



FREQUENTLY ASKED QUESTIONS (FAQs)

BY WITNESSES IN THE FORMAL
EEO COMPLAINT PROCESS





UNITED STATES DEPARTMENT OF THE TREASURY
OFFICE OF CIVIL RIGHTS & DIVERSITY



FREQUENTLY ASKED QUESTIONS (FAQs) BY WITNESSES IN THE FORMAL EEO COMPLAINT PROCESS

These FAQs provide general information to persons who are contacted regarding an equal employment opportunity (EEO) complaint. This information is intended solely to inform witnesses, management or other agency officials, and/or union representatives about the EEO process in general. It is not intended as legal advice. For further questions, contact your bureau EEO Officer or the Department of Treasury's Office of Civil Rights and Diversity (OCRD).

1 Who makes the determination as to whether to accept a Complainant's formal complaint?

All formal complaints of discrimination are filed with the Department of the Treasury. An EEO Specialist with the OCRD reviews the complaint and the Report of Counseling to identify the claims, issues, and bases of discrimination raised in the complaint. The Specialist then recommends whether the Director of the OCRD should accept the claims in the complaint or should dismiss part or all of the complaint for procedural reasons. Acceptance of a complaint is not based on an assessment of the merits of the claims.

Accepted claims are assigned thereafter to an EEO Investigator for the purpose of conducting an appropriate investigation.

I have been contacted by an EEO Investigator regarding an investigation of a formal EEO complaint (as a witness, management official or union representative). What is involved in the investigative process?

The EEO Investigator has the responsibility to prepare a thorough, impartial and appropriate factual record that will allow a fact finder to determine whether discrimination occurred. This record is called an “Investigative File” (IF) or sometimes a “Report of Investigation” (ROI).

The Department often uses contract Investigators; in such cases, the EEO Investigator will not have a Treasury or government email address. All Investigators will have an official authorization letter to investigate the EEO complaint; you may request to see this if you have concerns about responding to an email from a non-government account. You also may contact your bureau EEO Officer or the OCRD, who can transmit material on your behalf.

The evidence gathered by the EEO Investigator typically includes witness statements provided under penalty of perjury (also called “affidavits” or “declarations”) and documents and records such as policies and procedures. Depending on

what claims are made in the complaint, the EEO Investigator may gather applications for positions, interview notes, disciplinary documentation, time and attendance records, performance appraisals and comparative information that could demonstrate how other individuals were treated in comparison to the Complainant.

After the investigation has been completed, an Investigative File is assembled, which includes the witnesses' and Complainant's statements and documentary evidence as well as a summary of the information included in the IF. A copy of the IF is given to the Complainant and the Complainant's representative (if applicable). After receiving the IF, the Complainant generally has the option to request either an immediate final agency decision based on the IF or a hearing before an Administrative Judge (AJ) with the Equal Employment Opportunity Commission (EEOC).

I have been asked to provide testimony and/or documents regarding the claims raised in a formal EEO complaint. Why is my participation necessary? Do I have to cooperate with the investigation?

You have been asked to participate in the investigation of a formal EEO complaint because the EEO Investigator has reason to believe that you possess information relevant to the claim(s) of discrimination as alleged by the Complainant. You are required to cooperate with the Investigator.

Under the Department's Rules of Conduct, employees shall respond to questions truthfully and under oath when required, whether orally or in writing, and must provide documents and other materials concerning matters of official interest when directed to do so by competent Treasury authority. See 31 CFR Part 0.

29 CFR §1614.108(c) requires federal employees to produce such documentary and testimonial evidence as the Investigator deems necessary. That regulation also states that, absent good cause, a failure to respond fully and in a timely fashion could result in an adverse inference against the agency.

What this means is that if you do not cooperate with the investigation, the decision maker may assume that the testimony or documents that you failed to provide would have supported the Complainant's claim of discrimination; this assumption may result in a finding that the Complainant was the victim of discrimination and is entitled to relief.

4 In preparing my statement, may I compare notes or refresh my memory by discussing the questions with another witness?

If you feel it is necessary to refresh your memory, it would not be improper to discuss factual (and only factual) events with another witness, such as who else was present at a meeting or when an event occurred. You should not, however, reference the nature of your inquiry (i.e., to respond to an EEO complaint or EEO investigation) or review with another witness the specific questions posed by the Investigator or your answers to those questions. Generally, EEO matters are confidential and should not be discussed with any other witness or potential witness. Doing so may violate the Privacy Act, or result in a variety of adverse consequences to the agency. If you have questions or concerns, consult your bureau EEO Officer, OCRD, or agency counsel for guidance. Finally, your statement is *your*

statement, based on what you recall; therefore, your statement should reflect what you now recall rather than any reliance on what someone else may recall.

