



U.S. NATIONAL SCIENCE FOUNDATION
OFFICE OF CIVIL RIGHTS AWARDEE COMPLIANCE BRANCH

Complaint Processing Procedures for NSF-Assisted (Awardee Institution) and NSF-Conducted Programs

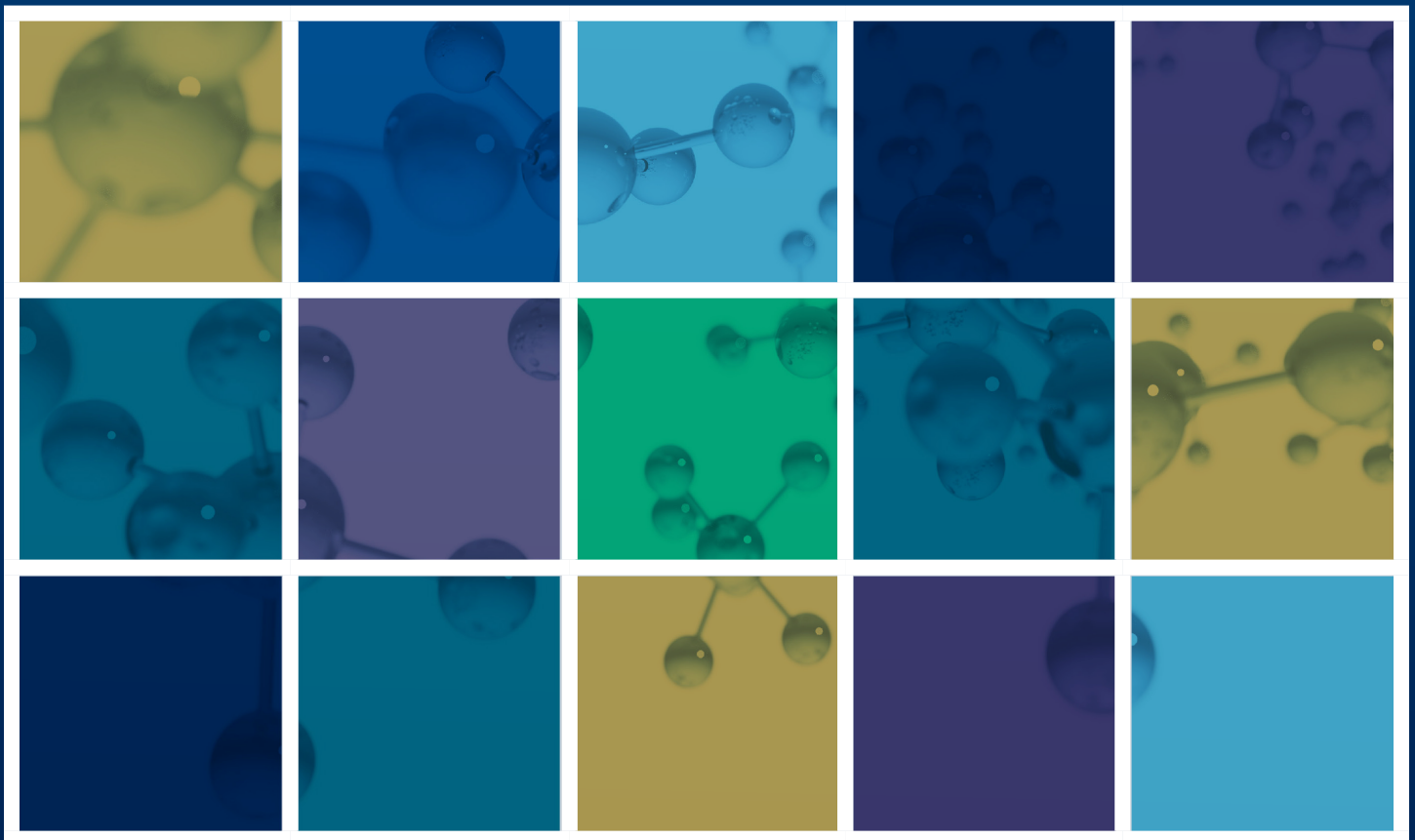


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Definitions

Allegation: A claim or assertion of discrimination or harassment.

