

The USDA Discrimination Complaint Process

Farmers who have been discriminated against when participating, or attempting to participate, in a USDA program (or a program that receives financial assistance from USDA) may file a discrimination complaint with USDA's Office of the Assistant Secretary for Civil Rights (OASCR).¹

What Must Be Included in a Discrimination Complaint

A discrimination complaint must be submitted to OASCR in writing. OASCR has prepared a form which farmers may use to file a discrimination complaint. This form is available online at

http://www.ocio.usda.gov/forms/doc/Complain_combined_6_8_12.pdf. However, it is not necessary to use the form. It is also possible to write a letter, so long as the letter includes the following information:

1. The farmer's name, mailing address, telephone number(s), and email address, if any. If the farmer has a preference of how he or she would like to be contacted – for example, a hard-of-hearing farmer who prefers written communication or a farmer who has difficulty reading or writing who prefers telephone communication – include mention of this in the letter.
2. If the farmer is represented, the name, address, and telephone number of the attorney or authorized representative.
3. The name of the individual(s) who discriminated against the farmer and the name of the agency or recipient of federal funds that employs the individual(s). If an individual's name is not known, it is advisable to provide as much identifying information as is known, such as the location of the office and the individual's job or role as understood by the farmer.
4. If known, the name of the USDA program(s) that the farmer was participating in or attempting to participate in and the name of the agency that administers the

¹ Federal law prohibits discrimination in USDA programs on the bases of race, color, religion, sex, age, national origin, marital status, sexual orientation, familial status, disability, limited English proficiency, or because all or a part of an individual's income is derived from a public assistance program. In programs that receive federal financial assistance from USDA, discrimination is prohibited on the bases of race, color, religious creed, sex, political beliefs, age, disability, national origin, or limited English proficiency. (Not all bases apply to all programs.) Reprisal based on prior civil rights activity is prohibited.

- program. For example: “farm loan program administered by the Farm Service Agency,” “NAP disaster program administered by FSA,” or “EQIP program administered by NRCS.”
5. The date(s) that the incident(s) of discrimination occurred.
 6. The location(s) where the discrimination occurred, including full address if known.
 7. The basis for the discrimination. That is, what the farmer believes was the motivating factor or factors for the discrimination and fills in the blank in the statement: “I was discriminated against based on my_____.”
 8. A statement of what happened, describing the action(s) taken by the individual(s) or agency that discriminated against the farmer and that resulted in some harm. The farmer should explain as clearly and completely as possible what happened, why the farmer believes it happened, and how the farmer was discriminated against. If applicable, the statement should include how other persons were treated differently from the farmer.
 9. A copy of whatever documents the farmer has to support the farmer’s statement of events and help show what happened. If the farmer was denied a benefit or service in writing, include a copy of the denial letter.
 10. A statement of how the farmer would like the complaint to be resolved.
 11. A statement whether the farmer has filed a complaint concerning the same incident(s) with a court or with another federal, state, or local agency and, if so, with what court or agency and when.
 12. The signature of the farmer or the farmer’s authorized representative and the date the letter was signed.

Deadline for Filing a Discrimination Complaint

The general rule is that a discrimination complaint must be filed within 180 days of the date the farmer knew or should have known of the alleged discrimination.

If the discrimination occurred more than 180 days before the complaint is filed, OASCR will not consider the case unless the complaint includes a request for waiver of the 180-day deadline and an explanation why there is good cause for a waiver.

A waiver may be granted when:

1. The farmer could not reasonably have been expected to know of the discriminatory act within the 180-day period;
2. The farmer was seriously ill or incapacitated;

3. The farmer filed a complaint about the same discriminatory act with another federal, state, or local agency, and that agency failed to act on the complaint; or
4. The Assistant Secretary for Civil Rights otherwise considers there to be good cause for a waiver.

OASCR will consider complaints sent by mail to be filed on the date the complaint was signed, unless there is a difference of seven days or more from the postmark date, in which case the filing date will be the postmark date. Complaints sent by fax will be considered filed on the day the complaint is faxed.

NOTE: Filing a discrimination complaint with OASCR does not stop the clock ticking on time limits for filing a lawsuit based on the same discrimination.

