



August 31, 2018

The Honorable Patty Murray  
United States Senate  
Washington, DC 20510

Dear Senator Murray:

Thank you for writing to express your concerns regarding sexual harassment in the workplace and, particularly, the role that the National Institutes of Health (NIH) plays in Title IX oversight for facilities that receive NIH funding.

I wholeheartedly agree that NIH grantee institutions must be held responsible for complying with antidiscrimination laws prohibiting sexual harassment in federally funded programs. We are taking several actions to ensure those expectations are clearly communicated and met, and to follow up on the recommendations of the recent National Academies of Science, Engineering, and Medicine (NASEM) report that you cited in your letter. I am glad that I had the opportunity to help shape this report as co-chair (with the National Science Foundation's France Córdova) of the National Science and Technology Council Committee on Science, and that NIH was able to contribute significantly to the support of the study. I have been in discussions with Dr. Córdova about reconvening the Committee on Science to discuss a federal interagency response to the recommendations in the NASEM report, consistent with our current authorities.

We set expectations for our extramural community through our NIH Grants Policy Statement, which is a term and condition of all awards. The Grants Policy Statement communicates that NIH upholds "high ethical, health, and safety standards in both the conduct of the research we fund and the expenditure of public funds by our recipients," including adherence to civil rights assurances. Further, the Policy Statement makes clear that "NIH recipients are expected to foster work environments conducive to high-quality research."

NIH requires our grantee institutions—the institutions with which the principal investigators (PIs) who conduct the funded research are associated—to be compliant with these conditions of award. We also survey other sources of information to be sure critical events are not overlooked. If and when NIH becomes aware of issues involving PIs or other grant personnel through sources such as the media, NIH immediately works with the recipient institution to verify the issues and take all appropriate actions on the affected grant awards. Such actions could include a change of PI or Program Director (PD) or other actions to remedy noncompliance with the terms and conditions of the grant award, some of which may affect the institution's future funding.

In addition, NIH conducts audits to make sure our grantees have in place appropriate policies and systems, primarily systems to ensure that federal funds are being accounted for properly. We do these things so our careful review of each grantee's specific circumstances can inform definitive findings that lead to successful enforcement actions.

In response to your specific requests (Questions 1-5), I have enclosed the following items:

1. NIH harassment policy:
  - a) National Institutes of Health Anti-Harassment Policy, March 19, 2012.<sup>1</sup>
  - b) Policy Memorandum on Maintaining a Safe Working Environment, December 13, 2017.<sup>2</sup>
  - c) Draft Manual Chapter 1311, Preventing and Addressing Harassment and Inappropriate Conduct, is under final review and scheduled to be published in September. We will provide a copy to your office when this is published (not enclosed).
2. NIH Anti-Harassment Steering Committee Roster and Statement of Goals.
3. A description of all internal or external harassment-related training provided in the last 18 months, including dates.
4. NIH dispute resolution process and policies:
  - a) Office of the Ombudsman Brochure.
  - b) Office of the Ombudsman Annual Report 2013-2017.
  - c) The Office of Equity, Diversity, and Inclusion (EDI) Alternative Dispute Resolution information.
5. The total number of harassment settlements regarding NIH.

In response to Question 6, which concerns other efforts NIH is undertaking to assess and address workplace harassment, I also have enclosed a detailed list of activities related to our specific efforts targeting NIH employees (Enclosure 6). In addition to the 2017 Policy Memorandum (Enclosure 1b) and the Draft Manual Chapter in development for our intramural community (reference 1c, above), with respect to our extramural community, we clearly state in our revised conference grant funding opportunity announcement that we expect organizers of NIH-supported conferences to take steps to maintain a safe and respectful environment for all attendees by providing an environment free from discrimination and harassment.

Further, this week, NIH reaffirmed the requirements for all training grant applications by requiring applicants to include a letter from an institutional leader stating that proper policies, procedures, and oversight are in place to prevent harassment and other discriminatory practices and to appropriately respond to allegations of such discriminatory practices, including providing any required notifications to NIH (e.g., requesting NIH's prior approval of a change of PI/PD status).

In June 2018, the Advisory Committee to the Director discussed these serious issues and NIH Principal Deputy Director Dr. Lawrence Tabak gave a presentation on NIH's anti-harassment efforts. You may hear Dr. Tabak's presentation<sup>3</sup> (the presentation begins at 4:35).

---

<sup>1</sup> [https://www.edi.nih.gov/sites/default/files/public/EDI\\_Public\\_files/policy/anti-harassment-01.pdf](https://www.edi.nih.gov/sites/default/files/public/EDI_Public_files/policy/anti-harassment-01.pdf)

<sup>2</sup> <https://hr.nih.gov/working-nih/civil/maintaining-safe-work-environment-memo>

<sup>3</sup> <https://videocast.nih.gov/Summary.asp?File=23957&bhcp=1>

Concerning Question 7, regarding compliance and enforcement, when a domestic research institution submits a grant application to NIH, the institution's Authorized Organization Representative must certify, by means of a signature on the application, that they have on file a number of Assurance of Compliance (AoC) documents, including those that pertain to human subjects protection, animal welfare practices, and civil rights compliance. A knowingly false certification by an applicant or recipient concerning the required Assurance of Compliance could result in an adverse action by the Department concerning funding or a referral to the Department of Justice for appropriate action.

With respect to Questions 8-11, prior to the issuance of each award, NIH conducts a pre-award risk assessment for every applicant by checking the federal System for Award Management (SAM),<sup>4</sup> among other resources, to determine if a recipient is eligible to receive an NIH award. NIH queries SAM, the Federal Awardee Performance and Integrity Information System (FAPIIS),<sup>5</sup> and the National External Audit Review Center. The lack of adherence to certifications made to NIH would place the recipient at risk for future funding. NIH is not aware of any compliance actions taken specifically because of an institution's failure to file the required Assurance of Compliance; however, because of the importance of these issues, we are exploring further collaboration with the U.S. Department of Health and Human Services' Office for Civil Rights.

With respect to Question 12, NIH is reviewing the NASEM report and considering and exploring its recommendations in conjunction with our federal science agency partners, including NSF. Currently, NIH policy requires funded institutions, if they take administrative or disciplinary action against employee(s) serving as a PI/PD—for example, limiting access to the institution's facilities or resources or modifying employment or leave status during an investigation of alleged sexual misconduct—to notify NIH and seek NIH's advance approval for his or her replacement. On May 1, 2018, NIH reminded the extramural community of this requirement in NOT-OD-18-172.<sup>6</sup>

I hope this response addresses your concerns. Please be assured that I am personally committed to providing a safe, harassment-free work environment, as are all of my senior staff. This is a high priority for NIH. If you have any additional questions, I am available and would be pleased to discuss this matter further in person at your convenience. I have sent an identical response to the co-signer of your letter, Representative Rosa L. DeLauro.

Sincerely yours,



Francis S. Collins, M.D., Ph.D.  
Director

Enclosures

---

<sup>4</sup> <https://sam.gov/>

<sup>5</sup> <https://www.fapiis.gov/>

<sup>6</sup> <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-18-172.html>



August 31, 2018

The Honorable Rosa L. DeLauro  
House of Representatives  
Washington, DC 20515

Dear Representative DeLauro:

Thank you for writing to express your concerns regarding sexual harassment in the workplace and, particularly, the role that the National Institutes of Health (NIH) plays in Title IX oversight for facilities that receive NIH funding.

I wholeheartedly agree that NIH grantee institutions must be held responsible for complying with antidiscrimination laws prohibiting sexual harassment in federally funded programs. We are taking several actions to ensure those expectations are clearly communicated and met, and to follow up on the recommendations of the recent National Academies of Science, Engineering, and Medicine (NASEM) report that you cited in your letter. I am glad that I had the opportunity to help shape this report as co-chair (with the National Science Foundation's France Córdoba) of the National Science and Technology Council Committee on Science, and that NIH was able to contribute significantly to the support of the study. I have been in discussions with Dr. Córdoba about re-convening the Committee on Science to discuss a federal interagency response to the recommendations in the NASEM report, consistent with our current authorities.

We set expectations for our extramural community through our NIH Grants Policy Statement, which is a term and condition of all awards. The Grants Policy Statement communicates that NIH upholds "high ethical, health, and safety standards in both the conduct of the research we fund and the expenditure of public funds by our recipients," including adherence to civil rights assurances. Further, the Policy Statement makes clear that "NIH recipients are expected to foster work environments conducive to high-quality research."

NIH requires our grantee institutions—the institutions with which the principal investigators (PIs) who conduct the funded research are associated—to be compliant with these conditions of award. We also survey other sources of information to be sure critical events are not overlooked. If and when NIH becomes aware of issues involving PIs or other grant personnel through sources such as the media, NIH immediately works with the recipient institution to verify the issues and take all appropriate actions on the affected grant awards. Such actions could include a change of PI or Program Director (PD) or other actions to remedy noncompliance with the terms and conditions of the grant award, some of which may affect the institution's future funding.

In addition, NIH conducts audits to make sure our grantees have in place appropriate policies and systems, primarily systems to ensure that federal funds are being accounted for properly. We do these things so our careful review of each grantee's specific circumstances can inform definitive findings that lead to successful enforcement actions.

In response to your specific requests (Questions 1-5), I have enclosed the following items:

1. NIH harassment policy:
  - a) National Institutes of Health Anti-Harassment Policy, March 19, 2012.<sup>1</sup>
  - b) Policy Memorandum on Maintaining a Safe Working Environment, December 13, 2017.<sup>2</sup>
  - c) Draft Manual Chapter 1311, Preventing and Addressing Harassment and Inappropriate Conduct, is under final review and scheduled to be published in September. We will provide a copy to your office when this is published (not enclosed).
2. NIH Anti-Harassment Steering Committee Roster and Statement of Goals.
3. A description of all internal or external harassment-related training provided in the last 18 months, including dates.
4. NIH dispute resolution process and policies:
  - a) Office of the Ombudsman Brochure.
  - b) Office of the Ombudsman Annual Report 2013-2017.
  - c) The Office of Equity, Diversity, and Inclusion (EDI) Alternative Dispute Resolution information.
5. The total number of harassment settlements regarding NIH.

In response to Question 6, which concerns other efforts NIH is undertaking to assess and address workplace harassment, I also have enclosed a detailed list of activities related to our specific efforts targeting NIH employees (Enclosure 6). In addition to the 2017 Policy Memorandum (Enclosure 1b) and the Draft Manual Chapter in development for our intramural community (reference 1c, above), with respect to our extramural community, we clearly state in our revised conference grant funding opportunity announcement that we expect organizers of NIH-supported conferences to take steps to maintain a safe and respectful environment for all attendees by providing an environment free from discrimination and harassment.

Further, this week, NIH reaffirmed the requirements for all training grant applications by requiring applicants to include a letter from an institutional leader stating that proper policies, procedures, and oversight are in place to prevent harassment and other discriminatory practices and to appropriately respond to allegations of such discriminatory practices, including providing any required notifications to NIH (e.g., requesting NIH's prior approval of a change of PI/PD status).

In June 2018, the Advisory Committee to the Director discussed these serious issues and NIH Principal Deputy Director Dr. Lawrence Tabak gave a presentation on NIH's anti-harassment efforts. You may hear Dr. Tabak's presentation<sup>3</sup> (the presentation begins at 4:35).

---

<sup>1</sup> [https://www.edi.nih.gov/sites/default/files/public/EDI\\_Public\\_files/policy/anti-harassment-01.pdf](https://www.edi.nih.gov/sites/default/files/public/EDI_Public_files/policy/anti-harassment-01.pdf)

<sup>2</sup> <https://hr.nih.gov/working-nih/civil/maintaining-safe-work-environment-memo>

<sup>3</sup> <https://videocast.nih.gov/Summary.asp?File=23957&bhcp=1>

Concerning Question 7, regarding compliance and enforcement, when a domestic research institution submits a grant application to NIH, the institution's Authorized Organization Representative must certify, by means of a signature on the application, that they have on file a number of Assurance of Compliance (AoC) documents, including those that pertain to human subjects protection, animal welfare practices, and civil rights compliance. A knowingly false certification by an applicant or recipient concerning the required Assurance of Compliance could result in an adverse action by the Department concerning funding or a referral to the Department of Justice for appropriate action.

With respect to Questions 8-11, prior to the issuance of each award, NIH conducts a pre-award risk assessment for every applicant by checking the federal System for Award Management (SAM),<sup>4</sup> among other resources, to determine if a recipient is eligible to receive an NIH award. NIH queries SAM, the Federal Awardee Performance and Integrity Information System (FAPIIS),<sup>5</sup> and the National External Audit Review Center. The lack of adherence to certifications made to NIH would place the recipient at risk for future funding. NIH is not aware of any compliance actions taken specifically because of an institution's failure to file the required Assurance of Compliance; however, because of the importance of these issues, we are exploring further collaboration with U.S. Department of Health and Human Services' Office for Civil Rights.

With respect to Question 12, NIH is reviewing the NASEM report and considering and exploring its recommendations in conjunction with our federal science agency partners, including NSF. Currently, NIH policy requires funded institutions, if they take administrative or disciplinary action against employee(s) serving as a PI/PD—for example, limiting access to the institution's facilities or resources or modifying employment or leave status during an investigation of alleged sexual misconduct—to notify NIH and seek NIH's advance approval for his or her replacement. On May 1, 2018, NIH reminded the extramural community of this requirement in NOT-OD-18-172.<sup>4</sup>

I hope this response addresses your concerns. Please be assured that I am personally committed to providing a safe, harassment-free work environment, as are all of my senior staff. This is a high priority for NIH. If you have any additional questions, I am available and would be pleased to discuss this matter further in person at your convenience. I have sent an identical response to the co-signer of your letter, Senator Patty Murray.

Sincerely yours,



Francis S. Collins, M.D., Ph.D.  
Director

Enclosures

---

<sup>4</sup> <https://sam.gov/>

<sup>5</sup> <https://www.fapiis.gov/>

<sup>6</sup> <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-18-172.html>



March 19, 2012

**TO:** All NIH Staff

**FROM:** Director, NIH

**SUBJECT:** National Institutes of Health Anti-Harassment Policy

**Purpose:**

The purpose of this policy is to affirm the National Institutes of Health's (NIH) commitment to achieving the goal of a workplace free of harassment. The NIH is taking all steps necessary to prevent harassment in the workplace and to correct any inappropriate conduct that occurs before it becomes severe or pervasive.

**Background:**

Harassment, as defined in this policy, is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, the Genetic Information Non-Discrimination Act of 2008, or Executive Order 11478, Equal Employment Opportunity in the Federal Government, as amended by Executive Order 13087 of May 1998.