Assisted program: A program, service, or activity operated by a U.S. National Science Foundation awardee institution that is supported or funded by NSF funding awards or with which NSF has a cooperative agreement.

Communication: Information from an individual or group to the Awardee Compliance Branch (ACB) where the individual or group: (1) is not requesting that ACB conduct a program discrimination complaint investigation or 2) is requesting that ACB take other action other than opening an investigation.

Complainant: An individual who submits an allegation of harassment and/or discrimination.

Complaint: Information from an individual alleging that the individual has been subjected to discrimination and/or harassment based on sex, national origin, race, color, disability, and/or age by an NSF awardee institution or an NSF program providing programs, services, or activities. For NSF-conducted education or training programs, religion and status as a parent apply.

Conducted program: Any program, service, or activity operated directly by NSF. Examples include the merit review process, programs, events, or activities held by NSF in NSF facilities.

Investigation: The action of gathering information on something or someone for a formal evaluation with the intent of concluding on the established facts.





SECTION 1: REGULATIONS

The U.S. National Science Foundation Office of Civil Rights (NSF OCR) Awardee Compliance Branch (ACB) ensures that awardee institutions comply with the following civil rights laws, regulations, and executive orders:

- **Title VI of the “Civil Rights Act of 1964,”** 42 U.S.C. §§ 2000d et seq., [45 C.F.R. Part 611](#) (Title VI).

Under Title VI, ACB 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, ACB 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](#) (Title IX).

Under Title IX, ACB 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, ACB 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](#) (Section 504).

Under Section 504, ACB has jurisdiction to investigate complaints involving individuals covered by the law and employment complaints based on disability. For employment complaints, ACB follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29¹.

- **Section 504 of the “Rehabilitation Act of 1973” (NSF Conducted Programs),** as amended, 29 U.S.C. § 794, [45 C.F.R. Part 606](#) (Section 504).

Under Section 504, ACB 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 C.F.R. 1613, shall apply to employment in federally conducted programs or activities.

- **“Age Discrimination Act of 1975,”** 42 U.S.C. §§ 6101 et seq., 45 C.F.R. Part 617 (“Age Discrimination Act”).

Under the “Age Discrimination Act,” ACB has jurisdiction to investigate complaints involving individuals covered by the law. ACB does not have jurisdiction over employment under the “Age Discrimination Act.” [Executive Order 13160 \(Nondiscrimination in NSF Conducted Education & Training Programs\)](#), prohibits discrimination based on race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent in education and training programs conducted by federal agencies.

¹ ACB 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.

This guide serves as ACB's procedures for receiving, evaluating, processing, investigating, and resolving allegations of discrimination, harassment, or retaliation in violation of NSF's civil rights regulations for federally assisted and federally conducted NSF programs.

SECTION 2: COMPLAINT PROCESS

2.1 Awardee Discrimination Complaint case management system (CMS)

ACB uses an [online complaint filing portal](#) for submitting and maintaining complaints. After a complaint is submitted, the complainant will receive an automatic email confirming their submission. An intake specialist will review the information and contact the complainant.

2.2 Communication vs. complaint

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

2.2.1 What is a complaint?

ACB classifies information submitted by individuals as a complaint when the individual or group alleges that they have been subjected to discrimination and/or harassment based on sex, national origin, race, color, disability, and/or age by an NSF awardee institution or an NSF program providing programs, services, and activities to participants, and they want ACB to investigate the information. For federally conducted education and training programs, complainants also may allege discrimination based on religion or status as a parent. Examples of complaints include (but are not limited to) allegations that an NSF awardee institution:

- Engaged in discrimination or harassment in violation of NSF's awardee/conducted civil rights regulations.
- Retaliated against the complainant for engaging in a protected activity (e.g., filing a discrimination complaint or participating in a discrimination complaint investigation as a witness).
- Committed a procedural violation of NSF's civil rights regulations. For example, the awardee institution does not have a Title IX or Section 504 Coordinator or a prompt and equitable Title IX or Section 504 discrimination/harassment grievance procedure.

2.2.2 What is communication?

ACB classifies information submitted by individuals as "communication" when the information may fall under the definition of a complaint above, but the individual or group providing the information is:

- a) Not requesting that ACB investigate.
- b) Requesting that ACB act other than opening a complaint investigation.

