

UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
CIVIL RIGHTS DIVISION

EQUAL EMPLOYMENT OPPORTUNITY (EEO)
COMPLAINTS HANDBOOK



***STRIVING FOR A WORKPLACE THAT RESPECTS
DIFFERENCES AND EMBRACES DIVERSITY***

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United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

Civil Rights Policy Statement

As Secretary of Agriculture, I fully support the U.S. Department of Agriculture's (USDA) civil rights, equal employment opportunity, and diversity policies and programs. Improving civil rights throughout USDA is one of my top priorities, and by pursuing this goal together in a transparent and ethical manner we can lead the way in making USDA a model organization.

The success of today's "People's Department" requires the steadfast support and commitment of every USDA employee. We will have zero tolerance for any form of discrimination or reprisal. There exists *no reason to discriminate* based on race, color, religion, national origin, age, sex (including gender identity and expression), sexual orientation, disability, marital or familial status, political beliefs, parental status, receipt of public assistance, or protected genetic information. Our policy at USDA is simply to understand that there will be zero tolerance for any form of discrimination. This standard is *applicable to every employee* at USDA and to every action taken at USDA.

To realize our vision of a modern workforce working in a modern workplace, USDA must become a model department of tolerance and inclusion. Only then will we live up to President Lincoln's description of USDA as "The People's Department." This is my commitment to you, and I expect every employee to demonstrate respect for and adherence to USDA civil rights, equal employment opportunity, and diversity policies.

To this end, accountability is key. USDA employees will be held accountable for doing their part to ensure that all USDA applicants, customers, constituents, and stakeholders as well as other USDA employees are provided equal access to the opportunities, programs, and services available through "The People's Department." Accordingly, I am counting on all senior leaders, managers, and supervisors to model appropriate behavior and to lead by example.

We must all strive to create an inclusive environment in which every employee is respected, trusted, and valued. Let us continue to cultivate and reap the benefits of a diverse USDA workforce that is rich in talent, ideas, background, and experience. The USDA mission depends on it.

A handwritten signature in black ink that reads "Thomas J. Vilsack". The signature is fluid and cursive, with the first name being the most prominent.

Thomas J. Vilsack
Secretary
June 2, 2011

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

APR 21 2009

TO: All USDA Employees

FROM: Thomas J. Vilsack
Secretary



SUBJECT: A New Civil Rights Era for USDA

As you know, civil rights is one of my top priorities. In the Departmental complaint system alone, more than 14,000 complaints have been filed since the year 2000. Approximately 3,000 of these complaints remain to be processed, and questions continue to be raised about USDA's handling of complaints. I have said many times that I intend to take definitive action to improve USDA's record on civil rights and to move USDA into a new era as a model employer and premier service provider.

To be successful, all USDA employees must be committed to making USDA a model in the Federal Government for respecting the civil rights of its employees and constituents. As Secretary, I will accept nothing less. USDA has taken steps to address the civil rights challenges that it faces. I want to acknowledge and applaud those employees across USDA who have worked hard to improve the Department's civil rights record. But we need to do better on these efforts and empower USDA employees to move USDA into this new era on civil rights.

This memorandum outlines my initial steps to change the direction of Equal Employment Opportunity, civil rights, and program delivery in USDA by designing a comprehensive approach to ensure fair treatment of all employees and applicants and improve our program delivery to every person entitled to our varied services.

The following actions are either already underway or will be implemented immediately:

1. The Assistant Secretary for Administration will publish a Request for Proposals to obtain an independent external analysis of program delivery in USDA's Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS), and Rural Development (RD) field offices. The analysis will provide specific recommendations and methodologies to ensure that programs are delivered equitably and that access is afforded to all constituents, with particular emphasis on socially disadvantaged farmers, ranchers, and other constituents. While this study will apply to these three agencies, the results will also impact all USDA agencies as necessary.

2. I will create a Task force to conduct a review of a sample of program civil rights complaints that have been processed since the year 2000 or that are currently being processed. The efforts of the Task Force will be supported by independent legal counsel, as suggested by the Government Accountability Office (GAO) report GAO-09-62, and additional staffing resources to support the review, investigations, and complaint adjudication functions. Agencies will be asked to contribute resources to accomplish both short- and long-term phases of the task.
3. The Assistant Secretary for Civil Rights will place top priority on the processing of complaints facing the statute of limitations in the Equal Credit Opportunity Act (ECOA) so that constituents have access to due process under the ECOA.
4. To address outstanding issues related to claims not previously adjudicated in the *Pigford* litigation that are currently pending in Federal court, USDA is in consultation with the Department of Justice to determine how such claims may be resolved fairly and expeditiously.
5. In response to the economic challenges facing farmers, I will use my existing authority to temporarily suspend all foreclosures within the Farm Service Agency's farm loan program for approximately 90 days. This time will also afford the Department the opportunity to review loans involving possible discriminatory conduct. We are also talking to the Department of Justice about exercising its authority to review existing litigation over these loans.
6. The Assistant Secretary for Civil Rights will, in collaboration with the appropriate agencies, fully implement automated corporate race, ethnicity, sex, national origin, disability, and age data collection for FSA, NRCS, and RD at the field office level by October 1, 2009, after which we will develop a corporate proposal for data collection across USDA.
7. The Assistant Secretary for Civil Rights will design and implement management controls to ensure that complaints are received, stored, and processed in a consistent manner and within specific timeframes. The first phase of this process has been implemented by the awarding of a contract to review and design a state-of-the-art electronic records system.
8. The Assistant Secretary for Civil Rights will take immediate action to migrate all program complaints into one data system, include additional data elements to ensure the usefulness of the system, and develop Departmental policy and training for Agency civil rights directors to ensure the proper and consistent use of the system.
9. The Assistant Secretary for Civil Rights will create and implement a correspondence management policy as well as a correspondence management plan for the Office of the Assistant Secretary for Civil Rights and all offices reporting to it.

