



National Science Foundation

**Office of Equity and 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 National Science Foundation’s (NSF’s) Office of Equity and Civil Rights 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 OECR through ACB. OECR 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.

OECR 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, OECR 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, OECR 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, OECR 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, OECR follows 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, OECR has jurisdiction to investigate complaints involving individuals covered by the law and employment complaints based on disability. For employment complaints, OECR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29 C.F.R. Part 1640.¹
- **Age Discrimination Act of 1975**, 42 U.S.C. §§ 6101 et seq., 45 C.F.R. Part 617. Under the Age Discrimination Act, OECR has jurisdiction to investigate complaints involving individuals covered by the law. OECR does not have jurisdiction over employment under the Age Discrimination Act.

OECR 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, OECR 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.

¹ OECR may investigate complaints initially filed with the US 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. See §35.171(a)(2)(ii).

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

OECR will first determine whether the information provided is classified as a “complaint” or whether the information is classified as a “communication.”

What is a complaint?

A “complaint” or “formal complaint” is defined as information submitted by a complainant who requests that OECR investigate 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 examples complaints include (but not limited to):

- a) Engaged or is engaging 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 a communication?

OECR 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 e-mail, US mail, fax or other means but not through OECR’s online awardee complaint filing portal. The portal links to the Awardee Discrimination Complaint Case Management System (CMS), which is detailed below.

OECR will inform the individual or entity sending the complaint or 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”, OECR may contact the individual or group and provide information on NSF civil rights regulations and information about how to file a complaint by requesting that the complaint be filed through OECR’s online awardee complaint filing portal or another method of the individual can’t or won’t use the online portal or requires an accommodation for a disability or is Limited English Proficient. If a communication can be addressed or resolved by another NSF office or program directorate, the communication may be referred by OECR to that office or directorate for action.

OECR will provide individuals with assistance regarding the nature of their rights and of the OECR investigation process. As appropriate, OECR 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.

OECR will inform individuals or entities that any information that is communicated to OECR deemed insufficient for further processing as a discrimination complaint may be used to inform future compliance review site selection. OECR 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 OECR cannot address.

The information provided to OECR 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 OECR performs to determine an NSF awardee’s compliance with the Harassment Notification term & condition.

Awardee Discrimination Complaint Case Management System (CMS)

OECR 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 OECR will first ask individuals to use this method), OECR will accept complaints that are submitted via email, US mail, express mail, or fax machine. If OECR receives a complaint or communication through these methods, OECR will enter the complaint or communication into CMS to ensure proper case management. See the “NSF CRS User Guide” for instructions on how OECR staff can use CMS.

Is a complaint a “complete” complaint?

Once OECR determines that the information received is a discrimination complaint, OECR will determine whether the complaint is a “complete” complaint. OECR 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 discrimination². 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/non-disabled 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 gender harassment) must assert that a hostile environment exists, 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 protected activity (i.e., filing a discrimination complaint); (2) the NSF awardee organization took an 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.
- The complaint and its allegations are timely filed or a request or waiver to complaint filing timeframes was made to OECR and granted by OECR.

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 to OECR but wish to remain anonymous or do not provide written consent for OECR to divulge their personally identifiable information (PII) to necessary parties.

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 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.

- 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 persons or entities.
- Inquiries that seek advice or information from OECR.
- Allegations that are communicated to OECR orally. (Individuals who communicate allegations to OECR orally will be provided information on how to file a written complaint with NSF through OECR.)
- 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 OECR 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 OECR 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 OECR as detailed above is not accepted for investigation by OECR, OECR may use this information to assist in efforts to identify NSF assisted and conducted programs and/or NSF awardee organization for future civil rights regulatory compliance and technical assistance efforts by OECR.

OECR will complete its evaluation of all complaints and notify the complainant of OECR’s acceptance, dismissal, or referral of the complaint as expeditiously as possible. Similarly, when the complaint is accepted for investigation, OECR 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. OECR will request data and documentation from the NSF awardee organization in the complaint acceptance letter, but for complex complaints, OECR 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 is received that occurred within the United States Antarctic Program, the complaint will first be referred to the NSF Sexual Harassment and Assault Prevention and Response (SAHPR) Office for action.

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. OECR may elect to continue evaluation and investigate complaints of discrimination, harassment, and retaliation.

