



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

DECISION MEMORANDUM FOR THE SECRETARY

FROM: Subcabinet

SUBJECT: Action Plan for Follow-up to the Civil Rights Breakout Sessions

ISSUE:

At your direction, every mission area and agency held civil rights breakout sessions in Washington and field locations immediately following your civil rights address on June 29.

DISCUSSION:

Agencies were given 30 days to prepare reports on the findings and recommendations of these meetings and deliver them to the Office of the Secretary. The field-based agencies, in particular, have produced extensive reports. In order to do justice to the effort, the Department of Agriculture (USDA) must make an appropriate public response.

The Subcabinet and staff offices have developed a number of ideas for your consideration for civil rights actions within USDA as a follow-on to the June 29 sessions. We focused on actions where considerable progress can be made before the end of the current Administration. We focused on issues that could be implemented across all mission areas. In addition, follow-through on actions already announced is critically important.

RECOMMENDATIONS:

There are two proposals that would require Congressional action; the remainders are within your administrative authority, although some require some internal redirection of current resources.

I. Items Requiring Congressional Action

A. Hire More Civil Rights Attorneys

Critics have charged that the Civil Rights Division of the Office of General Counsel (OGC), founded as a result of a 1997 Civil Rights Action Team (CRAT) recommendation, has not achieved some of the objectives envisioned when it was created. The mission areas look to the Division for guidance and counsel, and would benefit from its providing a stronger civil rights perspective in policy decisions. However, the Division has not been staffed at the levels envisioned in the CRAT report, and the heavy litigation workload in civil rights cases, including 19 class actions involving employees and customers, has limited its ability to meet those needs. The proposal is to bolster the civil rights resources of OGC by increasing the number of

attorneys from 6 to 11, plus an additional technician/paralegal. This would require a request to Congress for a supplemental appropriation of approximately \$700,000. In addition, the Division would be able to reduce its litigation defense activities if each of the five OGC regional offices were provided an additional FTE, at a cost of \$500,000, to work exclusively on civil rights issues and cases.

B. Fully Fund the 2501 Program

Section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990 authorizes \$10 million per year for outreach and technical assistance to socially disadvantaged farmers and ranchers. Under the program, the Secretary may make grants and enter into contracts and agreements with community-based organizations with experience in agricultural education for socially disadvantaged farmers and ranchers, as well as 1890/1862 land-grant institutions, Indian tribal community colleges and Alaskan Native cooperative colleges, and Hispanic-serving institutions. The program focuses on helping farmers and ranchers from socially disadvantaged groups better understand USDA programs and the opportunities to participate in them. The 2501 program has a proven track record, with 9,000 minority farmers and ranchers having participated, and more than 108,000 previously underserved constituents gaining access to USDA programs and services. However, Congress has never fully funded the program, and the FY 2000 appropriation is \$3 million. The proposal is to request Congress to appropriate the full \$10 million.

II. Items Not Requiring Congressional Action

A. Consistent with the Government Performance Results Act (GPRA), USDA will develop the first comprehensive Civil Rights Business Plan. The plan will incorporate not only complaint processing, but also compliance reviews, affirmative employment, training, policy issuance, special emphasis and accountability and outreach to socially disadvantaged customers. The plan will be developed in cooperation with the agency civil rights directors and will be submitted to me no later than December 1, 2000.

B. Mandate Two Civil Rights Listening Sessions Per Year for Mission Areas

Following your speech on June 29, each mission area held a listening session to allow employees to express their concerns and provide suggestions for continued improvement. It was proposed that such sessions be mandated for each mission area twice a year. This would ensure an ongoing dialogue between management and employees on civil rights, without intermediaries or filtering, and could bolster employee confidence that this issue remains in the forefront of management concerns and is not just a reaction to a crisis. Management would have to develop a way of formally responding after each session in a way that does something with the input.

C. Accelerate Implementation of Diversity Councils

Your June 29 announcement of five new diversity councils and an overarching Diversity Advisory Council has been well received. These councils will give USDA a means for each group to provide advice directly to the Secretary, and a way for the Secretary to provide consistent policy that takes into account the perspectives of each group. However, the councils are not yet up and running. The decision memo to establish these councils, each with a supporting staff person, has been prepared for your consideration. Charters for the councils have been drafted, which provide for each council to be led by two co-chairs, a Subcabinet officer and an officer of one of the protected group organizations. You would designate the co-chairs of each of the new Councils within the next two to three weeks. A committee of the whole of the council co-chairs will determine the criteria by which members are chosen. Within 30 days the full committee will meet.

D. Evaluate Prospective Managers on Human Relations and Sensitivity

Food, Nutrition and Consumer Service (FNCS) suggests taking action to ensure that newly hired supervisors and managers are sensitive to human relations and civil rights. Written policies covering sensitivity would apply in selections, and civil rights staff would participate in the selection process for all managers and supervisors. Selectees would be tested on the "Model 360 Needs Assessment Instrument" against identified core competencies. The results would provide a foundation for developing training plans that target areas needing attention. Progress would be reviewed yearly. In addition, a continuing education requirement would be imposed on supervisors and managers. Agency workforce planning would include measures to ensure adequacy of a diverse applicant pool.

E. Technical Assistance for Preservation of the African-American Family Farm

USDA supports the creation of a foundation for the preservation of the African-American farm family through the Village Foundation. The African-American farm family managed by the Village and its financial partner, the Rayne Bank of Canada, would have a Board composed of African-American farmers from around the Nation. This fund would petition private and public entities to create a \$250 million endorsement to do the following:

- Provide grants to African American farm families to maintain their present farm establishment.
- Provide revolving farm loans, equipment loans, and land purchasing loans, and provide farm families with training on how to get loans and the credit to finance their crops and farm developments.
- Establish a financial co-op to create a market system based on products produced by African-American farms. This system would establish contacts in the United States locally, regionally, nationally, and globally, matching farm producers and co-ops nationally and around the world. It would also create a co-op network.

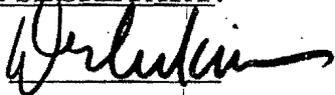
DECISION MEMORANDUM FOR THE SECRETARY

- Create a leadership venue for rural use pecifically to do future forecasting regarding land use.
- Create seminars, work group and travel expenses for farmers for the new wave of crop and new techniques that are being developed as sustainable environmental issues.
- Conduct a farm forum to be held in the Washington, D.C. area every six months. This forum would keep the American press and public aware of issues and progress related to the African-American farmer.

This action is needed to fully implement the outreach and technical assistance requirements of Pigford vs. Glickman Consent Decree.

DECISION BY THE SECRETARY:

Approve:



Disapprove: _____

Discuss with me: _____

Date:

10/2/2000

Reviewed by: _____

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OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

DECISION MEMORANDUM FOR THE SECRETARY

THROUGH:

Paul W. Fiddick
Assistant Secretary
for Administration

OCT 6 2000

FROM:

Rosalind D. Gray
Director
Office of Civil Rights

SUBJECT:

Management and Diversity Training for Department of
Agriculture (USDA) Supervisors

ISSUE:

Provide management and diversity training for all USDA supervisors.

DISCUSSION:

Employees in the listening sessions have identified the need for all supervisors to participate in training, to include personnel and conflict management, to enhance their ability to define and better manager diversity.

During the listening sessions, every employee group identified the need for managers to be trained in diversity, recruitment, hiring, alternative dispute resolution (ADR), conflict management, and effective communication with employees concerning workforce profiles. The Office of Civil Rights will lead this initiative by providing, during the months of October and November, diversity training to more than 600 managers in the Washington, D.C., metropolitan area. The need for training is identified by employees and supported by managers. Every agency can enhance its operations and improve its relations to its employees by enhanced management skills.

Goals of the training are to:

- increase awareness of equal employment opportunity laws;
- prevent illegal discrimination and/or harassment in the workplace;
- increase understanding of how diverse perspectives can improve organizational performance;

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- improve workplace relations and build more effective work teams;
- improve organizational problem-solving;
- improve service to customers;
- increase managers' awareness of personnel requirements for recruitment and hiring;
- encourage early identification of conflict;
- improve conflict management skills, and
- increase awareness and use of ADR.

RECOMMENDATION:

Each mission area will develop a comprehensive and mandatory management training program to include diversity, fair personnel processes, conflict management, and ADR, and to provide this training to all managers before March 1, 2001.

DECISION BY THE SECRETARY:

Approve:

[Signature]

Disapprove:

Discuss with me:

Date:

10/2/2000

Reviewed by:



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Administration

Office of
Civil Rights

1400 Independence
Avenue SW

Washington, DC
20250

DECISION MEMORANDUM FOR THE SECRETARY

THROUGH:

Paul W. Fiddick
Assistant Secretary
for Administration

FROM:

Rosalind D. Gray
Director
Office of Civil Rights

SUBJECT:

Dispute Resolution Resource Guide for Department of
Agriculture (USDA) Employees

ISSUE:

Modification and distribution of a Dispute Resolution Resource Guide to all USDA employees.

DISCUSSION:

The Forest Service has developed the *Forest Service Dispute Resolution Guide* that serves as an alternative for resolution of grievances, complaints, and appeals. The guide outlines various processes for resolving workplace disputes, including formal equal employment opportunity complaints and grievances.

The Conflict Prevention and Resolution Center will modify the guide for use by all USDA agencies to resolve conflict before a grievance or complaint is filed. This guide will be known as the *Departmental Early Intervention Resource Guide*.

The Guide will explain the purpose of the Early Intervention Program, which is to assist parties experiencing conflict in resolving the conflict themselves. It serves as an alternative to, not a replacement for, the formal systems of redress, namely grievances, discrimination complaints, and appeals. This will be implemented no later than December 1, 2000.

RECOMMENDATION:

We recommend you approve the modification the Dispute Resource Guide for distribution to all USDA employees.

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DECISION BY THE SECRETARY:

Approve:

[Handwritten Signature]

Disapprove:

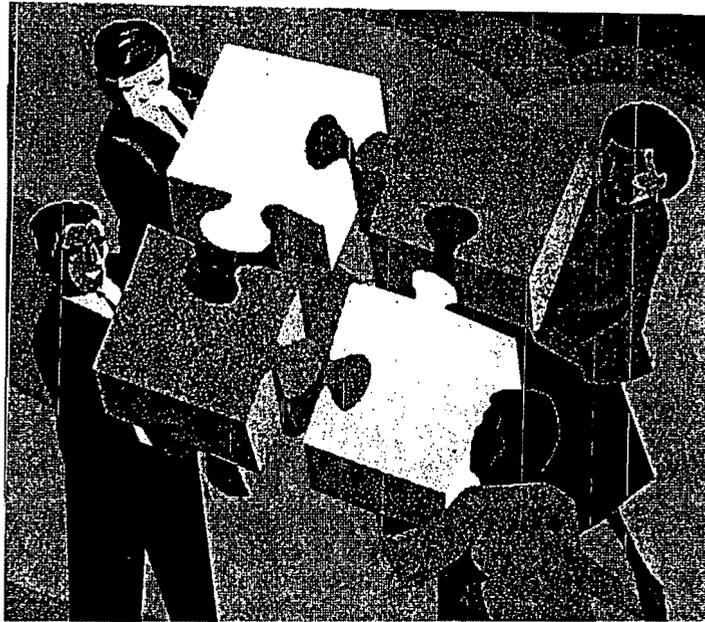
Discuss with me:

Date:

10/2/2000

Reviewed by:

Enclosure



FOREST SERVICE DISPUTE RESOLUTION GUIDE

COLLABORATION -- CONSISTENCY -- CONFLICT RESOLUTION

CO-SPONSORED BY:

**CIVIL RIGHTS - EMPLOYMENT COMPLAINTS
EARLY INTERVENTION - DISPUTE RESOLUTION
HUMAN RESOURCE MANAGEMENT - EMPLOYEE RELATIONS**

Last Revised July 3, 2000

EARLY INTERVENTION PROGRAM (EIP)

Description of the Process

Purpose and Use:

The purpose of the Early Intervention Program (EIP) is to assist the parties experiencing conflict in resolving the conflict themselves. EIP seeks to create a non-adversarial setting where issues can be openly discussed and solutions explored. EIP serves as an alternative, not a replacement for, the formal systems of redress, namely grievances, discrimination complaints, and appeals. EIP also serves as the Alternative Dispute Resolution (ADR) resource for mediation of EEO complaints at both the informal and formal stages. That process is described in detail in the standard operating procedure for the Employment Complaints Process.

