



Overview of the EEO Complaint Process

United States
Department of
Agriculture

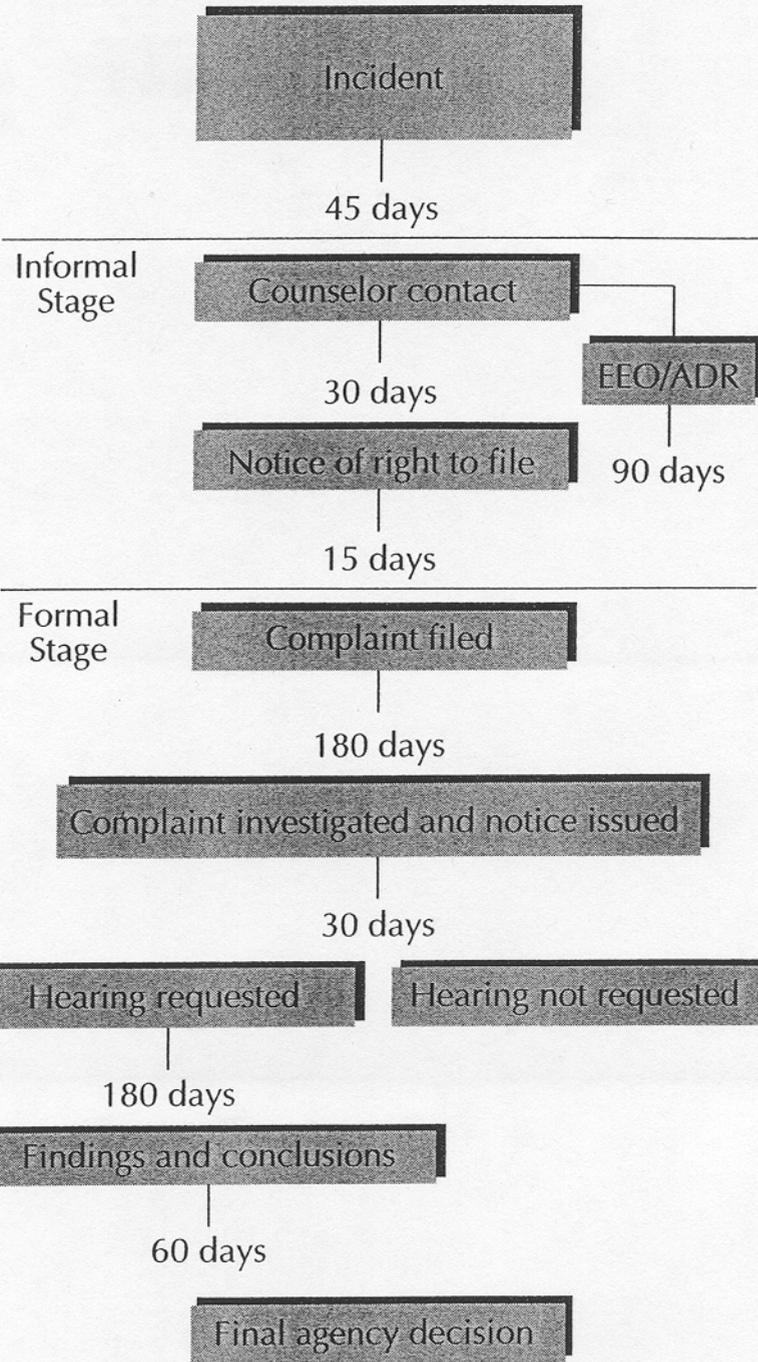
Informal and Formal

**Research,
Education,
and
Economics**

Agricultural
Research
Service

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Overview of EEO Complaint Process (Informal and Formal)



EEO/ADR process can be used after filing a formal complaint and before the hearing.

Complainant has 30 days to file appeal with the commission from agency dismissing complaint or deciding complaint on merits.

Complainant can file civil action within 90 days of agency decision or commission decision on appeal, or within 180 days after filing complaint or appeal.

Filing an Informal EEO Discrimination Complaint

Who can file an EEO complaint?

- Any employee, former employee, or applicant for employment in a Research, Education, and Economics agency¹ who thinks they have been discriminated against on the basis of their race, color, religion, national origin, sex, sexual orientation, age (40+), marital status, physical or mental disability, or in retaliation for past EEO activity may file an EEO complaint.

When must an EEO complaint be filed?

- An individual must seek counseling with an EEO counselor within 45 days of the date of an alleged act of discrimination. Some circumstances may permit allegations to be raised after the 45-day time limit—contact an EEO counselor for advice.

