

National Aeronautics and Space Administration
Headquarters
Washington, DC 20546-0001



March 9, 2015

Reply to Attn of:

Office of Diversity and Equal Opportunity

Cert. Mail No. 7013 1090 0000 4930 3431

Peggy R. Mastroianni
Legal Counsel
Office of Legal Counsel
U.S. Equal Employment Opportunity Commission
Washington, DC 20507

Re: 79 Fed. Reg. 51,362, National Aeronautics and Space Administration, Notice of Information Collection, NASA Complaint of Discrimination Form

Dear Ms. Mastroianni:

The NASA Office of Diversity and Equal Opportunity (ODEO) would like to thank the Equal Employment Opportunity Commission (EEOC) for its comments, dated October 28, 2014, in response to the above referenced Federal Register Notice. NASA has revised its draft Complaint of Discrimination Form and the form's accompanying instructions in accordance with EEOC's comments (see enclosed NASA Form (NF) 1355). The revised draft is pending approval by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995.

Regarding EEOC's comments on the discrimination bases that appear on the first page of NF 1355, we have added parentheticals to the listed bases to clarify that sex discrimination includes sexual harassment, sex stereotyping, pregnancy and gender identity. We have added a parenthetical for genetic information to clarify that it includes family medical history, as recommended. We have also revised our Agency Policy Statement on EEO to conform with EEOC's recommendations (see enclosed NASA EEO Policy Statement, signed by Administrator Bolden on February 6, 2015).

Regarding comments on the Instructions Page of NF 1355, we have removed the phrase stating that the EEOC "does not enforce the protections that prohibit [sexual orientation and gender identity]." At the time NASA developed its "Instructions Page" for NF 1355, the Agency was unclear as to the level of access to the Title VII complaints process that could be afforded an employee or applicant raising a claim of sexual orientation discrimination. In the absence of EEOC policy guidance to the contrary, it remains unclear whether sexual orientation discrimination allegations are *per se* sex stereotyping under Title VII.

NASA, in consultation with the Office of the Federal Operations (OFO), established a "parallel" process for sexual orientation discrimination complaints, consistent with the Office of Personnel Management's 1999 guidance addressing sexual orientation discrimination in the Federal workplace. We continue to offer this process as an option to NASA employees and applicants raising allegations of sexual orientation discrimination in recognition of the fact that it remains inadvisable for an employee to file solely under Title VII due to this ambiguity.

Again, NASA thanks EEOC for your review and comments regarding NF 1355. Please do not hesitate to contact me if you have any further questions or comments.



Brenda R. Manuel
Associate Administrator for
Diversity and Equal Opportunity

Enclosure



National
Aeronautics and
Space
Administration

Complaint of Discrimination

(Based on age, color, genetic information (including family medical history), national origin, disability (physical or mental), race, religion, retaliation, sex (including sexual harassment, sex stereotyping, pregnancy, and gender identity), and sexual orientation).

NPD 3713.6P, Delegation of Authority to Act in Matters Pertaining to Discrimination Complaints Under 29 C.F.R. Part 1614
NPR 3713.4, Procedures for Discrimination Complaints Based on Sexual Orientation

1. Complainant's Full Name	2. Your Telephone Number (including area code)
Street Address, RD Number, or Post Office Box Number	Home _____
City, State and Zip Code	Work _____
	Cell _____ <i>(optional)</i>

3. Which office do you believe discriminated against you?	4. Current work address
a. Street Address of Office	a. Name of Agency Where You Work
b. City, State and Zip Code	b. Street Address of Your Agency
	c. City, State and Zip Code
	d. Title and Grade of Your Job

