


<p style="text-align: center;"><i>EQUAL EMPLOYMENT OPPORTUNITY PROGRAM</i></p>	<p style="text-align: center;">U.S. Access Board</p>	
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U.S. ACCESS BOARD EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCEDURES

Equal Employment Opportunity Program

Approval Date: October 13, 2022

Version: Version 2.0

1. INTRODUCTION

This is a reissuance of the Access Board’s Employment Discrimination Complaints directive, which was originally issued in April 1993 and subsequently revised in July 1997. These Procedures are being reissued to (1) conform with updated legal requirements for federal agencies’ respective equal employment opportunity (EEO) programs (including a provision relating to alternative dispute resolution), (2) ensure that the Procedures reflect current agency complaint-handling processes, and (3) modify the section numbering so that it is consistent with current formatting conventions for agency policies.

2. PURPOSE

This directive sets forth the Access Board's policies and procedures for processing complaints by agency employees, or applicants for employment, related to allegations of unlawful employment discrimination on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age, disability, genetic information (including family medical history), or reprisal for protected EEO activities.

3. AUTHORITIES

3.1. STATUTES

- Administrative Dispute Resolution Act of 1996, as amended (codified at [5 U.S.C. §§ 571 - 84](#)).
- Age Discrimination in Employment Act of 1967, § 2 et seq., as amended (codified at [29 U.S.C. § 621 et seq.](#)).
- Americans with Disabilities Act, Titles I & V, §§ 101 through 107, 501, 503, and 510 -- 512, as amended (codified at [42 U.S.C. §§ 12101 – 12117, 12201, 12203, & 12210 -- 12212](#)).
- Civil Rights Act of 1964, Title VII, § 701 et seq., as amended (codified at [42 U.S.C. § 2000e](#) et seq.).
- Genetic Information Nondiscrimination Act of 2008, Title II, §§ 201 – 213 (codified at [42 U.S.C. §§ 2000ff – 2000ff-11](#)).
- Notification and Federal Employee Anti-discrimination and Retaliation (NOFEAR) Act of 2002, § 1(a) (codified at [5 U.S.C. § 2301 note](#)).
- Rehabilitation Act of 1973, §§ 501 and 505, as amended (codified at [29 U.S.C. §§ 791, 794a](#)).

3.2. REGULATIONS AND GUIDANCE

- Federal Sector Equal Employment Opportunity, [29 C.F.R. Part 1614](#).
- Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, [29 C.F.R. Part 1630](#).
- U.S. Equal Employment Opportunity Commission, [EEO MD-110: Federal Sector Complaint Processing Manual](#) (Revision Date: Aug. 5, 2015).
- U.S. Equal Employment Opportunity Commission, [EEO MD-715: EEO Reporting Requirements for Federal Agencies](#) (Oct. 1, 2003)

3.3. ACCESS BOARD POLICIES

- U.S. Access Board, *Anti-Harassment Policy* (October 13, 2022)
- U.S. Access Board, *Disciplinary and Adverse Actions* (Revision: 1.1: July 26, 2018)

4. APPLICABILITY

This directive applies to applicants for employment with the Access Board, current Access Board employees, or former Access Board employees who believe they have been subjected to unlawful discrimination with respect to any term or condition of employment (e.g., hiring, compensation, denial of promotion, demotion, discipline, job assignments and duties). For purposes of this directive, unlawful discrimination consists of employment discrimination on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age, disability, genetic information (including family medical history), or reprisal for protected EEO activities. Throughout this policy, references to employees include current employees, as well as applicants and former employees.

5. POLICY

It is the policy of the Access Board to promote equal opportunity in employment for all persons and to prohibit discrimination in employment on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age, disability, genetic information (including family medical history), or reprisal for protected EEO activities. Complaints of unlawful discrimination shall be handled fairly and promptly in accordance with applicable legal requirements.

6. PROCEDURES

The Access Board's procedures for processing complaints of employment discrimination on the basis of race, color, religion, sex, national origin, age, disability, genetic information, or reprisal for protected EEO activities are set forth in this directive.