Statutory/regulatory/policy basis:

1. Administrative Dispute Resolution Act of 1996
2. Executive Order 12871 (labor-management partnerships)
3. April 1997 Forest Service EIP Plan
4. Secretary's Memorandum 4710-1, March 23, 2000, USDA Alternative Dispute Resolution Policy
5. NFFE-Forest Service Master Agreement
6. MSPB Final Ruling giving an automatic 30-day extension for filing an appeal when the parties agree to use ADR

Who can use

The program is available for use by any employee, regardless of appointment, and enrollees.

What can be resolved through the EIP?

Virtually any workplace dispute can be addressed through the EIP if all involved parties are willing. It is recognized that certain situations, namely those involving criminal activities or those that are so egregious in nature (e.g. sexual harassment, other serious forms of misconduct) that they would not be appropriate for EIP action. Future plans are for EIP to be used for program execution conflicts with customers and constituents. EIP is triggered whenever the parties to a conflict agree to use an EIP neutral to attempt resolution of their problem. The focus is on identifying the underlying causes of the conflict and restoring/repairing working relationships.

What comprises an EIP case?

An EIP case usually consists of the party bringing forward the issue(s) and a responding party. Supervisors/managers can also refer employees who are in conflict to the EIP. With coaching

from the EIP intake person, the parties come to the mediation prepared to articulate their concerns and to discuss constructive ways to address those concerns with the assistance of a third party neutral (mediator). The mediation participants listen to each other's concerns and try to focus on the desired future. A mediation model is followed to surface and resolve the issues. Case file information consists solely of a record that contact to the program was made, whether a mediation was held, and a copy of the agreement if an agreement was reached and put in writing. While the parties elect whether to have a written agreement, it is strongly recommended.

****Note:** Please reference the Employment Complaints Process section of the Dispute Resolution Guide for an explanation of the handling of settlement agreements in EIP mediations of discrimination complaints.

Timeframes associated with the process

Response standards specify that the EIP practitioner will respond in no more than two (2) business days to a request for EIP assistance. Arrangements for EIP to begin will be established normally no later than five (5) business days after the EIP official has contacted the parties. There is no timeframe associated with making contact with an EIP practitioner as exist in the case of an EEO complaint or grievance. However, the individual making this contact is fully informed by the EIP practitioner in the initial intake of the timeframes associated with these other redress avenues.

Whom to contact for information & to initiate the process

An EIP manager or other designated intake person can be contacted to get information or request mediation assistance. Lists of managers who provide service to all employees in all FS units have been distributed and will be available on an EIP website. (See Exhibit 1 for a listing of EIP Managers.)

Roles of responsible parties

Person with issue/concern - this person should be able to: clearly explain the nature of the conflict; be willing to engage in candid dialogue with the responding party, and; be willing to work constructively with the assistance of a mediator to resolve identified issues. Note: The person with the issue/concern may also be a supervisor or manager who refers others to the EIP for assistance.

Responding party - the role of the responding party is essentially the same as that for the person who initially brings the issue to EIP. The responding party is expected to be fully engaged in identifying and resolving issues by engaging in constructive dialogue with the

other party. It is essential that both the person with the issue/concern and responding party have the authority to resolve their issues.

EIP Manager - Agency official responsible for EIP program for a FS organizational unit, including arranging mediations, evaluating program effectiveness, and serving as liaison with Civil Rights, Human Resources, and other ADR officials.

EIP Intake Person - Records basic case information prescribed by the EIP Manager, including whether the person's concerns are being pursued in other dispute forums.

Mediator (neutral) - The EIP neutral is responsible for conducting the mediation and assuring that the parties follow the process rules. It should be noted that the role of the mediator is not to decide the matter for the parties.

Representatives of the parties - rules, regulations, law, and collective bargaining agreements define their roles. All parties in EIP are entitled to representation. The EIP manager will resolve any questions concerning the appropriateness of a representative.

Technical advisor. ER and CR Specialists who provide advice to the parties during mediation on a variety of issues.

Decision points for each party built in to the process

Because EIP is a voluntary process, there are decision points at all stages. For instance, the parties are encouraged to decide upfront whether to use EIP for possible resolution before pursuing one of the formal dispute resolution channels, but may also initiate an EIP request at any time during any other dispute resolution process. The person with the concern makes an election, after hearing from the EIP intake person about the different options for redress, whether to continue with EIP. Likewise, the responding party chooses whether to participate in EIP or not. The parties can also choose to discontinue mediation once it has begun. The parties must also choose whether to agree to written or verbal terms of resolution that might develop from the mediation session. Finally, the person with the concern has the option of discontinuing the EIP process at any stage in favor of pursuing one of the other dispute resolution processes.

Settlement guidelines and resources

EIP agreements vary widely depending on the issues raised. Agreements do not have the same legal authority that would be present in the case of an EEO complaint (Title VII). EIP Agreements are expected to be executed in good faith by the parties. In EIP Agreements, a premium is placed on creativity and in assisting the parties to devise a solution that they are comfortable with. If either party believes an agreement has been breached, they have the option to pursue additional EIP mediation or seek relief of their concerns through other available dispute forums. Agreements must still be legal and in conformance with any

applicable collective bargaining agreement. This may entail contacting specialists in Human Resources, EEO, or the Office of General Counsel, to assure legality.

EMPLOYMENT COMPLAINTS PROCESS (ECP)

DESCRIPTION OF THE CURRENT PROCESS

PURPOSE AND USE:

The purpose of the Employment Complaints Process (ECP) is to provide counseling and complaint resolution services for employees and applicants in compliance with governing laws, regulations, and the USDA/FS employment discrimination (EEO) complaint program. ECP facilitates the resolution of EEO complaints.

STATUTORY/REGULATORY/POLICY BASIS:

1. Title VII of the Civil Rights Act of 1964, as amended
2. Rehabilitation in Employment Act of 1973, Section 501
3. Equal Pay Act of 1963, as amended
4. Age Discrimination in Employment Act of 1967, as amended
5. EEOC Management Directive 110, Federal Sector Employment Discrimination Complaint Processing Manual
6. USDA DR 4300-7, Processing EEO Complaints of Discrimination
7. 29 Code of Federal Regulation 1614, et al, as amended
8. FSM 1760 - Equal Employment Opportunity
9. USDA & FS Policy on Settlement Agreements
10. Secretary's Memorandum 4710-1, March 23, 2000, USDA Alternative Dispute Resolution Policy

• WHO CAN USE:

The process is available for use by any employee (regardless of appointment), former employee, or applicant for employment with FS and/or USDA who believes s/he is the victim of discrimination.

• WHAT CAN BE RESOLVED THROUGH THE ECP?

Any action and/or inaction of the Agency and/or its representatives that affect the work life of an employee and/or applicant for employment for which they believe themselves to be a victim of employment discrimination, can be addressed. The actions and/or inactions are believed to be motivated by a prohibited factor [discriminatory bases] such as: race, color, sex/gender (including sexual harassment), age (40 years of age and older), national origin, physical/mental disability, religion, and reprisal for participation in or support for activities related to any of these factors, may be brought to this process.

Employees and/or applicants may also use the ECP if they believe they have been subject to discrimination on the basis of sexual orientation or marital status. Issues attributed to these bases may be processed through to a Departmental administrative decision on the merits. Decisions based on these two factors will not receive appeal rights to EEOC.

WHAT COMPRISES AN EEO COMPLAINT?

An EEO complaint consists of the aggrieved person bringing forward a timely employment related concern (**Issue**), attributing the cause of the concern to be based on (**Basis**) one or more of the prohibited factors (i.e. race, color, religion, sex [including sexual harassment], national origin, age, physical or mental handicap, reprisal) as covered by 29 Code of Federal Regulations 1614. The complainant is required to describe the behavior/decision that has occurred, date/time of the incident, parties involved, and harm suffered.

TIMEFRAMES ASSOCIATED WITH THE PROCESS

The first step for an employee or applicant who believes he or she has been discriminated against by a federal agency (e.g., FS) is to contact an equal employment opportunity (EEO) counselor at the agency where the alleged discrimination took place within 45 calendar days of the alleged discriminatory action. Counseling must be completed within 30 calendar days of contact with the EEO Counselor. Prior to the end of the 30-day period, the person with the issue may agree in writing to postpone the final interview with the EEO Counselor and extend the traditional counseling effort for an additional period of no more than 60 days.

During the initial interview with the EEO Counselor, the individual will be informed of the option to have their issue(s) addressed through the Forest Service's Alternative Dispute Resolution (ADR) Process, namely the Early Intervention Program (EIP). The EIP relies on face-to-face mediation as the primary ADR technique. The pre-complaint processing period shall be 90 days where the aggrieved person chooses to participate in mediation (ADR) through the EIP. The complainant must make an ADR election within the first 30 days from the date of the initial interview. The resolving management official has 10 calendar days after notification of complainant's ADR election to elect or decline participation in EIP. Agency decisions on whether to participate in ADR will be based on the criteria set forth in the USDA/FS Settlement Policy contained in the Resolution Model.

If the claim is not resolved either through traditional counseling or ADR, the individual is issued a notice of their right to file a formal EEO complaint with the Department (i.e., Office of Civil Rights, USDA). The formal complaint must be filed within 15 days of receipt of this notice.

The Department must acknowledge receipt of the complaint and make a determination to accept or dismiss it, and if accepted, conduct a complete and fair investigation within 180 days of initial receipt.

If the complaint is one that does not contain issues that are appealable to the Merit Systems Protection Board (MSPB), at the conclusion of the investigation, the complainant has the option to request either a hearing by an Equal Employment Opportunity Commission (EEOC)

administrative judge (AJ) or an immediate final decision by the employing agency, i.e., the Department of Agriculture.

If a hearing is requested, the AJ must process the request for a hearing, issue findings of fact and conclusions of law, and order an appropriate remedy within 180 days.

After the final decision of the Department, the complainant may appeal to the Equal Employment Opportunity Commission (EEOC) within 30 days or may file in U.S. District Court within 90 days. Either party may request reconsideration of a decision made by the Commission. The complainant may also seek judicial review.

Traditional EEO Counseling and Alternative Dispute Resolution (ADR)

Traditional EEO Counseling and ADR as conducted by the Early Intervention Program bear some similarities, but also have some significant differences. In order for a complainant to make an informed decision as to which to elect, the dispute resolution practitioner should be able to discuss the differences between the similar but distinct functions of EEO counseling and EIP.

The EEO Counselor performs these functions:

- 1) *Explains the EEO complaint process under 29 CFR Part 1614;*
- 2) *Discusses the Early Intervention Program and explains the election option, i.e., the procedure for selecting ADR or traditional counseling;*
- 3) *Determines the claim(s) and basis(es) raised by the aggrieved person;*
- 4) *Conducts a limited inquiry to obtain information: (a) to identify jurisdictional questions (e.g. timeliness); and, (b) for settlement purposes;*
- 5) *Seeks a resolution of the dispute at the lowest possible level, unless the aggrieved person elects to participate in EIP;*
- 6) *Documents the resolution if one occurs during counseling or assists the EIP mediator in finalizing the agreement gained during an EIP mediation;*

Note: *In the case of an informal complaint, the EEO Counselor will serve as the lead in assuring that settlement agreements receive required approvals. For formal complaints, this responsibility resides with the controlling Employee Relations Office.*

- 7) *Advises the complainant of his/her right to file a formal complaint if attempts to resolve the dispute through EEO counseling or EIP; and,*
- 8) *Prepares a report sufficient to document that the EEO Counselor undertook the required counseling actions, referred the person to EIP based on their request for ADR, and addressed any jurisdictional questions.*

The EIP mediator performs these functions:

- 1) *Serves as a neutral and impartial third party who intervenes in a dispute but has no decision-making authority. The mediator may have the benefit of the information gathered during the intake phase by the EEO Counselor relative to issue(s) and basis(es). Mediations are normally conducted in which the parties meet face-to-face in non-workplace environments.*
- 2) *Makes primarily procedural suggestions regarding how the parties can reach an agreement;*
- 3) *May suggest substantive options as a means of encouraging the parties to expand the range of possible resolutions under consideration;*
- 4) *Conducts joint discussions or, depending on the circumstances, in caucuses to explore resolution options or develop proposals that might move the parties closer to resolution;*
- 5) *Assists the parties in developing a settlement agreement that is in compliance with agency policy. Sends a copy of the settlement agreement to the referring EEO Counselor and/or to Employee Relations for final agency review and processing in accordance with agency policy.*
- 6) *Establishes a record that a mediation took place and that an agreement was or was not reached.*

Whom to contact for information & to initiate the process

Informal - Precomplaint Stage

To initiate an informal complaint, an individual should contact a field Employment Complaints Program (ECP) Counselor assigned to their region/station/area. A list of ECP Centers and staff members are available for each FS work unit through the Civil Rights website, local/national posters, by contacting the Washington Office Civil Rights Staff, Employment Complaints Program staff member, or any Civil Rights Office. Points of Contact for each ECP Service Center are listed at Exhibit 2. A listing of FS Civil Rights Directors is located at Exhibit 3.

