

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
AGENCY  
AND  
THE GENERAL SERVICES ADMINISTRATION**

**Purpose, Authority, and Scope**

1. This Memorandum of Understanding (“Memorandum”) between the AGENCY (“XXX”) and the General Services Administration (“GSA”) provides procedures that either agency can use for Equal Employment Opportunity (“EEO”) matters as described in the Equal Employment Opportunity Commission’s (“EEOC”) Management Directive 110.
2. Under this Memorandum, if XXX or GSA has an EEO matter, including those that raise a conflict of interest or the appearance of a conflict of interest, in connection with processing a request for EEO counseling (as described in 29 C.F.R. § 1614.105) or an EEO complaint (as described in 29 C.F.R. § 1614.106 and 29 C.F.R. § 1614.108), that agency (the “Requesting Agency”) may ask the other agency (the “Processing Agency”) to process that matters consistent with the terms of 29 C.F.R. Part 1614 and this Memorandum.
3. XXX and GSA hereby agree that, in accordance with the terms of this Memorandum and the Economy Act (31 U.S.C. § 1535) and GSA’s Working Capital Fund authority (40 U.S.C. § 3173) the Processing Agency assumes responsibility for handling EEO matters upon the request of the Requesting Agency, but the Processing Agency may decline to handle a matter if: (1) the matter could also raise a conflict of interest or an appearance of a conflict of interest with the Processing Agency; or (2) handling the matter would place an undue burden on the Processing Agency. The Requesting Agency will pay costs related to matters handled under this Memorandum or reimburse the Processing Agency as described below.
4. For purposes of the Economy Act, *supra*, GSA and XXX will determine and find that (1) any request made to perform the services described in this Memorandum shall be made only when funds are available to the Requesting Agency for reimbursing the Processing Agency, (2) this arrangement is in the best interest of the United States government, (3) the Processing Agency is able to provide the requested services, and (4) the Requesting Agency could not obtain the services either as conveniently or as cheaply from a commercial enterprise. See 31 U.S.C. § 1535(a)(1)-(4). When GSA is the Processing Agency, the authority for the agreement will be GSA’s Working Capital Fund (40 U.S.C. § 3173) and GSA’s organic authority to provide services to Executive Agencies (40 U.S.C. § 501).

5. The liaisons for this Memorandum are XXXXXXXX, (XXX) XXX-XXXX for XXX and Carolyn Sanders, (202) 302-6533 for GSA. XXX and GSA may designate new liaisons at any time and agree to notify the other agency's liaison in writing when a new liaison is designated.
6. For each matter handled pursuant to this Memorandum, if feasible, the Requesting Agency will designate a staff member with no involvement in or responsibilities related to the incident(s) that led to the request for counseling or the EEO complaint as a primary point of contact. That staff member will handle logistical matters related to the specific matter ("Requesting Agency Contact").

### **Responsibilities of the Processing Agency**

7. With respect to a matter that the Processing Agency agrees to handle under this Memorandum, and pursuant to 29 C.F.R. § 1614.607, the Requesting Agency officially delegates authority to the Processing Agency to take one or more of the actions listed in this paragraph in a manner consistent with the regulations of the EEOC. At the time the Requesting Agency asks the Processing Agency to handle an EEO matter, it will specify which of the steps listed below is being assigned to the Processing Agency:
  - a. The Processing Agency agrees to provide counseling or alternative dispute resolution ("ADR") in accordance with 29 C.F.R. § 1614.105. If the matter is not resolved at the pre-complaint stage and the Processing Agency's EEO counselor provides notice of the right to file a discrimination complaint as described in 29 C.F.R. § 1614.105(d), the notice shall instruct the Complainant to file a complaint with the EEO office of the Processing Agency. (For purposes of this Memorandum, the term "Complainant" refers both to a person seeking counseling and a person who has filed a complaint.)
  - b. The Processing Agency shall determine whether all or part of an individual complaint<sup>1</sup> should be dismissed in accordance with 29 C.F.R. § 1614.107 and shall notify the Complainant of its determination and of the rationale for the determination.
  - c. The Processing Agency agrees to investigate any part of the complaint that is not dismissed in accordance with 29 C.F.R. § 1614.108(b)-(h). The Processing Agency:
    - i. May incorporate ADR techniques into its investigative efforts.
    - ii. If a contractor is used to conduct any part of the investigation or ADR, the Processing Agency agrees it will not use a contractor that the Requesting Agency uses for EEO matters unless the

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<sup>1</sup> This Memorandum does not cover class and non-statutory complaints. If Processing Agency receives a class or non-statutory complaint, it should provide it to the Requesting Agency for further processing.

