

PROCEDURES FOR PROCESSING DISCRIMINATION COMPLAINTS
AND CONDUCTING CIVIL RIGHTS COMPLIANCE REVIEWS IN USDA
CONDUCTED PROGRAMS AND ACTIVITIES

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CHAPTER I

INTRODUCTION

1 PURPOSE AND SCOPE

This manual provides guidelines and procedures to be followed by the Office of Civil Rights (CR) and USDA agencies to:

a Process administrative complaints of discrimination filed with the Department in any program or activity conducted by USDA; and

b Conduct civil rights compliance reviews of all USDA conducted programs and activities.

2 POLICY

a It is USDA policy to ensure that no person is subjected to prohibited discrimination in USDA conducted programs and activities based on race, color, national origin, sex, religion, age, disability, marital status, familial status, parental status, sexual orientation or because all or a part of an individual's income is derived from any public assistance program. The policy, in part, is enforced by:

(1) Fairly and efficiently responding to discrimination complaints filed against USDA; and

(2) Systematically evaluating whether and the extent to which USDA conducts its programs and activities in a manner consistent with applicable Federal and USDA civil rights requirements.

b No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint, participated in or contributed to the identification, investigation, prosecution or resolution of a civil rights violation in or by any USDA conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations or policies.

c Any person who believes that he or she or any specific class of individuals has been subjected to discrimination by any USDA agency may personally or through a designated representative file a complaint.

3 AUTHORITIES

a Statutory

- Title VI of the Civil Rights Act of 1964, as amended, 42 USC 2000d to 2000d-7.
- Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794.
- Title VIII, Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 USC 3601 et seq.
- 5 USC 301, Authority to Prescribe Departmental Regulations.
- Equal Credit Opportunity Act of 1974, Title VII of the Consumer Protection Act of 1974 (as amended), Section 701 of the Equal Credit Opportunity Act of 1974, Pub.L. 93-49, tit. V, 88 Stat. 1500, 15 USC §§1691-1691f.

b Regulatory and Executive Orders

- 7 CFR Part 2, Subpart P, Delegation of Authority by the Assistant Secretary of Agriculture.
- 7 CFR Part 15d, Nondiscrimination in Programs or Activities Conducted by the United States Department of Agriculture.
- 7 CFR Part 15e, Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the United States Department of Agriculture.
- 12 CFR Part 202, Equal Credit Opportunity Regulation B.
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency.
- Executive Order 13160, Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation and Status as a Parent in Federally Conducted Education and Training Programs.
- Executive Order 13125, Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs.

c Departmental Regulations/Policy

- DR 4330-3, Nondiscrimination in USDA Conducted Programs and Activities, dated March 3, 1999.

- DR 4300-5, Agency Civil Rights Programs, dated January 14, 1998.
- DR 4300-3, Equal Opportunity Public Notification Policy, dated February 25, 1998.
- DR 4300-6 Civil Rights Policy for the US Department of Agriculture, dated March 16, 1998.
- DR 5600-2, Environmental Justice, dated December 15, 1997.
- Secretary's Memorandum 1010-4, Restructuring Departmental Administration, dated May 16, 1997.

- 4 NOTICE

This manual will be updated periodically. Please send comments and suggested revisions to: USDA, Office of Civil Rights, Attn: Conducted Programs Procedures Manual, 14th and Independence Avenue, SW, Washington, DC 20250.

CHAPTER II: GLOSSARY OF TERMS

1 GENERAL

This Chapter defines and describes the meaning and purpose of the terms used in this manual.

2 TERMS

Below are the terms used in this manual:

a Agency - Any service, bureau, agency, office, administration, instrumentality of or corporation within the USDA or any officer or employee of the Department to whom the Secretary delegates authority to carry out any of the functions or responsibilities of an agency.

b Agency Review - A compliance review that extends to the entire USDA agency and its sub-components and all the programs and activities conducted by that agency and its sub-components.

c Allegation - An assertion, declaration or statement made in a complaint that sets out or identifies what the alleging party expects to be proved.

d Authority(ies) - The statutes, regulations, Executive Orders and policies which:

(1) Prescribe those actions by USDA agencies that constitute discrimination; and

(2) Set forth the scope and extent of CR's authority to require USDA agencies to conduct their programs and activities in a nondiscriminatory manner.

e Basis - The reason(s) the complainant believes the USDA agency, program or activity has or is engaging in the prohibited discriminatory behaviors. The bases on which discrimination is prohibited in USDA conducted programs and activities are race, color, national origin, age, disability, sex, religion, marital status, familial status, parental status, sexual orientation or because all or a part of an individual's income is derived from any public assistance program.

f Beneficiary - A person or group of persons with entitlement to receive or enjoy the benefits, services, resources and information, or participate in activities and programs conducted in whole or part by the USDA.

g Complainant - Any person or group of persons who files with any USDA agency a complaint that alleges discrimination in a program or activity conducted by any USDA agency. A complainant must be the injured party. Accordingly, if any person or organization files a discrimination complaint on behalf of an injured party, the injured party must affirmatively state his or her willingness to pursue the complaint or the case will be dismissed.

h Complaint - A statement that informs CR of one or more alleged prohibited discriminatory actions by a USDA agency, one of its programs, or subcomponents. CR will accept written complaints in languages other than English as well as complaints recorded on other media (e.g., Braille, audiotape) from persons who have limited English proficiency, disabilities, or other special needs that preclude them from submitting written complaints. In these cases, CR will translate complaints into English and convert or transcribe them to written form.

i Complaint, Complete - A written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform CR of the nature and date of the alleged civil rights violation. The statement must be signed by the complainant or someone authorized to sign on the complainant's behalf.

The complaint need not be written or signed if submitted in an alternate format to accommodate the complaint filing needs of a person(s) who has limited English proficiency, a disability or other special need.

j Complaint, Incomplete - A complaint from which critical information has been omitted, (e.g., the name of the entity against which the complaint is being filed, the date of the alleged discriminatory act, etc.)

k Compliance Review - A USDA CR systematically planned and regularly initiated investigation that assesses and evaluates the civil rights and equal opportunity policies, procedures and practices of a USDA agency or instrumentality to determine compliance with civil rights statutes, regulations, standards and policies. Compliance reviews will be initiated upon consideration of several factors, including: authorization; evidence of existing violations; level and type of complaints over time; issues arising from complaints that indicate the need for a more systematic review; previous consent decrees and settlement agreements; and relation to implementation of Departmental policies. They will be conducted in accordance with a written administrative plan containing specific neutral criteria and other factors as identified by CR.

l Conducted Programs and Activities - Solitary (one time) or continuing decisions, efforts, policies, procedures and practices of a USDA agency for the purpose of, that result in or otherwise contribute to the availability or delivery of services, benefits or resources for the use, enjoyment or consumption of the public.

m CR - The USDA Office of Civil Rights, which is responsible for ensuring that all programs and activities conducted by USDA operate in compliance with established civil rights and anti-discrimination statutes, regulations, policies and standards.

n Director - The Director, CR.

o Discrimination - Different treatment or denial of benefits, services, rights or privileges to a person or persons because of their race, color, religion, sex, age, national origin, marital status, familial status, parental status, sexual orientation, disability, political belief or affiliation or because all or a part of an individual's income is derived from any public assistance program.

p Final Agency Decision (FAD) - A written statement signed by the Director, in which the issues and allegations, related facts and evidence and findings and legal conclusions identified by CR in response to a complaint investigation of a USDA agency or instrumentality are set forth in writing for the purpose of notifying the complainant and the appropriate agency representative(s) whether and to what extent the agency has violated any civil rights requirements.

q Individual(s) with Handicap - A person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment. Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

r Issue - A statement that specifically asserts a violation of a civil rights provision or one from which it reasonably can be inferred that a violation is being asserted.

s Jurisdiction - USDA authority to affirmatively address and seek the resolution of allegations referenced in issues raised in a complaint.

t Legal Sufficiency Review - A review of the findings and recommendations pertaining to a complaint investigation or compliance review for the purpose of ensuring:

- (1) Accuracy of the document's legal citations;
- (2) Appropriate translation of allegations to issues;
- (3) Delineation of jurisdiction and authority of USDA;
- (4) Resolution of issues based on a preponderance of the evidence;
- (5) Resolution of issues based on facts and evidence that are material, relevant and reliable;
- (6) Findings of fact and conclusions of law which reflect and are consistent with the appropriate legal theories and standards; and
- (7) Recommended dispositions that resolve and dispose of all issues and matters.

u Modified Mailbox Rule - The set of priorities and rules used by the CR Intake Unit to establish the official filing date of a complaint. These priorities and rules may be used at other points in complaint processing when an official date must be established.

v Program Review - A compliance review that is limited to a particular program or activity or a USDA agency.

w Qualified Person(s) with Handicap/Disability - An individual with a disability who is able to achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or an individual with a disability who meets the essential eligibility requirements for participation in or receipt of benefits from that program or activity.

x Respondent(s) - The individual or individuals within an agency whom a complainant alleges has engaged in prohibited discrimination.

y Voluntary Resolution/Settlement - A voluntary agreement which resolves a complaint or compliance review issue wherein USDA or one of its agencies agrees to effect corrective or remedial action before or after USDA's official determination.

CHAPTER III - GENERAL PROVISIONS FOR PROCESSING DISCRIMINATION COMPLAINTS

PART 1 - INTAKE

1 GENERAL

This Part contains GENERAL PROVISIONS that apply to all complaints, regardless of the governing authority.

2 PURPOSE

The purpose of intake is to determine the following:

a Whether the document or information received is in fact a complaint;

- b CR's jurisdiction to process a complaint;
- c Information required to complete a complaint;
- d Disposition of any noncomplaint or complaint over which CR has no jurisdiction; and
- e Disposition or further processing of any complaint over which CR has jurisdiction.

3 DURATION

The intake process MUST be completed no later than 30 days from the date the complaint or document is received by CR.

4 GENERAL TIMELINESS REQUIREMENTS

CR will process only those complaints that have been filed within 180 calendar days from the date the person knew or should have known of the alleged discrimination unless a determination of continuing discrimination is made or CR waives the timeliness requirement. The 180-day time requirement begins on the next business day after the discriminatory act took place. If the 180th day falls on a weekend or holiday, the next business day will be considered the 180th day.

a 180-Day Time Requirement Exception for Continuing Acts of Discrimination. The Intake Unit will make the determination as to whether or not the complaint alleges the existence of continuing act(s) of discrimination. If there is such an allegation, the complaint will be considered timely filed.

b Waiver of Timeliness Requirement. When a complaint is not filed in a timely manner, it will be treated as an incomplete complaint.

- Within 15 days of receiving notice that the complaint was not timely filed, the complainant may request a waiver and furnish the reasons for failing to file within the 180-day period.
- The Director (or designee) may grant a waiver of the 180-day filing requirement under any of the following circumstances:

- The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period and the complaint was filed within 60 days after the complainant became aware of the alleged discrimination.
- Due to an illness or other incapacitating circumstances, the complainant was unable to file a complaint during the 180-day period. However, the complaint was filed within 60 days after the period of illness or incapacitation ended.
- The complainant filed a complaint alleging the same discriminatory conduct within the 180-day period with another Federal, state or local civil rights enforcement agency and that agency failed to act.
- Any other circumstances as determined by the Director.
- (3) If the complainant does not respond to the notice by requesting a waiver of the time requirement within 15 days of receiving notice, the case will be closed and the complainant informed of the decision.

c Complaint Closures Because of Untimeliness. In a situation where the complainant furnishes the reason for untimely filing of a complaint, the complaint is considered complete as of the date of receipt of that information. The complainant will be notified of the Director's (or designee's) decision to grant or deny a waiver within 15 calendar days of receipt of the information.

5 JURISDICTION

a Jurisdictional Issues. To fully process a complaint, CR must have jurisdiction over both the subject matter of the complaint and the agency, program or activity in which discrimination is alleged to have occurred. **CR HAS JURISDICTION TO PROCESS DISCRIMINATION COMPLAINTS THAT NAME ANY USDA AGENCY UNLESS IT DEFERS JURISDICTION TO ANOTHER AGENCY.** The complaint must be evaluated in three areas to determine whether or not CR has jurisdiction to resolve the complaint. The three issues or areas to be scrutinized are the:

- (1) Regulatory basis under which discrimination has been alleged;
- (2) Subject matter of the allegations; and
- (3) Timeliness with which the complaint was filed.

b Lack of Jurisdiction. If CR has no jurisdiction over the agency alleged to have discriminated (i.e., the named agency or program is not conducted by USDA), the Intake Unit will determine whether or not another agency has jurisdiction. If another agency has jurisdiction, the Intake Unit will refer the complaint to that agency.

- The complaint referral letter will include:
- Date the complaint was received by CR;
- Complainant (or representative) and agency contact information, if available;
- Summary of allegations of the complaint;
- Authority(ies) or reasons for referral of the complaint, i.e., lack of jurisdiction; and
- Copy of the complaint and any other documents provided by the complainant.
- The Intake Unit will send the complainant a copy of the referral letter and a case closure letter. The case then will be administratively closed.

c Dual or Shared Jurisdiction. As stated in section 5a, CR has jurisdiction over complaints involving USDA agencies. However, when USDA/CR has jurisdiction to process a complaint of discrimination but, due to statute, regulation or discretionary reasons, refers the complaint to a non-USDA agency, CR and the non-USDA agency share jurisdiction over the complaint until there is a determination on the case.

- In cases of shared jurisdiction, the CR Intake Unit will:
- Monitor the processing of the complaint at the referral agency;
- Obtain documentation of the final disposition;
- Determine whether all jurisdictional issues raised in the complaint were addressed or resolved;
- Notify the complainant of any remaining issues over which CR has sole jurisdiction and the complainant's right to have CR process the complaint based on the remaining issues;
- Process the complaint based on the remaining issues, if requested by complainant.
- If there are no remaining issues, CR will provide a closure letter to the complainant and will close the case file.

d Deferrals. Where CR defers to process a complaint due to a Memorandum of Understanding, statute, regulation or policy that dictates that another agency and not

USDA/CR, will have exclusive jurisdiction to process a particular case, then CR retains no jurisdiction while the complaint is being processed at that agency. In this situation, CR will provide a closure letter to the complainant and close the case file.

6 COMPLAINT INTAKE PROCESS REQUIREMENTS

a Initial Steps. Where CR has sole jurisdiction, the complaint intake process requires employees of the Intake Unit to:

(1) Log-in and docket the complaint;

- Date stamp the complaint to show the date it was received by CR; and
- Assign a case or docket number.

b When to Assign More than One Case Number. A separate case number will be assigned to each agency named in the complaint. If, during the course of the investigation, CR determines that other agencies are involved in the alleged acts of discrimination, separate complaints will be opened and a case number assigned for each such agency. The receipt date will be the date CR determines the complaint should be opened.

- Complaints from more than one person against the same agency that contain different allegations will be treated separately, with each complaint assigned its own case number.
- Complaints filed at approximately the same time by more than one person that raise substantially identical allegations against the same agency will be treated as one complaint and assigned one case number. If the complaints raise individual/different allegations, separate case numbers will be assigned.
- New allegations filed by the same person against the same agency, after the complaint has been accepted for investigation, will be reviewed on a case-by-case basis to determine whether the allegations should be added to the open complaint or treated as a new complaint.

- A complaint that contains, among other allegations, an allegation of retaliation, will be assigned one case number. If an allegation of retaliation is made after CR has begun its investigation process, CR will determine on a case-by-case basis whether a new complaint will be opened and a new case number assigned.

c Consent/Release Forms. Complainants will be sent a Complainant Consent/Release Form along with an acknowledgment letter in accordance with section 6g(a). This form describes to the complainant the provisions of the Privacy Act and the Freedom of Information Act and requests the complainant to affirmatively consent or to deny consent for the release of his or her name and/or the receipt of personal information.