Formal Complaint Stage

To initiate a formal complaint, the complainant or complainant's official representative who has been designated in writing by the complainant, must submit a formal complaint form to USDA's Office of Civil Rights (CR) within 15 calendar days of receipt of the notice of right to file a complaint. The address and telephone/fax numbers are provided in the notice. A complaint may be mailed, faxed or submitted in person. Contact information is posted on the WO/local Civil Rights website for both informal and formal stages.

FILING AN APPEAL WITH THE EEOC.

If the agency dismisses all or part of a complaint, a dissatisfied complainant may file an expedited appeal, within 30 days of notice of the dismissal, with the EEOC, with a copy to the Department.

A complainant may also appeal a final agency decision to the EEOC within 30 days of notice of the decision. The EEOC will examine the record and issue a decision. November 1999 changes to EEOC regulations (29 CFR 1614) and their Management Directive (MD 110) describe numerous modifications to the administrative processing of claims of employment discrimination. Each decision made regarding a complaint will include appeal rights and responsibilities.

If the complaint is on a matter that is appealable to the Merit Systems Protection Board (e.g., a mixed case, such as a termination of a career employee), the complainant may appeal the final agency decision to the MSPB within 20 days of receipt or go to District Court within 30 days. The complainant may petition the EEOC for review of the MSPB decision concerning the claim of discrimination.

ROLES OF RESPONSIBLE PARTIES

Complainant - The complainant is required to describe the behavior/decision/incident that has occurred, date/time of the incident, parties involved, why they believe the incident to be discriminatory, and the harm suffered. The complainant is responsible for fully cooperating with the presentation of information and working to reasonably resolve their complaint.

Responding Official - The person(s) named by complainant or indicated by the record as responsible, in whole or in part, for taking or recommending the action/incident at issue in the complaint. The responding official is responsible for their active participation in the consultation and ADR efforts of the agency to attempt resolution of the complaint. In some situations, the Responding Official may also be the Resolving Official. (See below for a description of the role of the Resolving Official)

EEO Counselor - The counselor is responsible for conducting the initial counseling with the complainant to clarify the claim and identify the issues and bases of the complaint, advise the parties of their role, rights and responsibilities, discuss the Early Intervention Program, and explain the election option. Refer complainants who elect to use an alternate dispute resolution forum to the appropriate FS Early Intervention Program manager.

The counselor is also responsible for conducting an informal inquiry, notifying and actively working with appropriate responding official(s) (RO) and the RO's servicing Employee Relations Office. Advises the RO of their rights and responsibilities to actively participate in any dispute resolution effort. Works with the parties using a variety of resolution strategies in applying the Forest Service Resolution Model to develop options for resolving the complaint. Also prepares legally sound resolution agreements consistent with agency policy (e.g., the

USDA/FS Delegation of Authority & Settlement Policy). Routinely collaborates with the Employee Relations counterpart in preparing the necessary justification to accompany settlement proposals.

EIP Program Manager - This person serves as the provider of ADR services, typically mediation. The EIP Manager, when contacted by the EEO Counselor about an ADR election, will take the lead in arranging for the mediation. This will include discussing ADR with the Responding Official (RO), obtaining the RO's concurrence to participate in ADR, and contacting all involved parties with the arrangements for the mediation. The EIP Manager may secure mediation from any of the following sources: contract mediator; Federal Executive Board neutral; another USDA agency; FS EIP mediator; an EEO Counselor who was not involved in the intake and inquiry on the particular case. Upon completion of the ADR process, the EIP Manager will coordinate with the EEO counselor to insure that the any settlement agreement meets EEO requirements or notify the counselor that resolution was not reached.

Employee Relations (ER). ER actively works with the responding and resolving officials and the counselors during the precomplaint/informal process to develop and ensure settlement options comply with applicable agency policies, Federal Regulations, and law. Also serves as the point of contact for the counselors (pre-complaint) and complaint investigators (formal complaint) to provide human resources technical advice relevant to the case. In formal complaints, applies the FS Resolution model and works with the parties to develop resolution options. Will prepares legally sound resolution agreements along with necessary justification statement. Normally, represents the agency in third party proceedings.

Representatives of the Parties. Rules, regulations, and law define their roles. Complainant is entitled to representation as long as that representative's interest and/or position is not in conflict with their role (e.g. a current HRM/CR employee). The responding official may have his or her own representative who is not provided by the agency. The resolving official receives technical advice from an Employee Relations/Human Resource Management specialist.

Resolving Officials. Agency management officials are FS employees with the delegated authority to settle complaints of discrimination within the authority issued in the USDA/FS Settlement Policy. The Resolving Official may be the responding official if that person has the authority to resolve the matter in dispute. Resolving officials are encouraged to use ADR to resolve complaints.

Technical Representatives. ER and CR Specialists who provide advice to the parties during mediations, on a variety of issues.

Agency Representative. An agency official, typically an ER Specialist, who represents management's interests in resolution of the dispute.

DECISION POINTS FOR EACH PARTY BUILT IN TO THE PROCESS:

In the Forest Service, ADR services are provided through the Early Intervention Program (EIP). The use of ADR in lieu of traditional counseling is voluntary by both parties (i.e. the complainant and responding official). By regulation, the counselor must advise the parties of the availability of ADR services during the precomplaint/informal stage of the process. If ADR is elected, the precomplaint/informal stage is automatically extended to 90 days starting from the date of contact with the EEO Counselor. It should be noted that the agency and the complainant could agree, in a settlement, that the agency may pay attorney's fees for precomplaint/informal process representation in accordance with 29 C.F.R. 1614.501 (e). There is no prohibition on agencies paying precomplaint/informal attorney's fees.

While the emphasis will be on face-to-face mediation as the primary ADR vehicle, the EIP manager can use other methods as appropriate.

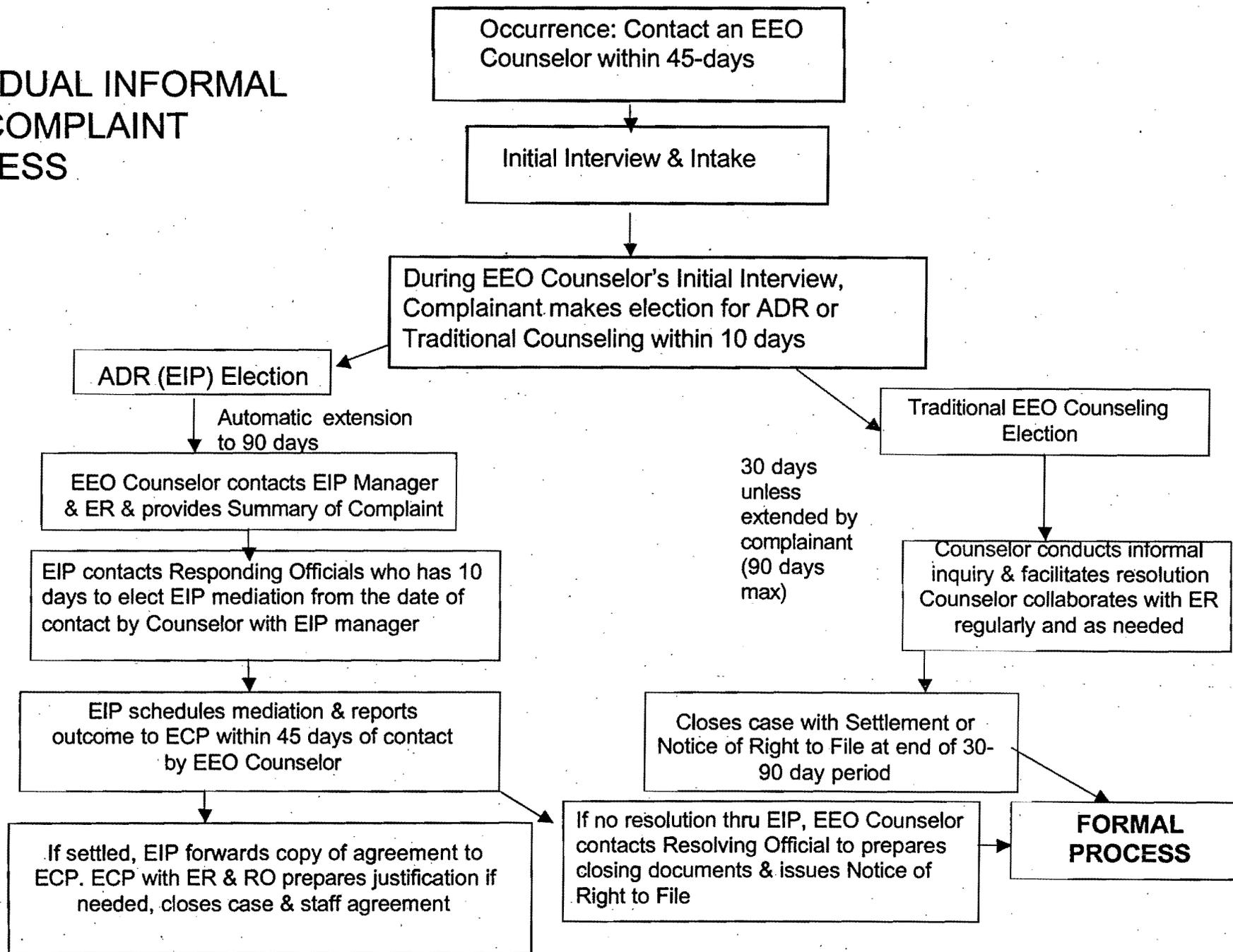
Since ADR is voluntary, the Complainant may choose not to use EIP services, elect traditional counseling, and/or file a formal complaint at the end of the initial 30-day period. The agency responding official may elect not to engage in ADR based on an application of the FS Resolution Model. ADR is also available to the parties at the formal complaint stage.

The Department assumes responsibility for adjudication of the complaint once it is formal. The Department's Office of Civil Rights will notify the complainant and the Agency of accepted claims and obtain an investigation of those claims. The Department encourages employees and agencies to formally and/or informally resolve claims and problems of complainants at any stage of the complaint process.

