

**Army Regulation 690–600**

**Civilian Personnel**

# **Equal Employment Opportunity Discrimination Complaints**

**Headquarters  
Department of the Army  
Washington, DC  
9 February 2004**

**UNCLASSIFIED**

# ***SUMMARY of CHANGE***

AR 690-600

Equal Employment Opportunity Discrimination Complaints

This revision dated 9 February 2004---

- o Contains extensive new and updated information on how to file, counsel, process, investigate, settle, and decide discrimination complaints.
- o Requires Army activities to establish an alternative dispute resolution program to facilitate early resolution of a complaint of discrimination (chap 2).
- o Sets forth policy and procedures to be followed in processing complaints of discrimination involving Civilian Personnel Operations Center Actions (chap 3).
- o Incorporates current address and telephone information for the Department of Defense Office of Complaint Investigations, Merit Systems Protection Board, and Equal Employment Opportunity Commission, regional and field offices (app B).

Effective 9 March 2004

## Civilian Personnel

### Equal Employment Opportunity Discrimination Complaints

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By order of the Secretary of the Army:

PETER J. SCHOOMAKER  
*General, United States Army*  
*Chief of Staff*

Official:



JOEL B. HUDSON  
*Administrative Assistant to the*  
*Secretary of the Army*

**History.** This publication is a major revision.

**Summary.** This regulation establishes policies and mandated procedures for counseling, filing, processing, investigating, settling, deciding, and taking action on equal employment opportunity discrimination complaints. This publication reflects the changes incorporated in Title 29, Code of Federal Regulations, Part 1614, effective 9 November 1999, which implements Federal law and the regulations of the Equal Employment Opportunity Commission that prohibit discrimination based on race, color, religion, sex, national origin, age, physical or mental disability, and reprisal.

**Applicability.** This regulation applies to all Department of the Army appropriated or nonappropriated fund activities, their employees, former employees, applicants

for employment, and certain contract employees. This regulation applies to employees from other Federal agencies receiving Army support under a servicing agreement who allege discrimination in a matter controlled by the Army. It is designed for use by commanders, equal employment opportunity officials, investigators, civilian personnel officials, labor counselors, managers, supervisors, employees, former employees, applicants for employment and certain contract employees. It does not apply to uniformed members of the military, persons employed or applying for positions in the Army and Air Force Exchange System, Army National Guard technicians, uniformed members of the military working part-time off duty for nonappropriated fund activities or the Army and Air Force Exchange Service. It also does not apply to non-U.S. citizens employed by the Army outside of the United States, or to U.S. citizens employed under local conditions. During mobilization, procedures in this publication can be modified to support policy changes as necessary.

**Proponent and exception authority.** The proponent for this regulation is the Assistant Secretary of the Army (Manpower and Reserve Affairs). The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation. The Assistant Secretary of the Army (Manpower and Reserve Affairs) may delegate the approval authority, in writing, to a division chief within the proponent

agency in the grade of colonel or the civilian equivalent.

**Army management control process.** This regulation contains management control provisions in accordance with AR 11–2, but does not identify management controls that must be evaluated.

**Supplementation.** Supplementation of this regulation is prohibited without prior approval from the Assistant Secretary of the Army (Manpower and Reserve Affairs), 111 Army Pentagon, Washington DC 20310–0111.

**Suggested improvements.** Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Director, Equal Employment Opportunity/Civil Rights Office, ATTN: SAMR–EO–CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202–4508.

**Distribution.** Distribution of this publication is available in electronic media only and is intended for command levels A, B, C, D, and E for Active Army, Army National Guard of the United States, and the U.S. Army Reserve.

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\*This regulation supercedes AR 690–600 dated 18 September 1989, and rescinds the following forms: DA Form 5492–R, Aug 89; DA Form 5493–R, Dec 85; DA Form 5494–R, Dec 85; DA Form 5495–R, Aug 89; DA Form 5496–R, Aug 89, and DA Form 5497–R, Aug 89.

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## Glossary



# Chapter 1 General Provisions

## Section I Introduction

### 1-1. Purpose

This regulation prescribes policy, responsibilities, and procedures for counseling, filing, processing, investigating, settling, deciding, and acting on equal employment opportunity (EEO) complaints. The processing of all EEO complaints filed by Army civilian employees, former employees, applicants for employment, and certain contractor employees will be governed by this regulation. This regulation is hereby revised to reflect changes made by the Equal Employment Opportunity Commission (EEOC) in its regulations and through the issuance of new or revised directives.

### 1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

### 1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

### 1-4. Policy statements

*a.* It is the policy of the Department of the Army (DA) to provide equal opportunity in employment for all people, and to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, disability, or reprisal.

*b.* No person will be subject to retaliation for opposing any practice or for participating in any stage of administrative or judicial proceedings under those statutes made unlawful by—

- (1) Title VII of the Civil Rights Act (Title VII) (42 USC §2000e-16),
- (2) The Age Discrimination in Employment Act (ADEA) (29 USC §621),
- (3) The Equal Pay Act (29 USC §206(d)), or
- (4) The Rehabilitation Act (29 USC §791).

*c.* Discrimination complaints will be processed with due regard for the rights of persons against whom allegations have been made.

*d.* Complaints will be processed promptly and impartially.

*e.* Complaints should be resolved at the earliest possible stage, however, resolution can occur at any stage of processing. Use of an alternative dispute resolution (ADR) program, as described in chapter 2, is encouraged. Early resolution of complaints achieves better employee relations, cuts administrative costs, avoids protracted litigation, and is consistent with the Army's commitment to EEO.

*f.* This regulation does not affect the rights granted to unions that have exclusive recognition in the Army. Further, this regulation is not intended to affect the rights of an employee represented by such a union from exercising the option to file—

- (1) A discrimination complaint under this regulation.
- (2) A grievance under a negotiated procedure.
- (3) An appeal under the appellate provisions of Merit System Protection Board (MSPB) regulations.

*g.* Suspenses imposed on the Army through this regulation that are not mandated by EEOC are administrative requirements. They are designed to assure prompt processing of complaints. Failure to meet timelines will not nullify any administrative proceeding or create a substantive right entitling any individual to relief. However, it may result in an adverse inference determination or other sanction by the Army Director of EEO or designee.

*h.* All "days" referred to in this regulation are calendar days unless otherwise indicated.

## Section II Responsibilities

### 1-5. The Assistant Secretary of the Army (Manpower and Reserve Affairs)

The Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) is the proponent of this regulation and will direct the Army Director of EEO to establish policy and implement the EEO Program.

### 1-6. The Army Director of Equal Employment Opportunity

The Army Director of EEO will set EEO policy and will ensure that—

- a.* Army programs conform to the aforementioned policies.
- b.* Adequate resources are available to implement the EEO program.

- c. A system to process EEO complaints exists.
- d. Final DA decisions and actions on EEO complaints are rendered.

### **1-7. Deputy for Equal Employment Opportunity Compliance and Complaints Review**

The Deputy for Equal Employment Opportunity Compliance and Complaints Review (EEOCCR) will—

- a. Develop Army policy and programs to process discrimination complaints.
- b. Direct the operation and management of the Army's discrimination complaint system for individual and class complaints from Army civilian employees, former employees, applicants for employment, and certain contract employees.
- c. Process and prepare final Army decisions and actions on individual and class complaints of discrimination for approval by the Army Director of EEO. When designated by the Director of EEO, render final Army decisions and actions in EEO complaints, including the decision to implement or appeal the decision of an EEOC administrative judge.
- d. Process requests from the EEOC for case files on final Army decisions and actions appealed to the EEOC.
- e. Ensure that requests for documents, records, and information that are solely within the control of Army are answered in a timely fashion.
- f. Receive and ensure compliance with appellate decisions rendered by EEOC and decide, on a case-by-case basis, whether the Army will request reconsideration of an EEOC appellate decision.
- g. Evaluate compliance of installations, activities, and major commands (MACOMs) in executing directed corrective actions and for conformance with procedural and regulatory guidelines.
- h. Provide guidance, assistance, and training to subordinate Army activities on the discrimination complaint system.
- i. Direct and manage the mandatory Army EEO automated data system that tracks complaints from the precomplaint stage through closure.

### **1-8. The Chief, Equal Employment Opportunity, Installation Management Agency**

The Chief, EEO Headquarters (HQ) Installation Management Agency (IMA) has mission responsibility and operational oversight over the regional IMA EEO offices. The Chief will ensure that the regional and operational EEO offices are sufficiently resourced to provide servicing to all commanders or equivalent officials of activities within the IMA's operational jurisdiction to enable serviced commanders or equivalent officials at all levels to develop and sustain positive EEO climates within their respective areas of command responsibility.

*Note.* Although the Chief, IMA EEO provides the resources to implement the EEO complaint program, serviced commanders or directors have a responsibility to coordinate with servicing EEO offices for timely processing of complaint actions and retain decisionmaking authority over complaints within their jurisdiction.

### **1-9. The region EEO officer**

The region EEO officer will—

- a. Advise the commander/director of the effectiveness of the EEO program and ADR programs within the region.
- b. Exercise operational control over garrison and installation EEO offices.
- c. Ensure that requests for reports, files, and information are submitted promptly.
- d. Make on-site evaluations of activity level effectiveness and provide staff assistance as needed.
- e. Ensure that all time limits set forth in this regulation are met.
- f. Coordinate and provide EEO training for employees and supervisors on the EEO process and the ADR program.
- g. Oversee use of the EEO automated data system by subordinate activities. Ensure that necessary equipment is available and properly maintained and that personnel are adequately trained on the system.
- h. Process IMA EEO complaints if processing is impractical or a conflict of interest exists at the activity level where the alleged discrimination occurred.
- i. Coordinate with serviced MACOMs as needed on EEO complaint related matters.
- j. Coordinate and review interservice support agreements for EEO services provided to non-Army tenants and off-installation Army activities.

### **1-10. The serviced commander or director**

The serviced commander or director will—

- a. Implement and enforce EEO policies as required by EEO laws, Presidential Executive Orders, EEOC, Office of Personnel Management (OPM), DOD, and Army regulations, policies, and directives.
- b. Be personally responsible and accountable for the EEO climate within their area of responsibility.
- c. Ensure the EEO officer is organizationally placed in a direct reporting relationship with the head of the organization.
- d. Ensure that supervisors and managers understand and meet their responsibilities in the discrimination complaint program.

- e.* Stress the need for and ensure prompt complaints processing.
- f.* Provide collateral duty resources to support the servicing office, that is collateral duty EEO counselors, special emphasis program managers, and committee members.
- g.* Ensure that the following information is regularly publicized and posted on official bulletin boards with easy access to current employees, former employees, applicants for employment, and certain contract employees:
  - (1) The name and address of the Army Director of EEO.
  - (2) The names, addresses, and telephone numbers of activity EEO officials, including the EEO officer and EEO counselors.
  - (3) Where applicable, a list of the organizations each counselor services.
  - (4) A statement that a counselor or EEO official must be consulted before a formal complaint is filed under this regulation. Where applicable, employees should also be advised that they may grieve allegations of discrimination under the negotiated grievance procedure (Title 5, USC, Section 7121) or under MSPB appellate procedures.
  - (5) The time limits to start an action and to file and process a complaint under this regulation. When applicable, employees should also be advised of the time limits for filing allegations of discrimination under a negotiated grievance procedure or MSPB appellate procedures.
- h.* Ensure employees are informed of the Federal EEO complaint process, to include information on the ADR program.
- i.* Ensure prompt implementation of remedies directed by EEOC or Army Director of EEO.
- j.* Ensure that the Army is adequately represented at all steps in the complaint procedure for complaints under their authority.
- k.* Make timely recommendations and decisions on complaints of discrimination for complaints under their authority.
- l.* Promote the use of ADR to resolve EEO disputes.

**1–11. The major Army command, subordinate major Army command, or independent activity EEO officer**

The major Army command (MACOM), subordinate major Army command (SUBMACOM) or independent activity EEO officer will—

- a.* Advise the commander/director of the effectiveness of the EEO discrimination complaint program and ADR programs within their areas of responsibility.
- b.* Ensure that the EEO complaint-processing program is operated effectively and efficiently in accordance with Army directives and procedures throughout the MACOM, SUBMACOM, or independent activity.
- c.* Ensure that requests for reports, files, and information are submitted accurately and promptly.
- d.* Make on-site evaluations of activity level effectiveness and give staff assistance as needed.
- e.* Ensure that all time limits set forth in this regulation are met.
- f.* Manage and oversee the EEO automated data system for subordinate activities. Ensure that necessary equipment is available and properly maintained, and that personnel are adequately trained on the system.
- g.* Process EEO complaints if processing is impractical or if a conflict of interest exists at the activity level where the alleged discrimination occurred.

**1–12. The activity/servicing EEO officer**

The activity/servicing EEO officer is responsible for administering a comprehensive EEO program for all serviced commanders or equivalent officials on all matters pertaining to the EEO program operations. EEO officers at all levels will—

- a.* Serve on the commander's or director's staff as the principal advisor to the commander or equivalent official on all matters pertaining to EEO program operations.
- b.* Know EEO laws, presidential executive orders, regulations, as well as EEOC, OPM, DOD, and DA EEO policy and directives, and be able to communicate the serviced commander's EEO policy to all members and appropriate officials at all levels within the work force.
- c.* Ensure that the EEO complaints processing program is administered in accordance with established procedures to meet the Army standard level of service.
- d.* Manage the activity complaints processing program. Monitor, implement and evaluate the progress of the EEO complaints processing program. Ensure that reports are prepared and submitted in a timely manner to appropriate officials.
- e.* Ensure that every reasonable effort is made to resolve complaints at the earliest possible stage.
- f.* Administer an ADR program for EEO disputes.
- g.* Ensure the availability of sufficient EEO counselors, appointed by orders, to provide effective counseling services.
- h.* Supervise EEO counselors to ensure effective performance and participation in training in all phases of complaint processing. Refer or assign EEO counselors for precomplaint counseling.

*i.* Ensure that counselors and investigators are given administrative and logistical support, including appropriate access to personnel records and copies of records or documents relative to the complaint, when needed in the performance of their official duties.

*j.* Upon an individual's intent to initiate the EEO complaint process, notify management officials, including Civilian Personnel Advisory Center (CPAC) and Civilian Personnel Operations Center (CPOC), to retain all relevant documents.

*k.* After coordination with the labor counselor, make the decision to accept or dismiss, in whole or in part, individual complaints at the activity, subject to the final decision of the Army Director of EEO, or designee.

*l.* Ensure that all formal complaints are captioned so as to identify the complainant versus (v.) the appropriate department or agency head against whom the complaint is filed, his or her official title, and the DA docket number. The DA docket number must be generated by the organization processing the complaint.

*m.* Arrange for investigations and EEOC hearings; provide for court reporters; ensure that the court reporter provides the required number of transcripts ordered to the DOD Office of Complaint Investigations (DODOCI) investigator or to the administrative judge.

*n.* Ensure that the EEOC administrative judge is advised to direct his or her decision and supporting documents, including all agency copies of the transcript, to EEOCCR.

*o.* Monitor implementation and ensure compliance with the terms of a negotiated settlement agreement (NSA) or Offer of Resolution accepted by the complainant to resolve any complaints of discrimination.

*p.* Maintain and safeguard complaint files.

*q.* Send legible copies of the complaint file, which are properly tabbed, indexed and bound, to EEOCCR within the time frames required by this regulation.

*r.* Establish and maintain accurate accounts, that is input and update of complaint records in the Army's prescribed EEO automated data system. Retrieve data for program management and reporting purposes.

*s.* Prepare and submit required reports.

### **1-13. The legal officer/staff judge advocate or labor counselor**

The legal officer/staff judge advocate (SJA) or labor counselor will—

*a.* Provide legal advice on EEO matters to the serviced commander, EEO officials, managers, appropriate civilian personnel officials such as the Chief, CPAC, and in some cases, the Director, CPOC. After a formal complaint is filed, serve as the agency representative and ensure appropriate coordination with EEO and civilian personnel officials on all issues pertaining to a complaint.

*b.* Coordinate with the activity EEO officer on the acceptance or dismissal, in whole or part, of individual complaints at the activity, subject to the final decision of the Army Director of EEO, or designee.

*c.* Act as the Army's representative in investigations and EEOC hearings in individual complaints and class action proceedings.

*d.* Draft and/or review proposed negotiated settlement agreements and Offers of Resolution.

*e.* Notify and provide supporting documents to the activity EEO officer when litigation is initiated on any EEO complaint.

### **1-14. The civilian personnel official**

The civilian personnel official will—

*a.* Ensure that EEO officers, EEO counselors, investigators, and agency representatives are given access to personnel records and copies of records or documents relative to the complaint when needed in the performance of their official duties. Retain the relevant records or documents until notification from the EEO officer or agency representative that no further administrative or legal decision is pending on the complaint.

*b.* Perform regulatory reviews and provide technical support to agency representatives, EEO counselors, and EEO officers.

### **1-15. Managers and supervisors**

Managers and supervisors at all levels will—

*a.* Ensure that all members of the work force refrain from actions or comments that may be perceived as having a prohibited discriminatory animus.

*b.* Act promptly to prevent or correct situations that may give rise to meritorious complaints of discrimination.

*c.* Take corrective action against military members and civilian employees who have been found to have engaged in discriminatory practices.

*d.* Provide employees, assigned as collateral EEO counselors or mediators, reasonable time to adequately perform their EEO function.

*e.* Participate in the ADR process when appropriate.

*f.* Cooperate and ensure subordinates' full cooperation with ADR neutrals and mediators, EEO counselors, labor counselors, EEO officers, investigators, and EEOC administrative judges involved in the EEO complaints process.

*g.* Throughout the administrative process of an EEO complaint, ensure that complainants and their representatives are permitted to use a reasonable amount of duty time to work on their complaints in accordance with guidance cited at paragraph 8-7.

#### **1-16. The EEO counselor**

Army's policy is that EEO counseling is a collateral duty. The EEO counselor will—

*a.* Advise aggrieved and management officials of their rights; conduct an inquiry into allegations of discrimination raised under this regulation, and attempt to facilitate resolution of discrimination complaints at the precomplaint stage.

*b.* Keep records indicating when the aggrieved first contacted the counselor and the matters raised by the aggrieved. These records will document the inquiry methods used to reach a resolution, the results of the inquiry, and will provide specific facts to be included in the counselor's written report to the EEO officer upon completion of counseling.

#### **1-17. The alternate dispute resolution neutral/mediator**

The ADR neutral/mediator is an unbiased, third party trained in ADR techniques. The ADR neutral will—

*a.* Facilitate open communication between the aggrieved and designated management official in a collaborative, nonadversarial manner.

*b.* Advise the EEO officer of any proposed settlement. The EEO officer is responsible for assuring necessary coordination and completion of any settlement agreement.

*c.* Advise the EEO officer if resolution is not achieved.

#### **1-18. The complaint investigator**

The complaint investigator will—

*a.* Conduct investigations of formal complaints of employment discrimination filed by civilian employees, applicants, former employees, and certain contract employees.

*b.* Prepare reports of investigation.

*c.* Encourage parties to settle a complaint, as appropriate.

### **Section III**

#### **Special Conditions**

#### **1-19. Equal employment opportunity counselor training**

All newly appointed EEO counselors must receive a minimum of 36 hours of initial training. The activity EEO officer will provide the Army Basic EEO Counselor Course that will serve as the basis of the initial training. Individuals successfully completing the Army Basic EEO Counselor Course will be certified by the Deputy for EEOCCR to serve as EEO counselors. To enhance and maintain counseling skills, counselors are required to complete at least 24 hours of continuing counselor training annually in EEO, civilian personnel management practices, law, and directives. The supplemental training will be training that the EEO officer deems appropriate to keep EEO counselors informed and proficient as EEO counselors.

#### **1-20. Venue**

Equal employment opportunity complaints will generally be processed at the activity where the alleged discrimination occurred unless otherwise provided in this regulation. The complaint may be processed at a different location designated by the MACOM, region, or HQ IMA EEO Chief or EEOCCR if processing is impractical at the activity where the alleged discrimination occurred.

#### **1-21. EEO Complaints involving the Secretary of the Army or officials of the Office of the Secretary of the Army; Chief of Staff, U.S. Army; officials of the Army Staff; MACOM commanders, and heads of its staff support or field operating agencies**

The Headquarters Department of the Army (HQDA) EEO Office and staff is an operating EEO office aligned under the office of the Administrative Assistant to the Secretary of the Army (AASA).

*a.* If at any time during the precomplaint or formal complaint processes, it comes to the attention of the EEO officer that a complainant has named the Secretary of the Army (SA); an official of the Office of the Secretary of the Army (OSA); the Chief of Staff, U.S. Army (CSA); an official of the Army Staff; a MACOM commander; or a head of its staff support or field operating agencies as a responsible management official in an EEO complaint, that EEO officer shall contact the EEO officer, HQDA, to coordinate further processing of the complaint.

*b.* Prior to contacting the HQDA EEO officer, the activity EEO officer shall ensure that a thorough precomplaint intake interview has been completed. The intake will provide information as to the aggrieved's reasons for naming one of the above officials.

c. During the initial contact with the HQDA EEO officer, a determination will be made as to whether the official was named because of position or because of an action personally taken.

(1) If the official was named because of position, the activity EEO officer will continue to process the precomplaint.

(2) If the official was named because of an action allegedly personally taken, the HQDA EEO officer will be responsible for processing the complaint. The HQDA EEO officer may coordinate with the activity EEO officer where the aggrieved is employed, was formerly employed, or has applied for employment, for the use of activity EEO counselors. The EEO counselor will report to and be guided by the HQDA EEO officer when performing EEO counselor duties.

(3) If the complaint involves actions allegedly personally taken by a MACOM commander, the HQDA EEO officer will coordinate with the activity EEO officer to process the complaint in both the precomplaint and formal phases. (This is permissible only if the EEO officer is a HQIMA resource.) If this occurs, the activity EEO officer will report to HQDA in matters concerning processing of this complaint.

d. If an allegation against one of the above officials initially surfaces during the formal complaint process, the activity EEO officer will coordinate with the EEO officer at HQDA.

(1) If it is determined that the official was named because of position, the activity EEO officer will continue to process the complaint.

(2) If it is determined that the official allegedly personally took an action, the activity EEO officer will issue a letter to the complainant acknowledging receipt of the complaint and inform the complainant of the referral to HQDA. The letter must state that such acknowledgement does not constitute acceptance of the complaint. The activity EEO officer will immediately forward the complaint file and a letter recommending acceptance or dismissal of the complaint to HQDA. If the official is a MACOM commander, the provisions of paragraph 1-19c(3) apply.

e. All conflicts involving processing of complaints covered by this paragraph will be resolved by the Deputy for EEOCCR.

## **1-22. Equal employment opportunity complaints involving the Assistant G-1 for Civilian Personnel Policy**

a. The Assistant G-1 for Civilian Personnel Policy (CPP) is authorized to resolve and settle the following issues:

(1) Failure to include complainant on a referral list prepared by the Assistant G-1 for CPP (Career Management).

(2) The rating, ranking, or referral process at the Army-wide referral level.

(3) Actions taken by DA career program administrators and career program screening panels.

b. When it comes to the attention of the EEO officer that a complaint involves actions personally taken by the Assistant G-1 for CPP, the procedures will be the same as those outlined in section 1-21.

c. The EEO officer servicing the activity commander responsible for a contested nonselection will process formal complaints wherein the complainant was on a referral list prepared by the Assistant G-1 for CPP (Career Management) but was not selected. Pertinent information will be requested from and provided by the Assistant G-1 for CPP (Career Management) or other DA level referral offices, as appropriate.

## **1-23. Equal employment opportunity complaints involving CPOC actions**

a. When processing actions for a serviced installation or activity, the CPOC "acts for" that installation or activity commander/director. Although geographically separated, the CPOC works for the commander/director of the activity who requested the personnel action and the CPOC is considered part of the serviced commander's/director's staff when processing personnel actions for that commander's/director's installation or activity.

b. When the CPOC is acting for a serviced commander/director and an employee or applicant alleges discrimination that involves an action taken by the CPOC, the EEO office servicing the commander/director is responsible for counseling and complaint processing.

c. Aggrieved employees and applicants who allege discrimination by CPOC personnel should contact their servicing or nearest Army operating EEO office for complaint processing information and guidance. The servicing EEO office will assist the individual in identifying the appropriate EEO office for counseling and complaint processing and immediately refer the individual to the appropriate office. The servicing EEO office should document the date contacted by the aggrieved for timeliness purposes and notify the appropriate EEO office of the referral.

d. The CPOC directors will ensure that EEO counselors, EEO officers, and agency representatives are afforded direct access to CPOC personnel to carry out their respective responsibilities in the EEO complaint process. When the CPOC, acting for a serviced commander/director, takes an action and an employee or applicant alleges discrimination pertaining to the CPOC action, the EEO counselor must have direct access to CPOC personnel. Additionally, agency representatives must have direct access to CPOC personnel to gather information about the complaint and to interview prospective witnesses.

e. The CPOC directors will ensure that EEO counselors, EEO officers, and agency representatives are afforded direct access to CPOC records to carry out their respective responsibilities in the EEO complaint process. When the CPOC is acting for a serviced commander/director and an employee or applicant alleges discrimination that involves an action taken by the CPOC, the EEO counselor must have direct access to CPOC records. The CPOC records may be

available through access of the regional database at the servicing CPAC; therefore, EEO counselors, EEO officers, and agency representatives are encouraged to coordinate with their servicing CPAC before requesting records directly from the CPOC. The CPOC directors will designate an individual within the CPOC to serve as EEO liaison/point of contact to facilitate timely response to installation or activity requests for records in connection with EEO complaints. Original personnel records should be transmitted through the CPAC to ensure accountability for the records. Timely production of needed records is critical.

#### **1–24. Conflicts of position or interest**

*a.* In order to maintain the integrity of the EEO program, EEO functions must be kept separate from personnel functions. The same Army officials responsible for executing and advising on personnel actions will not be responsible for managing, advising, or overseeing the EEO precomplaint or formal complaint processes. Complaints generally challenge the motivations and impacts of personnel actions and decisions. The integrity of the EEO investigative and decisionmaking processes is dependant upon its separation from the personnel function.

*b.* When a person involved in the EEO complaint process (for example, EEO officer, activity commander, or MACOM EEO officer) is named or otherwise designated as an alleged discriminating official, the following procedures will be followed to avoid a possible conflict of interest:

(1) *Equal employment opportunity officer.* If an EEO officer is named or otherwise designated as a witness in a discrimination complaint by a complainant based on actions that he or she personally has taken against the complainant, that officer's function in processing that complaint will be performed by the EEO officer at the next higher level. If the EEO officer is named or otherwise designated as a witness merely by virtue of his or her position or actions in processing a complaint, he or she may continue to process the complaint.

(2) *Activity commander.* If an activity commander is named or otherwise designated as a witness in a discrimination complaint based on actions that he or she personally has taken against the complainant, that commander's function in processing the complaint will be performed by the commander at the next higher level. If the activity commander is named or otherwise designated as a witness merely by virtue of his or her position or actions in processing a complaint, he or she may continue to process the complaint.

(3) *Staff judge advocate.* If the SJA or senior legal officer of the servicing activity is named or otherwise designated as a witness in a discrimination complaint based on actions that he or she personally has taken against the complainant, legal advice to the command in processing the complaint will be provided by the servicing legal office of the next higher level of command or another legal office designated by the legal office at the next higher level of command. If the SJA, senior legal officer, or agency representative is named or otherwise designated as a witness merely by virtue of his or her position or actions in processing a complaint, he or she may continue to provide advice on the complaint.

(4) *CPAC chief.* If a CPAC chief is named or otherwise designated as a witness in a discrimination complaint based on actions he or she personally has taken against the complainant, the CPAC chief's function in the complaint process will be assumed by the CPAC at the next higher level of command. If the CPAC chief is named or otherwise designated as a witness by virtue of his or her position, the CPAC chief's role in the complaint process will not be affected.

(5) *CPOC director.* If a CONUS CPOC director is named or otherwise designated as a witness based upon actions he or she personally has taken against the complainant, the CPOC director's function in the complaint process will be assumed by the Director, Civilian Personnel Operations Centers Management Agency (CPOCMA). If the CPOC director is named or otherwise designated as a witness by virtue of his or her position, the CPOC director's role in the complaint process will not be affected.

(6) *OCONUS CPOC director.* Complaints naming the director of an OCONUS CPOC will be processed through the OCONUS MACOM chain of command.

(7) *MACOM EEO Officer.* If a MACOM EEO officer is named or otherwise designated as a witness based on an action he or she personally has taken against the complainant, that officer's function in processing the complaint will be performed by a special EEO officer designated by the Deputy for EEOCCR. If the MACOM EEO officer is named or otherwise designated as a witness merely by virtue of his or her position or actions in processing a complaint, he or she may continue to process the complaint.

(8) *MACOM commander.* If a MACOM commander is named or otherwise designated as a witness in a particular discrimination complaint based on an action he or she personally has taken against the complainant, the commander's function in processing the complaint will be performed by the Vice Chief of Staff, U.S. Army (VCSA). If the MACOM commander is named or otherwise designated as a witness merely by virtue of his or her position or actions in processing a complaint, he or she may continue processing the complaint.

*c. Conflict of interest.* An activity EEO officer may preclude an EEO counselor from counseling based on an actual or perceived conflict of interest.

#### **1–25. Service of documents**

*a.* Unless the complainant states otherwise in writing, after the agency receives written notice of the name, address, and telephone number of a representative for the complainant, service of all documents will be with the representative

with copies to the complainant. All official correspondence, to include the investigative file, the hearing transcript and the administrative judge's decision, the final agency decision/action, and the EEOC appeal decisions will be served on the representative and the complainant either by personal delivery or certified mail, return receipt requested or other means, such as Federal Express or UPS, where tracking is available. The return receipt will be annotated to properly identify the delivered documents. If service to the representative or the complainant is by personal delivery, that party's signature and the date received are required on the official file copy of the correspondence, notice, or transmittal document.

*b.* When the representative is an attorney, service of all official correspondence will be made on the attorney and the complainant, but time frames for the receipt of correspondence will be computed from the date of receipt by the attorney.

*c.* If complainant is not represented, all official correspondence will be served on the complainant by personal delivery or sent by certified mail, return receipt requested. The return receipt will be annotated to properly identify the delivered documents. If service to the complainant is by personal delivery, the complainant is required to sign and date the official file copy of a document denoting receipt.

*d.* The use of facsimile or electronic mail by EEO officials as a means to transmit official correspondence to the complainant and representative is discouraged and should only be used in situations where timeliness is a critical issue. In such situations, the EEO official will confirm receipt of the official correspondence by the complainant and representative. The facsimile transmittal document or a copy of the electronic message will be maintained in the complaint file. When facsimile or electronic mail are used, the record must be protected from unauthorized disclosure.

*e.* The complainant, or the complainant's designated representative, must serve all official correspondence on the EEO officer and the designated agency representative.

## **Chapter 2**

### **Alternative Dispute Resolution (ADR)**

#### **2-1. Purpose**

*a.* The purpose of ADR is to offer disputing parties an opportunity to openly express their positions and interests in resolving disputes in a mutually satisfactory fashion.

*b.* The ADR process, especially when used at the earliest stage, restores working relationships and may serve as a preventative measure against future disputes. Additionally, the nonadversarial application of ADR reduces the costs incurred with the traditional administrative or adjudicative processes and affords use of activity resources for mission-related programs and activities. The preferred method of ADR within Department of Army is facilitated mediation with a qualified ADR neutral. (See paragraph 2-3.)

*c.* The use of ADR is not appropriate in every case. The commander or designee, preferably the EEO officer, will decide on a case-by-case basis whether it is appropriate to offer ADR to an aggrieved individual. For example, the commander or designee may wish to limit ADR geographically if extensive travel would be required, or exclude certain issues such as termination or nonselection. The commander or designee may not utilize blanket exclusions of disputes from ADR based solely upon the bases involved.

*d.* The commander or designee may include issues that do not fall under the jurisdiction of EEO laws for resolution under ADR. However, if resolution of the issue is unsuccessful, non-EEO disputes and issues not brought to the attention of the EEO official or ADR neutral cannot be accepted for investigation as a part of the formal complaint unless the issue is like or related to issues raised during the precomplaint process.

*e.* While it is Army policy to attempt to resolve complaints of discrimination at the earliest stage, ADR may be offered by the commander or designee anytime during the complaint process prior to the appointment of an EEOC administrative judge. The use of ADR must comply with timeframes prescribed in chapters 3 and 4.

#### **2-2. Alternative dispute resolution program development**

*a.* Each activity will have available an ADR program for both the precomplaint and formal complaint process. Each MACOM will be responsible for implementing an ADR program within its command to resolve disputes in the precomplaint and formal complaint process. The MACOM EEO officer will coordinate the implementation of such a program.

*b.* MACOMS will use a team approach in implementing a command ADR program with participation from their respective EEO officers, labor counselors, CPAC officials, managers, and union officials, where applicable.

*c.* The ADR program should fit each activity's environment and workforce, but at the same time, it must be fair and conform to the following core principles:

(1) *Voluntariness.* Parties must enter into mediation or another offered ADR process knowingly and voluntarily. Participation in ADR is voluntary for the aggrieved. Once the commander/designee has decided to offer ADR and the aggrieved elects in writing to participate in ADR, it is considered that both parties have knowingly and voluntarily

entered into ADR. Managers must be aware that they have an affirmative duty to cooperate in an ADR process once the decision is made to offer ADR. Likewise, the commander/designee and the aggrieved have the option to "opt out" of ADR at any point prior to resolution and for any reason. Neither the management official designated to participate in the ADR process nor the aggrieved will be coerced into accepting the other party's offer to resolve the matter.

(2) *Neutrality*. The ADR neutral shall have no official, financial, or personal interest in the issue at controversy or in the outcome of the dispute. Since the effectiveness of ADR relies on the perception of neutrality, employees of the EEO, CPAC, CPOC, and SJA/legal offices, regardless of training and skill, may not serve as ADR neutrals within their serviced activities. EEO counselors who possess the requisite training and skills may serve as ADR neutrals provided that they have not counseled the case at issue. It is the responsibility of the EEO officer to ensure that the potential ADR neutral is neither acquainted with nor an employee from the same unit or directorate as either the aggrieved or the management official.

(3) *Confidentiality*. The ADR process is confidential. As a means to promote open and frank discussions between the disputing parties, both parties and their representatives must agree, in writing, that any information disclosed during the ADR process, other than discoverable documentation, will remain confidential whether or not ADR is successful. However, any threat of physical harm or disclosure of waste, fraud, abuse, or any other illegal activity will be exempt from confidentiality and will be reported to the appropriate officials. Both parties must also agree not to request or subpoena the ADR neutral as a witness in any subsequent administrative process or judicial proceeding regarding the dispute at issue. The taking of notes by the parties and their respective representatives is discouraged during the ADR process. Any notes taken by the ADR neutral during the ADR process must be destroyed by the neutral at the conclusion of the ADR process. Information disclosed during the mediation is confidential and shall not be disclosed except as provided by law.

(4) *Enforceability*. If a resolution is achieved, the terms of the resolution will be set forth in a written negotiated settlement agreement that is binding upon both parties.

d. The ADR program implementation plan will be submitted through the MACOM commander to the Deputy for EEOCCR for approval prior to implementation. The written plan must include, at a minimum, the types of ADR that will be offered, the source of the ADR neutrals, a description of required training for in-house neutrals, and assurance that the activity will ensure participation of a management official with settlement authority.

e. The EEO officer is responsible for the administration and oversight of the entire ADR process as it pertains to processing complaints of discrimination. (See paragraph 1–10f.)

## **2–3. Mediation**

a. Mediation is the preferred ADR method and must be provided in a nonthreatening environment to facilitate open communication between the disputing parties. Although focused on mediation, the procedures described in this section shall apply to any ADR process.

b. Participation in mediation is voluntary for both the aggrieved and the commander's designee.

c. The commander or his/her designee will determine which management official will participate in the mediation. The management official selected should be one who is authorized to engage in resolution discussions and execute a NSA.

d. Prior to the scheduled date of mediation, the EEO officer will arrange for civilian personnel and legal office representatives to be available for management representative consultation during the mediation.

e. Both the aggrieved and the management official have a right to personal representation during the complaint process. The mediator will decide to what extent personal and agency representatives will actively participate in the process.

f. The role of the mediator is to facilitate the mediation process rather than to evaluate the positions of the parties.

g. If mediation is successful, the mediator will provide the EEO officer, in writing, with all terms agreed upon so that a NSA can be prepared. (See figure 5–1.) The settlement agreement will be prepared in accordance with procedures set forth in Chapter 5 and must be signed by the aggrieved, the aggrieved's attorney or representative (if applicable), and the management official with settlement authority. A copy of the NSA will be filed in the complaint file under the "Settlement" tab.

h. If mediation is unsuccessful during the precomplaint process, the EEO official will annotate the EEO Counselor's Report to reflect that mediation was unsuccessful. The EEO official will review the intake portion of the EEO Counselor's Report with the aggrieved to ensure that all EEO related issues raised during mediation are included and issue the aggrieved a Notice of Right to File a Formal Complaint of Discrimination. The notice will inform the aggrieved that in filing a formal complaint, he or she may only raise those alleged discriminatory issues addressed during mediation. The aggrieved individual will also be informed that issues like or related to those addressed during mediation can be made the subject of an EEO complaint. The EEO Counselor's Report and the Notice of Right to File a Formal Complaint of Discrimination will be filed in the complaint file under the "Precomplaint" tab.

i. If mediation is unsuccessful during the formal stage, the EEO officer will prepare a memorandum for record

(MFR) stating that mediation was attempted during the formal stage and was unsuccessful. The MFR will be filed in the complaint file under the “Formal” tab.

#### **2-4. Qualifications and training requirements for neutrals**

- a.* Any person who serves as an ADR neutral in the activity ADR program must be familiar with the following:
- (1) The EEO process pursuant to 29 CFR part 1614.
  - (2) The Civil Service Reform Act and the statutes that EEOC enforces, including—
    - (a)* Title VII of the Civil Rights Act of 1964, as amended;
    - (b)* The Rehabilitation Act of 1973, as amended;
    - (c)* The Age Discrimination in Employment Act of 1967, as amended, and
    - (d)* The Equal Pay Act of 1963, as amended.
  - (3) The Administrative Dispute Resolution Act of 1996.
  - (4) Federal employment remedies, including compensatory damages, and attorney’s fees and costs.
- b.* Individuals serving as a neutral in an EEO dispute must—
- (1) Have received at least 40 hours of basic mediation skills training.
  - (2) Have participated as a neutral at least 3 times in an ADR process. If mediation is the selected ADR process, then all three times must be in mediation to include serving as a mediator.

### **Chapter 3 Precomplaint Processing**

#### **Section I Introduction**

##### **3-1. Initiating the EEO complaint process**

*a.* Any employee, former employee, applicant for employment, or certain contract employee (see paragraph 3-10) covered by this regulation, who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, physical or mental disability, and/or reprisal in an employment matter, including Equal Pay Act complaints, subject to the control of the Army, may initiate the EEO complaint process.

*b.* This first phase of the EEO complaint process is referred to as the “precomplaint” process. The precomplaint process is set in motion when an individual contacts an EEO official and clearly exhibits intent to proceed with the EEO complaint process.

*c.* Processing of EEO precomplaints initiated by deceased individuals will continue until issuance of the Notice of Right to File a Formal Complaint of Discrimination to the executor or administrator of the estate. The processing of formal complaints initiated by subsequently deceased individuals will continue unless the executor or administrator withdraws on behalf of the deceased.

##### **3-2. Determining intent at initial contact**

*a.* Generally, the initial contact made by an individual with the EEO officer, specialist, or assistant (hereinafter referred to as EEO official), or EEO counselor is either to seek general information concerning the EEO complaint process or to actually begin the precomplaint process.

*b.* Because the timeliness factor is one of the critical elements in complaint processing, the EEO official or counselor shall determine the purpose of the individual’s initial contact, that is, to seek information concerning the EEO complaint process or to proceed with the precomplaint process, and to record that initial contact accurately.

##### **3-3. Information inquiry and precomplaint intake**

*a. Information inquiry.* When an individual contacts an EEO official or counselor seeking information concerning the EEO complaint process and is still clearly undecided at the end of the initial contact whether to proceed with the EEO complaint process, this contact is called an “information inquiry.” Information inquiries will be documented by use of the Information Inquiry Summary (DA Form 7509). During an information inquiry, the EEO official or counselor provides general information on the Army EEO complaint process. (See paragraph 3-5.)

*b. Precomplaint intake.* When an individual contacts an EEO official or counselor with the intent of proceeding with an employment matter alleging discrimination on the basis of race, color, religion, sex, national origin, age, physical or mental disability and/or reprisal, the individual is referred to as “aggrieved.” When the aggrieved intends to use the EEO process, the EEO official or counselor will conduct a thorough precomplaint intake. The precomplaint intake will be recorded as the initial portion of the EEO Counselor’s Report (DA Form 7510).

### **3-4. Time limitations**

*a.* In order to establish timelines in the formal complaint process, the aggrieved must initiate contact with an EEO official or counselor—

- (1) Within 45 days of the action or practice alleged to be discriminatory;
- (2) In the case of a personnel action, within 45 days of the effective date of the action;
- (3) Within 45 days from when the aggrieved became aware of the alleged discriminatory action or practice.

*b.* The 45-day time limit will be extended when the aggrieved shows that—

- (1) He or she was not notified of the time limits and was not otherwise aware of the time limits;
- (2) He or she did not know and reasonably should not have known that the perceived discriminatory action or practice occurred;
- (3) Despite due diligence, he or she was prevented by circumstances beyond his or her control from contacting an EEO official or counselor within the prescribed time limits; or

(4) For other reasons considered sufficient by the Army or the EEOC.

*c.* The requirement for EEO counselor contact is satisfied when an aggrieved initiates contact with an EEO officer, specialist, or assistant, even if that person is not a counselor, for the express purpose of proceeding with a matter of concern.

*d.* Any action or practice alleging discrimination within the protection of 29 CFR Part 1614 will be counseled by an EEO counselor even though a formal complaint may later be dismissed.

## **Section II**

### **Information Inquiry and Precomplaint Intake Procedures**

#### **3-5. Information inquiry**

*a.* When the EEO official or counselor determines that the purpose of the individual's initial contact is to seek information, the EEO official or counselor will document the contact by completing the DA Form 7509. The EEO officer will track the resources used to provide this service.

*b.* During the information inquiry, the EEO official or counselor will emphasize the prescribed time limitations for initiating the EEO precomplaint process to the individual, especially if the information inquiry is within close proximity to the 45<sup>th</sup> day of the incident or effective date of the personnel action.

*c.* If the individual has not exhibited intent to begin the EEO process at completion of the information inquiry, the EEO official or counselor will provide the individual with a copy of the completed DA Form 7509 after review and signature. If the information inquiry is conducted telephonically, the EEO official or counselor will send a copy of the DA Form 7509 to the individual by certified mail, return receipt requested when name and address are disclosed to the EEO official or counselor. If the information inquiry is conducted via electronic mail, the EEO official or counselor will document the information provided electronically and retain a copy. Whether the information inquiry is conducted personally, telephonically, or via electronic mail, the EEO official or counselor will reemphasize the importance of the 45-day time limit and explain the procedure for initiating the precomplaint process.

(1) When an information inquiry takes place between an EEO counselor and an individual, the counselor will immediately advise an EEO official of such contact and its outcome.

(2) The EEO counselor will provide the EEO official the original DA Form 7509 immediately after the individual has reviewed and signed the summary.

(3) When the information inquiry is conducted via electronic mail, the EEO counselor will immediately transmit the electronic mail communication to an EEO official.

(4) The original DA Form 7509 and certified receipts, if appropriate, will be retained in a by name case file and for a period of 3 years. If the individual later decides to use the precomplaint process, the DA Form 7509 will be filed in a complaint file under the "Precomplaint" tab.

*d.* If the individual indicates an intent to initiate the precomplaint process at any time during the information inquiry, the EEO counselor will complete the precomplaint intake portion of the DA Form 7510, immediately advise an EEO official, and forward all pertinent documents to the EEO office. (See paragraph 3-6.)

#### **3-6. Precomplaint intake procedure**

*a.* The precomplaint intake procedure involves a determination by the EEO official that an individual is alleging prohibited discrimination addressed in 29 CFR Part 1614, and determination about the proper venue to be used to address the individual's concern.

*b.* Once it has been determined that the matter presented by the individual is appropriate for processing under 29 CFR, Part 1614, a precomplaint intake interview will be conducted by an EEO official (serving in the role of an EEO counselor) or an EEO counselor. The EEO official or counselor will record the date and clarify the facts of the specific incident or personnel action on the precomplaint intake interview portion of the DA Form 7510.

*c.* An EEO official conducting a precomplaint intake interview will be considered performing in the role of an EEO

counselor. The 30-day counseling period begins on the date that the EEO official becomes aware of the aggrieved's intent to proceed and the precomplaint intake interview must begin within 3 days of this date.

*d.* When conducting the precomplaint intake interview, the EEO official or counselor will explain the activity's ADR program, including the differences between ADR and traditional EEO counseling. The EEO official or counselor will inform the aggrieved of the right to choose participation in ADR, if deemed appropriate, or traditional EEO counseling. The EEO official or counselor will explain and provide the aggrieved a copy of the Aggrieved Person's Rights and Responsibilities notice, which informs the aggrieved of rights and responsibilities in the EEO process and the other avenues of redress available for filing allegations of discrimination to include pertinent time frames. (See figure 3-1.)

