



Administrative Policies and Procedures: 1.01

Subject **Civil Rights Complaints**

Approved by Jeffery Blackshear, Assistant General Counsel

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Authority 28 C.F.R. 42.108, 45 C.F.R. 80, 34 C.F.R. 100; 7 C.F.R. 15, U.S.D.A. Food & Nutrition Service Instruction 113-1; Tenn. Code Ann. § 4-21-203

Application All Department of Human Services Employees

Policy Statement

The Department of Human Services (DHS) resolves Civil Rights complaints with due diligence in accordance with complaint guideline procedures as set forth by the U.S. Department of Health and Human Services, U.S. Department of Agriculture, U.S. Department of Education, and the Tennessee Human Rights Commission.

Purpose

This policy was developed to communicate the process available to file a civil rights complaint over which DHS has the authority to resolve.

Procedures

- A. Who Can File a Civil Rights Complaint** Anyone alleging discrimination against DHS personnel may file a complaint.
- B. Where to File a Civil Rights Complaint**
1. Civil Rights complaints may be filed at any DHS office or directly with the DHS Civil Rights Compliance Officer. DHS provides information at the program delivery site advising Complainants of the option to file a complaint with the appropriate federal agency.
 2. Complaints may also be filed with the Tennessee Human Rights

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Commission (state level); the Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture (USDA); Office of Civil Rights, U.S. Department of Health and Human Services (HHS); Office of Civil Rights, U.S. Department of Education (ED) and/or the Civil Rights Division, U.S. Department of Justice (DOJ) (federal level).

3. Complaints involving USDA programs, Supplemental Nutrition Assistance Program (SNAP), Child and Adult Care Food Program (CACFP) or Summer Food Service Program (SFSP) may be filed at both the state and the federal levels, separately or concurrently, at any time during the process. However, any complaint filed at the local level in SNAP, CACFP or SFSP must be forwarded to the Regional Civil Rights Director for the USDA Food and Nutrition Service within five (5) days of receipt for processing.

Forward these complaints to the following address:

Regional Civil Rights Director
U.S. Department of Agriculture
Food and Nutrition Service, Southeast Region
61 Forsyth Street, SW
Room 8T36
Atlanta, GA 30303

C. How to File a Civil Rights Complaint

1. [Form HS-2631, DHS Civil Rights Complaint Form](#), may be used for filing complaints; however, a letter describing the complaint may also be submitted without using the form.
2. The form may be filled out by the Complainant, his/her representative, or DHS supervisory staff. A verbal complaint may be taken, but verbal complaints must be transcribed to Form HS-2631 by DHS staff after they are received.

D. Civil Rights Complaint Filing Timeframes

1. DHS must adhere to the timeframes established by federal regulations and agreements.
2. All complaints must be filed within one hundred eighty (180) days of the adverse action.
3. This period of limitation may be extended for matters that are part of a continuing violation.
4. Only the applicable federal agency, such as the Secretary of Agriculture, may extend the filing timeframe under special circumstances. Upon receipt of a late file complaint, the Civil Rights Compliance Officer shall contact Complainant and/or Representative to determine the reason for the late filing and whether Complainant desires to request a waiver of the timeliness standard. If so, refer the complaint to the appropriate federal agency.

E. Processing Civil Rights Complaints

1. The Complainant must be advised of confidentiality and Privacy Act applications. The Federal oversight agencies encourage the Civil Rights Compliance Officer to resolve the issue at the lowest possible level and as expeditiously as possible.
2. DHS must determine whether Complainant, Affected Party or his/her Representative is limited English proficient (LEP), disabled, or illiterate and requires communication assistance or other reasonable accommodations and alternative formats when communicating with him or her.

3. DHS staff must send the original copy of the complaint to the DHS Civil Rights Compliance Officer at the State Office (include all pertinent documentation). A copy of the complaint must be provided to the Complainant and one (1) copy retained for facility files.
4. The DHS Civil Rights Compliance Officer, or designee must, within ten (10) calendar days of receipt, conduct an initial review of the complaint in order to make an initial determination of whether the Complainant has stated a claim under the applicable statutes and regulations. The initial review involves contacting the Complainant to clarify the allegation/protected basis(es) and to gather sufficient information to understand the facts that led Complainant to believe that the Respondent engaged in unlawful discrimination. Verify the contact information for Complainant. Obtain any evidence from Complainant, including witnesses and/or documents, in support of the allegation. Ask Complainant to identify the relief sought in filing his/her complaint.
5. If there is sufficient evidence to sustain a Civil Rights complaint, the DHS Civil Rights Compliance Officer, or designee must mail a letter to the Complainant within five (5) calendar days of the date that complaint was received acknowledging receipt of the complaint and that DHS will investigate the complaint. The written notice must advise the Complainant and/or his or her Representative of the legal issues accepted for investigation and those that will not be investigated and his or her right to file a complaint directly with the federal oversight agency, his or her right to be free from retaliation, and his or her right to withdraw the complaint. If the complaint is not accepted for investigation, a letter must be sent to Complainant informing Complainant of DHS's decision and appeal rights.
6. Record the complaint in the Civil Rights Complaint Log. If the complaint is accepted as a Civil Rights complaint, then the DHS Civil Rights coordinator lists Complainant identification and type/status of complaint on the Civil Rights Complaint Log. Civil Rights complaints must be maintained separately from all other complaints, such as customer service.
7. Conduct fact-finding investigations within thirty (30) calendar days of receipt of the complaint. After the initial review, the DHS Civil Rights Compliance Officer requests supervisory staff to conduct an investigation. The investigation should include interviewing the client, the DHS employees involved, any relevant witnesses, and reviewing any relevant facts. Where available, the investigation should include an assessment of aggregate statistical data that is capable of proving or disproving a pattern of bias against a member of a protected class.
8. Analyze the evidence obtained during an investigation under a "preponderance of the evidence standard" to determine whether the greater weight of the evidence is sufficient to support a conclusion that a DHS staff member or contractor failed to comply with a statute or regulation enforced by the applicable federal agency or whether the evidence is insufficient to support such a conclusion. This standard of proof is based on the more convincing evidence and its probable truth or accuracy, not on the amount of evidence. Therefore, the quality of evidence is given greater weight than the quantity of evidence to support or refute an allegation.