5. Date on Which Most Recent Alleged Discrimination Took Place (mm/dd/yyyy)	6. Check Below Why You Believe You Were Discriminated Against?
	<input type="checkbox"/> Race (Give Race) _____ <input type="checkbox"/> Color (Give Color) _____ <input type="checkbox"/> Religion (Give Religion) _____ <input type="checkbox"/> Sex (Give Sex) <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Sexual Harassment <input type="checkbox"/> Sex Stereotyping <input type="checkbox"/> Pregnancy <input type="checkbox"/> Gender Identity <input type="checkbox"/> Age (Give Date of Birth) _____ <input type="checkbox"/> National Origin (Give National Origin) _____ <input type="checkbox"/> Disability <input type="checkbox"/> Physical <input type="checkbox"/> Mental
	<input type="checkbox"/> Genetic Information (including family medical history) <input type="checkbox"/> Sexual Orientation <input type="checkbox"/> Reprisal <input type="checkbox"/> Class Complaint

7. Explain How You Believe You Were Discriminated Against (treated differently from other employees or applicants) Because of Your Race, Color, Sex (including sexual harassment, sex stereotyping, pregnancy and gender identity), Religion, National Origin, Age, Disability (physical or mental), Genetic Information (including family medical history), Sexual Orientation or Reprisal. Do not include specific issues or incidents that you have not discussed with your EEO Counselor.

8. What Corrective Action Do You Want Taken on Your Complaint?

9. HAVE YOU FILED A GRIEVANCE (negotiated or agency) OR APPEALED TO MSPB ON THIS MATTER(S)? YES NO

10a. I have discussed my complaint with an Equal Employment Opportunity Counselor and/or other EEO Official. Date of first contact with EEO office (mm/dd/yyyy):	Date of receipt of final interview from EEO Counselor (mm/dd/yyyy):	b. Name of Counselor	<input type="checkbox"/> I Have Not Contacted an EEO Counselor
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Files must be attached before form is signed. Attach Files

11. Date of This Complaint (mm/dd/yyyy):	Signature Field
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INSTRUCTIONS (READ CAREFULLY)

• This form should be used only if you, as the applicant for NASA employment or as a NASA employee, think you have been discriminated against because of race, color, national origin, sex (including sexual harassment, sex stereotyping, pregnancy, and gender identity), religion, retaliation, age, disability (physical or mental), genetic information (including family medical history) or, sexual orientation by NASA and have presented the matter for informal resolution to an Equal Opportunity (EO) Counselor within 45 calendar days of the date the incident occurred or, if a personnel action, within 45 calendar days of its effective date.

NOTE: Claims of discrimination based on sexual orientation can also be processed in accordance with NPR 3713.4, Discrimination Complaints Based on Sexual Orientation or Gender Identity. In accordance with NPR 3713.4, at the conclusion of the investigative stage, the Associate Administrator, Office of Diversity and Equal Opportunity (ODEO) will issue a decision on claims based on sexual orientation, and, if warranted, recommend corrective actions and remedies. The decision will apply the merit principles utilized for Final Agency Decision (FADs) issued for complaints based on the EEOC protected categories covered by Title VII of the Civil Rights Act of 1964, as amended (Title VII). However, the decision will not include appeal rights to EEOC. A request for reconsideration from the AA, ODEO may be filed within 30 days of a decision (see NPR 3713.4, Section 2.2.5).

