

ARTICLE 9

Equal Employment Opportunity and Discrimination Free Workplace

Section 9.01 - Policy. Recognizing that the mission of the Department is building strong and inclusive communities free of discrimination, the Parties commit to building the same within the Department. This is accomplished by:

- (1) Providing equal employment opportunity pursuant to all employees, to prohibit discrimination on the bases of race, color, religion, sex (including gender identity and sexual orientation based on failure to conform to sex stereotypes), age, national origin, genetic information, disability, or reprisal. This article covers employee protection from discrimination and retaliation as provided by the Title VII of the Civil Rights Act of 1964, and as amended, Age Discrimination in Employment Act (ADEA), the ADA Amendments Act of 2008, the Rehabilitation Act of 1973, the Equal Pay Act, the Genetic Information Nondiscrimination Act of 2008 (GINA), and all other laws and regulations related to unlawful discrimination.

- (2) In addition, the parties recognize their historic commitment to fight against discrimination on bases beyond these statutorily protected classes. Therefore, there shall be no discrimination on the basis of marital status, sexual orientation, gender identity, parental/familial status, veteran's status, and political affiliation. Although discrimination on these bases may not be covered by Title VII of the Civil Rights Act of 1964, as amended, and may not be appealable to the EEOC, any employee alleging discrimination on these bases may seek assistance under certain circumstances through other forums or the Negotiated Grievance Procedure.

Section 9.02 - Equal Employment Opportunity Program

- (1) The Department's Equal Employment Opportunity (EEO) Program is designed to promote equal employment opportunity in every aspect of HUD's personnel policy and practice in accordance with applicable law and government-wide rules and regulations. The Department shall conduct a continuing campaign to eliminate discrimination from its personnel practices, policies and employment conditions consistent with 29 CFR §1614 and with EEOC Management Directive (MD) 110 and 715. The Department will have a positive, ongoing and results-oriented program of affirmative employment.

- (2) Consistent with EEO regulations, the EEO program shall provide prompt, fair, and impartial processing of complaints at the informal and formal complaint stage. As part of the EEO program, Management will:
 - (a) Establish a system through the MD 715 process for periodic evaluation of the effectiveness of the Department's overall equal employment effort;

 - (b) Make available and encourage the use of the EEO Alternative Dispute Resolution (ADR) program for appropriate EEO matters pursuant to EEOC Regulation 29 C.F.R. § 1614; and

- (c) Review Departmental EEO policies and procedures for consistency with applicable laws and regulations, and provide training opportunities for Departmental managers, experts, and union representatives to ensure that EEO policies and procedures are current.
- (3) Consistent with this Agreement and EEO regulations, the EEO program shall include, but not be limited to:
- (a) Providing prompt, fair, and impartial processing of complaints at the counseling and complaint stage and expeditious adjudication of complaints of discrimination filed through the EEO administrative complaint process or the negotiated grievance procedure. The Department shall provide through various media (including at a minimum, the Department's hud@work or successor website and periodic e-mails) the names and current contact information of all relevant individuals responsible for providing counseling, processing, and adjudicating complaints. Persons who complain of alleged discrimination, who participate in presenting such complaints, or who present information or evidence relevant to such complaints shall be unimpeded by the Department in such efforts and will be free from restraint, interference, discrimination or reprisal.
 - (b) Conducting a continuing proactive campaign to remove every form of prejudice and discrimination from the Department's personnel policies, practices, and working conditions, including establishing and maintaining training and education programs.
 - (c) Managing an anti-harassment policy and program intended to take immediate and appropriate corrective action, including the use of disciplinary actions to eliminate harassing conduct against employees, managers, and supervisors.
 - (d) Reviewing, evaluating, and training managerial and supervisory personnel to ensure the enforcement and implementation of the equal employment policy and program.
 - (e) Establishing a system through the MD 715 process for periodically evaluating the effectiveness of the Department's overall equal employment effort; (1) Taking appropriate disciplinary action against employees, managers, and supervisors who engage in discriminatory practices. Employees who participate in any process leading to such disciplinary action shall be free from reprisal.
 - (f) Making available and encouraging the use of the Alternative Dispute Resolution (ADR) program pursuant to this Article.
 - (g) Working to support HUD becoming a model employer of people with disabilities and targeted (severe) disabilities by collaborating with appropriate Departmental Offices to ensure workplace accessibility through the provision of reasonable accommodation (e.g., assistive technology, work-at-home, job restructuring, etc.) and other appropriate actions (e.g., facility accessibility, IT accessibility, etc.).
 - I. Periodically reviewing Departmental EEO policies and procedures for consistency with applicable laws and regulations, and providing training

opportunities for Departmental managers, experts, and union representatives to ensure that EEO policies and procedures are up to date; and

- II. Working with the appropriate Departmental official(s) in order to provide religious accommodations for employees that make such requests.

