



Equal Employment Opportunity (EEO) Policy and Procedures

Purpose:

The OIG is fully committed to EEO without regard to ***race, color, religion, sex, national origin, age, sexual orientation, parental status, protected genetic information, or mental/physical disability***. In addition, employees who participate in the EEO process or oppose discriminatory practices will be protected from retaliation for such activity.

Federal EEO Laws:

The Federal laws prohibiting job discrimination are:

[Title VII of the Civil Rights Act of 1964](#) (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;

[Equal Pay Act of 1963](#) (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;

[Age Discrimination in Employment Act of 1967](#) (ADEA), which protects individuals who are 40 years of age or older;

[Title I and Title V of the Americans with Disabilities Act of 1990](#) (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;

[Sections 501 and 505 of the Rehabilitation Act of 1973](#), which prohibit discrimination against qualified individuals with disabilities who work in the federal government; and

[Civil Rights Act of 1991](#), which, among other things, provides monetary damages in cases of intentional employment discrimination.¹

Executive Orders Prohibiting Discrimination:

Executive Order (EO) 13087 –

Prohibits discrimination based on the basis of sexual orientation. This executive order prohibits discrimination and/or retaliation against an individual because of their actual and/or perceived sexual orientation.

Executive Order (EO) 13145 –

Prohibits discrimination based on protected genetic information. This executive order prohibits the use of information from genetic tests to be used against Federal Government employees and/or applicants for employment in any employment situation, or to classify employees (based on tests) in a manner that deprives them of advancement opportunities.

¹ Adapted from http://www.eeoc.gov/abouteeo/overview_laws.html.

Executive Order (EO) 13152 –

This executive order prohibits discrimination based on parental status. An individual who has a dependant they are responsible for under the age of 18 years or older, who is incapable of self-care due to a physical/mental disability. This executive order protects those who are biological, adoptive, foster and step parent.

What is Equal Employment Opportunity (EEO)?

Equal Employment Opportunity (EEO) is designed to provide avenues for equality of opportunity for all persons employed by the Federal Government. EEO provides protection and rights for all individuals in with Federal Government regardless of their race, color, religion, national origin, sex, age and/or mental/physical disability.

What are the goals and objectives of the OIG EEO Program?

- To eliminate barriers to equal employment opportunity for all employees and applicants for employment at OIG.
- To insure a discrimination-free workplace for all employees of OIG.
- To insure that all employees and applicants for employment are treated fairly and equitably.

What is illegal discrimination?

Illegal discrimination in the workplace occurs when actions or decisions are based on a person's race, color, sex, religion, national origin, age and/or disability and those action(s) have an adverse impact on the benefits or on the terms, conditions or privileges of employment.

What is retaliation/reprisal?

An employer may not fire, demote, harass or otherwise "retaliate" against an individual for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination. The same laws that prohibit discrimination based on race, color, sex, religion, national origin, age, and disability, as well as wage differences between men and women performing substantially equal work, also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding.

Retaliation occurs when an employer, employment agency, or labor organization takes an adverse action against a covered individual because he or she engaged in a protected activity.

- Adverse Action - action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding.
- Covered Individual - people who have *opposed unlawful practices, participated in proceedings, or requested accommodations* related to employment discrimination based on race, color, sex, religion, national origin, age, or disability. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals.
- Protected Activity - Opposition to a practice believed to be unlawful discrimination, and/or participation in an employment discrimination proceeding.

What are the theories of discrimination?

There are four (4) theories of discrimination that we will discuss. They are:

- Disparate Treatment

- Disparate Impact
- Denial of Reasonable Accommodation
 - Religion
 - Disability
- Sexual and Non Sexual Harassment

Disparate Treatment -

Disparate Treatment is unfavorable or unfair treatment of a person in comparison to others similarly situated because of that person's protected status. This generally involves the inconsistent or unfair application of an employment rule, policy, or practice against a specific individual. This treatment also is referred to as "unequal" or "differential treatment."

Disparate Impact -

Disparate Impact is uniform application to all applicants or employees of certain personnel policies that have the effect of denying employment or advancement to members of protected classes. Business necessity would be the only justification for continuing these policies. This treatment also is referred to as "discrimination by effect" or "adverse impact."

