

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

DEPARTMENTAL REGULATION	Number: 4300-007
SUBJECT: Processing Equal Employment Opportunity (EEO) Complaints of Discrimination	DATE: July 12, 2016
	OPI: Office of the Assistant Secretary for Civil Rights

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1. PURPOSE

This Departmental Regulation (DR) establishes rules and guidelines pursuant to 29 C.F.R. Part 1614 by which the United States Department of Agriculture (USDA or Department) will process administrative complaints of employment discrimination.

2. SCOPE

This DR covers all informal and formal complaints of alleged employment discrimination filed by USDA employees and employment applicants against USDA agencies, Departmental Management and Staff Offices.

The DR institutes the provisions of 29 C.F.R. Part 1614, Federal Sector Equal Employment Opportunity and Management Directive (MD) 110. Any conflict between this DR and Departmental Manual (DM) 4300-001, EEO Complaint Processing Procedures, July 20, 2001, are resolved in favor of this DR.

3. SPECIAL INSTRUCTIONS

This Regulation replaces DR 4300-007, Processing Equal Employment Opportunity (EEO) Complaints of Discrimination, and dated March 3, 1999.

This Regulation also replaces DR 4300-009, EEO Complaints Where a Departmental Senior Civil Rights Official is the Responsible Management Official, dated January 9, 2001.

4. POLICY

It is USDA's policy to provide a workplace free from discrimination based on race, color, national origin, age (40 and older), disability, sex, gender identity(including gender expression), protected genetic information, religion, reprisal/retaliation, political beliefs, marital, familial or parental status, and sexual orientation. Complaints alleging discrimination on the bases of political beliefs, marital, familial or parental status, and reprisal/retaliation for filing complaints on these bases are only processed within the Department. They are not appealable to the U.S. Equal Employment Opportunity Commission (EEOC) or any other non-USDA Agency or Department.

It is also USDA's policy to process complaints of employment discrimination in a fair, equitable, and timely manner, in accordance with legal requirements and encourage the use of Alternative Dispute Resolution (ADR) to resolve all discrimination complaints as early as possible.

5. DEFINITIONS

- a. Agency. For purposes of this regulation, agency is defined as a major program organizational unit of the Department with delegated authorities to deliver programs, activities, benefits, or services. The term "agency" does not include Departmental Management or Staff Offices.
- b. Agency Head. The administrator, chief, or director of an Agency who is the official named or designated to have primary responsibility for the management of the Agency as delegated under 7 C.F.R. Part 2.
- c. Agency Head Assessment. The annual assessment of Agency Heads and applicable Staff Office Directors by the Office of the Assistant Secretary for Civil Rights (OASCR), utilizing the Civil Rights Performance Plan and Accomplishment Report (the Plan), to evaluate and rate each Agency and applicable Staff Office for effectiveness and compliance with the Department's civil rights policies and regulations. The Plan requires Agencies and applicable Staff Offices to annually

assess their civil rights activities and accomplishments and submit a report to OASCR to ensure civil rights accountability throughout USDA. The civil rights accomplishment rating issued by OASCR serves as a representative rating of the Agency Heads and applicable Staff Office Directors.