Federal law sets strict time limits for filing a lawsuit because of discrimination in USDA programs. The amount of time varies depending on the specific USDA program. For example, a lawsuit claiming discrimination in the Farm Service Agency loan programs must be filed within five years of when the discrimination occurred. Filing a discrimination complaint with OASCR does not stop the clock on the time limit for filing a lawsuit.

If there is any chance that the farmer will want to file a lawsuit against USDA if the result from the discrimination complaint process is not satisfactory, the farmer should consult an attorney about the claim to be sure that the time limits are understood and the farmer's right to file a lawsuit is preserved.

Where to File a Discrimination Complaint

Completed complaint forms or letters and supporting documents should be mailed to OASCR at:

U.S. Department of Agriculture
Director, Office of Adjudication
1400 Independence Avenue, SW
Washington, DC 20250-9410

or

Faxed to: (202) 619-6853 or (202) 720-8376.

The farmer may wish to call OASCR at (202) 260-1026 to confirm that the complaint was received.

What Happens After the Discrimination Complaint Is Filed²

Intake

After a discrimination complaint is filed, OASCR will first determine whether it has legal authority to process the complaint based on the USDA programs involved, the basis for discrimination identified in the complaint, and the timing of the complaint. This is called the “Intake Stage.” Before making a decision in the intake stage, OASCR may contact the farmer for clarification or additional information.

If the complaint is not accepted, OASCR will send the farmer a notice why the complaint was not accepted, and the complaint will be dismissed. In some cases, based on the program and basis for discrimination identified in the complaint, a dismissed complaint may be referred to another agency that may assist in resolving the issues. The farmer will be notified of any such referral.

If the complaint is accepted for processing, OASCR will send a letter notifying the farmer of the acceptance and the issues that will be investigated. The USDA agency that the complaint is against will be required to prepare a written statement giving the agency’s position regarding the complaint. After the agency’s position statement is received by OASCR, the case will be sent to the next stage, investigation.

Investigation

Once a complaint has been accepted for processing, an investigator will be assigned to the case. The investigator will contact the farmer, any agency employees involved, and any other appropriate individual(s) (as determined by the investigator) to obtain sworn statements and documents relating to the events and issues in the complaint.

The investigator will then prepare a “Report of Investigation” and pass the complaint on within OASCR to the final stage, adjudication.

OASCR does not automatically provide a copy of the Report of Investigation to the farmer. The farmer may obtain a copy of the Report of Investigation by making a request under the Freedom of Information Act, but only after the complaint is closed.

² For some USDA programs and programs under the authority of other government departments, discrimination complaints may be processed using different procedures, as set out in a Memorandum of Understanding between OASCR and the agency.

Adjudication

During adjudication, OASCR reviews the investigator's report and "perform[s] a legal and factual analysis of the complaint to determine whether discrimination occurred." OASCR then issues a Final Agency Decision based on its analysis and setting out findings and conclusions. A copy will be sent to the farmer.

If the Final Agency Decision concludes that there was discrimination, OASCR procedures state that OASCR "may attempt to settle the complaint or take other corrective action." The USDA regulation governing discrimination complaint processing states more strongly that OASCR (or equivalent agency) "will make final determinations . . . as to the corrective actions required to resolve program complain[]ts."

If the Final Agency Decision concludes that there was no discrimination, the complaint will be closed. For cases of discrimination based on disability only, farmers can appeal a Final Agency Decision to the Assistant Secretary for Civil Rights within 90 days of receiving the decision. Otherwise, farmers whose discrimination complaints are denied by OASCR only have recourse to the federal courts, and then only if the applicable time limit has not passed.

The discrimination complaint process does not set out any time limits for OASCR to review a complaint or make a decision. To check the status of a discrimination complaint, farmers can contact OASCR at the contact information below.

For More Information

For help preparing a complaint, to check on the status of a complaint, or for any other information regarding the USDA discrimination complaint process, farmers can contact the Office of the Assistant Secretary for Civil Rights in the following ways:

Telephone: (202) 260-1026

Fax: (202) 720-8376

Email: CR-INFO@ascr.usda.gov