- Your complaint shall be filed within 15 calendar days of the date of receipt of the Final Interview and Notice of Right to File Complaint letter from the EO Counselor.
- These time limits may be extended if you show that you were not notified of the time limits and were not otherwise aware of them, or that you were prevented by circumstances beyond your control from submitting the matter within the time limits, or for other reasons considered sufficient by NASA.
- Your written complaint should be filed by you or your designated representative with the Director, Complaints Management Division, Office of Diversity and Equal Opportunity, NASA, Washington, DC 20546.
- You may have a representative of your own choosing at all stages of the processing of your complaint.
- If your complaint is accepted, you may have an opportunity to attempt settlement of your complaint through the Agency's Alternative Dispute Resolution (ADR) mediation program.
- If your complaint is accepted, you will also have an opportunity to talk with an investigator and give all the facts which you believe show discrimination.
- After the investigation of your complaint has been completed, you will be given a copy of the investigative report and notified of your right to request a hearing and final decision from an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ) or a decision from the AA, ODEO without a hearing.
- If you request a hearing, you will have an opportunity to seek discovery. The discovery and the hearing will be administered by an EEOC AJ. The hearing will be held at a convenient time and place. At the hearing, you may present witnesses and any other evidence in your behalf.
- If a hearing is held, the final decision will be made by the AJ. You will be furnished with a copy of the transcript of the hearing, a copy of the findings, analysis and decision of the AJ.
- If you are not satisfied with final decision of the AJ or the AA, ODEO, you will have the right to appeal that decision within 30 calendar days of its receipt. You shall file your appeal with EEOC's Office of Federal Operations, Post Office Box 19848, Washington, DC 20026, or you may file a civil action in a Federal District Court within 90 calendar days of receipt of the final decision. If you elect to file an appeal with the EEOC, you may still file a civil action in a federal court within 90 calendar days of the EEOC's decision if you are dissatisfied with the decision.
- You may also file a civil action in an appropriate Federal District Court if you have not received a final decision within 180 days of filing your complaint with NASA, or if you have not received a final decision from EEOC within 180 calendar days of filing your appeal.

PRIVACY ACT STATEMENT FOR COMPLAINT OF DISCRIMINATION

- The information to be provided on this form is authorized to be collected by the National Aeronautics and Space Administration by the Equal Employment Opportunity Act of 1972 (P.L. 92-261), the Age Discrimination in Employment Act of 1967, as amended (P. L. 93-259), and the EEOC rules and regulations; failure to furnish the information may result in your complaint being dismissed. The principal purpose for which the information is intended to be used is to secure the specific information essential for the acceptance and investigation of complaints of discrimination.
- This information will be incorporated in the NASA Equal Opportunity System of records. The routine uses of this system of records outside of NASA are: (a) to the EEOC to facilitate processing of discrimination complaints; (b) to the Congress, other Federal agencies, or organizations having legal and administrative responsibilities related to the EEO programs; (c) to law enforcement agencies or other agencies in connection with investigations; or (d) courts, administrative tribunals and the Department of Justice in connection with proceedings.



National Aeronautics and Space Administration Policy Statement on Equal Employment Opportunity

As we move forward with ever increasing momentum in our shared goal of exploring space, I reaffirm the Agency's commitment to equal opportunity in employment.

Equal opportunity in employment means opportunity not just for some but for all. NASA provides equal opportunity in Federal employment regardless of race, color, sex (including sexual harassment, sex stereotyping, pregnancy, and gender identity), national origin, religion, age, disability, genetic information (including family medical history), sexual orientation, or status as a parent.

Equal employment opportunity (EEO) covers all human capital and employment programs, management practices, and decisions including, but not limited to, recruitment, hiring, merit promotion, transfer, reassignments, training and career development, benefits, and separation. NASA supports employee exercise of rights under EEO law. Reprisal against individuals who engage in protected activity will not be tolerated. NASA supports the rights of employees to exercise all available rights under the civil rights statutes.

Preserving these rights in our workplace takes special care and vigilance. Our continued and vigorous adherence to these laws and a focus on the spirit as much as the letter of these laws are fundamental for our success. We must continue to be an organization that seeks the best minds and broadest experiences to ensure that every qualified person has an equal chance to compete and contribute.

NASA provides an environment that honors integrity, excellence, teamwork, fairness, and equity. We strive to exemplify in all of our decision making the principle that employees have the freedom to compete on a fair and level playing field. We will continue to provide a workplace that is free from all forms of illegal discrimination, including harassment and retaliation. Upon request and as appropriate, we will continue to provide reasonable accommodations to qualified individuals with disabilities. Above all, we must view our commitment to EEO as a matter of personal integrity and accountability.

I trust that we will all do our part in these efforts.


Charles F. Bolden, Jr.
Administrator

2/6/2015
Date