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## ADS Chapter 110

# Equal Employment Opportunity Program

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**Functional Series 100 – Agency Organization and Legal Affairs**  
**ADS 110 - Equal Employment Opportunity Program**  
**POC for ADS 110: [See ADS 501maa, ADS Chapters and Point of Contact List](#)**

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## ADS 110 - Equal Employment Opportunity

### 110.1

#### OVERVIEW

Effective Date: 08/20/2024

This chapter sets forth the authority, responsibilities, and procedures under which the U.S. Agency for International Development (USAID) manages its Equal Employment Opportunity (EEO) Program. The Equal Employment Opportunity Commission (EEOC) identifies six essential elements necessary to create and maintain the minimum requirements for a model EEO program, pursuant to [Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.](#), and [Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791](#), the [Americans with Disabilities Act Amendments Act of 2008 \(Pub. L. 110-325\)](#), and the [Pregnant Workers Fairness Act, 42 U.S.C. § 2000gg-1](#).

USAID supports the effective management, accountability, and self-analysis of its EEO Program to ensure program success and compliance with EEOC Management Directive (MD)-715. Agency personnel programs, policies, procedures, and practices are regularly evaluated to identify barriers that may exist in those programs, policies, procedures and practices that may limit or restrict equitable opportunity for USAID's workforce and in the workplace. The six elements that serve as the foundation for USAID's EEO program are:

1. Demonstrated commitment from Agency leadership;
2. Integration of EEO into the Agency's strategic mission;
3. Management and program accountability;
4. Proactive prevention of unlawful discrimination;
5. Efficiency; and
6. Responsiveness and legal compliance.

It is the policy of USAID to provide equal opportunity in employment for all people; to prohibit employment and workplace discrimination and harassment on the basis of someone's race, color, religion, sex (including pregnancy, gender identity, sexual orientation, or transgender status), national origin, age, physical or mental disability, genetic information (including family medical history), pregnancy accommodation, political affiliation, parental status, marital status, and veteran status, and retaliation for engaging in EEO activity; and to build a diverse workforce and advance inclusion and EEO through a continuing affirmative employment program in the Agency.

### 110.2

#### PRIMARY RESPONSIBILITIES

Effective Date: 08/20/2024

All levels of Agency management are responsible for the successful implementation of USAID's Equal Employment Opportunity Program and the achievement of its goals and objectives. Management officials are evaluated annually by their supervisors on their Annual Evaluation Form regarding their EEO Program responsibilities.

**a. The USAID Administrator:**

- 1) Exercises statutory responsibility for the development, maintenance, and administration of the USAID EEO Program as required by laws, regulations, rules, and directives;
- 2) Provides leadership authority to establish, maintain, and administer a continuing program designed to ensure equality of opportunity and eliminate discrimination and harassment within USAID;
- 3) Designates a Director of the Office of Civil Rights (D/OCR), who serves as the Agency EEO Official and reports to the Administrator to carry out the functions of the Agency's EEO Program and this policy directive in all USAID Operating Units (OUs) and locations;
- 4) Ensures that adequate resources and support are made available to create, maintain, and administer the minimum requirements of a [model EEO Program](#);
- 5) Supports the development and implementation of effective Agency policies, programs, procedures, and practices designed to prevent and reduce discrimination, ensure equality of opportunity, and foster a diverse workforce and an inclusive workplace; and
- 6) Holds agency leaders accountable regarding their EEO Program responsibilities.

**b. The Director of the Office of Civil Rights (D/OCR) serves as the USAID EEO Official, and is responsible for:**

- 1) Advising the USAID Administrator with respect to the preparation of Agency equal employment opportunity and related policies, programs, plans, procedures, regulations, reports, and other matters pertaining to equal employment opportunity and USAID's EEO Program;
- 2) Informing Agency management and the workforce about their responsibilities regarding federal EEO and related laws, regulations, directives, Executive Orders, programs, policies, procedures, and practices applicable to the Agency's EEO Program, its workforce, applicants for employment, and beneficiaries of USAID Federal financial assistance;
- 3) Evaluating and reporting to the Administrator at least annually USAID's EEO Program status, including making recommendations to the Administrator and

agency leaders about policies, programs, processes, and practices that warrant adoption, retirement, or modification to improve equality of opportunity and reduce discrimination and harassment;

- 4) Administering the Agency's Federal EEO discrimination and harassment complaint processes, including counseling (*i.e.*, the informal EEO complaint process), dispute resolution, formal EEO complaint processing, conducting inquiries, investigating complaints, and producing findings, making recommendations for preventative and corrective actions, reviewing settlement agreements and remedial actions (where warranted), and issuing Final Agency Decisions on EEO complaints;
- 5) Administering the Agency's Affirmative Employment Program to promote equal employment opportunity in compliance with Federal EEO laws, regulations, directives, executive orders, guidance, and Agency policies;
- 6) Developing and providing training and educational material to USAID's workforce to ensure that Agency leadership, managers, supervisors, and staff understand their rights and responsibilities with regard to the Agency's EEO Program and Federal EEO laws, regulations, directives, executive orders, guidance, and Agency policies to ensure equality of opportunity and to prevent and address discrimination and harassment and the effective processing of reasonable accommodation for religious needs and for persons with qualified mental and physical disabilities;
- 7) Developing and recommending criteria for assessing managers' and supervisors' performance to ensure a continuing affirmative application and vigorous enforcement of Federal EEO laws, regulations, directives, executive orders, guidance and Agency policies; and
- 8) Recognizing members of the USAID workforce and/or work units that demonstrate accomplishment in advancing equal employment opportunity in USAID with such recognition as awards, public notices, appreciation events, and/or positive comments in performance appraisals.

**c. The Office of Human Capital and Talent Management (HCTM):**

- 1) Designs, implements, and monitors USAID human capital policies and programs that ensure equal employment opportunity and support merit system principles;
- 2) Advises USAID leadership and Agency management officials on all human capital and related management issues;
- 3) Manages human capital processes, including the development and implementation of related policies and programs throughout the employment cycle (recruitment, hiring, development, advancement, and retention);

- 4) Provides guidance and advice to managers, supervisors, and other management officials on all aspects of the employment cycle;
- 5) Determines and recommends implementing corrective and remedial actions supervisor and managers should take when their subordinates are found to have engaged in misconduct, whether or not it rises to the level of unlawful behavior;
- 6) Collaborates with OCR to identify and remove barriers in personnel and related employment cycle policies, programs, and processes to enable equality of opportunity; and
- 7) Oversees the recruitment of women, minorities, and individuals with disabilities through the management of the Agency's Special Emphasis Programs and Managers (e.g., People with Disabilities Program, Federal Women's Program and Hispanic Employment Program), including the clerical and administrative support as may be necessary to carry out the functions described in this chapter in all Operating Units of the agency and at all agency installations.

