

EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINT PROCESS (TITLE VII)

Who can use this complaint process?

USDA employees and applicants for employment who believe they have been subjected to employment discrimination based on:

- Race
- Color
- Religion
- Sex (including sexual harassment)
- Sexual Orientation
- Political Beliefs
- Protected Genetic Information
- Age (if 40 or older)
- National Origin
- Disability
- Retaliation (for prior participation in an EEO activity or having opposed discrimination)
- Marital or Family Status
- Parental Status

Step 1: Filing an informal complaint

GM230, Part 401.41 states that the complainant has 45 calendar days from the alleged discriminatory event or from when he/she becomes aware that a discriminatory event has occurred to file an EEO informal complaint, in writing, as part of the pre-complaint process. In this initial step, the complainant makes contact with an EEO Counselor assigned by the NRCS Civil Rights Division (CRD), Complaints Branch (CB). The pre-complaint (informal) process must be completed before a formal complaint can be filed. During the pre-complaint process, the EEO Counselor explains their role; provides information and guidance about the EEO Complaint Process; explains timeframes; and advises the complainant of their rights and responsibilities.

To contact an EEO Counselor contact anyone on the CRD Staff:

Visit NHQ's Civil Rights Division at:

<http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/about/civilrights/?&cid=stelprdb1041559>

Initial contact with the EEO Counselor

The counselor will assist the complainant in clarifying and defining the issue(s) and basis of their complaint, and offer other avenues of redress if it does not fall within the scope of EEO.

The counselor explains the difference between Traditional Counseling and Alternative Dispute Resolution (ADR). The complainant will elect one or the other to seek resolution. An election form will then be completed and returned to the counselor immediately or as soon as possible.

Traditional Counseling	Alternative Dispute Resolution
<p>The EEO Counselor has 30 calendar days to complete a limited inquiry to attempt resolution of the EEO complaint. If resolution is reached with all parties, then the complainant withdraws their complaint.</p> <p>If no resolution is reached, the complainant is issued a Notice of Rights to File (NRF) a <u>Formal Complaint</u>.</p>	<p>Implementation of a variety of techniques and approaches to achieve collaborative resolution of disputes, and must be completed within 90 days from the date of initial contact with the counselor. The primary technique used is mediation. Mediation is a process that employs the use of a neutral third party to help individuals in conflict reach resolution. If resolution is reached, the parties complete a Settlement Agreement and the complainant withdraws their complaint.</p> <p>If no resolution is reached, the complainant is issued a Notice of Rights to File (NRF) a <u>Formal Complaint</u>.</p>

When the Responsible Management Official (RMO), or the person perceived to have discriminated, is contacted by the EEO Counselor, they have the responsibility to fully cooperate. They are also required to inform their supervisor that they have been named in an EEO complaint. When contacted by the EEO Counselor and/or NRCS CRD, the RMO should request written verification that identifies the EEO/CRD employee making the contact, including their name, telephone number, and email address.

Step 2: Formal Complaint Process

GM230, Part 401.43 states that if all attempts at an informal resolution have failed, a complainant has 15 calendar days from the day they receive the NRF to file their complaint of discrimination with the USDA Office of Adjudication and Compliance (formerly the Office of Civil Rights) at the following address:

U.S. Department of Agriculture
Director, Office of Adjudication and Compliance
1400 Independence Avenue, SW
Washington, DC 20250-9410

A formal complaint must include:

1. The complainant's name, address, and telephone number;
2. The name of the EEO Counselor contacted;
3. The name, address, and telephone number of any representative;
4. A specific description, including dates, of the decision involved in any individual complaint or the policy or practice and incident of application in any class complaint;
5. The agency that made the decision or applied the policy; and
6. The basis on which the discrimination is alleged.

The USDA Office of Adjudication and Compliance (OAC) sends an acknowledgement and acceptance (if complaint is timely submitted, covered by GM230, Subpart 401, and properly filed) letter to the complainant and notifies all RMO's. USDA is then required to develop an impartial and appropriate factual record upon which to make findings on the claims raised in the formal EEO complaint. This factual record is the Report of Investigation (ROI) and must be completed within 180 calendar days of filing a formal complaint. This can be extended up to an additional 90 days. The Complaints Branch will then review the ROI, and if it is found sufficient, the complainant will be contacted and notified of his/her avenues of redress.

The avenues of Redress are:

- (a) Hearing before an Administrative Judge (AJ) at Equal Employment Opportunity Commission (EEOC); or
- (b) Final Agency Decision (FAD) based on the record; or
- (c) Withdraw the complaint.

The complainant will be informed of the appeal process, if applicable, and has the right to appeal a dismissal, final action, or final decision within 30 days of receipt of the action to the EEOC in Washington, D.C. Formal EEO complaints alleging discrimination on the basis of sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information are not appealable before the EEOC.

The complainant has the right to file a civil action in Federal district court on claims raised in the administrative process. Refer to GM230, Part 401.43 for specific situations and timeframes.

For more information on the Equal Opportunity Employment Complaint Process, refer to GM230, Subpart 401.

What should NRCS be doing?

The NRCS CRD will contact the State Conservationist by letter to inform them that the complaint has been received. The State Conservationist will proceed accordingly. If any NRCS employee other than the State Conservationist is contacted by the NRCS CRD about a specific complaint, they should request and record the person's name and telephone number and inform the State Conservationist or State Administrative Officer of the contact.