102. File Establishment

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

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

OECR will use the following format for case numbers: NSF-OECR-ACB-(Fiscal Year last two digits) -(four-digit number from 001-9999). NSF stands for "National Science Foundation", OECR stands for "Office of Equity and 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 (October 1).

All communications and complaints will receive a case number in the order OECR receives them. Communications and complaints will share the same numbering sequence and will not have a separate numbering sequence. For example:

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

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

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

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

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

103. Complaint Acknowledgement

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

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, OECR 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 OECR'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 OECR by mail, fax, or electronic mail. If OECR 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, OECR will 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 persons 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 OECR.

If OECR receives the Consent Form from the complainant and the complaint does not provide consent for OECR to provide the complainant's PII to the awardee or other necessary parties, OECR will evaluate and review the complaint to determine whether such consent is crucial to investigate the complaint and render findings. If OECR 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 OECR may close the complaint without making findings. The complainant will be notified of the complaint closure for this reason. OECR 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 OECR 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](#)

OECR will only accept allegations that are filed within the following timeframes, (unless the complainant is granted a waiver (see Section 107 below)):

- For complaints related to **Title IX, Title VI, and Section 504 (awardee-assisted programs) complaints**, complainants have 90 calendar days from the date of the last alleged discrimination to file a complaint.
- For complaints related to the **Age Discrimination Act, Section 504 (NSF-conducted programs), and Executive Order 13160**, complainants have 180 days from the date when they first had knowledge of the alleged discrimination to file a complaint.
- In special circumstances, such as allegations relating to breach of the Voluntary Resolution Process agreements, OECR will determine the timeliness of the report on a case-by-case basis.

The filing date begins on the following intervals:

- The date the complaint was submitted via the online portal, electronic mail, or fax.
- 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, OECR will notify the complainant of the opportunity to request a waiver. OECR 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 OECR or the civil rights laws and regulations enforced by OECR 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 OECR 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 OECR 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.
- OECR 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.

OECR may dismiss a complaint in its entirety or specific allegations in the complaint if:

- a) OECR 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 & conditions of an NSF award, OECR may refer the complaint to the appropriate office.
- b) OECR 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). OECR may, at its discretion, refer the complaint to the entity that may have requisite jurisdiction to investigate the allegation.
- c) OECR 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 OECR's requirements for accepting the complaint for investigation but may meet requirements for investigation under another Federal or state civil rights agency's or another organization's discrimination complaint policies or procedures for investigation.In this instance, OECR 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. OECR may refer the complaint or complainant to another agency or organization that may have primary personal or subject matter jurisdiction.

- f) Based on all the facts/information provided by the complainant or publicly available information, the allegation(s) fail to state or establish a violation of one of the Civil Rights 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 OECR to infer that discrimination or retaliation may have occurred or is occurring.
- h) The allegation(s) is/are not timely filed with OECR, and a waiver was not requested or was requested but not granted.
- i) OECR 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), OECR will contact the complainant either by telephone or in writing (by letter or via electronic mail) to explain the information necessary for OECR 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 OECR 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) OECR determines that the identity, other PII, or records and communications are prohibited from disclosure to OECR 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 OECR 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. OECR 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, OECR may refer the complaint to that entity or advise the complainant that the complainant would need to refile the OECR complaint with that entity.
- l) The same or similar allegation(s) filed with OECR involve 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. OECR will advise the complainant that they may re-file within 60 days of the completion of the other entity's action. Generally, OECR

will not conduct its own investigation; instead, OECR 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 OECR. With respect to complaints filed with the U.S Equal Employment Opportunity Commission (EEOC), OECR will also give due weight to the determination made by EEOC.

- m) The same or similar allegation(s) filed with OECR 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 OECR. In addition, OECR 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), OECR 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 OECR complaint may be re-filed 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) OECR obtains credible information indicating that the allegations raised by the complainant are currently resolved or are no longer appropriate for investigation.
- p) The complaint raises the same or similar allegation(s) based on the same operative facts that were previously dismissed by OECR.
- q) OECR has recently investigated or is currently investigating the same or similar allegation(s) based on the same operative facts involving NSF or the same NSF awardee organization in a compliance review or directed investigation.
- 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) OECR 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 investigation of the complaint, by an inability to contact the complainant, or the complainant obstructs or interferes with the investigation.

