

ASCS HANDBOOK

COUNTY OFFICE PERSONNEL MANAGEMENT

To access the transmittal page click on the short reference.

For State and County Offices

SHORT REFERENCE

22-PM
(REVISION 1)

UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service
Washington, DC 20250

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**County Office Personnel Management
22-PM (Revision 1)**

Amendment 96

Approved by: Associate Administrator for Operations and Management

Chris P. Beyerhelm

Amendment Transmittal

A Reason for Amendment

Part 18 has been added to acknowledge NASCOE, RASCOE, NACS, NASE, NADD, FLCA, and FSAAA as national associations which FSA has agreed to work with to develop constructive, productive relationships.

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PART 1 BASIC PROVISIONS
SECTION 1 HANDBOOK COVERAGE

1 PURPOSE

This handbook provides instructions to State and County
--Offices concerning the personnel management program for--
County Office employees and committee members.

2 HANDBOOK SUPPLEMENTATION

A State Offices may issue the following personnel-related
material:

1 Amendments to this handbook, according to 1-AS.

2 Notices, according to 1-AS.

3 Memoranda about personnel policy and procedure.

B State Offices shall send, to the appropriate Area
Director, 2 copies of each directive and memorandum in
subparagraph A.

C The following offices shall review the material in
subparagraph A to ensure that it conforms with national
policy and procedure:

1 The appropriate Area Office.

2 HRMD.

3 (WITHDRAWN--AMEND. 46)

4-6 (RESERVED)

SECTION 2 AUTHORITY AND RELATED REFERENCES

7 SOURCES OF AUTHORITY

Authority for ASCS County Office personnel management program is mandated by:

- A Soil Conservation and Domestic Allotment Act (49 Stat. 1148).
- B Regulations governing ASCS County and Community Committees (7 CFR Part 7).

8 RELATED ASCS HANDBOOKS

ASCS handbooks about County Office personnel management include the following:

- A 16-AO.
 - B 3-BU.
 - C 1-CM * * * .
 - D 115-FI * * * .
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147 (WITHDRAWN--AMEND. 71)

148-156 (RESERVED)

SECTION 6 (WITHDRAWN--AMEND. 71)

157, 158 (WITHDRAWN--AMEND. 71)

159-170 (RESERVED)

PART 6 (WITHDRAWN--AMEND. 71)

SECTION 1 (WITHDRAWN--AMEND. 71)

171-185 (WITHDRAWN--AMEND. 71)

186 (WITHDRAWN--AMEND. 7)

187-190 (WITHDRAWN--AMEND. 71)

191, 192 (RESERVED)

SECTION 2 (WITHDRAWN--AMEND. 71)

193-197 (WITHDRAWN--AMEND. 71)

198 (WITHDRAWN--AMEND. 7)

199, 200 (WITHDRAWN--AMEND. 71)

201-208 (RESERVED)

SECTION 3 (WITHDRAWN--AMEND. 71)

209-215 (WITHDRAWN--AMEND. 71)

216 (WITHDRAWN--AMEND. 3)

217, 218 (WITHDRAWN--AMEND. 71)

219-225 (RESERVED)

SECTION 4 (WITHDRAWN--AMEND. 71)

226-228 (WITHDRAWN--AMEND. 71)

229-242 (RESERVED)

PART 7 (WITHDRAWN--AMEND. 71)

SECTION 1 (WITHDRAWN--AMEND. 71)

243-245 (WITHDRAWN--AMEND. 71)

245.1 (WITHDRAWN--AMEND. 71)

246, 247 (WITHDRAWN--AMEND. 71)

248 (WITHDRAWN--AMEND. 51)

249-254 (RESERVED)

SECTION 2 (WITHDRAWN--AMEND. 71)

255-257 (WITHDRAWN--AMEND. 71)

258 (WITHDRAWN--AMEND. 7)

258.5 (WITHDRAWN--AMEND. 71)

259-263 (RESERVED)

SECTION 3 (WITHDRAWN--AMEND. 71)

264, 265 (WITHDRAWN--AMEND. 71)

266-274 (RESERVED)

SECTION 4 (WITHDRAWN--AMEND. 71)

275-279 (WITHDRAWN--AMEND. 71)

280-294 (RESERVED)

PART 8 (WITHDRAWN--Amend. 87)

SECTION 1 (WITHDRAWN--Amend. 87)

295, 296 (Withdrawn--Amend. 87)
296.5 (Withdrawn--Amend. 87)
297 (Withdrawn--Amend. 87)

SECTION 2 (WITHDRAWN--Amend. 87)

298-302 (Withdrawn--Amend. 87)
302.2 (Withdrawn--Amend. 87)
302.5 (Withdrawn--Amend. 87)
303 (Withdrawn--Amend. 87)
303.5 (Withdrawn--Amend. 87)
304-307 (Withdrawn--Amend. 87)

SECTION 3 (WITHDRAWN--Amend. 87)

308-311 (Withdrawn--Amend. 87)

SECTION 4 (WITHDRAWN--Amend. 87)

312 (Withdrawn--Amend. 87)
313 (Withdrawn--Amend. 73)
314 (Withdrawn--Amend. 87)

SECTION 5 (WITHDRAWN--Amend. 87)

315 (Withdrawn--Amend. 87)
315.5 (Withdrawn--Amend. 87)
316-319 (Withdrawn--Amend. 87)
320-322 (Withdrawn--Amend. 73)
323, 324 (Withdrawn--Amend. 87)
325-330 (Reserved)

SECTION 6 (WITHDRAWN--Amend. 87)

331-336 (Withdrawn--Amend. 87)

SECTION 7 (WITHDRAWN--Amend. 87)

337, 338 (Withdrawn--Amend. 87)
338.5 (Withdrawn--Amend. 87)
339-341 (Withdrawn--Amend. 87)
342 (Withdrawn--Amend. 73)
343, 344 (Withdrawn--Amend. 87)
345-348 (Reserved)

SECTION 8 (WITHDRAWN--Amend. 87)

349-356 (Withdrawn--Amend. 87)

SECTION 9 (WITHDRAWN--Amend. 87)

357-360 (Withdrawn--Amend. 87)

SECTION 10 (WITHDRAWN--Amend. 87)

361 (Withdrawn--Amend. 87)

362 (Withdrawn--Amend. 73)

363 (Withdrawn--Amend. 87)

364 (Withdrawn--Amend. 73)

365-368 (Withdrawn--Amend. 87)

SECTION 11 (WITHDRAWN--Amend. 87)

369-384 (Withdrawn--Amend. 87)

385 (Withdrawn--Amend. 7)

386, 387 (Withdrawn--Amend. 87)

388 (Reserved)

SECTION 12 (WITHDRAWN--Amend. 87)

389 (Withdrawn--Amend. 87)

389.5 (Withdrawn--Amend. 87)

390 (Withdrawn--Amend. 87)

390.5 (Withdrawn--Amend. 87)

SECTION 13 (WITHDRAWN--Amend. 87)

391 (Withdrawn--Amend. 87)

391.5-391.16 (Withdrawn--Amend. 87)

392 (Reserved)

SECTION 14 (WITHDRAWN--Amend. 87)

392.5-392.29 (Withdrawn--Amend. 87)

PART 9 EMPLOYEE RESPONSIBILITIES AND CONDUCT

393 BASIC STANDARDS OF CONDUCT

ASCS employees and committee members shall maintain:

A High standards of conduct including:

- 1 Honesty.
- 2 Integrity.
- 3 Impartiality.

B High standards to ensure the:

- 1 Proper performance of ASCS business.
- 2 Confidence of producers, farmers, and the public in ASCS programs.
 - a This confidence is influenced by the manner in which employees serve the public.
 - b Employees shall avoid misconduct and conflicts of interest by using informed judgment.

394 DEBT COMPLAINT POLICY

A ASCS shall not consider fit for continued employment any employee who does not pay a debt:

- 1 In a timely manner.
- 2 Without just cause.

B Not paying:

- 1 Federal income taxes will result in deductions from salary if a lien is issued by IRS.

*--2 Debts owed the United States will result in salary offset if employee does not propose, in writing, an agreement to repay the debt as an alternative to salary offset.

C Salary deductions are not authorized unless they are for:

- 1 Debts owed to:
 - a IRS.
 - b Another U.S. Government Agency.--*

2 Child support.

3 Alimony.

4 Garnishment for bankruptcy.

*--D Make salary deductions or offset only if:

1 A court order and notice of garnishment or attachment have been issued.

2 HRMD approves the deductions or offset.--*

395 HANDLING DEBT COMPLAINTS

If CED or chairperson receives creditor complaint, COC shall:

A Counsel the employee.

B Assist in planning a payment schedule.

C Promptly advise the creditor.

--396 INDEBTEDNESS OTHER THAN TAX OBLIGATIONS AND SALARY OFFSETS--

No court has authority to order the County Office to deduct payments for money owed by an employee. If this type of order is received, immediately provide State Office with all available facts for presentation to OGC.

A If employee acknowledges the debt as valid, or if it has been reduced to a judgment by a court, advise employee to liquidate the obligation.

1 Method of payment shall comply with the purchase agreement or other method agreeable to the creditor.

2 If the employee is found to be financially unable to pay the debt immediately or in a timely manner:

a Require employee to submit in writing:

(1) Why payment cannot be made.

(2) When employee expects to make payment.

b Notify creditor of employee's payment arrangements.

B If employee does not acknowledge the debt as valid and it has been reduced to a judgment by a court:

- 1 Require employee to submit in writing:
 - a Why it is not a valid debt.
 - b The intention to initiate action to have the judgment modified or set aside.
- 2 If employee does not take the action in subparagraph 1 promptly, insist that the employee make payment.

C If employee does not acknowledge the debt as valid and it has not been reduced to a judgment by a court:

- 1 Require employee to submit in writing why he or she does not consider the debt valid.
- 2 Notify the creditor:
 - a Of the employee's position on the matter.
 - b That nothing can be done unless the debt is reduced to a judgment by a court.

D If employee does not make payments as promised, disciplinary action may be taken.

- 1 Before recommending disciplinary action, try to help the employee resolve the financial difficulties.
- 2 If disciplinary action is considered necessary, document the circumstances of why the employee did not cooperate.
- 3 Send a recommendation for disciplinary action and supporting documentation to the State Office:
 - a For transmittal to HRMD.
 - b Before final action is taken.

397 TAX OBLIGATIONS

- A The Internal Revenue Code of 1954 (68 A Stat. 1) permits IRS to collect delinquent taxes by levy upon an employee's accrued salaries or wages.
 - 1 Honor the levy when presented.
 - 2 Send payment to appropriate IRS office according to instructions on the levy.
- B Employees are expected to pay Federal, State, and local taxes according to the laws of the jurisdiction in which employees reside or work. If an employee cannot pay taxes, the employee should make satisfactory payment arrangements with the proper taxing authorities.
- C Employees are expected to cooperate with State and local tax authorities in making proper payment or adjustment of tax bills. Not paying taxes may result in a CED or COC recommendation to take disciplinary action against the employee.

398 GARNISHING WAGES FOR CHILD SUPPORT OR ALIMONY PAYMENTS

- A ASCS has the same legal obligation as a private employer to accept and process garnishment or attachment of wages in child support or alimony cases, if served with appropriate legal process.
- B Employees are required to meet legal obligations to provide child support or make alimony payments that are ordered by a court.
- C Send court order and notice of garnishment or attachment of wages through the State Office to HRMD, for processing. Include:
 - 1 Amount of employee's biweekly gross salary.
 - 2 Itemized list of all deductions per pay period.
 - 3 Net pay.

D HRMD will:

- 1 Process the court order. Notify the employee, through the State Office, of the:
 - a Reason for the deduction.
 - b Amount of payments in arrears.
 - c Biweekly salary deduction to be made.
 - d Paydays that the deduction will be made.
- 2 Provide copies of the notification to the State Office for processing and to be sent to the County Office.

E County Office shall process garnishment according to court order.

--1 Send CCC-184 (County), coded "OW" to the-- appropriate court.

2 File copy of the notification on the left (temporary) side of employee's OPF.

3 Remove notification from OPF when deduction is completed.

F If an employee separates before garnishment can be processed or an employee is already separated:

1 Notify HRMD through the State Office, by telephone.

2 Follow up HRMD notification with a memorandum.

398.5 SALARY OFFSET FOR COLLECTING DEBTS OWED THE UNITED STATES

A ASCS has the same obligation as other Federal Agencies to process salary offsets for debts its employees owe the United States, if requested to do so by the Department or other Government Agency.

B Send requests for salary offsets through the State Office to HRMD for processing. Include the following in a covering memorandum:

1 Amount of employee's biweekly gross salary.

2 Itemized list of all deductions per pay period.

3 Net pay.

C HRMD will:

- 1 Process the request for salary offset.
- 2 Through the State Office, notify the employee of:
 - a Reason for the salary offset.
 - b Amount of the debt, including current interest.
 - c Amount of the biweekly salary offset.
 - d Paydays that the salary offset will be made.
- 3 Provide copies of the notification to the State Office.

D County Office shall:

- 1 Process salary offset according to HRMD.
 - *--2 Send CCC-184 (County) to the State Office--* for disbursement.
- 3 File copy of the notification on the left (temporary) side of the employee's OPF.
- 4 Remove notification from OPF when debt, including all interest, is repaid.
 - *--E State Office shall send CCC-184 (County) to--* appropriate department or agency, according to HRMD.

F If an employee separates before salary offset can be processed or debt repaid:

- 1 Notify HRMD, through State Office, by telephone.
- 2 Follow up telephone notification with a memorandum.
 - *--G If State Office does not receive CCC-184 (County)--* for a current employee by the third workday after a pay day, notify HRMD immediately by telephone.

H Employees are expected to pay loans, penalties, fines, forfeitures, and other debts they owe the United States. Not repaying a debt owed the United States may result in disciplinary action against an employee, up to and including removal.

399 RESTRICTIONS ON POLITICAL ACTIVITY

A COC and CMC members, delegates, alternates, and County Office employees shall not:

- 1 Be a member of or candidate for any Federal, State, or county office filled by partisan election under the law. A person is not ineligible because of candidacy for or membership in offices below county level, such as township trustee or clerk, or membership on:
 - a School boards, including boards of education.
 - b Soil conservation district boards.
 - c Irrigation district boards.
 - d Drainage district boards.
 - e Weed control district boards.
 - f Other similar boards.
- 2 Be an officer, employee, or delegate of a political party.
- 3 Be a member of a national, State, or local committee of a political party.
- 4 Be an officer or member of a committee of a partisan political club.
- 5 Be a candidate for positions listed in subparagraphs 2 through 4.
- 6 Solicit, receive, collect, handle, disburse, or account for assessments, contributions, or other funds, including ticket sales, related to either of the following:
 - a A partisan political purpose.
 - b A partisan election.

- 7 Use official authority or influence to promise to promote, or to threaten to demote, discharge, or remove any employee for:
 - a Withholding or giving contributions, including buying or refusing to buy tickets, for any political purpose.
 - b Supporting or opposing any political organization or candidate in any primary, general, or special election.
 - 8 Use, direct, or permit the use of any official space, equipment, motor vehicle, materials, supplies, or personal services:
 - a To support or oppose any political official, candidate, or party.
 - b For any other political purpose.
 - B Employees in subparagraph A, except County Office employees, may be precinct or ward committee members ONLY if they are not delegates to political party conventions.
 - C Examples of prohibited and permissible political activities for COC and CMC members, delegates, alternates, and County Office employees are in Exhibit 29.
- 400 POLITICAL ACTIVITY VIOLATIONS
- A Employees who violate the restrictions described in paragraph 399 may be subject to disciplinary action up to and including removal from office.
 - B Cases involving violations related to elections for Federal office, may result in Federal criminal prosecution.
 - C Direct any questions about political activity restrictions to HRMD, through STC and DASCO.

401 FARM AND OTHER ORGANIZATION ACTIVITIES

It is an established ASCS and USDA policy to work with all organizations on the same basis. As part of this policy:

A CED's * * * and employees serving under a permanent or temporary appointment:

*--1 Shall not hold any policy-making position or functional office in general or specialized farm or commodity organizations at any level of these groups.

a Policy-making positions may include the following:

- (1) Boards of directors.
- (2) Executive committees.

b Functional office includes the following:

- (1) President.
- (2) Vice president.
- (3) Secretary.
- (4) Treasurer.
- (5) Organizer.
- (6) Comparable office.--*

--2 Shall not, with respect to general farm or commodity organizations:--

- a Act as a financial or business agent.
- b Participate in any * * * membership or recruiting campaign.
- c Accept free office space, salaries, or travel expenses.
- d Advocate any preferential treatment.

--e Be an employee of these organizations.--

3 May be an organizer or officer of an employee organization:

- a Concerned only with employees' welfare.
- b Not engaged in:
 - (1) Influencing legislation affecting USDA programs.
 - (2) Promoting USDA program activities.

*--B A COC member:

1 May:

- a Serve on boards and executive committees of general or specialized farm organizations, and hold functional offices at the county level of these groups.
- b Serve on boards and executive committees of general or specialized farm organizations, but not hold functional offices at the State level of these groups.--*

*--c Hold a nonpolicy position or nonfunctional office in general farm or commodity organizations at any level, if organizational activities:

- (1) Are not performed while the COC member is performing duties as a COC member.
- (2) Do not conflict with the COC member's ASCS duties or ASCS and USDA policies.

2 May not:

a Hold any national level position in general or specialized farm or commodity organizations.

(1) This includes service on the following:

- (a) Boards of directors.
- (b) Executive committees.
- (c) Functional offices.

(2) Functional offices include the following:

- (a) President.
- (b) Vice president.
- (c) Secretary.
- (d) Treasurer.
- (e) Comparable office.--*

*--b Lobby Congress on behalf of general or specialized farm organizations, but may lobby at the county or State legislative level. Lobbying may not be on any day the COC member works for ASCS.

c Act as a financial or business agent.

d Accept free office space, salaries, or travel expenses.

e Advocate any preferential treatment.

f Be an employee of the organizations in subparagraphs a and b.--*

(Text continues on page 339.)

402 CONFLICT OF INTEREST

- A Conflict of interest includes any situation in which an ASCS employee's or committee member's private interest, often economic, conflicts with his or her ASCS duties and responsibilities.
- B Appearance of a conflict-of-interest situations are those in which it could be concluded that an employee's or committee member's private interest is possibly in conflict with his or her ASCS duties and responsibilities, even though there MAY NOT actually be a conflict.
- C The following prohibitions apply to committee members, alternates, delegates, and County employees:
 - 1 They shall not have a direct or indirect financial interest, or engage in outside work that conflicts substantially or appears to do one of the following:
 - a Conflict substantially with their ASCS duties and responsibilities.
 - b Cause a bias toward their judgment, or otherwise bring discredit to ASCS.
 - 2 They shall not:
 - a Engage directly or indirectly in a financial transaction using information obtained through their ASCS employment, for personal benefit.
 - b Disclose any ASCS information for the benefit of another person.

- 3 They shall not engage directly or indirectly in any business transaction that might do one of the following:
 - a Interfere with the proper and impartial performance of their duties.
 - b Bring discredit upon ASCS.
- 4 They may not directly or indirectly speculate in any agricultural commodity, if they are concerned in any way with administering programs for:
 - a Purchase or sale of commodities.
 - b Price support programs.
 - c Commodity loan programs.
 - d Other programs that directly affect market prices of agricultural commodities.
- 5 Subparagraph 4 requirement does not prevent employee or committee members engaged in farming from hedging their own crops or livestock if this does not otherwise conflict with their ASCS duties and responsibilities.
- 6 They may:
 - a Join or do volunteer work with charitable, religious, social, fraternal, recreational, public service, civic, or similar organizations.
 - b Join professional societies or labor unions.
 - c Perform duties in the Armed Forces Reserves or National Guard.
- 7 They may not:
 - a Own or have financial interest in the building that contains the ASCS County Office.

- b Conduct any personal business during normal tours of duty.
 - c Have substantial financial interest in a lending agency or local bank that makes loans to farmers residing in the county. STC shall determine whether a financial interest shall be considered substantial.
- D COC members or employees acting in official capacities shall not sign a program document or participate in any decision affecting any farm in which they have interest or for which they are representatives or fiduciaries. For example:
 - 1 COC members may not participate in COC approval of an adjustment in a tobacco allotment or the transfer and lease of a tobacco allotment for their own farms.
 - 2 CED's may not participate in decisions affecting the approval of ACP cost-sharing on farms owned by family members.
- E COC members or County employees may not be an employee, operator, manager, or a majority owner of a tobacco warehouse.
- F Exceptions to subparagraph E are:
 - 1 Incumbent COC members elected before 1980, who may complete the unexpired terms.
 - 2 COC members elected in 1980, who gave up conflicting tobacco interests by March 1, 1981.

*--402.5 FINANCIAL DISCLOSURE

- A All CED's and COT's are required to file ASCS-324 (Exhibit 29.5) by January 31 of each year.
 - 1 List information on ASCS-324 indicating holdings, employment, and memberships as of the end of the immediately preceding calendar year.
 - 2 Send ASCS-324's to SED's for review and certification.--*

- 3 Requests for an extension of the filing deadline date may be made in writing to SED including reason for delay.
 - 4 Failure to file ASCS-324 in a timely manner, or failure to resolve identified conflicts of interest may be cause for disciplinary action.
- B SED's shall distribute ASCS-324's to all current CED's and COT's by December 1 of each calendar year.
- 1 SED's may grant an extension to the filing deadline date of up to 4 weeks on receipt of a written request to do so that includes justifiable reasons for the delay.
 - 2 SED's shall review all completed ASCS-324's and certify that no conflict of interest or appearance of conflict of interest exists, according to paragraph 402.
 - 3 If SED cannot determine whether a conflict of interest or appearance of a conflict exists, SED shall contact the Area Office for guidance before making an initial determination.
 - 4 If SED believes that a conflict of interest or the appearance of a conflict exists, SED shall notify the employee in writing and give him or her 15 days to provide further information if the employee does not agree that a conflict exists.
 - 5 Within 15 days after receiving the employee's reply or at the expiration of 15 days if the employee does not reply, SED shall inform the employee of the initial determination on the conflict situation.
 - 6 Within 15 days after receiving the initial determination, the employee may request a final determination on the conflict situation from DASCO through SED, Area Office, and the Director, HRMD.

- 7 If an employee does not request a final determination from DASCO, the initial determination by SED shall become the final determination.
- 8 If a conflict of interest situation or the appearance of a conflict is determined to exist, the employee must resolve the conflict or face possible removal from his or her ASCS position.
- *--9 Within 15 calendar days of the employee's receipt of a final determination, SED shall notify the employee that he or she has:
 - a 15 calendar days to resign any outside positions in conflict.
 - b 30 calendar days to begin divestiture of--* outside holdings in conflict.
- 10 Extensions of time to divest holdings may be approved by DASCO through SED and the Area Office. No extensions of time to resign from outside positions shall be granted.
- 11 By March 7 of each year, SED's shall submit a report to the Director, HRMD through the Area Office certifying that all requested ASCS-324's have been received, reviewed, and no conflicts exist or are in the process of resolution.
- 12 If CED or COT fails to file ASCS-324 by January 31 or another approved due date, SED shall notify the Director, HRMD through the Area Office.
- 13 Maintain ASCS-324 in a secured file cabinet for *--4 years. Label the folder, "PM 21 Financial--* Disclosure Reports".

403 GIFTS, GRATUITIES, ENTERTAINMENT, AND FAVORS

- A COC members and employees shall not solicit or accept for themselves or another person, directly or indirectly, from any interested party, any:
 - 1 Gift or gratuity.
 - 2 Favor.

- 3 Entertainment.
- 4 Loan.
- 5 Discount.
- 6 Special consideration.
- 7 Item of monetary value, including:
 - a Complimentary meals and beverages.
 - b Tangible gift items.
 - c Tickets and passes.
- B Accepting gifts or favors, no matter how innocently offered or accepted from interested parties, may:
 - 1 Discredit ASCS and the employee involved.
 - 2 Affect the objective and impartial judgment of the employee.
 - 3 Impair the public's confidence in the integrity of USDA and the employee.
- C An interested party is any person, firm, corporation, or other entity or individual acting on another's behalf, whose interests may include:
 - 1 Seeking to engage in procurement activities or other contractual, or financial business with ASCS.
 - 2 Conducting operations or activities that are regulated by ASCS.
 - 3 Being substantially affected by the performance or nonperformance of the employee's official duties.