- d. Alternative Dispute Resolution. Any of a number of conflict resolution techniques that use a neutral third party to assist employees, managers, agencies, and USDA customers in resolving disputes.
- e. Applicant. An individual seeking employment with USDA or its agencies.
- f. Assistant Secretary for Civil Rights (ASCR). The civil rights official for USDA with authority pursuant to 7 C.F.R. §2.25 for the performance and oversight of civil rights functions within USDA, including the authority and discretion to delegate civil rights functions to Agency Heads and offices.
- g. Basis. The ground(s) upon which an aggrieved person or complainant alleges that a USDA official or employee has engaged in prohibited discriminatory behavior.
- h. Civil Rights Director. An individual appointed by the Agency Head, that is responsible for the implementation of an equal employment program and for federally assisted and federally conducted programs to promote equal employment opportunity and to identify and eliminate discriminatory practices and policies. Pursuant to the Secretary's Memorandum 1130-000, dated February 6, 2012, Civil Rights Directors will report directly to their Agency Heads. For the purposes of this DR, the Civil Rights Director will also serve as an EEO Director as set forth at 29 C.F.R. 1614.102(b) (4).
- i. Conflict of Interest Complaint. An EEO complaint involving facts and/or allegations that are determined to pose an actual or perceived conflict between a responsible management official or complainant's position or personal interest, and USDA's responsibility to administer a fair, impartial investigative process and resolution of complaints.
- j. Departmental Management. USDA's central administrative management organization that provides support to policy officials of the Department, and overall direction and coordination for the administrative programs and services of USDA under the direction and supervision of USDA's Assistant Secretary for Administration with authority pursuant to 7 C.F.R. Part 2 §2.24.
- k. Employee. An individual employed or previously employed in any position within USDA. Contractors, interns, and volunteers may be included under this definition; however, specific criteria must be met in order for them to be classified as an "employee" for EEO purposes.
- l. EEO Complaint Process or EEO complaint process. All actions and procedures undertaken in an EEO complaint, including but not limited to, counseling, acceptance, dismissal, investigation, ADR, hearing, final agency decision, appeal, remand, and the right to file a civil action.

- m. EEO Counselor. An individual in the Informal EEO Complaint process with responsibility to: (1) advise the aggrieved person (verbally and in writing) of his/her rights and responsibilities, including the option to participate in traditional EEO counseling or, the ADR program; (2) conduct counseling activities in accordance with instructions contained in the EEOC's MD 110 and if applicable, DM 4300-001 and this DR; (3) prepare a written report concerning the issues discussed and actions taken during counseling; and (4) attempt to resolve the complaint.
- n. U.S. Equal Employment Opportunity Commission (EEOC). The agency responsible for enforcing Federal laws making it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, sexual orientation and gender identity), national origin, age (40 and older), disability, or genetic information and/or reprisal.
- o. Familial Status or familial status. An individual's family composition, including the makeup of his/her household, or other family relationships.
- p. Formal EEO Complaint or formal EEO complaint. A written statement of alleged employment discrimination filed after the completion of the informal (pre-complaint) process that initiates the formal EEO complaint process.
- q. Informal EEO Complaint or informal EEO complaint. The first stage in the EEO complaint process that must take place before the initiation of a formal complaint of discrimination in which the aggrieved person exhibits intent to begin the EEO process by presenting allegations of discrimination to an EEO Counselor. This term is commonly interchanged with the word "pre-complaint."
- r. Issue(s) or issue(s). The action(s) or decision(s), including failure to act or decide, or policy(ies) that allegedly violate(s) civil rights laws and policies that prohibit discrimination in USDA employment or in the employment application process.
- s. Marital Status or marital status. The state of a person being married, unmarried (single, divorced, widowed) or separated.
- t. Mixed Case Complaint or mixed case complaint. A complaint involving an allegation of discrimination in certain matters (e.g., reduction-in-force, performance-based demotions and removals, coerced separation of a non-probationary employee, etc.) that are also appealable to the Merit Systems Protection Board (MSPB).
- u. Parental Status or parental status. Status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is a: biological parent, an adoptive parent, foster parent, stepparent, custodian of a legal ward, in loco parentis over such individual, or actively seeking legal custody or adoption of such an individual.

- v. Responsible Management Official (RMO). USDA official(s) who, according to the complainant's allegations, is (are) responsible for the action or made the decision that allegedly harmed the complainant. Officials named in the informal or formal complaint who were not involved in the action or decision that allegedly harmed the complainant are not RMOs.
- w. Staff Offices. An administrative office with a specialized support function as defined by 7 CFR 2.4. All Staff Offices, with the exception of the National Appeals Division (NAD) and the Office of the Inspector General (OIG) report directly to the Secretary of Agriculture. NAD and OIG are in the Secretary's reporting chain but have independent authority and reporting responsibilities. Examples of Staff Offices are The Office of the Chief Financial Officer and The Office of the General Counsel.