- u) A complaint is a continuation of a pattern of complaints previously filed with OECR 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 which places an unreasonable burden on OECR's resources. OECR may consider conducting a compliance review or providing technical assistance concerning the issues raised by the complaint.
- w) Complaints contain allegations that at OECR's discretion can be resolved or remedied 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, OECR will engage the appropriate NSF or NSF awardee office to provide technical assistance to address allegations raised in the complaint.
- x) OECR determines that the allegation(s) is moot or unripe.

In the evaluation stage, OECR will assist the complainant in understanding the information that OECR requires to proceed to the investigation of the complainant's allegation(s). This process includes explaining OECR's investigation process and the rights of the complainant under the statutes and regulations. OECR will also identify the information necessary for OECR 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, OECR will issue a letter to the complainant explaining the reason for the decision. When a complaint allegation is dismissed after an investigation was opened, OECR will issue a letter to complainant and the NSF awardee organization explaining the reason for the decision.

110. Opening an Investigation

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

- OECR's jurisdiction with applicable statutory and regulatory citations.
- The allegations to be investigated.
- Contact information for the OECR staff person 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 OECR 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. OECR'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 OECR 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.

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

202. RBP Process Initiation and Termination

If OECR determines that RBP is appropriate and the complainant and the NSF awardee organization are willing to proceed with this resolution option, OECR will designate staff to facilitate an agreement between the NSF awardee organization and complainant. Staff assigned to conduct RBP of a complaint shall not be 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, OECR will suspend the investigation for up to 30 calendar days to facilitate an agreement between the parties. If an agreement is not reached, OECR 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 VRBP 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, OECR 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, OECR 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

OECR 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, OECR will not address the alleged breach of the agreement. Instead, OECR will determine whether to investigate the original allegation. When making this determination, OECR 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

OECR 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

OECR will ensure that investigations are legally sufficient and dispositive of the allegations under investigation. If OECR identifies compliance concerns involving issues that were not raised in the complaint, OECR 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. OECR 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. OECR shall notify NSF Office of General Counsel and the cognizant NSF program identified in the complaint upon acceptance of the complaint for investigation.

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 OECR resources. Planning decisions will reflect sound legal standards and will be adjusted as necessary to consider information obtained during case processing. The scope of OECR's investigation and resolution activities will depend upon the complaint allegation(s) and applicable legal standards.

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

- Allegation(s).
- OECR'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 OECR 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 OECR issues a final determination, the NSF awardee organization expresses an interest in resolving the allegations and OECR determines that it is appropriate to resolve them with an agreement. OECR will inform the NSF awardee organization that this resolution process is voluntary. When OECR determines that it is appropriate to resolve the allegations(s), OECR will notify the complainant of the NSF awardee organization's interest in resolution. In this instance, the NSF awardee organization and OECR 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 OECR determined that the resolution does not require consultation with the complainant.

A. Statement of the Case

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

- The allegations raised in the complaint.
- A statement of OECR'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, OECR and the NSF awardee organization will have a period of up to 30 calendar days within which to reach final agreement. During the negotiations period (which may be less than 30 days, at the discretion of OECR), OECR 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, OECR will issue a Resolution Letter, which will address all allegations in the case resolved. The letter must include, at a minimum:

- A statement of the allegations in the case.
- A statement of OECR'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 resolution agreement will address all of allegations and that OECR 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 OECR 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. OECR 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, OECR will close the case.

304. Investigative Determinations

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

B. Non-Compliance Determination

OECR will negotiate a resolution agreement and issue a final determination letter when OECR 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 OECR 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 OECR is a making determination, OECR will negotiate a resolution agreement and issue a letter of finding(s). In a “mixed determination” case where OECR is not making any determinations but is resolving allegations, OECR will issue a resolution letter.

305. Statement of the Case

OECR will prepare a Statement of the Case for investigative determinations. The Statement of the Case must set forth:

- Allegations raised in the complaint.
- A statement of OECR'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 regulation(s), and the appropriate legal standards.

306. Final Determination Letter

For insufficient evidence, non-compliance, and mixed determinations, OECR 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 OECR'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 OECR 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 OECR 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 non-compliance with NSF civil rights regulations is found, OECR 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, OECR will detail the steps or actions the institution needs to take in the final determination letter.
- For Section 504 NSF Conducted Programs complaints, a notice 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 OECR.

