



**National Science Foundation**

**Office of Civil Rights  
Awardee Compliance Branch**

**Discrimination Complaint Processing Manual for  
NSF-Assisted (Awardee Organization) and NSF-Conducted Programs**

Title VI of the Civil Rights Act of 1964  
Section 504 of the Rehabilitation Act of 1973  
Title IX of the Educational Amendments of 1972  
Age Discrimination Act of 1975  
Executive Orders 13160, 13166, 12898

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## SECTION I: EVALUATION

The Awardee Compliance Branch (ACB) of the U.S. National Science Foundation Office of Civil Rights (OCR) provides herewith "The Discrimination Complaint Processing Manual for NSF- Assisted and NSF-Conducted Programs" (the Manual). The Manual is the official NSF procedure to receive, evaluate, process, investigate, and resolve allegations of discrimination, harassment or retaliation in violation of NSF's civil rights regulations for federally assisted (NSF awardee organizations) and federally conducted (NSF) programs. These complaints are investigated by OCR through ACB. OCR will evaluate all information received that indicates that NSF or NSF awardee organizations engaged in discrimination, harassment, or retaliation or violated civil rights or equal opportunity laws, regulations, or executive orders.

OCR has jurisdiction pursuant to the following statutory and regulatory authorities for programs and activities funded by NSF at NSF awardee organization:

- **Title VI of the "Civil Rights Act of 1964,"** 42 U.S.C. §§ 2000d et seq., 45 C.F.R. Part 611. Under Title VI, OCR has jurisdiction to investigate complaints involving individuals covered by the law and certain employment complaints based on race, color, or national origin. With respect to employment, OCR only has jurisdiction under Title VI if: (1) the alleged discrimination could adversely affect program beneficiaries on the basis of race, color, or national origin, or (2) a primary objective of the federal financial assistance is to provide employment.
- **Title IX of the Education Amendments of 1972,** as amended, 20 U.S.C. §§ 1681 et seq., 45 C.F.R. Part 618. Under Title IX, OCR has jurisdiction to investigate complaints involving individuals covered by the law and employment complaints based on sex that involve educational programs and activities. For employment complaints, OCR will follow procedures consistent with the employment coordinating regulations at 28 C.F.R. Part 42 and 29 C.F.R. Part 1691.
- **Section 504 of the "Rehabilitation Act of 1973" (NSF Assisted Programs),** as amended, 29 U.S.C. § 794, 45 C.F.R. Part 605. Under Section 504, OCR has jurisdiction to investigate complaints involving individuals covered by the law and employment complaints based on disability. For employment complaints, OCR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29.<sup>1</sup>
- **"Age Discrimination Act of 1975,"** 42 U.S.C. §§ 6101 et seq., 45 C.F.R. Part 617. Under the Age Discrimination Act, OCR has jurisdiction to investigate complaints involving individuals covered by the law. OCR does not have jurisdiction over employment under the "Age Discrimination Act."

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<sup>1</sup> OCR may investigate complaints initially filed with the U.S. Department of Justice (DOJ) under Title II of the "Americans with Disabilities Act of 1990" (Title II) and referred to NSF once DOJ determines that it does not have section 504 jurisdiction and is not the designated agency under Subpart G of Title II to investigate the complaint.

OCR also has jurisdiction to investigate discrimination complaints involving programs conducted and operated by NSF under the following:

- **Section 504 of the "Rehabilitation Act of 1973" (NSF Conducted Programs)**, as amended, 29 U.S.C. § 794, 45 C.F.R. Part 606. Under Section 504, OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., proposers, students) and employment complaints based on disability. The definitions, requirements, and procedures of section 501 of the "Rehabilitation Act of 1973" (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.
- **Executive Order 13160, "Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs"** The Executive Order was issued June 23, 2000 in order to achieve equal opportunity in all federally conducted education and training programs and is premised upon the notion that the federal government should hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the educational programs and activities of NSF awardee organizations of federal financial assistance.

#### 101. Identifying a Complaint

OCR will first determine whether the information provided is classified as a "complaint" or whether the information is classified as "communication."

What is a complaint?

A "complaint" or "formal complaint" is defined as information submitted by a complainant who requests that OCR investigates allegations of discrimination or harassment on the basis of sex, national origin, race, color, disability, and age against an NSF awardee organization or an NSF program providing programs, services, and activities to participants. Some example complaints include (but not limited to):

- a) Engaged or is engaged in discrimination or harassment in violation of NSF's awardee/conducted civil rights regulations; and/or
- b) Retaliated or is retaliating against the complainant for engaging in "protected activities" (i.e., filing a discrimination complaint or participating in a discrimination complaint investigation as a witness); and/or
- c) Has committed a procedural violation of NSF's civil rights regulations (i.e., the awardee organization does not have a Title IX or Section 504 Coordinator or a "prompt and equitable" Title IX or Section 504 discrimination/harassment grievance procedure).

What is considered a communication vs. complaint?

OCR classifies information submitted by individuals as "communications" that may fall under the definition of a complaint above, but the individual or group providing the information is: (1) not requesting that NSF conduct a program discrimination complaint investigation; (2) is requesting that NSF take other action besides a complaint investigation; or (3) submit allegations of discrimination, harassment or retaliation via email, U.S. mail, fax or other means but not through OCR's online awardee complaint filing portal. The portal links to the Awardee Discrimination Complaint Case Management System (CMS), which is detailed below.

OCR will inform the individual who filed a complaint or sent communication in writing (or other means as requested by the individual or group) within two (2) working days of receiving the complaint or communication. In cases where the information constitutes a "communication," OCR may contact the individual and provide information on NSF civil rights regulations and information about how to file a complaint by requesting that the complaint be filed through OCR's online awardee complaint filing portal or another method if the individual can't or won't use the online portal or requires an accommodation for a disability or has limited English proficiency. If the communication can be addressed or resolved by another NSF office or program directorate, the communication may be referred to that office or directorate for action.

OCR will provide individuals with assistance regarding the nature of their rights and of the OCR investigation process. As appropriate, OCR will provide reasonable assistance to individuals or complainants who are persons with disabilities, individuals of limited English proficiency, and persons whose communication skills are otherwise limited.

OCR will inform individuals or entities that any information that is communicated to OCR deemed insufficient for further processing as a discrimination complaint may be used to inform future compliance review site selection. OCR may provide the individual or entity information on alternative processes, agencies, entities, or organizations that may have jurisdiction to address issues raised in the communication that NSF or OCR cannot address.

The information provided to OCR by the individual or entity may be used, if warranted, to determine whether an NSF awardee organization is required to submit a harassment notification in accordance with Chapter XI A.1.g (NSF Policy on Sexual Harassment, Other Forms of Harassment, or Sexual Assault) of the [NSF Proposal & Award Policies & Procedures Guide](#) (PAPPG). Since this is a confidential procedure, individuals and entities may be advised if requested that their information may generally be used for this purpose, but they must be advised that NSF will not confirm that such an inquiry took place nor divulge to them the results of any such inquiry OCR performs to determine an NSF awardee's compliance with the Harassment Notification Term and Condition.

#### Awardee Discrimination Complaint Case Management System (CMS)

OCR has an [online complaint filing portal](#) for the filing of complaints and communications and for awardee organizations to submit documentation if the complaint is accepted for investigation. While this is the preferred method for complaint filing (and OCR will first ask individuals to use this method), OCR will accept complaints that are submitted via email, U.S. mail, express mail, or fax machine. If OCR receives a complaint or communication through these methods, OCR will enter the complaint or communication into CMS to ensure proper case management.

## Is a complaint a "complete" complaint?

Once OCR determines that the information received is a discrimination complaint, OCR will determine whether the complaint is a "complete" complaint. OCR only accepts complete complaints for investigation, findings, and resolution. A complaint must meet the following criteria for consideration as a complete complaint:

- Alleges a violation of the applicable laws, regulations, or executive orders by an NSF program or by an organization that receives or is approved to receive funding from NSF. While complaints are not required to prove that an NSF awardee organization violated these laws at the evaluation stage, the complainant must establish a *prima facie* case of discrimination<sup>2</sup>. One or more of the following elements must apply to their allegations, which is not an exhaustive list:
  - Denial of admission or access to or participation in an NSF-funded or conducted program, service, activity, or benefit because of race, color, national origin, sex, age, or disability.
  - With respect to differential treatment, discrimination complainants must identify a similarly situated individual or group or entity of a different race, color, national origin, sex, age, or disabled/nondisabled status who was treated more favorably than the complainant.
  - With respect to disparate impact discrimination, the complainant must identify a policy, procedure, or practice that appears neutral but has a discriminatory effect on a protected group and provide data that demonstrates the disparate impact.
  - Allegations of harassment based on race, color, national origin, disability, age, and sex (including sexual and sex-based harassment) must assert that a hostile environment exists and/or quid-pro-quo harassment took place.
  - The NSF awardee organization was informed of the harassment and failed to take meaningful steps to end the harassment or was deliberately indifferent to the allegations of harassment.
  - Allegations of retaliation must establish that: (1) the complainant engaged in a protected activity (i.e., filing a discrimination complaint); (2) the NSF awardee organization took adverse action against the individual; and (3) a causal connection exists between the individual's protected activity and the NSF awardee organization's adverse action.