6. RESPONSIBILITIES

a. ASCR

OASCR shall provide the overall leadership, coordination and direction in USDA's civil rights EEO complaint process, including, but not limited to:

- (1) Having oversight over all aspects of the EEO program;
- (2) Having authority over all aspects of the formal EEO complaint process for USDA as described below;
- (3) Implementing the informal process for Departmental Management and Staff Offices;
- (4) Ensuring that agencies actively support and adhere to all civil rights policies, directives, findings and decisions;
- (5) Systematically reviewing, evaluating, and holding Agency Heads and Administrators to a high accountability standard for civil rights performance;
- (6) Ensuring through training, dissemination of information, technical assistance, and other appropriate methods, that the Department's civil rights employees (including contract employees and consultants) demonstrate and maintain the highest level of current technical competence, skills, knowledge, and abilities;
- (7) Issuing policies, directives, procedures, rules, and regulations to ensure that the Department fully achieves its civil rights compliance and enforcement obligations; and
- (8) Conducting, with full authority, an assessment of an Agency's, Departmental Management's, and applicable Staff Offices' compliance with this DR.

b. Agency

Each Agency Head shall:

- (1) Establish, maintain and ensure an effective, proactive EEO compliance and enforcement program in accordance with the policies, guidelines, and directive promulgated by OASCR;
- (2) Provide adequate and appropriately trained and qualified staff and other resources as necessary to ensure efficient and effective accomplishment of the Department's EEO obligations;
- (3) Hold employees accountable, through their performance review appraisals, for cooperating with the EEO complaint process and for carrying out all of their responsibilities on behalf of the Agency as required in this DR or for their failure to comply as may be set forth in the Agency Head Assessment conducted by OASCR;
- (4) Implement the informal process (filed by said Agency's employees) with the exception of Conflict of Interest complaints pursuant to Section 8, "Conflict of Interest Complaints," of this DR, and ADR pursuant to DR 4710-001;
- (5) Provide a written report of counseling to the OASCR's division responsible for the acceptance or dismissal of EEO complaints as designated by the ASCR and to the aggrieved person, within 15 calendar days from the issuance of the Notice of Right to File (NRF) a Formal Complaint;
- (6) Make the ADR process available to complainants at all stages of the EEO process in accordance with DR 4710-001; and
- (7) Ensure that all Inter-Agency Agreements to reimburse OASCR in support of the EEO Complaints process are signed and that the Agency provides reimbursement within 30 days of the beginning of the Fiscal Year, or 30 days of receipt of their appropriations if the appropriations have not been received at the beginning of the fiscal year, or shall provide a written statement indicating why the funds have not been received along with a date the funds shall be received.

c. Staff Offices and Departmental Management

Each Staff Office and Departmental Management shall:

- (1) Establish, maintain and ensure an effective, proactive EEO compliance and enforcement program in accordance with the policies, guidelines, and directives promulgated by OASCR;
- (2) Ensure that staff are adequately and appropriately trained and qualified to facilitate the efficient and effective accomplishment of the Department's EEO obligations;

- (3) Hold employees accountable, through their performance review appraisals, for cooperating with the EEO complaint process and for carrying out all of their responsibilities on behalf of the Agency as required in this DR or for their failure to comply as may be set forth in the Agency Head Assessment conducted by OASCR;
- (4) Make the ADR process available to complainants at all stages of the EEO process in accordance with DR 4710-001; and
- (5) Ensure that all Inter-Agency Agreements to reimburse OASCR in support of the EEO Complaints process are signed and that the Agency provides reimbursement within 30 days of the beginning of the Fiscal Year, or 30 days of receipt of their appropriations if the appropriations have not been received at the beginning of the fiscal year, or shall provide a written statement indicating why the funds have not been received along with a date the funds shall be received.

