USDA

Dealing with Workplace Conflicts and Concerns

A Guide for Employees

Options

Mediation

Investigation

Agreement

Decision

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The USDA Conflict Prevention and Resolution Center authored "*Dealing with Workplace Conflicts and Concerns - A Guide for Employees*." The following USDA organizations contributed: Forest Service, Natural Resources Conservation Service, Office of Civil Rights, Office of Communications, Design Center, Office of Human Resources Management, Office of the General Counsel.

February 2001

INTRODUCTION
Options for Workplace Disputes

All organizations have conflict. We can respond to conflict with choices that lead to destructive outcomes–the escalating "battles" that lead to hurt and unsafe feelings, or the suppressed frustration that eats away at employees' comfort. We can also respond to conflict in a manner that leads to constructive outcomes. While many employees would like a constructive resolution to conflict, we often do not know how to achieve such a resolution, and so may not believe that it is possible.

Frequently when we experience conflict, we can work things out by ourselves, quickly and satisfactorily. However, when a person feels a need for assistance in order to attempt to reach a constructive solution, the Federal Government and USDA offer a variety of kinds of assistance. This Guide is intended to help you choose an option best suited to your situation.

Informal avenues are available. A relatively new "interest-based" option- Alternative Dispute Resolution (ADR)- leaves the resolution of conflict to the persons who have the conflict. ADR can help USDA employees improve communication, build relationships, and understand another person's perspective. The availability of ADR before, during, or in place of the formal dispute resolution avenues

provides employees a more "personal" option for addressing their concerns.

Formal avenues are also available to employees, such as the grievance and EEO complaint processes. Like the court system, these are "rights-based" and end with a decision-maker determining the final outcome. Each approach has its own timeframes, procedures, and decision-making structure. The demands on an employee's finances, time, and emotions, as well as the demands on the work environment, vary as well.

USDA employees are encouraged to review this Guide. Should you face a workplace conflict, a call to the referenced contacts or a visit to the listed Web sites may provide you with some critical information. Protections against reprisal exist for employees who elect to pursue these options. Please note that this Guide is informational only, and does not replace or take precedence over any laws, regulations or policies that govern the listed processes.

In most instances of conflict, doing nothing is the least advisable course of action. By seeking to address concerns early and choosing an appropriate avenue, you can increase the chances of resolving your situation in the most timely and effective manner.

INFORMAL APPROACHES

ALTERNATIVE DISPUTE RESOLUTION (ADR)

• What is ADR?

ADR is a voluntary alternative to, and not a replacement for, formal dispute resolution systems such as grievances, discrimination complaints, and appeals. Unlike more formal processes, where management and employees are placed in a contest to determine a "winner" and a "loser," ADR provides an arena where individuals may thoroughly examine all the matters related to workplace concerns and develop solutions that are acceptable to all parties. In ADR, participants can generally arrive at resolutions much more quickly than decisions can be issued in the formal processes, and resolutions are designed by the participants rather than by an external party.

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ADR consists of a variety of approaches and techniques for early intervention and dispute resolution that include mediation, conciliation, facilitation, early neutral evaluation, ombuds, and others. Each ADR technique provides a non-adversarial setting where employees can openly discuss issues and examine possible solutions with the assistance of a neutral third party.

• Who may use ADR?

Any employee, including high-level managers, temporary appointees, professionals, and support and administrative staff, may ask to participate in ADR and may request that other involved individuals participate. ADR is appropriate for interpersonal disputes, possible disciplinary- or performance-related actions, as well as concerns

about violations of regulations or discrimination. ADR is available to an employee who is experiencing conflict with a co-worker, or with a supervisor, and may be requested **whether or not** a complaint, grievance, or personnel action has been initiated over the matter. Employees maintain the right to pursue those more formal avenues as long as they meet the required deadlines.

Employees maintain the right to pursue those more formal avenues as long as they meet the required deadlines.

• How does ADR work?

USDA encourages all employees to pursue available ADR options at the earliest possible time in order to minimize the disruptions and stress that often accompany conflict. Any employee can start an ADR process by contacting the agency's or mission area's ADR program. If an employee is already in one of the formal dispute resolution systems, an opportunity to participate in ADR may be offered as a part of that system.

USDA encourages all employees to pursue available ADR options at the earliest possible time...

Although there are a number of different ADR techniques, mediation is the one used most frequently at USDA. In mediation, a trained neutral mediator usually begins the session with all the participants present by explaining the procedures and ground rules that will be used. The participants are then invited to present the issues important to them in their own words. They may present facts and evidence, question each other, voice their concerns, or say what they are hoping for, while the mediator provides structure, balance, and fairness throughout the discussion. The mediator may meet separately with each participant to discuss matters

further and to develop possible options for resolution. Throughout the mediation process, the participants listen to each other's concerns and try to focus on the kind of future they can build together. Although an agreed-upon resolution between the parties is the primary goal, mediation is often considered successful if a better understanding or relationship between the participants is achieved.