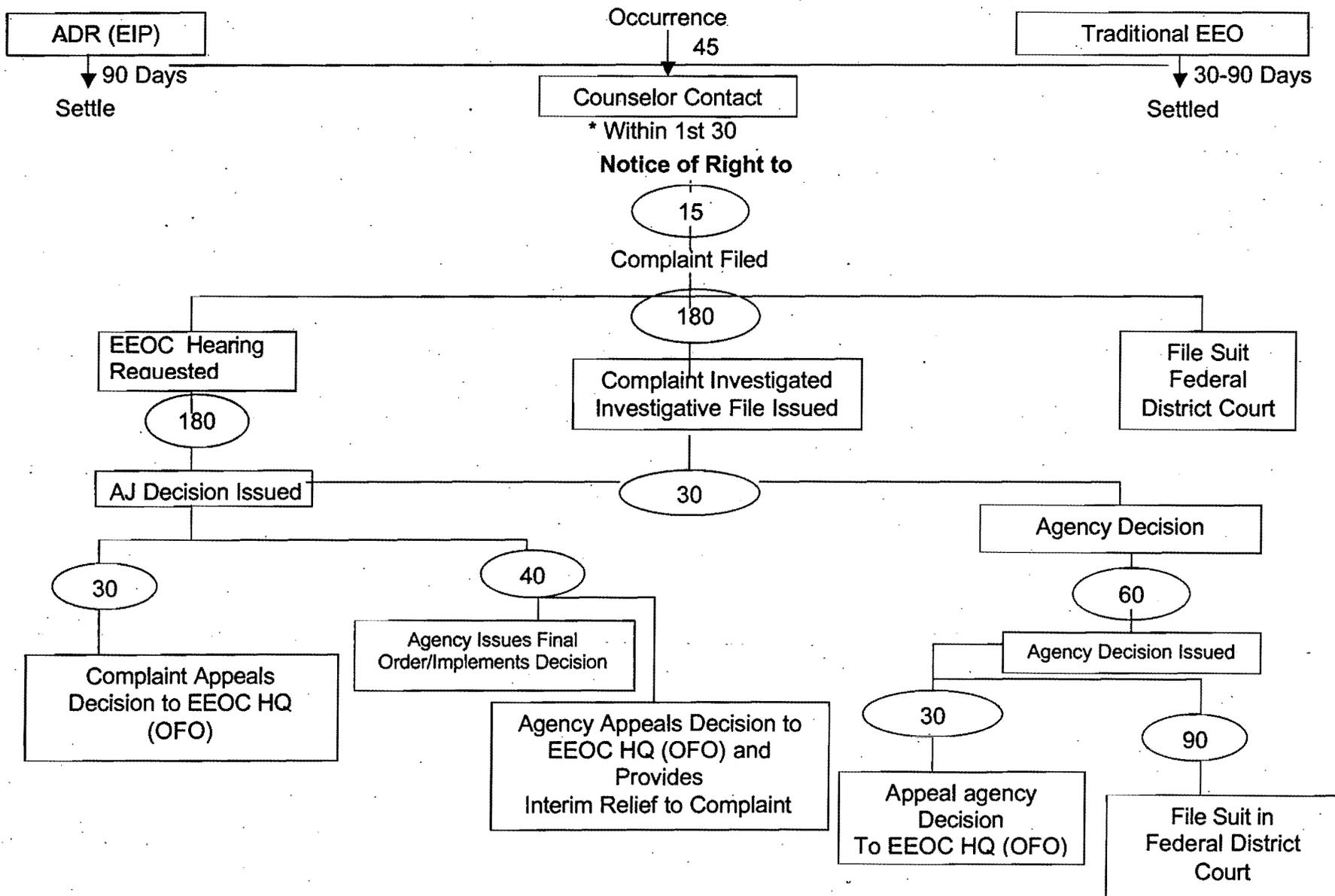
Settlement guidelines and resources

The Forest Service has issued supplemental guidance in light of the Department's latest instruction regarding complaint settlements. EEO settlements must have the legal authority applicable to the laws/regulations governing the type of discrimination alleged. (See Delegation of Authority Guidance at Exhibit 4.

INDIVIDUAL INFORMAL EEO COMPLAINT PROCESS



Individual EEO Complaint Process



* If agency doesn't implement or appeal the decision, it becomes final, and is enforceable by EEOC

ADMINISTRATIVE GRIEVANCE SYSTEM (AGS)

Description of the Process

Purpose and Use:

The purpose of the Administrative Grievance Process (AGS) is to facilitate the expeditious processing of grievances through a fair, equitable, and simple procedure.

Statutory/regulatory/policy basis:

Regulations and guidance can be found in USDA Personnel Manual Chapter 771 (May 1993), Title 5 Part 771, Code of Federal Regulations (CFR), and in other related issuances.

Who can use:

This grievance system applies to all Forest Service employees who are not included in an exclusively recognized bargaining unit. Bargaining unit employees are covered by their applicable negotiated grievance procedures.

What can be resolved through the AGS?

This process applies to any matter of concern or dissatisfaction relating to the employment of an employee, which is subject to the control of agency management. Employees should be encouraged, and managers/supervisors should be receptive, to having these concerns addressed through the Early Intervention Program. There are however, a number of matters that are specifically excluded from coverage under the AGS. They include:

1. Contents of established agency regulations or policy;
2. Matters grievable by a bargaining unit employee under their applicable Negotiated Grievance Procedure (NGP);
3. Matters in which the employee is entitled to file an appeal or other formal challenge for which the following organizations have authority to grant a remedy: Merit Systems Protection Board (MSPB), Office of Personnel Management (OPM), Federal Labor Relations Authority (FLRA), or Equal Employment Opportunity Commission (EEOC);
4. Nonselection for promotion from a group of properly rated and certified candidates;
5. Failure to receive a noncompetitive promotion;
6. A proposed action that, if effected, would entitle the employee to grieve or appeal;
7. Termination of a probationer;
8. The substance of performance elements or standards;
9. The granting or failing to grant an award, or its amount;
10. The termination or expiration of a time limited (e.g. temporary) appointment.

What comprises an administrative grievance and the timeframes associated with the process?

The employee presents a timely, informal grievance to his/her supervisor either orally or in writing within 15 calendar days of the date of the event causing the grievance, or the date the employee became aware of the event. The supervisor either forwards the grievance to the official who has authority to address the grievance or retains control of the case or determines whether it is possible to resolve the grievance through corrective action, clarification, or other actions at the informal stage.

If the grievance cannot be resolved, the supervisor issues a memorandum describing the informal grievance, the resolution efforts, and the proper procedures for filing a formal grievance, including the name of the designated agency official with which it should be filed. If the grievance is not resolved or rejected, the designated agency official issues a proposed disposition within 90 calendar days after the date the grievance was presented by the employee. The proposed disposition contains:

- a. The agency's position on the grievance issues and whether any corrective actions will be taken;
- b. The employee's right to request a final decision by the Chief, with or without referral to the USDA - Office of Human Resources Management (OHRM) for a grievance examiner;
- c. The timeframe to initiate a final decision request (10 days from receipt of the proposed disposition);
- d. A statement that the proposed disposition will become the USDA's final decision unless the grievant files a timely request for review.

Whom to contact for information and to initiate the process

The grievance should be presented to the grievant supervisor. For information concerning the processing of a grievance under the administrative grievance process, contacts should be directed to the grievant servicing personnel office.

Roles of responsible parties

Grievant - he/she is expected to initiate a timely grievance, and articulate (orally or in writing) the matter being grieved, and the relief being sought. If represented, the grievant is expected to designate their representative in writing and notify the supervisor or designated official processing the grievance.

Supervisor - receives and /or refers the grievance to the management official having the authority to accept the grievance and resolve the matter at issue. Writes or ensures the writing of the memorandum closing the informal stage.

Designated agency official - the authorized management official who accepts or rejects the grievance, admits or disallows representatives, adjudicates the matter, and who issues a proposed disposition.

Employee's representative - may be a Forest Service employee who accompanies, represents, and advises the grievant. Designation must be in writing by the grievant. Both the grievant and representative shall be granted a reasonable amount of official time to present the grievance if otherwise on duty. The designated representative may be disallowed in writing if management determines the representative would:

- a. Be in a position of which there is a conflict of interest;
- b. Be required to perform other priority work for the agency; or,
- c. Give rise to unreasonable delays in the processing of the grievance and/or unreasonable costs to the agency.

Washington Office, Labor-Management, Employee Relations & Performance Branch (WO-LMERP) - Receives and processes grievances for either a decision by the Chief or referral to the USDA Office of Human Resources Management for review by a grievance examiner.

USDA-OHRM Grievance Examiner - Receives and adjudicates unresolved grievances referred by the WO-LMERP Branch, issuing a recommended decision for final action by the Chief.

Chief (or designee) - issues final agency decision on grievances, or acts on recommendations made by the USDA-OHRM Grievance Examiner.

Decision points for each party built into the process

All involved parties are encouraged to consider using the Early Intervention Program early in the process of dealing with the grievance. Of course, EIP could be used at any stage, informal or formal, if the parties so choose. Supervisors must ascertain whether they have the authority to address grievant concerns, and if not, refer the grievance to someone who can.

Settlement guidelines and resources

Any grievance resolution must be legal and in compliance with agency regulations. Those resolving administrative grievances are encouraged to contact Human Resources to assure regulation compliance.

Administrative Grievance System

- EIP may be used before informal grievance is filed. Grievance time lines may be extended at any point by mutual agreement.

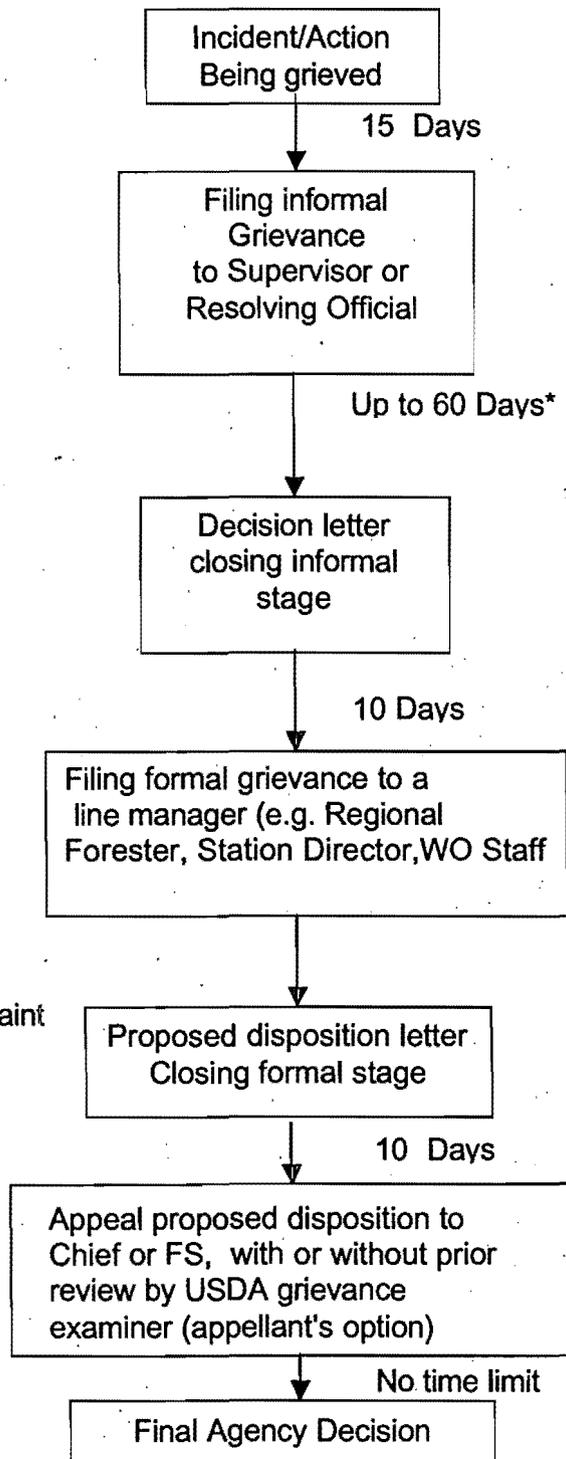
EIP may be used during informal stage to resolve grievance issues.

Under AGS agency has up to 90 calendar days to complete both informal and formal stages. Extension of time lines available by mutual agreement.

EIP may be used during formal stage to resolve grievance issues

Up to 90 Days
From filing of
Informal complaint

EIP may be used during the appellate stage of the grievance process up to when ever a final agency decision is issued



NEGOTIATED GRIEVANCE PROCEDURE (NGP)

Description of the Process

Purpose and Use:

The purpose of the Negotiated Grievance Procedure (NGP) is to provide the expeditious processing of grievances through a fair, equitable, and simple procedure. For those employees represented by the National Federation of Federal Employees (NFFE), the NGP is contained in Article 9 of the Master Agreement between Forest Service and NFFE-Forest Service Council and is summarized in this Guide.

Note: It is recognized that there are labor-management agreements between the Forest Service and other Unions at the Local level (i.e. American Federation of Government Employees and the National Association of Government Employees). Those employees represented by one of these labor organizations are covered by NGP procedures found in their respective contracts.