- Requesting Agency determines that use of the contractor would not raise a conflict of interest or the appearance of a conflict of interest.
- iii. Agrees to provide all notices to the Complainant that may be necessary under 29 C.F.R. § 1614.106-108, including the notice required by Section 1614.108(g) if the investigation is not completed within applicable time limits.
  - iv. Shall prepare an investigative file and an investigative summary, including an “unsanitized” version and a “sanitized” version. The “sanitized” version will redact all Personal Identifying Information (PII) and confidential information, as appropriate.
  - v. At the conclusion of the investigation, in accordance with 29 C.F.R. § 1614.108(f) or (h), the Processing Agency agrees to provide the Complainant with a copy of the sanitized investigative file and the investigative summary, and notify the Complainant of the Complainant’s right to request either a hearing and decision from an administrative judge, or an immediate final decision.
  - vi. In any notice informing the Complainant of their right to request a hearing from an administrative judge, the Processing Agency agrees to instruct the Complainant that if they request a hearing, the Complainant must send a copy of the request to the Requesting Agency’s EEO Office. If Complainant sends a request for hearing to the Processing Agency, the Processing Agency will promptly notify the Requesting Agency of the hearing election.
  - vii. In any notice informing the Complainant of the Complainant’s right to request an immediate final decision, the Processing Agency agrees to instruct the Complainant to direct the request to the Requesting Agency. The Requesting Agency will promptly notify the Processing Agency of the need for a final agency decision.
- d. If the Processing Agency believes ADR is appropriate at the counseling and/or investigative stages, the Processing Agency will confer with an official designated by the Requesting Agency (“ADR Coordinator”) before offering ADR to the Complainant. The ADR Coordinator will give due deference to a recommendation of the Processing Agency, but the ultimate decision about whether to engage in ADR remains with the Requesting Agency consistent with its own policy for ADR. If the Requesting Agency agrees to engage in ADR, the Processing Agency will offer ADR to the Complainant.
  - e. If the Complainant requests ADR, the Processing Agency will handle the coordination of ADR. The Requesting Agency’s Point of Contact will only assist as far as logistical information such as management official contact information and setting up rooms for ADR.
  - f. If the Processing Agency dismisses a complaint in its entirety under 29 C.F.R. § 1614.107, or if the Complainant requests an immediate final decision or does not reply to a notice issued under 29 C.F.R. § 1614.108(f), the Processing Agency agrees to take final action by drafting

a final decision in accordance with 29 C.F.R. § 1614.110(b). The Processing Agency will prepare the draft final agency decision and submit it to the Requesting Agency within 30 calendar days of receipt of the request.

- g. If the Complainant requests a hearing before an EEOC administrative judge (AJ) and the AJ issues a decision dismissing the complaint pursuant to 29 C.F.R. § 1614.109(b), issues a summary judgment decision pursuant to 29 C.F.R. § 1614.109 (g), or issues a decision on the merits of the complaint pursuant to 29 C.F.R. § 1614.109(i), the Processing Agency agrees to draft a final order in accordance with 29 C.F.R. § 1614.110(a). Note: The election form will include the Requesting Agency Information for the Complainant to send his/her election.
- h. If the Complainant requests a final agency decision, the Processing Agency agrees to prepare the final agency decision in accordance with 29 C.F.R. § 1614.110(b). The Processing Agency will prepare the draft final agency decision and submit it to the Requesting Agency within 25 calendar days of receipt of the request for mixed cases and 30 calendar days for non-mixed cases.
- i. On a case by case basis, FAD for damages may be requested per 29 CFR § 1614.501, and the agency or administrative judge shall issue a decision determining the amount of attorney's fees or costs due within 60 days of receipt of the statement and affidavit. The Processing Agency will prepare the draft FAD for damages within 30 calendar days of receipt of the request. Note: This also includes FAD for non-pecuniary and pecuniary damages.
- j. On a case by case basis, the Requesting Agency may request the Processing Agency to review a FAD for legal sufficiency and provide any feedback within 14 days of receipt of request.
- k. The responsibility of defending the interests of the Requesting Agency remains with the Requesting Agency at all times, and is not within the scope of this Memorandum. This includes, but is not limited to, any requested hearing to include submissions of motions and prehearing submissions, preparation of witnesses, representation of the Requesting Agency at the hearing, and submission of any-post hearing submissions as well as desired submissions to the Processing Agency when a hearing is not requested.
- l. The Processing Agency is not authorized to enter into any settlement on behalf of the Requesting Agency.
- m. The Processing Agency will promptly provide documents as requested from the Requesting Agency Contact which the Processing Agency will provide upon availability. Documents include, but are not limited to, the designation of representative, counselor's report, the notice of right to file, the formal complaint, the complete investigative file both sanitized and unsanitized, and FAD.