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In addition to mediation, other ADR techniques are increasingly becoming available at USDA. All of these processes emphasize voluntariness, neutrality, confidentiality as permitted by law, and the ability of the parties to determine their own futures.

• How do I learn more about ADR?

Anyone who has questions about ADR or wishes to initiate an ADR process should contact his/her agency or mission area Conflict Prevention and Resolution or ADR program. The USDA Conflict Prevention and Resolution Center has posted information about ADR, including a short video, "*A Better Way*," and contact information for agency or mission area ADR program coordinators, on its Web site at **http://www.usda.gov/cprc.**

EMPLOYEE ASSISTANCE PROGRAM (EAP)

• What is the Employee Assistance Program?

The EAP is a professional counseling and referral service designed to help you with your problems both on and off the job. It is free, confidential within the limits of the law, and voluntary. The EAP provides employees with counselors who are prepared to assist with virtually any issue or

problem that may arise. Some of the most common concerns relate to emotional issues, relationships, family matters, alcohol/other drug use, and the job.

- **Who may use the Employee Assistance Program?**

Any USDA employee may use the EAP.

- **How does the Employee Assistance Program work?**

The EAP provides immediate assistance to employees and, in some cases, their immediate family members. Employees simply contact an EAP counselor, who meets with them in a confidential setting. The counselor helps employees assess the problem, provides short-term counseling or problem-solving when appropriate, assists in selecting a community resource when necessary, and follows up to ensure employees receive quality assistance.

- **How do I learn more about the Employee Assistance Program?**

Employees interested in learning more about the EAP should contact their agency EAP program coordinator or Human Resources office, or visit **http://www.usda.gov/da/shmd/eappoc.htm.**

WORKPLACE VIOLENCE PREVENTION PROGRAM

- **What is the Workplace Violence Prevention Program?**

The USDA Workplace Violence Prevention Program exists to carry out USDA's policy prohibiting acts or threats of violence against persons or property in the USDA workplace. That policy applies to violent threats or acts, whether committed by USDA employees or by individuals outside USDA.

Any employee with concerns about a threat or act of violence should promptly raise these concerns...

- **Who may use the Workplace Violence Prevention Program?**

Any USDA employee may use the Workplace Violence Prevention Program.

- **How does the Workplace Violence Prevention Program work?**

Every USDA agency or mission area has a workplace violence prevention coordinator. Mission areas or agencies are required to have policies and procedures to prevent and to respond to workplace violence at USDA work sites. In addition, they must have a process to identify, report, monitor, and respond to specific areas with high potential for workplace violence.

Any employee with concerns about a threat or act of violence should promptly raise these concerns, generally with either her/his supervisor or the workplace violence prevention coordinator in her/his agency or mission area. The supervisor or coordinator will take the necessary and appropriate actions, which could include bringing a "threat assessment team" together to evaluate the situation and to determine what steps, if any, should be taken next. There may be unique features to each agency or mission area Workplace Violence Prevention Program.

- **How do I learn more about the Workplace Violence Prevention Program?**

Employees interested in learning more about the Workplace Violence Prevention Program should contact their agency or mission area workplace violence prevention coordinators. The *USDA Handbook on Workplace Violence Prevention and Response*, the relevant USDA regulation, and contact

information for all workplace violence prevention coordinators can be found at **http://www.usda.gov/da/workviolence.htm.**

FORMAL PROCEDURES

ADMINISTRATIVE GRIEVANCES

- **What is the administrative grievance process?**

The administrative grievance process provides employees an opportunity to raise concerns about work issues and to notify management of employment situations that may violate regulations. Employees who believe that a violation of a personnel regulation has caused them harm may choose to file an administrative grievance. Management uses the process to examine the claims and provide a formal response, which can range from completely correcting the situation to reinforcing the reasons for the challenged action.

Administrative grievances can appropriately address a wide variety of potential employment situations, but are not applicable in every matter, such as complaints of discrimination.

- **Who may file an administrative grievance?**

Employees who are not included in a recognized bargaining unit (see section entitled "Negotiated Grievances") may file an administrative grievance. Before attempting to file an administrative grievance, employees should first determine if they are included in a bargaining unit.

The grievance terminates with a final decision by the head of the employee's agency.

- **How does the administrative grievance process work?**

The employee initially presents an informal grievance to his/her supervisor orally or in writing, within 15 calendar days of *either* the action that generated the grievance *or* the day when the employee became aware of the action. The supervisor handles the grievance personally or directs it to the appropriate official. The grievant should receive a response that either clarifies the matter or provides corrective or other appropriate action to the grievant. If the grievant is not satisfied with the response, she or he may pursue the matter further to the next higher level in management. The grievance terminates with a final decision by the head of the employee's agency. The employee may request a review of the matter by an impartial grievance examiner prior to the agency head's decision.