Statutory/regulatory/policy basis:

The controlling statute can be found in 5 USC, Chapter 71, Subchapter 3, Section 7121 of the Federal Service Labor-Management Relations Statute.

Who can use:

Any bargaining unit employee covered by a negotiated grievance procedure.

What can be resolved through the NGP?

Any matter related to employment if grievance is filed by a labor organization or bargaining unit employee can be addressed through the NGP. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment may also be addressed. Finally, the effect or interpretation of the collective bargaining agreement or a claim of breach of the contract may be grieved. Bargaining unit employees are encouraged to consider the assistance of the Early Intervention Program (EIP). They should consult with their union officials and labor relation's specialists regarding the use of EIP and the possibility of holding grievance timeframes in abeyance when using EIP.

Some matters are not subject to being grieved under the NGP. The grievance procedure does not apply to issues related to:

1. Any claimed violation of 5 USC Chapter 73, Subchapter III, relating to prohibited political activities (Hatch Act);

2. Retirement, life insurance, or health insurance;
3. A suspension or removal under 5 USC 7532 (national security reasons);
4. Any examination or certification administered by Office of Personnel Management;
5. Appointments;
6. The classification of any position that does not result in the reduction in grade or pay of an Employee;
7. Reduction-in-force or furloughs of more than thirty days;
8. Separations during a probationary or trial period;
9. Separation or reduction in grade taken against specific employees who have no statutory right to appeal those adverse personnel actions to MSPB;
10. Bills of collection issued to employees that are covered by special process in Article 22, Section 9 of the Master Agreement;
11. Collections from accountable officers; or,
12. Determination of exempt/nonexempt status and claims for compensation under the Fair Labor Standards Act.

What comprises a negotiated grievance? [This applies to the NFFE Master Agreement only]

The grievance process is comprised of three steps:

Step 1: The grievance is submitted in writing by the grievant or union representative to the first level line manager or equivalent staff (e.g. District Ranger, Job Corps Center Department Head, ROWO Group Leader/Branch Chief, Station Project Leader/Group Leader etc.).

Step 2: If the grievant is not satisfied with the Step 1 decision, then the grievant or union representative may elevate the grievance in writing to the appropriate management official (e.g., Center Director, Forest Supervisor, Staff Director, Assistant Director, etc.).

Step 3: If the grievant is not satisfied with the Step 2 decision, then the grievant or union representative may elevate the grievance in writing to the appropriate management official: Regional Forester, Job Corps Field Office Director, Deputy Chief for Business Operations, or Station Director or Director, Forest Products Laboratory.

Timeframes associated with the process

Step 1: The grievance must be filed within 30 calendar days of the incident or reasonable awareness of the incident. The decision will be sent or delivered within 21 calendar days from the date the grievance is received.

Step 2: The grievance may be elevated to the next level within 21 calendar days after receipt or delivery of the Step 1 decision. The Step 2 decision will be sent or delivered within 21 calendar days from the date the grievance is received by the Step 2 deciding official.

Step 3: If the grievant is not satisfied with the Step 2 decision, then the grievance may be further elevated in writing within 21 days after receipt of the decision. The final written decision will be sent or delivered within 30 days of receipt of the Step 2 decision.

An automatic 7-day extension will be granted if requested by either party and if the reason for the delay is stated. In addition, when information is requested from a party that is needed and applicable to the grievance, then an extension will be granted that equals the amount of time required to receive the requested information. As noted above under the "**What can be resolved**" section, timeframes may be adjusted to allow for use of the Early Intervention Program with the parties' concurrence.

Whom to contact for information & to initiate the process

Bargaining unit employees are to contact their Union Local. In the case of Law Enforcement and Investigations, the bargaining unit employee contacts the Local who represents the unit on which they perform the duties of their position.

Roles of responsible parties

Grievant - the grievant role is to identify the nature of the grievance, provide a summary of the issues, and present the relief requested (in writing). If the grievant elevates the grievance, then the grievant is responsible for providing this information, and also the unresolved issues and the relief requested.

Local Bargaining Unit - if the Union Local files a grievance on behalf of a bargaining unit member employee, then their role is the same as the grievant specified above. However, in addition to this role, the locals also have the obligation to represent the interests of the bargaining unit members included in the unit as a whole.

Management Official - the management official's role is to first determine whether they have the authority to grant the remedy requested. If so, then they analyze the information provided by the grievant, and then gather any additional information needed to render a decision on the grievance. If they do not have the authority, then they must promptly elevate the grievance to the appropriate level.

Personnel/Labor Relations Specialist - the role of the specialist is to provide advice and counsel to the responding management official. This may include an assessment of the nature of the grievance, the appropriateness of the remedy requested, how timeframes are established, and how grievances are elevated.

Decision points for each party built into the process

Grievant/Local Bargaining Unit: For the grievant or the Union Local, the first decision point is whether to file a grievance. Consideration should be given to use of ADR (i.e., EIP) prior to or after a grievance is filed. They must also recognize that by filing a step 1 grievance where

employment discrimination is being alleged, they are electing a dispute forum and precluding themselves from filing a formal EEO complaint on the same issue.

Under the Negotiated Grievance Procedure (NGP), the grievant must assess at the end of each step whether to elevate the grievance. The final decision point for the Union is whether to take the issues being grieved to arbitration, if a Step 3 decision has been issued. In lieu of or in addition to arbitration, the grievant may elect to pursue the grievance, which includes allegations of discrimination to the EEOC.

Responding/Resolving Official: The first decision point is after the grievance is filed. Decision points then exist when and if the grievance is elevated.

Settlement Guidelines/Resources:

Externally - There are no laws or regulations requiring either Party to settle grievances.

Internally - The Master Agreement at Article 9.4, Subsection a, and 9.6, Subsection b, encourage the parties to resolve disputes before or after a grievance has been filed, using the Early Intervention Program (EIP) or other mutually agreed ADR processes.

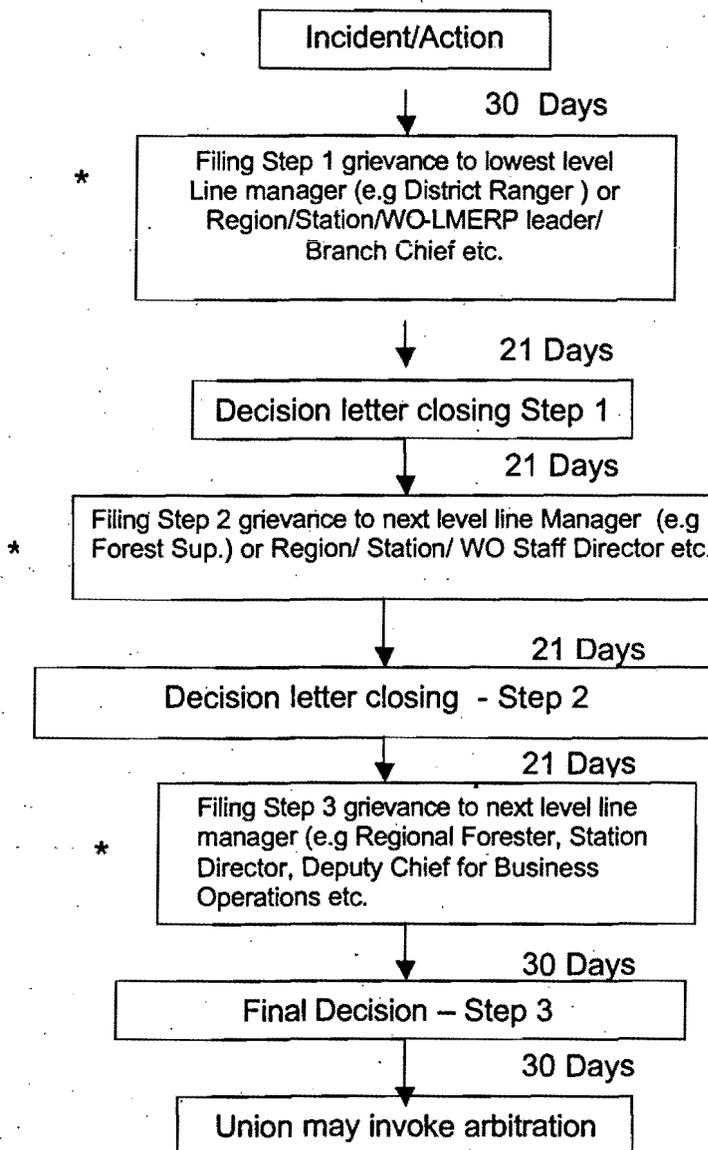
It should also be noted that at steps 2 and 3 of the NGP in Article 9.6, contract language highlights the option for the parties to use ADR to resolve the dispute.

Negotiated Grievance Process

(Article 9- Master Agreement- Employee & Union Procedure)

- EIP may be used before Step 1 grievance is filed (filing extension not available)

* EIP may be initiated and used at any step or the NGP to resolve issues. Master Agreement encourages the use of ADR. Timelines of the NGP may be extended by mutual agreement after a grievance is filed.



**MERIT SYSTEMS PROTECTION BOARD (MSPB)
(Mixed Case Appeals)**

Description of the Current Process

Purpose and Use:

The Merit Systems Protection Board's mission is to ensure that Federal employees are protected against abuses by agency management, that Executive branch agencies make employment decisions in accordance with the Merit System Principles and that Federal merit systems are kept free of prohibited personnel practices. Most Federal employees may appeal various personnel actions affecting them to the Board. The Board encourages the parties to explore settlement of issues at any time during the appeal process to obviate the need for an administrative hearing. As noted under the Timeframes section in this guide, the Board regulations extend the appeal filing time for an additional 30 days where the parties mutually agree to attempt resolution through ADR.

Statutory/regulatory/policy basis:

1. Civil Service Reform Act of 1978 (CSRA), P.L. 95-454
2. The regulatory authority for the MSPB can be found under 5 C.F.R. 1201.

Who can use

Employees who may appeal adverse actions and performance based actions are:

- A) Competitive service employees generally not serving a probationary or trial period under an initial appointment.
- B) Career appointees to the Senior Executive Service.
- C) Non-competitive service preference eligible employees with one or more years of current continuous service (i.e., employees with veterans preference.)
- D) Non-preference eligibles excepted service employees who have completed their probationary period or with two or more years of current continuous service.

The following employees generally do not have a right to appeal to the MSPB, or the rights are restricted:

- A) Probationary employees. They have very limited appeal rights. They may appeal a termination based on political affiliation or marital status and they may appeal a termination based on conditions arising before employment on the grounds that the termination was not in accordance with regulations.
- B) Non-appropriated fund activity employees.
- C) Employees serving under a temporary appointment limited to one year or less.
- D) An employee in a bargaining unit that has a negotiated grievance procedure covering any actions that may be appealed to the Board. This category of employee normally must pursue a grievance through the negotiated grievance procedure.

What can be appealed to the MSPB?

The Civil Service Reform Act authorized the Board to hear appeals of various agency actions. Most appealable matters fall into the following categories:

1. Reduction in grade or removal for unacceptable performance.
2. Removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service.
3. Separation, reduction in grade or furlough for more than 30 days, when the action was effected because of a reduction in force.
4. Reduction-in-force action affecting a career appointee in the Senior Executive Service.
5. Reconsideration decision sustaining a negative determination of competence (i.e. within grade increase denial) for a General Schedule employee.
6. Disqualification of an employee or applicant because of a suitability determination.
7. OPM determination on retirement matters.
8. Denial of restoration or re-employment rights.

An action that is appealable to the Board that also contains an allegation of employment discrimination is called a mixed case complaint or appeal. A "mixed case complaint" is a complaint of employment discrimination filed with a Federal agency based on race, color, religion, sex, national origin, age handicap, or reprisal related to or stemming from an action that may be appealed to the MSPB. The complaint may contain only an allegation of employment discrimination or it may contain additional non-discrimination allegations that the MSPB has jurisdiction to address. A "mixed case appeal" is an appeal filed directly with the MSPB that alleges that an appealable agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, handicap, or age.

What comprises an MSPB appeal?

