



U.S. Department of Agriculture
Natural Resources Conservation Service
Civil Rights Division

**EQUAL EMPLOYMENT
OPPORTUNITY (EEO)
COMPLAINTS**



*STRIVING FOR A WORKPLACE THAT RESPECTS
DIFFERENCES AND DIVERSITY*

Jason Weller
Chief, NRCS

Fred Reaves
Acting Director, Civil Rights Division

National Bulletin: 230-13-

Date: March XX, 2013

Subject: EOP – NRCS Civil Rights Policy Statement

Purpose. To announce the NRCS Civil Rights Policy Statement.

Expiration Date. January 31, 2014.

Background. Each year, the Chief of the Natural Resources Conservation Service (NRCS) officially renews the commitment to Civil Rights and transmits the NRCS Civil Rights Policy Statement. In light of the Cultural Transformation Initiatives and the Secretary's Blueprint for Stronger Service, now is the perfect time to remind all employees of NRCS leadership's commitment to civil rights.

Explanation. Attached to this bulletin, you will find a copy of Acting Chief Weller's Civil Rights Policy Statement. Please ensure that the policy is posted in all agency offices where it can be viewed by employees and customers.

Contact. If you have any questions, please contact the Program Compliance Branch, Civil Rights Division, at (301) 504-2182.



Jason Weller
Acting Chief

Attachment

DIST: E



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

MAR 13 2013

SUBJECT: EOP – NRCS Civil Rights Policy Statement

TO: All NRCS Employees

File Code: 230-15

The Natural Resources Conservation Service (NRCS) employees represent an array of cultures, ethnicities, and backgrounds, and that diversity helps us meet our mission. I am committed to enforcing the Secretary's zero tolerance policy on discrimination. Prohibited discrimination is a violation of Title VI and Title VII of the 1964 Civil Rights Act.

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. It is also our policy that customers and employees be free from reprisal or harassment in the pursuit of fairness and equal employment opportunities.

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 other employees will be held accountable for discrimination, reprisal or harassment, civil rights violations, and related misconduct.

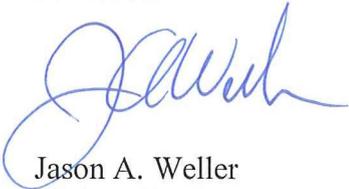
Managers and supervisors are responsible for the environment in which their employees work and have a duty to take both affirmative and corrective action to ensure equal opportunity and civil rights for customers and employees. To deter violations, managers and supervisors are required to take appropriate corrective or disciplinary action on findings of discrimination, reprisal, civil rights violations, and related misconduct in employment and program matters. They must demonstrate an elevated regard by supporting civil rights, equal employment opportunity, and diversity in the workplace.

All NRCS employees are expected to adhere to this policy. NRCS will ensure appropriate corrective or disciplinary action is taken against violators who engage in discriminatory behavior.



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

A handwritten signature in blue ink, appearing to read "J. Weller", with a large, stylized initial "J" that loops around the first part of the name.

Jason A. Weller
Acting Chief



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. We can turn our challenges into opportunities to strengthen our service.

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 not only to understand that there will be zero tolerance for any form of discrimination, but to ensure that this standard is maintained throughout the Department. This standard is *applicable to every employee and manager* at USDA and to every action taken at USDA.

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." Strengthening "The People's Department" is my commitment to you. I expect every employee and manager to demonstrate respect for and adherence to USDA civil rights, equal employment opportunity, and diversity policies and our program civil rights responsibilities.

To this end, accountability is key. I will hold all employees and managers accountable for doing their part to ensure that all USDA applicants, customers, constituents, and stakeholders 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. As we approach the 50th Anniversary of the Civil Rights Act of 1964, USDA must continue to ensure that the civil rights of USDA constituents and employees are respected and protected. We have corrected past errors, learned from past mistakes, and moved into a new era of equitable service and access for all. 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, appearing to read "Tom Wilsack", written in a cursive style.

Thomas J. Wilsack
Secretary

July 24, 2013

National Bulletin: NB-230-xx-xx Date:
Subject: EOP – Anti-Harassment Policy

Purpose. To provide notice and guidance to employees and partners of the updated Natural Resources Conservation Service (NRCS) Anti-Harassment Policy Statement.

