



# NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Affiliated with the International Association of Machinists & Aerospace Workers, AFL-CIO

September 14, 2022

Chief Debbie Clark and Janet Robinson Card, Senior Labor Relations Specialist  
Labor Relations and Litigation Division  
USDA, Office of Human Resources Management  
1400 Independence Avenue, SW  
Room 318-W, Mail Stop 9611  
Washington, DC 20250

**RE: NFFE NCR Comments on Draft USDA Anti-Harassment Program**

Dear Ms. Clark and Ms. Robinson Card:

This letter constitutes the National Federation of Federal Employee's (NFFE's) response pursuant to its National Consultation Rights regarding the USDA Departmental Regulation for the Anti-Harassment Program which we received in our office on August 30, 2022.

The Anti-Harassment Program has the great potential to eliminate workplace harassment as we know it, but a critical component has been missing for years: employee trust in the program. Harassed employees must have a safe way to seek redress where protection from retaliation is real. As incentive for employees to come forward, USDA must consistently enforce consequences for harassers and notify employees of those actions. On the whole, we have not seen that, regardless of forum or manner of reporting. Our members report that the investigators in the existing Anti-Harassment Program are not truly independent. Almost all investigations result in skewed reports and findings of "no harassment". The perception among the workforce is the only ones to face consequences for reporting harassment are the victims. This must change.

Please take this opportunity to instill a new confidence among our ranks that management is intent on addressing harassment and will not tolerate retaliation. Our comments below may help to that end. Ultimately, employee trust can be earned if the program yields results quickly and leaves employees feeling like it was worth it to report. Our comments further aim to emphasize and clarify all employee and union rights potentially implicated upon implementation of this Anti-Harassment Program. We have thoughtfully considered the draft guidance and submit to you these specific comments:

- Please make clear a report of harassment under these procedures do not constitute an election of forum or limit in any way and employee's right to utilize EEO, OSC or grievance procedures available to them to address harassment. Consider adding this to 2(c) and 6(a)(1).

- Please make clear in Section 2(e), nothing in this section may interfere with collective bargaining rights and obligations. This section shall not be construed to impact future or existing collective bargaining agreements except by mutual agreement of the parties.
- In 4(e) and 12(b), and where otherwise appropriate, please include that data may be shared with an exclusive representative in accordance with 5 U.S.C. 7114, if appropriate under the law.
- Please clearly state in 4(f): “Retaliation is misconduct and subject to discipline up to and including removal.”
- Please include language to the effect that “collective bargaining obligations must be satisfied first” in 5(a).
- Please include language that contemplates the use of investigatory leave as an available category of administrative leave where appropriate. 6(a)(2)(a)(3).
- Please clarify an employee’s right to consult with the Union and include an obligation to inform a represented employee of their rights to seek union assistance where an exclusive representative is recognized. 6(a)(2)(a)(4).
- Please incorporate reference to management’s obligations under 5 U.S.C. 7114(a)(2)(A) to notify the union of a formal meeting with a bargaining unit employee and protect the union’s right under 5 U.S.C. 7114(a)(2)(B) to the opportunity to be represented in an investigation. Relevant sections: 6(a)(3)(b)(2 and 3); 6(a)(3)(c); 6(a)(4)(b); 10(f)(2); 10(g)(11).
- Please consider adding to 6(a)(3)(c):
 

“Within 5 business days of the report of the allegation, initiate contact with the alleged harasser to inform them of the allegation and:

  1. If the allegation is considered misconduct that could result in discipline
  2. The nature of the matter of the allegation
  3. If they are the subject of the investigation or a witness
  4. If they are being directed to answer questions and could be disciplined if they refuse to answer questions.
  5. If they are in the bargaining unit, the union has an independent right to be represented throughout the process and the employee has the right to consult the union representative.
  6. Management and bargaining unit employees must refer to, be made aware of, and comply with applicable collective bargaining agreement provisions.

- For section 6(a)(6), please articulate the same requirement to utilize the procedures of this DR if the initial report of harassment is made through a union grievance and the employee and union either approve or request such action.
- Please clarify in 7(c)(2), an initial inquiry must be completed and considered before closing.
- Please include this phrase at the end of 8(a) “or in grievance processing.”
- Please include and apply the same language in 9(a,b,d,e) for grievances initiated through a negotiated grievance procedure.
- Expand authority for initiating any appropriate administrative, corrective or disciplinary actions against any management official or employee under section 10(a)(3).
- Include language in 10(c)(5) that “discipline could result up to and including removal”.
- The language in 10(f)(11) is ambiguous as currently worded. Please clarify to make clear an employee can grieve a violation of this policy.
- Include language in 10(g)(11) to reflect the union’s rights under 5 U.S.C. 7114(a)(2) on formal meetings and investigations.
- Please include when and how it is appropriate for management to consult with an on-site safety officer and/or security personnel upon receiving a report of harassment within 6(a)(3)(a).

When the USDA incorporates NFFE’s comments submitted through our National Consultation Rights in the DR, our locals’ interests are substantially captured and the need to devote time and resources to impact and implementation bargaining is significantly reduced. Thank you for considering our comments.

In partnership,



Randy Erwin  
National President  
National Federation of Federal Employees  
IAMAW, AFL-CIO

Cc: Jefferson Friday, NFFE General Counsel  
Shawn Patterson, NFFE FSC President  
Melissa Baumann, NFFE National Vice President  
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