The employee first timely notifies an MSPB Regional or Field Office of his/her intent to appeal the agency action, by completing and submitting the agency supplied appeal form. Included is a designation of representative form that the appellant must complete if they have representation. The Board makes a preliminary ruling on the issues of timeliness and jurisdiction, and accepts or rejects the appeal.

Timeframes associated with the process

Appeals, including Mixed Case Appeals, filed directly with the MSPB.

The appeal must be filed within 30 calendar days of the effective date of the action, if the notice of the action sets an effective date. (If the 30th day falls on a Saturday, Sunday, or Federal holiday, the filing deadline is extended to the next working day) In the case of actions that do not set an effective date (e.g. OPM retirement determinations, denial of within grade increase) the appeal must be filed within the time specified in the Board regulations. The date of filing by mail is considered to be the postmark date. The date of filing by fax is considered the date of the fax.

The Board regulations at 5 CFR 1201.22(b)(1) extend the 30 day filing time limit by an additional 30 days, for a total of 60 days, where an appellant and an agency mutually agree in writing to attempt to resolve their dispute through an ADR process.

Once an initial decision of a Board administrative judge has become final, or the Board has issued a final decision on a petition for review, the appellant can seek review of the final decision in the U.S. Court of Appeals for the Federal Circuit or, in cases involving allegations of discrimination, in the appropriate U.S. district court. The request must be filed within 60 days of receipt of the Board's final decision.

In cases appealable to the Board that involve allegations of discrimination the claimant may ask the EEOC to review the Board's final decision on the discrimination issue. If the EEOC disagrees with the Board's decision on the discrimination issue, the case is returned to the Board. If the Board does not adopt the EEOC decision, then the case is referred to the Special Panel made up of a Chairman appointed by the President, one member of the Board and one EEOC commissioner. The Special Panel issues the final decision in the case, which then may be appealed to the appropriate U.S. district court.

Mixed Case complaints filed at the agency.

If an employee elects to file a mixed case complaint, the agency must process the complaint in the same manner as it would any other discrimination complaint, including use of the precomplaint process. If after the precomplaint stage has ended and the complaint is accepted for processing as a formal complaint, the agency (USDA-Office of Civil Rights) is obligated to:

1. advise the complainant that if a final decision is not issued within one hundred and twenty days of the date of acceptance of the complaint, the complainant may appeal the matter to the MSPB at anytime thereafter, as specified in 5 CFR 1201.154(a), or may file a civil action as specified in section 1614.310(g), but not both;
2. notify the complainant that if (s)he is dissatisfied with the agency's final decision on the mixed case complaint, (s)he may appeal the matter to the MSPB (not the EEOC) within thirty (30) days of receipt of the agency's final decision; and,

3. advise the complainant of the right to appeal the matter to the MSPB (not EEOC) within thirty (30) days of receipt of the notice, and/or the right to file a civil action as provided in section 1614.310(a).

Whom to contact for information & to initiate the process

Filing an Appeal Directly to the Board

An individual wishing to file an appeal directly to the MSPB should file the appeal in writing with the Board or field office serving the area where their duty station was located when the action was taken. MSPB regional and field offices and the areas they service are listed in Exhibit 5)

Mixed Case Complaints Filed at the Agency

An individual wishing to file a mixed case complaint with the Agency should contact an EEO Counselor at their designated Employment Complaints Process Service Center (see ECP section of this Guide), within 45 days of the alleged discriminatory appealable matter for 30 days of informal counseling.

Roles of Responsible Parties

Appellant - Initiates a timely appeal with the MSPB clearly stating the action being appealed, any violations being raised, the relief being sought, and if represented, the designation of whom that representative is to the MSPB and the Agency. Notifies the Agency if the ADR option is elected and resulting extension is requested.

If pursuing a mixed case complaint, complainant must initiate contact with EEO counselor within 45 days of when the alleged discriminatory appealable matter occurred.

Agency Representative: Represents the agency in discussions with appellant and administrative judge, acting as the legal advocate during the appeal process, and collaborating with management on ADR and resolution. Must make contact with EIP manager to discuss ADR.

Deciding Official - Makes the decision, which resulted in the appealable action. Also makes determinations on offers of resolution. Ensures that agency has provided employee with MSPB appeal form and MSPB regulations at the time an appealable action is taken.

Employee's Representative - This person could be a Forest Service employee, or may be an outside party such as an attorney. The appellant may also choose to represent himself/herself. Designation must be in writing by the appellant.

EEO Counselor - Offers complainant the ADR option. Coordinates with EIP Manager and HR Employee Relations Specialist on mixed case complaints. Conducts 30 days of informal counseling.

Issues right to file formal complaint where appropriate. Where an aggrieved person files an MSPB appeal on a mixed case complaint, and seeks timely informal counseling, counseling may continue at the option of the parties as specified in regulations. The agency must terminate counseling and all efforts under the EEO process, with the issuance of the notice of right to file a formal complaint.

The Counselor will advise the complainant of their right to elect the forum in which the matter will be handled and advise the complainant that whichever avenue is used first will be considered their election of forum.

USDA-Office of Civil Rights - Must inform the complainant that if a final decision is not issued within 120 days of the date of filing the mixed case complaint, the complainant may appeal the matter to the MSPB at anytime thereafter. Notifies the complainant that if they are dissatisfied with the agency's final decision on the mixed case complaint, they may appeal the matter to the MSPB (not EEOC) within thirty (30) days of receipt of the agency's final decision. Advises the complainant of their right to appeal the Agency's final decision on a mixed case complaint to the MSPB (not EEOC) within (30) days of receipt of the notice, and/or the right to file a civil action.

Decision points for each party built into the process

The appellant can decide at any time when faced with the prospect of an agency action being taken against him/her, or after an action is taken, whether to seek ADR through the Early Intervention Program. There is no guarantee that ADR will occur, however, as it is a voluntary election on the part of the agency as well as the employee. The employee must decide whether to file an appeal with the Board, and if so, if he/she believes it to be a mixed case, to contact an EEO Counselor. The employee must decide whether to seek resolution prior to a hearing, possibly by electing the ADR option, and finally, if it is a mixed case, he/she must elect the forum in which to proceed.

The deciding official/agency representative must decide whether to offer mediation (ADR) through the EIP, whether to seek resolution prior to a hearing, and whether to pursue the agency's case through an MSPB, and, if applicable, a Petition for Review.

Settlement guidelines and resources

An option for using ADR to assist in mutually agreed to settlement efforts is now included in the Board's regulations as noted above in the Timeframes section. The MSPB Administrative Judge may also attempt to encourage use of ADR and settlement prior to a hearing.

EIP is available for use in accordance with Forest Service Guidelines and applicable Regional/Station/WO program policies. In the area of appealable actions, the use of EIP must be carefully evaluated.

Exhibit 5

MSPB REGIONAL OFFICES

Atlanta Regional Office
401 W. Peachtree Street, N.W.
Suite 1050 Atlanta, GA 30308
(401) 730-2751
Alabama, Florida, Georgia, Mississippi, South Carolina, and Tennessee

Central Regional Office
230 South Dearborn Street
Room 3100
Chicago, IL 60604
(312) 353-2923
Ill, Indiana, Iowa, Kansas City, Kansas, Kentucky, Michigan, Minnesota, Missouri, Ohio,
and Wisconsin

Dallas Field Office
1100 Commerce Street
Room 6F20
Dallas, TX 75242
(214) 767-0555
Arkansas, Louisiana, Oklahoma, and Texas

Northeastern Regional Office
U.S. Customhouse, Room 501
Second & Chestnut Streets
Philadelphia, PA 19106
(215) 597-9960
Delaware, Maryland (except the counties of Montgomery and Prince George's) New
Jersey (except the counties of Bergen, Essex, Hudson, and Union), Pennsylvania, and
West Virginia

Boston Field Office
99 Summer Street
Suite 1810
Boston, MA 02110
(617) 424-5700
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

New York Field Office
26 Federal Plaza
Room 3137A
New York, NY 10278

(212) 264 -9372

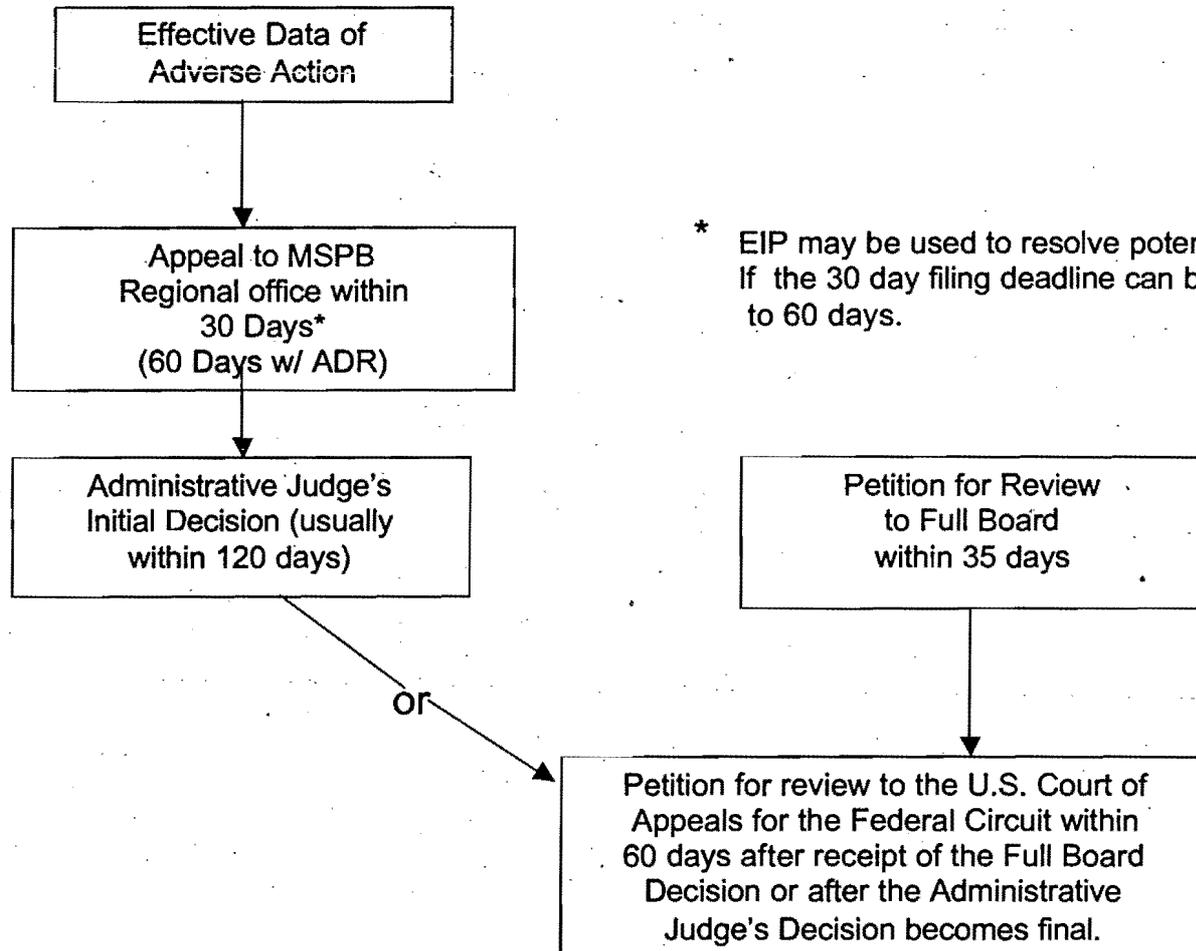
New Jersey (counties of Bergen, Essex, Hudson, and Union), New York, Puerto Rico, and Virgin, and all overseas areas not otherwise covered.

Western Regional Office
250 Montgomery Street
Suite 400, 4th Floor
San Francisco, CA 94104
(415) 705-2935
California and Nevada

Denver Field Office
12567 W. Cedar Dr.
Suite 100
Lakewood, CO 80228
(303) 969-5101
Arizona, Colorado, Kansas (except Kansas City), Montana, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Wyoming

Seattle Field Office
915 Second Avenue
Room 1840
Seattle, WA 98174
(206) 220-7975
Alaska, Hawaii, Idaho, Oregon, Washington, and Pacific overseas areas

"Mixed Case" Adverse Action Appeal To The MSPB



* EIP may be used to resolve potential appeals. If the 30 day filing deadline can be extended to 60 days.