**Definition:**

Harassment is unwelcome conduct that may be based on race, color, national origin, sex, religion, age, disability, genetic information, sexual orientation, gender identity or retaliation. Harassment occurs when:

1. The conduct is a term or condition of employment; and
2. Employment decisions are based on whether an individual accepts or rejects such conduct, or
3. The conduct is severe or pervasive and has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidation, abusive, or hostile work environment.

Harassing conduct includes but is not limited to slurs, epithets, ridicule, negative stereotyping, insults, offensive jokes, offensive objects or pictures, intimidation, threats or assaults that are directly or indirectly related to race, color, national origin, sex, religion, age, disability, genetic information, sexual orientation, gender identity, or retaliation.

The harasser can be a supervisor, co-worker, or non-employee (e.g. trainee, contractor). The person who alleges harassment does not have to be the person harassed but can be anyone impacted by the offensive conduct.

**Anti-Harassment Policy:**

It is the policy of the NIH to promote and maintain a work environment free from harassment as defined. The NIH has a zero tolerance for any form of unlawful harassment. A management inquiry will be conducted into allegations of harassment. Information obtained during management inquiries will be held in confidence and will be disclosed only on a "need to know" basis in order to resolve matters. The NIH will take prompt corrective action as deemed appropriate to correct harassing conduct. Reprisal or retaliation against anyone who engages in the equal employment opportunity (EEO) process will not be tolerated.

A hostile work environment claim requires demonstration of a pattern of offensive conduct. Isolated incidents of unwelcome conduct generally do not violate Federal law. To be unlawful, the conduct must create a work environment that would be hostile, intimidating, or offensive to a reasonable person. For

the purpose of this policy, the “reasonable person” standard considers the aggrieved person’s perspective and assesses whether a reasonable person exposed to the same or similar circumstances would find the environment hostile, intimidating, or offensive.

However, the NIH will not wait for patterns of inappropriate conduct to become severe or pervasive. Conduct that does not rise to the level of unlawful harassment actionable under Title VII of the Civil Rights Act of 1964, The Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, the Genetic Information Non-Discrimination Act of 2008, or Executive Order 11478, Equal Employment Opportunity in the Federal Government, as amended by Executive Order 13087 of May 1998, may be treated as misconduct subject to the NIH Table of Penalties.

## **Responsibilities:**

### **All Employees**

Each NIH employee is responsible for:

1. Acting professionally and refraining from harassing conduct;
2. Becoming familiar with the provisions of this policy and complying with all requirements of the policy;
3. Promptly reporting any incident of harassing conduct. The NIH can correct harassing conduct only if it is aware of the behavior. Employees should report harassing conduct to their supervisor, another management official, or to the Office of Human Resources (OHR). Employees are not required to report allegations of harassment to their immediate supervisor when the supervisor is the alleged harasser; and
4. Initiating contact with an EEO counselor in the Office of Equal Opportunity and Diversity Management (OEODM) within 45 days of the date of alleged harassment. Any employee who believes that she or he has been subjected to harassment must initiate contact with an EEO counselor within 45 days of the alleged discriminatory action or, in the case of personnel actions, within 45 days of the effective date of the action, as outlined in Title 29 Code of Federal Regulations Part 1614.105 (a)(1).

### **Supervisors and Managers**

All supervisors and managers are responsible for:

1. Taking prompt and appropriate actions to prevent harassment in the workplace, and to assist in inquiries of harassment;
2. Taking immediate steps to stop harassment once it is reported;
3. Taking steps to prevent retaliation against employees who complain of harassment, or who assist in conducting management inquiries;
4. Protecting the confidentiality of employees who allege or report harassment, to the extent possible;
5. Providing interim relief to alleged victims of harassment, pending the outcome of a management inquiry to ensure that further misconduct does not occur;
6. Consulting with the Office of Human Resources and the Office of Equal Opportunity and Diversity Management when warranted regarding the agency’s legal responsibility and liability; and
7. Attending anti-harassment training mandated by the Agency.

### **Office of Equal Opportunity and Diversity Management**

The Office of Equal Opportunity and Diversity Management is responsible for:

1. Ensuring that this policy is available and accessible to all NIH employees;
2. Advising supervisors and managers on how to provide interim relief to individuals alleging subjection to harassing conduct. This will ensure that further misconduct does not occur, pending the outcome of a management inquiry;
3. Advising the NIH Director and other agency leaders who need to know of the allegations of harassment and the resolution of those allegations under this policy;
4. Providing technical assistance and support to the Institutes and Centers to ensure compliance with this policy; and
5. Providing anti-harassment training to managers and supervisors.

## **Office of Human Resources**

The Office of Human Resources is responsible for:

1. Advising managers and supervisors on appropriate actions and penalties for misconduct in the workplace; and
2. Collaborating with the OEODM to advise and guide supervisors and managers on options for interim relief available to individuals alleging harassment.



Francis S. Collins, M.D., Ph.D.  
Director

Statement on Workplace Harassment  
December 13, 2017

The National Institutes of Health is committed to maintaining a safe and civil organizational culture, one free from all forms of discrimination.

**Policy Statement**

**At NIH, we commit to provide a workplace free of:**

- Harassment, including sexual harassment
- Open or hidden verbal abuse (including offensive language)
- Hidden verbal abuse (intended to harm your reputation)
- Acts or deliberate inactions which demean or isolate you, or undermine you and your work
- Threats or intimidation
- Physical assault
- Damaging or destroying property
- Concealing or using a weapon

**All NIH managers and supervisors are responsible for:**

- Fostering a safe and civil work environment for all employees that is free from harassment, bullying, intimidation, violence, threats of violence, or other disruptive or inappropriate behavior. Any actions that run counter to NIH's [mission and goals](#) will be met with the appropriate consequences, regardless of who the offender may be.
- Reporting allegations of harassment and harm to self/others as soon as possible to the [NIH Civil Program](#) in the [Office of Human Resources](#).
- Understanding that management officials have an obligation to report allegations of harassment immediately and, therefore, cannot guarantee confidentiality to staff.
- Promptly conducting an inquiry and/or administrative investigation where there are allegations of harassment.
- Encouraging staff to report workplace violence concerns in a timely manner to the [Civil Program](#) and ensuring they have information on the resources outlined below.

**All individuals physically located at an NIH facility or representing NIH at any place or time are responsible for:**

- Conducting themselves in a civil and professional manner, reflecting respect for all individuals.
- Reporting any concerning behavior, including harassment or other forms of workplace violence, to a management official and/or the [Civil Program](#) as soon as possible.
- Learning how and encouraging others to effectively identify and handle stress and conflict.
- Understanding that factual and professional criticism of your work, which is not made on an unlawful basis, is not bullying or harassment.
- Maintaining awareness of security procedures including safeguarding identification badges and taking building access control seriously.
- Promptly reporting any domestic violence concerns that may affect the workplace and/or your safety and welfare, so that precautions may be taken, and support and resources may be offered.

## NIH Resources

Inappropriate responses to stressful situations may lead to mounting tension. Timely access to resources can help prevent situations from escalating and allow distressed individuals to receive swift support. The following NIH resources can provide clarification regarding options and rights in a particular circumstance.

- [The NIH Civil Program](#) (301-402-4845) coordinates resources to prevent and address workplace harassment, bullying, intimidation, and violence. The Civil Program consists of three components: (1) Civil Coordinators who manage and track cases on a day-to-day basis; (2) a Response Team of experts who collaborate and share information to resolve cases employing multidisciplinary perspectives; and (3) an Advisory Committee that reports to the Deputy Director for Management, NIH.
- [The Employee Assistance Program](#) (EAP) (301-496-3164) provides strictly confidential, personalized consultation, short-term counseling, referral, and follow-up services to enhance personal and professional well-being. EAP is staffed by licensed, certified professionals in workplace wellness and behavioral health, and offers training and support to workgroups to address issues that affect the work environment. EAP is free to all members of the NIH workforce and their immediate family members.
- [The Office of the Ombudsman, Center for Cooperative Resolution](#) (301-594-7231) provides confidential and informal assistance to the NIH community in addressing lab and work-related issues. The OO/CCR is a neutral, independent, and confidential resource. Ombudsmen can help address lab or workplace conflict, improve communication and relationships, and create opportunities for organizational growth. They also clarify policies, provide referrals, help individuals consider options to analyze and address work-related conflicts and complex or sensitive situations, serve as mediators, facilitate discussions, and address systemic issues.
- [Office of Equity, Diversity, and Inclusion \(EDI\)](#) (301-496-6301) provides information on employee rights and responsibilities in the EEO complaint process. They process complaints of discrimination based on discriminatory harassment, including sexual harassment, as well as other allegations of discrimination, through the federal regulatory process in accordance with 29 C.F.R. §1614, EEOC Management Directive 110 and pertinent court decisions.



# Anti-Harassment Steering Committee Membership



**31**  
Committee Members

**8**  
Institutes/Centers

OD, NIDDK, NIDA, NHGRI, NIDCR, NIAID, NIMH, NCI

**14**  
Stakeholder Groups Represented

Member Name	Title	Member Name	Title
Dr. Lawrence Tabak	Principal Deputy Director, NIH	Ms. Beth Illana Chandler	Acting Deputy Director, OHR
Dr. Alfred Johnson	Deputy Director For Management	Ms. Debra Chew	Director, EDI
Dr. Michael Gottesman	Deputy Director, IRP	Ms. Treava Hopkins-Laboy	Deputy Director, EDI
Dr. Michael Lauer	Deputy Director, ERP	Ms. Jessica Hawkins	Supervisor, NIH Civil Program
Dr. Hannah Valentine	Chief Officer, Scientific Workforce Diversity	Mr. John Burklow	Associate Director, OCPL
Ms. Camille Hoover	Executive Officer	Ms. Renate Myles	Chief, OCPL News Media Branch
Ms. Joellen Austin	Executive Officer	Ms. Amanda Fine	Public Affairs Specialist, OCPL
Dr. Sharon Milgram	Director, OITE	Dr. Janet Clark	Director, Fellowship Training, NIMH
Dr. Julie Segre	Senior Investigator	Dr. Lori Conlan	Director, OPS / Career Services Ctr., OITE
Dr. Kelly Ten Hagen	Senior Investigator	Dr. Anna Han	Diversity Research Scientist, SWD
Dr. Roland Owens	Director, Research Workforce Development	Dr. Carl Hashimoto	Senior Advisor, Faculty Development
Dr. Jeffrey Cohen	Senior Investigator	Dr. Nicole Garbarini	Special Assistant to the NIH Principal Deputy Director
Dr. Allison Nugent	Principal Investigator	Dr. Karyl Barron	Deputy Director, DIR, NIAID
Ms. Julie Broussard Berko	Director, OHR	Dr. Swati Choksi	Staff Scientist
Dr. Kathleen Moore	Director, Ctr. For Cooperative Resolution	Dr. Debra Philp	Director, Office of Education
		Ms. Eva Chen	Manager, Employee Assistance Program

# Goals of the NIH Anti-Harassment Activities

- Centralize oversight of all Anti-harassment related activities at the NIH
- Establish transparency and consistency in management of all harassment allegations at the NIH
- Increase tools available to the NIH community to report harassment allegations
- Educate the NIH community about harassment , promote culture where harassment is not tolerated, and ensure all members of the NIH community understand their roles and responsibilities with regards to harassment prevention
- Establish and monitor trends related to harassment through data maintenance and sharing

## Anti-Harassment Training from Jan 1, 2017 to August 13, 2018

- **NO FEAR POSH Briefings: The Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002, better known as the No FEAR Act, requires that federal agencies be accountable for violations of anti-discrimination and whistleblower protection laws. This course will outline the rights federal employees have under these laws and provide details on how the No FEAR Act is implemented.**
  - Jan 24, 2017
  - Feb 2, 2017
  - Feb 16, 2017
  - Feb 23, 2017
  - March 3, 2017
  - March 9, 2017
  - June 1, 2017
  - Dec 14, 2017 2 sessions Am and Pm
  - Dec 18, 2017 2 sessions Am and Pm
  - Dec 20, 2017
  - Jan 24, 2018
  - Apr 23, 2018
  - May 03, 2018
  - May 07, 2018 sessions Am and Pm
  - May 11, 2018 sessions Am and Pm
  - June 12, 2018
  - July 26, 2018
  
- **Civil Treatment: Preventions of Workplace Harassment for Managers and Supervisors: Addresses the most compelling and urgent priorities for creating and maintaining a civil, productive, and inclusive work environment including: welcoming concerns, coaching and managing performance, addressing inappropriate behavior, making employment decisions, and modeling the behaviors that ensure an inclusive work environment. This course provides 4 CLP for Supervisors.**
  - March 7, 2017
  - June 15, 2017
  - Sept 13, 2017
  - Feb 2, 2018
  - Feb 21, 2018
  - Apr 9, 2018
  - Apr 10, 2018
  - Apr 18, 2018
  - Apr 30, 2018
  - May 22, 2018
  - June 05, 2018

- Civil Treatment: Preventions of Workplace Harassment Employees: By focusing on day-to-day behaviors along with the law, Prevention of Workplace Harassment for Employees is part of a comprehensive and sustainable learning solution designed to challenge and motivate employees to consider the impact of their own behavior and encourage them to speak up when issues arise.
  - Feb 15, 2017
  - May 10, 2017
  - July 11, 2017
  - Oct 3, 2017
  - Feb 7, 2018
  - Apr 9, 2018
  - Apr 10, 2018
  - Apr 18, 2018
  - Apr 30, 2018
  - May 22, 2018
  - June 05, 2018
  
- EEO Compliance for Supervisors: Focuses on Federal Laws, Disparate Treatment, Adverse Impact, Harassment/Hostile Environment, Reasonable Accommodation and Retaliation/Reprisal. As a supplement to the mandatory EEO online training, this in-person class is designed to meet the following learning objectives:
  - \* Identify the primary types of EEO Federal Law and how they relate to your role as a supervisor
  - \* Understand the legal and regulatory definitions, the theories of discrimination and the basics of the EEO process.
  - \* Recognize, prevent and end harassment (sexual and non-sexual) discrimination in the workplace
  - \* Provide specific strategies on how to address allegations of discrimination
    - Jan 24, 2017
    - April 11, 2017
    - May 22, 2017
    - July 18, 2017
    - Oct 11, 2017
    - Dec 15, 2017
    - Jan 23, 2018
    - April 18, 2018
    - May 02, 2018
    - July 11, 2018
  
- EEO Compliance for Employees: Focuses on Federal Laws, Disparate Treatment, Adverse Impact, Harassment/Hostile Environment, Reasonable Accommodation and Retaliation/Reprisal. As a supplement to the mandatory EEO online training, this in-person class is designed to meet the following learning objectives:
  - \* Understand the legal and regulatory definitions, the theories of discrimination and the basics of the EEO process.