*e.* In those instances where the EEO official, serving in the role of an EEO counselor, conducts the precomplaint intake interview and the EEO counselor conducts the inquiry, the EEO official will provide the EEO counselor with the DA Form 7510 as completed to date. Even though the EEO official may have provided the notice of rights and responsibilities to the aggrieved during the intake interview, the counselor will ensure that the aggrieved fully understands the option to use ADR throughout the entire complaint process and his or her rights and responsibilities as follows:

(1) The aggrieved may be accompanied, represented, and advised during all counseling interviews by a representative, designated in writing.

(2) During the precomplaint counseling inquiry, the identity of the aggrieved will not be revealed without written permission from the aggrieved.

(3) The aggrieved must cooperate with the EEO official or counselor by clearly defining the claim for the inquiry.

(4) Only claims raised in precomplaint counseling or claims like or related to those raised in precomplaint counseling may be alleged in a subsequent formal complaint filed with the agency. A claim "like or related to" may include a claim with a different basis of discrimination based on the same facts. Further, a later claim or complaint will be considered like or related to the original complaint if the later claim or complaint adds to or clarifies the original complaint and could reasonably have been expected to grow out of the original complaint during the investigation.

(5) The EEO counselor will record all issues alleged to be discriminatory by the aggrieved on DA Form 7510.

(6) When ADR is not elected, the EEO counselor will complete the inquiry in 30 days unless the aggrieved agrees to extend the 30-day time limit.

(7) An employee cannot raise allegations of discrimination, which are subject to final administrative review by the EEOC, in the administrative grievance procedure. (See DOD Directive 1400.25M, subchapter 771.)

(8) The aggrieved will waive the right to file a formal complaint of discrimination under this regulation if he or she has already filed a timely written grievance on the same matter under a negotiated grievance procedure that allows allegations of discrimination or an appeal on the same matter with the MSPB.

(9) In nonmixed case complaints, the aggrieved will have the right to request a hearing or a final Army decision after an investigation by the agency.

(10) In mixed cases, the aggrieved has the right to either file an appeal directly with the MSPB or a mixed case complaint under Title VII procedures, but not both.

(11) Except as noted in paragraphs (12) and (13) below, attorney's fees and other related costs may be awarded to a prevailing complainant. A prevailing complainant may be entitled to recover costs that may include witness fees, transcript costs, printing and copying costs, and reasonable out-of-pocket expenses.

(12) In claims based on a violation of the Age Discrimination in Employment Act, the aggrieved may elect to bypass the administrative procedure and file a civil action in an appropriate U.S. District Court after first giving the EEOC not less than 30 days notice of intent to file a civil action. Attorney's fees and costs are not recoverable in the administrative process and compensatory damages are never an available form of relief.

(13) The aggrieved has the right to file a civil action in an appropriate U.S. District Court in lieu of administrative processing under 29 CFR Part 1614 when the claims concern violations of the Equal Pay Act. Attorney's fees and costs are not recoverable in the administrative process and compensatory damages are never an available form of relief.

(14) The aggrieved has the obligation to mitigate damages.

(15) The aggrieved has the right to file a civil action in the appropriate U.S. District Court in a nonmixed case 180 days after filing a formal complaint and a final Army decision has not been rendered; within 90 days after receipt of a final Army decision and no appeal to the EEOC has been filed; 180 days after filing an appeal to the EEOC and no decision on the appeal has been issued; or within 90 days after receipt of the EEOC's decision on appeal.

(16) Failure of the aggrieved to keep the activity EEO officer and the EEOC informed of his or her current address could result in dismissal of a formal complaint.

*f.* During the precomplaint intake interview or shortly thereafter, the aggrieved must elect between ADR, if offered, and traditional EEO counseling. The offer of ADR must be presented in writing and the aggrieved will respond to the offer in writing. (See figure 3-2.)

*g.* If the aggrieved elects to participate in ADR, the DA Form 7510 will be so annotated and the EEO officer will coordinate mediation.

*h.* If the aggrieved elects traditional EEO counseling, the DA Form 7510 will be so annotated and the EEO officer will assign an EEO counselor. The counselor will make appropriate entries on the DA Form 7510 at the conclusion of the precomplaint inquiry.

### **Section III**

#### **Procedures for Use of ADR During the Precomplaint Process**

##### **3-7. Offer of ADR during precomplaint processing**

*a.* If, during the precomplaint intake, the aggrieved indicates an interest in participating in ADR, the EEO official must coordinate with management to determine if ADR will be offered to the aggrieved. The aggrieved will be advised that the activity's decision not to offer ADR is not appealable to the EEOC.

*b.* If management determines that ADR is appropriate, the EEO official or counselor will offer the aggrieved, in writing, the opportunity to participate in ADR. (See figure 3-2.) If the aggrieved agrees to participate in ADR, the aggrieved will sign an Agreement to Participate in Mediation. (See figure 3-3.) If the aggrieved fails to respond in writing to the offer within 5 days, the counselor will proceed with traditional EEO counseling.

(1) The aggrieved will be advised that election of ADR will extend the precomplaint processing period to 90 days from the date the precomplaint was initiated. The EEO official also will inform the aggrieved that election to participate in the ADR process is final.

(2) When an aggrieved elects participation in ADR, the EEO official or counselor will provide the DA Form 7510 as completed to date, the Offer to Mediate, and the Agreement to Participate in Mediation to the EEO officer or designee for initiation of the ADR process. The EEO officer or designee must provide copies of such documents to the ADR neutral prior to the initial session with the aggrieved.

*c.* When the aggrieved does not wish to participate in ADR, does not respond to the offer of ADR within 5 days, or ADR is not offered, traditional EEO counseling will be conducted.

*d.* If the dispute is resolved through the use of ADR, the resolution will be documented in the form of a NSA. (See figure 5-1.) The ADR neutral will provide the terms of the proposed resolution to the EEO officer to draft the NSA and coordinate the agreement with the designated agency representative. If the terms of the resolution address personnel practices or procedures, the EEO officer will coordinate the action with the appropriate civilian personnel official prior to signature and execution.

*e.* If the dispute is not resolved, the EEO official (performing as an EEO counselor) will conduct a final interview with the aggrieved, no later than 90 days from the date the aggrieved initiated the precomplaint process, to—

(1) Review with the aggrieved the claims raised during the precomplaint intake to ensure that no additional claims were raised in mediation.

(2) Provide the aggrieved with the Notice of Right to File a Formal Complaint of Discrimination. The aggrieved shall sign and date the notice to acknowledge receipt. (See figure 3-4.)

(3) Inform the aggrieved, in writing, that he or she has 15 days from the date of receipt of the notice to file a formal complaint. A copy of DA Form 2590 (Formal Complaint of Discrimination) will be attached to the notice. The EEO official shall not influence the aggrieved regarding a decision to file or not to file a formal complaint. The decision rests with the aggrieved.

(4) Complete the DA Form 7510, indicating that ADR was not successful.

*f.* The EEO Officer will provide a copy of the DA Form 7510, to include enclosures, to the aggrieved within 5 days from the date of the final interview in accordance with the service rules set forth in paragraph 1-25.

*g.* The original DA Form 7510 will be maintained in the complaint file under the "Precomplaint" tab.

##### **3-8. Duties of the EEO counselor during the precomplaint inquiry**

*a.* The EEO counselor's inquiry is designed to facilitate a resolution of the matters identified by the aggrieved. Usually such inquiries are to be completed within 10 days of assignment of the precomplaint to the EEO counselor. The inquiry is not to be as extensive as a formal investigation conducted by an investigator.

*b.* The EEO counselor will inquire into the specific incidents and actions identified by the aggrieved during the precomplaint intake interview.

*c.* The EEO counselor should interview persons and review documents that can provide firsthand information about the matters.

*d.* Before an interview with a witness, the EEO counselor or an EEO official must advise that person of his or her right to a personal representative and the nature of the claims described in the complaint. (See figure 3-5.)

*e.* The EEO counselor will prepare a report on DA Form 7510 recording actions taken during the inquiry and of information, if any, provided to the parties. (See paragraph 3-9h.)

*f.* Army personnel will cooperate with and support the EEO counselor in the performance of counseling duties. The EEO counselor will be free of restraint, interference, harassment, coercion, discrimination, or reprisal in connection with the performance of assigned counselor duties.

### **3-9. Duties of the EEO counselor during the final interview**

*a.* The counselor will conduct the final interview with the aggrieved within 30 days from the date the aggrieved initiated the counseling process.

(1) Prior to the end of the 30-day period, the aggrieved may agree in writing to extend the counseling period for an additional period of no more than 60 days. (See figure 3-6.) While there are provisions for extension of the counseling period, Army policy is to resolve complaints at the lowest possible level in the least amount of time. Extensions should be considered only when extenuating circumstances exist.

(2) In no case will the precomplaint process extend beyond 90 days. If the matter has not been resolved before the end of the 30-day counseling period, or before the 90-day extended period, the aggrieved shall be informed in writing of the right to file a formal complaint of discrimination.

*b.* The counselor will advise the aggrieved of the results of the inquiry and discuss proposed solutions. The counselor will not make findings nor opine as to whether discrimination has or has not occurred, and will not imply to the aggrieved that the EEO counselor's interpretation of the claims in the case constitutes an official finding of the agency on the issue of discrimination.

*c.* The counselor will inform the aggrieved, in writing, that he or she has 15 days, from the date of receipt of the Notice of Right to File a Formal Complaint of Discrimination, to file a formal complaint. The counselor shall not influence the aggrieved regarding a decision to file a formal complaint; the decision to file a formal complaint rests with the aggrieved.

*d.* The EEO counselor will provide the aggrieved with the Notice of Right to File a Formal Complaint of Discrimination. The aggrieved shall sign and date the notice to acknowledge receipt. (See figure 3-7.)

(1) If the Notice of Right to File a Formal Complaint of Discrimination is mailed and the aggrieved is represented by an attorney, the notice will be sent to the attorney by certified mail, return receipt requested, and a copy sent to the aggrieved by certified mail, return receipt requested. The return receipts will be filed in the complaint file under the "Precomplaint" tab.

(2) If the aggrieved is represented by a non-attorney, the notice will be sent to the representative by certified mail, return receipt requested, and a copy of the notice will be sent to the aggrieved by certified mail, return receipt requested. The return receipts will be filed in the complaint file under the "Precomplaint" tab.

(3) If the Notice of Right to File a Formal Complaint of Discrimination is delivered in person and the aggrieved refuses to acknowledge receipt of the notice, the server of the notice will note the refusal to acknowledge receipt on the notice and sign and date the notice.

*e.* The counselor will provide the aggrieved a DA Form 2590. The counselor will stress that a formal complaint must contain specific information on the alleged acts of discrimination. Failure to provide specificity may result in a request for clarification that will delay the complaint process. Failure to respond to a request for clarification may be cause for dismissal.

*f.* A Notice of Right to File a Formal Complaint of Discrimination will not be provided if a settlement agreement resolving all claims has been signed by the parties.

*g.* The counselor will advise the aggrieved that he or she must inform the EEO officer immediately, in writing, if legal counsel or any other representative is retained during the formal process.

*h.* The EEO counselor will submit a written report of all actions taken during the inquiry and of the information provided to management and the aggrieved to the EEO officer within 5 days of completion of counseling. The DA Form 7510 will not contain opinions or make findings on the allegations of discrimination. The EEO counselor will not retain a copy of the DA Form 7510 or any other precomplaint related material.

*i.* The completed DA Form 7510 will be placed in the complaint file under the "Precomplaint" tab.

*j.* The EEO officer will provide a copy of the DA Form 7510 to the aggrieved within 5 days of receipt.

## **Section IV**

### **Contingent Worker (Contract Employee) Guidance**

#### **3-10. Procedures for processing complaints filed by contingent workers (contract employees)**

Contingent workers are civilian workers who are outside of the Army's "core" work force, such as independent contractors, volunteers, employees of government contractors, individuals participating in training, work-study or fellowship programs, and all other individuals working on Army installations or projects without being on the activity's payroll or meeting the definition of a civil service employee under 5 USC Section 2105(a) or a nonappropriated fund employee described at §2105(c).

*a.* Inquiries to EEO counselors from employees who are not civil service employees should be referred to the EEO officer.

(1) The EEO officer will advise the worker to immediately report the allegations to his or her nonFederal employer.

(2) If the worker wants to file a complaint against the contractor, the EEO officer should provide the address and telephone number of the nearest EEOC field office.

(3) If the worker wants to file a complaint against the Army, the EEO officer should assign a counselor and process

initially in accordance with 29 CFR Part 1614 and this regulation. The EEO officer will advise the aggrieved that, depending on the facts and circumstances surrounding the employment relationship, the Army may not be his or her employer under Title VII or any other antidiscrimination laws.

*b.* Upon assignment of a counselor, the EEO officer must contact management officials to obtain the working relationship information (See figure 3–8.) The EEO officer must forward the working relationship information to the labor counselor for a fact based analysis and legal opinion on whether the aggrieved is a covered Army “employee” under the antidiscrimination laws.

(1) If the aggrieved does not qualify as an Army “employee,” the EEO officer will—

(a) Issue a Notice of Right to File a Formal Complaint of Discrimination.

(b) Dismiss any formal complaint for failure to state a claim, as well as for any other applicable grounds.

(c) Issue the Notice of Right to Appeal to the EEOC Office of Federal Operations (OFO) and include an EEOC Form 573.

(2) If the aggrieved qualifies as an Army “employee,” the EEO officer will—

(a) Process the complaint in accordance with 29 CFR Part 1614 and this regulation.

(b) If a formal complaint is filed, coordinate with the contracting officer’s representative (COR), if applicable, to ensure compliance with any contractual responsibilities.

*c.* When the aggrieved is an Army employee and the alleged discriminating official is a nonFederal employee, the EEO officer will—

(1) Notify the appropriate Army management officials at the activity.

(2) Process the complaint in accordance with 29 CFR Part 1614 and this regulation.

(3) Coordinate complaint processing with the agency representative, who will then coordinate with the third-party employer.

*d.* Private charges, which solely allege nonFederal entity discrimination, are filed with the EEOC. The EEO officer will serve as the activity’s point of contact. However, no interviews or document requests by the EEOC will be honored without prior concurrence of the servicing legal office.

*e.* Agency representative responsibilities—

(1) Status as an employee is a jurisdictional issue that may be raised at any point in the processing of an EEO complaint and the issue should be preserved at all phases of litigation.

(2) When fashioning remedies, the agency representative should work with the contract attorney to determine what contractual rights may be affected.

(3) Consider negotiated settlements involving the third-party employer.

(4) Ensure that no negotiated agreement contains an acknowledgment or admission that an individual who does not qualify as a Title V employee is an “employee” for purposes of Title VII or any other law prohibiting discrimination.

(5) Advise the command when discrimination is believed to be committed by a third-party employer operating on the installation or supporting an Army program.

*f.* Nothing in this section precludes management from offering ADR in an effort to resolve the dispute. If ADR is accepted, all complaint processing should continue to be coordinated with the agency representative to ensure compliance with contractual requirements.

### **3–11. Counseling sexual harassment complaints (10 USC Section 1561)**

*a.* If sexual harassment is one of the claims raised, the EEO counselor shall determine if the aggrieved person is directly supervised by a military commanding officer or a military officer in charge of a unit, vessel, facility, or area of the Army, Navy, Air Force, or Marine Corps. If not, the EEO counselor will continue with procedures established in 29 CFR Part 1614 and Army implementing guidelines.

*b.* If sexual harassment is one of the claims raised and the aggrieved is directly supervised by a military commanding officer or a military officer in charge of a unit, vessel, facility, or area of the Army, Navy, Air Force, or Marine Corps; the EEO counselor shall advise the aggrieved that there are two statutes applicable to him or her (that is, Title VII and 10 USC Section 1561) and that processes established under those statutes can be used simultaneously. The EEO counselor shall inform the aggrieved of the point of contact designated by the commander to receive 10 USC Section 1561 complaints and that he or she must contact this individual in order to file a complaint under 10 USC Section 1561. The EEO counselor shall then continue with procedures established under 29 CFR Part 1614 and Army implementing guidelines.

### **3–12. Basic complaint requirements**

*a.* The formal complaint should include at a minimum the basis(es), claim(s), and date(s) of alleged discriminatory matters.

*b.* General allegations of discrimination made by persons and special interest organizations that are not within the scope of individual or class complaints will be promptly answered by the activity commander or a designee. A copy of

the response to a general allegation will be sent to the MACOM EEO office of the activity against which the allegation was made.

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Date \_\_\_\_\_ (Date) \_\_\_\_\_

MEMORANDUM FOR (name of aggrieved)

SUBJECT: Aggrieved Person's Rights and Responsibilities

1. **Purpose.** If you believe you have been discriminated against because of your race, color, religion, sex, national origin, age, physical or mental disability, and/or subjected to reprisal in an employment matter subject to the control of the Army, you may have a choice of options to pursue your Equal Employment Opportunity (EEO) complaint and have it resolved. The purpose of this memorandum is to advise you, in writing, of those rights and responsibilities.

2. **Rights for Employees Outside of a Bargaining Unit**

a. If you are not a member of a bargaining unit covered by a union contract, you have the right to pursue a discrimination complaint under the procedures covered by Army Regulation (AR) 690-600. Your first step under this procedure is to contact an EEO counselor within 45 calendar days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 calendar days of the effective date of the action. An EEO official, such as the EEO officer, specialist, or assistant, or an EEO counselor may offer you the opportunity to participate in the precomplaint counseling process or, if determined appropriate, the alternative dispute resolution (ADR) method in lieu of traditional counseling. An individual contacting an EEO official or EEO counselor at the precomplaint stage is referred to as the "aggrieved."

(1) ADR: Mediation is the ADR process preferred by the Department of the Army, however, other methods may be offered as determined by the activity. Mediation is a method by which an objective and impartial person (a trained mediator) facilitates communication between the aggrieved and management to resolve concern(s) or disputes(s). If you are offered and choose to participate in mediation, the precomplaint period will be extended an additional 60 calendar days from the date you initiate the precomplaint phase of the EEO complaint process to accomplish the mediation.

(a) If ADR is successful, the participants will sign a negotiated settlement agreement. A signed settlement agreement is binding on both parties.

(b) If ADR is not successful or if some issues remain unresolved after mediation, you will be given a Notice of Right to File a Formal Complaint of Discrimination.

(2) Traditional Counseling: If ADR is not offered or you choose not to participate in ADR, the EEO counselor will continue with traditional EEO counseling.

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Figure 3-1. Sample Aggrieved Person's Rights and Responsibilities

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(a) During the initial interview with the assigned EEO counselor, the claim(s) you previously identified during the initial intake interview will be discussed in order to define and record the specific dates and facts of the incidents or personnel actions you allege to be discriminatory. If you present additional matters not initially recorded during the precomplaint intake interview during the EEO counselor's inquiry, those issues must be recorded in the EEO counselor's report.

(b) You are obligated to cooperate with the EEO counselor in clearly defining the claim(s) and basis(es) for inquiry. The EEO counselor's inquiry is designed to facilitate a satisfactory resolution of your allegations. The EEO counselor will advise you of the results of the inquiry and discuss proposed solutions.

(c) If resolution of your complaint is not achieved, the EEO counselor will conduct a final interview with you within 30 calendar days of the date you initiated the counseling process, unless an extension of the counseling period is executed. The EEO counselor will then issue you a Notice of Right to File a Formal Complaint of Discrimination.

(d) Upon receipt of the Notice of Right to File a Formal Complaint of Discrimination, you may file a formal complaint of discrimination. The EEO counselor will advise you with whom to file your formal complaint and will explain the formal complaint procedures. Formal complaints of discrimination fall under two separate categories, nonmixed complaints and mixed complaints, and each are processed differently.

- A nonmixed complaint is one in which actions identified as discriminatory are not appealable to the Merit Systems Protection Board (MSPB). Formal complaint procedures in nonmixed cases include an investigation by the Department of Defense Office of Complaint Investigations (DODOCI), your choice of requesting either a hearing before an Equal Employment Opportunity Commission (EEOC) administrative judge after which the EEO/Civil Rights Office (Deputy for Compliance and Complaints Review (EEOCCR)) will issue a final action or you may request a decision by the Deputy for EEOCCR without a hearing by an EEOC administrative judge.
- A mixed complaint of discrimination is a complaint that stems from an alleged discriminatory action that can be appealed to the MSPB (see paragraph b. below). In mixed complaint cases, you have the right to an investigation by the DODOCI; however, you do not have a right to a hearing by an EEOC administrative judge. The Deputy for EEOCCR will issue a final agency decision upon completion of the investigation by the DODOCI and will provide you with appeal rights to the MSPB.

b. Merit Systems Protection Board (MSPB): You may pursue a discrimination complaint under the MSPB appeal procedure without using the federal sector EEO complaint process. This procedure is available to you only if the alleged discriminatory

Figure 3-1. Sample Aggrieved Person's Rights—continued

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action can be appealed to the MSPB. This type of matter is referred to as a mixed case. The case is “mixed” in that it contains an action that may be appealed to MSPB and also alleges the action was discriminatory. Examples of personnel actions that are appealable to the MSPB include, but are not limited to, removal or suspension for more than 14 days of a nonprobationary, competitive service employee. If you are subject to a personnel action that is appealable to the MSPB, you will be notified in writing of your right to appeal to the MSPB. The time limit for appeal to the MSPB is 30 calendar days after the effective date of the personnel action that you believe to be discriminatory in nature. Under such an appeal, you are entitled to a hearing by the MSPB. In addition, you may petition the EEOC to review the final decision of the MSPB on the allegation(s) of discrimination.

3. **Options for Employees within a Bargaining Unit.** If you are a member of a bargaining unit covered by a union contract, and if the negotiated grievance procedure excludes discrimination claims, your rights are the same as those shown in paragraphs 2a and 2b above. If you are a member of a bargaining unit covered by a union contract, and if the negotiated grievance procedure in that contract does not specifically exclude discrimination issues, you have the right to select one of the following options:

a. You may pursue a discrimination complaint under the procedures covered by AR 690-600 as described in paragraph 2a above. This includes the option to participate in ADR during the precomplaint process.

b. You may pursue a discrimination complaint under the Merit Systems Protection Board (MSPB) appeal procedure as described in paragraph 2b above, if the issue(s) giving rise to your complaint are appealable to the MSPB.

c. You may pursue a discrimination complaint under the negotiated grievance procedure. Your union contract outlines the grievance steps. Note the following:

(1) Decisions in actions covered by Title 5, United States Code, Section 7512 or 4303 cases are not appealable to the Federal Labor Relations Authority (FLRA).

(2) In actions not appealable to the MSPB, but covered by the negotiated grievance procedure, you may choose between the grievance procedure or the EEO complaint procedure under AR 690-600.

(3) You may not seek redress under the EEO complaint procedure and the negotiated grievance procedure. When you select the negotiated grievance procedure by filing a timely written grievance, your decision is considered to be final and you cannot seek redress under the EEO complaint procedure.

(4) A grievance under the negotiated procedure may be rejected if you have filed a timely appeal with the MSPB or if you have filed a formal discrimination complaint under the EEO complaint procedure.

Figure 3-1. Sample Aggrieved Person's Rights—continued

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4. **Administrative Grievance Procedures.** An employee may not raise allegations of discrimination that are subject to final administrative review by the EEOC in the administrative grievance procedure. (See DoD Directive 1400.25M, Subchapter 771.)

5. **Additional Option for Age Discrimination in Employment Act of 1967 (ADEA), as amended, discrimination complainants (age 40 and over).** In lieu of filing a complaint under this regulation, a mixed case appeal with MSPB (if applicable) or a negotiated grievance (if applicable) as described above, you may elect to bypass the administrative procedure and file a civil action directly in an appropriate U.S. District Court, after first filing a written notice of intent to file a civil action with the EEOC within 180 calendar days of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with the EEOC, you must wait at least 30 calendar days before filing a civil action.

a. You must be aware that if you elect to file an administrative complaint rather than filing directly in U.S. District Court, you must exhaust your administrative remedies before you can file a civil action.

b. In a nonmixed complaint, you will have exhausted your administrative remedies when one of the following occurs:

(1) After receiving notice of the final Army decision on your complaint, if no appeal has been filed; or, after 180 calendar days from the date you filed your complaint with the Army and the Army has failed to issue a final decision and no appeal has been filed; or

(2) After receiving the EEOC's final decision on your appeal, or after 180 calendar days from the date you filed an appeal with the EEOC and the EEOC has not issued a final decision on the appeal.

c. Should you elect to bypass the administrative procedure in an age discrimination complaint, you are responsible for providing the following information in your notice of intent to sue:

(1) The date prepared.

(2) Statement of intent to file a civil action under Section 15(d) of the ADEA, as amended.

(3) Your name, address, and telephone number.

(4) Name, address, and telephone number(s) of your designated representative, if any.

(5) Name and location of the Federal agency or installation where the alleged discriminatory action occurred.

(6) Statement of the nature of the alleged discriminatory action(s).

(7) Date(s) the alleged discriminatory action occurred.

(8) Your signature or the signature of your designated representative.

Figure 3–1. Sample Aggrieved Person's Rights—continued

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d. Attorney's fees and costs are not recoverable in the administrative process and compensatory damages are never an available form of relief.

e. Notices of intent to sue under the ADEA must be submitted to the EEOC by facsimile (202) 663-7022 or sent/hand delivered to the following address:

Equal Employment Opportunity Commission  
Office of Federal Operations  
P. O. Box 19848 (if sent by mail)  
1801 L Street NW (if hand delivered)  
Washington, DC 20036

6. **Option for Equal Pay Act:** If you are alleging sex-based wage discrimination under the Equal Pay Act (EPA), you have the right to go directly to the U.S. District Court even though such claims are also cognizable under Title VII. A civil action must be filed within 2 years of the date of the occurrence, or within 3 years of the date of the alleged violation if the violation is willful. Notwithstanding the two/three year limitations period applicable to the current action under the EPA, in order to present an administrative EPA claim, the aggrieved must contact an EEO counselor within 45 calendar days of the date the aggrieved becomes aware of or reasonably suspects a violation of the EPA. The filing of an administrative complaint does not toll the time for filing a civil action. Attorney's fees and costs and compensatory damages are not recoverable in sex-based wage discrimination claims in the administrative process.

7. **Additional Rights under the EEO Process.**

a. You have the right to remain anonymous during the counseling. The counselor will refrain from revealing your identity except by your authorization. However, if you choose to participate in ADR, you will not be able to remain anonymous.

b. You have the right to a representative of your choice throughout the complaint process including precomplaint counseling. This right to a choice of representation will be limited when there is a conflict of interest as defined in AR 690-600. Your right to representation is extended to the ADR process. However, the ADR neutral will decide the extent to which the representative actively participates in ADR. Nonetheless, you will have sufficient time to discuss resolution and review any proposed terms with your representative prior to finalizing a settlement agreement. If your representative is an attorney, all documents will be officially served on your attorney.

c. If traditional EEO counseling is opted, within 30 calendar days of the first counseling contact (unless you agree in writing to an extension for counseling), you have the right to receive (in writing) a notice terminating counseling and informing you of—

(1) The right to file a formal individual or class complaint within 15 calendar days of receipt of the notice,

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Figure 3–1. Sample Aggrieved Person's Rights—continued

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(2) The appropriate official with whom to file a formal complaint, and

(3) Your duty to immediately inform the agency if you retain counsel or a representative.

d. Any extension of the counseling period may not exceed an additional 60 calendar days. When notice is not provided and no extension is secured, you have the right to file a formal complaint of discrimination after the 30th day. The only exception is if you agree to participate in mediation and unresolved issues remain after the mediation attempt, the written Notice of Right to File a Formal Complaint of Discrimination will be issued upon completion of the mediation process or within 90 calendar days of the initial contact, whichever comes first.

e. If you file a formal complaint, you have a right to be notified in writing whether the activity EEO officer accepts or dismisses your complaint. If you do not receive written notice within fifteen (15) calendar days of filing a formal complaint, you should contact the EEO officer. If your allegations are dismissed entirely or partially, you will be advised in writing of the basis and rationale for any dismissed allegations.

f. If you file a nonmixed EEO complaint and your allegations are dismissed in their entirety, you will be advised of your right to appeal the dismissal decision to the EEOC. If some but not all of your allegations are dismissed, the dismissed portion of your claim is not appealable to the EEOC until a final decision/action on the entire complaint is issued. However, the dismissed portion is subject to review by an administrative judge if a hearing is requested on the remainder of the complaint.

g. If you file a nonmixed EEO complaint, you have the right to request a hearing before an EEOC administrative judge after 180 calendar days from the filing of a formal complaint or after completion of the investigation, whichever comes first. Further, you have the right to file a civil action in an appropriate U.S. District court—

(1) Within 90 calendar days of receipt of a final agency action/decision if no appeal has been filed;

(2) 180 calendar days after filing a formal complaint if an appeal has not been filed and a final agency action/decision has not been issued;

(3) Within 90 calendar days of receipt of the EEOC's final decision on an appeal; or

(4) 180 calendar days after filing an appeal with EEOC if there has been no final decision by the EEOC.

h. If you file a mixed EEO complaint and a final agency decision is not issued within 120 calendar days after filing, you have the right to either appeal the matter to the MSPB or you may file a civil action.

Figure 3-1. Sample Aggrieved Person's Rights—continued

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i. If you file a mixed EEO complaint and are dissatisfied with the final agency decision, you have the right to appeal the matter to the MSPB, not the EEOC, within 30 calendar days after receipt of the final agency decision.

j. When you have filed two or more complaints, you have the right to receive in writing a notice that the agency is consolidating your complaints; that the investigation will be completed within the earlier of 180 calendar days after the filing of the last complaint or 360 calendar days of the filing of the first complaint; and that you may request a hearing with an administrative judge at any time after 180 calendar days of the filing of the first complaint.

k. You have the right to amend a pending complaint to add additional incidents or claims that are like or related to those raised in the pending complaint at any time prior to the completion of the investigation. The agency is required to complete its investigation within the earlier of 180 calendar days after the last amendment to the complaint or 360 calendar days after the filing of the original complaint.

## **8. Responsibilities**

a. You are responsible for cooperating with those individuals involved in the processing of your complaint.

b. At all times during the administrative processing of your complaint, you are responsible for updating, in writing, the activity EEO officer and the EEOC of any changes to your current mailing address. Failure to keep the agency and the EEOC informed of your current address may result in dismissal of your complaint.

c. You are responsible for filing a formal EEO complaint within 15 calendar days after receipt of the Notice of Right to File a Formal Complaint of Discrimination, in the event that you wish to file a formal complaint at the conclusion of traditional EEO counseling or ADR.

d. You are responsible for electing your avenue of redress. The formal action you file first (an MSPB mixed case appeal, a discrimination complaint under the EEO complaint procedure, or a written grievance under the negotiated grievance procedure) is considered to be an election to proceed only in that forum as to the alleged discrimination. Thus, you should be aware that:

(1) An appeal to the MSPB will not be accepted if you have filed a timely formal complaint in writing under the EEO complaint procedure or a timely written grievance under the negotiated procedure.

(2) A discrimination complaint filed under the EEO complaint procedure will be dismissed if you have first filed a timely appeal to the MSPB or a timely written grievance under the negotiated procedure on the same matter.

**Figure 3-1. Sample Aggrieved Person's Rights—continued**

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e. If you file a formal complaint, you are responsible for informing the EEO officer whether you are represented, by whom, and the address and telephone number(s) of your representative. You must also inform the EEO officer of any change in representation. You are responsible for electing your avenue of redress.

f. If you request a hearing before an EEOC administrative judge, you are responsible for sending your request directly to the appropriate EEOC field office and providing the EEO officer a copy of that request. You are also responsible for certifying to the administrative judge that you provided the EEO officer with a copy of your request for a hearing, including how it was served.

g. You must also be aware that you have a legal obligation to mitigate damages, for example on back pay and out of pocket expenses, regardless of whether it is later determined that you were a victim of unlawful discrimination. A successful complainant claiming back pay will be paid the amount that would have been earned had it not been for discrimination, less any amount actually earned or could have been earned with due diligence, plus interest. Interest on back pay is not payable to Federal employees or applicants who prevail on employment discrimination claims brought under the Age Discrimination in Employment Act or the Equal Pay Act.

h. The rejection of an offer of resolution made by the agency may result in the limitation of the agency's payment of attorney's fees or costs.

i. You are responsible for serving notice of appeal and a copy of the brief (if any) on the agency, for example, Deputy for EEOCCR and the agency representative, should you elect to appeal an agency decision to the EEOC, Office of Federal Operations.

9. You are further advised that only matters of discrimination raised in the precomplaint processing, to include those matters of discrimination like or related to matters of discrimination raised in precomplaint processing, may be alleged in a subsequent formal complaint filed with Army.

10. If you have any other questions on this matter, you may contact your activity EEO office.

**Figure 3-1. Sample Aggrieved Person's Rights--continued**

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Date \_\_\_\_\_ (Date) \_\_\_\_\_

DA Docket Number \_\_\_\_\_ (Docket Number) \_\_\_\_\_

MEMORANDUM FOR (aggrieved)

SUBJECT: Offer to Mediate

1. The purpose of this memorandum is to offer you the opportunity to participate in mediation as a means to facilitate resolution of the claim(s) you presented during the precomplaint intake interview. At this time, you have the option to elect either participation in Alternative Dispute Resolution (ADR)/mediation or traditional EEO counseling, and your election to proceed through counseling or ADR is final.
  2. You have the right to representation during mediation. If you are represented, you must advise the EEO officer, in writing, of such representation. Your election to mediate constitutes a waiver of your right to anonymity during the counseling process.
  3. If you elect to participate in mediation, the precomplaint process period shall be extended to a period not to exceed 90 calendar days from (insert date), the date of your initial contact with the EEO office. The claim(s) and incident(s) as discussed and recorded during the precomplaint intake interview will be provided to the mediator.
  4. If resolution is achieved, the terms of the agreement will be set forth in writing and must be signed by you and the designated agency official. If resolution is not achieved, you will receive a final interview and advised, in writing, of your right to file a formal complaint. Nothing said or done during attempts to resolve the complaint through mediation can be made the subject of an EEO complaint.
- 

I (aggrieved) accept/do not accept the offer to mediate my EEO complaint.

\_\_\_\_\_  
(Signature)  
Aggrieved's signature

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Figure 3–2. Sample Offer to Mediate

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## AGREEMENT TO MEDIATE

This is an agreement between the parties signing below to participate in mediation. The aggrieved understands that by agreeing to participate in mediation, the precomplaint counseling period is extended to 90 calendar days from the date of initiating the precomplaint process.

The parties understand that participation in mediation is voluntary. The aggrieved may terminate mediation at any time. Management may terminate mediation with command approval. Mediation may also be terminated at the discretion of the mediator.

The parties understand that the mediator has no authority to make decisions on issues raised or act as an advocate or attorney for either party. Both parties have the right to representation during the EEO process; however, the mediator will determine a representative's participation during mediation. The aggrieved is encouraged to consult with his/her designated representative for purposes of review prior to signing a settlement agreement.

The parties agree that statements made during, or documents prepared for, the mediation process will remain confidential to the fullest extent as permitted by law; except for the limited purpose of implementation and enforcement of a resulting negotiated settlement agreement.

Each party agrees not to request the mediator's testimony or request or use as evidence any materials prepared for, or used during, the mediation with the exception of a signed settlement agreement. The mediator will not voluntarily serve as a witness or testify on behalf of either party.

The aggrieved understands that he/she has the right to pursue unresolved issues through the formal discrimination complaint process. If applicable, the aggrieved will be provided a Notice of Right to File a Formal Complaint of Discrimination upon termination of the mediation or no later than the 90th day of the precomplaint period, whichever comes first.

\_\_\_\_\_  
(Signature)  
(Aggrieved signature & date)

\_\_\_\_\_  
(Signature)  
(Management official signature & date)

\_\_\_\_\_  
(Title)  
(Title)

**Figure 3-3. Sample Agreement to Mediate**

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NOTES:

1. The Agreement to mediate should be signed at anytime during the EEO process when mediation occurs.
2. When mediation occurs during the formal process, delete the last paragraph.

**Figure 3-3. Sample Agreement to Mediate-continued**

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Date \_\_\_\_\_ (Date)

DA Docket Number  (Docket Number)

MEMORANDUM FOR (name of aggrieved)

SUBJECT: Notice of Right to File a Formal Complaint of Discrimination After Mediation Attempt

1. This serves as notice that on (date), mediation was conducted on the claim(s) raised in your precomplaint, which could not be fully resolved. You initially contacted an EEO official on (date) to initiate the precomplaint process and, by agreeing to participate in mediation, the precomplaint processing period was extended to 90 calendar days. As recorded on the precomplaint intake, you alleged that you were discriminated against on (date of alleged discrimination) because of your (basis/bases) when (frame the claim(s) presented in the precomplaint intake).

2. If you believe that you have been discriminated against on the basis of race, color, religion, sex, national origin, age, mental/physical disability and/or reprisal for participation in protected EEO activity or opposition to prohibited discrimination, you have the right to file a formal complaint of discrimination within 15 calendar days of receipt of this notice.

3. This complaint must be in writing, preferably on a DA Form 2590, which is provided for your convenience. (For ease of completion, you may also access this form on the Army's publication website at <http://www.usapa.army.mil>.) Your complaint must be filed in person by you or your attorney, if retained, or by mail to any of the officials listed below. If you file your complaint with one of the officials listed below, other than the EEO officer, it will be sent to the EEO officer for processing. Therefore, it is recommended that your complaint be filed with the EEO officer to ensure the most expeditious processing.

a. Equal Employment Opportunity Officer  
(Provide name and address)

b. Activity commander  
(Provide name and address)

c. Department of Army  
Director of Equal Employment Opportunity/Civil Rights  
ATTN: Deputy for EEOCCR (SAMR-EO-CCR)  
1941 Jefferson Davis Highway, Suite 109B  
Arlington, VA 22202-4508

d. Secretary of the Army  
ATTN: SAMR-EO-CCR

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Figure 3–4. Sample Notice of Right to File a Formal Complaint After Mediation

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1941 Jefferson Davis Highway, Suite 109B  
Arlington, VA 22202-4508

4. The formal complaint must specify the claim(s) and the basis (es) of the complaint raised during the ADR session(s). It is important that you state the incident(s) that caused you to initiate your complaint as concisely as possible, citing the nature of the action, the date of the action, and the person(s) involved. You may only raise those claims and incident(s) discussed, or like or related to those discussed, during ADR. The complaint should also state whether you have filed a grievance under a Negotiated Grievance Procedure or an appeal to the Merit Systems Protection Board, on the same subject matter, including dates. This information is necessary to determine whether your complaint is appropriate for processing under Title 29, Code of Federal Regulations, Part 1614.

5. If you retain an attorney or any other person as a representative, you must immediately notify the EEO officer, in writing, of the name, address, and telephone number of your attorney or representative. You are advised that:

a. Unless you state otherwise in writing, after receipt of written notice of the name, address, and telephone number of your representative, service of all documents will be with the representative, with a copy furnished to you.

b. If your representative is an attorney, service of all official correspondence will be made on the attorney with a copy furnished to you, however, time frames for the receipt of correspondence will be computed from the date of receipt by the attorney.

6. Should you decide to file a formal discrimination complaint, you and/or your representative will receive a written acknowledgement of receipt of the complaint from the EEO officer.

Signature block EEO counselor or EEO office representative, as appropriate

IF NOTICE PRESENTED IN PERSON, INCLUDE THE FOLLOWING:

|   |  |
|---|--|
| _____<br>(Signature)<br>Signature of Aggrieved                      | _____<br>(Date)<br>Date Received by Aggrieved:     |
| _____<br>(Signature)<br>Signature of Representative (if applicable) | _____<br>(Date)<br>Date Received by Representative |

NOTE: If applicable, indicate which claims were resolved during the mediation.

Figure 3-4. Sample Notice of Right to File a Formal Complaint After Mediation—continued

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Date \_\_\_\_\_ (Date) \_\_\_\_\_

MEMORANDUM FOR Witness

SUBJECT: Witness Participation in Complaint Processing

1. A complaint of discrimination has been filed against the Department of the Army wherein you have been identified as having knowledge concerning the matters alleged. The purpose of the discrimination complaint procedure is to determine whether the alleged discrimination occurred so that appropriate remedial action can be taken.
2. The discrimination complaint procedure consists of a precomplaint and a formal complaint process. During the precomplaint process, an Equal Employment Opportunity (EEO) counselor is assigned to make an inquiry into a matter of concern set forth by an individual. The individual presenting the matter(s) of concern is referred to as an "aggrieved" during the precomplaint process. The EEO counselor cannot reveal the identity of the aggrieved unless authorized to do so by the aggrieved. The precomplaint counseling stage is an informal process for resolving the matter(s) at issue. If the EEO counselor is unable to achieve resolution of the matter(s) of concern, the aggrieved will be advised of his or her right to further pursue the matter by filing a formal complaint of discrimination.
3. If the aggrieved decides to file a formal complaint of discrimination and the complaint is accepted, it will be investigated by an investigator from the Department of Defense Office of Complaint Investigations (DODOCI). The individual filing a formal complaint of discrimination is referred to as the "complainant" during the formal process.
4. Your role in the complaint process is that of a witness. An EEO counselor may contact you and solicit your input into the matter(s) of concern. Your participation in the counseling process may serve to assist in resolving the matter(s) quickly. Should the aggrieved decide to file a formal EEO complaint and it is accepted for investigation, you may be required to provide testimony at the investigation and at a hearing before an Equal Employment Opportunity Commission (EEOC) administrative judge.
5. As a witness, you have the right to have a personal representative at the EEO counselor interview and at any other meeting necessary during complaint processing. A person of your own choosing, provided the choice of a representative does not involve a conflict of interest or conflict of position, may represent you. The staff judge advocate or the agency representative may not represent you.
6. Upon completion of DODOCI investigation, the investigator will provide a Report of Investigation (ROI). The complainant will be provided a copy of the ROI and advised of the right to request either a hearing before an EEOC administrative judge or the issuance of a final Army decision.

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Figure 3-5. Sample Witness Participation in Complaint Processing

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7. If, after investigation by the DODOCI, the complainant requests a hearing, the EEOC will appoint an administrative judge to conduct the hearing and issue a decision on the complaint, including appropriate remedies and relief if discrimination is found. At this stage, your testimony may be solicited once again. You will be afforded the opportunity to review relevant sanitized documents and to testify for the record. Again, you have the right to have a representative present during the EEOC hearing. Upon completion of the hearing, the EEOC administrative judge will then forward his/her decision to the Department of Army, EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review) for final action.

8. Any questions or requests for assistance during the processing of the complaint can be addressed to me. You may contact me at (phone #).

Signature block of EEO officer or appropriate official

(Signature)  
Signature of Witness

(Date)  
Date Received

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Figure 3-5. Sample Witness Participation in Complaint Processing—continued

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Date \_\_\_\_\_ (Date)

DA Docket Number \_\_\_\_\_ (Docket Number)

MEMORANDUM FOR (name of aggrieved)

SUBJECT: Agreement to Extend Counseling

1. By signing this agreement, you agree to allow up to an additional 60 calendar days for completion of counseling. This will extend the counseling period to a maximum of 90 calendar days. At or before the end of this period, the final interview will be conducted and you will be advised of your further rights unless you have entered into a settlement agreement resolving all issues.

2. This voluntary agreement means that counseling on the matter(s) you first brought to my attention on (date of initial contact) will be completed no later than (date), 90 calendar days from initial contact.

\_\_\_\_\_  
(Signature)  
Aggrieved

\_\_\_\_\_  
(Signature)  
EEO Counselor

\_\_\_\_\_  
(Signature)  
Aggrieved's Representative (if applicable)

Figure 3-6. Sample Agreement to Extend Counseling

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Date \_\_\_\_\_ (Date)

DA Docket Number                     (Docket Number)

MORANDUM FOR (aggrieved)

SUBJECT: Notice of Right to File a Formal Complaint of Discrimination after  
Completion of Traditional EEO Counseling

1. This serves as notice that on (insert date) the final counseling interview was held in connection with the claim(s) you presented during the precomplaint intake interview and to me as an Equal Employment Opportunity (EEO) counselor. Your initial contact with an EEO official was on (insert date), and my initial interview with you was on (insert date). You alleged that you were discriminated against on (date of alleged discrimination) because of your (basis/bases) when (frame the claim(s) presented in the precomplaint intake).

2. If you believe that you have been discriminated against on the basis of race, color, religion, sex, national origin, age, mental/physical disability and/or in reprisal for participation in protected EEO activity or opposition to prohibited discrimination, you have the right to file a formal complaint of discrimination within 15 calendar days of receipt of this notice.

3. This complaint must be in writing, preferably on a DA Form 2590, which is provided for your convenience. (For ease of completion, you may also access this form on the Army's publication website at: <http://www.apd.army.mil>.) Your complaint must be filed in person by you or your attorney, if you retain one, or by mail with any of the following officials listed below. If you file your complaint with one of the officials listed below, other than the EEO officer, it will be sent to the EEO officer for processing. Therefore, it is recommended that your complaint be filed with the EEO officer to ensure the most expeditious processing.

a. Equal Employment Opportunity officer  
(Provide name and address)

b. Activity commander  
(Provide name and address)

c. Department of the Army  
Director of Equal Employment Opportunity/Civil Rights  
ATTN: Deputy for EEOCCR (SAMR-EO-CCR)  
1941 Jefferson Davis Highway, Suite 109B  
Arlington, VA 22202-4508

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Figure 3-7. Sample Notice of Right to File a Complaint of Discrimination After Traditional Counseling

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d. Secretary of the Army  
ATTN: SAMR-EOCCR  
1941 Jefferson Davis Highway, Suite 109B  
Arlington, VA 22202-4508

4. The formal complaint must specify the claim(s) and the basis (es) of the complaint discussed during the counseling session(s). It is important that you state the incident(s) that caused you to initiate your complaint as concisely as possible, citing the nature of the action, the date of the action, and the person(s) involved. You may only raise claim(s) and incident(s) discussed, or like or related to those discussed, during counseling. The complaint should also state whether you have filed a grievance under a Negotiated Grievance Procedure or an appeal to the Merit System Protection Board, on the same subject matter, including dates. This information is necessary to determine whether your complaint is appropriate for processing under Title 29, Code of Federal Regulations, Part 1614.