How do I contact an EEO counselor?

- Individuals who think they have been discriminated against should contact EEO Counseling Intake by telephone at (202) 720-3410 or (800) 340-4289, or by mail at: USDA, ARS, Civil Rights Staff, EEO Counseling, 1400 Independence Avenue, SW, Room 3552-S, Washington, DC 20250.

¹ Research, Education, and Economics is comprised of the Agricultural Research Service; Cooperative State Research, Education, & Extension Service; Economic Research Service; and National Agricultural Statistics Service.

Duties of the EEO counselor

- Discusses the EEO/ADR (Alternative Dispute Resolution) Program and explains options available to the complainant and the procedure for selecting ADR or EEO informal counseling.
- Advises the complainant about the EEO complaint process.
- Determines the issue(s) and basis(es) of the potential complaint.
- Conducts a limited inquiry to obtain information for settlement efforts.
- Seeks resolution of the matter at the lowest possible level. In almost all instances, informal resolution, freely arrived at by all parties involved in the dispute, is the best outcome of a counseling action.
- Documents the resolution and advises the complainant of his or her right to file a formal discrimination complaint if resolution fails.
- Prepares a counselor's report. This report includes a description of the issue(s) counseled and basis(es) stated by the complainant, pertinent documents gathered during the inquiry, specific information bearing on timeliness of the counseling contact, and an indication as to whether an attempt to resolve the complaint was made.

The EEO laws

The U.S. Department of Agriculture prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability (physical and mental), marital status, or sexual orientation². Retaliation against an employee for filing an EEO complaint or participating in the EEO process is also prohibited.

The four major EEO laws are:

- The Equal Pay Act of 1963, as amended, prohibits agencies from paying employees of one sex lower wages than those of the opposite sex for performing substantially equal work.
- Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination based on race, color, religion, sex, or national origin. It also prohibits an agency from taking retaliatory action against an employee who alleges discrimination.
- The Age Discrimination in Employment Act of 1967, as amended, prohibits discrimination in employment on the basis of age. This statute applies to individuals 40 years of age and older.
- The Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of mental or physical disabilities.

² Discrimination on the basis of race, color, religion, sex, national origin, age, and disability are prohibited by law. Complaints on the basis of marital status and sexual orientation may be raised; however, those complaints are not appealable outside of USDA.

Equal Employment Opportunity/Alternative Dispute Resolution (EEO/ADR) Program

Why use EEO/ADR?

The Alternative Dispute Resolution has emerged as an effective alternative to the traditional complaint and litigation process. The Administrative Dispute Resolution Act of 1996 (PL 101-552) encourages increased use of ADR to resolve employee conflicts. Revised regulations of the Equal Employment Opportunity Commission that govern Federal-sector EEO complaints (29 CFR 1614) required agencies to establish EEO/ADR programs by January 1, 2000.

What ADR method is used in the REE mission area?

Mediation is the primary ADR method used in REE. It is an informal, nonadversarial process that offers individuals the opportunity to discuss their concerns and resolve them in a mutually satisfactory manner.

What are the goals of mediation?

- To bring disputing parties together to discuss issues of concern and develop a solution that satisfies each,
- To improve communication among the parties for the future,
- To promote understanding of each party's interests, and
- To create an opportunity for better working relationships between participants.

What is the role of the mediator?

- Leads and facilitates the resolution process,
- Facilitates an open discussion between disputants and helps them negotiate a mutually agreeable resolution; does not act as an advocate for either party, and
- Prepares a resolution agreement, but has no authority to make a decision for or impose a resolution on either party.

How does an employee get involved in EEO/ADR?

The first step in the process is for the complainant to contact an EEO counselor within 45 days of the alleged act of discrimination or harassment. During the initial interview, the EEO counselor informs the complainant that he or she may choose to follow either the traditional counseling process or the mediation process. If the employee chooses traditional counseling, the EEO counselor describes the complaint process and conducts a limited inquiry to obtain information for a possible settlement.

Mediation is completely voluntary for the complainant. In the interest of resolving complaints at the lowest possible levels, management's participation in ADR is mandatory.

If an employee chooses mediation, the EEO counselor (or other civil rights official, for formal complaints) conducts an intake interview with the employee to determine if the situation is suitable for mediation.

If it is, the EEO counselor contacts all other parties and carefully and thoroughly describes the mediation process. The complainant (and other interested parties) learn who they may bring with them to mediation, how settlement agreements are conducted, the terms of confidentiality provisions, how either party may terminate the EEO/ADR procedures, and how the EEO process will continue if no resolution is achieved. The EEO counselor assigns a mediator to the case, if appropriate, and schedules the case for mediation.