- \* Recognize, prevent and end harassment (sexual and non-sexual) discrimination in the workplace
- \* Provide specific strategies on how to address allegations of discrimination
  - Feb 7, 2017
  - May 18, 2017
  - Aug 16, 2017
  - Nov 17, 2017
  - March 21, 2018
  - June 27, 2018
  - Aug 14, 2018
- NIH Civil Program Training: While some sessions may have a specific area of focus (harassment, bullying, etc., all sessions cover respect and civility in the workplace and the Anti-Harassment Program.

DATE	TYPE
1/4/2017	Respect in the Workplace
1/11/2017	Respect in the Workplace
1/30/2017	Respect in the Workplace
2/28/2017	Respect in the Workplace
2/28/2017	Anti-Harassment Program
3/2/2017	Bullying Training
3/8/2017	Anti-Harassment Program
3/30/2017	Anti-Harassment Program
3/30/2017	Respect in the Workplace
4/10/2017	Respect in the Workplace
4/12/2017	Anti-Harassment Program Prevention
4/26/2017	Anti-Harassment Program Prevention
4/27/2017	Bullying Training
4/27/2017	Bullying Training
6/22/2017	Workplace Etiquette
6/29/2017	Respect in the Workplace
10/4/2017	Anti-Harassment Program
10/16/2017	Respect in the Workplace
11/1/2017	Customized - Distressed Trainee
11/16/2017	Anti-Harassment Program
12/7/2017	Anti-Harassment Program
1/18/2018	Anti-Harassment Program
2/14/2018	Anti-Harassment Program
2/15/2018	Respect in the Workplace
2/21/2018	Anti-Harassment Program
2/27/2018	Anti-Harassment Program
3/8/2018	Anti-Harassment Program
3/15/2018	Anti-Harassment Program
3/19/2018	Anti-Harassment Program

4/6/2018	Respect in the Workplace
4/19/2018	Anti-Harassment Program
4/23/2018	Anti-Harassment Program
4/26/2018	Bullying Training
4/26/2018	Bullying Training
5/2/2018	Anti-Harassment Program
5/2/2018	Anti-Harassment Program
5/7/2018	Anti-Harassment Program
5/7/2018	Anti-Harassment Program
5/11/2018	Anti-Harassment Program
5/11/2018	Anti-Harassment Program
5/15/2018	Anti-Harassment Program
5/18/2018	Anti-Harassment Program
5/22/2018	Anti-Harassment Program
6/14/2018	Anti-Harassment Program
6/19/2018	Anti-Harassment Program
6/21/2018	Anti-Harassment Program
7/30/2018	Anti-Harassment Program
8/30/2018	Anti-Harassment Program
8/31/2018	Anti-Harassment Program

Confidential ■ Neutral ■ Independent

# NIH Office of the Ombudsman

*Center for Cooperative Resolution*



## *Welcome*

The NIH Office of the Ombudsman, Center for Cooperative Resolution (OO/CCR), is a confidential, neutral, and independent resource providing informal assistance to NIH scientists, administrators, and staff at all levels in addressing work-related issues. The OO/CCR serves as a focal point for conflict resolution at NIH by (1) providing confidential, informal assistance to employees and managers in resolving work-related concerns and (2) developing and coordinating effective dispute resolution processes and procedures.

We offer a variety of services and programs to address likely sources of conflict, such as interpersonal communication, performance appraisals, harassment, mentoring relationships, and scientific collaboration.

We look forward to working with you.



## *The Ombudsman's Role*

Ombudsmen are independent, neutral individuals who assist in addressing concerns and resolving conflicts. Speaking to an ombudsman does not place the NIH on notice of an alleged violation of law or policy.

### **Ombudsman principles:**

- Act impartially and confidentially
- Advocate for fairness and equality
- Provide a mechanism for early problem resolution
- Consider all sides of an issue in an informed, unbiased manner
- Promote better communication

### **Ombudsmen do:**

- Provide a safe place to share thoughts and confidences
- Listen without criticizing
- Help analyze difficult and complex situations
- Help access NIH policies and procedures
- Help construct non-adversarial approaches to issues
- Facilitate a just resolution of problems and disputes
- Refer individuals to appropriate NIH resources
- Identify trends and systemic problems
- Carry out informal climate assessments

**Ombudsmen do not:**

- Accept or provide notice of an alleged violation
- Serve as part of any formal grievance or complaint process (except as providers of Alternative Dispute Resolution at the informal stage of the Equal Employment Opportunity [EEO] process)
- Advocate for any individual
- Share information with others without an individual's knowledge and permission
- Conduct formal investigations
- Issue investigative reports
- Testify or serve as a witness
- Make or change policy or administrative decisions
- Make binding decisions or determine rights
- Require anyone to follow ombudsman recommendations

***Contact the Ombudsmen When You:***

- Want an independent facilitator to assist you in working through a problem
- Feel that you have been unfairly treated, or that an NIH policy has been unfairly or erroneously applied or is itself unclear
- Have concerns about issues specific to the scientific community, including mentoring, authorship, resources, collaboration, and intellectual property rights
- Are uncertain where to take a work problem
- Are unclear about NIH policies, processes, and procedures and how they apply to you

## Our Pledge to the NIH Community

We are committed to working with integrity and in accordance with the ethical standards of the International Ombudsman Association while confidentially handling your concerns. The ombudsmen will not disclose nor discuss any confidential matter without your knowledge and permission. This includes not revealing:

- The identity of individuals who come to our Office
- The identity of contacts made by the ombudsmen in resolving an issue
- Specific details and circumstances of matters handled by our Office
- Any material related to specific cases

## International Ombudsman Association Code of Ethics

### Independence

The ombudsman is independent in structure, function, and appearance to the highest degree possible within the organization.

### Neutrality and Impartiality

The ombudsman, as a designated neutral, remains unaligned and impartial. The ombudsman does not engage in any situation that could create a conflict of interest.

### Confidentiality

The ombudsman holds all communications with those seeking assistance in strict confidence, and does not disclose

confidential communications unless given permission to do so. **The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.**

### Informality

The ombudsman, as an informal resource, does not participate in any formal adjudicative or administrative procedure related to concerns brought to his/her attention.

For more information, go to [www.ombudsassociation.org](http://www.ombudsassociation.org).



## *Services Offered by the OO/CCR*

The ombudsmen tailor their work to the needs of the individuals who contact the Office. The first step in that process is for the ombudsman to listen as the person explains his or her situation or concern and then discuss any goals the person might have for addressing it. Based on that discussion, the ombudsman and person will determine together whether working with the OO/CCR would be appropriate or if it would be more beneficial for the person to work with another office or resource to reach his or her goals. In some instances, there may be benefits to working with the OO/CCR in conjunction with another office.

The OO/CCR offers a range of services, depending on the situation:

### **Conflict Coaching**

Coaching typically involves one-on-one work with individuals to align goals and actions. Topics discussed in coaching may include how to engage in difficult conversations or negotiate an important work-related matter. Coaching is often part of OO/CCR processes, as it provides a private space to analyze, explore, and test ways to address situations.

### **Mediation**

Mediation is a process of assisted negotiation in which the disputants discuss and resolve their differences with the assistance of a neutral third party.

### **Facilitation**

Facilitation is a group process in which a facilitator helps a group of two or more people have an open and effective conversation to achieve the group's objectives. Facilitation can include group problem solving, structured dialogue, and meeting with management and staff to assist groups in reaching desired outcomes.

## Consultation

We help leaders and staff manage difficult situations and provide input in the development of policies and procedures in anticipation of possible problems and workplace disputes.

## Training and Presentations

Ombudsmen are available to conduct presentations at staff meetings, briefings, training sessions, and conferences regarding our services and various conflict management topics.

## Dispute Systems Design

- **Peer Panel Review.** Individuals may be convened on panels to review the facts of a dispute. For example, the OO/CCR can convene informal scientific panels to help resolve conflicts over authorship and credit. A peer resolution program allows a specially trained panel of supervisors and peers to hear employee grievances and make final and binding decisions.
- **Support for Scientific Teams and Collaboration.** The OO/CCR has designed several tools to help scientists foster healthier and more effective communication, teamwork, and conflict management. These tools include questions for collaborators to address critical issues and a *Field Guide* to collaboration and team science (for more information, please go to <http://teamscience.nih.gov>). The OO/CCR is also available to facilitate the development of partnering agreements for scientific teams or collaborations, as well as help researchers establish collaborations and resolve problems and conflicts that may arise within them.

## *Existing NIH Processes*

The OO/CCR is an alternative channel that complements – but does not replace – the following avenues for resolving employee and scientific concerns at NIH:

- Processes for resolution of conflicts in the NIH Intramural Research Program
- Administrative grievance procedures
- NIH Office of Management Assessment
- NIH Ethics Program
- NIH Office of Human Subjects Research
- NIH Animal Care and Use Committees/Office of Animal Care and Use
- NIH Office of Research Integrity
- NIH Division of Public Safety
- NIH Employee Assistance Program
- NIH Office of Equal Opportunity and Diversity Management
- Merit Systems Protection Board appeals
- U.S. Office of Special Counsel
- Office of the Inspector General

You will find a list of these resources on our website: [ombudsman.nih.gov](http://ombudsman.nih.gov).



## Frequently Asked Questions

### ***Who can contact the OO/CCR?***

The OO/CCR is available to employees, scientists, staff at every level, and those directly affiliated with NIH to address workplace conflicts, answer questions, and provide consultation.

### ***What issues are commonly dealt with at the OO/CCR?***

The most common concerns are staff/management interaction, performance appraisals, difficult management situations, discrimination, harassment, interpersonal misunderstandings, mentoring, authorship, and scientific collaboration. Some people are interested only in specific information about a rule, law, or policy that applies to their situations.

### ***May I use work time to resolve a complaint?***

An employee can use a reasonable amount of official work time to resolve a workplace problem. However, to use official work time to visit the OO/CCR, the Employee Assistance Program, the Office of Equal Employment Opportunity and Diversity Management, or the Equal Employment Opportunity office, you must first obtain approval from your supervisor. In situations where you do not want to notify your supervisor, you may use leave or arrange to have a meeting during lunch or outside of your work hours.

### ***What is different about the Office of the Ombudsman?***

The Office of the Ombudsman is firmly committed to maintaining the confidentiality of those who use our services. We operate independently of the usual administrative structures at NIH and are not part of any Institute or Center (IC). The OO/CCR provides an alternative to formal grievance and complaint processes and is flexible enough to handle any workplace dispute. The Office emphasizes non-adversarial problem-solving options that help avoid future disputes and preserve relationships.

***I'm thinking about filing an EEO complaint. May I still contact an ombudsman?***

You may contact an ombudsman at any time without relinquishing your right to file an EEO complaint. However, if you wish to file an EEO complaint, you must contact the NIH Office of Equal Opportunity and Diversity Management within 45 days of the alleged discriminatory action. The OO/CCR serves as a provider of Alternative Dispute Resolution (ADR) when a person elects ADR in the informal stage of the process. There are many instances of insensitivity, unfairness, or miscommunication that may not necessarily be discrimination. The Ombudsman's Office can also help address these situations.

***How is the OO/CCR different from the Employee Assistance Program (EAP)?***

While some issues that the Ombudsman's Office and EAP handle do overlap, ombudsmen provide conflict resolution approaches to workplace issues and related policies and practices. The EAP generally provides assistance with personal issues such as stress, health concerns, substance abuse, or family concerns that may be affecting job performance.

***What is Alternative Dispute Resolution?***

Alternative Dispute Resolution refers to a variety of informal, non-adversarial processes outside of formal complaint and grievance mechanisms. These processes include mediation, facilitation, peer panels, coaching, and shuttle diplomacy. ADR emphasizes collaborative problem solving, rather than win-lose approaches.

***I have seen the ombudsmen in the Office of the Director, at Human Resources, and at EEO. If the Office is so confidential, what are they doing in those official places?***

The ombudsmen need access to high-level decision makers in order to resolve some problems. The ombudsmen talk about issues only with permission. Sometimes, the

ombudsmen consult with others about systemic concerns in a general way, without revealing any identifying details about the matter. The ombudsmen only serve on committees at NIH as consultants or as *ex officio* members.

***To whom do the ombudsmen report, and what is reported?***

The ombudsmen report to the Principal Deputy Director of the NIH. The ombudsmen prepare periodic reports for the NIH community. These reports are designed to identify trends and patterns and are strictly demographic, with no information that would identify individuals who have used the Office.

***What authority do ombudsmen have?***

The ombudsmen have the authority to (1) mediate disputes and/or negotiate settlements with the agreement of all parties; (2) make recommendations for changes in a policy or practice; (3) bring issues to the attention of those with the authority to address concerns, such as Division Directors, Scientific Directors, and Executive Officers; and (4) seek to expedite administrative processes.

***If the ombudsmen are employed by the NIH, how independent can they be?***

The ombudsmen are inside “outsiders” – not part of management. In this way, they are able to see and address issues within the larger organizational context. NIH supports the independence of the ombudsmen because it is to everyone’s advantage to have all concerns, even the most sensitive, brought to the surface and resolved.

# How to Contact Us

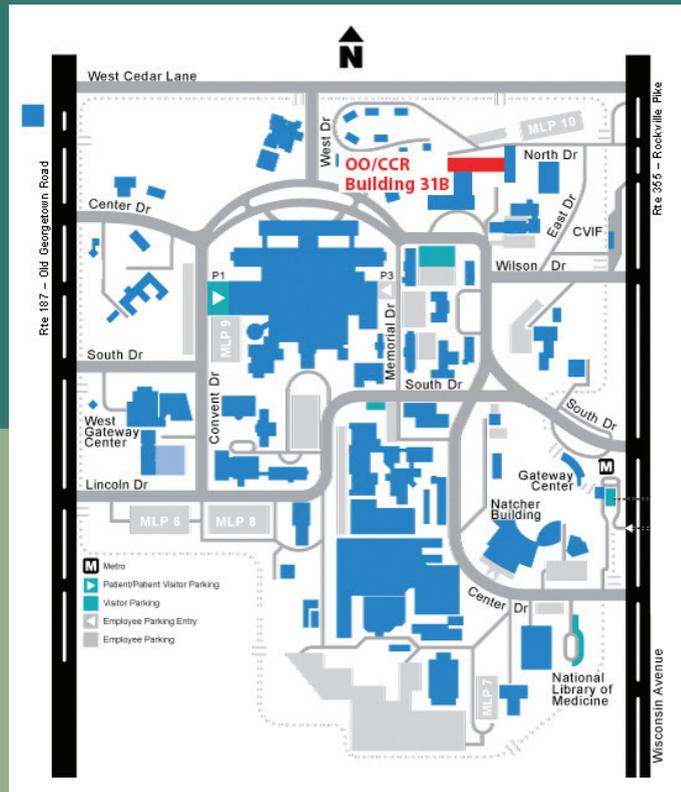
Contact the OO/CCR by telephone, email, U.S. mail, or in person. The OO/CCR is open Monday through Friday, 8:00 am to 5:00 pm EST.