Expiration Date. September 30, 2016

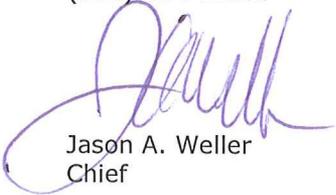
Background. Department of Agriculture (USDA) Departmental Regulation (DR) 4300-006, Civil Rights Policy, dated June 30, 2000, requires each Agency Head to develop and incorporate Civil Rights and Equal Employment Opportunity policies in the agency strategic plans. In compliance with the USDA directive, NRCS agency heads release their anti-harassment policy in the first year of their tenure.

Explanation. All NRCS field office staff must be notified of the updated policy. Consistent with DR 4300-3, Public Notification and Equal Opportunity Public Policy, a copy of this statement must be posted in all USDA offices.

For your reference and posting requirement, attached is a copy of the policy statement. The statement must be posted in all agency offices where it can be viewed by all employees and customers. Copies of the statement are to be made available to customers and participants upon request and may be obtained at the following link:

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/about/civilrights/>

Contact. If you have questions, please contact the Program Compliance Branch, Civil Rights Division, at (301) 504-2181.



Jason A. Weller
Chief

Attachment

DIST: L, R, S



Natural Resources Conservation Service
Post Office Box 2890
Washington, D.C. 20013

DEC 19 2013

SUBJECT: EOP - Natural Resources Conservation Service (NRCS)
Anti-Harassment Policy

TO: All NRCS Employees

File Code: 230-15

The most productive and satisfying work environment is one in which work is accomplished in a spirit of mutual trust and respect. All employees have a right to work in an environment free from discrimination and harassing conduct, including sexual harassment.

Harassment is a form of discrimination that is offensive, impairs morale, undermines the integrity of employment relationships, and causes serious harm to the productivity, efficiency, and stability of our organization. Harassment on the basis of an employee's race, color, national origin, sex, gender (including gender identity and expression), religion, age (40 and over), mental or physical disability, political affiliation or belief, sexual orientation, marital or familial status, genetic information, and/or reprisal (retaliation) for prior Equal Employment Opportunity activity will not be tolerated.

For the purpose of this policy, harassment is defined as persistent and unwelcome conduct or actions on any of the bases above. Sexual harassment is one type of harassment and includes unwelcome sexual advances, unwelcome physical contact, and unwelcome verbal or physical conduct of a sexual nature.

Unwelcome verbal or physical conduct of a sexual nature includes, but is not limited to—

- The repeated making of unsolicited, inappropriate gestures or comments.
- The display of offensive sexually graphic materials not necessary for our work.

Harassment on any basis (race, sex, age, disability, etc.) exists whenever—

- Submission to harassing conduct is made, either explicitly or implicitly, a term or condition of an individual's employment.
- Submission to or rejection of such conduct is used as the basis for an employment decision affecting an individual.
- The conduct interferes with an employee's work or creates an intimidating, hostile, or offensive work environment.

Harassment may be subtle or manipulative and is not always evident. It does not refer to occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome and is personally offensive. All forms of gender harassment are covered. Men can be sexually

harassed; men can harass men; women can harass other women. Offenders can be managers, supervisors, coworkers, and nonemployees, such as clients or vendors.

Physical harassment is actual or threatened assault, including hitting, tripping, kicking, punching, unwanted touching, and malicious or insulting gestures.

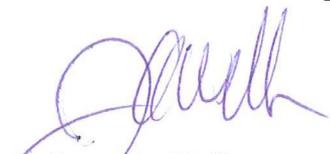
Verbal harassment includes jokes, insults, and innuendoes (based on race, sex, age, disability, etc.); degrading sexual remarks; referring to someone as a stud, hunk, or babe; whistling; “cat calls,” comments regarding a person’s body or sex life; or pressures for sexual favors.

Nonverbal harassment includes gestures, staring, touching, hugging, patting, blocking a person's movement, standing too close, brushing against a person's body, or display of sexually suggestive, degrading, racist or other derogatory pictures, cartoons, or drawings.