The grievant or any management official may ask to participate in alternative dispute resolution (ADR) during any stage of the process prior to the agency head's decision.

- **How do I learn more about the administrative grievance process?**

Employees who are interested in learning more about the administrative grievance process should contact their agency's Human Resources office, or their mission area's Human Resources office for those agencies that do not have their own. Employees should ask for a copy of their agency's administrative grievance procedures.

NEGOTIATED GRIEVANCES

- **What is the negotiated grievance process?**

The negotiated grievance process provides employees an opportunity to raise concerns about work issues and to notify management of adverse employment situations that may violate regulations or their collective bargaining agreement. Employees who believe that a violation of personnel regulations

or of a collective bargaining agreement provision has caused them harm may choose to file a negotiated grievance. Management uses the process to examine employees' claims and provide a formal response that can range from completely correcting the situation to reinforcing the reasons for the challenged action. Negotiated grievances can address a wide variety of potential employment matters, but are not applicable in all matters.

• Who may file a negotiated grievance?

Negotiated grievances may only be filed by employees who are included in a recognized bargaining unit. A bargaining unit is a group of employees who are represented by a labor union. Membership in the labor union is not necessary to file a negotiated grievance. Employees should first determine whether or not they are in a bargaining unit.

• How does the negotiated grievance process work?

An employee, or union on the employee's behalf, must file a grievance in the manner required by the collective bargaining agreement. In most cases the grievance is taken up with the employee's supervisor or other management official. The management official considers and examines the concerns the employee has raised and provides a formal decision on the matters in question. If the grievant is not satisfied with the decision, she or he can then raise the issues with the next higher official. The number of such "steps" varies from bargaining unit to bargaining unit. The managers' decisions can range from finding for the grievant with appropriate remedies to a denial of the grievance. If the grievant is not satisfied with the highest level decision, in some instances the matter may go to an external, neutral "arbitrator" for a binding decision. Employees who file negotiated grievances have the right to have a union representative assist and represent them through every phase of the process.

Employees should first determine whether or not they are in a bargaining unit.

Collective bargaining agreements contain provisions describing in greater detail what concerns may be a cause for grievance and how the grievance process works in an individual bargaining unit.

The grievant or any involved management official may ask to participate in alternative dispute resolution (ADR) during any stage of the negotiated grievance process in an attempt to reach a mutually agreeable resolution of the issues raised. Some agencies' collective bargaining agreements may provide for suspending the processing of the grievance until ADR is completed.

• How do I learn more about the negotiated grievance process?

Employees who are interested in learning more about the negotiated grievance process should contact their union local or contact a labor relations specialist in their agency or mission area Human Resources office. Employees who wish to initiate a negotiated grievance should notify a union steward or one of their union officials.

EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINTS

• What is the EEO complaint process?

The EEO complaint process provides employees an avenue to complain about actions taken against them by their agency which they believe resulted from illegal discrimination. The actions complained of may be personnel- or work-related, or they may result from an agency's failure to take actions. The EEO complaint process provides the employee opportunities to seek either a mutual resolution of those issues with management, or a decision by a third party on the validity of the claim of discrimination.

...an aggrieved employee has 45 days from the date of the action he or she believes was discriminatory, or from the date he or she learned about the action, to contact an EEO counselor.

• Who may use the EEO complaint process?

Any employee who believes she or he has suffered in employment due to an action or decision by an official or employee of USDA, and believes that this action or decision was made because of race, color, religion, sex, age (40 or over), national origin, physical or mental disability, sexual harrassment, or retaliation for prior EEO activity, may file an EEO complaint. USDA recognizes sexual orientation, political beliefs, parental status, and marital status as additional protected bases, but violations on these four bases are not enforceable in Federal courts or the Equal Employment Opportunity Commission (EEOC).

• How does the EEO complaint process work?

In order to initiate an EEO complaint, an aggrieved employee has 45 days from the date of the action she or he believes was discriminatory, or from the date she or he learned about the action, to contact an EEO counselor. During this "pre-complaint" or "informal" stage, the EEO counselor informs the employee of her/his rights, including the right to select a representative to assist her/him during the complaint process. The EEO counselor works with the employee and management officials to explore informally the full scope of the employee's claims and tries to help resolve them. In most instances, the EEO counselor will offer the employee an opportunity to participate in ADR as an alternative to counseling. If either counseling or ADR fails to result in a signed resolution agreement, the employee may go on to file a formal EEO complaint with the USDA Office of Civil Rights. A formal complaint must be filed in writing, within 15 days of the employee's receipt of the notice of the right to file a formal complaint.

