



RIGHTS AND RESPONSIBILITIES OF INDIVIDUALS IN THE EEO PROCESS

On August 5, 2015, EEOC's regulations governing the processing of complaints of employment discrimination by federal applicants and employees were revised. Your rights and responsibilities under the revised regulations are as follows:

1. **EEO Counseling.** If you believe that you have been discriminated against on the basis of race, color, age (40 or older), religion, sex (including pregnancy and sexual harassment), national origin, disability (physical or mental), or that you have been retaliated against for engaging in EEO activity, you must contact an Equal Employment Opportunity ("EEO") Counselor within forty-five (45) calendar days of the date of the alleged discriminatory incident, or of the date you learned of, or reasonably should have known of the alleged discriminatory event. If the discriminatory incident involves a personnel action, you must contact an EEO counselor within forty-five (45) calendar days of the effective date of the personnel action.

Anonymity. You have the right to remain anonymous during the informal EEO counseling process, unless you elect to participate in the Small Business Administration (SBA) Office of Diversity, Inclusion and Civil Rights (ODI&CR) Alternative Dispute Resolution (ADR) Program, or you waive the right to anonymity.

Representation. You have the right to representation throughout the complaint process, including at the EEO counseling stage. If you retain an attorney or any other person to represent you, you must provide written notification to the SBA, and to the Equal Employment Opportunity Commission ("EEOC"), if a formal complaint is also before the EEOC. (Designation of Representative form is attached for your use.) The EEO Counselor is not an advocate for either you or the agency, but acts strictly as a neutral in the EEO process.

Rights under the Privacy Act. Collection of this information is authorized by the Equal Employment Opportunity Act of 1972, 42 U.S.C. 2000e-16. This information will be used to determine the timeliness of filing and to investigate and reach a determination regarding a complaint of discrimination. Other uses may include utilization of data for statistical or analytical studies. This information may be disclosed to: (1) the Equal Employment Opportunity Commission when requested in the performance of its authorized duties; (2) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (3) the appropriate Federal, State, local agency or representative

charged with enforcing or implementing a statute, rule, regulation or order, when it appears there may have been a violation or potential violation of a civil or criminal law or regulation; (4) another Federal agency, or to a court or in an administrative proceeding being conducted by a subpoena; or, (5) an authorized appeal grievance examiner, formal complaints examiner, administrative judge, EEO investigator, arbitrator or the duly authorized official engaged in the investigation or settlement of a grievance, complaint or appeal filed by an employee.

You have the right to seek resolution of your claim(s) through either the EEO counseling process or the SBA ADR Program, but not both.

If you elect the EEO Counseling Procedure, the EEO Counselor has thirty (30) calendar days from the date of your initial contact with the ODI&CR to conduct an inquiry and attempt to resolve your claim(s). If your claim(s) is not resolved within thirty (30) calendar days from the date of initial contact with ODI&CR, you may elect to either continue or end EEO counseling. If EEO counseling is continued, then a written and signed agreement to extend counseling for up to an additional sixty (60) calendar days will be executed. If EEO counseling is terminated, then a Notice of Right to File a Formal Discrimination Complaint (“NRTF”) will be issued.

2. **Mediation.** If you are offered and elect to participate in the ODI&CR ADR Program during the informal Counseling stage of the EEO process, you must complete and sign the Agreement to Mediate and Extend EEO Counseling form. If this form is not completed and returned within five (5) calendar days from the date you receive it, your right to mediation will be deemed waived and your claim(s) will be processed through the EEO counseling procedure.

If you timely request mediation, but your claim(s) are not resolved through the ADR Program, the NRTF will be issued to you within ninety (90) calendar day of the date of your initial contact with EEO&CRC. The issuance of the NRTF does not preclude you from continuing to pursue resolution of your claim(s) through the ADR Program, or from filing a formal complaint through the administrative EEO complaint process.

3. **A Formal Complaint under the Administrative EEO Complaint Process.** If you file a formal complaint under the Administrative EEO Complaint Process, your complaint must be filed within 15 calendar days of receiving the NRTF from the EEO Counselor. The NRTF will provide specific instructions relating to the filing of a formal complaint.

After you file a formal complaint, and if the complaint is accepted, in whole or in part, the SBA will investigate your complaint. The investigation is to be completed within 180 calendar days from the filing date of your formal complaint, unless there is a written agreement to extend the investigation for not more than ninety (90) calendar days. When a formal complaint has been consolidated with one or more earlier complaints, the SBA is to complete the investigation within the earlier of 180 calendar days after the filing of the last complaint, or 360 calendar days after the filing of the first complaint.

Once the investigation of your complaint is completed, you have the right to participate in the ADR Program during the formal stage of the administrative EEO complaint process. If resolution is not reached, or you choose not to participate in the ADR Program, you may request a hearing before an EEOC Administrative Judge (except for a mixed case complaint), or request a Final Agency Decision without a hearing.

You also may request a hearing before an EEOC Administrative Judge (except in a mixed case complaint) 180 calendar days after you file your formal complaint, or within thirty (30) calendar days after you receive the completed report of the investigation, whichever comes first. When two or more formal complaints have been consolidated, you may request a hearing before an EEOC Administrative Judge at any time after 180 calendar days of the filing of the first formal complaint. To request a hearing, you must send your request to:

Equal Employment Opportunity Commission Hearings Unit	
District/Field Office Name:	
Address:	
City, State, ZIP Code:	
Fax number (if applicable):	

You also must send a copy of your hearing request to the SBA, and certify to the EEOC that a copy of the hearing request was sent to the SBA. Your correspondence to the SBA must be addressed to the following Agency Official:

Assistant Administrator
Office of Diversity, Inclusion and Civil Rights
U.S. Small Business Administration
409 Third Street S.W., Suite 6400
Washington, D.C. 20416

You also have the right to request a Final Agency Decision without a hearing, after the investigation has been completed.