5. If you retain an attorney or any other person as a representative, you must immediately notify the EEO officer, in writing, of the name, address, and telephone number of your attorney or representative. See the address shown in paragraph 3a for address of EEO office. You are advised that—

a. Unless you state otherwise in writing, after receipt of written notice of the name, address, and telephone numbers of your representative, service of all documents will be with the representative, with a copy furnished to you.

b. If your representative is an attorney, service of all official correspondence will be made on the attorney with a copy furnished to you, however, time frames for the receipt of correspondence will be computed from the date of receipt by the attorney.

6. You and/or your representative will receive a written acknowledgement of receipt of your formal discrimination complaint from the EEO officer.

Signature block EEO counselor or EEO office representative, as appropriate

IF NOTICE PRESENTED IN PERSON, INCLUDE THE FOLLOWING:

|   |  |
|---|--|
| _____<br>(Signature)<br>Signature of Aggrieved                      | _____<br>(Date)<br>Date Received by Aggrieved      |
| _____<br>(Signature)<br>Signature of Representative (if applicable) | _____<br>(Date)<br>Date Received by Representative |

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Figure 3–7. Sample Notice of Right to File a Complaint of Discrimination After Traditional Counseling—continued

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## EEO JOINT EMPLOYER GUIDANCE

### Working Relationship Information

- 1) Does a contract describing the working relationship between the individual and the Army exist?
- 2) Are you the contracting Officer's Representative or Army official responsible for the project the individual is working on? Please provide your name, title, phone number, and e-mail address, and provide the same information for any other key players.
- 3) How is the individual paid and who determines his/her rate of pay?
- 4) What type of work does the individual do for the Army?
- 5) Is there an end product you expect at the completion of the individual's contract? If so, what is it and when is it due?
- 6) Who assigns work to the individual?
- 7) Does the individual report to an office provided by the Army?
- 8) What equipment, materials and supplies does the individual need to do his/her work for the Army and who provides them?
- 9) Does the individual do work for anyone else besides the Army?
- 10) If a government contractor employs the individual, does that contractor provide an on-site supervisor?
- 11) Does the Army/DFAS withhold social security taxes or other taxes from the individual's compensation?
- 12) Does the Army provide medical insurance for temporary or long-term disabilities?
- 13) Does the Army reimburse the individual for any expenses? If so, please describe.
- 14) How were the individual's working hours established?
- 15) Who determines whether the relationship between the individual and the Army will continue and on what basis is that determination made?
- 16) Is a performance evaluation prepared on the individual? If so, who prepares it and what input do Army officials provide?
- 17) To whom does the individual submit leave requests, and who approves those requests?
- 18) What are the details of any documents or conversations showing that the individual was not being hired as an employee of the Army?

Figure 3-8. Sample EEO Joint Employer Guidance Working Relationship Information

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## **Chapter 4 Formal Complaints of Discrimination**

### **Section I Filing and Acknowledgement of Formal Complaints of Discrimination**

#### **4-1. Filing a formal complaint**

*a.* A formal complaint of discrimination shall be filed within 15 days of receipt of the Notice of Right to File a Formal Complaint of Discrimination unless extenuating circumstances occur as discussed in paragraph 4-4a(4). An individual who files a formal complaint of discrimination is referred to as “the complainant” during the formal complaint process.

*b.* Complaints should be submitted on DA Form 2590. Complaints submitted in letter format, while not preferred, are acceptable if they meet the other regulatory requirements. If the complainant submits a letter rather than a DA Form 2590, the EEO officer will complete a DA Form 2590 and attach it to the letter provided by the complainant.

*c.* Formal complaints may be submitted to—

- (1) The activity EEO officer,
- (2) The activity commander,
- (3) The Army Director of Equal Employment Opportunity, or
- (4) The Secretary of the Army.

*d.* All activity posters and similar publications will recommend that complainant submit a copy of his or her complaint to the activity EEO officer regardless of with whomever else the complaint is filed. Anyone other than the activity EEO officer who receives a complaint will immediately transmit the complaint to the activity EEO officer, indicating the date the complaint was received if it is not postmarked. EEO counselors should encourage aggrieved persons to submit their formal complaints to the activity EEO officer to ensure timely processing.

*e.* A formal complaint shall be deemed timely if it is delivered in person, via facsimile, commercial overnight delivery or postmarked before the expiration of the 15-day filing period or if, in the absence of a legible postmark, it is received within 5 days after the expiration of the 15-day filing period. If the complaint is mailed, the date of filing is the postmark date, not the date received by the activity. The postmarked envelope will be attached to the formal complaint and retained in the complaint file. If commercial overnight delivery is used, the date of filing is the date it is delivered to the commercial overnight delivery service.

*f.* Upon receipt of a formal complaint, the EEO officer will indicate the MACOM and activity or installation against which the complaint is filed, code the claims giving rise to the complaint, annotate the DA docket number on the complaint, ensure the precomplaint data in the EEO automated data system is accurate, and update the data system to reflect the formal complaint information. The formal complaint and all attachments will be maintained in the complaint file under the “Formal” tab.

*g.* The EEO officer will submit one copy of the formal complaint to the MACOM.

*h.* General allegations of discrimination made by persons and special interest organizations that are not within the scope of individual or class complaints will be promptly answered by the activity commander or a designee. A copy of the response to a general allegation will be sent to the MACOM EEO office of the activity against which the complaint was made.

#### **4-2. Receipt and acknowledgement of a formal complaint**

*a.* Within 15 days of receipt of a formal complaint, the EEO officer must acknowledge receipt of the complaint and either dismiss the complaint or accept the complaint and request assignment of an investigator. The EEO officer will acknowledge receipt of the formal complaint in writing. (See figure 4-1.) The acknowledgement letter shall inform the complainant and representative of the date on which the complaint was received and considered filed.

*b.* If the formal complaint contains vague or overly general claims, the EEO officer will request clarification in the acknowledgement letter. The complainant and representative will be advised that failure to provide specific information that clearly defines the claims, within 15 days from the date of receipt of a request for clarification, may result in dismissal of the complaint for failure to provide relevant information. (See paragraph 4-4a(13).)

*c.* Upon receipt of a formal complaint, the activity commander will designate a labor counselor to serve as the Army representative. The name, address, telephone number, facsimile number and e-mail address of the agency representative will be placed in the complaint file under the “Admin” tab.

*d.* Upon issuance of the Acknowledgement of Receipt, the EEO officer will provide a copy of the completed DA Form 2590 and all other available documents to the agency representative.

e. The acknowledgement of receipt and all subsequent actions on the complaint will be served in accordance with guidance provided in paragraph 1–25.

## **Section II**

### **Acceptance, Partial Dismissal or Dismissal of Formal Complaints of Discrimination**

#### **4–3. Procedures for acceptance or dismissal of a formal complaint**

a. The EEO officer will review the complaint to determine whether the complaint is a mixed or a nonmixed case. The EEO officer should consult with the agency representative to make this determination.

b. The EEO officer will review the complaint against the criteria of 29 CFR Section 1614.107 and paragraph 4–4 to determine if the circumstances surrounding the claims meet the criteria for dismissal.

(1) The EEO officer will coordinate acceptance and dismissal decisions, including the wording thereof, with the agency representative.

(2) The agency representative will respond to the EEO officer within 5 days of receiving a copy of the EEO officer's proposed decision and all existing complaint file documents. The agency representative's failure to respond within 5 days of receipt of all file documents will not delay the administrative processing of the EEO complaint.

c. Before acceptance, the EEO officer must determine if consolidation of the complaint with a pending complaint is appropriate to avoid claim fragmentation. (See paragraph 4–7.)

d. Within 15 days after the complaint is received, the EEO officer will provide the complainant and representative a written decision to accept claims in the complaint and request assignment of an investigator or dismiss the complaint. The acceptance/dismissal decision will be sent to the complainant and representative in accordance with the service rules set forth in paragraph 1–25. A copy of the acceptance/dismissal decision will be kept in the complaint file under the "Formal" tab.

e. The acceptance letter will inform the complainant of the following:

(1) The claims that are accepted for investigation. If a portion of the formal complaint is dismissed, the Notice of Acceptance will address the specific rationale for partial dismissal.

(2) The right to submit a statement to the EEO officer concerning the articulation of the claims, and that any statement submitted will be placed in the complaint file.

(3) The right to submit evidence substantiating the claims for compensatory damages and notice that failure to comply may limit any award if discrimination is subsequently found. (See figure 4–2.)

(4) The reasons for any extension of time limits.

(5) Any amendment to the complaint must be in writing and served on the EEO officer and the agency representative.

(6) The name, address, telephone number, facsimile number, and e-mail address of the designated agency representative.

(7) The acceptance of any complaint shall be conditioned upon the final decision of the Secretary of Army or designee.

f. In nonmixed complaint cases, the acceptance letter (fig 4–3) will also inform the complainant of the following:

(1) The requirement of the agency to conduct an impartial investigation of the complaint within 180 days of the filing of the complaint unless the parties agree to extend the time period.

(2) The right to file a request for a hearing by an administrative judge directly with the EEOC any time after 180 days has elapsed from the date of filing the complaint. The complainant will be provided a copy of the Request for Hearing form and the address of the appropriate EEOC office (see para 4–21).

(3) The right to amend a pending complaint to add claims that are like or related to those raised in the pending complaint at any time prior to the conclusion of the investigation.

(4) After requesting a hearing, the right to file a motion with the administrative judge to amend the complaint to include claims like or related to those raised in the complaint.

(5) When a complaint has been amended, the requirement of the agency to conduct an impartial investigation within the earlier of 180 days after the last amendment to the complaint, or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an EEOC administrative judge after 180 days have passed since the filing of the original complaint, even if the agency's investigation has not been completed.

(6) When complaints have been consolidated for processing, the requirement of the agency to conduct an impartial investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an EEOC administrative judge on the consolidated complaint any time after 180 days from the date of the filing of his or her first complaint.

(7) The authority of the Army to unilaterally extend the 180-day time period, or any period of extension, for not more than 30 days when it must sanitize a complaint file that contains classified information. The complainant and representative will be informed of the extension.

(8) The right to appeal the final action or decision of a complaint, except in partial dismissals, to the EEOC OFO, P.O. Box 19848, Washington, DC 20036, within 30 days of receipt of the dismissal, final action, or final decision.

(9) The right to file a civil action in Federal district court as described in paragraph 5–12.

(10) The requirement to serve a copy of all official correspondence, including any correspondence to the EEOC, on the EEO officer and the agency representative.

g. In mixed complaint cases, the acceptance letter (fig 4–4) must inform the complainant of the following:

(1) The requirement of the agency to conduct an impartial investigation and issue a final agency decision (FAD) within 120 days of the filing of the complaint.

(2) The right to appeal the matter to the MSPB or file a civil action, but not both, at any time if a final decision has not been issued within 120 days of filing the complaint.

(3) The right to appeal the final Army decision to the MSPB (not the EEOC) or file a civil action, but not both, within 30 days of receipt of the decision.

(4) The address for the MSPB regional office.

(5) The right to file a civil action in Federal district court as described in paragraph 5–12.

(6) The requirement to serve a copy of all official correspondence, including any correspondence to the MSPB, on the EEO officer and the agency representative.

#### **4–4. Procedures and criteria for dismissal or partial dismissal of a formal complaint**

a. A complaint or a portion of a complaint will be dismissed by the EEO officer (subject to final decision by the Army Director of EEO or designee) if one or more of the following apply:

(1) *Failure to state a claim.* (See 29 CFR Section 1614.107(a)(1).) In determining whether a complaint states a claim under 29 CFR Section 1614.103, the proper inquiry is whether the conduct, if true, would constitute an unlawful employment practice under the EEO statutes.

(2) *States the same claim.* (See 29 CFR Section 1614.107(a)(1).) The complaint sets forth a matter identical to one raised in a previous complaint filed by the same complainant and that has been or is being decided. The final decision of the agency or EEOC proving that the matter has been processed, or documents showing that the matter is currently being processed, will be attached to the notice of dismissal.

(3) *Untimely EEO counselor contact.* (See 29 CFR Section 1614.107(a)(2).)

(a) The complainant failed to contact an EEO official or an EEO counselor within 45 days of the date of the alleged discriminatory claim, or in the case of a personnel action, within 45 days of the effective date of the action. The complainant also must have failed to show that the 45-day contact period should be extended pursuant to 29 CFR Section 1614.105(a)(2). The agency has the burden to show that the complainant knew or should have known of the 45-day time limitation, and the appropriate documentation should be attached to the dismissal notice.

(b) The activity commander or the activity EEO officer will not dismiss a complaint under this provision if the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have known that the discriminatory claim or personnel action occurred, or that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting a counselor within the time limits.

(c) In some instances, dismissal of a complaint may be precluded if the complainant contends that the claim is a part of a continuing violation or establishes that there are other equitable circumstances that might mitigate untimely EEO counselor contact.

(d) The time limits of this paragraph may be extended by the activity EEO officer or the activity commander when the facts indicate that waiver, estoppel, or equitable tolling is appropriate.

(4) *Untimely filing of formal complaint.* (See 29 CFR Section 1614.107(a)(2).)

(a) Formal complaints filed later than 15 days after receipt of the Notice of Right to File a Formal Complaint of Discrimination will be dismissed unless an extension of time limits has been granted.

(b) The activity commander or the activity EEO officer will not dismiss a complaint under this provision unless proof can be provided showing that complainant or complainant's attorney representative received the Notice of Right to File a Formal Complaint of Discrimination and was clearly informed of the 15-day filing period. The notice of dismissal should reference the date the complainant either signed the Notice of Right to File or the date it was received by certified mail, and should include copies of those documents.

(c) The time limits of this paragraph may be extended by the activity commander or the activity EEO officer when the facts indicate that waiver, estoppel or equitable tolling are appropriate.

(5) *Unrelated information.* Complaint raises a matter that was not brought to the attention of an EEO counselor and is not like or related to the matter addressed by the counselor. (See 29 CFR Section 1614.107(a)(2).)

(6) *Filing of a civil action.* (See 29 CFR Section 1614.107(a)(3).) The complainant has filed a civil action concerning the same allegation(s) provided that at least 180 days have passed since the administrative complaint was filed. Copies of court filings will be attached to the notice of dismissal.

(7) *Issue has been decided by U.S. District Court.* (See 29 CFR Section 1614.107(a)(3).) The same issue was the

basis of a civil action decided by a U.S. District Court in which the complainant was a party. The proper inquiry to determine whether dismissal is warranted is whether the acts of alleged discrimination in the EEO complaint are identical to those contained in the civil action. Copies of court filings will be provided as an enclosure to the notice of dismissal.

(8) *Allegation raised in negotiated grievance procedure.* (See 29 CFR Section 1614.107(a)(4).) The complaint sets forth claims identical to those in a grievance filed in writing by the same complainant under a negotiated grievance procedure that does not exclude allegations of discrimination. Pursuant to 29 CFR Section 1614.301(a), an election to proceed under a negotiated grievance procedure is indicated by the filing of a timely written grievance. A copy of the grievance and applicable section of the collective bargaining agreement showing that allegations of discrimination are not excluded will be attached to the notice of dismissal.

(9) *Appealed to the MSPB.* (See 29 CFR Section 1614.107(a)(4).) The complainant elected to appeal the claim to the MSPB, rather than or prior to filing a mixed case complaint under 29 CFR Section 1614.302. A copy of the complainant's appeal to the MSPB will be attached to the notice of dismissal.

(10) *Complaint is moot.* (See 29 CFR Section 1614.107(a)(5) and the glossary for definition.) A complaint may be dismissed as moot when there is no reasonable expectation that the alleged violation will recur, and interim relief or events have completely and irrevocably eradicated the effects of the alleged discrimination. If compensatory damages are requested, an EEO officer will not dismiss the complaint under this provision until the issue of compensatory damages has been addressed.

(11) *Complainant alleges a preliminary step.* (See 29 CFR Section 1614.107(a)(5).)

(a) The complainant alleges that a proposal to take a personnel action or other preliminary step in taking a personnel action is discriminatory. This provision requires the dismissal of complaints that allege discrimination in any preliminary steps that do not, without further action, affect the person.

(b) If the complainant alleges, however, that the preliminary step was part of a pattern of harassing conduct for a prohibited reason, the complaint will not be dismissed under this section.

(12) *Complainant cannot be located.* (See 29 CFR Section 1614.107(a)(6).)

(a) A complaint may be dismissed when the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant, and the complainant has not responded within 15 days to a notice of proposed dismissal sent by certified mail, return receipt requested, to his or her last known address.

(b) A claim may not be dismissed under this provision until after the complainant has filed a formal complaint.

(13) *Failure to respond or proceed in a timely manner.* (See 29 CFR Section 1614.107(a)(7).)

(a) A complaint may be dismissed where the agency has provided complainant with a written request to provide relevant information or otherwise proceed with the complaint, and complainant has failed to respond to the request within 15 days of receipt, as evidenced by the signed, certified mail receipt (or proof of refusal to accept), or the response does not address the agency's request, provided that the request included a notice of proposed dismissal and further provided that there is otherwise insufficient available information to adjudicate the complaint.

(b) Dismissal under this provision is applicable only in those cases where there is a clear record of delay or contumacious conduct by the complainant.

(c) A complaint may not be dismissed under this provision where the record includes sufficient information to issue a decision.

(14) *Dissatisfaction with the EEO process or "spin off" complaints.* (See 29 CFR Section 1614.107(a)(8).)

(a) A complaint may be dismissed under this provision where the complainant alleges dissatisfaction with the processing of a previously filed complaint.

(b) The EEO officer will add a memorandum for record to the complaint file of the pending complaint annotating complainant's concerns and any action taken to resolve the complainant's concerns. If no action was taken to resolve the complainant's concerns, the memorandum for record will explain the reasons for not taking action.

(c) The notice of dismissal must inform the complainant that if his or her concerns have not been resolved informally, he or she may present those concerns to an EEOC administrative judge if a hearing is requested and before the administrative judge issues a decision in the underlying complaint, or on appeal to the EEOC OFO, if no hearing has been requested.

(d) The notice of dismissal should inform the complainant that he or she has the burden to prove improper processing, and that concerns regarding improper processing raised after a decision has been issued in the underlying complaint will not be accepted by the agency, the administrative judge, or OFO.

(15) *Abuse of the EEO process.* (See 29 CFR Section 1614.107(a)(9).)

(a) The activity commander or EEO officer will not dismiss a complaint under this provision unless there is a clear pattern of misuse of the EEO process for ends other than that which it was designed to accomplish.

(b) A clear pattern of misuse of the EEO process requires evidence of multiple complaint filings **and** evidence of circumventing other administrative processes, retaliating against the agency's in-house administrative processes, or overburdening the EEO complaint system. Numerous filings alone are not sufficient bases for determining that there has been an abuse of the process. However, multiple filings on the same issues, lack of specificity in the allegations,

and the filing of complaints on claims previously raised may be considered when deciding whether a complainant has engaged in a pattern of abuse of the EEO process.

*b.* When a complaint is partially dismissed, the EEO officer will inform the complainant and representative, in writing, of the rationale for the partial dismissal and that the dismissed claims will not be investigated. The EEO officer shall advise the complainant and representative that the partially dismissed claims are not appealable until a final action is issued on the remainder of the complaint but may be reviewed by an administrative judge if the complainant requests a hearing on the accepted claims.

*c.* When a nonmixed case complaint is dismissed in its entirety (fig 4–5), the notice of dismissal must cite the following:

(1) The appropriate section of 29 CFR Section 1614.107 and a specific explanation for the dismissal.

(2) The right to appeal the dismissal decision to the EEOC within 30 days of receipt of the decision. A copy of EEOC Form 573, Notice of Appeal/Petition to the Equal Employment Opportunity Commission, Office of Federal Operations, will be attached to the notice of dismissal.

(3) The right to file a civil action in a Federal district court as described in paragraph 5–12.

*d.* When a mixed case complaint is dismissed in its entirety (fig 4–6), the notice of dismissal must cite the following:

(1) The right to appeal the dismissal decision to the MSPB (or to the EEOC if it alleges that 29 CFR Section 1614.107(a)(4)) has been applied to a nonmixed matter) within 30 days of receipt of the notice of dismissal. A copy of U.S. MSPB Optional Form 283, Appeal to MSPB, will be attached to the notice. A copy of the form is available from the MSPB Web site (<http://www.mspb.gov>).

(2) The right to petition the EEOC to review the MSPB’s final decision on the discrimination issue.

(3) The right to file a civil action in a Federal district court as described in paragraph 5–12.

*e.* A complaint may be dismissed by the EEO officer after acceptance and prior to a request for a hearing if it is discovered that one or more of the criteria set forth in paragraph 4–4a, as contained in 29 CFR Section 1614.107, is applicable. Procedures for dismissal cited above will be followed, including coordination with the agency representative.

*f.* The Army Director of EEO or designee reserves the right to—

(1) Dismiss a complaint previously accepted by an EEO officer when making the final Army decision on the basis of one or more of the grounds specified in paragraph 4–4a above.

(2) Direct acceptance of an improperly dismissed complaint.

#### **4–5. Captioning complaint correspondence**

The appropriate complaint caption will be placed on all documents and correspondence relating to the complaint. All complaints accepted for processing by the EEO officer will be captioned so as to identify the complainant versus (v.) the name of the Secretary of the Army and the Army’s assigned docket number, unless the complaint is against a serviced activity not under the control of the Secretary of the Army, in which case the name and official title of the serviced agency’s head will be stated.

### **Section III**

#### **Amendment and Consolidation of Complaints**

##### **4–6. Amendment of complaints**

*a.* A complainant may add claims or incidents that are like or related to those raised in a pending complaint at any time prior to the issuance of the notice required by 29 CFR Section 1614.108(f) at the completion of the investigation. There is no requirement that the complainant seek precomplaint counseling for any newly disclosed like or related claims or incidents.

(1) If it is determined that the complainant has raised a new incident that provides additional evidence offered in support of the claim raised in the pending complaint, but does not raise a new claim in and of itself, the EEO officer must acknowledge receipt of the amendment in writing and inform the complainant of the date on which the amendment was filed. The EEO officer should instruct the investigator, in writing, to include the new incident in the investigation. A copy of this letter should be sent to the complainant and representative in accordance with the service rules set forth in paragraph 1–25. The EEO officer will furnish the agency representative with a copy of the amendment and the acknowledgement notice and place a copy in the complaint file under the “Formal” tab.

(2) If it is determined that the complainant has raised a new claim of alleged discrimination that is not part of an existing complaint, but the new claim is like or related to the pending complaint, the EEO officer will amend the pending complaint to include the new claim. The EEO officer shall acknowledge receipt of the amendment in writing and inform the complainant and representative of the date on which the amendment was filed. The acknowledgement notice will inform the complainant and representative that the newly raised claim will be included for investigation with the previously filed complaint. The EEO officer will instruct the investigator, in writing, to include the new claim in the investigation and will provide a copy of that letter to the complainant and the complainant’s representative in

accordance with the service rules set forth in paragraph 1–25. The EEO officer will furnish the agency representative with a copy of the amendment and the acknowledgement notice and place a copy in the complaint file under the “Formal” tab.

(3) If the EEO officer concludes that the new claim raised by the complainant is not like or related to the claim raised in the pending complaint, then the EEO officer will advise the complainant that an EEO counselor will be assigned to conduct a precomplaint intake on the new claim in accordance with paragraph 3–6. The postmark date of the letter (from complainant requesting that the complaint be amended) to the EEO officer or complaints manager, the date of facsimile or e-mail, or the date the letter was delivered in person to an EEO official is the date for time computation purposes used to determine if initial counselor contact was timely under 29 CFR Section 1614.105(a).

b. The EEO officer will coordinate the draft amendment decision and notice with the agency representative before issuance.

c. When a complaint is amended, the investigation will be completed within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint.

d. Like or related claims added after the complainant has requested a hearing will be filed by the complainant directly with the administrative judge. The complainant must provide a copy of any motion filed with the administrative judge to the EEO office and agency representative.

#### **4–7. Consolidation of complaints**

a. The EEO officer will consolidate two or more complaints of discrimination filed by the same employee, applicant, former employee, or certain contract employee for joint processing, after appropriate notice has been given to the complainant and representative. Although processed as a single unit, these complaints will be tracked in the automated tracking system using all applicable DA docket numbers.

b. The EEO officer may consolidate complaints of discrimination filed by two or more different Army employees, former employees, applicants for employment, or certain contract employees when they involve substantially similar allegations of discrimination or relate to the same matter, after appropriate notice has been given to the respective complainants and representatives. When complaints are consolidated for processing, each complainant will receive a separate investigative file. The complaints will be docketed and tracked separately in the EEO automated data system.

c. When a complaint has been consolidated with one or more earlier complaints, the investigation will be completed within the earlier of 180 days after the last complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an EEOC administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint.

### **Section IV**

#### **Processing Procedures for Mixed Complaints and Appeals, Negotiated Grievances, and Administrative Grievances**

#### **4–8. Mixed cases**

*a. Definitions.*

(1) A “mixed case complaint” is a complaint of employment discrimination filed with a Federal agency based on race, color, religion, sex, national origin, age, disability, or reprisal related to or stemming from an action that can be appealed to the MSPB. The complaint may contain only a claim of employment discrimination or it may contain additional nondiscrimination issues that the MSPB has jurisdiction to address. There is no right to a hearing before an EEOC administrative judge on a mixed case complaint.

(2) A “mixed case appeal” is an appeal filed directly with the MSPB that alleges that an action appealable to the MSPB was effected, in whole or in part, because of discrimination based on race, color, religion, sex, national origin, age, disability, or reprisal. This differs from an appeal to the MSPB of a final agency decision on a mixed case complaint.

*b. Standing.* Prior to processing a mixed case complaint, the EEO officer must determine that the employee has standing to file a mixed case appeal with the MSPB.

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

- (a) Competitive service employees not serving a probationary or trial period under an initial appointment;
- (b) Career appointees to the Senior Executive Service;
- (c) Noncompetitive service veterans preference eligible employees with one or more years of current continuous service, such as postal employees and attorneys with veterans preference; and
- (d) Nonpreference eligible excepted service employees who have completed their probationary period or with two or more years of current continuous service, such as attorneys.

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

- (a) Probationary employees (see 5 CFR Section 315.806, allowing appeals alleging discrimination based on party affiliation, marital status, procedural deficiencies);

- (b) Certain nonappropriated fund activity employees, such as employees of the Army and Air Force Exchange;
- (c) Employees serving under a temporary appointment limited to one year or less; and
- (d) Employees of the Central Intelligence Agency, the General Accounting Office, the United States Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, and the Federal Bureau of Investigation.

c. *Appealable actions.* Most appealable actions fall into one of the following seven categories:

- (1) Reduction in grade or removal for unacceptable performance.
- (2) Removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service.
- (3) Separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction-in-force.
- (4) Reduction-in-force action affecting a career appointee in the Senior Executive Service.
- (5) Reconsideration decision sustaining a negative determination of competence for a general schedule employee.
- (6) Disqualification of an employee or applicant because of a suitability determination.
- (7) Constructive discharge or retirement.

d. *Presentation of a mixed case.* A mixed case may be presented initially as a discrimination complaint under this regulation or under a negotiated grievance procedure, if applicable, or as part of an appeal to the MSPB in accordance with 5 CFR Part 1201, Subpart E. Employees must choose the system under which they wish to proceed. Whichever formal action the employee files first, in writing, is considered an election to proceed in that forum as to the alleged discrimination. Filing a formal complaint constitutes an election to proceed in the EEO forum; however, neither contact with an EEO counselor nor participation in the precomplaint process constitutes an election.

#### **4-9. Processing mixed case complaints**

When a complainant files a mixed case complaint, the EEO officer shall process the complaint in the same manner as it would a nonmixed discrimination complaint except—

a. Upon acceptance of a mixed case complaint, the EEO officer must advise the complainant and representative that if a final decision is not issued within 120 days of the date of filing the complaint, the complainant may appeal the complaint to the MSPB at any time thereafter, as specified in 5 CFR Section 1201.154(b), or the complainant may file a civil action, but not both, and;

b. Upon acceptance of a mixed case complaint, the EEO officer must inform the complainant and representative of the right to appeal the complaint to the MSPB (not the EEOC) within 30 days of receipt of the final agency decision if dissatisfied with the final agency decision on the mixed case complaint.

c. Upon completion of the investigation, the EEO officer must notify the complainant that a final agency decision without a hearing before an EEOC administrative judge will be issued within 45 days or within 120 days from the filing of the formal complaint.

d. Upon issuance of the final agency decision on a mixed case complaint, the EEO officer must advise the complainant and representative of the right to appeal the decision to the MSPB (not EEOC) within 30 days of receipt of the decision and of the right to file a civil action.

#### **4-10. Appeals of mixed case complaints to the MSPB**

a. An appeal to the MSPB on a mixed case complaint may be submitted—

(1) If a final decision is not issued by the Army within 120 days of the date of filing of the mixed case complaint. The complainant may appeal the matter to the MSPB any time thereafter as specified in 5 CFR Section 1201.154(b)(2) or may file a civil action as specified at 29 CFR Section 1614.310(g), but not both, or

(2) If dissatisfied with the final Army decision on the mixed case complaint, the complainant may appeal the matter to the MSPB (not EEOC) within 30 days of receipt of the final Army decision.

b. Appeals should be submitted to the appropriate MSPB field or regional office.

c. Although not required, complainants should be encouraged to use MSPB Optional Form 283, to file their appeal with the MSPB.

d. Appeals to the MSPB may be filed by mail, facsimile, commercial overnight delivery, or personal delivery. The date of filing is the date the appeal is postmarked, the date of the facsimile transmission, the date it is delivered to the commercial overnight delivery service, or the date of personal delivery.

e. The complainant must serve a copy of an appeal of a mixed case complaint to the activity EEO officer and agency representative.

#### **4-11. Mixed case appeals to the MSPB**

a. A mixed case appeal is an appeal filed directly with the MSPB, as defined in paragraph 4-8a(2).

b. Mixed case appeals to the MSPB must be filed within 30 days of the effective date of the action, if any, or within 30 calendar days after the date of receipt of the final Army decision whichever is later.

c. Filing instructions outlined in paragraphs 4–10 b through e should be followed.

#### **4–12. Procedures for handling dual filing of mixed case complaints and mixed case appeals**

a. When a complainant files a mixed case appeal with the MSPB before filing a mixed case complaint with the activity and the activity does not dispute MSPB jurisdiction, the EEO officer shall dismiss the mixed case complaint and advise the complainant to raise the claim of discrimination contained in the dismissed complaint to the attention of the MSPB. The notice of dismissal shall notify the complainant that any alleged misapplication of Section 1614.107(a)(4) must be appealed to the EEOC and not the MSPB. (See figure 4–7.) The EEO officer will attach a copy of the MSPB mixed case appeal to the notice of dismissal.

b. When the complainant files a mixed case appeal with the MSPB before filing a mixed case complaint with the activity and the activity questions MSPB jurisdiction, the EEO officer shall hold the mixed case complaint in abeyance until the MSPB administrative judge rules on the jurisdictional issue. The agency representative will request a determination from the MSPB on the jurisdictional matter. The EEO officer will inform the complainant and representative that the mixed case complaint will be held in abeyance and advise the complainant to bring the discrimination claim to the attention of the MSPB. During this period, all time limitations for processing or filing the complaint will be tolled.

(1) When the MSPB administrative judge determines that MSPB has jurisdiction over the claim, the EEO officer shall dismiss the mixed case complaint and advise the complainant and representative of the right to petition EEOC to review the MSPB's final decision on the claim of discrimination.

(2) When the MSPB administrative judge determines that MSPB does not have jurisdiction over the claim, the EEO officer shall recommence processing of the mixed case complaint as a nonmixed EEO complaint and notify the complainant and representative.

c. When the complainant files a mixed case complaint with the activity and then files a mixed case appeal with the MSPB, the EEO officer shall coordinate with the agency representative. The agency representative shall file a motion with the MSPB to dismiss the mixed case appeal.

d. Since the EEO officer is not normally served MSPB decisions, the activity official who receives an MSPB final order on an appeal of a mixed case complaint or mixed case appeal must immediately inform the EEO officer so that timely notice of applicable appeal rights may be provided to the appellant.

#### **4–13. Processing where MSPB dismisses a mixed case appeal or an appeal of a mixed case complaint**

a. When a complainant files a mixed case appeal in lieu of using the EEO process and the MSPB dismisses the appeal for lack of jurisdiction, the agency representative or official who receives MSPB final actions will immediately contact the EEO officer and provide a copy of the MSPB decision. The EEO officer must then inform the complainant that he or she may contact an EEO counselor within 45 days to address the alleged discriminatory issues and that the filing date of the mixed case appeal will be considered to be the date of initial contact with the EEO counselor.

b. If the individual filed the appeal after receiving a final Army decision on the mixed case complaint, or after the Army failed to issue a final decision on the mixed case complaint within 120 days and the MSPB dismisses for lack of jurisdiction, the EEO officer must provide the complainant with a 30-day notice of right to a hearing and decision from an EEOC administrative judge or an immediate final Army decision pursuant to Section 1614.108(f) and thereafter proceed as in a nonmixed case.

#### **4–14. Negotiated grievance procedure**

a. A complainant who is covered by a collective bargaining agreement may file claims of discrimination or reprisal under the negotiated grievance procedure instead of filing under this regulation. The complainant has this grievance option if the negotiated grievance procedure does not exclude claims of discrimination or reprisal. When using the negotiated grievance procedure, a complainant is bound by the negotiated agreement.

b. If the negotiated agreement does not exclude claims of discrimination, a person wishing to file a complaint or a grievance on a matter of alleged employment discrimination must elect the forum in which to pursue the matter. If a person files a timely written grievance, he or she may not thereafter file a complaint on the same matter under this regulation irrespective of whether the grievance has raised an allegation of discrimination within the negotiated grievance procedure. Any such formal complaint, filed after a written grievance has been filed on the same matter, shall be dismissed without prejudice to the complainant's rights to proceed through the negotiated grievance process, including the complainant's right to request the EEOC to review a final decision as provided by 5 USC Section 7121(d) and Subpart D of Part 1614. The activity decision dismissing such a complaint shall advise the complainant of the obligation to raise discrimination in the grievance process and the right to appeal the final grievance decision to the EEOC. (See figure 4–8.) An election, pursuant to this paragraph, to proceed under this regulation is indicated only by filing a formal complaint. Use of the precomplaint process as described in chapter 3 does not constitute an election for the purpose of this paragraph. (See paragraph 5–3 for final decision under the negotiated grievance procedure.)

#### **4-15. Administrative grievance procedure**

Allegations of discrimination, which are subject to final administrative review by the EEOC, may not be raised by an employee in the administrative grievance procedure. (See DOD Directive 1400.25-M, Subchapter 771).

#### **4-16. Army's Accessibility Program and command responsibilities**

Complaints of discrimination filed on the basis of disability involving programs and activities assisted or conducted by the Department of Army will be processed in accordance with AR 600-7 (Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army). AR 600-7 provides a system for processing complaints filed by those qualified disabled individuals who, because of their disabilities, were precluded from taking part in or attending certain programs conducted by or funded by DA, or precluded from gaining access to Federally owned or leased buildings, Army posts, camps, or stations because of architectural design or other barriers.

### **Section V**

#### **Investigation of Formal Complaints of Discrimination**

#### **4-17. Arranging for investigation**

*a.* For accepted complaints, within 15 days of the date a formal complaint is filed, the EEO officer will request the assignment of an investigator. (See figure 4-9.) A copy of the request, with any documents not previously provided, will be forwarded to the complainant and his or her representative in accordance with the service rules contained in paragraph 1-25, and to the agency representative. The request must contain the following information:

- (1) A clear statement of the claims accepted for investigation.
- (2) Whether the formal complaint is a mixed case complaint.
- (3) The complainant's mailing address, organization, work location, and telephone numbers, both Defense Switching Network (DSN) and commercial, facsimile number, and e-mail address.
- (4) The complainant's designation of a representative, including the representative's mailing address, telephone number, facsimile number, and e-mail address.
- (5) The name, address, telephone number, facsimile number, and e-mail address of the designated agency representative.
- (6) Appropriate fund information to ensure payment for investigative services.
- (7) A specific point of contact within the activity EEO office with appropriate telephone number, facsimile number and e-mail address.
- (8) Legible and unsanitized copies of the following documents:
  - (a) The formal complaint, DA Form 2590.
  - (b) The acceptance/partial acceptance letter.
  - (c) The EEO Counselor's Report.
  - (d) The Notice of Right to File a Formal Discrimination Complaint
  - (e) All other relevant documents.

*b.* The EEO officer, or a designee, will arrange for the investigator's visit or teleconferencing if available. This may include the following:

- (1) Arranging for quarters and local transportation.
- (2) Providing a conference room or other similar location with appropriate teleconferencing facilities, if needed.
- (3) Ensuring clerical support, court-reporting services at the location of the investigation, or any other administrative support needed to conduct an efficient investigation. Army employees may be used to transcribe investigations. Interservice support agreements with the Navy or Air Force may be used instead of contracting for such services. If no reporter is available, the activity may then contract for a court reporter through the contracting office using the General Services Administration (GSA) Federal Supply Schedule (FSS).
- (4) Ensuring the availability of witnesses and technical advisors as required and approved by the investigator.
- (5) Ensuring the availability of current employment and administrative statistics, such as promotions, hires, training, discipline, awards, and so forth, as requested by the investigator.

*c.* Upon receipt of the list of accepted witnesses from the investigator, the EEO officer will issue a written notification to the witnesses that their presence is required and provide information as to dates, time, and location of the investigation. A copy of each witness notification letter will be provided to the agency representative.

*d.* To avoid the appearance of impropriety, no activity personnel, to include the EEO officer, civilian personnel official, or any management official, shall express an opinion regarding the perceived merits of a complaint, or lack thereof, to the investigator. The agency representative may do so in connection with the investigation. However, activity personnel may disclose facts that would assist the investigator at any time up to the receipt of the investigative file.

*e.* Contracts with court reporting firms must require delivery of six verbatim transcripts to the investigator within 14

days after the factfinding conference is concluded. If the complaints investigated have two or more complainants, contracts with court reporting firms must require one additional copy of the transcript for each additional complainant.

#### **4-18. Avoiding delays**

*a.* Complainants and management officials must cooperate to process complaints without delay so that they may be investigated within 180 days of filing a nonmixed complaint or 75 days of filing a mixed complaint. Complainants, representatives, and witnesses must have a compelling reason to delay or fail to participate in an investigation.

*b.* Complaint processing will not be delayed pending settlement negotiations. Settlement negotiations are to be held concurrently with administrative processing. Successful settlement negotiations will terminate the administrative complaint process.

#### **4-19. Functions of assigned investigator**

Investigators are authorized to act as follows:

*a.* Investigate all aspects of a complaint. This includes reviewing and copying all records and documents judged by the investigator to be pertinent to the investigation. Classified documents may be examined only by an investigator who possesses the appropriate security clearance.

*b.* Require all Army personnel to cooperate with the investigator during the investigation.

*c.* Administer oaths.

*d.* Require all Army personnel who have direct knowledge of the matter to furnish testimony under oath or affirmation without a promise of confidentiality.

*e.* Issue an investigative file that contains an investigative report on the claims of alleged discrimination.

*f.* Encourage the parties to settle a complaint as appropriate.

*g.* Exclude any person from the investigation for contumacious conduct or misbehavior that obstructs the investigation.

*h.* Discuss claims presented for investigation requiring clarification with the EEO officer.

#### **4-20. The investigation**

*a.* The investigating agency will complete its investigation and issue an investigative report within 120 days of the date of receipt of the request for investigation of a nonmixed individual complaint, or within 75 days of receipt of a mixed complaint. The 120- and 75-day time frames in this paragraph are administrative guidelines.

*b.* By written agreement between the Army and the complainant, the 180-day time period may be voluntarily extended for not more than an additional 90 days. (See figure 4-10.) The EEO officer will be responsible for coordinating with the complainant and representative prior to the 180-day period to obtain signatures on the agreement. The Army may unilaterally extend the 180-day time period, or any period of extension, for not more than 30 days when it must sanitize a complaint file which contains classified information, provided the complainant and his or her representative are informed of the extension. Part 1614 contains no provision for extending the time to investigate a mixed case complaint.

*c.* When a complaint has been amended or consolidated with an ongoing complaint, the EEO officer will provide the investigative file to complainant and his or her representative within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint or within the time period contained in an order from EEOC OFO on an appeal from a dismissal or within any period of extension provided in paragraph b above.

*d.* The assignment of investigators to conduct the investigation is within the purview of the investigating agency. The investigation may take various forms, such as an exchange of letters or memoranda, interrogatories, factfinding conferences, or any other method that thoroughly and efficiently addresses the matters at issue. The preferred method for investigating Army EEO complaints is the factfinding conference; therefore, exceptions to use other methods will be granted by the Deputy for EEOCCR on a case-by-case basis. The factfinding conference, which may be accomplished through video teleconferencing, differs from the traditional method of investigation primarily in the area of taking testimony. Instead of conducting a series of individual interviews during the investigation, the investigator takes testimony in a formal meeting from the same participants who would have been interviewed in the traditional method. This method produces a more thorough case record. A verbatim record of the proceeding is taken with all testimony given under oath or affirmation. The other phases of the investigation generally parallel the traditional method.

*e.* The investigator collects facts and develops information on each accepted claim in the complaint and reviews the circumstances under which the discrimination is alleged to have taken place.

*f.* The investigator does not have the authority to expand the scope of the investigation when the complainant has amended his or her pending complaint to add claims or incidents that are like or related to those claims or incidents in the pending complaint unless approval to do so has been given by the EEO officer. (See paragraph 4-6.) However, an investigator is not restricted from investigating an accepted claim on a basis other than that originally raised by the complainant in his or her complaint.

(1) If, during the course of an investigation, evidence is introduced that tends to establish discrimination on a basis other than the one initially raised by the complainant, the investigator may develop evidence on the additional basis.

(2) The investigator must provide the complainant and management the opportunity to present evidence on the new basis. The obligation of the investigator to collect facts and develop information does not lessen the responsibility of the complainant and management to prepare, present, and explain their positions concerning the complaint.

*g.* When a complainant raises a new claim or incident of alleged discrimination during the investigative process, the investigator will instruct the complainant to submit his or her amendment, in writing, to the EEO officer. The EEO officer will expeditiously review complainant's request for amendment and provide the complainant with a written determination as prescribed in paragraph 4–6. The EEO officer will provide the investigator a copy of the written determination and instructions whether to include the new claim or incident for investigation.

*h.* The investigator initiates discussion between the parties in an attempt to facilitate resolution of the complaint.

*i.* The investigator determines the witnesses whose testimony is necessary to the investigation and interviews and obtains testimony or affidavits from only those witnesses. Affidavits are included in the investigative file only if the investigator deems the testimony relevant and necessary. The investigator documents for the record the reason any witness identified by the complainant or by management was not interviewed and the reason the evidence offered was not accepted. When a party fails without good cause shown to produce requested, relevant evidence, the investigator may note in the investigative record that the decisionmaker should, or the Commission on appeal may, in appropriate circumstances:

(1) Draw an adverse inference that the requested information or the testimony of the requested witness would have reflected unfavorably on the party refusing to provide the requested information or witness;

(2) Consider the matter to which the requested information or the testimony of the requested witness pertains to be established in favor of the opposing party;

(3) Exclude other evidence offered by the party failing to produce the requested information or witness;

(4) Issue a decision fully or partially in favor of the opposing party; or

(5) Take such other actions as deemed appropriate.

*j.* The investigator collects and analyzes information on how similarly situated members of the complainant's group are treated compared to other employees in the organization where the discrimination is alleged to have occurred. This information may include, for instance, statistical data on promotions, disciplinary actions, awards, or other personnel actions.

*k.* The investigator reviews work policies and practices relevant to the accepted claims of the complaint.

*l.* The investigator collects information needed to review the merit of mixed case claims that are included under paragraph 4–8.

*m.* The investigator is independent of control by any of the parties to the complaint, but is entitled to the full cooperation of all parties and their representatives.

*n.* Upon completion of the investigation within the time limits set forth in paragraph 4–20a, the investigator will send the original and two copies of the investigative file with all copies of the factfinding conference transcript to the EEO officer. Included in the file are the Report of Investigation and other relevant documents, as described in paragraph 8–10.

#### **4–21. EEO officer responsibilities after completion of investigation**

*a.* Assemble the complaint file in accordance with the guidance in paragraph 8–10.

*b.* For nonmixed cases, the EEO officer will—

(1) Within 3 days of receipt of the investigative file, provide a Notice of Post-Investigative Options (nonmixed cases) to complainant and representative advising complainant that he or she may request a hearing before an EEOC administrative judge or a final Army decision based on the record (complaint file), and that any request for a hearing must be sent directly to the EEOC District Office provided in the Notice of Acceptance within 30 days from the date of receipt of the Notice of Post-Investigative Options. (See figure 4–11.) Complainant will be further advised that a copy of the Request for a Hearing must be simultaneously served on the EEO officer and the agency representative. A copy of the investigative file, including the factfinding conference transcript and Report of Investigation, will be attached to the Notice of Post-Investigative Options. The EEO officer will also attach the Request for a Hearing and Request for a Final Army Decision Without a Hearing formats to the notice. (See figures 4–12 and 4–13.) The Notice of Post-Investigative Options (nonmixed cases) and the investigative file will be sent to the complainant and representative in accordance with service rules set forth in paragraph 1–25.