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<sup>2</sup> To establish a *prima facie* case of intentional discrimination under Title VI using the *McDonnell-Douglas* framework from Title VII of the "Civil Rights Act of 1964," a plaintiff typically shows that he or she is a member of a particular protected group, was eligible for the recipient's program, activity or service, and was not accepted into that program or otherwise treated in an adverse manner, and that an individual who was similarly situated with respect to qualifications but was not in the plaintiff's protected group was given better treatment.



- The complaint and its allegations are timely filed or a request or waiver to complaint filing timeframes was made to OCR and granted by OCR.

The following are generally not subject to further processing and may be dismissed (this determination is made on an individualized basis):

- Anonymous communications or correspondence.
  - This does not apply to individuals who identify themselves with OCR but wish to remain anonymous or do not provide written consent for OCR to divulge their personally identifiable information (PII) to necessary parties.
  - This does not apply to individuals who file a complaint but do not want to provide their identity on the complaint form or submitted documentation.
- Mass email correspondence or documentation filed with multiple entities.
- Inquiries that seek advice or information from OCR.
- Allegations that are communicated to OCR orally. (Individuals who communicate allegations to OCR orally will be provided information on how to file a written complaint with NSF through OCR.)
- Written information that relies exclusively on statistical data, media, journals/studies, and/or other published articles as the basis for the alleged discrimination.
- Allegations of discrimination, harassment and retaliation against an individual who is thought or known to be listed as a Principal Investigator (PI), co-Principal Investigator (co-PI) **and** a request is made to NSF that the PI or co-PI be removed from an NSF award by NSF because the PI or co-PI has been investigated for or found responsible for engaging in discrimination, harassment, or retaliation by an NSF awardee organization or other entity. Such allegations will be considered by OCR to be "communications."
  - This does not include notifications or other communications submitted by an NSF awardee organization in accordance with Chapter XI A.1.g of the PAPPG (NSF Policy on Sexual Harassment, Other Forms of Harassment, or Sexual Assault).
  - Such requests will be processed in accordance with NSF's Harassment Notifications Standard Operating Procedure.
- Allegations of discrimination, harassment, and retaliation against an individual who is thought or known to be listed as a PI or co-PI on an NSF proposal and a request is made that NSF deny, reject, or cease evaluation of the proposal because the PI or co-PI thought or known to be listed in the proposal has been investigated for or found responsible for engaging in discrimination, harassment or retaliation by an NSF awardee organization or other entity.
- NSF may also use this information to determine if an NSF awardee organization is required to submit a notification to OCR in accordance with Chapter XI A.1.g of the PAPPG (NSF Policy on Sexual Harassment, Other Forms of Harassment, or Sexual Assault). If information submitted to OCR as detailed above is not accepted for investigation by OCR, OCR may use this information to assist in efforts to identify NSF-assisted and NSF-conducted programs and/or NSF awardee organization for future civil rights regulatory compliance and technical assistance efforts by OCR.

OCR will complete its evaluation of all complaints and notify the complainant of OCR's acceptance, dismissal, or referral of the complaint as expeditiously as possible. Similarly, when the complaint is accepted for investigation, OCR will inform the NSF awardee organization of

the complaint acceptance and the start of investigative activities at the same time the complainant is notified of complaint acceptance. OCR will request data and documentation from the NSF awardee organization in the acceptance letter, but for complex complaints, OCR will send the NSF awardee organization separate data and documentation no later than 30 days from the date of the acceptance of the complaint for investigation.

### Complaint referrals to other NSF offices

If a complaint alleges fraud, waste, abuse, research misconduct or loss of scientific integrity, the complaint will be referred to the NSF Office of Inspector General and/or Office of Scientific Integrity for review and action. OCR may elect to continue evaluation and investigate complaints of discrimination, harassment, and retaliation.

### 102. File Establishment

OCR's complaint process commences on the first business day after a complaint is received by OCR. Upon receipt of a complaint by OCR, a number is assigned, and a file is opened.

All case files will be kept as electronic files on NSF systems assigned to OCR. All hard copy materials received by OCR are scanned into electronic media format.

OCR will use the following format for case numbers: NSF-OCR-ACB-(Fiscal Year last two digits) - (four-digit number from 001-9999). NSF stands for the "National Science Foundation", OCR stands for "Office of Civil Rights", ACB stands for "Awardee Compliance Branch." The fiscal year and four-digit portions of the case number will reset on the first day of the new fiscal year (Oct. 1).

All communications and complaints will receive a case number. For example:

NSF-OCR-ACB-24-0001 is the first communication/complaint received in FY24.

NSF-OCR-ACB-24-0010 is the tenth communication/complaint received in FY24.

NSF-OCR-ACB-24-0100 is the 100 communication/complaint received in FY24.

NSF-OCR-ACB-24-1000 is the 1000 communication/complaint received in FY24.

OCR, at its discretion, may modify complaint numbers or assign new case numbers based on new allegations from the same complainant, a re-filed complaint, or reopen the original complaint and keep the same case number.

### 103. Complaint Acknowledgement

OCR will acknowledge in writing within two (2) working days that OCR has received the complaint. For individuals who communicate information without filing a complaint, OCR will provide the individual with the [weblink for filing an awardee program discrimination complaint with OCR](#).

## 104. Consent Form Necessity

When an individual files a discrimination complaint and the identity of the complainant is necessary to investigate and resolve the complaint, OCR will require completion of a Consent Form before proceeding with accepting the complaint for investigation and resolution. The complainant will be informed that the complaint will be closed if the Consent Form is not received within 14 calendar days from the date that the Consent Form was provided to the complainant. The signed Consent Form is available in OCR's complaint filing portal, and the complainant must submit the Consent Form through this portal. If the portal is unavailable or the complainant is unable to use the portal, the Consent Form may be submitted to OCR by mail, fax, or email. If OCR does not receive a signed written Consent Form within the above timeframe, the complaint will be dismissed, and the complainant will be informed in writing. For consent forms that are mailed to NSF, OCR would provide flexibility with the 14-day timeframe if the complainant mailed the consent form before the expiration of the 14-day timeframe. The CMS also tracks and notifies complainants if a Consent Form is missing.

A complainant who is filing on behalf of or pertaining to another person(s) is responsible for securing any necessary written consent from that individual, including when a parent files for a student over the age of 18 or one who becomes 18 while the complaint is under investigation or in monitoring. Where the person is a minor (under the age of 18) or a legally incompetent adult, the Consent Form must be signed by that person's parent or legal guardian. Parental or legal guardian consent may not be required for people under the age of 18 if they are emancipated under state law and are therefore considered to have obtained a majority. Proof of emancipation, incompetence, and/or legal guardianship must be provided if requested by OCR.

If OCR receives the Consent Form from the complainant and the complaint does not provide consent for OCR to provide the complainant's PII to the awardee or other necessary parties, OCR will evaluate and review the complaint to determine whether such consent is crucial to investigate the complaint and render findings. If OCR determines that the complainant's consent to release their PII to the NSF awardee organization or necessary parties is crucial to making a compliance determination in the investigation, then OCR may close the complaint without making findings. The complainant will be notified of the complaint closure for this reason. OCR will engage in a similar process if the complainant withdraws consent after the complaint is accepted for investigation. If the complainant does not consent to the release of the contents of the complaint to the awardee institution, that will not cause OCR to close the complaint. See Section 704 for the procedure for responding to the awardee institution's request for a copy of the complaint.

A signed and completed Consent Form is not required for the submission of anonymously filed complaints (complaints that do not contain the first and/or last name of the complainant and/or other PII).

With respect to complaints filed against NSF conducted programs, it may not be necessary to obtain the signed and completed Consent Form unless the complainant does not wish to consent to provide his/her/their PII to the NSF office or directorate the complaint is filed against.

## 105. Timeliness Determination

OCR will act only with respect to those allegations that have been filed within the following timeframes, unless the complainant is granted a waiver (see Section 107 below), as prescribed by the applicable regulations:

- **Title IX, Title VI, and Section 504 (awardee-assisted programs) complaints:** The complainant has 90 calendar days from the date of the last alleged discrimination.
- **"Age Discrimination Act," Section 504 (NSF-conducted programs), and Executive Order 13160:** Complainants have 180 days from the date the complainant first had knowledge of the alleged discrimination.
- In special circumstances, allegations relating to breach of the Voluntary Resolution Process agreements, OCR will determine on a case-by-case basis.