2.3 Intake

When ACB receives a complaint, ACB will begin the intake stage. ACB will collect additional information, as needed, to determine jurisdiction. For ACB to continue processing a complaint, the complaint must allege a violation of an applicable law, regulation, or executive order by an NSF program or by an institution that receives or is approved to receive funding from NSF. Although complaints are not required to prove that an NSF awardee institution violated these laws at the intake stage, the

complainant must establish a *prima facie* case of discrimination.² One or more of the following elements must apply to the allegations. This list is not exhaustive:

- Denial of admission or access to or participation in an NSF-funded or conducted program, service, or activity based on race, color, national origin, sex, age, or disability.
- Discrimination complaints must identify a similarly situated individual or group or entity of a different race, color, national origin, sex, age, or disability status who was treated more favorably than the complainant.
- 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 an exchange occurred where one transfer or favor depends on another.
- For allegations of harassment, the NSF awardee institution 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 (e.g., filing a discrimination complaint or participating in a discrimination complaint as a witness); (2) the NSF awardee institution took adverse action against the individual; and (3) a causal connection exists between the individual's protected activity and the NSF awardee institution's adverse action.

2.4 Timeliness determination

ACB will act only with respect to allegations that have been filed within the following timeframes, unless the complainant is granted a waiver:

- **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:** The complainant has 180 days from the date the complainant first had knowledge of the alleged discrimination.

The filing date is the date ACB was notified of the complaint, i.e., received via the online portal, email, or fax, or the postmark date if the complaint was submitted by mail. ACB collecting information during the intake stage does not affect the filing date.

If a complaint is not filed timely, ACB will notify the complainant of the opportunity to request a waiver. ACB may grant a waiver for reasons such as:

- The complainant could not reasonably be expected to know the act was discriminatory within the 90-day/180-day filing period. If this occurs, the complainant must file the complaint within 60 days after the complainant became aware of the alleged discrimination or harassment. (*Note that lack of previous awareness of ACB or the civil rights laws and regulations enforced by ACB 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. If this occurs, the complainant must file the complaint within 60 days after the period of incapacitation ended. (ACB may request a medical note from a doctor.)

² 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 they are a member of a particular protected group; they were eligible for the recipient's program, activity or service; they were 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 complainant filed a complaint alleging the same or similar allegation based on the same operative facts with another forum, i.e., a federal, state, or local civil rights enforcement agency, or federal or state court. In these cases, the complainant must file with ACB within 60 days of the completion of actions in another forum.
- ACB determines at its discretion and after careful review of the information contained in the complaint, that the best interests of the United States, NSF, and the scientific enterprise are served by extending or waiving the filing timeframe.

2.5 Consent form

When an individual files a complaint, they will be asked to fill out a form in which they will consent to the sharing of their personal identifiable information (PII) with the awardee institution. Although the complainant is not required to submit a consent form to submit a complaint, if ACB has decided to accept the complaint for investigation, ACB **must** receive a consent form before beginning an investigation. The complainant will have 14 calendar days from the date that the consent form was provided to the complainant to complete, sign, and return to ACB. If ACB does not receive the consent form within 14 calendar days, ACB will dismiss the complaint for lack of consent. A signed consent form is not required for the submission of anonymously filed complaints.

The signed consent form is available in ACB's complaint filing portal, and the complainant should submit the consent form through this portal. If the portal is unavailable or the complainant is unable to use the portal, the complainant may submit the consent form to ACB by mail, fax, or email. For consent forms that are mailed, ACB would provide flexibility with the 14-day timeframe if the complainant mailed the consent form before the expiration of the 14-day timeframe. CMS also tracks and notifies complainants if a consent form is missing.

Third party reports: A complainant who is filing on behalf of another person(s) is responsible for securing consent from that individual, including when a parent files for a student over the age of 18 or one who turns 18 while the complaint is under investigation or in monitoring. The complaint cannot be accepted without consent of the impacted individual.

Minor or legally incompetent adult: 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 ACB.

Denies consent: When ACB receives the consent form from the complainant, and the complainant does not provide consent for ACB to provide their PII to the awardee or other necessary parties, ACB will evaluate and review the complaint to determine whether such consent is crucial to investigate the complaint and render findings. If ACB determines that the complainant's consent is crucial, then ACB may close the complaint and notify the complainant. ACB will engage in a similar process if the complainant withdraws consent.