**d. Bureau/Independent Office Heads and Mission Directors** assist the D/OCR in carrying out the Agency's EEO Program functions in their Operating Units (OUs). While each principal will be held accountable for program results, authority for EEO Program management may be re-delegated to a level no lower than principal deputy, to carry out the following functions:

- 1) Liaising with OCR on all EEO Program matters;
- 2) Exercising authority and responsibility for preventing discrimination and harassment, whether or not it rises to the level of unlawful behavior, and timely correcting the inappropriate conduct of their employees, especially to ensure it does not rise to the level of violating Agency policies or federal laws;
- 3) Ensuring equity, fair and level playing field affording equal opportunity throughout the employment cycle, in all personnel, and related workplace activities, including recruitment, selection, assignment, training, performance evaluation, and promotion, for personnel within their Operating Unit;
- 4) Providing guidance and support to ensure all managerial and supervisory personnel within their respective units carry out their responsibilities in implementing USAID's EEO Program;
- 5) Evaluating policies and practices in their Bureaus, Independent Offices and/or Missions for compliance with USAID's EEO Program;
- 6) Holding their managers and supervisors accountable for ensuring equality of opportunity, preventing discrimination, harassment, and denial of reasonable

accommodation for religious needs, for persons with qualified mental and physical disabilities **and for pregnant persons**;

- 7) Facilitating compliance and cooperation with Federal EEO laws, regulations, directives, executive orders, guidance, and Agency policies; and
- 8) Participating with OCR in the barrier analysis process, developing and implementing action plans within their B/IO and Missions.

e. The **Chief of OCR's Complaints and Resolution Division** assists the D/OCR in all D/OCR tasks listed above, as delegated. The Chief:

- 1) Administers the Agency's EEO Complaints and Anti-Harassment Programs in accordance with [29 CFR Part 1614](#); [EEOC Management Directive 110](#), and related laws, regulations, rules, directives, executive orders, guidance, and Agency policies;
- 2) Oversees the selection, training, and management of collateral duty EEO Counselors as they perform the duties described in [29 CFR 1614.105](#) and in [EEOC Management Directive 110, Chapter 2](#);
- 3) Administers the Agency's Alternative Dispute Resolution Program consistent with [29 CFR 1614.102](#) and [105](#), as well as [EEOC Management Directive 110, Chapter 3](#);
- 4) Oversees the preparation, presentation to Agency leadership, submission to the EEOC and other Federal Government offices, and public dissemination of the Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints ([462 Report](#)) and the [Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 \(No FEAR Act\) Report](#);
- 5) Develops internal procedures for the timely processing of EEO and harassment complaints; and
- 6) Monitors the case tracking systems to ensure all EEO and harassment complaints are accountable and accurate.

f. The **Agency Affirmative Employment Program (AEP) Manager** in OCR assists the D/OCR in all relevant D/OCR tasks listed above, as delegated. The AEP Manager:

- 1) Oversees the preparation, including related workforce data and barrier analysis and, presentation to Agency leadership, submission to the EEOC, and public dissemination of the annual MD-715 Report of the Agency's EEO Program status for internal application and external review;



- 2) Conducts EEO and related workforce data and other analyses;
- 3) Makes recommendations for policies, programs, and practices that remove and reduce barriers to equal employment opportunity, and prepares and disseminates reports of Agency EEO and workforce data analysis to support and implement the Agency's EEO Program;
- 4) Oversees the development and production of barrier analysis reports of the Agency's workforce;
- 5) Consults and collaborates with HCTM and other Agency stakeholders to develop and implement policies, programs, practices, and procedures that ensure equality of opportunity and compliance with EEOC and Office of Personnel Management (OPM) guidelines for all aspects of the employee cycle, including outreach, recruitment, hiring, employee development and advancement, and retention;
- 6) Oversees the development and implementation of commemorative programs in honor of employees who are Asian, Native Hawaiian or other Pacific Islander, Black or African-American, Hispanic or Latinx, American Indian or Alaska Native, women, lesbian, gay, bisexual or transgender, or have a disability and any other employee resource groups authorized by the Agency that represent a protected class under Title VII of the Civil Rights Act of 1964;
- 7) Conducts analysis and evaluation of Federal, Agency, and other relevant data and employment trends to determine impact on the Agency's affirmative employment efforts; and
- 8) Provides periodic reports to Agency leadership and staff on AEP progress.

**g. Equal Employment Opportunity Counselors** provide vital information to aggrieved individuals regarding their rights and obligations under EEO laws, conduct limited inquiries, and attempt to informally resolve matters if alternative dispute resolution is not offered or accepted.

### **110.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES**

#### **110.3.1 Equal Employment Opportunity (EEO) Complaints**

Effective Date: 05/14/2021

OCR administers the Agency's EEO complaint process in accordance with the regulations in [29 CFR 1614, Federal Sector Equal Employment Opportunity](#), for processing EEO complaints filed with USAID by members of USAID's workforce or applicants for employment, or by any persons intending to file a complaint on behalf of such individuals (see [ADS 110mab, Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 \(P.L. 107-174\)](#)).

Parental status is a basis protected by [Executive Order 13152](#). OCR may accept and process formal complaints based on parental status and issue a Final Agency Decision. However, there is no right to a hearing before the EEOC or appeal to the U.S. Merit Systems Protection Board (MSPB).

Individuals alleging discrimination based on marital status or political affiliation may file a complaint with the U.S. Office of Special Counsel and, in some instances, the MSPB, as USAID's EEO Program does not have jurisdiction to process these complaints.

Individuals alleging discrimination on the basis of veteran status should file their complaint with the U.S. Department of Labor, [Veterans' Employment and Training Service \(DOL/VETS\)](#).

U.S. citizen Direct-Hire personnel (Civil Service and Foreign Service) and U.S. citizen personal services contractors are eligible for the Agency's EEO complaint process.

To bring an action (*i.e.*, file a formal EEO complaint) under the Federal sector formal EEO complaint process, an individual must be a United States citizen and a Federal employee (or USPSC) or applicant for Federal employment. As a result, the Agency's formal EEO complaint process is not available to Institutional Support Contractors (ISCs) or non-U.S. citizen personal services contractors or non-U.S. citizen applicants. ISCs who believe they have been discriminated against must contact their company's EEO office, the Equal Employment Opportunity Commission, or the U.S. Department of Labor, Office of Federal Contract Compliance Programs (DOL/OFCCP). Non-U.S. citizen personal services contractors must contact their local government agencies.

Non-U.S. citizen personal services contractors and non-U.S. citizen applicants may participate in the Agency's informal, pre-complaint process.

Individuals who are offerors for personal service contracts are not eligible for the EEO complaint process but instead must pursue remedies under [Federal Acquisitions Regulations Part 33](#).

### **110.3.1.1 Pre-Complaint (or Informal) Process**

Effective Date: 05/14/2021

The pre-complaint (or informal) process is governed by [Chapter 2 of MD-110](#). USAID must make EEO Counselors available to aggrieved persons who must engage with those Counselors during the pre-complaint/informal process before they can file a formal EEO complaint. At USAID, EEO Counselors serve in collateral duty status under the direction of OCR. EEO Counselors are members of the Agency workforce or contractors serving in a neutral capacity. They inform aggrieved individuals of their rights and obligations under EEO laws, conduct a limited inquiry, and attempt to informally resolve the matter(s) if ADR is not offered or accepted.

EEO Counselors' names, contact information, and locations are posted prominently in Agency business locations and on the Agency's intranet (<https://pages.usaid.gov/OCR>). In addition, employees can contact OCR directly at [EEOcomplaints@usaid.gov](mailto:EEOcomplaints@usaid.gov) to be connected to an EEO Counselor.

