



April 7, 2016

Food and  
Nutrition  
Service

**SUBJECT:** Age Discrimination Act of 1975 –Mediation of Complaints

Park Office  
Center

**TO:** All Regional Civil Rights Directors

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VA 22302

This memorandum provides guidance on the processing of discrimination complaints under the Age Discrimination Act of 1975 (Age Act), as amended, 42 U.S.C. 6101 *et seq.* The Age Act is one of the Federal civil rights laws enforced by FNS CRD that prohibits age discrimination in programs or activities receiving Federal financial assistance. Federal regulation, 45 CFR 90, provides general, government-wide rules for the implementation of the Age Act. Last year, the Department issued 7 CFR 15c establishing the policy of non-discrimination on the basis of age in USDA programs and activities and reinforcing the applicability of the policy to each FNS recipient.

These regulations require that all complaints alleging Age Act violations be referred for mediation. Mediation involves the use of an impartial, third-party mediator, who assists the complainant and respondent in reaching terms that both parties find satisfactory, without imposing a decision upon the parties. Mediation offers a faster and more creative resolution of complaints through informal dispute resolution methods, while minimizing expenses to the parties. All of the information obtained in the course of mediation is kept confidential.

Participation in mediation is not optional, but mandatory for both the complainant and the State Agency against whom the complaint is filed. 45 CFR 90.43(c)3; 7 CFR 15c.7(d). State Agencies are not required to reach an agreement or settle the dispute, but must participate in the effort to reach a resolution on a good faith basis.

For these reasons, it is important that every State Agency administering FNS-assisted programs promptly refer all complaints to FNS CRD that allege unlawful discrimination on the basis of age, regardless of whether other bases are alleged. FNS CRD will then forward the complaints to the Federal Mediation and Conciliation Service (FMCS) upon receipt. Concurring investigations of the complaint should not be conducted while FMCS performs mediation.

This guidance memorandum should be shared with Program Directors in your region and any State Agency deemed appropriate to facilitate cooperation with FMCS and/or FNS CRD staff for compliance with Age Act requirements. If you have any questions, please contact Harriet Kornegay, [Harriet.Kornegay@fns.usda.gov](mailto:Harriet.Kornegay@fns.usda.gov).

Roberto Contreras  
Director, Civil Rights Division



## FNS FMCS FAQ

**Question 1:** Is participation in mediation mandatory?

**Answer 1:** Yes. USDA regulations at 7 CFR 15c.7(d), provide that the complainant and the respondent are both required to participate in the mediation process. However, participation in mediation does not require the parties to reach an agreement or settlement.

**Question 2:** Who should the mediator contact to schedule the mediation meeting?

**Answer 2:** The respondent entered in item #12 and the complainant in item #8 on the FMCS referral form.

**Question 3:** Are FMCS mediators allowed to share a copy of the complaint with the respondent?

**Answer 3:** Yes. Generally the mediator is the first point of contact with respondent. The mediator should advise the respondent of the complaint and provide the respondent a copy of the complaint.

**Question 4:** What happens if the respondent refuses to participate in mediation?

**Answer 4:** The mediator should contact the FNS civil rights contact listed in item #4 on the FMCS referral form as soon as possible. FNS will contact the respondent to facilitate scheduling the mediation meeting. Respondents do not have the option to refuse to participate in mediation.

**Question 5:** What happens if the complainant refuses to participate in mediation?

**Answer 5:** The mediator will close the FMCS case and notify the FNS civil rights contact of the action taken. FNS will send a letter advising the complainant that his or her FNS civil rights discrimination complaint is closed for failure to participate in mediation.

**Question 6:** What happens if mediation is not successful?

**Answer 6:** The mediator will close the FMCS case and notify the FNS civil rights contact of the action taken within five days (not to exceed the 60 day timeframe - 45 CFR 90.43(c)(3)(iii)). The specific circumstances of each complaint will determine if FNS civil rights will close the complaint or refer the complaint for an investigation.

**Question 7:** What happens if mediation is successful?

**Answer 7:** Within five days of the parties' resolution (not to exceed the 60 day timeframe), the mediator will notify the FNS civil rights contact that a resolution has been reached. The mediator will provide a copy of the signed agreement. (45 CFR 90.43(c)(3)(ii) and 7 CFR 15c.7(d).

**Question 8:** Who can represent the respondent during the mediation meeting?

**Answer 8:** Any individual who has decision making authority for the respondent.

**Question 9:** Is the complainant allowed to bring a representative to the mediation meeting?

**Answer 9:** Yes. The complainant has the right to have a representative at all stages of the complaint process.

**Question 10:** What happens if the mediation does not take place within the allotted 60 day timeframe?

**Answer 10:** The mediator should return the unresolved complaint to FNS for investigation.

**Question 11:** The complainant does not have a telephone number or email address where they can be reached. Should the mediator close the FMCS case because the complainant can't be contacted?

**Answer 11:** If a telephone number or email address is not available, the mediator should send the complainant a letter to schedule the mediation meeting. After all attempts to contact the complainant have failed, the mediator should close the FMCS case and notify the FNS civil rights contact of the action taken.

**Question 12:** If the complaint alleges discrimination on other bases in addition to age discrimination, should the parties resolve the entire complaint on all issues and bases?

**Answer 12:** Yes. Although the parties are not required by Age Act regulations to mediate other bases of discrimination, we encourage the parties to mediate the other bases identified in the complaint and if possible, resolve them.