(2) Provide a copy of the Notice of Post-Investigative Options (nonmixed), and the investigative file, including the factfinding conference transcript and the Report of Investigation, to the agency representative.

(3) Send one copy of the complete, tabbed complaint file to the appropriate EEOC Hearings Unit and the original and one copy of the complete, tabbed complaint file to the Deputy for EEOCCR within 3 days of receipt of the complainant's request for an EEOC hearing or upon notification by EEOC that the complainant has requested a hearing, whichever is earlier. The transmittal letter must include instructions to send the administrative judge's decision to the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review), ATTN: SAMR–EO–CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202–4508. The complainant may request a hearing by the

EEOC administrative judge whether or not he or she has received the Notice of Post-Investigative Options if 180 days have elapsed from the date the formal complaint was filed.

(4) Send the original and one copy of the complete, tabbed complaint file to the Deputy for EEOCCR within 3 days of receipt of the complainant's request for a final Army decision without a hearing.

(5) If the complainant or representative fails to respond to the Notice of Post-Investigative Options by the 36th day after receipt of the Notice, send the original and one copy of the complete, tabbed complaint file to the Deputy for EEOCCR for a final Army decision.

c. For mixed cases, the EEO officer will—

(1) Within 3 days of receipt of the investigative file, prepare a letter advising the complainant that a final Army decision will be issued without a hearing (fig 4-14). A copy of the investigative file, including the factfinding conference transcript and Report of Investigation, will be attached. The letter and the investigative file will be sent in accordance with service rules set forth in paragraph 1-25.

(2) Forward the original and one copy of the complete, tabbed complaint file to the Deputy for EEOCCR for issuance of a final Army decision.

## **Section VI**

### **Hearings Before the EEOC**

#### **4-22. Arranging for an EEOC hearing**

a. Upon receipt of notification from either the EEOC or the agency representative of the date and location where hearing is to be held, the EEO officer will make arrangements for an appropriate room to hold the hearing and advise the agency representative of the selected location.

b. The EEO officer will arrange for the services of a court reporter at the hearing.

(1) The use of Army employees to transcribe hearings is prohibited by the EEOC except as may be authorized in a signed memorandum of understanding between the Army and the EEOC. However, interservice support agreements may be used instead of contracting for such services.

(2) Contracts with court reporting firms must require delivery of six verbatim transcripts to the EEOC administrative judge within 10 days or less after the EEOC hearing is closed. If the complaints heard have two or more complainants, contracts with court reporting firms must require one additional copy of the hearing transcript for each additional complainant.

c. The use of video teleconferencing is viewed as an appropriate method to conduct hearings.

d. Upon receipt of the list of accepted witnesses from the agency representative, the EEO officer will issue a written notification to the witnesses that their presence will be required and provide information as to date, time, and location. A copy of each witness notification letter will be provided to the agency representative. The EEO officer will make all necessary travel arrangements. For information about travel and other related expenses, see paragraph 8-9.

#### **4-23. The EEOC hearing**

a. The hearing is conducted by an EEOC administrative judge subject to EEOC regulations and procedures. This paragraph is provided for information and general guidance and does not control the EEOC administrative judge's activities. The administrative judge is authorized to—

(1) Administer oaths or affirmations;

(2) Regulate the course of the hearing;

(3) Rule on offers of proof and receive relevant evidence;

(4) Order the production of documents, records, comparative data, statistics, affidavits, or the attendance of witnesses;

(5) Limit the number of witnesses whose testimony would be unduly repetitious;

(6) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The administrative judge or the EEOC may refer to the disciplinary committee of the appropriate Bar Association or the Army General Counsel information on any attorney who refuses to follow the orders of the administrative judge or who otherwise engages in improper conduct. Upon reasonable notice and an opportunity to be heard, the administrative judge or EEOC may suspend or disqualify from representing complainants or agencies in EEOC hearings any representative who refuses to follow the orders of an administrative judge, or who otherwise engages in improper conduct.

(7) Dismiss complaints pursuant to 29 CFR Section 1614.107 after notice to both parties or upon an agency's motion to dismiss a complaint.

(8) Issue a decision without holding a hearing if he or she determines that some or all facts are not in genuine dispute. The administrative judge may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 days, issue an order limiting the scope of the hearing or issue findings and conclusions without holding a hearing.

b. The parties have the right to seek discovery prior to the hearing. Unless the parties agree in writing concerning

the methods and scope of discovery, the party that is seeking discovery shall request authorization from the administrative judge prior to commencing discovery. Evidence may be developed through interrogatories, depositions, requests for admissions, stipulations, or requests for the production of documents. Requests for information that are overly burdensome or seek information that is irrelevant, repetitious, or privileged are objectionable. The agency representative will handle discovery requests for the agency. All Army officials will cooperate with the agency representative by providing information and documents to the agency representative to respond to discovery requests.

*c.* If the complainant or the Army refuses or fails without good cause shown to fully and timely respond to an order of an administrative judge or any request by the administrative judge for documents, records, comparative data, statistics, affidavits, or the attendance of witnesses, the administrative judge may, in appropriate circumstances—

(1) Draw an adverse inference that the requested information or the testimony of the requested witness would have reflected unfavorably on the party refusing to provide the requested information or witness;

(2) Consider the matter to which the requested information or the testimony of the requested witness pertains to be established in favor of the opposing party;

(3) Exclude other evidence offered by the party failing to produce the requested information or witness;

(4) Issue a decision fully or partially in favor of the opposing party; or

(5) Take such other actions as deemed appropriate.

*d.* The administrative judge will limit attendance at the hearing to those who have direct knowledge of the complaint. The activity will provide for the attendance at the hearing of all Army and Federal government personnel approved by the administrative judge as witnesses. The administrative judge conducts the hearing to bring out pertinent facts and to accept pertinent documents. Rules of evidence are not applied strictly, but the administrative judge will exclude irrelevant or repetitious evidence. Information that has a bearing on the complaint, including employment policies or practices relevant to the complaint, will be received in evidence. The complainant or representative, if any, and the agency representative at the hearing are given the opportunity to cross-examine witnesses who appear and testify. Testimony is given under oath or affirmation.

*e.* The hearing is recorded and transcribed verbatim. All documents accepted by the administrative judge at the hearing are made part of the record. If the agency representative submits a document that is accepted, a copy of the document will be furnished to the complainant or complainant's attorney, if represented. If the complainant submits a document that is accepted, the administrative judge will make the document available to the agency representative for reproduction.

*f.* The administrative judge considers all documents in the complaint file, including the record of the hearing, in making his or her decision. The administrative judge shall issue a decision within 180 days of receipt of the request for a hearing unless the administrative judge makes a determination that good cause exists for extending the time. The administrative judge, as requested in the transmittal letter, shall send the decision and the requested number of copies of the hearing transcript to the Deputy for EEOCCR.

*g.* The administrative judge shall send a copy of his or her decision and the hearing transcript to the complainant or his or her representative. Also, the administrative judge may send the Deputy for EEOCCR a separate letter concerning conditions at the activity that do not have a direct bearing on the complaint which need to be addressed.

*h.* If the administrative judge sends the original decision and any records or attachments to the activity rather than to the Deputy for EEOCCR, the EEO officer will immediately notify EEOCCR and fax the decision to EEOCCR at (703) 602-8391. The original decision, including any records or documents attached thereto, will be sent by certified mail, return receipt requested, and express delivery to the EEO/Civil Rights Office (Deputy for EEOCCR), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202-4508.

#### **4-24. Timeframes for offers of resolution**

*a.* An offer of resolution may be made—

(1) To a complainant represented by an attorney at any time after the filing of a formal complaint, but not later than the date an administrative judge is appointed to conduct a hearing.

(2) At any time after the parties have received notice that an administrative judge has been appointed to conduct a hearing, but not later than 30 days prior to the hearing whether the complainant is represented by an attorney or not.

*b.* The complainant will have 30 calendar days from the date of receipt to accept or decline the Offer of Resolution.

*c.* The foregoing time and representation provisions apply only to offers of resolution and do not restrict either negotiation of a settlement or use of ADR to resolve the complaint.

#### **4-25. Elements of the offer**

*a.* An Offer of Resolution, with the accompanying settlement agreement, will be made in writing and served, unsigned, in accordance with the service rules set forth in paragraph 1-25. The notice of nonacceptance will also be attached. (See figs 4-15, 4-16, and 4-17.) The Offer of Resolution and accompanying agreement will be drafted or reviewed by the designated agency representative.

*b.* An Offer of Resolution made under the provisions of 29 CFR Section 1614.109(c) will—

(1) Include attorney's fees and costs, unless the complaints involve ADEA or EPA claims where attorney's fees and costs are not payable.

(2) Specify any nonmonetary and monetary relief. The offer may include a lump sum payment that includes all forms of monetary liability, including attorney's fees and costs, or the offer may itemize the amounts and types of monetary relief offered.

(3) Inform the complainant and representative that acceptance or rejection of the offer must be made, in writing, within 30 days from receipt of the offer.

(4) Inform the complainant and representative that failure to accept an offer of resolution made in accordance with 29 CFR Section 1614.109(c) may result in the limitation of attorney's fees and costs to only those incurred prior to the expiration of the 30-day acceptance period if the relief awarded by the administrative judge or EEOC OFO, on appeal, is less relief than had been offered.

#### **4-26. Nonacceptance of the Offer of Resolution**

*a.* If the complainant declines an Offer of Resolution (fig 4-17) made under the provisions of 29 CFR Section 1614.109(c), processing of the complaint will continue.

*b.* After the hearing stage is completed, if the administrative judge (or the EEOC OFO on appeal) concludes that discrimination has occurred, but provides for less relief than the amount offered by the Army earlier in its Offer of Resolution, the activity may use the declination to argue for a reduction in the obligation to pay attorney's fees and costs.

#### **4-27. Acceptance of Offer of Resolution**

*a.* Complainant's acceptance of the Offer of Resolution must be made in writing and received by the agency representative or postmarked within 30 days of receipt. The signatures of both the complainant and his or her attorney on the settlement agreement are required for acceptance.

*b.* Immediately upon receipt of complainant's acceptance of the Offer of Resolution, the agency representative will provide the complainant and representative, and the administrative judge copies of the signed Offer of Resolution, and terminate the administrative complaint process.

*c.* Executed Offers of Resolution will be filed in the complaint file under the "Settlement" tab.

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Name of complainant/attorney representative  
Address of complainant/attorney representative  
City, State, Zip Code

Complaint of (first, middle initial, and last name of complainant)  
v. (insert name), Secretary of the Army  
DA Docket Number(s):

Dear (Mr., Mrs., Ms., Dr. and last name of complainant/attorney representative):

This acknowledges receipt on (date), of your (your client's) discrimination complaint received in this office on (date) and deemed filed on (date).

I will review your (your client's) formal complaint so that I may determine the appropriate disposition of the complaint. Upon my determination whether to accept or dismiss your (your client's) formal complaint, I will notify you (and your client) and provide written notice of your (your client's) rights and the time requirements for exercising those rights.

**[TO REQUEST CLARIFICATION OF CLAIM(S), INSERT THE FOLLOWING:]**

*After an initial review of your complaint, I have concluded that additional information is required prior to making the determination whether to accept or dismiss the claim(s) raised in your complaint. Please provide the following information:*

*If this information has not been provided within 15 calendar days from receipt of this notice, your complaint may be dismissed in accordance with 29 C.F.R. Section 1614.107(a)(7) for failure to provide relevant information.*

Sincerely,

Signature block of EEO officer or appropriate official

Copy furnished:  
Complainant, if represented by an attorney; or  
Nonattorney representative  
Agency representative

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Figure 4-1. Sample Acknowledgement Receipt of Discrimination Complaint

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**NOTES:**

1. The date of receipt is the date received by the EEO Office. The date of filing is the date the complaint was personally delivered, faxed, date postmarked if addressed to an official designated to receive complaints, or five days prior to the date of receipt if mailed to an appropriate official and the postmark is not legible.
2. This notice will be issued to complainant/representative in accordance with the service rules set forth in paragraph 1-25.
3. A copy of this notice and all certified return receipt (green) cards will be filed in the complaint file under Tab "Formal".
4. This notice will also be used to request additional clarification for vague or unclear claims.
5. The format of this sample notice may be modified to conform with local requirements.

**Figure 4-1. Sample Acknowledgement Receipt of Discrimination Complaint—continued**

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## **Notice to EEO Complainant Seeking Compensatory Damages**

### **I. Introduction**

A review of your employment discrimination complaint indicates that you are, or may be, seeking compensatory damages as part of the relief you are requesting, or that you may be entitled to compensatory damages should you prevail in your complaint. Compensatory damages are awarded to repay a complaining party for losses or suffering experienced due to the alleged discriminatory act or conduct. (However, currently the law does not provide for payment of compensatory damages in complaints alleging violation of the Age Discrimination in Employment Act or the Equal Pay Act.) In order to allow the agency to evaluate the merits of your claim, you are required to provide substantiating evidence of pecuniary damages, nonpecuniary damages, or both, as explained below. In addition, the Equal Employment Opportunity Commission (EEOC) requires that the agency inform you of certain matters relating to your claim for damages.

### **II. Substantiating a claim for damages**

#### **A. Past and Future Pecuniary Compensatory Damages**

1. Past pecuniary losses are monetary expenses incurred as a result of an employer's unlawful action, including job-hunting expenses, moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable expenses. If you are claiming such losses, you must provide documentary evidence of these expenses, such as paid bills, canceled checks, or receipts.

2. Future pecuniary losses are monetary expenses that are likely to occur after resolution of a complaint, such as the projected cost of physical and/or psychiatric therapy that extends into the future. If you are claiming such future requirements, statements from appropriate health care professionals are recognized as proper substantiation of such claims.

#### **B. Nonpecuniary Compensatory Damages**

1. Nonpecuniary compensatory damages are monetary compensation for your intangible injuries experienced as a result of an employer's unlawful discriminatory action. Consistent with the guidance from the EEOC, you are advised as follows in regard to claiming and substantiating nonpecuniary damages:

2. You must submit objective evidence, such as your statement concerning your emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or

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**Figure 4–2. Sample Notice to EEO Complainant Seeking Compensatory Damages**

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reputation, injury to credit standing, loss of health and any other intangible losses that you believe you incurred as a result of the alleged discriminatory conduct.

3. You may submit statements from others, including family members, friends, health care providers, other counselors (including clergy) addressing, for example, your outward manifestations, or physical consequences, of emotional distress. Such manifestations may include sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, or excessive fatigue.

4. Objective evidence, in addition to statements from yourself and others, may include documents indicating expenses, if any, for your medical treatment, counseling, and so forth, that are related to the intangible injury allegedly caused by the discrimination you have claimed.

### **III. Information you should know about claims for compensatory damages**

Whether you are claiming pecuniary, nonpecuniary damages or both, please note the following additional requirements:

A. You must establish a causal connection, or nexus, between the alleged discriminatory action(s) and any resulting physical, emotional or other harm you claim has occurred.

B. You have the duty to mitigate your damages and may not recover damages for any harm that you could have avoided, or minimized, with reasonable effort.

C. The EEOC requires that you be advised that your request for compensatory damages may permit the agency to seek personal and sensitive information from you in order to determine whether the injury you claim is linked solely, partially, or not at all to the alleged discriminatory conduct.

Please provide the requested documentation to this office within [15 to 30 - can vary with circumstances] days of your receipt of this notice. If you are unable to comply with this deadline, please request an extension in writing.

EEO Officer Signature Block

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Figure 4–2. Sample Notice to EEO Complainant Seeking Compensatory Damages—continued

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Name of complainant/attorney representative  
Address of complainant/attorney representative  
City, State, Zip Code

Complaint of (first, middle initial, and last name of complainant)  
v. (insert name), Secretary of the Army  
DA Docket Number(s):

Dear (Mr., Mrs., Ms., Dr. and last name of complainant/representative):

This refers to your (your client's) discrimination complaint filed on (insert date). Your (Your client's) initial contact with an EEO official was (insert date) and you (your client) received the Notice of Right to File a Formal Complaint of Discrimination on (insert date)

In your (your client's) formal complaint of discrimination, you (your client) allege(s) discrimination on the basis/bases of (insert basis/bases) in the following action(s) when: (FRAME THE CLAIM(S) RAISED IN THE FORMAL COMPLAINT, TO INCLUDE DATE AND SPECIFIC ACTION. IF SEVERAL CLAIMS INVOLVED, START WITH MOST RECENT.)

- a.
- b.
- c.
- d.

Based on my review of the complaint file, and conditioned upon a final decision by the Army Director of EEO or designee, I have accepted claim(s) **[from the list above, that is, (a) and (b)]** for investigation.

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**(INSERT FOLLOWING IF PARTIAL DISMISSAL OF COMPLAINT IS APPROPRIATE. PROVIDE A THOROUGH RATIONALE AND ATTACH APPLICABLE SUPPORTING DOCUMENTS.)**

*Further, after careful analysis of the complaint file, I have dismissed claim(s) **[enumerate dismissed claim(s) from list from above]** in accordance with the referenced provisions of 29 CFR section 1614.107 and AR 690-600 as follows:*

**[Include dismissed claim(s) and appropriate provision(s) and rationale for dismissal.]**

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Figure 4-3. Sample Notice of Acceptance of Discrimination Complaint (Nonmixed)

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*The dismissed portion of your (your client's) complaint will not be investigated and is not appealable to the Equal Employment Opportunity Commission (EEOC) Office of Federal Operations (OFO) until final action is taken on the remainder of the complaint. However, an EEOC administrative judge may review the dismissed portion if a hearing is requested on the remainder of the complaint.*

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If you believe the claim(s) in this complaint has/have not been correctly identified, please notify me, in writing, within 5 calendar days after you receive this letter, and specify why you believe the claim(s) has/have not been correctly identified. If you fail to contact me, I will conclude you agree that the claim(s) has/have been properly identified above. Any statement submitted in this regard will be placed in the complaint file.

Your (your client's) complaint will be assigned to an investigator for formal investigation of the accepted claim(s). Once assigned, you will be informed of the investigator's identity and when the investigation is expected to begin. The investigation must be completed within 180 calendar days of the filing of this complaint, unless you agree in writing to extend the period an additional 90 calendar days. In accordance with Title 29, Code of Federal Regulations, Part 1614.108(e), the Army may unilaterally extend the 180-day time period, or any period, of extension, for not more than 30 calendar days when it must sanitize a complaint file, which contains classified information. If this need for extension should arise, you (and your client) will be informed of the extension.

After completion of the investigation and if the case has not been settled, the EEO officer will provide you (you, on behalf of your client) with the Notice of Post-Investigative Options and the investigative file. This notice will inform you (you, on behalf of your client) that you have the right to, within 30 calendar days from your receipt of the notice, request a hearing before an EEOC administrative judge, who will issue a decision subject to final action by the Army, or the right to request that a final Army decision be issued on the record. You may also request a hearing at any time after 180 calendar days have elapsed from the filing of this complaint. If you opt for a hearing, the enclosed Request for a Hearing form should be sent directly to [insert appropriate EEOC office]. A copy of the Request for a Hearing must be provided to the EEO office at the address indicated on the Request for a Hearing form.

You (You, on behalf of your client) may amend a complaint at any time prior to the conclusion of the investigation to include claims like or related to those identified above. When a complaint has been amended, the agency is required to conduct an impartial investigation within the earlier of 180 calendar days after the last amendment of the complaint or 360 calendar days after the filing of the original complaint. You (you, on behalf of your client) may request a hearing from an EEOC administrative judge after 180 calendar days have passed since the filing of the original complaint if the investigation has not been completed. Prior to a request for a hearing, any amendment

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**Figure 4-3. Sample Notice of Acceptance of Discrimination Complaint (Nonmixed)—continued**

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must be submitted, in writing, to the undersigned (or insert name of EEO officer and title) for a determination whether the new claim(s) warrant(s) inclusion in the pending complaint or processing as a new complaint. Additionally, after requesting a hearing, you have the right to file a motion with the administrative judge to amend the complaint to include claims like or related to those raised in the original complaint.

If a new claim(s), not like or related to a previously filed complaint, provide(s) the basis for a separate complaint, the new claim(s) will be referred to an EEO counselor and will be subject to all regulatory requirements regarding the EEO complaint process. In cases where complaints are consolidated, the agency is required to conduct an investigation within the earlier of 180 calendar days after the filing of the last complaint or 360 calendar days after the filing of the original complaint. However, you (your client) may request a hearing from an EEOC administrative judge on the consolidated complaint any time after 180 calendar days from the date of the filing of the first complaint.

If you (you, on behalf of your client,) fail to request an EEOC hearing or to ask for a final decision by the Army within 30 calendar days after you receive the report of investigation, the processing of this case will proceed; and I will submit the entire complaint file to the Army Director of EEO or designee for a final Army decision on the merits of the complaint based on the record as it stands.

If you are (your client is) dissatisfied with the final Army decision/action (with or without a hearing), you (your client) may file a notice of appeal to the Equal Employment Opportunity Commission (EEOC), Office of Federal Operations (OFO), P.O. Box 19848, Washington, D.C. 20036, within 30 calendar days after receiving the final Army decision/action. A copy of the appeal must be provided to the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review (EEOCCR)), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, Virginia 22202-4508. Also, any brief or statement in support of the appeal should be sent to OFO, with a copy to the Deputy for EEOCCR, within 30 calendar days after filing the notice of appeal. In or attached to the appeal to the EEOC, you (your client) must certify that a copy of the appeal was served on the Deputy for EEOCCR, the date and method of service.

Instead of appealing to EEOC, you (you, on behalf of your client,) may file a civil action in the proper U.S. District Court within 90 calendar days after receiving the final Army decision/action or, if the Army has not issued a final decision on this complaint, after 180 calendar days from the date the formal complaint was filed. If you file a civil action under Title VII of the Civil Rights Act of 1964, as amended, or the Rehabilitation Act of 1973, as amended, and you do not have, or are unable to obtain the services of an attorney, you may request the court to appoint an attorney to represent you. In such circumstances as the court may deem just, the court may appoint an attorney and may authorize the commencement of the action without the payment of fees, costs, or security. Any such request must be made within the above-referenced 90-day time limit for filing suit and in such form and manner as the court may require.

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**Figure 4-3. Sample Notice of Acceptance of Discrimination (Nonmixed)—continued**

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You are further notified that if a civil action is filed by you (you, on behalf of your client,) you must name the appropriate Department head or Agency head as the defendant and provide his or her official title. DO NOT NAME JUST THE AGENCY OR DEPARTMENT. Failure to name the Department head or Agency head or to state his or her official title may result in the dismissal of your (your client's) case. The appropriate agency is the Department of the Army. The head of the Department of the Army is (insert name), who is the Secretary of the Army.

If you decide (your client decides) to appeal to the EEOC OFO, you (your client) will still have an opportunity to file a civil action in U.S. District Court within 90 calendar days after receiving the EEOC final decision, or 180 calendar days after the date of filing the appeal with the EEOC if there has been no final decision by the EEOC.

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**[INSERT THE FOLLOWING PARAGRAPH IF COMPENSATORY DAMAGES ARE REQUESTED:]**

*In your formal complaint, it appears as though you are, or may be seeking, compensatory damages as part of the requested relief. The "Notice to EEO Complainant Seeking Compensatory Damages" is attached for your information and review. Please provide the requested documentation to [insert name of EEO officer and agency representative] within [15-30 days depending on circumstances].*

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The agency representative in this complaint is (insert name), (address), (telephone number), (facsimile number) and (e-mail address). You are advised that copies of all official correspondence must be served on the EEO officer and the agency representative.

If at any time a settlement or resolution of this complaint is reached, the terms of the settlement/resolution will be agreed to in writing by all parties and you (and your client) will be given a copy.

A copy of your (your client's) EEO Counselor's Report was previously sent to you on [insert date].

Sincerely,

Signature block of EEO officer or appropriate official

Enclosure(s)

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Figure 4-3. Sample Notice of Acceptance of Discrimination (Nonmixed)—continued

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Copy Furnished:

Complainant, if represented by an attorney; or

Nonattorney representative

Agency representative

**NOTES:**

1. The date of alleged discrimination and the date of the initial contact with the EEO official are included in the acceptance letter to serve as an initial reference point to determine timeliness. An explanation should be provided if (a) facially untimely issue(s) is/are being accepted.
2. This notice will be issued for partial dismissal of a complaint. Figure 4-5 should be used if the complaint is dismissed in its entirety.
3. This notice will be issued to complainant/representative in accordance with the service rules set forth in paragraph 1-25.
4. A copy of the Request for a Hearing form (fig 4-12) should be enclosed.
5. A copy of this notice and all certified return receipt (green) cards will be filed in the complaint file under Tab "Formal".
6. The format of this sample notice may be modified to conform to local requirements.
7. Revise the deadlines for filing a civil action for EPA cases.
8. If the matter of compensatory damages is raised, attach the "Notice to EEO Complainant Seeking Compensatory Damages" (figure 4-2).

**Figure 4-3. Sample Notice of Acceptance of Discrimination (Nonmixed)—continued**

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Name of complainant/attorney representative  
Address of complainant/attorney representative  
City, State, Zip Code

Complaint of (first, middle initial, and last name of complainant)  
v. (insert name), Secretary of the Army  
DA Docket Number(s):

Dear (Mr., Mrs., Ms., Dr. and last name of complainant/attorney representative):

This refers to your (your client's) discrimination complaint filed on (insert date). Your initial contact with an EEO official was (insert date) and you received the Notice of Right to File a Formal Complaint of Discrimination on (insert date). Although the claim(s) giving rise to the complaint was (were) also appealable to the Merit Systems Protection Board (MSPB), you (your client) elected to use mixed case complaint procedures under 29 C.F.R. Part 1614.

In your formal complaint of discrimination, you allege discrimination on the basis/bases of (insert basis/bases) in the following action(s) when: **(FRAME THE CLAIM(S) RAISED IN THE FORMAL COMPLAINT, TO INCLUDE DATE AND SPECIFIC ACTION. IF SEVERAL CLAIMS INVOLVED, START WITH MOST RECENT.)**

- a.
- b.
- c.
- d.

Based on my review of the complaint file, and conditioned upon a final decision by the Army Director of EEO or designee, I have accepted claim(s) (list from above, e.g. (a) and (b)) for investigation.

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**(INSERT FOLLOWING IF PARTIAL DISMISSAL OF COMPLAINT IS APPROPRIATE. PROVIDE A THOROUGH RATIONALE FOR DISMISSAL AND ATTACH SUPPORTING DOCUMENTATION.)**

*Further, after careful analysis of the complaint file, I have dismissed claim(s) (enumerate from list from above) in accordance with the referenced provisions of 29 CFR section 1614.107 and AR 690-600 as follows:*

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Figure 4-4. Sample Notice of Acceptance Discrimination Complaint (Mixed)

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**[Include dismissed claim(s) and appropriate provision(s) and rationale for dismissal.]**

*The dismissed portion of your (your client's) complaint will not be investigated and is not appealable to the MSPB until final action is taken on the remainder of the complaint.*

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If you believe the claim(s) in this complaint has/have not been correctly identified, please notify me, in writing, within 5 calendar days after you receive this letter, and specify why you believe the claim(s) has/have not been correctly identified. If you fail to contact me, I will conclude you agree that the claim(s) has/have been properly identified above. Any statement submitted in this regard will be placed in the complaint file.

Your (your client's) complaint will be assigned to an investigator for formal investigation. Once assigned, you will be informed of the investigator's identity and when the investigation is expected to begin. The investigation must be completed and a final Army decision issued within 120 calendar days of filing this complaint. In the event a final Army decision is not rendered within 120 calendar days of the date of filing this complaint, you (your client) may appeal to the MSPB at any time after the 120th day or may file a civil action, but not both. Appeals to MSPB should be addressed to the Merit Systems Protection Board, (insert MSPB regional office). You must serve a copy of your (your client's) appeal to the MSPB simultaneously to the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202-4508.

After completion of the investigation and if the class has not been settled, the EEO officer will provide you (you, on behalf of your client,) with the Notice of Post Investigative Options. This notice will inform you that your (your client's) entire complaint file will be forwarded to the Army Director of EEO or designee for a final Army decision on the merits of the complaint. There is no right to a hearing before an EEOC administrative judge on a mixed case complaint.

If you are (your client is) dissatisfied with the final Army decision on the merits of the case, you (you, on behalf of your client) have the right to appeal the matter to the MSPB (not EEOC) within 30 calendar days of receipt of the notice or to file a civil action. Appeals to MSPB should be addressed to the Merit Systems Protection Board at the address provided above. A copy of the appeal must be served simultaneously on the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202-4508.

You (You, on behalf of your client,) may file a civil action in the proper U.S. District Court within 30 calendar days after receiving the final Army decision if no appeal has been filed or, if the Army has not issued a final decision on the complaint, after 120 calendar days from the date the formal complaint was filed. If you file a civil action under Title VII of the Civil Rights Act of 1964, as amended, or the Rehabilitation Act of

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Figure 4-4. Sample Notice of Acceptance Discrimination (Mixed)—continued

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under Title VII of the Civil Rights Act of 1964, as amended, or the Rehabilitation Act of 1973, as amended, and you do not have, or are unable to obtain the services of an attorney, you may request that the court appoint an attorney to represent you. In such circumstances as the court may deem just, the court may appoint an attorney and may authorize the commencement of the action without the payment of fees, costs, or security. Any such request must be made within the above referenced limits for filing suit and in such form and manner as the court may require.

You are further notified that if a civil action is filed, you must name the appropriate Department head or Agency head as the defendant and provide his or her official title. **DO NOT NAME JUST THE AGENCY OR DEPARTMENT.** Failure to name the Department head or Agency head or to state his or her official title may result in the dismissal of your case. The appropriate agency is the Department of the Army. The head of the Department of the Army is (insert name), who is the Secretary of the Army.

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**[INSERT THE FOLLOWING PARAGRAPH IF COMPENSATORY DAMAGES ARE REQUESTED:]**

*In your formal complaint, it appears as though you are, or may be seeking compensatory damages as part of the requested relief. The "Notice to EEO Complainant Seeking Compensatory Damages" is attached for your information and review. Please provide the requested documentation to [insert name of EEO officer and/or agency representative] within [15-30 days depending on circumstances].*

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If at any time a settlement/resolution of the complaint is reached, the terms of the settlement/resolution will be agreed to in writing by all parties and you (and your client) will be provided a copy.

The agency's representative in this complaint is (insert name), (address), (telephone number), (facsimile number), (e-mail address). You are advised that copies of all official correspondence must be served on the EEO officer and the agency representative.

A copy of your (your client's) EEO Counselor's Report was previously sent to you on [insert date].

Sincerely,

Signature block of EEO officer or appropriate official

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Figure 4-4. Sample Notice of Acceptance Discrimination (Mixed)—continued

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Copy Furnished:  
Complainant, if represented by an attorney; or  
Non-attorney representative  
Agency representative

**NOTES:**

1. This notice will be issued to complainant/representative in accordance with the service rules set forth in paragraph 1-25.
2. A copy of this notice and the certified return receipt will be filed in the complaint file.
3. The date of alleged discrimination and the date of the initial contact with an EEO official are included in the acceptance letter to serve as an initial reference point to determine timeliness. An explanation should be provided if (a) facially untimely claim(s) is/are being accepted.
4. This notice will be issued for partial dismissal of a complaint. Figure 4-6 will be issued when a complaint is dismissed in its entirety.
5. A copy of this notice and all certified return receipt (green) cards will be filed in the complaint file under Tab "Formal".
6. The format of this sample notice may be modified to conform with local requirements.
7. A copy of MSPB Form OF 283 (figure 4-19) should be attached to this notice.
8. Do not consolidate mixed and non-mixed complaints.
9. Actions appealable to MSPB:

| 5 CFR/Part | Action  |
|------------|---|
| 302        | Denial of restoration from compensable injury after recovery of an excepted service employee          |
| 315        | Termination during probation (under limited circumstances)  |
| 317        | Certain involuntary reassignments or demotions connected with conversions to Senior Executive Service |
| 330        | Improper application of re-employment priority rights   |
| 351        | Reduction-in-force (separation, demotion, or furlough for more than 30 days)                          |
| 352        | Denial of reemployment rights under various circumstances   |

**Figure 4-4. Sample Notice of Acceptance Discrimination (Mixed)—continued**

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|-----|---|
| 353 | Denial of restoration following military duty or recovery of competitive service employees from certain injuries                                  |
| 432 | Reduction-in-grade and removal based on unacceptable performance  |
| 531 | Denial of within-grade increases  |
| 731 | Adverse suitability determinations  |
| 752 | Adverse actions by agencies<br>-Removal<br>-Suspensions for more than 14 days<br>-Reduction-in-grade (demotion)<br>-Furloughs for 30 days or less |
| 831 | All adverse retirement decisions of OPM except termination of annuity payments  |
| 930 | Adverse actions involving administrative law judges   |

**Figure 4-4. Sample Notice of Acceptance Discrimination (Mixed)—continued**

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Name of complainant/attorney representative  
Address of complainant/attorney representative  
City, State, Zip Code

Complaint of (first, middle initial, and last name of complainant)  
v. (insert name), Secretary of the Army  
DA Docket Number(s):

Dear (Mr., Mrs., Ms., Dr. and last name of complainant/attorney representative):

This is the Department of the Army's final decision in the above-captioned equal employment opportunity complaint filed on (insert date). Your initial contact with an EEO official was (insert date) and you received the Notice of Right to File a Formal Complaint of Discrimination on (insert date)

In your formal complaint of discrimination, you allege discrimination on the basis/bases of (insert basis/bases) in the following action(s) when: (FRAME THE CLAIM(S) RAISED IN THE FORMAL COMPLAINT, TO INCLUDE DATE AND SPECIFIC ACTION. IF SEVERAL CLAIMS INVOLVED, START WITH MOST RECENT.)

- a.
- b.
- c.

I have reviewed all of the information in the file and have decided to dismiss the complaint in its entirety for the following reason(s): [When dismissing a complaint in whole or in part, the EEO officer or appropriate official must notify complainant of the reason(s) for the dismissal, must cite the appropriate subsection of 29 C.F.R. Section 1614.107(a), and provide detailed explanation with evidence if appropriate.]

If you are (your client is) dissatisfied with this decision, your (his/her) appeal rights are as follows:

#### **APPEAL RIGHTS FOR NONMIXED COMPLAINTS**

1. An appeal may be filed with the Equal Employment Opportunity Commission (EEOC), Director of Federal Operations, P.O. Box 19848, Washington, D.C. 20036 within 30 calendar days of the date of receipt of this decision. The 30 calendar day period for filing an appeal begins on the date of receipt of this decision. An appeal shall be deemed timely if it is delivered in person, transmitted by facsimile or postmarked before the expiration of the filing period or, in the absence of a legible postmark, if the appeal is received by the Commission by mail within 5 calendar days after the

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Figure 4-5. Sample Dismissal Decision of Discrimination (Nonmixed)

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expiration of the filing period. The complainant will serve a copy of the Notice of Appeal/Petition, EEOC Form 573, to the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review (EEOCCR)), Department of the Army, ATTN: SAMR-EO-CCR, Suite 109B, 1941 Jefferson Davis Highway, Arlington, VA 22202-4508, and furnish a copy to the agency representative, **[insert name, address, facsimile number and e-mail address of agency representative]**, at the same time it is filed with the Commission. In or attached to the appeal to the Commission, you must certify the date and method by which service was made to the Deputy for EEOCCR and the agency representative.

2. The complainant may file a brief or statement in support of his/her appeal with the Office of Federal Operations (OFO). The brief or statement **must** be filed with the OFO within 30 calendar days from the date the appeal is filed. The complainant will serve a copy of the brief or statement submitted in support of the appeal on the Deputy for EEOCCR and on the agency representative at the addresses shown above in paragraph 1 at the same time the brief or statement is filed with the Commission. The regulation providing for appeal rights is contained in Title 29 of the Code of Federal Regulations, a part of which is reproduced below:

**Part 1614.401 Appeals to the Commission.**

(a) A complainant may appeal an agency's final action or dismissal of a complaint.

(b) An agency may appeal as provided in Section 1614.110(a).

(c) A class agent or an agency may appeal an administrative judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class agent or an agency may appeal a final decision on a petition pursuant to Section 1614.204(g)(4).

(d) A grievant may appeal the final decision of the agency, the arbitrator or the Federal Labor Relations Authority (FLRA) on the grievance when an issue of employment discrimination was raised in a negotiated grievance procedure that permits such issues to be raised. A grievant may not appeal under this part, however, when the matter initially raised in the negotiated grievance procedure is still ongoing in that process, is in arbitration, is before the FLRA, is appealable to the MSPB [Merit Systems Protection Board] or if 5 U.S.C. Section 7121(d) is inapplicable to the involved agency.

(e) A complainant, agent or individual class claimant may appeal to the Commission an agency's alleged noncompliance with a settlement agreement or final decision in accordance with Section 1614.504.

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Figure 4-5. Sample Dismissal Decision of Discrimination (Nonmixed)—continued

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## **Part 1614.402 Time for appeals to the Commission.**

(a) Appeals described in Section 1614.401(a) and (c) must be filed within 30 calendar days of receipt of the dismissal, final action or decision. Appeals described in Part 1614.401(b) must be filed within 40 calendar days of receipt of the hearing file and decision. Where a complainant has notified the EEO Director [Deputy for EEOCCR] of alleged noncompliance with a settlement agreement in accordance with Section 1614.504, the complainant may file an appeal 35 calendar days after service of the claim of noncompliance, but no later than 30 calendar days after receipt of the agency's determination.

(b) If the complainant is represented by an attorney of record, then the 30 calendar day time period provided in paragraph (a) of this Section within which to appeal shall be calculated from the receipt of the required document by the attorney. In all other instances, the time within which to appeal shall be calculated from the receipt of the required document by the complainant.

## **Section 1614.403 How to appeal.**

(a) The complainant, agency, agent, grievant or individual class claimant (hereinafter complainant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition [copy enclosed], and should indicate what is being appealed.

(b) The appellant shall furnish a copy of the appeal to the opposing party [Deputy for EEOCCR and the servicing agency representative] at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the complainant must certify the date and method by which service was made on the opposing party [Deputy for EEOCCR and the servicing agency representative – addresses shown in paragraph 1 above].

(c) If appellant does not file an appeal within the time limits of this subpart, the appeal shall be dismissed by the Commission as untimely.

(d) Any statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 calendar days of filing the notice of appeal. Any statement or brief on behalf of the agency in support of its appeal must be submitted to the Office of Federal Operations within 20 calendar days of filing the notice of appeal. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than 10 pages long.

**Figure 4–5. Sample Dismissal Decision of Discrimination (Nonmixed)—continued**

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(e) The agency must submit the complaint file to the Office of Federal Operations within 30 calendar days of initial notification that the complainant has filed an appeal or within 30 calendar days of submission of an appeal by the agency.

(f) Any statement or brief in opposition to an appeal must be submitted to the Commission and served on the opposing party within 30 calendar days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 calendar days of receipt of the appeal. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than 10 pages long.

**Section 1614.407 Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act.**

A complainant who has filed an individual complaint, an agent who has filed a class complaint or a claimant who has filed a claim for individual relief pursuant to a class complaint is authorized under Title VII, the ADEA [Age Discrimination in Employment Act] and the Rehabilitation Act to file a civil action in an appropriate United States District Court:

(a) Within 90 calendar days of receipt of the final action on an individual or class complaint if no appeal has been filed;

(b) After 180 calendar days from the date of filing an individual or class complaint if an appeal has not been filed and final action has not been taken;

(c) Within 90 calendar days of receipt of the Commission's final decision on an appeal; or

(d) After 180 calendar days from the date of filing an appeal with the Commission if there has been no final decision by the Commission.

**Section 1614.408 Civil action: Equal Pay Act.**

A complainant is authorized under Section 16(b) of the Fair Labor Standards Act (29 U.S.C. 216[b]) to file a civil action in a court of competent jurisdiction within two years or, if the violation is willful, three years of the date of the alleged violation of the Equal Pay Act regardless of whether he or she pursued any administrative complaint processing. Recovery of back wages is limited to two years prior to the date of filing suit, or to three years if the violation is deemed willful; liquidated damages in an equal amount may also be awarded. The filing of a complaint or appeal under this part shall not toll the time for filing a civil action.

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Figure 4-5. Sample Dismissal Decision of Discrimination (Nonmixed)—continued

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### Section 1614.409 Effect of filing a civil action.

Filing a civil action under Section 1614.408 or Section 1614.409 shall terminate Commission processing of the appeal. If private suit is filed subsequent to the filing of an appeal, the parties are requested to notify the Commission in writing.

3. If a civil action is filed and complainant does not have or is unable to obtain the services of a lawyer, the complainant may request the court to appoint a lawyer. In such circumstances as the court may deem just, the court may appoint a lawyer to represent the complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Any such request must be made within the above referenced 90-calendar day time limit for filing suit and in such form and manner as the court may require.

4. You are further notified that if you file a civil action, you must name the appropriate Department or Agency head as the defendant and provide his or her official title. **DO NOT NAME JUST THE AGENCY OR DEPARTMENT.** Failure to name the head of the Department or Agency or to state his or her official title may result in the dismissal of the case. The appropriate agency is the Department of the Army. The head of the Department of the Army is [insert name], who is the Secretary of the Army.

The DA docket number identified at the top of page 1 of this letter should be used on all correspondence.

Sincerely,

Signature block of EEO officer or appropriate official

Enclosure

Copy Furnished:

Complainant, if represented by an attorney; or

Nonattorney representative

Agency representative

NOTES:

1. This notice will be issued to complainant/representative in accordance with the service rules set forth in paragraph 1-25.
2. A copy of this notice and the certified return receipt will be filed in the complaint file under "Formal" tab.
3. A copy of the EEOC Form 573, Notice of Appeal/Petition will be attached to the final agency decision to dismiss. The form will be locally reproduced.

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Figure 4-5. Sample Dismissal Decision of Discrimination (Nonmixed)—continued

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Name of complainant/attorney representative  
Address of complainant/attorney representative  
City, State, Zip Code

Complaint of (first, middle initial, and last name of complainant)  
v. (insert name), Secretary of the Army  
DA Docket Number(s):

Dear (Mr., Mrs., Ms., Dr. and last name of complainant/attorney representative):

This is the Department of the Army's final decision in the above-captioned equal employment opportunity complaint filed on (insert date). Your initial contact with an EEO official was (insert date) and you received the Notice of Right to File a Formal Complaint of Discrimination on (insert date).

After a review of the complaint file, I have determined that your (your client's) complaint constitutes a mixed case complaint, in that the claim(s) raised involve an action(s) that is appealable to the Merit Systems Protection Board (MSPB). In your (your client's) formal complaint of discrimination, you (he or she) allege(s) discrimination on the basis/bases of (insert basis/bases) in the following action(s) when: (FRAME THE CLAIM(S) RAISED IN THE FORMAL COMPLAINT, TO INCLUDE DATE AND SPECIFIC ACTION. IF SEVERAL CLAIMS INVOLVED, START WITH MOST RECENT.)

- a.
- b.

I have reviewed all of the information in the file and have decided to dismiss the complaint in its entirety for the following reason(s): [When dismissing a complaint in whole or in part, the EEO officer or appropriate official must notify complainant of the reason(s) for the dismissal, must cite the appropriate subsection of 29 C.F.R. Section 1614.107(a), and provide detailed explanation with evidence if appropriate.]

If you are (your client is) dissatisfied with this decision, you may appeal to the MSPB (not EEOC) within 30 calendar days from receipt of this decision. Your (Your client's) appeal should be addressed to the Merit Systems Protection Board, (insert MSPB regional office). A copy of MSPB Appeal Optional Form 283, is attached. You must serve a copy of the appeal simultaneously on the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review (EEOCCR)), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202-4508 and on the agency representative [insert name and address of agency representative]. In or attached to the appeal to the MSPB, you must certify the date and method by which service was made to the Deputy for EEOCCR and the agency representative. After receipt of the MSPB's decision, you (your client) have (has) the right to petition the EEOC to review the MSPB's final decision on the discrimination issue.

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Figure 4-6. Sample Dismissal Decision of Discrimination (Mixed)

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You (you, on behalf of your client,) may file a civil action in the proper U.S. District Court:

- a. Within 30 calendar days of receipt of the final Army decision if no appeal has been filed;
- b. Within 30 calendar days of receipt of notice of the final decision or action taken by the MSPB if a petition for consideration with the EEOC has not been filed;
- c. Within 30 calendar days of receipt of notice that the Commission has determined not to consider the decision of the MSPB;
- d. Within 30 calendar days of receipt of notice that the Commission concurs with the decision of the MSPB;
- e. If the Commission issues a decision different from the decision of the MSPB, within 30 calendar days of receipt of the notice that the MSPB concurs in and adopts in whole the decision of the Commission; or
- f. If the MSPB does not concur with the decision of the Commission and reaffirms its initial decision or reaffirms its initial decision with a revision, 30 calendar days of the receipt of notice of the decision of the Special Panel;
- g. After 120 calendar days from the date of filing a formal complaint if there is no final action or appeal to the MSPB;
- h. After 120 calendar days from the date of filing an appeal with the MSPB and the MSPB has not yet made a decision; or
- i. After 180 calendar days from the date of filing a petition for consideration with the Commission if there is no decision by the Commission, reconsideration decision by the MSPB or decision by the Special Panel.

If you file a civil action under Title VII of the Civil Rights Act of 1964, as amended, or the Rehabilitation Act of 1973, as amended, and you do not have, or are unable to obtain the services of an attorney, you may request the court to appoint an attorney to represent you. In such circumstances as the court may deem just, the court may appoint an attorney and may authorize the commencement of the action without the payment of fees, costs, or security. Any such request must be made within the above referenced limits for filing suit and in such form and manner as the court may require.