- The Administrative Procedures Act and the Privacy Act (Title 5 USC, Section 552a(e)(3)) require each Federal agency that maintains records to inform each individual whom it asks to supply information, on the form which it uses to collect such information or on a separate form that can be retained by the individual:

(a) The authority which authorizes the solicitation of the information and whether disclosure is mandatory or voluntary;

(b) The principal purpose(s) for which the information is intended to be used;

(c) The routine uses which may be made of the information; and

(d) The effects on the individual, if any, of not providing all or any part of the requested information.

- Consent/Release forms may also be appropriate for witnesses interviewed in the course of an investigation.

d Establish a Case File. A case file will be established for each complaint. THE FILE WILL BE LABELED WITH THE CASE NUMBER AND THE CASE NAME.

- Materials will be filed in chronological order, with the most recent document on top, tabbed and indexed. Official case documents, those that are discoverable or releasable under a Freedom of Information Act (FOIA) request, will be maintained separately from other documents, such as drafts, investigators' outlines and notes. Official case documents include, but are not limited to:
 - The complaint and originals of signed correspondence;
 - Intake forms and other management tools;
 - Reports (ROIs) of investigation; and
 - Agency position statements and decisions.

(2) Documents that are NOT to be treated as a part of the official case file include:

- Unsigned correspondence;
- Oral allegations, unless the complainant has limited English proficiency, a disability or other special need that prevents him or her from submitting a written complaint;
- Courtesy copies of correspondence or complaints filed with non-USDA agencies;
- Inquiries that seek advice or information but do not seek, explicitly or by implication, action or intervention from USDA;
- Issues involving contractual relationships with USDA and its agencies;
- Complainants alleging misconduct by non-USDA agencies; and
- Complaints by USDA employees alleging misconduct that is not a civil rights violation.

(3) If the complainant has a limitation or disability as described in section 6d(2)(b) , CR will reduce the complaint to writing and include it in the official case file.

(4) In situations where CR receives courtesy copies of correspondence or complaints filed with non-USDA agencies containing allegations about matters within CR's jurisdiction, the writer will be contacted within five days and advised of the procedures for filing a complaint.

e Complete Complaints. A determination must be made as to whether or not a complaint is complete. A complete complaint will contain ALL of the following:

(1) Complainant's signature (or authorized signature in the case of a disability, limited English speaking proficiency or other special circumstance which prevents a complainant from signing the complaint);

(2) Complainant's name and contact information;

(3) Must allege discrimination and identify the person(s) (including the protected attribute, i.e., race, national origin, sex, etc.), injured by the alleged discrimination;

(4) Identity of agency, program or representative alleged to have committed illegal discrimination;

(5) Description of issues or subject matter sufficient to enable CR to understand the facts that led the complainant to believe discrimination occurred and the date when the alleged discrimination took place;

(6) Damage or injury suffered and the relief sought; and

(7) Supporting evidence.

Complaints lacking a request for relief under section 6e(6) or section 6e(7) may still be accepted for investigation.

f Determining Filing Date: Timeliness Priority Rules. The Intake Unit will use the Modified Mailbox Rule in determining whether a complaint or other document is timely filed. According to the Modified Mailbox Rule, the filing date of a complaint is considered to be the date on the complaint letter: If, however, the date on the complaint letter differs by seven days from the postmark date, then:

(1) The postmark date will be used as the filing date.

(2) If there is no date on either the complaint letter or the postmark, the filing date will be the date the complaint is received by CR.

(3) If a complaint is faxed to CR, the date on the fax legend will be the filing date.

g Processing Complete Complaints. Within five days of receipt of a complete complaint, an acknowledgment letter will be sent to the complainant.

- The acknowledgment letter will contain the following information:

(a) Date of the complaint;

(b) Date the complaint was received by CR;

(c) Case or docket number assigned;

(d) Privacy Act/FOIA statement;

(e) Retaliation/harassment statement;

(f) Acceptance statement or an explanation that the complaint is being evaluated for jurisdiction; and

(g) Explanation of the complaint process.

- Based on the allegations, the acknowledgment letter will advise the complainant of any special options and/or procedures available by statute or regulation. Attached to the acknowledgment letter will be a list of any available technical assistance resources and a Complainant Consent/Release Form.

h Agency Transmittal. Simultaneous with forwarding the acknowledgment letter to the complainant, the Intake Unit will send the Agency Transmittal Memorandum, to the identified USDA agency. The memorandum will request that an Agency Position Statement (APS), be submitted to CR within 15 days from the date of the Agency Transmittal. A copy of the complaint will be attached to the memorandum. The Agency Transmittal Memorandum will also:

- Inform the agency that CR has accepted the complaint for investigation;
 - Provide the name of the complainant, if it can be released;
- (3) Enumerate the issues and bases raised in the complaint;
- (4) Describe CR's jurisdiction to investigate and resolve the complaint; and

- (5) Include a statement of prohibition against harassment and/or retaliation.

i Processing Incomplete Complaints. Incomplete complaints are complaints that do not contain enough information to enable the Intake Unit to make a decision on whether or not to accept the complaint for investigation. Complaints containing both complete and incomplete allegations and issues are considered incomplete complaints. Complaints that are not timely filed are also considered incomplete complaints. Upon receipt of an incomplete complaint:

(1) An Incomplete Complaint Acknowledgment Letter will be sent to the Complainant within five days of receipt. The letter will include all of the information shown in section 6g. In addition, the Incomplete Complaint Acknowledgment Letter will also contain:

- Identification of those allegations and issues that are considered complete;
- (b) Notice that processing will continue on those allegations and issues that are complete;

- (c) Identification of the allegations and issues that are incomplete;
- (d) A detailed description of the information needed to complete the complaint so that it can be further processed;
- (e) A 15-day deadline for submission of additional information;
- (f) Notice that failure to provide the requested information may result in closure of the case; and

(g) Notification that a 10-day extension may be granted if:

1 An extension is requested in writing; and

2 The reason the additional time is needed involves a matter or circumstance beyond the complainant's control that makes it impossible to meet the initial

15-day deadline.

- (2) The USDA/CR Complaint Form will be enclosed with the Incomplete Complaint Acknowledgment Letter. The complainant must be informed that use of the complaint form is voluntary -- NOT REQUIRED.

(3) The decision on whether or not to grant a complainant's request for an extension is final and solely within the discretion of the Director of the Intake Unit.

(4) When the additional information is received, the Intake Unit will send an acknowledgment letter to the complainant stating that the complaint is complete.

(5) If the information requested in the Incomplete Complaint Acknowledgment Letter is received after the established deadline, the Intake Unit will make a determination as to whether the "now complete" allegations and issues will be added to the existing complaint or processed as a separate complaint.

j Complainant Representation. If a complainant is represented by an attorney or other designated representative, all complainant contacts will be made through the attorney or designated representative. Permission will be sought from the attorney or designated representative prior to any direct contact with the complainant.

- In most instances, it will be clear from the cover letter or complaint whether the complainant is represented by an attorney or other designated representative. However, this is not always the case. If it is unclear or if the information received indicates that the matter raised has been or soon will be filed in court, the Intake Unit specialist assigned to the complaint will contact the complainant by telephone or letter and request the name and contact information of the attorney or designated representative.

- If the attorney or designated representative fails to respond to informational or other requests within established deadlines, the Intake Unit specialist will send a letter directly to the complainant notifying him or her that the complaint will be closed if the information requested is not received by a specified date. A copy of this letter will be sent to the complainant's attorney or representative by regular mail AND by certified mail/receipt required.

7 NOTICE ON REPRISAL/HARASSMENT

a Letters to the complainant, witnesses and agency will include language describing the prohibition against reprisal, retaliation and harassment.

b To establish a case based on retaliation, the complaint must allege facts that show or infer the following:

- The person allegedly retaliated against engaged in a protected activity (i.e., filed a complaint, participated in an investigation, testified at a hearing, etc.);
- The person allegedly retaliating was aware of the protected activity;
- The person alleging the retaliation suffered adverse treatment after engaging in the protected activity; and
- There was a causal connection between the protected activity and the alleged retaliation.

8 PRE-INVESTIGATION CLOSURE

a Closures Prior to Investigation. Under certain circumstances, it may be appropriate for the Intake Unit to recommend to the Director that a case be closed prior to investigation. These circumstances include, but are not limited to situations where:

- (1) Issues raised in the complaint are also raised in a class action complaint that is currently on the active case docket;
- (2) Legislation or policy changes directly address the issue raised in the complaint;
- (3) A court decision is pending or has been rendered on the issue raised in the CR complaint;
- (4) The complaint raises a systemic issue that is already under investigation;
- (5) Previous CR decisions have already addressed the issue(s) raised in the complaint;
- (6) The complainant has filed the same complaint/allegations with another Federal, State or local agency which has jurisdiction over the matter;
- (7) The complainant fails or refuses to cooperate with USDA/CR and USDA/CR determines that its ability to complete intake or investigation of the complaint is substantially impaired;
- (8) The complaint is transferred or referred to another non-USDA agency that has jurisdiction over the matter and that agency accepts the case for investigation;
- (9) The complainant withdraws the complaint or there is a voluntary resolution;
- (10) The complainant is determined not to have standing to file the complaint or if the issues raised in the complaint are otherwise moot.

b Frivolous Complaints. If, despite appropriate attempts to clarify a complaint and the issues it raises, the complaint is "patently frivolous," it may be closed and the complainant notified by letter that the issues raised do not come within the authority of USDA. "Patently frivolous" generally means:

- A complaint that is so attenuated and unsubstantiated as to be absolutely devoid of merit; or
 - Previous decisions of courts, USDA or another investigative agency foreclose the subject and leave no room for inference that the question sought to be raised can be the subject of controversy.
- c Notification of Pre-Investigation Closure. The complainant will be notified within three days of the Director's decision to close the case. The complainant will be informed that the complaint is being closed and the reason(s) for the decision. If the complaint closure is due to section 8a(1), CR will inform the complainant of the existing class action and provide information needed to enable the complainant to pursue his/her inclusion in the class. As appropriate, all complainants being notified of pre-investigation closure will be advised of other options available to them.

PART II

INVESTIGATION

1 GENERAL

The investigative phase is an impartial process to determine the facts and evidence surrounding a case. The purpose of the investigation is to establish a fact-based, evidence-supported record of the:

a The actions and circumstances that led the complainant to believe that he or she was the victim of discrimination; and

b The actions and circumstances that might explain the action of the agency alleged to have discriminated.

2 DURATION

The investigation phase must be completed within 120 days from the date intake is completed. Since the Intake Unit must complete its work no later than 30 days from the date the complaint is received by CR, the Investigation Unit may have as little as 90 days to complete the final ROI and transfer the case file to the Adjudication Division or other processing point.

a Role of the Investigator. The investigator is a neutral party who develops the official record of the case. In the course of developing the record, the investigator is usually the person who will have direct contact with the parties, witnesses and other informants. Specific functions and duties of the investigator include, but are not limited to:

1. Sorting and clarifying allegations and issues;

1. Verifying USDA/CR jurisdiction over the complaint case and each of the issues raised;

1. Collecting, preserving (i.e., physically and in terms of admissibility) and analyzing all evidence relevant to the case and to each party's position (including injury or harm suffered);

1. Identifying and establishing any pattern or practice of discrimination;

1. Making determinations with respect to the release of information, confidentiality of informants and information;

1. Producing the official evidentiary record of the case;

1. Producing findings of fact;

1. Producing the ROI; and

1. Making recommendations, where appropriate, for disposition or closure of the case.

b Authority of the Investigator. The investigator is an agent of USDA and CR. As such, the investigator acts with the same authority as CR and USDA to collect evidence, in whatever form, that is relevant to the case. This authority, however, stops short of subpoena power.

3 CONDUCTING INVESTIGATIONS

a Establishment of the Investigative Case File. Once a complaint is accepted for investigation, an Investigative Case File is established to systematically compile and store all documents, records and information associated with the case. The Investigative Case File is structured so that it:

(1) Provides the basis and supporting documentation for the Investigator's Draft ROI; and

- Allows any reader of the draft ROI to easily verify the facts upon which it is written.

b Scope of the Investigation. The scope of the investigation is usually limited to the facts and evidence surrounding the specific allegations, circumstances, actions and programs raised in the complaint. However, in the course of investigating the complaint, the investigator may discover evidence to warrant a decision by the Director to expand the scope of the investigation to include additional issues or to take other action, such as conducting a compliance review.

c Time Period. A critical issue confronting the investigator is determining the period of time prior to the date of the alleged discrimination for which evidence of relevant events should be collected. In making that determination, the investigator must consider the following factors as well as any other factors raised by the facts of the case:

(1) Whether or Not the Alleged Discrimination is Continuing in Nature. If the analysis of the information suggests that an unlawful practice of discrimination has occurred over a period of years and has continued up to the filing of the complaint, the investigation could extend to all of the alleged unlawful acts, under the theory of continuing violation. However, it is important for the investigator to examine all of the events complained of to make sure they are continuing unlawful acts.

- (2) The Frequency With Which Events Similar to Those Underlying the Allegations Occurred. For example, if the investigator is gathering data relevant to the complainant's allegation that an agency official failed to timely process his or her loan application, actual loan activity may show that there were very few farm loan applications submitted or processed within the six months prior to the complainant's application. In that instance, the investigator may need to expand the time period for which records are requested in order to find relevant comparative or statistical data.
- (3) Whether or Not the Conditions Under Which the Alleged Discrimination Occurred Changed. For example, if the agency's management had changed some time prior to the alleged discriminatory act or if the agency revised its procedures, then actions that occurred prior to those changes may not be relevant to the issues raised in the complaint. Only those actions that occurred under the rules or policies that existed at the time of the alleged discrimination would be probative of discrimination (unless the complainant claims that the rule changes themselves were discriminatory).
- (4) Whether or Not Events That Occurred Subsequent to the Alleged Discriminatory Act be Included in The Scope of The Inquiry. The investigator should keep in mind that actions that an agency or respondent takes after receiving notice of the discrimination complaint may not be probative of whether the complainant was a victim of discrimination. For example, if a complainant alleged that a respondent denied him or her access to a program for which he or she is eligible because the complainant is mobility impaired, the fact that the respondent enrolled a person in a wheelchair after having received notice of the complaint would have limited probative value. On the other hand, in some cases, evidence of later events is VERY relevant to the proof of a complaint. For example, if a respondent maintains that he or she rejected the complainant because of poor credit, evidence that the respondent accepted applicants with poor credit both before and after the alleged discrimination would be relevant.

d Impartiality. It is critical in all communications with parties, witnesses and others that the investigator explain that his/her role is to determine the facts of the allegations or issues raised in the complaint. In particular, it is important that the investigator conduct himself or herself in such a manner that he or she does not represent any party to the complaint -- neither the complainant nor the agency.

e "Off the Record" Comments. "Off the record" comments are not part of the official record of the case. In those instances where it appears that a witness is making an "off the record comment" the investigator will clarify with the witness his/her intent that the comment be attributable. This situation occurs particularly when the investigator has had significant contact -- especially face-to-face -- with the witness, and a comfort and trust level have been built between the witness and the investigator. Where it is not possible to get the witness to make his/her comments on the record, an investigator may use the information obtained from the comment to pursue and identify additional evidence that can be made part of the official case record.

f Confidentiality of Investigation. All matters related to the investigation of a complaint are confidential. The investigator may be called upon to develop investigative methods that will protect witness privacy. Investigator notes are also considered part of the case "work product" and are also treated as confidential material.

g Investigative Plan. An Investigative Plan will be developed for each complaint case that is investigated. The Investigative Plan will, at a minimum, include:

- Jurisdictional information;
- Bases and issues;

(3) Identification of applicable legal theory(ies);

- (4) Description of the documentary, testimonial, statistical and other type of evidence needed;
- (5) Evidence needed to test the validity of anticipated responses and defenses;
- (6) The plan for securing needed evidence, including best sources; and
- (7) A sequence of activities and time lines for completing those activities, including onsite investigation.

h Subsequent Jurisdictional Questions. All jurisdictional questions should have been resolved prior to the investigation stage. However, during the investigation evidence or issues may emerge that will require the investigator to make a determination, after consultation with his or her supervisor, of whether or not USDA/CR has jurisdictional authority or should investigate a particular issue. This determination may mean that a specific issue or allegation will be referred to another federal agency or forum for processing. USDA/CR will continue investigating those issues over which it has

jurisdiction or may suspend its investigation until the referral agency/forum makes a determination on the issue that has been referred.

i Theories of Discrimination. The investigator will identify the basis and legal authority for the complaint, i.e., that the reason for the complaint is alleged discrimination against one or more individuals because of race, color, national origin, sex, religion, disability, age, marital status, familial status, parental status, sexual orientation or because all or part of an individual's income is derived from a public assistance program.