The filing date begins at the date the complaint was submitted via the online portal, email, or fax or the date the complaint was submitted by mail is the complaint's postmark date.

## 106. Timeliness Waiver Determination

If a complaint allegation is not filed in a timely manner, OCR will notify the complainant of the opportunity to request a waiver. OCR may grant a waiver of the timeliness filing requirement for reasons such as:

- The complainant could not reasonably be expected to know the act was discriminatory during the applicable 90-day/180-day filing period and the complaint allegation was filed within 60 days after the complainant could reasonably have become aware of the alleged discrimination. (Note that lack of previous awareness of OCR or the civil rights laws and regulations enforced by OCR is not a basis for a waiver.)
- The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the applicable 90-day/180-day filing period, and the complaint allegation was filed within 60 days after the period of incapacitation ended.
- The complainant filed a complaint alleging the same or similar allegation based on the same operative facts during the applicable 90-day/180-day filing period with another federal, state, or local civil rights enforcement agency, or federal or state court, and filed a complaint with OCR within 60 days after the other agency had completed its investigation or, in the case of a court, there had been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice is considered a decision on the merits.
- The complainant filed, during the applicable 90-day/180-day filing period, an internal grievance with the NSF awardee organization, or a due process hearing, alleging the same discriminatory conduct that is the subject of the OCR complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded.
- Unique circumstances generated by NSF action have adversely affected the complainant.

- OCR determines at its discretion and after careful review of the information contained in the complaint, that the best interests of the United States, the Foundation, and the scientific enterprise are served by extending or waiving the filing timeframe.

## 107. Allegation Dismissal

Allegations can be dismissed during the evaluation stage of case processing or after the allegations have been opened for investigation.

OCR will dismiss a complaint in its entirety or specific allegations in the complaint, if appropriate, when:

- a) OCR determines that it lacks jurisdiction over the subject matter of the complaint. (The complaint does not allege discrimination, harassment, or retaliation for a protected activity.) If the complaint alleges a violation of other terms and conditions of an NSF award, OCR may refer to the appropriate office.
- b) OCR determines that it lacks jurisdiction over the entity alleged to have discriminated against. (NSF does not currently provide the entity funding, NSF is not in receipt of funding proposals, or NSF did not provide funding during the time of the alleged discrimination.) OCR may, at its discretion, refer the complaint to the entity that may have requisite jurisdiction to investigate the allegation.
- c) OCR determines that while NSF may have statutory or regulatory authority over the complaint or may provide funding to an organization named in the complaint:
  1. Another Federal or State civil rights agency or another investigative organization (i.e., NSF awardee organization) has primary statutory or regulatory jurisdiction over the complaint.
  2. Another Federal agency may provide funding to the organization, program, service or activity in which the alleged discrimination has occurred.
  3. The complaint may not meet OCR's requirements for accepting the complaint for investigation but may meet requirements for investigation under another Federal or State civil rights agency or another organization's discrimination complaint policies or procedures for investigation.

In this instance, OCR may refer a complaint to the investigative organization or advise the complainant that the complaint that it cannot accept the complaint for investigation advise the complainant about investigative organizations that may be able to investigate the complaint.
- d) The allegations are made against an NSF-conducted program that is not an NSF-conducted education and training program, and the alleged discrimination is on a basis other than disability (i.e., race, color, national origin, sex, and age).
- e) A complaint is filed against an NSF awardee organization, but the allegation(s) does not allege discrimination in an NSF-funded program, service, or activity.

- f) Based on all the facts/information provided by the complainant or publicly available information, the allegation(s) fails to state or establish a violation of one of the laws or regulations.
- g) The allegation(s), on its face or as clarified, lacks sufficient factual detail (e.g., who, what, where, when, and how), for OCR to infer that discrimination or retaliation may have occurred or is occurring.
- h) The allegation(s) is/are not timely filed with OCR, and a waiver was not requested or was requested but not granted.
- i) OCR determines that a signed Consent Form is required to proceed with an investigation, and the Consent Form has not been provided. Before dismissing an allegation(s), OCR will contact the complainant either by telephone or in writing (by letter or via electronic mail) to explain the information necessary for OCR to open an investigation of the allegation(s) and that the information must be received within 14 calendar days of the date of the contact.
- j) The complainant provided a signed Consent Form and indicated on the form that they do not consent to release PII to the awardee institution, and OCR determines that the complainant's consent to release their PII to the NSF awardee organization is crucial to making a compliance determination in the investigation.
- k) OCR determines that the identity, other PII, or records and communications are prohibited from disclosure to OCR by the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), without signed written consent from student(s) and other FERPA-protected individuals named in the complaint at the respondent NSF awardee institution, including the complainant. If OCR has determined that this information is crucial to the investigation and cannot proceed with the investigation and make a compliance determination without this information and the written consent to the NSF awardee institution. (See Section 704)
  - 1. OCR may exercise its discretion in dismissing a complaint without accepting it for investigation in the evaluation stage if it can be determined that another investigative entity with personal and subject matter jurisdiction over the complaint allegations is exempt from FERPA restrictions on disclosing student PII and student records.
  - 2. If the complaint is dismissed under such circumstances, OCR may refer the complaint to that entity or advise the complainant that the complainant would need to refile the OCR complaint with that entity.
- l) The same or similar allegation(s) filed with OCR involves the same operative facts **currently pending** before another federal, state, or local civil rights enforcement agency or through an NSF awardee organization's internal grievance procedure, including due process proceedings. OCR will advise the complainant that they may re-file within 60 days of the completion of the other entity's action. Generally, OCR

will not conduct its own investigation; instead, OCR reviews the results of the other entity's determination and decides whether the other entity provided a comparable resolution process pursuant to legal standards that are acceptable to OCR. With respect to complaints filed with the U.S Equal Employment Opportunity Commission (EEOC), OCR will also give due weight to the determination made by EEOC.

- m) The same or similar allegation(s) filed with OCR involve the same operative facts as allegations that **have been investigated and/or resolved** by another federal, state, or local civil rights enforcement agency or through an NSF awardee organization's internal grievance procedure, including due process proceedings, and all allegations were investigated and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR. In addition, OCR will dismiss allegations that could have been raised in the proceeding currently pending before another federal, state, or local civil rights enforcement agency or through an NSF awardee organization's internal grievance procedure, including due process proceedings. With respect to complaints filed with the U.S Equal Employment Opportunity Commission (EEOC), OCR will also give due weight to the determination made by EEOC.
- n) The same or a similar allegation based on the same operative facts has been filed either by the complainant or someone other than the complainant, including a class action, against the same NSF awardee organization with state or federal court. An OCR complaint may be refiled within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice is considered a decision on the merits.
- o) OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved or are no longer appropriate for investigation.
- p) The complaint filed against NSF, or an awardee organization, raises the same or similar allegations based on the same operative facts that were previously dismissed by OCR.
- q) OCR has recently investigated or is currently investigating the same or similar allegation(s) based on the same operative facts involving NSF or an NSF awardee organization in a compliance review, directed investigation, or an OCR complaint.
- r) The complainant withdraws the complaint.
- s) The death of the complainant makes it impossible to investigate the allegations fully or forecloses the possibility of individual relief.
- t) OCR determines that its ability to complete an investigation is substantially impaired by the complainant's refusal to provide information that is reasonably accessible to the complainant and is necessary for the investigation of the complaint. For example, by an inability to contact the complainant or the complainant obstructs/interferes with the investigation.

- u) A complaint is a continuation of a pattern of complaints previously filed with OCR by an individual or group against multiple NSF awardee organizations.
- v) Complaints with the same or similar allegations are filed against multiple NSF awardee organizations that, when viewed as a whole, place an unreasonable burden on OCR's resources. OCR may consider conducting a compliance review or providing technical assistance concerning the issues raised by the complaint.
- w) Complaints contain allegations that at OCR's discretion can be resolved without an investigation and a violation/no violation finding of facts (one example is when a discriminatory practice is alleged but did not directly impact the complainant) In this instance, OCR will engage the appropriate NSF or NSF awardee office to provide technical assistance to address allegations raised in the complaint.
- x) OCR determines that the allegation(s) is moot or unripe.

In the evaluation stage, OCR will assist the complainant in understanding the information that OCR requires to proceed with the investigation of the complainant's allegation(s). This process includes explaining OCR's investigation process and the rights of the complainant under the statutes and regulations. OCR will also identify the information necessary for OCR to proceed with an investigation and will provide reasonable assistance to complainants who are persons with disabilities, individuals of limited English proficiency, or persons whose communication skills are otherwise limited.