10. The Assistant Secretary for Civil Rights, in collaboration with field service agencies, will implement all provisions of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) related to tracking and monitoring of client services, including "Receipt for Services."
11. The Assistant Secretary for Civil Rights has convened a team to study ombudsman and Alternative Dispute Resolution (ADR) services in USDA and to make recommendations by September 30, 2009, for establishing an ombudsman and strengthening the ADR function.
12. The Assistant Secretary for Civil Rights will review the organization and roles of the Office of the Assistant Secretary for Civil Rights and ensure that appropriate emphasis and staffing are placed on enforcement of Equal Employment Opportunity and civil rights law regarding employment and program delivery.
13. I will establish outreach, advocacy, and diversity as separate functions at USDA in keeping with the 2008 Farm Bill.
14. To ensure the most constructive and effective partners' meeting format and agenda, future meetings will be held after the Department has the opportunity to consider information gathered in the reorganization efforts described above and in the study described in item 1. A final report summarizing the information gleaned from previous partners' meetings will be published by June 30, 2009, and will be considered in the aforementioned study.

While there is emphasis on some of these items in FSA, NRCS, and RD, I want to be clear that this memorandum applies to all of USDA, and my expectation is that all agencies will cooperate in this effort and follow this new direction. It is essential that all agencies demonstrate their commitment to these goals.

These are just the first actions in a continuing effort to ensure that the civil rights of USDA constituents and employees are respected and protected. This is a new day for Equal Employment Opportunity, program delivery, and civil rights in USDA. I intend to lead the Department in correcting its past errors, learning from its mistakes, and moving forward to a new era of equitable service and access for all. With this effort and with each USDA employee taking individual responsibility, we can and will transform USDA into a model organization.

United States Department of Agriculture



Natural Resources Conservation Service
Civil Rights Division
5601 Sunnyside Avenue
Mail Stop 5472, Room 1-2184
Beltsville, Maryland 20705

JAN 20 2012

SUBJECT: EOP – NRCS FY 2012 Civil Rights Policy Statement

TO: All NRCS Employees

File Code: 230-15

The Natural Resources Conservation Service (NRCS) was founded in 1935 during a period in American History known for the “New Deal,” to help get the country out of the Great Depression. NRCS employees are our greatest asset for enabling people to be good stewards of the Nation’s soil, water, and related natural resources on non-Federal lands, in other words, in “Helping People Help the Land.” We must accomplish this goal and fulfill our mission to provide service throughout the Nation by treating everyone in a fair, non-discriminatory, and equitable manner.

Prohibited discrimination is a violation of Title VI and Title VII of the 1964 Civil Rights Act and will not be tolerated. It is NRCS’ policy to treat all customers and employees equitably regardless of race, color, national origin, sex (including gender identity and expression), religion, age, disability, political beliefs, sexual orientation, marital or familial status, parental status, and protected genetic information, and that employees and customers must be free from reprisal or harassment in the pursuit of fairness and equal employment opportunity. Complainants, representatives, and witnesses involved in complaints of discrimination must be unimpeded and free from restraint, coercion, or retaliation in the exercise of eliminating discrimination in the workplace. Reprisal of any kind against customers or employees will not be tolerated. Agency officials, managers, supervisors, and all employees will be held accountable for discrimination, reprisal, civil rights violations, and related misconduct.

I am committed to enforcing the Secretary’s zero tolerance policy on discrimination. As such, managers and supervisors are responsible for the environment in which their employees work and have a duty to take both affirmative and corrective action to ensure equal opportunity and civil rights for customers and employees. To deter violations, managers and supervisors are required to take appropriate corrective or disciplinary action in findings of discrimination, reprisal, civil rights violations, and related misconduct in employment and program matters. NRCS will ensure appropriate corrective or disciplinary action is taken against violators who engage in discriminatory behavior. Simply put, accountability is key to our success.

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We must embrace the goals of "Cultural Transformation" as expressed by Secretary Vilsack. On August 29, 2011, I sent an email message to all NRCS employee's titled "What is Cultural Transformation" and it was followed in September, by an agency-wide training entitled "Starting the Cultural Transformation Conversation." As I renew my commitment and the expectation of the agency to be committed to equal opportunity and civil rights, it is imperative to remind everyone that the core values of cultural transformation include of the principles of equal opportunity and civil rights. As such, I am incorporating Cultural Transformation as part of the NRCS Civil Rights policy.

