

**FISH AND WILDLIFE SERVICE  
EQUAL OPPORTUNITY**

**Equal Opportunity**

**Part 061 Complaint Processing and Adjudication**

**Chapter 2 Pre-Complaints and Complaint Processing**

**061 FW 2**

**2.1 What is the purpose of this chapter?** This chapter provides:

**A.** Standards and guidelines for Service employees who process Equal Employment Opportunity (EEO) complaints, and

**B.** Guidance to employees, applicants for employment, and former employees who believe that they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, reprisal, sexual orientation, family status, or genetic information.

**2.2 What are the authorities for this chapter?** You can find the authorities for all the chapters in Part 061 in 061 FW 1.

**2.3 What is the scope of this chapter?** The procedures in this chapter apply only to EEO complaints. Procedures for administrative grievances are different and follow different timelines (see 227 FW 3).

**2.4 Who is responsible for complaint processing procedures?**

**A. The Assistant Director – Budget, Planning and Human Resources:**

(1) Ensures there is policy in place for the program, and

(2) Approves settlement agreements that involve monetary awards or material benefit (see section 2.10 and 061 FW 4).

**B. Assistant Directors and Regional Directors** ensure that their staff process EEO complaints fairly and thoroughly in accordance with EEO regulations and the procedures in this chapter.

**C. The Chief, Branch of Equal Opportunity and Diversity (EEO Officer):**

(1) Prepares, publishes, and updates Servicewide policy and procedures for processing EEO complaints;

(2) Evaluates the efficiency of our EEO program and recommends necessary changes;

(3) Maintains a Servicewide EEO complaint tracking system; and

(4) Provides guidance to Regional Divisions of Diversity and Civil Rights.

**D. The Regional Chiefs, Division of Diversity and Civil Rights (DCR),** ensure that Regional staff process complaints in accordance with this chapter.

**E. Staff in servicing Human Resources offices** provide personnel documents in accordance with section 2.9 below.

**2.5 What are pre-complaints and how does the Service process them?** Pre-complaints are when someone believes he/she has been discriminated against and has consulted with an EEO counselor to resolve the matter (takes place before filing a formal complaint). Following are the procedural guidelines:

**A. Mandatory Pre-complaint Process.**

(1) Employees who believe that they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, reprisal, sexual orientation, family status, or genetic information **must** consult with a designated EEO Counselor **before** filing a formal complaint.

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(2) If you are 40 years of age or older and believe you have suffered age discrimination, instead of following the pre-complaint process, you may file a civil action in a United States district court after giving the Service and EEOC at least 30 days' notice of the intent to file suit.

**B. Time Limit on Filing.** The aggrieved person must initiate contact with an EEO Counselor within 45 days of the occurrence of the alleged discriminatory event, or within 45 days of the effective date of a personnel action, and exhibit intent to enter the EEO pre-complaint process. This time limit may be extended if the aggrieved person can show:

(1) That he or she was not notified of the time limits, was not aware of the limits, or did not know and reasonably could not have known that the discriminatory matter or personnel action occurred; or

(2) Despite diligence, he or she was prevented by circumstances beyond his or her control from contacting the EEO Counselor within the time limits.

**2.6 What are the procedures for the EEO Counselor's initial contact with an aggrieved person?** When contacted by an aggrieved person, the EEO Counselor must arrange to meet with that person within 2 business days. If that is not possible, the EEO Counselor must advise the Chief, Branch of Equal Opportunity and Diversity or the Regional DCR office so that he/she can make other counseling arrangements. During the initial contact, the counselor should:

A. Determine, if possible, the basis for and issue(s) involved,

B. Provide the aggrieved person with a brief overview of the complaint process, and

C. Establish the time and location for the initial interview and, if the aggrieved person is disabled, determine if additional accommodations are required to effectively conduct the interview (see section 2.7). The counselor may conduct the initial interview during this initial contact.

**2.7 What are the procedures and guidelines for the EEO Counselor to follow during the initial interview with the aggrieved person?**

**A. Procedures.** During the initial interview, the EEO Counselor must:

(1) Provide the aggrieved person with information on the complaint process,

(2) Advise the person of his or her rights and responsibilities, including:

(a) Time frames,

(b) Right to representation,

(c) Protection from reprisal,

(d) Right to file a formal complaint, and

(e) Right to remain anonymous during the pre-complaint process.