Every U.S. Direct-Hire, U.S. Personal Services Contractor (USPSC), and Cooperating Country National or Third Country National Personal Services Contractor (CCN/TCN PSC) or applicant for employment with USAID who perceives discrimination or retaliation prohibited by Title VII of the Civil Rights Act of 1964 (referred to as Title VII) and related statutes must consult with an EEO Counselor for pre-complaint or informal counseling, to seek informal resolution of the matter.

Note: Non-U.S. citizen personal services contractors and non-U.S. citizen applicants can access the Agency's pre-complaint, informal process; however, because they are not U.S. citizens they are not eligible for the formal EEO complaint process.

An aggrieved person must initiate contact with an EEO Counselor (*i.e.*, participate in the pre-complaint or informal process) or OCR, within 45 calendar days from the date the individual becomes aware of the alleged discriminatory action or, in the case of a personnel action, within 45 calendar days of the effective date of the action. Unless OCR grants a waiver of the 45-day requirement, a complaint made after the requisite 45-day timeline will be dismissed for failure to seek counseling on a timely basis. OCR may extend the 45 calendar-day time limit if an aggrieved person shows that one of the following conditions exists:

- 1) The aggrieved person was not notified of, or was not aware of, the time limits;
- 2) The aggrieved person did not know and reasonably could not have known that the discriminatory matter or personnel action occurred; or
- 3) Despite due diligence, the aggrieved person was prevented by circumstances beyond their control from contacting the EEO Counselor within the time limits, or other circumstances impacting timeliness.

EEO Counselors must conduct counseling activities in accordance with [29 CFR 1614](#), Federal Sector Equal Employment Opportunity, and [EEOC Management Directive 110, Chapter 2](#). Management officials (*i.e.*, managers and supervisors) must cooperate with EEO Counselors as they perform their duties and responsibilities. EEO Counselors must conduct the final interview with the aggrieved person and provide the aggrieved a Notice of Right to File a Formal Complaint of Discrimination within 30 calendar days of initial contact from the aggrieved. Any request to extend counseling by OCR or the aggrieved must be approved by both parties through written or electronic correspondence and must be properly recorded by OCR.

Note: Because non-U.S. citizen personal services contractors and non-U.S. citizen applicants are not eligible for the formal EEO complaint process, they will not be issued

the Notice of Right to File a Formal Complaint of Discrimination.

- 1) At the initial and final EEO counseling sessions, Counselors must advise individuals that if resolution attempts fail and the aggrieved decides to file a formal EEO complaint, OCR is permitted to accept only those matters raised in counseling for investigation.
- 2) If the matter is not resolved within the required timeframes, the EEO Counselor must notify the person of the right to file a formal EEO complaint within 15 calendar days of the receipt of the Notice of Right to File a Formal Complaint, and of the appropriate official with whom to file a complaint. The EEO Counselor must not attempt in any way to restrain the aggrieved person from filing a formal complaint.
- 3) If the matter is resolved during the pre-complaint, informal EEO Counseling period, the General Counsel's Office will document the agreed upon terms in writing in a Settlement Agreement that is signed by all parties involved, to include the D/OCR as the Settlement Authority for the Agency.
- 4) EEO Counselors must prepare an [EEO Counselor's Report](#) and submit it to OCR within 15 calendar days from the end of the pre-complaint, informal counseling period.

#### **110.3.1.2 Representation**

Effective Date: 05/14/2021

Throughout the informal and formal EEO complaint processes, the aggrieved (known as "aggrieved" during the informal, pre-complaint process)/complainant (known as "complainant" during the formal complaint process) has the right to be accompanied, represented, and advised by a representative, who may or may not be an attorney of their choice and at their cost. The aggrieved/complainant must inform OCR in writing when they retain a representative. In cases where the representation of an aggrieved/complainant would conflict with the official or collateral duties of that representative, OCR may disqualify the representative after full and fair consideration of the representative's opportunity to show cause against disqualification. The decision of OCR is not appealable, but the decision, and the reasons for it, must be recorded and made a part of the complaint file. If the representative is disqualified, the aggrieved/complainant will be granted reasonable time to obtain other representation.

#### **110.3.1.3 Official Time**

Effective Date: 05/14/2021

Aggrieved/complainants are entitled to a reasonable amount of official time to present the complaint and to respond to requests for information from the Agency and the EEOC. If the aggrieved/complainant designates another USAID employee as representative, the representative also is entitled to a reasonable amount of official time, if otherwise on duty, to assist in complaint preparation and any required responses.

Both are in a duty status when their presence is authorized or required by OCR or EEOC during the investigation, resolution attempts, or hearing on the complaint. USAID is not obligated to change work schedules, incur overtime, or pay travel expenses to facilitate the choice of a specific representative or to allow the aggrieved/complainant and representative to confer.

The amount of time considered “reasonable” is based on the nature of the particular action being taken, the current workload of the employee, and the amount of time granted for similar actions in other cases. The employee’s supervisor, with appropriate guidance from OCR, and in certain cases, the Office of General Counsel makes this determination. Any request for official time must be made in advance and granted in advance in accordance with applicable leave rules. This provision does not preclude appropriate administrative actions in cases in which an employee has not followed the applicable leave rules in requesting and obtaining official time.

### **110.3.2 Formal Complaint Process**

#### **110.3.2.1 Time Limit and Presentation**

Effective Date: 05/14/2021

- a. The formal EEO complaint process begins after the pre-complaint, informal (counseling) process has ended.
- b. Individuals must go through the pre-complaint, informal (counseling) process before filing a formal EEO complaint.
- c. An aggrieved individual or their representative must file a formal EEO complaint with OCR within 15 calendar days of receipt of the Notice of Right to File a Formal Complaint of Discrimination. OCR may waive the time requirement when sufficient reasons for untimely filing of a complaint are presented. The complainant or their representative must sign and date the formal EEO complaint and must describe the action(s) or practice(s) at issue in the complaint and their related date(s), as well as the basis for the alleged discrimination. A formal EEO complaint is deemed filed either:
  - On the date OCR received it, if hand-carried;
  - On the date postmarked, if mailed; or
  - On the date stamped, if emailed to OCR.

#### **110.3.2.2 Acceptance or Dismissal of Complaint**

Effective Date: 05/14/2021

- a. OCR must acknowledge the receipt and filing date of a formal complaint in writing to the complainant.

- b. OCR must notify the complainant of the allegations accepted for investigation or dismissed, and of the complainant's right to a Final Agency Decision and rights of appeal.
- c. OCR must make a Final Agency Decision on any procedural dismissal of any complaint issues for the reasons stated in [29 CFR 1614.107, Dismissals of Complaints](#).

### **110.3.2.3 Investigation**

Effective Date: 05/14/2021

- a. OCR must develop a complete and impartial factual record upon which to make findings on the claim(s) accepted by OCR for adjudication. OCR must conduct the investigation in accordance with [29 CFR 1614.108](#), Investigation of Complaints, and [EEOC Management Directive 110, Chapter 6](#).
- b. All Federal employees must cooperate with the investigative process by promptly providing affidavits or documents as requested. Failure to cooperate with an investigation may result in corrective or disciplinary action. The responsibility of a Federal employee to cooperate with an EEO complaint investigation does not end if that employee transfers to another Federal agency.