USDA-INSPECTOR GENERAL HOTLINE COMPLAINT

Description of the Current Process

Purpose and Use:

The USDA-Inspector General Hotline Complaint Process provides a relatively fast and secure way for individuals to report violations of law and regulations. Those using the Hotline are informed that their complaint can be made anonymously or that they may request confidentiality.

Statutory/regulatory/policy basis:

Inspector General Act of 1978, Public Law 95-452

Who can use

Employees of the federal government

What can be called into the Inspector General Hotline?

Any matter having to do with: criminal activity, conflict of interest, bribery, employee misconduct, fraud (submission of false claims/statements), misuse of grant or contract funds, mismanagement/waste of funds, and/or actions endangering the public health or safety.

What comprises a Hotline complaint?

Those contacting the Hotline are expected to provide as much detail of the law or regulation violation as possible.

Timeframes associated with the process

There are no specific timeframes for reporting violations of law and regulations. However, Forest Service Regulations require employees to timely report what they know or have a reasonable basis to believe are violations of law or regulations. (See FSM 5320.42 - .43, FSM 5304.7, USDA-OHRM Personnel Bulletin 735-1, Section 725-211)

Whom to contact for information & to initiate the process

Individuals may either call the USDA Office of the Inspector General at 1-800-424-9121 or write United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026-3399.

A Hotline Complaint may be filed with the Inspector General (IG) or with Law Enforcement & Investigations (LE&I) in the Washington Office, U.S. Forest Service. The IG refers complaint

to LE&I - WO. The IG normally expects the Forest Service to complete its investigation and report on follow up to be taken within 90 days of case referral.

LE&I - WO refers those complaints which contain allegations of employee misconduct to the Washington Office - Human Resources Management (Labor-Management, Employee Relations and Performance Branch) for review and initial assessment and determination on the type and scope of the inquiry or investigation that is warranted. Complaints alleging program mismanagement not involving employee misconduct are referred to the appropriate WO Deputy Chief areas for inquiry.

WO-HRM refers complaints for inquiry or administrative investigation to certified Forest Service Misconduct Investigators or FS contracted investigators. Referrals are typically made to the FS Region or Station Human Resources Management Director where the allegation arose.

Inquiries or investigations are normally completed within 60 days, with Reports of Investigations submitted to WO-HRM, along with Region or Station HR Director recommendations regarding administrative action that may be warranted. HRM reviews the Report of Investigation (ROI). If WO-HRM concurs with the Region or Station HR recommendations, the ROI and HRM Director's recommendation to close out complaint are sent to WO-LE&I. If further information or action is necessary, the Region or Station is notified and instructed to provide it.

Complaint remains open if administrative action is pending, until such action is complete. Once the complaint is closed out, the investigating Region or Station notifies subject of complaint.

Decision points for each party built into the process

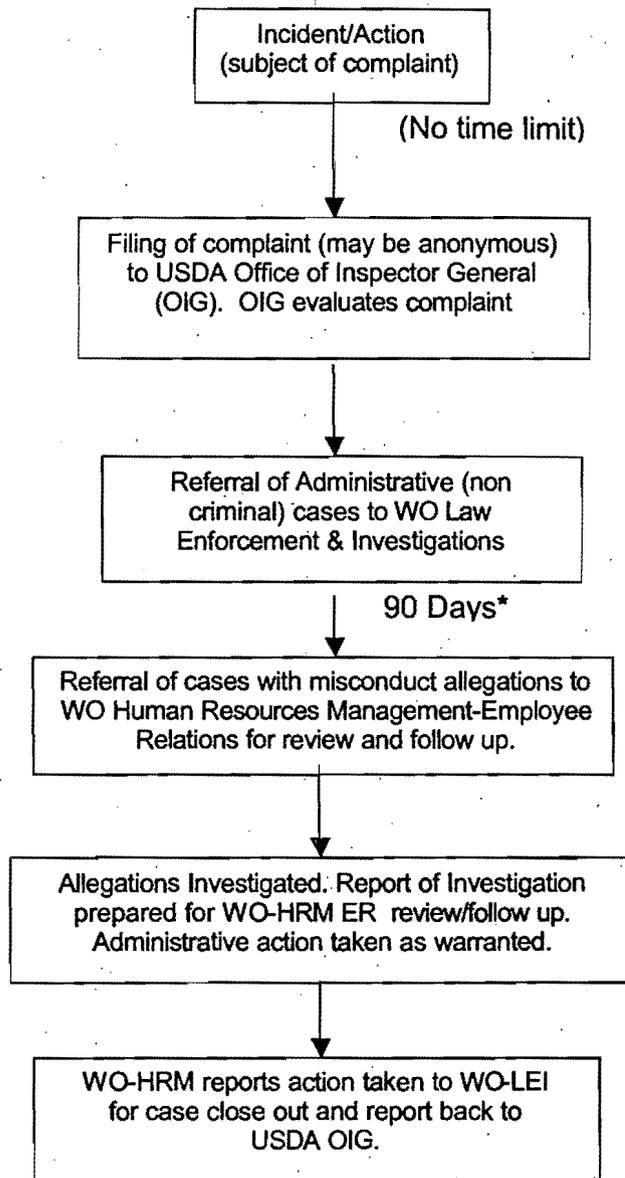
There are no points of collaboration or consultation so this process does not lend itself well to ADR. ADR (EIP) could conceivably play a role in addressing any conflict that surfaces or is uncovered as a result of the investigation or factfinding. ADR could be used by an employee against whom disciplinary action is taken as a result of an investigation, in conjunction with resolving a grievance, appeal or complaint they might initiate.

Hotline Complaint Process

- EIP may be used to prevent hotlines by offering forum for parties to openly discuss/ resolve concerns that are perceived as being mismanagement, waste or abuse of agency systems.

- * Forest Service has 90 calendar days to process hotline complaint and report action taken to USDA OIG

- EIP may be used to resolve issues arising from grievances or appeals filed in response to administrative action taken.



Whistleblower Complaints
filed with the U.S. Office of the Special Counsel (OSC)

Description of the Current Process

Purpose and Use:

The Whistleblower process provides a means for employees to safely report any violation of law, rule or regulation to a body that is outside the USDA.

Statutory/regulatory/policy basis:

1. Civil Service Reform Act of 1978
2. P.L. 95-454 (5 USC 3324, 5 USC 7321, 5 USC 552, 5 USC 1207 and 1208)
3. Whistleblower Protection Act of 1989 and as amended in 1990 PL 101-12, (5 CFR Chapter II 1209 and 5 CFR Part 1201), and the Hatch Act
4. Office of Special Counsel (5 USC 1212(e), 5 CFR 1800)
5. Prohibited Personnel Practices (P.L. 95-454 Title I Section 101 and 5 USC 2302).

Who can use

Any employee, former employee, and applicant for employment can use the Whistleblower process.

What information can be disclosed in a Whistleblower Complaint

This process applies to any alleged violation of law (including Prohibited Personnel Practices and Hatch Act violations), rule, or regulation; gross mismanagement; gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.

What comprises a Whistleblower Complaint?

Disclosure of any of the items listed in the above information section.

Timeframes associated with the process

There are no defined timeframes when filing a disclosure Whistleblower Complaint. On filing a Whistleblower appeal of actions directly appealable to the Merit Systems Protection Board, the timeframes are the same as filing directly with the Board, i.e. 30 days.

Whom to Contact for Information and to Initiate Process

Office of the Special Counsel 1-800-872-9855, or write to them at the U.S. Office of Special Counsel, 1730 M Street, N.W. Suite 300, Washington, D.C. 20036-4505.

Roles of responsible parties

Office of Special Counsel - receives information and determines if further inquiry is warranted, investigates and prosecutes allegations of Prohibited Personnel Practice, seeks corrective action or may seek disciplinary action from and through the Merit Systems Protection Board, and issues written decisions and written notice to whistleblowers.

Agency Head - receives information and must conduct investigation on disclosure items. Agency must also take appropriate action on information received in investigation.

Settlement guidelines and resources

Information discovered during investigations could result in disciplinary action. ADR may be used by an employee against whom disciplinary action is taken as a result of an agency investigation, in conjunction with resolving a grievance, appeal, or complaint they initiate.



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Administration

Office of
Civil Rights

1400 Independence
Avenue SW

Washington, DC
20250

DECISION MEMORANDUM FOR THE SECRETARY

THROUGH: Paul W. Fiddick *Paul W. Fiddick* Assistant Secretary
for Administration

August Schumacher *August Schumacher*
Under Secretary
Farm & Foreign Agricultural Services

FROM: Rosalind D. Gray *Rosalind D. Gray*
Director
Office of Civil Rights

Keith Kelly *Keith Kelly*
Administrator
Farm Service Agency

SUBJECT: County Committee Election Procedures

ISSUE:

Amend current regulations governing the election of county committees.

DISCUSSION:

Current regulations governing the election and operation of county committees, found at 7 C.F.R. Part 7, predate the 1994 reorganization statute. See 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. § 590h(b)(5)), as amended by Section 227 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. These regulations must be amended to reflect the 1994 reorganization act, to increase participation, and to ensure fair elections consistent with principles embodied in the Voting Rights Act and other laws that require fair and impartial elections.

RECOMMENDATIONS:

The following changes are recommended:

1. Eliminate community committees currently authorized in 7 C.F.R. § 7.2.
2. To ensure that only eligible voters participate in the election of county committee members, there must be routine purging of voter lists. For example, a person who fails to vote in two successive county committee elections for their LAA or who has not participated in farm program activity for five years, should be removed from the registration list. For election year 1996, FSA-681 reported that there were 1,760,310 female eligible voters and 3,938,795 male eligible voters, for a total of 5,699,105 eligible voters in the country, exceeding the number of farmers by approximately 3-1. The same form 681 indicated there were 2,050,947 eligible voters in open local administrative areas. A total of 354,800 ballots were cast in open local administrative areas or about 17 percent of eligible voters.

FSA will implement a program to purge its voter lists for county committee elections. An otherwise eligible producer will remain on the eligibility list when the producer participated in one of the last two elections or participated in FSA activity over the last three years. To assist in updating the FSA database for county committee elections, FSA shall contract a management audit firm.

FSA and CR shall select a management consulting firm to audit the eligible voters list, and to make recommendations for new modified procedures for maintenance of the list of eligible voters. The contracted auditing firm will report to the Secretary of Agriculture and recommend modifications as evidenced by the audit to provide fair election procedures. The database and racial and geographical profiles will be analyzed to determine if the local administrative area have a disparate impact on minority and women voters. Local administrative areas will be reviewed by SEDs and STCs before every COC election until the audit has been conducted to ensure fairness for all producers. When the SED and STC determine that a designated local administrative area dilutes the impact of minority votes then the SED and STC shall modify the boundaries of the local administrative area to ensure fairness for producers. Until the audit is complete and new local administrative areas are designated by the Secretary, all eligible producers in a county shall fully participate in the current election process of county committee members.

3. The most effective method to ensure that only eligible producers participate in elections is to require voter registration. A voter registration form for county elections will be developed by the Department for approval by OMB. FSA will continue to purge its eligibility lists but will also contract a management audit firm to review its elections procedures and to make recommendation to the Secretary regarding incorporating a registration system for voting.
4. The voter registration form must be developed in such a way that a farmer who "checks the correct boxes" is determined an eligible voter.
5. Streamline and improve the nomination process by: (1) eliminating the requirement that a person who desires to run for a county committee position acquire names on a petition; (2) allowing eligible voters, including county committee members, who desire to run for a county committee slot to "nominate" himself/herself by filling out a nomination form; (3) eliminating the current requirement of 4 persons running per county committee seat (if only one person runs, that person wins); (4) prohibiting county committees, community committees, and local office personnel from submitting nominations; and (5) requiring that nominations be submitted and signed by eligible voters willing to serve, or signed by an eligible community based organization, as described in the 1994 reorganization act, provided the farmer so nominated signs the form indicating a willingness to serve if elected.
6. An eligible voter should be defined as follows: "Any person, regardless of race, color, religion, sex, age, or national origin, who has an interest in a farm as

owner, operator, tenant, or sharecropper and who is of legal voting age in the State in which the farm is located, and any person not of such legal voting age who is in charge of the supervision and conduct of the farming operations on an entire farm, shall be eligible to vote for direct election of county committee members or community committee members if such person is eligible to participate with respect to the farm in any program administered by the county committee. If two spouses or more than one person operating the same farm operation meets this requirement, then each person is an eligible voter." This definition is similar to 7 C.F.R. § 7.5, but is clearer. The regulation will be updated to provide that no one individual may vote more than one ballot. An entity would remain an eligible voter but no individual would cast more than one ballot.