7. EEO COMPLAINTS

It is USDA's policy to process all complaints of employment discrimination in accordance with 29 C.F.R. Part 1614 and EEOC's MD 110 and, if applicable, DM 4300-001 and this DR. All complaints will be handled in a fair and impartial manner. When a complaint is filed about a matter, all documents relating to the matter will be maintained with the OASCR until the complaint is closed and all rights to appeal have been exhausted.

Information in a complaint file may be protected by the Privacy Act of 1975, and where the Act applies, information is not subject to disclosure.

An employee or applicant who believes he/she or any specific class of individuals has suffered discrimination in the terms, conditions, and/or privileges of employment: a) due to an action and/or decision (including a failure to act or decide) by an official or employee of USDA, and believes that this action and/or decision was motivated by a discriminatory intent based on his/her race, color, national origin, age (40 and older), mental and/or physical disability, sex, gender identity, genetic information, religion, reprisal/retaliation, political beliefs, marital, familial or parental status, or sexual orientation; or b) due to a policy or practice that has a disparate impact on members of the aforementioned protected groups, may file an individual complaint of employment discrimination in accordance with this DR. For class complaints, see Section 9, "Class Complaints," below.

In accordance with MD-110 and any individual internal official time policy, if applicable, Agencies, Departmental Management and Staff Offices will afford employees (aggrieved persons/complainants, representatives, and witnesses) reasonable time and opportunity during official business hours to participate in the EEO complaint(s) process in which they are a party, representative, or named as a witness. Individuals who file informal or formal EEO complainants must fully cooperate in the processing of the complaint (including the scheduling of and attending meetings and interviews, responding to correspondence, and providing requested material or information) and comply with all established timeframes.

In accordance with 29 C.F.R. §1614.107(a) (7) failure to cooperate may result in dismissal of the entire complaint. Notice must be given to the union, where applicable, of formal discussions as defined by Section 7114(a) (2) (A) of the Federal Labor Relations Authority (FLRA).

Managers and supervisors are required to cooperate in all stages of the EEO complaint process, (including any resolution attempts of informal and formal complaints, scheduling of and attending meetings and interviews, responding to correspondence, and providing requested material or information) and comply with all established timeframes.

Additionally, employees named as witnesses are expected to cooperate in all stages of the EEO complaint process, as necessary (including scheduling of and attending meetings and interviews, responding to correspondence, and providing requested material or information) and comply with all established timeframes. EEO Counselors and investigators must be given access to original records. In accordance with 29 C.F.R. §1614.108 and EEOC's MD 110 failure to cooperate may result in USDA and/or EEOC drawing an adverse inference that the requested information, or the testimony of the requested individual, would have reflected unfavorably on the party refusing to provide the requested information. Notice must be given to the union, where applicable, of formal discussions as defined by Section 7114(a) (2) (A) of the FLRA.

The EEO complaint process consists of the informal or pre-complaint and the formal process. Specific timeframes apply to each stage of the EEO complaint process. Unless otherwise stated, all days are calendar days, consistent with the rules, regulations, and other applicable requirements of the EEOC and if applicable, DM 4300-001 and this DR.

USDA encourages employees, Agencies, Departmental Management and Staff Offices to informally resolve issues raised in EEO complaints and make the ADR process available to complainants at all stages of the EEO process, in accordance with DR 4710-001.

a. Informal Complaint Processing

(1) Initial Contact

An aggrieved person has the right to remain anonymous in the informal complaint process. An aggrieved person must contact a designated EEO Counselor within 45 calendar days. Only issues raised with an EEO Counselor (and claims like or related to the counseled issues) may be asserted in the formal complaint.

The aggrieved person will proceed through the informal complaint stage using either traditional counseling or ADR.

