

Fiscal Year 2023

# Timeliness of Merit Final Agency Decisions in the Federal Sector



**U.S. Equal Employment Opportunity Commission**  
Research, Evaluation, & Applied Data Division | Office of Federal Operations

## Table of Contents

<b>Executive Summary</b> .....	<b>iii</b>
<b>Introduction</b> .....	<b>1</b>
<b>Methodology</b> .....	<b>2</b>
<b>Survey Results</b> .....	<b>3</b>
Responsibility for EEO Processing.....	4
Merit FAD Timeliness and Characteristics of Writers.....	5
Review Process for Merits FADs.....	7
Training and Resources.....	8
Factors in Timeliness.....	8
Summary of Survey Results.....	10
<b>Interviews on Exceptional FAD Timeliness</b> .....	<b>10</b>
Characteristics of Interviewed FAD Writers.....	10
Practices of Agencies with High FAD Timeliness Rates.....	11
Challenges to Timeliness.....	11
Advice for Agencies with Low Timeliness Rates.....	12
Summary of Interviews.....	13
<b>Questionnaire Results</b> .....	<b>13</b>
Formal Complaint Process Overall.....	14
Role of Contractors in FAD Timeliness.....	14
Impact of Review and Signature Authority on FAD Timeliness.....	15
Funding and Staffing Considerations.....	16
Role of Attorneys in the FAD Writing Process.....	16
Reporting Structure's Effect on FAD Timeliness.....	16
FAD Process Challenges.....	17
Suggestions for Improving the FAD Process.....	18
Summary.....	18
<b>Main Findings in This Report</b> .....	<b>19</b>
Impediments to Issuing Timely FADs.....	19
Promising Practices to Improve FAD Timeliness Rates.....	19
<b>Conclusion and Next Steps</b> .....	<b>21</b>

<b>Appendix A: Survey of Agency EEO Directors .....</b>	<b>22</b>
<b>Appendix B: Interview Questions for Agencies with High Timeliness Rates .....</b>	<b>27</b>
<b>Appendix C: Questionnaire Sent to Subset of Survey Respondents .....</b>	<b>30</b>
<b>Appendix D: Investigation and FAD Writing Staff .....</b>	<b>33</b>

## Executive Summary

The equal employment opportunity (EEO) complaint process provides Federal employees and job applicants an avenue to address unlawful discrimination and retaliation. A merit final agency decision (FAD) is one means by which the claims raised in an EEO complaint are adjudicated. A merit FAD contains findings of fact and conclusions of law on each claim raised by the complainant, provides the rationale for dismissal of any claims (as applicable), and determines appropriate remedies and relief when discrimination is found.

Federal agencies must generally issue merit FADs within 60 days of the complainant's choosing a merit FAD. Any delays may impact the outcome of a complainant's claims and undermine the effectiveness of the EEO process.

### Main Findings

The EEOC identified promising practices among agencies with high merit FAD timeliness, including:

- Leadership prioritized merit FAD timeliness.
- Appropriate staffing, funding, and training for writing FADs.
- Attorneys and experienced EEO professionals hired as FAD writers.
- FAD writers held accountable for timeliness.
- Availability of attorneys for legal advice and review of complex matters.

The EEOC also identified impediments to timely FAD issuance. These included:

- Heavy caseloads and backlogs.
- Inadequate investigations that require supplemental investigations.
- Difficulty recruiting and retaining FAD writers, particularly because these positions tend to be lower paid than attorney positions.
- Prolonged review and approval process.
- Lack of proper training and tracking systems.

### Main Recommendations

The EEOC recommends that agencies:

- Recruit and retain experienced FAD writers with appropriate funding.
- Embed accountability for FAD timeliness in agency practices and procedures.
- Coordinate with contract investigators to prevent delays and put in place a FAD writing contract with proper oversight.

## Introduction

The equal employment opportunity (EEO) complaint process provides Federal employees and job applicants an avenue to address unlawful discrimination and retaliation. Through Management Directive 110 (MD-110), the U.S. Equal Employment Opportunity Commission (EEOC) provides Federal agencies with policies, procedures, and guidance related to the processing of employment discrimination complaints.<sup>1</sup>

The EEO process begins when an individual contacts the EEO Counselor at the agency where the individual works or where the individual applied for a job. The individual must initiate contact within 45 calendar days from the date the alleged discrimination occurred. In most cases, the EEO Counselor will give the individual the choice of participating either in EEO counseling or in an alternative dispute resolution (ADR) program, such as mediation. If the dispute is not resolved during EEO counseling or through ADR, the individual is provided notice of their right to file a formal discrimination complaint with the agency's EEO Office. An individual choosing to file a formal complaint must do so within 15 calendar days of receiving this notice.

After a formal complaint is filed, the agency will acknowledge receipt of the complaint and decide whether the case should be dismissed for a procedural reason, such as if the complaint was not filed on time. If the agency does not dismiss portions or the entirety of the complaint, it will conduct an investigation. The agency generally has 180 days from the date the complaint was filed to complete the investigation. Then, the agency will generally issue a notice giving the complainant two choices: either request a hearing before an EEOC Administrative Judge (AJ) or ask that the agency issue a final agency decision (FAD). The complainant has 30 days to make their selection. If the complainant does not make a selection, then at the conclusion of the 30-day period for making a selection, the agency must issue a FAD within 60 days.

EEOC regulation 29 CFR § 1614.110 provides that the final decision must address the merits of each claim raised by the complainant. Additionally, this regulation states that the final decision must provide the rationale for dismissal of any claims (as applicable) and determine appropriate remedies and relief when discrimination is found. The agency must issue the FAD within 60 days of receiving notification that a complainant has requested an immediate decision.<sup>2</sup> In most cases, a complainant who disagrees with the agency's determination in the FAD can file an appeal with the EEOC's Office of Federal Operations.

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<sup>1</sup> The EEO complaint process is described in 29 C.F.R. Part 1614 and MD-110.

<sup>2</sup> While this report focuses on merit FAD timeliness, agencies must also maintain the quality of their FADs in accordance with EEOC regulations, case law, and MD-110. Compromising on quality is not an acceptable means of achieving timeliness.

The EEOC examined FY 2018 to FY 2021 data from the Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (Form 462). Table 1 shows that as the governmentwide number of merit FADs increased, merit FAD timeliness rates decreased. In FY 2018, Federal agencies issued a total of 5,024 merit FADs at a 61% timeliness rate.<sup>3</sup> By FY 2021, the total merit FADs had climbed to 5,604, while the timeliness rate dropped to 47%. Accordingly, the average number of days it took agencies to process and issue FADs trended upward—from 162.0 days in FY 2018 to 178.1 days in FY 2021. Overall, this suggests that Federal agencies have found it increasingly difficult to meet the regulatory timeframe for issuing an increasing number of FADs.

**Table 1. Timeliness of Merit Final Agency Decisions (FADs) Governmentwide, FY 2018–21**

Fiscal Year	Total Merit FADs	Average Processing Days	Percent of Timely Merit FADs
2018	5,024	162.0	61%
2019	5,466	150.2	58%
2020	5,482	174.7	50%
2021	5,604	178.1	47%

Notes: Merit FADs address the merits of each claim raised by the complainant, provide the rationale for dismissal of any claims (as applicable), and determine appropriate remedies and relief when discrimination is found. Table 1 reflects the average processing days calculated starting from the date the merit FAD was required.

Source: U.S. Equal Employment Opportunity Commission, Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (Form 462), Fiscal Years (FYs) 2018–21.

### Methodology

The EEOC used multiple methods to gain insight into the factors that determine the timeliness of merit FADs for Federal agencies. First, the EEOC gathered FY 2018–21 data from the EEOC's Form 462 and EEOC Management Directive 715 (MD-715) Reports. The EEOC grouped the data by agency size:

- Large – 15,000 or more employees
- Medium – 1,000 to 14,999 employees
- Small – fewer than 1,000 employees

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<sup>3</sup> As indicated, regulations require that FADs be issued within 60 days of when a complainant opts for a FAD, or, in cases where a complainant does not make a selection, within 60 days of the conclusion of the 30-day selection period. Thus, the timeliness rate refers to the percentage of time that agencies comply with these deadlines.

Furthermore, the EEOC considered whether an agency was a cabinet-level agency or a subcomponent of a cabinet agency.<sup>4</sup> Cabinet agencies are the 15 federal executive agencies that have agency heads that comprise the President's Cabinet. Subcomponents are agencies that are part of and under a cabinet or parent agency.

