

DEPARTMENTAL REGULATION

Number:
4300-010

SUBJECT:
Civil Rights Accountability Policy and Procedures

DATE:
January 18, 2006

OPI:
Office of Civil Rights and Office of
Human Capital Management

1 PURPOSE

This Departmental Regulation (DR) establishes the civil rights accountability policy and procedures for ensuring that appropriate disciplinary or corrective actions are taken when discrimination, retaliation, civil rights violations, or related misconduct occurs. This DR is intended to strengthen existing civil rights policies within the U.S. Department of Agriculture (USDA) and encourage agencies to work to resolve complaints at the earliest possible opportunity.

2 POLICY

It is the policy of USDA to treat customers and employees fairly and equitably, with dignity and respect, regardless of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, marital or familial status, parental status and protected genetic information, or because all or part of an individual's income is derived from public assistance. Retaliation against customers or employees for opposition to discrimination of any kind in contravention of this policy will not be tolerated.

Agency officials, managers, supervisors and other employees shall be held accountable for discrimination, retaliation, civil rights violations, or related misconduct. Discrimination, retaliation, civil rights violations, or related misconduct will be evaluated, in accordance with this policy and with the governing Federal and USDA regulations regarding discipline and adverse actions, by agency human resources (HR) offices, in conjunction with the Office of Human Capital Management (OHCM), to determine if disciplinary or other corrective action is warranted.

In order to further the goal of encouraging resolution of issues at the earliest possible opportunity, these procedures do not apply to voluntary resolutions reached on matters prior to initiation of the Equal Employment Opportunity (EEO) complaint process but do apply to formal complaints filed with the Office of Civil Rights.

3 SCOPE

Agency Heads, staff office directors, managers and supervisors are responsible for a work environment free of discrimination or retaliation and have a duty to uphold the civil rights of customers and employees. As a basic requirement, Agency Heads and the directors of HR and Civil Rights will work together to ensure that this accountability policy is effectively administered within and reported by the agencies and staff offices in a timely manner. To deter violations, agencies and staff offices are required to take appropriate corrective or disciplinary action on findings of discrimination, retaliation, civil rights violations or misconduct in employment and program matters. Disciplinary actions should be taken pursuant to the USDA Guide for Disciplinary Penalties (Departmental Personnel Manual (DPM), Chapter 751, Appendix A) and prevailing laws and regulations.

Managers and supervisors will be held accountable for failure to take appropriate action in response to any findings of discrimination, retaliation, civil rights violations or related misconduct. Annual performance appraisals for managers and supervisors shall include an evaluation of their contributions to USDA's commitment to civil rights and equal opportunity, and adherence to its civil rights policy. Managers and supervisors are responsible and accountable for maintaining a civil rights program that will accomplish the strategic civil rights goals.

4 CANCELLATION

This DR cancels the Assistant Secretary for Administration's memorandum dated July 17, 2000, "Civil Rights Accountability Policy," establishing financial thresholds that triggered referral to the OHCM. The current policy does not require any specific financial threshold before action is initiated.

5 SPECIAL INSTRUCTIONS

These procedures are to be used in conjunction with:

- a DPM, Chapter 751, including Appendix A, USDA Guide for Disciplinary

Penalties.

- b DR 4300-001, Processing EEO Complaints of Discrimination, dated March 3, 1999.
- c DR 4300-006, Civil Rights Policy for USDA, dated June 30, 2000.
- d DR 4300-009, Equal Employment Opportunity Complaints where a Department Senior Civil Rights Official is the Responsible Management Official, dated January 9, 2001.
- e DR 4710-001, USDA Alternative Dispute Resolution Policy, dated July 20, 2001.
- f Departmental Manual (DM) 4300-001, EEO Complaint Processing Procedures, dated July 20, 2001.
- g DM 4330-001, Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance Reviews in USDA Conducted Programs and Activities, dated October 18, 2001.
- h DM 4330-2, Procedures for Processing Complaints Alleging Unlawful Discrimination in USDA Federally-Assisted Programs and Activities, dated March 31, 2000.

6 NOTICE TO EMPLOYEES

Agencies must provide notice of this DR to each of its employees. Copies may be distributed in printed format or by e-mail, or employees may be notified that this DR is available on the USDA website. Copies should also be provided in alternative formats or languages upon request.

Employees shall be notified of this DR or subsequent changes to it, within 90 days of publication, or at the time of the employee's appointment.

7 DEFINITIONS

For purposes of this Regulation:

- a “Alternative Dispute Resolution” refers to any number of conflict resolution techniques that assist employees, managers, supervisors, agencies, and USDA customers

in resolving disputes.

b “Conciliation Agreement” is a contract/agreement between the USDA and a customer that creates an obligation to do or not do a particular thing.

c “Corrective Action” means measures taken that are not disciplinary or adverse actions.

d “Decision” means a determination arrived at after consideration of the facts and any applicable law. It also refers to a determination of a judicial body (i.e., a judgment or decree pronounced by a court) or administrative body (i.e., Equal Employment Opportunity Commission (EEOC), administrative Law Judge (ALJ), etc.).

e “Disciplinary Action” is an action taken to correct the conduct of an employee and includes a letter of reprimand, suspension, reduction in grade or pay, or removal from the Federal service.

f “Final Agency Decision (FAD)” means a conclusive determination, by USDA, of a formal equal employment opportunity or program complaint that disposes of all of the issues involved.

g “Settlement Agreement” means a written agreement by which parties having disputed matters between them reach or ascertain what is coming from one to the other, without resort to further litigation.