Agencies, Departmental Management, and Staff Offices shall offer ADR to all aggrieved employees/complainants at the informal (pre-complaint) stage except when an agency documents an incident reasonably related to the complaint that involved workplace violence, sexual assault/battery, or other criminal activity. See DR 4710-001. If the aggrieved person elects to participate in ADR during the pre-complaint process, management's participation is required.

For further information regarding ADR in the informal EEO complaint process, see 29 C.F.R. 1614, MD 110 DR 4710-001 and DM 4300-001.

(2) Reports

If there is no resolution at the informal stage, the EEO Counselor shall issue a NRF to the aggrieved person. Within 15 calendar days from the issuance of NRF, the EEO Counselor is required to provide a written report of counseling to a division within OASCR responsible for the acceptance or dismissal of EEO complaints and to the aggrieved person. If the counselor report is not received within 30 days of the issuance of the NRF, then OASCR reserves the right to accept the complaint in its entirety. Each Agency shall bear the negative consequences for failure to timely submit an EEO Counselor report. Additionally, Agencies shall be assessed (by OASCR) on their compliance with the 15 calendar day requirement for submission of the written report of counseling through the Agency Head Assessment process.

For further information regarding the requirements for the EEO Counselor's report, see DM 4300-001.

(3) Posting

Agencies, Departmental Management and Staff Offices must post a notice (conspicuously throughout each work location) containing the name and address of its EEO Counselors and their current business telephone contact information, the EEO complaint processing procedures, and applicable time limits to initiate EEO counseling, using a format approved by the ASCR.

b. Formal Complaint Processing

The formal EEO complaint process consists of the following stages:

- Intake (Acceptance/Dismissal);
- Investigation;
- The complainant's election for a final agency decision (FAD) by the OASCR or of a hearing before the EEOC;
- OASCR's completion of a FAD, or Final Agency Order (FAO) based on a hearing decision issued by an EEOC Administrative Judge;
- The complainant's election to file an appeal of the findings of any FAD or FAO; and
- Remand.

(1) Intake (Acceptance/Dismissal)

Following the conclusion of the Informal EEO complaint process, an aggrieved person must file a Formal EEO Complaint with the Department, in the manner provided in the NRF, within 15 calendar days of receipt of the NRF. The complaint does not need to be written or signed if it is submitted in an alternate format to accommodate the complaint filing needs of a person who has Limited English Proficiency or a disability).

Failure to submit a Formal EEO Complaint within the required 15 calendar day timeframe may result in the dismissal of the complaint, unless the timeframe is extended by the OASCR. This time limit is subject to waiver, estoppel, and equitable tolling.

A complaint may be mailed, faxed, e-mailed, or submitted in person. OASCR will acknowledge receipt of a formal complaint and subsequently notify complainants (and their designated representative) of dismissal or acceptance of their complaints for investigation and all appeal rights to which they are entitled.

All Formal EEO Complaints must outline the counseled claims and the complainant's wish to pursue, be signed by the complainant or his/her designated representative, if that representative is an attorney. For further information regarding the content of the formal complaint, where to submit complaints, amendments, consolidations and other aspects of the Intake process see DM 4300-001.

(2) Investigation of Complaints

OASCR will notify the complainant and the Agency of the issues accepted for investigation. Additionally, OASCR will arrange for an investigation into the issues of the Formal EEO Complaint. The Report of Investigation (ROI) will include all documentary evidence concerning the accepted issues.

Except in mixed cases (See Section 7 (c)) "Mixed Case Complaint Processing"), within 180 calendar days from the complainant's filing of his/her complaint, OASCR shall provide the complainant with a copy of the ROI.

If the complaint is amended prior to the issuance of the ROI, the Department will provide a copy of the ROI within 360 calendar days from the initial complaint filing date or 180 calendar days from the date the amendment was filed. If the 180 calendar days elapse without completion of the investigation the complainant has the right to elect a hearing directly with the EEOC or file a civil action in District Court.

However, upon the issuance of the ROI, the complainant will be given the right to elect either a hearing before an EEOC Administrative Judge or a FAD on the merits by USDA.