Additionally, agencies were classified by their FAD timeliness rates over the last four years, as follows:

- Low Timeliness – 0% to 49%
- Medium Timeliness – 50% to 74%
- High Timeliness – 75% to 100%

The EEOC utilized a voluntary survey to all Federal agencies seeking feedback on the processing of FADs. The survey consisted of 25 questions in total. The EEOC received responses from 61 agencies.<sup>5</sup>

To gather information on best practices, the EEOC followed up with agencies that ranked among the top five Federal agencies for the timely issuance of merit FADs. The EEOC prepared 22 interview questions and met with Federal EEO officials from two large cabinet-level agencies and one medium-sized agency. The interviewees worked at agencies that timely issued over 90% of their merit FADs from FY 2018 through FY 2021.

Finally, to further explore the processing of FADs, the EEOC disseminated a 29-item questionnaire (with multiple opportunities for open-ended responses) to a subset of EEO Directors who responded to the initial survey. In all, 18 agencies responded to the questionnaire, which inquired about the specific challenges that agencies face in their efforts to timely issue FADs. Agencies were also asked to share any known best practices for timely submission of FADs.

### **Survey Results**

On May 16, 2022, the EEOC sent the 25-question survey to Federal sector EEO Directors to gather feedback on factors that impact the timely issuance of merit FADs. The survey closed on June 16. Survey respondents included 27 EEO Directors, 4 Deputy EEO Directors, 4 EEO Complaints Managers, 9 Complaints Adjudication Officers, and 5 Civil Rights Program Managers. However, some respondents did not answer every question.

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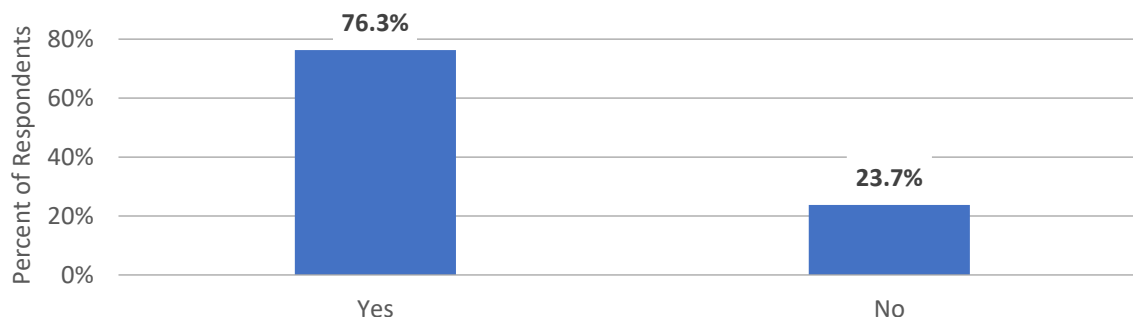
<sup>4</sup> For purposes of this report, an "agency" may include a cabinet-level department, subcomponent, or other agency unless otherwise specified.

<sup>5</sup> The majority of respondents (73.8%) reported they did not work for an agency that is a subcomponent of another agency.

## Responsibility for EEO Processing

The EEOC's survey asked respondents several questions about how their agency handled various stages of EEO processing in FY 2021. The majority of respondents (71.7%) stated that the same office at their agencies processed both informal and formal complaints. Furthermore, figure 1 shows that the majority of respondents (76.3%) indicated that their agency used contractors to conduct EEO investigations.

**Figure 1. Did Your Agency Use Contract EEO Investigators in FY 2021?**



Notes: EEO = Equal Employment Opportunity. FY = Fiscal Year.

Source: U.S. Equal Employment Opportunity Commission.

The EEOC asked respondents to also identify who was responsible for conducting several EEO functions beginning from the informal stage to issuing merit FADs. Respondents who worked for a parent agency or an agency that is not a subcomponent of a larger agency or department were instructed to indicate "agency" to this series of questions. Subcomponent agencies were instructed to indicate "parent agency" or "subcomponent" in response to these questions.

EEOC asked respondents about responsibility for EEO counseling, ADR at the informal stage, and EEO investigations. Results show that 64.3% of respondents selected "agency" as the responsible entity for processing EEO claims during the informal or counseling stage, 63.2% selected "agency" as conducting ADR during the counseling stage, and 63.2% selected "agency" as conducting EEO investigations. By comparison, 35.7% of respondents chose "subcomponent" as responsible for EEO counseling, 33.3% for ADR, and 15.8% for EEO investigations. None of the respondents selected "parent agency" as responsible for EEO counseling, but 3.5% indicated a parent agency is responsible for ADR, and 21.1% indicated a parent agency conducted EEO investigations.

The survey then asked about who was responsible for accepting and dismissing EEO complaints. Approximately 66.7% of respondents chose their "agency" as the entity responsible, 19.3% selected "subcomponent," and 14.0% chose "parent agency."



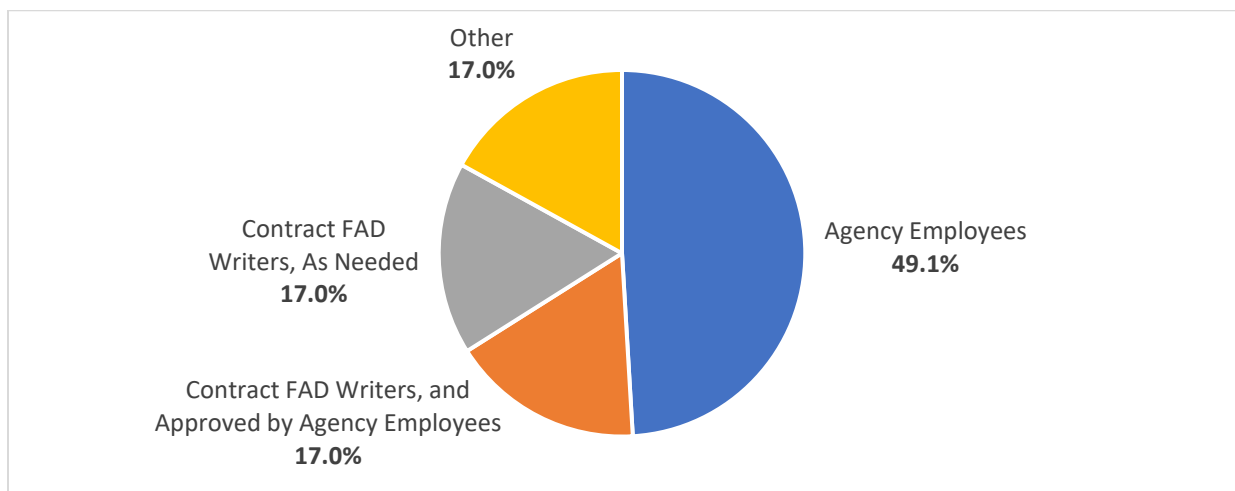
Finally, 75.4% of respondents pointed to their “agency” as responsible for drafting FADs. By comparison, 19.3% selected “parent agency” and 5.3% chose “subcomponent.”

### Merit FAD Timeliness and Characteristics of Writers

The EEOC survey asked respondents to estimate the percentage of FADs that were issued in a timely manner by their agency.<sup>6</sup> Over half (54.9%) of respondents reported that their agency issued the vast majority (75% to 100%) of its FADs in a timely manner in FY 2021. In contrast, only 11.8% reported that few (0% to 24%) of their agency's FADs were issued in a timely manner.

The survey also asked respondents about the characteristics of merit FAD writers. Figure 2 shows that almost half (49.1%) reported that agency employees write merit FADs for their agency. By comparison, 17.0% of respondents reported that FADs are written by contract writers and approved by agency employees, with another 17.0% indicating that contract FAD writers were employed on an “as needed” basis.

**Figure 2. Who Drafted All of Your Agency's FADs in FY 2021?**



Notes: “Other” includes respondents who either reported some other combination of writers, or responded that they did not know who drafted their FADs, or responded that their agency had not issued any FADs. Final agency decisions (FADs) address the merits of each claim raised by the complainant, provide the rationale for dismissal of any claims (as applicable), and determine appropriate remedies and relief when discrimination is found.

Source: U.S. Equal Employment Opportunity Commission.