- n. The Processing Agency will provide regular (weekly) status updates to the Requesting Agency regarding any major events in the complaint for purposes of collecting relevant data for the Requesting Agency's data collection system, the annual 462 Report, and the No FEAR Act Reports. This includes (but is not limited to) the following information:

Pre-Complaint Stage:

- The date of initial contact
- The date of initial interview
- The dates ADR was offered and accepted or rejected
- The date and outcome of ADR attempts
- The date the Notice of Right to File was issued
- The date the Notice of Right to File was received
- The name(s) of the alleged responsible management official
- The issues and bases raised with the Counselor

Complaint Stage:

- The date the acknowledgement letter was sent
- The date the acceptance/dismissal letter was sent
- The issues and bases that were accepted or dismissed
- The date amendments were received
- The dates amendments were accepted or dismissed
- The issues and bases of the requested amendments and whether they were accepted or dismissed
- The dates ADR was offered and accepted or rejected
- The date and outcome of ADR attempts
- The date an investigator was requested
- The date an investigator was assigned
- The date the investigative plan was approved
- The date of the 180 day letter
- The date and length of any extensions
- The date the ROI was sent to the Complainant
- The date the Complainant/Representative received the ROI
- The date the Complainant requested a hearing
- The date the Complainant requested a final agency decision
- The date the final agency decision was issued

### **Responsibilities of Requesting Agency**

8. With respect to a matter that the Processing Agency agrees to handle under this Memorandum, the Requesting Agency agrees to assume the following responsibilities:
  - a. Requests for GSA shall be submitted to [eeo@gsa.gov](mailto:eeo@gsa.gov) and requests for XXX shall be submitted to XXXXX@XXXX.gov. IAA shall be included in the beginning of the subject line.
  - b. The Requesting Agency agrees to transmit to the Processing Agency the request for counseling and/or complaint that relates to the matter the Processing Agency is handling, along with the case file maintained by the Requesting Agency's EEO Office relating to the request for counseling and/or complaint, within seven (7) calendar days of the date that the Processing Agency agrees to handle the matter.
  - c. If the Complainant files any case-related documents with the Requesting Agency, the Requesting Agency will forward the documents to the Processing Agency within two (2) business days.
  - d. At the time of the transmittal of a counseling matter or complaint or at the time the Requesting Agency learns of the filing of a complaint with the Processing Agency, the Requesting Agency will notify the Processing Agency of all contractors it is currently using for processing EEO complaint matters so that the Processing Agency may decide which, if any, contractor to process the matter, consistent with applicable contracting law and regulation.
  - e. The Requesting Agency agrees to cooperate fully with the Processing Agency staff assigned to a matter covered by this Memorandum. The Requesting Agency Contact will be responsible for coordinating requests for cooperation. This cooperation includes, but not limited to, the following:
    - i. The Requesting Agency agrees to make officials and employees available for interviews, conferences, and statements under oath with the Processing Agency at times and places designated by the Processing Agency, including any employees deemed by the Processing Agency to be witnesses necessary to furnish information pertinent to the complaint. This includes the obligation to provide a reasonable amount of official time to these employees and to pay their necessary travel expenses (See Paragraph 8(i));
    - ii. The Requesting Agency agrees to promptly respond to any written or oral requests for information received from the Processing Agency; and,
    - iii. The Requesting Agency agrees to designate and make available a Management Representative who is authorized to discuss and enter into a settlement of the matter.