6.1. GENERAL

Complaints of employment discrimination in violation of the EEO Laws shall be processed in accordance with 29 C.F.R. Part 1614 and Equal Employment Opportunity Commission Management Directive 110 (EEO-MD-110).

6.2. EEO OFFICIALS

6.2.1. EEO Director

The Director of the Office of Technical and Information Services (OTIS) serves as EEO Director. However, if the complaint contains allegations against the OTIS Director, then the Executive Director will appoint a trained, neutral third party (i.e., contract with other federal agencies or private entities, or appoint a qualified Access Board employee) to provide this service.

6.2.2. EEO Counselor, EEO Officer, and EEO Investigator

The Access Board contracts with trained, neutral third parties (i.e., other federal agencies or private entities) to provide pre-complaint (informal) counseling and alternative dispute resolution, receive and process formal complaints, and furnish investigative services. References in this directive to EEO Counselors, EEO Officers, and EEO Investigators are personnel employed by, or under contract with, the Access Board.

6.3. MANDATORY PRE-COMPLAINT (INFORMAL) EEO COUNSELLING

6.3.1. Initiation of EEO Counselling

The EEO process begins when an individual claiming to have been aggrieved, contacts an EEO Counselor. The employee must consult with an EEO Counselor prior to filing a complaint, to try to informally resolve the matter. The aggrieved person must contact an EEO Counselor within 45 days of the date of the incident alleged to be discriminatory (or in the case of a personnel action, within 45 days of the effective date of the action), unless the time period is extended in accordance with 29 C.F.R. § 1614.105(a)(2). Contact can be effectuated by contacting a person in the agency logically connected to the EEO Process and exhibiting intent to file an EEO complaint. The Access Board has contracted with the United States Postal Service's (USPS) National EEO Investigative Services office to provide agency-wide EEO services. To initiate EEO counseling employees should contact Janine Lewis, EEO Services Analyst, janine.h.lewis@usps.gov or (813) 739-2028.

6.3.2. EEO Counseling Process

The EEO Counselor must provide counseling in accordance with 29 C.F.R. § 1614.105 and EEO-MD-110, which includes: (1) advising the employee about the EEO complaint process; (2) determining the claim(s) and base(s) raised by the employee; (3) conducting a limited inquiry during the initial interview with the employee to resolve jurisdictional questions; (4) seeking to resolve the employment dispute at the lowest possible level, unless the agency offers EEO ADR and the employee agrees to participate in the

EEO ADR program; (5) advising the employee of the right to file a formal complaint if the dispute is not resolved through EEO counseling or EEO ADR; (6) preparing an EEO counseling report; and (7) advising the employee that the employee's identity will not be revealed unless the employee authorizes such disclosure or a formal complaint is filed with the agency.

Absent extension, the EEO counseling period lasts 30 days. The EEO Counselor must conduct a final interview with the aggrieved employee within 30 days of the date on which the employee contacted the agency's EEO office to request counseling. Any agreement to extend the counseling period must be approved by both parties in writing and specify an additional period of no more than 60 days.

6.3.3. EEO Alternative Dispute Resolution (ADR) Program

At the initial counseling session, the EEO Counselor must inquire whether the employee is interested in participating in the Access Board's EEO ADR program. If so, then within a reasonable time, the Access Board will decide whether it will offer EEO ADR to the employee. The Access Board's EEO ADR process is administered by the neutral third-party contracted to provide EEO services. An employee who is offered EEO ADR must decide whether to proceed with the EEO ADR or with EEO Counseling. Once an employee elects EEO ADR, the EEO Counselor must complete the intake functions of counseling and refer the case to the EEO ADR process. Once the intake functions are complete, the EEO Counselor ceases involvement with the matter until the EEO ADR process is complete.

If the EEO ADR is successful, the EEO Counselor shall follow the process for informal resolution. (See section 6.3.5 below). If the EEO ADR is unsuccessful or the employee withdraws, the EEO Counselor must provide the employee with the final interview and Notice of Right to File a Formal Complaint. (See section 6.3.5 below). In addition, the EEO Counselor must prepare the EEO Counselor's Report and note that the parties attempted EEO ADR, but not reveal any other information about the EEO ADR process.