If you need a sign language interpreter or reasonable accommodation to work with us, please let us know when you contact us so we can make appropriate arrangements (Federal Relay Service: 1-800-877-8339).

**NIH Office of the Ombudsman  
Center for Cooperative Resolution  
Building 31, Room 2B63  
(on the second floor)  
31 Center Drive, MSC 2087  
Bethesda, MD 20892-2087**

**Phone: 301-594-7231  
Fax: 301-594-7948  
Email: [ombudsman@mail.nih.gov](mailto:ombudsman@mail.nih.gov)**

**Web: [ombudsman.nih.gov](http://ombudsman.nih.gov)**



# NIH Office of the **Ombudsman**

Center for Cooperative  
Resolution

Annual Report 2013-2017





# NIH Office of the **Ombudsman**

Center for Cooperative  
Resolution

Annual Report 2013-2017

# Table of Contents

MESSAGE FROM THE OMBUDSMAN.....	<b>3</b>
EXECUTIVE SUMMARY.....	<b>4</b>
OMBUDS OFFICE OVERVIEW .....	<b>5</b>
CASE DATA & OBSERVATIONS 2013-2017 .....	<b>8</b>
CRITICAL OBSERVATIONS: SYSTEMIC THEMES 2013-2017 .....	<b>14</b>
A WAY FORWARD: POTENTIAL NEXT STEPS.....	<b>17</b>
CONCLUSION .....	<b>19</b>
APPENDICES .....	<b>20</b>

# Message from the Ombudsman



I am pleased to conclude my first year as the NIH Ombudsman by providing this Annual Report. It has been seven years since our Office has published a report, so this “Annual Report” is more comprehensive than is customary. This past year we enhanced our database in order to better analyze trends, and are thus able to present data from approximately 3,000 cases over the last five years. We also provide an overview of our practice within the NIH community through our individual and group cases, and workshops. We highlight a number of organizational challenges that we have observed over time. These critical observations surface issues that are complex, multi-dimensional, and require trans-organizational engagement to resolve.

We offer thoughts about how we may begin to address these systemic issues and look forward to our continued collaboration with many people at NIH to address them in the year ahead.

The basic purpose of an ombuds office is to provide a place where people may address concerns before contemplating formal procedures. There are various times one can be unhappy in the workplace that are unrelated to the violation of rules or rights. In fact, issues may arise that cannot be remedied by policies or procedures. We are able to provide a unique problem-solving discussion in a confidential, neutral, and independent space to explore alternative options to formal dispute resolution. Sometimes a person merely wants a sounding board or help reviewing a letter to confirm it conveys his or her perspective and goals accurately. Sometimes people request a facilitated discussion with another party, and sometimes it is more effective to address a systemic problem without reference to the particular individual. Our philosophy is that by helping prevent and manage conflict, and by fostering the sorts of working relationships that enable people to conduct better science, we can contribute to the ability of NIH to fulfill its mission.

Each of us in the office is dedicated and accountable to the NIH community, and I present this report on behalf of the entire team. We pledge to serve the NIH community by providing exceptional conflict resolution services through continued scholarship, vibrant collaborations, and creative problem solving, thus enhancing fairness and respect for all.

**J. Kathleen Moore, Ph.D.**

Director and Ombudsman

Office of the Ombudsman

Center for Cooperative Resolution

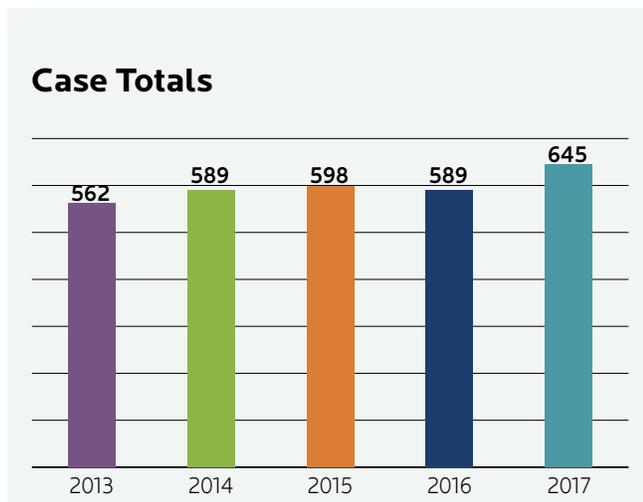
# Executive Summary

**The Office of the Ombudsman assists the NIH community in addressing lab and workplace concerns. We are a resource that is neutral, independent, confidential, and informal.**

## SUMMARY OF CASELOAD, OMBUDS ACTIVITIES, AND OUTCOMES

From 2013 to 2017 our office handled 2,983 cases. Over that time, our caseload increased by 15%. Half of the issues raised by individual visitors concerned supervisor-employee relationships. The most common ombuds activities were coaching, helping visitors explore their options, and policy clarification. Most visitors decided to proceed independently, using the resolution strategies discussed in our office.

Group cases typically involved working with others to address systemic concerns. Workshops and presentations covered a range of topics utilizing a mix of lecture, group discussion, exercises, case studies, skits, role-plays, self-assessments, and multimedia. Workshop topics included Conflict Management, Difficult Conversations, Giving & Receiving Feedback, and Implicit Bias.



## SYSTEMIC THEMES

A crucial component of our work is the identification of important trends and organizational concerns. Over the past five years, our office has identified four broad themes in the issues visitors bring to our attention: *perceptions of inequity and unfairness, leadership challenges, administrative policies, and organizational concerns.*



## A WAY FORWARD

The Office of the Ombudsman looks forward to partnering with the NIH community to address these systemic issues. We are encouraged by recent partnerships involving Civil, EDI, and the NIH Anti-Harassment Committee to create policies and implementation plans to address organizational concerns. In this report, we propose several additional approaches NIH might consider. These approaches include raising systemic issues to leaders and other stakeholders, the formation of multidisciplinary teams; expanding leadership resources, support, and accountability; and taking further steps to institutionalize fairness.

We value the role we play in supporting the NIH mission, and we invite you to read our full report.

# Ombuds Office Overview

**Our Mission Statement:** The mission of the NIH Office of the Ombudsman, Center for Cooperative Resolution, is to facilitate collaborative processes and the creative resolution of conflict for the entire NIH community.

## WHAT WE DO

Individuals, groups, and organizations may face misunderstandings or disagreements. Such conflicts present challenges – but they also offer opportunities for growth, strengthened relationships, improved morale, and enhanced organizational operations. However, engaging in conflict constructively is difficult without skills, resources, or awareness of how to do so. Our office is a resource to the entire NIH community, helping to build both awareness and necessary individual and organizational skills. We provide these services to the NIH community through our individual and group cases and our workshops and presentations. We have also provided mediation services for EEO actions over the past years, until January, 2018. We also coordinate early mediation of administrative grievances through a pilot grievance process called the Peer Resolution Program (PRP).

- Group Facilitation
- Group Conflict Resolution
- Scientific Collaborations
- Workshops and Presentations
- Systemic Interventions



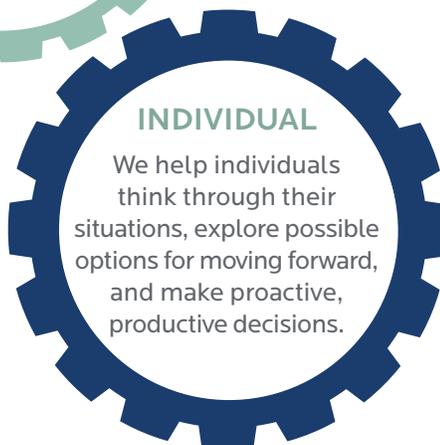
- Consultation
- Coaching
- Policy Clarification
- Referrals

## OUR OMBUDS SERVICES

We help visitors identify the underlying causes of disputes as well as behavioral responses to the situation. We listen and help visitors explore options for resolution. We may facilitate conversations between individuals or employ shuttle negotiation when requested and as appropriate. We use a variety of techniques and tools to assist members of the NIH community to address individual, interpersonal, or group concerns. We work through each concern with our visitors, and employ resolution strategies that address the unique needs of each situation.



- Facilitated Discussions
- Shuttle Negotiations
- Scientific Partnering Agreements



### OUR STANDARDS OF PRACTICE

*We are committed to the highest professional standards. We operate under the Code of Ethics and Standards of Practice enunciated by the International Ombudsman Association (IOA):*

#### **Independence**

We work independently of NIH management structures. The Director of the Office of the Ombudsman reports to the NIH Director through the NIH Principal Deputy Director while maintaining our office's confidentiality, neutrality, and independence.

#### **Neutrality and Impartiality**

Our standard of neutrality means we treat everyone with equal respect. We strive for fairness and objectivity in our dealings with visitors and consideration of issues. We advocate for fair and equitable processes but not for a particular person or point of view.

#### **Confidentiality**

We do not reveal the identity of any individual who contacts us, nor do we reveal information provided in confidence without that individual's permission. We do not take specific action related to an individual's concerns unless we have permission. The only exception to confidentiality is if there appears to be an imminent risk of serious harm to self or another.

#### **Informality**

We assist people by engaging in discussion and analysis of creative solutions available to them outside the formal procedures. We do not make binding decisions, mandate policies, or formally adjudicate issues for the organization. We do not participate in formal investigative or adjudicative procedures. Use of our office is voluntary and is not a step in any grievance process or policy. Contacting our office does not place the organization on notice, a critical departure from many of the resources within the NIH.

*“Thank you for the conversation today – no one has ever given me feedback in that way before. I appreciate you taking a risk and pointing out certain things for me to think about and work on.”*



**NIH Office of the Ombudsman Team 2018**

*Seated in front:* J. Kathleen Moore, Linda Brothers, Judith Gail; *Standing in rear:* Jason Byron, David Michael, Tyler Smith; *Not pictured:* Lisa Witzler, Denise Burns

**What to Expect When Working with Our Office:** When an individual or group of people reaches out to our office, we work through the steps below either in the initial meeting or over the course of several meetings.

## Initial Conversation

- We set up a time to meet with you privately and confidentially.
- While we prefer in-person meetings, we understand there are situations where a phone call is preferred.



## Clarifying Roles

- We review our standards of practice and answer your questions about our office, role, and how we work.
- We ask about your role in your Institute or Center and other information you would like us to know.

## Understanding the Situation

- We listen and ask elicitive questions to explore your situation and understand your concerns, goals, hopes, fears, complexities, and context.
- We listen to understand from your perspective, not to decide who is right or wrong.



## Analyzing

- We help you look at the issues in a different way.
- We encourage perspective taking of “the other” party in the conflict.
- We help you to think about additional parties, issues, trends, structures, relationships, and causation.
- We help you explore how you may contribute to the situation.

## Exploring Options

We help you identify options available to address the issues you are facing. Options might include:

- Taking no further action.
- Obtaining additional information or clarification from another resource.
- Initiating a conversation with the other person or people involved.
- Inviting others to participate in a conversation we can facilitate.



## Determining Next Steps

- We can be involved as you determine, so long as it is within the scope of our role.
- Meeting with us may result in concrete action steps or a decision to gather more information.

# Case Data & Observations

2013 – 2017

Over the past five years the NIH Office of the Ombudsman has served a population of approximately 22,000 employees from NIH’s 27 institutes and centers. Our work is divided into different case types: individual, group, workshops, EEO, and PRP. We define as a single “case” one or more individuals who experience a conflict.

## Individual cases

These cases involve one to four individuals seeking assistance from our office. Other individuals or parties to the conflict or situation may become involved if necessary.

## Group cases

These cases involve five or more people seeking assistance from our office. These individuals may be connected as work groups, work teams, divisions, branches, labs, centers, etc.

## Workshops & Presentations

These include workshops and presentations we provide for members of the NIH community and external audiences (students, conference attendees, other agencies, etc.).

## EEO Mediation cases

Equal Employment Opportunity (EEO) cases involved members of our staff acting as mediators for NIH EEO complaints (performed through 2017).

## Peer Review Program (PRP) cases

These cases involved members of our staff acting as mediators for Stage 1 PRP administrative grievances (performed through 2017).

## CASE TOTALS

Over the past five years our total caseload has increased by 15%. Much of this growth was driven by increases in workshops and presentations, which increased by 43% between 2016 and 2017. There was also modest growth in individual cases over the five years. Group cases held steady at 3% of our yearly caseload. Sixty-seven percent of group cases took more than 20 hours each of ombuds time.

