




United States
Department of
Agriculture

Office of the
Assistant Secretary
for Civil Rights

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Washington, DC
20250

TO: Agency Heads
Staff Office Directors

FROM: Joe Leonard, Jr., Ph.D.  JAN 16 2014
Assistant Secretary for Civil Rights



SUBJECT: New Processing Guidelines for Conflict of Interest Complaints

The Office of the Assistant Secretary for Civil Rights (OASCR) through its Corporate Services Division (CSD) has responsibility for processing the *formal and informal* Civil Rights complaints filed *against*:

- Agency Heads/Administrators/Chiefs, including: Department Management (DM) Assistant Secretary for Administration; Deputy Assistant Secretary's for Administration; and the Assistant and Deputy Assistant Secretary for Congressional Relations;
- Civil Rights Directors and their direct reports;
- All OASCR Employees; and
- Office of the Secretary (OSEC) employees including Under Secretaries.

CSD will process the *informal portion only* for non-conflict Civil Rights complaints filed *against*:

- Departmental Management employees; and
- Departmental Staff Offices without a Civil Rights Director including: Office of the Chief Economist; Office of Communications; Office of Congressional Relations; Office of the Inspector General; and, Office of the General Counsel.

All other formal and informal complaints should be processed by agency Civil Rights offices. If you have any questions regarding this process please contact 


cc: Civil Rights Directors

Conflict Complaint Definition

A Conflict of Interest Complaint is 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.

The Conflict Complaints Division (CCD) will be responsible for determining if complaints meet the criteria for a conflict of interest and reserves the right to return complaints to the agencies when it is determined that no conflict exist. Agency Civil Rights offices will be responsible for processing all non-conflict complaints files by their employees.

CCD will process the informal and formal complaints filed against:

1. Agency Heads/Administrators/Chiefs/the Assistant Secretary for Civil Rights.
 - a. For Department Management (DM) only the following individuals: Assistant Secretary; Deputy Assistant Secretary; and, Deputy Assistant Secretary
 - b. For non DM Staff Offices includes: the General Counsel, the Inspector General, etc.
2. Civil Rights directors and their direct reports.
 - a. Does not include Deputy Administrators, UNLESS the Civil Rights Director reports to the Deputy or Associate Administrator.
3. Employees of the Office of the Assistant Secretary for Civil Rights (OASCR)
 - a. Complaints filed by or against OASCR employees are conflict cases regardless of the complainant's or RMO's grade level or position.
4. Office of the Secretary (OSEC)
 - a. Complaints filed by or against OSEC employees are conflict cases regardless of the complainant's or RMO's grade level or position.
 - b. Including Under Secretaries.
5. Individuals on a case-by-case basis
 - a. If the complainant raises the issue; and/or,
 - b. Other reason determined by CCD.

CCD will handle the informal process only for non-conflict complaints filed against:

1. Departmental Management employees (with the exception of Assistant Secretary; Deputy Assistant Secretary; and, Deputy Assistant Secretary).
2. Non DM Staff Offices without a Civil Rights director.
 - a. Including: Office of the Chief Economist; Office of Communications; Office of Congressional Relations; Office of the Inspector General; and, Office of the General Counsel.



CONFLICT COMPLAINTS DIVISION

Informal Jurisdiction Determination Worksheet

Aggrieved:	
Complaint No.:	
Agency/Office:	
RMO(s):	
RMO(s) Title:	
Nexus b/w RMO(s) and Aggrieved:	

INFORMAL COMPLAINTS	Processed by CCD	Returned to Agency
DM and Staff Office Complaints (CCD)	<ul style="list-style-type: none"> Complaints against staff offices without a Civil Rights Department/ Director; and Complaint is against the head of the staff office; by or against an OSEC employee; or by or against an OASCR employee (but not CCD or in CCD Director's chain of command) 	<ul style="list-style-type: none"> Complaint against staff office with Civil Rights Director/ Department and complaint is not against the Director, his/her direct report, or someone in Director's chain of command
DM and Staff Office Complaints (DEPT)	<ul style="list-style-type: none"> Complaints against staff offices without a Civil Rights Department/ Director; and Complaint is not against the head of the staff office (not true conflict cases) 	<ul style="list-style-type: none"> N/A
Agency Complaints (AGENCY-CF)	<ul style="list-style-type: none"> Agency complaint filed against the Civil Rights Director, his/her direct reports, or someone in Director's chain of command 	<ul style="list-style-type: none"> Agency complaint not against the Civil Rights Director, his/her direct reports, or someone in Director's chain of command
Internal Conflict Complaints (CCD-CF)	<ul style="list-style-type: none"> Complaints by or against CCD employees, the Director of CCD or anyone in Director's chain of command (conflict within conflict) 	<ul style="list-style-type: none"> N/A