If the complaint or any portion of the complaint is dismissed, the complainant will be provided, in writing, the reason(s) for the dismissal and informed of his/her administrative appeal and civil action rights.

4. **Mixed Cases.** You may be required to choose between the EEO complaint procedure and an appeal to the Merit Systems Protection Board (MSPB). Consult your EEO Counselor for clarification.

- (1) Two determinations must be made to decide if the mixed case regulations apply, i.e., (i) the employee must have standing to file such an appeal with the MSPB, and (ii) the matter which forms the basis of the discrimination complaint must be appealable to the MSPB.

(2) Standing. The following employees generally have a right to appeal to the MSPB and, therefore, to initiate a mixed case complaint or appeal:

- i. competitive service employees not serving a probationary or trial period under an initial appointment;
- ii. career appointees to the Senior Executive Service;
- iii. non-competitive service preference eligible employees with one or more years of current continuous service (e.g., postal employees and attorneys with veterans preference); and
- iv. non-preference eligible excepted service employees who have completed their probationary period or with two or more years of current continuous service (e.g., attorneys).

The following employees generally do not have a right to appeal to the MSPB:

- i. probationary employees (*but see* 5 C.F.R. § 315.806 under certain circumstances, discrimination based on party affiliation, marital status, procedural deficiencies),
- ii. non-appropriated fund activity employees, and
- iii. employees serving under a temporary appointment limited to one year or less.

(3) Appealable Matters. Most appealable matters fall into the following six categories:

- i. reduction in grade or removal for unacceptable performance;
- ii. removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service;
- iii. separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction in force;
- iv. reduction-in-force action affecting a career appointee in the Senior Executive Service;
- v. reconsideration decision sustaining a negative determination of competence for a general schedule employee; and
- vi. disqualification of an employee or applicant because of a suitability determination.

5. Age Discrimination Complaints. When age is alleged as a basis for discrimination, you have the right to file a civil lawsuit in U.S. District Court thirty (30) calendar days after you have filed a Notice of Intent to Sue with the agency, or you may file a formal EEO complaint under the administrative EEO Complaint process pursuant to 29 C.F.R. § 1614, but not both.

6. **Equal Pay Act Complaints.** When sex-based wage discrimination is alleged, you have the right to immediately file a civil lawsuit in U.S. District Court under the Equal Pay Act, or you may file an EEO complaint under the administrative EEO Complaint process. If you file an EEO complaint under the administrative EEO Complaint process, however, you must file a civil lawsuit in U.S. Federal District Court within two (2) years of the date of the alleged discriminatory act, or within three (3) years, if the alleged discriminatory act is intentional. If you do not file a lawsuit within those timeframes, you may lose your right to go to court.
7. **Class Complaints.** If you are seeking EEO counseling as a class agent or representative, you must inform the EEO counselor of this and clearly indicate that you intend to file a class complaint. As with individual EEO counseling, you must seek counseling within forty-five (45) days of the alleged discriminatory event, or within forty-five (45) calendar days of the date that you knew or reasonably should have known of the alleged discriminatory event or personnel action. If the complaint involves a personnel action, you must seek counseling within forty-five (45) calendar days of the effective date of the personnel action.

If EEO counseling of your class complaint is not completed within thirty (30) calendar days from the date of initial contact, the counseling period may be extended up to an additional sixty (60) calendar days. A class complaint must be signed by the class agent or class representative and must identify the policy or practice adversely affecting the class, as well as the specific action or policy affecting the class agent. Within thirty (30) days of the SBA's receipt of a class complaint, the SBA will designate an Agency Representative and forward the class complaint, with a copy of the EEO Counselor's Report and other relevant information, to the EEOC. The EEOC will certify or dismiss the class complaint. If the class complaint is dismissed, you have the right to file an individual formal EEO complaint.

8. **Civil Actions.** You have the right to file a civil lawsuit in U.S. District Court 180 calendar days after filing a formal complaint, or 180 calendar days after filing an administrative appeal with EEOC, if no final decision has been rendered by the SBA or EEOC – except for complaints filed under the Equal Pay Act (see Section 6 above), and complaints filed on the basis of sexual orientation or parental status.
9. **Your Responsibilities.** It is your duty to keep the SBA and the EEOC informed of your current mailing address and to serve copies of hearing requests and appeal papers on the SBA as indicated:

Assistant Administrator
Office of Diversity, Inclusion and Civil Rights
U.S. Small Business Administration
409 Third Street S.W., Suite 6400
Washington, D.C. 20416

It is your duty to mitigate damages. If you were an applicant for a position at the SBA who was not selected, or a former SBA employee whose employment was terminated, you must use your best efforts to obtain employment comparable to the position at the SBA that you sought, or that you lost.

Your rejection of an offer of resolution made by the SBA pursuant to 29 C.F.R. § 1614.109(c) may limit the amount of attorney's fees or costs that you can recover.¹

¹ Attorney's fees or costs are not recoverable for administrative complaints filed under the Age Discrimination in Employment Act and the Equal Pay Act.