OCR must complete the investigation of an EEO complaint and forward the investigative report to the complainant within 180 days of the date the complaint was filed or within the time period required by an EEOC order. OCR must provide the complainant with a copy of the completed investigative report (*i.e.*, the Report of Investigation, "ROI") and inform the complainant that they may choose either a Final Agency Decision or a hearing before an administrative judge at the EEOC.

By written agreement of both parties, the complainant and OCR may agree to extend the time period to complete the investigation for not more than an additional 90 days.

When an EEO complaint has been amended, OCR must complete the investigation within the earlier of 180 days after the last amendment to the consolidated complaints or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. If the investigation is not completed and the Report of Investigation is not forwarded to the complainant within the required time limits, the complainant may request an EEOC hearing or file a civil action in Federal District Court and must notify OCR regarding the action taken.

### **110.3.2.4 EEOC Hearings**

Effective Date: 05/14/2021

- a. When a complainant exercises the right to a hearing prior to issuance of a Final

Agency Decision, OCR must provide copies of the investigative and administrative files to the administrative judge within 30 calendar days of receipt of the complainant's request for a hearing, in accordance with [29 CFR 1614.109](#).

- b. USAID is responsible for ensuring approved witnesses, who are employees or USPSCs, appear at hearings.
- c. The hearing must be recorded, and USAID must arrange and pay for verbatim transcripts. All documents submitted to and accepted by the administrative judge at the hearing are part of the record of the hearing. Administrative judges determine whether to hold full or limited hearings or issue findings of fact and conclusions of law on the case merits without a hearing. Hearings are closed to the public because they are part of the investigative process.
- d. Unless the administrative judge makes a written determination that good cause exists for extending the time of the hearing, the administrative judge is required to issue a decision on the complaint, and order appropriate remedies and relief where discrimination is found, within 180 days of the date EEOC received the request for the hearing.

#### **110.3.2.5 Final Agency Decision**

Effective Date: 05/14/2021

The Agency must take final action on the EEO complaint by issuing a final order within 40 days of receipt of the administrative judge's decision. The final order must notify the complainant whether the Agency will fully implement the decision of the administrative judge and must contain notice of the complainant's right to appeal to the EEOC or to file a civil action in Federal District Court. If the final order does not fully implement the decision of the administrative judge, the Agency must simultaneously file an appeal in accordance with [29 CFR 1614.403](#), How to Appeal. Any statement or brief on behalf of the Agency in support of its appeal must be submitted to the EEOC Office of Federal Operations within 20 days of filing the notice of appeal.

When a complainant waives the right to a hearing or requests an immediate Final Agency Decision, OCR must issue a Final Agency Decision within 60 days of the complainant's request, consistent with [29 CFR 1614.110](#), Final Action by Agencies. The Final Agency Decision issued by OCR must consist of findings on the merits of each claim accepted and, when discrimination is found, the appropriate remedies and relief. Rights of appeal or filing a civil suit must be included with this decision. If the complainant makes no request, OCR must produce a Final Agency Decision on the complaint within 90 days of the complainant's receipt of the investigative file.

#### **110.3.2.6 Appeal to the Equal Employment Opportunity Commission**

Effective Date: 05/14/2021

- a. If the complainant chooses to appeal a Final Agency Decision, the complainant must file an appeal with the Director of the EEOC Office of Federal Operations. The

appeal must be uploaded into the [EEOC Federal Sector EEO Portal](#) (FedSEP) or mailed to the Director, Office of Federal Operations, P.O. Box 77960, Washington, DC 20013.

- b.** The complainant must submit an appeal to the EEOC within 30 calendar days of the complainant's receipt of the Final Agency Decision, using [EEOC Form 573](#), which OCR must provide, along with the Final Agency Decision. When the complainant submits the appeal to the EEOC, they must simultaneously provide a copy of the appeal to OCR.
- c.** The complainant may submit a statement or brief to EEOC in support of the appeal but must do so within 30 days of filing the appeal, and must simultaneously send a copy of the statement to OCR.
- d.** OCR must provide a copy of the administrative file and the investigative file to the EEOC within 30 calendar days of receiving notice that an appeal has been filed. Any statement or brief in opposition to the appeal must be filed within 30 calendar days of receipt of the statement or brief supporting the appeal, or if no supporting document is filed, within 60 calendar days of the receipt of the appeal. USAID must simultaneously provide a copy of the Agency's appeal statement or brief to the complainant.
- e.** A complainant or representative may appeal USAID's final decision based on:
  - 1)** The merits of an individual complaint of employment discrimination;
  - 2)** The dismissal of an individual complaint;
  - 3)** The award of attorney's fees;
  - 4)** Alleged noncompliance with the terms of a settlement agreement;
  - 5)** Dismissal of all or a portion of a class complaint, or final decision on a class complaint;
  - 6)** A grievance when an issue of employment discrimination was raised in the USAID/American Federation of Government Employees (AFGE) or USAID/American Foreign Service Association (AFSA) negotiated grievance procedure and is not appealable to the MSPB; or
  - 7)** Final discrimination decisions rendered by an arbitrator or the Federal Labor Relations Authority (FLRA).

Such appeals must be filed within 30 calendar days of an individual's receipt of a Final Agency Decision.



- f. An EEOC appellate decision is final within the meaning of [29 CFR 1614.407](#), Civil Action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act, unless either the complainant or USAID files a timely request for reconsideration or the EEOC on its own motion reconsiders the case.

### **110.3.2.7 Remedial Actions and Compliance with Final EEOC Decisions**

Effective Date: 05/14/2021

#### **a. Appropriate Relief**

- 1) If either USAID or EEOC makes a final decision that USAID has discriminated against an individual, the Agency must provide appropriate relief, as described in [29 CFR 1614.501](#), Remedies and Relief; [502](#), Compliance with Final Commission Decisions; and [505](#), Interim Relief.
- 2) Relief ordered in a final decision on appeal to EEOC is mandatory and binding on USAID. USAID must provide the ordered relief within a required time frame, typically, not later than 60 calendar days after receipt of the final decision, unless otherwise ordered in the decision, when no request for reconsideration is filed or when a request for reconsideration is denied.

#### **b. Noncompliance**

To petition EEOC for enforcement of an appellate decision, a complainant must submit a petition to EEOC's Office of Federal Operations, specifically setting forth the reasons why USAID is in noncompliance with the decision. The Office of Federal Operations may clarify the appellate decision to ensure understanding of meaning or intent or may refer the matter to the EEOC with recommendations for enforcement and further EEOC action. The EEOC may issue a notice to show cause why there is noncompliance to the USAID Administrator; may refer the matter, as appropriate, to the Office of Special Counsel; or may notify the complainant of the right to seek judicial review of any alleged noncompliance. Failure to implement ordered relief may be subject to judicial enforcement as specified in [29 CFR § 1614.503](#), Enforcement of Final Commission Decisions.

#### **c. Reconsideration**

- 1) If desired, either USAID or the complainant must submit a request for reconsideration to the EEOC Office of Review and Appeals within 30 days of receipt of a decision. In support of a request for reconsideration of an EEOC decision, USAID or the complainant must submit a statement or brief that contains arguments or evidence which seek to establish that:
  - a. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
  - b. The decision will have a substantial impact on the policies, practices,

or operations of the Agency.

Regardless of whether the reconsideration request is initiated by the complainant or USAID, the party opposing such reconsideration has 20 days from the date of service or notice to submit any statement or brief in opposition to the request.