Where does mediation take place?

Mediation takes place in a neutral setting away from the employee's normal worksite.

What happens if resolution is reached?

If the parties reach a resolution during mediation, the mediator prepares a resolution agreement. An attorney or other representative may be present, and either party may consult with legal counsel as necessary throughout the process. All parties have the option of consulting an attorney before finalizing and signing the agreement. Resolution agreements are binding on all parties.

What happens if resolution is not reached?

If an offer of resolution is rejected during mediation, the parties should give specific reasons for the rejection and present a reasonable modification or alternative resolution. If the parties still cannot resolve their differences, and no agreement is reached, the mediator closes the session and notifies the EEO counselor. At the informal stage, the EEO counselor conducts a final interview. The complainant is advised of his or her right to file a formal complaint. At the formal stage, the normal EEO process picks up from the point where the complainant chose EEO/ADR.

How much time is involved?

The mediation session usually lasts from 4 to 6 hours. However, all parties are asked to make themselves available for the entire day. The mediation session may extend to a second day, depending on the complexity of the case.

What matters are not appropriate for EEO/ADR?

Any dispute or disagreement that is not in the EEO-protected areas, such as administrative grievances and program disputes. In these areas, employees are encouraged to seek redress through the REE Mission Area Cooperative Resolution Program or the Department's Conflict Prevention and Resolution Center.

Filing a Formal EEO Discrimination Complaint

Agency Responsibility	Department Responsibility	Complainant Responsibility
<p>1. Provide the Department and the complainant with a written report (when requested) within 15 days of being advised that the complainant has filed a formal EEO complaint.</p> <p>2. Within 15 days of receiving a copy of the complainant's request for a hearing, the agency must send a copy of the complaint and investigative file(s) to the complainant and the EEOC district or field office.</p> <p>3. An investigator collects information from the complaint and prepares a report of investigation, which is sent to the agency official and the complainant.</p> <p>4. Ensure that all approved Federal witnesses are notified of the date and time of the hearing, the approximate time that their presence will be required, and the appearance and travel arrangements to the hearing site.</p> <p>5. Arrange an appropriate room in which to hold the hearing.</p> <p>6. Arrange and pay for court reporter services and transcripts.</p> <p>7. Deliver transcripts to the administrative judge within 10 calendar days or less after the close of the hearing.</p>	<p>1. Upon receipt of a formal complaint of discrimination, acknowledge in writing, informing the complainant of the date the complaint was filed.</p> <p>2. The complainant is informed of the Department's obligations, such as (a) filing a formal complaint (including mixed complaints); (b) investigating in a timely manner; (c) unilateral extension for sanitizing classified information; (d) the right to a hearing (except in mixed cases³); (e) the right to appeal a dismissal, final action, or decision, and (f) the right to file a civil action in Federal district court on claims that arose in the administrative process.</p> <p>3. Advise the complainant of the EEOC office and address where a hearing request is to be sent, as well as the office to which the copy of the request should be sent.</p> <p>4. Conduct the investigation in a timely manner that must be appropriate, impartial, and completed within 180 days of filing the complaint.</p> <p>5. If the Department is unable to locate the complainant, it may dismiss the complaint, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 days of the notice of proposed dismissal.</p>	<p>1. The complainant has a right to request a hearing before an EEOC administrative judge 180 calendar days from the filing of a formal complaint or after completion of the investigation, whichever comes first.</p> <p>2. Must submit the hearing request directly to the EEOC district or field office having jurisdiction over the geographic area in which the complaint arose.</p> <p>3. Must cooperate in the investigation and keep the Department informed of his or her current address.</p>

³A “mixed-case complaint” is a complaint of employment discrimination, filed with a Federal agency, based on race, color, religion, sex, national origin, age, disability, or reprisal related to or stemming from an action that may be appealed to the Merit Systems Protection Board (MSPB). The complaint may contain only a claim of employment discrimination or additional nondiscrimination claims that the MSPB has jurisdiction to address.

How To Get Information

**Agricultural Research Service
Civil Rights Staff
Director**

For further information, visit our web site at <http://www.ars.usda.gov>. You may also contact the Civil Rights Staff by telephone at (202) 720-6161 (voice), or by mail at USDA, ARS, Civil Rights Staff, 1400 Independence Avenue, SW, Room 3552-S, Washington, DC 20250-0304.

To discuss an alleged incident or to file a complaint of discrimination within ARS, write to us at the above address or call 1-800-340-4289, (202) 720-3410 (voice), or (202) 720-3303 (TDD).

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.