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## ADS Chapter 489

# Performance Based Actions - Civil Service

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## **ADS Chapter 489 – Performance Based Actions – Civil Service**

### **489.1 OVERVIEW**

This chapter provides policies and essential procedures regarding unacceptable performance of Civil Service employees.

This chapter applies only to Civil Service employees covered under 5 CFR Part 432. (See [5 CFR 432.102\(e\)](#))

Actions taken for unacceptable performance of Civil Service employees are based on the application of existing policy, essential procedures, legislation, and external regulations contained in the following ADS chapters and mandatory references. It is essential that these materials be consulted when referenced herein:

ADS 462 Employee Evaluation Program  
462.3.5 Appraisal Committee  
462.3.8 Unacceptable Performance

USAID/AFGE Negotiated Agreement  
Article 14 Performance Appraisal  
Article 30 Actions Based on Unacceptable Performance

Actions involving both unacceptable performance and misconduct are processed under the policies and essential procedures contained in ADS 487, Disciplinary and Adverse Actions Based on Misconduct - Civil Service. (See [ADS 487](#))

For Civil Service employees within the bargaining unit, the provisions of the USAID/AFGE negotiated agreement take precedence over any conflicting essential procedures in this chapter.

### **489.2 PRIMARY RESPONSIBILITIES**

**a. Rating officials (first-line supervisors)** are responsible for:

- 1) Offering employees performing at an unacceptable level a reasonable opportunity to demonstrate acceptable performance; (See [ADS Glossary](#) and [ADS 462.3.8](#))
- 2) Documenting employee efforts during the opportunity period to improve performance above the unacceptable level; and
- 3) Determining whether to reassign an employee or, in the event that the employee fails to improve, proposing the employee's reduction in grade or removal from the Federal service for unacceptable performance. A reduction in

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grade or removal action is accomplished by means of a written proposal notice to the affected employee.

**b. Deciding officials (second-line supervisors)** are responsible for making the decision to reduce in grade or remove an employee based on unacceptable performance and communicating that decision in writing to the employee.

**c. The Deputy Assistant Administrator, Office of Human Resources (DAA/OHR) or the Deputy Director, Office of Human Resources (DD/OHR)** may propose or decide performance based actions stemming from unacceptable performance under the provisions of concurrent authority. (See **489.3.8**) In addition, the Chief, Personnel Operations Division (OHR/POD) may propose performance based actions.

**d. The Office of Human Resources, Labor and Employee Relations and Performance Management Division (OHR/LERPM)** is responsible for providing advice and assistance to managers and supervisors, employees, and Bureau/Office administrative management staffs (AMS), concerning performance based actions. As appropriate, OHR/LERPM will consult with the Office of General Counsel (GC) in order to ensure consistency in application and that regulatory and legal requirements are met.

### **489.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES**

The statements contained within the .3 section of this ADS chapter are the official Agency policies and corresponding essential procedures.

#### **489.3.1 Timing of Action**

Pursuant to the requirements set forth in the law, regulations, and procedures, as well as the guidelines of this chapter, ADS 462, ADS 487, and the USAID/AFGE Negotiated Agreement, an employee may be reassigned, reduced in grade, or removed at any time during the performance appraisal cycle that the employee's performance is determined to be unacceptable in one or more critical elements.

#### **489.3.2 Determination of Unacceptable Performance**

Rating Officials shall determine whether an employee's performance is unacceptable in one or more critical elements. (See [Glossary](#)) The determination of unacceptable performance may be made at any time after a minimum of 120 days has elapsed since work objectives and performance measures were communicated in writing to the employee.

The Rating Official shall review the employee's performance against each work objective and determine whether it is substantially below the performance measure established for the objective. If the employee is performing substantially below the

performance measure of a work objective, then the employee is performing unacceptably. (See **489.3.4**)

In the event that the Rating Official determines that the employee is performing at an unacceptable level coincident with the end of the rating cycle (see [ADS 462](#)), the employee's rating cycle will be extended until the end of the opportunity period. If at that time the employee's performance is at an acceptable level (See [Glossary](#)), an overall performance rating will be prepared by the Rating Official for approval by the Appraisal Committee. (See [ADS 462.3.6](#))

### **489.3.3 Opportunity to Demonstrate Acceptable Performance**

If after the minimum 120 calendar-days following the establishment of work objectives and performance measures the Rating Official determines that an employee's performance is unacceptable in at least one critical element of the job, the employee must either be reassigned to another position or given a formal opportunity to demonstrate acceptable performance. (See [Glossary](#) and [ADS 462.3.8](#))