- 2) If USAID requests reconsideration by the EEOC of a decision that included an order of relief, USAID must notify the EEOC and the affected employee in writing, at the same time, it requests reconsideration, that any relief it provides is temporary or conditional, pending a final decision on reconsideration, consistent with [29 CFR § 1614.502](#) and [505](#).

### **110.3.2.8 Attorney's Fees**

Effective Date: 05/14/2021

In a decision or final action, the Agency may award reasonable attorney's fees related to the processing of the EEO complaint, consistent with [29 CFR 1614.501](#), Remedies and Relief. USAID is not required to pay for attorney's fees for services rendered during the pre-complaint process unless an Administrative Judge issues a decision finding discrimination, the Agency issues a final order that does not implement the decision, and the EEOC upholds the Administrative Judge's decision on appeal. If USAID agrees to fully implement the Administrative Judge's decision, it cannot be compelled to pay attorney's fees for fees incurred during the pre-complaint process, however, fees may be recovered for a reasonable period of time for services performed in reaching the decision whether to represent the complainant (see [29 C.F.R. § 1614.501\(e\)\(1\)\(iv\)](#)). USAID and the complainant can agree, however, that USAID will pay attorney's fees for pre-complaint process representation.

- a. Any determination of attorney's fees will be done in accordance with [MD-110, Chapter 11](#).
- b. When there is a finding of discrimination, which raises a presumption of entitlement to an award of reasonable attorney's fees under Title VII and the Rehabilitation Act, USAID must pay reasonable attorney's fees as appropriate. Complainants prevailing on claims under the Age Discrimination in Employment Act of 1967 and the Equal Pay Act of 1963 are not entitled to attorney's fees at the administrative level. Only where a Title VII, Genetic Information Nondiscrimination Act of 2008, or Rehabilitation Act of 1973 complainant rejects an offer of resolution made in accordance with [29 CFR § 1614.109\(c\)](#) and does not obtain more relief than the agency had offered, or in the rarest of other circumstances, might an agency limit or deny an award of fees.
- c. Attorney's fees will be computed by determining the "lodestar." The "lodestar" is the number of hours reasonably expended multiplied by a reasonable hourly rate (see [Hensley v. Eckerhart, 461 U.S. 424, 434 \(1983\)](#)). By regulation, the EEOC uses the same basis for calculating the amount of attorney's fees (see [29 CFR § 1614.501\(e\)\(2\)\(ii\)\(B\)](#)).

d. The following guidelines apply to the payment of attorney's fees:

- 1) Attorney's fees are allowable only for the services of members of the Bar and law clerks, paralegals, or law students under the supervision of members of a Bar, except that no award is allowable to an employee of the Federal Government who serves in such legal capacity.

Agencies may, but are not required to, pay attorney's fees for services performed during the pre-complaint, informal process. Attorney's fees for the formal EEO complaint process are paid only for services performed after the filing of a written formal complaint and after the complainant has notified OCR that they are represented by an attorney. Services performed in reaching a determination to represent the complainant are allowable for a reasonable period prior to notification of representation.

- 2) To file a claim for fees, the attorney must submit a verified statement of costs and attorney's fees (including expert witness fees) to OCR within 30 calendar days of receipt of the decision, unless a request for reconsideration is filed.
- 3) The amount of attorney's fees must be calculated in accordance with existing case law. The starting point is the number of hours reasonably expended multiplied by a reasonable hourly rate. This amount may be reduced or increased in consideration of factors listed by the EEOC on [MD-110, Chapter 11\(VI\)\(F\), Remedies](#). Only in cases of exceptional success should any of these factors be used to enhance an award computed by the formula set forth in this paragraph.
- 4) Additional attorney's fees may be awarded as authorized by [28 U.S.C.1920](#), including:
  - Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case;
  - Fees and disbursements for printing and witnesses; and
  - Fees for copies necessarily obtained for use in the case.

### 110.3.2.9 Complaint Settlement

Effective Date: 05/14/2021

- a. As required by [29 CFR 1614.603](#), USAID must make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, administrative processing of complaints, including the pre-complaint, informal (counseling) period. Any settlement reached must be in writing, approved and signed by the D/OCR (Agency Settlement Authority), the complainant, complainant's

representative, the Agency's representative, and where necessary, the appropriate Agency management official.

- b. EEO Counselors must advise aggrieved persons that when the Agency agrees to offer ADR in a particular case, they may choose between participation in the EEO ADR program and the counseling activities provided for in [29 CFR 1614.105\(c\)](#).
- c. An allegation of noncompliance with a settlement agreement is governed by the following procedures:
  - 1) If USAID fails to comply with the terms of a settlement agreement, for reasons not attributable to acts or conduct of the complainant, the complainant is required to notify OCR. This notification must request that the terms of settlement be implemented or that the complaint be reinstated for continued processing from the point processing ceased.
  - 2) To initiate a claim of USAID noncompliance, the complainant must notify OCR in writing within 30 calendar days of when the complainant knew or should have known of the alleged noncompliance.
  - 3) If the complainant is not satisfied with OCR's response, or if the complainant is not satisfied with the resolution attempts; the complainant may appeal to EEOC. The complainant can make this appeal 35 calendar days after written notice of noncompliance to OCR and must be made within 30 calendar days of receipt of any decision by OCR.
  - 4) Allegations that subsequent acts of discrimination that violate a settlement agreement will be processed as separate complaints.

**110.3.2.10 Civil Actions**  
Effective Date: 08/20/2024

- a. A complainant who has filed an EEO complaint has the option to file a civil action in an appropriate United States District Court pursuant to [Title VII of the Civil Rights Act, as amended](#), [the Pregnant Workers Fairness Act](#), the [Age Discrimination in Employment Act](#), and the [Rehabilitation Act](#). A civil action must be filed in the following timeframes:
  - 1) Within 90 calendar days of receipt of the final decision on an individual or class complaint if no appeal has been filed;
  - 2) After 180 calendar days from the date of filing an individual or class complaint, if an appeal has not been filed and a final decision has not been issued;
  - 3) Within 180 calendar days from the date of filing an appeal with the EEOC, if there has been no final decision by the Commission; or

- 4) Within 90 calendar days of receipt of a Commission decision on appeal.
- b. Filing a civil action terminates administrative processing of a complaint by USAID or of an appeal by EEOC. If a civil suit is filed subsequent to the filing of an appeal, the appellant must notify EEOC in writing.

### 110.3.3 EEO Alternative Dispute Resolution (EEO ADR)

Effective Date: 05/14/2021

EEOC's regulations at [29 CFR §1614.102 \(b\)\(2\)](#) and [MD-110, Chapter 3](#) require Agencies to establish or make available an EEO ADR Program. EEO ADR is a generic term used to describe a variety of techniques, methods, or processes that are outside the court or administrative dispute resolution processes. It is designed to resolve conflict at the earliest opportunity and the lowest level possible.

Although there are several EEO ADR procedures available, USAID primarily uses the mediation method. Mediation refers to the process where a third-party neutral, who is not a decision maker, facilitates discussion between the parties to help them reach a mutually acceptable resolution. During mediation, the mediator does not have decision-making authority. Instead, the mediator guides the process and meets with both parties in a joint session or individually and establishes a tone to help parties engage in meaningful discussion in a safe environment.