2.6 Complaint determinations

After the initial review, ACB will notify the complainant of ACB's acceptance, dismissal, or referral of the complaint.

2.6.1 Dismissals

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

The following are some examples for complaint dismissal:

1. **Lack of jurisdiction** over the subject matter or institution of the complaint.
2. **Not an education or training program.**
3. **Does not** allege discrimination in **an NSF-funded program, service, or activity.**
4. **Lack of sufficient factual detail** (e.g., who, what, where, when, and how) for ACB to infer that discrimination or retaliation may have occurred or is occurring.
5. The allegations are **not timely filed** with ACB, and a waiver was not requested or was requested but not granted.
6. **Fails to provide a signed consent form.**
7. **"Family Educational Rights and Privacy Act" (FERPA):** ACB determines that the identity, other PII, or records are prohibited from disclosure to ACB by FERPA (20 U.S.C. § 1232g; 34 C.F.R. Part 99), without signed written consent from student(s) and other FERPA-protected individuals named in the complaint, including the complainant, at the NSF awardee institution. If this information needs to be investigated, ACB may forward the complaint to the U.S. Department of Education's Office of Civil Rights.
8. **Previously filed in another forum**
 - a. The same or similar allegation(s) filed with ACB is/are **currently pending and/or resolved by another federal, state, or local civil rights enforcement agency.**
 - b. The same or similar allegation filed with ACB is **currently pending and/or has been resolved in a local, state, or federal court.**
9. **Allegations were resolved either by ACB or another entity that provided a comparable resolution process that was acceptable to ACB.**
10. **ACB previously dismissed** the same or similar allegations.
11. **Allegations were recently investigated, or ACB is currently investigating.**
12. The **death of the complainant** makes it impossible to investigate the allegations fully or forecloses the possibility of individual relief.
13. **Complainant refuses to provide necessary information.**
14. **Complaint can be resolved without an investigation.**

2.6.2 Referrals

ACB may determine whether a complaint is best handled by another federal agency. In these circumstances, ACB will send the complaint and the complainant's contact information to the respective federal or state civil rights agencies.

Complaints based on disability, race, national origin, and/or color.

Per a 28 Oct 1987 delegation between NSF and ED/OCR - 52 FR 41496, the Department of Education is the agency responsible for Title VI and Section 504 complaints. Any complaints within an NSF-funded program or activity received that have a basis of disability, race, national origin, and/or color will be referred to the Department of Education. Information on regional offices can be found at the [Office for Civil Rights Complaint Assessment System](#).

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. The Equal Employment Opportunity Commission (EEOC) regulations at [29 C.F.R. § 1691.5](#) and the U.S. Department of Justice regulations at [28 C.F.R. § 42.605](#) require that ACB refer individual complaints of employment discrimination to the EEOC. ACB will refer individual complaints of race, color, national origin, religion, and sex discrimination in employment to the EEOC within 30 days of receipt. ACB will notify the complainant and the NSF awardee institution of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred, and the date ACB received the complaint.

Section 504 employment disability complaints

For employment complaints based on disability, complaints are transferred to the EEOC under Title I of the "Americans with Disabilities Act." ACB will notify the complainant that their complaint was referred to the EEOC and will notify the NSF awardee institution of the complaint referral. For employment discrimination based on a disability within an NSF-conducted program, ACB will handle the investigation.

Other examples of when ACB will retain the complaint: 1) the EEOC does not have jurisdiction under Title I (i.e., if fewer than 15 employees); 2) the complaint alleges discrimination in both employment and in other practices or services covered by Section 504.

Age discrimination employment complaints

ACB does not have jurisdiction over complaints of age discrimination in employment under the "Age Discrimination Act." ACB transfers employment complaints filed by people 40 and older to the appropriate EEOC office. ACB then closes the complaint. If the complaint alleges age discrimination in employment and contains allegations of age discrimination in NSF programs or services, ACB splits the complaint into two separate cases. ACB assigns each case its own case number, with respect to the agency, and investigations will proceed concurrently.