### Case Totals



*“Thank you for facilitating our discussion today. You had a balanced approach that enabled us to have a very successful conversation.”*

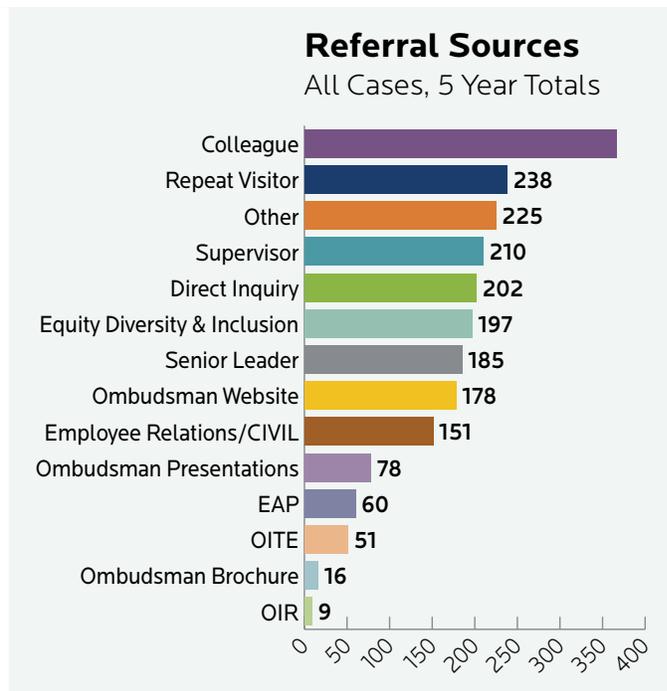
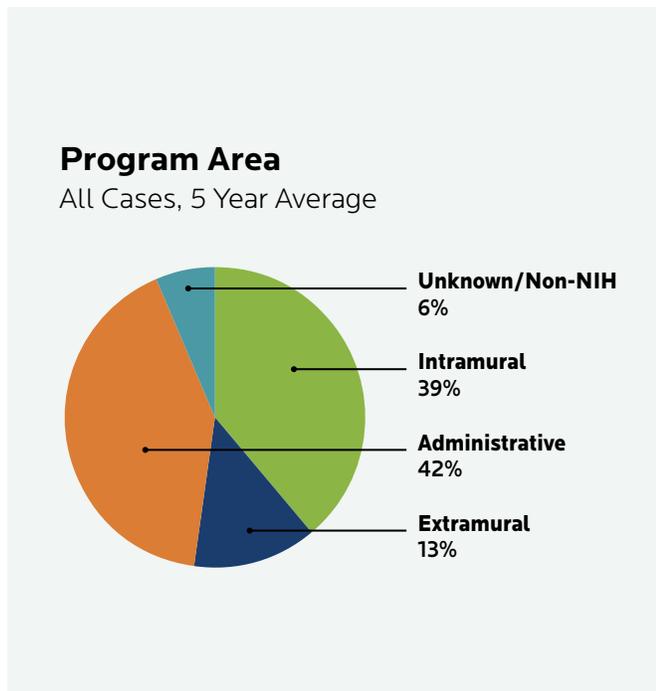
PROGRAM AREAS

NIH is organized within the intramural research, extramural research, and administrative program areas. **Intramural research programs** refer to programs and scientific research initiatives conducted within NIH laboratories by NIH scientists. **Extramural research programs**, in contrast, refer to NIH programs and initiatives that support the funding and oversight of research conducted by non-NIH scientists in non-NIH settings. **Administrative programs** support the intramural, extramural, and overall functions of NIH and its 27 institutes and centers. Approximately 42% of our cases involved employees from the administrative programs from 2013 - 2017, while 39% have come from intramural research programs – and 13% from extramural research programs during the same period.

REFERRAL SOURCES

We receive cases in a variety of ways. Over the past five years most visitors to our office were referred by one of their colleagues. You will also notice that many people return to our office – repeat visitors – after having worked with us in the past. The chart below summarizes our referral resources over the past five years.

*“I had a meeting with my supervisor . . . it was so helpful to ask for specific examples on how I can improve.”*



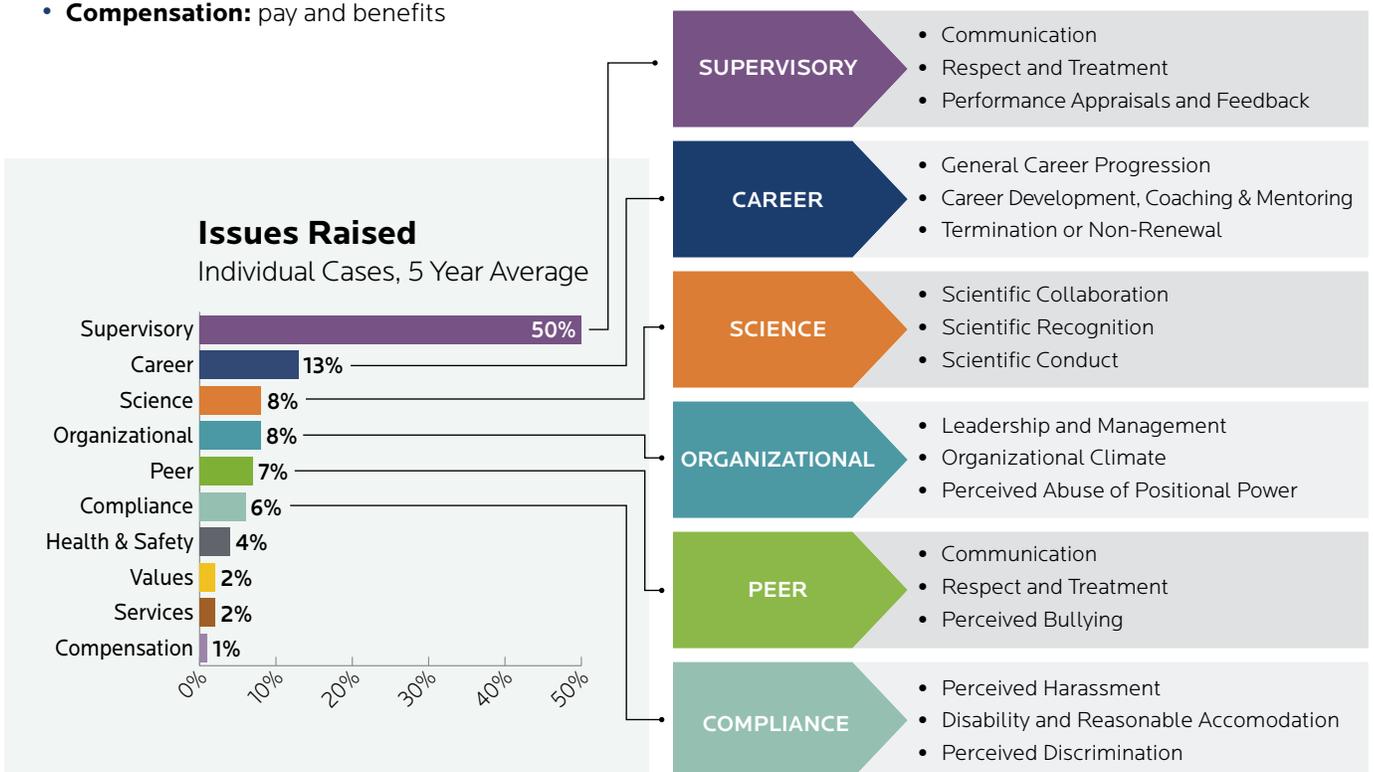
ISSUES RAISED

People contact our office because they have a variety of concerns that they wish to address. Their concerns are grouped into ten categories:

- **Supervisory:** issues regarding leaders and those they supervise
- **Career:** career development, progression, and elimination
- **Science:** scientific collaboration, review, and resources
- **Organizational:** organizational leadership, climate, and change management
- **Peer:** peer and colleague relations
- **Compliance:** perceived discrimination, harassment, disability, and reasonable accommodation
- **Health and Safety:** physical working conditions and work-related stress
- **Values:** perceived discrepancies in organizational values
- **Services:** administrative decisions, rules, and procedures
- **Compensation:** pay and benefits

As shown in the accompanying chart, in our **individual cases** supervisory issues were by far the most frequently raised issues by those visiting our office; fully half of all issues were about problems between supervisors and those who report to them. The sustained prevalence of supervisory issues over the last five years strongly suggests that more needs to be done at an institutional level to educate supervisors and employees regarding strategies for effective workplace interactions. Suggested strategies are discussed in the section of this Annual Report entitled “A Way Forward: Potential Next Steps.”

In the supervisory category the three most reported issues were problems with communication, concerns about respect and fair treatment, and questions about perceived problems with performance appraisals and feedback. Additional top three issues in each broad category are shown in the accompanying graphic.



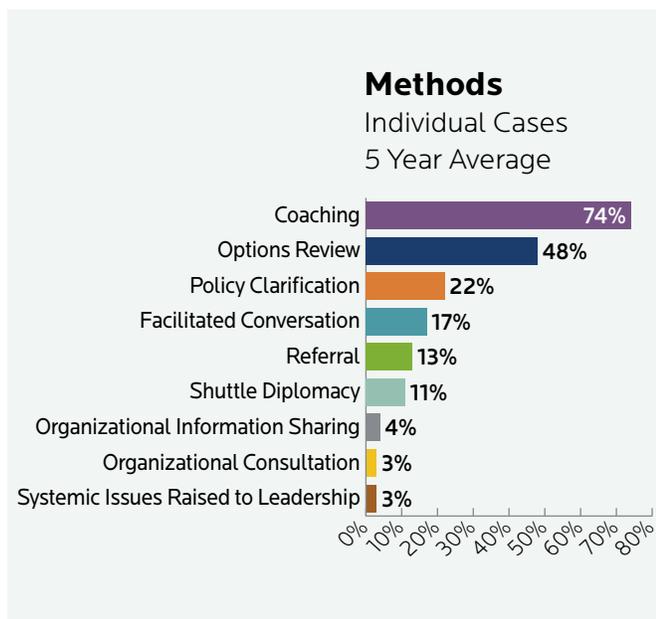
An overview of data over the last five years indicates that many **group cases** involved the following issues:

- Purpose, Goals & Mission
- Communication & Information Sharing
- Leadership & Management
- Roles & Responsibilities
- Resources & Mechanisms
- Assignments & Distribution of Work
- Personalities, Styles & Culture
- Trust & Respect
- Morale

## METHODS

We utilize a wide variety of methods to help resolve concerns. Our data show that in **individual cases** our most used mechanism is coaching. Coaching provides an opportunity for the visitor to sort through options, understand their own assumptions, and develop a more effective thinking and behavioral path to achieve their goals. The second most utilized mechanism is options review, where we answer visitors’ questions and provide information about the use of informal and formal conflict resolution strategies.

As the chart demonstrates, the majority of our **group cases** have involved intragroup intervention and facilitation. Intragroup interventions often involve helping the group to identify and address sources of tension within the group. Facilitation involves a process of helping group members to address their own issues.



*“I want to thank you for the extensive work you did with our team. You thoughtfully analyzed the issues and helped us plan a productive way forward.”*

Over the past five years we have become increasingly involved in preventive conflict resolution work as represented by an increase in the number of **workshops and presentations** given to both administrative and scientific communities. Between 2013 and 2017 we provided 243 workshops and presentations; of those, 182 presentations and workshops were offered to internal NIH audiences. The remaining 61 workshops and presentation were provided for external audiences at conferences, universities, and other federal agencies.

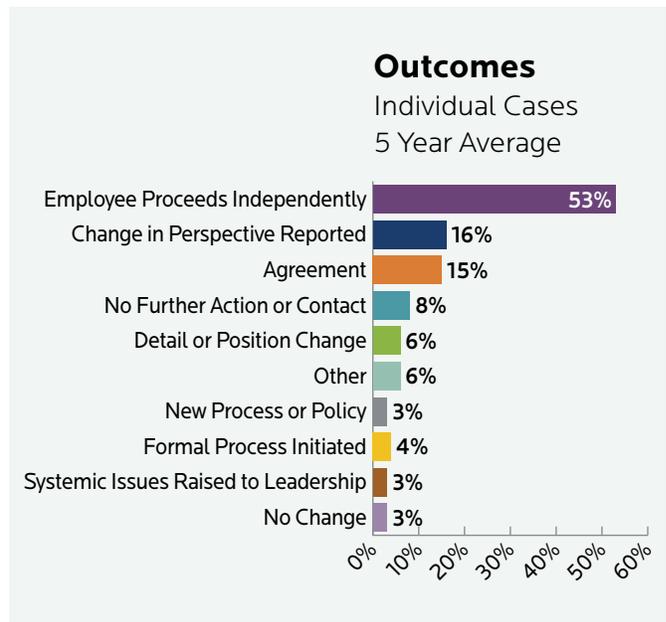
Each of our internal workshops is tailored to the needs of a specific constituency and can include a mix of lecture, group discussion, case studies, role-plays, self-assessments, and multimedia offerings (such as film screenings on topics related to workplace difference).

Common training topics over the past five years included:

- Conflict Management & Resolution
- Interpersonal Communication
- Email Communication
- Giving & Receiving Feedback
- Interest-Based Negotiation
- Implicit Bias
- Cultural Differences
- Emotional Intelligence

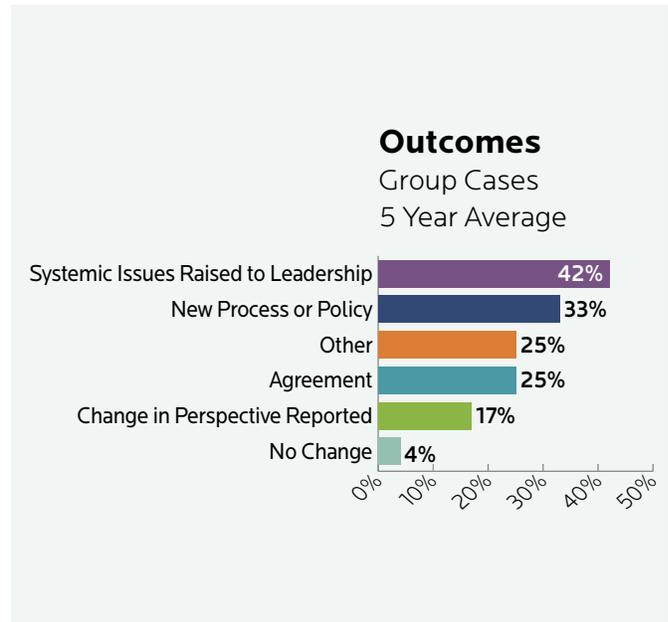
## OUTCOMES

The people who visit the Office of the Ombudsman do so for many reasons. Sometimes they want a particular result; other times they want to explore possible options before deciding whether or not to take action. As ombuds, one of our aims is to help all members of the NIH community become better able to resolve issues on their own if they are able to do so. In our **individual cases** this is reflected in the largest single outcomes category of “employee proceeds independently.” Many visitors from our individual cases talk with us about their concerns, consider different options, receive coaching, and then decide to proceed independently using the resolution strategies discussed in our office.



*“I wanted to thank you again for coming out yesterday to speak to our team. Several people said that the information and resources provided were relevant and can be used to their advantage.”*

Many of our **group cases** involve working with others to address systemic concerns. Our group cases are among our most successful work in that over 40% of group case outcomes result in raising concerns to leadership for proactive interventions. At least 33% of group cases result in the creation of a new policy or process, and 25% of group cases result in express agreements.



*“Thanks for leading such a rewarding discussion. You and your colleague did such a wonderful job sharing the different perspectives and encouraging such a candid dialogue. I really feel this was a necessary first step toward becoming unified . . . I’m still reflecting on everything you shared, and will continue to follow up.”*



NIH Clinical Center

An important component of our work as ombuds is our ability to identify important trends and raise concerns to leadership. We often see individuals and groups who raise systemic issues – those issues which are rooted in a policy, procedure, or practice.

Systemic concerns are especially difficult because, by their nature, they permeate multiple levels of the system in which they reside. Many of these concerns are noticed in different organizations, across different program areas and organizational roles which enable us to raise them without revealing confidential information.