While EEO ADR is available during both the pre-complaint, informal process, and the formal complaint process, complainants must initiate EEO counseling prior to be considered for mediation. Pursuant to EEOC regulations, the counseling period will be extended when EEO ADR is used (see 29 C.F.R. §1614.105(f)).

The core principles of an EEO ADR program include the concepts of fairness, flexibility, training, and evaluation. Fairness requires the elements of voluntariness, neutrality, confidentiality, and enforceability. Participation is voluntary for the aggrieved/complainant, who can terminate it at any time within the prescribed time frames without loss of rights. Once the agency decides to offer EEO ADR, Agency officials have a duty to cooperate. Finally, the intent of EEO ADR is to produce a solution acceptable to the parties involved.

EEO ADR is intended to:

- Reduce the average processing time of EEO complaints;
- Prevent the escalation of disputes into multiple EEO complaints of discrimination;
- Increase the total number of EEO complaints/disputes resolved at the pre-complaint, informal stage;
- Enhance the overall morale and cooperation of staff, supervisors, and managers;

- Increase the confidence of employees in the EEO complaint process;
- Increase active participation in problem-solving by all involved parties, thereby potentially reducing the number of future disputes;
- Ensure better utilization of EEO Program staff and resources; and
- Reduce the costs associated with the processing of formal EEO complaints.

The EEO ADR program is a neutral, objective process. Aggrieved/complainants have the right to representation throughout the EEO ADR process. The aggrieved/complainant has a responsibility to cooperate in the EEO ADR process once they have elected to participate in the EEO ADR process. However, the aggrieved/complainant has the right to withdraw from EEO ADR proceedings at any time during the established time frames without loss of rights. The Agency, as well, has the right to terminate EEO ADR at any time during the process when it is no longer practical to continue because of the lack of agreement on the issue(s) after a reasonable period of time.

Agency management officials (supervisors, managers) must participate in EEO ADR once OCR has determined that a matter is appropriate for EEO ADR and the aggrieved/complainant has chosen to engage in ADR. The Agency will encourage the parties, particularly management, to continue attempting to resolve disputes throughout the pre-complaint/informal and formal complaint process, whether through EEO ADR or any other means of resolution. However, no one can force a resolution on the parties – not Agency management, the aggrieved/complainant, EEO officials, or mediators.

In accordance with the [Administrative Dispute Resolution Act of 1996 \(ADRA\)](#), 5 U.S.C. § 574, as amended, ADR discussions are confidential; however, any resolution resulting from EEO ADR may be shared with the appropriate action offices on a need-to-know basis. Agreements reached by the parties during the process will be enforced according to EEOC regulation. Management officials representing USAID will have the authority to agree with the terms of the agreement during the EEO ADR process. If there is no resolution during the EEO ADR session(s), no documentation or record of deliberations will be maintained. While the purpose of EEO ADR is to allow the parties to fashion their own resolution to a dispute, both parties are provided the opportunity to be represented throughout the proceeding.

Nothing said or done during attempts to resolve the complaint through EEO ADR can be made the subject of an EEO complaint pursuant to the ADRA and 5 U.S.C. § 574. Likewise, an Agency decision not to engage in EEO ADR, or not to make EEO ADR available for a particular case, or an Agency failure to provide a mediator cannot be made the subject of an EEO complaint.

### 110.3.3.1 Incorporating EEO Alternative Dispute Resolution in the EEO Process

Effective Date: 05/14/2021

The regulations governing discrimination complaint processing within the Federal sector are found at Title [29 CFR Part 1614](#) and [EEOC Management Directive 110](#). These regulations encourage the use of EEO ADR techniques in order to promote the early resolution of complaints and provide incentives to agencies that incorporate such techniques into their complaint resolution processes.

The EEO ADR program follows the core principles established by the EEOC in addition to incorporating the values of the ADRA. The procedures to be followed in the pre-complaint, EEO complaint processes and in utilizing EEO ADR in an attempt to resolve an EEO complaint are as follows.

#### EEO ADR in the Pre-Complaint, Informal EEO Complaint Process

- 1) According to [29 CFR § 1614.105\(a\)\(1\)](#), an employee or applicant for employment must contact an EEO counselor within 45 calendar days from the date the alleged decision, event, act, incident, or personnel action occurred (or most recent occurrence if a pattern of discrimination is alleged), or within 45 calendar days after they became aware or should have been aware of the alleged offense. The EEO Counselor will inform the aggrieved of their rights, conduct a limited inquiry, and attempt to resolve the dispute informally.
- 2) Under the EEO counseling process, the Notice of Right to File (NRTF) should be presented to the aggrieved by the 30<sup>th</sup> calendar day of the process; however, an extension may be agreed to as provided under 29 CFR 1614.105(e), of up to 60 additional calendar days.
- 3) If the informal attempt to resolve the dispute is successful, the terms of the agreement will be documented in writing by OCR and signed by the appropriate parties.

During the initial intake or initial interview, the EEO Counselor will offer the EEO ADR option to the aggrieved and present the EEO ADR Election Form. If the aggrieved opts to participate in the voluntary EEO ADR program, the aggrieved must agree in writing. If the aggrieved opts to engage in EEO ADR, they must sign and return the agreement to OCR within five calendar days of receipt. The EEO Counselor will notify OCR that the aggrieved opted to engage in EEO ADR and provide OCR all relevant information to facilitate OCR's decision-making process regarding the appropriateness for mediation.

If the aggrieved elects EEO ADR, pre-complaint, informal counseling activities must end. No further attempts at resolution should be made by the EEO Counselor once EEO ADR is requested by the aggrieved and approved by OCR.

However, the EEO Counselor must submit a Counselor's Report at the end of the mediation session indicating whether or not mediation was successful.

- 4) OCR will manage the mediation process, including obtaining a mediator, identifying and notifying management, coordinating with the Office of General Counsel, if necessary, and determining the time, date, and location of the mediation session. The mediator will circulate an agreement to participate in EEO ADR to the parties involved in the mediation. At the conclusion of the mediation, the mediator must complete a form detailing the results of the mediation and submit it to OCR.
- 5) If the aggrieved is offered EEO ADR and declines, the processing of the complaint will continue pursuant to [29 CFR 1614 § 105\(d\)](#).

If EEO ADR is successful and an agreement is reached during the pre-complaint, informal process, the mediator will provide the Settlement Agreement to OCR. All settlement agreements are reviewed by OCR prior to the signing of the agreement. Settlement agreements are signed by the aggrieved and/or their representative; management official; Office of General Counsel; and D/OCR. By signing the agreement, the aggrieved agrees to withdraw their informal EEO complaint.

If no agreement is reached during the pre-complaint, informal process, OCR will notify the EEO Counselor, who will then issue the Notice of Right To File (NRTF) to the aggrieved and/or their representative to close the pre-complaint, informal EEO counseling process. Alternatively, the NRTF may be issued by OCR. The EEO Counselor's Report will contain the allegations made and will only state that EEO ADR was attempted and unsuccessful. The EEO Counselor will submit a report to OCR within 15 calendar days after the EEO counseling process is closed.