- f. If the Complainant requests a final agency decision, the Requesting Agency agrees to provide the Processing Agency with a copy of the request for a final agency decision and the report of investigation, in the format designated by the Requesting Agency (e.g., digital or hard copy) if needed, as soon as possible, and in no event more than five (5) calendar days after it receives the request. The final agency decision will be drafted by the Processing Agency and signed and issued by the Requesting Agency. Note: The election form will include the Requesting Agency contact to which the Complainant can send his/her election.
- g. The Requesting Agency will be responsible for processing the case once a complainant requests a hearing, and as a result, the Requesting Agency is responsible for uploading the necessary files to the EEOC via FedSEP for a hearing or an appeal. If the Processing Agency receives any documentation related to an EEOC hearing or EEOC appeal, the Processing Agency agrees to provide all relevant documents to the Requesting Agency within two (2) business days, and immediately forward to the Requesting Agency any hearing request, notice of appeal, or an EEOC Administrative Judge's Order to Produce the Complaint File, Report of Investigation, etc.
- h. The Requesting Agency agrees to reimburse the Processing Agency, as provided below:
  - i. At the time an agreement is established, the Requesting Agency will obligate \$10,000 as an estimate for services rendered.
  - ii. At the conclusion of requested work, the Processing Agency will bill actual costs against the amount obligated. The final cost billed will be the actual cost for all time spent by the Processing Agency personnel completing tasks listed in Paragraph 7 of this Memorandum.
  - iii. The final amount the Processing Agency requests to be reimbursed will include (1) standard rate factor (30%) of the salary rates reimbursed in paragraph 8(h)(i), above, for benefits and other costs associated with the administration of this Memorandum; and (2) an additional 4% administration fee to reflect the indirect costs of processing and managing the cases, associated with this Memorandum.
- i. The Requesting Agency will pay if advance approval was requested prior to any costs incurred and obtained by the Processing Agency, as provided below, the following costs:
  - i. all air, hotel, per diem and other travel expenses as authorized by the Federal Travel Regulations for travel by the Processing Agency personnel required to investigate the complaint;
  - ii. all costs for the services of a qualified court reporter (not an agency employee) to take verbatim affidavits or statements and prepare transcripts in connection with any investigation;

- iii. all copying services of a commercial vendor determined to be necessary to reproduce the investigative file; and
  - iv. all other costs agreed to in writing by the Requesting Agency prior to incurrence of the cost, as may be necessary to the Processing Agency's investigation of the complaint.
- j. Except as specified herein, each Agency is responsible for all direct and indirect costs of its own personnel, including pay and benefits. Each Agency is responsible for the supervision and management of its own personnel.

#### **Processing Agency's Right to Determine Investigative Method**

9. The Processing Agency reserves the right to determine the investigative techniques and procedures to be used in an investigation that the Processing Agency agrees to handle under this Memorandum, and the Requesting Agency reserves the right to provide legal assistance to managers or supervisors during that investigation consistent with applicable law. In the event that the Processing Agency elects to have verbatim affidavits or statements of the witnesses made at fact-finding conferences or other investigative proceedings, the Requesting Agency agrees, subject to a ten (10) business day advance request by the Processing Agency, to take all necessary steps to procure the services of a qualified court reporter to transcribe investigative proceedings and to prepare transcripts of those proceedings. The Processing Agency will not arrange and provide court reporter services on a reimbursable basis. All arrangements will be made by the Requesting Agency and all bills for transaction services and transcripts will be sent directly to the Requesting Agency. Such bills will not be sent to the Processing Agency. If the Processing Agency receives any such bills, it will forward them to the Requesting Agency.
10. The Requesting Agency is responsible for ensuring that a court reporter is available on the day and at the time and location specified by the Processing Agency. The Requesting Agency agrees to instruct the court reporting firm to send the original transcript of any proceeding and any copies ordered directly to the Processing Agency within the time frame deemed necessary by the Processing Agency, but not later than ten (10) calendar days from the date of the investigative proceeding.

#### **Procedure for Reimbursement**

11. The Processing Agency shall provide the Requesting Agency with a cost estimate to conduct the requested work and regular updates on cost spending. If the cost of the work is expected to exceed the cost estimates provided, the Processing Agency shall notify the Requesting Agency as soon as possible.