You are further notified that if you file a civil action, you must name the appropriate Department or Agency head as the defendant and provide his or her official title. **DO NOT NAME JUST THE AGENCY OR DEPARTMENT.** Failure to name the head of the Department or Agency or to state his or her official title may result in the

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Figure 4-6. Sample Dismissal Decision of Discrimination (Mixed)—continued

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dismissal of the case. The appropriate agency is the Department of the Army. The head of the Department of the Army is [insert name], who is the Secretary of the Army.

The DA docket number identified at the top of page 1 of this letter should be used on all correspondence.

Sincerely,

Signature block of EEO officer or appropriate official

Enclosure

Copy Furnished:  
Complainant, if represented by an attorney; or  
Nonattorney representative  
Agency representative

**NOTES:**

1. This notice will be issued to complainant/representative in accordance with the service rules set forth in paragraph 1-25.
2. A copy of this notice and the certified return receipt will be filed in the complaint file under Tab "Formal".
3. A copy of MSPB Appeal Optional Form 283 will be attached to the final agency decision to dismiss. The form will be locally reproduced.

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**Figure 4-6. Sample Dismissal Decision of Discrimination (Mixed)—continued**

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Name of complainant/attorney representative  
Address of complainant/attorney representative  
City, State, Zip Code

Complaint of (first, middle initial, and last name of complainant)  
v. (insert name), Secretary of the Army  
DA Docket Number(s):

Dear (Mr., Mrs., Ms., Dr. and last name of complainant/attorney representative):

This is the Department of the Army's final decision in the above-captioned equal employment opportunity complaint filed on (insert date). Your (Your client's) initial contact with an EEO official was (insert date) and you (your client) received the Notice of Right to File a Formal Complaint of Discrimination on (insert date).

In your (your client's) formal complaint of discrimination, you (your client) allege(s) discrimination on the basis/bases of (insert basis/bases) in the following action(s) when: (FRAME THE CLAIM(S) RAISED IN THE FORMAL COMPLAINT, TO INCLUDE DATE AND SPECIFIC ACTION. IF SEVERAL CLAIMS INVOLVED, START WITH MOST RECENT.)

- a.
- b.

Because you have (your client has) made a prior election to appeal your (your client's) (insert personnel action) to the Merit Systems Protection Board (MSPB), (MSPB Docket Number: (insert MSPB docket number) 29, Code of Federal Regulations (CFR), Section 1614.302(c)(2)(i) requires that the Army dismiss the mixed case complaint pursuant to 29 C.F.R Section 1614.107(a)(4). You are advised that you must bring the allegations of discrimination contained in the dismissed complaint to the attention of the MSPB, pursuant to 5 C.F.R. Section 1201.155. You are further advised that you have the right to petition the Equal Employment Opportunity Commission (EEOC) to review the MSPB's final decision on the discrimination issue.

This dismissal is not appealable to the EEOC unless you allege that 29 C.F.R. Section 1614.107(a)(4) has been applied to a non-mixed case matter. If you believe that your complaint is not a mixed case matter, you may file an appeal with the Equal Employment Opportunity Commission, Office of Federal Operations, P.O. Box 19848, Washington, DC 22036 within 30 calendar days of receipt of this dismissal. In or attached to the appeal, you must certify to the EEOC that a copy of the appeal was served on the agency, including the date and method of service. A copy of the appeal must be provided to the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review) Department of the Army, ATTN: SAMR EEO-CCR, Suite 109B, 1941 Jefferson Davis Highway, Arlington, VA 22202-4508 and to the agency representative, [insert name, address, and e-mail address of agency representative], at

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Figure 4-7. Sample Dismissal for Prior Election of Forum to MSPB

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the same time it is filed with the EEOC. A copy of EEOC Form 573, Notice of Appeal/Petition, is enclosed for your convenience.

The DA docket number(s) identified on the top of page 1 of this letter should be used on all correspondence.

Sincerely,

Signature block of EEO officer or appropriate official

Enclosure

Copy Furnished:  
Complainant, if represented by an attorney; or  
Non-attorney representative  
Agency representative

**NOTES:**

1. If there is a question concerning jurisdiction raised by either the agency or the MSPB administrative judge on the appeal, the mixed case complaint will not be dismissed and will be held in abeyance until the MSPB administrative judge rules on the jurisdictional issue.
2. This notice will be issued to complainant/representative in accordance with the service rules set forth in paragraph 1-25.
3. A copy of the notice and the certified return receipt will be filed in the complaint file under Tab "Formal".
5. A copy of EEOC Form 573, Notice of Appeal/Petition will be attached to the final agency decision to dismiss. The form will be locally reproduced.

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**Figure 4-7. Sample Dismissal for Prior Election of Forum to MSPB—continued**

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Name of complainant/attorney representative  
Address of complainant/attorney representative  
City, State, Zip Code

Complaint of (first, middle initial, and last name of complainant)  
v. (insert name), Secretary of the Army  
DA Docket Number(s):

Dear (Mr., Mrs., Ms., Dr. and last name of complainant/attorney representative):

This is the Department of the Army's final decision in the above-captioned equal employment opportunity complaint filed on (insert date). Your (Your client's) initial contact with an EEO official was (insert date) and you (your client) received the Notice of Right to File a Formal Complaint of Discrimination on (insert date).

In your (your client's) formal complaint of discrimination, you (your client) allege(s) discrimination on the basis/bases of (insert basis/bases) in the following action(s) when: (FRAME THE CLAIM(S) RAISED IN THE FORMAL COMPLAINT, TO INCLUDE DATE AND SPECIFIC ACTION. IF SEVERAL CLAIMS INVOLVED, START WITH MOST RECENT.)

- a.
- b.

Pursuant to Title 29, Code of Federal Regulations, Section 1614.301(a) and Section 1614.107(a)(4), your (your client's) formal complaint is dismissed because you have (your client has) made a prior election to proceed under a negotiated grievance procedure (insert Negotiated Grievance Docket Number). You are advised that you must raise the allegations of discrimination in the dismissed complaint in the grievance process and that you have the right to appeal the final grievance decision to the Equal Employment Opportunity Commission.

If you are (your client is) dissatisfied with this decision, your (his/her) appeal rights are as follows:

#### **APPEAL RIGHTS FOR NONMIXED COMPLAINTS**

1. An appeal may be filed with the Equal Employment Opportunity Commission (EEOC) within 30 calendar days of the date of receipt of this decision. The 30-calendar day period for filing an appeal begins on the date of receipt of this decision. An appeal shall be deemed timely if it is delivered in person, transmitted by facsimile or postmarked before the expiration of the filing period or, in the absence of a legible postmark, if the appeal is received by the Commission by mail within 5 calendar days after the expiration of the filing period. The complainant will serve a copy of the Notice of Appeal/Petition, EEOC Form 573, to the EEO/Civil Rights Office (Deputy for EEO

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Figure 4-8. Sample Notice of Dismissal Election of Forum (Negotiated Grievance)

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Compliance and Complaints Review (EEOCCR)), Department of the Army, ATTN: SAMR-EO-CCR, Suite 109B, 1941 Jefferson Davis Highway, Arlington, VA 22202-4508, and furnish a copy to the agency representative, **[insert name, address, and e-mail address of agency representative]**, at the same time it is filed with the Commission. In or attached to the appeal to the Commission, you must certify the date and method by which service was made to the Deputy for EEOCCR and the agency representative.

2. The complainant may file a brief or statement in support of his/her appeal with the Office of Federal Operations (OFO). The brief or statement **must** be filed with the OFO within 30 calendar days from the date the appeal is filed. The complainant will serve a copy of the brief or statement submitted in support of the appeal on the Deputy for EEOCCR and on the agency representative at the addresses shown above in paragraph 1 at the same time the brief or statement is filed with the Commission. The regulation providing for appeal rights is contained in Title 29 of the Code of Federal Regulations, a part of which is reproduced below:

**Part 1614.401 Appeals to the Commission.**

(a) A complainant may appeal an agency's final action or dismissal of a complaint.

(b) An agency may appeal as provided in Section 1614.110(a).

(c) A class agent or an agency may appeal an administrative judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint and a class member, a class agent or an agency may appeal a final decision on a petition pursuant to Section 1614.204(g)(4).

(d) A grievant may appeal the final decision of the agency, the arbitrator or the Federal Labor Relations Authority (FLRA) on the grievance when an issue of employment discrimination was raised in a negotiated grievance procedure that permits such issues to be raised. A grievant may not appeal under this part, however, when the matter initially raised in the negotiated grievance procedure is still ongoing in that process, is in arbitration, is before the FLRA, is appealable to the MSPB [Merit Systems Protection Board] or if 5 U.S.C. Section 7121(d) is inapplicable to the involved agency.

(e) A complainant, agent or individual class claimant may appeal to the Commission an agency's alleged noncompliance with a settlement agreement or final decision in accordance with Section 1614.504.

**Part 1614.402 Time for appeals to the Commission.**

(a) Appeals described in Section 1614.401(a) and (c) must be filed within 30 calendar days of receipt of the dismissal, final action or decision. Appeals described in

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Figure 4–8. Sample Notice of Dismissal (Negotiated Grievance)—continued

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Part 1614.401(b) must be filed within 40 calendar days of receipt of the hearing file and decision. Where a complainant has notified the EEO Director [Deputy for EEOCCR] of alleged noncompliance with a settlement agreement in accordance with Section 1614.504, the complainant may file an appeal 35 calendar days after service of the claim of noncompliance, but no later than 30 calendar days after receipt of the agency's determination.

(b) If the complainant is represented by an attorney of record, then the 30-calendar day time period provided in paragraph (a) of this Section within which to appeal shall be calculated from the receipt of the required document by the attorney. In all other instances, the time within which to appeal shall be calculated from the receipt of the required document by the complainant.

### **Section 1614.403 How to appeal.**

(a) The complainant, agency, agent, grievant or individual class claimant (hereinafter complainant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition [copy enclosed], and should indicate what is being appealed.

(b) The appellant shall furnish a copy of the appeal to the opposing party [Deputy for EEOCCR and the servicing agency representative] at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the complainant must certify the date and method by which service was made on the opposing party [Deputy for EEOCCR and the servicing agency representative – addresses shown in paragraph 1 above].

(c) If appellant does not file an appeal within the time limits of this subpart, the appeal shall be dismissed by the Commission as untimely.

(d) Any statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 calendar days of filing the notice of appeal. Any statement or brief on behalf of the agency in support of its appeal must be submitted to the Office of Federal Operations within 20 calendar days of filing the notice of appeal. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than 10 pages long.

(e) The agency must submit the complaint file to the Office of Federal Operations within 30 calendar days of initial notification that the complainant has filed an appeal or within 30 calendar days of submission of an appeal by the agency.

(f) Any statement or brief in opposition to an appeal must be submitted to the Commission and served on the opposing party within 30 calendar days of receipt of the

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statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 calendar days of receipt of the appeal. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than 10 pages long.

**Section 1614.407 Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act.**

A complainant who has filed an individual complaint, an agent who has filed a class complaint or a claimant who has filed a claim for individual relief pursuant to a class complaint is authorized under Title VII, the ADEA [Age Discrimination in Employment Act] and the Rehabilitation Act to file a civil action in an appropriate United States District Court:

(a) Within 90 calendar days of receipt of the final action on an individual or class complaint if no appeal has been filed;

(b) After 180 calendar days from the date of filing an individual or class complaint if an appeal has not been filed and final action has not been taken;

(c) Within 90 calendar days of receipt of the Commission's final decision on an appeal; or

(d) After 180 calendar days from the date of filing an appeal with the Commission if there has been no final decision by the Commission.

**Section 1614.408 Civil action: Equal Pay Act.**

A complainant is authorized under Section 16(b) of the Fair Labor Standards Act (29 U.S.C. 216[b]) to file a civil action in a court of competent jurisdiction within two years or, if the violation is willful, three years of the date of the alleged violation of the Equal Pay Act regardless of whether he or she pursued any administrative complaint processing. Recovery of back wages is limited to two years prior to the date of filing suit, or to three years if the violation is deemed willful; liquidated damages in an equal amount may also be awarded. The filing of a complaint or appeal under this part shall not toll the time for filing a civil action.

**Section 1614.409 Effect of filing a civil action.**

Filing a civil action under Section 1614.408 or Section 1614.409 shall terminate Commission processing of the appeal. If private suit is filed subsequent to the filing of an appeal, the parties are requested to notify the Commission in writing.

3. If a civil action is filed and complainant does not have or is unable to obtain the services of a lawyer, the complainant may request the court to appoint a lawyer. In such circumstances as the court may deem just, the court may appoint a lawyer to

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Figure 4–8. Sample Notice of Dismissal (Negotiated Grievance)—continued

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represent the complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Any such request must be made within the above referenced 90-calendar day time limit for filing suit and in such form and manner as the court may require.

4. You are further notified that if you file a civil action, you must name the appropriate Department or Agency head as the defendant and provide his or her official title. **DO NOT NAME JUST THE AGENCY OR DEPARTMENT.** Failure to name the head of the Department or Agency or to state his or her official title may result in the dismissal of the case. The appropriate agency is the Department of the Army. The head of the Department of the Army is [insert name], who is the Secretary of the Army.

The DA docket number identified at the top of page 1 of this letter should be used on all correspondence.

Sincerely,

Signature block of EEO officer or appropriate official

Enclosure

Copy Furnished:  
Complainant, if represented by an attorney; or  
Nonattorney representative  
Agency representative

**NOTES:**

1. An election to proceed under a negotiated grievance procedure is indicated by the filing of a timely written grievance.
2. A copy of the grievance and an extract of the contract showing that the processing of allegations of discrimination is permitted should be attached.
3. This notice will be issued to complainant/representative in accordance with the service rules set forth in paragraph 1-25.
4. A copy of the notice and the certified return receipt will be filed in the complaint file under "Formal" tab.
5. A copy of EEOC Form 573, Notice of Appeal/Petition will be attached to the final agency decision to dismiss. The form will be locally reproduced.

Figure 4-8. Sample Notice of Dismissal (Negotiated Grievance)—continued

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Memorandum for: (Insert Appropriate Regional Office of Complaints Investigation)

SUBJECT: Request for Assignment of Investigator for the Complaint of (insert complainant's name) v. (insert name of Secretary of Army), Secretary of the Army, DA Docket Number:

1. Request the assignment of an investigator to conduct an investigation of subject complaint. A copy of the complaint file is enclosed.
2. The following claim(s) has (have) been accepted for investigation:
  - a.
  - b.
  - c.
3. Complainant's mailing address and telephone numbers are:
4. Complainant has/has not notified this office of his/her designation of a representative. (If complainant is represented, include name, address and phone number, facsimile number and email address of representative.)
5. The agency representative in this complaint is (insert name, address, phone number, facsimile number and e-mail address of designated agency representative).
6. Fund citation for payment of investigative services is enclosed.
7. Point of contact for this action is (insert appropriate EEO official, telephone number, facsimile number, and email address).

Signature block of EEO officer or appropriate official

Enclosures

1. Complaint file
2. Fund citation

CF:

Complainant

Attorney or Non-attorney representative (if represented)

Agency representative

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Figure 4-9. Sample Request for Assignment of OCI Investigator

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**NOTES:**

1. This request will be sent in accordance with the service rules set forth in paragraph 1-25.
2. A copy of this notice and the certified return receipt will be filed in the complaint file under “Investigation” tab.
3. The format of this sample memorandum may be modified to conform to local requirements.

**Figure 4-9. Sample Request for Assignment of OCI Investigator—Continued**

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Date \_\_\_\_\_ (Date)  
DA Docket Number(s) \_\_\_\_\_ (Docket Number)

MEMORANDUM FOR (name of complainant/attorney representative)

SUBJECT: Agreement to Extend Investigation

1. By signing this agreement, you (you, on behalf of your client) agree to allow the investigator up to an additional 90 calendar days to complete the investigation. This will extend the investigation period to a maximum of 270 calendar days.

2. This voluntary agreement means that the investigation of your complaint filed on (date of filing) will be completed no later than (date), 270 calendar days from the filing of your formal EEO complaint.

\_\_\_\_\_  
(Signature)  
Complainant

\_\_\_\_\_  
(Signature)  
EEO Officer

\_\_\_\_\_  
(Date)  
Date

\_\_\_\_\_  
(Date)  
Date

\_\_\_\_\_  
(Signature)  
Complainant's representative

\_\_\_\_\_  
(Date)  
Date

**NOTE:**

1. This agreement must be presented to complainant prior to the end to the 180-day period beginning with the date the EEO complaint was filed.
2. The original copy of the agreement will be filed in the complaint file under the "Investigation", tab, and a copy provided to the complainant/representative, the agency representative, and the OCI investigator.

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Figure 4-10. Sample Agreement between Complainant and EEO Officer to Extend Investigation

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Name of complainant/attorney representative  
Address of complainant/attorney representative  
City, State, Zip Code

Complaint of (first, middle initial, and last name of complainant)  
v. (insert name), Secretary of the Army  
DA Docket Number(s):

Dear (Mr., Mrs., Ms., Dr. and last name of complainant/attorney representative)

Please be advised that the investigation pertaining to subject complaint(s) of discrimination filed on (date) has been completed. In accordance with Title 29, Code of Federal Regulations Section 1614.108(f), you are hereby provided a copy of the investigative file. This investigative file does not constitute a final Army decision on your (your client's) complaint. Its primary purpose is to develop the facts of the case and provide the basis for deciding this complaint.

You (you, on behalf of your client,) have 30 calendar days from your receipt of this notice to request either a hearing before an Equal Employment Opportunity Commission (EEOC) administrative judge or a final Army decision based on this record. If you (your client) elect(s) a hearing before an EEOC administrative judge, the enclosed Request for a Hearing must be sent directly to [insert name and address of EEOC field/district office]. A copy of the Request for a Hearing must be provided to the undersigned. In or attached to the hearing request to the EEOC, you must certify that a copy of the hearing request form was served on the EEO officer, including the date and method of service.

If you (you, on behalf of your client,) request an EEOC hearing, an EEOC administrative judge will be appointed to hear the case. The administrative judge may make a determination that there are no issues of material fact and issue a final decision without holding a hearing. Should the administrative judge make such a determination on his or her own initiative, you will be notified and provided an opportunity to respond in writing within 15 calendar days of receipt of the notice. If a hearing is to be conducted, the date and time of the hearing will be determined by the administrative judge. The administrative judge will hear the case, make a final decision on the complaint subject to final action by the Army, including appropriate remedies and relief where discrimination is found, within 180 calendar days of EEOC's receipt of your request for a hearing unless the administrative judge makes a written determination that good cause exists for extending the time for issuing a decision on the complaint. The administrative judge will provide you (and your client) with a copy of the hearing record, including the transcript, if a hearing was held, and the decision. The Army will then consider the administrative judge's decision and issue a final Army action.

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Figure 4-11. Sample Notice of Post-Investigative Options (Nonmixed Complaints)

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Should you (you, on behalf of your client,) decide not to request an EEOC hearing, you may request a final Army decision on the merits of the complaint by returning the enclosed Request for a Final Army Decision to the undersigned within 30 calendar days of your receipt of this notice. The Army will have 60 calendar days from the date of receipt of your request to review the case file and to issue the final Army decision. If you do not respond within 30 calendar days of receipt of this letter, the Army Director of EEO, or designee, will render a decision on the record as it stands.

Sincerely,

Signature block of EEO officer or appropriate official

Enclosures

Copy Furnished:

Complainant, if represented by an attorney; or  
Nonattorney representative  
Agency representative

NOTES:

1. This notice and the investigative file will be sent in accordance with the service rules set forth in paragraph 1-25.
2. A copy of this notice and the certified return receipt will be filed in the complaint file under the "(ROI/PIO)" tab.
3. The Request for a Hearing and Request for a Final Army Decision formats (figs 4-12 and 4-13) will be attached to this notice.

**Figure 4-11. Sample Notice of Post-Investigative Options (Nonmixed Complaints)—continued**

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Date \_\_\_\_\_ (Date) \_\_\_\_\_

Equal Employment Opportunity Commission  
\_\_\_\_\_ Field/District Office  
Hearings Unit  
[insert address]

Processing EEO Office:  
EEO Office Name  
Office Symbol  
Street Address  
City, State, Zip  
Phone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

Dear Sir or Madam:

I am requesting the appointment of an Equal Employment Opportunity Commission administrative judge pursuant to Title 29, Code of Federal Regulations (CFR), Part 1614.108(g). I hereby certify that either more than 180 calendar days have passed from the date I filed my complaint(s) or I have received a notice from the Department of the Army that I have 30 calendar days to elect a hearing or a final Army decision.

My name: \_\_\_\_\_ (Name) \_\_\_\_\_

My address: \_\_\_\_\_ (Address) \_\_\_\_\_  
\_\_\_\_\_ (Address) \_\_\_\_\_

DA Docket Number(s): \_\_\_\_\_ (Docket Number) \_\_\_\_\_

In accordance with 29 CFR 1614.108(g), I have sent a copy of this request for a hearing to the activity EEO officer at the address shown above.

Sincerely,

Signature of complainant

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Figure 4-12. Request for a Hearing Format

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NOTES:

1. This format should be attached to the notice of acceptance and the Post Investigative Options Notice.
2. The EEO officer should insert the addresses of the appropriate EEOC District Office and the EEO office in the format.

**Figure 4-12. Request for a Hearing Format—continued**

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Date \_\_\_\_\_ (Date) \_\_\_\_\_

Equal Employment Opportunity Officer  
Office Symbol  
Street Address  
City, State, Zip

Dear Sir or Madam:

I am requesting a final Army decision without a hearing pursuant to Title 29, Code of Federal Regulations (CFR), Part 1614.110(b).

My name: \_\_\_\_\_ (Name) \_\_\_\_\_

My address: \_\_\_\_\_ (Address) \_\_\_\_\_  
\_\_\_\_\_ (Address) \_\_\_\_\_

DA Docket Number(s): \_\_\_\_\_ (Docket Number) \_\_\_\_\_

I understand that my complaint file will be forwarded to the Director of Army EEO (or his designee) for issuance of the final Army decision.

Sincerely

Signature of complainant

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Figure 4-13. Sample Request for Final Army Decision

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Name of complainant/attorney representative  
Address of complainant/attorney representative  
City, State, Zip Code

Complaint of (complainant)  
v. (insert name), Secretary of the Army  
DA Docket Number(s):

Dear (Mr., Mrs., Ms., Dr. and last name of complainant/attorney representative):

Please be advised that the investigation pertaining to subject complaint(s) of discrimination filed on (date) has been completed. In accordance with Title 29, Code of Federal Regulations, Section 1614.108(f), you are hereby provided a copy of the investigative file. This investigative file does not constitute a final Army decision on this complaint. Its primary purpose is to develop the facts of the case and provide the basis for deciding this complaint.

Inasmuch as your (your client's) case is a mixed case (that is, a discrimination complaint stemming from an action appealable to the Merit Systems Protection Board), you are (he/she is) not entitled to a hearing before an Equal Employment Opportunity Commission administrative judge. Accordingly, your (your client's) case file is being forwarded to the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Hwy, Suite 109B, Arlington, Virginia 22202, for issuance of a final Army decision by the Army Director of Equal Employment Opportunity, or his designee. The Army will have 45 calendar days from the date of this notice to issue the final Army decision.

Sincerely,

Signature block of EEO officer or appropriate official

Copy Furnished:  
Complainant, if represented by attorney; or  
Non-attorney representative

**NOTES:**

1. This notice and the investigative file will be sent in accordance with the service rules set forth in paragraph 1-25.
2. A copy of this notice and the certified return receipt will be filed in the complaint file under the "ROI/POI" tab.

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Figure 4-14. Sample Notice of Post Investigation (Mixed Complaint)

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Name of complainant/attorney representative  
Address of complainant/attorney representative  
City, State, Zip Code

Complaint of (name of complainant)  
v. (insert name), Secretary of the Army  
DA Docket Number(s):

Dear (Mr., Mrs., Ms., Dr. and last name of complainant/attorney representative):

This offer of resolution is made in accordance with Title 29, Code of Federal Regulations, Part 1614.109(c) and in full satisfaction of the claim(s) of employment discrimination that you (your client) have (has) made against the Department of the Army in the docket number(s) cited above. This offer specifically identifies all relief to be awarded in resolution of this matter. Attorney's fees and costs are not payable in age discrimination (ADEA) or equal pay (EPA) complaints. By signing this agreement, you (your client) waive(s) your (his/her) right to pursue administrative or judicial action in any forum concerning the matters raised in the above-listed complaints.

Your acceptance of this offer must be made in writing and postmarked or received in this office within 30 calendar days of your receipt of this offer. If you accept this offer, please indicate your acceptance on the enclosed original offer by signing on the line appearing above your name and include the date of your acceptance on the line appearing adjacent to your name. **[INCLUDE THE FOLLOWING IF COMPLAINANT IS REPRESENTED BY AN ATTORNEY:** *The signature of your client is also required and should be placed on the line above (his/her) name and date of (his/her) acceptance should be placed on the line adjacent to (his/her) name. The offer will not be deemed accepted without the signature of both you and your client.*

If you decline this offer, please indicate your non-acceptance by signing and dating the enclosed original Notice of Non-Acceptance of an Offer of Resolution. **[INCLUDE THE FOLLOWING IF COMPLAINANT IS REPRESENTED BY AN ATTORNEY:** *The signatures of both you and your client are required.*] Failure to respond within 30 calendar days shall be considered nonacceptance.

The acceptance or declination of this offer should be personally delivered or sent to the undersigned at the address shown above. You are further advised that your non-acceptance of this offer neither terminates the processing of your complaint(s) nor prohibits further negotiations or use of ADR in an effort to resolve your claim(s). If you accept this offer, the administrative judge will be advised that the matter has been resolved.

If you do not accept this offer of resolution, and the ordered relief is less than that offered by the agency, you (your client) will not be reimbursed for attorney's fees incurred after the expiration of the offer's 30-calendar day acceptance period. The only

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Figure 4-15. Sample Cover Letter for Offer of Resolution

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exception to this rule is where the administrative judge or Equal Employment Opportunity Commission awards attorney's fees and costs in the interests of justice.

If you have any questions concerning this offer of resolution, you may contact me by telephone at (insert telephone number), or in writing at (insert address). Please be advised, however, that any such inquiry will not serve to extend the 30-calendar day acceptance period for this offer.

Sincerely,

EEO officer or appropriate official

Enclosures

1. Agreement
2. Notice of Non-Acceptance

Copies Furnished:

Agency representative

MACOM

Complainant, if represented by an attorney

Non-attorney representative, if applicable

NOTES:

1. 29 C.F.R. Part 1614.109(c) provides that an offer of resolution can be made to a complainant who is represented by an attorney at any time after filing of a formal complaint until thirty (30) calendar days before a hearing. If complainant is not represented by an attorney, an offer of resolution cannot be made before the case is assigned to an administrative judge for a hearing.
2. This Offer, the Agreement, and Notice of Nonacceptance will be sent in accordance with the service rules set forth in paragraph 1-25.
3. If complainant accepts the offer of resolution, the administrative judge or OFO should be notified, in writing, of the resolution and provided with a copy of the signed Agreement.
4. A copy of all documents related to the accepted offer of resolution will be filed in the complaint file under Tab "Settlement".

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Figure 4-15. Sample Cover Letter for Offer of Resolution—continued

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**OFFER OF RESOLUTION  
IN THE COMPLAINT(S)  
OF**

(first, middle initial, last name of complainant)

Complainant

v.

(insert name), Secretary of the Army  
(insert name of activity)  
(insert address of activity)

Activity

1. Pursuant to the provisions of Title 29, Code of Federal Regulations, Part 1614.109(c), the Department of the Army is offering the terms shown in paragraphs 3 and 4 below to informally resolve the following formal complaint(s):

DA Docket Number(s) \_\_\_\_\_ (Docket Number) \_\_\_\_\_  
\_\_\_\_\_ (Docket Number) \_\_\_\_\_  
\_\_\_\_\_ (Docket Number) \_\_\_\_\_

2. By entering into this Offer of Resolution, the Army does not admit that the Army, any Army official or employee has violated Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, the Age Discrimination in Employment Act, as amended, the Equal Pay Act or any other Federal or State statute or regulation.

3. The Army agrees to—

**Stipulate remedy to be provided in clear and concise detail and specify time frames for completion, if appropriate. The offer must include attorney's fees and costs, with the exception of ADEA or EPA complaints, as well as nonmonetary and monetary relief. The offer may include a lump sum payment that includes all forms of monetary liability, including attorney's fees and costs, or the payment may itemize the amounts and types of monetary relief being offered.**

4. The complainant agrees to—

**Stipulate terms clearly and concisely and specify time frames for completion, if appropriate.**

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Figure 4-16. Sample Offer of Resolution

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5. The complainant's signature on this agreement constitutes a full and complete resolution of any and all claims arising from the circumstances of the complaints identified in paragraph 1 above. This includes but is not limited to attorney's fees and costs arising from or related to the complaints identified in paragraph 1 above. In addition, the complainant agrees to waive his/her right to pursue administrative or judicial action in any forum concerning the matters raised in the complaints identified in paragraph 1 above and that they will not be made the subject of future litigation.

6. If the complainant believes that the Army has failed to comply with the terms of this offer of resolution, the complainant will notify the Equal Employment Opportunity/Civil Rights Office (Deputy for EEO Compliance and Complaints Review) (EEOCCR), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, Virginia 22202-4508, in writing, of the alleged noncompliance within 30 calendar days of when the complainant knew or should have known of the alleged noncompliance. A copy should also be sent to the activity EEO Officer. The complainant must request that the terms of the settlement agreement be specifically implemented or, alternatively, the complaint(s) be reinstated for further processing from the point processing ceased. If the Deputy for EEOCCR has not responded to the complainant in writing or if the complainant is not satisfied with the attempts to resolve the matter, the complainant may appeal to the Equal Employment Opportunity Commission (EEOC), Office of Federal Operations (OFO), P.O. Box 19848, Washington, DC 20036 for a determination as to whether the Army has complied with the terms of this offer of resolution. The complainant may file such an appeal to the EEOC, OFO 35 calendar days after service of the allegation of noncompliance upon EEOCCR but no later than 30 calendar days after receipt of the Army determination.

7. The terms of this offer of resolution will not establish any precedent nor will the offer of resolution be used as a basis by the complainant or any representative organization as justification for similar terms in any subsequent case.

8. I have read this Offer of Resolution and agree to accept its provisions.

\_\_\_\_\_  
(Signature)  
Signature of complainant

\_\_\_\_\_  
(Date)  
Date signed by complainant

\_\_\_\_\_  
(Signature)  
Signature of attorney

\_\_\_\_\_  
(Date)  
Date signed by attorney

\_\_\_\_\_  
(Signature)  
Signature & Title of Army official

\_\_\_\_\_  
(Date)  
Date signed by Army Official

Figure 4-16. Sample Offer of Resolution-continued

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\_\_\_\_\_  
(Signature)  
Agency Representative

\_\_\_\_\_  
(Date)  
Date signed by Agency Representative

NOTES:

1. The foregoing format will be used as standard guidance for preparation of an Offer of Resolution made pursuant to 29 C.F.R. Part 1614.109(c).
2. The Offer of Resolution is a binding legal document on the Army and should **never** be signed without knowledge of the EEO officer and the designated agency representative.
3. The agency representative, the EEO officer, and the appropriate civilian personnel official will coordinate and consult each other prior to the execution of an offer of resolution. Any disagreement in professional judgment among them as to the initiation, conduct, merits, or any other issue of settlement will be resolved by their common superior prior to the proposal of the offer to complainant and representative.
4. The Offer of Resolution must be drafted or reviewed by the agency representative.
5. The term(s) of the offer should be stated clearly and concisely, and will not commit the management official to any action(s), which are outside of his or her authority to execute. If a specified term has or could have a different definition, the intent of that term must be specifically included in the offer. The Offer of Resolution may not obligate another DOD activity or Federal agency without express and written consent from that activity or agency prior to the execution of the offer. The written consent from that activity or agency will be attached as an enclosure to the Offer of Resolution or the responsible activity or agency official must sign the Offer of Resolution.
6. Time frames for completion of the actions agreed upon should not only be reasonable but also very specific to ensure prompt compliance by both parties, and to prevent any subsequent allegation(s) of noncompliance by the complainant. The Army must take the agreed upon action within the time frames specified, or it may be in noncompliance. In the event of noncompliance by the Army, the complainant has 30 days from the dates specified in the offer to notify EEOCCR of the alleged noncompliance.
7. Any offer made in resolution of a claim under the ADEA must comply with the requirements of the Older Workers Benefit Protection Act.
8. Attorney fees and/or costs are not payable in age discrimination (ADEA) or equal pay (EPA) complaints.
9. Implementation of the Offer of Resolution is the responsibility of management. To ensure compliance with the terms of the offer, the activity will designate an official to be responsible for implementation of the Offer of Resolution. The official may be the EEO officer, the appropriate civilian personnel official, or another management official, as appropriate.
10. Ensuring compliance with the Offer of Resolution is the responsibility of the EEO officer.

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Figure 4-16. Sample Offer of Resolution—continued

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**NOTICE OF NONACCEPTANCE OF AN OFFER OF RESOLUTION**

By signing and dating this notice, I hereby decline the offer of resolution that has been made to me under the provisions of Title 29, Code of Federal Regulations, Part 1614.109(c). I understand that by declining this offer, I will not receive payment for any attorney's fees and costs incurred after the 30-calendar day acceptance period if the relief awarded by the Equal Employment Opportunity Commission (EEOC) administrative judge or EEOC, Office of Federal Operations (OFO), on appeal, is less than the amount offered, unless the EEOC administrative judge or OFO rules that the interest of justice requires that I receive award of full attorney's fees and costs. I further understand that my nonacceptance of this offer of resolution will neither terminate the processing of my complaint(s) nor prohibit further negotiations or use of ADR in an effort to resolve my complaint(s).

\_\_\_\_\_  
(Signature)  
Signature of complainant

\_\_\_\_\_  
(Date)  
Date

\_\_\_\_\_  
(Signature)  
Signature of representative

\_\_\_\_\_  
(Date)  
Date

**NOTES:**

1. This notice, the Cover Letter for Offers of Full Resolution, and the Offer of Resolution must be sent in accordance with the service rules set forth in paragraph 1-25.
2. If complainant does not accept the offer of resolution, the agency representative should be immediately notified and provided with a copy of the nonacceptance notice.
3. The signed Notice of Nonacceptance and a copy of all documents related to the offer of resolution will be filed in the agency representative's litigation file and not in the EEO complaint file.

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**Figure 4-17. Sample Notice of Non-Acceptance of an Offer of Resolution**

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## Chapter 5

# Final Army Decisions/Actions and Appeals of Nonmixed and Mixed Complaints, Civil Actions, and Settlements

## Section I

### Final Army Decisions and Actions

#### 5-1. Final Army decisions in nonmixed complaints

*a.* A final Army decision on the merits of the complaint, including rationale for dismissal of any claim, will be issued by the Army Director of EEO or designee—

(1) Within 60 days after receipt of the investigative file and notice from the activity that complainant requested a final Army decision, or

(2) Within 60 days after receipt of the investigative file and notice from the activity that complainant failed to request either a hearing or a final Army decision within 30 days of receipt of the investigative file and Notice of Post Investigative Options.

(3) Within 60 days after notification that complainant has withdrawn his or her request for a hearing by an administrative judge.

*b.* The final Army decision will specify the reasons for the decision and any remedial action authorized by law that is judged to be necessary or desirable to resolve alleged claims of discrimination and to promote EEO policy, including the payment of attorney's fees and costs and compensatory damages. (See chapter 7.)

*c.* The final Army decision will inform the complainant of the right to appeal the decision to either the EEOC OFO (include the name and address of the Army official to be served) or to the applicable Federal district court (name the Secretary of the Army as the proper defendant and list the applicable time limits for such action). A copy of EEOC Form 573 will be attached to the final Army decision.

*d.* The final Army decision will be served on the complainant and designated representative in accordance with the service rules set forth in paragraph 1-25. A copy of the final Army action/decision will be furnished to the serviced MACOM EEO officer, agency representative, and the activity EEO officer.

*e.* Upon issuance of the final Army decision, EEOCCR will update the automated tracking system and administratively close the complaint record.

#### 5-2. Final Army decisions in mixed case complaints

*a.* In a mixed case complaint, the Army Director of EEO or designee will issue a final agency decision within 45 days of notice being provided the complainant in accordance with 29 CFR, Section 1614.302(d)(2).

*b.* The final Army decision in a mixed case will include the right to appeal to MSPB (not EEOC) within 30 days of receipt of decision (include the name and address of the Army official to be served) or to the applicable Federal district court (name the Secretary of the Army as the proper defendant and list the applicable time limits for such action). A copy of MSPB OF 283 will be attached to the final Army decision.

*c.* The final Army decision will be served on the complainant and designated representative in accordance with the service rules set forth in paragraph 1-25. A copy will be provided to the serviced MACOM, the agency representative, and the EEO officer.

*d.* Upon issuance of the final Army decision, EEOCCR will update the automated tracking system and administratively close the complaint record.

#### 5-3. Final decisions under the negotiated grievance procedure

*a.* A final decision under the negotiated grievance procedure is defined as one of the following:

(1) The final grievance decision rendered by the activity, if the union fails to invoke arbitration of the grievance. An employee cannot individually invoke arbitration.

(2) The award rendered by an arbitrator, if neither the union nor management files an exception to the award with the Federal Labor Relations Authority (FLRA). (An employee cannot individually appeal an arbitration award to the FLRA).

(3) The decision of the FLRA on exceptions to arbitration award.

*b.* Final decisions under paragraphs 5-3a(1), (2), and (3) are appealable to the EEOC OFO in a nonmixed case if the grievance includes an allegation of prohibited discrimination and the grievance procedure does not exclude discrimination claims. Final decisions under paragraphs 5-3a(1), (2), and (3) are appealable to the MSPB in a mixed case if the grievance includes an allegation of prohibited discrimination and the grievance procedure does not exclude discrimination claims.

#### **5-4. Final Army actions**

A final Army action to either fully implement or appeal an administrative judge's decision will be issued by the Director of EEO, or designee, within 40 days after the receipt of the decision of an EEOC administrative judge. An administrative judge's decision will become final and binding on the Army if the Army has not issued a final action concerning the administrative judge's decision within 40 days of receipt.

*a.* Upon receipt of an administrative judge's decision, the agency representative or activity EEO officer will ensure that the decision and hearing transcripts were served upon EEOCCR as instructed in the transmittal letter. If the administrative judge has served the decision and hearing transcripts on the activity and not on EEOCCR, the agency representative or EEO officer will immediately fax a copy of the decision to EEOCCR and send the original decision and transcripts to EEOCCR via overnight mail.

*b.* When the administrative judge finds discrimination, EEOCCR will immediately coordinate with the agency representative and EEO officer. EEOCCR will ensure that the agency representative and EEO officer have received a copy of the administrative judge's decision, and that the agency representative receives a copy of the hearing transcripts. The EEO officer will coordinate with the agency representative for a copy of the hearing transcript.

*c.* EEOCCR will notify the complainant and designated representative in writing of the decision to fully implement the administrative judge's decision.

*d.* If the final Army action is to appeal the administrative judge's decision, EEOCCR will advise the complainant and designated representative in writing of the decision not to fully implement the decision of the administrative judge. The final Army action will also include a decision concerning interim relief, if any, to be granted pending appeal.

(1) EEOCCR will simultaneously file a notice of appeal to EEOC OFO, within 40 days of receipt of the administrative judge's decision and will advise the EEOC of the decision not to restore complainant to duty, if applicable, or delay payment of any awarded amount pending resolution of the appeal.

(2) After coordination with the activity agency representative, EEOCCR will file an appeal brief to EEOC OFO within 20 days of filing the notice of appeal.

*e.* The final Army action and/or appeal brief will be served on the complainant and designated representative in accordance with the service rules set forth in paragraph 1-25. A copy of the final Army action will be furnished to the administrative judge, serviced MACOM EEO officer, agency representative, and the activity EEO officer. Certification as to the date and method by which service was made on complainant and designated representative will be included or attached to the notice of appeal filed with EEOC OFO.

*f.* The final Army action will inform the complainant of the right to appeal the decision to either the EEOC OFO (include the name and address of the Army official to be served) or to the applicable Federal district court (name the Secretary of the Army as the proper defendant and list the applicable time limits for such action). A copy of EEOC Form 573 will be attached to the final Army decision.

*g.* If not already provided, EEOCCR will ensure that a copy of the hearing transcripts are forwarded to the agency representative. The EEO officer will coordinate with the agency representative for a copy of the transcripts.

## **Section II**

### **Appeals, Reconsideration, Appellate Procedures, and Civil Actions**

#### **5-5. Appeals of final Army decisions/actions on nonmixed cases**

*a. Who may appeal.* A complainant or his or her attorney may appeal the following to EEOC OFO:

- (1) The final agency decision to dismiss the complaint in whole under the provisions of paragraph 4-4.
- (2) The final agency decision or final agency action on the merits of the complaint under paragraph 5-1.
- (3) The final decision of an administrative judge, if the agency has not issued a final action within 40 days under paragraph 5-4.

(4) The final agency action not to fully implement the administrative judge's decision under the provisions paragraph 5-4.

(5) The final agency decision on alleged noncompliance with a NSA under paragraph 5-14.

(6) The final agency decision on the issue of attorney's fees or costs, compensatory damages, or remedial actions.

*b. How to appeal.* The complainant, agent, or class claimant may file an appeal, by mail, personal delivery, or fax with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. Any statement or brief in support of the appeal must be submitted to the Office of Federal Operations, Equal Employment Opportunity Commission, within 30 days of filing the notice of appeal.

(1) The complainant will serve a copy of the appeal, as well as any statement or brief in support of the appeal, to the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review (EEOCCR)), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202-4508, and to the agency representative at the same time that he or she files the appeal with the EEOC.

(2) EEOCCR will request that the EEOC deny the appeal unless a copy of an appeal and any supporting statements were served on the agency at the same time as they were served on the EEOC, as required by 29 CFR, Section

1614.403. A copy of EEOCCR's request to EEOC will be furnished to the activity EEO officer and the designated agency representative.

*c. Agency response to appeal.* Army policy is to respond to all appeals. Upon receipt of an appeal, EEOCCR will immediately forward a copy of the appeal and documents submitted with the appeal to the agency representative and EEO officer via facsimile or electronic mail. If the complainant files a separate brief or statement in support of the appeal, EEOCCR, upon receipt of the brief or statement, will immediately forward a copy of the brief or statement to the agency representative via facsimile or electronic mail (eoccr@hqda.army.mil). The agency representative will prepare a draft response to the appeal. The Army's response will be double-spaced on plain bond paper without a signature block. The draft response can be transmitted to EEOCCR by facsimile or electronic mail.

(1) If complainant's statement or brief in support of the appeal is attached to the notice of appeal, any comments in opposition to the appeal must be submitted to EEOCCR within 20 days of the date the brief was received by EEOCCR or by the agency representative, whichever comes first.

(2) If the complainant subsequently submits a timely statement or brief in support of the appeal, comments in opposition to the statement or brief must be submitted to EEOCCR within 20 days of the date the brief was received by EEOCCR or by the agency representative, whichever comes first.

(3) If complainant does not submit a statement or brief supporting his or her appeal within 30 days of the date the notice of appeal was filed, the agency representative will submit a brief to EEOCCR within 20 days after the expiration of the complainant's period to submit a brief. This brief will reserve the right to comment on any after-filed brief from the complainant.

(4) The Army brief will be sent to EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review (EEOCCR)), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, Virginia 22202-4508, or the brief may be sent via facsimile or e-mail (eoccr@hqda.army.mil). The activity will not submit comments directly to the EEOC OFO or provide the complainant or representative a copy of the comments. A copy of the Army's brief will be served on the complainant and representative in accordance with the service rules set forth in paragraph 1-25. EEOCCR will also provide the agency representative with a copy of the brief forwarded to EEOC OFO.

(5) EEOCCR will submit the complaint file to EEOC OFO within 30 days of receipt of the notification of appeal of EEOC's request for the complaint file. A copy of the letter transmitting the complaint file to EEOC OFO will be furnished to the EEO officer and complainant and designated representative in accordance with the service rules set forth in paragraph 1-25.

*d. Time limits for administrative appeals to the EEOC.* Except as provided in paragraph 5-5, a complainant in an individual complaint of discrimination may file a notice of appeal with the EEOC within 30 days after receiving the Army final action/decision on his or her complaint.

(1) If the complainant is represented by an attorney of record, then the 30-day time period within which to appeal will be calculated from the date the attorney receives the Army final action/decision.

(2) Where a complainant has notified EEOCCR of alleged noncompliance with a settlement agreement, the complainant—

(a) Must file an appeal, if any, to EEOC OFO within 30 days of receipt of the Army's determination on the issue of noncompliance; or

(b) May file an appeal to EEOC OFO 35 days after the complainant served the allegation of noncompliance on EEOCCR, if the Army has not issued a determination on the allegation of noncompliance.

## **5-6. Petitions for review by the EEOC from MSPB decisions on mixed case appeals and complaints**

*a.* Individuals who have received a final decision from the MSPB on a mixed case appeal or on appeal of a final decision on a mixed case complaint may petition the EEOC to consider that decision. The EEOC will not accept appeals from MSPB without prejudice.

*b.* A petition must be filed with the Commission either within 30 days of receipt of the final decision of the MSPB or within 30 days of when the decision of a MSPB field office becomes final.

*c.* Although not required, EEOC Form 573, Notice of Appeal/Petition, should be used and filed by certified mail, return receipt requested, to EEOC OFO, and served on all parties.

## **5-7. Appeals of matters brought forth under the negotiated grievance procedure**

*a.* A grievant or his or her attorney may appeal to EEOC OFO, within 30 days of receipt of the final decision on issues of employment discrimination raised in a negotiated grievance procedure covered by paragraph 4-14.