5 Is there any information that I should not identify or release?

You should not be asked for certain information, such as tax returns (i.e. IRS employees), bank sensitive information (i.e. OCC employees), social security numbers, classified information, or unnecessarily intrusive questions that are not relevant to the claims, etc. If you are or you are concerned about a particular request for information, you should contact your bureau EEO Officer or the OCRD.

6 Am I required to give my statement to anyone to review before I provide it to the Investigator?

The Department does not require that you give your statement to anyone to review before you provide it to the Investigator.

7 Who will have access to the information that I provide to the EEO Investigator?

After the investigation has been completed, any information that you provided (e.g., a declaration or documentary or comparative evidence) may be included in the Investigative File (IF), which the EEO Investigator submits to the Department's OCRD. The Complainant and his/her designated representative will receive a copy of the IF, as will the bureau EEO office. If the Complainant elects an administrative hearing before an EEOC Administrative Judge (AJ), the OCRD will submit a copy of the IF to the EEOC AJ and bureau legal counsel. If the Complainant appeals the final agency decision to the EEOC, the EEOC's Office of Federal Operations will be issued a copy. If the Complainant files a civil action in federal district court, the information contained in the IF may be used in that action.

8 Will I be contacted by the EEO Investigator more than once for information about the claims raised in the EEO complaint?

While it is the goal of the EEO Investigator to contact you as few times as possible for information, there is always the possibility that you will be contacted more than once. Situations which might

cause you to be contacted more than once include:

- The EEO Investigator did not understand your responses to the questions in the declaration and needs clarification, or your response indicated that additional questions should have been posed;
- You did not respond to each of the questions in the declaration and the EEO Investigator needs information to answer those questions;
- The Complainant amended his/her complaint with additional claims of discrimination after you submitted your declaration; or
- Information was provided by other witnesses which necessitates clarification or corroboration from you.

Although rare, you may be contacted for additional information if a final agency decision is elected and the Department's OCRD has determined that additional information is needed to make a legally sufficient decision on the complaint. In that event, you will either be contacted by an OCRD representative or by an EEO Specialist or Investigator.

While it may be frustrating to be contacted again, please remember that if you are a federal employee, it is your obligation to cooperate with the investigation (see Question 3 above).

9 Will I be notified when the investigation is complete? Can I review the Investigative File?

The Department's OCRD will not notify you that the investigation is complete, nor will it give you a copy of the IF, if your only role was as a witness, management or other agency official, or a union representative (who is not serving as the Complainant's representative).

10 Once the Complainant and the agency's EEO Office receive a copy of the Investigative File, what happens next?

After issuance of the Investigative File, the Complainant has the option to elect either:

- (1) to receive an immediate final agency decision based on the Investigative File. Final agency decisions are rendered by the Department's OCRD; or
- (2) to request a hearing before an Administrative Judge (AJ) with the Equal Employment Opportunity Commission (EEOC)* Any decision issued by the AJ will be reviewed by the OCRD, which will then issue a final agency order that either (a) implements the AJ decision or (b) declines to implement the AJ decision, in which case, the OCRD must simultaneously file

an appeal of the AJ decision with the EEOC's Office of Federal Operations.

If the Complainant disagrees with the final agency decision, he/she may appeal that decision to the EEOC's Office of Federal Operations or file suit in a federal district court. If the Complainant appeals to the EEOC, and is not satisfied with EEOC's decision on the appeal, he/she may then elect to file suit in a federal district court.

(* If the claim involves an action that is appealable to the Merit Systems Protection Board (MSPB), the Complainant has no right to request a hearing before the EEOC. Instead, the OCRD will issue a final agency decision with appeal rights to the MSPB.)

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If the Complainant elects a hearing before an EEOC Administrative Judge, will I receive notification or be contacted for additional information?

There is no requirement to notify you when the Complainant elects a hearing. However, if your testimony is needed in connection with the hearing, your bureau legal counsel will contact you and you might also be contacted by the Complainant or the Complainant's representative.

12**If the Complainant's representative contacts me, am I obligated to speak with him/her regarding the Complainant's claims?**

If you are a management official, you should not have any substantive conversation about the case with the Complainant or Complainant's representative without first discussing with bureau counsel. If you are not a management official and are contacted by the Complainant or the Complainant's representative, you are free to talk about the case with Complainant or Complainant's counsel if you wish, but you also can choose not to do so.