This policy also expressly prohibits retaliation of any kind against any employee bringing a complaint or assisting in the investigation of a complaint. Such employees may not be adversely affected in any manner related to their employment. NRCS views harassment and retaliation to be among the most serious breaches of workplace behavior. Consequently, appropriate disciplinary or corrective action, ranging from a warning to termination, can be expected.

This policy will be issued to all current employees and during orientation of new employees. Any employee who believes he or she is being harassed, or any employee who becomes aware of harassment, should promptly notify his or her supervisor. If the employee believes that the supervisor is the harasser, the supervisor's supervisor should be notified. If an employee is uncomfortable discussing harassment with his or her supervisor, the employee should contact the NRCS Civil Rights Division. Information on your right to file a harassment complaint is also available at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/about/civilrights/>.

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



Jason A. Weller
Chief

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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 implements the Equal Employment Opportunity Commission and the Department of Agriculture's EEO policies in processing allegations of employment discrimination. ECT is comprised of several teams that address the Civil Rights Divisions' goals and initiatives.

Initiatives:

- **EEO Counseling**
- **Complaint Prevention**
- **Complaint Processing**
- **EEO Investigations**
- **Trend Analysis**
- **Civil Rights Training**

THE EEO COMPLAINT PROCESS

The EEO complaint process consists of the pre-complaint process (informal process) in which the Complainant makes the initial contact with the EEO Counselor, and the formal process. If an employee or applicant believes he/she has been discriminated against 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 Assistant Secretary of Civil Rights.

Formal Complaint Process

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 at the OASCR. Upon receipt of 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; failure of the Complainant to state a claim or show that he or she has been harmed; failure 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. The investigator 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. To ensure timeliness the ECT gives the investigator forty-five (45) days to complete the ROI.

Following completion of the investigation, the ROI is provided to ECT from the contractor. The ECT will review the ROI for legal sufficiency. A copy of the ROI will then be distributed to Complainant or his/her representative and to the OASCR.

Upon receipt of the ROI, the Complainant the right to exercise one of the following several redress options and has 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 of 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, fostering a culture of respect and trust between customers and employees, and increasing customer satisfaction and employee morale.

The NRCS, Civil Rights Division (CRD), offers mediation to all employees and applicants in both 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.

Mediation in the EEO Pre-Complaint Stage:

Consistent with the USDA ADR Departmental Regulation, NRCS should utilize ADR as early as possible in the EEO complaint process. NRCS offers ADR to all Complainants at the Informal (Pre-Complaint) stage except when NRCS has documented an incident reasonably related to the complaint that involved workplace violence, sexual assault/battery, other criminal activity and termination.

If a Complainant elects mediation as an alternative to the traditional counseling process, the Complainant may have up to ninety (90) days from the first date of contact with CRD to try to reach a resolution that is acceptable to all parties. CRD assigns a “neutral third party” the mediator, to lead and assist with the resolution process by facilitating an open discussion between the Complainant, Responding Management Official (RMO), and Resolving Official. The RMO is, according to the Complainant’s allegations, is (are) responsible for the action or made the decision that harmed the Complainant. The RO is designated on behalf of NRCS with full authority to make, change, accept and approve proposals for resolution during the mediation.

If the complaint has not been resolved before the 90th day, the EEO Counselor will inform the Complainant of his/her right to file a Formal discrimination complaint within 15 calendar days of receipt of the notice.

Mediation in the EEO Formal Stage:

Consistent with the USDA ADR Departmental Regulation, NRCS should offer ADR at the formal stage even when ADR was conducted during the informal stage, except in those situations involving workplace violence, sexual assault/battery, criminal activity or termination.

Upon receipt of a formal complaint, the USDA, Office of Adjudication and Compliance (OAC), Employment Complaints Division, will analyze the complaint and make a determination on whether to accept the complaint for investigation or dismiss the complaint without an investigation.

OAC may dismiss a complaint if the allegations are untimely; failure of the Complainant to state a claim or show that he or she has been harmed; failure 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). OAC notifies the Complainant and NRCS whether the complaint was accepted for investigation or dismissed.

