

Department of State

§ 16.3

(f) *Grievance Board* or *Board* means the full Foreign Service Grievance Board, or a Panel or member thereof, as appropriate.

(g) *Party* means the grievant or the Foreign Affairs agency having control over the act or condition forming the subject matter of the grievance.

(h) *Bureau* means equivalent organizational elements in State and USIA, and includes offices in AID.

(i) *Days* means calendar days.

§ 16.2 General provisions.

(a) *Statement of purpose.* These regulations establish procedures as required by law to provide Foreign Service officers and employees (and their survivors) of the Foreign Affairs agencies, a grievance procedure to insure a full measure of due process, and to provide for the just consideration and resolution of grievances of such officers, employees, and survivors. No regulation promulgated in this part shall be interpreted or applied in any manner which would alter or abridge the provisions of the due process established by the Congress in Pub. L. 94-141, 22 U.S.C. 1037, section 691.

(b) *Discussion of complaints.* (1) Every effort should be made to settle any employee complaint informally, promptly, and satisfactorily.

(2) Supervisors and other responsible officers should encourage employees to discuss complaints with them and should respond in a timely manner to resolve the complaints.

(3) An employee initially should discuss a complaint with the employee's current supervisor or with the responsible officer who has immediate jurisdiction over the complaint to give that person an opportunity to resolve the matter, before further steps are taken under these procedures.

(c) *Guidance.* Nothing in these procedures prevents a grievant from seeking guidance from any official who might be helpful respecting the submission of a grievance or its resolution.

(d) *Freedom of action.* (1) Any grievant, witness, representative or other person involved in a proceeding hereunder shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them. The For-

Foreign Affairs agencies recognize their obligation to insure compliance with this section. Any person involved or having immediate knowledge of any alleged breach of this section should call it to the attention of the pertinent foreign affairs agency through appropriate channels for corrective action as necessary. Normally such allegations should be brought to the attention of the senior agency official at the post; and at Washington, DC, to the Director, Grievance Staff for State; Chief, Employee Relations Branch for AID and Chief, Employee-Management Relations Division for USIA.

(2) The grievant has the right to a representative of the grievant's own choosing at every stage of the proceedings. The grievant and representative(s) who are under the control, supervision, or responsibility of the Foreign Affairs agencies shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the grievance.

(3) Any witness under the control, supervision, or responsibility of a Foreign Affairs agency shall be granted reasonable periods of administrative leave to appear and testify at any such proceeding.

(4) The Foreign Service Grievance Board established hereunder shall have authority to ensure that no copy of the determination of the agency head or designee to reject a Grievance Board recommendation, no notation of the failure of the Grievance Board to find for the grievant, and no notation that a proceeding is pending or has been held, shall be entered in the personnel records of the grievant (unless by order of the Grievance Board as a remedy for the grievance) or those of any other officer or employee connected to the grievance. The Foreign Affairs agencies shall maintain grievance records under appropriate safeguards to preserve confidentiality (§16.9).

§ 16.3 Access to records.

(a) *Grievance Board records.* The grievant and the grievant's representative shall have access to the record of proceedings, including the decision of the Board.

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(b) *Agency records.* (1) In considering the validity of a grievance, the Grievance Board shall have access, to the extent permitted by law, to any agency record considered by the Board to be relevant to the grievant and the subject matter of the grievance.

(2) The agency shall, subject to applicable law, promptly furnish the grievant any agency record which the grievant requests to substantiate the grievance and which the agency or the Grievance Board determines is relevant and material to the proceeding. When deemed appropriate by the agency or the Board, a grievant may be supplied with only a summary or extract of classified material. If a request by a grievant for a document is denied prior to or during the agency's consideration of a grievance, such denial may be raised by the grievant as an integral part of the grievance before the Board.

(3) These regulations do not require disclosure of any official agency record to the Grievance Board or a grievant where the head of agency or deputy determines in writing that such disclosure would adversely affect the foreign policy or national security of the United States.

§ 16.4 Time limits for grievance filing.

(a) A grievance concerning a continuing practice or condition may be presented at any time if its adverse effect is presently continuing. Documents contained in official employee personnel files, for example, shall be deemed to constitute a continuing condition.

(b) Subject to paragraph (a) of this section, a grievance under these regulations is forever barred, and the Grievance Board shall not consider or resolve the grievance, unless the grievance is presented within a period of 3 years after the occurrence or occurrences giving rise to the grievance, except that if the grievance arose earlier than 2 years prior to the effective date of these regulations, the grievance shall be so barred, and no considered and resolved, unless it is presented within a period of 2 years after the effective date of these regulations. There shall be excluded from the computation of any such period any time during which the grievant was unaware of

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the grounds which are the basis of the grievance and could not have discovered such grounds if the grievant had exercised, as determined by the Grievance Board, reasonable diligence.

(c) A grievance shall be deemed presented to the responsible official (§16.7(b)), transmitted to post or bureau (§16.7(c)) submitted for agency review (§16.8) or filed with the Grievance Board §16.11(a):

(1) On the date of its dispatch by telegram, registered or certified mail, or receipted mail, in a diplomatic pouch;

(2) On the date of its arrival at the appropriate office, if delivered by any other means.

§ 16.5 Relationship to other remedies.

(a) A grievant may not file a grievance under these procedures if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided, under another provision of law, regulation, or executive order, and the matter has been carried to final decision thereunder on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under these regulations by paragraph (a) of this section, the grievant may file under these regulations notwithstanding the fact that such grievance may be eligible for consideration, resolution, and relief under a regulation or executive order other than under these regulations, but such election of remedies shall be final upon the acceptance of jurisdiction by the Board.

§ 16.6 Security clearances.

The agencies shall use their best endeavors to expedite security clearances whenever necessary to ensure a fair and prompt investigation and hearing.

§ 16.7 Agency procedures.

(a) *Initial consideration.* (1) Grievances shall be considered through the steps provided in this section before they are filed with the Grievance Board.

(2) During the pendency of agency procedures under this section, the grievant may request a suspension of the proposed action of the character of