12. Upon completion of the matter (whether through completion of the full process, settlement of the complaint, withdrawal of the complaint by the Complainant, or cancellation by the Requesting Agency) and within the subsequent 30 calendar days, the Processing Agency agrees to provide the Requesting Agency Contact an itemized billing statement of the costs and expenses and the total hours expended by the assigned Processing Agency, or its contractors, to complete tasks listed in Paragraph 7 of this Memorandum.
13. As appropriate, the itemized billing statement shall include a standard rate factor for employee benefits and administration (30%, as provided in Paragraph 8(h) of this Memorandum). To protect the Complainant's identity to the greatest extent practicable, the statement shall use a unique identifier provided by the Requesting Agency and will not otherwise identify the Complainant.
14. The time expended by the assigned Processing Agency personnel investigating the complaint shall include time spent in a travel status and other time spent on the investigation either during or after normal duty hours.
15. The itemized billing statement shall include billing documentation that contractors submit to the Processing Agency for conducting investigations or other applicable matters.
16. The statement shall also include a recitation of the total dollar amount to be reimbursed to the Processing Agency by the Requesting Agency. Such amount shall be calculated by multiplying the total hours expended by the official hourly rate of the assigned Processing Agency personnel in accordance with the applicable federal pay schedule and adding applicable payments to contractors, along with any other direct and indirect costs applicable to the matter.
17. Upon presentation of the itemized billing statement, collection shall be effected by the Processing Agency via the United States Department of Treasury's ("Treasury") intra-governmental payment and collection system (IPAC). Collection shall be made no later than thirty (30) calendar days after the billing.
18. Travel expenses relating to the investigation shall be paid by the Requesting Agency at GSA rates as travel is performed. Travel shall not be arranged and paid for by the Processing Agency on a reimbursable basis. When the Processing Agency notifies the Requesting Agency Contact that travel arrangements are necessary, the Requesting Agency Contact shall make or cause to be made the travel arrangements, including airline scheduling and tickets, lodging accommodations at the destination, and authorized per diem.
19. Prior to travel, the Requesting Agency shall deliver the necessary airline tickets (either by paper or notification of availability of electronic ticket), confirmation of lodging arrangements, and any travel advance as authorized by the Federal Travel

Regulations to the designated Processing Agency personnel. Upon completion of the travel, the Processing Agency shall promptly present the Requesting Agency Contact with the necessary information and documents for the Requesting Agency to prepare a travel claim for the signature of the personnel who traveled. The Requesting Agency shall promptly process and settle such travel claims.

20. In accordance with the Treasury procedures, the Requesting Agency and Processing Agency shall document each request to handle a matter under this MOU by completing Treasury Forms 7600A and B, and exchanging or providing other forms or information as required by Treasury for reimbursements made under interagency agreements ("IAAs") pursuant to Economy Act authority or GSA's Working Capital Fund and organic authority to perform work for Executive Agencies, *supra*.

### **Confidentiality**

21. Both the Processing Party and the Requesting Party acknowledge that the records created, maintained, or used in connection with processing EEO matters under this MOU may be non-public and subject to the Privacy Act of 1974, 5 U.S.C. § 552a, and exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. § 552. Accordingly, to the extent permitted by applicable laws, the Parties will maintain the confidentiality of all non-public information obtained pursuant to this Memorandum and will not disclose such information to any person outside their agencies except as otherwise provided herein. Both agencies will:
- a. establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of any non-public information provided pursuant to this Memorandum, as well as any information derived therefrom or otherwise created, maintained, or collected in the processing of an EEO matter under this Memorandum;
  - b. notify the other agency in writing, as soon as practicable, of any legally enforceable demand or request for its information (including but not limited to a subpoena, court order, or request, order or subpoena from a committee of Congress acting within the scope of its jurisdiction, or request pursuant to the Freedom of Information Act), and provide that agency a reasonable opportunity to respond to the demand or request prior to complying with the demand or request, and assert all legal exemptions or privileges it reasonably requests be asserted;
  - c. not grant any other demand or request for the information, not furnish the information to any third party, make public any portions of the information or information derived therefrom, or make public use of the information, without the prior written permission of the other agency, unless otherwise required by law or court order;

- d. consent to application by that agency to intervene in any related action solely for the purposes of asserting and preserving any of its privileges or claims of confidentiality with respect to its non-public information; and
- e. provide immediate notice to the other agency in the event of any actual or suspected loss, unauthorized access, or other compromise of the information, so that the appropriate consultation and action may be taken by the parties, including the reporting of data security incidents involving personally identifiable information (PII) to the United States—Computer Emergency Readiness Team (US-CERT).

**Memorandum Effective Date, Term Modification, and Termination**

- 22. This Memorandum will become effective when signed by both the XXX and the GSA and be effective for a period of five (5) years. Either agency may terminate the Memorandum upon thirty (30) calendar days written notice to the other party.
- 23. The XXX and the GSA may modify this Memorandum by written consent.
- 24. Should a disagreement arise on the interpretation of the provisions of this Memorandum, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty (30) calendar days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.
- 25. Nothing in this MOU, including but not limited to its confidentiality provisions, is intended to create or confer any additional or independent legal right or cause of action on any entity or individual, including any individual whose EEO matter may be handled and processed under this MOU.

FOR THE XXX:

FOR THE GENERAL SERVICES  
ADMINISTRATION:

By: \_\_\_\_\_  
Name  
Position Title

By: \_\_\_\_\_  
Mary D. Gibert  
Associate Administrator  
Office of Civil Rights

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date