(3) Determine the basis for and claim(s) the aggrieved person raises. Get as much information as possible, including names, dates, and telephone numbers or other contact information.

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(4) Determine whether the aggrieved person has previously filed a complaint of discrimination. If the person has filed a previous complaint, determine if the new claims are like or related to the previous claim(s).

(5) Determine the specific date(s) that the alleged incident(s) occurred or when the aggrieved person became aware of it.

(6) Attempt to resolve the issue.

(7) Determine if the aggrieved person wants to remain anonymous during the pre-complaint process.

(8) Explain his/her role as that of an unbiased, impartial party whose function is to inquire into the situation and try to resolve the allegation(s) of discrimination.

(9) If applicable, advise the aggrieved person of the option to elect the Alternative Dispute Resolution (ADR) process (see 061 FW 3).

(10) Specify when he/she will contact the aggrieved person again.

**B. Guidelines for the Interview.** The EEO Counselor should:

(1) Meet with the aggrieved person in a setting appropriate for conducting counseling. A room should be dedicated to the EEO Counselor for counseling activities to allow privacy and minimize interruptions.

(2) Meet only during official duty hours. On rare occasions, it may be necessary to meet before or after normal duty hours. If so, the counselor should be sure that his/her supervisor approves the time and place.

(3) Discuss the aggrieved person's perceptions of the allegations. Do not take sworn testimony. Do not render an opinion on the merits of the claim.

**2.8 How does the EEO Counselor interview the alleged responding management official (RMO)?** If the aggrieved person identifies an alleged responding management official, the EEO Counselor must interview that official to get his or her perception of the situation. During the interview, the counselor should:

A. Advise the official that the aggrieved person named him/her as the alleged responding official.

B. Provide the official with information regarding the pre-complaint process, including his or her right to representation and the aggrieved person's right to freedom from reprisal.

C. Explain his/her role in the pre-complaint process.

D. Determine what, if any, remedies the office is willing to consider.

**2.9 What information (documentation) may EEO Counselors access as part of the counseling process?** EEO Counselors, when acting in their official capacity, may access the aggrieved person's Official Personnel Files (OPF) and other records necessary to obtain sufficient information about the allegation. EEO Counselors must adhere to the Privacy Act restrictions regarding the use of information contained in OPFs or other personnel-related documents.

**2.10 What are Settlement Agreements?** If the Service and the aggrieved person agree to a resolution of the dispute, they must put the terms of the agreement into writing. Both the aggrieved person and management official with settlement authority must sign the settlement agreement to ensure that there is a clear understanding of the terms between both parties. All EEO settlement agreements that include material

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benefit or monetary payments (including payment of attorney's fees and compensatory damages) **must** be approved in compliance with 061 FW 4, Settlement Authority.

**2.11 What is a Notice of Final Interview/Notice of Right to File a Discrimination Complaint, and when does the EEO Counselor issue it?**

**A.** The Notice of Final Interview (NOFI)/Notice of Right to File a Discrimination Complaint terminates the pre-complaint process. The EEO Counselor must issue a NOFI for every counseling incident. The NOFI must be sent by certified mail/return receipt requested or the counselor must ask the aggrieved person to sign for the notice in person.

**B.** Unless the aggrieved person agrees to extend the counseling period, the EEO Counselor must issue a NOFI to the aggrieved person no later than the 30th day (90 days if the aggrieved party elects Alternative Dispute Resolution) after entering the EEO pre-complaint counseling, which will terminate the EEO counseling.

**2.12 How long does the aggrieved person have to file a formal complaint?** The aggrieved person has 15 calendar days from the date of receipt of the NOFI to file a formal complaint.

**2.13 What are the reporting requirements for pre-complaints?** The EEO Counselor must send a counselor's report to the Complaints Processing Specialist in the Branch of Equal Opportunity and Diversity within 10 days of issuing the Notice of Final Interview. At a minimum, the report must include:

- A.** A description of the claims and bases of discrimination brought to the counselor's attention;
- B.** Relevant information provided by the aggrieved person, responding management official(s), and witnesses;
- C.** Any relevant document the counselor collected during fact-finding;
- D.** Information that establishes the timeliness of counseling contact;
- E.** If timeliness is not established, an explanation for the delay; and
- F.** A description of any resolution efforts.

Acting Deputy  
DIRECTOR

Date: 9/23/08

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