These systemic themes and issues are drawn from among the approximately 3000 ombudsman cases from 2013 – 2017 and reflect issues raised by employees and supervisors throughout NIH. While these qualitative data are derived only from those individuals who work with our office, they provide a broad range of perspectives that often are not otherwise available within NIH. These systemic issues should not be seen as a definitive or complete characterization of the issues discussed but rather as a starting point to understand possible trends and concerns.

**Four overarching themes** frame the following systemic concerns. Understanding and addressing these systemic concerns could benefit NIH.



### PERCEPTIONS OF INEQUITY AND UNFAIRNESS

#### Performance Appraisal Fairness

Many employees report that meaningful and substantive feedback about their performance and conduct at work is important to them but often absent throughout the rating period. We have also heard from some employees that their supervisors ask them to sign unrated end-of-year performance appraisals. Both of these practices can lead to surprise ratings at the end of the year and contribute to general anxiety about close-out evaluations.

#### Perceived Discrimination and Inequity based on Race and Gender

Concerns about perceived discrimination are raised by employees of both the administrative and scientific communities of NIH. Female tenure-track and tenured principal investigators describe a perceived climate of unfairness which manifests in greater resources and opportunities for their male colleagues. Additionally, female scientists and science leaders report pay disparities as compared to similarly-situated male counterparts, along with more perceived difficulty in achieving research support and tenure. Perceptions of discrimination and inequitable treatment extend to racial groups and often impact morale, productivity, and team cohesion. These concerns have been recognized and a trans-NIH committee was formed in 2018 and charged with remediating these issues.

### Perceived Fairness in Tenure and Promotions

Over the years tenure track and non-tenure track investigators have expressed concern regarding a perceived absence of procedural fairness in the tenure process. Other employees denied grade promotions raise similar fairness concerns. The perceptions of unfairness are fed by limited and inconsistent information regarding certain aspects of the process, as well as a perceived lack of opportunity to address or appeal negative decisions. In addition, supervisors' failure to raise performance or tenure concerns prior to making these decisions contributes significantly to perceptions of unfairness and being "set up to fail."



**LEADERSHIP CHALLENGES**  
**Leadership Effectiveness and Skills**  
Leaders within the organization hold positional power and are responsible for managing a complex ensemble of technical, administrative, interpersonal, and scientific activities. Many people report that supervisors possess limited technical and relational skills and insufficient understanding of the organization. In addition, perceived biases – such as favoritism and the selective enforcement of policies – are seen as causing unfair outcomes and impacting the work/lab environment. In addition, many trainees and fellows believe the expectation of leadership development through supervisory mentorship does not occur. This leads to an absence of collegial relationships, along with reduced opportunities to publish, and sometimes results in harmful situations that affect their ability to publish research and advance scientific careers.

### Perceptions of Disrespectful Behaviors

There are visitors who describe their supervisors as "bullying," "toxic," "hostile," or "abusive." Individuals are fearful of raising these concerns because they fear they will be subject to retaliation. Individuals also report feeling stress, anxiety, difficulty concentrating, and situational panic. In some cases, fellows have reported wanting to leave NIH and intramural science as a result of their experiences. These behaviors often have a negative ripple effect within the larger organization, elevating stress, lessening communication, productivity, and morale, and in extreme cases causing physical and emotional harm.



**ADMINISTRATIVE POLICIES**  
**Perceived Bias in Administrative Inquiries**  
Administrative inquiries are initiated to investigate and resolve employees' claims of harassment or disparate treatment. Control of these inquiries by management at the Institute/Center level is often perceived as undermining the impartiality necessary for a fair understanding and resolution of issues. Management control of the inquiry's scope, funding, communication of information, findings, and follow-up determinations are perceived as a structural bias of administrative inquiries. These vulnerabilities limit the effectiveness of administrative resolutions that may end reported inequities. NIH has recognized this issue and in 2018 a new policy and procedure to centrally fund and handle harassment claims and effectively eliminate bias has been formed.

### Challenges of Reasonable Accommodations Process

The Americans with Disabilities Act (ADA) requires organizations to provide reasonable accommodations to qualified employees with a disability, unless doing so would pose an undue hardship. However, many visitors to our office have expressed a lack of clarity about the process, as have many of our supervisor visitors. In some cases, employees seeking reasonable accommodations have limited access to support, and management is not well-informed of the law. Employees report being told that making a request may subject them to termination, and their requests for reasonable accommodation are often denied without explanation or additional interaction.

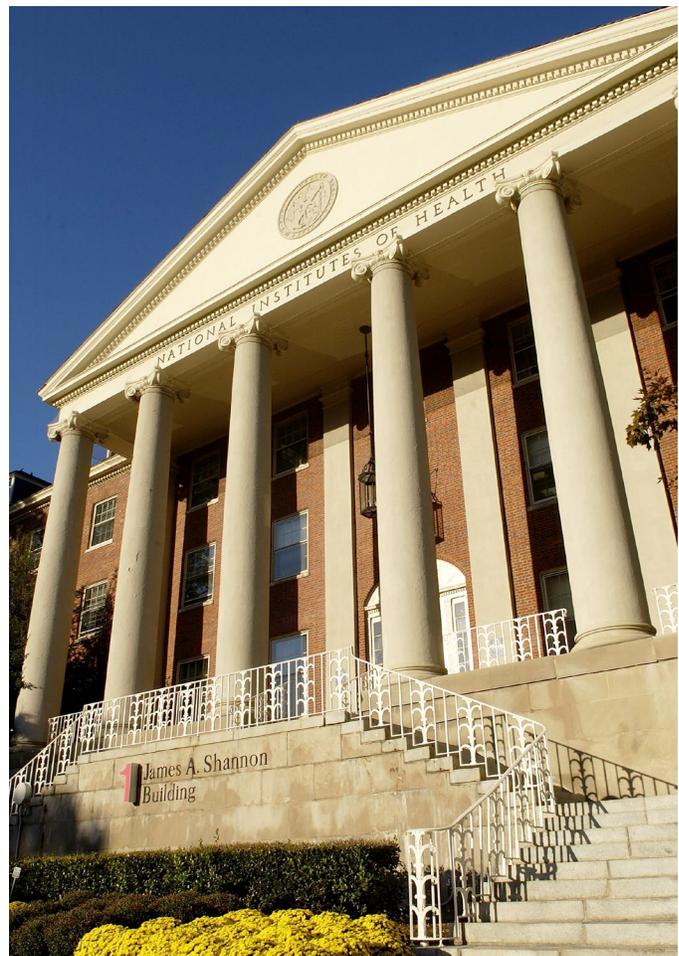


### ORGANIZATIONAL CONCERNS

#### Challenges of Change Management

Employees in the midst of organizational change sometimes report unclear objectives, roles, and expectations. These concerns add work stressors that can impact patient care, lab safety, and the ability to make sound decisions. **Employees** often express complaints about vague and confusing communication and about the failure of leadership to set clear expectations about the change process. Conversely, **leadership** sometimes report employee resistance to changes that seek to improve accountability and performance. These dynamics add to a decrease in organizational readiness for change intervention.

*“Our philosophy is that by helping prevent and manage conflict, and by fostering the sorts of working relationships that enable people to conduct better science, we can contribute to the ability of NIH to fulfill its mission.”*



NIH Building 1

**Unrecognized and unresolved conflict creates a host of consequences that are often overlooked but deeply experienced.**

The cost of conflict includes decreased productivity, lost time, lowered motivation, increased attrition, and depressed morale. Expenses directly related to addressing employee turnover and hiring, and the filing of grievances and complaints are other costs of conflict. Lost opportunities for the organization include impaired decision making that can sometimes create dangerous workplace situations and diminished achievement of program strategic goals.

We suggest the following as four possible strategies for reducing the cost of conflict and addressing systemic concerns at NIH, many of which have been initiated in 2018.

## 1. RAISE SYSTEMIC ISSUES TO LEADERS AND OTHER STAKEHOLDERS

The Office of the Ombudsman will meet as needed with senior leaders to strengthen working relationships and discuss systemic issues affecting their institutes. The Ombudsman also will meet periodically with subject matter expert stakeholders (such as OHR/Employee and Labor Relations, Civil, and the Office of Equity, Diversity and Inclusion) to further explore systemic issues identified by the Ombudsman as well as potential remedies.

## 2. COORDINATE MULTIDISCIPLINARY PROBLEM-SOLVING TEAMS

Multidisciplinary teams from across the Institutes/Centers and disciplines can work through specific entrenched problems. These coordinated teams, chartered with the support of senior NIH leadership, should have the expertise and knowledge to identify the perceived problems

from multiple perspectives, as well as generate a process for attempting resolution. For example, such teams could address the systemic issues of:

- reasonable accommodations;
- leadership effectiveness and skill building;
- performance appraisal fairness;
- tenure and promotion inequities related to gender and race; and
- harassment and bullying environments

We note that recent efforts and problem-solving teams have been created in 2018 to address issues pertaining to reasonable accommodations procedures, inequities related to gender and race, and harassment and bullying. We offer to participate in these teams and support efforts with EDI, Civil, and the NIH Anti-Harassment Committee to create needed change in these areas.

## 3. RE-IMAGINE LEADERSHIP SUPPORT, RESOURCES, AND ACCOUNTABILITY

### Leverage the FEVS

The Federal Employee Viewpoint Survey (FEVS) is increasingly seen as a valuable indicator of organizational health that can be used to initiate constructive group discussions. Results from the recent FEVS indicate both the importance of, and progress that NIH has made in, the Leadership, My Satisfaction, and My Supervisor sections. Overall, NIH reported improvement beyond government wide or HHS results, with positive changes of 4% in all three categories. We will continue to support results-driven activities in these areas and provide services that enhance NIH's "Best Practices for Implementation."

### Provide Leadership Resources

We suggest that leaders be provided a full spectrum of resources for performance improvement and change management, including access to needed information, and ongoing training. These elements for leadership performance are consistent with the Joint Commission accreditation process for healthy organizations. Our office can assist leaders in two ways: continuing our coaching role to empower employees and supervisors to engage routinely in performance conversations, and by retooling and reshaping leadership effectiveness training so that it will be embraced by investigators, trainees, and administrators alike.

### Enhance Leadership Accountability

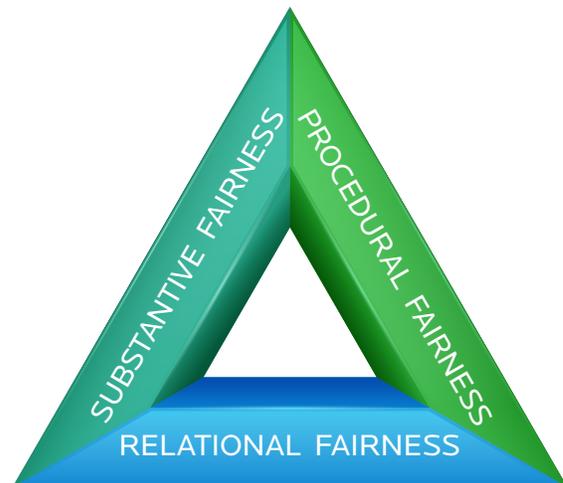
We also suggest expanding institutional accountability for all those in supervisory positions and by reinforcing these expectations in performance plans. One example would be to utilize periodic anonymous 360 degree evaluations of leadership that are tied to PMAPS and BSC reviews. We have initiated a partnership with the Training Center and other offices to develop a series of educational trainings or workshops that include a range of management skills (e.g., mentoring and coaching, effective listening, intercultural communication, giving and receiving feedback, etc.), as well as technical and interpersonal leadership skills needed in intramural or extramural environments.

The introduction of the new online performance appraisal (ePMAP) system reinforces the requirement of regular meetings between all supervisors and employees at defined intervals throughout the evaluation cycle including establishment of the performance plan, mid-year, and close-out discussions. We are encouraged by the transparency and accountability promoted by the ePMAP

system and will continue to offer more informal resources for supervisors and employees to engage in meaningful conversations regarding performance.

## 4. INSTITUTIONALIZING FAIRNESS

People want a fair and responsive workplace. The fact that many visitors raise this concern implies that fair treatment, processes, and outcomes are expected at NIH. This idea is captured in the Fairness Triangle, developed by Ombudsman Saskatchewan, which describes the three dimensions of fairness that people need to function at their best: a) **Relational Fairness** – listening openly, respecting confidentiality, honesty, and providing information; b) **Procedural Fairness** – ensuring that decision-making is based on sufficient information, provides an opportunity to be heard in a fair and impartial forum, and is reached within a reasonable time along with the rationale for the decision; and c) **Substantive Fairness** – ensuring that decisions are based on relevant facts and law, are reasonable, and are not unjust, arbitrary, or discriminatory. Perceptions that policies, practices, or norms are not relationally, procedurally, or substantively fair motivate many individuals to visit our office.



**The Fairness Triangle**

# Conclusion

*“Every conflict we face in life is rich with positive and negative potential. It can be a source of inspiration, enlightenment, learning, transformation, and growth - or rage, fear, shame, entrapment, and resistance. The choice is not up to our opponents, but to us, and our willingness to face and work through them.”*

*-Kenneth Cloke*

NIH is a place of discovery, where scientists, administrators, administrative support staff, and contractors work together to advance the NIH mission. All of these individuals come from different countries and cultures, making NIH a microcosm of the world. We are also a community that has a demonstrated capacity for change and progress. We have confidence in our collective ability to work through conflict and challenges to create a community at NIH where each of us, and the science we support, can flourish. It is our mission in the Office of the Ombudsman to foster collaborative processes to support NIH in these efforts.

For more information about the NIH Office of the Ombudsman, Center for Cooperative Resolution and how we can support your work, see our website at **[ombudsman.nih.gov](http://ombudsman.nih.gov)**.