Cultural Transformation is a "strategic effort to ensure every employee, partner, and customer can operate in an environment that is diverse, inclusive and high performing." Cultural transformation is a shift in our thinking, a modification in our behavior, and ultimately, a greater, more accepting world view about what it is that makes each of us unique. At NRCS, cultural transformation is not a dramatic departure from how we operate, instead it is an affirmation of our core beliefs, founded upon mutual respect for each other and an abiding core value to conserve our natural resources.

All NRCS employees are expected to model equal opportunity, civil rights, and cultural transformation, and managers and supervisors must demonstrate an elevated regard by supporting civil rights, equal employment opportunity, diversity, and cultural transformation. The Civil Rights Division will continue to provide guidance and ensure the agency's compliance with the laws and principles of equality for employment and programs.

NRCS can achieve and maintain a diverse workforce with an abundance of opportunities for every employee to reach his or her full potential. We can also achieve our critical mission of providing assistance and service to conserve our Nation's natural resources, but it requires every employee's cooperation and commitment. I have every confidence that you will take this responsibility seriously and do your part to renew and champion our commitment to equal opportunity, civil rights, and cultural transformation.

If you have questions, concerns, suggestions, or complaints of discrimination, contact the Civil Rights Division at (301) 504-2181.

A handwritten signature in black ink, appearing to read "Dave White". The signature is written in a cursive, flowing style.

Dave White
Chief

United States Department of Agriculture



Natural Resources Conservation Service
P.O. Box 2890
Washington, D.C. 20013

FEB 14 2012

SUBJECT: EOP – Anti-Harassment Policy Statement

TO: All NRCS Employees

File Code: 230-15

The Natural Resource Conservation Service (NRCS) Anti-Harassment Policy Statement reaffirms my commitment to prohibit sexual and non-sexual harassment in the agency's work environment and program delivery.

Sexual and non-sexual harassment (a form of discrimination) based on a prohibited basis of race, color, national origin, sex (including gender identity and expression) gender, religion, age (40 and over), mental or physical disability, political affiliation or belief, sexual orientation, marital or familial status, genetic information, and reprisal (retaliation) for prior Equal Employment Opportunity activity is prohibited by the agency.

For the purpose of this policy, harassment is defined as any objectionable verbal or physical conduct, comment, or display which demeans, disparages, aggravates, intimidates, or causes humiliation or embarrassment to another person. Harassment is a reasonably known unwelcome offense and serves no legitimate work purpose. Harassment occurs based on any of the above protected characteristics when:

- (a) The behavior can reasonably be considered to adversely affect the work environment (create an intimidating, hostile, or offensive work environment);
- (b) An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct;
- (c) Unreasonable interference with an individual's work performance; and
- (d) An individual's employment opportunities are affected.

Harassing conduct includes, but not limited to:

Physical – Actual or threatened assault including hitting, tripping, kicking, punching, or unwanted touching; malicious or insulting gestures.

Verbal – Unwelcome remarks, jokes, innuendos, or taunts causing offense or embarrassment; name calling, swearing, bullying, expressing or insinuating threats, incessant teasing, wolf whistling, or spreading rumors.

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Psychological – Shunning or ostracizing, stalking, staring, gesturing; preventing someone from joining in an activity; hiding, damaging, or taking another's property; and displaying objectionable materials, graffiti or pictures.

Intimidation – Use of physical or organizational power to coerce a person to perform a particular action or to instill a feeling of humiliation or intimidation. Intimidation does not include the exercise of supervisory authority in the ordinary course of agency business.

NRCS strictly prohibits the use of abuse or official authority or position to intimidate, coerce, or harass employees or customers. Managers and supervisors are subject to receive disciplinary or adverse action for tolerating harassment and failing to take appropriate and immediate action when harassment is reported.

Personnel actions that a supervisor or manager takes for valid reasons do not constitute harassment in the workplace. Please note that this notice does not limit the supervisor's right to manage effectively. All employees must be proactive in preventing harassment and promoting a discrimination free workplace.

Any employee who is subjected to or witnesses conduct which is unwelcome and perceived to be harassment, or receives a report of alleged harassment, should immediately report the incidents to a NRCS official. If an informal attempt at resolution fails or is impractical, employees may seek relief from harassment based on one or more of the above-cited prohibited basis by contacting the NRCS Civil Rights Division, Complaints Branch at 1-866-NRCS-295 or TTY at (301) 504-2439 within 45 days of the alleged incident. All other allegations of harassment (non-discriminatory) may be reported directly to an official.

As Chief of NRCS, I am fully committed to ensuring that every employee and customer is treated with respect and dignity. Managers, supervisors, and employees must remain cognizant of this policy and refrain from perpetuating acts of harassment. All employees, including contractors and others performing official work for the agency, must fully support this zero tolerance harassment policy.

A handwritten signature in cursive script that reads "Dave White". The signature is written in dark ink and is positioned above the printed name and title.