8 COVERED ACTIONS

An inquiry to determine whether disciplinary or corrective action is warranted shall be initiated following:

a A FAD that includes a finding of discrimination (for EEO and program discrimination complaints);

b Decisions issued by Administrative Judges of the Equal Employment Opportunity Commission (EEOC) that become final, the EEOC Office of Federal Operations, or the Merit Systems Protection Board that include findings of discrimination ;

c ALJ decisions with findings of discrimination (for program discrimination complaints);

- d Court decisions on EEO or program discrimination complaints with findings of discrimination;
- e A finding of misconduct related to civil rights; and
- f Investigations, compliance reviews or audits of civil rights or related activities performed by entities within or outside of USDA that include formal findings of discrimination or misconduct related to civil rights.

9 REPORTED ACTIONS

The existence of the following actions will be reported using the appropriate attached form:

- a Settlement Agreements of EEO complaints; and
- b Settlement and Conciliation Agreements of program discrimination complaints.

10 RESPONSIBILITIES AND PROCEDURES

- a Agency Civil Rights directors, agency representatives and the Office of the General Counsel shall be responsible for forwarding to the Office of Civil Rights (CR) any Covered and Reported Actions that were not issued by CR. These documents shall be forwarded as expeditiously as possible, and no later than fifteen (15) calendar days after the document is received. .
- b Using the Office of Civil Rights Accountability Case Record form (Appendix A), CR shall forward to the HR Director for the agency or staff office at issue, a copy of each Covered Action, along with a copy of the pertinent complaint file(s) maintained by CR, within ten (10) calendar days of CR receiving notice of the Covered Action. CR shall provide OHCM a copy of the Office of Civil Rights Accountability Case Record form only. OHCM may request additional documentation from CR or the agency HR Director, if needed.
- c CR shall review all Reported Actions and determine whether any should be referred to the HR Director for the agency or staff office. When determined by CR that a Reported Action should be referred, a copy of each Reported Action shall be forwarded by CR to the HR Director for the agency or staff office at issue, using the Office of Civil Rights Accountability Case Record form, within ten (10) calendar days of CR's receipt of

the Reported Action. The HR Director shall determine whether additional documentation, such as the discrimination complaint or investigative report, is needed to conduct an inquiry. Reported Actions shall be handled in a manner to ensure that the confidentiality of any settlement or conciliation agreement is protected except as required by law. In addition, any request for additional documentation or inquiry by an HR Director shall not contravene the confidentiality normally accorded to the alternative dispute resolution (ADR) process, pursuant to the Administrative Dispute Resolution Act of 1996.

d Within twenty-five (25) calendar days of receiving the Office of Civil Right Accountability Case Record, the HR Director shall initiate an inquiry into the underlying circumstances leading to the Covered or Reported Action. If the underlying circumstances implicate activities of a Senior Executive Service employee or Senior Scientific Research Service employee, then the Agency Head shall initiate the inquiry, review the results, draft a proposal for disciplinary or corrective action, if appropriate, and request delegated authority from the Department to take the action. If a political appointee is implicated, the agency shall conduct the inquiry and include the Agency Head's recommendation on appropriate action and then forward all information and recommendations to Departmental Administration, Office of Planning, Coordination, and Executive Resources for coordination with the White House Liaison.

e The inquiry conducted by the HR Director shall be used to determine whether corrective action or a proposal of disciplinary action is warranted for discrimination, retaliation, civil rights violations, or related misconduct. The HR Director shall consult with OHCM before implementing a proposal of disciplinary action if the inquiry determines that discrimination, retaliation, civil rights violations, or related misconduct has occurred.

f Using the Agency/Staff Office Case Report (Appendix B), the HR Director shall report to CR and OHCM the results of the inquiry and whether any disciplinary or corrective action was taken. The Case Report will be provided to CR and OHCM no later than ten (10) calendar days after the inquiry is completed and any disciplinary action is proposed or corrective action is issued.

g At the end of each fiscal year, OHCM shall prepare an annual report setting forth the number of disciplinary or corrective actions taken pursuant to this policy. The report shall set forth the specific nature of the disciplinary or corrective action taken and shall identify the Covered or Reported Action giving rise to the inquiry that led to the disciplinary or corrective action. The annual report shall be provided to CR no later than January 15.

APPENDIX A

OFFICE OF CIVIL RIGHTS
ACCOUNTABILITY CASE RECORD

(1) AGENCY/STAFF OFFICE: _____

(2) COMPLAINANT'S NAME: _____

(3) AGENCY CASE NUMBER(S): _____

(4) TYPE OF CASE: ◦ EMPLOYMENT

◦ PROGRAM

(5) ACTION TYPE: ◦ DECISION WITH
FINDING OF DISCRIMINATION

◦ SETTLEMENT

◦ OTHER

(6) DATE OF DECISION OR SETTLEMENT: _____

(7) DATE OF REFERRAL: _____

(8) REFERRED TO: _____(NAME/TITLE)

A-1

APPENDIX B

AGENCY/STAFF OFFICE
CASE REPORT

(1) AGENCY/STAFF OFFICE: _____

(2) COMPLAINANT'S NAME: _____

(3) AGENCY CASE NUMBER(S): _____

(4) TYPE OF CASE: ° EMPLOYMENT
 ° PROGRAM

(5) ACTION TYPE: ° DECISION WITH
FINDING OF DISCRIMINATION
 ° SETTLEMENT
 ° OTHER

(6) DATE OF DECISION OR SETTLEMENT: _____

(7) INQUIRY CONDUCTED BY: _____

(8) RESULTS OF INQUIRY:

(9) WAS DISCIPLINARY OR CORRECTIVE ACTION TAKEN? IF YES, DESCRIBE ACTION TAKEN, INCLUDING NAME, POSITION TITLE AND GRADE LEVEL OF ANY INDIVIDUALS SUBJECT TO DISCIPLINE. IF NO, SUMMARIZE REASONS WHY NO ACTION WAS DEEMED APPROPRIATE.