D Any items in subparagraph A, given to employee's immediate family members, are considered to be given to the employee. This includes:

- 1 Spouses of employees and committee members.
- 2 Blood and in-law relatives who are household residents of the ASCS employee.

E The following are examples of permissible gifts:

- 1 Exchanging social gifts in an obvious family or personal relationship if it is clear that the business of an interested party is not a motivating factor.
- 2 Exchanging customary social courtesies that are:
 - a Free of any discrediting or improper implications.
 - b Of little monetary value such as a soft drink or cup of coffee.
- 3 Accepting loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as automobile and home mortgage loans.
- 4 Accepting unsolicited advertising or promotional material having little monetary value, such as pens, pencils, note pads, calendars, and other items of nominal value. The following gifts are strictly PROHIBITED:
 - a Meat products.
 - b Alcoholic beverages.
 - c Fruit baskets and candy.
 - d Wallets and jewelry.

- 5 Accepting food and refreshments of nominal value on infrequent occasions at industry-sponsored activities if:
 - a ASCS participation serves the interest of the U.S. Government.
 - b The activities include discussion of matters of mutual interest to ASCS and industry. Luncheons or dinners may be served.
- 6 Voluntarily giving or accepting a gift or donation of nominal value on a special occasion such as marriage, illness, retirement, or death. An employee shall not:
 - a Solicit a contribution from another employee for a gift to an official superior.
 - b Make a donation as a gift to an official superior.
 - c Accept a gift from an employee receiving less pay than himself or herself.
- F The statutory provisions on conflict of interest, according to 18 U.S.C. 203, restrict committee members and employees from:
 - 1 Representing others before a court or U.S. Government Agency in a matter in which the United States is a party or has an interest:
 - a Regardless of whether the representation is for pay.
 - b Except while performing official duties.

- 2 Participating in an official governmental capacity, in any matter in which any of the following have a financial interest:
 - a Employee.
 - b Employee's spouse or minor child.
 - c Outside business associate.
 - d Persons with whom employee is negotiating for employment.
- 3 Representing anyone other than the United States in a matter in which the employee participated personally and substantially:
 - a For the U.S. Government at any time during employment.
 - b After employee's ASCS service has ended. This is a permanent bar.
- 4 Representing anyone other than the United States in a matter:
 - a In which the United States is a party or has an interest, for 1 year after terminating ASCS service.
 - b That was within employee's official responsibility at any time during the last year of ASCS service. Official responsibility includes:
 - (1) Having direct administrative or operating authority to take official action.
 - (2) Having intermediate or final authority, either personally or through subordinates, to decide the U.S. Government's action.
- 5 Receiving any supplementary salary for ASCS services from a private source.

6 Directly or indirectly soliciting, accepting, or agreeing to accept for themselves or for another person, anything of value that may:

a Influence employee's performance of official duty.

b Provide an opportunity for an act of fraud against the United States.

404 ASSIGNING COUNTY OFFICE EMPLOYEES TO STATE OFFICE WORK

A County Office employees may be assigned to perform State Office duties related to County Office functions.

B Employees hired and supervised by the State Office to do microfilming and similar work shall:

1 Be considered State Office employees.

2 Not be placed on County Office payrolls when employed for State Office work assignments.

C County Office employees assigned to State Offices shall return to assigned County Offices upon completing the specified work.

405 STORAGE, DRYING, AND OTHER EQUIPMENT VENDORS

A No committee member or employee shall be:

1 An approved vendor under any ASCS program requiring these vendors.

2 An approved supplier of farm storage, drying, or similar equipment under any ASCS loan program.

--B Elected committee members or new and permanent-- employees may not hold offices such as president, secretary, or treasurer, or be employed by an approved vendor or supplier in subparagraph A.

- C Persons resigning according to subparagraph B must do so at the earliest opportunity.
- D Committee members or employees serving under temporary appointment may hold membership on boards of directors.
- E Committee members and employees shall not have a significant financial interest:
 - 1 In an approved vendor or supplier in subparagraph A.
 - 2 That would permit the committee member or employee to direct or influence the policies of the business.
- F STC may grant an exception if local farmers would be deprived of the only reasonable source of supply. For example:
 - 1 The only approved vendor available to farmers in the county is elected as a committee member.
 - 2 STC may determine that if this committee member stops being a vendor, it would eliminate the only reasonable source of supply available to farmers.

406 CLEARANCE REQUIREMENT FOR OUTSIDE EMPLOYMENT ACTIVITIES

- A All subordinate County Office employees must have any *--outside employment approved by CED. Employees shall complete and submit ASCS-324 to CED when they want to accept outside employment.
- B All CED's must have any outside employment approved by SED. CED's shall submit ASCS-324 each January according to paragraph 402.5.
- C If CED is unable to determine whether a conflict of interest exists, the case is a questionable case and shall be referred to SED.
- D State Offices shall, if SED is unable to make a determination, request a final determination from DASCO through the Area Office and Director, HRMD.--*

*--407 PROHIBITED EMPLOYEE CROP INSURANCE ACTIVITIES

- A Permanent ASCS Federal and County Office employees, temporary employees, STC members and alternates, and COC members and alternates shall not:--*
- 1 Refer any producer to FCIC or private crop insurance sales agent.
 - 2 Direct any crop insurance sales agent to any producer.
 - 3 Use ASCS positions to affect or interfere with producer's selection of an FCIC or private crop insurance agent.
- *--B In additional to subparagraph A, permanent ASCS Federal and County Office employees, STC members and alternates, and COC members and alternates shall not be:--*
- 1 Contract FCIC sales agents of any kind or work for these agents.
 - 2 Contract FCIC loss adjusters or adjusters supervisors.
 - 3 Employees of agents, loss adjusters, or adjuster supervisors for private crop insurance companies that:
 - a Have agency sales and service agreements with FCIC.
 - b Are reinsured by FCIC.
- C Temporary employees shall not sell or adjust FCIC insurance on any day that they * * * work for ASCS.

*--408 PERMITTED EMPLOYEE CROP INSURANCE ACTIVITIES

- A Official actions under reimbursable agreements with FCIC that allow ASCS to sell and service insurance--* are permitted.
- B Any employee or committee member may be or work for agents, loss adjusters, or adjuster supervisors for private crop insurance companies if they:
 - 1 Do not have agency sales and service agreements with FCIC.
 - 2 Are not reinsured by FCIC.
- C Temporary employees, on any day that they do not work for ASCS, may:
 - 1 Act as sales-only agents for FCIC crop insurance.
 - 2 Serve as contract FCIC loss adjusters or adjuster supervisors.
- D Permitted activities include any involvement with crop insurance by:
 - 1 CMC members and alternates.
- *--2 Spouses of employees or committee members. Employees and committee members whose spouses--* sell crop insurance are reminded that:
 - a Using one's official position for personal benefits is grounds for disciplinary action.
 - b Violating these regulations could result in dismissal. These regulations shall be enforced.

409, 410 (RESERVED)

Part 10 Performance and Conduct

Section 1 General Provisions

***--411 Overview**

A Delegations of Authority

DAFO, STC'S, COC'S, and CED'S have authority for controlling certain County Office administrative operations, including suspension and separation authority.

B HRD and DAFO Clearance

The following require HRD and DAFO clearance, **all**:

- proposals for suspensions and separations
- final decision letters on suspensions and removals
- OTI plans and related letters.--*

***--412 Coverage**

A Removal and Suspension Actions

The following are subject to removal and suspension actions:

- COC members and alternates.
- CED's.
- program technicians and other non-Federal County Office employees.

B Types of Actions

Types of actions include:

- separation for poor performance (see Section 3)
- separation for misconduct (see Section 4)
- separation during basic probationary period (see Section 5)
- separation during managerial probationary period (see Section 5)
- RIF separation because of lack of funds or work, or reorganization (see Section 5)
- Separation from COT program and non-selection for CED position (see Section 5).--*

413-415 (Withdrawn--Amend. 91)

416-420 (Reserved)

Section 2 (Withdrawn--Amend. 3)

421-424 (Withdrawn--Amend. 3)

425-430 (Reserved)

--Section 3 Performance Issues*431 Performance Issue Options****A Separations**

Separations shall be based solely on performance-related problems.

IF...	THEN follow...
both performance problems and misconduct provide the basis for separation	misconduct procedures in Section 3.
separation for performance problems and misconduct during any probationary period	procedures for employees on probation in Section 5.

Note: Do **not** take separation action for non-probationary employees until counseling and documentation requirements are met.

B Counseling - General Guidelines

The following provides the personnel responsible for providing guidance for performance problems.

IF person is a...	THEN the...
CED	DD and COC shall: <ul style="list-style-type: none"> • consult with Administrative Officer, Executive Officer, or designee as appropriate, in counseling of employee • meet with employee, specifically noting the deficiencies in performance providing supporting documentation and/or work products.
County Office employees serving under permanent appointment	CED and DD shall: <ul style="list-style-type: none"> • consult with Administrative Officer, Executive Officer, or designee as appropriate, in counseling of employee • meet with employee, specifically noting the deficiencies in performance providing supporting documentation and/or work products.

--*

--431 Performance Issue Options (Continued)*C Counseling**

Counseling shall be provided immediately when there is evidence of an unacceptable performance. Counseling shall include:

- discussing specific performance deficiencies and how they represent an impediment to the effective accomplishment of the work of the office
- assisting employee in bringing performance to an acceptable level
- telling the employee what improvements are needed to bring performance to a fully successful level
- aligning performance deficiencies with the employee's Performance Plan.

D Factors to Consider

The following factors shall be considered:

- has the employee performed acceptably in the past
- does the employee have the potential to perform at a fully successful level
- has the employee forgotten how to do certain tasks
- are there physical or other limitations preventing the employee from performing at a fully successful level?

E Performance and Conduct Issue Factors to Consider

The following performance and conduct issue factors shall be considered:

- is there negligence in performing duties
- does the employee refuse to perform duties?

Note: If failure to perform duties is negligent, willful, or intentional; disciplinary action may be more appropriate (see Section 4).

F Documenting Counseling

Oral counseling may be sufficient to bring employee's performance to acceptable level. Document counseling efforts and provide it to employee.--*

--432 OTI Plans*A Failure to Improve**

If employees continue to perform unacceptably in **at least 1 critical element**, a formal OTI action may be taken with the result that the employee may be:

- reduced in grade.
- separated.

B Employee Notification

During or shortly after counseling and a failure to improve performance in 1 or more critical elements, an employee **must** be put on an OTI (see subparagraph C and Exhibit 30). OTI plans **must** contain:

- critical elements and performance standards in which employee's performance is unacceptable
- exact nature of deficiencies
- improvements needed to bring performance to an acceptable level
- notice that failure to become acceptable on 1 or more critical elements may result in employee's separation or reduction in grade
- notice that a minimum OTI period of 90 calendar days is being established in which the employee will be given an opportunity to demonstrate acceptable performance
- fact that the supervisor is committed to work with the employee
- references to previous counseling sessions, memorandums, and other efforts to improve employee's performance.--*

432 OTI Plans (Continued)***--C Guidelines for Performance Removals or Reductions-in-Grade Actions--***

The following table provides issuing, deciding, and/or appeal officials for performance actions.

IF person affected is a...	THEN...				AND final appeal official is...
	OTI issuing official is...	*--proposing official for removal or reduction-in-grade is...	deciding official for removal or reduction-in-grade is...	review and/or appeal official is...	
permanent County Office employee, except CED	CED	CED	COC	STC	DAFO.
	COC	COC	STC	DAFO	
	STC	STC	STC	DAFO	
CED	COC	COC	STC	DAFO	
	STC	STC	STC	DAFO--*	

* * *

*--432 OTI Plans (Continued)

D Determination at the End of OTI Period

Employees or COC's monitoring OTI Plans shall meet regularly with the employee during OTI period, noting progress being made and/or continuing deficiencies. Memorandums of these meetings shall be kept.

IF employee's performance...	THEN...
has improved to an acceptable level	<p>the employee should be:</p> <ul style="list-style-type: none"> • notified in writing • informed that performance must be sustained at an acceptable level in all critical elements for at least 1 year from the date of the beginning of the OTI period or removal or downgrade action may be taken without another OTI period.
has improved, but not to an acceptable level	<p>consider extending the OTI period and notifying employee by:</p> <ul style="list-style-type: none"> • acknowledging the improvement • identifying what is needed to achieve acceptable performance • specifying the period of time OTI is extended.
has not improved	a determination must be as to whether a reduction in grade or separation is appropriate.

--*

--433 Separations or Reductions-In-Grade*A Notifying Employees**

Separation or reduction-in-grade notices shall:

- be in writing (see Exhibit 30.3)
- include:
 - reference to counseling memorandum and OTI notification
 - examples of unacceptable performance during OTI period and the employees performance is still not at an acceptable level
 - summary of meetings with employee and other attempts at helping employee to improve performance.
 - the date of separation

Notes: Provide the employee with at least a 14-calendar-day notice before separation.

With DAFO approval, administrative leave may be appropriate during 14-calendar-day notice period.

Separation notice should inform employee of right-of-review.

If reduction-in-grade is determined to be the penalty and not removal, an explanation should be given for this determination.

Note: Clear separation notice and supporting documentation with HRD and DAFO.--*

--433 Separations or Reductions-In-Grade (Continued)*B Right-Of-Review and Appeals**

The following provides the personnel responsible for right-of-reviews and appeals.

IF deciding official for separation or reduction-in-grade is...	THEN the reviewing body is...	Final appeal with the right to hearing body is...
COC	STC.	DAFO.
STC		

Request by employee for review shall:

- be in writing and provide the reasons why the employee does not believe the separation or reduction-in-grade is justified
- reply to the reasons in the separation or reduction-in-grade notice
- be filed with reviewing officials within 15 calendar days of the date of receipt notification of the separation or reduction-in-grade
- advise if the employee would like a personal appearance (oral reply before the reviewing officials) is requested
- indicate if employee is represented by an attorney or other representative.

Note: If the employee does **not** request a review within the stated time period, separation action or reduction in grade shall be final.--*

--433 Separations or Reductions-In-Grade (Continued)*C Right-of-Review Proceedings**

At the review proceeding, an individual has the opportunity to show cause why he or she should not be separated.

- Minutes of the review proceeding shall be taken.
- A court reporter may be used if deemed necessary, at government expense.
- An individual may:
 - offer affidavits, statements or other documents for the record to support the case
 - appear personally
 - be represented by an attorney or other representative.

Note: This is not a formal hearing and witnesses are not permitted.

IF reviewing officials...	THEN reviewing officials shall...
find that the separation or reduction-in-grade was taken without following proper procedures or not supported by substantial evidence	do 1 of the following: <ul style="list-style-type: none"> • reinstate employee to his/her prior position or grade • offer employee another position at his/her prior grade • take other action as appropriate, such as reassignment to another duty station.
uphold the separation	notify the separated or downgraded person and provide right to further review or appeal, as appropriate (see Exhibit 30.5).

--*

--433 Separations or Reductions-In-Grade (Continued)*D Appeals**

The separated or downgraded employee may appeal the reviewing official's decision to DAFO and has the right to a formal hearing before DAFO. Requests for review should be:

- filed with DAFO in writing
- filed within 15 calendar days of receiving the final reviewing official's decision
- indicate if a hearing is requested
- indicate if employee is represented by an attorney or other representative.

E Determination on Record

If the employee does **not** request a personal appearance, DAFO shall make its determination on the written record and issue a decision within 90 calendar days after the record is closed.

This table provides a timeline for handling the determination.

Step	Action
1	DAFO shall: <ul style="list-style-type: none"> • notify the affected employee within 15 calendar days of receiving request for review on the record • contact HRD and request the official file and provide separated employee with a copy of the file.
2	The affected employee shall have 30 calendar days from date of receipt of FSA's file to submit any additional information or comments about separation or reduction-in-grade action.
3	DAFO shall allow HRD 15 calendar days to reply to the separated or downgraded employee's comments to the official case file.
4	Within 90 calendar days of receiving the employee's request for decision or the record, DAFO shall issue the final administrative decision.

--*

--434 Hearings Conducted by DAFO*A Hearing Details**

The hearing officer:

- is DAFO or a designee appointed by DAFO
- shall conduct the hearing at the time and place designated by DAFO or hearing officer
- put all witnesses under oath.

The employee may be accompanied or represented by a person of his or her choice, unless the representative's FSA position poses a conflict of interest.

FSA shall designate a representative to present FSA's case.

Both the employee and FSA's representative may:

- produce witnesses
- cross-examine all witnesses.

Notes: DAFO does **not** have subpoena power.

A verbatim transcript of the hearing

- is required
- shall be made available at no charge to the employee with or before the final decision, at the discretion of the hearing officer
- may be provided to the FSA representative and employee before a final decision for use in preparing written closing arguments.

Hearings shall be closed to the public and other employees or members of the public except those participating in the hearing. A reasonable number of family members may attend the hearing, at the discretion of the hearing officer.--*

--434 Hearings Conducted by DAFO (Continued)*B Hearing Officer's Responsibilities**

If DAFO's designee conducted the hearing, the hearing officer shall, within 30 calendar days after the date of receiving the transcript, or 30 calendar days after the hearing officer closes the record, send the following to DAFO:

- the complete record of the hearing, including the transcript and any additional documents.
- hearing officer's findings, analysis and recommended determination that may be accepted, rejected, or modified by DAFO.

C Issuing DAFO's Determination

DAFO will notify employee of the final determination:

- in writing
- within 30 calendar days after the receiving findings, analysis, and recommendations of the hearing officer.

DAFO's decision is the final administrative action in separations or reductions-in-grade for poor performance.

Note: An employee may **not** appeal a final FSA decision resulting in removal, suspensions of more than 14 calendar days, or a downgrade through both EEO's administrative process and DAFO. If the EEO process is initiated, DAFO proceedings will be terminated.--*

435 (Withdrawn--Amend. 91)

436 (Withdrawn--Amend. 4)

437 (Reserved)

--Section 3.5 Disciplinary, Adverse, and Other Actions*438 Determining Type of Action****A Action Determination**

Determine type of action to address conduct problems.

- Managers should use progressive discipline when determining appropriate action.
- Progressive discipline may **not** be appropriate in all cases.
- Actions range from oral counseling to separation.

B Determining a Penalty

Penalties should be fair and reasonable. A disproportionate penalty may be reduced or reversed on appeal even if the actual misconduct charges against the employee are sustained.--*

--438 Determining Type of Action (Continued)*C Factors to Consider**

Major factors to consider are the **Douglas** factors. Douglas factors are:

- the nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities.

Note: Include whether the offense was intentional, technical, or inadvertent; committed maliciously or for gain, or was frequently repeated.

- the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position
- the employee's past disciplinary record
- the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability
- the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties
- consistency of the penalty with those imposed upon other employees for the same or similar offenses
- consistency of the penalty with any applicable agency table of penalties
- the notoriety of the offense or its impact upon the reputation of FSA
- the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- the potential of the employee's rehabilitation;
- mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith
- the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.--*

--439 Letters to Employees*A Letters of Caution and Counsel**

Letters of caution, counsel, or confirmations of oral counseling:

- shall cite the specific acts, deficiencies, or misconduct
- shall include a warning that repetition of the offense or other improper conduct may lead to a recommendation for more severe disciplinary action up to and including removal
- are **not** considered letters of reprimand and shall **not** be placed in the employee's OPF, but be retained in a separate file by the supervisor or other designated employee.

Note: All letters of counsel and caution shall be cleared with HRD and DAFO.

B Letters of Reprimand

Letters of reprimand (see Exhibit 30.4) shall:

- cite the specific acts, deficiency, or misconduct
- include a warning that repetition of the offense or other improper conduct may lead to a recommendation for more severe disciplinary action up to and including removal
- be placed in an employee's OPF for a period of not more than 2 years
- state the maximum period of time the letter will remain in employee's OPF
- be cleared by HRD and DAFO..

Note: At any time, the affected employee may request that the issuing official remove the letter.--*

440, 441 (Withdrawn--Amend. 91)

441.5, 441.6 (Withdrawn--Amend. 91)

442 (Reserved)

--Section 4 Suspensions or Separations for Misconduct*443 Suspensions of 14 Calendar Days or Less****A Disciplinary Actions**

Suspensions of 14 calendar days or less:

- are considered disciplinary actions
- **must** be approved in advance of taking any action.

HRD and DAFO shall review **all** actions proposing to suspend or suspending an employee for 14 calendar days or less.

Proposing officials shall submit requested action and all supporting documentation to HRD. HRD will clear all notices through DAFO

B Procedure and Grounds for Disciplinary Suspensions of 14 Days Or Less

Procedure to suspend an employee for misconduct includes:

- issuing a proposal notice (see Exhibit 30.6)
- 7 calendar day advance notice
- right-of-reply to proposal notice
- determining whether to suspend and for how many days
- issuing a decision letter. (see Exhibit 30.7)
- appealing a decision.--*

--443 Suspensions of 14 Calendar Days or Less (Continued)*C Proposed Suspensions**

Proposing official shall:

- describe reasons for proposed suspension with detailed supporting information and documentation to provide the employee with a clear understanding of the reasons
- provide employee an opportunity to reply not later than 7 calendar days from the date of the proposal to suspend

Employee replies may be in person and/or writing.

Note: Request for an oral reply must be received within 7 calendar days of receipt of the proposal.

D Decision Letters

Deciding official shall issue a decision letter, as follows:

- after hearing employee's oral reply and/or reviewing any written reply of employee
- if employee does not reply, after the time given to employee in which to reply
- giving the effective dates of the suspension
- for indefinite suspensions, indicate the right to a DAFO hearing.--*

--443 Suspensions of 14 Calendar Days or Less (Continued)*E Employee Oral Replies**

Oral replies:

- are **not** adversarial proceedings
- are **not** formal hearings; therefore, witnesses are not permitted
- provide employees another opportunity to present reasons, in writing, in person, or both, why a proposed action should be reversed or modified.

Notes: There is no cross-examination or right to produce witnesses; however, employees may present affidavits, statements, or other evidence.

Employees may be accompanied or represented by a person of his or her choice; however, if there is a conflict of interest FSA may disallow a representative.

A verbatim transcript may be made which should be provided to the employee.

F Notification, Decision, and Appeal Process Suspensions of 14 Calendar Days or Less

The following table provides notifying, deciding, and/or appeal officials for suspensions of 14 calendar days or less.

IF persons affected is a...	THEN proposing official is...	REPLY is addressed to...	DECIDING official is...	AND address appeal of final decision to...
permanent County Office employee, except CED and COC	CED	COC	COC	STC.
	COC	STC	STC	DAFO.
	STC			
CED	COC			
	STC			
COC	STC			

Note: DAFO may be the notifying, deciding, and appeal official in **all** cases. All DAFO final reviews of suspensions of 14 calendar days or less are on the record. There is no right to a hearing in these cases.--*

--444 Suspensions of More Than 14 Calendar Days*A Adverse Actions**

Suspensions of more than 14 calendar days:

- are considered adverse actions
- **must** be approved in advance of taking any action.

HRD and DAFO shall review **all** actions proposing to suspend or suspending an employee for more than 14 calendar days.

Proposing officials shall submit requested action and all supporting documentation to HRD. HRD will clear all notices through DAFO

B Procedure and Grounds for Suspensions of More Than 14 Calendar Days and Separations

Procedure to suspend an employee for misconduct includes:

- issuing a proposal notice (see Exhibit 30.8)
- 30 calendar day advance notice
- right-of-reply to proposal notice
- determining whether to suspend or separate and for how many days
- issuing a decision letter (see Exhibit 30.9)
- appealing a decision.

C Proposed Suspensions

Proposing officials shall:

- describe reasons for proposed suspension with detailed supporting information and documentation to provide the employee with a clear understanding of the reason for proposal
- provide employee an opportunity to reply not later than 15 calendar days from the date of the proposal to suspend

Notes: Replies may be in person and/or writing.

Request for an oral reply must be received within 7 calendar days of receipt of the proposal.--*

--444 Suspensions of More Than 14 Calendar Days (Continued)*D Decision Letters**

Deciding official shall issue a decision letter, as follows:

- after hearing employee's oral reply and/or reviewing any written reply of employee
- if employee does **not** reply, after the time given to employee in which to reply
- giving the effective dates of the suspension
- for indefinite suspensions, indicate the right to a DAFO hearing.