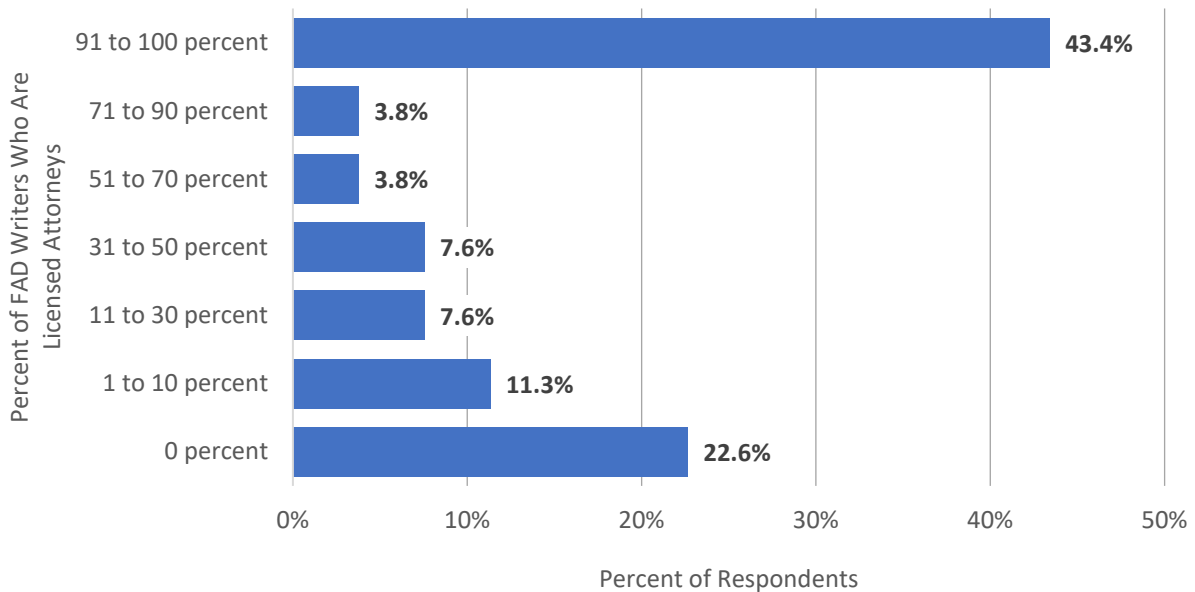
The EEOC further examined how often FADs were drafted by licensed attorneys. Figure 3 shows that about 43.4% of respondents reported that the vast majority (91% to 100%) of individuals who draft their agency's FADs were licensed attorneys. In contrast, 22.6% of respondents reported that none of the individuals who draft their agency's FADs

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<sup>6</sup> This survey measured agencies' perceptions and was not correlated with Form 462 data.

were licensed attorneys. Another 11.3% reported that only 1% to 10% of their agency's FAD writers were licensed attorneys.

**Figure 3. What percentage of Agency's FAD Writers were Licensed Attorneys in FY 2021?**



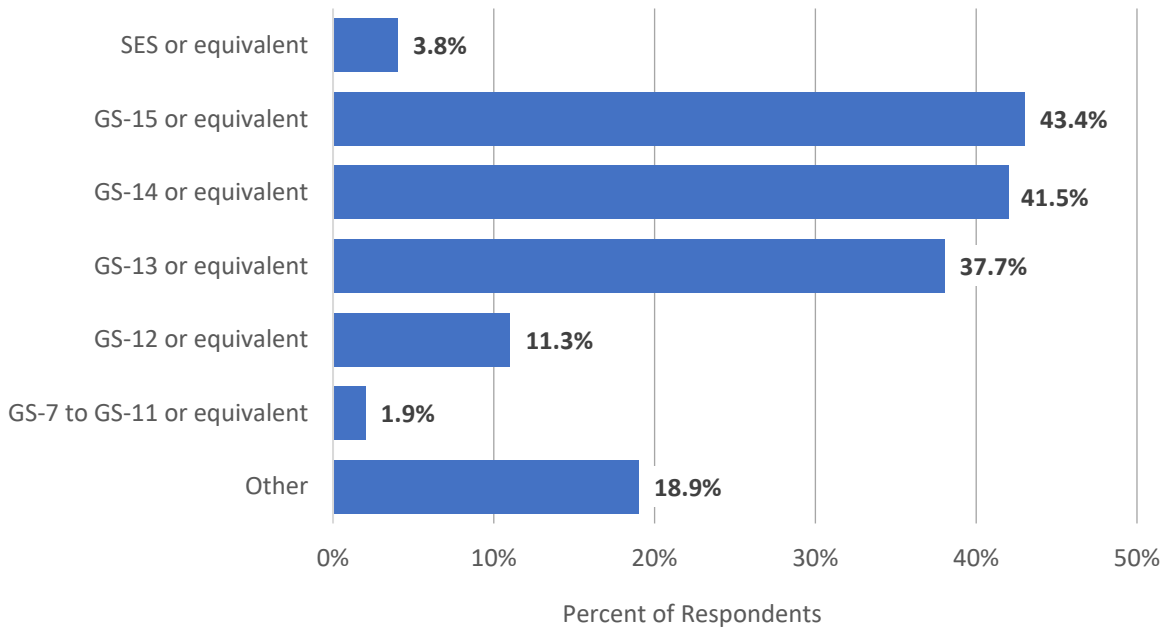
Notes: Final agency decisions (FADs) conclude the complaint process by addressing the merits of each claim raised by the complainant, providing the rationale for dismissal of any claims (as applicable), and describing appropriate remedies and relief when discrimination is found.

Source: U.S. Equal Employment Opportunity Commission.

The survey also asked what percentage of FAD writers performed this job as a collateral duty (meaning, they are not full-time FAD writers). About half (50.9%) of respondents reported that none of their agency's FAD writers were performing this work as a collateral duty. However, 34.0% reported that the vast majority (91% to 100%) of their agency's FAD writers were performing this work as a collateral duty.

Figure 4 shows the grade levels of agency employees dedicated to FAD writing. Some respondents selected more than one grade level, suggesting agencies promote FAD writers through a range of grade levels over time. Many respondents indicated that FAD writers were employed at higher General Schedule (GS) grades. Overall, 43.4% of respondents reported that those who wrote FADs at their agency were graded at the GS-15 level or equivalent, 41.5% at the GS-14 level or equivalent, and 37.7% at the GS-13 level or equivalent. In addition, 3.8% reported these positions at the Senior Executive Service (SES) level or equivalent. In contrast, only 1.9% reported that FAD writers were employed at GS-7 to GS-11 or equivalent, and 11.3% at GS-12 or equivalent.

**Figure 4. Grade Levels of Agency Employees Dedicated to Writing FADs, FY 2021**



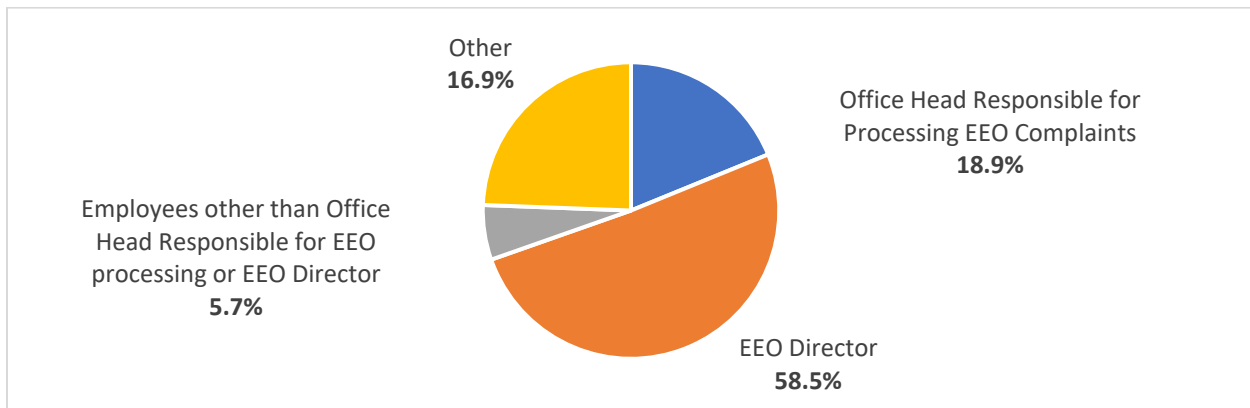
Notes: GS = General Schedule. SES = Senior Executive Service. "Other" includes respondents who reported their agency had no FAD writers, had contractors draft FADs, or had not issued a FAD. Final agency decisions (FADs) address the merits of each claim raised by the complainant, provide the rationale for dismissal of any claims (as applicable), and determine appropriate remedies and relief when discrimination is found. Respondents could select more than one grade level.

Source: U.S. Equal Employment Opportunity Commission.

### **Review Process for Merits FADs**

The EEOC examined the review and signature process required to issue merit FADs. Figure 5 shows that over half (58.5%) of respondents reported that their agency's EEO Director must review and sign all merit FADs. Next, 18.9% reported that the head of the office responsible for processing formal EEO complaints must review and sign all merit FADs. After that, 5.7% of respondents reported that employees other than the office head responsible for processing EEO complaints or the EEO director review and sign merit FADs prior to issuance. Finally, 16.8% of respondents indicated "Other" in response to this question.

**Figure 5. Who Reviews and Signs Your Agency's Merit FADs Prior to Issuance?**



Notes: Merit final agency decisions (FADs) conclude the complaint process by addressing the merits of each claim raised by the complainant, providing the rationale for dismissal of any claims (as applicable), and describing appropriate remedies and relief when discrimination is found. The designated office head is the individual who oversees formal complaints processing.