For further information regarding ROI coverage, processing and timeframes see DM 4300-001.

(3) Final Agency Decision (Adjudication)

If the complainant elects a FAD or does not make an election for either a hearing or a FAD within the 30-day timeframe, OASCR will issue a FAD on the merits of complaints of discrimination. OASCR must issue the FAD within 60 calendar days of either: 1) the request for a final decision on the record; or 2) the expiration of the 30-day period for the complainant to request a hearing if no hearing or decision request is submitted; or within 120 calendar days of the date of filing of a Mixed Case Complaint (See Section 7 (c) “Mixed Case Complaint Processing”).

When an EEOC Administrative Judge issues a decision (i.e., dismissal, or decisions with or without a hearing), OASCR will issue a FAO within 40 calendar days after receipt of the Administrative Judge’s decision. For class complaints (See Section 9 “Class Complaints”), the OASCR will issue a FAO within 60 calendar days after receipt of the Administrative Judge’s decision. For further information on the content and distribution of FADs, see DM 4300-001.

(4) Hearing

If the complainant elects an EEOC hearing, the request for a hearing must be submitted to the EEOC within 30 calendar days of receipt of the ROI. A copy of the request for a hearing must be submitted simultaneously to the OASCR. The EEOC Administrative Judge assumes full responsibility for the adjudicating of the complaint including overseeing the development of the record as necessary and rendering a decision (e.g., finding, no finding, dismissal, remand) and order.

For further information regarding the hearing process, see DM 4300-001.

(5) Appeals

The complainant may file an appeal, with the EEOC Office of Federal Operations, within 30 days of receipt of a FAD or a FAO issued by the OASCR. If no, FAO is issued, the complainant can appeal the decision of an EEOC Administrative Judge upon the conclusion of the OASCR’s 40-day review period.

Decisions on mixed-case complaints, and complaints filed on the bases of marital, familial or parental status, sexual orientation (if not determined to be sex discrimination) or political beliefs may not be appealed to the EEOC.

For further information on mixed case complaints, negotiated grievances, and the EEO Appeal process, see DM 4300-001.

(6) Remand

A remand is an EEO complaint that is returned to USDA, by the EEOC, for further action based on an appeal decision. USDA will process any remanded cases in accordance with EEOC Orders. For further information regarding remands and compliance, see DM 4300-001.

c. Mixed Case Complaint Processing

In cases where the employee files a Mixed Case Complaint, in addition to following the procedures outlined in Section 7, “Formal Complaints,” as applicable, the aggrieved employee must choose whether to pursue a “mixed case complaint” through the federal sector EEO process administered by EEOC, a “mixed case appeal” subject to MSPB jurisdiction, or file a civil action with Federal District Court. Whatever action the individual files first is considered an election to proceed in that forum. 29 C.F.R. §1614.302(b) outlines procedures and timeframes to avoid duplication of efforts.

For further information on mixed case complaints, see 29 C.F.R. §1614.301-306.

d. Posting

Agencies, Departmental Management and Staff Offices must post:

- (1) a notice of discrimination as ordered by the ASCR, an EEOC Judge, or a Federal District Court Judge in the event of a finding of discrimination, where designated by the order; and
- (2) statistical data on the number of EEO complaints opened, filed and resolved during the fiscal year using electronic media and other formats, on the Agency’s website.

8. CONFLICT OF INTEREST COMPLAINTS

All EEO complaints will be processed without conflicts of interest. USDA will take measures to prevent any such conflicts and, where possible, avoid perceived conflicts of interest. To ensure compliance with this requirement and to maintain the integrity of the EEO complaint program the same official(s) responsible for executing and advising on personnel actions may not also be responsible for managing, advising, or overseeing the EEO pre-complaint or complaint process. In addition, USDA will employ alternative complaint processing mechanisms, described below in this Section, to ensure complaints receive fair and impartial treatment.