- In order to proceed with the investigation it is important to identify the potential applicable legal theories in order for the investigator to determine the type of evidence required and the standards of proof needed to establish a violation. Following is a brief summary of the principal theories of discrimination and the analytical framework these theories provide for an investigation of a civil rights violation. After receiving evidence from the complainant, agency and witnesses, the investigator will re-assess the issues to verify whether or not the correct theory of discrimination is being applied.

(a) Disparate Treatment. Disparate treatment occurs when similarly situated persons (or class of persons) are treated differently than others and the only attribute that is different is one that is protected by specific civil rights laws and regulations (e.g., race, color, national origin, etc.) Disparate treatment discrimination can occur based on the treatment of only one person if the reason for that disparate treatment is one of the protected bases. If an agency or program routinely treats members of a protected class differently, then it is possible to establish a pattern and practice of discrimination against a class of individuals.

1 Intent to Discriminate. To prove disparate treatment, the investigator must establish evidence that the actions of the agency were motivated by an "intent to discriminate." This "intent" should not be construed as bad faith or other negative motive on the part of the agency. "Intent" may be found when an official attempts to act "for the good" of a member of a protected class based on his or her own stereotypes - for example, no women are interviewed for maintenance or construction jobs because the official believes such work to be too laborious or dangerous for a woman. Evidence of discriminatory intent may be derived from sources such as historical practices and policies, statements by managers and staff or minutes of meetings, among other things. Most of the evidence for proving intent will be circumstantial or indirect evidence. To prove discriminatory

intent, there must be enough evidence provided to raise an INFERENCE of discrimination.

2 Elements of a Prima Facie Case of Discrimination. The elements of a PRIMA FACIE case of discrimination based on disparate treatment follows this four-part analytic framework:

a Complainant is a member of a protected class;

b Complainant applied for and was eligible to participate in the subject program or activity which was accepting applicants at that time;

c Despite complainant's eligibility, he or she was rejected, referred somewhere else or otherwise treated differently; and,

d The agency accepted or treated differently others of a group or class who were different from the complainant's.

3 Evidence Gathering. Once the prima facie case is established, the investigator must gather evidence to determine whether the agency has "legitimate, nondiscriminatory reasons" for the challenged action. This evidence in support of the agency must then be analyzed to determine whether the nondiscriminatory reason was in fact the true reason for the disparate treatment and not just a pretext or excuse for unlawful discrimination.

- (b) Disparate Impact. A disparate impact occurs when an agency uses a policy or practice that, while neutral on its face and applicable to everyone, disproportionately and adversely affects members of a protected group.

1 Effects of Policies and Practices. The theory of disparate impact does not require proof of discriminatory intent, but centers around the adverse effect(s) that a policy or practice has on protected groups. Evidence-gathering based on the disparate impact theory will focus on determining the consequences of program practices or policies.

2 Evidence-Gathering. Gathering evidence will likely require a comparison of the effects of the policy or practice on members of a protected class relative to its effects on those persons outside the protected class.

a If the evidence demonstrates a statistically significant (not due to "chance" or more than two standard deviation points) adverse effect on members of the protected class, the investigator must then determine whether there is a "substantial legitimate justification" for the challenged practice. "Substantial legitimate justification" requires that the challenged practice be necessary in order to meet a goal that is legitimate, important and integral to the overall program mission.

b Simply making program implementation easier or some other ancillary goal does not meet this standard. The goal must be at the core of the program or institutional mission. Again, the investigator must determine whether this claim is merely a pretext or excuse for discrimination. In addition, the investigator must consider whether there are any less discriminatory alternatives that would accomplish the stated goal.

j Likely or Enunciated Agency Defenses And a Description of The Evidence Required to Test Their Validity. In every case, after a prima facie case has been established, the agency will be provided the opportunity to rebut the evidence presented. Some typical rebuttals to a prima facie finding of disparate treatment or impact are:

- The finding is factually incorrect;
- Individuals compared were not "similarly situated";

(3) The comparison was not inclusive (i.e., some persons who were similarly situated were not included);

(4) Statistical evidence is not probative (e.g., irrelevant to the issue, insufficient sample, inappropriate comparison, etc.);

(5) Presentation of contrary statistical evidence;

- (6) Demonstration that actions were taken pursuant to a consent decree or remedial plan;
- (7) Evidence provided by rebuttal witnesses e.g., other members of the complainant's class who were not treated like the complainant; a person not of the complainant's class who was treated in the same manner as the complainant);

(8) The difference in treatment was based on some other reason such as qualifications, favoritism, nepotism, etc.;

(9) The rule, policy, procedure, etc., under attack did not cause the adverse impact (questions the "significance" of the finding); or

(10) The facially neutral policy or practice had a manifest relationship to a legitimate business or program goal or objective.

- (11) In regard to section 3j(8):
 - The reason need not be objective, fair or ethical, so long as it is not discriminatory on grounds that violate applicable civil rights law(s); and
 - If the investigator finds evidence of a violation of some other civil or criminal law(s), it may be appropriate to refer the case to another Federal or State agency or to another office, such as the USDA Inspector General.

k Retaliation and Intimidation. Evidence of alleged retaliation or intimidation must prove:

- The person retaliated against was engaged in a protected activity (e.g., filed a CR complaint, has information which the respondent believed would be used in a complaint process or testified at a hearing);

- The retaliating official or respondent was aware of the protected activity;
- The person retaliated against suffered adverse treatment; and,
- There is a causal connection between the protected activity and the adverse action.

I Conclusions Drawn from Analysis of Information, Data or Other Evidence Already Gathered. A careful analysis of the evidence provided by the complainant will enable the investigator to more clearly determine how much and what kind of additional information and data are needed and which theory of discrimination may apply. Information and data gathered during the course of the investigation must answer two main questions concerning the allegations:

- What happened? The complaint alleges that something did or did not happen. Consequently, information and data must be gathered to determine whether or not the alleged event occurred, when it occurred, where it occurred and how it occurred.
- Why did it happen? The information and data gathered must help the investigator determine whether or not the reason(s) and basis(es) for the discrimination alleged in the complaint are accurate.

PART III

COLLECTING AND ANALYZING EVIDENCE

1 GENERAL

This Part identifies and describes the types of evidence that should be collected and analyzed to complete the discrimination complaint investigation. It is critical that the

investigator find evidence not only to address the allegations of the complainant, but to address the validity of any stated or anticipated defenses that might be asserted.

2 SOURCES OF EVIDENCE

The evidence necessary to complete the investigation should be identified along with potential sources for obtaining the evidence.

a Documentary Evidence is in written form and may consist of any type of program records, letters, applications, forms or notes, among other things. This category also includes statistical and computer based evidence or data. Documentary evidence is essential to the investigation process.

b Testimonial Evidence refers to oral evidence. From the evidence already in hand, the investigator will develop interview questions and a list of interviewees from which to obtain testimonial evidence.

3 TYPES OF EVIDENCE

a Direct Evidence is proof or confirmation of the actual intent of the respondent who is charged with discrimination. It may take the form of an admission (e.g., during interview) or any facts that establish the subjective motives of the official. These could include public statements or speeches, minutes of hearings/meetings, facially discriminatory actions/legislation and contemporaneous statements (e.g., attributed by a third party).

b Circumstantial Evidence includes facts from which a "reasonable person" may infer intent or discriminatory motive. Evidentiary proof might include historical information on how protected classes have been treated by the agency and the extent of similar complaints (and corrective actions taken, if any).

c Comparative Evidence identifies differences in treatment accorded similarly situated individuals or groups based on their identification with or membership in a protected class or differences with respect to program or employment results. Comparative evidence raises the following rebuttable presumption:

IF: Similarly situated persons of different races (for example) receive different treatment or evidence different program results --

AND: There is no adequate explanation for the differences beyond the protected characteristic or attributes --

THEN: A reasonable person can infer that the protected characteristic or attribute was a factor in the treatment or results.

To be probative, the comparative evidence must demonstrate that "persons similarly situated are being compared" and that the comparisons being made are significant and inclusive. Thus, the sample size of similarly situated persons must be large enough to support a statistically significant conclusion.

d Statistical Evidence is a category of comparative evidence. Statistical evidence is very helpful in establishing discriminatory intent. Using the proper statistical models and techniques, the evidence should indicate statistically significant (a .05 level of confidence) results. In other words, there should be a 95 percent probability that the results are not due to chance. Statistical evidence is also used frequently to prove discrimination under the disparate impact theory. In this case, statistical evidence alone may be used to establish a prima facie case of discrimination.

4 QUALITY AND USEFULNESS OF EVIDENCE

Evidence gathered by the investigator should be material to the allegations raised, relevant and reliable.

a Material evidence. To be material, evidence must relate to one or more of the issues raised in an allegation.

b Relevant evidence. Relevant evidence tends to either prove or disprove an allegation or issue raised in an allegation.

c Reliable evidence. Reliable evidence is that which is dependable and/or trustworthy. The weight given to any evidence will be based on the interest (or disinterest) of the source, whether statements are factual (as opposed to conclusory), the qualifications of the witness or source to speak on a particular issue and whether or not there is corroboration by other evidence. Making determinations about weight and reliability are balancing acts in which all the factors are weighed and included in the analysis.

5 QUANTITY OF EVIDENCE

The investigator does not need to identify equal amounts of evidence for each party. It is enough that the investigator exhaust all sources likely to support the complainant and all sources likely to support the respondent. Additional evidence or investigation is not required if there is already documentation or evidence such that any additional witnesses, etc. will not change the findings of the investigator.

6 ANTICIPATED SEQUENCE OF ACTIVITIES

a The sequence of activities related to the case is relatively important. The investigator will carefully list the data and information needed to guard against having to make multiple subsequent requests. For the same reason, the sequence of likely evidence also will be considered.

b Establishing internal time frames is critical to ensuring the continued processing of the case and to allowing sufficient time for securing and analyzing evidence.

7 GUIDELINES FOR DATA COLLECTION

Data collection is central to determining what happened and why it happened in a discrimination complaint. In gathering the appropriate data that will be used to address these core questions, the investigator will:

a If possible, attempt to obtain written documentation to corroborate oral statements that are critical to proving the case; and

b Always clearly label evidence, both documents and written records of contact, with information identifying the case under investigation and the circumstances under which the evidence was obtained.

8 AUTHORITY TO OBTAIN INFORMATION

a CR is authorized complete access to all information maintained by the agency on the issues under investigation during an agency's normal business hours. This includes access to oral information from an agency's employees, written correspondence and other hard copy documents and electronic information such as electronic storage media, microfilm retrieval systems, photocopies maintained by the agency, etc. CR DECIDES WHAT INFORMATION IS RELEVANT TO A DETERMINATION OF COMPLIANCE, not the agency or recipient.

b CR has no legal authority to require the complainant or any other non-USDA agency to provide information. Any case where the complainant's refusal to provide information interferes with the ability to investigate the case may lead to closure of the case.

(1) Requests for Data and Information. A memorandum will be sent to the agency requesting data and information relevant to the investigation. The memorandum may be used to initiate data and information collection or to request additional information after the primary data and information collection activity has been completed.

- Nature of Data and Information Request. The memorandum may request one or more of the following:
 - Comprehensive data;
 - Preliminary information to enable CR to determine more specific data and information needs; or
 - Specific data and information that the agency is to make available during an onsite visit.

- Contents of Memorandum. The memorandum requesting data and information will contain:
 - The case number of the case under investigation;
 - Reference to CR's legal authority for access to information;
 - The citation of the regulation under which the investigation will be conducted;
 - The specific information requested; and
 - The deadline for responding to the data and information request.

- Denial of Access to Information. It is a clear denial of access to information when a agency either explicitly or by its overall conduct:
 - Refuses to complete OMB-approved compliance and survey forms relevant to an investigation (e.g., OS/CR 532-1 and 532-2 survey forms).
 - Refuses to permit CR access to the agency's facilities during normal business hours or to hard copy or electronic information, such as electronic storage media, microfilm, retrieval systems, photocopies, etc.;
 - Refuses to permit CR access to employees during the agency's normal business hours;
 - Fails to provide information to which it has access when:

1 One of its employees refuses to cooperate; or

2 Needed information is withheld by an employee who exclusively maintains it in his/her official capacity.

(5) Response to Refusals to Provide Data/Information or Access to Witnesses.

- When the agency states its intent to refuse to provide CR with requested data and information or access to records or witnesses, CR will do the following:

1 If the refusal is stated orally, either in person or over the telephone, the investigator will attempt to ascertain the exact basis for the agency's refusal and where possible, attempt to explain CR's authority or provide other information to address the agency's concerns.

2 If the investigator is unable to obtain access to the requested information, the investigator will consult with OGC/CRD staff (when on site, this should be done over the telephone whenever possible, before the investigator leaves the agency's premises). When appropriate, OGC/CRD will discuss the refusal to provide information directly with the agency's representative.

3 When attempts to persuade an agency to provide the requested information fail, a letter will be prepared, in consultation with OGC/CRD, setting forth CR's authority to obtain access to the information and addressing as fully as possible any particular concerns expressed by the agency. The letter will state a date by which, if the information is not provided, the case will be referred to OGC for enforcement.

- (b) If the information is not provided, the case will be referred to OGC with an enforcement recommendation.

9 ONSITE INVESTIGATIONS

a Onsite Investigation Not Indicated. An onsite investigation is normally not necessary when ALL of the following conditions are present:

- Individuals are not the primary source of information needed (i.e., interviews are not needed or can be conducted by telephone);
- All needed information and documentation can be specified precisely in the data and information request memorandum and may be easily provided by the respondent;
- The agency can provide written documentation to verify its position in its response to the information request letter; and,
- There is good reason to conclude that the complainant is the only person affected by the allegation of discrimination.

b Decision to Conduct Onsite Investigation. In most cases, the decision to conduct an onsite investigation will not be made until the investigator has received and analyzed the materials submitted in response to the information request.

c Notice to Complainant of Onsite Investigation. If appropriate, the complainant will be notified in writing of the intent to conduct an onsite investigation. The notification letter will include, at a minimum:

- (1) Dates of the onsite visit;
- (2) Time and place for interviewing the complainant (if appropriate);
- (3) Request for the complainant to provide any additional information or documentation, including a list of witnesses, prior to the onsite visit; and

(4) Date when additional information is due.

d Notice to Agency of Onsite Investigation. A letter notifying the agency of the scheduled onsite visit will:

- State the allegations, the basis on which they are made and the legal authority under which the complaint is being investigated;
- Cite the section of the regulation that prohibits the type of discrimination alleged in the complaint;

- Provide the general date and time schedule under which the onsite investigation will be conducted;
- Request any additional data and information to be submitted prior to the onsite visit, including a deadline for the information to be submitted;
- Identify additional data and information to be reviewed during the onsite investigation as a result of the investigator's review of the information obtained;
- Request that all agency witnesses who will be interviewed or who are responsible for the release of records be available during the onsite investigation;
- Request a specific date and time in which to conduct an orientation meeting with appropriate staff;
- Identify staff who will be interviewed and request that interviews be scheduled at convenient times and in private locations during the onsite visit; and
- Request the designation of a liaison person.

e Principal Data/Information to Be Obtained Prior to Onsite Investigation. Unless the Director grants a waiver, the following data and information will be obtained from the complainant and the agency, prior to commencement of the onsite investigation:

- Agency's response, including its account of the facts and the respondent's agreement or disagreement with each of the complainant's allegations;
- Names of the witnesses that the agency and/or respondent wants interviewed and an indication of the information each witness can be expected to provide; and
- Documentation the agency and/or respondent wants reviewed in defense of their position.

f Conducting Onsite Interviews. Before conducting the interviews, the investigator should have as much information as possible about the intended purpose of the interview, the subject areas and issues to be covered and the interviewee's role and possible knowledge of the events alleged in the complaint.