An opportunity to demonstrate acceptable performance begins with the issuance of a Notification of Unacceptable Performance and an Opportunity to Improve. (See [ADS 462.3.8](#)) Upon determining that an employee's performance is unacceptable in one or more critical job elements, the Rating Official shall notify the employee in writing of this unacceptable performance. (See [5 CFR 432.104](#)) Written notification shall be preceded by a progress review during which the employee is orally informed of the unacceptable nature of performance in one or more critical elements. The written notice shall be prepared in accordance with the provisions of 462.3.8 and shall contain:

- a) Reference to an earlier progress review and the fact that the employee's performance remains unacceptable. (See [ADS 462.3.3](#) and [ADS 462.3.8](#))
- b) A performance improvement plan (PIP) that provides a structured means of identifying the areas of unacceptable performance and lays out a plan for improving performance during the opportunity period. The minimum opportunity period is 30 calendar days.
- c) A statement addressing the possible consequences of the employee's failure to improve performance. (See [ADS 462.3.8a](#))

#### **489.3.3.1 Contents of PIP**

The PIP provides a clear statement of expectations for improved performance and includes the following:

- 1) The critical element(s) and corresponding standard(s) in which the employee's performance is unacceptable;

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- 2) Specific deficiencies in the employee's performance;
- 3) A written performance measure(s) for the "Needs Improvement" level; (See [ADS 462.3.6a \(4\)](#))
- 4) A reasonable period of time to demonstrate acceptable performance but in no case less than 30 calendar days; (See [Glossary](#)) and
- 5) Assistance that will be provided to improve the employee's unacceptable performance.

#### **489.3.3.2 Review of PIP**

The Rating Official must have the written notice and the PIP Plan reviewed by the Office of Human Resources, Labor and Employee Relations and Performance Management Division (OHR/LERPM) in order to ensure that the elements required by 489.3.3 and 489.3.3.1 are included before it is implemented.

#### **489.3.4 Improvement in Performance During Opportunity Period**

If the employee's performance improves to a level above unacceptable during the opportunity period, the Rating Official will issue a notice to the employee to that effect.

In accordance with the provisions of 462.3.8, if the employee demonstrates acceptable performance during the opportunity period, the notice of unacceptable performance will be retained by the Rating Official for one year from the beginning of the opportunity period. If the employee subsequently performs unacceptably in the critical element for which the opportunity to improve was provided, the Rating Official is not obliged to notify the employee and provide another opportunity period. (See [5 CFR 432.105\(a\)](#))

#### **489.3.5 Actions Based on Unacceptable Performance**

If after an employee is given a reasonable opportunity to demonstrate improved performance according to guidelines set forth in this chapter, performance continues to be unacceptable, the Rating Official shall propose that the employee be reduced in grade or removed from the Federal service.

If, within one year of the beginning of the opportunity period an employee's performance against a critical element again falls to the unacceptable level, the Rating Official does not have to establish another PIP before proposing that the employee be removed or down-graded.

A recommendation for reassignment is generally not appropriate upon conclusion of an unsuccessful opportunity period unless there is strong reason to believe that a new position will result in immediate and significant improvement in performance. If a

decision is made to reassign the employee, such action may be effected unilaterally by management without reply, decision, or appeal rights.

#### **489.3.6 Proposing and Taking Formal Action to Reduce in Grade or Terminate the Employee**

The Agency's policy is to adhere to the requirements of 5 CFR 432.105(a). The Rating Official shall propose either removal or reduction in grade based on continued unacceptable performance.

The Agency shall follow the procedures contained in 5 CFR 432.105(a). Before being issued to the employee, the written notice of proposed action shall be forwarded to and reviewed by OHR/LERPM and the Assistant General Counsel for Ethics/Administration (GC/EA).

#### **489.3.7 Decision to Reduce in Grade or Terminate the Employee**

In the event that the employee's performance does not improve above the unacceptable level at the conclusion of the opportunity period, the Deciding Official shall decide to reduce in grade or remove the employee.

The Deciding Official shall issue a final written decision in accordance with 5 CFR 432.105(b). (See [5 CFR 432.105\(b\)](#)) An acknowledgment copy of the decision must be provided to OHR/LERPM.

#### **489.3.8 Concurrent Authority**

The Deputy Assistant Administrator, Office of Human Resources (DAA/OHR) or the Deputy Director, Office of Human Resources (DD/OHR) also may either propose or decide performance based actions. Additionally, the Chief, Personnel Operations Division, may propose performance-based actions.

#### **489.3.9 Status of Employee Pending Decision**

The employee is retained in an active duty status during the notice period absent unusual circumstances requiring alternative arrangements, e.g., affected employee evidences behavior that might be harmful to self, coworkers, or others.