If an allegation(s) is dismissed during the evaluation stage, OCR will issue a letter to the complainant explaining the reason for the decision. When a complaint allegation is dismissed after an investigation is opened, OCR will issue a letter to the complainant and the NSF awardee organization explaining the reason for the decision.

## 110. Opening an Investigation

When OCR opens a complaint for investigation, it will issue letters of notification to the complainant and the NSF awardee organization that contain the following information:

- OCR's jurisdiction with applicable statutory and regulatory citations.
- The allegations that need to be investigated.
- Contact information for the OCR staff who will serve as the primary contact during the investigation and resolution of the complaint.

## SECTION II: RESOLUTION BETWEEN THE PARTIES

### 201. Roles



The purpose of the Resolution Between The Parties Process (RBP) is to facilitate the resolution of complaints by providing an opportunity for the parties involved to voluntarily resolve the complaint allegations in an expedient manner without the need to conduct an investigation of the allegations. While the NSF awardee organization and complainant may resolve the allegations in a mutually agreed-upon manner, the agreed-upon resolution may not necessarily constitute corrective action on the part of the NSF awardee organization that brings the awardee organization into compliance with NSF's civil rights regulations. When OCR determines that a complaint is appropriate for RBP, it shall contact the parties to offer this resolution option.

RBP is appropriate in instances where the complainant asserts that he/she/they were adversely affected or impacted by the alleged discriminatory act(s) and wishes to resolve the allegations in the manner described above. This is a different approach to resolving allegations than the process described above in Section 107, W. (Dismissals)

**Note: RBP is not intended to be used to resolve allegations of sexual harassment or other forms of sexual misconduct.**

A. OCR's Role in the RBP process:

- To serve as an impartial, confidential facilitator between the parties.
- To inform the parties of RBP procedures, establish a constructive tone, and encourage the parties to work expeditiously and in good faith toward a mutually acceptable resolution.
- To review the allegations with the parties and assist both parties in understanding the pertinent legal standards and possible remedies.
- To facilitate a discussion between the parties regarding possible actions that the parties may consider in working toward a resolution.
- To help, as appropriate, regarding reducing any resolution to writing. When an agreement is reached, the parties are informed that OCR will issue a closure letter reflecting the resolution of the complaint by agreement of the parties.

B. Role of the Participants

- To participate in the discussions in good faith.
- To consider offers or suggestions with an open mind and to work constructively toward a mutually acceptable resolution.
- To implement any agreement in good faith.

OCR does not sign, approve, endorse, or monitor any agreement reached between the parties.

## **202. RBP Process Initiation and Termination**

If OCR determines that RBP is appropriate and the complainant and the NSF awardee organization are willing to proceed with this resolution option, OCR will designate staff to facilitate an agreement between the NSF awardee organization and the complainant. Staff assigned to conduct RBP of a complaint will not involve staff assigned to the investigation of that complaint.

An Agreement to Participate in RBP must be reviewed and signed, verbally agreed to, or agreed to by electronic mail by the complainant and NSF awardee organization. In circumstances where verbal agreement is obtained, the RBP facilitator shall send a letter or electronic mail to the parties confirming the Agreement.

If both the complainant and the awardee organization agree to participate in RBP, OCR will suspend the investigation for up to 30 calendar days to facilitate an agreement between the parties. If an agreement is not reached, OCR will resume its investigation.

### **203. RBP Process Confidentiality**

A Confidentiality Agreement must be reviewed and signed, verbally agreed to, or agreed to by electronic mail by the RBP facilitator and the parties to the RBP (the complainant or complainant's representative and the NSF awardee organization or NSF awardee organization's representative). In circumstances where verbal agreement is obtained, the RBP facilitator shall send a letter or electronic mail to the parties confirming this Agreement.

To maintain the confidentiality of the RBP process, any notes taken during RBP by the facilitator and/or any records or other documents offered by either party to the facilitator during RBP will be kept in a separate file and will not be shared with the staff member(s) assigned to investigate the complaint.

### **204. RBP Process Conclusion**

At the end of RBP, OCR will obtain a copy of a statement that the allegation(s) has been resolved, signed by the complainant, or a copy of any agreement that has been signed by the parties. Once resolution of any allegation has been obtained, OCR will notify the parties in writing that the allegation(s) has been resolved; other outstanding allegations, if any, are to be resolved through the investigation and resolution process. A copy of the agreement between the parties or the signed statement from the complainant that the allegation(s) has been resolved will be attached to the closure letter.

### **205. RBP Agreement Breach**

OCR will not monitor or enforce the agreement but will inform the parties that if a breach occurs, the complainant has the right to file another complaint. If a new complaint is filed, OCR will not address the alleged breach of the agreement. Instead, OCR will determine whether to investigate the original allegation. When making this determination, OCR will consider whether the alleged breach is material, its relation to any alleged discrimination and any other factors as appropriate. To be considered timely, the new complaint must be filed either within 180 calendar days of the date of the alleged discrimination or within 60 calendar days of the date the complainant obtains information that a breach occurred, whichever date is later.

### **206. Unsuccessful RBP Investigative Determination**

OCR will monitor the process of RBP to ensure adequate time for completion of the investigation if RBP is unsuccessful. Where RBP is unsuccessful, investigation must proceed to ensure completion in accordance with case processing procedures.

## SECTION III: CASE PLANNING, INVESTIGATION, AND RESOLUTION

OCR will ensure that investigations are legally sufficient and dispositive of the allegations under investigation. If OCR identifies compliance concerns involving issues that were not raised in the complaint, OCR may address any compliance concerns and/or identified violations in the final determination letter and the resolution agreement or, depending on the nature of the compliance concerns, provide technical assistance or consider the compliance concerns for a possible compliance review or directed investigation.

### 301. Investigation Timeframes

Except for Section 504 NSF Conducted Programs complaints, there are no specified timeframes for the completion of investigative activities for Title VI, Title IX, Section 504 NSF Assisted programs (awardee programs) and Executive Order 13160 complaints. OCR will endeavor to complete these investigations as expeditiously as possible.

For Section 504 NSF Conducted Programs complaints, 45 CFR 606.70(f) prescribes that these complaints must be investigated, and the Final Determination Letter sent to the complainant within 180 days of the receipt of a complete complaint. Once the complaint is accepted, OCR will notify the NSF Office of General Counsel and the cognizant NSF program.

### 302. Case Planning

Case planning will begin as early as possible, will be thorough, and will be conducted throughout the life of every case to ensure high-quality decisions, prompt investigations and efficient use of OCR resources. Planning decisions will reflect sound legal standards and will be adjusted as necessary to consider information obtained during case processing. The scope of OCR's investigation and resolution activities will depend upon the complaint allegations and applicable legal standards.

The following essential elements of case planning will be addressed in every OCR file either as an investigative plan or similar document (unless inapplicable):

- Allegation(s).
- OCR's Jurisdiction over the subject matter and entity.
- Legal Standard, Regulatory Authority, and Elements of Proof.
- Scope of the Investigation.
- Investigative Methods (i.e., what data and information is necessary to resolve the case, and the means and methods OCR will use to obtain the relevant data and information).
- Resolution Strategy.

### 303. Resolution Agreement During Investigation

Allegations under investigation may be resolved at any time when, prior to the point when OCR issues a final determination, the NSF awardee organization expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them with an agreement. OCR will inform the NSF awardee organization that this resolution process is voluntary. When OCR determines that it is appropriate to resolve the allegations(s), OCR will notify the complainant of the NSF awardee organization's interest in resolution. In this instance, the NSF awardee organization and OCR are resolving the allegations in a manner that brings the awardee organization into compliance with NSF civil rights regulations. This process is different than RBP in that the awardee organization is seeking to remedy the complaint without further investigation that does not provide a direct remedy for a complainant and/or OCR determined that the resolution does not require consultation with the complainant.

#### A. Statement of the Case

For cases with allegations proposed for resolution, OCR will prepare a Statement of the Case. The Statement of the Case must be set forth:

- The allegations raised in the complaint.
- A statement of OCR's jurisdictional authority, including NSF awardee organization status and the statutory basis for the investigation.
- An explanation of the pertinent legal standard(s).
- Relevant background information.
- A summary of the investigation, including analysis of the evidence reviewed to date.

#### B. Timeframes and Procedures for Negotiations

From the date that the proposed resolution agreement is shared with the NSF awardee organization, OCR and the NSF awardee organization will have a period of up to 30 calendar days within which to reach the final agreement. During the negotiations period (which may be less than 30 days, at the discretion of OCR), OCR may suspend its investigation of the case. Where a final agreement is not reached by the 30th day, the investigation will resume no later than on the 31st day after negotiations were initiated; however, negotiations may continue while the investigation resumes. This 30-day period for suspension of the investigation to conduct negotiations cannot be restarted.

