



U.S. Department  
of Transportation  
Federal Highway  
Administration

# Memorandum

**Subject:** INFORMATION: Communication  
with Management Officials and  
Managers in the Equal Employment  
Opportunity (EEO) Complaint  
Process

**Date:** JUL 29 2016

**From:** Irene Rico   
Acting Associate Administrator  
Office of Civil Rights

**In Reply Refer To:**  
HCR-20

**To:** Associate Administrators  
Chief Counsel  
Chief Financial Officer  
Director, Innovative Program Delivery  
Directors of Field Services  
Federal Lands Highway Division Engineers  
Director of Technical Services  
Division Administrators

In keeping with U.S. Equal Employment Opportunity Commission's Management Directive 110 (MD-110), the Federal Highway Administration (FHWA) Office of Civil Rights is updating the previous Memorandum of July 8, 2009 regarding Communication with Management Officials in the (EEO) Pre-Complaint Process.

When an employee contacts the Office of Civil Rights with allegations of discrimination, the employee enters into a pre-complaint stage with the FHWA. The goal of the pre-complaint stage is to attempt to resolve the matter at the lowest level possible through counseling with an EEO counselor or Alternative Dispute Resolution (ADR). Previously, the FHWA's EEO Counselors were required to contact an employee's first-level team leader or supervisor to address the EEO matter. The first level team leader or supervisor is often but, not always the person whom the employee identifies as the Responsible Management Official (RMO), or person responsible for the alleged discriminatory action. The higher level management officials were not notified, it sometimes limited their ability to make sure that a full range of informal resolution options were considered and that there were appropriate authority available for settlement.

To ensure that a full range of informal resolution options are considered and appropriate authority is available for settlement, the EEO Counselor will contact the appropriate higher level management official in the program office of the employee. The management official will designate a manager to work with the EEO Counselor and the employee to attempt to resolve the dispute. The managerial structure of the field and Headquarters offices vary; therefore, attached

is a chart which indicates the appropriate management official whom will be contacted during the EEO pre-complaint process.

In making the decision as to who to designate to represent the office, the management official should consider whether the employee is participating in EEO counseling or has requested ADR, as well as the following guidance based on the MD-110:

- (1) If an employee requests ADR during the informal process, the Agency must select a settlement official other than the RMO.
- (2) The RMO is permitted but, not required to participate in the ADR, at the Agency's option.
- (3) Including the RMO in the mediation may be useful in instances where the RMO's historical knowledge of the case or knowledge of the office could help reach a resolution or help to inform the discussion of the claims or potential relief.
- (4) Deciding not to include the RMO may be appropriate when the RMO's presence intimidates or angers the complainant so as to significantly reduce the possibility of settlement, or when the Agency thinks the RMO will have difficulty interacting calmly and respectfully with the complainant during the mediation.

The MD-110 is silent about whether the RMO can represent the Agency in negotiating an "informal resolution" during the EEO counseling process when a complainant has not elected ADR. Therefore, if the employee has elected to participate in EEO counseling and has not requested ADR, during counseling, a RMO may talk with the EEO counselor and complainant regarding possible informal resolutions and bind the Agency if an informal resolution is reached within his/her authority. Accordingly, the management official may after consideration of the above factors, designate the employee's immediate or second line supervisor to participate in EEO counseling, even if that supervisor is the RMO. If the employee subsequently requests ADR, the EEO Counselor will notify the management official that he or she can select a settlement official other than the RMO for purposes of ADR.

At the close of an EEO counseling session, the EEO Counselor will contact the designated manager(s) to conduct an "exit interview." This practice ensures that the designated manager knows that the session has ended.

To ensure management officials are aware when a formal complaint has been filed, upon receipt of the Letter of Acceptance or Dismissal of a formal complaint from the Departmental Office of Civil Rights, the FHWA Office of Civil Rights will provide a copy of the letter to the management official in the program office of the dispute.

The Office of Civil Rights is committed to ensuring effective communication throughout the EEO complaint process. If you have any questions, please contact Ms. Pamela Woodruff, Equal Employment Opportunity Program Manager, at 202-366-1607.

Attachment



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## COMMUNICATION IN THE EEO COMPLAINT PROCESS

<b>Field Office</b>		<b>Headquarters Office</b>	
<b>If the manager (RMO) named in the dispute is:</b>	<b>Then the EEO Counselor will contact the following management official:</b>	<b>If the manager (RMO) named in the dispute is:</b>	<b>Then the EEO Counselor will contact the following management official:</b>
Team Leader-Federal Aid	Asst. Division Administrator / Supervisor (small tier divisions)-Federal Aid	Team Leader	Division Chief
Asst. Division Administrator / Supervisor (small tier divisions)-Federal Aid	Division Administrator-Federal Aid	Division Chief	Director
Division Administrator-Federal Aid	Director of Field Services	Field Office Attorneys	Chief Counsel
Team Leader-Federal Lands	Branch Chief-Federal Lands	Director	Respective: Associate Administrator Chief Financial Officer Chief Innovative Officer
Branch Chief-Federal Lands	Office Director-Federal Lands	Associate Administrator	Executive Director
Office Director-Federal Lands	Division Director-Federal Lands	Chief Counsel	
Division Director-Federal Lands	Associate Administrator-Office of Federal Lands Highway	Chief Financial Officer	
OST Manager / Team Leader Resource Center Team Leader	Chief Technical Services Officer	Chief Innovative Officer	
Administrative Service Team Lakewood & Atlanta	Human Resource Manager / Team Leader		
Human Resource Manager / Team Leader	Associate Administrator-Office of Administration		
Director of Field Services Chief Technical Services Officer	Executive Director		