Source: U.S. Equal Employment Opportunity Commission.

The survey then evaluated whether respondents were satisfied with the quality of FADs issued at their agency (the survey did not undertake an independent assessment of FAD quality). The overwhelming majority (88.7%) reported that they were satisfied, while the remaining responses reported being unsatisfied. Respondents gave several reasons why they were unsatisfied, including inexperienced FAD writers, inconsistent standards, and insufficient staff.

### **Training and Resources**

The survey also inquired about how often FAD writers received training on writing decisions. Although responses varied, over half of respondents to this question (52.9%) reported that such training is provided "as needed." About 23.5% of respondents reported that their agencies provide such training annually. However, 11.8% of respondents reported that FAD writers never receive training.

Legal templates (that provide a framework for a draft FAD) and/or boilerplate (standard language that can be incorporated verbatim into a draft FAD) can streamline the process of writing FADs by using consistent language, formatting, legal analyses, and legal standards. The vast majority of respondents (84.9%) reported that their agencies used such writing tools.

### **Factors in Timeliness**

Overall, 27 survey respondents reported that their agency had a merit FAD timeliness rate above 75%. The EEOC asked these respondents to identify factors they attributed to their agency's high rate of timeliness. Table 2 shows that the most cited factors were

leadership priority (74.1% of respondents), knowledgeable FAD writers (70.4%), and a streamlined process for drafting, approving, and issuing FADs (63.0%).

**Table 2. Top 5 Factors Respondents Attributed to Their Agency’s Exceptionally Timely FAD Rates**

Answer Choices	Percent
Leadership priority	74.1%
FADs written by staff with knowledge of EEO legal issues	70.4%
Streamlined process for drafting, approving, and issuing FADs	63.0%
Clear standard operating procedures for complaint processing	55.6%
Small case volume	40.7%

Notes: Data includes only respondents who reported that their agency had a merit FAD timeliness rate over 75%. Respondents could select more than one option. Merit final agency decisions (FADs) address the merits of each claim raised by the complainant, provide the rationale for dismissal of any claims (as applicable), and determine appropriate remedies and relief when discrimination is found. The designated office head is the individual who oversees formal complaints processing.

Source: U.S. Equal Employment Opportunity Commission.

The EEOC also assessed factors that contributed to untimeliness by asking survey respondents who reported that their agency had a merit FAD timeliness rate below 75% to identify factors they attributed to their agency’s lack of timeliness. Table 3 shows that the vast majority (85.7%) of respondents to this question cited a lack of staff. Next, 50.0% of respondents cited a large case volume and 41.2% cited lack of funding.

**Table 3. Top 5 Factors Respondents Attributed to Their Agency’s Low Timely FAD Rates**

Answer Choices	Percent
Lack of staff	85.7%
Large case volume	50.0%
Other	50.0%
Lack of funding	42.9%
Cases with multiple claims and incidents	42.9%

Notes: Data includes only respondents who reported that their agency had a merit FAD timeliness rate below 75%. Respondents could attribute timeliness issues to more than one factor. Final agency decisions (FADs) address the merits of each claim raised by the complainant, provide the rationale for dismissal of any claims (as applicable), and determine appropriate remedies and relief when discrimination is found.

Source: U.S. Equal Employment Opportunity Commission.

## Summary of Survey Results

The findings from this survey reveal that about half of responding agencies use agency employees to write FADs, while the other half use contract writers to varying degrees. Of the responding agencies that use employees to write FADs, more than half reported that these employees write FADs as a collateral duty, not a full-time job. Furthermore, the majority of respondent agencies reported that they use attorneys to write FADs, but in a collateral duty capacity.

The survey also indicated that most agencies are not providing FAD writing training on an annual basis or certain timetable. Over half, or 54.6% of respondents, reported that their agency provides such training as needed. However, 10.6% of respondents reported that their agency's FAD writers never receive training on how to write final decisions. This suggests that some agencies have not adequately prepared FAD writers for their job duties.

Most respondents from agencies with a high rate of timely-issued FADs attributed their agency's success to leadership making timeliness a priority; writers' knowledgeable ability of EEO issues; and a streamlined process for drafting, approving, and issuing FADs. In contrast, the vast majority of respondents whose agencies had a low timeliness rate reported lack of staff as the top factor. These factors offer possible focal points to help agencies meet the regulatory time limit for issuing FADs.

## Interviews on Exceptional FAD Timeliness

To gain further insight about factors that determine the timeliness of FADs, the EEOC interviewed three FAD writers with extensive experience in FAD-writing. These writers wrote FADs for agencies that had, on average, timely issued over 90% of their merit FADs from FY 2018 to FY 2021.

### Characteristics of Interviewed FAD Writers

The three FAD writers reported directly to SES-level EEO Directors. Two of them were GS-15 attorneys working for large cabinet-level agencies, while the third was a GS-14 non-attorney working for a medium-sized non-cabinet-level agency. All three writers spent at least half of their work hours writing final decisions. The writers' experience varied, however. The interviewee from the non-cabinet-level agency had written FADs at her agency for approximately 10 months, but previously wrote FADs at a large cabinet-level agency for 5 years and had experience in other areas of EEO. One of the cabinet-level interviewees had approximately 16 years of experience writing FADs. The other cabinet-level interviewee stated he had over 8 years of experience writing FADs, with an additional 2 years of experience writing briefs and motions in private legal practice.

All interviewees stated that their offices rely on contractors, particularly to complete Reports of Investigation (ROIs).

## Practices of Agencies with High FAD Timeliness Rates

The interviewees identified practices they believed contribute to their agency's high rate of timely final decisions.

**Timeliness is a leadership priority.** Agency leadership plays a pivotal role in setting a culture that prioritizes the timely issuance of FADs. "It took attention from leaders at a high level to put emphasis and resources on timely FADs," one interviewee stated.

**Adequate review time.** Assigning work to writers in a timely manner and leaving adequate time for supervisors and agency employees to review employee and contract writers' draft decisions can help an agency issue FADs on time.

**Adequate tools and training.** The interviewees cited training on writing FADs and the use of writing tools (such as templates and tracking systems) as critical to timeliness. These tools can help speed up the drafting process and alert writers of upcoming deadlines.

**Experienced writers.** The interviewees reported that their agencies did not require FAD writers to be attorneys, but two of the three agencies have only attorneys writing FADs. One interviewee stated that attorneys "rise to the top" when writing FADs, and another said that decisions drafted by experienced attorneys require limited editing. Having attorneys as writers or consultants can improve the writing quality of FADs and ensure that the correct legal conclusions are reached.

**Accountability for timeliness.** All interviewees stated that there is a timeliness element in performance plans for writers and their supervisors. One writer stated that to receive the highest performance rating, writers must have all decisions issued in a timely manner. Another writer stated, "What is measured is what will happen." Another writer stated that performance evaluations for writers are based on the overall timelines of all agency FADs and investigations, as well as the number of decisions issued. A third interviewee stated that to receive the highest performance rating, writers must have all decisions issued in a timely manner. At the same time to receive a satisfactory rating, writers cannot have more than three revisions of a single draft decision. The writer also noted that writers at her agency must submit their draft decisions to management at least 20 days before the regulatory deadline to issue FADs. This approach recognizes the importance of proactively incorporating quality control measures into timelines to ensure both timeliness and quality of decisions.

## Challenges to Timeliness

The EEOC also examined the challenges to timeliness that interviewees encountered.

**Complex decisions.** Interviewees indicated that certain types of decisions can require more difficult analysis and generally take longer to write. These types of decisions include entitlement to compensatory damages and attorney's fees as well as final orders rejecting decisions from an AJ. For example, a final order rejecting an AJ's

decision usually requires extensive review by the agency, and coordination with agency counsel, to determine if the matter should be appealed.

**Heavy caseload.** A heavy caseload may overwhelm an agency's FAD writers. One interviewee reported that his agency periodically hires temporary employees to deal with heavy caseloads. The other interviewees reported that their agencies rely on agreements with other agencies to spread the workload.

**Writer turnover.** The interviewees indicated that it is difficult to recruit and retain well-qualified candidates to write FADs. One interviewee attributed this issue to the fact that his agency classifies non-supervisory writing positions at the GS-12 and GS-13 levels. "Attorneys are only going to stay at the GS-13 level for so long," he stated. Another interviewee stated that there is "a little bit of stigma" when attorneys write FADs, which may impact their future careers.

**Tight agency budget.** One interviewee stated that his agency focuses resources on issuing timely FADs and investigations, but that leaves other components of the EEO Program without adequate resources. Another interviewee stated that his agency is "making do" with the available resources to write FADs, but "it's tight."

