



SUBJECT: Processing Claims of Discrimination on the Basis of Status as a Parent

1. **PURPOSE.** This OCRE Issuance establishes Departmental policy and procedures for processing complaints of discrimination on the basis of status as a parent.
2. **SCOPE.** The provisions of this Issuance apply to all bureaus, offices, and organizations in the Department, including the Offices of Inspectors General within the Department. The Issuance applies to all Treasury employees, including consultants, detailees, temporary employees, and interns (hereafter called employees), and contractor employees performing work for the Department of the Treasury, its offices, and bureaus, whenever the employee is working in a government-designated office, traveling, or working from home on behalf of the Department. The provisions of this issuance shall not be construed to interfere with or impede the authorities or independence of the Offices of Inspector General.
3. **POLICY.** It is the policy of the Department of Treasury (the Department or Treasury) to process allegations of discrimination on the basis of status as a parent through the Department's modified Equal Employment Opportunity (EEO) complaint structure.
4. **DEFINITION.** The following terms used in this directive are defined as follows.
 - a. **Status as a parent.** Refers to the status of an individual who, with respect to another individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: (1) a biological parent; (2) an adoptive parent; (3) a foster parent; (4) a stepparent; (5) a custodian of a legal ward; (6) in loco parentis over such an individual; or (7) actively seeking custody or adoption of such an individual.
5. **RESPONSIBILITIES.**
 - a. **Heads of Bureaus** shall ensure that:
 - 1) Bureau policies regarding non-discrimination include prohibitions against discrimination on the basis of parental status, and
 - 2) Managers and supervisors are aware of their responsibilities under Executive Order 11478 (as amended by Executive Order 13152) and established policies and procedures, and are held accountable for their conduct.
 - b. **EEO Officers** shall ensure that EEO counselors are prepared to:
 - 1) Explain to employees, applicants, and former employees that the current federal non-discrimination statutes do not prohibit discrimination on the basis of status as a parent, and thus, there is no right to file a civil action in Federal District Court;
 - 2) Advise employees, applicants, and former employees that complaints of discrimination on the basis of status as a parent may nevertheless be processed through the Department's "modified" EEO complaint structure, and explain the differences between the regulatory and the modified complaint structures;

- 3) Advise employees, applicants, and former employees that there are also other possible avenues of redress for discrimination on the basis of status as a parent such as:
 - a) requesting mediation under the Bureau's Alternate Dispute Resolution program (ADR);
 - b) filing a grievance under the negotiated grievance procedure in an applicable collective bargaining agreement, if any;
 - c) filing a complaint with the Office of Special Counsel;
 - d) appealing to the Merit Systems Protection Board (if applicable); and
 - e) filing an administrative grievance.
- 4) Advise employees, applicants, and former employees that if the individual elects to use one or more of the avenues identified in Section 5(b)(3)(b) – (e), above, the modified complaint process will not be available, and any complaint filed under the process will be dismissed;
- 5) Advise employees, applicants, and former employees that they have a right to representation and to anonymity in the modified complaint process;
- 6) Advise employees, applicants, and former employees that when claims of discrimination based on status as a parent are included with other bases of discrimination covered by applicable statutes (race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), protected genetic information, national origin, age, reprisal, or disability), status as a parent must be processed through the modified procedure, while the other claims are to be processed through the procedures established by 29 C.F.R. Part 1614 (the Equal Employment Opportunity Commission's (EEOC) regulations governing federal sector EEO complaints). The individual has the right to hearing or to appeal a final agency decision only on the claims covered by applicable statutes and the EEOC regulations but not on the parental status claims.

6. **PROCEDURES.**

- a. An individual who believes they have been discriminated against because of status as a parent and wishes to raise a claim of discrimination must follow the Department's modified complaint procedure unless the employee elects to raise the matter in a forum outside the EEO complaint process (see Section 5B.(3)(b) - (e), above). The modified complaint procedure follows the same procedures and standards as the statutory and regulatory EEO complaint process, but with the following key exceptions: there is no right to an EEOC hearing and no right to appeal a final agency decision to the EEOC or any other administrative or judicial forum.
- b. If the aggrieved individual elects to pursue a claim of discrimination on the basis of status as a parent, they must contact an EEO counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action.
- c. The EEO counselor will define the issues and bases of the claim and attempt resolution through counseling activities and alternative dispute resolution. The counselor will also advise the individual of their responsibilities under the modified complaint structure.