## **We welcome you to contact us at any time to:**

- Raise a workplace conflict concern involving yourself or others
- Consult with us about questions involving your team
- Refer a colleague to us
- Discuss or schedule a presentation about the Office of the Ombudsman
- Discuss or schedule a training on a conflict-related topic

## **For a confidential conversation, you may reach out to our office in any of the following ways:**

- **Email:** [ombudsman@nih.gov](mailto:ombudsman@nih.gov)
- **Website:** [www.ombudsman.nih.gov](http://www.ombudsman.nih.gov)
- **Phone:** (301) 594-7231
- **Walk-In:** NIH Main Campus, Building 31, Room 2B63, between 8:30 am – 5:00 pm



NIH Building 31: Office of the Ombudsman location

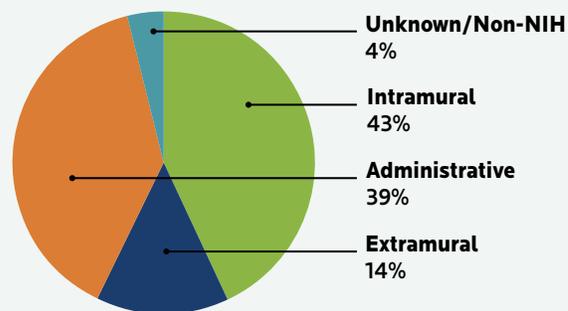
# Appendix A: Case Totals & Program Area

## Individual Case Totals

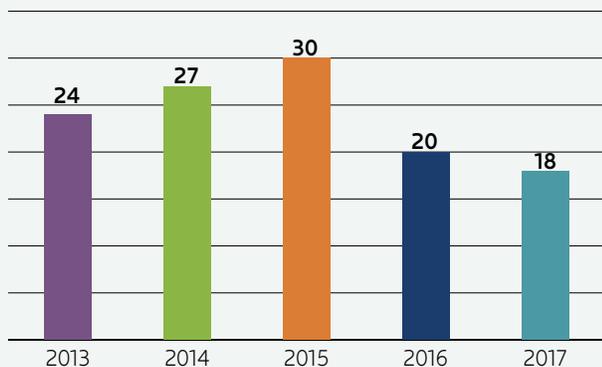


## Program Area

Individual Cases, 5 Year Average

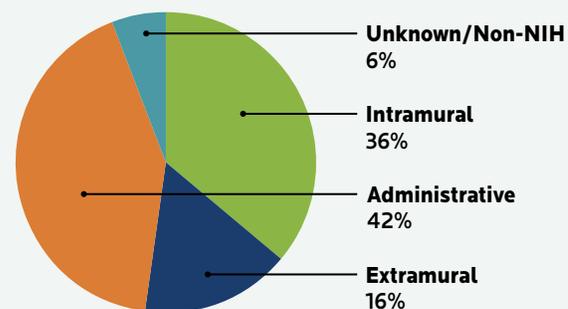


## Group Case Totals

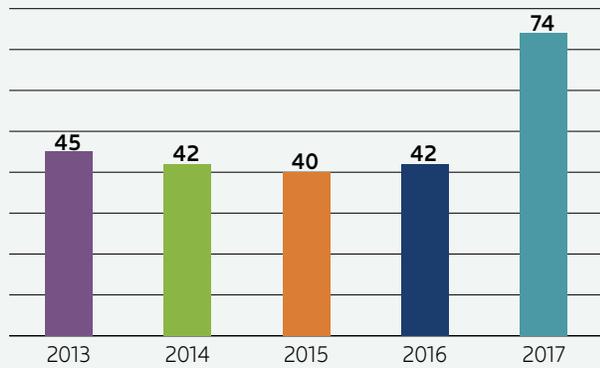


## Program Area

Group Cases, 5 Year Average

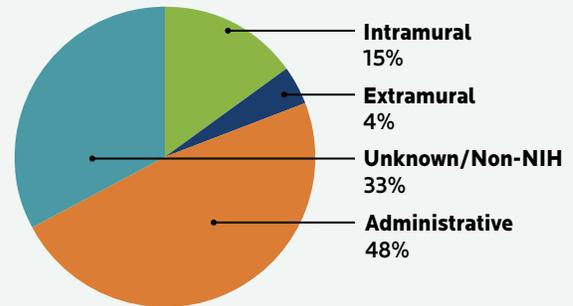


### Workshop & Presentation Case Totals

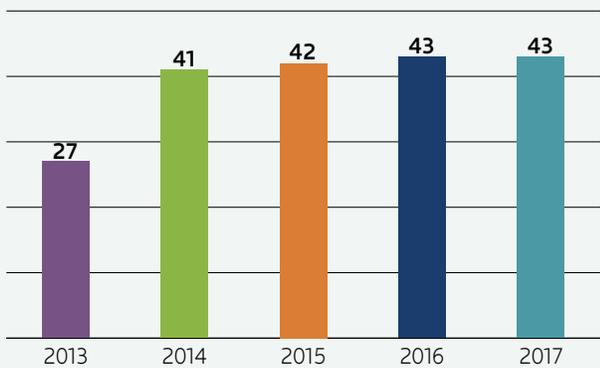


### Program Area

Workshop & Presentations, 5 Year Average

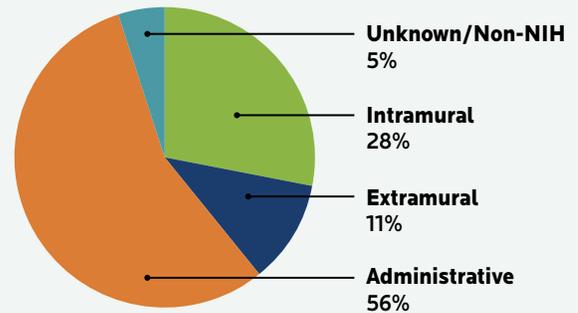


### EEO Mediation Case Totals

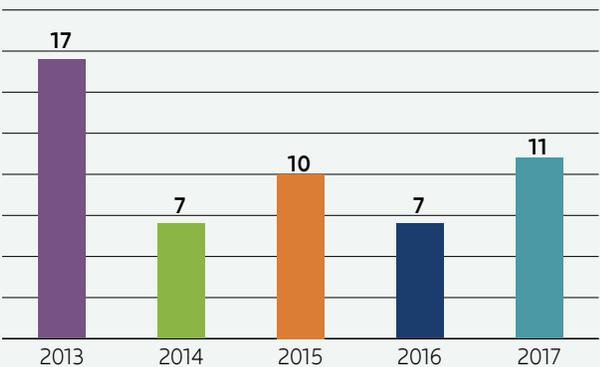


### Program Area

EEO Mediation Cases, 5 Year Average

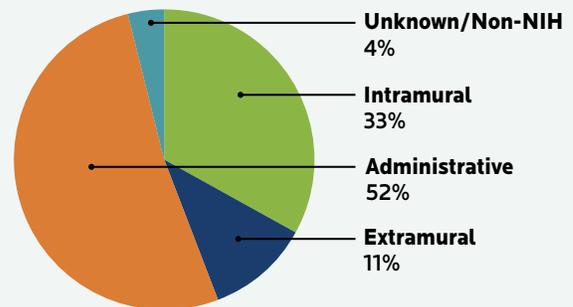


### PRP Mediation Case Totals



### Program Area

PRP Cases, 5 Year Average



# Appendix B: Visitor Roles & Information

## VISITOR ROLES

Visitors who initiate contact with our office represent the spectrum of NIH’s program areas, occupying many positions within the different NIH institutes. We have grouped these job positions and organizational roles into broad categories to preserve confidentiality and provide a longitudinal overview of visitor usage of our office. Specifically, we have grouped these initiating visitors into the following categories:

### Administrative Employees

includes non-supervisory employees whose job description directly supports the administrative program; it includes administrative assistants, budget staff, counselors, administrative officers, human resources staff, management and program analysts, etc.

### Other

includes roles not readily categorized into one of the existing categories; possible examples might include special volunteers

### Fellows/Trainees

includes post-doctoral and post-baccalaureate students, paid interns, etc.

### Program Employees

includes employees with responsibility for guiding or evaluating an administrative or scientific program, e.g. SROs, program managers, etc.

### Administrative Supervisors

includes supervisory employees whose job descriptions support the administrative program; it includes those who supervise administrative employees

### Investigators

includes senior and adjunct tenured scientists

### Clinical Supervisors and Staff

includes all clinical supervisors and employees, including physicians, nurses, and advanced practice providers

### Senior Leaders

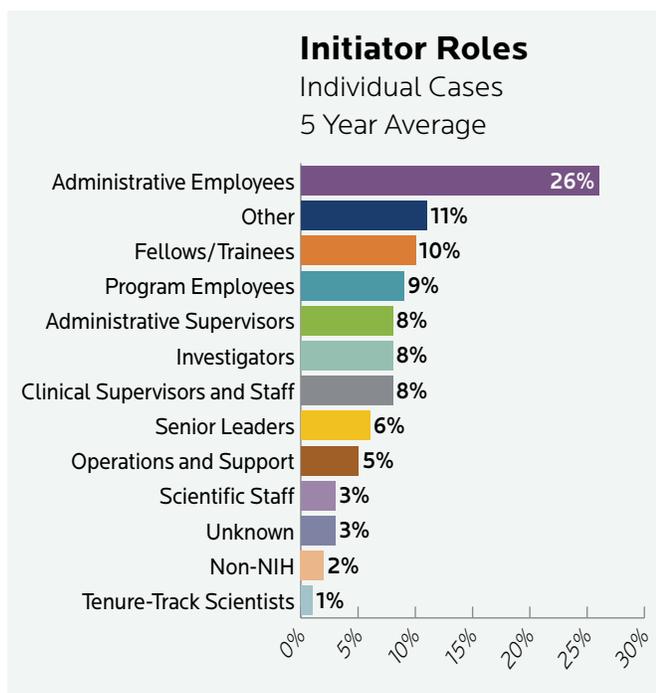
includes senior NIH executives and senior NIH and IC science executive personnel

### Operations and Support

includes facilities and operations staff

### Scientific Staff

includes staff scientists, biologists, scientific technicians, etc.



**Unknown**

often includes cases where there is incomplete information or the visitor is anonymous

**Non-NIH**

includes former employees, job applicants, non-NIH contractors, etc.

**Tenure-Track Scientists**

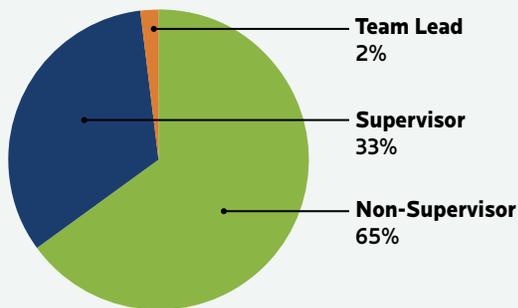
includes intramural scientists competing for permanent positions as tenured independent investigators

**OTHER INITIATOR INFORMATION**

Over the past five years approximately one-quarter of the individuals initiating individual cases have been administrative employees. At the same time, a large majority of these visitors have been upper-level GS employees. Sixty-five per cent of them, on average, have been non-supervisors, while 35% have been supervisors or team leads. Initiators come to our office without regard to their longevity; visitors range from new employees to those with over 20 years at NIH.

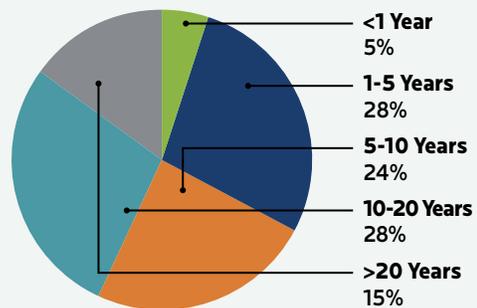
**Initiators' Supervisory Status**

Individual Cases, 5 Year Totals



**Initiators' Years at NIH**

Individual Cases, 5 Year Totals



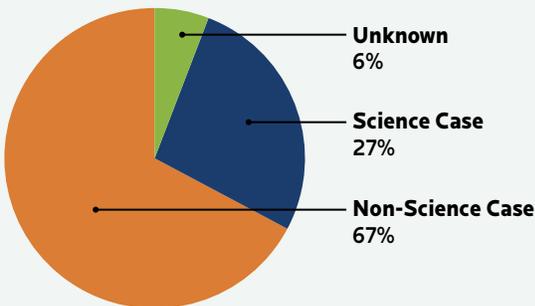
# Appendix C: Science Cases

## SCIENCE/NON-SCIENCE CASE RATIO

In addition to keeping track of visitors by program area, we make note of “science cases” – that is, where visitors’ concerns are focused expressly on the research and scientific work of the lab.

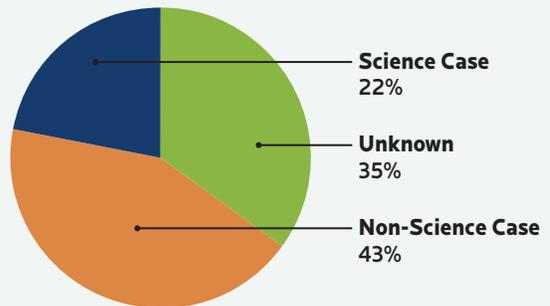
### Science/Non-Science Case Ratio

Individual Cases, 5 Year Average



### Science/Non-Science Case Ratio

Group Cases, 5 Year Average







National Institutes of Health  
*Office of the Ombudsman  
Center for Cooperative Resolution*

CONSULTING

PEOPLE

TRAINING

RESOLUTIONS

DATA

POLICY

MORE



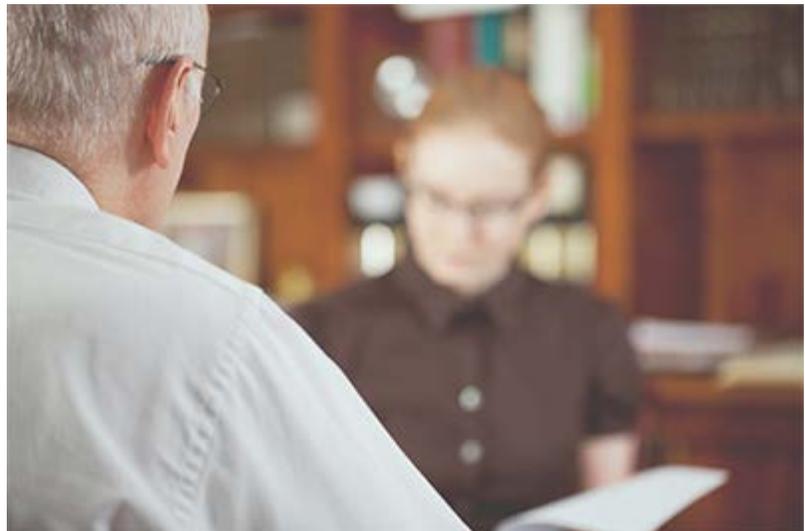
Unbiased counsel from conflict to resolution.

[File A Complaint](#) ▶

The filing of the Formal Complaint of Discrimination starts the second stage of the EEO Complaint Process. The EDI Formal Complaints Branch is responsible for processing all Formal Complaints of discrimination filed against the NIH in compliance with 29 C.F.R. §1614, EEOC Management Directive 110 and pertinent court decisions.