#### C. Resolution Letter

After the NSF awardee organization signs the resolution agreement, OCR will issue a Resolution Letter, which will address all allegations in the case. The letter must include, at a minimum:

- A statement of the allegations in the case.

- A statement of OCR's jurisdictional authority, including NSF awardee organization status and the statutory basis for the investigation.
- A statement that the NSF awardee organization has signed a resolution agreement.
- A statement that, when fully implemented, the agreement will address all the allegations, and that OCR will monitor the implementation of the agreement.
- The following statement: "The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation." For service complaints under the "Age Discrimination Act," the complainants may file in federal court only after they have exhausted administrative remedies.

A copy of the signed resolution agreement will be included with the resolution letter. OCR will monitor the implementation of the agreement until the NSF awardee organization has fulfilled the terms of the agreement. Upon completion of the obligations under the agreement, OCR will close the case.

### 304. Investigative Determinations

At the conclusion of the investigation, OCR will determine, **using a preponderance of the evidence standard**, whether there is insufficient evidence to support a conclusion of noncompliance, or the evidence supports a conclusion of noncompliance.

#### A. Insufficient Evidence Determination

When OCR determines that the preponderance of the evidence does not support the conclusion that the NSF awardee organization failed to comply with applicable regulations, OCR will issue a determination letter to the parties explaining the reasons for its decision.

#### B. Noncompliance Determination

OCR will negotiate a resolution agreement and issue a final determination letter when OCR determines that the preponderance of the evidence supports a conclusion that the NSF awardee organization failed to comply with applicable regulation(s).

#### C. Mixed Determination

A "mixed determination" is appropriate for complaints with multiple allegations, where the allegations will be resolved in different ways (e.g., investigation has found a violation regarding some allegations and insufficient evidence regarding other allegations; the investigation has found a violation with regard to some allegations and there are other allegations that are appropriate to resolve prior to the conclusion of the investigation; or OCR has found insufficient evidence with regard to some allegations and determined that other allegations are appropriate to resolve prior to the conclusion of the investigation.) In a "mixed determination" case where the OCR is deciding, OCR will negotiate a resolution agreement and issue a letter of finding(s). In a "mixed determination" case where OCR is not making any determinations but is resolving allegations, OCR will issue a resolution letter.

### 305. Statement of the Case

OCR will prepare a Statement of the Case for investigative determinations. The Statement of the Case must include:

- Allegations raised in the complaint.
- A statement of OCR's jurisdictional authority, including NSF awardee organization funding status and the statutory basis for the investigation.
- An explanation of the pertinent legal standard(s).
- Relevant background information.
- A statement of each allegation investigated and the findings of fact for each, including analysis of the evidence on which the findings are based.
- Conclusions for each allegation that reference the relevant facts, the applicable regulations, and the appropriate legal standards.

### 306. Final Determination Letter

For insufficient evidence, noncompliance, and mixed determinations, OCR will issue a letter of finding(s) explaining the reason(s) for its decision. Letters of finding(s) will address all allegations in the case. The letter must include, as appropriate:

- A statement of the allegations in the case.
- A statement of OCR's jurisdictional authority, including NSF awardee organization status and the statutory basis for the investigation.
- A statement of the findings of fact for each allegation, supported by any necessary explanation and/or analysis of the evidence on which the findings are based.
- Conclusions for each allegation that reference the relevant facts, the applicable regulation(s) and OCR policy, and the appropriate legal standards.
- The statement, "The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation." For service complaints under the "Age Discrimination Act," the complainants may file in federal court only after they have exhausted administrative remedies.
- Where noncompliance with NSF civil rights regulations is found, OCR may choose to remedy the violations with the resolution agreement or decide that the NSF awardee organization took steps or actions to come into compliance with the applicable NSF civil rights regulations, which would not require a resolution agreement. If a resolution agreement is necessary, OCR will detail the steps or actions the institution needs to take in the final determination letter.
- For Section 504 NSF Conducted Programs complaints, a note of the right to appeal the final determination to the Director of the Foundation shall be contained in the letter and instructions on how to file the appeal (see Section 306 below).

### 307. Appeals of the Final Determination (Section 504 NSF Conducted Programs Only)

Except for Section 504 NSF Conducted Programs complaints, there is no appeal process or procedure available for final determinations of Title VI, Title IX, Section 504 NSF Assisted programs (awardee programs) and Executive Order 13160 complaints. Therefore, the final determination letter for these complaints will be the final decision of OCR for complaints filed under these civil rights regulations and executive orders.

For Section 504 NSF Conducted Programs complaints, 45 CFR 606.70(g)(1)(2) prescribes the appeal process. A complainant may appeal findings of fact, conclusions of law, or remedies to the Director of the Foundation. Such appeals must be in writing and must state fully the basis for the appeal, proposed alternative findings of fact, conclusions of law, or remedies. They must be sent (as evidenced by an appropriate postmark or other satisfactory evidence) within 90 days after the date of receipt of the Final Determination Letter. NSF may extend this time for good cause. The Director or their designee shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the Director or his/her/their designee determines that additional information is needed from the complainant, the Director or his/her/their designee shall have 30 days from the date such additional information is received from the complainant to decide on the appeal.

When OCR receives the appeal from the complainant, OCR shall notify the Office of The Director and the Office of General Counsel no later than close of business of the next business day after the day of receipt of the appeal.

### 308. Timeframes and Procedures for Negotiations

From the date that the proposed resolution agreement is shared with the NSF awardee organization, OCR and the NSF awardee organization will have a period of up to 90 calendar days to reach a final agreement.

### 309. Agreement Reached Within the 90-day Period

When negotiations result in an agreement within the 90-day period, OCR will issue the letter of finding(s) to the complainant and notify the NSF awardee organization in writing of its acceptance of the signed agreement.

### 310. Negotiation Impasse

OCR may end the negotiations period at any time prior to the expiration of the 90-calendar day period when it is clear that agreement will not be reached (e.g., the NSF awardee organization has refused to discuss any resolution; the NSF awardee organization has indicated a refusal to agree to a key resolution term; the NSF awardee organization has not responded to a proposed resolution agreement and at least 30 calendar days have passed). At such time, OCR shall issue an Impasse Letter that informs the NSF awardee organization that OCR will issue a letter of impending enforcement action in 14 calendar days if a resolution agreement is not reached within that 14-day period. The letter will include a description of OCR's unsuccessful attempts to resolve the complaint. If the NSF awardee organization does not enter a resolution

agreement within 14 calendar days of the date of the issuance of the Impasse Letter, OCR must follow the procedures for the issuance of a Letter of Impending Enforcement Action regarding noncompliance determinations. In the case of a mixed determination, when the negotiations included allegations that were appropriate to resolve prior to the conclusion of the investigation and allegations for which OCR made determinations of noncompliance, OCR shall issue a Letter of Impending Enforcement Action in 14 calendar days if a resolution agreement is not reached within that 14-day period. The letter will include a description of OCR's unsuccessful attempts to resolve the complaint. If the NSF awardee organization does not enter into a resolution agreement within 14 calendar days of the date of the issuance of the Impasse Letter, OCR must follow the procedures for the issuance of a Letter of Impending Enforcement Action regarding noncompliance determinations.

### 311. Negotiations On-Going at the End of the 90-day Period

If OCR and the NSF awardee organization negotiate for 90 calendar days and fail to reach a final agreement by the 90th day and negotiations are ongoing, OCR shall inform the NSF awardee organization that OCR will issue a Letter of Impending Enforcement Action in 30 calendar days if a resolution is not reached within that 30-day period. Negotiations will be considered ongoing if the NSF awardee organization has agreed in principle to the terms of the agreement but needs a short period of time to obtain approval of the agreement (e.g., by a board of education or president of an institution of higher education) and/or the appropriate signature on the agreement; or where the NSF awardee organization has agreed to most of the terms of the agreement but requests a short period of additional time to negotiate other terms. If the NSF awardee organization does not enter into a resolution agreement within 30 calendar days, OCR will issue a Letter of Impending Enforcement Action regarding noncompliance determinations.

In the case of mixed determination, when the negotiations included allegations that were appropriate to resolve prior to the conclusion of the investigation and allegations for which OCR made determinations of noncompliance, OCR shall inform the NSF awardee organization that OCR will issue a Letter of Impending Enforcement Action in 30 calendar days if a resolution is not reached within that 30-day period. If the NSF awardee organization does not enter into a resolution agreement within 30 calendar days, OCR will issue a Letter of Impending Enforcement Action regarding noncompliance determinations.