Dave White
Chief

Employment Compliance Team
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INTRODUCTION

The NRCS, Civil Rights Division, Employment Compliance Team (ECT) is responsible for administering the Agency's Equal Employment Opportunity (EEO) Complaint processes to ensure compliance with Federal statutes that prohibit discrimination in hiring, employment, and program delivery for applicants, customers, and employees. The ECT also implements the Equal Employment Opportunity Commission and the Department of Agriculture's EEO policies in processing allegations of employment discrimination. ECT continually addresses the following Civil Rights Divisions' goals and initiatives.

Initiatives:

- **EEO Counseling**
- **Complaint Prevention**
- **Complaint Processing**
- **EEO Investigations**
- **Trend Analysis**
- **No Fear Act**
- **Civil Rights Training**

THE EEO COMPLAINT PROCESS

The EEO complaint process consists of the pre-complaint process (Also, known as the informal process) and the formal process. If an employee or applicant believes he/she has been discriminated against and wish to file an EEO complaint, they must begin with the pre-complaint process.

Pre-Complaint Process

Step 1

NRCS employees and applicants for employment who believe they have been subjected to employment discrimination based on race, color, religion, sex, national origin, age (if 40 or over), disability, reprisal (for prior participation in an EEO activity or having opposed discrimination) must contact the Civil Rights Division within 45 calendar days of the alleged discriminatory event to file an EEO complaint. In addition, USDA also adheres to internal policies, which prohibits employment discrimination based on sexual orientation, genetic information, political status, parental status, and marital status. Complaints filed on these bases can only receive redress through a Final Agency Decision (FAD), and cannot be appealed through the Equal Employment Opportunity Commission (EEOC).

In the pre-complaint process the complainant makes an initial contact with an EEO Counselor. During the initial contact the Counselor will assist the Complainant in clarifying and defining the issue(s) and basis(es) of his/her complaint. The EEO Counselor will advise the Complainant that he/she may elect to seek resolution of the EEO complaint either through the Traditional Counseling process or the Alternative Dispute Resolution (ADR) process.

The Counselor will also explain the appropriate timeframes and advise the Complainant of his/her rights and responsibilities within the EEO complaint process. Traditional Counseling is usually completed within 30 calendar days and ADR within 90 calendar days. As appropriate, the Counselor will conduct a limited inquiry into the allegations to attempt resolution of the EEO complaint.

The Counselor works with both management and the complainant to work towards a resolution. If a resolution is reached, in counseling or ADR, then the Complainant withdraws his/her complaint. If no resolution is reached, then the Complainant is issued a Notice of Right to File (NRF) letter and has the option of filing a formal complaint of discrimination. Once the NRF Letter is received, the Complainant has fifteen (15) calendar days from the day he/she receives the NRF Letter to file a complaint of discrimination with the U. S. Department of Agriculture, Office of the Assistant Secretary of Civil Rights.

Step 2

The U.S. Department of Agriculture (USDA)/Assistant Secretary of Civil Rights (ASCR), Employment Complaints Division (ECD), is responsible for processing formal complaints of discrimination. The NRCS, Civil Rights Division (CRD), Employment Compliance Team (ECT) works closely with investigators, agency and the Complainant's representatives, managers, supervisors, and employees when processing EEO complaints, to include attempts at resolution. The first step in the formal EEO Complaint process begins when the OASCR receipts a formal complaint. OASCR will analyze the complaint and make a determination on whether to accept the complaint for investigation or dismiss the complaint without an investigation. OASCR may dismiss a complaint if the allegations are untimely; the Complainant fails to state a claim or show that s/he has been harmed; if the Complainant fails to allege an adverse action due to one of the covered basis (i.e. race, sex, age, etc.); or lack of jurisdiction (i.e. if the complaint is against a contractor). OASCR notifies the Complainant and the agency whether the complaint was accepted or dismissed.

If an EEO complaint is accepted, USDA must conduct an investigation and develop a Report of Investigation (ROI) within 180 days of receiving the formal complaint. The assigned Investigator is a neutral party that interviews the Complainant, witnesses, and management officials who are relevant to the investigation. It is expected that the Complainant, management officials, and all witnesses will cooperate in the investigation and be available to be interviewed.

Following completion of the investigation, a ROI is prepared and provided to the ECT from the Contractor/Investigator. The ECT will review the ROI for legal sufficiency and a copy of the ROI will then be issued to Complainant or his/her representative, and to the OASCR. Upon receipt of the ROI, the Complainant has the right to exercise one of the following redress options: (1) withdraw the formal complaint; (2) request a final agency decision (FAD) by the USDA based on the evidence of record; or, (3) request an administrative hearing by an EEOC Administrative Judge (EEOC AJ). If the ECT does not receive the election form regarding the chosen option within thirty (30) calendar days of receipt of the ROI, USDA will proceed to issue a FAD based on the evidence on record. In order to assist the Complainant in processing the chosen options, the ECT encloses a "Final Agency Decision or Withdrawal Election Form" and a "Hearing Election Form." In addition to choosing one of the redress options, the Complainant may also elect to participate in Alternative Dispute Resolution (ADR). This attempt at resolution does not stop the hearing or FAD process.