E Notification, Decision, and Appeal Process Suspensions of More Than 14 Calendar Days

The following table provides notifying, deciding, and/or appeal officials for suspensions of more than 14 calendar days.

Note: These appeal rights may differ from those in performance-based actions.

IF persons affected is a...	THEN proposing official is...	REPLY is addressed to...	DECIDING official is...	REVIEW official is...	AND address appeal of final decision to...
permanent County Office employee, except CED and COC	CED	COC	COC	STC	DAFO.
	COC	STC	STC		
	STC				
CED	COC				
	STC				
COC	STC				

Notes: DAFO may issue proposal notices and decision letters in **all** cases.

There is a right to a hearing before DAFO, if requested by appellant.--*

445 Other Actions**A Disqualification From Future Service or Employment**

County Office employees or COC members are automatically disqualified from future service as County Office employees or COC members if:

- *--separated for misconduct, except in cases where the sole cause for removal is failure to accept a reassignment
- employee resigns after receiving proposal to separate and the facts show that the employee would have likely been removed if the employee had not resigned.

After an resignation is received, the employee will be notified promptly by letter (by FedEx or similar express service) of the disqualification from future service. The letter will reference the reason for disqualification and advise the employee that a reply may be submitted to DAFO showing why the disqualification action should not be taken.

In all cases, DAFO may remove disqualification for future service upon request from employee.--*

B Administrative Leave/Alternate Duty Station

There may be situations where an employee's conduct or other circumstances necessitate removing the employee from the workplace such as:

- OIG or other investigation
- threats of violence
- potential harm to FSA records or property.

A change of duty station may be appropriate pending the disciplinary and/or investigative procedure.

Administrative leave may be appropriate when maintaining an employee in a duty status is not possible. Administrative leave must be approved by DAFO.

--445 Other Actions*C Indefinite Suspensions**

Occasionally, when an employee is involved in criminal conduct and FSA does **not** initially have enough evidence to take a removal action, an employee can be indefinitely suspended as a temporary measure. The action can be taken when it is established that there is “reasonable cause to believe a crime has been committed”, such as from an indictment or preliminary investigation.

If an indefinite suspension is warranted; proposing official shall:

- issue a notice of proposed suspension describing the reason for the action (see Exhibit 31.5)
- provide employee with a 7 calendar day notice period to respond (oral reply) to the proposed suspension

Note: The notice period is reduced to seven 7 calendar days because there is reasonable cause to believe that a crime has been committed for which a sentence of imprisonment may be imposed.

- issue a decision letter (see Exhibit 31.6)
- see subparagraph D for procedures for oral replies.

D Decision Letters

Deciding official shall issue a decision letter, as follows:

- after hearing employee’s oral reply and/or reviewing any written reply of employee
- if employee does not reply, after the time given to employee in which to reply
- giving the effective dates of the suspension
- for indefinite suspensions, indicate the right to a DAFO hearing when the indefinite suspension is upheld by the deciding official.--*

446-449 (Withdrawn--Amend. 91)

450 (Withdrawn--Amend. 3)

451-458 (Withdrawn--Amend. 91)

459 (Withdrawn--Amend. 3)

Par. 459.5 Separation of Temporary Employees**A Temporary Appointments**

For employees under temporary appointments:

- Section 4 applies **except** as provided in this paragraph.
- CED shall:
 - *--confer with COC, DD, and administrative officer before taking action to separate--*
an employee
 - upon approval of administrative officer or SED, prepare written notice of separation a minimum of 14 calendar days before separation date or sooner, if approved by
--DAFO--
- disqualification to future employment and suspension shall not be used
- right to reply and right of appeal do not apply
- notices to separate employees under OIG investigation shall be cleared with HRD
--and DAFO.--

Section 5 Other Separations

460 Separation During Probationary Periods

A Probationary Employees

Employees serving any probationary period shall be separated by written notice:

- at least 14 calendar days before the separation date, unless work-related circumstances require a lesser notice period

--Note:** DAFO may approve a shorter notification period.**--

- notifying employee of reasons for separation.

Note: Obtain written notice approval from Administrative Officer.

461 Separation by Reduction-In-Force

A Reductions-In-Force

For reductions-in-force caused by lack of funds or work or because of reorganization, employees under:

- permanent appointment shall be separated by written notice:
 - at least 60 calendar days before separation date
 - advising employee of basis for reduction-in-force
 - providing available rights, benefits, and assistance
 - temporary appointment shall be separated by written notice:
 - at least 5 workdays before separation date, unless work-related circumstances require a shorter notification period
- *--Note:** DAFO may approve a shorter notification period.
- advising employee of basis for reduction-in-force--*
 - advising employees that there is no right of appeal or reply.

Note: Obtain written notice approval from Administrative Officer or SED.

462 (Withdrawn--Amend. 91)

463 Separation at Expiration of Temporary Appointment

A Employee Notification

CED's should remind employees in writing at least 5 workdays before the expiration of appointment that:

- appointment will expire automatically
- arrangements should be made about closing out activities.

464 (Reserved)

PART 10.5 GRIEVANCES

464.3 PURPOSE

This part describes the procedures that give County Office employees an opportunity to:

- A Present grievances.
- B Receive an unbiased determination about the validity of their grievances.

464.4 COVERAGE AND STRUCTURE

A This part applies to:

- 1 Current County Office employees under permanent and temporary appointments.
- 2 County Offices in all States.

B A State Grievance Board in each State administers the
--FSA County Office Employee Grievance System.--

C The Board shall consist of 4 members, each of whom shall serve for a 1-year term, beginning January 1 each year, or until a successor is selected. One Board member shall be selected from each of the following job titles or classifications:

- 1 State Office employee familiar with administrative processes. This member shall be the Chairperson.
- 2 CED.
- 3 County Office program assistant.
- 4 COC member.

D Alternates shall be appointed for each position on the Board. Alternates shall be used in situations of conflict of interest or if a regular member **cannot** meet with the Board.

E SED and the president of the State NASCOE affiliate:

- 1 Shall select Board members and alternates as mutually agreed upon.
- 2 May appoint any Board member or alternate for a successive term.
- 3 May **not** be members of the Board.

F Any suggested addition, deletion, or change to this grievance system shall be subject to negotiations between FSA and NASCOE.

464.5 GRIEVANCE SYSTEM APPLICABILITY

A The grievance system applies to any concern or dissatisfaction that involves the employment of a covered employee, subject to State or County Office management's control, which is **not** covered by another form of appeals or complaint process. The system applies to, but is **not** limited to, the following:

- 1 Working conditions.
- 2 Improper application of or **not** following rules and regulations.
- 3 Unfair treatment.
- 4 Performance ratings.
- 5 Nonselection for training opportunities.
- 6 Letters of reprimand.
- *--7 Changes in assignments, including details and reassignments.
- 8 Denials of official time in connection with performance, disciplining in adverse actions, or an administrative grievance.--*

B The grievance system does NOT apply to:

- 1 Involuntary separations, such as poor performance, misconduct, or RIF's.
 - 2 Discrimination based on marital status, race, religion, national origin, sex, age, handicapping conditions, or other issues appealable to the Equal Employment Opportunity Commission.
 - 3 Classification and pay plans.
 - 4 Nonselection for promotion, or withholding of a promotion.
 - 5 Any action affecting another person. Action grieved **must** be personal to the aggrieved party.
 - 6 Selections to the COT program.
 - 7 The content or enforcement of published FSA procedures and policy.
 - 8 The substance of the elements and standards of an employee's position.
 - 9 The granting or failing to grant an award or the decision to adopt or **not** adopt a suggestion.
 - 10 The receiving or failing to receive a performance award or QSI.
 - 11 The termination of a probationary employee.
 - 12 A salary offset determination.
 - *--13 A preliminary or proposed notice of a performance, disciplinary, and adverse action that includes:
 - a Proposed disciplinary action.
 - b Letters of caution.
 - c OTI.--*
- * * *
- 14 Disciplinary suspensions of 14 calendar days or less (10 workdays).
 - 15 Matters appealable to the Comptroller General.
 - 16 Placement or nonplacement of names on STC certificate of eligible candidates for CED positions.

- C Matters excluded from coverage under the grievance system may be subject to review or appeal under other review or appeal procedures.

*--464.6 GRIEVANCE PROCEDURES

A Informal Grievance

An employee shall present a matter as an informal grievance to the lowest level individual who can make a decision on the matter being grieved. If this individual is unknown to the employee, the grievance shall be submitted to the employee's immediate supervisor.

1 Identifying an Informal Grievance

An informal grievance may be presented either orally or in writing. A written explanation should **not** be required from the employee. However, in presenting a grievance, it is the employee's responsibility to clearly identify all of the following:

- a Matter of concern.
- b Corrective action sought.
- c That he or she is initiating the grievance process.

If the informal grievance is presented orally, the receiving supervisor should document the grievance, in writing, and provide a copy to the grievant.

2 Timeframe for Presentation

An employee **must** present an informal grievance within 15 calendar days after the later of either of the following:

- a Date of the act or event that is the basis for the grievance.
- b Date the employee became aware of the act or event.--*

*--3 Informal Grievance Response

The informal grievance process **must** be completed by issuing a memorandum or resolution of the grievance within 20 calendar days after its initial presentation. If this deadline is **not** met, the employee may file a formal grievance.

Note: An informal grievance should be addressed whether or **not** it is presented within the timeframes in subparagraph 2, although it may be rejected as a formal grievance based on timeframes grounds. A grievance can **never** be presented more than 6 months after the act or event in question.

B Filing a Formal Grievance

- 1 A formal grievance **must** be filed within 10 calendar days after either of the following:
 - a Receipt of the memorandum closing the informal process.
 - b Passage of 20 calendar days from presentation of the informal grievance, if no memorandum or resolution is issued closing the informal process.
- 2 The grievance must be filed with the chairperson, State Grievance Board, at the appropriate State Office.--*

- 3 If there is more than 1 aggrieved party, and the nature of their grievance is identical, 1 written grievance may be filed by all parties, if all parties agree in writing. Any party may request to have his or her grievance considered separately.
- 4 The written grievance shall:
 - a Be signed by the aggrieved party or parties, or an authorized representative of the affected parties.
 - b If signed by an authorized representative, clearly identify the aggrieved party or parties.
 - c Clearly and concisely state the subject of the grievance.
 - d Specify the corrective action being sought.
- 5 Upon receipt of a grievance, the Chairperson shall review the grievance and within 15 workdays inform the grievant of the acceptance or rejection of the grievance. A grievance may be rejected as:
 - a Untimely.
 - b A matter excluded from coverage.
 - c Not meeting a requirement for processing.
- 6 A grievance rejected as **not** meeting a requirement for processing (subparagraph 5 c) may be resubmitted after deficiencies are corrected. Grievance **must** be resubmitted within 15 workdays of receiving the notice of deficiencies.
- *--7 Rejection of a grievance may be appealed to DAFO. Appeal **must** be filed:
 - a Within 15 workdays of receipt of the rejection notice.
 - b With DAFO.--*

- 8 After accepting a grievance, the Chairperson shall notify the aggrieved party or parties of the date, time, and place where the Board will receive evidence about the grievance.
 - a The notification shall be given at least 10 calendar days before the scheduled hearing date.
 - b Any hearing shall be scheduled within 30 calendar days after accepting a properly filed grievance.
 - c Grievant should be instructed to submit a list of proposed witnesses to the Chairperson for the Board's review.
- 9 The Chairperson shall determine whether there is any conflict of interest between the aggrieved parties and regular members and notify the regular members or alternates of the scheduled hearing date. If there is a conflict, the Chairman shall select an alternate.
- 10 Under the grievance system, no aggrieved employee or representative shall be subject to restraint, coercion, intimidation, reprisal, or discrimination because of filing a grievance.
- 11 The grievant may withdraw a grievance:
 - a At any time.
 - b For any reason.
 - c By notifying the Chairperson
- 12 The grievant shall notify the Chairperson if he or she does **not** want a hearing. The decision of the Board shall then be only on the written record.
- *--13 Nothing shall prohibit reasonable attempts by supervisors to resolve, at any time, a grievance that is being processed.--*

464.7 CONDUCT OF HEARING PROCEDURES

--A The grievant and any FSA employee, including an FSA employee representing the Grievant, involved in the grievance-- procedure shall be granted:

- 1 A reasonable period of official time (**not** to exceed 8 hours) to prepare for the hearing.
- 2 A reasonable period of official time to present their grievance or response before the Board.
- 3 Official travel expenses for any approved appearance before the Board.

B The grievant or parties shall have the right to be represented, accompanied, and advised by legal counsel

--or other representative, including a NASCOE National or State representative, an FSA employee, at all stages of the-- grievance procedure except that a representative, who is an FSA employee, may be disallowed if FSA determines that:

- 1 The representative would be in a conflict-of-interest position.
- 2 The exigencies of public business require the presence of the representative elsewhere.

--If a representative is disallowed, grievant may directly request review of the disallowance by writing to DAFO; DAFO will make a final decision in the matter.--

C There are no provisions for payment to a grievant of attorney's fees or other expenses associated with filing a grievance, even if the grievant prevails.

*--D Grievants can request ADR. If a request is made, it **must** be initiated within 15 calendar days of the act or occurrence that is the basis for the grievance or within 15 calendar days of the date the grievant learned of the act or occurrence.

When use of ADR offers a reasonable opportunity to resolve the conflict, managers and supervisors are expected to participate in the ADR process.--*

*--The grievant **must** provide a written request to elect/request ADR. Election of the ADR process will suspend the time limits associated with filing and processing a grievance.

E Rejecting EEO Complaints

To avoid dual processing, a dispute over a matter for which an employee has elected either of the following will be rejected under the process.

- 1 An entitlement to file an appeal.
- 2 A formal challenge in some other forum.

The grievance may be reinstated if the grievance issues are **not** addressed during the appeal process or any other forum.

F Conducting the Hearing:

- 1 The Board shall conduct any inquiry necessary to:
 - a Resolve any disputes as to facts.
 - b Develop sufficient basis on which to recommend a decision.--*
- 2 The Board may obtain any information that may assist in its review, including review of the documents or records and questioning of witnesses who have direct knowledge of the subject matter of the grievance.
- 3 The Board inquiry is **not** a trial-type hearing, but is a fact finding inquiry.
- 4 The Board shall determine which witnesses are to be called from those proposed by the grievant or other parties. The Board may call its own witnesses.
- 5 Any employee against whom the grievance is filed shall be informed in writing by the Board of any allegations and be given a right to appear as a witness before any Board hearings.

- 6 Cross examination of witnesses by the grievant or other parties shall **not** be allowed. Only Board members may ask questions of witnesses.
 - a The grievant, other witnesses, or representatives should be allowed to make a short statement during their testimony.
 - b Witnesses shall be present only when giving their testimony.
- 7 All witnesses before the board may be accompanied by a representative, including an attorney.
- 8 The hearing is closed to the public. Only Board members, necessary administrative staff, the witness, or representative may be present when a witness is questioned.
* * *
- 9 A verbatim transcript is **not** required, but may be authorized by the Chairperson.
- 10 The grievant may make his or her own arrangements for a verbatim transcript, if the chairperson does **not** request a court reporter.
- 11 If a verbatim transcript is **not** prepared, the Board shall make a summary of each witnesses' testimony.
- 12 Employees against whom adverse action is taken because of the Board's findings are entitled to receive any portion of the transcript or other recordings of Board relating to this adverse action.
- 13 The grievant is entitled to only those portions of the Board's transcript or record relating to the grievance issues.

464.8 RECOMMENDATION OF THE BOARD

A The Board shall send * * * DAFO a written recommended decision that contains:

- 1 A report of its findings of fact.
- 2 An analysis of the issues.
- 3 A determination on the grievance, including any corrective action that may be necessary.
- 4 A statement of the rationale for the determination.
- 5 The hearing record or transcript

* * *

B Within 15 calendar days after receiving the recommended decision, * * * DAFO shall:

- 1 Accept, reject, or modify the recommended decision.
- 2 Issue a decision on the grievance to:
 - a The aggrieved party or parties.
 - b The person or persons against whom the grievance was filed.

*--C DAFO's final decision shall **not** be subject to review.--*

* * *

Part 11 (Withdrawn--Amend. 91)

Section 1 (Withdrawn--Amend. 91)

465-472 (Withdrawn--Amend. 91)
473-480 (Reserved)

Section 2 (Withdrawn--Amend. 91)

481-489 (Withdrawn--Amend. 91)
490-496 (Reserved)

Section 3 (Withdrawn--Amend. 91)

497-499 (Withdrawn--Amend. 91)
500-508 (Reserved)

Section 4 (Withdrawn--Amend. 91)

509-522 (Withdrawn--Amend. 91)
523-528 (Reserved)

Section 5 (Withdrawn--Amend. 91)

529-531 (Withdrawn--Amend. 91)
532-538 (Reserved)

Section 6 (Withdrawn--Amend. 91)

539-541 (Withdrawn--Amend. 91)
542-550 (Reserved)

Section 7 (Withdrawn--Amend. 91)

551-557 (Withdrawn--Amend. 91)
558-562 (Reserved)

Section 8 (Withdrawn--Amend. 91)

563-566 (Withdrawn--Amend. 91)
567-572 (Reserved)

Section 9 (Withdrawn--Amend. 91)

573-583 (Withdrawn--Amend. 91)

Section 10 (Withdrawn--Amend. 91)

584 (Withdrawn--Amend. 91)
585 (Withdrawn--Amend. 18)
586-590 (Withdrawn--Amend. 91)

Section 11 (Withdrawn--Amend. 91)

590.5-590.8 (Withdrawn--Amend. 91)
590.9-590.14 (Reserved)

Section 12 (Withdrawn--Amend. 91)

590.15, 590.16 (Withdrawn--Amend. 91)
590.17-590.29 (Reserved)

Part 11.5 (Withdrawn--Amend. 91)

590.30-590.41 (Withdrawn--Amend. 91)

Part 12 (Withdrawn--Amend. 91)

591-615 (Withdrawn--Amend. 91)
616-624 (Reserved)

Part 13 (Withdrawn--Amend. 91)

Section 1 (Withdrawn--Amend. 91)

625-646 (Withdrawn--Amend. 91)
647 (Reserved)

Section 1.3 (Withdrawn--Amend. 91)

647.5-647.17 (Withdrawn--Amend. 91)

Section 1.4 (Withdrawn--Amend. 91)

648 (Withdrawn--Amend. 91)
648.3-648.23 (Withdrawn--Amend. 91)

Section 1.5 (Withdrawn--Amend. 91)

649 (Withdrawn--Amend. 91)
649.3-649.11 (Withdrawn--Amend. 91)
650 (Withdrawn--Amend. 91)
650.3-650.12 (Withdrawn--Amend. 91)
651, 652 (Withdrawn--Amend. 91)
652.1-652.9 (Withdrawn--Amend. 91)

Section 2 (Withdrawn--Amend. 91)

653, 654 (Withdrawn--Amend. 91)
655-660 (Reserved)

PART 14 EQUAL EMPLOYMENT OPPORTUNITY

SECTION 1 BASIC EEO PROVISIONS

661 REQUIREMENTS

- A Policy. STC's, SED's, COC's, and CED's shall ensure equal opportunity for all employees or applicants seeking employment in County Offices. Discrimination based on any of the circumstances in paragraph 671, in any employment matter, is prohibited.
- B Recruitment. All recruitment activity shall include reasonable efforts to advise and interest job applicants from any locally available minority groups. Record:
- 1 These recruitment efforts and the consideration given to any minority group candidate.
 - 2 The reasons for not selecting a qualified minority group candidate.

662 MINORITY CATEGORIES

- A A Black is a person who has origins in any of the black racial groups of Africa.
- B An American Indian or Alaskan Native is a person who meets all of the following criteria:
- 1 Has origins in any of the original peoples of North America.
 - 2 Maintains cultural identification through tribal affiliation or community recognition.
 - 3 Is regarded as a member of this group in his or her place of work or in the community where he or she lives.
- C An Asian or Pacific Islander is a person who meets both of the following criteria:
- 1 Has origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. These areas include China, India, Japan, Korea, the Phillippine Islands, and Samoa.

2 Is regarded as a member of this group in his or her place of work or in the community where he or she lives.

D Hispanic is a person of Mexican, Puerto Rican, Cuban, Central South American, or other Spanish culture or origin, regardless of race.

663 EEO OFFICER

The employees appointed by the Administrator to serve as EEO counselors for Federal employees in the State shall also serve as counselors for County employees.

A Inform all employees and applicants of the EEO counselor's name, office address, and phone number.

B The EEO counselor shall be free from restraint, coercion, discrimination, or reprisal in performing EEO counseling duties.

C See Exhibit 57 for a description of the role of EEO counselors.

664 EEO OFFICER

The Administrator is the EEO Officer for ASCS.

665-670 (RESERVED)

SECTION 2 DISCRIMINATION COMPLAINT PROCESS

671 APPLICABILITY

The discrimination complaint process applies to complaints of discrimination or unequal treatment, in any County Office employment matter, based on any of the following factors:

- A Race.
- B Color.
- C Religion.
- D Sex.
- E Age.
- F National origin.
- G Marital status.
- H Physical or mental handicap.
- I Reprisal for equal employment complaint activity.

672 COMPLAINT PROCESSING

Follow the procedures in this section to process complaints. These procedures are based on the USDA Employee Handbook, Appendix II.

673 RIGHT TO FILE DISCRIMINATION COMPLAINTS

- A Who May File. County Office employees, former employees, and applicants for County Office employment who believe they have been discriminated against because any of the factors in paragraph 671 may file discrimination complaints.
 - 1 If the complaint is based on age discrimination, the complainant must be at least 40 years of age.

- 2 If the complaint is based on physical or mental handicap, EEO procedures apply. An exception is that, under the Equal Pay Act of 1963 (77 Stat. 56), there is no specific statutory authority covering back pay relief or law suits involving descrimination because of physical or mental handicap.

B Freedom of Action. All employees shall be free from any restraint, interference, coercion, discrimination, or reprisal by their associates or supervisors in:

- 1 Making allegations, complaints, or appeals.
- 2 Seeking counsel from EEO counselors.
- 3 Serving as the representative of a complainant.
- 4 Appearing as witnesses.
- 5 Seeking information about the EEO procedures in this handbook. This includes the right to be accompanied, advised, and represented by representatives of their own choice.

C Representation.

- 1 The complainant shall indicate in writing, to the Director, EEO/CRS, the names of his or her EEO representative.
- 2 Employees may be denied the right to act as representatives if the representation:
 - a Would result in an appreciable neglect of the employees' regular duties.
 - b Suggests a conflict of interest.
- 3 Managers and supervisors shall allow representatives a reasonable amount of official time to prepare the complaint.

D Violation of EEO Complaint Regulations.

- 1 To ensure that appropriate action is taken, complainants, their representatives, or the persons affected shall report violations of EEO complaint regulations to one of the following:
 - a Director, EEO, USDA.
 - b The Administrator.
 - c Director, EEO/CRS.
- 2 EEO regulations and 29 CFR 1613 apply equally after a complaint has been adjudicated.

674 MANAGEMENT AND SUPERVISORY RESPONSIBILITIES

Management and supervisory officials shall:

- A Inform individuals, who express the belief that they have been discriminated against, of their right to use the EEO procedures in this handbook without fear of reprisal or retaliation.
- B Provide employees, who want to initiate a complaint of discrimination, with names, locations and telephone numbers of EEO counselors to contact.
- C Provide the most favorable conditions possible for resolving complaints informally.

675 OFFICIAL TIME FOR PREPARING COMPLAINTS

- A All counseling sessions, inquiries, hearings, etc., shall be:
 - 1 Conducted during the normal administrative workweek.
 - 2 Considered official business for pay and leave purposes.
- B A complainant and his or her representative, if the representative is an ASCS employee, shall be given a reasonable amount of duty time to prepare the complaint.
- C Do not authorize overtime for complaint preparation.

676 CORRESPONDENCE

- A All correspondence about complaints shall be sent by registered letter, return receipt requested.
- 1 Under normal circumstances, correspondence shall be addressed to the complainant's home address.
 - 2 If it is expedient to send correspondence to the complainant's office, address the envelopes "PERSONAL: TO BE OPENED BY ADDRESSEE ONLY."
- B Send copies of all correspondence about all formal and informal complaints directly to the Director, EEO/CRS.