### 312. Resolution Agreement Guidelines

The complaint will be considered resolved and the NSF awardee organization deemed compliant when the NSF awardee organization, after negotiating with OCR and reaching agreement on its terms, enters and fulfills the terms of a resolution agreement.

Resolution Agreements:

- Must be signed by a person with authority to bind the NSF awardee organization.
- Must include:
  - Specific acts or steps the NSF awardee organization will take to resolve compliance concerns and/or violations.



- Dates for implementing each act or step.
  - Dates for submission of required reports and documentation.
  - Language requiring submission of documents and/or other information or actions for OCR's review and approval, and timeframes for their submission.
  - Timeframes requiring the NSF awardee organization to implement what OCR has approved, and language requiring documentation verifying implementation.
- Must have the following statements of principle:
    - The NSF awardee organization understands that by signing the Agreement they agree to provide data and other information in a timely manner, in accordance with the reporting requirements of the Agreement. Further, the NSF awardee organization understands that during the monitoring of the Agreement, if necessary, OCR may visit the NSF awardee organization, interview staff and students, and request additional reports or data for OCR to determine whether the NSF awardee organization has fulfilled the terms of the Agreement.
    - Upon the NSF awardee organization's satisfaction of the commitments made under the Agreement, OCR will close the case.
    - The NSF awardee organization understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement or judicial proceedings to enforce the Agreement, OCR will provide the NSF awardee organization written notice of the alleged breach and 60 calendar days to cure the alleged breach.

Where the agreement is memorialized through an exchange of letters or other written communications, each of the above elements must be satisfied.

### 313. Letter of Impending Enforcement Action

If the NSF awardee organization does not enter into a resolution agreement to resolve the identified areas of noncompliance, OCR will prepare a Letter of Impending Enforcement Action. The letter must include:

- A statement of allegation(s) in the case.
- A statement of OCR's jurisdictional authority, including NSF awardee organization status and the statutory basis for the investigation.
- A statement of the findings of fact for each allegation supported by any necessary explanation or analysis of the evidence on which the findings are based.
- Conclusions for each allegation that reference the relevant facts, the applicable regulations, and the appropriate legal standards.
- Notice that the letter is not intended and should not be construed to cover any other issue regarding the NSF awardee organization's compliance.
- Notice of the time limit on OCR's resolution process and the consequences of failure to reach agreement.
- A description of OCR's unsuccessful attempts to resolve the case.

- When a decision is made to defer final approval of any applications by the NSF awardee organization for additional federal financial assistance or additional funds made available through NSF over what the NSF awardee organization is presently receiving, the letter also will provide notice of such possible deferral. A separate deferral letter will be prepared if appropriate.

To resolve the case after issuance of the Letter of Impending Enforcement Action, any resolution agreement that the NSF awardee organization proposes must be approved by OCR.

### 314. Referrals from other Federal agencies

When a complaint is referred to OCR by a Federal agency, OCR will send a copy of the letter resolving the case to that agency.

## SECTION IV: Compliance Reviews and Directed Investigations

The investigation and resolution options and procedures identified in the Complaint Processing Manual will be utilized for compliance reviews and directed investigations, as appropriate. The "initiation date" is the date of the letter notifying the NSF awardee organization of the compliance review or directed investigation.

### 401. Compliance Reviews

In addition to the regulations that require OCR to investigate complaints that are filed with the agency, the regulations require OCR to initiate "periodic compliance reviews" to assess the practices of NSF awardee organizations to determine whether they comply with NSF's Title VI, Title IX, Section 504, and the Age Discrimination Act regulations. The compliance review regulations afford OCR broad discretion to determine the substantive issues for investigation and the number and frequency of the investigations.

### 402. Directed Investigations

In appropriate circumstances, OCR may conduct a directed investigation when information indicates a possible failure to comply with the laws and regulations enforced by OCR, or the matter warrants immediate attention, and the compliance concern is not otherwise being addressed through OCR's complaints, compliance review, or technical assistance activities.

A directed investigation is an OCR-initiated process that allows OCR to address possible discrimination that is not currently being addressed through OCR's complaints, compliance review, or technical assistance activities. Depending on the circumstances, a directed investigation may include offering technical assistance to the NSF awardee organization, and/or conducting an expedited investigation that may result in a resolution agreement that will ensure that NSF awardee organizations come into compliance with the requirements of the civil rights laws and regulations enforced by OCR.

## SECTION V: MONITORING RESOLUTION AGREEMENTS

### 501. Implementation Verification

OCR will promptly acknowledge receipt of interim and final monitoring reports. OCR will evaluate the report and issue an appropriate response (e.g., where OCR determines actions taken are sufficient or insufficient under the agreement). OCR must obtain sufficient information to determine whether the commitments made by the NSF awardee organization have been implemented consistently with the terms of the resolution agreement. Depending on the nature of the agreement, verification of remedial actions may be accomplished by, for example, a review of reports, documentation and other information submitted by NSF awardee organizations and knowledgeable persons, interviews with the NSF awardee organizations and knowledgeable persons and/or site visit(s).

### 502. Implementation Problems

OCR will promptly provide written notice to the NSF awardee organization of any deficiencies with respect to implementation of the terms of the agreement and will request appropriate action to address such deficiencies. When OCR has determined that an NSF awardee organization has failed to comply with the agreement or any of the terms thereof for reasons that do not justify modification of the agreement, OCR will take prompt action to enforce the agreement.

### 503. Agreement Modifications

#### Changed Circumstances Affecting Agreements

OCR may agree to modify or terminate a resolution agreement if circumstances have arisen that substantially change, fully resolve, or render moot, some or all the compliance concerns that were addressed by the resolution agreement. OCR may also modify the agreement in response to changes in controlling case law, statutes, regulations, or agency policy.

#### New Compliance Issues

OCR may address a new compliance issue(s) identified for the first time during monitoring by providing technical assistance or considering the issue(s) for a possible compliance review or directed investigation.

#### Approval of Modifications

OCR must approve modifications to the agreement (e.g., requests to change the substance of any provision in the agreement, requests for extension of time to complete the required action) to the institution. Approved modifications are set forth in writing and appended to the original agreement. Requests for modification are documented in the case file. The complainant is notified in writing of the approved modification(s) to the substance of the agreement.

## 504. Conclusion of Monitoring

OCR will conclude the monitoring of a case when it determines that the NSF awardee organization has fully and effectively implemented the terms of the resolution agreement, including any subsequent approved modifications to the agreement. The NSF awardee organization and the complainant will be promptly notified in writing of this determination.

## SECTION VI: INITIATION OF ENFORCEMENT ACTION

When OCR is unable to negotiate a resolution agreement with the NSF awardee organization, OCR will initiate enforcement action. OCR will either: (1) initiate administrative proceedings to suspend, terminate, defer, or refuse to make awards to the organization; or (2) refer the case to DOJ for judicial proceedings to enforce any rights of the United States under any law of the United States.

### 601. Administrative Proceeding Initiation

When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement, OCR will request that the administrative proceedings prescribed in NSF's Title VI regulations at 45 CFR 611.8-611.10 be initiated. OCR will confer with the NSF Office of the Director and NSF Office of General Counsel on the conduct of these proceedings.

### 602. Referrals To DOJ

When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement, OCR will where appropriate, issue a letter to the NSF awardee organization stating that the case will be referred to DOJ in 10 calendar days from the date of the letter.

### 603. Denial of Access Enforcement

An NSF awardee organization denies access to OCR when it:

- Refuses to permit OCR access during the NSF awardee organization's normal business hours to information maintained by the NSF awardee organization that is necessary to determine compliance status of the allegation(s) and issue(s) under investigation, or, during monitoring, NSF awardee organization's compliance with a resolution agreement. Generally, this includes access to books, records, accounts, electronic storage media, microfilm, retrieval systems and photocopies, and other sources of information, including witnesses, and NSF awardee organization's facilities.
- Refuses to permit OCR access to its employees during the NSF awardee organization's regular business hours.
- Fails to provide information by the refusal of one of its employees to do so or to provide access to information maintained exclusively by an employee in his/her official capacity.

- Refuses to complete applicable OMB-approved compliance and survey forms relevant to an investigation.