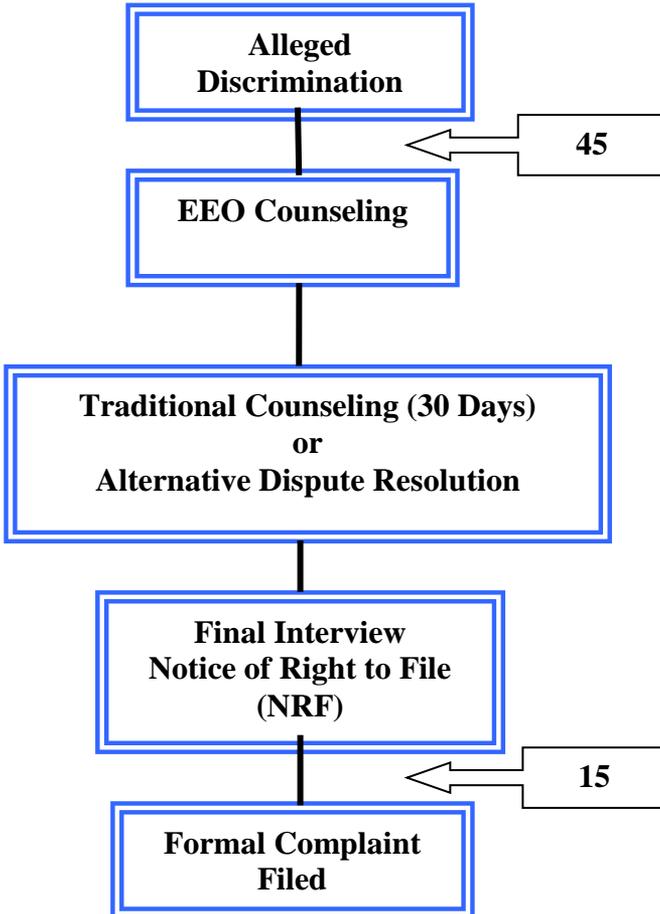
Once an EEO complaint is accepted, a contractor is assigned by the ECT to investigate the complaint. The ECT gives the contractor forty-five (45) work days to complete the investigation and develop a Report of Investigation (ROI). However, this date may be extended if necessary. A case must be investigated within 180 days from the receipt of the formal complaint.

Following completion of the investigation, a ROI is provided to the ECT from the contractor. The ECT will review the ROI for legal sufficiency. A copy of the ROI will then be distributed to the Complainant or his/her representative and to the OAC. Upon receipt of the ROI, the Complainant has the right to exercise one of the following 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 of 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 options, the Complainant may also elect to participate in ADR.