*b.* A grievant may appeal the final decision of the activity, the arbitrator, or the Federal Labor Relations authority on the grievance.

*c.* A grievant may not appeal under this paragraph, however, if the action is appealable to MSPB or when the matter initially raised in the negotiated grievance procedure is still ongoing in that process, is in arbitration or is before the FLRA. Any appeal prematurely filed in such circumstances will be dismissed without prejudice.

d. EEOCCR will coordinate with the agency representative to obtain two copies of the grievance file, one of which will be forwarded to EEOC OFO. (See paragraph 5–5c.)

### **5–8. Appellate procedures**

a. On behalf of the EEOC, OFO reviews the complaint file and all relevant written representations made by the parties, and makes a determination on any jurisdictional or procedural issues.

b. EEOC OFO may require additional information from one or both parties. Supplementation of the record may be made by an exchange of letters, memoranda, or investigation. If EEOC OFO requests information directly from the parties, the parties must cooperate fully and respond in a timely fashion.

(1) Each party is required to provide copies of the supplemental information to the other party at the time it is submitted to EEOC OFO.

(2) Activity responses to EEOC OFO information requests will be submitted to EEOCCR with a copy furnished to the complainant and designated representative in accordance with the service rules in paragraph 1–25. Upon receipt, EEOCCR will forward the information to the EEOC OFO.

c. If the complaint is remanded to EEOC for a hearing, EEOCCR will ensure that the complaint file is forwarded to the appropriate hearings unit. A copy of the transmittal letter will be sent to the agency representative and EEO officer.

d. If the record is so incomplete as to require remand to the Army in order to complete its investigation, EEOC will designate a time period within which the investigation must be completed.

(1) Upon completion of the investigation, the EEO officer will provide the complainant, the complainant’s representative, and the agency representative with a copy of the supplemental record.

(2) Service of the supplemental record and findings to the complainant and representative will be in accordance with the service rules set forth in paragraph 1–25.

(3) Upon receipt, the EEO officer will forward a copy of the investigative summary to EEOCCR for submission to the EEOC OFO Compliance Officer. If the complaint is remanded to EEOC for a hearing, EEOCCR will ensure that the complaint file is forwarded to the appropriate hearings unit. A copy of the transmittal letter will be sent to the agency representative and EEO officer.

e. When the complainant, the Army, or its employees fail without good cause to respond fully and in a timely fashion to EEOC requests for information, the EEOC may, in appropriate circumstances—

(1) Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) Consider the matters to which the requested information pertains to be established in favor of the opposing party;

(3) Issue a decision fully or partially in favor of the opposing party; or

(4) Take such other actions, as it deems appropriate.

### **5–9. Reconsideration of decisions on appeal**

a. A request for reconsideration may only be requested when—

(1) The appellate decision involved a clearly erroneous interpretation of material fact or law, or

(2) The decision will have a substantial impact on the policies, practices, or operations of the agency.

b. Either EEOCCR or the complainant may request reconsideration. Requests for reconsideration must be filed with EEOC OFO, within 30 days of receipt of a decision by the EEOC.

(1) EEOCCR or the complainant shall submit copies of the request and supporting documents to all other parties and their representatives at the time of the request along with proof of such submission. Any argument in opposition to the request to reconsider or cross request to reconsider will be submitted to EEOC OFO and to the requesting party within 20 days of receipt of the request to reconsider along with proof of such submission.

(2) The complainant or designated representative must forward a copy of any statement or brief in support of a request to reconsider to EEOCCR as well as to the designated agency representative.

c. An activity commander or a designee who wishes to request reconsideration will consult the agency representative to determine if the request meets the requirements of this paragraph. If so, within 5 days of receipt of EEOC OFO’s decision on appeal from EEOCCR, the commander or designee will notify the Deputy for EEOCCR via electronic mail or facsimile of the intent to request reconsideration. This notification will include an explanation of how the criteria of paragraph 5–9a apply. The Deputy for EEOCCR will determine whether the Army will request reconsideration and notify the agency representative. If the determination is made to request reconsideration, the agency representative will submit a brief that must contain the following:

(1) An explanation of how the criteria of paragraph 5–9a apply to the case and is supported by the complaint file. It will be prepared to show an Army position rather than a local position.

(2) The brief will be sent to EEOCCR by facsimile or electronic mail as early as possible but not later than 10 days before the 30-day time limit for requesting reconsideration expires.

*d.* Any brief or comments in response to the complainant's request for reconsideration should be forwarded to EEOCCR not later than 5 days prior to the time limit for response.

*e.* If corrective action is ordered by the EEOC, the activity EEO officer will promptly report and provide all necessary documentation to EEOCCR unless—

- (1) The complainant or the Army files a timely request to reconsider the EEOC OFO decision, or
- (2) The EEOC on its own motion reconsiders the case.

*f.* A decision by EEOC OFO on a request to reconsider by either party is final and there is no further right by either party to request reconsideration of the decision for which reconsideration was sought.

#### **5-10. Compliance with EEOC and final Army decisions**

Compliance with decisions issued by the EEOC OFO and Army is mandatory.

*a.* When corrective action or further processing is ordered by EEOC OFO—

(1) EEOCCR will notify the activity EEO officer and agency representative, via facsimile or electronic mail, of EEOC OFO's order and Army suspenses for completion of corrective actions.

(2) A compliance report detailing the activity's status in implementing all ordered corrective action will be submitted by the activity EEO officer to the EEOCCR Compliance Manager not later than the 5<sup>th</sup> day of each month.

(3) Attached to the compliance report will be the appropriate supporting documentation that provides proof of Army's compliance with the EEOC OFO's order.

(4) A compliance report will be submitted until notification from EEOCCR that EEOC OFO has closed compliance.

(5) The activity EEO officer will serve copies of the compliance report, with attachments, to the complainant, the complainant's designated representative, and the agency representative at the same time the report is forwarded to EEOCCR.

*b.* When corrective action is ordered by the Army—

(1) An implementation letter addressed to the activity commander will be attached to the final action/decision outlining corrective action to be taken by the activity. If further processing of the complaint is required, EEOCCR will notify the EEO officer.

(2) Compliance reports will be submitted by the activity EEO officer to the EEOCCR Compliance Manager not later than the 5<sup>th</sup> day of each month.

(3) Attached to compliance reports will be the appropriate supporting documentation that provides proof of the activity's compliance with the Army's order.

(4) Compliance reports will be submitted until notification from EEOCCR that the Army has closed compliance.

(5) The activity EEO officer will serve copies of the compliance report, with supporting documentation to the complainant, designated representative, and the agency representative at the same time the report is forwarded to EEOCCR.

#### **5-11. Enforcement of final EEOC decisions**

A complainant may petition the EEOC to enforce a decision issued under its jurisdiction. The petition will be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, DC 20036. The EEOC OFO's decision on a petition to enforce is final.

#### **5-12. Civil actions**

*a.* All Army final actions/decisions must notify the complainant of the right to file a civil action and of the time limits for doing so.

*b.* A complainant in an individual complaint or an agent or claimant in a class complaint has the right to file a civil action in an U.S. District Court—

(1) Within 90 days after receiving the notice of the final Army decision on the complaint or claim if no appeal has been filed; or

(2) After 180 days from the date of filing a complaint or claim with the Army if no appeal has been filed and no notice of final action or final Army decision has been issued; or

(3) Within 90 days after receipt of the EEOC final decision on an appeal; or

(4) After 180 days from the date of filing an appeal with the EEOC if there has been no final decision by the EEOC.

*c.* If complainant has filed a mixed case complaint or appeal, the right to a civil action is as follows:

(1) Within 30 days of receipt of a final Army decision on a complaint unless an appeal is filed with the MSPB; or

(2) Within 30 days of receipt of notice of the final decision or action taken by the MSPB if the individual does not file a petition for consideration with the EEOC; or

(3) Within 30 days of receipt of notice that the EEOC has determined not to consider the decision of the MSPB; or

(4) Within 30 days of receipt of notice that the EEOC concurs with the decision of the MSPB; or

(5) If the EEOC issues a decision different from the decision of the MSPB, within 30 days of receipt of notice that the MSPB concurs in and adopts in whole the decision of the EEOC; or

(6) If the MSPB does not concur with the decision of the EEOC and reaffirms its initial decision or reaffirms its initial decision with a revision, within 30 days of the receipt of notice of the decision of the special panel; or

(7) After 120 days from the date of filing a formal complaint if there is no final action or appeal to the MSPB; or

(8) After 120 days from the date of filing an appeal with the MSPB if the MSPB has not yet made a decision; or

(9) After 180 days from the date of filing a petition for consideration with the EEOC if there is no decision by the EEOC, reconsideration decision by the MSPB, or decision by the special panel.

*d.* If a civil action is filed arising from the Civil Rights Act or the Rehabilitation Act and the complainant does not have or is unable to obtain the services of an attorney, the complainant may request the court to appoint an attorney. In such circumstances as the court may deem just, the court may appoint an attorney to represent the complainant and may authorize the commencement of the action without the payment of fees, costs, or securities.

*e.* If a civil action is filed, complainant must name the Secretary of the Army as the defendant and provide his or her official title. Failure to either name the Secretary of the Army or to state his or her official title may result in the case being dismissed.

*f.* If the agency representative is notified of the filing of a civil action by the complainant prior to notification by EEOCCR, the agency representative will inform the U.S. Army Legal Services Agency (ATTN: JALS-LTC), 901 North Stuart Street, Arlington, VA 22203-1837 and the activity EEO officer, who, in turn, will notify the Deputy for EEOCCR.

*g.* When the U.S. Army Legal Services Agency is first notified of the filing of a civil action, that office will notify the Deputy for EEOCCR. EEOCCR will then notify the activity EEO officer and instruct closure of all complaints that are currently being processed containing claims that are like or related to those raised in the civil action in accordance with 29 CFR Part 1614.107(a)(3). The activity EEO will notify EEOCCR that the complaints have been closed and forward the appropriate complaint files. If the complaint is at EEOCCR awaiting a final Army decision/action, EEOCCR will terminate processing of the complaint and issue a dismissal in accordance with 29 CFR 1614.107(a)(3).

### **Section III**

#### **Negotiated Settlement of Complaints**

##### **5-13. Settlement**

*a.* Title VII of the Civil Rights Act of 1964, as amended, expressly encourages the settlement of employment discrimination disputes without litigation. Complaints should be resolved at the earliest opportunity. Resolution can occur at any stage of the administrative process. Settlements, where appropriate, achieve better employee relations, reduce administrative waste, avoid protracted litigation, and are consistent with the Army's commitment to EEO. Settlement of complaints must be reached without the Army admitting fault, wrongdoing, or discrimination. When negotiating settlement, all of the complainant's existing workplace disputes should be considered without regard to the forum being used.

*b.* Unlike the Back Pay Act, Title VII does not require a finding of an unwarranted and unjustified personnel action to authorize the award of back pay. The connection between Title VII and the Back Pay Act arises only because EEOC has provided in its regulations on remedial actions that when discrimination is found, an award of back pay under Title VII is to be computed in the same manner as under the Back Pay Act regulations. This is significant in that there is no impediment to an award of back pay being included in a settlement even without a finding of discrimination.

*c.* Lump sum payments may be used to resolve complaints irrespective of the inclusion of a personnel action. In these cases, the parties can agree on an overall figure in the settlement that represents back pay, attorney's fees and costs, compensatory damages, and other monetary relief to which the complainant would be entitled if a finding of discrimination had been made.

*d.* Although Title VII provides authority to effectuate personnel actions to settle complaints, activities will exercise caution and avoid including provisions in the proposed agreements that may conflict with personnel practices and procedures contained in Title 5, USC and with the Office of Personnel Management regulations and guidance.

*e.* The relief provided by the Army to settle an EEO dispute cannot be greater than the relief a court could order if that particular dispute went to trial.

*f.* After acceptance of the formal complaint, the agency representative shall explore settlement. The agency representative, the EEO officer, and civilian personnel and management officials will consult with each other as equal members of the commander's settlement team. Any difference in professional judgment among them as to initiation, conduct, merit or any other issue of settlement will be resolved by their common superior, for example, the commander, deputy commander, or chief of staff.

*g.* The specific actions to be taken by the Army and the complainant constituting the terms for settlement and time frames for completion will be set forth in a NSA. (See figure 5-1.) The agency representative or EEO officer will prepare a draft of the NSA. If the NSA is prepared by the EEO officer, coordination with the agency representative and civilian personnel official (if a personnel matter is involved) is required before execution. The NSA will be signed by the complainant and the attorney, if complainant is represented by an attorney, and the activity commander, or designee. A copy of the NSA will be provided to the complainant and his or her attorney, if represented.

*h.* If the settlement is accomplished before the receipt of the investigative file, the activity EEO officer will send the original complete, tabbed complaint file to EEOCCR within 10 days after the NSA is signed by the respective parties.

*i.* If settlement has not occurred prior to the conclusion of the investigation, upon receipt of the investigative file, the EEO officer will encourage resolution, if appropriate, to the activity commander. However, settlement discussions may not postpone the 29 CFR Section 1614.108(f) requirements of notice and delivery of the complaint file to the complainant within 180 days of the date the complaint was filed.

*j.* If settlement occurs after the complainant's request for a hearing or final Army decision, the EEO officer will immediately fax a copy of the NSA to EEOCCR.

*k.* If complainant has elected a hearing, efforts to settle the complaint will be coordinated with the EEOC administrative judge. Negotiations to settle the complaint do not restrict the agency representative from making an Offer of Resolution.

*l.* Settlement of a claim under the ADEA must comply with the requirements of the Older Workers Benefit Protection Act. Any agreement that settles an EEO complaint having age as a basis will contain the following statement:

(1) By signing this agreement, the complainant understands that he or she is knowingly and voluntarily waiving rights and claims arising under the Age Discrimination in Employment Act as amended by the Older Workers Benefit Protection Act. The employee understands that he or she—

(a) Does not waive rights or claims that may arise after the effective date of this agreement;

(b) Waives rights or claims only in exchange for consideration in addition to anything of value to which the complainant is already entitled;

(c) Is advised to consult with an attorney prior to signing this agreement;

(d) Has a reasonable time in which to consider this agreement before signing it.

(2) Not used.

*m.* Settlement may include an award of compensatory damages, if appropriate, in accordance with the guidance outlined in paragraph 7–11. Rules governing settlements involving payment of compensatory damages are set forth in paragraph 7–11c.

*n.* Settlement may also include an award of reasonable attorney's fees and costs, if appropriate, in accordance with the guidance outlined in chapter 7, section II. If a complaint is settled and attorney's fees are not paid as part of the settlement, the agreement should contain an express waiver of attorney's fees.

*o.* The line of authority to settle EEO complaint involving a CPOC action is as follows:

(1) When an employee or applicant alleges discrimination that involves an action taken by CPOC personnel on behalf of a serviced commander/director, the authority to settle the matter rests with the serviced commander/director (not the CPOC director).

(2) A serviced commander/director may not offer or agree to a remedy which impacts on the CPOC's processing of other installations' or commands' actions except as reasonably necessary to implement specific relief to the individual complainant.

*p.* Settlement coordination involving EEO complaints pertaining to CPOC actions is as follows:

(1) The agency representative, the EEO officer, and the appropriate CPAC official will coordinate and consult with each other as equal members of the commander's/director's advisory team. If a personnel issue involves a matter within the CPOC's purview, the CPAC official should consult with the CPOC.

(2) If an installation or activity is considering entering into a settlement agreement, the terms of which require action by the CPOC, the proposed agreement must be coordinated with the CPOC. The same is true when the terms of a proposed agreement would not require action by the CPOC but would have the effect of changing or overruling a CPOC action. If the CPOC objects to a proposed remedy or term in the settlement agreement, and the commander/director cannot reach agreement with the CPOC on the proposed remedy or term of the agreement, the commander/director will decide the agency's position on the settlement proposal after consultation with the agency representative, EEO officer, and CPAC director. A serviced commander's/director's authority to settle an EEO complaint over the objections of the CPOC may be delegated no lower than the commander's/director's immediate subordinate who acts for the commander/director, such as the deputy commander/director or chief of staff.

(3) Under normal circumstances, installation/activity coordination of proposed settlement agreements with CPOCs should be accomplished by the local CPAC. When time is of the essence (for example proposed settlement reached during a hearing before an EEOC administrative judge or during an OCI investigation or during mediation), the EEO officer or the agency representative may directly contact the CPOC for coordination.

(4) To ensure that the terms of a settlement agreement are carried out and to facilitate any necessary arrangements with the CPOC, the activity should designate an official responsible for implementation. This may be the EEO officer, a CPAC official, or another management official, as appropriate.

(5) Processing costs and monetary remedies related to CPOC actions will be carried out in accordance with paragraph 7–1d.

*g.* It is the responsibility of the EEO officer to monitor implementation and ensure compliance with the terms of a NSA. Documents proving compliance should be maintained in the complaint file under the “Settlement” tab.

#### **5–14. Failure to carry out terms of the settlement**

*a.* Any settlement agreement knowingly and voluntarily agreed to by the respective parties, reached at any stage of the complaint process, shall be binding on both parties. If the complainant believes that the Army has failed to comply with the terms of the settlement agreement, the complainant will notify the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review), ATTN: SAMR–EO–CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202–4508, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point where processing ceased.

*b.* EEOCCR will provide a copy of the complainant’s allegation of noncompliance to the activity EEO officer. The EEO officer, in coordination with the agency representative, will submit a brief to EEOCCR within 7 days of receipt that supports its position on compliance and outlines actions taken by the activity to implement the terms of the NSA. Copies of supporting documentation will be attached to the brief.

*c.* Before the Army Director of EEO, or his or her designee responds to the complainant’s written allegation of noncompliance, EEOCCR may request that either party submit whatever additional information or documentation it may deem necessary. If, without adequate explanation, the request for information or documentation is not answered in a timely fashion, the Deputy for EEOCCR may—

(1) Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information.

(2) Take such other action, as it deems appropriate.

*d.* The Army Director of EEO, or designee, will respond to complainant’s written allegations of noncompliance within 30 days of the date the allegations of noncompliance are received. If the Army Director of EEO, or designee, has not responded to the complainant in writing or, if the complainant is not satisfied with the attempts to resolve the matter, the complainant may appeal to EEOC OFO for a determination whether the Army has complied with the terms of the settlement agreement. The complainant may file such an appeal 35 days after he or she served the agency with the allegation of noncompliance, but no later than 30 days after receipt of the agency’s decision. Complainant must provide a copy of the appeal and any statement in support of the appeal to EEOCCR at the same time it is filed with EEOC OFO.

*e.* Prior to rendering its determination, the EEOC may request that the parties submit whatever additional information or documentation it may deem necessary or it may direct that an investigation or hearing on the matter be conducted.

*f.* Allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints, rather than as a noncompliance matter.

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**NEGOTIATED SETTLEMENT AGREEMENT IN THE PRECOMPLAINT(S) OF  
Or  
NEGOTIATED SETTLEMENT AGREEMENT IN THE FORMAL COMPLAINT(S) OF**

(First, middle initial, last name of complainant)

Complainant

v.

(insert name), Secretary of the Army  
(insert name of activity)  
(insert address of activity)

Activity

1. In the interest of promoting the principles of the Equal Employment Opportunity (EEO) Program, the Parties agree to settle the following complaint(s) on the terms shown in paragraphs 3 and 4 below.

DA Docket Number(s) \_\_\_\_\_ (Docket Number) \_\_\_\_\_  
\_\_\_\_\_ (Docket Number) \_\_\_\_\_  
\_\_\_\_\_ (Docket Number) \_\_\_\_\_

2. By entering into this settlement, the Army does not admit that the Army, any Army official or employee has violated Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, the Age Discrimination in Employment Act, as amended, the Equal Pay Act or any other Federal or State statute or regulation.

3. The Army agrees to:

[Stipulate remedy to be provided in clear and concise detail and specify time frames for completion, if appropriate.]

4. The complainant agrees to:

[Stipulate terms clearly and concisely and specify time frames for completion, if appropriate.]

5. Complainant's signature on this agreement constitutes a full and complete settlement of any and all issues and claims arising from the circumstances of the aforementioned EEO complaint(s). This includes, but is not limited to, attorney's fees and costs arising from or related to the aforementioned complaint(s). No other

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**Figure 5-1. Sample Negotiated Settlement Agreement Pre/Formal Complaint(s)**

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agreements shall be binding unless signed by all parties. In addition, the complainant agrees to waive his/her right to pursue administrative or judicial action in any forum concerning the matters raised in this complaint and that they will not be made the subject of future litigation.

6. If the complainant believes that the Army has failed to comply with the terms of this settlement agreement, the complainant shall notify the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review (EEOCCR)), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, Virginia 22202-4508, in writing, of the alleged noncompliance within 30 calendar days of when the complainant knew or should have known of the alleged noncompliance. A copy should also be sent to the activity EEO Officer. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, the complaint be reinstated for further processing from the point processing ceased. If the Deputy for CCR has not responded to the complainant in writing or if the complainant is not satisfied with the attempts to resolve the matter, the complainant may appeal to the Equal Employment Opportunity Commission (EEOC), Office of Federal Operations, P.O. Box 19848, Washington, DC 20036 for a determination as to whether the Army has complied with the terms of this settlement agreement. The complainant may file such an appeal to the EEOC 35 calendar days after service of the allegation of noncompliance upon EEOCCR but no later than 30 calendar days after receipt of the Army determination.

7. The terms of this settlement will not establish any precedent nor will the settlement be used as a basis by the complainant or any representative organization as justification for similar terms in any subsequent case.

8. I have read the negotiated settlement agreement and agree to accept its provisions.

\_\_\_\_\_  
(Signature)  
Complainant

\_\_\_\_\_  
For the Army

\_\_\_\_\_  
(Date)  
Date signed by complainant

\_\_\_\_\_  
(Title)  
Title of Army official

\_\_\_\_\_  
(Date)  
Date signed by Army official

\_\_\_\_\_  
(Signature)  
Complainant's Representative

\_\_\_\_\_  
(Signature)  
Agency Representative

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Figure 5-1. Sample Negotiated Settlement Agreement Pre/Formal Complaint(s)—continued

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- b. Complainant is aware that she/he is not waiving any rights or claims that may arise after the date this Agreement is executed;
  - c. This Agreement is clearly written in a manner calculated to be understood by the Complainant and that she/he has, in fact, read and understood it;
  - d. The settlement terms provide valuable consideration to the complainant in addition to anything of value to which she/he already is entitled;
  - e. The Complainant was given a reasonable period of time within which to consider this Agreement before signing it;
  - f. The Complainant was advised to consult with his/her attorney before executing this Agreement.
8. Attorney's fees and costs are not payable in age discrimination (ADEA) or equal pay (EPA) complaints.
  9. Implementation of the NSA is the responsibility of management. To ensure compliance with the terms of the NSA, the activity will designate an official to be responsible for implementation of the NSA. The official may be the EEO officer, the appropriate civilian personnel official, or another management official, as appropriate.
  10. Monitoring compliance with the NSA is the responsibility of the EEO officer.
  11. If possible, settle all workplace disputes raised by the complainant including MSPB appeals, grievances, and Office of Special Council complaints.
  12. Agency advisors and representatives do not have settlement authority without prior delegation by an appropriate management official.

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Figure 5–1. Sample Negotiated Settlement Agreement Pre/Formal Complaint(s)—continued

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## **Chapter 6**

### **Class Complaints of Discrimination**

#### **6–1. Introduction**

- a. A class is a group of employees, former employees or applicants for employment who, it is alleged, have been or are being adversely affected by an agency personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age or handicap.
- b. A class complaint is a written complaint of discrimination filed on behalf of the class by an agent of the class, alleging that the class is so numerous that a consolidated complaint by the members of the class is impractical; that there are questions of fact common to the class; that the claims of the agent of the class are typical of the claims of the class; and that the agent of the class or, if represented, the representative, will fairly and adequately protect the interests of the class.
- c. A class complaint must be processed promptly. All parties must proceed with the complaint so that the complaint is processed without undue delay.

#### **6–2. Precomplaint processing**

- a. An employee, former employee or applicant for employment who meets the criteria for, and seeks to file a class complaint must first undergo precomplaint processing in accordance with chapter 3, including counseling by the activity's EEO official or counselor designated for class complaints.
  - (1) A complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in the individual complaint.
  - (2) If a complainant moves for class certification after completing counseling in accordance with the precomplaint procedures in chapter 3, no additional counseling is required.

*b.* Contact with the EEO counselor must be made within the following time frame:

(1) Within 45 days of the date of the matter giving rise to the allegation of discrimination or, in the case of a personnel action, within 45 days of the effective date of the action.

(2) The 45-day time limit for a prospective class agent to seek counseling from an EEO counselor may be extended in accordance with the provisions outlined in paragraph 3–4b.

*c.* The EEO counselor shall advise the prospective class agent orally and in writing of the following:

(1) The rights and responsibilities of a class agent. (See paragraph 3–6e.)

(2) The regulatory requirements for class complaint procedures.

(3) The class agent is required to seek counseling on the issue of concern.

(4) An EEOC administrative judge will determine whether to certify the complaint as a class action discrimination complaint.

(5) If the complaint is certified as a class action, an administrative judge will make recommendations and findings on the merits of the complaint.

(6) Where there has been a finding of class-based discrimination, the claims for relief of the individual class members will be determined.

(7) The criteria for the dismissal of class complaints.

(8) The class agent’s right to be represented throughout the precomplaint and formal complaint process. The designation of the representative must be made in writing and made part of the class complaint file.

(9) Only those matters raised in precomplaint counseling or like or related claims, may be alleged in a subsequent complaint filed with the agency.

(10) The duty to keep the agency and the EEOC informed of their current address and to serve copies of appeal papers on the agency.

(11) The duty to mitigate damages.

(12) Administrative and court time frames.

(13) The class agent’s right to anonymity during the precomplaint process unless disclosure is authorized or a formal complaint is filed.

(14) Should the agent file a civil action in U.S. District Court based on the same allegation of discrimination after 180 days from the date of filing of the class complaint, if no appeal has been filed and a final decision has not been issued, the complaint will be dismissed.

*d.* The EEO counselor will—

(1) Clarify and define the claims raised by the class agent.

(2) Attempt to facilitate resolution through discussions with appropriate officials of the responsible activity.

(3) Keep records of all counseling activities by summarizing the actions and advice given, if any, concerning the claims.

(4) Conduct the final interview and terminate counseling with the prospective class agent not later than 30 days after the date on which the allegation was first brought to the counselor’s attention, unless the prospective class agent agrees to an extension of an additional period of no more than 60 days in accordance with paragraph 3–9a. This interview will take place whether or not the matter has been resolved. At the final interview the counselor will inform the prospective class agent in writing that—

(a) The class agent has the right to file a formal class complaint of discrimination within 15 days of receipt of the notice of right to file a class complaint. The notice must identify the appropriate agency official with whom to file a complaint.

(b) The prospective class agent must immediately inform the EEO officer if he or she obtains legal or other representation.

(c) A formal complaint must specifically describe the acts of alleged discrimination.

(d) Only matters discussed with the EEO counselor will be considered in a formal complaint.

*1.* The EEO counselor will submit a counselor’s report to the activity EEO officer not later than 5 days after the final interview. The EEO counselor must avoid influencing the prospective class agent in any way regarding filing or not filing a class complaint.

*2.* The EEO officer will forward a copy of the EEO Counselor’s Report to the class agent within 5 days after receipt from the EEO counselor in accordance with the service rules in paragraph 1–25.

### **6–3. Filing a formal class complaint**

*a.* The complaint must be filed in writing and signed by the class agent or a representative.

*b.* The complaint must identify specifically the policy or practice that adversely affected the class, as well as the specific action or matter affecting the class agent.

*c.* The complaint must be filed no later than 15 days after the class agent received the notice of right to file a formal complaint of discrimination. For that purpose, the complaint will be deemed timely if it is delivered in person, via facsimile, commercial overnight delivery, or postmarked before the expiration of the 15-day filing period, or if there is

no legible postmark, it is received by mail within 5 days from the expiration of the 15-day filing period. If commercial overnight delivery is used, the date of filing is the date it is delivered to the commercial overnight delivery service.

(1) Persons to whom class complaints may be submitted are as follows:

- (a) Activity EEO officer.
- (b) Activity commander.
- (c) Army Director of EEO.
- (d) Secretary of the Army.

(2) The EEO counselor will request that the class agent submit a copy of the class complaint to the responsible activity EEO officer in every case. Any official listed above will immediately transmit the complaint, including the envelope if the complaint was mailed, by the fastest means possible to the responsible activity EEO officer, indicating the date the complaint was received if it was not postmarked.

d. At all stages in the preparation and presentation of a complaint, including counseling, the class agent will have the right to be represented, accompanied, and advised by a representative of his or her own choosing, provided the choice does not involve a conflict of interest or position. (See paragraphs 8-4 and 8-5.) The designation of the representative must be made in writing and be made a part of the class complaint file.

e. If the Army employs the class agent, he or she will have a reasonable amount of official time, if otherwise on duty, to prepare his or her complaint and to respond to the agency and EEOC requests for information. If the agent is an Army employee and designates another Army employee as his or her representative, the representative will have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to the agency and EEOC requests for information.

(1) The activity is not obliged to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the agent and the representative to confer. However, the complainant and representative, if employed by the Army and otherwise in a pay status, will be on official time, regardless of their tour of duty, when their presence is authorized or required by the Army or EEOC during the investigation, informal adjustment, or hearing on the complaint.

(2) Army employees who represent non-Army employees in a complaint may be granted, at their request, a reasonable amount of annual leave or leave without pay for this purpose.

#### **6-4. Processing a class complaint**

a. Upon receipt of the class complaint, the EEO officer will immediately send a copy of the complaint and DA Form 7510 (with enclosures) annotated with the DA docket number via fax to EEOCCR and the designated agency representative.

(1) The appropriate complaint caption will be placed on all documents and correspondence relating to the complaint. All complaints will be captioned so as to identify the class agent *et al* versus (v.) the name of the head of the Department of the Army, his or her official title, and the DA docket number. (See captions on sample notices at end of chapter 3.)

(2) Upon receipt of a class complaint, the activity commander will designate a labor counselor to serve as the Army representative.

b. The EEO officer will coordinate the collection of relevant information with the agency representative and the servicing CPAC.

c. Within 30 days of receipt of the class complaint, including receipt of a class complaint during the investigative stage of the complainant's individual complaint, the EEO officer will forward the class complaint to the EEOC district office having geographic jurisdiction.

d. The EEO officer must forward the following items to the EEOC:

- (1) The class complaint.
- (2) A copy of the EEO Counselor's Report.
- (3) Any other information that may help the administrative judge determine whether the complaint should be certified as a class complaint or dismissed.
- (4) A brief prepared by the agency representative regarding the acceptability of the class status of the complaint.
- (5) The name, address, telephone number, facsimile number and electronic mail address of the agency representative.

(6) Written notification that the administrative judge sent the recommended decision to accept or dismiss the class complaint directly to the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202-4508.

(a) If the class complaint proceeds to a hearing, the class representative may present the individual claim at the liability stage of the process, or

(b) It may be presented at the remedy stage by the complainant.

## **6-5. Certification or dismissal**

*a.* Upon receipt of a class complaint by the EEOC, an administrative judge will be assigned to issue a decision on certification of the complaint.

*b.* A class complaint will be dismissed by the administrative judge if—

(1) The complaint does not meet *all* of the prerequisites of a class complaint under 29 CFR Section 1614.204(a)(2), that is, numerosity, commonality, typicality, and adequacy of representation.

(2) The allegations lack specificity and detail pursuant to 29 CFR, Section 1614.204(d)(4).

(3) The complaint meets any of the criteria for dismissal pursuant to 29 CFR, Section 1614.107(a).

(4) The complainant unduly delayed in moving for class certification. (See 29 CFR, Section 1614.204(b).)

*c.* The administrative judge may direct the complainant or the activity to submit additional information relevant to the issue of certification. The agency representative will coordinate with the EEO Officer and civilian personnel offices prior to submission of any additional information requested by the EEOC administrative judge.

*d.* If an allegation is not included in the EEO Counselor's Report, the administrative judge will allow the class agent 15 days to state whether it was discussed with the counselor and, if not, the reason it was not discussed. If the explanation is not satisfactory, the administrative judge shall dismiss the allegation. If the explanation is satisfactory, the administrative judge will refer the allegation to the agency for further counseling. After counseling, the allegation will be consolidated with the class complaint.

*e.* If an allegation is not specific and lacks detail, the administrative judge will allow the agent 15 days to provide specific and detailed information. If the agent does not provide the required information within that time, the administrative judge shall dismiss the allegation. If the information provided raises new allegations outside the scope of the complaint, the administrative judge shall advise the agent on how to file an individual or class complaint based on the newly raised allegations.

*f.* The administrative judge shall extend the time limits for filing a complaint and for consulting with an EEO counselor in accordance with the extension provisions outlined in paragraph 3-4b.

*g.* When appropriate, the administrative judge may decide that a class be divided into subclasses and that each subclass be treated as a class.

*h.* The administrative judge's written decision to certify or dismiss a class complaint is sent to the Deputy for EEOCCR. The administrative judge will send notification of the transmittal to the class agent. If the administrative judge sends the original decision and any records or attachments to the activity rather than to the Deputy for EEOCCR, the EEO officer will immediately notify EEOCCR and fax the decision to EEOCCR at (703) 602-8391. The original decision, including any records or documents attached thereto, will be sent by certified mail, return receipt requested, or express delivery to the EEO/Civil Rights Office (Deputy for EEOCCR), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202-4508.

## **6-6. Final Army action on certification or dismissal decision**

A final Army action to either fully implement or appeal the administrative judge's decision concerning class certification will be issued by the Army Director of EEO, or designee, within 40 days after the receipt of the decision of an EEOC administrative judge. An administrative judge's decision will become final and binding on the Army if the Army has not issued a final action concerning the administrative judge's decision within 40 days of receipt.

*a.* When the final Army action is to fully implement the administrative judge's decision not to certify the class and dismiss the class complaint, the Army Director of EEO or designee will advise the class agent and representative in writing of the decision to fully implement the administrative judge's decision.

*b.* The final Army action will be served on the class agent and representative in accordance with the service rules set forth in paragraph 1-25. A copy of the final Army action will be furnished to the administrative judge, serviced MACOM, agency representative, and the activity EEO officer. Certification as to the date and method by which service was made on a complainant and representative will be included or attached to the copy of the final Army action provided to the administrative judge.

*c.* The final Army action implementing the administrative judge's decision to dismiss the class complaint must inform the class agent and representative of the following:

(1) The complaint is accepted on that date as an individual complaint of discrimination and will be processed under the provisions of this regulation applicable to individual complaints, or

(2) The complaint is also dismissed as an individual complaint, or

(3) In the case of a complaint forwarded to the administrative judge during the investigation of the complaint, that the complaint is being returned to point processing ceased prior to referral of the complaint to the EEOC.

(4) The right to appeal the final Army action implementing the administrative judge's dismissal decision of the class complaint to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, PO Box 19848, Washington, DC 20036, within 30 days of receipt of the final Army action. The agent, or individual class claimant, will be encouraged to use EEOC Form 573, Notice of Appeal/Petition, if an appeal is filed. A copy of the EEOC Form 573 will be attached to the final Army action.

(5) The right to file a civil action in Federal district court.

*d.* When the administrative judge certifies a class complaint, EEOCCR will fax a copy of the administrative judge's decision to the activity EEO Officer, the agency representative and DAJA-LE upon receipt.

*e.* If the final Army action is to appeal the administrative judge's decision to certify the class, EEOCCR will advise the class agent and representative, in writing, of the decision not to fully implement the decision of the administrative judge.

(1) The final Army action will be served on the class agent and representative in accordance with the service rules set forth in paragraph 1-25. A copy of the final Army action will be furnished to the administrative judge, serviced MACOM EEO officer, agency representative, and the activity EEO officer. Certification as to the date and method by which service was made on complainant and representative will be included or attached to the copy of the final Army action provided to the administrative judge.

(2) EEOCCR will simultaneously file a notice of appeal to the EEOC OFO within 40 days of receipt of the administrative judge's decision.

(3) After coordination with the activity agency representative, EEOCCR will file an appeal brief citing the specific reasons for not fully implementing the decision to the EEOC OFO, within 20 days of filing the notice of appeal. A copy of the appeal brief will be served on the class agent and representative in accordance with the service rules set forth in paragraph 1-25. Certification as to the date and method by which service was made on the class agent and representative will be included or attached to the appeal brief filed with the EEO.

(4) EEOCCR will coordinate with the agency representative in the filing of a motion with the administrative judge seeking a stay in the distribution notice to all members of the class.

*f.* Within 10 days of receipt of the final Army action certifying a class complaint, the EEO officer will use reasonable means, such as delivery, mailing to last known address, or distribution, to notify each class member of the existence of the class complaint. A copy of the administrative judge's decision and the final Army action will be provided to each class member. Conspicuous posting of the administrative judge's decision on bulletin boards to which all potential class members have easy access may constitute adequate notice in some situations.

*g.* The notice will contain the following information:

(1) The name of the agency or organizational segment, its location, and the date of acceptance of the class complaint.

(2) The definition of the class and a description of the issues accepted in the class complaint.

(3) An explanation of the binding nature of the final decision or resolution of the complaint on class members.

(4) The name, address and telephone number of the class representative.

*h.* Acceptance or certification of a class complaint by the Army Director of EEO, or designee, for purposes of administrative processing under this regulation is not an admission of class status within the meaning of Rule 23 of the Federal Rules of Civil Procedure for purposes of litigation within a U.S. District Court.

## **6-7. Individual complaints filed on bases and claims identical to class complaints**

*a.* An individual complaint that is filed before or after the class complaint is filed and that comes within the definition of the class claim will not be dismissed but will be subsumed within the class complaint.

*b.* If a class complaint is dismissed at the certification stage, the individual complaint may still proceed, unless another basis for dismissal of the individual complaint applies. The class members may not proceed unless they filed timely individual complaints.

(1) The decision of the administrative judge will inform the class agent that the complaint is being filed on that date as an individual complaint and will be processed or that the individual complaint is dismissed in accordance with 29 CFR Section 1614.107(a) or, in the case of a complaint forwarded to the administrative judge during the investigative stage, that the complaint is returned and will continue from the point processing ceased by the agency.

(2) In the final Army action, EEOCCR will specify whether the individual complaint will be processed from the point processing ceased or is dismissed pursuant to 29 CFR Section 1614.107(a).

(3) If the final Army action dismisses a class complaint and accepts the individual complaint for processing, the EEO officer will provide the complainant with written acknowledgment of receipt of the individual complaint within 3 days of receipt of the final Army action. (See paragraph 4-2.) The EEO officer will also process each individual complaint that was subsumed within the class complaint in accordance with policies and procedures set forth in chapter 4.

*c.* If the class complaint proceeds to a hearing, the class representative may present the individual claim at the liability stage of the process, or it may be presented at the remedy stage by the complainant.

## **6-8. Developing evidence**

*a.* The administrative judge will notify the agency representative and the class agent and representative of the time period that will be allowed both parties to prepare their cases. The period will allow at least 60 days and may be extended by the administrative judge upon the request of either party.

*b.* Both parties are entitled to reasonable development of the evidence on matters relevant to the claims raised in the

complaint. Evidence may be developed through interrogatories, depositions, requests for admissions, stipulations, or requests for the production of documents. It will be grounds for objection to producing evidence that the information sought by either party is irrelevant, overly burdensome, repetitious, or privileged.

*c.* If mutual cooperation fails, either party may request the administrative judge to rule on a request to develop evidence. If a party fails without good cause shown to respond fully and in a timely fashion to a request made or approved by the administrative judge for documents, records, comparative data, statistics or affidavits, and the information is solely in the control of one party, such failure may, in appropriate circumstances, cause the administrative judge—

(1) To draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) To consider the matters to which the requested information pertains to be established in favor of the opposing party;

(3) To exclude other evidence offered by the party failing to produce the requested information;

(4) To recommend that a decision be entered in favor of the opposing party; or

(5) To take such other actions as the administrative judge deems appropriate.

*d.* During the period for development of evidence, the administrative judge may, at his or her discretion, direct that an investigation of facts relevant to the complaint or any portion be conducted by an agency certified by the Commission.

*e.* Both parties shall furnish copies of all materials they wish to be examined, and such other material as may be requested, to the administrative judge.

### **6–9. Resolution of the complaint**

*a.* The administrative judge will provide the class agent or representative, and the agency representative a copy of all materials obtained concerning the complaint and provide an opportunity for the agent or attorney to discuss these materials with the agency representative to try to resolve the complaint.

*b.* Though an opportunity to settle the complaint is specifically provided at this stage, both parties may agree to settle the complaint at any time pursuant to the notice and approval procedure contained in paragraph d below.

*c.* If the complaint is settled, the agency representative will prepare the terms of the settlement and have the agreement signed by the class agent, the class representative, and the activity commander, or designee, after coordination with the EEO officer and the civilian personnel official. It must include any corrective action agreed upon. The corrective action must be consistent with the law, executive orders, collective bargaining agreements, and Federal regulations, rules, and instructions. A copy of the signed NSA will be given to the class agent and representative, if applicable, and the administrative judge.

*d.* Within 10 days of resolution, the EEO officer will notify all members of the class of the resolution by the same means used to notify the class of the certification of the class complaint. In addition, the EEO officer will provide a copy of the notice of resolution to the administrative judge.

*e.* The notice of resolution will state the relief, if any, to be granted by the Army and the name and address of the administrative judge assigned to the case. The notice will advise the class members that within 30 days from the date of the notice of resolution, any member of the class may petition the administrative judge to vacate the resolution because it benefits only the class agent, or is otherwise not fair, adequate, and reasonable to the class as a whole.

*f.* The administrative judge will review the notice of resolution and consider any petitions to vacate received.

(1) If the administrative judge finds that the proposed resolution is not fair, adequate, and reasonable to the class as a whole, he or she shall issue a decision vacating the agreement and may replace the original class agent with a petitioner or some other class member who is eligible to be the class agent during further processing of the class complaint. The decision will inform the former class agent or the petitioner of the right to appeal the decision to the EEOC and include EEOC Form 573.

(2) If the administrative judge finds that the resolution is fair, adequate and reasonable to the class as a whole, the resolution shall bind all members of the class.

### **6–10. Procedures for the hearing**

At the end of the period allowed to prepare the case, the administrative judge will set a date and place for a hearing. The hearing will be conducted in accordance with paragraph 4–22.

### **6–11. Report of administrative judge's findings and recommendations**

*a.* The administrative judge shall transmit to the agency a report of findings and recommendations on the complaint, including a recommended decision, systemic relief for the class and any individual relief, where appropriate, with regard to the personnel action or matter that gave rise to the complaint.

*b.* If the administrative judge finds no class relief appropriate, he or she will determine if a finding of individual discrimination is warranted and, if so, shall recommend appropriate relief.

c. The administrative judge shall notify the agent of the date on which the report of findings and recommendations was forwarded to the agency.

#### **6-12. Final Army decision**

a. Within 60 days after the Army receives the administrative judge's report of findings and recommendations, the Army Director of EEO, or designee, must issue a written decision to accept, reject, or modify the findings and recommendations.

b. If the Army has not issued a decision within 60 days after receiving the administrative judge's report, the administrative judge's findings and recommendations will become the final Army decision.

c. If the final Army decision is to reject or modify the findings and recommendations of the administrative judge, the decision must state, in detail, the specific reasons for the Army decision.

d. The decision will be sent to the class agent and representative in accordance with the service rules set forth in paragraph 1-25. A copy of the final Army decision will be sent to the serviced MACOM EEO officer, the agency representative, and to the activity EEO officer.

e. The final decision must inform the class agent of the right to appeal to EEOC OFO, or file a civil action, and the applicable time limits. (See paragraph 5-5.) Within 10 days after the final Army decision is transmitted to the class agent and representative, the EEO officer will notify all members of the class of the final Army decision by the same means used to notify the class of the existence of the class complaint. Where appropriate, the notice will include information concerning the rights of class members to seek individual relief and the procedures to be followed.

f. A final Army action/decision on a class complaint shall be binding on the Army and all members of the class subject to chapter 5 of this regulation.

g. The final Army decision will direct any remedial action authorized by law and determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal employment opportunity. (See chapter 7.) When discrimination is found, the notice of decision will—

(1) Advise the class agent and representative, if represented by an attorney, that attorney fees or costs may be awarded. Attorney fees or costs are not payable in administrative complaints filed under the ADEA or the EPA.

(2) State that a request for such award must be filed within 30 days after receipt of the final decision.

(3) List the documents that must be sent with the request.

#### **6-13. Appeals of class complaints**

a. The agent or attorney representative in a class complaint may appeal the final Army decision to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, PO Box 19848, Washington, DC 20036—

(1) To dismiss the complaint in whole under the provisions of paragraph 6-5b;

(2) On the merits of the complaint;

(3) On the issue of attorney's fees and costs and corrective action;

(4) On a petition by a class member to vacate an NSA; or

(5) On alleged noncompliance with an NSA.

b. A claimant in a class complaint may appeal the Army decision to the EEOC—

(1) To dismiss a claim for individual relief.

(2) On the merits of a claim for individual relief.

(3) On a petition by a class member to vacate an NSA.

(4) On alleged noncompliance with an NSA.

c. In the case of class complaints, the Army's final agency action/decision, which is served on an agent, petitioner or an individual claimant, may be appealed to the EEOC OFO within 30 days of its receipt. (See paragraph 5-5b.)

d. For an agency's response to appeal, see paragraph 5-5c.