- d. If the matter is not resolved within the 30-day counseling period (or the 90-day period for ADR), the individual shall be provided with a Notice of a Right to File a Discrimination Complaint. The individual must file the formal complaint with the Department of the Treasury within 15 days of receipt of the Notice. The Notice of Right to File provided to the individual contains instructions on where and how to file a complaint. If the complaint is not filed within 15 days of receipt of the Notice, it may be dismissed as untimely.
 - e. The Department of the Treasury shall acknowledge receipt of the complaint. The Department will identify the issues raised in the formal complaint and may accept some or all the allegations made. Dismissal of some or all the complaint allegations may occur at any time pursuant to applicable statutory and/or regulatory provisions.
 - f. The Department will arrange for an investigation of the accepted allegations in the complaint. Upon completion of the investigation, the individual is entitled to a final agency decision. As indicated above, under the modified complaint structure, claims of discrimination based on status as a parent are not entitled to a hearing before an EEOC administrative judge.
 - g. The final agency decision will include a determination if discrimination occurred and will prescribe corrective action, if appropriate. Under the modified complaint structure, for claims of discrimination based on status as a parent, the decision of the Department is final. There is no right to further review under the modified EEO complaint structure.
 - h. If the Department finds that discrimination has occurred, only “make whole” remedies will be ordered. The goal is to place the Complainant in the same position as if the discrimination had not occurred. Compensatory and/or any other monetary damages, other than as specified herein, are not available. The remedy may include, but is not limited to the following:
 - 1) a commitment from the Agency that corrective or preventive action will be taken;
 - 2) an offer of placement in the position at issue (or an equivalent position) the person would have occupied absent discrimination;
 - 3) payment of any lost earnings or benefits the person may have been denied, including back pay (only if the employee suffered a diminution in pay);
 - 4) cancellation of any unwarranted personnel action and restoration of the employee’s prior status;
 - 5) expungement from the employee’s official personnel file of any adverse actions relating to the discriminatory employment practice;
 - 6) full opportunity to participate in the employee benefit denied (if any); and
 - 7) attorney’s fees (only if the individual is entitled to a back pay award).
7. **AUTHORITY.** Executive Order 13152, amending Executive Order 11478, “Equal Employment Opportunity in the Federal Government.”
8. **CANCELLATION.** The following guidance referencing Status as a Parent has been cancelled.
- a. Office of Equal Opportunity Program (OEOP) Memorandum, “Processing Complaints of Sexual Orientation Discrimination,” dated August 1, 1997, and as amended December 17, 1997.

- b. OEOP Memorandum No. 007-01, "Parental Status Complaints," dated October 30, 2001.
 - c. OEOP Memorandum No. 005-01, "Protected Genetic Information," dated November 16, 2001.
 - d. Human Capital Issuance System Chapter 900, Transmittal Number 06-003, "Processing Claims of Discrimination on the Basis of Sexual Orientation, Status as a Parent, and Protected Genetic Information," dated August 28, 2006.
 - e. CRD – 003 – Processing Claims of Discrimination on the Basis of Status as a Parent, dated 05/16/2017.
9. **OFFICE OF PRIMARY INTEREST.** Assistant Secretary for Management and Office of Civil Rights and Equal Employment Opportunity (OCRE).
10. **POLICY REVIEW.** The provisions of this Issuance are subject to modifications by changes in pertinent statutes and the EEOC regulations. The applicable provision or provisions shall be amended or superseded through interim guidance effective on the dates specified in any statutory or regulatory change. This Issuance will be reviewed after five years.

Snider Page
Director, Office of Civil Rights and Equal
Employment Opportunity