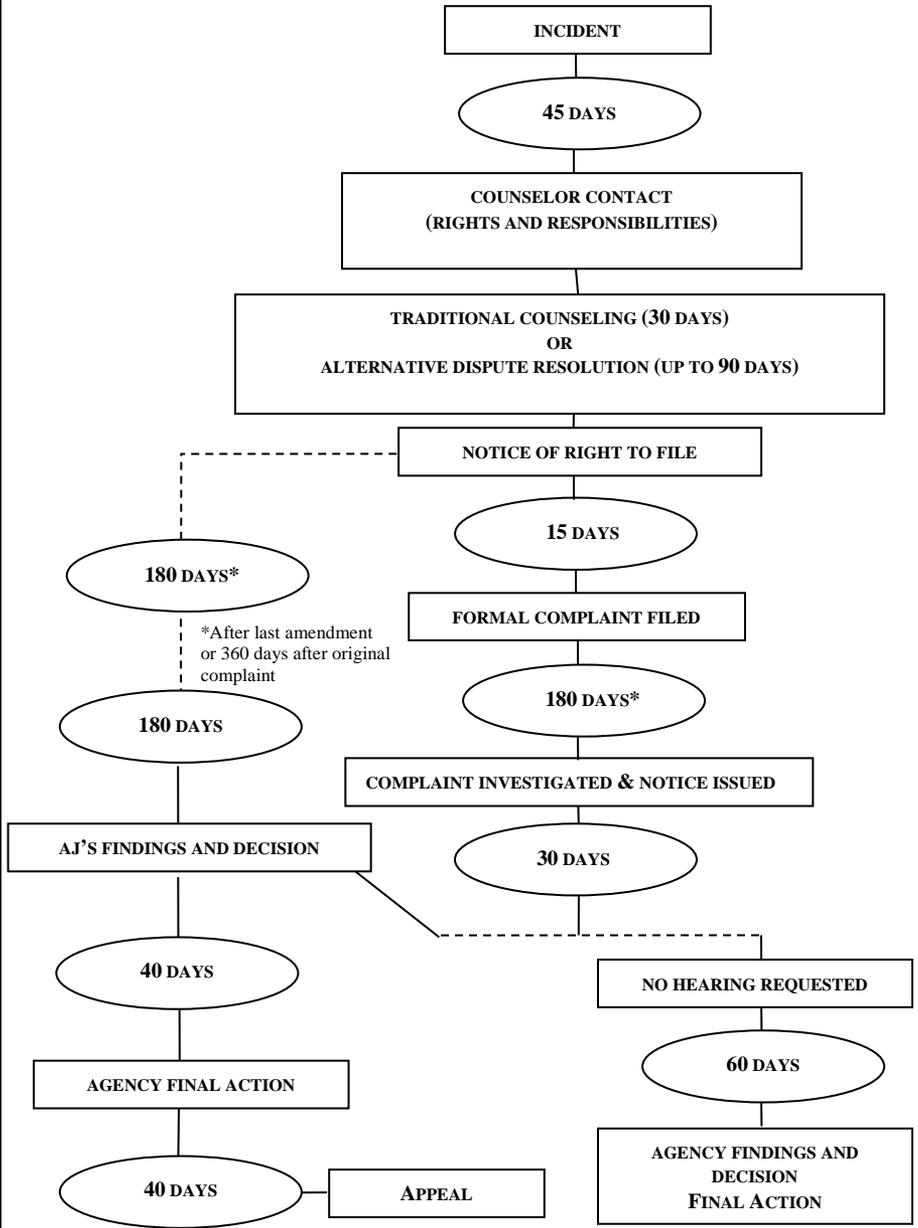
If the parties are able to reach a mutually agreeable resolution, the terms of the agreement will be reduced to writing. The original, signed agreement will be placed in the Complainant's CRD complaint file. The Complainant and resolving official will also be provided a copy for their records.

However, if the parties do not reach an agreement in the mediation, there attempt at resolution does not stop the hearing or FAD process.

**THE NATURAL RESOURCES CONSERVATION SERVICE
EEO PRE-COMPLAINT PROCESS**



FEDERAL SECTOR COMPLAINT PROCESS



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 US Department of Agriculture Office Compliance (OAC).
 - 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. **Select** 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 USDA, Office of Adjudication and Compliance (OAC).
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 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 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.

VS.

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 USDA Office of Adjudication and Compliance (OAC).

What happens after I file a formal complaint with USDA? OAC 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 OAC. 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.



USDA NRCS Civil Rights Division



5601 Sunnyside Ave
Beltsville, Maryland 20705
(301) 504-2181
(voice or TTY) 1-800-877-8339
Fax (301) 504-2336
<http://www.nrcs.usda.gov/about/civilrights/>

NRCS IS AN EQUAL OPPORTUNITY EMPLOYER



Civil Rights

Civil Rights Division



The Natural Resources Conservation Service (NRCS), Civil Rights Division (CRD) places emphasis on Equal Opportunity for the Agency's employees and program customers. CRD strives to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable groups of society. Every employee, applicant, and customer must be treated fairly, equitably, and with dignity and respect.

CRD enforces federal statutes prohibiting discrimination on the basis of race, color, sex, national origin, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, protected genetic information, or reprisal (retaliation) for prior EEO activity. Unlawful discrimination in any form will not be tolerated.

Director's Office

Vision and Mission

CRD Reporting Requirements

CRD Informational Handbook

Civil Rights Newsletter



Program Compliance Team

Title VI Program Discrimination Complaint Process
 Civil Rights Compliance Reviews
 Civil Rights Impact Analysis
 Limited English Proficiency

Employment Compliance Team

Title VII - Employment
 EEO Pre-Complaint Process
 EEO Formal Complaint Process
 Management Directive 715
 NO FEAR Act
 CRD Training

Other Documents

These documents require Adobe Acrobat.

USDA Secretary's Civil Rights Policy (PDF; 76 KB)

NRCS Civil Rights Policy Statement (PDF; 145 KB)

NRCS Anti-Harassment Policy Statement (PDF; 113 KB)