- 6) The mediator is authorized to request documents and information pertinent to the issues prior to the EEO ADR proceeding. However, the material will be subject to the review and concurrence of OCR before release.
- 7) If EEO ADR does not resolve all of the issues raised, the processing of the complaint will continue pursuant to 29 CFR 1614 § 105.
- 8) If either party to a resolution subsequently alleges breach of the agreement, OCR will make appropriate inquiries and determine whether reopening of the EEO complaint is appropriate, or if an administrative resolution of the alleged breach is feasible. Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the informal, pre-complaint or formal complaint process, must be binding on both parties. If an aggrieved believes



that USAID has failed to comply with the terms of an agreement, they may pursue their rights in accordance with 29 CFR Part 1614, within 30 calendar days by notifying [eeocomplaints@usaid.gov](mailto:eeocomplaints@usaid.gov).

### **110.3.3.2 EEO ADR in the Formal Complaint Process**

Effective Date: 05/14/2021

- 1) EEO ADR may occur at any time during the formal complaint process (*i.e.*, after filing a formal complaint; after acceptance or investigation; after a request for hearing or Final Agency Decision (FAD); and after an appeal has been filed). The timetable for assigning a mediator, if required, and completing the EEO ADR process will be identical to the time periods established under the pre-complaint, informal process. If a complainant elects EEO ADR, OCR will determine if EEO ADR is appropriate for the formal complaint.
- 2) OCR will manage the mediation process by obtaining a mediator from an outside, contracted entity, identifying and notifying management, coordinating with the Office of General Counsel, if necessary, and determining the time, date, and place of the mediation session. The mediator will circulate an agreement to participate in EEO ADR to the parties involved in the mediation. At the conclusion of the mediation, the mediator will complete a form detailing the results of the mediation and submit it to OCR.
- 3) If EEO ADR is successful and an agreement is reached, the terms of the agreement will be provided by the mediator and reduced to writing in a Settlement Agreement. All agreements will be reviewed by OCR prior to the signing of the agreement. The resolution agreement will be signed by the complainant and/or representative; Management Official; Office of General Counsel, and the D/OCR. By signing the agreement, the Complainant agrees to withdraw their formal EEO complaint.
- 4) If EEO ADR does not resolve all issues raised, the formal complaint phase of the process will continue in accordance with 29 CFR § 1614.106.
- 5) If EEO ADR is offered by the Agency and the Complainant declines, the processing of the formal complaint will continue pursuant to 29 CFR § 1614.106.
- 6) The mediator is authorized to request documentation and information pertinent to the issues prior to the EEO ADR proceeding, if necessary. However, this information will be subject to the review and concurrence of OCR before release.
- 7) If either party to a settlement agreement subsequently alleges breach of the agreement, OCR will make appropriate inquiries and determine whether reopening of the EEO complaint is appropriate, or if an administrative resolution of the alleged breach is feasible. Any Settlement Agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, must be binding on both parties. If a Complainant believes that USAID has failed to comply with the

terms of an Agreement, the Complainant may pursue their rights in accordance with 29 CFR Part 1614, within 30 calendar days by notifying [eeocomplaints@usaid.gov](mailto:eeocomplaints@usaid.gov).

### **110.3.3.3 Class Complaints**

Effective Date: 05/14/2021

A class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

- The class is so numerous that a consolidated complaint of the members of the class is impractical;
  - There are questions of fact common to the class;
  - The claims of the agent of the class are typical of the claims of the class; and
  - The agent of the class, or the agent's representative, if any, will fairly and adequately protect the interests of the class.
- a. An employee or applicant who wishes to file a class complaint must receive EEO counseling in accordance with [29 CFR § 1614.105](#).
  - b. A class complaint must be signed by the class agent or representative and must identify the policy or practice adversely affecting the class, as well as the specific action or matter affecting the class agent.
  - c. The complaint must be filed with OCR no later than 15 calendar days after the agent's receipt of the Notice of Right to File a class complaint.
  - d. USAID must process class complaints in accordance with the provisions of [29 CFR § 1614.204](#), Class Complaints.

### **110.3.4 Affirmative Employment**

#### **110.3.4.1 Affirmative Employment Program**

Effective Date: 12/21/2022

It is the policy of USAID to promote the full realization of equal employment opportunity through a proactive continuing [Affirmative Employment Program \(AEP\)](#). The purpose of this program is to identify and eliminate barriers to EEO, adopt best practices to promote diversity and inclusion, and assist the Agency in establishing and maintaining a Model EEO program to ensure USAID's workforce is representative of the nation it serves.

The AEP is designed to assist Agency officials and USAID's workforce address

employment issues that restrict equal opportunity for racial and ethnic minorities, women, and individuals with disabilities, and help improve the effectiveness of Agency efforts to create a work environment that is equitable, inclusive, and diverse. Accordingly, the AEP is responsible for reviewing and assessing the Agency's policies, programs, practices and procedures and analyzing workforce data to identify barriers to employment throughout the employment life cycle. The employment life cycle includes, but is not limited to, outreach, recruitment, hiring, training, development and advancement, engagement and retention, and all other conditions, benefits and privileges of employment. These policies, programs, processes and practices are evaluated regularly to identify and address barriers that may exist that limit or tend to limit equitable opportunities for open and fair competition and treatment in the workplace. The core functions statutorily of the AEP program are directed at the Direct-Hire workforce, however, the principles of affirmative employment in practice are relevant to the entire workforce across all hiring types and contracting mechanisms, and the AEP program at USAID is committed to equality of opportunity for all employees and applicants for employment and to advancing diversity, equity, and inclusion throughout all of USAID (see [29 CFR 1614.102](#) and [MD-715](#)).

The AEP Manager oversees and monitors the Agency's affirmative programs of equal opportunity responsibilities in accordance with EEOC's Management Directive (MD) 715, which are EEOC's standards and guidance for establishing and maintaining effective affirmative programs that create a Model EEO Program. A Model EEO Program is one that fosters a work environment that is free from discrimination and harassment, and promotes equitable, fair, and inclusive employment opportunities for all employees and qualified job applicants.

MD-715 requires that USAID submit an annual report on the efforts and accomplishments of the Agency for establishing and maintaining a Model EEO Program. The report focuses on the following areas of affirmative employment:

- 1) Assessing the Agency's EEO performance against [EEOC's Six Essential Elements](#) of a Model EEO Program for a given fiscal year;
- 2) Analyzing workforce data related to the employment cycle and identifying the triggers (*i.e.*, low participation rates of minorities, women, and people with disabilities and equitable distribution of grade levels) that may indicate barriers to aspects of the employment cycle; and
- 3) Developing effective strategies for implementation to address the barriers to employment in Agency policies, programs, processes, and practices (*e.g.*, through their modification, including adoption, or retirement) that may affect employment, advancement, and retention.

The AEP works with HCTM to ensure comprehensive collection of workforce data relating to the employment cycle, including on outreach, recruitment, hiring, and employee recognition, development, advancement, and retention with regard to race,

ethnicity, sex, and disability. The AEP uses that data to develop the narrative and workforce tables required in the annual MD-715 Report, and to conduct additional analysis regarding employment trends and the representation of racial and ethnic minorities, women, and people with disabilities in the USAID workforce.

The AEP also works with the Agency's [Employee Resource Groups](#) (ERGs) and bargaining units to jointly work together on efforts to advance and assist the Agency in implementing USAID's efforts to ensure equality of opportunity. These collaborations provide a platform for employee affinity groups to engage with the AEP and influence and improve practices that advance Affirmative Employment.