If a Complainant elects a FAD without a hearing, OASCR will issue a decision within sixty (60) days. The decision will inform the Complainant whether or not OASCR found a violation of any Civil Rights Law(s) specified in Complainant's EEO complaint. If a violation is found, the OASCR will specify the actions it will take to remedy the situation. The Complainant may appeal the FAD to the EEOC. Complainants may also appeal a decision from the EEOC in a Federal District Court.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

29 CFR 1614.102 requires agencies to establish or make available Alternative Dispute Resolution (ADR). ADR uses a variety of approaches and techniques to achieve consensual resolution of disputes, generally with the assistance of a neutral third party. ADR techniques include, but are not limited to: mediation, facilitation, neutral evaluation, conciliation, arbitration, fact finding, and negotiation.

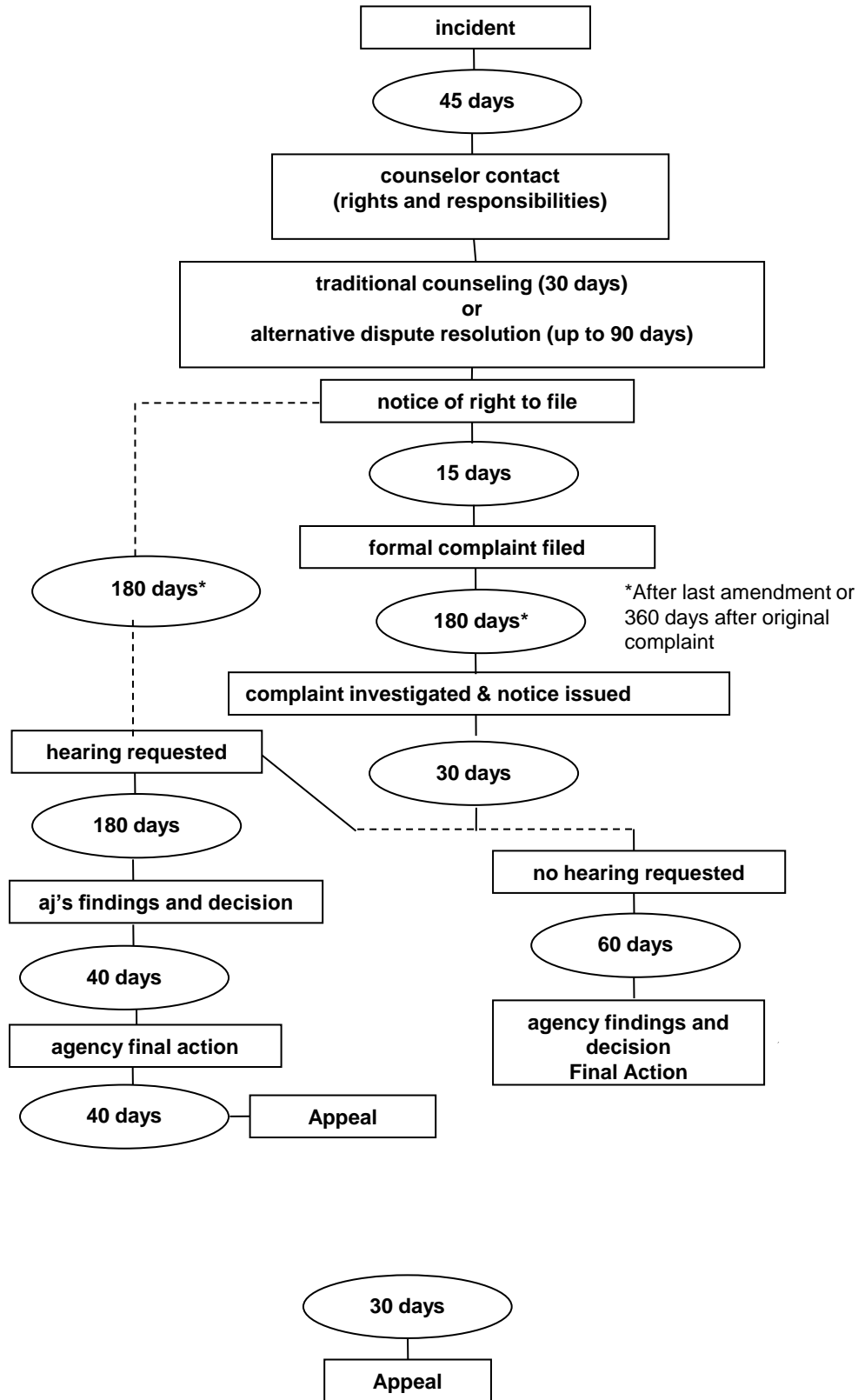
The most preferred ADR technique requested at the United States Department of Agriculture (USDA) is mediation. The benefits of utilizing mediation includes achieving effective and mutually satisfactory resolutions of conflicts, decreasing time, cost and other resources expended in resolving conflicts, and fostering a culture of respect and trust between managers, customers, and employees in an effort to increase customer satisfaction and employee morale.