#### **489.3.10 Appeal Rights Not Involving Allegations of Discrimination**

For cases not involving an allegation of discrimination, an employee against whom action is taken under this chapter is entitled to appeal an adverse decision to the Merit Systems Protection Board (MSPB) pursuant to the procedures contained in 5 CFR 432.106(a). (A copy of the MSPB rules and regulations, as well as the appeals form, will be provided to the employee consistent with 5 CFR Part 1201.)



Bargaining unit employees may also grieve the adverse decision under the negotiated grievance procedure, but may not both grieve and appeal this matter to the MSPB. An appeal forecloses the right to grieve. (See [5 CFR 432.106\(b\)](#))

#### **489.3.11 Grievance Rights Not Involving Allegations of Discrimination**

Bargaining unit employees have a right to grieve adverse decisions through the negotiated grievance procedure pursuant to 5 CFR 432.106(b). A copy of the procedure must accompany the decision letter. The procedure is contained in Article 31 of the Collective Bargaining Agreement (CBA) between the Agency and Local 1534, American Federation of Government Employees (AFGE).

Bargaining unit employees may also appeal the adverse decision to the MSPB, but may not both appeal and grieve this matter. A grievance forecloses the right to appeal.

#### **489.3.12 Appeal and Grievance Rights Involving Allegations of Discrimination**

If an employee believes that a decision reached under this chapter was based in whole or in part on discrimination (based on race, color, religion, sex, national origin, age, handicap, or retaliation for participation in the EEO complaint process), the employee may elect to appeal the decision in only one of the following ways:

- a) By filing a "mixed case" appeal through the MSPB in accordance with 5 CFR 1201.151;
- b) By filing a "mixed case" Equal Employment Opportunity (EEO) complaint with the USAID Office of Equal Opportunity Programs (EOP) office; (See [29 CFR 1614.302](#)) or
- c) By filing a "mixed case" grievance in accordance with Article 24, Section 5 of the CBA.

#### **489.3.13 Agency Records**

The Agency's policy is to follow 5 CFR 432.107. (See [5 CFR 432.107](#))

### **489.4 MANDATORY REFERENCES**

#### **489.4.1 External Mandatory References**

- a. [5 CFR Part 432 - Performance Based Reduction in Grade and Removal Actions](#)

- b. [5 CFR Part 1201 - Merit Systems Protection Board Practices and Procedures](#)
- c. [29 CFR Part 1614 - Federal Sector Equal Employment Opportunity](#)
- d. [Civil Service Reform Act of 1978, as amended](#)

#### 489.4.2 Internal Mandatory References

- a. [ADS 462, Employee Evaluation Program, Civil Service](#)
- b. [ADS 462maa, Employee Evaluation Program Guidebook](#)
- c. [ADS 487, Disciplinary and Adverse Actions Based Upon Employee Misconduct – Civil Service](#)
- d. [USAID/AFGE Negotiated Agreement](#)

#### 489.5 ADDITIONAL HELP

There are no Additional Help documents for this chapter.

#### 489.6 DEFINITIONS

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

##### **acceptable performance**

Performance that meets an employee's performance measure(s) at the Needs Improvement level (or higher) in the work objective(s) at issue. (**Chapter 489**)

##### **critical element**

A work objective that contributes to accomplishing organizational goals and objectives and is of such importance that unacceptable performance would result in unacceptable performance in the position. (**Chapters [462](#), [489](#))**

##### **opportunity period (civil service)**

The period during which an employee is given a reasonable opportunity to demonstrate acceptable performance after having job performance in one or more critical elements appraised as unacceptable. Typically, the minimum opportunity period is 30 days. (See also ADS 462.4). (**Chapter 489**)

##### **performance based action**

Action taken by the Agency either to place an employee in a lower-graded position or to remove an employee from the Agency's rolls. (**Chapter 489**)

**Performance Improvement Plan (PIP)**

A formal written plan provided to an employee whose performance in one or more critical elements is determined to be unacceptable. In addition to defining the length of the opportunity period, the PIP provides a structured means of identifying the areas of unacceptable performance and devising a plan for improving the employee's performance. (**Chapter 489**)

**performance plan**

That part of a Civil Service employee's Annual Evaluation Form (AEF) which contains individual critical and noncritical elements (work objectives) and performance standards (performance measures). The AEF is used to record the performance plan and to appraise performance against the criteria in the plan. (**Chapter 489**)

**reassignment**

The change of an employee within the Agency from one position to another without promotion or demotion. ([Chapter 418](#), [471](#), **489**)

**tenure**

A process that changes a career candidate from limited or conditional to career status. (**Chapters [463](#), 489**)

**unacceptable performance**

Performance that fails to significantly meet minimum performance standards for one or more critical elements of an employee's performance plan (AEF). For Civil Service employees, the minimum standard is 'Needs Improvement'. (**Chapter 489**)

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