#### **Advice for Agencies with Low Timeliness Rates**

The interviewees recommended several actions to agencies that have struggled to issue FADs in a timely manner.

**Improve ROIs.** Agencies should track when ROIs are received and the progress of complaints. For writers to produce quality FADs, agencies must produce a timely and quality ROI.

**Hold writers accountable for timeliness.** All interviewees recommended that agencies hold writers accountable for issuing timely FADs. One interviewee stated, "Accountability is the biggest factor, and we are holding ourselves accountable instead of outside entities telling us we are untimely."

**Better manage caseloads.** "If you are assigning multiple cases to a writer at a time, they could get confused," stated one interviewee. "It's better to assign one at a time to keep them focused."

**Offer writing guidance and templates.** Interviewees urged agencies to offer writing guidance and templates, particularly to contract writers. For instance, interviewees stated agencies might inform contract FAD writers that they should use the most recent applicable case law. Such guidance can help writers focus their efforts.

**Allocate adequate resources.** Sufficient funding and staffing are crucial factors in releasing decisions on time. One interviewee stated, "If you are in a large organization and don't have resources, it's not going to be timely."



**Let writers participate in other parts of EEO Program.** Giving writers the opportunity to work on other aspects of the EEO Program can enhance their knowledge of all EEO matters. This can better inform their writing.

**Involve the EEOC.** One interviewee recommended that agencies use the EEOC as a resource and ask for additional guidance on issuing FADs in a timely manner during customary technical assistance meetings.

### Summary of Interviews

The EEOC's interviews with leaders in organizations that issue timely FADs revealed that these agencies' successes in issuing timely FADs are largely attributable to:

- Hiring FAD writers with substantial experience in the EEO field and EEO law.
- Using formal tracking systems that alert writers and management to deadlines.
- Providing ongoing training and education to FAD writers.
- Including timeliness as a performance element in both staff-level and supervisory performance plans, so that both writers and management are held accountable for issuing timely and quality FADs.
- Providing resources (such as boilerplate and templates) and legal databases to help writers draft decisions in a timely manner.

While interviewees reported that complex cases, heavy caseloads, and writer turnover pose significant challenges to issuing timely FADs, these challenges can be managed through adequate resources, leadership, and planning. For example, interviewees indicated that heavy caseloads can be addressed through contractors and agreements with other agencies to write FADs, as needed. Writers also benefit from having Attorney Advisors dedicated to the EEO Program so that writers can consult with them about complex and novel legal matters.

### Questionnaire Results

The EEOC sent follow-up questionnaires to a subset of EEO Directors who responded to the initial survey. For follow-up, the EEOC contacted 11 cabinet-level agencies, five DoD subcomponents, two large agencies, seven medium-sized agencies, and five small agencies. Seven cabinet-level agencies, four DoD subcomponents, one large agency, three medium-sized agencies, and four small agencies responded to the follow-up questionnaire.<sup>7</sup>

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<sup>7</sup> For the purposes of this questionnaire, agencies were classified as small (1-999 employees), medium (1,000 to 14,999), and large (15,000 or more employees) as well as designated as cabinet-level.

## Formal Complaint Process Overall

This follow-up section examines the formal complaint process overall at respondent agencies with an average merit FAD timeliness rate greater than 75% for FY 2018–21. The following provides an overview:

- At one cabinet-level agency, contract investigators conduct investigations and prepare ROIs in coordination with EEO Specialists. Six GS-14 or equivalent EEO Specialists—all licensed attorneys—draft FADs. In the case of a backlog or in a conflict case, contractors draft the FAD and a senior FAD writer reviews and provides edits. FADs are generally reviewed and signed by the Assistant EEO Director, but the EEO Director reviews FADs with a finding of discrimination.
- At one DoD subcomponent, cases are referred for investigation to the DoD's centralized investigative office, or a contract investigator if necessary. Upon completion of the investigation, the EEO Office refers the case to a contractor and coordinates the FAD drafting. A manager and the EEO Director review the FAD and forward it to the Office of General Counsel (OGC) for review by a conflict-screened attorney. The EEO Director signs and issues the FAD.
- At one medium-sized agency, contract investigators, in coordination with EEO Specialists, draft letters regarding acceptance/dismissal of claims. The EEO Specialists may also assist in obtaining agency documents and closely monitor the investigation. Five EEO Specialists at the GS-13-14 or equivalent (two of whom are attorneys) draft FADs, unless there is a conflict case. The branch chief reviews FADs, followed by the Deputy EEO Director, who is an experienced attorney. The EEO Director signs off on all FADs.

## Role of Contractors in FAD Timeliness

In this follow-up section, respondents, overall, described contract investigators as beneficial to FAD timeliness, particularly for conflict cases and when there is an influx of cases. However, many respondents stated that quality control issues with FADs drafted by contractors can cause subsequent case processing challenges.

Most agencies stated that their staff coordinate with contract investigators to ensure that contractors are an asset to the EEO program and support timely FAD issuance. Agencies highlighted close collaboration with the contract investigators—including drafting an investigative plan for the contractor, remaining in contact about timelines, and assisting with obtaining applicable documents—as critical to ensuring timely FAD issuance. Only one agency indicated that contract investigators decreased the likelihood of FAD timeliness, citing a contract investigator's lack of direct access to agency points of contact and the difficulty of holding contractors accountable for poor performance.

Agencies use contracts and memoranda of understanding to fill FAD writing needs. However, agencies also expressed concerns about the timeliness and quality of some of these FADs. Agencies reported that they review contract FADs with checklists and provide templates and past decisions to improve quality. When quality issues arise, agencies described either correcting the problems or returning the FADs to the contractor. Nevertheless, agencies stated that using FAD contractors was crucial to overall timeliness.

### **Impact of Review and Signature Authority on FAD Timeliness**

In this follow-up section, agencies described various review and signature processes prior to issuing merit FADs. These processes may vary based upon whether there is a finding. For example:

- At one cabinet-level agency with a low timeliness rate, all FADs are either drafted or reviewed by in-house licensed attorneys and then sent to OGC for review prior to review by the Deputy EEO Director and signature by the EEO Director.
- At one cabinet-level agency with a high timeliness rate, all FADs are drafted or reviewed by in-house licensed attorneys and are subsequently reviewed and approved by the Assistant EEO Director. Only findings require approval from the EEO Director at this agency.
- At one medium-sized agency with a low timeliness rate, after a licensed attorney drafts a FAD, it is reviewed by the Deputy EEO Director and/or EEO Director. However, another agency designee must review the FAD for legal sufficiency, which can delay the FAD issuance process.
- At another medium-sized agency with a high timeliness rate, attorneys draft merit FADs, which are reviewed by a complaints manager and signed by the EEO Director.

Agencies also differ on whether there is a special review standard for merit FADs containing a finding. Several agencies stated that FADs without a finding require less review and could be issued without the EEO Director's signature. Agencies also described that FADs containing a finding could require further review by the EEO Director or another high-level official with legal expertise.

An agency stated that the review process provides an opportunity to engage with leadership and discuss settlement. However, other respondents indicated that the additional review could lead to untimeliness with respect to these FADs. Since few merit

FADs contain findings of discrimination, agencies reported that the additional review did not greatly affect overall timeliness rates.<sup>8</sup>

### **Funding and Staffing Considerations**

Respondents indicated a need for additional staffing and funding, particularly because of the increasing complexity and number of federal sector cases related to employees returning to offices after the easing of COVID-19 restrictions. For example, one cabinet-level agency sought to hire several additional full-time attorneys, a part-time attorney, and an additional Program Support Assistant by Summer 2022 to deal with a backlog of cases. Other agencies indicated they had relied on detailees to boost staffing levels and were seeking additional staff and an additional FAD writing contract.

Shifting priorities can also pose challenges. A cabinet-level agency said that shifting priorities—such as drafting policies and guidance, providing technical assistance, and facilitating trainings—have taken away from the staff's capacity to draft merit FADs.

### **Role of Attorneys in the FAD Writing Process**

In-house FAD writers are either classified as Attorney Advisors or EEO Specialists, with licensed attorneys holding many of the FAD writing positions in both categories. The number of attorneys employed to draft FADs varied by agency.

Overall, agencies indicated a preference for attorney FAD writers for more complicated cases. Notably, cabinet-level agencies with high timeliness rates reported they only employed attorneys as FAD writers and used in-house attorneys for review. Two of the three medium-sized agencies with high timeliness rates did the same, while another medium-sized agency with high timeliness employed two attorneys out of its five EEO Specialists and has an attorney deputy director review all FADs. However, some agencies with low timeliness rates also employed only attorney FAD writers. Thus, employing attorney FAD writers or in-house attorneys to review FADs may not guarantee timeliness, but all the respondent agencies with high timeliness rates do so.

