

THE EEO COMPLAINT PROCESS

INFORMAL/PRE-COMPLAINT STAGE

Employees and applicants who believe that they have been subjected to discrimination, also known as aggrieved persons, must contact the SIGTARP EEO Program Manager within **45 calendar days** of the alleged act of discrimination; within **45 calendar days** of the time when the complainant first became aware of the alleged act(s) of discrimination; or, if it is a personnel action, within **45 calendar days** of its effective date.

The EEO Program Manager may offer the aggrieved person the opportunity to participate in the traditional EEO counseling process or the Alternative Dispute Resolution (ADR) process.

EEO Counseling

A counselor will be assigned to conduct initial interviews to determine the **basis** for discrimination and the **issues** involved. The counselor serves as an independent and objective fact-finder and is not an advocate for employees, applicants, or management. The counselor's responsibility is to gather facts and make every effort to resolve disputes at the earliest possible stage.

Alternative Dispute Resolution (ADR)

ADR is a method used to resolve conflict. Mediation is SIGTARP's preferred method of ADR to resolve employment-related disputes. Mediation is facilitated by an impartial and neutral third party who has no decision-making authority. The objective is to assist parties in reaching an acceptable resolution of the issue(s) in dispute.

Participation in ADR is voluntary for an employee; however, the agency will determine on a case-by-case basis if mediation is appropriate. Although there are few circumstances in which the agency may decline to participate, ADR is not offered following in cases where there is no remedy:

- Non-selection
- Termination
- When sexual harassment is alleged
- When the aggrieved is an applicant

Participants in ADR proceedings include the employee, the responsible management official, the mediator, and the agency-designated resolution official. Disputing parties have the right to bring a representative, if they choose; however, the employee, not their representative, will be expected to speak on his/her own behalf.

Confidentiality is essential to the success of all ADR proceedings. Information obtained in ADR proceedings may not be used later by or against the employee.

When it becomes apparent that the allegations of discrimination cannot be resolved during the informal pre-complaint stage, a “Notice of Right to File” (NRTF) a formal complaint will be issued to the employee by the counselor or the mediator.

An employee’s rights during the informal pre-complaint process include:

- Right to representation: Employees may choose a person, including another SIGTARP employee, to represent them; however, a representative may not be selected where a conflict of interest would result, e.g. management or EEO officials.
- Confidentiality and anonymity (if requested) during the informal stage only.

Federal employees who have knowledge of the circumstance(s) or incident(s) causing the employee to file an EEO complaint must cooperate during all stages of the complaint process. This cooperation includes assisting counselors, mediators, and investigators. Likewise, if the employee fails to cooperate, his/her complaint may be dismissed. Other parties, including responsible management officials and witnesses, who do not cooperate may be disciplined for failing to assist in EEO proceedings. The following is a summary of the informal EEO complaint process.

Informal/Pre-complaint Process

- 45 days to contact EEO Office after the alleged incidence or occurrence
- EEO Counselor assigned or Alternative Dispute Resolution (ADR) offered
- If ADR is elected and,
 - Resolution achieved: Settlement Agreement Issued
 - Resolution not achieved: Notice of Right to File a Formal Complaint issued

THE FORMAL COMPLAINT STAGE

Submission of the NRTF terminates the informal/pre-complaint process. Employees and applicants who file a formal complaint, now referred to as the complainant, must file the formal complaint with the SIGTARP EEO Program Manager within 15 calendar days from the date the individual receives a notice of right to file a formal complaint. If the individual chooses to file a formal complaint, the EEO Program Manager will forward the complaint file in its entirety to the Treasury’s Complaint Mega Center (TCMC), operated by the Internal Revenue Service for formal processing of the complaint.

If the TCMC accepts the individual's formal complaint for investigation, an investigator will be assigned to collect all relevant information pertaining to the complaint. If portions of the complaint are dismissed, the individual will be provided, in writing, the reason(s) for dismissal and of their right to appeal the decision.