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 the person they designated to review the appeal shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the Director/designee determines that additional information is needed from the complainant, the appeal decision will extend an additional 30 days from the receipt of the requested information.

When OECR receives the appeal from the complainant, OECR 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, OECR 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, OECR 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

OECR 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, OECR shall issue an Impasse Letter that informs the NSF awardee organization that OECR 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 OECR'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, OECR must follow the procedures for the issuance of a Letter of Impending Enforcement Action regarding non-compliance 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 OECR made determinations of non-compliance, OECR 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 OECR'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, OECR must follow the procedures for the issuance of a Letter of Impending Enforcement Action regarding non-compliance determinations.

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

If OECR and the NSF awardee organization negotiate for 90 calendar days and fail to reach final agreement by the 90th day, but negotiations are on-going, OECR shall inform the NSF awardee organization that OECR 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 on-going 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, OECR will issue a Letter of Impending Enforcement Action regarding non-compliance 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 OECR made determinations of non-compliance, OECR shall inform the NSF awardee organization that OECR 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, OECR will issue a Letter of Impending Enforcement Action regarding non-compliance 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 OECR 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 OECR's review and approval, and timeframes for their submission.

- Timeframes requiring the NSF awardee organization to implement what OECR 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, OECR may visit the NSF awardee organization, interview staff and students, and request additional reports or data for OECR 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, OECR will close the case.
 - The NSF awardee organization understands and acknowledges that OECR 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, OECR will provide the NSF awardee organization written notice of the alleged breach and sixty (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 non-compliance, OECR will prepare a Letter of Impending Enforcement Action. The Letter must include:

- A statement of allegation(s) in the case.
- A statement of OECR'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 regulation(s), and the appropriate legal standards.
- Notice the Letter not intended and should not construed to cover any other issue regarding the NSF awardee organization's compliance.
- Notice of the time limit on OECR's resolution process and the consequence of failure to reach agreement.
- A description of OECR'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 OECR.

314. Referrals from other Federal agencies

When a complaint is referred to OECR by a Federal agency, OECR 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 OECR to investigate complaints that are filed with the agency, the regulations require OECR 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 OECR broad discretion to determine the substantive issues for investigation and the number and frequency of the investigations.

402. Directed Investigations

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

A directed investigation is an OECR-initiated process that allows OECR to address possible discrimination that is not currently being addressed through OECR’s complaint, 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 OECR.

SECTION V: MONITORING RESOLUTION AGREEMENTS

501. Implementation Verification

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

502. Implementation Problems

OECR will promptly provide written notice to the NSF awardee organization of any deficiencies with respect to implementation of terms of the agreement and will request appropriate action to address such deficiencies. When OECR 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, OECR will take prompt action to enforce the agreement.

503. Agreement Modifications

Changed Circumstances Affecting Agreements

OECR 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. OECR may also modify the agreement in response to changes in controlling case law, statutes, regulations, or agency policy.

New Compliance Issues

OECR 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

OECR 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 a 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 approved modification(s) to the substance of the agreement.

504. Conclusion of Monitoring

OECR 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 OECR is unable to negotiate a resolution agreement with the NSF awardee organization, OECR will initiate enforcement action. OECR 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, OECR will, where appropriate, request that the administrative proceedings prescribed in NSF's Title VI regulations at 45 CFR 611.8-611.10 be initiated. OECR will confer with the Office of the Director and 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, OECR 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 OECR when it:

- Refuses to permit OECR 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 the access to books, records, accounts, including electronic storage media, microfilm, retrieval systems and photocopies, and other sources of information, including witnesses, and NSF awardee organization's facilities.
- Refuses to permit OECR 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 OECR access, either in person, over the telephone, or through use of other media, OECR must attempt to ascertain the exact basis for the NSF awardee organization's refusal and explain OECR's authority to obtain the evidence. If attempts to persuade the NSF awardee organization to provide access have failed, OECR 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 OECR access and specifies the efforts that OECR has made to obtain the evidence. When the NSF awardee organization does not voluntarily provide OECR with access to the requested evidence within 30 calendar days of OECR's issuance of the letter to NSF awardee organization, OECR will issue a Letter of Impending Enforcement Action. If the NSF awardee organization continues to deny OECR access to the requested evidence, OECR will issue a letter to the NSF awardee organization stating OECR'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, OECR 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, OECR 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, OECR 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 OECR and OECR has made no finding, or (2) OECR issues a finding in favor of the NSF awardee organization. If OECR fails to make a finding within 180 days or issues a finding in favor of the NSF awardee organization, OECR will promptly notify the complainant of this fact and of his or her right to bring a civil action for injunctive relief. OECR'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.