The NRCS, Civil Rights Division (CRD), offers mediation to all employees and applicants in both the Pre-Complaint (Informal) and Formal stages of the Equal Employment Opportunity (EEO) complaint process in accordance with Equal Employment Opportunity Commission (EEOC) Management Directive 110. An EEOC Administrative Judge may also order parties to utilize mediation prior to a hearing. Mediation is also available to prevent and resolve Administrative Grievance, Program Conflicts and Early Intervention of Workplace Disputes.

The Administrative Dispute Resolution Act of 1996 (ADRA) and the EEOC ADR Policy Statement recognize that there are instances in which ADR may not be appropriate or feasible. The CRD has the discretion to determine whether a given dispute is appropriate for ADR.

Mediation is voluntary for the Complainant and management's participation is required. All participants are entitled to representation throughout the mediation process.

FEDERAL SECTOR COMPLAINT PROCESS: 29 C.F.R. PART 1614



*Complainant may file in Civil Court 180 calendar days from filing a complaint with the Agency

Complainant's Rights and Responsibilities

Regulations of the U.S. Equal Employment Opportunity Commission (EEOC) which became effective November 9, 1999, require counselors to advise individuals in writing of their rights and responsibilities at the initial counseling session. This document summarizes these rights and responsibilities.

Pre-Complaint Process:

The Complainant has the right to:

- 1. Be Advised** of timeframes in the EEO complaint process.
- 2. Be Advised** of class complaint procedures and the responsibilities of a class agent if he or she informs the Counselor that an individual wishes to file a class complaint.
- 3. Anonymity** during the Pre-Complaint counseling process, unless he or she waives the right.
- 4. Receive** correspondence that provides information, guidance, and status on the EEO complaint process and the agency's Alternative Dispute Resolution (ADR) process when a complaint is filed. The following correspondence is mailed to the Complainant during the Pre-Complaint process:

- Initial Contact Letter with attachments.
- Understanding the Mediation Process document, once an individual has agreed to participate in ADR process.
- Settlement Agreement, if a settlement is reached in the Pre-Complaint process.
- Notice of the right to file (NRF) a formal individual or class complaint. The Complainant has **15** calendar days after receipt of the notice to file a formal complaint with the Office of the Assistant Secretary of Civil Rights.
- Counselor's Report that contains relevant information about the Complainant's allegations, jurisdiction, claims, bases, requested remedy, and a summary of the informal resolution attempt.

- 5. Go** directly to a court of competent jurisdiction on claims of age discrimination, under the Age Discrimination in Employment Act (ADEA), instead of pursuing his or her claim under the agency's administrative system. Before an individual can file such a lawsuit, he or she must file a notice of intent to sue with the EEOC.

6. Go directly to a court of competent jurisdiction on claims of sex-based wage discrimination under the Equal Pay Act, instead of pursuing his or her claim under the agency's administrative system.

7. Elect between the Agency's Alternative Dispute Resolution (ADR) process (where the agency agrees to offer ADR in the particular case) or the EEO Traditional Counseling process.

8. File a formal complaint on those claims raised in—or like or related to those claims raised in—counseling, and amend a formal complaint after it has been filed with claims like or related to those in the original complaint.

9. Representation throughout the complaint process, including during the counseling stage and in any alternative dispute resolution (ADR) procedure. The EEO Counselor and the Mediator are strictly neutral in the EEO process, and **are not** advocates for the Complainant or the agency, which the complaint is against

The Complainant has the responsibility to:

- 1. Choose** either to use his or her union's negotiated grievance procedure (*where the collective bargaining agreement permits raising claims of discrimination*) or to pursue his or her complaint through the EEO complaint process.
- 2. Choose** either to take his or her claim to the Merit Systems Protection Board (MSPB) if the claim is appealable to MSPB (that is a "mixed case") or to pursue a mixed-case complaint through the EEO complaint process. (*Actions appealable to the MSPB are listed on page 18 of this handbook.*)
- 3. Meet** timeframes in the complaint process, including:
 - contacting an EEO counselor within **45** days of learning of the matter that causes you to be aggrieved;
 - filing a formal complaint within **15** days of receiving notice of right to file a formal complaint or on the **30th** day in counseling if you have not agreed to extend the process.

Formal Process:

The Complainant has the right to:

1. Receive notice when the agency consolidates two or more of his/her complaints, including notice that:

- the agency shall complete its investigation within the earlier of **180** days after the filing of the last complaint or 360 days of the filing of the first complaint, but that
- the Complainant may still request an EEOC hearing at any time after **180** days from filing the first complaint.

2. Receive a copy of the Report of Investigation (ROI) at the close of the investigation, and a notice of the option to participate in mediation.

3. Elect a request for an immediate Final Agency Decision (FAD) by agency or a hearing before an EEOC Administrative Judge (except in a mixed case) after **180** calendar days from the date the formal complaint was filed or after completion of the investigation, whichever comes first. *(The agency's letter acknowledging his or her complaint will be provided with: the address of an EEOC field office to which he or she must send the hearing request and the address of the agency official to whom he or she must send a copy of the hearing request.)*

4. Go to U.S. District Court **180** calendar days after filing a formal complaint or **180** days after filing an appeal.