- Interviews should be scheduled so there is enough time between interviews for the investigator to review and complete interview notes. Therefore, it is critical that the onsite visit be planned over enough days to ensure thorough data/information gathering.

- (2) The number and sequence of interviews will depend on the investigative strategy. However, certain strategies are advisable. For instance:
 - People with first-hand knowledge should be interviewed first. This includes:

1 Persons who were directly involved in the situation that the complainant has alleged occurred; and

2 Persons who were not directly involved, but who have first-hand knowledge of the processes, events and issues under investigation.

- (b) Persons who make decisions that are relevant to the issues under investigation, but who were not actually involved in the situation or the decision in question.

(c) Persons familiar with the criteria used in the various processes and policies related to the issues under investigation.

g Interviews. The main objective of interviews is to elicit information that will either support or refute the allegations that violations of USDA regulations have taken place. An interview guide should be prepared containing the major questions to be asked during interviews. Generally, in interviewing, the investigator will:

- Introduce himself or herself and describe the interviewing process to the interviewee;
- (2) Inform the witness that he or she is legally protected against interference, retaliation, coercion, discrimination or reprisal for providing information and cooperating with the investigation;

(3) Distinguish factual information from opinions;

(4) Allay negative reactions;

(5) Take clear, precise notes; and

- (6) Obtain a signed summary statement of the interview from the interviewee.

h Witness Consent/Release Form. The Privacy Act/Administrative Procedures Act and standards set by DOJ require that agencies authorized to process complaints or to conduct investigations must obtain signed consent and release forms from witnesses.

i Documentation. A written record of all interviews is required to preserve the probative value of the information obtained. Most investigators take careful, precise notes during interviews. If note-taking appears to impede the flow of information, the interview may be conducted without taking notes. However, immediately following the interview, the information will be reduced to writing. With the witness' permission, the investigator may also tape record the interview. Notes and subsequent reports of the interview will contain the following information:

- Case number;
- Name, address and telephone number of the witness;
- Date, time and location of the interview;
- Identification of whether interview conducted face-to-face or by telephone;
- Name of the person conducting the interview;
- A summary of the questions and responses (this need not be a verbatim transcript but should accurately reflect the questions posed by the investigator and the responses of the witness);
- Signature of the interviewee; and
- Interpreters, translators and the witness' personally designated representative and/or others who were present during the interview.

j Representation During Interviews. Generally, persons other than the witness, the witness's personally designated representative and an interpreter or translator, if needed, are not allowed to be present during interviews. The witness will be informed of any potential conflicts of interest between their personal representative's role and responsibilities to the witness as opposed to their responsibilities to the agency.

- The witness' choice of personal representative will be honored unless the designated representative interferes with the investigator in conducting the interview or disrupts the

flow of information from the witness. If so, the designated representative will be asked to leave and the witness asked to designate another personal representative.

- The written consent of a parent or guardian must be obtained in order to interview a minor or someone with a mental impairment. The parent or guardian may also be present at the interview. If written consent is refused, then the parent's or guardian's wishes must be honored.

10 GENERAL RULES FOR HANDLING EVIDENCE

a Annotate all evidence received in terms of date on which received and person(s) from whom received;

b Maintain an original, clean and unmarked copy of all documents;

c Keep documents in a secure place and one in which a strict chain of custody can be documented and maintained; and

d Document the circumstances under which evidence was collected, using the Document Control Cover Sheet.

11 ANALYSIS OF NON-NUMERICAL DATA

The following steps will be followed in analyzing non-numerical data/information:

a Determine the relevance of non-numerical data and information by identifying what information is needed and recognizing its presence or absence. Note where the evidence:

(1) Does not provide the answers needed;

(2) Does not provide any direction to a source for the answers needed; or

- Does not raise additional issue-related questions.

b Categorize the evidence by issue and/or allegation.

c Verify the evidence by cross-checking the evidence, identifying conflicting information and resolving the conflict to the extent possible.

d Assemble and organize the evidence in a logical manner so that anyone reviewing the evidence will be able to ascertain the issues and the evidence pertaining to those issues.

e Draw conclusions regarding the evidence collected and test those conclusions by considering as many rebuttal arguments as possible by the complainant or the agency.

12 ANALYSIS OF NUMERICAL DATA

Analysis of numerical data can be as simple as computing simple frequencies, means and medians to applying complex techniques for which a quantitative analyst or statistician must be consulted. If part of the evidence consists of complex statistical data, it may be appropriate to consult an expert in statistics.

13 PREPARING THE ROI

a The ROI will be prepared when the investigation has been completed. The purposes of the ROI are to:

(1) Organize and present the factual information collected during the investigation;

(2) Identify the location in the case file of the specific supportive documentation from which each statement, allegation, conclusion or determination was drawn;

(3) Present an analysis of the information/evidence to determine the relevance of the facts to the allegations; and

- Draw conclusions from the analysis, i.e., FINDINGS OF FACT.

b The ROI will contain the major sections listed below. Each section should direct the reader to the appropriate supporting documentation in the Investigative Case File. The contents of each of the major ROI sections are described below:

- Introduction: Provides a historical overview of the actions taken on the case prior to CR involvement and CR activities prior to accepting the complaint for investigation.
- Allegations: Clearly describes each individual or class allegation, the statute or regulation which the allegation, if true, would violate and the grounds upon which the allegation is based. The allegations will be organized in a logical sequence to sustain a finding of discrimination or nondiscrimination.
- Methodology: Explains how the investigation was conducted, what documents were reviewed and which witnesses were interviewed. Specific names of witnesses need not be provided, but a description of the numbers and types of witnesses is necessary.

- Agency Response: Describes the position of the agency. This information can be obtained from primary source documents, interviews, etc. Where the agency or the respondent has refused to supply information, document the attempts and efforts to secure information that would explain their positions.
- Findings of Fact: Presents facts in a logical sequence (usually chronologically or by subject matter). Each fact or series of related facts will be sequentially numbered and listed separately. Any facts in dispute will be resolved based on the evidence and standards of proof. Any allegations rejected and the reasons for their rejection will be noted in this section. In presenting facts or series of related facts, investigators will take care to avoid drawing conclusions or making determinations as to whether discrimination occurred.

14 ROI APPROVAL AND REFERRAL TO ADJUDICATION

Once the ROI is completed and signed by the investigator, it is submitted to the Chief of the Investigation Unit for approval. The Chief reviews the ROI to determine its completeness. If the ROI is complete, the Chief approves it by signature and the case is forwarded to the Adjudication Unit for further processing.

CHAPTER 4

CLOSURES AND FINAL AGENCY DECISIONS

1 GENERAL

During the adjudication process, the facts are analyzed, appropriate law applied and a determination made as to whether discrimination occurred, based on the merits of the allegations.

2 CASE DETERMINATIONS

a Making Determinations/Decisions. In the adjudication process, the appropriate law is applied to the findings of fact. Each fact will be weighed against the allegation to which it pertains.

- A determination of discrimination or no discrimination must be made with respect to each allegation, based solely on the record of evidence and facts as presented in the ROI.
- A prima facie case of discrimination will established based on the PREPONDERANCE OF THE EVIDENCE. Evidence which is more credible and convincing than opposing evidence meets this test.
- The analysis and conclusions must be supported by the ROI.
- All conclusions must be logical, reasonable reflections of the factual evidence as presented and drawn in accordance with the appropriate standard of proof.
- Rejected allegations will also be addressed in the adjudication process. HOWEVER, the focus of the determination rests ENTIRELY upon whether or not the weight of the evidence supports the complainant's allegation(s) of discrimination. Programmatic errors will be noted only where they relate to the allegation(s) of discrimination.

b Final Agency Decision (FAD). Upon completion, the FAD will be signed by the adjudicator(s) involved and submitted to the Chief of the Adjudication Unit for review. The Chief will indicate approval of the FAD by signature. The Chief will then transmit the FAD to the Deputy Director of Programs who will then send the decision to OCG/CRD for a legal sufficiency review.

3 LETTERS OF CLOSURE AND FINDINGS

All closure letters are administratively final. They will be utilized under the following circumstances:

a Voluntary withdrawal by the complainant;

b Resolution agreement;

c Failure of the complainant to pursue the complaint;

d Lack of jurisdiction;

e Untimely filed complaint;

f Court litigation has commenced on similar fact pattern;

g No (or no further) relief can be granted to the complainant;

h Benefit sought was not available due to statute, regulation or Court decision; or

i Any other reason as determined by the Director.

4 CONTENTS OF FADS

FADs are issued for all cases not covered by closure letters. FADs are based on the merits of the complainant's allegations. FADs are also administratively final. All FADs will include the following:

a Complainant's name, case number, date of complaint and the agency against which complaint was filed;

b Decision Section which summarizes the Director's finding;

c Summary Statement of the Case, which will include:

- Summary of allegations;
- Statement of facts giving rise to the allegations;
- Applicable regulation;
- Analysis (performed for each allegation);
- Prima facie case;
- Articulated reason;
- Pretext discussion; and
- Conclusion, including regulatory authority to resolve the complaint.

5 OUTCOMES - FADS

a Finding of No Violation. If CR finds that no discrimination occurred, the FAD will state a finding of no violation.

b Corrected Violation Finding. If CR finds that discrimination occurred but the agency took steps to resolve the practice or problem before the issuance of the FAD, the FAD will acknowledge the voluntary compliance. In this instance, the FAD may require follow-up monitoring.

c Violation Finding with Requirement for Remedial Action . If CR makes a finding of noncompliance and requires remedial action (including damages), a Corrective Action Plan will be developed. The Corrective Action Plan may be a combination of recommendations made by the agency and CR for specific steps to be taken by the agency to comply with applicable law(s).

6 OFFERS OF SETTLEMENT

a When there is a finding that discrimination has occurred, the Director, in consultation with OGC/CRD, will determine the amount, if any, of damages to be awarded the complainant. An Offer of Settlement will be issued by the Director to the complainant. The complainant may:

(1) Accept the offer by signing the Offer of Settlement. The Director will then direct the payment of the agreed-to funds.

(2) Reject the offer and make a counter offer. In this instance, the Director (or designee) will attempt to negotiate a mutually agreeable settlement amount.

- (3) If CR and the complainant cannot agree on an acceptable settlement, the Director (or designee) will notify the complainant of his/her right to pursue a private cause of action in civil court.

b While the discrimination complaint case itself will be closed, CR will work through the Program Compliance Division to monitor and enforce implementation of any actions required by the agency under the Corrective Action Plan.

7 MONITORING SETTLEMENT AGREEMENTS

a CR is responsible for monitoring implementation of settlement agreements and assuring compliance with the terms and conditions of the agreement. When settlement is reached

in a complaint, the terms of the settlement will be reduced to writing and signed by the complainant, the complainant's representative and the Director, for the Department.

b CR will monitor agency compliance with settlement agreements and will carry out the following activities to monitor and track implementation of settlement agreements:

- When it might appear that a settlement involves a court decision or coordination with OGC, CR will forward the settlement agreement to OGC for transmittal to DOJ to determine if DOJ approval is required. At the time CR forwards the settlement agreement to OGC, it also will provide a copy of it to the agency for informational purposes and will advise the agency to withhold implementation of the compensatory damages provision until it is notified that approval has been granted by OGC.
- Upon approval of the settlement agreement by OGC, CR will inform the agency that it may proceed with the implementation of such settlement.
- When no DOJ concurrence is required, CR will forward the settlement to the agency, with a copy to OGC, directing the agency to implement the agreement in accordance with its terms and time frames.
- The Chief of the Program Compliance Division, CR is responsible for ensuring implementation of settlement agreements. The Chief or his or her designee will:
 - Follow up with the agency biweekly or as needed on implementation progress and will conduct periodic checks with the complainant concerning implementation of the agreement;
 - Submit biweekly inquiries to the agency head (or designee) requesting updated information and documentation of implementation activities;
 - Keep the Director informed of the agency's progress or failure to implement the terms of the settlement agreement;
 - Periodically and on an ad hoc basis (as the need arises), meet with the agency head (or designee) to reconcile records and discuss implementation progress;
 - Report problems and concerns raised by the complainant with the implementation process to the

agency head (or designee) and monitor the agency's corrective action;

- In case of a finding of discrimination, advise the agency head of whether or not responsible officials have been found to have engaged in discrimination, including any recommendations for taking appropriate disciplinary action;
- Follow up with the agency at least monthly, by telephone or written inquiry, as appropriate, to determine if disciplinary action is taken against any official found to have engaged in discrimination;
- Provide the Office of Human Resources Management with a copy of settlement agreements for complaints having indications of significant wrongdoing/discrimination by responsible official(s), or others, that CR determines should be reviewed for disciplinary action (see policy on disciplinary action in CR cases for further information);
- Issue a final closure letter to the complainant and the agency when all terms of the agreement have been fully implemented;
- Maintain the original copy of the agreement and copies of implementation documents in the official complaint files;
- Conduct spot checks of the successful implementation of the settlements and will provide guidance and directions to agencies for technical services and assistance to help prevent future complaints; and
- Enter information in the data base to record and track all settlement agreements, including the date each one is entered into, the types of relief agreed to, the implementation of relief granted in settlement agreements, including attorney fees, date implementation is completed and date of the settlement closure letter to the complainant and agency.

8 ROLE OF OGC

Following the execution of a settlement agreement that CR and OGC have determined must be reviewed by DOJ, OGC will:

- a Transmit such agreements to DOJ, as appropriate and act as the USDA contact with respect to DOJ;

b Notify CR and the agency upon receipt of DOJ's determination, providing them with copies of DOJ's opinion;

c Assist CR, if requested, in drafting the agency transmittal memorandum in accordance with the DOJ decision;

- d Provide legal advice to CR and agencies on implementation of the terms of settlement agreements if other statutes or programmatic relief conflict.

9 ROLE OF THE AGENCY

a Upon receipt from CR of the settlement agreement or notice of DOJ approval of the settlement agreement, the agency will:

- Proceed to implement the settlement agreement according to its terms and time frames;
- (2) Provide CR and OGC copies of settlement agreements entered into by the agency;

(3) Provide weekly reports to CR on its activities in implementing the agreement;

(4) Provide CR with copies of documents processed to effect the terms of the settlement agreement. Following are the types of documents that are to be sent to CR to document implementation:

- Correspondence to agency officials directing them to implement portions of the agreement;
- Fiscal documents showing issuance of cash payments to the complainant;
- Processing documents to cancel, liquidate, set aside or write down prior or outstanding debts and other obligations;
- Approval documents for loans or other benefits; and/or
- Any other documents or correspondence initiated to implement programmatic relief granted in the agreement.

b The agency will consider any recommendations from CR or make a separate agency determination, about whether appropriate disciplinary action should be taken against agency officials determined to be responsible for the discriminatory act(s) that gave rise to the complaint.

CHAPTER 5 - COMPLIANCE REVIEWS

PART I - GENERAL RESPONSIBILITIES AND REQUIREMENTS

1 GENERAL

This Chapter describes the process for conducting compliance reviews of agencies having conducted programs and activities. The theories of discrimination, guidelines for collecting and analyzing evidence and other general technique guidance from other chapters of this manual also apply to the conduct of compliance reviews.