Using MD-715 Workforce Table and other personnel and demographic data analysis, the AEP consults and collaborates with HCTM and other Agency stakeholders to develop and implement policies, programs, procedures, and practices, to ensure equality of opportunity and compliance with EEOC and Office of Personnel Management (OPM) guidelines. In addition, the AEP will liaise with national organizations representing various diverse groups and advise on outreach and recruitment best practices, including encouraging the Agency to engage with minority serving institutions as well as national civil rights organizations and affinity groups.

The AEP also engages with HCTM in the "End-to-End" recruitment and hiring processes, including receiving access to the automated selection certificates/referral lists when they are sent to selecting officials.

#### **110.3.4.2 EEO Harassment**

Effective Date: 05/14/2021

It is the policy of the Agency to provide a work environment free of EEO-based harassment; to prohibit explicit or implicit EEO harassment; to comply with the letter and spirit of all laws and regulations governing EEO harassment; to conduct inquiries into allegations of EEO harassment; to take corrective action when EEO harassment conduct is established; and to ensure that formal complaint channels for EEO harassment are available to all employees.

All USAID employees must refrain from engaging in EEO harassment in the workplace.

### **110.4 MANDATORY REFERENCES**

#### **110.4.1 External Mandatory References**

Effective Date: 08/20/2024

- a. [5 CFR 339.101-104](#)
- b. [5 U.S.C. 8337](#)
- c. [5 U.S.C. 8451](#)

- d. [28 U.S.C. 1821](#)
- e. [28 U.S.C. 1920](#)
- f. [29 CFR 1608, Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964, As Amended](#)
- g. [29 CFR 1614, Federal Sector Equal Employment Opportunity](#)
- h. [Age Discrimination in Employment Act \(P.L. 90-202\)](#)
- i. [Civil Rights Act of 1964, Title VII](#), as amended (P.L. 88-352)
- j. [Civil Rights Act of 1991 \(P.L. 102-166\)](#)
- k. [EEOC Management Directive 110](#)
- l. [EEOC Management Directive 715](#)
- m. [Equal Pay Act of 1963 \(P.L. 88-38\)](#)
- n. [Executive Order 11478, Equal Employment Opportunity in the Federal Government, as amended](#)
- o. [Genetic Information Nondiscrimination Act of 2008 \(P.L. 110-233\)](#)
- p. [Government Performance and Results Act of 1993](#)
- q. [Pregnant Workers Fairness Act \(P.L. 117-328\)](#)
- r. [Rehabilitation Act of 1973 \(P.L. 93-112\)](#)
- s. [Veterans Readjustment Assistance Act of 1974 \(38 U.S.C. 4212\)](#)

**110.4.2 Internal Mandatory References**  
Effective Date: 12/21/2022

- a. [ADS 111, Procedures for Providing Reasonable Accommodation](#)
- b. [ADS 113, Preventing and Addressing Sexual Misconduct](#)
- c. [ADS 114, Anti-Harassment Program](#)
- d. [ADS 418, Merit Staffing Program for Civil Service \(CS\) Employees](#)
- e. [ADS 549, Telecommunications Management](#)

f. [USAID Policy Statement on Equal Employment Opportunity](#)

**110.5 ADDITIONAL HELP**  
Effective Date: 05/14/2021

There are no Additional Help documents for this chapter.

**110.6 DEFINITIONS**  
Effective Date: 06/25/2021

See the [ADS Glossary](#) for all ADS terms and definitions.

**Administrative Judge**

Formerly called a hearing examiner, a person appointed by EEOC to conduct hearings on equal employment opportunity complaints. (**Chapter 110**)

**Age**

Refers to individuals who are at least 40 years old. (**Chapter 110**)

**Agent of the Class**

A class member who acts for the class during the processing of the class complaint. (**Chapter 110**)

**Aggrieved**

Any person or class of individuals presenting a complaint to an EEO Counselor during the pre-complaint, informal phase of the EEO complaint process. (**Chapter 110**)

**Class**

A group of individuals (e.g., USAID employees, former USAID employees, and/or applicants for employment with USAID) alleging an adverse effect of an Agency personnel management policy or practice which the Agency has the authority to rescind or modify, based on common protected EEO categories. (**Chapter 110**)

**Class Complaint**

A written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

- a. The class is so numerous that a consolidated complaint of the members of the class is impractical;
- b. There are questions of fact common to the class;
- c. The claims of the agent of the class are typical of the claims of the class; and
- d. The agent of the class, or the agent's representative, if any, will fairly and adequately protect the interests of the class. (**Chapter 110**)

**Complainant**

Any individual who files a formal equal employment opportunity complaint with USAID. **(Chapter 110)**

**Days**

For the purposes of the EEO complaint process, the term days refers to calendar days. Due dates that fall on weekends or United States Federal holidays require action on the next business day. **(Chapter 110)**

**Discrimination**

Different or less favorable of an individual or group for some reason.

**(Unlawful) Workplace Discrimination**

Prejudicial treatment in employment actions in Federal jobs that can occur in any aspect of employment, including: hiring and firing; compensation, assignment, or classification of employees; transfer, promotion, layoff, or recall; job advertisements; recruitment; testing; use of facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans, and disability leave; or other terms and conditions of employment.

**(Systemic) Discrimination**

A pattern or practice, policy, or class case where the alleged discrimination has a broad impact on an industry, profession, company, or geographic area. Also, patterns of behavior, policies or practices that are part of the structures of an organization, and which create or perpetuate disadvantage for categories of persons. **(Chapter 110)**

**Diversity**

The variety of similarities and differences within the workforce that include, but are not limited to, the following: race, ethnicity, sex, sexual orientation, gender, gender identity, gender expression, sex characteristics, disability, native or indigenous origin, age, generation, culture, religion, belief system, marital status, parental status, socio-economic status, appearance, language and accent, education, geography, nationality, lived experience, job function, personality type, and thinking style. [\(Chapter 101 and 110\)](#)

**EEO Counselor**

An individual appointed by OCR to provide EEO counseling on a collateral duty basis. **(Chapter 110)**

**Employee**

Although personal services contractors are not Federal employees, for the purposes of the EEO complaint process, the term employee includes all USAID U.S. citizen Direct-Hire personnel (Civil Service and Foreign Service), U.S. Personal Services Contractors, and Cooperating Country National Personal Services Contractors

and Third Country National Personal Services Contractors. (**Chapter 110**)

### **Equity**

The consistent and systematic fair, just, and impartial treatment of all individuals including individuals who belong to underserved communities that have been denied such treatment, including (but not limited to) Black, Latinx, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color, members of religious minorities, lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons, persons with disabilities, persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality.

(**Chapter [101](#) and 110**)

### **Inclusion**

A dynamic state in which diversity is leveraged to create a fair, healthy, and high-performing organization or community. An inclusive environment is safe, respectful, engaging, celebratory, and motivating and values the unique contributions of each employee as we strive to fulfill USAID's mission. (**Chapter [101](#) and 110**)

### **Unlawful EEO Harassment**

A form of discrimination, it is unwelcome conduct that violates EEO laws, where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Harassment includes conduct including retaliation against individuals for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws. (**Chapter 110**)

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