#### **6-14. Relief for individual class members**

a. When no discrimination is found, the activity shall, within 60 days of the issuance of the Army's final decision, issue the acknowledgement of receipt of an individual complaint and process each individual complaint that was subsumed into the class complaint.

b. If discrimination against a class is found, there is a presumption of discrimination as to each member of the class. The Army has the burden of proving by clear and convincing evidence that a class member is not entitled to relief.

c. If discrimination is found and a class member believes that he or she is entitled to individual relief, the class member may file a written claim within 30 days of receipt of the final Army action/decision with the Army Director of EEO or the Secretary of the Army. The claim must include specific details showing that the claimant is a class member who was affected by a discriminatory policy or practice and that this discriminatory action took place within the period of time for which the agency found class-wide discrimination in its final decision. The agency or Commission may order remedial action for any policy or practice in existence within 45 days of the agent's initial contact with the counselor.

*d.* The administrative judge shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members. The administrative judge may hold a hearing or otherwise supplement the record on a claim filed by a class member.

*e.* The Army will issue a final agency decision on each claim within 90 days of filing. The final agency decision will be transmitted in accordance with the service rules set forth in paragraph 1–25 and will include a notice of the right to file an appeal or file a civil action in accordance with chapter 5 of this regulation. A copy of the final Army decision will be sent to the serviced MACOM EEO officer, the agency representative, and the activity EEO officer. Certification as to the date and method by which service was made on complainant and designated representative will be included or attached to the copy of the final Army decision provided to the administrative judge.

#### **6–15. Corrective action**

*a.* If discrimination is found, the Army must eliminate or change the personnel policy or practice that gave rise to the complaint, so that the policy or practice will no longer cause such discrimination. The Army must comply with the requirements of the Federal Service Labor-Management Relations Statute in making any such change. Also, the Army must provide individual remedial action to the class agent, including an award of attorney fees or costs, as appropriate, as provided in chapter 7.

*b.* If corrective action is ordered, the EEO officer will follow the procedures outlined in paragraph 5–10.

#### **6–16. The complaint file**

The complaint file will be assembled in a suitable, heavy-duty cover or binder and will be tabbed on the right side and punched with a standard three-hole punch on the left side. The file will be tabbed in reverse chronological order using phased tabbing and will contain legible copies of the documents. (See paragraph 8–10.)

## **Chapter 7**

### **Remedial and Corrective Actions, Attorney’s Fees/Costs, and Compensatory Damages**

#### **Section I**

#### **Remedial Actions after a Finding of Discrimination, Interim Relief, and Corrective Actions**

##### **7–1. Remedial actions**

*a.* Upon a finding of discrimination or reprisal in individual cases of discrimination, a complainant is entitled to remedial action unless the evidence of record establishes by clear and convincing evidence that the action complained of would have occurred even absent the identified discrimination. Remedial action is to place the complainant in the situation he or she would have been if there had been no discrimination. Relief ordered by the commission or Army is mandatory and binding. Failure to fully implement ordered relief could result in EEOC enforcement.

*b.* Remedial action may include—

(1) Notification to all employees in the affected facility of their right to be free of unlawful discrimination or reprisal, and assurance that the particular types of discrimination found will not recur.

(2) Commitment that the Army will cease from engaging in the specific unlawful employment practice found in the case and that corrective, curative, or preventive action will be taken, or measures adopted, to ensure that similar violations of the law will not recur.

(3) An unconditional offer of nondiscriminatory placement in the position at issue or a substantially equivalent position, unless clear and convincing evidence contained in the record demonstrates that nonselection would have occurred even absent the discrimination. (See paragraph 7–2.)

(4) Payment of back pay, computed in the same manner prescribed by 5 CFR Section 550.805, for any loss of earnings the person may have suffered as a result of the discrimination. (The back pay liability under Title VII or the Rehabilitation Act is limited to two years prior to the date the discrimination complaint was filed.)

(5) Interest on back pay, with the exception of Federal employees or applicants who prevail on employment discrimination claims brought under the Age Discrimination in Employment Act or the Equal Pay Act.

(6) Cancellation of an unwarranted personnel action and restoration of the employee.

(7) Elimination of any adverse materials relating to the discriminatory employment practice from agency records.

(8) Full opportunity to participate in the employee benefit denied (for example, training, preferential work assignments, or overtime scheduling).

(9) Attorney’s fees, costs and compensatory damages, if applicable.

(10) If the record contains clear and convincing evidence that, although discrimination existed at the time the personnel action was taken, the personnel action would have been taken even absent discrimination, the Army will nevertheless eliminate any discriminatory practice and ensure that it does not recur.

*c.* The Army may also settle complaints and award back pay and other remedial relief, including attorney’s fees,

costs, and compensatory damages, without a finding or admission of discrimination. The agreed upon relief cannot exceed that which could be awarded if discrimination is proven.

*d.* When a CPOC is acting for a serviced commander/director and an employee or applicant alleges discrimination that involves an action taken by the CPOC, the installation or activity that requested the personnel action is responsible for complaint processing costs as well as the payment of any monetary remedy, including attorney's fees, costs, and compensatory damages, agreed to by settlement or awarded in a decision by an appropriate authority.

*e.* The EEO officer will monitor and ensure timely implementation of the remedies and relief ordered by the Army Director of EEO or designee, administrative judge or EEOC in accordance with paragraph 5–10.

## **7–2. Remedial action involving an applicant for employment or nonselection**

*a.* Upon a finding that discrimination was the basis for nonselection to the position at issue, or that discrimination existed at the time the applicant was considered for employment, the Army shall offer the applicant the position that he or she would have occupied absent the discrimination, or if justified by the circumstances, a substantially equivalent position unless clear and convincing evidence indicates that the applicant would not have been selected even absent the discrimination.

(1) In appropriate circumstances, placement of the complainant may entail displacing an incumbent. If such displacement occurs, the incumbent will be placed in another position without a loss of grade or pay.

(2) If no position is available for the complainant through displacement or otherwise, the agency will make complainant whole until placement can be accomplished.

(3) If clear and convincing evidence indicates that the applicant would not have been selected even absent the discrimination, the Army, nevertheless, shall take all steps necessary to eliminate the discriminatory practice and ensure it does not recur.

*b.* Any offer of employment or placement in the position at issue in the complaint or to a substantially equivalent position will be made to the complainant in writing. The offer will be served on the complainant and representative in accordance with the service rules set forth in paragraph 1–25.

*c.* The complainant will have 15 days from receipt of the offer to accept or decline the offer. Failure to notify the Army of his or her decision within the 15-day period will be considered a declination of the offer, unless the complainant can show that circumstances beyond his or her control prevented him or her from responding within the time limit.

*d.* If the offer of employment or nondiscriminatory placement is accepted, the appointment shall be retroactive to the date the applicant would have been hired, reassigned, or promoted.

(1) Back pay computed in the same manner prescribed by 5 CFR, Section 550.805 shall be awarded from the date the complainant would have entered on duty until the date the complainant actually enters on duty.

(2) Interest on back pay will be included in the back pay computation in complaints in accordance with applicable case law.

(3) The complainant shall be deemed to have performed service for the Army during this period of retroactivity for all purposes except for meeting service requirements for completion of a required probationary or trial period.

*(a)* If the offer of employment or placement is declined, the Army shall award a sum equal to the back pay the complainant would have received from the date he or she would have been appointed or selected to the date the offer was declined. The award will be computed in the manner prescribed by 5 CFR, Section 550.805 to include interest, when applicable, and offset for wages earned. The Army shall inform the applicant, in its offer of employment, of his or her right to this award in the event the offer is declined.

*(b)* The complainant may also be entitled to reasonable attorney's fees or costs and compensatory damages, if applicable, in accordance with paragraphs 7–6 through 7–10.

## **7–3. Interim relief**

*a.* When the Army appeals the decision of an administrative judge who orders retroactive restoration in cases involving removal, separation, or suspension continuing beyond the date of appeal, the activity will comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified in the administrative judge's decision pending outcome of the appeal. The complainant may decline the interim relief.

(1) If EEOC OFO upholds the administrative judge's decision on appeal, any service under the temporary or conditional restoration provision will be credited toward completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure.

(2) If EEOC OFO reverses the decision of the administrative judge on appeal, such service will not be credited toward the completion of any applicable probationary or trial period or the completion of the service requirement for career tenure.

*b.* The final Army action will advise the complainant that a grant of interim relief does not insulate him or her from subsequent disciplinary action or adverse action.

*c.* If it is determined that the complainant's return to his or her place of employment would be unduly disruptive to

the work environment, the final Army action will advise the complainant that he or she is not being returned to duty but that prospective pay and benefits will be paid. The final Army action will also advise the complainant that the determination not to return him or her to duty is not reviewable.

d. When the final Army action is to appeal the decision of the administrative judge and the ordered remedy involves payment of money, the final Army action will advise complainant whether the relief provided is temporary or conditional, and whether payment of any ordered amount, other than prospective pay and benefits, will be delayed pending resolution of the appeal. Failure to provide notification may result in the dismissal of the Army's appeal by the EEOC OFO.

(1) If payment of an ordered amount is delayed pending resolution of the appeal, the complainant will be advised that interest will be paid from the date of the original decision to the date payment is made if the administrative judge's decision is upheld on appeal.

(2) The final Army action will be served on the complainant and designated representative in accordance with the service rules set forth in paragraph 1-25. A copy of the final Army action will be furnished to the administrative judge, serviced MACOM EEO officer, agency representative, and the activity EEO officer. Certification as to the date and method by which service was made on complainant and designated representative will be included or attached to the notice of appeal, including a copy of the final Army action, filed with the EEOC.

#### **7-4. Remedial action pending reconsideration decision by EEOC**

a. Corrective action ordered by the EEOC OFO is mandatory and binding on the Army unless a timely request for reconsideration has been submitted to EEOC or the EEOC reconsiders the case on its own motion. Failure to implement ordered relief shall be subject to enforcement.

b. When the Army requests reconsideration, if the complaint involves removal, separation, or a suspension continuing beyond the date of the request for reconsideration, and if the Commission's decision directed retroactive restoration, the activity will comply with the decision only to the extent of the temporary or conditional restoration of the employee to duty status in the position recommended by the Commission, pending the outcome of the request for reconsideration.

(1) When the employee receives a temporary or conditional restoration, service during this period will be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or completion of the service requirement for career tenure, provided the EEOC—

(a) Upholds its decision after reconsidering the case; or

(b) Refuses to reconsider the case.

(2) An Army request to reconsider will notify the EEOC that the remedial action it takes is temporary or conditional. A written notice will also be sent to the employee.

c. When no request for reconsideration is filed or when a request for reconsideration is denied, the Army will provide the relief ordered and there is no further right to delay implementation of the ordered relief. The relief will be provided in full no later than 60 days after receipt of the final decision unless otherwise ordered in the decision.

#### **7-5. Corrective actions**

a. When there is a finding of discrimination, the commander of the activity in which the finding occurred will determine the appropriate corrective action to prevent recurrence.

b. The EEO officer will specify the nature of the corrective action taken in the compliance report to the EEOCCR Compliance Manager.

## **Section II**

### **Attorney's Fees and Costs**

#### **7-6. Entitlement to recovery of attorney's fees and costs**

a. A prevailing complainant who is represented by an attorney may be entitled to recover reasonable attorney's fees, including expert witness fees. The complainant may also be entitled to recover other costs incurred in the processing of his or her complaint as a part of the remedial relief under this regulation unless special circumstances render such an award unjust.

b. The following arguments are not sufficient to show special circumstances:

(1) The complainant did not need an attorney;

(2) The complainant's attorney worked for a public interest organization;

(3) The complainant's attorney accepted the case *pro bono*;

(4) The complainant's attorney was paid from some private fee agreement;

(5) The complainant was able to pay the costs of the case;

(6) The Army acted in good faith;

(7) The Army took prompt action in remedying the discrimination or reprisal;

- (8) The financial burden of any fee would fall on the taxpayer; and
- (9) The activity has limited funds.

c. The Army, an administrative judge, the EEOC OFO, or a Federal court will determine the amount of reasonable attorney's fees and costs to be awarded. However, activities may also pay attorney's fees and costs as part of a settlement agreement.

d. Reimbursement of attorney's fees may be made for the services performed after the complainant has notified the Army, the administrative judge, or the EEOC OFO, that he or she is represented by an attorney. Written submissions to the Army or copies of written submissions to the administrative judge or EEOC OFO, signed by an attorney, will be deemed to constitute a notice of representation.

### **7-7. Processing claims for reasonable attorney's fees and costs**

a. The complainant and the complainant's attorney bear the burden of establishing entitlement to fees or costs. Requests for recovery of attorney's fees, including expert witness fees and other costs, as appropriate, should be submitted to the agency representative within 30 days of receipt of the final Army decision and in accordance with Army instructions implementing OFO decisions. The statement of attorney's fees and costs must be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Absent extraordinary circumstances, requests for recovery of attorney's fees may be denied if not submitted within the 30-day period of receipt of the final Army decision.

b. The verified statement of fees and costs should include the following:

- (1) A list of services rendered itemized by date, number of hours, detailed summary of the task, rate, and attorney's name;
- (2) Documentary evidence of reasonableness of hours, such as contemporaneous time records, billing records, or a reasonable accurate substantial reconstruction of time records;
- (3) Documentary evidence of reasonableness of rate, such as an affidavit stating that the requested rate is the attorney's normal billing rate, a detailed affidavit of another attorney in the community familiar with prevailing community rates for attorneys of comparable experience and expertise, a resume, a list of cases handled, or a list of comparable cases where a similar rate was accepted; and
- (4) Documentation of costs.

c. Documentation submitted should include the following:

- (1) A copy of the fee agreement between the complainant and the complainant's attorney.
- (2) A copy of current billing records with a key to all abbreviations.
- (3) Documentation of costs, such as receipts or billing statement, verifying that the costs and amounts claimed were actually incurred in the prosecution of the complainant's case. Examples include long distance telephone bills, express mailing receipts, computer legal research billing statements, food and lodging receipts, airline ticket receipts.
- (4) For costs for which receipts or billing statements are not normally available, an explanation of how the costs were calculated, the formula used to compute the totals claimed, and the dates incurred. Examples of these costs include: mileage (dates of travel, locations, distance traveled, mode of transportation, cost per mile, and formula used to compute amount claimed) and photocopying and faxing of documents (number of documents copied or sent by facsimile, cost per page, and formula used to compute amounts claimed).
- (5) All other relevant documents.

d. In final Army decisions where discrimination or reprisal has been found and recovery of attorney's fees and costs is awarded as part of the remedial relief, the complainant's attorney must file a verified statement of attorney's fees and costs as described in paragraphs 7-7b and c with the agency representative within 30 days of receipt of the decision.

- (1) The agency representative will review the request and supporting documentation and prepare a written recommended decision as to payment.
- (2) The recommended decision should include a summary of the case; a statement of the relief granted to the complainant; an analysis of the number of hours, hourly rates, and costs for which payment is approved or denied; the basis for the conclusions; and the total amount recommended for payment.

e. The activity may enter into a written settlement agreement to resolve the request of attorney fees and costs. In cases where agreement cannot be reached, the agency representative will, within 10 days of receipt of the request and supporting documentation, forward, by overnight means, a recommended decision through the Office of The Judge Advocate General, Labor & Employment Law Division, ATTN: DAJA-LE, 1777 N. Kent Street, Rosslyn, VA 22209, to the Deputy for EEOCCR for decision. The following should be included with the recommended decision: the attorney's fee request and supporting documentation and a copy of the final agency decision, decision of the administrative judge, or EEOC decision.

f. The Army Director of EEO, or designee, will issue a written final decision, including specific reasons for the award determination, within 60 days after receipt of the verified statement of services and attorney's affidavit.

- (1) The final Army decision will be served on the complainant and the attorney of record in accordance with the service rules set forth in paragraph 1-25.

(2) The final Army decision will advise the complainant of his or her right to appeal the final Army decision to the EEOC OFO, or file a civil action in an U.S. District Court. A copy of EEOC Form 573, Notice of Appeal/Petition will also be included.

*g.* Attorney fees and costs paid during the administrative processing of a complaint, either by settlement or award, are paid by the activity where the discrimination or alleged discrimination occurred.

*h.* Any payment of attorney fees and costs will be made payable jointly to the complainant and the attorney. The servicing Defense Finance and Accounting Service will be instructed to address the envelope containing the payment of monies due to the complainant's attorney of record.

#### **7-8. Computing compensation for attorney's fees**

*a.* The degree of success is an important factor in calculating an award of attorney's fees. In determining the degree of success, the obtained relief, both monetary and equitable, should be considered in light of the complainant's goals. Where the complainant achieved only limited success, the complainant should receive only the amount of fees reasonable in relation to the results obtained. However, a reasonable fee may not be determined by mathematical formula based on monetary relief obtained. The determination of the degree of success should be made on a case-by-case basis.

*b.* Attorney's fees will be computed by determining the number or hours reasonably expended multiplied by a reasonable hourly rate, that is, the lodestar. A reasonable hourly rate is based on the prevailing market rates in the relevant community for attorneys of similar experience in similar cases.

(1) The number of hours should not include excessive, redundant, or otherwise unnecessary hours. The presence of multiple counsel at hearing or deposition may be considered duplicative when the additional counsel had little or no participation or presence or where the presence of multiple counsel served to delay or prolong the hearing or deposition.

(2) The hours spent on unsuccessful claims should be excluded in considering the amount of a reasonable fee only where the unsuccessful claims are distinct in all respects from the successful claims.

(3) Time spent on arguments and motions with no clear merit, and time spent on unnecessarily uncooperative or contentious conduct may be deducted.

(4) A fee award may be reduced for failure to provide adequate documentation.

*c.* Reimbursement may be made only for the services and work performed by members of the Bar, law clerks, paralegals, and law students under the supervision of a member of the Bar. This reimbursement will be based on the prevailing market rates in the relevant community, but not for clerical services. Public interest attorneys and private (for-profit) attorneys, who represent certain clients at reduced rates, which reflects noneconomic goals, will also be reimbursed at the prevailing market rate.

(1) An attorney who represents himself or herself is not entitled to an award of fees. However, an attorney complainant who prevails may be entitled to recovery of reasonable costs.

(2) Attorney's fees are not payable to either a non-attorney representative or a Federal employee, including attorneys, who represents a complainant. However, the prevailing complainant may be entitled to recovery of reasonable costs directly incurred by the prevailing complainant.

*d.* Attorney's fees and costs are recoverable for services performed during the precomplaint process when the Army takes final action by not implementing the decision of the administrative judge that discrimination or reprisal occurred and the EEOC OFO affirms the administrative judge's decision on appeal.

*e.* Attorney's fees are recoverable for work performed during the appeal stage provided the appellant prevails.

*f.* The agency representative will review the request and supporting documentation and make a written recommended decision as to payment. The recommended decision should include a summary of the case; a statement of the relief granted to the complainant; an analysis of the number of hours, hourly rates, and costs for which payment is approved and or denied; the basis for the conclusions, and the total amount recommended for payment.

#### **7-9. Computing compensation for costs**

*a.* Certain costs incurred by a prevailing complainant who is not represented or represented by a nonattorney are compensable. The complainant must prove costs and provide documentation, such as bills or receipts.

*b.* The costs that may be awarded are those authorized by 28 USC, Section 1920 to include fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case; fees and disbursements for printing and witnesses; and fees for exemplification and copies necessarily obtained for use in the case.

*c.* Witness fees will be awarded in accordance with the provisions of 28 USC, Section 1821 except that no award will be made for a Federal employee who is in a duty status when made available as a witness.

#### **7-10. Settlement of attorney fee claims**

*a.* Subject to the conditions set forth in paragraphs 7-6 through 7-9 and any limitations imposed by the responsible MACOM, an activity commander or designee may pay attorney's fees and costs as part of settlement of an EEO complaint.

b. The agency representative is responsible for evaluation of any claim or request for attorney's fees and costs, and for providing legal advice to ensure that the activity does not agree to pay more than the maximum allowable attorney's fees in any case.

c. The agency representative will negotiate the settlement on behalf of the agency and should draft the settlement agreement.

d. Settlement agreements that provide for the payment of attorney's fees and costs must state a specific amount of attorney's fees and costs, and must finally resolve the issue of attorney's fees and costs associated with the EEO complaint.

(1) Activities will not agree to payment of an uncertain amount of attorney fees and costs (that is, "a reasonable amount of attorney's fees and costs") or an amount to be determined at a later date.

(2) An activity will not pay attorney's fees and costs that are unlawful, unreasonable or in excess of the maximum allowable. The "maximum allowable" is defined as the amount of fees the complainant would receive (assuming the complainant prevailed) if fees were adjudicated for service up to the date of the settlement.

(3) The amount of fees paid by settlement is negotiable. A settlement agreement may specifically waive the payment of attorney's fees and costs or may provide for the payment of fees in any amount up to the maximum allowable. Nothing in this paragraph will be construed as encouraging the payment of attorney's fees and costs or encouraging the payment of the maximum allowable in settlement of an EEO case.

e. Without prior approval of the Deputy for EEOCCR, activities may not sever the issue of attorney's fees and costs from settlement of the merits of the case. The Deputy for EEOCCR will approve requests to sever only in exceptional circumstances. An activity's request to sever must include a detailed justification.

f. The EEO complaint file must include sufficient documentation to show that the amount of fees that the activity agrees to pay does not exceed the maximum allowable. The type and amount of documentation will vary from case to case. In the course of negotiations, agency representatives may request that the complainant's attorney provide the information described in paragraphs 7-7 and 7-9.

### **Section III**

#### **Compensatory Damages and Mitigation of Damages**

##### **7-11. Authority to award compensatory damages**

a. Where the administrative judge has found discrimination or reprisal and the complainant claimed compensatory damages, the administrative judge will make a determination of the amount, if any, of compensatory damages to be paid to the complainant by the Army.

b. Where the Army's final decision has found that discrimination or reprisal occurred and the complainant claimed compensatory damages, the complainant and his or her attorney will be advised that any claim for past or future pecuniary losses or nonpecuniary losses must be submitted through the agency representative to the Deputy for EEOCCR within 30 days of receipt of the final Army decision. The final Army decision will further advise the complainant and his or her attorney that—

(1) Such damages will only be payable to the extent they were caused by the specific actions that formed the basis of the finding of unlawful discrimination or reprisal.

(2) In claiming past or future pecuniary losses, documentary evidence of these costs, including, but not limited to, copies of bills, receipts, cancelled checks, affidavits or other proof that these losses were actually incurred must be submitted.

(3) In the case of future pecuniary losses claimed, complainant must submit objective evidence that the losses claimed will occur into the future, and evidence of the anticipated duration of those losses and that these projected losses will result from the unlawful discrimination or reprisal found in the final Army decision.

c. Activity commanders may include payment of compensatory damages, in a sum certain amount, in no fault settlement agreements of precomplaints and formal complaints subject to the conditions set forth below:

(1) The complainant must allege a form of discrimination for which compensatory damages are recoverable. Compensatory damages are not recoverable in disparate impact cases, mixed motive cases, Equal Pay Act complaints, age discrimination cases (ADEA), or Rehabilitation Act cases in which the agency has made a good faith effort to reasonably accommodate the complainant's disability.

(2) The complainant must allege injury for which compensatory damages are recoverable (that is, medical expenses, travel expenses, emotional pain, mental anguish, and so forth).

(3) The complainant must allege that the compensatory damages were caused by the alleged discrimination.

d. Compensatory damages may be paid if supported by objective or other evidence of the damages. Specifically—

(1) Past pecuniary damages may be paid if the file includes objective evidence of the out of pocket costs.

(2) Future pecuniary damages may be paid if the file includes objective evidence of the future costs.

(3) Nonpecuniary damages may be paid if the file includes objective or other evidence of the damages. Emerging EEOC case law continues to define the value of injury. Payment may not exceed a reasonable value for the injury.

- e. Activities may not agree to pay an uncertain amount of compensatory damages (that is, a “reasonable amount” of compensatory damages.)
- f. Activities may not sever or separate a compensatory damage claim from the merits of a case for the purposes of settlement.
- g. Any settlement agreement that includes payment of compensatory damages must be in writing. (See chapter 5.)

## **7–12. Mitigation of damages**

Complainants must be made aware that they have a legal obligation to mitigate damages. Before reducing a claim for failure to mitigate, the agency must prove by preponderant evidence that the complainant failed to adequately mitigate his or her damages.

## **Chapter 8**

### **Witnesses, Representation, Administrative Procedures, Complaint File, Automated Tracking System and Reports**

#### **Section I**

#### **Witnesses and Representation**

##### **8–1. Disclosure of the EEO complaint file**

The EEO complaint file is a record protected from unlawful disclosure by the Privacy Act. The agency has the burden of determining complaint documents that may be released in accordance with the Privacy Act.

- a. *Complainant.* The complainant and representative are entitled to a copy of the complaint file to include transcripts and exhibits entered in the record.
- b. *Witnesses.* The Army may disclose information and documents to a witness where necessary to obtain information from the witness.

##### **8–2. Arranging for witnesses**

a. Army military and civilian personnel requested as witnesses by the agency representative, the EEO officer, the investigator, or the EEOC administrative judge will be made available unless it is administratively impracticable.

(1) If an Army witness is not under local administrative control, the activity commander or the EEO officer may ask the witness' commander to make that person available.

(2) Denials will be promptly referred to the EEO officer at the next higher-level command of the requested witness. If the denial is not justified, the next higher-level command will direct the organization to make the witness available.

b. If a witness is employed by another Federal agency or has left Federal employment, the EEO officer will contact him or her. The EEO officer will make every reasonable effort to ensure the presence of the witness. If the witness refuses to appear, the EEO officer will refer the matter to the investigator or the administrative judge.

c. A Federal employee is in an official duty status when his or her presence as a witness is authorized or required by the Army or the EEOC.

##### **8–3. Right to representation**

a. A complainant or an agent in a class complaint has the right to be accompanied, represented, and advised by a representative of his or her own choice at any stage of the complaint process, including the precomplaint counseling stage, except as provided in paragraph 8–4 below. No employee is obligated to serve as a representative. Neither EEO officials, agency representatives, civilian personnel officials, management officials, nor active duty military members whose service as a representative would create the appearance of a conflict of interest may serve as a representative.

b. The complainant or the class agent will designate the representative in writing. Any change will be reported in writing to the EEO officer, with copies to the agency representative, investigator, administrative judge, or the Deputy for EEOCCR as appropriate.

c. The Army must be notified immediately when an attorney is retained to represent a complainant or class agent. Written submissions to the Army that are signed by the attorney are deemed to constitute notice of representation. This notice is required to establish the attorney's eligibility to claim fees and costs.

d. A witness has the right to be accompanied, represented, and advised by a personal representative of his or her own choice at any stage of the complaint process. A witness may not be represented by the SJA or agency representative, an EEO official, civilian personnel official, military member, or management official except as provided in paragraph 8–4 below.

#### **8-4. Disqualification of representative**

*a.* In cases where representation of a complainant or the Army would conflict with the official or collateral duties of the representative, the representative may be disqualified.

*b.* The representation of a complainant by a military member on active duty is an inherent official conflict.

*c.* After consulting with the SJA or senior legal officer of the servicing legal office and after providing the representative an opportunity to respond, the activity commander or designee may deny permission to an Army employee to serve as complainant's or a witness' representative.

(1) The denial will be made in a letter to the complainant or the witness stating, with specificity, the reason for denial. The letter will notify the requester that an appeal of the denial may be filed with the EEO/Civil Rights Office (Deputy for Compliance and Complaints Review (EEOCCR), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202-4508 within 5 days after receipt of the denial.

(2) Complainant must provide a copy of the appeal to the activity EEO officer.

(3) The Deputy for EEOCCR will decide the appeal within 7 days of receipt of the appeal.

(4) There is no further right to appeal denial of representation.

*d.* If a problem with a representative arises during the investigative stage in the complaint processing, the investigator will discuss the situation with the activity EEO officer and ask for a decision subject to the procedures cited in paragraph 8-4c.

*e.* The EEOC administrative judge may disqualify the complainant's representative during the hearing process.

#### **8-5. Representing the Army in individual complaints**

*a.* The agency representative designated by the activity commander represents the Army in complaint proceedings. (See paragraph 4-2c.)

*b.* The agency representative's role is to ensure that the Army position is based on a sound legal theory and supported by competent evidence at the investigative, hearing, and appellate stages. Additionally, the agency representative should explore settlement possibilities at all stages in the processing of the complaint.

*c.* The agency representative represents the best interest of the Department of Army.

*d.* The agency representative may have technical advisers, as needed, at the hearing with the administrative judge's permission.

#### **8-6. Representing the Army in class complaints**

*a.* After consulting with the servicing EEO officer, the EEO counselor may seek legal advice from the servicing legal office during the precomplaint stage of class discrimination complaints.

*b.* When a class complaint is filed formally, the activity commander will appoint a labor counselor as the designated Army representative.

## **Section II**

### **Administrative Procedures**

#### **8-7. Using official time**

*a.* Under 29 CFR Section 1614.605, complainants and representatives who are Army employees have the right to a reasonable amount of official time, if otherwise on duty, to prepare a complaint filed under this regulation and to respond to Army and EEOC requests for information.

*b.* The Army is not obligated to change work schedules, incur overtime wages, or pay travel expenses in order to allow the complainant to select a specific representative or to confer with him or her.

*c.* When the Army, the investigator, or an EEOC administrative judge authorizes or requires the presence of a representative or complainant during the investigation or hearing on the complaint, the representative or complainant will be granted official time for the duration of such meeting or hearing regardless of the tour of duty, if otherwise in a pay status.

*d.* Employees must obtain supervisory approval in advance to use duty time to prepare a complaint.

*e.* "Reasonable duty time" includes all time actually spent in meetings and hearings required by an Army, investigating agency, or EEOC official plus a reasonable amount of preparation time. Time is generally defined in terms of hours rather than days, weeks, or months.

*f.* Disagreements as to what constitutes "reasonable duty time" are resolved by the activity commander or a designee.

*g.* Time off for non-Army representatives will be determined by non-Army employers. The Army has no purview in disputes regarding reasonable time for non-Army employees.

#### **8-8. Computation of time**

With respect to time periods specified in this regulation—

*a.* The first day counted will be the day after the event from which the time period begins to run. The last day of the period will be included, unless it falls on a weekend or Federal holiday, in which case the period will be extended to include the next business day.

*b.* A document shall be deemed timely if it is received or postmarked before the expiration of the applicable filing period, or if, in the absence of a legible postmark, it is received by mail within 5 days from the expiration of the applicable filing period.

*c.* Unless otherwise stated, all days are calendar days.

### **8–9. Travel and other costs**

*a.* For individual complaints as well as class complaints of discrimination, expenses incurred in the administrative processing of an EEO complaint will be borne by the activity where the discrimination is alleged to have occurred. These expenses include travel and other costs of investigators, EEO counselors, and agency representatives and expenses for the court reporter and transcripts from the investigation and hearing.

*b.* To be considered for funding by the activity where the alleged discrimination occurred, travel and related expenses of witnesses must be required or approved by the EEOC, the investigating agency, or an authorized Army official. This includes travel of witnesses who are employed at a Federal agency other than the Army. In such cases, the EEO officer will coordinate with the employing agency to initially pay the travel expenses subject to reimbursement by the Army. The Army is not obligated to pay travel expenses of complainant's witnesses who are not Federal employees.

*c.* Unless required by the administrative judge in the administrative process, the Army is not responsible for paying the travel expenses of a complainant who is not an Army employee. In the judicial process, the Army is not responsible for any of complainant's travel expenses. Complainants who prevail in their complaints may be reimbursed for travel expenses as part of their costs.

*d.* If a complaint of discrimination is filed against a tenant organization, the tenant organization is responsible for all costs incurred unless otherwise provided for in a host-tenant agreement. Problems that develop between host and tenant organizations will be promptly referred for resolution to the MACOM EEO officer having jurisdiction over the activity in which the complaint arose.

*e.* If the complaint involves a NAF activity, the costs will be borne by the appropriated fund host activity having command responsibility for the NAF activity.

## **Section III Complaint File**

### **8–10. Assembly of the complaint file**

*a.* The EEO officer will assemble a complaint file that will include all documents pertinent to the complaint. All documents in the complaint file will be made available to the complainant and representative. The EEO officer shall maintain a separate "working" file containing documents that should not be included in the complaint file, such as, written communication from agency representatives concerning acceptance, dismissal, or settlement of complaints, memoranda of record obtained by the counselor, and so forth.

*b.* The complaint file will be assembled in a suitable heavy-duty cover. The documents will be punched with a standard three-hole punch and bound on the left side.

*c.* The complaint file will have a title page which contains complainant's name and address; name of Secretary of the Army; DA docket number, EEOC docket number, and name, address, phone number, facsimile number and electronic mail address of the servicing EEO activity, agency representative and serviced MACOM. (See figure 8–1.)

*d.* The complaint file will be organized by stages or phases of the complaint process. Stages are as follows:

- (1) Precomplaint.
- (2) Formal.
- (3) Investigation (contains subtab).
- (4) Hearing (contains subtab).
- (5) FAA/FAD.
- (6) Appeal.
- (7) Remand.
- (8) Compliance.
- (9) Civil Action.
- (10) Settlement (contains subtab).
- (11) Admin.

*e.* The sections of the complaint file will be tabbed with visible tabs to correspond with the phases. Tab dividers should be labeled with the stage only, that is "Precomplaint", "Formal", "Admin" and so forth, and arranged in reverse

chronological order with the “Precomplaint” tab at the bottom building upward through the appropriate tab signifying the final stage of processing. The “Admin” tab will always be the top tab.

f. The file will contain legible copies of the following documents with the appropriate evidence of their receipt, as applicable, in the order listed below:

(1) Transmittal notice to EEOCCR indicating the number of complaint files forwarded; the reason files were forwarded, that is request for hearing or FAD, withdrawal, dismissal; a statement certifying that complaint has been updated in the complaints automated tracking system, and a point of contact and phone number for the action. Printouts from the automated complaint tracking system are not required.

(2) Title page (See figure 8–1.)

(3) The following information should be used as guidance for establishing complaint files:

(a) *Precomplaint tab.* Precomplaint documents include all documents associated with the precomplaint stage in reverse chronological order with the top document being the Notice of Right to File a Formal Complaint of Discrimination. Examples of documents under the “Precomplaint” tab include but are not limited to—

1. Information Inquiry Summary.
2. Aggrieved Person’s Rights and Responsibilities Notice.
3. Offer to Participate in ADR.
4. Agreement/Declination to Participate in ADR.
5. Witness notices.
6. Extension of Counseling Agreement.
7. EEO Counselor’s Report.
8. Notice of Right to File a Formal Complaint of Discrimination.

(b) *Formal tab.* Include documents generated from the time a formal complaint is filed through acceptance or dismissal of the formal complaint in reverse chronological order. Requests for additional information and amendments to a formal complaint, including the acknowledgment, will be included in the “Formal” tab as they occur in the complaint process. Examples of documents under this tab include but are not limited to—

1. DA 2590, Formal Complaint of Discrimination.
2. Acknowledgement of receipt of formal complaint.
3. Request for clarification/additional information.
4. Offer to participate in ADR.
5. Notice of dismissal.
6. Notice of acceptance or partial acceptance.
7. Amendments to formal complaints.
8. Acknowledgement of amendments.

(c) *Investigation tab.* Include all documents pertaining to the investigative stage from the request for assignment of an investigator to the notice provided to complainant and representative after receipt of the investigative file in reverse chronological order. Examples of documents filed under the “Investigation” tab are—

1. Request for assignment of OCI investigator.
2. Witnesses in pending investigation.
3. Notices to complainant/agency representative.
4. OCI request for documents.
5. Transmittal of amendments to OCI.

(d) *Report of Investigation (ROI) and Notice of Post Investigative Option (PIO) subtab.* The Report of Investigation and Notice of Post Investigative Options will be a subtab of the “Investigation” tab and will be labeled “ROI/PIO.” These documents will be tabbed separately because of the size of reports of investigation and for easier access. Examples of documents filed under this subtab include—

1. Report of Investigation.
2. Supplemental investigations.
3. Notice of Post Investigative Options.

(e) *Hearing tab.* File documents pertaining to the hearing stage from complainant’s request to an administrative judge decision in reverse chronological order. Examples of the “Hearing” tab documents include but are not limited to—

1. Complainant’s request for hearing.
2. Transmittal memorandum forwarding complaint file to EEOC.
3. Acceptance of Offer of Resolution.
4. Amendments forwarded to AJ.
5. Discovery documents.
6. Motions filed by agency/complainant.

7. Hearing transcript. (The hearing transcript will be filed as a subtab of the “Hearing” tab. This tab will be labeled “Hearing Transcript” and will include the transcript and all associated exhibits.)

(f) *Final Agency Action (FAA) or Final Agency Decision (FAD) tab.* Include all documents pertaining to the issuance of a FAA after an AJ decision, or “FAD” without an AJ decision, in reverse chronological order. Examples of documents under the “FAA” or “FAD” tab include but are not limited to—

1. Complainant’s request for final agency decision.
2. Activity transmittal to EEOCCR requesting FAD.
3. FAD on nonmixed or mixed complaint.
4. FAA on AJ decision.
5. FAD on compensatory damages.
6. FAD on attorney fees.
7. FAD on noncompliance with NSA.

(g) *Appeal tab.* Documents related to the appeal stage will be filed in reverse chronological order and may include but not be limited to—

1. Notification from OFO/Appellant of Appeal.
2. Briefs supporting or opposing appeal.
3. Transmittal letters and correspondence to or from OFO.
4. OFO Decision.
5. Notification from OFO/complainant of RFR.
6. Agency Request for Reconsideration.
7. Briefs supporting/opposing RFR.
8. OFO decision on reconsideration.
9. Notification of appeal to MSPB.
10. Appellate decision on mixed case complaints.

(h) *Remand tab.* Documents pertaining to an OFO or EEOCCR remand of a complaint for further processing or OFO’s decision to reverse the Army’s final decision, should be included under the “Remand” *tab*. Documents under the “Remand” *tab* include but are not limited to—

1. The OFO order to remand the complaint or reverse the Army’s decision.
2. Notification from OFO/complainant of RFR.
3. Agency Request for Reconsideration.
4. Briefs supporting/opposing RFR.
5. OFO decision on reconsideration.
6. EEOCCR letter vacating dismissal.

(i) *Compliance tab.* Include documents pertaining to compliance with an OFO or Army order. Documents under the “Compliance” *tab* include but are not limited to—

1. Letter to complainant acknowledging receipt of remand order.
2. Copy of posting order.
3. Copies of checks.
4. DFAS vouchers.
5. Personnel actions (SF 50, Notification of Personnel Action/SF 52 Request for Personnel Action).
6. EEOCCR implementation letter for remand/reversal/finding of discrimination.

(j) *Civil Action tab.* Documents pertaining to the filing of a civil action should be included under the “Civil Action” *tab*. Examples of documents under the “Civil Action” *tab* include but are not limited to—

1. Civil action (actual court filing).
2. Notification memorandum from litigation division.
3. Notification from activity of closure of civil action.

(k) *Settlement tab.* “Settlement” should be placed on top of the stage in the process in which settlement occurs. For example, if settlement occurs during the investigative stage, the “Settlement” *tab* should be placed on top of “Investigation” *tab*. This *tab* should contain the NSA and all documentation proving compliance with the terms of the agreement. Examples of documents under the “Settlement” *tab* include but are not limited to—

1. NSA.
2. Personnel actions (SF 50–B/SF 52–B).
3. DFAS vouchers.
4. Copies of checks.

(l) *Noncompliance tab.* Documents pertaining to noncompliance with an NSA will be filed in a subtab of the “Settlement” *tab* labeled “Noncompliance”. Examples of documents under the “Noncompliance” *tab* include but are not limited to—

1. Agency's response to allegations and all supporting documentation (do not include attorney work products).
  2. Complainant's allegation of noncompliance.
- (m) *Admin tab.* The "Admin" tab should always remain on the top of the complaint file. This tab should be limited to items such as—
1. Designation (or change) of representative.
  2. Designation of agency representative.
  3. Change of address for complainant.
  4. Withdrawal of formal complaint. (If a withdrawal is included, place on the top of the "Admin" tab.)
  5. Other miscellaneous items that pertain to the administrative processing of the complaint.
- g. Complaint files should be tabbed according to the sequence of processing. For example—
- (1) When the EEO officer dismisses a complaint at the activity level, the appropriate tabs will be "Precomplaint", "Formal", and "Admin" with appropriate documentation under each tab.
  - (2) When a complaint has been investigated and the complainant requests a decision without a hearing, the appropriate tabs will be "Precomplaint", "Formal", "Investigation", "ROI/PIO", "FAA", and "Admin".
  - (3) When a complaint has been investigated and the complainant requests a hearing by an administrative judge, the complaint file will be established as "Precomplaint", "Formal", "Investigation", "ROI/PIO", "Hearing", "FAA", and "Admin" with appropriate documents under each tab.
  - (4) When a complaint has been dismissed in its entirety and appealed, the appropriate tabs will be "Precomplaint", "Formal", "Appeal", and "Admin".
  - (5) When a complaint has been settled during the investigation, the appropriate tabs will be "Precomplaint", "Formal", "Investigation", "Settlement", and "Admin".
  - (6) When a complaint has been dismissed in its entirety, appealed, and remanded for investigation, the appropriate tabs will be "Precomplaint", "Formal", "Appeal", "Remand", "Investigation", and "Admin".

#### **8-11. Disposition of complaints of discrimination**

- a. When action on a complaint of discrimination has been completed at the activity level, the complaint file will be promptly forwarded to the EEO/Civil Rights Office (Deputy for EEOCCR), ATTN: SAMR-EO-CCR, 1941 Jefferson Davis Highway, Suite 109B, Arlington, VA 22202-4508. The transmittal letter to EEOCCR should be placed on top of the title page of the complaint file. When the case has been closed by the activity, instructions set forth in paragraph 8-12b will be followed.
- b. Forwarding of complaint files to EEOCCR will be accomplished:
  - (1) If a formal EEO complaint is closed in its entirety at the activity level because of withdrawal or settlement, the EEO officer will submit the original, complete complaint file to EEOCCR within 5 days after the complaint is closed.
  - (2) If a formal complaint is closed in its entirety at the activity level because of dismissal, the EEO officer will submit the original and one copy of the complete complaint file to EEOCCR within 5 days after the complaint is closed.
  - (3) If a formal complaint is investigated and processed for issuance of a Final Army Decision/Action, procedures outlined in 4-20(b)(3-5) and 4-20 (c)(2) will be followed.
- c. Once the complaint is closed or the complaint file is forwarded to EEOCCR for action, EEOCCR becomes the official custodian of the agency's record. EEOCCR will retain complaint files for 5 years from the final action/decision on the complaint or until all administrative or judicial appeals are exhausted, whichever is longer. A copy of the formal complaint case file will be retained by the EEO officer for 2 years from the date of closure at the activity level, the final Army decision, or until all administrative or judicial appeals are exhausted, whichever is longer. Precomplaint files will not be forwarded to EEOCCR but shall be maintained at the activity for 2 years after the closure of the precomplaint.

### **Section IV**

#### **The Complaints Automated Tracking System and Reporting Requirements**

#### **8-12. Establishing and closing complaint records**

- a. Use of the Army's complaints automated tracking system is mandatory. Immediately upon receipt of a precomplaint, the activity EEO officer will establish the EEO automated data systems record. The DA docket number generated will be used on all documents throughout the EEO complaint process as the unique identifier of the records in the complaint file.
- b. The EEO officer or complaints manager is responsible for ensuring that all complaints are updated in the automated tracking system as actions occur. EEOCCR, as the proponent for the system, will be able to access current information, when needed, on all Army complaints. The EEO officer will ensure the validity of information entered into the automated system.
- c. A record will be established in the EEO automated data system for each workable contact after the interview with

the individual. A workable contact is any contact with an EEO official or counselor by an individual whose sole purpose is to seek information on the EEO process, otherwise referred to as an Information Inquiry (see paragraph 3-3). A DA Docket Number will be generated but will not be used on any correspondence unless the individual later expresses intent to initiate the EEO process.

*d.* A record will be established in the EEO automated data for each reportable contact immediately following the precomplaint intake interview. A reportable contact is any contact with an EEO counselor (or EEO official performing the counseling function) by an aggrieved who expresses or implies intent to initiate the discrimination complaint process on the basis of race, color, religion, sex, national origin, age, physical or mental disability, or reprisal.

(1) The DA Docket number will be placed on all documents generated thereafter to include the Notice of Right to File a Formal Complaint of Discrimination, settlement agreement, and EEO Counselor's Report.

(2) Prior to generating a DA Docket number for perceived conflict of interest complaints as described in paragraph 1-24, a determination must be made as to the processing EEO office. The processing EEO office will docket the complaint.

*e.* An EEO official will update the EEO automated data system at all stages of the process.

(1) Upon closure of a precomplaint, the automated data system will be updated to denote either issuance of the Notice of Right to File a Formal Complaint of Discrimination or execution of a settlement agreement.

(2) If the aggrieved does not file a formal EEO complaint, an EEO official will update the EEO automated data system with an entry closing the precomplaint record.

(3) Upon closure of a complaint via the execution of a settlement agreement, an EEO official will enter the monetary and nonmonetary terms of the agreement in the EEO automated data system.

(4) An EEO official will close a formal complaint record after a notice of dismissal by the activity, the execution of a settlement agreement, or withdrawal by the complainant. EEOCCR will close a formal complaint record after issuance of a FAA or FAO.

### **8-13. Access to EEO data**

Data created by an EEO official in its mission to manage the EEO Complaints Processing Program is for official use only. Release of such information will be governed by AR 25-55, The Department of the Army Freedom of Information Act Program, and AR 340-21, The Army Privacy Program.