5. Receive interim relief should the agency appeal an EEOC decision or award.

The Complainant has the responsibility to:

1. Send a completed hearing request directly to the EEOC, where he or she elect a hearing by an EEOC administrative judge, and provide a copy of the request to the OASCR.

2. Meet timeframes in the Formal complaint process, including:

- appealing to the EEOC within **30** days of receiving a dismissal or agency final decision or final action or **35** days after serving the EEO director with notice of agency noncompliance with a settlement agreement entered into in your case, but no later than **30** days after receiving the agency determination and
- filing a civil action in U.S. District Court within **180** days of
- filing a complaint, if no action has been taken:

- within **90** days of receiving an agency final action, if no appeal has been filed
- within **180** days of filing an appeal, if EEOC has not made a decision within specified time limits at various points in the process, where a case is a mixed-case complaint or a mixed-case appeal to MSPB

3. Keep the agency and EEOC informed of his or her current mailing address and serve copies of hearing requests and appeal papers on the agency.

4. Mitigate damages. (For example: If the Complainant is terminated, he or she has a duty to pursue employment to minimize losses, since interim earnings or amounts that could be earned with reasonable diligence is generally deducted from any award of back pay.)

5. Examine the agency's offer of resolution (he or she has **30** days to accept or reject) with the understanding that rejecting an agency's offer of resolution made pursuant to may result in the limitation of the agency's payment of those attorney's fees or costs incurred after the **30**-day acceptance period has expired.

APPEALABLE ACTIONS TO THE MERIT SYSTEMS PROTECTION BOARD (MSPB)

The MSPB is an independent Federal agency that serves as the guardian of Federal merit systems. Under the Civil Service Reform Act of 1978 (CSRA), most Federal employees may appeal various personnel actions affecting them to the MSPB. The MSPB appeal process is designed to ensure that Federal employees are protected from unfair or unequal treatment.

When an employee contacts an EEO Counselor to discuss a potential discriminatory employment action, the EEO Counselor informs the individual that he or she may also have appealable rights to the MSPB. If the employee elects to file a complaint through the EEO complaint process and an appeal with the MSPB, this is referred to as a “mixed case complaint”.

A “mixed case complaint” is a complaint of employment discrimination based on race, color, religion, sex, age, national origin, disability, or reprisal related to or stemming from a personnel action that can be appealed to the MSPB.

The mixed case complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address. An employee can choose to raise a mixed case claim in either an EEO complaint or an MSPB appeal, but may not use both processes simultaneously. The most frequent appealable action falls into the following six categories:

Categories of Appealable Actions through the MSPB:

- Reduction in grade or removal for unacceptable performance.
- Removal, reduction in grade or pay, suspension for more than fourteen(14) days, or furlough for thirty (30) days or less for cause that will promote the efficiency of the service.
- Separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction-in-force.
- Reduction-in-force action affecting a career appointee in the Senior Executive Service (SES).
- Reconsideration decision sustaining a negative determination of competence for a general schedule employee.
- Disqualification of an employee or applicant because of a suitability determination.

The following employees generally do not have right to appeal to the MSPB:

1. Probationary employees.
2. Non-appropriated fund activity employees.
3. Employees serving under a temporary appointment limited to one year or less.

RESPONDING MANAGEMENT OFFICIAL (RMO) RIGHTS AND RESPONSIBILITIES

WHAT IS A RESPONDING MANAGEMENT OFFICIAL

When an EEO complaint has been filed against the Natural Resources Conservation Service, the employee or applicant often names a management official as the person they perceived to have discriminated against them. Therefore, the nomenclature Responding Management Official (RMO) is used to identify the management official that is responsible for the action(s) or made decision(s) that lead to the discriminatory act based on the individual's race, color, religion, sex, national origin, age, disability or reprisal (for previous EEO activity) that allegedly caused the harmed.

The Responding Management Official should understand the Federal Equal Employment Opportunity (EEO) complaint process and the Alternative Dispute Resolution (ADR) process so s/he can help the Agency resolve the complaint promptly. A Responding Management Official has certain rights and responsibilities as s/he participates in the EEO complaint process. Some of those rights and responsibilities are listed below:

Rights:

- The Responding Management Official has the right to be informed of all allegations of discrimination made against him/her.
- The Responding Management Official has the right to be given the opportunity to respond to allegations of discrimination made by an employee or applicant, and provide any supporting documentation.
- The Responding Management Official has the right to obtain a personal representative, at his/her own expense.
- The Responding Management Official has the right to contact the Civil Rights Division if s/he has any questions or concerns about the EEO complaint process.

Responsibilities:

- The Responding Management Official has a responsibility to ensure that his/her employment decisions and practices are fair, equitable, and based on merit.
- The Responding Management Official has a responsibility to demonstrate "a good faith effort" in resolution/settlement attempts to resolve an EEO complaint. A resolution/settlement can be attempted at any stage of the EEO complaint process. Always remember that a resolution or settlement of a complaint is in the best interest of the agency.
- The Responding Management Official has a responsibility to offer suggestions and/or alternatives to resolve or settle the EEO complaint at the lowest level.
- The Responding Management Official has a responsibility to ensure all terms agreed to in a Settlement Agreement are implemented and followed according to what the agreement states.
- The Responding Management Official has a responsibility to ensure s/he do not take any action or fail to take any action that may be considered to be retaliatory towards an employee or witnesses that have or will participate in the EEO complaints process. Retaliation can be found even if there is no merit to the complaint.