The potential for a conflict of interest arises in cases where an RMO or complainant serves in a capacity that would preclude the fair and impartial processing of a complaint, or the appearance of a fair and impartial process. OASCR shall designate a unit within OASCR independent of the main EEO division of OASCR to process complaints that may raise a conflict of interest or a potential conflict of interest.

Subject to the guidance below, the conflict unit shall be responsible for determining when a complaint meets the criteria for a conflict of interest. The conflict unit shall have the discretion to return a complaint to the referring Agency or to processing by the main EEO division of OASCR if the conflict unit determines that no actual or perceived conflict of interest exists. For example, without limitation, the conflict unit may determine that there is no actual or perceived conflict of interest where the conflict unit determines that the alleged RMO is not in the complainant's chain of command; if the conflict unit determines that the RMO did not participate in the alleged discriminatory act; or where a complaint asserts that an alleged RMO engaged in discriminatory behavior but said complaint makes no allegations related to the specific actions of said alleged RMO.

When a conflict of interest or a perceived conflict of interest arises, the conflict unit shall ensure that an appropriate alternate processing mechanism is used that takes the complaint outside the influence of the alleged conflicted RMO. Subject to the guidance below, the conflict unit may handle all or part of the EEO complaint process as appropriate to safeguard the integrity of the EEO complaint process, including referring complaints to a third party for processing. Third parties may include private contractors, USDA agencies or units that do not report through the alleged RMO's chain of reporting, or Federal Agencies outside of the USDA.

USDA will process conflict of interest complaints in accordance with the guidance set forth below.

- a. The conflict unit will arrange for informal, pre-complaint processing and will ensure that formal complaints (including FADs) are processed by an appropriate third party, in cases where:
 - (1) the alleged RMO or complainant is the ASCR, Deputy ASCR, Associate ASCR, and any person directly supervised by the ASCR;
 - (2) the alleged RMO or complainant is any person employed in the conflict unit;
 - (3) the alleged RMO or complainant is anyone employed in the Office of the Secretary; and
 - (4) the alleged RMO or complainant is the Agency Head or anyone directly supervised by the Agency Head, where applicable.
- b. The conflict unit will handle informal, pre-complaint processing and formal complaint processing either directly, or through a third party in all cases involving complaints brought by, or alleging discrimination committed by employees of OASCR, or other than those identified in Section 8(a), above.

- c. The conflict unit will handle informal, pre-complaint processing and formal complaint processing either directly, or through a third party in call cases involving complaints brought by, or filed against an Agency Civil Rights Director, or filed against anyone directly supervised by an Agency Civil Rights Director.
- d. The conflict unit will handle administration and will track processing times for all complaints identified as conflict cases to ensure investigations are completed within the allocated 180 days, and that all other regulatory timeframes are met. The conflict unit will develop a manual that provides further guidance on EEO complaint processing.

9. CLASS COMPLAINTS

A class is a group of employees, former employees, or applicants for employment who, alleged to be or have been adversely affected by a personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, gender identity, sexual orientation, national origin, age, disability, or genetic information.

A class complaint is a written complaint of discrimination filed on behalf of a class by a class member (agent) who acts for the class during the processing of the class complaint.

The Department will process class complaints in accordance with 29 C.F.R. §1614.105 and §1614.204.

10. REMEDIES

The policy of the Department is to attempt to make whole any individual who has been found to have suffered from discrimination. The Department will also attempt to resolve complaints, where the Agency, Departmental Management, or Staff Office deems it warranted, whether or not discrimination is explicitly found. Relief, up to and including the maximum possible relief, may be provided by an Agency, Departmental Management, or Staff Office to resolve the complaint at any stage.

For further information on remedies see DM 4300-001.

11. RIGHT TO FILE A CIVIL ACTION

Nothing in this DR shall prohibit any aggrieved person or complainant from filing an action in Federal District Court in accordance with the requirements of 29 C.F.R.