13**Can I be notified when an EEOC Administrative Judge issues a decision or when the OCRD issues the final agency decision (FAD)? Can I receive a copy of the decision?**

There is no requirement to notify management officials or other witnesses in the investigation when the EEOC Administrative Judge or the OCRD issues a decision. Neither the EEOC Administrative Judge nor the OCRD will provide you with a copy of the decision. Unlike decisions issued by EEOC's Office of Federal Operations or by the courts, decisions issued by EEOC Administrative Judges and FADs are not public documents.

14**Will I be notified if a complaint has been officially withdrawn, closed or settled?**

The OCRD will not notify you when a complaint is withdrawn or closed for other reasons. You will be aware of a settlement if you are involved in the settlement process, either as a participant in an alternative dispute resolution conference or in a grievance or other negotiation, as the Department's official signatory of a settlement agreement, or if you are responsible for executing an action specified in the settlement agreement. Again, to protect against any violation of the Privacy Act, or other adverse consequences, any information you obtain from this process should not be disclosed to others unless there is a "need to know" of such information.

15**How long will the investigative process take?**

Generally, an agency is required to complete the investigation within 180 days of filing of the complaint. Under certain circumstances the time allowed may be extended to 270 days or even to 360 days. In other circumstances, an investigation must be completed in 120 days.

**See note on Q10 pertaining to mixed cases.*

16 **If the Complainant elects an immediate final agency decision (FAD), how long will it take to issue the FAD?**

If the Complainant elects an immediate final agency decision without a hearing, the Department of the Treasury is required to issue the final agency decision within 60 days of receiving notice of the FAD election. See 29 CFR §1614.110. Only in unusual circumstances has the Department's OCRD taken longer than 60 days to issue the FAD.

17 **If the Complainant requests a hearing, how long will the hearing process take?**

The hearing process is under the control of the EEOC Administrative Judge (AJ). While EEOC regulations call for the process to be completed within 180 days of receipt of the hearing request, the Department has found that the time a complaint spends in the hearing process can vary greatly. It is not uncommon for the time to exceed 365 days.

Following the hearing, the Department has 40 days from receipt of the EEOC AJ's decision to issue a final order either implementing the EEOC AJ's decision or declining to implement the decision (in which case, the Department's OCRD must

simultaneously file an appeal of the AJ decision with the EEOC). If the Department fails to issue the final order within 40 days of receipt of the EEOC AJ's decision, the EEOC AJ's decision automatically becomes binding on the Department.

18 Why does the agency allow a Complainant to file multiple complaints?

Complainants have the right to file multiple complaints because federal law gives them that right. The EEO complaint process was designed to protect all federal employees and applicants from discriminatory practices. Federal employees or applicants for federal employment who believe that a federal agency has discriminated against them have a right to file a complaint and raise the matter for investigation and/or resolution.

Remember, as a federal employee, the law protects you from discrimination because of your race, color, religion, sex (including pregnancy and failure to conform to sex stereotypes/sexual orientation), national origin, age (40 or older), disability or protected genetic information. The law also protects you from retaliation if you oppose employment discrimination, file a complaint of discrimination, or participate in the EEO complaint process (even if

the complaint is not yours.) There are also federal laws and regulations and Executive Orders (which are not enforced by the EEOC but are enforced by other federal agencies) that have the full force and effect of law in the federal workplace that prohibit discrimination on other bases, such as parental status. (While there is an Executive Order prohibiting discrimination based on sexual orientation, the EEOC now accepts claims of sexual orientation as a claim of sex discrimination.)

When a federal employee has an open EEO case, rather than filing a new complaint, he/she may request to amend the open case to include the new claim(s) that are like or related to the original claim. A Complainant may make such a request at any point throughout the investigation of his/her complaint. A request for amendment may also be made to an EEOC Administrative Judge when a complaint is at hearing with the EEOC.

An agency may dismiss a complaint for abuse of process if it is determined that the Complainant is engaging in a clear pattern of misuse of the process for purposes other than those it was designed to accomplish. See 29 CFR §1614.107. However, such dismissals are very rare and must strictly follow the criteria established by the EEOC.

19**Should I be concerned about participating in the EEO process?**

As indicated above, the law protects you and the complainant from retaliation for participating in the EEO process. An employee must not be treated any differently or otherwise be retaliated against for participating in the EEO process, filing an EEO complaint, or opposing employment discrimination.

20**Whom should I contact if I have any questions about this process?**

If you have any questions about the EEO complaint process, please contact your bureau's EEO office or the Office of Civil Rights and Diversity at 202-622-1160.

