

Department of Justice

§ 42.608

EEOC should ordinarily defer its investigation pending the agency investigation.

(h) When a joint complaint is referred to EEOC for investigation, the agency shall advise EEOC of the relevant civil rights provision(s) applicable to the employment practices of the recipient, whether the agency wants to receive advance notice of any conciliation negotiations, whether the agency wants EEOC to seek information concerning the relationship between the alleged discrimination and the recipient's Federally assisted programs or activities and, where appropriate, whether a primary objective of the Federal financial assistance is to provide employment. The agency shall also notify the complainant and the recipient of the referral, the location of the EEOC office to which the complaint was referred, the identity of the civil rights provision(s) involved, the authority of EEOC under this regulation and that the date the agency received the complaint will be deemed the date it was received by EEOC. Specifically, the notice shall inform the recipient that the agency has delegated to EEOC its investigative authority under title VI, title IX, or the revenue sharing act, and the relevant act's implementing regulations. The agency, therefore, may use information obtained by EEOC under the agency's investigative authority in a subsequent title VI, title IX or revenue sharing act enforcement proceeding.

[Order No. 992-83, 48 FR 3577, Jan. 25, 1983, as amended at 61 FR 33658, June 28, 1996]

§ 42.606 General rules concerning EEOC action on complaints.

(a) A complaint of employment discrimination filed with an agency, which is transferred or referred to EEOC under this regulation, shall be deemed a charge received by EEOC. For all purposes under title VII and the Equal Pay Act, the date such a complaint was received by an agency shall be deemed the date it was received by EEOC.

(b) When EEOC investigates a joint complaint it shall, where appropriate, seek sufficient information to allow the referring agency to determine whether the alleged employment discrimination is in a program or activity

that receives Federal financial assistance and/or whether the alleged employment discrimination causes discrimination with respect to beneficiaries or potential beneficiaries of the assisted program.

(c) Upon referral of a joint complaint alleging a pattern or practice of employment discrimination, EEOC generally will limit its investigation to the allegation(s) which directly affect the complainant.

(d) If EEOC, in the course of an investigation of a joint complaint, is unable to obtain information from a recipient through voluntary means, EEOC shall consult with the referring agency to determine an appropriate course of action.

(e) If EEOC agrees to defer its investigation of a complaint of employment discrimination pending an agency investigation of the complaint, then EEOC shall give due weight to the agency's determination concerning the complaint.

§ 42.607 EEOC dismissals of complaints.

If EEOC determines that the title VII allegations of a joint complaint should be dismissed, EEOC shall notify the complainant and the recipient of the reason for the dismissal and the effect the dismissal has on the complainant's rights under the relevant civil rights provision(s) of the referring agency, and issue a notice of right to sue under title VII. At the same time, EEOC shall transmit to the referring agency a copy of EEOC's file.

§ 42.608 Agency action on complaints dismissed by EEOC.

Upon EEOC's transmittal of a dismissal under § 42.607 of this regulation, the referring agency shall determine within thirty days, what, if any, action the agency intends to take with respect to the complaint and then notify the complainant and the recipient. In reaching that determination, the referring agency shall give due weight to EEOC's determination that the title VII allegations of the joint complaint should be dismissed. If the referring agency decides to take action with respect to a complaint that EEOC has dismissed for lack of reasonable cause

to believe that title VII has been violated, the agency shall notify the Assistant Attorney General and the Chairman of the EEOC in writing of the action it plans to take and the basis of its decision to take such action.

§ 42.609 EEOC reasonable cause determination and conciliation efforts.

(a) If EEOC, after investigation of a joint complaint, determines that reasonable cause exists to believe that title VII has been violated, EEOC shall advise the referring agency, the complainant and the recipient of that determination and attempt to resolve the complaint by informal methods of conference, conciliation and persuasion. If EEOC would like the referring agency to participate in conciliation negotiations, EEOC shall so notify the agency and the agency shall participate. EEOC shall provide advance notice of any conciliation negotiations to referring agencies that request such notice, whether or not EEOC requests their participation in the negotiations.

(b) If EEOC's efforts to resolve the complaint by informal methods of conference, conciliation and persuasion fail, EEOC shall:

(1) Issue a notice of failure of conciliation to the recipient in accordance with 29 CFR 1601.25;

(2) Transmit to the referring agency a copy of EEOC's investigative file, including its Letter of Determination and notice of failure conciliation;

(3) If the recipient is not a government, governmental entity or political subdivision, determine whether EEOC will bring suit under title VII and, in accordance with 29 CFR 1601.28, issue a notice of right to sue under title VII;

(4) If the recipient is a government, governmental entity or political subdivision, refer the matter to the Attorney General in accordance with 29 CFR 1601.29. The Attorney General, or his or her delegate, will determine whether the Department of Justice will bring suit under title VII and, in accordance with 29 CFR 1601.28, issue a notice of right to sue under title VII.

§ 42.610 Agency enforcement of unresolved complaints.

(a) Upon EEOC's transmittal of a reasonable cause determination and notice of failure of conciliation under § 42.609(b)(2) of this regulation, the referring agency shall determine, within thirty days, whether the recipient has violated any applicable civil rights provision(s) which the agency has a responsibility to enforce. The referring agency shall give due weight to EEOC's determination that reasonable cause exists to believe that title VII has been violated.

(b) If the referring agency determines that the recipient has violated any applicable civil rights provision(s) which the agency has a responsibility to enforce, the agency shall so notify the complainant and the recipient and determine whether further efforts to obtain voluntary compliance are warranted. In reaching that determination, the agency shall give due weight to the failure of EEOC's efforts to resolve the complaint by informal methods. If the referring agency determines that further efforts to obtain voluntary compliance are not warranted or if such further efforts fail, the agency shall initiate appropriate enforcement proceedings under its own regulations.

(c) If the referring agency determines that the recipient has not violated any applicable civil rights provision(s) which the agency has a responsibility to enforce, the agency shall notify the complainant, the recipient, the Assistant Attorney General and the Chairman of the EEOC in writing of the basis of that determination.

§ 42.611 EEOC negotiated settlements and conciliation agreements.

If the parties enter into a negotiated settlement (as described in 29 CFR 1601.20) prior to a determination or a conciliation agreement (as described in 29 CFR 1601.24) after a determination, EEOC shall notify the referring agency that the complaint has been settled. The agency shall take no further action on the complaint of employment discrimination thereafter except that the agency may take the existence of the complaint into account in scheduling the recipient for a review under the agency's regulations.