677 PRECOMPLAINT PROCESSING

- A Complainants shall:
- 1 Consult with an EEO counselor if they believe that they have been discriminated against because of any of the circumstances in paragraph 671. See ASCS-837 or contact the State Office for names, addresses, and phone numbers of EEO counselors. Complainants may:
 - a Phone, write, or visit an assigned EEO counselor. USDA employees may use the FTS system for making necessary telephone contacts with EEO counselor.
 - b If assigned EEO counselors are NOT available by telephone, contact any EEO counselor.
 - c Contact Director, EEO/CRS, by phone, if an EEO counselor is not immediately available.
 - 2 Contact an EEO counselor within the following time limits, as applicable:
 - a 30 calendar days after the date of the matter.

- b 30 calendar days after the effective date of the action, if the complaint is based on a personnel action.

B The Administrator will ensure that all employees cooperate fully with the EEO counselor in each case. See Exhibit 57 for a description of EEO counselors' role.

678 EEO COUNSELOR DUTIES

A EEO counselors shall:

- 1 Consult with the complainant after being notified of the complaint.
- 2 Travel, if necessary, to the complainant's location for consultation.
- 3 Counsel the complainant on the issues and factors in the complaint.
- 4 Make necessary inquiry into the EEO complaint and the general environment in which complaint occurred.
- 5 Interview the employees who allegedly discriminated and any other persons who may have information about the complaint.
- 6 Try to resolve the complaint informally.
- 7 Keep records of counseling activities.
- 8 Periodically brief the Administrator, through the Director, EEO/CRS, on the counseling activities that will form a basis for a report, if the complainant files a formal complaint.
- 9 Try to resolve the complaint within 21 calendar days after the first interview with the complainant.
- 10 As soon as it is reasonably evident that the complaint cannot be resolved to the complainants satisfaction:
 - a Terminate counseling.
 - b Hold a final interview with the complainant.

- c Notify the complainant in writing that if he or she wants to file a formal complaint, it must be submitted within 15 days after the complainant's receipt of notice of final counseling interview. See Exhibit 58 for an example of the notice.
- 11 Conduct the final interview in subparagraph 10 b no later than the 21st day.
 - a Advise the complainant in writing of the right to file a formal discrimination complaint. See Exhibit 59 for an example. Inform the complainant of the:
 - (1) Right to file a complaint at any time after receiving of the notice, up to 15 calendar days after the final interview.
 - (2) Appropriate official with whom to file a complaint.
 - b If the complainant does not choose to file a formal complaint at this time, the counseling may continue if the EEO counselor believes informal resolution of the problem is still possible.
- 12 When advised that a complaint discrimination has been filed:
 - a Prepare a written report, within 7 calendar days after the notification, summarizing the counselor's actions and advice to both management and the complainant, on the issues in the complaint.
 - b Include at least the following in the report:
 - (1) Dates of contact with the complainant.
 - (2) The issues presented and the bases for the issues.

- (3) Substance of any inquiry.
- (4) Content of attempted resolutions.
- (5) Identities of those contacted.

c Send the report to the Director, EEO&CRS.

d Send a copy of the report to the complainant.

B The EEO counselor shall NOT:

- 1 Try in any way to restrain the complainant from filing a formal complaint.
- 2 Reveal the identity of a complainant who has come for consultation, except if authorized to do so by the complainant, or if ASCS has advised the EEO counselor that the complaint has been accepted.
- 3 Make a determination about whether discrimination actually occurred.

679 PUBLICIZING APPOINTMENT OF EEO COUNSELORS

To help employees, applicants, and the public know who the EEO counselors are and how they can be contacted, post 1 or more copies of ASCS-837 with the EEO counselor's pictures, names, addresses, and telephone numbers for the applicable area, in conspicuous places in each office.

680 FILING A FORMAL COMPLAINT

If the final counseling interview is not completed before 21 calendar days after the date a discrimination allegation was made, the EEO counselor shall, on the 21st day, inform the complainant of the right to file a formal complaint.

* * * Advise the complainant of:

A When to file. Complaints may be filed up to 15 calendar days after the final counseling interview with the EEO counselor.

--B How to file. Use ASCS-464 or a letter containing-- the required information.

C With Whom to File.

- 1 Complaints may be filed with:
 - a Director, EEO&CRS.
 - b Administrator.
 - c Director, EEO, USDA.
 - d Federal Women's Program Manager, USDA.
 - e Hispanic Employment Program Manager, USDA.
- 2 See Exhibit 59 for the names, addresses, and phone numbers of the officials listed in subparagraph 1.

681 FORWARDING COMPLAINTS

Send complaints and EEO counselor's reports promptly to the Administrator or the Director, EEO&CRS.

- A The Director, EEO&CRS ensures that complaints and the EEO counselor's reports meet regulatory requirements in form and presentation.
- B The Administrator may attach appropriate recommendations to Chief, Employee Appeals Staff, OP, about the complaint before sending the complaint to OP.

682 ACCEPTING COMPLAINTS

- A Discrimination complaints may only be accepted if they are:
 - 1 Filed by an employee, former employee, or applicant for employment in the ASCS office where the alleged discriminatory act occurred.
 - 2 Based on the factors listed in paragraph 671.
 - 3 Based on an employment matter over which ASCS has jurisdiction.

- B The Chief, Employees Appeals Staff, OP, shall promptly acknowledge acceptance of complaints that are not rejected or canceled.

683 REJECTING, CANCELING, AMENDING, OR WITHDRAWING COMPLAINTS

A Chief, Employee Appeals Staff, OP:

1 May reject a complaint, if:

- a The discrimination allegations are not covered under 29 CFR 1613.212.
- b The complainant includes same issues contained in a previous pending or adjudicated complaint.
- c The discrimination allegations were not brought to the attention of an EEO counselor within either of the following time limits, as applicable:
 - (1) 30 calendar days of the date of the incident occurred.
 - (2) 30 calendar days of the effective date of the action, if the complaint is based on a personnel action.
- d Complaint was not filed within 15 calendar days after the final counseling interview.

2 May cancel a complaint, if the complainant does not pursue the complaint.

3 Shall notify complainant and his or her representatives of the right to appeal rejection or cancellation of the complaint:

- a To EEOC within appropriate time limits.
- b In writing.

B Complainants may:

1 Amend a formal complaint, before or after it is accepted, to provide additional:

- a Bases for allegation.

- b Issues to the complaint, but only if each additional issue has been presented properly to an EEO counselor.
 - (1) USDA may, at its discretion, combine individual complaints from the same complainant for processing. Chief, Employee Appeals Staff, OP, will notify complainants and ASCS of these actions.
 - (2) If a complaint is amended after the initial investigation is completed, the Chief, Employee Appeals Staff, OP, will determine, on a case-by-case basis, how the additional issues will be processed.
- 2 Withdraw complaints at any time during complaint process. Complaint withdrawals must be in writing.

684 EXTENDING TIME LIMITS

Chief, Employee Appeals Staff, OP, may extend the time limit for contacting EEO counselor or filing a formal complaint, under the following conditions:

A If the complainant shows that he or she was:

- 1 Not notified of the time limits, or otherwise was not aware of them.
- 2 Prevented by circumstances beyond his or her control from submitting the complaint within the time limits.

B Any reasons the appropriate officials consider sufficient.

685 FORWARDING COMPLAINTS

The Director, EEO/CRS, will promptly forward the complaint and EEO counselor's report to the Chief, Employee Appeals Staff, OP.

- A The Director, EEO/CRS, will ensure that the complaint and EEO counselor's report meet regulatory requirements in manner and presentation.
- B The Administrator may attach appropriate recommendations about the complaint to Chief, Employee Appeals Staff, OP, before sending complaint to OP.

686 EEO COMPLAINTS REVIEW COMMITTEE

An EEO Complaints Review Committee:

A Is established to:

- 1 Review EEO complaints and investigative files according to FPM Letter 713-42.
- 2 Advise the Administrator on appropriate course of action to resolve EEO complaints.

B Is comprised of:

- 1 The Deputy Administrator, or designee, under whose area the complaint arose. This person serves as chairperson.
- 2 Executive Assistant to the Administrator.
- 3 DAM or designee.
- 4 Area Director or designee for State or County Office from which complaint originated, if applicable.
- 5 Director, EEO/CRS or designee.
- 6 Personnel representative, to serve as Executive Secretary and Technical Advisor for personnel matters.
- 7 Director, Appeals Staff or designee who presents an overview and analysis of the complaint, and relief requested.

687 RESPONSIBILITIES

- A AAS will prepare the following for the EEO Complaints Review Committee before any offer of settlement is made:
- 1 An overview of complaint and relief requested.
 - 2 A summary of the investigative file, if an investigation has been made. The investigative file will be available for the committee to review before the committee meets.
 - 3 An analysis of factors on the case.
 - 4 The proposed negotiated settlement with complainant, according to the EEO Complaints Review Committee determinations.
- B The EEO Complaints Review Committee shall determine:
- 1 Whether the facts presented suggest an improper action that requires negotiations.
 - 2 Bases and parameters for negotiating a settlement of the case, both during Agency processing and in prehearing settlements before the EEOC.

688 REVIEW BY THE EEO COMPLAINTS REVIEW COMMITTEE

- A The Director, EEO/CRS will, upon receipt of a formal complaint and EEO Counselor's report, notify the Chairperson, EEO Complaints Review Committee, if sufficient information is available.
- B The Chairperson shall convene the Committee to:
- 1 Discuss bases and issues of the complaint.
 - 2 Discuss any personnel aspects of the complaint.
 - 3 Attempt to resolve informally the issues brought to the attention of the committee.

689 COMPLAINT FILES

- A The Director, EEO/CRS will maintain the official ASCS complaint file for each formal complaint.
- B Complaint file shall include:
 - 1 The complaint formally submitted by the complainant.
 - 2 EEO counselor's report.
 - 3 Documented acceptance, rejection, or cancellation of the complaint, if appropriate.
 - 4 The investigative report.
 - 5 The written terms or adjustments, if the complaint was adjusted informally.
 - 6 A copy of each of the following:
 - a ASCS's letter to the complainant describing the proposed disposition of the complaint.
 - b The decision, if a hearing is not requested.
 - c ASCS's final decision that is sent to the complainant and his or her designated representative.
 - 7 A record of the findings, analysis, and recommended decision by the complaint examiner on the merits of the specific complaint.
 - 8 A complete copy of the hearing transcript.

690 OIG INVESTIGATION

- A OIG investigation is required to determine the facts of the complaint. OIG investigations will normally be completed within 60 days after date of request by Chief, Employee Appeals Staff, OP.

B ASCS will use OIG investigation report to:

- 1 Help resolve the complaint.
- 2 Address other problems that developed during the investigation.

C DO NOT routinely send the OIG report or excerpts of it to individuals or units that are not responsible for processing complaints or resolving related problems. An exception is if Chief, Employee Appeals Staff, OP, grants approval.

D OIG will send:

- 1 3 copies of the OIG report to ASCS to be distributed as follows:
 - a 1 copy to the Administrator, ASCS, to be retained by HRMD.
 - b 2 copies to the ASCS-OIG liaison officer. The ASCS-OIG liaison officer shall send both copies to the Director, EEO/CRS.
- 2 4 copies of the OIG report to the Chief, Employee Appeals Staff, OP.

E After receiving the OIG report, OP will promptly:

- 1 Send 1 copy of report to the complainant or designated representative.
- 2 Notify EEO/CRS that the copy was sent.

F The Director, EEO/CRS will send 1 copy of the OIG report to the Director, AAS.

G If ASCS or the complainant believes that an additional OIG investigation is necessary, the request will be sent to the Chief, Employee Appeals Staff, OP, with one copy of the request to the remaining party.

691 INFORMAL RESOLUTION

A Policy. It is ASCS's policy to resolve complaints informally, if possible.

B Procedure. AAS has been delegated the responsibility and authority to attempt to resolve EEO discrimination complaints informally.

1 When notified that a copy of the investigative report has been sent to the complainant, the Director, AAS, or designee, will act as Administrator's representative for negotiating complaints resolutions.

2 The Administrator's representative will:

a Make a thorough analysis of the investigation report. He or she will prepare an overview of the complaint and summary of the investigative file. The file will be available for review by the EEO Complaints Review committee before the Committee meets.

b Notify the chairperson of the EEO Complaints Review Committee.

3 The chairperson of the committee shall convene the committee to:

a Discuss bases and issues of the complaint, including whether discrimination occurred.

b Discuss any personnel aspects of the complaint.

c Attempt to resolve informally the issues brought to the attention of the Committee by exploring ranges of possible resolution options.

d Set the terms of a resolution which shall be according to the remedies included in 29 CFR 1613.271.

4 The Administrator's representative will:

a Be bound by the terms established by the EEO Complaints Review Committee.

- b Contact, usually by telephone, the complainant and designated representative to:
 - (1) Discuss the contents of the investigation report.
 - (2) Try to resolve the complaint only within terms set by the EEO Complaints Review Committee.
- 5 If an agreement is reached, it shall be recorded in writing and signed by the complainant, any designated representative, and the Administrator's representative. The written agreement will:
 - a Contain a statements that the complainant withdraws the complaint and that ASCS will take specified actions.
 - b Be incorporated in the case file and copies distributed to:
 - (1) The complainant.
 - (2) Director, EEO/CRS.
 - (3) Director, HRMD.
 - (4) Chief, Employee Appeals Staff, OP.
- 6 If ASCS does not carry out, or rescinds, any action specified by the terms of the adjustment, for any reason not related to actions or conduct of the complainant, ASCS will reinstate the complaint for further processing:
 - a Upon the complainant's written request.
 - b From the point processing ceased under the terms of the adjustment.
- 7 The information in this paragraph shall not be used to limit ASCS from trying to settle a complaint at any stage of processing.

692 PROPOSED AGENCY DECISION

If a resolution is not reached, the Administrator's representative will prepare a proposed ASCS decision for signature in AO based on the of the EEO Complaints Review Committee's recommendations.

A The proposed ASCS decision will contain:

- 1 Factual findings and conclusions.
- 2 An analysis based on relevant case law.
- 3 A proposed decision on whether there was discrimination.

B If the proposal includes a finding of no discrimination, notify the complainant of the right to a hearing or decision on the record.

C If the proposal is a finding of discrimination, take remedial action according to 29 CFR 1613.271.

D Copies of the proposed ASCS decision will be prepared for:

- 1 The alleged discriminating official in the complaint.
- 2 Director, EEO/CRS.
- 3 Director, HRMD.
- 4 Chief, Employee Appeals Staff, OP.
- 5 Deputy Administrator or head of office from which the complaint originated.

693 REVIEW BY DIRECTOR, HRMD

The Director, HRMD, will:

A Review all findings, recommendations, and proposed decision to determine whether:

- 1 The complaint was based on, or resulted from, an improper personnel action.
- 2 The proposed decision is consist with current regulatory personnel requirements.

- B Include any alternative recommendations related to the case.
- C Submit the entire case file and materials to the Director, EEO/CRS.

694 REVIEW BY DIRECTOR, EEO/CRS

The Director, EEO/CRS will:

- A Review all findings, recommendations, and proposed decision on complaints.
- B Include any alternative findings, recommendations, on proposed decision.
- C Submit all materials to the Administrator, or designee, for determination on the proposed decision.

695 FINAL USDA DECISION

If the complainant does not notify ASCS or USDA of a requested hearing or decision on the record within 15 calendar days of receiving the proposed ASCS decision, the Administrator may adopt the proposed decision as the final USDA decision.

- A The Administrator will send a written decision, as the final USDA decision on the complaint to:
 - 1 The complainant and designated representative.
 - 2 Alleged discriminating officials in the case.
 - 3 Applicable Area Office Director.
 - 4 Applicable Deputy Administrator.
 - 5 Director, EEO/CRS.
 - 6 DAPPD.
 - 7 Chief, Employee Appeals Staff, OP.
 - 8 Applicable SED.

9 Director, AAS.

10 Director, HRMD.

B The Administrator's letter will inform complainant of his or her right:

1 Of appeal to EEOC, including the time limits for appealing the case.

2 To file a civil action according to 29 CFR 1613.281.

696 (RESERVED)

SECTION 3 HEARINGS, APPEALS TO EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION, AND CIVIL ACTIONS

697 ARRANGING FOR HEARING

The hearing is an extension of the factfinding process and is not to be considered an adversary proceeding.

A The requested hearing will be held by a complaints examiner who must be an employee of an Agency other than USDA.

1 ASCS will designate a representative.

2 The Chief, Employee Appeals Staff, OP, will then request the assignment of a complaints examiner. Because EEOC does not have jurisdiction in marital status complaints, the request for a hearing in these cases are handled within USDA by OP.

B Address requests for assignment of a certified complaints examiner to conduct the hearing, to:

"Director, Office of Field Services,
Equal Employment Opportunity Commission,
2401 E Street NW, Washington, D.C. 20506."

C When the Chief, Employee Appeals Staff, OP, notifies EEO/CRS that a complainant has requested a hearing, the Director, EEO/CRS, will notify the Director, HRMD.

1 OP will send copies of the complaint file to the complaints examiner.

2 The complaints examiner will review the complaint to determine whether further investigation is needed before the scheduled hearing.

D After consulting with ASCS and the complainant, the complaints examiner will set a convenient time and place for the hearing.

E The Director, HRMD, will:

1 Arrange for the hearing room and equipment needed for a verbatim transcript of the hearing.

2 Designate the official ASCS representative for the hearing.

F ASCS will pay all the hearing costs. This includes, but is not limited to, travel costs for:

1 Witnesses.

2 Representatives who are USDA employees.

3 Complainants.

698 COMPLAINTS EXAMINER'S AUTHORITY

The complaints examiner may:

A Accept or reject witnesses.

1 ASCS and the complainant may submit to the examiner names of witnesses and their relevance to the case.

2 The examiner will notify ASCS of the names of:

a Accepted witnesses.

b Persons rejected as witnesses, and the reasons for rejection.

c Employees who may have information supplementary to the investigative file.

B Administer oaths or affirmations.

C Regulate the course of the hearing.

D Rule on offers of proof.

E Limit the number of witnesses to avoid repetition.

F Set the time and place of the hearing.

G Request that any person leave the hearing because of misconduct.

699 CONDUCTING HEARINGS

- A Only persons who the complaints examiner determines to have a bearing on the case, may attend the hearing.
- B USDA authorizes the complaints examiner to:
 - 1 Rule out repetitious and irrelevant evidence.
 - 2 Accept only documents and evidence that bring out the facts of the case.
- C The complainant, or ASCS, or both, may object to the introduction of certain evidence.
- D If an ASCS employee or other USDA employee appears as a witness in a hearing that deals with an employee's official duties, he or she will be considered in a duty status.
- E Complainants, or their representatives, and ASCS representatives are permitted to cross-examine any witness who appears and testifies.
- F Provide the following with copies of documents offered and accepted in evidence by either party:
 - 1 Remaining party.
 - 2 Complaints examiner.

700 FINDINGS, ANALYSES, AND RECOMMENDATIONS

Complaints examiners may:

- A Examine all documents in a complaint file and the record of hearing, to help in making their findings, analyses, and recommendations.
- B Send the findings, analyses, and recommendations about the complaint, including corrective action, if necessary, to the Director, EEO, USDA.
- C Notify the complainant of the date on which the findings, analyses, and recommendations were sent to the Director, EEO, USDA.

701 CORRECTIVE ACTIONS

If the Administrator determines that an employee was discriminated against or other discrepancies were revealed during the OIG review, ASCS will take corrective action. The Director, EEO/CRS, will initiate and monitor the recommended corrective actions.

A ASCS will evaluate the particular circumstances of each complaint before deciding on the appropriate corrective action. Corrective action includes, but is not limited to, one or more of the following actions:

- 1 Retroactively promoting the employee.
- 2 Considering the employee for a promotion if:
 - a The record shows that discrimination existed at the time of selection.
 - b It is not clear that, except for discrimination, the employee would have been promoted.
- 3 Canceling an unwarranted personnel action and restoring employee's status.
- 4 Removing from ASCS records, any reference to or any record of an unwarranted disciplinary action.
- 5 Providing employee the opportunity to participate in an employee benefit previously denied that employee, such as training, overtime, or work assignments.

B Backpay period for applicants and employees shall not exceed a date earlier than 2 years from the date that the discrimination finding was made or recorded, or the complaint was filed.

702 DISCIPLINARY CORRECTIVE ACTIONS

If a finding is made that an ASCS employee has been discriminated against, ASCS will take disciplinary action against the discriminating official, as warranted by the circumstances. The Director, EEO/CRS will initiate and monitor the recommended corrective action.

703 USDA DECISION ON HEARING

A request for a final decision on the record will generally be issued within 60 days.

A Complaints must be resolved within 180 days after they are filed.

B If USDA has not issued a final decision, and has not requested EEOC to assign a complaints examiner within 75 calendar days after the date that a complaint was filed, EEOC may:

- 1 Require USDA to take special measures to ensure prompt processing of the complaint.
- 2 Assume responsibility for processing the complaint. This includes providing an investigator to conduct any necessary investigation for USDA.

C The complaints examiner's recommended finding of discrimination and reprisal becomes the final USDA decision, if USDA has not issued a final decision adopting, rejecting, or modifying the recommended decision by the latter of the following 2 dates:

- 1 30 calendar days after USDA received the recommended decision.
- 2 180 calendar days after the date on which the complaint was filed.

704 APPEALS TO EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The decision will inform the complainant of the right to appeal to EEOC or file a civil action in a U.S. district court. An exception is in the case of a marital status complaint, of which there is no right of further review.

A Complainants may appeal:

- 1 A USDA decision that involves:
 - a Rejecting the complaint because it was not filed on time, or not covered by EEO regulations.
 - b Canceling the complaint because complainant did not prosecute it.

- 2 On the merits of the complaint according to 29 CFR 1613.217 or 29 CFR 1613.221.
 - 3 To EEOC, if complainant has filed a mixed case, only after first appealing through MSPB. Use either of the following time limits, as applicable, to file a petition for appeal to MSPB:
 - a Within 20 days after a USDA decision.
 - b Between 120 and 365 days after the complaint is filed, if no USDA decision is issued.
 - 4 If not satisfied with the USDA decision.
- B Complainants may file an appeal within 20 days after receiving USDA notice of final decision.

705 FILING A CIVIL ACTION

- A The Civil Rights Act of 1964 (84 Stat. 241) as amended, Section 717 (c), authorizes an employee, former employee, or ASCS job applicant to file a civil action in an appropriate U.S. district court, for discrimination complaints, unless the complaint is based on age.
- B File a civil action using one of the following time limits, as applicable:
- 1 Within 30 calendar days after receiving USDA notice of final action on a complaint.
 - 2 After 180 calendar days after the date a complaint was filed with ASCS, if there has been no decision.
 - 3 Within 30 calendar days of receiving an EEO notice of final action on a complaint.
 - 4 After 180 calendar days after the date of filing an appeal with EEOC, if there has been no EEOC decision.
- C The time limits in subparagraph B do not apply to discrimination complaints based on age. Complainants wishing to file a civil action based on age discrimination should file as soon as possible.

706-710 (RESERVED)

SECTION 4 CLASS COMPLAINTS

711 FILING CLASS ACTION COMPLAINTS

- A ASCS employees, former employees, and applicants for employment with ASCS may file a class action if they believe that they HAVE BEEN, ARE BEING, OR MAY BE adversely affected by an ASCS personnel management policy or practice that discriminates against the group:
 - 1 Based on the circumstances in paragraph 761. See subparagraph 2 for an exception.
 - 2 Not based on marital status, which is not covered under class complaint procedures.
- B A complainant eligible for filing an individual complaint may file a class complaint, acting as AGENT for the class, by contacting a designated EEO class complaint counselor. Agents must be complainants, that is, members of the class filing the complaint.
- C In filing a class action, the agent shall:
 - 1 Contact the EEO class complaint counselor within 90 days of the alleged discriminatory incident.
 - 2 Allege that:
 - a The class is so numerous that a consolidated complaint is impractical.
 - b There are questions of fact common to the class.
 - c The agent's claims are typical of the claims of the class.
 - 3 Fairly and adequately protect the interests of the class. This also applies to complainant's representative.
- D Follow paragraphs 673, 675, and 676 for managing:
 - 1 Employee protection.

2 Class complaint preparation.

3 Correspondence about class complaints.

E The precomplaint process for class complaints includes the following actions:

1 Actions by the agent, which are as follows:

a Before filing a formal complaint, the agent shall discuss the complaint with a designated EEO class complaint counselor to attempt an informal resolution. Contact Director, EEO/CRS, for class complaint counseling.