Accommodation -

- Disability - Agencies are required to provide reasonable accommodations to qualified individuals with disabilities provided it does not cause an undue hardship on the agency.
- Religion - Agencies are required to provide reasonable accommodations for sincerely held religious beliefs provided it does not create an undue hardship on the agency.

Harassment –

- Sexual Harassment - is a form of unlawful sex discrimination. *Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature* constitutes sexual harassment when:
 - Submission to such conduct is either an *explicit or implicit condition* of an individual's employment;
 - Submission to or rejection of such conduct is used as the *basis for employment decisions* affecting such an individual, or
 - Such conduct has the purpose or effect of *unreasonably interfering* with work performance or creating an **intimidating, hostile, or offensive** working environment.
- Non-Sexual Harassment - is typically cumulative in nature and can include intimidation, ridicule, insults, comments and the like. One offensive remark will seldom be illegal, but can become illegal if similar incidents are allowed to continue and are ongoing. When you add an individual's protected group (e.g.-race, color, sex, age, etc.) you now have discriminatory non sexual harassment.

How do I file a complaint of Discrimination?

Specific information regarding how a Federal employee files a charge of discrimination can be found at <http://www.eeoc.gov/federal/index.html>.

OIG policies and procedures are as follows:

Employees or applicants who believe that they have been discriminated against by a federal agency have the right to file a complaint with that agency. The first step is to contact an agency EEO Counselor at the agency **within 45 days** (calendar) of the discriminatory action. The individual may choose to participate in either counseling or in Alternative Dispute Resolution (ADR) when the agency offers ADR. Ordinarily, counseling must be completed within 30 days and ADR within 90 days. At the end of counseling, or if ADR is unsuccessful, the individual may then file a formal complaint of discrimination with the agency.

If an OIG employee feels they have been discriminated against they are to contact the EEO Manager, [Ray Campbell](#), 202.927.5023, who will then notify an EEO Counselor. The EEO Counselor will then contact the complainant and start the counseling process.

The Informal (Pre-Complaint) Process

The agency EEO Counselor's role is as follows:

Where an aggrieved person seeks EEO counseling, the Counselor must ensure that the complainant understands his/her rights and responsibilities in the EEO process, including the option to elect ADR. The EEO Counselor must perform several tasks in **all** cases, regardless of whether the individual ultimately elects the ADR option, including:

1. Advise the aggrieved person about the **EEO complaint process** under 29 C.F.R. Part 1614. The EEO counselor should explain the agency **ADR program**, indicating either that the program is available to the aggrieved individual or that the EEO counselor will advise the individual whether the program will be made available. The EEO Counselor further should explain that if the ADR program is available, the aggrieved individual will have to exercise an election option, and decide whether to seek pre-complaint resolution through the ADR process or through the traditional EEO counseling process. In this regard, the EEO Counselor should inform the aggrieved individual about the differences between the two processes. (emphasis added)
2. Determine the **claim(s) and basis(es)** raised by the potential complaint. (emphasis added)
3. Conduct an **inquiry** during the initial interview with the aggrieved person for the purposes of determining jurisdictional questions. (emphasis added)
4. **Seek a resolution of the dispute at the lowest possible level**, unless the aggrieved person elects to participate in the agency's ADR program where the agency agrees to offer ADR in a particular case. If the dispute is resolved in counseling, the EEO Counselor must document the resolution. (emphasis added)
5. **Advise** the aggrieved person of his/her **right to file a formal discrimination complaint** if attempts to resolve the dispute through EEO counseling or ADR fail to resolve the dispute. (emphasis added)
6. **Prepare a report** sufficient to document that the EEO Counselor undertook the required counseling actions and to resolve any jurisdictional questions that arise. (emphasis added) When a complaint is filed, the EEO counselor must submit a

written report to the agency's EEO office concerning the issues discussed and the actions taken during counseling. 29 C.F.R. Section 1614.105(c).

7. Counseling must be completed within 30 days of the date the aggrieved person contacted the agency's EEO office to request counseling. If the matter is not resolved in that time period, the counselor must inform the individual in writing of the right to file a discrimination complaint. This notice ("Notice of Final Interview") must inform the individual that a complaint must be filed within 15 days of receipt of the notice, identify the agency official with whom the complaint must be filed, and of the individual's duty to inform the agency if he or she is represented. 29 C.F.R. Section 1614.105(d). The 30-day counseling period may be extended for an additional 60 days: (1) where the individual agrees to such extension in writing; or (2) where the aggrieved person chooses to participate in an ADR procedure. If the claim is not resolved before the 90th day, the Notice of Final Interview described above must be issued to the individual. 29 C.F.R. Section 1614.105(e), (f).²

If the EEO counseling does not assist in resolving the complaint of discrimination, the EEO Counselor will issue the complainant his/her notice of right to file formal complaint of discrimination with the Treasury Complaint Mega Center (TCMC) in Dallas Texas.