### **8-14. EEO reporting requirements**

*a.* The EEOC Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (EEOC Form 462) submission is submitted to the EEOC in October of each year. EEOC Form 462 can be accessed on EEOC's Web site at "<http://www.EEOA.Army.Pentagon.mil>." This Web site can only be accessed by MACOM/IMA POCs after receiving the required login permission from EEOCCR.

*b.* The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act) requires the posting of certain complaint data on the Army's Web site. This data must be posted no later than 30 days after the end of each quarter.

*c.* To this end, each activity must ensure that complaint data is kept up to date and is accurate. To alleviate end-of-year processing time and to identify developing Army-wide trends, EEOCCR will periodically review complaint data in January, April, July, and October of each year.

*d.* For other EEOC and Army mandatory or ad hoc reports, requests from EEOCCR to MACOM and activity EEO offices will be submitted in accordance with assigned suspenses.

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**DA Docket Number(s):**

**EEOC Docket Number(s):**

**Complainant's Name  
Address  
City, State, Zip**

**Name of Attorney or Representative (if applicable)  
Address  
City, State, Zip**

**v.**

**Secretary of the Army**

**Processing EEO Office  
Address (include Office Symbol)  
City, State, Zip**

**Email address:  
Phone Number:  
Fax Number:**

**Servicing Labor Counselor  
Address (include Office Symbol)  
City, State, Zip**

**Email address:  
Phone Number:  
Fax Number:**

**Serviced MACOM  
Address (include Office Symbol)  
City, State, Zip**

**Email address:  
Phone Number:  
Fax Number:**

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Figure 8-1. Sample Cover Page for Complaint File

## **Appendix A References**

### **Section I**

#### **Required Publications**

This section contains no entries.

### **Section II**

#### **Related Publications**

A related publication is merely a source of additional information. The user does not have to read it to understand this publication.

#### **AR 600–7**

Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army

#### **AR 600–23**

Nondiscrimination in Federally Assisted Programs

#### **AR 690–12**

Equal Employment Opportunity and Affirmative Action

#### **DOD 1400.25M, Subchapter 771**

Department of Defense Civilian Personnel Manual (Administrative Grievance System)

#### **EEO MD–110**

Equal Employment Opportunity Management Directive-110

#### **Title 29, Code of Federal Regulations, Part 1614**

Federal Sector Equal Employment Opportunity

### **Section III**

#### **Prescribed Forms**

Except where otherwise indicated below, the following forms are available on the Army Publishing Directorate's Web site ([www.apd.army.mil](http://www.apd.army.mil)).

#### **DA Form 2590**

Formal Complaint of Discrimination (Prescribed in para 3–7.)

#### **DA Form 7509**

Information Inquiry Summary (Prescribed in para 3–3.)

#### **DA Form 7510**

Equal Employment Opportunity Counselor's Report (Prescribed in para 3–3.)

### **Section IV**

#### **Referenced Forms**

Except where otherwise indicated below, the following forms are available on the Army Publishing Directorate's Web site ([www.apd.army.mil](http://www.apd.army.mil)).

#### **EEOC Form 462**

EEOC Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (Available at [http://eeoa.army.pentagon.mil/web/prog\\_comp/complaints/statistics.cfm](http://eeoa.army.pentagon.mil/web/prog_comp/complaints/statistics.cfm))

#### **EEOC Form 573 REV 1– 01**

Notice of Appeal/Petition to the Equal Employment Opportunity Commission (Available at <http://www.eeoc.gov/federal/md110/appendixk.html>.)

#### **OF 283 (Rev10/94)**

Merit Systems Protection Appeal Form (Available at <http://www.mspb.gov/foia/forms-pubs/applform.pdf>.)

**SF 50–B**

Notification of Personnel Action

**SF 52–B**

Request for Personnel Action

**Appendix B****Addresses and Area Office Territories for the Department of Defense Office of Complaint Investigations, Equal Employment Opportunity Commission, and Merit Systems Protection Board****B–1. Addresses and Geographic Jurisdictions of EEOC District Offices**

DODOCI investigators are assigned to investigate discrimination complaints from various area offices located throughout the United States, Europe, and the Pacific. When an EEO officer must obtain the services of a DODOCI investigator, he or she should contact the DODOCI area office with jurisdiction over the respective activity. The DODOCI Web site (<http://www.cpms.osd.mil/oci>) lists the area OCI offices. From the homepage, select Civilian Personnel Manual (CPM) Chapter 1600 EEO Complaints.

**B–2. Addresses and Geographic Jurisdictions of EEOC District Offices**

EEOC administrative judges are assigned to hear discrimination complaints from various district offices located throughout the United States. When a complainant requests a hearing before an EEOC administrative judge, the EEO officer will advise the complainant in writing as to the EEOC district office with jurisdiction over the activity. The EEOC has a Web page (<http://www.eeoc.gov>) that lists the EEOC district, area, and local offices. Select “Contact EEOC/Field Offices.”

**B–3. Addresses and Regional and Field Office Jurisdictions for the Merit Systems Protection Board (MSPB)**

The MSPB processes appeals on mixed case complaints. When an EEO officer must advise a complainant regarding these appeal rights, he or she should reference the MSPB office with jurisdiction over the respective activity. (See figs B-1, B-2, and B-3.) The MSPB Web site (<http://www.mspb.gov/offices>) also lists addresses, telephone numbers, and appellate jurisdiction. From the MSPB home page, select “Contact Us.”

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**DEPARTMENT OF DEFENSE  
OFFICE OF COMPLAINT INVESTIGATIONS (OCI)  
REGIONAL OFFICES AND GEOGRAPHIC  
JURISDICTIONS**

**HEADQUARTERS**

Office of Complaint Investigations  
OCI – Rosslyn  
1401 Wilson Boulevard, Suite 1009  
Arlington, Virginia 22209-5144

Mailing Address  
1400 Key Boulevard, Suite B200  
Arlington, Virginia 22209-5144

Area Code 703  
Commercial No. – 696-1584  
DSN No. - 426-1584  
FAX No. - 703-696-7731  
FAX DSN. - 426-7731

**Regional Offices**

Office of Complaint Investigations – Atlanta  
The Atrium  
2400 Herodian Way, Suite 240  
Smyrna, Georgia 30080-8500

Area Code 404  
Commercial No. – 363-5801  
FAX No. - 770-984-8737

Geographic Jurisdiction: Alabama, Caribbean, Central America, Florida,  
Georgia, Mississippi, South America,  
South Carolina

**Figure B-1. DOD OCI Regional Offices and Geographic Jurisdictions**

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Office of Complaint Investigations – Columbia  
8850 Stanford Boulevard, Suite 3200  
Columbia Corporate Park 1  
Columbia, Maryland 21045-4753

Area Code 301  
Commercial No. – 621-5170  
FAX No. - 301-621-6359

Geographic Jurisdiction: Connecticut, Delaware, District of Columbia,  
Maine, Maryland, Massachusetts, New Hampshire,  
New Jersey, New York, North Carolina,  
Pennsylvania, Rhode Island, Vermont, Virginia,  
West Virginia

Office of Complaint Investigations – Dayton  
2656 San Antonio Avenue  
Wright-Patterson AFB, Ohio 45433-5650

Area Code 937  
Commercial No. – 257-5744  
DSN No. – 787-5744  
FAX No. – 937-257-0913  
FAX DSN - 787-0913

Geographic Jurisdiction: Illinois, Indiana, Iowa, Kansas,  
Kentucky, Michigan, Minnesota, Missouri,  
Nebraska, North Dakota, Ohio, South Dakota,  
Tennessee, Wisconsin, Canada

Office of Complaint Investigations - Seckenheim  
Unit 29331  
APO AE 09266

OCONUS 011-49-621-481-5614  
DSN No. - 375-6451  
LOCAL - 0621-481-6451  
FAX No. – 011-49-621-481-5613

Geographic Jurisdiction: Europe, Africa

Office of Complaint Investigations - Sacramento  
801 "I" Street, Room 229  
Sacramento, California 95814-2510

Area Code 916  
Commercial No. – 498-5332  
FAX No. - 916-498-6527

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Figure B-1. DOD OCI Regional Offices and Geographic Jurisdictions—continued

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Geographic Jurisdiction: Alaska, Arizona, California, Idaho,  
Montana, Nevada, Oregon, Utah, Washington

Office of Complaint Investigations – Honolulu  
300 Ala Moana Boulevard, Room 6328  
Honolulu, Hawaii 96850-0001  
Area Code 808  
Commercial No. – 541-2640  
FAX No. – 808-541-2641

Geographic Jurisdiction: Asia, Hawaii, Pacific Islands, Australia

Office of Complaint Investigations – San Antonio  
1222 Stanley Road, Suite 2, Building 129  
Fort Sam Houston, Texas 78234-5082  
Area Code 210  
Commercial No. – 221-2889  
DSN No. – 471-2889  
FAX No. – 210-221-2963  
FAX DSN – 471-2963

Geographic Jurisdiction: Arkansas, Colorado, Louisiana, New Mexico,  
Oklahoma, Texas, Wyoming

**Figure B-1. DOD OCI Regional Offices and Geographic Jurisdictions—continued**

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# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## EEOC Headquarters

U.S. Equal Employment Opportunity Commission  
1801 L Street, NW  
Washington, DC 20507

Area Code 202  
Commercial No. – 663-4900  
TTY – 202-663-4494

[You can be automatically connected to your field office by calling 1-800-669-4000 or TTY 1-800-669-6820]

## District Offices and Geographic Jurisdictions

Albuquerque District Office  
EEOC  
505 Marquette, N.W.  
Suite 900  
Albuquerque, New Mexico 87102

Area Code 505  
Commercial No. – 248-5201  
Toll Free – 800-669-4000  
FAX No. 505-248-5239  
TTY No. – 505-248-5240  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: New Mexico

Atlanta District Office  
EEOC  
Sam Nunn Atlanta Federal Center  
100 Alabama Street  
Suite 4R30, 4<sup>th</sup> Floor  
Atlanta, Georgia 30303

Area Code 404  
Commercial No. – 562-6800  
Toll Free – 800-699-4000  
FAX No. 404-562-6909  
TTY No. – 404-562-6801  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Georgia

Baltimore District Office  
EEOC  
City Crescent Building  
10 South Howard Street  
Third Floor  
Baltimore, Maryland 21201

Area Code 410  
Commercial No. – 962-3932  
Toll Free – 800-699-4000  
FAX No. – 410-962-4270  
TTY No. – 410-962-6065  
Toll Free TTY – 800-669-6820

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Figure B-2. EEOC District Offices and Geographic Jurisdictions

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Geographic Jurisdiction: Maryland and Virginia (except for those Virginia cities and counties under the Jurisdiction of the Washington Field Office)

Birmingham District Office  
EEOC  
Ridge Park Place  
1130 22<sup>nd</sup> Street South  
Suite 2000  
Birmingham, Alabama 35205-2397

Area Code 205  
Commercial No. – 731-0082  
Toll Free – 800-699-4000  
FAX No. – 205-731-2101  
TTY No. – 205-731-0175  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Alabama and Mississippi

Charlotte District Office  
EEOC  
129 West Trade Street  
Suite 400  
Charlotte, North Carolina 28202

Area Code 704  
Commercial No. – 344-6682  
Toll Free – 800-669-4000  
TTY – 704-334-6684  
FAX No. – 704-344-6734/6731  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: North Carolina and South Carolina

Chicago District Office  
EEOC  
500 West Madison Street  
Suite 2800  
Chicago, Illinois 60661

Area Code 312  
Commercial No. – 353-2713  
Toll Free – 800-669-4000  
FAX No. – 312-886-1168  
TTY No. – 312-353-2421  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Illinois, except counties of Alexander, Bond, Calhoun, Clinton, Greene, Jackson, Jersey, Macoupin, Madison, Monroe, Perry, Pulaski, Randolph, St. Clair, Union, and Washington (which are under the jurisdiction of St. Louis District Office)

Figure B-2. EEOC District Offices and Geographic Jurisdictions-continued

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Cleveland District Office  
EEOC  
Tower City – Skylight Office Tower  
1660 West Second Street  
Suite 850  
Cleveland, Ohio 44113-1412

Area Code 216  
Commercial No. – 522-2003  
Toll Free – 800-669-4000  
FAX No. – 216-522-7395  
TTY No. – 216-522-8441  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Ohio

Dallas District Office  
EEOC  
207 S. Houston Street  
3<sup>rd</sup> Floor  
Dallas, Texas 75202-4726

Area Code 214  
Commercial No. – 655-3355  
Toll Free – 800-669-4000  
FAX No. – 214-655-3443  
TTY No. – 216-522-8441  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Oklahoma and Texas counties of: Anderson, Archer, Baylor, Bell, Bosque, Bowie, Brown, Callahan, Camp, Cass, Cherokee, Clay, Coleman, Collin, Comanche, Cooke, Coryell, Dallas, Delta, Denton, Eastland, Ellis, Erath, Falls, Fannin, Fisher, Franklin, Freestone, Grayson, Gregg, Hamilton, Harrison, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jack, Johnson, Jones, Kaufman, Lamar, Lampasas, Leon, Limestone, McLennan, Madison, Marion, Milam, Mills, Montague, Morris, Nacogdoches, Navarro, Nolan, Palo Pinto, Panola, Parker, Rains, Red River, Robertson, Rockwall, Runnels, Rusk, Shackelford, Shelby, Smith, Somervell, Stephens, Tarrant, Taylor, Throckmorton, Titus, Upshur, Van Zandt, Wichita, Wilbarger, Wise, Wood, and Young

Denver District Office  
EEOC  
303 E. 17<sup>th</sup> Avenue  
Suite 510  
Denver, Colorado 80203

Area Code 303  
Commercial No. – 866-1300/1301  
Toll Free – 800-669-4000  
FAX No. – 303-866-1085  
TTY No. – 303-866-1950  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming

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Figure B–2. EEOC District Offices and Geographic Jurisdictions-continued

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Detroit District Office  
EEOC  
Patrick V. McNamara Building  
477 Michigan Avenue  
Room 865  
Detroit, Michigan 48226-9704

Area Code 313  
Commercial No. – 226-4600  
Toll Free – 800-669-4000  
FAX No. – 313-226-4610  
TTY No. – 313-226-7599  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Michigan

Houston District Office  
EEOC  
Mickey Leland Federal Building  
1919 Smith Street, 7<sup>th</sup> Floor  
Suites 600 & 700  
Houston, Texas 77002

Area Code 713  
Commercial No. – 209-3320/3377  
Toll Free – 800-669-4000  
FAX No. – 713-209-3381  
TTY No. – 713-209-3439  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Texas, counties of: Angelina, Austin, Brazoria,  
Chambers, Colorado, Fort Ben, Galveston, Grimes,  
Hardin, Harris, Jasper, Jefferson, Liberty, Matago  
Augustine, San Jacinto, Trinity, Tyler, Walker, Waller  
and Wharton

Indianapolis District Office  
EEOC  
101 West Ohio Street  
Suite 1900  
Indianapolis, Indiana 46204-4203

Area Code 317  
Commercial No. – 226-7212  
Toll Free – 800-669-4000  
FAX No. – 317-226-7953/5571  
TTY No. – 317-226-5162  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Indiana

Los Angeles District Office  
EEOC  
Roybal Federal Building  
255 E. Temple Street  
4<sup>th</sup> Floor  
Los Angeles, California 90012

Area Code 213  
Commercial No. – 894-1000  
Toll Free – 800-669-4000  
FAX No. – 213-894-1118  
TTY No. – 213-894-1121  
Toll Free TTY – 800-669-6820

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Figure B-2. EEOC District Offices and Geographic Jurisdictions-continued

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Geographic Jurisdiction: Nevada and California counties of: Imperial,  
Los Angeles, Orange, Riverside, San Bernadino, Santa  
Barbara, San Diego, San Louis Obispo, Ventura

Memphis District Office  
EEOC  
1407 Union Avenue, Suite 621  
Memphis, Tennessee 38104

Area Code 901  
Commercial No. – 544-0115  
Toll Free – 800-669-4000  
FAX No. – 901-544-0111  
TTY No. – 901-544-0112  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Arkansas and Tennessee

Miami District Office  
EEOC  
One Biscayne Tower  
2 South Biscayne Boulevard  
Suite 2700  
Miami, Florida 33131

Area Code 305  
Commercial No. – 536-4491  
Toll Free – 800-669-4000  
FAX No. – 305-536-4011  
TTY No. – 305-536-5721  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Florida

Milwaukee District Office  
EEOC  
Henry S. Reuss Federal Plaza  
310 West Wisconsin Avenue, Suite 800  
Milwaukee, Wisconsin 53203

Area Code 414  
Commercial No. – 297-1111  
Toll Free – 800-669-4000  
FAX No. – 414-297-4133  
TTY No. – 414-297-1115  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Iowa and Wisconsin

New Orleans District Office  
EEOC  
701 Loyola Avenue  
Suite 600  
New Orleans, Louisiana 70113

Area Code 504  
Commercial No. – 589-2329  
Toll Free – 800-669-4000  
FAX No. – 504-589-6861  
TTY No. – 504-589-2958  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Louisiana

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Figure B–2. EEOC District Offices and Geographic Jurisdictions-continued

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New York District Office  
EEOC  
33 Whitehall Street  
New York, New York 10048

Area Code 212  
Commercial No. – 336-3620  
Toll Free – 800-669-4000  
FAX No. – 212-336-3622  
TTY No. – 212-336-3622  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: The Bronx, Columbia, Dutchess, Greene, Kings, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Westchester counties, and the United States Virgin Islands

Philadelphia District Office  
EEOC  
21 South 5<sup>th</sup> Street  
Suite 400  
Philadelphia, Pennsylvania 19106-2515

Area Code 215  
Commercial No. – 440-2600  
Toll Free – 800-669-4000  
FAX No. – 215-440-2632  
TTY No. – 215-440-2610  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Delaware, New Jersey, Pennsylvania, and West Virginia

Phoenix District Office  
EEOC  
3300 N. Central Avenue  
Suite 690  
Phoenix, Arizona 85012-9688

Area Code 602  
Commercial No. – 640-5000  
Toll Free – 800-669-4000  
FAX No. – 602-640-5071/5070  
TTY No. – 602-640-5072  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Arizona and Utah

St. Louis District Office  
EEOC  
1222 Spruce Street  
Room 8.100  
St. Louis, Missouri 63103

Area Code 314  
Commercial No. – 539-7800  
Toll Free – 800-669-4000  
FAX No. – 314-539-7894  
TTY No. – 314-539-7803  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Kansas, Missouri, and Illinois counties of: Alexander, Bond, Calhoun, Clinton, Greene, Jackson, Jersey, Macoupin, Madison, Monroe, Perry, Pulaski, Randolph, St. Clair, Union, Washington

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Figure B–2. EEOC District Offices and Geographic Jurisdictions-continued

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San Antonio District Office  
EEOC  
Mockingbird Plaza II  
5410 Fredericksburg Road, Suite 200  
San Antonio, Texas 78229

Area Code 210  
Commercial No. – 281-7600  
Toll Free – 800-669-4000  
FAX No. – 210-281-7690  
TTY No. – 210-281-7610  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Texas, counties of: Arkansas, Atascosa, Bandra, Bastrop, Bee, Bexar, Blanco, Boliad, Brazos, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Coke, Comal, Concho, Crockett, De Witt, Dimmit, Duval, Edwards, Fayette, Frio, Gillespie, Gonzales, Guadalupe, Hays, Hidalgo, Irion, Jackson, Jim Hogg, Jim Wells, Karnes, Kendall, Kennedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Lee, Live Oak, Llano, McCulloch, McMullen, Mason, Maverick, Medina, Menard, Nueces, Real, Refugio, San Patricio, San Saba, Schleicher, Starr, Sutton, Terrell, Tom Green, Travis, Upton, Ulvade, Val Verde, Victoria, Washington, Webb, Willacy, Williamson, Wilson, Zapata, and Zavala

San Francisco District Office  
EEOC  
350 The Embarcadero, Suite 500  
San Francisco, California 94105-1260

Area Code 415  
Commercial No. – 625-5600  
Toll Free – 800-669-4000  
FAX No. – 415-625-5609  
TTY No. – 415-625-5610  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Hawaii, Pacific Far East (the U.S. Possessions of American Samoa, Guam, Commonwealth of Northern Mariana Islands, Walke Island), and California counties of: Butte, Colusa, Contra Costa, Del Norte, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, San Francisco, San Mateo, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo, and Yuba

Figure B-2. EEOC District Offices and Geographic Jurisdictions-continued

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Seattle District Office  
EEOC  
Federal Office Building  
909 First Avenue  
Suite 400  
Seattle, Washington 98104-1061

Area Code 206  
Commercial No. – 220-6883  
Toll Free – 800-669-4000  
FAX No. – 206-220-6911/6869  
TTY No. – 206-220-6882  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: Alaska, Idaho, Oregon, and Washington

Washington Field Office  
EEOC  
1400 L Street, N.W.  
Suite 200  
Washington, D.C. 20005

Area Code 202  
Commercial No. – 275-7377  
Toll Free – 800-669-4000  
FAX No. – 202-275-6834  
TTY No. – 202-275-7518  
Toll Free TTY – 800-669-6820

Geographic Jurisdiction: District of Columbia and Virginia counties of: Arlington, Clarke, Fairfax, Fauquier, Frederick, Loudoun, Prince William, Stafford, Warren, and Virginia independent cities of Alexandria, Dumfries, Fairfax City, Falls Church, Quantico, Manassas, Manassas Park and Winchester. (Hearings in Europe)

## **EEOC Area Offices**

Boston Area Office  
John F. Kennedy Federal Building  
475 Government Center  
Boston, MA 02203

Area Code 617  
Commercial No. 565-3200  
Toll Free – 800-669-4000  
FAX No. – 617-565-3196  
TTY No. – 617-565-3204  
Toll Free TTY – 800-669-6820

Cincinnati Area Office  
John W. Peck Federal Office Building  
550 Main Street, 10th Floor  
Cincinnati, OH 45202

Area Code 513  
Commercial No. 684-2851  
Toll Free – 800-669-4000  
FAX No. - 513-684-2361  
TTY No. - 513-684-2074  
Toll Free TTY - 800-669-6820

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Figure B–2. EEOC District Offices and Geographic Jurisdictions-continued

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El Paso Area Office  
300 E Main Street  
Suite 500  
El Paso, Texas 79901

Area Code 915  
Commercial No. 534-6700  
Toll Free - 800-669-4000  
FAX No. - 915-534-6701  
TTY No. - 915-534-6710  
Toll Free TTY - 800-669-6820

Jackson Area Office  
Dr. A. H. McCoy Federal Building  
100 West Capitol Street, Suite 207  
Jackson, Mississippi 39269

Area Code 601  
Commercial No. 965-4537  
Toll Free - 800-669-4000  
FAX No. - 601-965-5272  
TTY No. - 601-965-4915  
Toll Free TTY - 800-669-6820

Kansas City Area Office  
Gateway Tower II  
4th & State Ave., 9th Floor,  
Kansas City, KS 66101

Area Code 913  
Commercial No. 551-5655  
Toll Free - 800-669-4000  
FAX No. - 913-551-6957  
TTY No. - 913-551-5657  
Toll Free TTY - 800-669-6820

Little Rock Area Office  
820 Louisiana Street  
Suite 200  
Little Rock, Arkansas 72201

Area Code 501  
Commercial No. 324-5060  
Toll Free - 800-669-4000  
FAX No. - 501-324-5991  
TTY No. - 501-324-5481  
Toll Free TTY - 800-669-6820

Louisville Area Office  
600 Dr. Martin Luther King, Jr. Place  
Suite 268  
Louisville, Kentucky 40202

Area Code 502  
Commercial No. 582-6082  
Toll Free - 800-669-4000  
FAX No. - 502-582-5895  
TTY No. - 502-582-6285  
Toll Free TTY - 800-669-6820

Minneapolis Area Office  
Towle Building  
330 South Second Avenue, Suite 430  
Minneapolis, MN 55401-2224

Area Code 612  
Commercial No. 335-4040  
Toll Free - 800-669-4000  
FAX No. - 612-335-4044  
TTY No. - 612-335-4045  
Toll Free TTY - 800-669-6820

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Figure B-2. EEOC District Offices and Geographic Jurisdictions-continued

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Nashville Area Office  
50 Vantage Way  
Suite 202  
Nashville, Tennessee 37228-9940

Area Code 615  
Commercial No. 736-5820  
Toll Free - 800-669-4000  
FAX No. - 615-736-2107  
TTY No. - 615-736-5870  
Toll Free TTY - 800-669-6820

Newark Area Office  
One Newark Center, 21st Floor  
Newark, New Jersey 07102-5233

Area Code 973  
Commercial No. 645-6383  
Toll Free - 800-669-4000  
FAX No. - 973-645-4524  
TTY No. - 973-645-3004  
Toll Free TTY - 800-669-6820

Norfolk Area Office  
Federal Building  
200 Granby Street  
Suite 739  
Norfolk, VA 23510

Area Code 757  
Commercial No. 441-3470  
Toll Free - 800-669-4000  
FAX No. - 757-441-6720  
TTY No. - 757-441-3578  
Toll Free TTY - 800-669-6820

Oklahoma Area Office  
210 Park Avenue, Suite 1350  
Oklahoma City, Oklahoma 73102

Area Code 405  
Commercial No. 231-4911  
Toll Free - 800-669-4000  
FAX No. - 405-231-4140  
TTY No. - 405-231-5745  
Toll Free TTY - 800-669-6820

Pittsburgh Area Office  
Liberty Center  
1001 Liberty Avenue, Suite 300  
Pittsburgh, PA 15222-4187

Area Code 412  
Commercial No. 644-3444  
Toll Free - 800-669-4000  
FAX No. - 412-644-2664  
TTY No. - 412-644-2720  
Toll Free TTY - 800-669-6820

Raleigh Area Office  
1309 Annapolis Drive  
Raleigh, N.C. 27608-2129

Area Code 919  
Commercial No. 856-4064  
Toll Free - 800-669-4000  
FAX No. - 919-856-4151  
TTY No. - 919-856-4296  
Toll Free TTY - 800-669-6820

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Figure B-2. EEOC District Offices and Geographic Jurisdictions-continued

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Richmond Area Office  
830 East Main Street  
6th Floor  
Richmond, VA 23219

Area Code 804  
Commercial No. 771-2200  
Toll Free - 800-669-4000  
FAX No. - 804-771-2222  
TTY No. - 804-771-2227  
Toll Free TTY - 800-669-6820

San Diego Area Office  
Wells Fargo Bank Building  
401 B. Street, Suite 510  
San Diego, CA 92101

Area Code 619  
Commercial No. 557-7235  
Toll Free - 800-669-4000  
FAX No. - 619-557-7274  
TTY No. - 619-557-5748  
Toll Free TTY - 800-669-6820

San Juan Area Office  
525 F.D. Roosevelt Ave.  
Plaza Las Americas, Suite 1202  
San Juan, Puerto Rico 00918-8001

Area Code 787  
Commercial No. 771-1464  
Toll Free - 800-669-4000  
FAX No. - 787-771-1485  
TTY No. - 787-771-1484  
Toll Free TTY - 800-669-6820

Tampa Area Office  
501 East Polk Street, Suite 1000  
Tampa, FL 33602

Area Code 813  
Commercial No. 228-2310  
Toll Free - 800-669-4000  
FAX No. - 813-228-2841  
TTY No. - 813-228-2003  
Toll Free TTY - 800-669-6820

## **EEOC Local Offices**

Buffalo Local Office  
6 Fountain Plaza  
Suite 350  
Buffalo, NY 14202

Area Code 716  
Commercial No. 551-4441  
Toll Free – 800-669-4000  
FAX No. – 716-551-4387  
TTY No. – 716-551-5923  
Toll Free TTY – 800-669-6820

Fresno Local Office  
1265 W. Shaw Avenue  
Suite 103  
Fresno, CA 93711

Area Code 559  
Commercial No. 487-5793  
Toll Free – 800-669-4000  
FAX No. – 559-487-5053  
TTY No. – 559-487-5837  
Toll Free TTY – 800-669-6820

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Figure B–2. EEOC District Offices and Geographic Jurisdictions-continued

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Greensboro Local Office  
Suite 201  
2303 W. Meadowview Road  
Greensboro, N.C. 27407

Area Code 336  
Commercial No. 547-4188  
Toll Free – 800-669-4000  
FAX No. – 336-547-4032  
TTY No. – 336-547-4035  
Toll Free TTY – 800-669-6820

Greenville Local Office  
Suite 1402  
301 N. Main Street  
Greenville, SC 29601-9916

Area Code 864  
Commercial No. 241-4400  
Toll Free – 800-669-4000  
FAX No. – 864-241-4402  
TTY No. – 864-241-4403  
Toll Free TTY – 800-669-6820

Honolulu Local Office  
300 Ala Moana Blvd  
Room 7-127  
P.O. Box 50082  
Honolulu, HI 96850-0051

Area Code 808  
Commercial No. 541-3120  
Toll Free – 800-669-4000  
FAX No. – 808-541-3390  
TTY No. – 808-541-3131  
Toll Free TTY – 800-669-6820

Oakland Local Office  
1301 Clay Street  
Suite 1170-N  
Oakland, CA 94612-5217

Area Code 510  
Commercial No. 637-3230  
Toll Free – 800-669-4000  
FAX No. – 510-637-3235  
TTY No. – 510-637-3234  
Toll Free TTY – 800-669-6820

San Jose Local Office  
96 N. Third St., Suite 200  
San Jose, CA 95112

Area Code 408  
Commercial No. 291-7352  
Toll Free – 800-669-4000  
FAX No. – 408-291-4539  
TTY No. – 408-291-7374  
Toll Free TTY – 800-669-6820

Savannah Local Office  
410 Mall Boulevard  
Suite G  
Savannah, Georgia 31406-4821

Area Code 912  
Commercial No. 652-4234  
Toll Free – 800-669-4000  
FAX No. – 912-652-4248  
TTY No. – 912-652-4439  
Toll Free TTY – 800-669-6820

Figure B-2. EEOC District Offices and Geographic Jurisdictions-continued

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# U.S. MERIT SYSTEMS PROTECTION BOARD AND GEOGRAPHIC JURISDICTIONS

## HEADQUARTERS

U.S. Merit Systems Protection Board  
1615 M Street, NW  
Washington, DC 20419

Area Code 202  
Commercial No. – 653-7200  
Toll Free. – 1-800-209-8960  
MSPB Inspector General Hotline – 800-424-9121  
FAX No. - 202-653-7130  
V/TDD No. - 800-877-8339

## Regional Offices

Atlanta Regional Office  
**Thomas J. Lanphear**  
Regional Director and Chief Administrative Judge  
401 W. Peachtree Street, NW.  
Suite 1050  
Atlanta, Georgia 30308

Area Code 404  
Commercial No. – 730-2751  
FAX No. - 404-730-2767

Appellate Jurisdiction: Alabama, Florida, Georgia, Mississippi, South  
Carolina and Tennessee

Central Regional Office  
**Martin Baumgaertner**  
Regional Director and Chief Administrative Judge  
230 South Dearborn Street  
Room 3100  
Chicago, Illinois 60604

Area Code 312  
Commercial No. – 353-2923  
FAX No. – 312-886-4231

Appellate Jurisdiction: Illinois, Indiana, Iowa, Kansas City (KS),  
Kentucky, Michigan, Minnesota, Missouri, Ohio  
and Wisconsin

Northeastern Regional Office  
**William L. Boulden**  
Regional Director and Chief Administrative Judge  
U.S. Customhouse Room 501  
Second & Chestnut Streets  
Philadelphia, Pennsylvania 19106

Area Code 215  
Commercial No. – 597-9960  
FAX No. – 215-597-3456

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Figure B-3. Merit Systems Protection Board and Appellate Jurisdictions

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Appellate Jurisdiction: Delaware, Maryland (except Montgomery and Prince George's counties), New Jersey (except Bergen, Essex, Hudson and Union counties), Pennsylvania and West Virginia

Washington DC Regional Office  
**PJ Winzer** Area Code 703  
Commercial No. – 756-6250  
Regional Director and Chief Administrative Judge FAX No. - 703-756-7112  
1800 Diagonal Road  
Suite 205  
Alexandria, Virginia 22314-2840

Appellate Jurisdiction: Washington DC, Maryland (counties of Montgomery and Prince George) North Carolina, Virginia, and all overseas areas not covered

Western Regional Office Area Code 415  
**Amy Dunning** Commercial No. – 705-2935  
Regional Director and Chief Administrative Judge  
250 Montgomery Street FAX No. – 415-705-2945  
Suite 400, 4<sup>th</sup> Floor  
San Francisco, California 94104

Appellate Jurisdiction: California and Nevada

**Field Offices**

Boston Field Office Area Code 617  
**William Carroll** Commercial No. – 424-5700  
Chief Administrative Judge FAX No. – 617-424-5708  
99 Summer Street  
Suite 1810  
Boston, Massachusetts 02110

Appellate Jurisdiction: Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut and Vermont

Figure B-3. Merit Systems Protection Board and Appellate Jurisdictions—continued

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Dallas Field Office  
**Sharon F. Jackson**  
Chief Administrative Judge  
1100 Commerce Street  
Room 620  
Dallas, Texas 75242

Area Code 214  
Commercial No. – 767-0555  
FAX No. – 214-767-0102

Appellate Jurisdiction: Arkansas, Louisiana, Oklahoma and Texas

Denver Field Office  
**Joseph Hartman**  
Chief Administrative Judge  
165 South Union Boulevard  
Suite 318  
Lakewood, Colorado 80228

Area Code 303  
Commercial No. – 969-5101  
FAX No. – 303-969-5109

Appellate Jurisdiction: Arizona, Colorado, Kansas (except  
Kansas City), Montana, Nebraska, New Mexico,  
North Dakota, South Dakota, Utah and Wyoming

New York Field Office  
**Arthur S. Joseph**  
Chief Administrative Judge  
26 Federal Plaza  
Room 3137A  
New York, New York 10278

Area Code 212  
Commercial No. – 264-9372  
FAX No. – 212-264-1417

Appellate Jurisdiction: New Jersey, (counties of Bergen, Essex, Hudson,  
and Union), New York, Puerto Rico and Virgin  
Islands

Seattle Field Office  
**Carl Berkenwald**  
Chief Administrative Judge  
915 Second Avenue  
Room 1840  
Seattle, Washington 98174

Area Code 206  
Commercial No. – 220-7975  
FAX No. – 206-220-7982

Appellate Jurisdiction: Alaska, Hawaii, Idaho, Oregon, Washington and  
Pacific overseas areas

Figure B-3. Merit Systems Protection Board and Appellate Jurisdictions—continued

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## **Glossary**

### **Section I Abbreviations**

#### **AASA**

Administrative Assistant to the Secretary of the Army

#### **ADEA**

Age Discrimination in Employment Act of 1967

#### **ADR**

alternative dispute resolution

#### **AR**

Army Regulation

#### **ARNG**

Army National Guard

#### **CFR**

Code of Federal Regulations

#### **CONUS**

continental United States

#### **CPAC**

Civilian Personnel Advisory Center

#### **CPOC**

Civilian Personnel Operations Center

#### **DA**

Department of the Army

#### **DASA–CPP**

Deputy, Assistant Secretary of the Army (Civilian Personnel Policy)

#### **DOD**

Department of Defense

#### **DODOCI**

Department of Defense Office of Complaint Investigations

#### **DSN**

Defense Switching Network

#### **EEO**

Equal employment opportunity

#### **EEOC**

Equal Employment Opportunity Commission

#### **EEOCCR**

Equal Employment Opportunity Compliance and Complaints Review

#### **EPA**

Equal Pay Act

#### **FAA**

final agency action

**FAD**

final agency decision

**FLRA**

Federal Labor Relations Authority

**HQDA**

Headquarters, Department of the Army

**IMA**

Installation Management Agency

**MACOM**

Major Army Command

**MSPB**

Merit Systems Protection Board

**NAF**

nonappropriated fund

**NSA**

negotiated settlement agreement

**OCONUS**

outside continental United States

**OFO**

Office of Federal Operations

**OGC**

Office of General Counsel

**OPM**

Office of Personnel Management

**OTJAG**

Office of The Judge Advocate General

**PIO**

post investigative options

**ROI**

report of investigation

**SJA**

staff judge advocate

**USAR**

United States Army Reserve

**USC**

United States Code

**Section II****Terms****activity commander**

The army commander who has delegated appointing authority for the civilian work force and has a civilian personnel official, a labor counselor, and an EEO officer available for advice.

**administrative judge (EEOC)**

An official assigned by the EEOC to hold hearings on formal complaints of discrimination and to otherwise process individual and class complaints for the EEOC.

**adverse impact**

A substantially different rate of selection in hiring, promotion, or other employment decision that works to the disadvantage of members of a protected group.

**age discrimination**

A claim of discrimination based on age by an individual who is at least 40 years old at the time of the alleged discriminatory act.

**agent of the class**

A member of a class who files the complaint and acts for the class during the class complaint process. The agent alleges that an Army personnel practice or policy discriminates against members of the class on the basis of race, color, religion, sex, national origin, age, and/or physical or mental disability.

**alternative dispute resolution (ADR)**

A variety of techniques and methods used to resolve disputed issues, including but not limited to: settlement negotiations, conciliation, facilitation, mediation, factfinding, and minitrials, or any combination thereof.

**arbitration**

The final resolution or decision on a grievance filed under a negotiated grievance procedure by an impartial person (an arbitrator) selected by labor and management. If allegations of discrimination are not excluded from a negotiated grievance procedure, they may be filed under such a procedure and eventually may be decided through arbitration. Only a union or the Army may invoke arbitration to resolve a grievance.

**Army Director of Equal Employment Opportunity (Army Director of EEO)**

The official who is designated by the Secretary of the Army to administer the Army's EEO program in accordance with 29 CFR Section 1614.102.

**Army representative**

An attorney designated to represent the Army.

**civilian personnel official**

An individual designated by a commander to administer the civilian personnel program and serve as head of the civilian personnel office at the commander's activity or installation. In many cases the titles of the official and office have been changed to Chief, CPAC. In addition, Directors of regional CPOC's administer parts of most civilian personnel programs. In various places throughout this regulation the term may refer to the head of the concerned office, advisory center or operations center.

**Civilian Personnel Advisory Center (CPAC)**

An office staffed by multiskilled generalists primarily, and certain specialists, who provide civilian personnel advisory services to local commanders, managers, supervisors, employees, and applicants. These centers are under the operational control and direction of the installation commander.

**Civilian Personnel Operations Center (CPOC)**

A regional center staffed by functional specialists and technicians who support centralized personnel services and processes for a number of geographically based sites.

**class**

A group of Army employees, former employees, or applicants for employment, who allege they have been or are being adversely affected by an Army personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age, or physical or mental disability.

**complainant**

An Army employee, a former Army employee, an applicant for Army employment, or certain contract employee who files a formal complaint of discrimination based on his or her race, color, religion, sex, national origin, age, physical or mental disability, and/or reprisal.

**contingent worker**

All civilian employees outside of the Army's core workforce, such as independent contractors and other individuals working on Army installations or projects without being on the activity's payroll.

**Department of Defense Office of Complaint Investigations (DODOCI)**

The Department of Defense organization that investigates and makes recommended findings on formal EEO complaints filed against the Army.

**discrimination**

Any act or failure to act, impermissibly based in whole or in part on a person's race, color, religion, sex, national origin, age, physical or mental disability, and/or reprisal, that adversely affects privileges, benefits, working conditions, results in disparate treatment, or has a disparate impact on employees, former employees or applicants for employment.

**Equal Employment Opportunity Commission (EEOC)**

The Federal agency with overall responsibility for Federal sector EEO complaints. The EEOC issues policy and regulations on the discrimination complaint system, holds hearings and makes findings on discrimination complaints and makes final decisions on discrimination complaints that have been appealed. It also reviews, upon request, decisions of negotiated grievances and MSPB appeals if they include issues of discrimination.

**Equal Employment Opportunity Compliance and Complaints Review (EEOCCR)**

The Army organization responsible for managing the Army's EEO complaints system. EEOCCR also prepares the final Army action/decision on the merits of EEO complaints for the approval and signature of the Director of EEO or his or her designee.

**EEO counselor**

An individual designated by the Army to perform EEO counselor duties, working under the direction of the EEO officer, who makes informal inquiries and seeks resolution of precomplaints.

**EEO officer**

The individual designated by the activity commander to administer the activity's EEO program. This includes managing and operating the complaint processing system, supervising and training EEO counselors, and advising the activity commander on the disposition of complaints.

**equitable tolling**

Stopping or suspending certain time limitations imposed under this regulation when a complainant's failure to act in a timely manner is caused by circumstances beyond his or her control.

**estoppel**

A party is prevented by his or her own acts from claiming a right to the detriment of the other party who was entitled to rely on such conduct and has acted accordingly.

**factfinding conference**

One of several alternative means used to investigate an EEO complaint. As the Army's preferred method, this procedure involves taking testimony in the presence of a court reporter, the complainant and his or her representative, and the attorney representing the Army.

**Federal Labor Relations Authority (FLRA)**

The Federal agency responsible for deciding appeals of arbitration awards filed by a union or an agency regarding grievances filed under the negotiated grievance procedure.

**final Army action**

The decision by the Army Director of EEO, or designee, to either implement or appeal the decision rendered by an administrative judge of the EEOC.

**final Army decision**

The decision rendered by the Army Director of EEO, or designee, on a nonmixed complaint of discrimination where no hearing was elected by the complainant, on a mixed complaint of discrimination or addressing allegations of noncompliance with negotiated settlement agreements. Final Army decisions may also address compensatory damages and/or attorney fee payments.

**formal individual discrimination complaint**

A written complaint, preferably on a DA Form 2590 (Formal Complaint of Discrimination), filed under this regulation, alleging that a specific act or acts of discrimination or reprisal has/have taken place that is/are personal to the individual.

**investigative file**

The complaint file as provided by the DODOCI Investigator and supplemented to include the ROI and exhibits.

**labor counselor**

An Army attorney who works in the servicing activity's legal office who advises the commander and his or her staff, including the EEO officer and CPO, on employment law matters.

**mediation**

A method used to resolve complaints of discrimination wherein an acceptable, impartial and neutral third party, who has no decisionmaking authority, intervenes to facilitate settlement of the dispute.

**mediator**

An impartial and neutral third party, who has no decision making authority, trained and certified to intervene between disputing parties as a means to facilitate settlement of complaints of discrimination.

**Merit Systems Protection Board (MSPB)**

The Federal agency responsible for deciding appealable personnel actions and mixed case appeals.

**mixed case complaint**

An EEO complaint filed directly with the Army involving an action appealable to MSPB which alleges that the action was taken because of discrimination. Actions appealable to the MSPB include, but are not limited to, removals, demotions, suspensions for more than 14 days, reductions-in-force, and furloughs for 30 days or less.

**mixed case appeal**

An appeal filed directly with the MSPB which alleges that an adverse Army personnel action, appealable to MSPB was taken, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, age, physical or mental disability and/or reprisal.

**moot(ness)**

A complaint is moot if there is no reasonable expectation that the alleged discriminatory violation will recur and interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.

**negotiated grievance procedure**

A grievance procedure contained in a collective bargaining agreement negotiated between the Army and a recognized labor organization. An allegation of discrimination may be processed under a negotiated grievance procedure as provided for by Title 5, USC, Section 7121(d).

**negotiated settlement agreement (NSA)**

A written settlement agreement knowingly and voluntarily signed by the complainant or agent and the Army during the precomplaint or formal complaint process which resolves an EEO complaint. The terms of agreement are binding on both parties.

**Office of Federal Operations (OFO)**

This EEOC component is responsible for the Federal EEO complaint process and handles all administrative appeals to the EEOC on agency decisions concerning EEO complaints.

**precomplaint**

A matter of alleged discrimination which an aggrieved person brings to the attention of an EEO official/counselor before a formal discrimination complaint is filed.

**remedial action**

Measures taken to put the victim of prohibited discrimination where she or he would have been absent the discrimination. May include, but is not limited to, retroactive appointment or promotion, back pay, attorney fees and/or costs, cancellation of an unwarranted personnel action, or expunction from the Army's records of any adverse materials relating to the discriminatory employment practice.

**reportable contact**

A reportable contact is any contact with an EEO counselor or EEO office personnel performing counseling by an aggrieved person who alleges discrimination on the bases of race, color, religion, sex, age, national origin, physical or mental disability, and/or reprisal.

**representative**

A person selected and designated in writing by a complainant, the class agent, or witness. The representative may accompany, represent, and advise the complainant, the agent, or witness at any stage of the complaint process.

**reprisal**

Retaliation for participation in Title VII activity or opposition to any practice made unlawful by Title VII, ADEA, EPA or Rehab Act.

**serviced activity**

Any activity that receives EEO services from the servicing EEO officer.

**servicing activity**

The installation to which the activity EEO officer is assigned which administers the EEO program and provides EEO services.

**settlement**

A resolution arrived at during the precomplaint or formal complaint process which resolves issues raised to the satisfaction of the complainant or agent and the Army. The terms of the resolution must be set out in a written negotiated settlement agreement.

**waiver**

The intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right.

**witness**

Any individual called upon to testify or provide evidence on behalf of the agency or complainant.

**workable contact**

A workable contact is any contact an EEO official has with an employee for the purpose of providing information on the EEO process.

**Section III****Special Abbreviations and Terms****class complaint**

A written discrimination complaint filed on behalf of a class of Army employees, former employees or applicants by the agent of the class alleging that an Army personnel policy or practice discriminates against the class, and fulfills all of the following elements:

- a.* The class is so numerous that a consolidated complaint of the class is impractical;
- b.* there are questions of fact common to the class;
- c.* the agent's individual claim is typical of the claims of the class; and
- d.* the agent of the class or the representative, if represented, will fairly and adequately protect the interests of the class.

**sexual harassment**

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a.* Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b.* Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such an individual; or
- c.* Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

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