Section 9.03 - EEO Discrimination Complaint Procedures. Employees who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, genetic information, or reprisal for engaging in Equal Employment Opportunity (EEO) activity may file an EEO complaint or grievance pursuant to this Article. The parties acknowledge that employees who have discrimination complaints subject to EEOC procedures can opt to have their complaints resolved by either the negotiated grievance procedure as provided in Article 51 of this Agreement or the EEO complaint process, but not both procedures.

- (1) The EEO complaint process begins with the complaining employee contacting an EEO Counselor within 45 calendar days of the alleged discriminatory action or within 45 calendar days of when the employee became aware of the alleged discrimination. The Department shall provide the current statutory EEO complaint procedures through various media, including at a minimum, the Department's hud@work or successor website and periodic e-mails.
- (2) Communication with the EEO counselor, including the filing of an Informal Complaint of Discrimination form or its successor form, does not preclude the employee from selecting another forum.
- (3) The timely filing of the formal discrimination complaint constitutes selection of the EEOC statutory appeal procedures, and, therefore, precludes the filing of a grievance under Article 51 on the same issue.
- (4) The timely filing of a grievance under Article 51 constitutes selection of the negotiated grievance procedure, and therefore, precludes the filing of a formal EEO complaint on the same issue.
- (5) An employee has the right to be accompanied, represented, and advised by a representative of his/her choice at any stage of the EEO complaint process. The employee will designate his/her personal representative in writing.

Section 9.04 - EEO Alternate Dispute Resolution (ADR) Program.

- (1) It is the policy of the Department to make all reasonable efforts to resolve potential EEO conflicts informally and to the mutual satisfaction of the employee and their Management organization. An employee or party may use the EEO ADR process prior to or following the filing of an EEO complaint or grievance or to resolve any underlying EEO issue consistent with this Article. The Department and the Union agree that EEO ADR should be made available to the employee and the employee's organization as soon as possible following the events that would form the basis of a complaint or grievance. If an employee files a formal EEO complaint or appeal, once the matter has been assigned to a judge or other adjudicator, the Department and the employee will consider mediation or other facilitated resolution of the matter available from

the outside agency or court prior to seeking resolution through the Department's EEO ADR process. To the extent authorized by such third party tribunals and if the parties (i.e., the Department and the employee) mutually agree, the parties may utilize HUD's EEO ADR process after a third party tribunal takes jurisdiction over the matter. When a judge has been assigned, the parties seeking EEO ADR will provide appropriate notice and accord appropriate deference to the judge. The purpose of the EEO ADR program is to facilitate the resolution of matters arising under this Article.

(2) All EEO ADR sessions will occur during regularly scheduled hours of work. No EEO ADR participant will be made to suffer loss of pay, or charged leave to the extent they are otherwise in duty status.

(3) Employee Rights. The ADR Program is voluntary for employees and is an informal and confidential process to assist employees and employers to reach their own resolution of disputes involving EEO matters. When an employee requests ADR, Management, within the affected Program Office, shall designate an individual with settlement authority. If the Program Official with settlement authority is not directly involved in the ADR proceeding, then he or she shall be available to provide information, make an offer of settlement, or make a decision during any ADR session.

(4) EEO ADR Program Conformance. The Department's ADR program will be conducted in accordance with Chapter 3 of the EEOC Management Directive MD-110. Information on ADR will be available on the Department's intranet (hud@work) or its successor.

(5) Alternative Dispute Resolution Process. ADR shall be available during both the informal and formal complaint process. If ADR is elected, it will not prevent the filing of a formal EEO complaint.

(6) Employee Participation. Participation in the ADR program at the informal stage does not preclude the employee from exercising rights under any of the Department's other complaint or appeals procedures, including the negotiated grievance procedures, when no resolution is reached. However, timeframes are not extended by use of ADR.

(7) Representation. The parties in the ADR process are entitled to representation of their choice.

(8) ADR Proceedings and Records. ADR proceedings are confidential and, if resolution attempts fail, offers and statements made by parties cannot be used as evidence against either party in any administrative, judicial or arbitration proceeding. All parties involved in the ADR process shall not disclose any information said or done during the ADR proceedings, except for those with a need to know in order to authorize, approve or implement a resulting resolution. There will be no recorded transcript taken of the ADR sessions. If settlement is reached, then the settlement agreement will be the record from the ADR proceeding.

(9) Mediators. Only certified ADR mediators/neutrals shall be used for the ADR mediation process. These may be contract mediators or shared interagency neutrals/mediators.

(10) Availability of Mediators. ADR mediators will be made available Department-wide, regardless of geographical location. However, mediation may occur via teleconference or video-conference by mutual agreement.