1. 2 PURPOSE

a Agencies are responsible for ensuring that all programs and activities for which they are responsible are conducted, managed and administered in a nondiscriminatory manner. A major tool that agencies will use to accomplish this is the civil rights compliance review.

b Compliance reviews are systematic, planned investigations conducted by CR or the agencies that assess and evaluate the civil rights and equal opportunity policies, procedures and practices of agencies and their sub-components to determine their compliance with applicable civil rights statutes, regulations, standards and policies.

3 RESPONSIBILITIES

a CR provides overall leadership and direction in the conduct of compliance reviews. CR:

- Conducts compliance reviews of agencies and their programs and activities;
- (2) Establishes criteria for the selection of agencies and their sub-components that will undergo compliance reviews;
- (3) Establishes criteria for the conduct of compliance reviews by USDA agencies;

(4) Directs and guides the implementation of Compliance Action Plans negotiated with agencies found to be in noncompliance;

(5) Monitors compliance review activity within the agencies; and

- Provides agencies with technical assistance and training.

b All USDA agencies are responsible for regularly and systematically monitoring and evaluating its policies, procedures and practices to ensure that there is no unlawful discrimination and that there is an equal opportunity to participate in agencies' programs and activities. Agencies will:

(1) Prepare and submit to CR annually, (prior to the beginning of each fiscal year), a Compliance Review Plan and Schedule For Conducting Onsite Compliance Reviews.

The Compliance Review Plan and Schedule must provide detailed information on the dates, geographical locations and program areas that will be covered for each compliance review.

(2) Regularly and systematically conduct compliance reviews of their programs and activities that include INVESTIGATION of the administration of agency programs and activities, processes, procedures and practices.

(3) Prepare compliance review reports that identify:

- The applicability of civil rights laws, federal regulations and USDA policies to the programs and activities under investigation;
- The civil rights implications of each agency program and activity in the context of the internal agency policies, administrative processes and practices that apply;
- The areas of noncompliance, if any;
- Recommendations that will correct noncompliance.

(4) Direct and coordinate the implementation of Compliance Action Plans negotiated with sub-components found to be in noncompliance;

(5) Monitor and evaluate sub-components progress in implementing recommendations; and

(6) Provide copies of compliance review reports to CR for review and feedback.

4 TYPES OF COMPLIANCE REVIEWS

a At its discretion, CR may conduct either an agency review or a program review. CR will be guided by the policies, legal standards and requirements that have been established in Federal statutes, Executive Orders, regulations, case law decisions and guidelines related to discrimination based on race, color, national origin, sex, religion, age, disability, marital status, familial status, parental status, sexual orientation or because all of a part of an individual's income is derived from any public assistance source and make applicable to USDA-conducted programs and activities.

b Agencies, may, at their discretion, conduct compliance reviews of all of the programs and activities administered by a sub-component(s), limit them to a particular program or activity of a sub-component or in the context of a compliance review schedule, conduct a combination of compliance review types, over the course of a fiscal year.

5 COMPLIANCE REVIEW TARGETING CRITERIA

Compliance reviews will not be randomly targeted. The decision to conduct a compliance review will be based on neutral criteria or evidence of a violation. Criteria to be considered in targeting compliance reviews include:

a A routine review cycle which is driven by the need to review all programs and activities on a regular schedule;

b Issues identified for special attention in strategic plans, annual work plans, plans of operations, etc.;

c Issues frequently identified as problems faced by program applicants and participants;

d Geographic areas where problems have been identified or geographic areas in which there has been little compliance activity;

e Issues raised in complaints or identified during the investigation of complaints that could not be fully covered within the scope of the complaint investigation process;

f The identification of problems and issues by community groups, advocates and other representing protected classes;

g Issues flagged by CR, the agency head or regional and state leadership officials; and

h Issues and problems identified by other Federal, state or local civil rights agencies.

6 SCOPE OF COMPLIANCE REVIEWS

It is within the discretion of the Director to determine the scope of any compliance review. If the conduct of the compliance review is based on neutral criteria, the review itself may be limited to a DESK AUDIT. A desk audit is a review of the documentation submitted to CR by the agency. Desk audits may be extended to include onsite visits.

7 SOLICITATION OF DOCUMENTS

In requesting documentation, CR and USDA agencies will take into consideration three factors:

a Whether or not the requested documentation is material and relevant to the conduct of the compliance review or desk audit;

b Whether or not the request for documents is properly limited in scope; and

c The criteria used to target the compliance review.

8 MANDATORY ELEMENTS OF COMPLIANCE REVIEWS

Regardless of the type of compliance review, CR and agencies will cover, AT A MINIMUM, the following areas in their compliance reviews, based on the requirements set out below, which will be limited only by the type of review being conducted:

a Civil Rights Resources. Agencies are required to dedicate sufficient resources to administer their civil rights responsibilities. During compliance reviews, these resources will be identified by staff hours/full time equivalencies and budget allocations.

b Training for Civil Rights Professionals and Others. Agencies must take the necessary steps to ensure that civil rights professionals and officials who are responsible for integrating civil rights requirements into programs and activities receive the technical training necessary to properly carry out their responsibilities. During compliance reviews, it will be ascertained:

- Who has received training by title, level of authority, race, national origin and disability status;
- The subject matter covered and the number of hours of training received;
- The existence or absence of training needs inventories, employee develop plans or other documents that identify the need for the requisite civil rights training;
- The process used to provide civil rights technical training to new employees or employees new to technical responsibilities in the civil rights area;
- The role of national, regional and other civil rights offices within the agency in identifying and validating the need for specific civil rights training;
- The information in section 8(b)(1)-(4) for nonsupervisory employees and/or employees who must be provided non-

technical civil rights training per USDA policy.

c Public Notification and Outreach. Agencies must have in place an effective public notification system that adequately informs applicants and participants of the availability of programs, benefits and services, USDA's policy of nondiscrimination and procedures for filing a discrimination complaint. Some of the attributes of an effective public notification and outreach system which should be reviewed are:

- Nondiscrimination statements printed on all publications and outreach materials providing information to the public;
- Photographic and outreach materials that display diversity of participants and staff; and
- Evidence of outreach and linkages to grassroots organizations, advocacy groups and referral sources representing members of protected classes.

d Data Collection Systems. Agencies must develop, implement and maintain data collection systems that yield accurate, relevant and reliable statistical information. The systems will be used to identify:

- Composition of service areas by race, national origin, sex and disability;

- Total number of applicants and program participants in programs, activities and specific services or benefits, as appropriate, by race, national origin, sex and disability;
- Nominations and memberships, by race, national origin, sex and disability on local and national planning and advisory boards and committees;

- Data on service areas where LEP persons reside, including:
 - Primary language of each LEP group;
 - Estimated number of persons in each LEP group; and

- Total number of agency staff who are bilingual in the identified LEP languages and the number and position of such staff by each LEP language identified.

e Complaints Processing in Conducted Programs. From public notification to complaint closure or settlement, agencies are required to cooperate in the processing complaints filed in USDA conducted programs. Please refer to Chapters III and IV of this manual to identify specific agency responsibilities. CR and agencies will review implementation and cooperation issues that are relevant to the agency and/or the agency's sub-components and include in the compliance review the agency's/sub-component's performance in the implementation and use of these procedures. They will also review the effectiveness and efficiency of the interface with CR's and/or the agencies' headquarters requirements. Included should be:

- The degree of cooperation and assistance provided by the sub-component to applicants and participants on how to file a complaint at key stages in the service delivery continuum;
- The number of complaints filed by applicants and program participants in the sub-component by race, sex, national origin and disability;
- Effectiveness of efforts to implement provisions of settlement/conciliation agreements, as appropriate;
- Efforts to eliminate policies or practices that gave rise to allegations of discrimination;
- Trends or patterns and practices that are identifiable; and
- Other activities being conducted to avoid and reduce the number and types of discrimination complaints filed by program applicants and participants.

f Program Availability and Accessibility to Persons With Disabilities. CR and agencies will review conducted programs and activities to ensure that requirements of Section 504 of the Rehabilitation Act, as amended, are being implemented. In conducting compliance reviews, it will be determined whether or not:

- A self-evaluation of the facility under review has been conducted and acquire a description or copy of the self-evaluation, which should include, at least:
 - A list of persons with disabilities or other interested person(s) who were consulted; and

- A description of areas examined, any identified problems and modifications or remedial steps undertaken.

(2) Procedures currently used (or planned) in order to:

- Disseminate information to current and potential program participants about the existence and location of services and facilities that are accessible to persons with disabilities;
- Notification of program applicants and program participants of nondiscrimination policy, services, waivers of rights and treatment;
- Evidence of the timeliness and methods in use to communicate civil rights policy, program materials, proposed rules, advisory committee solicitations and other information to sensory impaired persons; and

(d) Declaration of availability of auxiliary aides, including: description of aids available; explanation as to how aid selected will ensure effective communication with current and potential applicants and program participants who have disabilities; staff training in use of auxiliary aids and communications; methods used by applicant to notify current and potential beneficiaries of availability of the aids.

g Service to LEP Persons. USDA at all levels, has an affirmative responsibility pursuant to E. O. 13166 to provide LEP persons with meaningful opportunity to participate in programs and activities conducted by USDA. During compliance reviews, it will be ascertained what actions have been taken (or are planned) to communicate with and assist individuals with LEP and other special needs. During compliance reviews, CR and agencies will verify if:

(1) Agencies and/or their sub-components have in place, strategies, processes, and/or procedures that ensure:

- Thorough assessment of the language needs of the population to be served;
- Effectuation of a comprehensive written communications policy and plan on LEP assistance;
- Staff training to increase understanding and capability to carry out the policy effectively; and
- Vigilant monitoring to ensure that LEP persons can meaningfully access programs and activities.

(2) In assessing the above information, reviewers will validate whether or not LEP persons are:

- Receiving adequate information on programs and activities;
- Able to effectively communicate the relevant circumstances of their situations to agency officials;
- Able to understand the services and benefits available; and
- Able to receive the services and benefits for which they are eligible.

h Local Planning and Advisory Committees and Boards. Agencies are required to diversity internal and external advisory boards and committees. This requirement extends to boards and committees that are established at all levels within USDA. During compliance reviews, the internal and external planning and advisory committees should be reviewed for adherence to USDA policy in this area. Some of the factors that should be considered are:

(1) Efforts to solicit diverse nominations for committees and advisory boards;

(2) The selection and appointment process(s) that are used to staff committees and advisory boards;

(3) Any qualifying mandatory or discretionary membership criteria that are imposed internally and externally and their impact on diversity;

(4) Efforts to remove or revise discretionary criteria where their impact has been negative or adverse; and

(5) Any other factors that effect planning and advisory committee membership.

i Program Delivery and Contracting Opportunities. Agencies are required to ensure nondiscrimination in its conducted programs and activities, including those affecting minorities, women, persons with disabilities and Native American tribes, thereby improving service delivery to historically under-served populations. This includes programs and activities having environmental justice implications. In addition, agencies are required to ensure equal opportunity for minority, women-owned and small and disadvantaged business in all USDA contracting activities. Compliance reviews should, in the context of effective planning and program delivery, investigate:

- Program delivery and contracting priorities, goals and benchmarks, qualitative and quantitative change(s) anticipated and qualitative and quantitative change(s) accomplished;
- Barrier removal; and
- (3) Local and regional assessment(s) and evaluation(s) of section 8i(1)-(2) above.

9 TIME FRAMES FOR COMPLIANCE REVIEW PROCESS

Following are CR time frames for the compliance review process. Agencies will establish similar time frames to ensure that the compliance review process is completed in a timely fashion and that agency compliance review reports are submitted to CR for review and evaluation. Unless otherwise stated, all days are calendar days.

a Agencies will receive notice from CR of plans to conduct a compliance review at least 60 days prior to the date on which the review will commence. This notice will include a description of the scope of the review, data and information required from the agency, and the date by which the information must be submitted.

b Agencies will acknowledge the CR notice within five working days and consult with CR on submission of the requested data and information.

c CR compliance reviews will be completed within 180 days following the receipt of the requested data and information from the agency subject to review.

d Within 30 days of the completion of the compliance review, CR will provide an initial compliance review report to the agency CR director and the head of the agency. Voluntary compliance efforts may be initiated at any time.

e The agency must respond within 15 WORKING DAYS following receipt of the initial compliance review report with a proposal of specific actions it will undertake to remedy any findings of noncompliance. The proposal will be in the form of a voluntary compliance agreement.

f Within 30 days following the release of the initial compliance review report to the agency, the Director will issue the final compliance review report along with any voluntary compliance agreement reached with the agency or, where no agreement has been reached on issues of noncompliance findings, a request that the agency submit a proposed Compliance Action Plan within 30 days to the Director. The final CR compliance review report will be issued to the:

- Agency head;
- Agency civil rights director;
- USDA General Counsel;
- Appropriate Under or Assistant Secretary;
- Assistant Secretary for Administration; and
- Deputy Secretary.

10 PRE-ONSITE ACTIVITIES

a Prior to commencing onsite compliance reviews, CR will:

(1) Log in, date stamp and assign a case number to any correspondence or request for a compliance review (Thereafter, this case number will be used on all documents and correspondence related to the compliance review);

- (2) Enter case number and agency/program name into the database to flag and cross-reference with discrimination complaints and other departmental actions.

(3) Assign case to team leader;

(4) Review request and assess/make recommendations on:

- The issues involved;
- The seriousness of the issues;
- The nature of the review to be conducted (i.e., conducted programs only or combined with assisted programs and/or employment programs);
- Background information on compliance history and civil rights complaints; and
- Whether the request falls within CR's stated priorities.

b Agencies are expected to establish similar requirements to facilitate the management of compliance reviews.

11 TEAM LEADER RESPONSIBILITIES

The CR team leader will:

a Notify the agency head or designee to discuss the upcoming compliance review and to request a liaison;

b Coordinate plans for the compliance review with liaison;

c Identify team members;

d Conduct team planning and strategy meetings;

e Determine scope of the review;

f Prepare data request and ensure that data is received and disseminated to the team at least 60 days prior to onsite review;

g Ensure analysis of data received from the agency;

h Ensure that the notification package is sent to the agency at least 90 days prior to onsite review;

i Coordinate arrangements for onsite transportation, work space and equipment;

j Conduct opening meeting with agency head and/or managers;

k Conduct assigned interviews and evaluations;

l Provide guidance and support for team members in accomplishing assignments;

m Collect team member reports and prepare written preliminary compliance review report;

n Summarize and discuss preliminary report with agency management at the closing meeting;

o Conduct team de-briefing;

p Develop final written report for review and approval by the Director, Program Compliance Division; and

q Prepare final report and letters of findings for the Director to submit to agency.

12 ESTABLISHMENT OF COMPLIANCE REVIEW CASE FILE

a The team leader will organize the compliance review case file, which will include:

- File label;
- Case number;
- Agency name and state;
- Date of onsite review;
- Number of folders (e.g., 1 of 3); and
- Destruction date.

b The CR team leader will maintain the Compliance Review Status Monitoring Sheet, which should be kept separate from the case file and capture information on the following:

- Section I: Pre-onsite Preparation:
 - Pre-onsite notification package:
- (b) List of team members, team leader:
 - Compliance Review Approval Forms.

(2) Section II: Review and Evaluation Activities:

- Data collected during pre-onsite period;
- Data collected during onsite;
- Preliminary Evaluation Report;
- Comments and corrective action received from agency.

(3) Section III: Post Onsite Activities:

- Final Report;
 - Agency Response;
 - Record of Attempts and Outcomes of Voluntary Compliance;
 - Director's Letter of Findings.
- (4) Section IV: Compliance Action Plan and Monitoring Reports.