(1) The agent shall contact an EEO class counselor within 90 calendar days, about the matter that resulted in the allegation of individual discrimination or incident.

(2) If complaint is about a personnel action, the agent shall contact EEO class counselor within 90 calendar days of the effective date of the personnel action.

b To arrange a discussion of the matter, the agent may contact:

(1) An assigned EEO class complaint counselor by phone, letter, or personal visit. USDA employees may use FTS system for making telephone contact with EEO class complaint counselor.

(2) ANY EEO class complaint counselor, if assigned EEO class complaint counselors are not available by telephone.

(3) The Director, EEO/CRS, if no EEO class complaint counselor is immediately available.

- 2 Actions by EEO class complaint counselor, which include the following:
 - a EEO counselor will advise the agent of:
 - (1) Class complaint discrimination procedures.
 - (2) Complainants' right to representation throughout the precomplaint and complaint processes.
 - (3) Complainants' right to remain anonymous ONLY during the precomplaint process.
 - b EEO class counselor will follow the same processing procedures as in paragraph 678 for general precomplaint processing.

712 FORMAL CLASS COMPLAINT PROCESS

If the final counseling interview is not completed within 30 calendar days, the EEO counselor shall inform the agent on the 30th day, of the right to file a formal complaint.

- A File complaints no later than 15 calendar days after the agent's final interview with EEO counselor.
- B Use ASCS-464 or a letter.
- C Complaints may be filed * * * with 1 of the following:
 - 1 Director, EEO&CRS.
 - 2 The Administrator.
 - 3 Director, EEO, USDA.

713 FORMAL CLASS COMPLAINT PROCEDURE

A Forwarding Complaints. Director, EEO&CRS, shall promptly forward the complaint and EEO counselor's report to the Chief, Employee Appeals Staff, OP.

B Accepting, Rejecting, or Canceling Complaints.

1 Chief, Employee Appeals Staff, OP, shall promptly acknowledge acceptance of all complaints that are not rejected or canceled.

2 USDA may reject a complaint based on the EEO examiner's recommendation, for the following reasons:

a The complaint was not filed on time.

b The complaint is identical to an allegation contained in a previously filed complaint that:

(1) Represents the same class.

(2) Is either pending in ASCS, or has been resolved or decided by ASCS.

c The complaint is not covered by the regulations, such as if it is NOT:

(1) Filed by employee, former employee, or job applicant for employment with ASCS, where the alleged discriminatory act was to have occurred.

(2) About an employment matter over which ASCS has jurisdiction.

(3) Based on complainant's race, color, religion, sex, national origin, age, or physical or mental handicap.

- d The agent did not consult an EEO class complaint counselor in a timely manner.
 - e The complaint is not specific and detailed.
 - f The complaint was not submitted in writing, or was not signed by the agent.
 - g The complaint does not meet the following prerequisites:
 - (1) The class must be so numerous that a consolidated complaint is impractical.
 - (2) There must be questions of fact common to the class.
 - (3) The agent's claims must typical of the claims of the class.
 - (4) The agent or representative of the class must fairly and adequately protect the interests of the class.
 - h Discrimination allegations were not referred to EEO class complaint counselor within the following time limits, as applicable:
 - (1) 90 calendar days of the alleged discriminatory act.
 - (2) 90 calendar days of personnel action effective date, if related to a personnel action and not filed within 15 calendar days after the final counseling interview.
- 3 If the agent does not prosecute the complaint, the Chief, Employee Appeals Staff, OP, may cancel the complaint and notify the complainants and their representative:
- a Of the right to appeal to EEOC within appropriate time limits.
 - b In writing.

- 4 The complainants may withdraw their complaint at any time during the complaint process. Complaint withdrawals must be in writing.

C Extending the Time Limit. The appropriate official may extend the time limits for either of the following reasons:

- 1 The complainants show that they:
 - a Were not notified of the time limits and were not otherwise aware of them.
 - b Were prevented by circumstances beyond their control from submitting the complaint within the required time limits.
- 2 Any reasons the appropriate officials consider sufficient.

D Maintaining Complaint File. The Director, EEO/CRS, shall maintain a file for each formal class complaint, that shall contain:

- 1 The class complaint.
- 2 EEO class complaint counselor's report.
- 3 Appropriate documentation, if the complaint is accepted, rejected, or canceled.
- 4 Evidence obtained through discovery.
- 5 The written terms or adjustments, if the complaint is adjusted informally.
- 6 A copy of the letter of ASCS complaint disposition to the complainants.

- 7 A record of hearing and complaint examiner's findings, analysis, and recommended decision on the merits of the complaint.
- 8 A copy of the final ASCS decision that USDA sends to the Administrator or designee when the decision is made.

714 ASCS DECISION

A If an adjustment of the complaint is reached:

- 1 Include the written terms of the adjustment as part of the complaint file.
- 2 Provide a copy of the terms of adjustment to:
 - a The complainants.
 - b Director, EEO, USDA.
- 3 If ASCS rescinds or does not carry out action specified in the adjustment, for ANY reason not related to the complainants' conduct, ASCS shall reinstate the complaint:
 - a For further processing.
 - b Upon the complainants' written request.
 - c From the point processing ceased under the terms of the adjustment.

B If an adjustment of the complaint is not reached, notify the complainants, in writing, that:

- 1 There is a 60 calendar day period for both parties to develop evidence.
- 2 Either party may request the complaints examiner to rule on a request to develop evidence.
- 3 The complaints examiner may request an investigation.

715 CORRECTIVE ACTIONS ON CLASS COMPLAINTS

If it is determined that an employee was discriminated against, ASCS or USDA will take corrective action. The particular circumstances of each complaint will be considered before deciding on appropriate corrective action. The Director, EEO/CRS will initiate and monitor the recommended corrective action for ASCS.

A Corrective action will include but need not be limited to one or more of the following actions:

- 1 Corrective action for systematic relief to the class and any individual corrective action, if appropriate, relating to the personnel action or matter that was the source of the complaint.
- 2 Considering the employee for a promotion if:
 - a The record shows that discrimination existed at the time of selection.
 - b It is not clear that except for discrimination, the employee would have been promoted.
- 3 Canceling an unwarranted personnel action and restoring employee's status.
- 4 Removing from ASCS records any reference to or any record of an unwarranted disciplinary action.
- 5 Providing the employee the opportunity to participate in an employee benefit previously denied the employee, such as training, overtime, or work assignments.

B Backpay limitation prescribes that the backpay shall not cover more than 2 years before the date on which the complaint was first filed or the discrimination finding was made or recorded.

716 DISCIPLINARY ACTION

If it is determined that an ASCS employee has been discriminated against, ASCS may take disciplinary action against the discriminating official, based on the circumstances. The Director, EEO/CRS will initiate and monitor the recommended disciplinary action.

717 USDA DECISION ON CLASS COMPLAINTS

A USDA will issue a decision to accept, reject, or change the findings and recommendations of the complaints examiner within 30 calendar days after receiving the report of findings and recommendations issued according to 29 CFR 1613.611. USDA decision will be:

1 In writing.

2 Sent to the agent, including a copy of the:

a Record of the hearing.

b Findings and recommendations of the complaints examiner.

B If ASCS has not issued a decision within 30 calendar days after receiving complaints examiner's report of findings and recommendations, the findings and recommendations will become the final ASCS decision. ASCS will send the final ASCS decision and record of hearing:

1 To the agent or his or her representative.

2 Within 5 calendar days after the end of the 30-day period.

C ASCS will inform the agent or his or her representative of the right to:

1 Appeal the final ASCS decision to the Office of Review and Appeals, EEOC.

- 2 File a civil action according to 29 CFR 1613.641, within the applicable time limits.

D A final ASCS decision on a class complaint is binding on all members of the class and ASCS.

E ASCS will take any corrective action necessary to:

- 1 Resolve discrimination issues.
- 2 Promote equal opportunity.

718 APPEALS TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

A An agent may appeal the Administrator's or designee's decision to Office of Review and Appeals, EEOC for the following reasons:

- 1 To reject or cancel the complaint, or a portion of it, according to 29 CFR 1613.604.
- 2 To refuse to reinstate the complaint for further processing according to 29 CFR 1613.609 (e).
- 3 To question the merits of the complaint or corrective action.

B A claimant may appeal to the Administrator's, or designee's, decision to Office of Review and Appeals, EEOC for the following reasons:

- 1 To cancel or reject a claim for individual relief according to 29 CFR 1613.614 (f) and (g).
- 2 To question the merits of the claim for individual relief.

C An appeal may be filed at any time up to 15 calendar days after receiving ASCS final decision, except if:

- 1 The complainant shows that he or she, or a representative was not notified of the prescribed time limit and was not otherwise aware of it.

- 2 The agent or a representative was prevented by circumstances beyond his or her control from appealing within the prescribed time limit.

D An appeal shall be considered filed:

- 1 On the postmark date.

- 2 If there is no postmark, on the date that it is received by the Office of Review and Appeals, EEOC.

E Office of Review and Appeals, EEOC will review the existing record to determine whether ASCS decision is:

- 1 Based on applicable law, Executive Order, or OPM regulations, rules, and instructions.

- 2 Supported by substantial evidence.

719-724 (RESERVED)

SECTION 5 SEXUAL HARASSMENT

725 POLICY ON SEXUAL HARASSMENT

A Sexual harassment is:

- 1 Behavior such as verbal comments, gestures, or physical contact of a sexual nature that is:
 - a Deliberate.
 - b Repeated.
 - c Unwelcome.
 - d Unsolicited.
- 2 Unacceptable conduct in the workplace.

B Personnel actions shall be:

- 1 Free from prohibited practices such as sexual harassment.
- 2 Consistent with merit system principles, in the Civil Service Reform Act of 1978 (72 Stat. 1111).

726 DETERMINING SEXUAL HARASSMENT

Sexual harassment exists if one or more of the following apply:

- A Submission is either an explicit or implicit term or condition of employment.
- B Submission or rejection is used as the basis for an employment decision affecting the person submitting or rejecting the sexual harassment actions.
- C The conduct has the purpose or effect of substantially:
 - 1 Interfering with an individual's work performance.
 - 2 Creating an intimidating, hostile, or offensive work environment for the employee.

727 DETERMINING RESPONSIBILITIES FOR ACTIONS

A ASCS is responsible for the actions of supervisors and subordinate employees regardless of whether the:

- 1 Actions were authorized or forbidden by the supervisor or manager.
- 2 Supervisor or manager knew or should have known of the actions.

B EEOC will determine, on a case-by-case basis, whether an individual acted in a supervisory capacity.

728 SUPERVISOR'S AND MANAGER'S RESPONSIBILITIES

Supervisors and managers shall take necessary action for preventing sexual harassment by:

- A Expressing strong disapproval.
- B Affirmatively raising the subject of sexual harassment.
- C Informing employees of their rights to file a complaint of sexual harassment under the Civil Rights Act of 1964 (78 Stat. 241), Part 1613.

729 CORRECTIVE ACTION ON SEXUAL HARASSMENT

ASCS shall:

- A Attempt a resolution on any sexual harassment matter within 180 days.
- B Take decisive action, if appropriate, against the perpetrator of the harassment.

730 SEXUAL HARASSMENT COMPLAINTS

Employees who believe that they have been subjected to sexual harassment should immediately make it known to the perpetrator that the actions are not welcome. If the sexual harassment continues, employees may take any of the following actions:

- A Inform the immediate supervisor or manager of the situation.

- B Contact an employee relations specialist.
- C File an employee grievance.
- D Submit an EEO complaint according to procedures in this part.

* * *

731-738 (RESERVED)

PART 15 UNEMPLOYMENT COMPENSATION

739 COVERAGE

All COC employees are covered by the unemployment compensation program for employment during any period after December 31, 1952.

- A COC, CMC, marketing quota review, and referendum committee members and delegates to the county convention ARE NOT covered when serving in those capacities.
- B This program is operated through individual State governments. Application for compensation by County Office employees should be made to the appropriate State agency.

740 ISSUING SF-8

When an employee resigns, is separated, or is placed in a nonpay status for a period expected to be 7 consecutive *--calendar days or more, provide the employee with SF-8 on or before the last day of active duty.

- A Show "U.S. Department of Agriculture" and the name and address of the County Office in the block provided on SF-8. This information may be entered by addressograph, typewriter, or rubber stamp, or the form may be overprinted by duplicating process.--*

* * *

- B If a person works for a County Office during 2 or more separate periods of employment in the same calendar year, provide SF-8 only upon the first separation from service during the calendar year.

741 REQUEST FOR WAGE AND SEPARATION INFORMATION

*--When an unemployment compensation claim is filed by a former County Office employee, the State agency will request certain information from the County Office.

- A Use ES-931 in obtaining the information.
- B The State agency will:
 - 1 Complete the heading on ES-931, which identifies the employee.
 - 2 Indicate in Item 2 the base period for which wage information is requested.--*

742 CONTROL OF ES-931

Return ES-931 to the State agency within 4 workdays after receipt by the County Office.

- A A control, either by register, by a 3- by 5-inch card file, or other record may be used for this purpose.
- B If an answer cannot be made within the required 4 days, notify the State agency when an answer may be expected.

743 OBTAINING INFORMATION FROM FRC

FRC is not authorized to complete ES-931 for the employing office. If the personnel folder containing records needed to complete ES-931 has been transferred to FRC, do not send ES-931 to FRC. Instead, request required information by *--overnight mail using the format applicable in the State.--*

- A Florida, Michigan, Missouri, New Jersey, New York, Ohio, Oregon, Rhode Island, Utah, Vermont, Wisconsin, and Wyoming use the following format:

*--"National Personnel Records Center
Civilian Personnel Records--*
111 Winnebago Street
St. Louis, MO 63118

U. I. Request wages (insert name of the State agency transmitting ES-931) for period beginning (date)
and statement of reason for separation for (last name,
first name, middle initial), (name under which
employed, if different), and (date of birth).

U.S. Department of Agriculture
(name of county) County ASCS Office
(address of County Office) "

B All other States use the following format:

*--"National Personnel Records Center
Civilian Personnel Records--*
111 Winnebago Street
St. Louis, MO 63118

U. I. Request wages for calendar quarters beginning
(date) and statement of reasons for separation for
(last name, first name, middle initial), (name under
which employed, if different), and (date of birth).

U.S. Department of Agriculture
(name of county) County ASCS Office
(address of County Office) "

C FRC will:

- *--1 Send requested data by overnight mail.
- 2 Mail copies of ASCS-125 or Annual Pay Status
Period Printout, and ASCS-50, as applicable, to--*
the County Office for verification.

D The County Offices shall:

- 1 Complete ES-931, from information received by
--overnight mail, and return it to State agency--
immediately.
- 2 Check the forms received from FRC against retained
copy of ES-931 to ensure that information supplied
was correct.
- *--3 Retain the forms for at least 30 calendar days--*
before returning to FRC in case the State agency
asks for additional information or
reconsideration.

744 COMPLETING ES-931

- A General Requirement. Complete the number of ES-931
copies required by the State agency, including 1 copy
for retention in the County Offices.
- B Erroneous Report. If at any time within 1 year after
submission of information on ES-931, an error is
discovered on any of the entries, immediately notify
the State agency by letter, giving the correct
information.

745 FILING ES-931

--Retain 1 copy of each ES-931 in an alphabetical file in the County Office for 2 years.--

746 BACK PAY AWARDS

When back pay has been awarded within 52 weeks after submission of information on ES-931, notify the State agency by letter indicating the amount of money awarded and the period it covers. The State agency will determine whether this information will affect its determination.

--The State agency may submit another ES-931 for the employee involved.--

747 REQUESTS BY STATE AGENCIES FOR WAGE INFORMATION OUTSIDE THE BASE PERIOD

State agencies sometimes request wage information outside the base period by letter or by a form other than ES-931. Wages outside the base period are not used in an initial determination of benefits by a State agency. Some of the conditions under which a report of wages outside the base period may be requested are:

A Partial unemployment or concurrent employment.

- 1 A report of current, not base period, wages earned during a week of partial unemployment, that is, a week in which a claimant works less than full time and earns less than the earnings limit provided in the State unemployment insurance law may be requested.
- 2 An agency may also request earnings information for weeks in which it has reason to believe that a claimant was employed during a week or weeks for which the employee is claiming or has received benefits.
- 3 Report the earnings in this subparagraph when requested.

* * *

B Requalifying wages after disqualification.

- 1 In many States, disqualifications are in terms of a stated number of weeks or until the claimant has earned a stated multiple of the weekly benefit amount.
- 2 A State agency may request a report of earnings to justify the lifting of a disqualification.
- 3 Report wages when requested.

748 REQUEST FOR INFORMATION OR RECONSIDERATION OF FEDERAL FINDINGS

A Basic Rules. If for any reason the information supplied on ES-931 is not adequate, the State agency or State administrative appeal authority will request additional information. Provision is made also for a claimant to request a Federal Agency to supply additional information or to reconsider its findings. The claimant's request will usually be made through the State agency with which the claim was originally filed. These requests may be made by ES-934, letter, or other State forms.

B Processing ES-934. To expedite processing, use the same mail control as for ES-931. If an answer cannot
--be obtained in 4 workdays, notify the State agency-- when an answer may be expected. After carefully considering all available facts, complete the reply portion on ES-931. Provide any relevant information requested if not prohibited by law. If the request is for reconsideration of findings, reconsider any information supplied by the claimant, the State agency, or the State administrative appeal authority, and review the original findings submitted on ES-931. Promptly correct any errors or omissions and reverse, modify, or affirm the original findings as follows:

- 1 If the request involves the findings on performance of Federal service, review the copy of ES-931 in light of the request to see whether any errors were made in completing the form. Correct any errors.
- 2 If the question involves the amount of wages or the period of service, review the information provided with the request against the copy of
--ES-931 and the individual's ASCS-50, ASCS-125,-- or ASCS-282 and annual pay status record. Correct any errors or omissions.

- 3 If the question involves the reason for separation, make every effort to provide the necessary information. If no further information is available, restate the information previously supplied and add "No additional information is available".
- 4 If the reason for separation given on ES-931
--involves removal, the reply need only confirm-- or deny that the copy of the documents or statement submitted over the claimant's signature correctly reflects the letter or charges, the decision on the case, or both. * * *

C Completing the Reply Portion of ES-934 Promptly.

- 1 Enter the additional information or reconsidered findings on ES-934 or in a letter attached to it.
- 2 If the County Office has no information in addition to that provided on ES-931, or if it is prohibited by law from disclosing additional information, indicate on ES-934 or in the letter.

D Final Findings of Facts.

- 1 Requests by the claimant or the State agency for County Office reconsideration, correction, or modification of its findings are provided to ensure that the State agency has adequate and accurate information.
- 2 The findings of fact of the County Office may be modified only by the County Office. The findings are final and conclusive with respect to:
 - a Whether the employee has performed Federal service.
 - b The periods of service.
 - c The amount of remuneration for service.
 - d The reasons for separation from service.

749 PROCESSING ES-936

--The State agency will request each County Office to verify a sample of ES-931's submitted by that office.--

- A These requests will be made on ES-936. Use the same mail control as for ES-931 to ensure completion and return within 4 workdays.
- B The State agency will send a representative to visit the County Office if a reply to ES-936 indicates any of the following:
 - 1 That there is a lack of understanding of the program.
 - 2 That errors are being made.
 - 3 That the office desires to discuss reporting problems.

750 PERIODIC VISITS BY REPRESENTATIVES OF STATE AGENCIES

Periodically, representatives of State unemployment compensation agencies visit Federal Agencies and review the operation of the unemployment compensation programs. As part of this review, calls will be made on County Offices. Fiscal operation in County Offices differs from those of other Federal Agencies. The State agency representatives have been advised that instructions for County Offices relating to the unemployment compensation program are in *--this handbook. The reviews of County Offices should be made in the light of these instructions. CED and the State--* agency representative should have an understanding of this point before a review begins.

- A Purpose of Visits. Visits are made to:
 - 1 Determine whether County Offices are fully discharging their responsibilities and ensure the availability of unemployment compensation benefits to former employees.
 - 2 Determine whether State unemployment compensation agencies have adequately assisted the County Offices.
 - 3 Give any needed assistance to County Offices.

B Form Used. The State agency representative will use ES-939 in making a review.

- 1 Some references on ES-939 do not apply in County Offices; for example, ES-939 refers to SF-50 in connection with separations; in County Offices
--separation information is obtained from ASCS-50,--
ASCS-125, or ASCS-282; therefore, ES-939 is used to the extent that its items can be applied to County Office operations.
- 2 Studying ES-939 will help County Office employees learn their responsibilities under the unemployment compensation program.

751 REFUSAL OF WORK OFFER BY FORMER EMPLOYEE

If a former employee refuses an offer of reemployment, review the alphabetical file of ES-931's to determine whether it contains ES-931 for the employee. If the file contains ES-931 and the "Date of Request" in the upper right corner is within 12 months of the date on which reemployment was offered, send a notice to the State agency that initiated ES-931, giving the following information:

- A Employee's name and Social Security number.
- B Date of the job offer.
- C Nature, location, and salary of the job offered.
- D Reasons for the refusal, if known.

752 ADDITIONAL INFORMATION TO STATE AGENCIES

COC's shall cooperate in providing any other information necessary for the administration of Unemployment Compensation for Federal Employees. Do not release prohibited information.

753 RIGHT OF APPEAL

- A If a determination of ineligibility is made, each employee has the right of appeal, according to applicable State law.
- B COC, with the advice and assistance of the State Office, may appeal a determination it believes is incorrect if:
 - 1 The State agency determination challenges the finality of the County Office findings of fact.
 - 2 The State agency appears to have misinterpreted County Office findings.
 - 3 The County Office believes that the determination is not according to the applicable State law.

754 MONTHLY REPORTS TO STATE EMPLOYMENT SECURITY COMMISSION

When State Employment Security Commission requests monthly reports on wages, KCMO will provide the reports directly to the State agency. Direct any requests for these reports to KCMO.

755-773 (RESERVED)

*--PART 16 FOIA AND PRIVACY ACT

774 DELEGATION OF AUTHORITY

A OPM and OP have delegated to HRMD the authority to determine what information from personnel records is exempt from FOIA.

B In determining these exemptions, HRMD is guided by:

1 FOIA (5 USC 552) and the Privacy Act of 1974 (Pub. L. 93-579, 5 USC 552a).

2 The requirements established in FPM and DPM.

3 Decisions of Federal Labor Relations Authority, MSPB, and the Federal Courts affecting personnel records.

C This supplements the regulations in 12-DS and 13-DS.

775 STANDARDS OF CONDUCT

All ASCS employees shall:

A Be sensitive to individual rights to personal privacy.

B NOT disclose information from any personnel record, unless disclosure is part of their official duties or required by executive order or regulation.--*

*--776 STATISTICAL OR DEPERSONALIZED PERSONNEL INFORMATION

Information of a general nature that can be provided in a statistical format or in a manner that does not identify specific individuals may be released.

777 INFORMATION ABOUT A SPECIFIC EMPLOYEE

- A Information about an employee's past or present tenure, salary, grade, position title, position description, work schedule, Agency-sponsored training, duty station, and awards received may be disclosed.
- B Information of a more personal or sensitive nature, such as matters related to alleged or determined employee misconduct, training course grades or evaluations, date of birth, medical information, salary deductions, and marital status shall NOT be disclosed, except as required in subparagraphs C and D.
- C OPF's and personnel forms, such as, applications and requests for personnel actions that contain personal, sensitive information may be disclosed to Agency officials and employees to the extent required in the performance of their official duties.
- D Disclosure to any representative of an employee of information in the employee's OPF or personnel forms shall NOT be made, unless this representative has advanced written consent from the employee to whom the information pertains.--*

*--778 RIF INFORMATION

A RIF folders shall only contain information required by regulation.

B This information may be disclosed upon request to affected employees or their representative and only to the extent necessary to settle questions about RIF either before or after the RIF action is completed.

779 PERFORMANCE APPRAISALS

An employee or his or her representative is prohibited from seeing the appraisal of another employee.

780 DISCIPLINARY ACTIONS

Information about disciplinary actions may not be disclosed without advanced written consent from the employee to whom the information pertains or without HRMD's approval.

781 NAMES AND ADDRESSES OF BARGAINING UNIT EMPLOYEES

The names and addresses of employees of a bargaining unit or organization of ASCS shall be released to the union or organization of which they are a member.

