roles of the Employee Councils and Workgroups, click [here](https://team.ishare.tsa.dhs.gov/sites/HCapital/NRC/default.aspx?PageView=Share) or visit the following iShare page: <https://team.ishare.tsa.dhs.gov/sites/HCapital/NRC/default.aspx?PageView=Share>

**TSA HANDBOOK TO
HCM LETTER 771-4**

APPENDIX A: EXECUTIVE SUMMARY

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APPENDIX B: MEMORANDUM OF AGREEMENTS

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APPENDIX C: APPEALS OF ADVERSE ACTIONS BY BUEs, CCOs, and STSOs

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APPENDIX D: SENSITIVE SECURITY INFORMATION (SSI)

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