13 TEAM MEMBER SELECTIONS AND TASKS

The CR team leader, in consultation with the Chief, Program Compliance Division, will select members for the review team. Team members may include representatives from other agencies (USDA and non-USDA). Team member tasks include:

a Participate in strategy meetings;

b Analyze pre-onsite data prior to onsite review;

- c Assist team leader with coordination of site arrangements;
- d Participate in opening meeting onsite;
- e Coordinate scheduling of interviews with liaison;
- f Conduct assigned interviews and evaluations;
- g Alert team leader of any potential problems or issues;
- h Develop preliminary report of assigned areas;
- i Participate in closing meeting;
- j Participate in post-onsite debriefing; and
- k Prepare final report of assigned areas and submit to team leader.

14 TEAM STRATEGY MEETING

The CR team leader will convene a strategy meeting at least three days prior to the onsite review. This meeting will be used to make final decisions and assignments, such as:

- a Determine team members' areas of responsibility;
- b Determine which team members will analyze what portions of the requested data prior to the onsite;
- c Discuss logistics issues;
- d Finalize any substantive questions or issues, including:

- Overview of agency, programs, activities and participants;
- (2) Clarifications on applicable civil rights laws, regulations and policies;

(3) Criteria and standards to be used;

(4) Review of previous compliance review or complaint investigation findings;

(5) Policies and practices of the agency; and

(6) Sources of information (within and outside the agency).

15 PRE-ONSITE NOTIFICATION PACKAGE

The CR team leader is responsible for assembling and mailing the Pre-Onsite Notification Package to the agency at least 60 days prior to the date of the onsite investigation. The package will, at a minimum, include the following:

a Confirmation of the liaison;

b Sites to be visited;

c Individuals to be interviewed;

d Checklist of information to be returned to the team leader within 60 days prior to the onsite review;

e Description of the scope of the review; and

f Questionnaire with instructions for distribution to agency employees with instructions that it be returned within 60 days prior to the onsite review.

16 COMPLIANCE REVIEW PLAN

Based on input from the team members and information gathered from the agency, the team leader will prepare a Compliance Review Plan that will guide the work of the team. This plan will contain the following components:

a Name of agency and/or program(s) to be reviewed;

b Purpose of review;

c Sites to be reviewed;

d Scheduled dates and times;

e Scope of review (including issues to be covered and the extent of coverage);

f Statutory requirements, standards and/or criteria;

g Background information, including:

- (1) Compliance and civil rights history;

(2) Status of any existing court orders or pending agency action(s);

(3) Types of programs and activities to be reviewed; and

(4) Information on the community (demographics).

h List of interviewees and expected area(s) of information;

i Interview questions;

j Employment and program participation data to be reviewed;

k Names of boards, councils and committees and data on the membership of each;

l Date of Letters of Notification; and

m Schedule for completion of review and final report.

17 APPROVAL OF REVIEW PLAN

The CR team leader will negotiate the final review plan with the Chief, Program Compliance Division, who must approve the final plan.

PART II

CONDUCTING ONSITE REVIEWS, CLOSURE AND FOLLOW-UP

1 ONSITE ACTIVITIES

a Entrance Conference. Upon arrival, the team leader and team members will meet with the agency officials and the liaison for introductions and to set the tone for the onsite process. The team leader will review the goals and objectives of the review, explain how it will be conducted and answer any questions about the review process. This is an opportunity to also confirm any last minute scheduling or logistical changes. The goal of the entrance conference is to set the officials at ease and to promote an atmosphere of cooperation. It may be helpful to talk about the process in terms of a service that will assist the agency in strengthening its civil rights and equal opportunity programs. If not done prior to arrival onsite, the exit conference will be scheduled at this time.

b Interviews: With the help of the liaison, onsite interviews of randomly selected employees will be conducted. Interviews with the following categories of employees will be conducted. Team members are responsible for clarifying the purpose of the review with employees.

- Employee Interviews. It is important that the team interview a cross-section of the agency nonsupervisory work force who can provide information on how programs and activities are actually implemented. Such interviews will provide insight on common practices as compared with official policy.
- Management interviews. Onsite interviews of randomly selected management staff also will be conducted. The focus of these interviews will be on the officials' involvement, participation and support of civil rights

programs. Any management concerns, issues and barriers from managers' perspectives, should be surfaced during these interviews.

(3) Other interviews. Other interviewees may come from a wide spectrum of persons who have information about the agency and its programs and services. These interviewees include, but are not limited to program participants, board/council/committee nominees and members, community leaders, local chapters of grassroots organizations, local advocates, etc.

c Record Examinations. Examine records relevant to the program areas and activities described in section 8. Compare the records with information obtained from interviews and outside sources to confirm facts about the agency's programs, activities and practices. Some typical records that should be reviewed include, but are not limited to:

- Training plans, inventories of needs, curriculum and other materials for staff;
- Training sign-up sheets;
- Procedures for informing participants of their rights;
- Procedures for processing program complaints;
- Strategic plans, operating plans, business plans, etc.;
- Monthly, quarterly and annual program and civil rights reports;
- Performance plans and accomplishment reports;
- Civil Rights Policy statement;
- Agency Nondiscrimination Statement;
- Copies of civil rights laws and regulations;
- Internal policies and procedures;
- Examples of news clips, brochures, etc.;
- Mailing and board/committee/council membership lists;
- Program eligibility and enrollee files and applications;
- self-evaluation reports; and
- Applicant, program participation and other relevant Statistical and Other Data/information.

d Compliance Criteria.. The following criteria may be used to help in determining if the agency is in compliance with the legal and regulatory requirements which apply to conducted programs:

- Adherence to program and civil rights regulations and policies;
- Involvement and accountability (issuance of civil rights policies, description of goals, objectives, expectations, results, correction of deficiencies);
- Use of outreach to inform potential applicants and program participants of programs and activities;
- Adequacy of procedures and efforts to address trends and patterns;
- Short and long term effectiveness of civil rights training;
- Infrastructure (impact of agency structure, functions, budget, staffing, internal communications);
- Accommodation, accessibility and availability of information, programs, activities and facilities to all protected groups;
- Sufficiency of data collection, monitoring, analysis and assessment of civil rights programs; and
- Other criteria that is applicable to management of civil rights implementation within the agency.

e Observations. The team members will take time to look at the physical facilities with the specific purpose of observing:

- Prominent placement of posters informing of civil rights and complaint procedures;
- (2) Accessibility features, such as ramps, TDD and other devices;
- (3) Information posted or distributed in languages other than English;

(4) Pictures displaying diversity of staff and program participants;

- (5) Traffic flow and mix of people in key areas of the facility; and

(6) Other physical aspects of the facilities that will verify, document and/or offer insight into how the facilities are used to promote equal opportunity and provide access to participants in USDA programs and activities.

f Preliminary Evaluation Report. The compliance review team should develop its preliminary report of findings prior to completing the onsite investigation. This preliminary report serves two functions. First, it enables the team to identify information gaps, conflicting data and information and areas for further investigation. Second, as a

way to promote voluntary compliance, the report can provide the agency with "early warning" of areas of concern. This enables the agency to begin efforts immediately to remedy any areas of noncompliance prior to the issuance of a final letter of findings.

g Exit Conference. An exit conference will be held with agency management. If it is not possible for the entire team to be present, the team leader will conduct this conference. The exit conference will be a closed meeting. During the exit conference, the team leader will share preliminary concerns as well as identify areas that are in compliance. The team leader will answer any questions about the compliance review and the post-onsite process.

2 FINAL COMPLIANCE REVIEW REPORT

a A final report of the findings of the compliance review will be completed immediately upon return to the office. The report will be signed by the person(s) who conducted the compliance review. The report will include, at a minimum, the following components:

- Background information;
- Statement of issues;
- Legal standards applicable to each issue;
- Summary of documentation, analysis and conclusion;
- Recommendations; and
- Additional comments or observations.

b Upon completion, the final report will be submitted to the Chief, Program Compliance Division or designee. The Chief or designee will review the report for completeness and clarity. If the report meets division standards, the Chief will sign off on the report, indicating his or her approval.

3 OGC REVIEW

The Chief, Program Compliance Division, will submit the approved final report to the Director. The Director may forward the report to OGC to be reviewed for legal sufficiency.

4 FINAL USDA DECISION: LETTER OF FINDINGS

a Upon completion of the OGC review, if applicable, OGC will return the report and letter of findings, with any comments or recommendations, to the Director. Any recommended changes concurred on by the Director will be made in the report. Otherwise, the report will be issued to the agency. The letter of findings will include information about the agency's rights and timelines for response.

b Copies of the Letter of Findings also will be sent to the:

- USDA General Counsel;
- Appropriate Under or Assistant Secretary;
- Assistant Secretary for Administration; and
- (4) Deputy Secretary.

5 COMPLIANCE ACTION PLAN

a A Compliance Action Plan will be developed to remedy areas of noncompliance. The Compliance Action Plan may include actions and goals suggested by the agency in addition to those suggested by CR.

b The Compliance Action Plan establishes specific actions, benchmarks and timetables that the agency will implement to move from noncompliance to compliance status. The plan will also identify any periodic reports, reviews and other activities. The Compliance Action Plan must be approved by the Director.

6 EXECUTION OF COMPLIANCE ACTION PLAN

When the agency completes corrective actions, the Chief, Program Compliance Division, will prepare a notice for approval by the Director, stating that the agency has met compliance requirements. The notice of compliance will be sent to the:

a Agency head;

b USDA General Counsel;

c Appropriate Under or Assistant Secretary;

d Assistant Secretary for Administration; and

e Deputy Secretary.

7 CLOSURE OF COMPLIANCE REVIEW CASE FILE

Upon issuance of the notice referenced in section 6, the compliance review case file will be closed.

8 OVERSIGHT, MONITORING AND FOLLOW-UP

The Chief, Program Compliance Division, is responsible for guiding, directing and monitoring implementation of the Compliance Action Plan. The Chief will provide quarterly monitoring reports for the Director and the agency. When the agency has accomplished the specified actions and goals, CR will issue a letter of compliance stating that the agency has satisfied the terms and conditions of the Compliance Action Plan and the agency has been determined to be in compliance.

APPENDIX A - SPECIAL PROVISIONS FOR PROCESSING COMPLAINTS

1 GENERAL

These special provisions for processing complaints set forth instructions and guidance that are necessary due to (1) the basis on which the discrimination is alleged and (2) the unique characteristics of the various authorities that prohibit discrimination.

2 SECTION 504 OF THE REHABILITATION ACT OF 1973 (7 CFR 15e)

1. Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination against qualified persons with disabilities in programs and activities conducted by USDA, directly or through contractual or other arrangements. This prohibition includes employment in any USDA conducted program or activity. Complaints of employment discrimination in USDA conducted programs and activities will be handled under Section 501 of the Rehabilitation Act of 1973, as amended, and complaint processing procedures established by the Equal Employment Opportunity Commission at 29 CFR 1614.

a To avail himself or herself of the remedies afforded by Section 504 and USDA regulation, the complainants must be a qualified person with a disability(ies). To be a qualified person with a disability(ies), the complainant must meet two tests:

(1) Have a disability which SUBSTANTIALLY LIMITS one or more major life activities, has a record of such an impairment or is regarded as having such an

impairment. Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Having a record of such an impairment means having a history of or having been mis-classified as having a mental or physical impairment that substantially limits one or more major life activities. Regarded as having an impairment means having a mental or physical impairment that does not substantially limit major life activities, but having the impairment treated as though it is a limitation; having a mental or physical impairment that substantially limits major life activities only as a result of the attitudes of others; or having none of these impairments but being treated as though such impairments exist.

(2) Must be otherwise qualified for the service, activity or employment opportunity in question.

b The complainant's disability must not be a direct threat. A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures or by the provision of reasonable accommodation.

(1) For employment purposes, a person is not entitled to protection under Section 504 if that person poses a direct threat to the health and safety of himself/herself or others.

(2) For purposes other than employment, a person is not entitled to protection under Section 504 if he/she poses a direct threat to the health and safety of others.

3 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

ADA prohibits discrimination and requires equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services and telecommunications.

1. a As is the case under Section 504, to be considered as having a disability under ADA, a complainant must:

(1) Have a physical or mental impairment that substantially limits a major life activity;

(2) Have a record of such an impairment; or

(3) Is regarded as having such an impairment.

b The disability determination is made without regard to the availability of mitigating measures.

c An impairment does not have to be permanent to rise to the level of a disability.

1. d The acknowledgment of a complaint alleging discrimination based on disability will, in addition to those requirements described in Chapter 3, include:

(1) A description of Section 504 and ADA processes and remedies;

(2) A request that the complainant elect whether to have his or her complaint processed under Section 504 or ADA.

(3) A request to the complainant to provide any additional information that is needed to initiate or continue complaint processing.

1. If the complainant chooses to proceed under Section 504, then CR investigates the complaint.

1. If the complaint concerns employment, CR will refer the case to the EEOC for processing and will administratively close the case and notify the complainant.

1. If the complainant chooses to have his/her complaint processed under ADA, CR will transfer the case to the appropriate designated Federal agency and will administratively close the case. A notice of CR's actions will be sent to the complainant.

4 EXECUTIVE ORDER 12898 AND DR 5600-2

1. a Under Executive Order 12898 and DR 5600-2 , the concept of environmental justice is integrated into USDA federally conducted programs and activities, making all of these programs and activities subject to USDA civil rights requirements. Executive Order 12898 specifically prohibits discrimination against minorities and low income populations (e.g., race, color, national origin and low income). However, because federally conducted programs are involved, other civil rights statutes and Executive Orders which pre-date Executive Order 12898 also prohibit discrimination based on sex, religion, age, disability, marital status, familial status, sexual orientation or because all or a part of an individual's income is derived from any public assistance program. These prohibited bases also must be applied in determining compliance or complaints processing where environmental justice considerations are involved.

b These authorities prohibit discrimination by seeking to address the disproportionately high and adverse human health or environmental effects, including social and economic effects of federally conducted programs and activities on protected group members.

c To pursue redress, a complainant must allege:

1. An adverse environmental or human health effect;

1. A disproportionate, adverse impact based on an individual or protected group referenced above; and

1. A causal connection between this disproportionate, adverse effect and policies, programs, conduct or actions taken by an agency.

d Environmental justice complaints are processed according to the procedures established for processing complaints under 7 CFR 15d. As part of the investigation, there must be a determination that the alleged discriminatory behavior or conduct raises an environmental justice issue.

5 SEXUAL ORIENTATION (Reserved)

APPENDIX B - SAMPLE FORMATS

INTAKE FORM

Complainant's Name: (Firstname Lastname)

Address: (Address1)

City, State, Zip: (city, state zip)

Phone Number:

Representative's Name:

Address:

City, State, Zip:

Phone Number:

Specialist:

Program Type:

Date of Complaint:

Date Received:

Date of Discrimination:

Issue:

Basis:

Agency:

TIMELY FILED:

JURISDICTION:

COMPLETE:

INTAKE CHECKLIST

Revised 5-24-99

DOES THE INFORMATION FROM THE COMPLAINANT CONTAIN:

1. The signature of the person who alleges the discriminatory act or a signed statement authorizing someone to act as the complainant's representative?

 YES

 NO

2. The complainant's name and address or the name and address of the authorized representative?

 YES

 NO

3. The USDA Agency against which the complaint is filed?

YES

 NO

4. Allegation(s) of an act (different treatment or denial of benefit, services, rights, or privileges) by a USDA employee?

 YES

 NO

If yes, **briefly** (a couple of phrases will probably be sufficient) describe the allegations contained in the complaint that you relied on in making your determination that the complaint contained allegations of a discriminatory act.

5. Allegation(s) that infer or show that the action was taken because of a prohibited motive (race, sex, age, etc.)

 YES

 NO

If yes, **briefly** (a couple of phrases will probably be sufficient) describe the allegations contained in the complaint that you relied on in making your determination that the complaint contained allegations that infer or show that the action was taken because of a prohibited motive.