The formal complaint stage consists principally of the investigation phase and the decision phase. The complainant may seek a hearing by an EEOC judge before a decision on the merits of the complaint is issued. If the complainant disagrees with the decision or if complaint processing exceeds certain timeframes, the complainant may be entitled to appeal to the EEOC or go to a Federal district court.

During the formal complaint stage, the complainant may again be offered an opportunity to participate in ADR. Because it can take as long as several years before a decision is issued in the EEO complaint process, complainants may wish to consider participating in ADR in an attempt to resolve a complaint early.

• How do I learn more about the EEO complaint process?

Employees who have questions about the EEO complaint process should contact an EEO counselor in their agency's Civil Rights office, or in their mission area's Civil Rights office for those agencies that do not have their own. Employees who wish to initiate an EEO complaint should contact an EEO counselor. The EEOC has posted valuable information on its Web site at **http://www.eeoc.gov.** The site includes the regulation that contains the requirements for the EEO complaint process (29 CFR 1614). Additional information on the EEO complaint process at USDA can be found at the USDA Office of Civil Rights Web site, **http://www.usda.gov/da/cr.html.**

MERIT SYSTEMS PROTECTION BOARD (MSPB) APPEALS

• What is an MSPB appeal?

MSPB appeals exist to ensure that Federal employees are protected against abuses by agency management, that executive branch agencies make employment decisions in accordance with the Merit System Principles, and that Federal merit systems are kept free of prohibited personnel practices. Most Federal employees may appeal various personnel actions affecting them to the MSPB. Most matters appealable to the MSPB are personnel actions that have an adverse impact on employees, such as removal, suspension for more than 14 days, reduction in grade or pay, furlough for 30 days or less, reduction-in-force, performance-based actions, and certain other actions under regulations of the Office of Personnel Management.

• Who may use the MSPB appeals process?

Most, but not all, Federal employees may file appeals of adverse actions and performance-based actions to the MSPB. Probationary employees, non-appropriated fund activity employees, employees serving under a temporary appointment of 1 year or less, and employees in bargaining units with grievance procedures that cover any actions that may be appealed to the MSPB either do not have a right to file appeals or have restricted rights to do so.

• How does the MSPB appeals process work?

Employees must file a written appeal of the agency action with the MSPB's regional or field office serving the area where the duty station is located. Appeals must be filed within 30 calendar days of the effective date of the action, or within 30 calendar days of receipt of the decision, whichever is later. In those cases where the parties mutually agree to attempt resolution through ADR, MSPB regulations extend the appeal filing time for an additional 30

days. The MSPB encourages the parties to explore settlement of issues at any time during the appeals process, to prevent the need for an administrative hearing.

An MSPB administrative judge makes an initial decision, which becomes final unless a party petitions the full Board for review. The Board's final decisions may be reviewed in the U.S. Court of Appeals for the Federal Circuit or, in some instances, Federal district court.

• How do I learn more about MSPB appeals?

Employees interested in learning more about the MSPB appeals process or who wish to initiate an appeal should contact their personnel office, the MSPB, or an MSPB field office serving the area where their duty station was located when the action was taken. The MSPB offers additional information on its Web site at **http://www.mspb.gov.**

OFFICE OF SPECIAL COUNSEL (OSC) COMPLAINTS

• What are OSC complaints?

OSC, an independent agency, has as its primary mission safeguarding the merit system by protecting Federal employees and applicants from "prohibited personnel practices (PPP)," especially reprisal for whistleblowing. OSC receives, investigates, and prosecutes complaints that an agency has committed PPP's.

• Who may use the OSC complaint process?

The OSC complaint process is open to most Federal employees or applicants who believe that a PPP has been committed against them or other employees.

- **How does the OSC complaint process work?**

Employees may file PPP complaints with OSC, using OSC's required Form OSC-11, at any time after the alleged prohibited activity occurred. With a PPP complaint, it may be necessary for there to have been a related personnel action taken, such as an appointment, promotion, reassignment, or suspension. OSC analyzes the complaint to determine whether an investigation is warranted. OSC offers the parties the opportunity to voluntarily participate in mediation, a type of ADR, as an alternative to an investigation. If matters remain unresolved through the investigation phase, OSC conducts a legal review and analysis to determine whether the investigation established a violation of law, rule, or regulation, and whether the matter warrants corrective action, disciplinary action, or both. OSC may seek corrective action during the complaint process, either through negotiation with the parties or in litigation before the Merit Systems Protection Board.

- **How do I learn more about the OSC process?**

Employees who wish to learn more about the OSC complaint process may call 1-800-872-9855 or 202-653-7188. Additional information about the complaint process may be found on OSC's Web site, **http://www.osc.gov.**

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