

Nebraska Emergency Management Agency

Complaint Procedures

The Nebraska Department of Emergency Management (NEMA) is required, under the Joint Emergency Preparedness Guidance (DOJ, DHS, HUD, HHS, and NEMA) to develop procedures for prompt processing and disposition of Title VI complaints received directly by the State and not by Federal Emergency Management Agency's (FEMA) Office of Equal Rights. Additionally, Title II of the Americans with Disabilities Act, Subpart A, Section 35.107(b) requires that a public entity employing 50 or more persons adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the ADA. The following complaint procedures are in accordance with the Joint Emergency Preparedness Guidance.

Complaints may be against NEMA itself, or against a NEMA sub-recipient. All Complaints filed with NEMA, if any, will be organized through the Nebraska Military Department's (NMD) Human Resources Division for initial investigation to seek resolution. Should there be no resolution, NMD will forward the complaint and initial findings to the Department Homeland Security's (DHS) Office for Civil Rights and Civil Liberties (CRCL) Compliance Branch within 90 days from the date the complaint was received by NEMA. CRCL actions might then include dismissing the complaint, conducting additional investigation, and/or issuing a Letter of Finding. The Americans with Disabilities Act Complaints filed with NEMA, whether against its sub-recipients or against the Agency itself, will be forwarded to Nebraska's Office of State Risk Management for investigation.

Persons Eligible to File

Any person or any specific class of persons, by themselves or by a representative, that believe they have been subjected to discrimination or retaliation prohibited by Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504), or Title II of the Americans with Disabilities Act of 1990 (ADA) may file a complaint.

Complaint Substance and Format

A complaint is a written or electronic statement concerning an allegation of discrimination that contains a request for the receiving office to take action. Complaints should be in writing and signed and may be filed by mail, in person, or e-mail. NEMA has developed a Complaint Form (See Documents Appendix) and made it available on the NEMA website. A complaint must contain at least the following information:

- The complainant's name and a way to contact the complainant;
- A written explanation of what has happened; The basis of the complaint, e.g., age, sex, race, color, national origin, or disability;
- The identification of the respondent, e.g., agency/ organization alleged to have discriminated;
- Sufficient information to understand the facts that led the complainant to believe that discrimination occurred; and,
- The date(s) of the alleged discriminatory act(s).

While the above indicates a complaint should be in writing and signed, NEMA will accept complaints in alternate formats from persons with disabilities, only upon request. For example: the complaint may be filed on a computer disk, by audio tape, or in Braille, or the complainant may call the agency and provide the allegations by telephone. The agency will transcribe the allegations of the complaint as provided over the telephone and send a written complaint to the complainant for signature. Complaints in languages other than English will be translated and responded to in the language in which they were written. The following are examples of items that are not considered complaints, unless the item contains a signed cover letter specifically asking that NEMA take action concerning the allegations:

- An anonymous complaint;
- Inquiries seeking advice or information;
- Courtesy copies of court pleadings;
- Courtesy copies of complaints addressed to other local, State, or Federal agencies;
- Newspaper articles; and,
- Courtesy copies of internal grievances.

Timeframe for Filing Complaints

Complaints must be filed within 180 days of the last date of the alleged discrimination. The filing date of the complaint is the earlier of: (1) the postmark of the complaint, or (2) the date the complaint is received by any office authorized to receive complaints. An extension may be granted under any of the following circumstances:

- The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period, and the complaint was filed within 60 days after the complainant became aware of the alleged discrimination;
- The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180-day period, and the complaint was filed within 60 days after the period of incapacitation ended;
- The complainant filed a complaint alleging the same discriminatory conduct within the 180-day period with another Federal, State or local civil rights enforcement agency, and filed a complaint with NEMA within 60 days after the other agency had completed its investigation or notified the complainant that it would take no further action.
- The complainant filed, within the 180-day period, an internal grievance alleging the same discriminatory conduct that is the subject of the NEMA complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded;
- Unique circumstances generated by NEMA action have adversely affected the complainant; or
- The discriminatory act is of a continuing nature.

Some complaints will be referred to NEMA by other agencies. In the event the referring agency has possessed the complaint for an inordinately long period of time and the complainant filed his or her complaint with that agency within the 180-day timeframe NEMA will automatically grant an extension.

Processing and Investigating Complaints

Upon initial receipt, a complaint will always be date stamped by the receiving office, or the date of receipt will otherwise be recorded. The date of receipt by the receiving office is crucial for determining timeliness.

The complaint will be reviewed within 10 calendar days of receipt to determine whether it contains all the necessary information required for acceptance. If the complaint is complete and no additional information is needed, the complainant will be sent a letter of acceptance. If the complaint is incomplete, the complainant will be contacted in writing or by telephone to obtain the additional information. The complainant will be given 15 calendar days to respond to the request for additional information.

A request for information will be mailed to the respondent, along with a copy of the complaint, upon acceptance of the complaint. The investigation will be confined to the issues and facts relevant to the allegations in the complaint, unless evidence shows the need to extend the issues. The standard of proof applied in making a determination of non-compliance will be one of preponderance of evidence. The preponderance of evidence as a standard of proof in civil cases is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

- An investigative report will be maintained which documents activity related to the complaint. The investigative report will contain, at minimum:
- The identity of each complainant and each respondent, including contact information;
- The nature and basis of the complaint; Copies of all requests for information, along with responses to the requests;
- A log of all important dates relevant to the complaint, including, but not limited to, the date that the complaint was filed, the dates of all correspondence with complainant or respondent, the dates of all interviews with complainant or respondent, and the date of the disposition (or the date that the complaint was forwarded to FHWA for further action);
- The disposition and/ or recommendations for action; and Other pertinent information.

The NMD will complete investigations of Title VI complaints within 60 days, at which time a copy of the complaint, together with a copy of NMD's report of investigation and recommendation for action, will be forwarded to the CRCL Branch as required by regulation. Although the regulations do not specify a timeframe for the investigation of ADA complaints, the NEMA strives to have ADA complaints investigated and finalized within 90 days of receipt of the complaint.

Contact Information

Complaint forms are available on the NEMA website, or by contacting the NEMA Compliance Officer. Complaints and substantiating information should be sent to:

Ervin L. Portis

Nebraska Emergency Management Agency
2433 NW 24th Street
Lincoln, NE 68524-1801
erv.portis@nebraska.gov