Where the NSF awardee organization has refused to provide OCR access, either in person, over the telephone, or through use of other media, OCR must attempt to ascertain the exact basis for the NSF awardee organization's refusal and explain OCR's authority to obtain the evidence. If attempts to persuade the NSF awardee organization to provide access have failed, OCR must send a letter to the NSF awardee organization that sets forth in detail the evidence (e.g., documents, data, other information, witnesses) to which the NSF awardee organization denied OCR access and specifies the efforts that OCR has made to obtain the evidence. When the NSF awardee organization does not voluntarily provide OCR with access to the requested evidence within 30 calendar days of OCR's issuance of the letter to the NSF awardee organization, OCR will issue a Letter of Impending Enforcement Action. If the NSF awardee organization continues to deny OCR access to the requested evidence, OCR will issue a letter to the NSF awardee organization stating OCR's intention to impose deferral of NSF award funding.

#### 604. Failure to Comply with Agreement Enforcement

Where the NSF awardee organization has failed to comply with the terms of a resolution agreement, OCR must issue a Letter of Impending Enforcement Action. If the NSF awardee organization does not come into compliance after issuance of the Letter of Impending Enforcement Action, OCR will initiate enforcement action.

## SECTION VII. APPENDICES

### 701. Special Intake Procedures

#### Age Discrimination Complaints

An age discrimination complaint is timely when it is filed within 180 days of the date the complainant first had knowledge of the alleged discrimination. For good cause shown, OCR may extend this time limit. For complaints under the Age Discrimination Act not involving employment discrimination, the complainant may file a civil action under the Age Discrimination Act in federal court but only after he or she has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred: (1) 180 days have elapsed since the filing of a complaint with OCR and OCR has made no finding, or (2) OCR issues a finding in favor of the NSF awardee organization. If OCR fails to make a finding within 180 days or issues a finding in favor of the NSF awardee organization, OCR will promptly notify the complainant of this fact and of his or her right to bring a civil action for injunctive relief. OCR's notice must also contain the following information: that a civil action can be brought only in a United States district court for the district in which the NSF awardee organization is found or transacts business; that a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint filed with the court; that before commencing the action, the complainant shall give 30 days' notice by registered mail to the Secretary, the Secretary of Health and Human Services, the Attorney General of the United States, and the NSF

awardee organization; that the notice shall state the alleged violation of the Age Discrimination Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails; and that the complainant may not bring an action if the same alleged violation of the Age Discrimination Act by the same NSF awardee organization is the subject of a pending action in any court of the United States.

OCR does not have jurisdiction over employment complaints under the Age Discrimination Act. Employment complaints filed by people 40 and older are referred to the appropriate EEOC office, and the OCR complaint is closed. Employment complaints filed by people under 40 are not within the jurisdiction of the EEOC and may be closed with notice to the complainant that there is no jurisdiction under the Act. If the complaint alleges age discrimination in employment that is within EEOC's jurisdiction and contains allegations of discrimination in services within the jurisdiction of OCR, the complaint is split into two separate cases. Each is given its own case number, the age employment complaint is referred to EEOC with the OCR age employment case being closed, and OCR proceeds with the age services complaint.

All complete and timely complaints containing an allegation of age discrimination in the provision of programs and services by an NSF awardee organization are promptly referred to: Federal Mediation and Conciliation Service Attention: Alternative Dispute Resolution Department 250 E. Street SW, Washington, D.C. 20427.

Where OCR receives a complaint containing both allegations of age discrimination in services and allegations under Title VI, Title IX, or Section 504, and OCR determines that the non-age allegation(s) is independent and separable from the age allegation, OCR will refer only the age portion of the complaint to FMCS. OCR will proceed to investigate the additional allegations over which OCR has jurisdiction. OCR will not wait for mediation of the age portion of the complaint to conclude before beginning investigation of the non-age portion of the complaint.

If FMCS does not resolve the complaint within 60 days from the date of filing with OCR, OCR will resume processing the age aspects of the complaint. FMCS's processing time will not be included in OCR's case processing time.

#### Title VI and Title IX Employment Complaints

Race, color, national origin, and sex discrimination in employment complaints will be processed in accordance with the government-wide regulations. Within 30 days of receipt, OCR will determine whether OCR or EEOC has jurisdiction over the complaint under Title VI and/or Title IX. If it is determined that the EEOC has jurisdiction, OCR must refer the "complaint" to the EEOC. OCR will notify the complainant and the NSF awardee organization of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred, and the date the agency received the complaint.

OCR must refer "complaints" to the EEOC complaints where both OCR and EEOC appear to have jurisdiction ("joint complaints"), consistent with the following guidance:

- Absent special circumstances, OCR will refer to a joint complaint that solely alleges employment discrimination against an individual.
- Absent special circumstances, OCR will not refer to a joint complaint alleging a pattern or practice of employment discrimination.
- Absent special circumstances, OCR will not refer to a joint complaint that alleges discrimination against employment and includes allegations regarding other practices of an NSF awardee organization. If, because of special circumstances, the employment allegations of such a complaint are referred to EEOC, OCR will assign a new case number to the allegations that are retained.

OCR will notify the complainant and NSF awardee organization of the action taken on the joint complaint. In the case of a referral to EEOC, the notice will include the location of the EEOC office to which the complaint was referred, the civil rights provision(s) involved, the authority of EEOC under this regulation and that the date the agency received the complaint will be deemed the date it was received by EEOC.

For those joint complaints retained for OCR investigation, OCR will contact the EEOC to ensure that, in the event EEOC has also received the complaint, EEOC defers its investigation.

#### Section 504 Disability Employment Complaints

Employment complaints based on disability will be referred to the EEOC under Title I. OCR will notify the complainant in writing that their complaint was referred to the EEOC. If special circumstances make the referral inappropriate, OCR and the appropriate agency may jointly determine to reallocate investigation responsibilities.

When OCR has jurisdiction over a disability employment complaint under Section 504, OCR shall retain the complaint if: 1) the EEOC does not have jurisdiction under Title I (i.e., if fewer than 15 employees); 2) the EEOC has jurisdiction, but the complainant elects to have OCR process the complaint as stated above; 3) the complaint alleges discrimination in both employment and in other practices or services covered by Section 504, or; 4) the complaint alleges a pattern or practice of employment discrimination.

#### 702. Data Collection and Information Gathering

OCR's data collection and information gathering activities will depend upon the case, applicable legal standards, and investigative/resolution strategy. The data/information collection and other investigative activities will vary from case to case depending on the extent to which relevant data are in the control of the NSF awardee organization or others.

Some general investigative principles and practices include:

- Obtain independent written documentation to corroborate oral statements.
- Label all evidence, documents, electronic media, and written records of contact, with information identifying the case being investigated and the circumstances under



- which evidence was obtained (e.g., where and when an interview was conducted, and who provided a given document).
- Document efforts to obtain access to NSF awardee organization data and witnesses.
  - Collect data resulting from any methods that OCR or NSF awardee organizations use to track and evaluate NSF awardee organization's compliance with their legal responsibilities (e.g., data from federal agency databases, NSF awardee organization public websites, climate surveys, and other self-assessment tools).

### 703. OCR's Authority to Obtain Information

OCR has the right to access during regular business hours to the NSF awardee organization's facilities and to information maintained by the NSF awardee organization that is necessary to determine compliance status on those issues under investigation. Generally, this includes access to such of the NSF awardee organization's books, records, accounts, including electronic storage media, microfilming, retrieval systems, and photocopies maintained by the NSF awardee organization, and other sources of information, including witnesses, and its facilities for relevance in OCR's judgment to ascertain compliance.

If an NSF awardee refuses to provide OCR with student information because of potential noncompliance with the "Family Educational Rights and Privacy Act" (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), OCR will delay efforts to secure this information pending consultation with the U.S. Department of Education and/or the U.S. Department of Justice. If, in the opinion of these agencies, the NSF awardee organization can withhold release of student information because of FERPA, OCR may attempt other means of obtaining substitute data in consultation with the NSF awardee organization. OCR will document this process and each action by OCR, the NSF awardee organization and the consulting federal agencies in the case file. OCR may dismiss a complaint if it determines that access to information protected by FERPA is crucial to the investigation. In such instances, OCR will attempt to transfer the complaint to the U.S. Department of Education's Office for Civil Rights or the U.S. Department of Justice's Civil Rights Division.

If the NSF awardee organization cites FERPA in not providing information pertaining to a complainant, OCR may contact the complainant to obtain consent from the complainant to release the information withheld by the NSF awardee organization. OCR will obtain the FERPA consent form used by the NSF awardee organization or if not available, consult with the NSF awardee organization on the format of consent it requires to comply with FERPA and release the withheld information to OCR. If the complainant refuses to provide consent and OCR determines that the complainant's consent is necessary to obtain information crucial to the investigation and cannot render findings without this information, OCR may dismiss the complaint without making a compliance determination. OCR will inform both the complainant and NSF awardee organization of the dismissal.