6.3.4. Conclusion of Counseling Period: Informal Resolution or Notice of Rights

When a dispute is informally resolved during the EEO counseling process or EEO ADR, the parties' agreement shall be reduced to writing. This written document must, at minimum, specify the agreed-upon terms, clearly identify the claims resolved, and be signed by both parties (i.e., Access Board and complainant). The EEO Counselor, with the knowledge and guidance of the agency's EEO Director, should set forth the agreed-upon terms of the parties' informal resolution in a settlement agreement transmitted to both parties. The EEO Counselor shall transmit a signed and dated copy of the settlement agreement to the EEO Director.

For any matter not informally resolved during the counseling period, the EEO Counselor must hold a final interview with the employee and issue a notice of the right to pursue the claim further through the formal complaint process. Unless the counseling has been extended by written agreement, the EEO Counselor must conduct the final interview and issue a "Notice of Right to File a Discrimination Complaint" within 30 days of the date the employee contacted an EEO Counselor or effectuated contact by contacting a person in the agency logically connected to the EEO Process and exhibiting intent to file an EEO complaint. When the counseling period has been extended, the EEO Counselor is required to take these

same actions prior to the expiration of the extended counseling period. If the parties are participating in EEO ADR, the final interview must be conducted, and Notice of Right to File a Discrimination Complaint must be provided, within 90 days of the date of contact with an EEO Counselor.

The Notice of Right to File a Discrimination Complaint must be in writing and must inform the complainant of: the right, within 15 days of receipt of the notice, to file a discrimination complaint; who to file the complaint with; the duty of an employee who retains counsel or a representative to inform the agency immediately; and the complainant's duty to inform the agency of a change of address during the pendency of the EEO process.

6.3.5. Confidentiality During EEO Counseling

The EEO Counselor must keep the identity of the aggrieved employee confidential unless the employee consents to disclosure or files a formal EEO complaint.

6.4. FORMAL DISCRIMINATION COMPLAINTS

6.4.1. Filing a Formal Complaint

An employee who elects to pursue a formal complaint of discrimination must file a written complaint specifying the claim(s) that were raised in the EEO counseling that the employee wishes to pursue. The complaint must be signed by the complainant or complainant's representative and must be filed with USPS National EEO Investigative Services within 15 calendar days of receiving the Notice of Right to File a Discrimination Complaint. Formal complaints may be filed by facsimile, email, hand delivery (during business hours), regular U.S. mail (confirmation services recommended), or other third-party commercial carrier (confirmation services recommended). The date of the postmark, facsimile, email, hand delivery, delivery to a third-party commercial carrier, or in-person delivery is considered the filing date, and must be within the 15-day regulatory timeframe.

6.4.2. Agency Acknowledgement of Receipt

Upon receipt of a formal complaint, USPS National EEO Investigative Services shall promptly prepare a written acknowledgment informing the employee of the filing date of the complaint and the EEOC office and its address where a request for hearing following an investigation (see Section 6.6 below) can be sent. (*Note: If the complaint was mailed, the filing date is the postmark date, not the date of receipt.*)

6.4.3. EEO Counselor's Report

After receiving notice that a formal complaint has been filed, the EEO Counselor is responsible for preparing a report that contains relevant information about, among other things, the aggrieved employee, jurisdiction, claims, bases, and requested remedy. The report should also state whether the employee attempted to resolve the matter through EEO counseling or EEO ADR. However, the report should not provide a summary of resolution attempts, nor offer an opinion as to whether discrimination occurred. EEO Counselors have 15 days from the date of the notice to prepare a counseling report and provide copies to both the EEO Director and the employee.

6.4.4. Agency Acceptance Letter

Within a reasonable time after receipt of the EEO Counselor's report, the Access Board (through USPS National EEO Investigative Services) shall send the complainant a second letter (acceptance letter) setting forth the discrimination claim(s) asserted and the claim(s) to be investigated. If some of the asserted claims will not be investigated, the acceptance letter must explain the reason, including whether the Access Board is dismissing a portion of the complaint. Since partial dismissals are not subject to immediate appeal, the letter should inform the complainant that once the investigation has been completed and the complainant has either requested a hearing before an EEOC Administrative Judge or an immediate agency decision pursuant to [section 6.5.4](#) below, the partial dismissal may be reviewed by the Administrative Judge (if a hearing has been requested) or by the EEOC on appeal of the final agency decision or action. For additional discussion of, or guidance on, partial dismissals, see 29 C.F.R. § 1614.107(b) and EEO-MD-110, Chapter 5, Section IV.