9. If the Complainant establishes a prima facie case of intentional discrimination, determine whether there is a legitimate, nondiscriminatory reason for the alleged adverse action. Determine whether there is sufficient evidence to determine that the justification provided is a pretext for discrimination. To determine noncompliance, the evidence must support a finding that the reason articulated by DHS Staff or Contractor was not the true reason for the challenged action and that the real reason was discrimination based on a protected class.
10. Report investigation findings to the DHS Civil Rights Compliance Officer within five (5) days of completion of investigation. [Form HS-2632, Report of Investigation](#), may be used to summarize and report the findings of an investigation; or the general outline of the form can be incorporated into a report structured by the investigator, if it addresses the essential issues outlined in the form.
11. This form should contain the names of people interviewed, the dates and times of the interviews, and any relevant statistical information relating to the allegations. The Report of Investigation should include an application of the legal theory to the evidence to determine if a prima facie case of discrimination exists in each case. If the report includes a finding of a violation of Civil Rights, the facility should include any proposed remedial action in the report.
12. Send report of investigation findings and proposed closure letter to oversight agency for review. Based on the results of the report of investigation, draft a proposed closure letter resolving the case. The closure letter must inform the Complainant of her or her right to appeal to the federal level if there is disagreement with investigation findings or the proposed remedial action. Upon approval from the oversight agency, send the closure letter to the Complainant.

The Complainant may also file an appeal with the appropriate federal oversight agency:

U.S. Department of Health & Human Services
Office for Civil Rights
Atlanta Federal Center
61 Forsyth Street, S.W., Suite 3B70
Atlanta, GA 30303
Phone: (800) 368-1019/(404) 562-7886

U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
Stop 9430
1400 Independence Avenue, S.W.
Room 212-A, Whitten Building
Washington, D.C. 20250

U.S. Department of Education
Office for Civil Rights
61 Forsyth Street S.W., Suite 19T10
Atlanta, GA 30303-8927

F. General

1. According to federal regulations, a complaint directly to the federal oversight agency must be filed no later than one hundred eighty (180) calendar days

Information

- after the alleged discrimination occurred.
- 2. If a complaint is filed both within the Department and externally to the federal oversight agency during the same period, the external complaint supersedes the internal complaint filing; accordingly, the local or departmental level complaint procedures will be suspended pending outcome of the external complaint.
- 3. A Complainant has the right to withdraw their complaint or appeal request at any time. The withdrawal must be submitted in writing, preferably on [Form HS-2633, *Withdrawal of Complaint or Appeal for Fair Hearing*](#).

G. Appealing a Finding or Proposed Remedial Action

[Form HS-2634, *Appeal from Finding*](#), may be used to appeal a finding or the proposed remedial action by the agency, to the federal oversight agency.

H. Withdrawing a Request for an Appeal to the State Level

[Form HS-2633, *Withdrawal of Complaint or Appeal for Fair Hearing*](#), should be used if a complaint or a request for appeal (to the state level) is withdrawn. A request for withdrawal must be in writing.

Forms

[Form HS-2631, *DHS Civil Rights Complaint Form*](#)

[Form HS-2632, *Report of Investigation*](#)

[Form HS-2633, *Withdrawal of Complaint or Appeal for Fair Hearing*](#)

[Form HS-2634, *Appeal from Finding*](#)

Collateral Documents

None

Additional Resources

None

Retention of Records

[RDA Summary for Policy 1.01 Civil Rights Complaints](#) (For internal use only)

Glossary

Term	Definition
Civil Rights Complaint	Involves any allegation that unlawful discrimination occurred on one or more protected bases in the delivery of program benefits or services. Depending on the program, protected bases may include race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information. (Not all prohibited bases will apply to all programs and/or employment activities.)
Establishing a prima facie case of disparate treatment (intentional discrimination theory)	In general, to establish a prima facie case of disparate treatment (intentional discrimination theory), the evidence must prove that (1) the aggrieved person identifies with a protected class (e.g., race, color, national origin); (2) the discriminating person/entity was aware of aggrieved person's protected class and acted in part because of it; (3) the aggrieved person applied for, and was eligible for a federally assisted program that was accepting applicants; (4) despite being qualified, respondent denied access or otherwise treated the aggrieved person adversely; and, (5) others outside the aggrieved person's protected class received the benefit that he/she was seeking or were treated more favorably. (The elements of a prima facie case may vary depending on the facts of the complaint.)