Furthermore, an agency asserted a need for additional assistance and training for non-attorney FAD writers, noting a “steep learning curve” for non-attorneys. Another agency recommended hiring FAD writers with law degrees, regardless of licensure.

### **Reporting Structure's Effect on FAD Timeliness**

Most respondent agencies indicated that a direct reporting structure—where an EEO Director reports directly to the agency head—did not affect FAD timeliness.

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<sup>8</sup> Specifically, Form 462 data indicate that only 1.95% of merit FADs government-wide contained findings of discrimination.

Data from the EEOC's Form 462 back up these responses. Table 4 shows the median timeliness in issuing FADs by reporting structure from FY 2018 through FY 2021. In FY 2019 and FY 2021, agencies with direct reporting structures, at the median, were timelier in issuing FADs than agencies without direct reporting structures. The opposite occurred in FY 2018 and FY 2020. However, in all four years, the differences were not statistically significant.<sup>9</sup> In other words, a direct reporting structure did not significantly impact an agency's ability to issue merit FADs within the required timeframe.

**Table 4. Median Timeliness in Issuing Merit FADs by Reporting Structure, FY 2018–21**

Direct Reporting Structure?	FY 2018	FY 2019	FY 2020	FY 2021
Yes	71.4%	62.6%	53.6%	60.0%
No	75.5%	58.2%	60.0%	40.6%

Notes: To be included in this analysis, an agency must have issued at least 5 merit FADs in the respective fiscal year (FY). The data included both subcomponents and parent agencies. The results were substantively the same if 10 merit FADs were required for an agency to be included or if subcomponent agencies were excluded.

Source: U.S. Equal Employment Opportunity Commission, Annual Federal EEO Statistical Reports of Discrimination Complaints (Form 462).

### FAD Process Challenges

Agencies reported that employees responsible for issuing FADs have a formal performance element pertaining to timeliness. However, that performance element did not apply to factors outside the employee's control, such as review by agency officials. For example, writers are evaluated based on how promptly they submit drafts for supervisory review and issuance, but are not penalized when final decisions are issued beyond the time limit because of delays in supervisory, leadership, or legal review.

In addition, five out of seven cabinet-level agencies (along with other agencies) indicated that timely FAD issuance had interfered with work-life balance or required employees to take credit hours. Respondents also reported that hiring lags and other EEO priorities have contributed to a lack of staff writing FADs. Some agencies pointed to reporting requirements that take up employees' time without increased staffing. However, agencies did not specify which requirements had interfered with FAD writing.

Agencies stated that FADs have become increasingly complex, and they expect the volume of complex cases to increase as employees return to the office. Specifically,

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<sup>9</sup> This was confirmed for each fiscal year with a Wilcoxon rank-sum test. The Wilcoxon rank-sum test checked whether the distribution of timeliness rates of agencies with direct reporting structures significantly differed from that of agencies without direct reporting structures.

respondents pointed to the increase in harassment cases, which may have multiple claims and take longer to draft.

### **Suggestions for Improving the FAD Process**

Through questionnaire responses, agencies made suggestions for fellow agencies. These suggestions included:

- Conduct the EEO process from the beginning as if a final decision is being issued. This will help ensure that all claims are framed appropriately and the necessary evidence is found in the file.
- Coordinate timelines with contract investigators and help them to get necessary documents and to contact agency officials. This will help ensure a timely, thorough, and legally sufficient investigation.
- Provide examples of high-quality final decisions, boilerplate, and templates for in-house writers and contractors to use while ensuring the writers incorporate appropriate analysis.
- Regularly communicate with contract FAD writers to ensure timeframes will be met and conduct quarterly meetings with the contractor to discuss deficiencies.
- Hire FAD writers with law degrees and attorney licenses.

Agencies also provided suggestions for the EEOC, including:

- Publicize applicable precedent to include in FADs, such as through *The Digest of EEO Law*.
- Offer sample final decisions and templates to the EEO community.
- Offer training on writing decisions, especially for non-attorneys.
- Expand the capabilities of the EEOC's FedSEP online system to be used at the agency level.

### **Summary**

The EEOC's questionnaires with a subset of agency survey respondents revealed that several factors contributed to issuing merit FADs on time. Respondents stated that high quality ROIs make it easier to write high quality final decisions on time. In addition, having attorneys draft merit FADs or review them in-house prior to publication helped ensure timeliness. Respondents suggested that agencies with case backlogs rely on contractors and detailees to catch up. A review and signature process that facilitates FAD quality and a legally sufficient review may also prevent delays.

On the other hand, insufficient staffing and funding contributed to untimeliness and interfered with work-life balance at many agencies. Agencies also found it challenging to deal with the increasing complexity and number of cases as employees return to

work in offices. Other challenges included training non-attorneys to write FADs and recruiting attorneys to write FADs.

Respondents provided suggestions for agencies to improve merit FAD timeliness, including coordinating with contract investigators, providing templates and boilerplate for FAD writers, and regularly communicating with contract FAD writers. Additionally, respondents suggested hiring FAD writers with law degrees and using agency detailees to draft FADs as needed.

Lastly, respondents offered suggestions to the EEOC, such as providing guidance on FAD length, complexity, and applicable legal precedent. Respondents also requested education and technical assistance, such as FAD templates, FAD writing courses for non-attorneys, and expanded FedSEP access.

## **Main Findings in This Report**

### **Impediments to Issuing Timely FADs**

After evaluating all the information in this report, the EEOC identified several major impediments to issuing merit FADs on time. One major impediment was a lack of staffing and funding. Agencies also found it difficult to recruit and retain well-qualified candidates to write FADs, particularly those with law degrees, because these positions are not highly graded and are not usually characterized as “Attorney” positions.

Heavy caseloads and backlogs also presented a major challenge to timeliness. Cases involving many claims and incidents, findings of discrimination, and complex issues (such as hostile work environment, attorney’s fees, and compensatory damages) tend to require additional layers of review and approval. This, in turn, can cause delays. Inadequate investigations that require supplemental investigations later on also tend to cause delays.

Other impediments to issuing FADs on time included:

- Agency leadership did not make the timely issuance of FADs an agency priority.
- Lack of training for FAD writers, especially non-attorneys.
- Lack of tracking systems for alerting EEO personnel of deadlines for processing individual FADs makes it difficult to issue FADs in a timely manner.

### **Promising Practices to Improve FAD Timeliness Rates**

The EEOC’s evaluation of agencies with high rates of timely-issued FADs found some promising practices to help other agencies improve their timeliness. Most importantly, leadership at these agencies made FAD timeliness a priority. Other promising practices are described below.

### Recruit and Retain Experienced Staff with Appropriate Funding and Prioritization

One common practice these agencies shared was that they devoted appropriate staffing and funding to writing FADs. FADs cannot be written without personnel who write them, and likewise, they cannot be written in a timely manner if there is insufficient staff to write them within the regulatory time limit. In order to ensure appropriate staffing and funding for writing FADs, agencies must make FAD-writing a budgetary priority and prioritize FADs as an important agency deliverable. Of course, this requires agency leadership and budget officials to communicate to Congress the need for sufficient appropriations for FAD-writing.

Agencies with high timeliness rates also demonstrated the importance of recruiting and retaining experienced and well-trained staff. FAD writers at agencies with high timeliness rates were often licensed attorneys, had law degrees, or had significant experience in EEO law. This reflects the fact that writing merit FADs in a timely manner requires a high level of legal knowledge about EEO laws and regulations. Further, where FAD writers were not attorneys, agencies provided access to attorneys for legal advice and review, particularly for final decisions involving complex or novel matters. Likewise, agencies with high timeliness rates offered their FAD writers ongoing, frequent training on EEO laws and decision writing. These agencies also used boilerplate and templates, often drafted by more experienced staff, to expedite the FAD writing process.

### Embed Accountability for FAD Timeliness in Agency Practices and Procedures

Agencies with high timeliness rates embedded accountability into the FAD writing process. They held FAD writers and their supervisors accountable for issuing FADs in a timely manner by including timeliness as an element in performance evaluations. These agencies also used tracking systems to monitor progress and alert writers of upcoming deadlines. These practices reflect that timely issuance of FADs requires agencies to implement procedures and practices that ensure writers are aware of deadlines for writing decisions and held accountable for missing them.

### Coordinate with Contract Investigators to Prevent Delays and Put in Place a FAD Writing Contract with Proper Oversight

Agencies with high timeliness rates coordinated with contract investigators to prevent delays and had a FAD-writing contract in place with proper oversight to address or prevent a backlog. These agencies helped contract investigators obtain access to agency witnesses and documents. These agencies also ensured quality investigations, since an incomplete file could delay the FAD writing process.