6.4.5. Provision of Other Information and Notice of Rights

The Access Board and/or EEO Investigator must provide the complainant with prompt, written notification of the complainant's rights, including the right to request a hearing following an investigation, appeal a final agency decision or action, and file a civil action. The notice must also describe the Access Board's obligations, including the obligation to investigate the complaint in a timely manner. The notice may be provided in the Acknowledgement Letter, Acceptance Letter, or at another juncture in the complaint process, so long as the provision of the information is timely. For additional information concerning advisements for complainants, see 29 C.F.R. § 1614.106(e) and EEO-MD-110, Chapter 5, Section II.

6.4.6. Dismissal of a Complaint

If an entire complaint is subject to dismissal for any of the reasons specified in 29 C.F.R. §§ 1614.107(a)(1) - (9), the Access Board shall notify the complainant in writing and advise the complainant of the right to appeal the dismissal to the EEOC within 30 days of receipt of the notice of dismissal. A complaint may be dismissed in its entirety where: (1) the complaint fails to state a claim or asserts the same claim that is pending before, or has already been decided by, the Access Board or the EEOC; (2) the complaint fails to comply with applicable time limits for complaint filing; (3) the complaint raises claims that are the subject of a pending civil action or that have already been decided by a court; (4) the complainant has decided to pursue the matter through either the negotiated grievance procedure or in an appeal to the Merit Systems Protection Board; (5) the complaint raises only matters that are moot; (6) the complainant cannot be located, despite reasonable efforts; (7) the complainant fails to cooperate in the EEO process (e.g., does not respond to the Access Board's written request for information); (8) the complaint alleges dissatisfaction with the processing of a previously filed complaint; or (9) there is a demonstrated pattern of misuse of the EEO process for a purpose other than the prevention or elimination of employment discrimination.

6.5. INVESTIGATION

6.5.1. Referral to EEO Investigator

Unless a complaint is dismissed in its entirety, the Access Board shall promptly refer the complaint to an EEO Investigator to conduct an investigation of all accepted claims.

6.5.2. Investigation Process

The EEO Investigator must develop a complete and impartial factual record upon which to make findings on the issues raised by the accepted claims in the complaint in accordance with 29 C.F.R. § 1614.108 and EEO-MD-110. The EEO Investigator is also required to prepare an investigative summary that states the issues and sets out the evidence on both sides of each issue in the case.

6.5.3. Investigation Timeframe

Absent written extension of the parties or complaint amendment, investigations must be completed within 180 days of the filing date of a complaint or, if applicable, within the time period contained in an order from EEOC's Office of Federal Operations on an appeal from a dismissal under 29 C.F.R. § 1614.107. The complainant and the Access Board may voluntarily extend the 180-day investigatory time period for no more than 90 days by written agreement. For amended complaints, timeframes for completion of investigations are set forth in 29 C.F.R. § 1614.108(f).

6.5.4. Provision of Investigation File and Notification of Complainant Rights

Upon completion of the investigation, the EEO Investigator shall provide the EEO Director with a copy of the investigative file and summary within 180 days of the filing of a complaint, unless the complaint has been amended or there has been a written agreement to extend the investigation period, in which case the time frames specified in 29 C.F.R. § 1614.108(f) apply. The EEO Director or USPS National EEO Investigative Services shall provide copies of the investigative file and summary to both the Access Board and complainant, along with notification to the complainant of the right to request a hearing before an Administrative Judge (as discussed in [section 6.6](#) below) or an immediate final decision from the agency (as discussed in [section 6.7](#) below).

6.6. HEARING BEFORE AN ADMINISTRATIVE JUDGE

6.6.1. Filing of Hearing Requests

The complainant must request a hearing before an Administrative Judge within 30 days of receiving the investigative file/summary and accompanying notification of rights, by submitting a written request to the EEOC office noted in the agency's acknowledgment letter. A complainant who does not receive these materials and notification within 180 days from the filing of the complaint may request a hearing at any time after the 180th day.