Recommendation: CCD Jurisdiction Transfer Complaint to Agency

If CCD Jurisdiction, please select all that apply	
<input type="checkbox"/>	RMO is a Civil Rights Director, his/her direct report, or in the Director's chain of command
<input type="checkbox"/>	Complaint is by or against DM or staff office without a Civil Rights Director/ Department
<input type="checkbox"/>	Complaint is by or against an OASCR or CCD employee
<input type="checkbox"/>	Complaint is by or against an OSEC employee
<input type="checkbox"/>	Other reason (please explain)

Prepared by: _____ Date: _____

Approved by: _____ Date: _____



CONFLICT COMPLAINTS DIVISION

Formal Jurisdiction Determination Worksheet

FORMAL COMPLAINTS	Processed by CCD	Processed by OA
CCD	<ul style="list-style-type: none"> Complaints by or against OSEC employees; OASCR employees (<i>but not CCD or anyone in CCD Director's chain of command</i>) <i>or</i> Complaints <i>against</i> the following DM employees: <ul style="list-style-type: none"> Assistant Secretary for Administration; Deputy ASA; and Directors/ Heads of DM offices and staff offices 	<ul style="list-style-type: none"> NONE
CCD-CF	<ul style="list-style-type: none"> Complaints by or against CCD employees, the CCD Director or anyone in the Director's chain of command (<i>conflict within conflict</i>) 	<ul style="list-style-type: none"> NONE
DEPT	<ul style="list-style-type: none"> NONE 	<ul style="list-style-type: none"> Complaints against DM or staff offices without a Civil Rights Director/ Department; <i>if not</i> by or against: OASCR or CCD employees; OSEC employees; or the ASA, Deputy ASA, or Head of staff offices
AGENCY-CF	<ul style="list-style-type: none"> Complaints <i>against</i> Civil Rights Directors, his/her direct reports, or someone in Director's chain of command 	<ul style="list-style-type: none"> NONE

Recommendation: CCD Jurisdiction Transfer Complaint to ECD

If CCD Jurisdiction, please select all that apply

<input type="checkbox"/>	Complaint is by or against an OSEC employee
<input type="checkbox"/>	Complaint is by or against an OASCR or CCD employee
<input type="checkbox"/>	Complaint against the ASA, Deputy ASA, or the Head of a DM office or staff office
<input type="checkbox"/>	Complaint is by or against a Civil Rights Director, his/her direct report, or someone in Director's chain of command
<input type="checkbox"/>	Other reason (please explain)

Prepared by: _____

Date: _____

Approved by: _____

Date: _____



UNITED STATES DEPARTMENT OF AGRICULTURE
Office of the Assistant Secretary for Civil Rights
Conflict Complaints Division

Complaint Transfer Form

Reason(s) for Transfer

1. Informal complaint *is* against a Departmental Management or Staff Office with a Civil Rights Director/Department; and the complaint *is not* against the Director, his/her direct report, or someone in the Director's chain of command;
2. Informal complaint *is* against an Agency employee who *is not* the Civil Rights Director, his/her direct reports, or someone in the Director's chain of command;
3. Formal complaint *is* against a Departmental Management or Staff Office employee who *is not* the Civil Rights Director, his/her direct report, or someone in the Director's chain of command;
4. Formal complaint *is* against an Agency employee who *is not* the Civil Rights Director, his/her direct reports, or someone in the Director's chain of command.

Complainant/Aggrieved Information

Complainant Name: [Click here to enter the Complainant's name]

Complaint No: [Click here to enter the complaint number, if applicable]

Title/Series/Grade: [Click here to enter Title/Series/Grade]

Alleged Discriminating Agency/Office: [Click here to enter Alleged Discriminating Agency/Office]

RMO(s): [Click here to enter the RMO(s)]

Date Filed: [Click here to enter Date Filed/Initial Contact Date]

Status: [Click here to enter Complaint Status]

Reason Complaint Transferred: (please select one)

[Insert applicable reason for transfer here. Copy the applicable reason from above.]

Transfer Information

Transfer Date: [Insert Transfer Date here] Sent To: [Click here to enter name of receiver]

Print Name: Candace Glover, Director Email: [Click here to enter email address of receiver]

Signature: _____ Telephone: [Insert telephone number of receiver here]

(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.