(11) Concurrent Process. If the ADR process is requested after a formal complaint has been filed, then the formal complaint process and the ADR process proceed concurrently.

(12) Alternative Solutions. The ADR process shall allow for the use of innovative alternative solutions that will be fully considered by the Department.

(13) Settlement Agreements. The parties have significant flexibility in structuring settlement agreements. As long as the parties agree, they can settle for any relief that a court could order if the case were to go to trial. For example, a Department and an employee may agree to a retroactive or prospective personnel action, back pay or lump sum payment, attorney's fees, costs, and/or monetary damages or other appropriate solutions. ADR settlements that are part of the EEOC statutory appeals procedure can be appealed to the EEOC Office of Federal Operations for enforcement. If the settlement agreement was made to settle a grievance or arbitration, then the employee and union could file a grievance/arbitration or ULP charge for enforcement.

(14) Binding Effect. All final ADR agreements are binding.

Section 9.05 - Information and Data. The annual report to the EEOC (MD-715 Annual Report) will be posted on the ODEEO website. The Department agrees to provide the Union with the MD-715 report required by the EEOC concurrently with posting on the website

Section 9.06 - Other Discrimination Complaints.

- (1) Discrimination complaints not appropriate for consideration under the EEOC administrative complaint process may include marital or familial status, political affiliation, veterans' status, or reprisal for alleging such discrimination. Often times, employees who have discrimination complaints can opt to have their complaints resolved in multiple forums, but must choose one.
- (2) Depending upon the basis of discrimination, employees may be able to file a complaint or appeal under the negotiated grievance procedure, or other forums may be available under law. Examples include the following:
 - Merit Systems Protection Board (MSPB)
 - Office of Special Counsel (OSC)
 - Department of Labor (DOL)
- (3) Employees may be able to have a representative of their choosing. Employees are advised that each forum has its own specific filing deadlines. Employees may locate filing deadlines and other filing requirements in MSPB, OSC, and DOL regulations at 29 CFR part 1614, 5 CFR part 1800, and 29 CFR parts 31-37, or successor regulations. Employees are encouraged to seek advice to determine the appropriate forum and filing deadlines (e.g. union

representative, attorney, etc.). Time spent by representatives shall be assessed in accordance with applicable regulations.

- (4) **Veterans.** The Department and Union affirm their support for hiring veterans, including disabled veterans; restoring employees who leave their positions temporarily to go on active duty to their positions; and ensuring equal and fair treatment of HUD employees on active duty, returning from active duty, or with a family member on or returning from active duty.
- (a) The Department and the Union agree that, although it may not be covered by EEOC-enforced statutes and regulations, workplace discrimination will not be tolerated on the basis of active duty or reserve military service. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) contains provisions that prohibit federal agencies from discriminating against service members or reservists when returning to their federal job. Returning service members are entitled to restoration of their job, pay, and benefits in accordance with DOL regulations at 20 CFR 1002.
 - (b) Affected employees may file complaints with the Veterans Employment and Training Service (VETS) in the U.S. Department of Labor. Reemployment or discrimination cases under USERRA may be filed also with the MSPB. If VETS is unable to resolve the complaint, the complainant may request the DOL refer the complaint to the Office of Special Counsel (OSC) or the complainant may file an appeal with the MSPB.
 - (c) The Department and the Union are committed to implementing the Veterans Employment Opportunities Act and Veterans Recruitment Appointment Act to encourage the employment of veterans in HUD's workforce. Complaints under the VEOA may be filed with DOL. If DOL cannot resolve a complaint, the complainant may file an appeal with the MSPB. The Department and the Union recognize that the policies, procedures and regulations of outside agencies such as the MSPB, OSC and DOL regarding veterans and members of the uniformed services are subject to change. Employees are encouraged to obtain current information regarding veterans and uniformed services rights directly from such organizations.
 - (d) The Department will inform employees who are veterans, on active duty, or in the reserves of their right to redress veteran's rights complaints through the appropriate authorities or through the Negotiated Grievance Process.

Section 9.07 - Participant Protection. Any employee, employee representative, or witness will be free from coercion, interference, dissuasion and reprisal related to the exercise of any rights under the law or this Agreement.

Section 9.08 - Third Party Settlements. If a settlement agreement results in a change of working conditions for employees other than the complainant the Union retains their rights under Article 49. Section 7106 of the Civil Service Reform Act excludes the Union from participating in certain substantial personnel decisions; particularly in the areas of hiring, training, selections, promotions, and similar matters. The settlement of discrimination complaints may, therefore, require modification to certain personnel policies and practices contained in this Agreement. As appropriate, the Union shall be offered the opportunity to negotiate under the terms of the mid-term bargaining article of this agreement over significant changes in working conditions brought about by a third party settlement for a discrimination complaint.