782 SUPERVISOR'S PERSONAL NOTES

Supervisor's personal notes that are:

A Maintained on an employee are not subject to FOIA if they are kept private. After the notes are used to make a decision on an employee's job status, the notes become subject to the provisions of FOIA.

B Dated, signed, and witnessed shall be kept in a file with other official personnel records and are retrievable through official channels. They are not considered as private "memory joggers" and are subject to the provisions of FOIA.--*

783 PROMOTION FILES

Information about the composition of promotion panels, promotion crediting plans, and the ranking of candidates shall NOT be disclosed.

784 NATIONAL PERSONNEL RECORDS CENTER FILES

Records previously under the custody of ASCS, that have been forwarded to the National Personnel Records Center for custody, are considered the responsibility of the Records Center in responding to requests for information under FOIA.

785 CHILD, SPOUSAL, OR FAMILY SUPPORT

Responses to requests for information about child, spousal, or family support shall be treated differently depending on the requester's authority.

- A Court-ordered requests for information by summons, warrant, subpoena, or other compulsory legal process requires releasing any information requested.
- B Treat information requested by administrative officers, attorneys, or social service organizations the same as requests from the general public.

786 REQUESTS FOR ASCS-675'S DURING THE PROCESSING OF GRIEVANCES AND EEO COMPLAINTS

- A Grievance. ASCS-675's shall NOT be released to a grievant or a grievant's representative. ASCS-675's may be temporarily released to ASCS officials acting in an official capacity to resolve a grievance.
- B EEO Complaint. Releasing ASCS-675's to an EEO counselor during the informal resolution process or to a USDA representative during the formal processing of an EEO complaint is permitted.

787 RECORDING RELEASE OF INFORMATION

If information is released from an employee's OPF according to this part:

- A Record the date, nature, and purpose of the disclosure and the name and address of the person or agency to whom it was released.
- B Keep the information in subparagraph A for the life of the record or 5 years, whichever is longer.

788-799 (RESERVED)

PART 17 BARGAINING UNITS

800 RECOGNITION OF NASCOE STATE AFFILIATES

- A NASCOE has been granted exclusive recognition to Represent
--FSA County employees at the national level.--
- B The agreement with NASCOE specifies that State affiliates
may request and receive comparable recognition at the State
*--level. See Exhibit 22, the signed copy is maintained at the
National Office.--*
- 1 If recognition is requested, STC chairman shall:
- a Determine whether the 51 percent membership
requirement is met.
- b If the finding is made, notify the president of
the affiliate, by letter, that recognition is
granted.
- *--c Notify DAFO that recognition has been granted.
- d Advise DAFO of any significant agreement or--*
problem resulting from a negotiating or consulting
conference.
- 2 Supplementary agreements between STC and State
affiliate are only for adjusting problem situations,
--such as, regulating the way meetings between FSA and--
NASCOE are conducted, or interpreting provisions of the
agreement.
- a Limit the number and extent of all supplementary
agreements.
- b Apply general guidelines in a cooperative manner
instead of detailed, restrictive procedures to
govern the relationship.

801 PAYING TRAVEL EXPENSES FOR MANAGEMENT MEETINGS

- A NASCOE, or State affiliate officials, may be
*--reimbursed for travel expenses from FSA travel
allotments:--*
- 1 To attend meetings with management officials.
 - 2 For meetings that are primarily:
 - *--a In FSA's interest.
 - b Called by management.
- B Meetings are considered to be primarily in FSA's--*
interest for purposes such as:
- 1 Preventing accidents.
 - 2 Improving communications.
 - 3 Ensuring EEO compliance.
 - 4 Maintaining employee productivity and morale.
- C For travel expense approval and certification:
- 1 STC or SED may approve travel within the State.
 - *--2 DAFO may approve travel outside of the State.
 - 3 Indicate on the approval:
 - a That travel is primarily for FSA's--*
benefit.
 - b The basis for the determination in
subparagraph a.

***--Part 18 National Associations**

802 NASCOE, RASCOE, NACS, NASE, NADD, FLCA, and FSAAA

A Recognizing Associations

FSA has recognized NASCOE, NACS, NASE, NADD, FLCA, and FSAAA as National associations which present and share views on appropriate issues. FSA and the associations have agreed to work together to develop a constructive, productive relationship.

FSA has recognized RASCOE as a national, non-labor organization; however, it does not represent current FSA employees. FSA employees or former employees associated with RASCOE may not take on the character of negotiations or consultations regarding conditions of employment of bargaining unit nor non-bargaining unit employees. See 5 CFR Section 251.101 (d).--*

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

None

Forms

This table lists the forms referenced in this handbook.

Number	Title	Display Reference	Reference
ASCS-50	Notice of Personnel Action		Text
ASCS-134	County Time, Attendance, and Leave/Travel Claim Record		Text, Ex. 30.4
ASCS-281	Application for Service Credit (County ASC Committee Employment)		Ex. 21
ASCS-282 <u>1/</u>	Notice of Personnel Action		748, 750, Ex. 21
ASCS-324	Confidential Statement Regarding Financial Interests and Outside Employment	Ex. 29.5	
ASCS-464	Class Complaint of Discrimination Based on Race, Color, Religion, Sex, National Origin, Mental or Physical Handicap, or Age		680, 712
ASCS-675	Application for ASCS County Employment		786
ASCS-837	EEO Counseling Mediation and Complaint Program Counselors		677, 679
CCC-184	CCC Check		398, 398.5
CSS-125 <u>1/</u>	ASC County Committee Employment, Pay and Tax Record		Ex. 21
ES-931	Wage and Separation Information UCFE		Part 15
ES-934	Additional or Reconsidered Information UCFE		748
ES-936	Report of Visit - UCFE		749
ES-939	District Unemployment Compensation Board		750
SF-8	Notice to Federal Employees About Unemployment Insurance		740
SF-50	Notification of Personnel Action		750
SF-71	Application for Leave		Part 8
SF-2803	Application to Make Deposit or Redeposit (CSRS)		Ex. 21

1/ These obsolete forms are retained in County Office records.

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Abbreviations Not Listed in 1-CM

This table lists abbreviations not listed in 1-CM.

Approved Abbreviation	Term	Reference
AFGE	American Federation of Government Employees	Text
C&PP	classification and pay plan	Text
COT	county operations trainee	Text and Exhibits
CS	civil service	Text
CSR	Civil Service Retirement	Text
EOD	entrance on duty	Text
FECA	Federal Employees Compensation Act	Text
FEHB	Federal Employee's Health Benefits	Text
FLCA	Farm Loan Chiefs Association	802
FSAAA	Farm Service Agency Appraiser Association	802
LWOP	leave without pay	Text
NACS	National Association of Credit Specialists	802
NADD	National Association of District Directors	802
NAGE	National Association of Government Employees	Text
NALC	National Association of Government Letter Carriers, AFL-CIO	Text
NASE	National Association of Support Employees	802
NFFE	National Federation of Federal Employees	Text
OFEC	Office of Federal Employees Compensation	Text
OPF	official personnel folder	Text
OTI	Opportunity to Improve	411, 432, 433, 464.5
OWCP	Office of Workers Compensation Program	Text
PIP	performance improvement period	Ex. 30
PT	part time	Ex. 21
RASCOE	The National Association of Retired ASCS/FSA State and County Office Employees	802

Redelegations of Authority

This table lists redelegations of authority in this handbook.

Redelegation	Reference
Authority for HRD to determine what information from personnel records is exempt from FOIA	774

Definitions of Terms Used in This Handbook

Agency Automatic 1 Percent Contribution An Agency automatic 1 percent contribution is the contribution the Agency makes to an eligible FERS employee's TSP account. This contribution is equal to 1 percent of the employee's basic pay.

Assignment An assignment is the transfer of ownership of the employee's FEGLI coverage to another individual, corporation, or trustee. The employee continues to be the insured person.

- An employee, annuitant, or compensationner can **voluntarily** assign ownership of their basic, Option A, and Option B life insurance, but may not assign ownership of Option C life insurance.
- An assignment:
 - is irrevocable
 - can be between more than 1 individual, corporation, or trustee
 - cannot designate or change beneficiaries and any current beneficiary is void
 - cannot elect living benefit if insurance has been assigned
 - cannot cancel your insurance coverage.
- All new or additional insurance elected, except for Option C--Family, automatically becomes subject to the existing assignment.

Basic Pay Rate For TSP, the basic pay rate is the rate of pay fixed by applicable law or regulation, and is used for retirement purposes in FSA County Offices.

Locality pay is included in basic pay.

The following types of pay are excluded from basic pay:

- bonuses, allowances, overtime, and holiday pay
 - lump-sum payment covering accrued and accumulated leave
 - supplemental payments from OWCP.
-

Continued on the next page

Definitions of Terms Used in This Handbook (Continued)

Calendar Year A calendar year is January 1 through December 31.

**Call-Back
Overtime** Call-back overtime is unscheduled overtime work when an employee is called back to work. In these cases, the employee will be compensated for at least 2 hours in premium pay, or, if appropriate, compensatory time, whether the employee actually worked 2 hours or not.

**Combined
County
Operation** A combined county operation is a headquarters County Office with 1 or more of the following:

- full-time suboffices
- part-time suboffices
- closed County Offices.

**Consecutive
Service** The term consecutive service indicates uninterrupted employment.

* * *

**Continuous
Service** The term continuous service indicates employment without breaks in service.

Continued on the next page

Definitions of Terms Used in This Handbook (Continued)

Dependents

The following individuals, if they are totally dependent on the employee, are dependents:

- widow or widower
 - parents
 - children up to 18 years old, or until married or deceased (over 18 years old, if incapable of self-support)
 - brothers and sisters
 - grandparents
 - grandchildren.
-

Deposit

A deposit is a sum of money owed to OPM retirement fund for a period of service during which deductions were not made from the employee's salary.

Disabling Injury

A disabling injury is a work injury that results in 1 of the following:

- death
 - permanent total disability
 - temporary total disability
 - permanent partial disability.
-

Continued on the next page

Definitions of Terms Used in This Handbook (Continued)

Disposable Pay	<p><u>Disposable pay</u> is the amount of salary due an employee after the following deductions:</p> <ul style="list-style-type: none"> • Federal, State, and local income taxes • Social Security taxes • medicine taxes • Federal Retirement Program • premiums for life and health benefits.
Duration of Disability	<p><u>Duration of disability</u> is the total number of full calendar days in which an injured employee was unable to work because of disability. This:</p> <ul style="list-style-type: none"> • does not include the day of injury or the day that the employee returns to work, but does include all of the intervening calendar days • includes actual number of calendar days of disability if an employee serving under temporary appointment suffers an injury that extends beyond the period of employment.
Employees	<p><u>Employees</u> are individuals employed in County Offices, excluding COC and CMC members.</p>
Fiscal Year	<p>A <u>fiscal year</u> is October 1 through September 30.</p>
Full Biweekly Pay Period	<p>A <u>full biweekly pay period</u> for leave accrual purposes, is employment (on the rolls) in pay status, nonpay status, or combination of pay and nonpay status on all days and hours during the pay period that fall within the regular tour of duty, exclusive of holidays, and all nonworkdays established by Federal statute or by Executive or administrative order.</p>
Full-Time Employees	<p><u>Full-time employees</u> are employees for whom prescheduled regular tour of duty is the 40-hour basic workweek.</p>
Furlough	<p>A <u>furlough</u> is an involuntary absence from duty without pay, resulting from action required and initiated by Agency-appointing authority.</p>

Continued on the next page

Definitions of Terms Used in This Handbook (Continued)

General Supervision

General supervision includes supervision in which the supervisor provides the instructions on special projects or assignments, and changes in procedures and policies.

- An employee working under general supervision is expected to carry out the day-to-day work at the employee's own initiative.
 - Work is reviewed on a spotcheck basis for:
 - compliance with instructions
 - compliance to FSA policy
 - accuracy.
-

Injury

An injury is any personal injury sustained in the official performance of duty. This includes any disability, illness, or disease caused by condition of employment.

Inter Vivos Trust

An inter vivos trust is a trust created during the employee's lifetime, for designating beneficiaries.

Living Benefits

Living benefits are life insurance benefits paid to an individual while he or she is living, rather than paid to a beneficiary or survivor upon the insured individual's death.

- An employee, annuitant, or compensationner who is covered by FEGLI can elect a living benefit if they have been diagnosed as terminally ill with a life expectancy of 9 months or less.
 - Only the basic insurance is available for living benefits.
 - Living benefit can be elected only once.
 - A full living benefit or a partial living benefit may be elected by employees.
 - Annuitants and compensationners may only elect a full living benefit.
 - A living benefit **may not** be elected if insurance employee has assigned their insurance.
-

Continued on the next page

Definitions of Terms Used in This Handbook (Continued)

Major Duties

Major duties are an employee's duties that:

- constitute the main purpose for the position's existence
 - set the qualification requirements
 - are of a regular recurring nature
 - occupy a substantial part of the incumbent's time.
-

Paid-For Workdays

Paid-for workdays are actual employee workdays expended and paid by County Office administrative expenses.

Performance of Duty

Performance of duty is considered official work performed during:

- normal workhours
 - authorized overtime
 - time spent in authorized travel status if there was no deviation from authorized course of travel for personal reasons or convenience.
-

Physician

The term physician includes:

- Doctors of medicine (M.D.)
- Osteopathic practitioners (D.O.) within the scope of medical practice, as defined by State law.

Chiropractors and practitioners in other fields of healing practice are not considered physicians.

Redeposit

A redeposit is a sum of money owed to the OPM retirement fund to cover a period of service during which retirement deductions were withheld but later refunded to the employee.

Continued on the next page

Definitions of Terms Used in This Handbook (Continued)

Salary Offsets

Salary offsets are involuntary deductions from the disposable pay of an employee for a debt.

Shared Management Program

The shared management program results when CED manages a full-time County Office and either of the following:

- 1 or more full-time sub offices
- 1 or more part-time sub offices that are:
 - open at least 3 full days per week
 - staffed with a permanent FSA employee who works exclusively in the suboffice.

*--Substantial Evidence

Substantial evidence is evidence of such quality and weight that reasonable and fair minded persons, in exercising impartial judgment, might reach a different conclusion.--*

Testamentary Trust

A testamentary trust is a trust created by the employee's will for designating beneficiaries.

Tour of Duty

A tour of duty is the employee's established work schedule. Each employee has a set work schedule of days per week and hours per day. This forms a pattern that recurs each pay period and can only be changed through formal documentation.

- A full-time employee works 40 hours per week for regular full time or a total of 80 hours per 2 week pay period on a compressed work schedule.
- A part-time employee must work at least 16 hours, but not more than 32 hours per week for regular part time or at least 32 hours but not more than 64 hours per pay period for part-time compressed work schedules.
- An intermittent employee may not work:
 - more than 28 consecutive days without a break in service of at least 1 day
 - a regularly scheduled tour of duty because this would constitute a part-time tour of duty
 - more than 1,040 hours in a service year. A service year is 1 calendar year from the date of the appointment.

PROCEDURE FOR VERIFYING COUNTY
SERVICE BEFORE JULY 10, 1960

1 SERVICE THAT MAY BE CLAIMED

All service may be claimed, regardless of whether it was temporary, permanent, intermittent, or part-time employment, and regardless of whether the employee had a regular tour of duty. The service must have taken place before July 10, 1960, as a County Office employee under the Soil Conservation and Domestic Allotment Act (54 Stat. 727), Section 8 (b) or of a committee or association of producers described in the Agricultural Adjustment Act of May 12, 1933, (48 Stat. 37) Section 10 (b). A committee member who has also served on a part-time or intermittent basis as a County Office employee at the same time is entitled to service credit only on the basis of actual service rendered as a County Office employee; for example, a committee member employed as a reporter for 27 days can claim credit for those 27 days.

2 AUTHORITY TO CERTIFY SERVICE

Authority to certify service to OPM has been delegated to the Director, HRMD.

3 OFFICIAL DOCUMENTARY EVIDENCE

A For service before January 1, 1957, official documentary evidence includes any official records showing names, dates of employment, and salary changes, such as:

- 1 Social security records.
- 2 Applications for County Office or Federal employment filed before July 1, 1960.
- 3 Payroll, budget, bank, and income tax records.

B For service from January 1, 1957 to July 9, 1960. Form CSS-125, is documentary evidence.

4 CLAIM FOR SERVICE CREDIT

A ASCS-281, Part A, Item 4.

- 1 Listing Periods of Service. Starting with the employee's most recent service and working back, the employee must use a separate line for each of the following and complete as many columns as possible for each:

- a Type of work performed or job held.
- b Salary change.
- c Period of service under a regular tour of duty.
- d Period without a regular tour of duty.

- 2 Regular Tour of Duty. An employee may claim full-time credit for all periods of employment that took place on a regular tour of duty basis.

a Conditions. The tour must have:

- (1) Been set in advance.
- (2) Specified full-time, or part-time, such as 4 hours a day, or 5 days or 8 hours every Monday and Friday.

- b Reporting Regular Tour of Duty. Show "FT" for full-time service, or "PT" for part-time tour. If part-time tour is shown, indicate type of tour, such as 4 hours each Monday through Friday or 8 hours for each Monday and Friday; for example, the abbreviated method of showing these would be: "PT - 4 Hr., M.T.W.T.&F;" and "PT - 8M&8F."

- c Holding 2 Positions at the Same Time. If employee held 2 positions at one time and one was on a regular tour of duty basis, report the service on different lines. If the service without a tour of duty extends beyond or after the tour of duty service (column A and B), it must be split into 2 lines; for EXAMPLE:

An employee served as a janitor and worked 3 hours each day during calendar year 1955. He also held an appointment as a reporter during the fall of 1955 and spring of 1956 without a tour of duty. In this case, one line must be used to show 12 months employment as a janitor in 1955, one line for the period of service as reporter in 1955, and a different line for the reporter service in 1956.

- d Reporting Nonpay or LWOP. Note in column F the amount of nonpay or LWOP taken during each calendar year. Do not include time outside of the tour of duty; for EXAMPLE:

If the employee's regular tour of duty is Monday and Friday; Tuesday, Wednesday, and Thursday would not be considered nonpay for this purpose.

- e Period of Suspension and Removal. The periods of employment shall include periods of suspension or removal if the employee was restored to duty. In these cases, include back salary received in column G. If back salary was not received for all or part of the period, include the nonpay period in column F.

- 3 Employment Without a Regular Tour of Duty. Employees employed intermittently without a regular tour of duty will receive credit based on total days worked. For these periods of employment, indicate in column F the number of days worked. If the employee worked less than full days, compute the hours of employment and divide by 8 to determine the number of days. The days of service claimed (column G) for work paid on a unit basis may be determined by dividing the earnings by the rate of pay on which the unit rates were based.

- 4 Lump Sum Payment. Do not include any lump sum payment for annual leave in column G.

- 5 Military Service.

- a Active military service is creditable for retirement purposes unless used to qualify for military retirements. No deposit or purchase is required. Claims for this service by all employees are unnecessary at this time. Employees who left nontemporary, or regular tour of duty County Office positions to enter the military service and who exercised reemployment rights to return should a file claim. Other employees will claim military service when they apply for retirement. Use a separate line in item 4 for this purpose.

- b Credit may be given for the entire period of absence, that is, the date of separation in the County Office to the date of return to duty in the County Office. To receive this credit, an employee must have applied for reinstatement within 90 days after release from hospitalization that continued for not more than one year after discharge. This military service is considered allowable civilian service. A copy of the employee's honorable discharge or notice or transfer to the inactive reserves under honorable conditions must be included to verify this service. If the employee is receiving retirement income, from the military, not the Veteran's Administration, based upon this service, attach full details regarding this annuity to the completed ASCS-281.

B ASCS-281, Part B, Item 6. CED shall:

- 1 Examine the service claimed in Part A and verify, to the extent possible, all claims for services that were performed in that County Office.
- 2 Allow no entry to be made in this item for any service claimed in item 4 that can be fully verified from official documented evidence; for EXAMPLE, if the period of employment and total salary received cannot be verified for one of the lines in item 4, the information listed for that line will be repeated in item 6. Column A and line reference must be completed for all lines of services not fully verified.
- 3 Advise the claimant to prepare a new ASCS-282, if he or she is an employee or resides in the area of the County Office.
- 4 Enter the official information in item 4 on the new ASCS-281 for other claimants. Retain the records used to verify service pending further instructions.

C ASCS-281, Part B, Item 7. List all verifiable County Office employment after July 9, 1960, for which retirement deductions were not withheld from the salary. If additional forms are needed, make a notation and complete item 7 on a separate ASCS-281.D ASCS-281, Part B, Item 8. Complete for employees currently serving in a position subject to the Civil Service Retirement Act.E ASCS-281, Part B, Item 9. Use this space for any comments or suggestions that may be useful in disposing of unverified claims. If CED or any employee or committee member believes from their personal knowledge that any of the unverified claims are substantially correct or are quite likely incorrect, this should be stated; For example, it might be general knowledge that \$6 per day was the current rate of pay in the county for a particular type of work claimed. CED shall sign Part B for claimants other than CED. An STC representative shall sign Part B claim for service credit for CED.

5 APPLICATION TO MAKE DEPOSIT

Employees who wish OPM to bill them for County Office employment before July 10, 1960, shall complete SF-2803 in quintuplicate. The employee shall retain 1 copy. Send the original and 3 copies with ASCS-281 to the State Office. If all County Office service has been certified, the employee may obtain notification of the amount of deposit because of County Office service described in subparagraph 4 C of this exhibit.

*--

LABOR-MANAGEMENT RELATIONS AGREEMENT
between,
U.S. Department of Agriculture
(USDA)
The Farm Service Agency
(FSA)

and

The National Association of FSA County Office Employees
(NASCOE)

SECTION 1 GENERAL PROVISIONS

1. PURPOSE:

The purpose of this agreement is to (1) identify the parties to the agreement and define their respective roles and responsibilities under the agreement; (2) state the policies, procedures, and methods that will govern working relationships between the parties, and (3) indicate the subject matter of proper mutual concern.

The object of the parties in their cooperative endeavors under the agreement is to provide means for and to facilitate:

- A. Employee participation in the formulation of policies and procedures governing the terms of their employment and the conditions under which they work;
- B. The fair and prompt settlement of grievances, disputes, and impasses;
- C. Systematic labor-management relations in the attainment of FSA program objectives; and
- D. More effective and active support of the farmer-elected committee system for the betterment of agriculture.

2. AUTHORITY

Exclusive recognition of NASCOE was granted by the Secretary on June 12, 1962, under the authority of Section 8 (b) of the Soil Conservation and Domestic Allotment Act, as amended. This was done to accord FSA county employees rights similar to those provided regular Federal employees by Executive Order

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Continued on the next page

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10988, approved by the President January 7, 1962, and is continued under the Executive Order 11491 approved by The President October 29, 1983.

3. PARTIES TO THE AGREEMENT

The parties to this agreement are the U.S. Department of Agriculture, herein referred to as the Department or USDA, and the Farm Service Agency, herein referred to as the Service or FSA, on the one hand, and the National Association of FSA County Office Employees, herein referred to as NASCOE, on the other hand. Primary responsibility for cooperative relations with NASCOE under this agreement rests with FSA management; matters may be taken up with the Department that are of Departmentwide concern, or that are otherwise beyond the discretion of FSA management.

4. COVERAGE

This agreement is applicable to all FSA county employees. Under this agreement NASCOE has exclusive rights to represent all county employees in consultations and negotiations with management of FSA and USDA. As a condition of this exclusive right, NASCOE accepts responsibility for and agrees to represent in good faith the interests of all county employees without discrimination and without regard to membership in NASCOE.

5. RECOGNITION AT THE STATE LEVEL

To obtain recognition at the State level, a NASCOE affiliate must have membership of at least 51 percent of the County employees serving under regular appointment in the State or States covered by the affiliate. Where NASCOE affiliate has such membership, recognition may be requested by written application to the Chairman of the State Committee from the recognized officers of the of the NASCOE affiliate. The request shall contain a statement as to the number of county employees holding regular appointment within the States who are NASCOE members. Where a finding is made that sufficient membership is present, the Chairman of the State Committee shall notify the appropriate NASCOE affiliate official in writing that recognition is granted. NASCOE may not modify the geographic boundary of its affiliates without prior agreement at the National level between NASCOE and FSA. Written agreements supplementary to and consistent with this agreement may be entered into at the State level as may be deemed necessary or desirable.