### 704. Requests for Records



## Timeframes for NSF awardee organization's Response

Depending upon the nature and extent of OCR's data request, the NSF awardee organization will be given an appropriate amount of time to submit the information required. The timeframe will be established at OCR's discretion, depending on the nature and extent of the data requested and/or other special circumstances, including factors affecting the feasibility of the timeframe brought to OCR's attention by the NSF awardee organization.

## Data Provided by NSF awardee organization.

An NSF awardee organization must submit information as necessary for OCR's compliance activities. For example, in the context of an ongoing complaint, compliance review, or directed investigation, OCR may require NSF awardee organizations to record information in such form and containing such information as OCR may determine is necessary to assess compliance, without obtaining prior approval for its use by the Office of Management and Budget; however, other federal regulations and policies may restrict OCR's information request, such as FERPA.

OCR must consider federal policies concerning paperwork burdens when requesting an NSF awardee organization to do more than provide OCR access to normally maintained information. Requests that an NSF awardee organization manipulate or compile information to meet an OCR need must be reasonable and take into consideration the burden placed on the NSF awardee organization. NSF awardee organizations that maintain data in an electronic format must provide the data in that format to OCR in a file type that can be accessed by OCR. NSF awardee organizations that do not maintain data in an electronic format are encouraged to provide the requested information in an electronic format that can be accessed by OCR. If an NSF awardee organization invites OCR to come onsite and collect the requested information, including the interview of witnesses and provides OCR with sufficient access to files, records, logs, and appropriate indexes for OCR to obtain the needed information, then the NSF awardee organization has provided OCR with the requisite access.

## Confidentiality

OCR has the right of access to an NSF awardee organization's record, even if those records identify individuals by name. To protect the confidential nature of the records (and to address the NSF awardee organization's concerns about potential noncompliance with FERPA), OCR may permit the NSF awardee organization to replace names with a code and retain a key to the code.

## Awardee Institution Requests for a Copy of the Complaint

When an awardee institution receives a data request from OCR, the awardee institution may request a copy of the complaint from OCR. OCR may release the contents of the complaint only if the complainant has given written consent on Consent Form B. If the complainant only provided to consent to the release of PII by completing Consent Form A, the awardee institution is to be advised that OCR is not authorized to release the contents of the complaint. The awardee

institution should be instructed to submit a FOIA request to the NSF FOIA Officer if it seeks to obtain a copy of the complaint.

## 705. Interviews

The objective of interviews is to gain an understanding of the records and data relevant to the issues in the case; to obtain information from and assess the credibility of witnesses; and to evaluate NSF awardee organization defenses. OCR may conduct individual interviews and focus groups, as appropriate, as part of its investigations and will make efforts to work with NSF awardee organizations to conduct interviews in a manner that minimizes disruptions to the NSF awardee organization's educational environment.

Prior to initiating an interview, OCR should inform the witness of the following:

- The general purpose of the interview, including OCR's role, what law or laws may be pertinent to the investigation, and a brief explanation of what is under investigation.
- The witness's right to personal representation during the interview by a person of his or her choice.
- When the witness is an employee of an NSF awardee organization, his or her right to refuse to have anyone else present during the interview and his or her right to refuse to reveal the content of an interview.
- The regulatory provision(s) concerning prohibition of intimidating or retaliatory acts by an NSF awardee organization.
- In most cases, the NSF awardee organization's counsel will be allowed to be present during upper-level management interviews.
- Privacy - OCR interviews witnesses under circumstances that assure privacy. An interpreter may be used when safeguards are taken to ensure the competence of the interpreter and to protect the witness's privacy.
- Interviews with minors (persons under 18) or Legally Incompetent Individuals.
  - OCR shall obtain written consent from a parent or guardian prior to conducting an interview of any person under 18 years of age or otherwise adjudicated legally incompetent, for example, mentally impaired. Parental or legal guardian consent may not be required for people under 18 if they are emancipated under state law and are therefore considered to have obtained a majority. For people under 18 who state they are emancipated, OCR must obtain proof of emancipation.
  - Where parents or guardians refuse to provide consent for an interview, and OCR determines that the child's information is critical, OCR may attempt to secure parental or guardian consent by inviting the parent or guardian to attend the interview. Where consent is denied, OCR will not interview the child.

## Records of Interviews

A written record of interviews (i.e., in-person, telephone, or through use of other electronic media) must be kept. Interviewers will notify interviewees when an audio or video recording is used. Audio/video recording will be done only with the consent of the interviewee. If Tape recording is used, the tape is part of the case record along with the written record.

The record of the interview to be placed in the case file must contain the following information:

- Case identification (name and case number).
- Name and identification of the interviewee, interviewer, and any other person present (including an explanation for the presence of any other persons).
- Date, time, and location of interview (including whether the interview was conducted in person or through use of media (e.g., telephone, videoconferencing)).
- A record of whether the interviewee was informed of required notifications.
- Written record reflecting the questions and responses obtained during the interview (It does not have to include a verbatim transcript but must accurately reflect the responses of the witness).

#### 706. Freedom of Information Act and Privacy Act

To investigate the complaint, OCR may collect and analyze personal information. The "Privacy Act of 1974," 5 U.S.C. § 552a, and the "Freedom of Information Act" (FOIA), 5 U.S.C. § 552, govern the use of personal information collected by OCR. OCR does not reveal the name or other personal information about an individual unless: (1) such information is necessary for the completion of an investigation or in enforcement activities against an organization that violates the laws and regulations enforced by OCR; (2) such information is required to be disclosed under FOIA or the Privacy Act; or (3) such information is permitted to be disclosed under both FOIA and the Privacy Act and OCR determines disclosure would further an interest of the U.S. National Science Foundation or the United States.

With respect to media inquiries regarding complaints, OCR will refer requests to NSF's Office of Legislative and Public Affairs (NSF OLPA) and the Office of General Counsel (NSF OGC). Any disclosure or non-disclosure of complaint information is conducted in coordination between OCR, NSF OLPA, NSF OGC, and other offices, as appropriate, in compliance with FOIA and the Privacy Act. All information within OCR complaint case files is subject to FOIA and the Privacy Act.

#### 707. NSF Awardee Organizations Operating Under Federal Court Order

##### United States a Party

When OCR receives a complaint alleging discrimination by an NSF awardee organization against which the DOJ represents the United States as a party in pending litigation, the following procedures will apply:

- **OCR notification to DOJ:** The appropriate NSF staff will forward the complaint to DOJ by electronic mail immediately and ask whether DOJ wants OCR to refer the complaint to DOJ. This will occur before any OCR evaluation of the complaint begins and even if it is clear on the face of the complaint that OCR would not open it for investigation.

- **DOJ response:** DOJ will have seven calendar days after the date of OCR's electronic mail notification to determine whether (1) DOJ wants OCR to refer the complaint to DOJ, or (2) DOJ does not want OCR to refer the complaint to DOJ.
- **No referral to DOJ:** If DOJ indicates that it does not want OCR to refer the complaint, or DOJ does not respond within seven calendar days of the date of OCR's request, OCR, in its sole authority, will immediately process the complaint.
- **Referral to DOJ:** If DOJ decides to take the complaint, then:
  - The entire complaint will be referred to DOJ.
  - OCR will close the complainant of the referral.
  - Once a complaint is referred to DOJ, they are responsible for investigating and resolving the entire complaint. OCR will forward all communications it receives from the complainant relating to the complaint to the DOJ and the DOJ will be responsible for addressing all such communications. OCR will not accept any type of return or re-referral of the complaint from DOJ.

## Section VII: Definitions

**Allegation:** A claim or assertion that someone has done something illegal or wrong, typically one made without proof.

**Assisted Program:** a program, service, or activity operated by an NSF awardee organization that is supported or funded by NSF funding awards, including cooperative agreements.

**Communication:** OCR classifies information submitted by individuals as "communications" that may fall under the definition of a complaint, but the individual or group providing the information is: 1) not requesting that NSF conduct a program discrimination complaint investigation or 2) is requesting that NSF take other action besides a complaint investigation.

**Complainant:** Complainant is a party who initiates a lawsuit in a court of law or an administrative proceeding.

**Complaint:** A "complaint" or "formal complaint" is defined as information submitted by a complainant who requests that OCR investigates allegations of discrimination or harassment based on sex, national origin, race, color, disability, and age against an NSF awardee organization or an NSF program providing programs, services, and activities to participants.

**Conducted Programs:** a program, service or activity operated directly by NSF. Examples are the Merit Review process, or programs, events, and activities held in NSF facilities.

**Data Requests:** A data request seeks information from the NSF awardee organization relevant to the investigation. It can be used to initiate information collection or to request further information, as necessary.

**Investigation:** The action of gathering information on something or someone for an informal or formal evaluation.

**Respondent:** A defendant in a lawsuit or complaint.