Age discrimination complaints

All complaints filed for age discrimination in programs and services by an NSF awardee institution are transferred to the Federal Mediation and Conciliation Service or another mediation entity. Both the complainant and awardee institution must participate in the mediation process. If the complainant does not participate, ACB will take no further action on the complaint. If the complainant and the awardee institution reach an agreement, the mediator will prepare a written statement of the agreement. The mediator will send a copy of the agreement to ACB, and ACB will take no further action on the complaint unless the complainant or the awardee institution fails to comply with the agreement. If the parties do not reach resolution within 60 days, ACB will continue its investigation.

U.S. National Science Foundation Office of Inspector General

If a complaint alleges fraud, waste, abuse, research misconduct, or loss of scientific integrity, ACB will refer the complaint to the NSF Office of Inspector General and/or Office of Scientific Integrity for review and action as appropriate.

NSF directorates and scientific offices

If the complaint alleges programmatic issues within the award (funding, staff, PI disengagement, etc.), ACB will refer to the respective directorate for review and resolution, as appropriate.

2.6.3 Accepting a complaint for investigation

If ACB determines that the alleged activities or events, if true, would violate applicable laws or regulations, ACB will initiate an investigation. ACB will notify the complainant and the NSF awardee institution if ACB accepts the complaint for investigation. Investigations will review the pertinent practices and policies of the NSF awardee institution, the circumstances under which the alleged activities or events occurred, and other factors relevant to a determination of whether the NSF awardee institution failed to comply with applicable civil rights laws and regulations.

SECTION 3: INVESTIGATION

3.1 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.

For Section 504 NSF Conducted Programs complaints, [45 C.F.R. § 606.70\(f\)](#) prescribes that these complaints must be investigated, and the final determination letter sent to the complainant within 180 days of ACB's receipt of a complete complaint.

3.2 Request for information

ACB will send the NSF awardee institution a request for information to start the investigation. Data requests will depend upon the case and applicable legal standards. ACB will provide the NSF awardee institution with a deadline to submit the information with an option to extend if necessary. ACB establishes timeframes at its discretion, depending on the nature and extent of the data requested and/or other circumstances.

If the NSF awardee institution does not voluntarily provide ACB with access to requested information, ACB will issue a letter of impending enforcement action. After the letter is sent, if the NSF awardee institution continues to deny ACB access to the requested evidence, ACB may initiate suspension or termination of, or refusal to grant or to continue federal financial assistance or by any other means authorized by law in accordance with [45 CFR Part 611 procedures](#).

3.3 ACB's authority to obtain information

Per [45 C.F.R. Part 611](#), ACB has the right to access an NSF awardee institution's facilities and information maintained by the NSF awardee institution that is necessary to determine compliance status on issues under investigation. Generally, this includes access to the NSF awardee institution's books; records; accounts, including electronic storage media, microfilming,

retrieval systems, and photocopies; other sources of information, including witnesses; and the awardee institution's facilities for relevance in ACB's judgment to ascertain compliance.

"Privacy Act" and "Freedom of Information Act"

Two laws govern personal information submitted to any federal agency:

The "Privacy Act of 1974" (5 U.S.C. § 552a) (Privacy Act)

The "Freedom of Information Act" (5 U.S.C. § 552) (FOIA).

The "Privacy Act" protects individuals from unauthorized disclosure or use of personal information held by the federal government. The law applies to agency systems of records that are maintained and retrieved by the individual's name, Social Security number, or other personally assigned identifier.

FOIA provides public access to federal government files and records. Individuals can obtain items from many categories of records of the government — not just materials that apply to them personally. Pursuant to an applicable FOIA exemption from the general release requirement, ACB generally is not required to release documents during an investigation or enforcement proceeding if the release could adversely affect the ability of the agency to do its job. Other records, such as personnel files, may be withheld where the disclosure would be a "clearly unwarranted invasion of personal privacy."

ACB does not reveal the name(s) or other personal information about an individual in an investigation unless it is necessary for the completion of an investigation under enforcement activities against a recipient for violating the laws, or unless such information is required to be disclosed publicly under FOIA or to the individual under the "Privacy Act." Questions regarding what disclosures may be allowed or required under the FOIA or "Privacy Act" should be directed to the Office of General Counsel (OGC).