### Alternative Dispute Resolution (ADR)

Department of Health and Human Services' (HHS) policy, dictates that mediation is the form of Alternative Dispute Resolution (ADR) used to resolve Informal Complaints of Discrimination when shuttle diplomacy is not elected at the Informal stage. Mediation is a confidential process in which disputing parties meet and a neutral, impartial third party (mediator) who facilitates discussions to assist the parties in



reaching a mutually acceptable resolution. The parties sit at the table with one another and with the assistance of the neutral mediator, attempts are made to resolve the dispute. If you are interested in mediation at the formal stage, please contact your assigned EDI Specialist.

### How Do I File a Formal Complaint?

If a resolution is not achieved during the Informal stage, upon completion of the Informal stage an individual may file a written Formal Complaint of discrimination with EDI. The EDI Counselor will provide the individual a "Notice of Right to File a Discrimination Complaint." Formal Complaints must be filed within 15 calendar days from the date that individuals receive the Notice of Right to File a Discrimination Complaint. Formal Complaints should be filed with EDI. Once filed the individual filing the complaint is known as the Complainant.

## Formal Complaint Process Basics

Once EDI receives a Formal Complaint of Discrimination, the Specialist will review the allegations contained in the Complaint and apply the 12 bases for dismissal as contained in 29 C.F.R. § 1614. A determination will be made as to whether any of these 12 bases of dismissal should be applied. It should be noted that none of the 12 bases of dismissal pertain to the merits of the case, rather, they are jurisdictional in nature and the Specialist does not have the right to dismiss based on the lack of merit of any complaint. If, after the legal review, none of the claims can be accepted for investigation, the case will be dismissed and the Complainant will be issued appeal rights. If some or all of the claims are accepted for investigation then the Specialist will refer the case to the Department of Health and Human Services who will contract for an EEO investigation. Once a contract investigator is assigned they will reach out to the Complainant and to all of the third party witnesses and management witnesses to collect all documentary evidence, including affidavits. Once gathered this evidence will be compiled into a Report of Investigation (ROI) which serves as the evidence file in the case. Generally, the contract investigator has 180 days to complete the ROI (barring any extensions or amendments). Once the ROI is completed the Complainant will be provided with a copy and they will have the election between a hearing before an administrative judge of the U.S. Equal Employment Opportunity Commission (EEOC) or a Final Agency Decision (FAD) which is a written decision based on the ROI prepared by the Department of Health and Human Services.

## Individual Rights

**During the Formal Complaint stage, individuals have the following rights:**

- Right to a representative of his or her choice, as long as the identified representative does not create a conflict of interest or the appearance thereof. Representatives may be attorneys or non-attorneys.
- Right to a reasonable amount of official time to present the complaint and to respond to requests for information from sources, including HHS, NIH, or the Equal Employment Opportunity Commission (EEOC).
- Right to request to participate in the ADR process at any time during the formal complaint process before requesting a hearing or Final Agency Decision.
- Right to amend the original Formal Complaint at any time prior to the conclusion of the investigation to include issues or claims that are like and related to those alleged in the original complaint.
- Right to request a Final Agency Decision based on the investigative record or to request a hearing before an EEOC administrative judge.
- Right to file a motion with the EEOC administrative judge to amend the complaint at the

hearing stage.

- Right to appeal the outcome of the Final Agency Decision to the EEOC; or, in the case of a hearing the right to appeal the Agency's final order.
- Right to bypass the administrative EEO complaint processing under the Age Discrimination in Employment Act and pursue a civil action in an appropriate U.S. District Court after providing written notice to the EEOC at least 30 calendar days before filing a civil action.
- Right to bypass the administrative EEO complaint process under the Equal Pay Act to pursue a civil action in U.S. District Court.

## Individual Responsibilities

**To avoid any undue delay in processing the Formal Complaint, individuals have the following responsibilities:**

- Individuals must meet the required time frames at each stage of the Formal Complaint process.
- Individuals must provide a written explanation to the EDI Director of NIH EDI Office, if they fail to file the complaint within the required 15 calendar days of the alleged discriminatory occurrence.
- Individuals must cooperate with all EEO officials including EEO investigators.
- Individuals must provide a prompt response to requests for information.
- Individuals must keep EDI informed of their current address and telephone number; and, if they have a representative, individuals must provide EDI with the representative's current contact information

## Investigations

**Under 29 C.F.R. § 1614**, the Department of Health and Human Services (HHS) must complete the Report of Investigation of the accepted claim(s) within 180 calendar days from the date on which the individual complaint was filed. This time period may be extended by up to an additional 90 calendar days if a) the individual and the agency voluntarily agree, in writing, to an extension, or b) if a complaint has been amended. The Report of Investigation contains all of the documentary evidence and affidavits of the pertinent witnesses associated with the administrative EEO complaint. Investigations at NIH are conducted by contract Investigators through a contract held by HHS.

An individual may amend a formal complaint with issues or claims that are "like or related" to the original complaint prior to the conclusion of the investigation without the need for additional EEO counseling. The EDI Resolutions and Equity Division will acknowledge all amendments in writing. Regulations require that the investigation be completed by the 180th day after the filing date of the complaint, or the 180th day after the filing date of the last amendment to the original complaint, or the 360th day from the filing date of the original complaint, whichever is earlier.

## Right to Hearing or Final Agency Decision

Within 30 calendar days of receipt of the Report of Investigation, an individual may elect a hearing before an EEOC Administrative Judge, **or** a request a Final Agency Decision issued by the HHS EEO Director.

If the individual elects a hearing, an Administrative Judge will oversee discovery (or the gathering of facts from both parties), conduct a hearing, and issue a decision on the complaint. If a finding of discrimination is made, the Administrative Judge will order an appropriate remedy. The judge must complete this process within 180 calendar days of receipt of the complaint file from HHS. Within 40 calendar days of receipt of the Administrative Judge’s decision, HHS must take final action on the complaint by issuing a final order notifying the individual whether or not HHS will fully implement the Administrative Judge’s decision. The final order will also explain the individual’s appeal rights. If HHS does not issue a final order within the above stated time limit, the Administrative Judge’s decision will become the Final Agency Action of HHS.

If the individual requests a Final Agency Decision, the final decision shall consist of findings by HHS on the merits of each issue in the complaint or, as appropriate, the rationale for dismissing any claims in the complaint. If discrimination is found, the Final Agency Decision will also discuss appropriate remedies and relief in accordance with subpart E of Title 29 C.F.R. § 1614.

**The Final Agency Decision will contain the following:**

- Notice of the right to appeal HHS’ final decision to the EEOC’s Office of Federal Operations
- Right to file a civil action in the appropriate District Court
- Name of the proper defendant in any such lawsuit
- Applicable time limits for appeals and lawsuits



**Consulting**

Guidance  
Strategy  
Customer Outreach

**People**

Portfolios  
Change Agents  
Game Changers  
The Strategists  
Get Connected

**Training**

Courses  
The Cadre  
Contact Us

**Resolutions**

About  
Complaints  
Remedies  
The Specialists  
Resources

**Data**

About  
Resources  
Contact Us

**More**

The Office  
The Agency  
Social Media

[edi.nih.gov](http://edi.nih.gov)

No FEAR | Accessibility | Disclaimer | FOIA | Privacy Policy

**Download Adobe Reader**

**2013 Harassment Settlements**

Out of the 18 harassment settlements for 2013, 12 were settled with monetary benefits

Attorney's Fees	\$71,666.67
Lump Sum	\$5,000.00
Lump Sum	\$35,000.00
Attorney's Fees	\$71,666.67
Attorney's Fees	\$37,500.00
Attorney's Fees	\$2,000.00
Attorney's Fees	\$40,000.00
Attorney's Fees	\$71,666.67
Attorney's Fees	\$20,000.00
Attorney's Fees	\$6,000.00
Attorney's Fees	\$6,000.00
Lump Sum	\$15,000.00
<b>Grand Total for 2013</b>	<b>\$381,500.01</b>

**2014 Harassment Settlements**

Out of the 18 harassment settlements for 2014, 14 were settled with monetary benefits

Lump Sum	\$12,500.00
Lump Sum	\$12,500.00
Attorney's Fees	\$47,500.00
Lump Sum	\$12,500.00
Attorney's Fees	\$20,000.00
Lump Sum	\$12,500.00
Lump Sum	\$25,500.00
Attorney's Fees	\$6,000.00
Attorney's Fees	\$12,000.00
Lump Sum	\$6,000.00
Attorney's Fees	\$2,500.00
Attorney's Fees	\$9,905.15
Lump Sum	\$100,000.00
Lump Sum	\$124,459.00
Attorney's Fees	\$2,500.00
Attorney's Fees	\$2,500.00
<b>Grand Total for 2014</b>	<b>\$408,864.15</b>

**2015 Harassment Settlements**

Out of the 20 harassment settlements for 2015, 17 were settled with monetary benefits

Lump Sum	\$2,950.00
Attorney's Fees	\$20,000.00
Attorney's Fees	\$12,500.00
Lump Sum	\$2,500.00
Attorney's Fees	\$23,000.00
Lump Sum	\$125,000.00
Attorney's Fees	\$18,720.00
Backpay	\$8,900.00
Lump Sum	\$2,914.90
Attorney's Fees	\$10,000.00
Attorney's Fees	\$2,500.00
Lump Sum	\$1,000.00
Lump Sum	\$10,000.00
Lump Sum	\$5,700.00
Lump Sum	\$24,999.00
Attorney's Fees	\$10,000.00
Backpay	\$47,488.55
Lump Sum	\$8,000.00
Attorney's Fees	\$5,000.00
Lump Sum	\$8,994.41
Attorney's Fees	\$5,000.00
<b>Grand Total for 2015</b>	<b>\$355,166.86</b>

2016 Harassment Settlements

Out of the 20 harassment settlements for 2016, 20 were settled with monetary benefits

Lump Sum	\$8,722.45
Attorney's Fees	\$38,500.00
Attorney's Fees	\$29,500.00
Attorney's Fees	\$1,600.00
Attorney's Fees	\$5,292.67
Lump Sum	\$4,707.33
Lump Sum	\$8,000.00
Attorney's Fees	\$14,500.00
Attorney's Fees	\$10,000.00
Attorney's Fees	\$4,500.00
Attorney's Fees	\$40,000.00
Lump Sum	\$53,333.00
Lump Sum	\$24,999.00
Attorney's Fees	\$40,000.00
Lump Sum	\$108,013.00
Lump Sum	\$18,000.00
Attorney's Fees	\$29,600.00
Lump Sum	\$80,000.00
Attorney's Fees	\$24,999.00
Attorney's Fees	\$8,000.00
Lump Sum	\$5,000.00
Lump Sum	\$5,000.00
Attorney's Fees	\$11,000.00
Lump Sum	\$20,500.00
Grand Total for 2016	<b>\$593,766.45</b>

2017 Harassment Settlements

Out of the 15 harassment settlements for 2017, 10 were settled with monetary benefits

Attorney's Fees	\$105,000.00
Attorney's Fees	\$24,500.00
Lump Sum	\$10,000.00
Lump Sum	\$12,500.00
Lump Sum	\$7,221.80
Lump Sum	\$24,900.00
Lump Sum	\$10,000.00
Attorney's Fees	\$1,220.00
Lump Sum	\$11,000.00
Lump Sum	\$5,000.00
Lump Sum	\$3,000.00
Attorney's Fees	\$3,000.00
Grand Total for 2017	<b>\$217,341.80</b>

<b>Grand Total for 2013 - 2017 for harassment settlements</b>	<b>\$1,956,639.27</b>
---	-----------------------

## **Activities Related to Sexual Harassment in the NIH Workplace**

NIH Principal Deputy Director Dr. Lawrence A. Tabak has led an effort over the last year to bolster our systems and policies to identify, report, and address allegations of harassment, including sexual harassment. We have dedicated, and continue to dedicate, significant time and resources to foster a federal workplace free of harassment and related inappropriate conduct.

Dr. Tabak established an Anti-Harassment Steering Committee that consists of representatives from 14 different stakeholder groups, including the Women Scientist Advisors Committee, the Assembly of Scientists, the Scientific Workforce Diversity Office, the Office of Human Resources (OHR), the Office of Equity, Diversity, and Inclusion (EDI), as well as the NIH Deputy Directors for Management, Extramural Research, and Intramural Research. The participants of this group began working together in 2016 to oversee tangible process improvements. NIH established this as a permanent Steering Committee in January 2018. This Committee has:

- Expanded the existing NIH Civil Program to establish a centralized, independent office to consistently address allegations of harassment, manage related administrative inquiries, and track and report data, as appropriate.
- Finalized a policy restricting relationships between individuals where a power disparity exists (e.g., between lab chiefs and trainees) and began developing related policy implementation tools and training.
- Developed a comprehensive Prevention of Harassment and Inappropriate Conduct Policy, which provides straightforward guidance, clear definitions, procedures, and responsibilities for all applicable parties, that is scheduled to be implemented formally in September 2018.
- In August 2018, EDI spearheaded a month-long anti-retaliation awareness campaign.

To build upon these efforts, NIH is initiating the following activities this fall:

- The NIH Office of Human Resources Civil Program is launching a new Anti-Harassment communications campaign, which includes extensive outreach and visibility at campus entry points and other key locations on all NIH facilities across the United States.
- The Civil Program is launching new training modules to inform the NIH community of the new anti-harassment policy and tools. The Civil Program and EDI are updating the existing Prevention of Sexual Harassment (POSH) training to reflect the new policy and tools, and is proposing mandatory annual training rather than every two years.
- An agency-wide outreach and training effort will begin in the fall of 2018 and will continue throughout the rest of 2018. This training will provide information on preventing and responding to harassment and uncivil behavior by a variety of means,

including a more prominent web presence, role-based toolkits, and targeted outreach efforts for the intramural community, with a focus on trainees and fellows.

- To enforce the need for mandatory training, EDI is creating an active directory shutdown process for staff who do not complete the biennial NoFEAR and POSH training. Scheduled for implementation in January 2019, this system will disable staff from accessing their computer accounts until they have successfully completed the training.

Additional initiatives that are underway include:

- Implementing new tools for reporting allegations of harassment: a web-based intake form and a staffed, independent phone hotline for those within and outside the NIH community to report concerns and learn more about all available resources. Both the web-based form and the hotline will provide callers with the option to remain anonymous and will be formally launched in the fall of 2018.
- A workforce environmental survey to be distributed in spring 2019 using a validated instrument that has been developed by leading experts in sexual harassment and survey methodology led by Dr. Hannah Valentine, NIH Chief Officer for Scientific Workforce Development. It will be confidential and scientifically designed to assess the prevalence and severity of sexual harassment and its impacts.