Additionally, agencies with high timeliness rates had a FAD contract in place for instances of high case volume or low staffing. These agencies ensured FAD quality by closely coordinating with contractors to meet agency requirements and by properly



reviewing and revising FADs. Some agencies described the need for more oversight. However, agencies found the contracts useful to prevent delays in FAD issuance.

### **Conclusion and Next Steps**

This report assessed factors that contribute to timely merit FAD issuance. The EEOC surveyed multiple agencies, interviewed agencies with high merit FAD timeliness rates, and reviewed questionnaires from a subset of survey respondents.

The results indicate that agencies with high merit FAD timeliness rates have leaders who prioritize FAD timeliness, devote sufficient staffing and funding to FAD writing programs, and hire experienced staff who can collaborate with contract investigators and contract FAD writers. These agencies also use tools such as tracking systems and templates, include a staff performance element related to timeliness, and provide training for staff. Additionally, FAD writing contracts with external writers can assist these agencies in the event of a backlog. The EEO Director's direct reporting structure assists some of these agencies with added attention and lesser required review of FADs.

In contrast, agencies with lower merit FAD timeliness rates generally lack sufficient staffing, funding, tools, and training. These agencies have difficulty recruiting and retaining qualified staff, particularly licensed attorneys. Moreover, leadership at these agencies tends not to prioritize FAD timeliness. Additionally, inadequate investigations and/or insufficient contract FAD drafts may contribute to delays.

Finally, agencies requested guidance from the EEOC to assist in increasing timely FAD issuance. For example, agencies suggested that the EEOC offer a class on writing FADs for non-attorneys. The EEOC will continue to collaborate with the EEO community to develop further guidance and resources to improve merit FAD timeliness.

## Appendix A: Survey of Agency EEO Directors

### Introduction

1. What is your agency's name?
2. Are you a subcomponent of another Federal agency?
3. Please indicate the name of your parent agency or department.
4. What position do you hold?
  - a. Agency Head
  - b. EEO Director (or equivalent)
  - c. Deputy EEO Director (or equivalent)
  - d. Collateral Duty EEO Director
  - e. Other EEO Personnel
  - f. Non- EEO Personnel
  - g. Agency Attorney/Counsel
  - h. Other (please specify)
5. Are informal and formal complaints processed in the same office within your agency or are these functions divided into different offices?
  - a. Yes, the same office processes both informal and formal complaints.
  - b. No, there are separate offices for the informal and formal complaint processes.

### EEO Functions

For the EEO functions listed below, please indicate who is responsible for conducting the function by typing agency, parent agency, or subcomponent. For example, if you are a parent agency or your agency does not include subcomponents, please indicate "Agency". However, if you are a subcomponent agency, please indicate who is responsible by typing "subcomponent" or "parent agency."

6. EEO Counseling
7. ADR During Counseling Stage
8. Acceptance/Dismissal of Claims
9. ADR at the Formal Stage
10. Reports of Investigation
11. Drafting Final Decisions

## **Investigations**

For the following questions, please consider your agency's activities that occurred in fiscal year 2021.

12. Does your agency use contract EEO investigators?
13. During FY 2021, what percentage of investigations are conducted by contractors?
  - a. 0%
  - b. 1 to 10%
  - c. 11 to 30%
  - d. 31 to 50%
  - e. 51 to 70%
  - f. 71 to 90%
  - g. 91 to 100%
  - h. There were no investigations conducted in FY 2021

## **Merit FAD Processing**

For the following questions, please consider your agency's activities that occurred in FY 2021.

14. All FADs are drafted by:
  - a. Agency employees
  - b. Contract FAD writers and approved by agency employees
  - c. We contract FAD writers on an as needed basis
  - d. Other (please specify)
15. What percentage of the individuals who draft your agency's FADs are licensed attorneys?
  - a. 0%
  - b. 1 to 10%
  - c. 11 to 30%
  - d. 31 to 50%
  - e. 51 to 70%
  - f. 71 to 90%

- g. 91 to 100%
16. Please specify the number of agency staff responsible for FAD writing.
17. Out of the total number of staff indicated what percentage are collateral duty (meaning they are not fulltime FAD writers)?
- a. 0%
  - b. 1 to 10%
  - c. 11 to 30%
  - d. 31 to 50%
  - e. 51 to 70%
  - f. 71 to 90%
  - g. 91 to 100%
18. Please specify the grade levels of the agency employees dedicated to FAD writing. (Check all that apply.)
- a. GS 7-11 or equivalent
  - b. GS 12 or equivalent
  - c. GS 13 or equivalent
  - d. GS 14 or equivalent
  - e. GS 15 or equivalent
  - f. SES or equivalent
  - g. Other (please specify)
19. What level of review and signature is required prior to the issuance of merit FADs?
- a. The designated office head responsible for formal complaints must review and sign all merit FADs
  - b. The EEO Director must review and sign all merit FADs
  - c. Employees other than the designated office head or EEO Director may review and sign FADs
  - d. Other (please specify)
20. Do your employees and/or contractors use agency legal templates and/or boilerplate in assisting with FAD drafting?
21. Are you satisfied with the quality of FADs issued at your agency?

22. How often does your agency provide training to FAD writing staff? (Note: this is any training that is applicable to FAD writing i.e., substantive legal training.)
- a. Annually
  - b. Biannually
  - c. As needed
  - d. Other (please specify)
  - e. Never

### **Merit FAD Timeliness**

For the following questions, please consider your agency's activities for FY 2021.

23. Do you have an approximate idea of your agency's timeliness rate? Please select the closest option from the following percentage range.
- a. 0-24% (*go to question 24*)
  - b. 25-49% (*go to question 24*)
  - c. 50-74% (*end of survey*)
  - d. 75-100% (*skip to question 25*)
  - e. I do not have an approximate idea of my agency's timeliness rate (*end of survey*)
  - f. My agency did not have any Merit FADs in FY 2021 (*end of survey*)
24. What factors do you attribute to your agency's low timely FAD processing rate? Check all that apply.
- a. Lack of staff
  - b. Lack of funding
  - c. Lack of training
  - d. Not a leadership priority
  - e. Unclear operating procedures for complaint processing
  - f. Staff is not knowledgeable in EEO legal issues
  - g. Large case volume
  - h. Supplemental investigations
  - i. Findings of Discrimination
  - j. Complex Legal Analyses

- k. Cases with Multiple Claims and Incidents
  - l. Prolonged deliberations on whether to accept or reject AJ decisions
  - m. Too many personnel or offices involved in drafting, approving, or issuing FADs
  - n. Inadequate tracking system for alerting EEO personnel of deadlines for processing individual FADs
  - o. Other
25. What factors do you attribute to your agency's exceptional timeliness rates?  
Check all that apply.
- a. Sufficient staff
  - b. Sufficient funding
  - c. Sufficient training
  - d. Leadership priority
  - e. Clear operating procedures for complaint processing
  - f. FADs written by staff with knowledge of EEO legal issues
  - g. Small case volume
  - h. Few supplemental investigations
  - i. Low number of findings of discrimination
  - j. Few cases that require Complex Legal Analysis
  - k. Few cases with Multiple Claims and Incidents
  - l. Short deliberations on whether to accept or reject AJ decisions
  - m. Streamlined process for drafting, approving, and issuing FADs
  - n. Tracking system alerts personnel involved in FAD writing of deadlines for issuing individual FADs
  - o. Other

## Appendix B: Interview Questions for Agencies with High Timeliness Rates

The EEOC asked agencies with high timeliness rates the following questions:

1. State your name and title of your position.
2. How long have you been in your position?
3. What is your grade level?
4. Are you involved in writing or reviewing merit Final Agency Decisions?
5. Describe the setup of your agency's EEO office and your role within that office, including:
  - How your EEO office relates to any sub-agencies, particularly with respect to FAD writing
  - What is your role is within the office
  - How your position relates to the EEO director
6. Who performs the following EEO functions at your agency?
  - EEO Counseling
  - Alternative Dispute Resolution (ADR) During Counseling Stage
  - Acceptance/Dismissal of Claims
  - ADR at the Formal Stage
  - Reports of Investigation
  - Drafting Final Decisions
7. Does your office use contract investigators, and if so, how often? How do you think contract investigators affect the timeliness of the formal EEO process, if at all?
8. Does your office have sufficient funding and staffing to issue FADs in a timely manner?
9. If not, how are you lacking in terms of staffing and other resources?
10. What happens when a case is sent back for further investigation, such as in the case of a remand from OFO or an AJ? How does your office ensure the FAD is timely issued in such circumstances?
11. Tell us about the people in your office who draft FADs:
  - How many people
  - How many are licensed attorneys

- What are the grade levels of these staff members
  - Do you use contractors and if so, when?
  - Are these positions classified as attorney positions or as EEO specialist positions?
12. What attributes do you seek in candidates for your FAD writing team?
13. Now, we are going to ask you to describe your agency's process for drafting FADs:
- What tools are used in initial drafting
  - How are the drafts reviewed and edited
  - Who signs off on the FADs
  - Does your agency have a tracking system for FAD timeliness?
14. How do you ensure the quality of FADs?
15. What training do you provide to staff who drafts FADs?
16. Does your staff have performance standards incorporating a timeliness element?
17. Do you think the amount of training provided to staff who write FADs is adequate? If not, why is the training inadequate? Do you have specific suggestions regarding training that will enable your agency to write better FADs and increase timeliness?
18. What factors do you attribute to your agency's timeliness rates?
19. What factors contribute to an untimely FAD at your agency?
- What is the biggest cause of untimely merit FADs at your agency?
  - What is your agency doing to address this factor?
20. What would your agency need to improve timeliness in issuing merit FADs?
21. Does getting FADs timely issued affect your work life balance or ability to take leave?
22. Do complaints that ultimately result in a finding take longer for your office to process than complaints that do not result in a finding?
- If so, why is this so?
  - To what extent, do you think this is a factor in your overall percentage of timely FADs?