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6. LEGAL AND REGULATORY REQUIREMENTS

In the event that any law, executive order, regulation or policy binding on FSA is hereafter enacted or issued and is inconsistent with any of the provisions of this agreement, such enactment or issuance shall prevail. NASCOE and FSA shall issue a joint statement interpreting the effect of such a change.

7. MANAGEMENT RIGHTS

FSA management officials retain the right in accordance with applicable laws and regulations to:

- A. Direct and supervise employees;
- B. Hire, promote, transfer, remove, assign, suspend, demote, discharge, or take disciplinary action against employees;
- C. Relieve employees from duties because of lack of work or for other legitimate reasons;
- D. Maintain the methods, means, and personnel by which operations are to be conducted;
- E. Take whatever actions may be necessary to carry out the mission of the Agency in situations of emergency.

8. EMPLOYEE MEMBERSHIP RIGHTS

Employees have the right to organize or join or refrain from joining any employee organization. In the exercise of this right, employees shall be free from any and all interference, coercion, restraint, or discrimination.

9. MAINTAINING CONTINUOUS OPERATIONS

Employees covered by this agreement do not have any rights individually or collectively to strike, cease work, or otherwise interfere by concerted action, in any way at any time with the expeditious accomplishment of assigned work.

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SECTION 2 CONSULTATIONS AND NEGOTIATIONS**10. JOINT RESPONSIBILITIES**

The parties to the Agreement pledge themselves to conduct all consultations and negotiations objectively and in good faith for the purpose of fair and equitable solutions. They will make every effort to reach agreement on all matters within a reasonable period of time.

11. NEGOTIABLE MATTERS

The parties' shall consult and negotiate from time to time in the formulation and implementation of personnel policies affecting county employees. In general, these include policies, practices, and matters affecting working conditions and terms and security of employment which are within the administrative jurisdiction of the FSA National office or that of a State Office. Whenever administratively practicable, FSA will consult with NASCOE before implementing any major change affecting terms of employment or working conditions. As a rule, FSA will not seek the views of NASCOE on individual applications of basic policy. NASCOE may consult and negotiate with FSA management officials if it believes a policy is not being uniformly and impartially applied and implemented. Individual actions taken by county committee or a *county* executive director within their delegation of authority and in accordance with procedure shall not be reviewed by or negotiated upon at the State or National level.

12. NASCOE REVIEW OF INDIVIDUAL ACTIONS

NASCOE or State affiliate officials may as observers, sit in on employee hearings which are held as a result of removal or disciplinary action. This right is extended so as to facilitate arriving at recommendations for changes in policy or method. FSA and NASCOE agree with the interpretation that this right will be exercised only if the employee agrees.

13. NEGOTIATION AND CONSULTATION PROCEDURE

Negotiations relating to a matter within the administrative authority of a State Office must be initiated at the State level. Where the agreement cannot be reached, either the NASCOE affiliate or the State Office may terminate negotiations by notifying the other in writing. National representatives of NASCOE may obtain reconsideration of the matter at the National level by notifying the designated FSA National official. As a general rule, negotiations and consultations shall be by letter. If, after attempting to reach agreement by

Continued on the next page

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correspondence it becomes apparent that face to face discussion is needed, management or NASCOE may request a meeting. If agreement on issues cannot be reached between NASCOE and FSA, NASCOE may present its case to USDA.

14. REPRESENTATIVES

For the purpose of handling consultations and negotiations between the parties, each shall select representatives in the following manner:

- A. USDA Level. The Department representatives shall be those designated by the Department. NASCOE representatives shall be those designated by the NASCOE Officers.
- B. FSA Level. NASCOE and FSA shall each select a maximum of ten members to compose the negotiation committee at FSA level. Each shall designate the individual through whom requests will be initiated. In addition, NASCOE and FSA may not at any one time have more than two consultants attend any meeting except that NASCOE may have one program assistant from each NASCOE area attend.
- C. State Level. The NASCOE affiliate and the State Committee shall each select maximum of four members to compose the negotiation committee at the State level. Each shall designate the individual through whom requests will be initiated. In addition, NASCOE and FSA each may not have more than two consultants to attend any meeting. Where NASCOE has jurisdiction covering more than one State, the affiliate may use one committee or separate committees to negotiate with the separate State groups.

SECTION 3 OFFICIAL TIME AND USE OF FACILITIES.

15. OFFICIAL TIME

Representatives of NASCOE shall not be on official time when attending internal NASCOE meetings to negotiate an agreement with FSA management. Meetings between FSA and NASCOE requested by management officials will be conducted on official duty. Other meetings approved by management shall be on official time or the employee's time as determined by the appropriate management official. The internal business of employee organizations such as the solicitation of membership, collection of dues, election of officers, and other meetings shall be conducted during non-duty hours of the employees involved.

Continued on the next page

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16 TRAVEL AND PER DIEM

Normally FSA will not authorize travel or per diem for meetings with NASCOE or State affiliate officials. FSA may authorize official travel and per diem if the meeting is called by management, and the subject of the meeting is primarily in the interest of FSA when engaged in (but not limited to) activities such as: preventing accidents, improving communications, insuring equal opportunities, and maintaining employee productivity and morale. Authorization for official travel within the State must be approved by the State Committee or the State Executive Director. Authorization for travel to meetings outside the State requires approval of the Deputy Administrator for Field Operations. All approved memorandums will state that the travel is for the primary benefit of FSA and explain the basis for such a finding.

17. USE OF OFFICIAL SPACE

NASCOE may be granted permission to use official space for meetings on non-duty hours of the employees involved. Management will permit the use of such space when available and in instances where such use will not conflict with the performance of official functions. Official space when available at no added cost may also be used for NASCOE files. NASCOE is responsible for exercising reasonable care in the use of such facilities.

18. EFFECTIVE DATE AND AMENDMENT

This agreement is effective upon written approval by USDA, FSA, and NASCOE. The provisions of this agreement may be opened for amendment at any time by USDA, FSA, or NASCOE. Such modification shall become effective only after written approval by USDA, FSA, and NASCOE.

19. PROVISION FOR TERMINATION

This agreement will terminate, subject to renegotiation on August 31, of each year. Recognition at the State level may be terminated after a finding that the NASCOE affiliate has less than 51% membership within the State(s).

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Amendment and Extension of
LABOR-MANAGEMENT RELATIONS AGREEMENT

Between

U.S. Department of Agriculture
(USDA)

Farm Service Agency
(FSA)

and

The National Association of FSA County Office Employees
(NASCOE)

This extends the current agreement between the U.S. Department of Agriculture (USDA), the Farm Service Agency (FSA), and The National Association of FSA County Office Employees (NASCOE).

19 PROVISION FOR TERMINATION

This agreement will terminate, subject to renegotiation, on August 31, of each year. Recognition at the State level may be terminated after a finding that the NASCOE Affiliate has less than 51 percent membership within the State(s).

APPROVALS

For The National Association of FSA County Office Employees:

President, NASCOE

Date

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Continued on the next page

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Amendment and Extension of
LABOR-MANAGEMENT RELATIONS AGREEMENT
Between
U.S. Department of Agriculture (USDA),
Farm Service Agency (FSA),
And
The National Association of FSA County Office Employees
(NASCOE)

APPROVALS

For the Farm Service Agency and USDA:

Administrator, FSA

Date

Deputy Administrator of Field Operations

Date

Director,
Office of Human Resources Management, USDA

Date

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EMPLOYEE POLITICAL ACTIVITY

The following is not a complete list of all permissible and prohibited political activity. All COC and CMC, members, delegates, alternates, or employees are cautioned that before they engage in any political activity that is not expressly allowed, they should request a ruling from HRMD through STC and DASCO.

Prohibited Political Activity

- 1 Campaigning for partisan candidates or political parties.
- 2 Registering voters for 1 party only.
- 3 Making campaign speeches or engaging in other activity to elect a partisan candidate.
- 4 Being a candidate or working in a campaign if any candidate represents a national or State political party.
- 5 Collecting contributions or tickets to political fund-raising functions.
- 6 Distributing campaign literature, badges, or buttons in a partisan election.
- 7 Organizing or managing political rallies or meetings.
- 8 Holding office in a political club or party.
- 9 Initiating or circulating nominating petitions for a partisan candidate
- 10 Campaigning for or against a candidate or slate of candidates in a partisan election.
- *--11 Campaign for or be a delegate, alternate, or proxy for the purpose of serving in a political convention.--*
- 12 Acting as an officer or taking any prominent part in any primary meeting, mass convention, or caucus.
- 13 Addressing a political meeting or rally on any partisan political matter.

Permissible Political Activity

- 1 Registering and voting as you choose.
- 2 Assisting in nonpartisan voter registration drives.
- 3 Expressing one's opinion about candidates and issues.
- 4 Participating in campaigns if none of the candidates represent a political party.
- 5 Contributing money to a political organization or attending political fund-raising functions.
- 6 Wearing or displaying political badges, buttons, and stickers.
- 7 Attending political rallies and meetings.
- 8 Joining a political club or party.
- 9 Signing nominating petitions.
- 10 Campaigning for or against referendum questions, constitutional amendments, municipal ordinances, etc.
- 11 Attending a political convention, as a spectator.
- 12 Attending a primary meeting, mass convention, or caucus and casting a vote on any questions presented.
- 13 Attending any meeting of a political committee where the general public is admitted.

Prohibited Political Activity

- 14 Serving as a precinct or ward committee member for any political organization. Employees may not serve as a precinct committee member for any political organization as specified in paragraph 399. COC and CMC members, delegates, or alternates may serve as precinct or ward committee members if they do not serve as delegates to any political party convention.
- 15 Providing the names and addresses of subordinates for political solicitation without being a candidate.
- 16 Writing for publication or publishing any letter or article (signed or unsigned) soliciting votes in favor of or against any candidate or political party.
- 17 Acting as an accredited checker, watcher, or challenger of any political party
- 18 Transporting voters to and from polls.
- 19 Participating in or organizing a political parade.

Permissible Political Activity

- 14 Serving as an election officer as prescribed by State or local law, except, one may not become a candidate for this office in a partisan election.
- 15 Accepting and holding a local office in which the employee was elected

Although wearing partisan political badges and buttons is a permissible political activity, it is contrary to the spirit and intent of the ASCS mission for any COC or CMC member, delegate, alternate, or County Office employee involved in meeting the public to wear these badges or buttons while conducting official ASCS business.

REPRODUCE LOCALLY. Include form number and date on reproductions.

ASCS-324
(10-02-90)

U.S. DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service

CONFIDENTIAL STATEMENT REGARDING FINANCIAL INTERESTS AND OUTSIDE EMPLOYMENT
(FOR USE BY COUNTY EXECUTIVE DIRECTORS AND COUNTY OPERATIONS TRAINEES)

PART I - IDENTIFYING DATA

1. NAME (last, first, middle initial)	2. DATE OF BIRTH (month, day, year)	3. SOCIAL SECURITY NUMBER
4. POSITION HELD		5. GRADE
6. OFFICE		

PART II - TO BE COMPLETED BY EMPLOYEE (Use an extra sheet of paper, if needed)

A. **FINANCIAL INTERESTS - LIST** all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations and educational or other institutions in which you, your spouse, minor child, or relative (blood and in-law relations who are residents of your household) have any continuing financial interest as an employee, officer, owner, director, trustee, member, partner, advisor, or consultant; through a pension or retirement plan, or other income plan or other arrangement as a result of any current or prior employment or business or professional association; or in the ownership of stock, stock options, bonds, securities or other arrangements including trust. If none, write **NONE**.

B. **FINANCIAL INTERESTS - DO NOT LIST** shares in credit unions, building and loan associations, social or religious organizations, deposits in banks and savings and loan associations, holdings in widely held mutual funds or regulated investment companies which do not specialize in a particular industry or commodity and over to which you have no managerial control; shares totaling less than \$1,000 for an individual corporation, company or firm.

NAME OF ORGANIZATION	PRINCIPAL BUSINESS	TYPE OF INTEREST: NO. OF SHARES (e.g., stocks, bonds)	DOLLAR VALUE	IN WHOSE NAME INTEREST IS HELD	RELATION TO YOU (If Applicable)

C. **INTERESTS IN PROPERTIES - REAL AND FARM. LIST** your, your spouse's, your minor child's, or any relative's (blood and in-law relations who are residents of your household) interest or rights in land, and minerals. Include interests in timber/undeveloped land, farm, crops and farm animals. Owner-occupied farms must be listed. If none, write **NONE**.

D. **INTERESTS IN PROPERTIES - REAL AND FARM. DO NOT LIST** your personal residence, owner-occupied, single resident vacation property or cemetery lots.

NATURE OF INTEREST (e.g., ownership, mortgage lien, investment trust)	TYPE OF PROPERTY (e.g., residential, hotel, apartment, timber/undeveloped land, farm, crops, farm animals)	DOLLAR VALUE	A-TOTAL ACREAGE B-TOTAL NO. OF FARM ANIMALS	A-TYPE OF CROPS B-TYPE OF FARM ANIMALS	A-NO. OF ACRES OF EACH CROP B-NO. OF EACH FARM ANIMAL	AVERAGE ANNUAL INCOME FROM: A-SALES OF CROPS B-SALES OF FARM ANIMALS	ADDRESS (If rural give RFD or county, and state and ZIP code)

E. **CREDITORS - LIST** the names of your, your spouse's, your minor child's or any relative's (blood and in-law relations who are residents of your household) creditors. If none, write **NONE**.

F. **CREDITORS - DO NOT LIST** those to whom above may be indebted: (1) by reason of a mortgage on your personal residence (indebtedness on owner-occupied farms must be reported); (2) for ordinary household and living expenses, such as furnishings, automobiles, education, vacation, and similar expenses. This includes most credit card expenses. If none, write **NONE**.

NAME AND ADDRESS OF CREDITOR	NATURE OF INDEBTEDNESS (e.g., personal loan, note security)

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or handicap.
(Statement continued on reverse)

ASCS-324 (Reverse)

- G. EMPLOYMENT BY SPOUSE, MINOR CHILD OR RELATIVE (blood and in-law relations who are residents of your household) - List any significant employment on a substantially regular basis by these individuals with any organization with which ASCS does business or with which you have official ASCS contact. If none, write NONE.

NAME OF ORGANIZATION	KIND OF ORGANIZATION	TITLE OR KIND OF POSITION	NAME AND RELATION OF INDIVIDUAL TO YOU

- H. NON ASCS EMPLOYMENT - **LIST** all companies, firms, Federal, State or local Government entities, other organizations, and educational, or other institutions of which you are an employee, officer, member, trustee, director, consultant, or advisor, with or without compensation; also include self-employment. If none, write NONE. **Exclude** charitable and religious groups.

NAME AND PRINCIPAL BUSINESS OF ORGANIZATION	LOCATION (City and State)	TITLE OR KIND OF POSITION

PART III - APPROVAL AND CERTIFICATION

To assist the reviewing official in identifying and resolving possible conflicts-of-interest, please attach a supplementary statement with respect to items listed in Part II, which to your knowledge relate in any way to your duties and responsibilities as an ASCS Employee. The supplementary statement should identify each interests or employment, making full disclosure of the nature and extent of such interest or employment, and explaining exactly how it relates to your duties and responsibilities with ASCS.

I CERTIFY that the statements I have made are true, complete, and correct to the best of my knowledge and belief. I UNDERSTAND that if, I undertake new outside employment, or acquire any new financial interests, I must promptly file an amended statement.

(Signature)

(Address)

(Date)

PART IV - ASCS REVIEW

NAME AND TITLE	CONFLICT	NO CONFLICT	DATE OF REVIEW

REMARKS - (If no conflict appears, indicate "No Conflict." If there is a question, indicate conflict and what it is and its resolution.)

Sample County Office OTI Letter

This is to inform you that your performance is unacceptable in () critical element(s) of your position. You are being placed on an Opportunity-to-Improve Plan (OTI) pursuant to Handbook 22-PM, paragraph _____. The critical element(s) and performance standard(s) for each element that was discussed and examples of your unacceptable performance follow.

Critical element: [Title of critical element.]

Standard: [State the standard in its entirety including the further clarification as needed.]

Examples: [Be concise, direct, and easy to understand. Include information on what the employee did or did not do with reference to specific dates, places, cases, etc., and what the employee should have done. Reference required procedures, counseling or instructions previously given.]

[List each critical element, standard, and example of the unacceptable performance separately.]

[Include advice or guidance as to what must be done to bring the performance up to an acceptable level. This could include such things as how time would best be spent (prioritizing and planning), suggested sources of assistance and information, ways or techniques of performing work, formal or informal training planned, etc. Describe what supervisory assistance and support management will provide the employee; such as, specific work reviews and/or counseling sessions planned, etc.]

Beginning on the date you receive this letter, you will be given ninety (90) calendar days during which you will have the opportunity to demonstrate that you can perform at the fully successful level with respect to the above critical element(s) and performance standard(s). To obtain a fully successful level of performance you must meet all of the performance standards listed in the critical element(s) above.

During the OTI, you will be expected to perform all the elements of your performance work plan. You must independently perform these duties at least at the fully successful level.

At the end of the ninety (90) calendar day period, I will evaluate your work and make a determination whether your performance during the ninety (90) calendar day period has reached the level required for retention in your position. You will be informed, soon thereafter, of whatever further action is to be taken.

If your performance has reached the level required for retention in your position you must continue to perform at an acceptable level. If your performance again becomes unacceptable before one (1) year from the date of this OTI, I may remove or reduce you in grade without affording you an additional opportunity to improve your performance.

If your performance has not reached the level required for retention in your position, you may be removed or reduced in grade.

Sample County Office OTI Letter

Please be reminded that it is FSA's policy to offer Employee Assistance Program (EAP) counseling to all employees who may be experiencing personal problems that appear to be affecting their conduct. In advising you of this counseling service, we are not implying that you have such a problem. The availability of this program is routinely communicated to employees. If you believe that the EAP program may be helpful, you may avail yourself of these services by contacting EAP at 1-888-290-4327.

If you have any questions on this matter, feel free to contact me. I am available to answer your questions and to assist you in improving your performance during this period.

Sincerely,

CED or Committee

Sample County Office Removal or Reduction-In-Grade for Performance

Pursuant to Handbook 22-PM, Paragraph ____, in a letter dated ____ you were informed that your performance had become unacceptable in the critical element(s) stated below and you were placed on an Opportunity-to-Improve (OTI) Plan. You were also informed that you would be given an opportunity to improve your performance with respect to those critical elements to the fully successful level. You have failed to perform at the level required for retention in our position as demonstrated by the instances of unacceptable performance cited below which occurred during your opportunity to improve period.

This action is based on the following:

Reason I: Unacceptable performance in critical element [title of critical element]

Performance standard: [List in its entirety.]

Specification 1: [Be concise, direct, and easy to understand. Include information on what the employee did or did not do, with reference to specific dates, places, cases, etc., and what the employee should have done. Include references to required procedures, counseling, or instructions given previously about the matter. Include any harm caused by, or resulting from, the deficiency.

Specification 2: Etc.

It is my decision to remove you (or reduce you in grade) effective (date). [The effective date must 14 calendar days after the employee receives the notification of removal.

You have fifteen (15) calendar days to exercise your right to have this action reviewed by the State Committee, as provided in Handbook 22-PM. Your request for review must be in writing and must be filed with the State Committee within fifteen (15) calendar days of the date you receive this notification. Please advise the State Committee if you desire to appear in person, to submit only a written response, or to have the review based only on the existing record. Your written request should be sent to (address).

You also have the right to be represented by an attorney or other representative of your choice. Your written designation of representative, if any, should be forwarded to the State FSA Committee.

You also have the right to view the material relied upon to support the reason in this notice. This material is available in the (appropriate Employee and Labor Relations Branch or Section). Any procedural questions you may have regarding this matter should also be directed to the Employee and Labor Relations (Branch or Section).

Sample County Office Removal or Reduction-In-Grade for Performance (Continued)

An allegation that the action taken against you was based in whole or in part on discrimination because of race, color, religion, sex, age, national origin, or physical or mental handicap, may be taken up with FSA under Equal Employment Opportunity (EEO) Commission regulations, Part 1614, provided that such allegation is brought to the attention of an EEO counselor within forty-five (45) calendar days from the effective date of this action. Information about these appeal rights and procedures may be obtained from the Employee and Labor Relations (Branch or Section) and/or your EEO counselor.

The Standard Form 50 (SF-50) effecting your removal is enclosed [or: will be forwarded to you when available.]

Sincerely,

First line supervisor or Appropriate Committee

Sample County Office Official Reprimand Letter

This is a letter of official reprimand for [identify the offense; such as, your failure to readily respond to the direction of your supervisor, etc.]

[Describe the offense, provide times and dates, location, etc. and as appropriate cite any regulatory violation.]

[In cases of off-duty misconduct, state the nexus. The nexus might be stated, as applicable, in terms of publicity or notoriety, the effect on the image of FSA, or FSA's ability to accomplish its mission. The effect on management's ability to rely on the integrity, honesty, or good judgment of the employee (especially for responsible jobs), the effect on coworkers; such as, safety, morale, job performance, etc., and direct applicability to the job. Might begin with, "Such conduct seriously impairs the efficiency of ..."]

You are cautioned that any future violations of this nature, or other misconduct, may result in more severe disciplinary action, up to and including removal.

Please be reminded that it is FSA's policy to offer Employee Assistance Program (EAP) counseling to all employees who may be experiencing personal problems that appear to be affecting their conduct. In advising you of this counseling service, we are not implying that you have such a problem. The availability of this program is routinely communicated to employees. If you believe that the EAP program may be helpful, you may avail yourself of these services by contacting EAP at 1-888-290-4327.

You may grieve this action according to Handbook 22-PM, Part 10.5. Your grievance must be filed in writing within thirty (30) calendar days from the effective date of this action. The grievance must be filed with the Chairperson, State Grievance Board at [address].

A copy of this letter will be placed in your Official Personnel Folder for a period not to exceed two (2) years or until you transfer to another agency, or are otherwise separated from FSA.

Sincerely,

First line supervisor

Sample County Office STC Review of Performance Separation Letter

*--

On (date) the (State) State FSA Committee (STC) reviewed your performance separation action that was taken by the (County) County FSA Office. During the review, the STC considered the information provided by you in response to the notice of separation dated (date). [If new information was submitted that should be addressed.] The STC also considered statements, that were provided to you, from the (County) County FSA Committee, District Director, and documentary evidence provided by the (County) County FSA Office.

After reviewing the entire record in this matter, the STC has decided to affirm the performance based separation action taken by the (County) County FSA Office.

You have the right to appeal this decision to the Deputy Administrator for Field Operations as provided in Handbook 22-PM. You may either request a hearing before the Deputy Administrator or his representative or request a determination be made based on the written record. You also have a right to be represented by an attorney or other representative.

An appeal must be filed in writing within fifteen (15) calendar days from the date you receive this decision. You must indicate in any response whether you wish to have a hearing or you wish to present only a written response. Also include whether you are represented by an attorney or other representative. Appeals must be in writing and sent to the Deputy Administrator for Field Operations, 1400 Independence Ave. S.W., Room 3090 S, Stop 0539, Washington, D.C. 20250-0539.

Sincerely,

Chairperson, (State) State FSA Committee

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Sample County Office Notice of Proposed Suspension for 14 Days or Less

*--

This is a notice of proposed disciplinary suspension issued pursuant to Handbook 22-PM, paragraph _____. To promote the efficiency of FSA, it is proposed to suspend you from duty and pay for a period of _____ calendar days, no sooner than 7 calendar days from the date you receive this notice.

This proposed suspension is based on the following reason(s):

Reason I: [State a specific identifiable offense that refers to personal conduct on the part of the employee; what s/he actually did that was wrong. Where appropriate cite a specific regulatory rule.]

Specification 1: [Specifically describe the offense, with reference to times, dates, location, persons directly involved, acts, and actions.]

[Note: Use as many reasons as there are clearly distinct offenses and as many specifications as necessary.]

[In cases of off-duty misconduct, state the nexus. The nexus might be stated, as applicable, in terms of publicity or notoriety, the effect on the image of FSA, or FSA's ability to accomplish its mission. The effect on management's ability to rely on the integrity, honesty, or good judgment of the employee (especially for responsible jobs), the effect on coworkers; such as, safety, morale, job performance, etc., and direct applicability to the job. Might begin with, "Such conduct seriously impairs the efficiency of ..."]