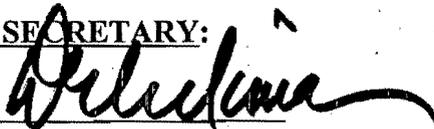
7. Only the county executive director (CED), can decide that a person is not an eligible voter. The county executive director must decide that a person is not an eligible voter within 10 days of receiving the voter registration form, or the person is considered an eligible voter. The county executive must in writing within 15 days of receipt of the registration form advise a person of the decision to declare the person an ineligible voter, and notify that person of his/her appeal rights. All decisions of ineligibility are appealable to the State Executive Director. If further appeal is necessary, it shall be to the Deputy Administrator.
8. Require that only eligible voters are nominated for a county committee seat.
9. The county executive director (CED) must conduct all aspects of the election process. The county committee will not be involved in any aspect of the conduction of the election process.
 - No eligibility decisions can be made during the week prior to the publicized date for elections to begin.
 - Any voter on the eligibility list may vote in their LAA election.
 - Producers not on the eligible list of voters at least one week before the election may not vote.
 - No documents related to the election, including ballots and disqualified ballots, may be destroyed for at least 180 days and if there is an appeal or challenge, no documents can be destroyed until all appeals or challenges are satisfied. After the election, all ballots, including disqualified ballots, must be secured for at least 180 days in the FSA County office. If an election is challenged or results appealed to a State Director or Deputy Administrator, then all documents related to that election will be forwarded to the State Director until all appeals or challenges are satisfied.
 - County ballots that are the subject of challenge shall be delivered immediately to the State Executive Director.

DECISION MEMORANDUM FOR THE SECRETARY

- Any eligible voter or community based group which serves underserved constituencies, as defined in the 1994 reorganization act, may challenge an election result or procedure to the State Executive Director with appeal to the Deputy Administrator.
 - A neutral observer shall monitor the counting of the ballot.
10. In operating the voter registration, nomination, and election processes, clearly established and distinct timetables must be established by the Deputy Administrator. The local county executives must take all steps to ensure that all potential voters receive the information. The local county executives must also work directly with local community based groups who serve underserved constituencies. This information must also be published in the Federal Register.
 11. There must be open elections reporting and monitoring of election results. FSA must report on a committee and state basis all information contained in the Election Information and Media Outreach Report. The election results and demographic data from the Election Information and Media Outreach Report must be published on FSA's website.
 12. Recognizing the problems with participation by underserved constituents, Congress in the 1994 reorganization act authorized nominations of eligible farmers by community based groups who serve underserved constituencies. The new regulations must place an affirmative requirement on the county executive to seek out and solicit nominations from local community based groups who serve underserved constituencies.
 13. The new procedures must be published in the Federal Register, providing comment period as required by the Administrative Procedure Act. Interim regulations are not advisable.
 14. The USDA Office of Civil Rights and FSA will jointly monitor election results and routinely investigate counties where there is low voter participation or low or variable participation of voters of one race compared to another.

DECISION BY THE SECRETARY:

Approve:



Disapprove: _____

Discuss with me: _____

Date:

10/11/2000

Reviewed by: _____



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

DECISION MEMORANDUM FOR THE SECRETARY

THROUGH:

Paul W. Fiddick
Assistant Secretary
for Administration

OCT 6 2000

FROM:

Rosalind D. Gray
Director
Office of Civil Rights

SUBJECT:

Management and Diversity Training for Department of
Agriculture (USDA) Supervisors

ISSUE:

Provide management and diversity training for all USDA supervisors.

DISCUSSION:

Employees in the listening sessions have identified the need for all supervisors to participate in training, to include personnel and conflict management, to enhance their ability to define and better manager diversity.

During the listening sessions, every employee group identified the need for managers to be trained in diversity, recruitment, hiring, alternative dispute resolution (ADR), conflict management, and effective communication with employees concerning workforce profiles. The Office of Civil Rights will lead this initiative by providing, during the months of October and November, diversity training to more than 600 managers in the Washington, D.C., metropolitan area. The need for training is identified by employees and supported by managers. Every agency can enhance its operations and improve its relations to its employees by enhanced management skills.

Goals of the training are to:

- increase awareness of equal employment opportunity laws;
- prevent illegal discrimination and/or harassment in the workplace;
- increase understanding of how diverse perspectives can improve organizational performance;

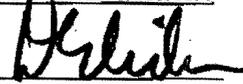
DECISION MEMORANDUM FOR THE SECRETARY

- improve workplace relations and build more effective work teams;
- improve organizational problem-solving;
- improve service to customers;
- increase managers' awareness of personnel requirements for recruitment and hiring;
- encourage early identification of conflict;
- improve conflict management skills, and
- increase awareness and use of ADR.

RECOMMENDATION:

Each mission area will develop a comprehensive and mandatory management training program to include diversity, fair personnel processes, conflict management, and ADR, and to provide this training to all managers before March 1, 2001.

DECISION BY THE SECRETARY:

Approve: 

Disapprove: _____

Discuss with me: _____

Date: 10/2/2000

Reviewed by: _____



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

DECISION MEMORANDUM FOR THE SECRETARY

FROM: Subcabinet

SUBJECT: Action Plan for Follow-up to the Civil Rights Breakout Sessions

ISSUE:

At your direction, every mission area and agency held civil rights breakout sessions in Washington and field locations immediately following your civil rights address on June 29.

DISCUSSION:

Agencies were given 30 days to prepare reports on the findings and recommendations of these meetings and deliver them to the Office of the Secretary. The field-based agencies, in particular, have produced extensive reports. In order to do justice to the effort, the Department of Agriculture (USDA) must make an appropriate public response.

The Subcabinet and staff offices have developed a number of ideas for your consideration for civil rights actions within USDA as a follow-on to the June 29 sessions. We focused on actions where considerable progress can be made before the end of the current Administration. We focused on issues that could be implemented across all mission areas. In addition, follow-through on actions already announced is critically important.

RECOMMENDATIONS:

There are two proposals that would require Congressional action; the remainders are within your administrative authority, although some require some internal redirection of current resources.

I. Items Requiring Congressional Action

A. Hire More Civil Rights Attorneys

Critics have charged that the Civil Rights Division of the Office of General Counsel (OGC), founded as a result of a 1997 Civil Rights Action Team (CRAT) recommendation, has not achieved some of the objectives envisioned when it was created. The mission areas look to the Division for guidance and counsel, and would benefit from its providing a stronger civil rights perspective in policy decisions. However, the Division has not been staffed at the levels envisioned in the CRAT report, and the heavy litigation workload in civil rights cases, including 19 class actions involving employees and customers, has limited its ability to meet those needs. The proposal is to bolster the civil rights resources of OGC by increasing the number of

attorneys from 6 to 11, plus an additional technician/paralegal. This would require a request to Congress for a supplemental appropriation of approximately \$700,000. In addition, the Division would be able to reduce its litigation defense activities if each of the five OGC regional offices were provided an additional FTE, at a cost of \$500,000, to work exclusively on civil rights issues and cases.

B. Fully Fund the 2501 Program

Section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990 authorizes \$10 million per year for outreach and technical assistance to socially disadvantaged farmers and ranchers. Under the program, the Secretary may make grants and enter into contracts and agreements with community-based organizations with experience in agricultural education for socially disadvantaged farmers and ranchers, as well as 1890/1862 land-grant institutions, Indian tribal community colleges and Alaskan Native cooperative colleges, and Hispanic-serving institutions. The program focuses on helping farmers and ranchers from socially disadvantaged groups better understand USDA programs and the opportunities to participate in them. The 2501 program has a proven track record, with 9,000 minority farmers and ranchers having participated, and more than 108,000 previously underserved constituents gaining access to USDA programs and services. However, Congress has never fully funded the program, and the FY 2000 appropriation is \$3 million. The proposal is to request Congress to appropriate the full \$10 million.

II. Items Not Requiring Congressional Action

A. Consistent with the Government Performance Results Act (GPRA), USDA will develop the first comprehensive Civil Rights Business Plan. The plan will incorporate not only complaint processing, but also compliance reviews, affirmative employment, training, policy issuance, special emphasis and accountability and outreach to socially disadvantaged customers. The plan will be developed in cooperation with the agency civil rights directors and will be submitted to me no later than December 1, 2000.

B. Mandate Two Civil Rights Listening Sessions Per Year for Mission Areas

Following your speech on June 29, each mission area held a listening session to allow employees to express their concerns and provide suggestions for continued improvement. It was proposed that such sessions be mandated for each mission area twice a year. This would ensure an ongoing dialogue between management and employees on civil rights, without intermediaries or filtering, and could bolster employee confidence that this issue remains in the forefront of management concerns and is not just a reaction to a crisis. Management would have to develop a way of formally responding after each session in a way that does something with the input.

C. Accelerate Implementation of Diversity Councils

Your June 29 announcement of five new diversity councils and an overarching Diversity Advisory Council has been well received. These councils will give USDA a means for each group to provide advice directly to the Secretary, and a way for the Secretary to provide consistent policy that takes into account the perspectives of each group. However, the councils are not yet up and running. The decision memo to establish these councils, each with a supporting staff person, has been prepared for your consideration. Charters for the councils have been drafted, which provide for each council to be led by two co-chairs, a Subcabinet officer and an officer of one of the protected group organizations. You would designate the co-chairs of each of the new Councils within the next two to three weeks. A committee of the whole of the council co-chairs will determine the criteria by which members are chosen. Within 30 days the full committee will meet.

D. Evaluate Prospective Managers on Human Relations and Sensitivity

Food, Nutrition and Consumer Service (FNCS) suggests taking action to ensure that newly hired supervisors and managers are sensitive to human relations and civil rights. Written policies covering sensitivity would apply in selections, and civil rights staff would participate in the selection process for all managers and supervisors. Selectees would be tested on the "Model 360 Needs Assessment Instrument" against identified core competencies. The results would provide a foundation for developing training plans that target areas needing attention. Progress would be reviewed yearly. In addition, a continuing education requirement would be imposed on supervisors and managers. Agency workforce planning would include measures to ensure adequacy of a diverse applicant pool.

E. Technical Assistance for Preservation of the African-American Family Farm

USDA supports the creation of a foundation for the preservation of the African-American farm family through the Village Foundation. The African-American farm family managed by the Village and its financial partner, the Rayne Bank of Canada, would have a Board composed of African-American farmers from around the Nation. This fund would petition private and public entities to create a \$250 million endorsement to do the following:

- Provide grants to African American farm families to maintain their present farm establishment.
- Provide revolving farm loans, equipment loans, and land purchasing loans, and provide farm families with training on how to get loans and the credit to finance their crops and farm developments.
- Establish a financial co-op to create a market system based on products produced by African-American farms. This system would establish contacts in the United States locally, regionally, nationally, and globally, matching farm producers and co-ops nationally and around the world. It would also create a co-op network.

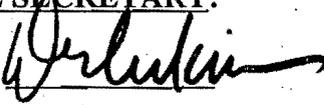
DECISION MEMORANDUM FOR THE SECRETARY

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- Create a leadership venue for rural use pecifically to do future forecasting regarding land use.
- Create seminars, work group and travel expenses for farmers for the new wave of crop and new techniques that are being developed as sustainable environmental issues.
- Conduct a farm forum to be held in the Washington, D.C. area every six months. This forum would keep the American press and public aware of issues and progress related to the African-American farmer.

This action is needed to fully implement the outreach and technical assistance requirements of Pigford vs. Glickman Consent Decree.

DECISION BY THE SECRETARY:

Approve: 

Disapprove: _____

Discuss with me: _____

Date: 10/2/2000

Reviewed by: _____

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