OECR does not have jurisdiction over employment complaints under the Age Discrimination Act. Employment complaints filed by persons 40 and older are referred to the appropriate EEOC office, and the OECR complaint is closed. Employment complaints filed by persons under 40 are not within the jurisdiction of 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 OECR, 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 OECR age employment case being closed, and OECR 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 OECR receives a complaint containing both allegations of age discrimination in services and allegations under Title VI, Title IX, or Section 504, and OECR determines that the non-age allegation(s) is independent and separable from the age allegation, OECR will refer only the age portion of the complaint to FMCS. OECR will proceed to investigate the additional allegations over which OECR has jurisdiction. OECR 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 OECR, OECR will resume processing the age aspects of the complaint. The date that the complaint or any portion of a complaint is sent to FMCS shall be entered into the case file and the date that the complaint is referred from FMCS shall also be entered into the case file. FMCS's processing time will not be included in OECR'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. OECR will, within ten days of receipt, notify the complainant and the NSF awardee organization that OECR has received the complaint, including the date, place, and circumstances of the alleged unlawful employment practice. Within 30 days of receipt, OECR will determine whether OECR or EEOC has jurisdiction over the complaint under Title VI and/or Title IX. If it is determined that EEOC has jurisdiction, OECR will refer the complaint to the EEOC. OECR 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.

OECR will refer complaints to the EEOC complaints where both OECR and EEOC appear to have jurisdiction (“joint complaints”), consistent with the following guidance:

- Absent special circumstances, OECR will refer to a joint complaint that solely alleges employment discrimination against an individual.
- Absent special circumstances, OECR will not refer to a joint complaint alleging a pattern or practice of employment discrimination.
- Absent special circumstances, OECR will not refer to a joint complaint that alleges discrimination in 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, OECR will assign a new case number to the allegations that are retained.

OECR 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 OECR investigation, OECR 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

Disability employment complaints shall be referred to the DOJ Civil Rights Division if OECR has no jurisdiction under Section 504 of the Rehabilitation Act of 1973, and EEOC does not have jurisdiction under Title I (i.e., NSF awardee organization has fewer than 15 employees). If EEOC has jurisdiction under Title I (NSF awardee organization has 15 or more employees), the complaint is referred to the EEOC.

OECR shall refer individual disability employment complaints to the EEOC unless the complainant elects to have OECR process the complaint. OECR must notify the complainant in writing that he or she may choose whether to have OECR or the EEOC process the complaint and that if the complainant would like OECR to process the complaint, OECR must receive such written request within 20 calendar days of the date of the letter. If special circumstances make referral inappropriate, OECR and the appropriate agency may jointly determine to reallocate investigation responsibilities.

When OECR has jurisdiction over a disability employment complaint under Section 504, OECR 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 OECR 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

OECR'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 the 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 OECR 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. OECR's Authority to Obtain Information

OECR has the right of 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 OECR's judgment to ascertain compliance.

If an NSF awardee refuses to provide OECR 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), OECR will delay efforts to secure this information pending consultation with the US Department of Education and/or the US Department of Justice. If, in the opinion of these agencies, the NSF awardee organization can withhold release of student information because of FERPA, OECR may attempt other means of obtaining substitute data in consultation with the NSF awardee organization. OECR will document this process and each action by OECR, the NSF awardee organization and the consulting Federal agencies in the case file. OECR may dismiss a complaint if it determines that access to information protected by FERPA is crucial to the investigation. In such instances, OECR will attempt to transfer the complaint to the US Department of Education's Office for Civil Rights or the US Department of Justice's Civil Rights Division.