1614.407. However, there are certain bases (marital, familial, or parental status, sexual orientation (if not determined to be sex discrimination) or political beliefs) that may not be within the jurisdiction of the Federal District Court, if raised as the basis of a discrimination claim. Aggrieved persons or complainants should become aware of applicable case specific deadlines and prerequisites for filing civil actions. The filing of a civil action with a Federal District Court will result in USDA dismissing any administrative claims alleging the same act of discrimination.

For further information regarding civil actions and requisite timeframes see DM 4300-001.

12. OTHER RELATED PROVISIONS

a. Civil Rights Enterprise System (CRES)

The OASCR is responsible for and has the authority to administer the CRES for the Department. The CRES is an electronic computerized system which tracks and provides reports on EEO complaints based on data collected from discrimination complaints filed by USDA employees and applicants for USDA employment.

b. Agency Options

Agencies are encouraged to establish their own regulations and procedures for processing informal EEO complaints consistent with and in accordance with this DR. Any such regulations or policies must be submitted to OASCR for review and approval in writing, signed by the ASCR, prior to implementation. Notwithstanding approval by OASCR, any provision contained in Agency regulations that is inconsistent with the provisions of this DR shall be superseded by the provisions of this DR.

c. Training

All employees who work in civil rights including political appointees, and collateral duty and full-time civil rights practitioners must participate in annual civil rights training as directed by the OASCR. Training topics include, but are not limited to Anti-harassment, Reasonable Accommodation, Religious Accommodation, Age Discrimination, Lesbian, Gay, Bisexual and Transgender, Limited English Proficiency, New EEO Counselors and Investigators, Refresher Training for Experienced EEO Counselors and Investigators, Civil Rights Compliance Reviews, MD 715, No FEAR, and CRES System (Database) Management.

Participation in this training is mandatory. Certification by the Department may be required.

For further information on Civil Rights Training, see DR 4120-001, Annual Departmental Civil Rights Training.

-END-

APPENDIX A
AUTHORITIES

a. Statutory Authorities

- (1) Title VII of the Civil Rights Act of 1964.
- (2) The Age Discrimination in Employment Act (ADEA) of 1967.
- (3) Sections 501 and 505 of the Rehabilitation Act of 1973.
- (4) Americans with Disabilities Act Title I.
- (5) The Equal Pay Act of 1963.
- (6) Notification and Federal Employee Anti-discrimination and Retaliation (No FEAR) Act of 2002 (Pub. L. 107-174).
- (7) Civil Service Reform Act of 1978.
- (8) The Pregnancy Discrimination Act of 1978.
- (9) Civil Rights Act of 1991.
- (10) Alternative Dispute Resolution Act of 1996.
- (11) 5 U.S.C. § 301, Authority to Prescribe Departmental Regulations (January 3, 2007).
- (12) Genetic Information Nondiscrimination Act of 2008.

b. Regulatory and Executive Orders

- (1) Executive Order 13672 (July 21, 2014); Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government.
- (2) Executive Order 13087 (May 28, 1998); Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government.
- (3) Executive Order 13145 (February 8, 2000); To Prohibit Discrimination in Federal Employment Based on Genetic Information.
- (4) Executive Order 13152 (May 2000); Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government.
- (5) DR 4300-5, Agency Civil Rights Programs, dated January 14, 1998.
- (6) DR 4300-4, Civil Rights Impact Analysis, dated May 30, 2003.

- (7) EEOC MD 110, Federal Sector Complaint Processing Manual, dated August 15, 2015.
- (8) DM 4300-001, EEO Complaint Processing Procedures.
- (9) DR 4710-001, Alternative Dispute Resolution, dated April 5, 2006.
- (10) EEOC MD 715, EEO Reporting Requirements for Federal Agencies.
- (11) 29 C.F.R. Part 1614, Federal Sector Equal Employment Opportunity.
- (12) The Secretary of Agriculture's Civil Rights Policy Statement.
- (13) Any other published regulations, policies, staff instructions, executive orders, statutes, or directives related to non-discrimination.