EEO INVESTIGATION

During a formal investigation, sworn testimony, in the form of an affidavit, is taken from all parties identified in the complaint. Parties named in the testimony may review and respond to those parts of the documents (the complaint and affidavits) in which they are mentioned. The investigator is a neutral third party. He/she does not represent the complainant or SIGTARP; his/her role is to gather facts and evidence.

The burden of proof is on the individual or the complainant, to show that he/she was subjected to discrimination because of his/her race, color, religion, sex (including sexual orientation, equal pay/compensation, and pregnancy), national origin, age (40 or older), disability (physical or mental), genetic information, or in retaliation/reprisal for opposing unlawful discrimination or participating in prior EEO activity.

Simply believing that the individual was discriminated against is not enough. The investigator will also ask SIGTARP management for its side of the story. The investigator will issue a consolidated report to SIGTARP and the complainant at the conclusion of the investigation.

The complainant is given an opportunity to elect to have their complaint heard by an Administrative Judge (AJ) appointed by the EEOC, or have a final agency decision rendered by the Treasury Office of Civil Rights and Diversity. If the complainant requests an agency decision, the applicable Treasury Secretary, or his/her representative will issue a decision based on any record that is before it.

The complainant has the option of accepting the agency decision, appeal the agency's decision to the EEOC's Office of Federal Operations (OFO) or file a civil action in a U.S. District Court. The decision will outline the complainant's appeal rights.

FINAL AGENCY DECISION

If the agency finds that the complainant has been subjected to discrimination, the Treasury Secretary will direct that actions be taken to eradicate the effects of the discrimination the employee has suffered. The agency will also order relief that is equitable and will serve to eliminate discrimination from the organization. If it is determined that the complainant was not subjected to discrimination, there will be no order of any corrective or remedial actions to be taken.

EEOC ADMINISTRATIVE HEARING

In a formal EEO complaint process, a complainant may request a hearing before an EEOC Administrative Judge (AJ). An AJ is a neutral full-time official of the EEOC who presides over hearings and listens to both sides of a complaint. The hearing conference may be conducted telephonically or conducted formally in a manner similar to a trial.

Management officials, the complainant, and others who have observed the dispute or have pertinent information may be called to testify as a witness. The presentation of SIGTARP's case is done by the agency's Chief Counsel. A complainant may present his/her own case and have a representative. However, unless it is decided that the individual has been discriminated against, the individual may have to pay the cost of their attorney's fees.

If the AJ determines that a hearing is not necessary, s/he will issue a decision based on the record before him/her. The AJ's decision will then be sent to TCMC where they will decide whether to accept the AJ's decision.

The AJ must make a recommended finding based on the evidence presented in the record. If the allegation of discrimination is found to be supported, the organization must then provide the remedy that makes the complainant whole. If the allegation is found to be unsupported, the complainant may appeal to the EEOC Office of Federal Operations or file suit in an appropriate U.S. District Court. The complainant may also appeal if dissatisfied with the remedy. Each decision will outline the complainant's appeal rights.

The goal of the complaint process is to resolve allegations of discrimination to the agreement of both the complainant and management. The following summarizes the formal EEO complaint process:

Formal Complaint Process

- Formal complaint must be filed within 15 calendar days of receipt the notice of right to file a formal complaint.
- If the complaint is dismissed, the complainant can appeal the dismissal to the EEOC
- If the complaint is accepted, an investigator is assigned to investigate the issue(s) given rise to the complaint
- Complainant receives a report of the investigation and has the option to:
 - Request Final Agency Decision (FAD) or,
 - Request an EEOC Hearing by an Administrative Judge

Resolution of a Discrimination Complaint may be reached at any time during the complaint process. If this occurs the resolution is summarized in a written confidential settlement agreement signed by all parties. The complaint is closed, and all further processing terminated.

For additional information on the EEO complaint process, contact the EEO Office at josui.watson@do.treas.gov or by phone: 202-622-4879.