6. The date(s) during which the alleged discrimination occurred?

YES

 NO

7. A complaint filed within 180 days of the alleged discriminatory event?

 YES

 NO

(REQUEST FOR AGENCY POSITION STATEMENT)

TO: (Agency Civil Rights Director)

(Title)

(Agency)

FROM: (Name of Current Deputy Director for Programs)

Deputy Director for Program Operations(Title)

Office of Civil Rights

SUBJECT: Complaint of (Complainant's name)

(Case Number)

The Office of Civil Rights (CR) has received a complaint of discrimination from the above referenced complainant. We have determined the complaint to be complete and

within the jurisdiction of CR. The accepted issue is _____ . The accepted basis is _____.

Please have your civil rights staff conduct an Agency Response (AR) to this complaint. The AR is to be completed within 24 days from the date of this memorandum. The AR should include the following:

1. A statement from the agency personnel involved in the alleged discriminating event. This statement should clearly explain the reasons for the actions which he or she took with regard to the complaint.

2. Statistical and/or comparative information indicating the applications or request for the benefit at issue in the complaint. The statistics should be indicate the disposition of each application. The statistics should be presented in light of the basis of the complaint as listed above.

3. A copy of the regulations which governed the specific decisions made by the alleged discriminating official. Please provide any regulations which would allow for exceptions to the type of action(s) taken in this case.

1. Other statements from relevant agency personnel having information concerning the complaint at issue.

At no time during the preparation of the AR should you or your staff communicate with the complainant regarding the complaint at issue. Your cooperation is appreciated.

cc: Agency Head



(RESPONSE TO INQUIRY)

Your [date] letter to [name of person letter was written to], was forwarded to the Office of Civil Rights (CR). CR is responsible for processing complaints of program discrimination filed against a Department of Agriculture (USDA) agency.

Your letter alleges that you have been discriminated against by an employee of the [name of agency]. To file a discrimination complaint, you must file within 180 days of the occurrence of the discriminatory event. Your complaint must be in writing, signed by you, and contain the following information in sufficient detail to enable our staff to clearly understand the circumstances giving rise to your complaint:

1. The basis for your complaint. The basis is the reason, that you believe, motivated the actions of the alleged discriminating official.

1. The date that the alleged discrimination occurred. Please note that our office only has jurisdiction over actions that took place no more than 180 days prior to the filing of your complaint.

1. The individual(s) whom you believe discriminated against you and the agency that employs that individual(s).

1. The issue of your complaint. The issue is the incident or action taken, by the individual who discriminated against you, which caused you some harm.

1. The written complaint should be mailed to:

Program Investigation Division

Office of Civil Rights

Reporter's Building, Suite 400

300 7th Street SW

Washington, DC 2002

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any USDA conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

If you have any questions, you can contact the Program Investigations Division at

(202) 720-5964.

Sincerely,

(Name of Current Deputy Director for Programs)

Deputy Director for Programs (Title)

Office of Civil Rights

(Enclosure)

INVESTIGATIVE REVIEW SHEET

1. Complainant's Name: 2. Agency:

3. Case Number: 4. City, State:

5. File Available: YES / NO

6. Agency Response Available: YES / NO

7. Jurisdictional Criteria:

A. Standing: YES / NO

B. Discriminatory Act/Conduct by employee of USDA: YES / NO

C. Act motivated by prohibited basis: YES / NO Basis:

Is the basis under which the complaint alleges discrimination covered for the
program to which applied? YES / NO

D. Established or infer nexus or causal connection between act and prohibited
basis: YES / NO

E. Timeliness: YES / NO

Date of Complaint:

Date of alleged discriminatory action:

Is the time between date of complaint and date of alleged discriminatory
action 180 days or less? YES / NO

8. ISSUE(s): Whether

9. Class Case:

1) African American Farmer

2) Farmed, or Attempted to Farm between January 1, 1981 and December 31, 1996

3) Applied for Farm Credit or Benefit from USDA

4) Filed a Complaint Prior to July 1, 1997

SOL Case:

1) Non-employment Complaint

2) File prior to July 1, 1997

3) Claiming Damages in a RH Loan FO, OL, EM, Disaster or Commodity Program

4) Discrimination Occurred Between January 1, 1981 and December 31, 1996

11. RECOMMENDATION:

(1) REFER - CLASS CASE

(2) REFER - SOL CASE

(3) INVESTIGATE: TELEPHONIC OR ONSITE

(REMARKS)

INVESTIGATOR: DATE:

CONCUR OR NON-CONCUR

SUPERVISOR: DATE:



(INCOMPLETE COMPLAINT-30 DAY LETTER)

Dear (Title) (Last Name):

The Office of Civil Rights (CR) has received your letter dated (date of letter). This letter was received in CR on (date of receipt). CR is responsible for processing complaints of program discrimination filed against a Department of Agriculture (USDA) agency.

We have determined that your letter does not contain sufficient information to constitute a complete complaint. USDA's Departmental Regulations require a complaint to be complete before it can be processed. As a result, you must provide our office with additional information within 30 days of the date of receipt of this letter or your case will be closed. This information should be provided with sufficient detail to enable our staff to clearly understand the circumstances of your complaint. If you need assistance in preparing this information, please contact one of the offices listed on the attached sheet. Please provide our office with the following:

* The basis for your complaint. The basis is what you believe was the source of the discrimination you experienced, such as your race, color, national origin, sex, religion, age, disability, marital status, familial status, sexual orientation, or because all or part of your income is derived from a public assistance program. No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any program or activity conducted by the Department of Agriculture (USDA); or otherwise aided or supported Federal or USDA civil rights laws, rules, regulations, or policies. If you believe you have been retaliated against, please explain the circumstances and what actions you took which you believe were the basis for the retaliation.

* The date(s) on which the incident you are reporting as discrimination occurred. Please note that our office has authority to investigate only actions that took place no more than 180 days prior to the filing of your complaint. If the discrimination occurred more than 180 days ago, you may request a waiver of the filing requirement. A waiver may be granted for the following reasons: (1) the discriminatory act could not reasonably be expected to be known within the 180-day period; (2) illness or incapacitation; (3) the same complaint was filed with another Federal, state, or local agency; and (4) any other basis determined by the Director of Civil Rights, USDA. If you wish to request a waiver, please explain why you failed to file within the 180-day period.

* The name of the individual(s) whom you believe discriminated against you and the agency that employs that/those individual(s).

* The issue of your complaint. The issue is the incident that occurred, or the action that was taken by the individual(s) or agency that discriminated against you, which caused you some harm. Explain as clearly as possible what happened, why you believe it happened, and how you were discriminated against. Please include how other persons were treated differently from you, if applicable. If you were denied a benefit or service, please provide a copy of the denial letter.

If you have any questions or need assistance, you can contact the Program Investigations Division at (202) 720-5964. You may also obtain assistance by contacting one of the programs on the attached list.

Sincerely,

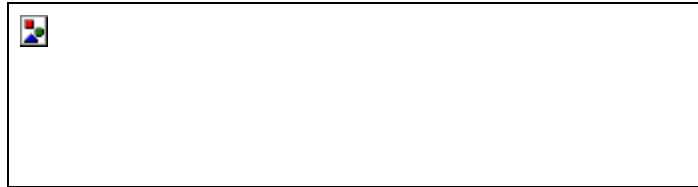
(Name of Current Deputy Director for Programs)

Deputy Director for Programs(Title)

Office of Civil Rights

(Enclosure)

CR:PID:(writer):(initials):date:phonenumber:documentname



(INADEQUATE RESPONSE CLOSURE LETTER)

After a review of the information in your case file, the Office of Civil Rights (CR) has determined that CR does not have jurisdiction to process your complaint. On *(date we sent request)*, CR mailed you a certified letter requesting additional information. Specifically, we requested that you provide our office with *(what we requested)*. The letter indicated that your failure to provide the requested information would result in your complaint being closed. On *(date we received the response)*, we received your response to our request for additional information. You have not provided the information requested. We also provided you names of non-USDA programs that could assist you. Please contact the CR office within 15 days if you require assistance to prepare your response. If CR does not hear from you within 15 days, CR will close your complaint.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any Department of Agriculture (USDA) conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

This is USDA's final action regarding this complaint. If you choose to pursue this matter or need to determine any legal remedies, you may wish to consult an attorney. If you have any questions concerning our determination, you may contact our office at (202) 720-5964.

Sincerely,

(Name of Current Deputy Director for Programs)

Deputy Director for Programs(Title)

(COMPLETE COMPLAINT ACKNOWLEDGMENT LETTER)

The Office of Civil Rights (CR) has received your letter dated (date of letter). This letter was received in CR on (date of receipt). CR is responsible for processing complaints of program discrimination filed against a Department of Agriculture (USDA) agency.

Our office has determined that the information which you submitted constitutes a complete complaint over which we have jurisdiction. Your complaint has been accepted for processing. We have determined: 1) the issue(s) of your complaint to be ##Complaints##, and 2) the basis (bases) of your complaint to be ##Bases##.

Your complaint letter included information and/or allegations over which our office cannot exercise jurisdiction. (Provide an explanation for the items not accepted for processing)

We have advised the ##CaseAgency## that your complaint has been received. The Agency will prepare a response. The Agency Response (AR) is a statement of fact from the agency and any explanation for its decision regarding your complaint. The ##CaseAgency## has 24 days to complete the AR and forward it to our office. Your case will be forwarded to our Investigative Unit for processing no later than 30 days after the date of this letter. Our investigation will include, at a minimum, an interview with you and the agency officials involved in the case. If you know of persons who you believe have information which will support your allegations you should inform our investigator when you are contacted. After an investigation has been completed, the investigator will prepare a Report of Investigation (ROI). The ROI will be completed within 120 days of our receipt of your complaint. The ROI will be forwarded to our Adjudication Unit so that a Final Agency Decision can be prepared. You will receive the Final Agency Decision within 180 days of our receipt of your complaint.

You may have a right to file a civil action regarding the issues raised in your complaint. therefore, you may wish to consult an attorney to determine your legal remedies.

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights laws we enforce. Any individual alleging such harassment or intimidation may file a complaint with the USDA. We will investigate such allegations of reprisal.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

If you have any questions, you can contact the Program Investigations Division at 202-720-5964.

Sincerely,

(Name of Current Deputy Director for Programs)

Deputy Director for Programs(Title)

Office of Civil Rights



(UNTIMELY CLOSURE LETTER)

The Office of Civil Rights has received your letter in which you allege that an agency of the Department of Agriculture (USDA) has discriminated against you. After a review of the information in your case file, we have determined that our office does not have jurisdiction to process your complaint. Therefore, we are closing our case file regarding this matter.

You filed your complaint with our office on or about (date of complaint). The alleged discriminatory action took place (on _____)(in 19__)(between 199__ and 19__). The regulations that give our office jurisdiction to process complaints require that a complaint be filed within 180 days of the occurrence of the discriminatory event. Your complaint was not filed within 180 days of the alleged discriminatory event. Therefore, your complaint is untimely and we will close our case file. However, if you can submit evidence that amounts to a "good cause" explanation for your untimely filed complaint, we will re-open our case file. Please note that mere lack of knowledge about the filing requirements will not constitute good cause. Evidence of good cause received after 30 days of your receipt of this letter will not be considered. However, if you only recently became aware that the facts surrounding your case were discriminatory, an extension may be granted.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any USDA conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

This is USDA's final action regarding this complaint. You may have a right to file a civil action regarding the issues raised in your letter. therefore, you may wish to consult an attorney to determine your legal remedies.

Sincerely,

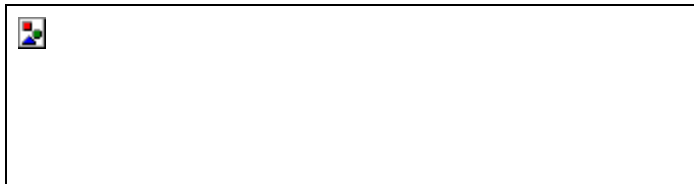
(Name of current Deputy Director for Programs)

Deputy Director for Programs(Title)

Office of Civil Rights

(NO CASUAL CONNECTION CLOSURE LETTER)

Claim Number: ##CaseId##



The Office of Civil Rights has received your letter in which you allege that an agency of the Department of Agriculture (USDA) has discriminated against you. After reviewing the information you provided, we have determined that our office does not have jurisdiction to process your complaint. The information you provided is not sufficient to sustain your allegation of discrimination. A statement that the agency's actions were discriminatory is not sufficient without information showing how those actions were motivated by race, color, national origin, sex, religion, age, disability, marital status, familial status, sexual orientation, reprisal for prior civil rights activity, or because all or part of your income is derived from a public assistance program. In your letter you merely stated that _____
_____ . CR does not have jurisdiction over the case as you have presented the facts.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any USDA conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

This is USDA's final action regarding this complaint. You may have a right to file a civil action regarding the issues raised in your letter, therefore, you may wish to consult an attorney to determine your legal remedies.

Sincerely,

(Name of Current Deputy Director for Programs)

Deputy Director for Programs(Title)

Office of Civil Rights



(NO JURISDICTION [BASIS] CLOSURE LETTER)

The Office of Civil Rights (CR) has received your letter in which you allege that an agency of the Department of Agriculture (USDA) has discriminated against you. After a review of the information in your case file, we have determined that our office does not have jurisdiction to process your complaint. Therefore, we are closing our case file regarding this matter.

You alleged that you were discriminated against because of your **(basis)**. The regulations which give our office jurisdiction to process complaints involving the **(program)** cover the following bases: **race, color, religion, sex, age, national origin, marital status, familial status, parental status, sexual orientation, disability, political belief, genetic information, low income, or because all or a part of an individual's income is derived from any public assistance program**. The basis of your complaint is not covered by the regulation which gives our office jurisdiction over the program in which your complaint arose. Therefore, we do not have jurisdiction to process your complaint.

[The Department of _____ has jurisdiction over your case. By copy of this letter CR is referring your letter. You may contact that agency at _____.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any USDA conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

This is USDA's final action regarding this complaint. You may have a right to file a civil action regarding the issues raised in your letter. Therefore, you may wish to consult an attorney to determine your legal remedies.

Sincerely,

(Name of Current Deputy Director for Programs)

Deputy Director for Programs(Title)

Office of Civil Rights

(NO RESPONSE CLOSURE LETTER)



After a review of the information in your case file, the Office of Civil Rights (CR) has determined that CR does not have jurisdiction to process your complaint. On *(date of request for additional information)*, CR sent you a letter informing you that your complaint letter did not contain sufficient information by which CR could determine its jurisdiction over your complaint. The letter requested that you submit additional information to our office within *(number of days in the letter)* days from your receipt of the letter. As of the date of this letter, we have not received any information from you. Therefore, we are closing our case file regarding this matter.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any USDA conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

This is USDA's final action regarding this complaint. If you choose to pursue this matter or need to determine any legal remedies, you may wish to consult an attorney. If you have any questions concerning our determination, you may contact our office at (202) 720-5964.

Sincerely,

(Name of Current Deputy Director for Programs)

Deputy Director for Programs(Title)

Office of Civil Rights



(NO STANDING CLOSURE LETTER)

The Office of Civil Rights (CR) has received your letter in which you allege that an agency of the Department of Agriculture (USDA) has discriminated against *(Name of the person(s) the complainant is filing on behalf of)*. CR policy requires a written complaint signed by the person who alleges the discriminatory conduct being reported. If you are representing (*Name of complainant*), the written, signed complaint must be accompanied by a written authorization, signed by (*Name of complainant*) naming you as the authorized representative. Without a written signed complaint, CR does not have jurisdiction to process the complaint you filed on behalf of (*Name of complainant*). The complaint must be filed within 180 days of the occurrence of the discriminatory conduct.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any USDA-conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

This is USDA's final action regarding this complaint.