- If you believe that writing FADs involving findings take longer to write and issue, do you have any suggestions on how to improve the timeliness of these types of decisions?
23. When your agency issues decisions regarding compensatory damages, does this take longer? To what extent does this affect timeliness?
  24. If your office ultimately rejects an AJ's decision, does it generally take longer to issue a final order? To what extent, do you think this is a factor in your overall percentage of timely FADs?
  25. How does your agency try to ensure timely FADs when you have an influx of cases?
  26. What advice do you have for agencies who are struggling to issue timely FADs based on your experience?
  27. Is there anything else you would like to share with us?

## Appendix C: Questionnaire Sent to Subset of Survey Respondents

1. Name, Agency, and Title of Your Position:
2. Years in Your Position:
3. Grade Level:
4. Are you involved in writing or reviewing merit Final Agency Decisions?
5. Describe the setup of your agency's EEO office and your role in the office, including the following:
  - a. EEO Office Relationship to Department or Sub-Agencies (particularly with respect to FAD writing), if applicable
  - b. Your Role in the EEO office
  - c. Your Position's Relationship to EEO Director
6. Describe who (position title and office, or contractor) performs the following EEO functions at your agency:
  - a. EEO Counseling
  - b. ADR During Counseling Stage
  - c. Acceptance/Dismissal of Claims
  - d. ADR at the Formal Stage
  - e. Reports of Investigation
  - f. Drafting Final Decisions
7. Does your EEO Director report directly to the Agency head, as reflected by the fact that your EEO Director receives a performance evaluation from the Agency head?
8. Does your office use contract investigators, and if so, how often? How do you think contract investigators affect the timeliness of the formal EEO process, if at all?
9. Does your office have sufficient funding and staffing to issue FADs in a timely manner?
10. If your office does not have sufficient funding and staffing, how is your office lacking in terms of staffing and other resources?
11. What happens when a case is sent back for further investigation, such as in the case of a remand from OFO or an AJ? How does your office ensure the FAD is timely issued in such circumstances?

12. Tell us about the people in your office who draft FADs:
  - a. Number of People
  - b. Number Who Are Licensed Attorneys
  - c. Grade Levels of Staff
  - d. When Do You Use Contract FAD Writers
  - e. Positions Classified as EEO Specialists, Attorneys, or Other Positions
13. What attributes do you seek in candidates for your FAD writing team?
14. Tell us about the following aspects of the process for drafting FADs:
  - a. What tools are used in initial drafting?
  - b. How are the drafts reviewed and edited?
  - c. Who signs off on the FADs?
  - d. Does your agency have a tracking system for FAD timeliness?
  - e. What tools are used in initial drafting?
  - f. How do you ensure the quality of FADs?
15. What training do you provide to staff who draft FADs? If you provide training, how often is it provided?
16. Does your staff have performance standards incorporating a timeliness element with respect to documents issued?
17. Do you think the amount of training provided to staff who write FADs is adequate? If not, why is the training inadequate? Do you have specific suggestions regarding training that will enable your agency to write better FADs and increase timeliness?
18. What factors do you attribute to a timely FAD issued by your agency?
19. What are the biggest factors contributing to an untimely FAD at your agency and what is your agency doing to address these factors?
20. What would your agency need to improve timeliness in issuing merit FADs?
21. Does getting FADs timely issued affect your work life balance or ability to take leave?
22. Do complaints that ultimately result in a finding take longer for your office to process than complaints that do not result in a finding, and if so, why? To what extent, do you think this is a factor in your overall percentage of timely FADs? Do

you have any suggestions on how to improve the timeliness of these types of decisions?

23. When your agency issues decisions regarding compensatory damages, does this take longer? If so, to what extent does this affect timeliness rates?
24. If your office ultimately rejects an AJ's decision, does it generally take longer to issue a final order? To what extent, do you think this is a factor in your overall percentage of timely FADs?
25. How does your agency try to ensure timely FADs when you have an influx of cases?
26. Does the reporting relationship (direct or indirect) of your EEO Director to the Agency head impact the timely issuance of FADs? If so, explain how it is impacted.
27. If your agency has a high rate of timely FADs, what advice do you have for agencies who are struggling to issue timely FADs based on your experience?
28. Is there anything else you would like to share with us?

## Appendix D: Investigation and FAD Writing Staff

**Table 5: Respondent and Interviewee Agency Use of Investigation and FAD Writing Contractors**

Agency Size Classification	Timeliness Rate	Investigation Contractors	FAD Writing Contractors
Cabinet (Large)	Low	Always	Never
Cabinet (Large)	Low	Always	Sometimes
Cabinet (Large)	Low	Sometimes	Sometimes
Cabinet (Medium)	Medium	Always	Always
Cabinet (Large)	Medium	Always	Sometimes
Cabinet (Large)	High	Always	Sometimes
Cabinet (Large)	High	Almost Always	Sometimes
Cabinet (Large)	High	Always	Sometimes
Cabinet (Large)	High	Sometimes	Sometimes
Large	Medium	Always	Sometimes
Medium	High	Sometimes	Sometimes
Medium	High	Always	Sometimes
Medium	High	Always	Sometimes
Medium	Low	Always	Sometimes

Note: FAD = Final agency decision. A “low” timeliness rate is less than 50%, a “medium” rate is 50% to less than 75%, and a “high” rate is 75% or greater.

Source: U.S. Equal Employment Opportunity Commission.

**Table 6: FAD Writing Staff at Respondent and Interviewee Agencies with Attorney Status and Timeliness Rate**

Agency Size Classification	Number of FAD Writers/Reviewers of Contract FADs	Classification as EEO Specialist or Attorney	Number of Attorneys	Grade Levels or Equivalents	Timeliness Rate
Cabinet (Large)	13	Attorney	13	GS-12-15	Low
Cabinet (Large)	2	Attorney	2	GS-12	Low
Cabinet (Large)	2	EEO Specialist	1	GS-14-15	Medium
Cabinet (Medium)	0	EEO Specialist	0	GS-13/14	Medium
Cabinet (Large)	4	EEO Specialist	2 (2 other law school graduates)	GS-13-15	Medium
Cabinet (Large)	6	EEO Specialists	6	GS-14	High
Cabinet (Large)	1 (with occasional assistance from others and in-house attorney review of all merit FADs)	EEO Specialist	0	GS-12-15	High
Cabinet (Large)	2	EEO Specialist	2	GS-13-15	High
Cabinet (Large)	4	EEO Specialist	4	GS-11-15	High
Large	7	EEO Specialist	4	GS-12-14	Medium
Medium	4	Attorney	4	GS-14-15	High
Medium	5 (Deputy, who is an attorney reviews all FADs)	EEO Specialist	2	GS-13-14	High

Agency Size Classification	Number of FAD Writers/Reviewers of Contract FADs	Classification as EEO Specialist or Attorney	Number of Attorneys	Grade Levels or Equivalents	Timeliness Rate
Medium	1 (in-house attorney reviews work product)	EEO Specialist	0	GS-14	High
Medium	3	Attorney	3	GS-14	Low
DoD (Large)	2	EEO Specialist	0	GS-13	Low
DoD (Large)	1	EEO Specialist	0	GS-13	Low
DoD (Medium)	0 (review of contract FADs conducted by other staff)				Medium
DoD (Medium)	0 (review of contract FADs conducted by other staff and an OGC attorney reviews prior to issuance)				High

Note: FAD = Final agency decision. DoD = Department of Defense. A "low" timeliness rate is less than 50%, a "medium" rate is 50% to less than 75%, and a "high" rate is 75% or greater.

Source: U.S. Equal Employment Opportunity Commission.