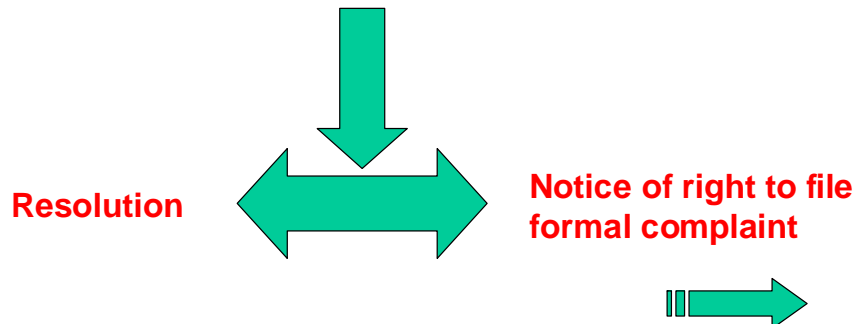


EEO Informal (Counseling) Complaint Process



EEO Counselor has 30-Days* to attempt to resolve the complaint informally.

**Attempts at mediation can extend an additional 60-days (90 days total)*



-26-

² Adapted from <http://www.eeoc.gov/federal/md110/chapter2.html>

The Formal Complaint Process

The complainant must file his/her complaint with the TCMC within 15-Calendar days after receiving the Notice of Right to File. Once the notice is received by the TCMC they will determine acceptance/dismissal of the complaint, notify the complainant of the decision to accept or dismiss and assign accepted complaints to an available EEO Investigator.

The role of the EEO Investigator is to conduct an unbiased investigation³ of the raised complaint as received during the EEO Counseling process. Investigations are conducted by the respondent agency. The agency must develop an impartial and appropriate factual record upon which to make findings on the claims raised by the complaint. An appropriate factual record is defined in the regulations as one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. 29 C.F.R. Section 1614.108(b).

The EEO Investigator does not making findings on the merit of the complaint. They merely conduct inquiries and obtain documentation to allow a reasonable fact-finder to make a decision regarding the complaint as it stands.

“Investigations must be finished within **180 days**⁽⁸⁾ of filing a complaint or within the time period contained in an order from the Office of Federal Operations to investigate a complaint following an appeal from a dismissal, unless the EEO Officer or designee and the complainant agree in writing to an extension of not more than an additional **ninety (90) days**. Where a complaint has been amended or consolidated with another complaint, the investigation must be completed within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint. A complainant has the right to request a hearing, even in the case of consolidated complaints, after 180 days have passed since the filing of the original complaint, even if the agency's investigation has not been completed.”⁴

Once the investigation has been completed, the Report of Investigation (ROI) is provided to the agency and the complainant, both the agency and the complainant have 30-days to review the ROI and:

“Within the appropriate time frame for finishing an investigation under § 1614.108(e), and prior to issuance of the notice required by § 1614.108(f), agencies are encouraged to allow complainants and their designated representatives an opportunity to examine the investigative file and to notify the agency, in writing, of any perceived deficiencies in the investigation prior to transferring the case to the EEOC for a hearing or prior to issuing a final decision without a hearing. A copy of the complainant's notification to the agency of perceived deficiencies must be included in the investigative file together with a written description by the agency of the corrective action taken.

If the agency agrees with alleged deficiencies in the investigation as identified by the complainant, the agency must immediately correct them. If the investigation period has ended or is about to end, the agency should request agreement from the complainant to extend the investigation period for pursuant to § 1614.108(e). If the agency does not agree with the complainant's claimed deficiencies in the investigative file, the agency will prepare a statement explaining the rationale for the disagreement and include it in the investigative file along with the complainant's notice of claimed deficiencies.”⁵

³ Information can be found at <http://www.eeoc.gov/federal/md110/chapter6.html>

⁴ Information obtained from <http://www.eeoc.gov/federal/md110/chapter5.html>

⁵ Information obtained from Part XI of <http://www.eeoc.gov/federal/md110/chapter6.html>

The complainant can then request a Final Agency Decision (FAD) which would be drafted by the Treasury Office of Civil Rights and Diversity (OCRD), and provide a finding based on the merits of the complaint file. Requesting an FAD does not relinquish the rights to a hearing by an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ).