[Reference prior discipline or other aggravating circumstances; such as, "I am also taking into account the fact that..."]

You have the right to view the material relied upon to support the reason(s) in this notice. This material is available in the Employee and Labor Relations Section, telephone number 816-926-6643 [or 202-401-0684 if HRD/WDC is handling the case]. Any procedural questions you may have regarding this matter should also be directed to the Employee and Labor Relations Section. You also have the right to be represented by an attorney or other representative of your choice. Your written designation of representative, if any, should be forwarded to (deciding official).

You have the right to answer both personally and in writing and to furnish affidavits and evidence in support of your answer. Your written and/or oral reply must be received by (appropriate second level supervisor) within 7 calendar days from your receipt of this letter. Any written reply or request for an oral reply should be addressed to (appropriate second level supervisor). Should you desire an oral reply, you must request it within seven (7) calendar days from your receipt of this letter.

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Sample County Office Notice of Proposed Suspension for 14 Days or Less (Continued)

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It is FSA's policy to offer Employee Assistance Program (EAP) counseling to all employees who may be experiencing personal problems that appear to be affecting their conduct. In advising you of this counseling service we are not implying that you have such a problem. The availability of this program is routinely communicated to employees. If you believe that the EAP program may be helpful, you may avail yourself of these services by contacting EAP at 1-800-222-0864.

A final decision will not be made in this matter until your reply or replies have been received and considered, or if no reply is received, until after the reply period has passed. Any replies submitted by you will be given full consideration. You will be notified in writing of the final decision.

Sincerely,

Proposing Official or Committee

--*

Sample County Office Decision Letter for Suspension of 14 Days or Less

In a letter dated ____, it was proposed to suspend you from duty and pay for a period of ____calendar days based on the reason(s) and specification(s) therein.

I have carefully considered [replies and their dates]

[If the employee raised an issue of discrimination at the oral/written reply stage, the deciding official must state a legitimate management reason for the action. For example: In your reply, you allege that this action is being taken against you because of your _____. Having considered your replies (and the evidence you have submitted) I am persuaded that there are no discriminatory motives for the action. A nondiscriminatory reason for the action is that your conduct does not meet the standards required by FSA.]

[If the employee has raised any factual disputes, the deciding official must state why each was rejected. Factual disputes arise when the employee presents credible evidence which appears to conflict with the proposal letter's facts. They do not include arguments, such as whether or not there is a nexus or whether or not the penalty is appropriate. It is sufficient to state which facts are found more credible.]

My decision regarding the reason(s) stated in the letter of ____ is as follows:

Reason I: Sustained
Specification 1: Sustained

In determining what penalty is adequate and appropriate in this case, I have considered all relevant factors, [including those raised by you (and your representative) in your replies.]

[If prior discipline or aggravating circumstances were mentioned in the proposal, they should also be referenced here; such as, "I have also taken into consideration the fact that you received a ..." Any nexus statement should also be referenced; such as, "I have also determined that your misconduct has impaired the efficiency of FSA."]

It is my decision that, in order to promote the efficiency of the service, you will be suspended from duty and pay for a period of ____ calendar days commencing _____. You will return to duty on _____. You are advised that any repetition of this misconduct or other misconduct may result in more severe disciplinary action, up to and including removal.

[If COC is deciding: You have fifteen (15) calendar days from the date of mailing of this notice to request in writing to have this action reviewed by the State Committee. You may respond in writing, in person, or both to show reasons why this action should not have been taken. If you wish to make a personal appearance before the State Committee, you must indicate in writing within seven (7) calendar days so that your appearance can be scheduled. Your written request should be sent to: [address]. This review constitutes the final FSA decision.]

Sample County Office Decision Letter for Suspension of 14 Days or Less (Continued)

[If STC is deciding: You have fifteen (15) calendar days from the date of mailing of this notice in which to request in writing a final review by the Deputy Administrator for Field Operations (DAFO). The DAFO review is on the written record. There is no right to a hearing. Your written request should include any additional information you wish the DAFO to consider. The request should be sent to: Deputy Administrator for Field Operations, USDA/FSA, 1400 Independence Ave SW, Stop 0539, Washington DC 20250-0539.

An allegation that the action taken against you was based in whole or in part on discrimination because of race, color, religion, sex, age, national origin, or physical or mental handicap, may be taken up with FSA under the Equal Employment Opportunity (EEO) Commission regulations, Part 1614, provided that such allegation is brought to the attention of an EEO counselor within forty-five (45) calendar days of the effective date of this action. Information about these appeal rights and procedures may be obtained from the Employee and Labor Relations Branch and/or your EEO counselor.

The Standard Form 50's (SF-50') effecting your suspension and return to duty are enclosed [or: will be forwarded to you when available.]

Sincerely,

Deciding Official or Committee

Sample County Office Notice Of Proposed Removal or Suspension for More Than 14 Days

This is a notice of proposed adverse action issued pursuant to Handbook 22-PM, Paragraph (___). In order to promote the efficiency of service, it is proposed to [remove you from service, reduce you in grade, or suspend you from duty and pay for a period of {15 or more} calendar days], no sooner than thirty (30) calendar days from the date you receive notice.

This proposed adverse action is based on the following reason(s):

Reason I: [State a specific identifiable offense that refers to personal conduct on the part of the employee, what s/he actually did that was wrong. Where appropriate cite a specific regulation.]

Specification 1: [Specifically describe the offense, with reference to times, dates, location, person directly involved, acts, and actions.]

[Note: Use as many reasons as there are clearly distinct offenses and as many specifications as necessary.]

[In case of off-duty misconduct, state the nexus. Describe why and how there is a connection between the specific off-duty misconduct and the efficiency of the service. Example: Such conduct seriously impairs the efficiency of the service...]

[If prior discipline or other aggravating circumstances are present; state, "I am also taking into account the fact that..."]

You have the right to view the material relied upon to support the reason(s) in this notice. This material is available in (state the appropriate Employee and Labor Relations Branch and phone number). Any procedural questions you may have regarding this matter should also be directed to the (state appropriate ELRB). You have the right to a reasonable amount of official time to review the material relied upon and to prepare an answer to the charges. You also have the right to be represented by an attorney or another representative of your choice. Your written designation of representative, if any, should be forwarded to (deciding official).

You have the right to answer, both personally and in writing, and to furnish affidavits and evidence in support of your answer. Your written and/or oral reply must be received by (deciding official) within thirty (30) calendar days from your receipt of this letter. Any written reply or request for an oral reply should be addressed to (deciding official). Should you desire an oral reply, you must request it within seven (7) calendar days from receipt of this letter.

**Sample County Office Notice Of Proposed Removal or Suspension for More Than 14 Days
(Continued)**

Please be reminded that it is FSA's policy to offer Employee Assistance Program (EAP) counseling to all employees who may be experiencing personal problems that appear to be affecting their conduct. In advising you of this counseling service, we are not implying that you have such a problem. The availability of this program is routinely communicated to employees. If you believe that the EAP program may be helpful, you may avail yourself of these services by contacting EAP at 1-888-290-4327.

A final decision will not be made in this matter until your reply or replies have been received and considered, or, if no reply is received, until after the time specified for the replies has passed. Any replies submitted by you will be given full consideration. You will be notified in writing of the final decision.

Sincerely,

CED or Committee

Sample County Office Decision Notice of Removal, Reduction-in-Grade, or Suspension for More Than 14 Days

In a letter dated (____), it was proposed to {remove you from service, reduce you in grade, or suspend you from duty and pay for a period of [15 or more] calendar days} based on the reason(s) and specification(s) therein. This proposal was made pursuant to Handbook 22-PM, Paragraph ____.

I have carefully considered [include replies and their dates, including any medical documentation provided.]

[If the employee raised an issue of discrimination at the oral/written reply stage, the deciding official must state a legitimate management reason for the action. For example: In your reply, you allege that this action is being taken against you because of your _____. Having considered your replies (and the evidence you have submitted) I am persuaded that there are no discriminatory motives for the action. A nondiscriminatory reason for the action is that your conduct does not meet the standards required by FSA.]

[If the employee has raised any factual disputes, the deciding official must state why each was rejected. Factual disputes arise when the employee presents credible evidence which appears to conflict with the proposal letter's facts. They do not include arguments, such as whether or not there is a nexus or whether or not the penalty is appropriate. It is sufficient to state which facts are found more credible.]

My decision regarding the reason(s) stated in the letter of ____ is as follows:

Reason I: Sustained

Specification 1: Sustained

In determining what penalty is adequate and appropriate in this case, I have considered all relevant factors, [including those raised by you (and your representative) in your replies.]

[If prior discipline or aggravating circumstances were mentioned in the proposal, they should also be referenced here – "I have also taken into consideration the fact that you received a ..." Any nexus statement should also be referenced – "I have also determined that your misconduct has impaired the efficiency of the service."]

[For removal: I have concluded that a removal will promote the efficiency of the service and that a lesser penalty would be inadequate. It is my decision to remove you from the service effective _____.] You are also disqualified for future service and employment as either an FSA Committee Member or employee of an FSA County Committee.]

[For a suspension: I have concluded that a suspension will promote the efficiency of service. It is my decision that you be suspended from duty and pay for a period of _____ calendar days commencing _____. You will return to duty on _____. You are advised that any repetition of this misconduct or other misconduct may result in more severe disciplinary action.]

Sample County Office Decision Notice of Removal, Reduction-in-Grade, or Suspension for More Than 14 Days (Continued)

[If STC is deciding: You have fifteen (15) calendar days from the date of mailing this decision in which to request, in writing, a hearing before the Deputy Administrator, Field Operations, as provided by Handbook 22-PM. You have a right to a hearing before the Deputy Administrator, or his representative. Please indicate in any response if you wish to have a hearing, or you wish to present only a written response. Direct any response to Deputy Administrator, Field Operations, USDA/FSA, 1400 Independence Avenue SW, Stop 0539, Washington DC 20250-0539.]

[If COC is deciding: You have fifteen (15) calendar days from the date of mailing of this decision letter in which to request in writing this action be reviewed by the State Committee. You may respond in writing, in person, or both to show reasons why this action should not have been taken. If you want to make a personal appearance before the State Committee, you must indicate in writing within seven (7) calendar days so that your appearance can be scheduled. Your written request should be sent to: (address).

An allegation that the action taken against you was based in whole or in part on discrimination because of race, color, religion, sex, age, national origin, or physical or mental handicap, may be taken up with FSA under Equal Employment Opportunity (EEO) Commission regulation, Part 1614, provided that such allegation is brought to the attention of an EEO counselor within forty-five (45) calendar days of the effective date of this action. Information about these appeal rights and procedures may be obtained from the Employee and Labor Relations (Branch or Section) and/or your EEO counselor.

Under no circumstances may you appeal this action through both EEO and DAFO. If EEO process is initiated, DAFO's proceedings will be terminated. Information about appeal rights and procedures may be obtained from (appropriated ELR Branch or Section).

[If the employee meets the service requirements for a disability retirement and there are indications that a medical condition may be the cause of the reasons for the action, add: If you believe that a medical condition is the cause of the reasons for this action, you may file an application for a disability retirement. Said application must be filed with the Office of personnel Management within one (1) year from your date of separation. Please contact the (appropriate ELR Branch or Section) for additional information.

A Standard Form 50 (SF-50) effecting your ____ is enclosed [or: will be forwarded to you when available.]

Sincerely,

Deciding Official or Committee

Sample County Office Proposed Indefinite Suspension Letter

This is a notice of proposed adverse action issued in pursuant to Handbook 22-PM, paragraph ____.

To promote the efficiency of FSA, it is proposed to suspend you from duty and pay for an indefinite period of time pending [further investigation and /or resolution of the criminal charges against you.] Should this proposal result in an indefinite suspension and should investigation and administrative determination so warrant, a removal action may be proposed while you are in an indefinite suspension status.

This proposed indefinite suspension is based on the following reason:

Reason I: [State the basis for the indefinite suspension. Example: You were indicted for ... or there is reasonable cause to believe that you may be guilty of a crime for which a sentence of imprisonment may be imposed.]

Specification 1: [The particulars of the legal process (when arrested or indicted, where, for what) or a brief description of what the investigation disclosed and why it is believed that a crime has been committed.]

[In cases of off-duty misconduct, state the nexus. The nexus may be stated in terms of publicly or notoriety, the effect on the image of FSA or its ability to accomplish its mission, the effect on FSA's ability to rely on the integrity, honesty or good judgment of the employee, and the direct applicability to the job. Example: The conduct at issue in this matter would seriously impair the efficiency of the service...]

You have the right to view the material relied upon to support the reason(s) in this notice. This material is available in (provide the appropriate Employee and Labor Relations Branch and phone number). Any procedural questions you may have regarding this matter should also be directed to the (appropriate Employee and Labor Relations Branch). You have the right to a reasonable amount of official time to review the material relied upon and to prepare an answer to the charges. You also have the right to be represented by an attorney or another representative of your choice. Your written designation of representative, if any, should be forwarded to (appropriate second level supervisor).

Because there is a reasonable cause to believe that a crime has been committed for which a sentence of imprisonment may be imposed, the notice period for this proposed action is reduced to seven (7) calendar days. You have the right to answer both personally and in writing and to furnish affidavits and evidence in support of your answer. Your written and/or oral reply must be received by (second level supervisor) within seven (7) calendar days from your receipt of this letter.

Sample County Office Proposed Indefinite Suspension Letter (Continued)

It is FSA's policy to offer Employee Assistance Program (EAP) counseling to all employees who may be experiencing personal problems that appear to be affecting their conduct. In advising you of this counseling service we are not implying that you have such a problem. The availability of this program is routinely communicated to employees. If you believe that the EAP program may be helpful, you may avail yourself of these services by contacting EAP at 1-888-290-4327.

A final decision will not be made in this matter until your reply or replies have been received and considered, or if no reply is received, until after the time specified for the replies has passed. Any replies submitted by you will be given full consideration. You will be notified in writing of the final decision.

[If the employee is in a duty status; such as, not on AWOL or approved leave, then state: You will be retained in a nonduty pay status during the advance notice period. You will continue in that status for a period of ten (10) calendar days or until a decision is effected on this proposal, whichever is earlier.]

Sincerely,

Proposing Official or Committee

Sample County Office Decision Notice of Indefinite Suspension

In a letter dated ____, it was proposed to suspend you for an indefinite period of time pending [indicate the reason; such as, further investigation and/or resolution of the criminal charges] based on the reason(s) and specification(s) therein. This action is being taken pursuant to Handbook 22-PM, paragraph ____.

I have carefully considered (replies and their dates).

[If the employee raised an issue of discrimination at the oral/written reply stage, the deciding official must state a legitimate management reason for the action. For example: In your reply, you allege that this action is being taken against you because of your _____. Having considered your replies (and the evidence you have submitted) I am persuaded that there are no discriminatory motives for the action. A nondiscriminatory reason for the action is that your conduct does not meet the standards required by FSA.]

[If the employee has raised any factual disputes, the deciding official must state why each was rejected. Factual disputes arise when the employee presents credible evidence which appears to conflict with the proposal letter's facts. They do not include arguments, such as whether or not there is a nexus or whether or not the penalty is appropriate. It is sufficient to state which facts are found more credible.]

My decision regarding the reason(s) stated in the letter of ____ is as follows:

Reason I: Sustained
Specification 1: Sustained

[In determining what penalty is adequate and appropriate in this case, I have considered all relevant factors, including those raised by you and your representative in your replies.]

[Any nexus statement in the proposed letter should be referenced, for example: I have also determined that the conduct at issue in this matter would seriously impair the efficiency of the service.]

I have concluded that an indefinite suspension will promote the efficiency of the service. It is my decision that you be suspended from duty and pay commencing _____. A removal action may be proposed prior to the termination of this suspension, which will occur [state the situation which will end the indefinite suspension, i.e., upon completion of the investigation or resolution of the criminal charges.]

[If STC is deciding : You have fifteen (15) calendar days from the date of mailing this decision in which to request in writing to have this reviewed by the Deputy Administrator for Program Delivery and Field Operations, as provided by Handbook 22-PM. You have a right to a hearing before the Deputy Administrator, or his representative. Please indicate in any response if you wish to have a hearing, or you wish to present only a written response. Direct any response to Deputy Administrator, Field Operations, USDA-FSA, 1400 Independence Ave SW, Stop 539, Washington DC 20250-0539.]

Sample County Office Decision Notice of Indefinite Suspension (Continued)

[If COC is deciding: You have fifteen (15) calendar days from the date of mailing of this decision letter in which to request in writing to have this action reviewed by the State Committee. You may respond in writing, in person, or both to show reasons why this action should not have been taken. If you wish to make a personal appearance before the State Committee, you must indicate in writing within seven (7) calendar days so that your appearance can be scheduled. Your written request should be sent: [address].

An allegation that the action taken against you was based in whole or in part on discrimination because of race, color, religion, sex, age, national origin, or physical or mental handicap, may be taken up with FSA under Equal Employment Opportunity (EEO) Commission regulations, Part 1614 provided that such allegation is brought to the attention of an EEO counselor within forty-five (45) calendar days of the effective date of this action. Information about these appeal rights and procedures may be obtained from the Employee and Labor Relations Branch and/or your EEO counselor.

Under no circumstances may you appeal this action through both EEO and DAFO. If the EEO process is initiated the DAFO proceedings will be terminated.

Information about appeal right and procedures may be obtained [appropriated Employee and Labor Relations Branch].

[If the employee meets the service requirements for a disability retirement and there are indications that a medical condition may be the cause of the reasons for the action, add: If you believe that a medical condition is the cause of the reasons for this action, you may file an application for a disability retirement. Said application must be filed with the Office of Personnel Management within one (1) year from your date of separation. Please contact [appropriate Employee and Labor Relations Branch] for additional information.

A Standard Form 50 (SF-50) effecting your indefinite suspension is enclosed (or: will be forwarded to you when available.)

Sincerely,

Deciding Official or Committee

THE ROLE OF EQUAL OPPORTUNITY COUNSELORS**1 BACKGROUND**

EEO counselors play a vital role in the EEO program. Their responsibilities complement, and are an extension of, those of the manager and the Administrator.

A Managers. EEO is the manager's responsibility because it is the manager who is ultimately responsible for the success or failure to the program.

1. The EEO program must have the personal involvement of the head of the office.
2. Program responsibility is shared by every line manager and supervisor in the organization.

B EEO.

- 1 The head of each Federal Department and Agency receives staff assistance on the program from a Director of EEO who assists and advises the Agency head on conducting an affirmative EEO program.
- 2 Organization subdivisions within each Agency are served by EEO officers who either are organization heads or who assist their organizational head in carrying out effective and affirmative EEO program in their organizations, including handling formal discrimination complaints.

2 COUNSELING

The counseling responsibilities of the EEO counselor are to:

A Establish and open and sympathetic channel through which employees may raise questions, discuss grievances, get answers, and on an informal basis, get resolutions to EEO problems.

B Help employees and managers communicate with each other.

C Try to resolve problems that are brought to their attention by employees. They do this by:

- 1 Discussing the employee's problems with the employee, and the employee's supervisors or associates.
- 2 Advising the employee of the issues involved in the matters brought to their attention.
- 3 Finding solutions to problems if it is possible to do so.

D Make a report, if appropriate, to the Administrator through Director, EEO/CRS on finding in particular cases. The employee's name may be used only when permitted to do so.

E Make recommendations for action, as necessary, to the EEO officer if the officer's involvement is necessary to reach a solution or correct a problem.

F Inform employees about their right to file formal complaints if attempts at informal resolution fail.

3 PERSONAL CHARACTERISTICS

EEO counselors should have some familiarity with the civil rights movement and a general understanding of the organization relationships within ASCS and its offices. In addition, they must:

- A Be sensitive to the problems of intergroup relations and have empathy with employees who bring problems to their attention.
- B Have good judgment.
- C Be objective and fair.
- D Be able to secure the confidence of employees who they will counsel.
- E Be able to work and communicate effectively with managers and other employees.

4 LIAISON

EEO counselors:

- A Maintain liaison as necessary with the personnel office and other elements of the organization, on EEO matters.
- B Report on EEO matters to the EEO officer, through the Director, EEO/CRS.
- C Submit recommendations about the EEO program as a means of assisting the EEO officer in carrying out the most effective EEO program possible.

5 SUPPORT OF EEO COUNSELORS

- A To be fully effective, the EEO counselors' role must be clearly understood by everyone in the organization.
 - 1 They need solid support from the EEO officer and other managers.
 - 2 Employees must be aware that EEO counselors may act outside the formal complaint process. They can:
 - a Be readily accessible to employees.
 - b Function effectively on an informal basis, handling individual problems and trying to resolve them before they reach the formal complaint stage.
 - 3 Employees must discuss their problems with EEO counselors before they file a formal discrimination complaint.
- B Whether the EEO counselors are full or part-time, they must be given adequate support in terms of cooperation throughout the organization, resources, and time.
 - 1 If they are not full-time, they must still be free to work exclusively and at some length on EEO problems when the circumstances demand.
 - 2 The EEO counselor's role and responsibility must be communicated to every employee within their area of responsibility.
 - 3 It must be made clear that:
 - a The EEO counselors' responsibilities are an integral and essential part of the EEO program.
 - b Supervisors and other employees should be cooperative in their efforts to resolve problems informally.

EXAMPLE FORMAT - NOTICE OF RIGHT TO FILE A DISCRIMINATION COMPLAINT

SUBJECT : NOTICE OF RIGHT TO FILE A DISCRIMINATION COMPLAINT

FROM : EEO Counselor DATE:
(Specific Installation)

TO : (Name of Person Counseled)

This is to inform you that although counseling on the matter you brought to the attention of the EEOC has not been completed, 21 calendar days have gone by since you first contacted the counselor and you are now entitled, if you want to do so, to file a discrimination complaint if you believe you have been discriminated against on the basis of race, color, religion, sex, national origin, age, physical or mental handicap.

If you do not file a complaint at this time, counseling will continue and your right to file a complaint will also continue 15 calendar days AFTER RECEIPT OF NOTICE OF FINAL INTERVIEW with the counselor. The counselor will inform you in writing when the final counseling interview is conducted.

If you file a complaint, it must be in writing and be filed in person or by mail with Director, EEO/CRS ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20250, or any of the following officials authorized to receive discrimination complaints.

Administrator, ASCS (EEOO)
U.S. Department of Agriculture
P.O. Box 2415
Washington, D.C. 20013

USDA Federal Women's Program Manager
Office of Minority Affairs
U.S. Department of Agriculture
Washington, D.C. 20250

USDA Hispanic Employment Program Manager
Office of Minority Affairs
U.S. Department of Agriculture
Washington, D.C. 20250

GIVE THIS NOTICE TO THE PERSON COUNSELED 21 CALENDAR DAYS AFTER THE COUNSELOR WAS FIRST CONSULTED ON THE MATTER BY THE EMPLOYEE OR APPLICANT.

Keep 1 copy. If a complaint is filed, attach copy to EEO counselor's report on counseling activities and make a part of the complaint file.

EXAMPLE FORMAT - NOTICE OF FINAL INTERVIEW WITH EEO COUNSELOR

SUBJECT : NOTICE OF FINAL INTERVIEW WITH EEO COUNSELOR

FROM : EEO Counselor DATE:
(Specific Installation)

TO : (Name of Person Counseled)

This is notice that on the above date the final counseling interview was held in connection with the matter you presented to the EEO.

If you believe that you have been discriminated against on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap, you have the right to file a COMPLAINT OF DISCRIMINATION WITHIN 15 CALENDAR DAYS AFTER RECEIPT OF THIS NOTICE.

The complaint must be in writing and may be filed in person or by mail with Director, EEO/CRS ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20250, or any of the following officials authorized to receive discrimination complaints.

Administrator, ASCS (EEOO)
U.S. Department of Agriculture
P.O. Box 2415
Washington, D.C. 20013

USDA Federal Women's Program Manager
Office of Minority Affairs
U.S. Department of Agriculture
Washington, D.C. 20250

USDA Hispanic Employment Program Manager
Office of Minority Affairs
U.S. Department of Agriculture
Washington, D.C. 20250

GIVE THIS NOTICE TO THE PERSON COUNSELED DURING THE FINAL INTERVIEW.

Keep 1 copy. If a complaint is filed, attach copy to EEO counselor's report on counseling activities and make it a part of the complaint file.