The Equal Employment Opportunity (EEO) Complaint Process

Who can use the EEO process?

- Employees
- Applicants

When can you use the EEO Process?

- People related issues
- When you believe you have been discriminated against based on: race, color, age, religion, national origin, disability, sexual orientation, and sexual harassment

How would the EEO Complaint Process begin?

- Contact the EEO Complaint Branch within 45 days of the alleged act of discrimination. The EEO Counselor has 30 days from the original contact to facilitate a resolution.
- If there is no resolution after the 30-day timeframe, the Counselor will issue to the employee (in writing) a “Notice of the Right to File” a formal complaint.
- The employee has 15 days from receipt of the Counselor’s notice to file the formal complaint in writing.

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The Administrative Grievance Procedure

Who can use the Administrative Grievance Procedure?

- Employees
- A group of employees

When can you use the Administrative Grievance Procedure?

- Work related issues
- When you have suffered from unfair treatment, performance appraisals, non-selection for training, suspension, changes in assignments, and failure to follow rules and regulations

How would the Administrative Grievance Procedure begin?

- The grievance must be presented to the lowest level official in the organization with decision power within 15 days of the act or occurrences.
- The grievance must be orally or in writing, and clearly identifying the concerns being grieved.
- The grievance must state corrective actions the grievant is seeking.
- A determination and a response will be sent back to the grievant within 15 days. If a resolution can not be achieved, the official will notify the grievant and advise him/her that a grievance may be filed with the Deputy Administrator, Management within 10 calendar days.

FREQUENTLY ASKED QUESTIONS (FAQ)

How many days do I have to file an EEO Complaint if I think I have been discriminated against? An employee or applicant, who believes he/she has been discriminated against, must contact the NRCS, Civil Rights Office, within **45 calendar days** of the alleged discriminatory event or from when he/she becomes aware that a discriminatory event has occurred to file an EEO complaint.

Can I file a formal complaint directly with USDA? No. An individual can not file a formal complaint directly with USDA. An employee or applicant must first make a good faith effort to resolve the complaint in the Pre-Complaint process before filing formally. The only exceptions are for individuals alleging discrimination based on age or the equal pay act, which claims can be filed directly with a court.

Who does the EEO Counselor represent when a complaint is filed? The EEO Counselor remains neutral as he/she processes a complaint of alleged discrimination and does not represent either party (employee or management).

Can I withdraw my complaint after it is filed? Yes. An active Pre-Complaint or formal complaint can be closed, by the individual that initiated the complaint, at any time during the process.

When can I file a formal complaint with USDA? If a resolution is not reached in the Pre-Complaint process, then the EEO Counselor will issue a Notice of Right to File (NRF) letter to the individual. The individual will have **15 calendar days** after he/she receives the NRF, to file a formal complaint with the OASCR.

What happens after I file a formal complaint with USDA? OASCR will review the individual's complaint and make a determination of whether to accept or dismiss the complaint. If the complaint is accepted, a thorough investigation will be conducted and a report of investigation (ROI) is developed. A copy of the ROI will be given to the individual or his/her representative and to OASCR. After the individual receives the ROI, he/she will be given the following options: (1) Withdraw his/her formal complaint; (2) request a final agency decision (FAD) from USDA; or (3) request a hearing by an EEOC Administrative Judge.

How can I get status on my formal complaint filed with USDA? An individual can obtain status on his/her formal complaint by calling the Customer Service Unit at (800) 795-3272 or writing to USDA, Office of Adjudication and Compliance, Chief, Employment Complaints Division, Reporters Building, Room #607, 300 7th Street SW, Washington, DC 20024.

What is Alternative Dispute Resolution (ADR)? ADR is a term used to describe a series of non-adversarial processes which assists participants in resolving their disputes quickly and efficiently.

What is Mediation? Mediation is an informal, but structured form of alternative dispute resolution in which one or more impartial neutrals intervenes in a conflict and assists the participants in reaching a mutually satisfactory resolution.

Who is the Mediator? The mediator is a person who serves as an impartial facilitator (neutral third party) between participants who are experiencing conflict in an attempt to assist them in resolving a dispute.

What is the goal of Mediation? The goal of mediation is to improve or restore working relationships, foster better communication between the participants and to effect a long lasting solution to the issues, usually through the use of a written agreement that each party signs.

Will the Mediator(s) impose a decision? No, Mediator(s) do not impose decisions on the participants, but create a "safe" environment for the participants to hear each other out, express their issues, concerns and feelings, share information, and address underlying needs and problems.

Where is the mediation conducted? Mediation proceedings will take place in a neutral setting and will not normally be held in the workplace of either party to the mediation.



For additional information on the EEO Complaint Process and the Mission and Functions of NRCS Civil Rights Division, go to <http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/contact/civilrights/>

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