If the NSF awardee organization cites FERPA in not providing information pertaining to a complainant, OECR may contact the complainant to obtain consent from the complainant to release the information withheld by the NSF awardee organization. OECR 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 OECR. If the complainant refuses to provide consent and OECR determines that the complainant's consent is necessary to obtain information crucial to the investigation and cannot render findings without this information, OECR may dismiss the complaint without making a compliance determination. OECR 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 OECR'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 OECR's discretion, depending on the nature and extent of data requested and/or other special circumstances, including factors affecting feasibility of the timeframe brought to OECR's attention by the NSF awardee organization.

Data Provided by NSF awardee organization.

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

OECR must consider federal policies concerning paperwork burdens when requesting an NSF awardee organization to do more than provide OECR access to normally maintained information. Requests that an NSF awardee organization manipulate or compile information to meet an OECR 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 OECR in a file type that can be accessed by OECR. 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 OECR. If an NSF awardee organization invites OECR to come onsite and collect the requested information, including the interview of witnesses and provides OECR with sufficient access to files, records, logs, and appropriate indexes for OECR to obtain the needed information, then the NSF awardee organization has provided OECR with the requisite access.

Confidentiality

OECR has the right of access to a 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), OECR 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 OECR, the awardee institution may request a copy of the complaint from OECR. OECR 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 OECR 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. OECR 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, OECR should inform the witness of the following:

- The general purpose of the interview, OECR's role, what law or laws are pertinent to the investigation, and where appropriate, 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 - OECR 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.
 - OECR 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 persons under 18 if they are emancipated under state law and are therefore considered to have obtained a majority. For persons under 18 who state they are emancipated, OECR must obtain proof of emancipation.

- Where parents or guardians refuse to provide consent for an interview, and OECR determines that the child's information is critical, OECR may attempt to secure parental or guardian consent by inviting the parent or guardian to attend the interview. Where consent is denied, OECR 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, and audio/video recording will be done only with the consent of the interviewee. When interviewers use tape recording, the tape becomes part of the case record along with the written record. Regardless of the technique used during the interview, a written record of the interview must be created. 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 (include 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, OECR 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 OECR. OECR 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 OECR; (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 OECR determines disclosure would further an interest of the National Science Foundation or the United States.

With respect to media inquiries regarding complaints, OECR will refer such requests to NSF's Office of Legislative and Public Affairs (OLPA) and the Office of General Counsel (OGC). Any disclosure or non-disclosure of complaint information is conducted in coordination between OECR, OLPA, OGC, and other offices, as appropriate, in compliance with FOIA and the Privacy Act. All information within OECR 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 OECR receives a complaint alleging discrimination by a NSF awardee organization against which the DOJ represents the United States as a party in pending litigation, the following procedures will apply:

- OECR notification to DOJ: The appropriate NSF staff will forward the complaint to DOJ by electronic mail immediately and ask whether DOJ wants OECR to refer the complaint to DOJ. This will occur before any OECR evaluation of the complaint begins and even if it is clear on the face of the complaint that OECR would not open it for investigation.
- DOJ response: DOJ will have seven calendar days after the date of OECR's electronic mail notification to determine whether (1) DOJ wants OECR to refer the complaint to DOJ, or (2) DOJ does not want OECR to refer the complaint to DOJ. There are no additional options. For example, a complaint cannot be conditionally referred or conditionally declined, nor may DOJ request referral of only a portion of a complaint.
- No referral to DOJ: When DOJ indicates that it does not want OECR to refer the complaint, or DOJ does not respond within seven calendar days of the date of OECR's request, OECR, in its sole authority, will immediately process the complaint.
- Referral to DOJ: When DOJ indicates that it wants OECR to refer the complaint, then:
 - OECR will refer the entire complaint to DOJ.
 - OECR will close the complaint and notify the complainant that the complaint has been referred to DOJ.
 - Once a complaint is referred to the DOJ, they are responsible for investigating and resolving the entire complaint. OECR will forward all communications it receives from the complainant relating to the complaint to DOJ and DOJ will be responsible for addressing all such communications. OECR will not accept any type of return or re-referral of the complaint from DOJ.

United States Not a Party

As part of the evaluation of the complaint, OECR will consult with parties about the status of the court order.

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 or sponsored by an NSF awardee organization that is supported or funded by NSF funding awards, including cooperative agreements. An example would be a grant awarded to an institution.

Communication: OECR 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 OECR 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.

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

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.