6.6.2. Appointment of Administrative Judge

When a complainant requests a hearing, the EEOC will appoint an Administrative Judge to conduct a hearing in accordance with 29 C.F.R. § 1614.109 and EEO-MD-110.

6.6.3. Hearing Decision

The Administrative Judge will issue findings of fact and conclusions of law on the merits of the complaint, and shall order appropriate relief Where discrimination is found, within 180 days of receipt of the complaint file from the Access Board, unless the Administrative Judge makes a written determination that good cause exists for extending the time. The Administrative Judge will provide the complainant and the Access Board with a copy of the hearing decision and record, including the transcript, in accordance with 29 C.F.R. § 1614.109(i).

6.6.4. Final Agency Action

Within 40 days of receiving an Administrative Judge's decision and hearing file (or 60 days for a decision a class complaint under 29 C.F.R. §1614.204(j)), the Access Board will take final action on the complaint by issuing a final order. The Access Board's final order must notify the complainant whether the agency will fully implement the Administrative Judge's decision and shall contain notice of the right to appeal the decision to the EEOC or to file a civil action in Federal district court and the other information required by 29 C.F.R. § 1614.110. If the Access Board's final order does not implement the Administrative Judge's decision in full, the Board must also simultaneously file an appeal in accordance with 29 C.F.R. § 1614.403.

6.6.5. Final Agency Action Authority

The Executive Director shall issue the final agency order, unless the complaint involves an action taken by the Executive Director, in which event the Access Board Chair or Vice-Chair shall issue the final agency order.

6.7. FINAL AGENCY DECISION WHEN HEARING IS NOT REQUESTED

6.7.1. Final Agency Action

The Access Board will issue a final decision, including appropriate relief where discrimination is found, within 60 days of any of the following events:

- The Access Board receives notice that the complainant requests an immediate final decision; or
- The 30-day period for the Complainant to reply to the notice providing the right to either request a hearing or an immediate final decision has ended, and the complainant has failed to respond. ([See section 6.5.4](#) above and 29 C.F.R. §1614.108(f)).

The Access Board's final decision shall consist of findings on the merits of each issue in the complaint, or the rationale for dismissing any of the claims from the complaint and, when discrimination is found, appropriate remedies and relief in accordance with Subpart E of 29 C.F.R §1614. The final decision shall

include a notice of the right to appeal the decision to the EEOC or to file a civil action in Federal district court, and the other information required by 29 C.F.R. § 1614.110.

6.7.2. Final Agency Action Authority

The Executive Director shall issue the final agency decision, unless the complaint involves an action taken by the Executive Director, in which event the Chair or Vice-Chair of the Board shall issue the final agency decision.

6.8. CLASS COMPLAINTS

Class complaints shall be processed in accordance with 29 C.F.R. § 1614.204.

6.9. MIXED CASE COMPLAINTS

The EEO Counselor and the EEO Director shall inform an employee who is the subject of an action that is appealable to the Merit Systems Protection Board (MSPB) and who has either orally or in writing raised the issue of discrimination during the processing of the action of the right to file either a mixed case complaint with the agency or a mixed case appeal with the MSPB. Mixed case complaints shall be processed in accordance with 29 C.F.R. § 1614.302.

6.10. NON-RETALIATION

The Access Board will not retaliate against any employee for asserting EEO rights. Asserting these EEO rights is called “protected activity” and can take many forms. For example, it is unlawful to retaliate against applicants or employees for:

- filing or being a witness in an EEO charge, complaint, investigation, or lawsuit;
- communicating with a supervisor about employment discrimination, including harassment;
- answering questions during an employer investigation of alleged harassment;
- refusing to follow orders that would result in discrimination;
- resisting sexual advances, or intervening to protect others;
- requesting accommodation of a disability or for a religious practice; and
- asking managers or co-workers about salary information to uncover potentially discriminatory wages.