"Family Educational Rights and Privacy Act"

ACB's access to certain information about students may be limited due to the "Family Educational Rights and Privacy Act" (FERPA) ([20 U.S.C. § 1232g](#); [34 CFR Part 99](#)), which protects the privacy of student records. When student information is required for investigation, ACB will consult 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 institution can or must withhold release of student information because of FERPA, ACB may attempt other means of obtaining substitute data in consultation with the NSF awardee institution. ACB may dismiss a complaint if it determines that access to information protected by FERPA is crucial to the investigation. In such instances, ACB 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.

3.4 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 institution defenses. ACB may conduct individual interviews and/or focus groups, as appropriate, as part of its investigations and will make efforts to work with NSF awardee institutions to conduct interviews in a manner that minimizes disruptions to the NSF awardee institution's educational environment.

Witness rights

Witnesses have the following rights when they are interviewed for an investigation:

- Knowledge of the general purpose of the interview, including ACB's role, what laws apply to the investigation, and a brief explanation of what is under investigation.
- The right to personal representation during the interview
- When the witness is an employee of an NSF awardee institution, the witness has a right to refuse to have institution officials present during the interview, the right to refuse to reveal the content of an interview, and protection under applicable civil rights laws against intimidating or retaliatory acts by an NSF awardee institution.
- Privacy rights, as described under the heading, "Privacy Act and Freedom of Information Act," above apply to witness interviews,
- Interviews with minors (persons under 18) or legally incompetent individuals.
- ACB shall obtain written consent from a parent or guardian prior to conducting an interview with any person under 18 years of age or otherwise adjudicated legally incompetent. Parental or legal guardian consent may not be required for people under 18 if they are emancipated under state law and therefore considered to have obtained a majority. People under 18 who state that they are emancipated must provide proof of emancipation to ACB.
- Where parents or guardians refuse to provide consent for an interview, and ACB determines that the child's information is crucial to the investigation, ACB will consider closing the complaint or referring to the U.S. Department of Education or the U.S. Department of Justice.

Records of interviews

Interviewers will either keep a written record of interviews or use an audio/video recording. Interviewees must provide consent for the use of audio/video recording. If consent is not provided, the interviewer will not record the interview. The record of the interview will be maintained for the length of the records retention schedule.

3.5 Investigative determinations

At the conclusion of the investigation, ACB will determine, **using a preponderance of the evidence standard**, whether there is sufficient evidence to support a conclusion of noncompliance.

3.5.1 Insufficient evidence determination

When ACB determines that there is insufficient evidence to support the conclusion that the NSF awardee institution failed to comply with applicable regulations, ACB will issue a determination letter to the parties explaining the reasons for its decision.

3.5.2 Noncompliance determination

When ACB determines that the preponderance of the evidence supports a conclusion that the NSF awardee institution failed to comply with applicable regulation(s), ACB will send the awardee institution a letter outlining the investigation and non-compliance. Afterward, ACB will attempt to negotiate a resolution agreement where necessary.

3.5.3 Mixed determination

A mixed determination is appropriate for complaints with multiple allegations, where not all the allegations are found in violation of applicable NSF regulations. In a mixed determination case, ACB will send the awardee institution a letter outlining the investigation and the determination for each allegation. ACB will then attempt to negotiate a resolution agreement.

3.6 Final determination letter

For all findings (i.e., insufficient evidence, noncompliance, and mixed determinations), ACB 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. Where ACB finds noncompliance with NSF civil rights laws and/or regulations, ACB determines whether a resolution agreement is necessary. ACB may determine that a resolution agreement is not necessary if ACB determines that the NSF awardee institution has already taken steps or actions to come into compliance with the applicable NSF civil rights laws and regulations. If a resolution agreement is necessary, ACB will detail in the final determination letter the steps or actions the institution needs to take (see the Resolution Agreements section below for more details).

3.7 Appeals of the final determination

Except for complaints citing Section 504 in NSF-conducted programs, there is no appeal process or procedure available for final determinations of complaints citing Title VI, Title IX, Section 504 in NSF-assisted programs (awardee programs), or Executive Order 13160. Therefore, the final determination letter for these complaints will be the final decision.

For complaints citing Section 504 in NSF-conducted programs, [45 C.F.R. § 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 NSF. Such appeals must be in writing and must state the basis for the appeal fully, and proposed alternative findings of fact, conclusions of law, or remedies. Appeals must be sent within 90 days after the date of receipt of the final determination letter; however, the Director 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 their designee determines that additional information is needed from the complainant, the Director or their designee shall have 30 days from the date such additional information is received from the complainant to decide on the appeal.