Should a complainant request an FAD, the OCRD must provide FAD within 60-days of receipt of the request.

The complainant does not have to request an FAD, and can also request a hearing by an EEOC AJ at this time as well. If a hearing is requested, the EEOC hearing process can take up to **180-days** to conduct the hearing.



EEO Formal Complaint Process

Receipt of Notice

15-days

File a formal complaint

Process allows for 180-days* to investigate complaint and issue an ROI (Report of Investigation)

**Up to 360 days for a consolidated/amended complaint*

Request Hearing before the EEOC (180 days or more)

30- Days

Directly to a final agency decision (FAD) (60-days)

Final decision explains appeal rights to EEOC and notice of right to file civil action.

-27-

Resolution Attempts – Alternative Dispute Resolution (ADR)

What is ADR?

ADR generally refers to a continuum of processes and approaches that are designed to resolve disputes in a manner which avoids the cost, delay, and unpredictability of more traditional adversarial and adjudicatory processes, such as, litigation, hearings, and appeals. Numerous types of ADR techniques exist, including mediation, facilitation, fact finding, early neutral evaluation, the use of an Ombudsman, settlement conferences, minitrials, and peer review. [Chapter 3 of the EEO Management Directive \(MD\)-110](#) provides a detailed description of each of these techniques.

ADR is a process in which a third party neutral assists the disputants in reaching an amicable resolution through the use of various techniques. ADR describes a variety of approaches to resolve conflict which avoid the cost, delay, and unpredictability of the traditional adjudicatory processes while at the same time improving workplace communication and morale.

Why is ADR beneficial?

Agencies and complainants have realized that utilizing ADR during the EEO process has many advantages. ADR offers the parties the opportunity for an early, informal resolution of disputes in a mutually-satisfactory fashion. Rather than receiving a decision from an unknown third party, such as an administrative judge, the parties have the opportunity to write their own agreement in a manner which satisfies both of their needs. Not only does ADR provide a Win-Win resolution for the parties, but it also usually costs less and uses fewer resources than traditional administrative or adjudicative processes. For example, complainants could avoid costly attorney's fees and the agency could minimize the use of investigators, legal staff, official time, and court reporter fees. Moreover, since the parties are using ADR during the earliest stages of the EEO process, a resolution will avoid numerous years of litigation in administrative and court proceedings. As a result, the complainant's working relationship can improve rather than deteriorate due to ongoing legal battles, and the overall employee morale can be enhanced when the agency is viewed as open-minded and cooperative in seeking to resolve EEO disputes.

How does the ADR process work?

The revised regulations do not require federal agencies to conduct ADR in every EEO case; rather, agencies have the discretion as to which EEO cases are offered ADR. Complainants may not file a new complaint based on the agency's refusal to offer ADR in their particular case.

If the agency offers ADR during the pre-complaint, or the informal, stage of the EEO process, the complainant may choose between participating in the ADR program or the traditional EEO counseling activities. Once the complainant elects to participate in the ADR program, all EEO counseling activities will end. It is also important to note that electing ADR increases the EEO pre-complaint processing period from 30 to 90 days. In the event that the matter concludes without resolution after 90 days, the agency will conduct a final interview, and issue a notice of right to file a formal complaint to the complainant.

If the complainant files a complaint, the agency may also choose to offer ADR during the formal complaint stage. The 180-day processing period for the formal complaint stage may be increased by an additional 90 days in order to conduct ADR, if the parties agree to do so in writing.

The revised regulations have established certain core principles which must be incorporated into every federal sector ADR program. The overriding requirement is that the ADR program is fair. Fairness requires voluntariness, neutrality, confidentiality, and enforceability.

1. Voluntariness means that the parties (in this context, the complainant and the agency) knowingly and willingly enter into an ADR proceeding and that they have the opportunity to end the proceeding at any time. In this regard, once the ADR proceeding ends, complainants may re-enter the traditional EEO complaint process in order to pursue their claim. Moreover, any agreements between the parties must have been reached without coercion or duress.
2. Neutrality means that the ADR proceeding is impartial and independent of control by either party. A neutral third party who assists the parties in reaching an agreement must not have any stake in the outcome of the proceeding.