6.11. REPRESENTATIVE

A complainant has the right to be accompanied, represented, and advised by a person of the complainant’s choice, unless the designated representative is an Access Board employee whose representational services would (a) pose a conflict of interest or position, or (b) unduly compromise agency priorities or interests. Representative designations must be made in writing and submitted to an Access Board EEO Officer. Absent unusual circumstances, employees must use the Access Board’s “Personal Representative Designation” form (USAB Form PER-02). Copies of this form are available on the USAB shared network, as well as from the Offices of Administration and General Counsel. This form contains all the needed information, authorizations, and signatures for representative designations.

Representatives, in any event, may only access case files and other privacy-protected information once appropriate written consent has been submitted by the employee.

6.12. OFFICIAL TIME

A Complainant and the complainant's personal representative (if an Access Board employee) who are in active-duty status, are entitled to request a reasonable amount of official time to prepare and participate in the EEO complaint process, including preparing the complaint, responding to requests for information, and preparing for meetings or hearings. Complainants and their representatives (if Access Board employees) must request official time in advance from their supervisors.

When reviewing requests for official time, supervisors should consider the nature and complexity of the complaint and the mission of the agency and need to have the employees perform their normal duties on a regular basis. The complainant and the supervisor should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time.

In addition to official time to prepare a case, the complainant and representative (if an Access Board employee), who are on active duty and in pay status, shall be on official time when their presence is authorized or required during the processing of a complaint.

Approval for official time for both preparation purposes and attendance at meetings and hearings for personal representatives that are Access Board employees, may be restricted to a certain percentage of the representative's duty hours in any given month. Such restrictions will be determined prior to the use of such time and will be based on the nature of the position occupied by the representative, the relationship of that position to the mission of the agency, and the degree of hardship imposed on the mission of the agency by the representative's absence from normal duties.

If the supervisor denies a request for official time, either in whole or in part, the supervisor must prepare a written statement for the complaint file noting the reasons for the denial.

7. SPECIAL RULES FOR AGE DISCRIMINATION AND EQUAL PAY COMPLAINTS

7.1. AGE DISCRIMINATION COMPLAINTS

An employee may file a complaint pursuant to 29 C.F.R. Part 1614 and these procedures for age discrimination. An employee who elects to file an EEO complaint must exhaust administrative remedies before filing a civil action in U.S. District Court. Exhaustion of administrative remedies occurs when the Access Board takes final action or 180 days after filing the complaint if no action is taken.

In the alternative, an employee may bypass the administrative complaint process described in this Policy and file a civil action directly in the U.S. District Court. However, prior to filing suit, the complainant must provide the EEOC with a written notice of intent to sue under the ADEA. The notice to the Commission must be filed within 180 days of the date of the alleged discriminatory action, and after providing timely notice, the complainant must wait at least thirty (30) days before filing a civil action.

Specific information on how to file a Notice of Intent to Sue, including where to send the notice and what should be included can be found in [MD-110, Chapter 4, Section IV](#).

7.2. EQUAL PAY ACT COMPLAINTS

Employees are not required to file an Equal Pay Act complaint through this administrative process, in accordance with this Policy, prior to filing a lawsuit under the EPA. If the employee chooses to file an EPA complaint as an administrative EEO complaint, it will be processed in accordance with the procedures set forth in this Policy. However, the time limits for filing in court are different under the EPA. The statute of limitations for EPA cases, which applies even if an employee files an administrative complaint, is two years, or if a willful violation is alleged, three years. Employees alleging violation of the EPA should be notified that they are permitted to bypass the administrative process and file directly in a court of competent jurisdiction without first providing notice to the Commission or exhausting administrative remedies and of the applicable statute of limitations for their claim.

8. APPROVALS

This Access Board directive on EEO Complaint Procedures is effective upon signature by the Equal Employment Opportunity Director and the Executive Director, and remains in effect until rescinded, superseded, or reissued.

Alison Levy
Equal Employment Opportunity Director

Date:

Sachin Pavithran
Executive Director

Date:

9. REVISION HISTORY

The “Revision History” table below should be used to capture revisions or updates to this EEO Complaint Procedures directive. All columns are mandatory.

Date	Revision Summary	Version Number	Author/Owner Name

USAB EEO Complaint Procedures