SECTION 4: RESOLUTION AGREEMENTS

Where ACB finds that an awardee institution has failed to comply with applicable civil rights laws/regulations and has not taken actions to remedy the noncompliance, ACB endeavors to resolve the matter through a resolution agreement. The agreement will outline the actions the awardee institution must take to comply with the law.

The NSF awardee institution will have the opportunity to negotiate the terms of the resolution agreement. From the date that ACB shares the proposed resolution agreement with the NSF awardee institution, ACB and the NSF awardee institution will have up to 90 calendar days to reach a final agreement.

4.1 Successful negotiation

After ACB and the awardee institution sign a resolution agreement, the NSF awardee institution will enter a monitoring period. ACB will consider the complaint resolved and will deem the NSF awardee institution compliant when the NSF awardee institution fulfills the terms of the resolution agreement.

4.2 Resolution agreement negotiation impasse

If ACB and the awardee institution do not reach a resolution agreement within 90 calendar days, ACB will issue an impasse letter, which includes a description of ACB's unsuccessful attempts to resolve the complaint and a notice that impending enforcement action may follow. If ACB and the awardee institution still do not reach a resolution agreement within 14 calendar days of the impasse letter, ACB will issue a letter of impending enforcement. [See Section 6, Impending Enforcement Action](#), for additional details.

SECTION 5: MONITORING RESOLUTION AGREEMENTS

5.1 Implementation

If ACB and the awardee institution reach a resolution agreement, ACB will monitor the agreement. During the monitoring period, the NSF awardee institution will submit sufficient information for ACB to determine whether the awardee institution has complied with the terms of the resolution agreement. ACB may assess compliance by means including review of reports, documentation, and other information submitted by the NSF awardee institution, interviews with the NSF awardee, and site visits.

5.2 Implementation problems

ACB will promptly provide written notice to the NSF awardee institution of any deficiencies in the implementation of the terms of the resolution agreement and will request appropriate action to address such deficiencies. If ACB determines that an NSF awardee institution has failed to comply with any of the terms of a resolution agreement for reasons that do not justify modification of the agreement, ACB will take prompt action to enforce the agreement.

5.3 Agreement modifications

5.3.1 Changed circumstances affecting agreements

ACB 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 the resolution agreement addressed. ACB also may agree to modify an agreement in response to changes in controlling case law, statutes, regulations, or agency policy, or if additional compliance issues emerge at the NSF awardee institution.

5.3.2 New compliance issues

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

5.3.3 Approval of requested modifications

ACB must approve requested 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). Approved modifications are set forth in writing and appended to the original agreement. Requests for modification are documented in the case file, and the complainant will be notified in writing of the approved modification(s) to the substance of the agreement.

5.4 Conclusion of monitoring

ACB will conclude the monitoring of a resolution agreement when it determines that the NSF awardee institution has fully and effectively implemented the terms of the agreement, including any subsequent approved modifications to the agreement. Once the monitoring period is completed, ACB will notify the NSF awardee institution and the complainant.

SECTION 6: IMPENDING ENFORCEMENT ACTION

If the NSF awardee institution does not enter into a resolution agreement to resolve the identified areas of noncompliance or if the awardee institution does not comply with the terms of the resolution agreement, ACB will prepare a letter of impending enforcement action. The letter of impending enforcement action is a formal letter advising an NSF awardee institution that NSF will take enforcement action if the noncompliance is not resolved. When post-letter of impending enforcement action negotiations does not result in a resolution agreement, ACB will request that the administrative proceedings prescribed in NSF's Title VI regulation at [45 C.F.R. § 611.8-611.10](#) be initiated.³ ACB will confer with the NSF Office of the Director and NSF Office of General Counsel regarding enforcement action.

Enforcement action may include, but is not limited to:

- (1) Initiating administrative proceedings to suspend, terminate, defer, or refuse to make awards to the organization.
- (2) Referring the case to the U.S. Department of Justice for judicial proceedings to enforce any rights of the United States under any law of the United States.

The awardee institution may resolve the matter if they enter an approved resolution agreement with ACB.

³ Note these proceedings apply to all NSF civil rights enforcement actions.