Sincerely,

(Name of Current Deputy Director for Programs)

Deputy Director for Programs(Title)

Office of Civil Rights



(NO JURISDICTION [REPRISAL AGAINST OTHER THAN USDA] CLOSURE LETTER)

The Office of Civil Rights (CR) has received your letter in which you allege that an agency of the Department of Agriculture (USDA) has discriminated against you. After a review of the information in your case file, we have determined that our office does not have jurisdiction to process your complaint. Therefore, we are closing our case file regarding this matter.

You stated that the basis for your complaint was reprisal taken against you by the [insert name of agency]. The regulations giving CR authority to investigate claims of discrimination prohibit reprisal for prior civil rights activities with USDA. In your letter you did not indicate that you had engaged in prior civil rights activities with USDA, therefore CR does not have jurisdiction to investigate your complaint.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any USDA-conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

This is USDA's final action regarding this complaint.

Sincerely,

(Name of Current Deputy Director for Programs)

Deputy Director for Programs(Title)

Office of Civil Rights



(NO JURISDICTION [ISSUE] CLOSURE LETTER)

The Office of Civil Rights (CR) has received your letter in which you allege that an agency of the Department of Agriculture (USDA) has discriminated against you. After a review of the information in your case file, we have determined that our office does not have jurisdiction to process your complaint. Therefore, we are closing our case file regarding this matter.

You alleged that you were discriminated against when **(issues)**. Our office has jurisdiction over allegations of discrimination which involve the conduct of our employees with respect to the administration of a program or activity conducted by the USDA. The issue(s) that you have raised does (do) not involve discriminatory conduct of one of our employees in a conducted program or activity. As a result, our office does not have jurisdiction to process your complaint.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any Department of Agriculture (USDA) conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

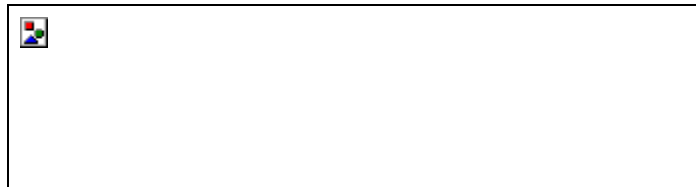
This is USDA's final action regarding this complaint.

Sincerely,

(Name of Current Deputy Director for Programs)

Deputy Director for Programs

Office of Civil Rights



(NO JURISDICTION [PROGRAM] CLOSURE LETTER)

The Office of Civil Rights (CR) has received your letter in which you allege that an agency of the Department of Agriculture (USDA) has discriminated against you. After a review of the information in your case file, we have determined that our office does not have jurisdiction to process your complaint. Therefore, we are closing our case file regarding this matter.

You alleged that you were discriminated against because of your **(basis)**. The regulations which give our office jurisdiction to process complaints involving the **(program)** cover the following bases: **race, color, religion, sex, age, national origin, marital status, familial status, parental status, sexual orientation, disability, political belief, genetic information, low income, or because all or a part of an individual's income is derived from any public assistance program**). The basis of your complaint is not covered by the regulation which gives our office jurisdiction over the program in which your complaint arose. Therefore, we do not have jurisdiction to process your complaint.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any USDA conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

This is USDA's final action regarding this complaint.

Sincerely,

(Name of Current Deputy Director for Programs)

Deputy Director for Programs(Title)

Office of Civil Rights

AGENCY DATA REQUEST (Memo Form)

TO: (Agency Administrator Name)

Administrator

(Agency)

FROM: (Name of Chief of Program Investigations Division)

Chief(Title)

Program Investigations Division

SUBJECT: Request for Additional Information

Investigation of Discrimination Complaint # (complaint number)

(Complainant's Name)

(Complainant's Address - City/State only)

The Office of Civil Rights (CR), Program Investigations Division, is conducting an investigation into the subject complaint. The investigator assigned to this complaint is (investigator name). He/she can be reached at 202-720-5964.

The complainant alleged discrimination on the basis(es) of (complaint basis). The issue(s) in the complaint is the (complaint issue(s)). The civil rights law, regulation or policy that provides CR with jurisdiction to process this complaint is (cite regulation under which the investigation will be conducted).

The investigator has identified the following information as necessary to complete the investigation. Please provide this information to the investigator within 10 days of your receipt of this memorandum. The information required is as follows:

(Information needed).

The information should be sent to the investigator's attention at the address listed below:

USDA-Office of Civil Rights

Program Investigations Division

1400 Independence Avenue, SW, Stop 9430

Washington, DC 20250-9430

We request that you designate a liaison in your agency to facilitate the timely delivery of this information to the investigator.

cc: (Agency CR Director)

INVESTIGATIVE PLAN

1. Case Number:

2. Name of Investigator:

3. Complainant Identification: (name, address, phone number)

4. Complainant's Representative: (if any)

5. Jurisdictional Information:

A. Standing: _____ (yes/no)

B. Discriminatory act/conduct by employee of USDA: _____ (yes/no)

C. Act motivated by prohibited basis: _____ (yes/no)

D. Is the basis under which the complainant alleges discrimination covered for the program to which applied? _____ (yes/no)

E. Timeliness: _____ (yes/no)

(1) Date of Complainant: _____

(2) Date of alleged discriminatory action: _____

(3) Is the time between date of complaint and date of alleged discriminatory action 180 days or less?
_____ (yes/no)

6. Basis: _____

7. Issues: (Statement that specifically asserts a violation of a civil rights provision or one from which it reasonably can be inferred that a violation is being asserted).

8. Applicable Legal Theory(s):

9. Evidence Required: (Describe evidence needed to test the validity of complaint, including anticipated responses and defenses. Also, include plan for obtaining evidence)

A. Documentation (program records, letters, applications, forms, notes)

B. Testimonial (list interviewees and areas to be covered)

C. Statistical (comparative evidence)

10. Investigative Time Frame:

A. Time Line - Dates

(1) Investigative Plan submitted: _____

(2) Manager Approval of IP: _____

(3) Investigation Dates: _____

(4) Report Writing: _____

(5) Manager Review of ROI: _____

(6) Case to Adjudication: _____

(7) Additional Work _____

(8) Final Completion _____

B. Notifications and Requests for Information

(1) Notice to Complainant of Onsite Investigation _____

(2) Notice to Agency of Onsite Investigation _____

(3) Data Request Letter _____

C. On Site Schedule - Field Work

Dates, Work Locations and Phone Numbers

(Agency/Hotel)

COMPLAINANT CONSENT/RELEASE FORM

Your Name:

Address:

Complaint Number(s) (if known):

Please read the information below, check the appropriate box, and sign this form.

As a complainant, I understand that in the course of an investigation it may be necessary for USDA to reveal my identity to persons at the agency under investigation. I am also aware of the obligations of USDA to honor requests under the Freedom of Information Act. I understand that it may be necessary for USDA to disclose information, including personally identifying details, which it has gathered as a part of its investigation of my complaint. In addition, I understand that as a complainant I am protected by USDA's regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by nondiscrimination statutes enforced by USDA.

CONSENT/RELEASE

CONSENT -- I have read and understand the above information and authorize USDA to reveal my identity to persons at the agency under investigation. I hereby authorize the USDA to receive material and information about me pertinent to the investigation of my complaint. This release includes, but is not limited to, personal records and medical records. I understand that if, during the course of the investigation, USDA determines that it needs to receive, review or copy documents or records that are not in USDA's or my possession, USDA will request that I sign a release that specifically describes the documents or records sought, and the name and mailing address of the entity that is the custodian of the documents or records described. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and do so voluntarily.

CONSENT DENIED -- I have read and understand the above information and do not want USDA to reveal my identity to the agency or institution under investigation, or to review, receive copies of, or discuss material and information about me, pertinent to the investigation of my complaint. I

understand this is likely to impede the investigation of my complaint and may result in the closure of the investigation.

Signature and Date

AFFIDAVIT

Date:

City/State:

County:

I, (Affiant's Name), being first duly sworn on oath, make the following statement freely and voluntarily to (Name of Investigator) who has identified him/herself to me as an Investigator for the Office of Civil Rights, United States Department of Agriculture (USDA), knowing that this statement may be used in evidence. No threats or promises have been made to me in exchange for my statement.

(Body of Affiant's Statement)

I have read the above statement consisting of _____ pages. I further attest that I have been provided full opportunity to review the statement and given the opportunity to make additions and corrections. It is true, complete, and correct. I have initialed the bottom of each page and signed the Affidavit below.

Signature: _____

Date: _____

Subscribed and (sworn to) (affirmed)

before me this _____ day of (month) (year)

Witness (optional)

(Name of Investigator) (Name of Witness)

Program Investigations Division Title

Office of Civil Rights Agency

U. S. Department of Agriculture

MEMORANDUM OF INTERVIEW

CASE NUMBER: DATE/TIME:

WITNESS: LOCATION CONDUCTED:

PHONE NUMBER:

ADDRESS: In-Person: _____ (Yes/No)

Telephone: _____ (Yes/No)

INVESTIGATOR:

INTERVIEW SUMMARY

Signature of Witness Signature of Investigator

Page of Pages

MEMORANDUM OF INTERVIEW (Continued)

Signature of Witness Signature of Investigator

Page of Pages

Notice to Agency of On-site Investigation (Conducted Program)

TO: (Agency Administrators/Chiefs Name) (Title)

(Agency)

FROM: (Name of Chief of Program Investigations Division)

Chief(Title)

Program Investigations Division

SUBJECT: On-site Investigation of Discrimination complaint (complaint number)

(Complainants Name)

(Complainant's Address - City/State only)

The Office of Civil Rights (CR) will conduct an on-site investigation into the subject complaint. The investigation is scheduled for (dates of investigation). The investigator assigned to this complaint is (investigator's name). (Name) can be reached at (202) 720-5964.

The complainant alleged discrimination on the basis of (basis). The issue(s) remaining in the complaint for investigations are (issue(s)). CR has jurisdiction to process this complaint pursuant to (applicable regulation).

The on-site investigation may include the interview of staff members at the agency work site(s) in (state and/or county office(s)). Additional gathering of information, including the review of complainant's and other case files, may also be conducted at these sites. We request that you notify the appropriate officials of our planned visit and schedule of interviews.

The investigator has identified the following information as needing review prior to the on-site portion of the investigation. Please provide this information to the investigator within 10 days of your receipt of this memorandum. The information required is as follows: (Name of agency worksite and information needed)

Please forward the requested information to the attention of the above named investigator at:

Office of Civil Rights

Program Investigations Division

U.S. Department of Agriculture

300 7th Street, S.W., Suite #400

Washington, DC 20250-9430

We request that you designate a liaison person in your agency to work with the investigator to facilitate the timely completion of this investigation.

If you have any questions concerning this letter, please contact (investigator's name) at

(202) 720-5964. In all correspondence to us, please refer to the complaint number referenced. Thank you for your cooperation.

cc: (Agency CR Director)

Notice to Complainant of Onsite Investigation (Conducted Program)

Complaint Number: (Complaint number)

(Title) (First Name, MI, Last Name)

(Address)

(City, State, Zip Code)

Dear (Title) (Last Name):

This letter is to notify you that the Department of Agriculture (USDA), Office of Civil Rights, will conduct an on-site investigation related to your discrimination complaint # (complaint number), against the (agency). The investigation is scheduled for (dates of investigation). The investigator assigned to your complaint is (name of investigator).

Your interview is scheduled for (date/time of interview) at (location of interview). You should be prepared to provide a statement to the investigator and any information that you deem relevant to your complaint. Prior to the onsite review additional information including a list of witnesses must be provided. Documentation and a list of witnesses should be sent to this office no later than (date). An envelope is enclosed for that purpose.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any USDA conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

If you have questions, please contact (investigator's name), at (202) 720-5964. Our office hours are from 8:30 a.m. to 5:00 p.m. If you are unable to contact us during that time, please leave a message and a telephone number where you may be reached between 8:30 a.m. and 5:00 p.m. on our voice-mail system.

Sincerely,

(Name of Current Division Chief)

Chief(Title)

Program Investigations Division

Enclosure

cc: (investigator)

ROI FORMAT

I. INTRODUCTION:

(Provide a historical overview of the actions taken on the case prior to CR involvement and CR activities prior to accepting the complaint for investigation.)

II. ALLEGATION(S):

(Summarize the allegations - clearly describe each individual or class allegation, the statute or regulation which the allegation, *if true*, would violate, and the grounds upon which the allegation is based. The allegations should be organized in a logical sequence to sustain a finding of discrimination or nondiscrimination.)

III. METHODOLOGY:

(Explain *how* the investigation was conducted, what documents were reviewed, and which witnesses were interviewed. Specific names of witnesses need not be provided, but a description of the numbers and types of witnesses is necessary.)

IV: POSITION STATEMENT OF RESPONDENT:

(Describe the position of the respondent. This information can be obtained from primary source documents, interviews, etc. Where respondent has refused to supply information, document the attempts and efforts to secure information that would explain the respondent's position.)

V: FINDINGS OF FACT:

(Present facts in a logical sequence, usually chronologically or by subject matter. Each fact or series of related facts should be sequentially numbered and listed separately. Any facts in dispute should be resolved based on the evidence and standards of proof. Any allegations rejected and the reasons for their rejection should be noted in this section. (Present facts only. No conclusions should be drawn.)

**UNITED STATES DEPARTMENT OF
AGRICULTURE**

OFFICE OF CIVIL RIGHTS

PROGRAM INVESTIGATION DIVISION

REPORT OF INVESTIGATION (FORMAT)

Complaint Number:

Date of Complainant:

Date of Investigation:

Date of Report:

Issue(s):

Basis:

Agency:

Program (conducted or assisted):

State & County:

Representative:

Investigation Conducted By:

This document is for OFFICIAL USE ONLY. The contents of this report are not to be distributed, duplicated, or provided to parties outside the Office of Civil Rights without prior clearance from the Director of the Office of Civil Rights.

ROI COVER SHEET

REPORT OF INVESTIGATION:

EXHIBITS:

Attachment 1: Original Complaint

Attachment 2: Complainant's Affidavit

Attachment 3: Complainant's Supporting Documentation

Attachment 4: Complainant's Witnesses

Attachments 5: Agency Response

Attachment 6: Agency Witness Statements

Attachment 7: Applicable Regulations

Attachment 8: Data and Statistics

Attachment 9: Miscellaneous

ROI REVIEW SHEET

Complainant:

Case Number:

Date of Complaint:

Date of ROI (1st draft): _____ **Returned to Investigator** _____

2nd draft: _____ **(If needed)** _____

3rd draft: _____

Has the issue(s) been identified? **Yes** **No**

Has the basis(es) been identified? **Yes** **No**

Is an Agency Response included? Yes No

Reason for non-inclusion _____

Are additional interviews needed? Yes No

Interviews are required of the following persons: _____

A rebuttal interview is needed of the following person: _____

Have all allegations been addressed? Yes No

Do exhibits/documentation pertain to the allegations?

_____ **Yes No**

Were appropriate statistical data available? Yes No

If so, are the statistics included Yes No

Is the ROI in the appropriate format? Yes No

Does the ROI contain typographical errors? Yes No

Are all identified attachments included? Yes No

Remarks: _____

ROI Approved: _____ **Date:** _____

Chief, PID

ADJUDICATION WORKSHEET

Complainant: _____ **Case**

No: _____

Address: _____

Date of Complaint: _____

Date of Alleged Discrimination: _____

Issue(s): _____

Basis(es): _____

Jurisdiction:

Factual Synopsis of Case (Causal Connection between allegations and agency actions):

- Does the ROI contain sufficient information to allow one to perform a prima facie analysis? Yes ___ No ___

If yes, has a prima facie case been made? _____

If no, what additional information is needed to perform a prima facie analysis? _____

- Does the ROI contain a statement of the agency's reason(s) for its actions with regard to the issue of the complaint? If yes, please state the agency's articulated reason for its actions: _____

- Does the ROI contain sufficient information to allow one to perform a pretext analysis? Yes ___ No ___

If yes, please provide a brief synopsis of the pretext analysis:

If no, what additional information is needed to perform a pretext analysis?
