
EMPLOYEE BENEFITS SECURITY ADMINISTRATION

Chapter 30, Complaints

1. Complaints. A complaint refers to information received which indicates or alleges that a violation of the law has occurred or is about to occur. Complaints may be specific or nonspecific, written or oral, within or outside EBSA's jurisdiction and may come from a number of sources, such as individuals, news media, and other enforcement agencies.

2. Complaints From Individuals. Inquiries and complaints from members of the public are generally handled by EBSA's Benefits Advisors in accordance with the procedures established by the Office of Participant Assistance. When appropriate, a participant complaint may be transferred as an investigative lead to the enforcement unit. If a participant complaint is the source of an investigative lead, interim contact with the participant should be made by the investigator or the Regional Director's designee as long as the complaint remains unresolved. Final notification to the participant should be made upon completion of the investigation and documented in the case file.

3. Nonspecific Complaints. If the information is indefinite, general in nature, grounded in rumor or conjecture, or alleges activity which does not constitute a violation of law, the complaint is "nonspecific." Generally, investigations will not be conducted on nonspecific information. However, a number of such complaints relating to the same person, entity, or subject matter, received over a period of time, may indicate the need for investigation because the cumulative effect of such complaints may form the basis for conducting the investigation.

4. Confidentiality of Complaints. If the complainant requests confidentiality, the complainant will be identified as a "Confidential Source" and described as to the degree of reliability, such as "who has furnished accurate information in the past" or "of unknown reliability" in a memorandum that is included in the case file. The complainant's name will only appear in the original written complaint or an original memorandum relating to an oral complaint, which is to be kept in the RD's or DS's safe. No complainant, particularly when the complaint concerns a benefit dispute, can be guaranteed confidentiality. The most that can ever be stated is that we will attempt not to make disclosure unless required by law. Similar protection will be afforded to government agencies which request it, making reference to "Confidential Source A, a U.S. government agency" or "Source D, a municipal agency," etc.

5. Identification of Source. Law enforcement agencies are not to be designated as confidential sources of information except in those instances when the agency involved, or its employee, specifically requests anonymity as a condition precedent to the release of such information. Such instances usually occur when the information is "raw, unevaluated" matter and of such a nature as to be a possible source of embarrassment to the contributor.

6. Information from Other Agencies. Information received from some agencies, such as the FBI, is released to the requesting agency only upon the condition that the information

is not to be released to other agencies without prior permission of the contributing agency. The IRS, by law, is compelled to consider tax return information to be confidential (IRC section 6103). Any information obtained from the IRS as authorized by IRC section 6103 shall be kept confidential and not released outside EBSA or the Solicitor's Office without prior permission of the Commissioner of Internal Revenue. IRC section 7213 provides severe penalties including criminal sanctions for unauthorized disclosure. Information obtained from the IRS should not be discussed with anyone, even within the Department, other than on a need-to-know basis. See Chapters 12 and 20 for further details in dealing with information obtained from the IRS.

7. Anonymity of Complainant. Even though a complainant does not request to be treated as a confidential informant, it is EBSA policy not to disclose the complainant's identity during the course of an investigation unless such disclosure is required by law. This does not apply to an individual who is requesting help from EBSA in obtaining an individual benefit.

8. Documenting Oral Complaints. When appropriate, complaints should be documented in accordance with the procedures established by the Office of Participant Assistance. In other situations, the nature of the complaint will determine if a written memorialization should be prepared. If, in the judgment of the individual receiving the complaint, further action will be required, an RI will be prepared. If the matter is deemed to be of interest to the NO, another RO, or a DO, copies will be furnished to each interested office.

9. Complaints of Violations of Other Laws. ROs or DOs in possession of information pertaining to potential violations of laws enforced by other agencies, federal or state, will refer such matters to the appropriate agency. ROs should only refer to other agencies those complaints which do not involve potential plan violations. If a potential plan violation, as well as some other violation, is involved, and the RD is uncertain as to proper disposition of the matter, the case should be referred to OE for appropriate action. Referrals to the PBGC should be made through DFO.

10. Complaints Concerning Subjects Outside Regional Office Jurisdiction. If an oral complaint concerning an individual or organization outside the territorial jurisdiction of the RO/DO is received, the information will be forwarded to the appropriate RO. Prior to referral, the RO should confirm with the receiving RO or DO that a referral is appropriate.