3. Confidentiality of the ADR proceedings must be maintained by the parties and the neutral third party. This means that information concerning the underlying facts of an ADR proceeding and records generated as part of that proceeding may not be made part of the EEO complaint record. The Alternative Dispute Resolution Act of 1996, 5 U.S.C. § 574, provides that neutrals in ADR proceedings may not voluntarily disclose or be required to disclose dispute resolution communications, with certain statutory exceptions. For additional information regarding confidentiality, please consult with the guidance developed by the Department of Justice Interagency Alternative Dispute Resolution Working Group at <http://www.usdoj.gov/adr/>.
4. In order to have an enforceable settlement agreement, the agreement must be in writing and signed by both parties. The revised regulations at 29 C.F.R. 1614.504 set forth specific procedures by which the EEOC enforces all settlement agreements.⁶

If an OIG employee requests ADR during the informal/formal phase of a complaint, the OIG EEO Manager will contact representatives who are a neutral third-party to conduct the mediation and make attempts at resolution.

More information on Federal Sector ADR process can be found at:
<http://www.eeoc.gov/federal/adr/index.html>

Frequently Asked Questions (FAQ's)

- **What is the difference between discrimination and harassment?**
 - Discrimination, as used herein is a violation of applicable federal statutes and regulations prohibiting discrimination on the basis of race, color, sex, national origin, religion, disability, age and reprisal.
 - Harassment cases, except those involving “quid pro quo” sexual harassment, do not involve personnel actions. The focus in harassment cases is on the work environment itself and whether it is hostile, intimidating or abusive. This is in contrast to disparate treatment cases where the focus is on whether the employer has taken some personnel action because of the employee's protected status.
- **What is a hostile work environment?**
 - A “hostile work environment” is created when the workplace is permeated with discriminatory intimidation, ridicule, and/or insult that is sufficiently severe and pervasive as to alter the conditions of the victim's employment and create an abusive working environment.
- **Who is protected by discrimination laws?**
 - All individuals on the basis of their race, color, national origin, sex, age, religion and/or disability.
- **Can an individual allege discrimination on the basis of more than one protected group?**
 - **YES.** An individual can combine any or all of the bases in making an allegation of discrimination.

⁶ Information obtained from <http://www.eeoc.gov/federal/adr/facts.html>

- **What is the difference between race and color?**
 - Race and color are closely related bases, and are most often used together, i.e. “Black” or “White” designates both a race and a color. However, an individual can claim disparate treatment within the same racial group based solely on skin color and the level of complexion.

- **Can a male employee claim he is being discriminated against because of his sex?**
 - **YES.** The laws of discrimination protect all individuals. The protected group is based on sex, not necessarily being female.

- **Are employees allowed to express their religious beliefs in the workplace?**
 - **YES.** Personal religious expression is permitted any may not be restricted based on content or viewpoint. However, a manager may restrict religious expression to the same extent as other non-religious expression, such as limiting the time, place or manner of expression.

- **What is reasonable accommodation?**
 - When an employee demonstrated that he/she is a qualified individual with a disability, it is the agency’s obligation to provide “reasonable accommodation” unless the accommodation would create an undue burden on the agency.

- **Can an allegation of discrimination based on sexual orientation be processed through EEO channels?**
 - **YES.** Treasury has an abbreviated process for handling complaints of sexual orientation discrimination. It is processed through the EEO channels, but the individual does not have appeal rights to EEOC as it is not considered a “protected basis” in accordance with EEOC and current laws and statutes.
 - The Treasury Department rules of conduct prohibit discriminating against individuals based on their actual or perceived sexual orientation.

- **What are retaliation and reprisal?**
 - Retaliation and reprisal are used interchangeably. When a complainant alleges retaliation or reprisal, the complainant must show:
 - **(1)** that she/he engaged in prior protected activity;
 - **(2)** that the responsible management official knew of the activity;
 - **(3)** that he/she was subjected to an adverse employment action, and;
 - **(4)** that the adverse action followed the protected activity at such time or in such manner as to permit an inference of retaliatory motive.

Please feel free to contact [Ray Campbell](#), OIG EEO Manager, 202.927.5023 for more information concerning equal employment opportunity (EEO).