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Civilian Personnel

Equal Employment Opportunity Discrimination Complaints

By Order of the Secretary of the Army:

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Chief of Staff

Official:


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History. This publication is an administrative revision. The portions affected by this administrative revision are listed in the summary of change.

Authorities. This regulation implements Equal Employment Opportunity Management Directive 110, 5 CFR 315.806, 5 CFR 550, 5 USC 1201, 29 CFR 1614, and DoDI 1400.25, Volume 1614.

Applicability. This regulation applies to the Regular Army, and the U.S. Army Reserve, unless otherwise stated. This regulation applies to all Department of the Army appropriated or non-appropriated fund activities, their employees, former employees, and applicants for employment. It does not apply to uniformed members of the military, persons employed or applying for positions in the Army and Air Force Exchange System, persons employed or applying for positions at the National Guard Bureau or National Guard of each state, Army National Guard technicians, uniformed members of the military working part-time off duty for non-appropriated 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.

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 or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific requirements.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix C).

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 Compliance and Complaints Review (SAMR), at usarmy.pentagon.hqda-asa-mra.mbx.eeoccr@army.mil.

Distribution. This regulation is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

*This regulation supersedes AR 690–600, dated 1 August 2024.

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Summary of Change

AR 690–600

Equal Employment Opportunity Discrimination Complaints

This administrative revision, dated 20 February 2025—

- Removes content to align with Executive Order 14168 (para 1–1).
- Updates references (appendix A).

This mandated revision, dated 6 February 2025—

- Removes Diversity, Equity, Inclusion and Accessibility Policy and Programs per Executive Order 14151 (throughout)
- Change from Office of the Deputy Assistant Secretary of the Army for Equity and Inclusion to Assistant Secretary of the Army (Manpower and Reserve Affairs) (throughout).

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Glossary of Terms

Chapter 1 General Provisions

Section I

Introduction

1–1. Purpose

This regulation prescribes policy, responsibilities, and procedures for counseling, filing, processing, investigating, settling, documenting, advising, 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, employees of contractors in cases involving joint employer issues or allegations, will be governed by this regulation (see para 3–10). 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, changes in federal laws, statutes, and regulations that affect the processing of federal sector EEO complaints, changes to the structure of the Army and clarification of and changes to roles, policies, and procedures. 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, genetic information, mental or physical disability, or in reprisal for engaging in prior protected EEO activity. No person will be subject to reprisal or retaliation for opposing any practice, or for participating in any stage of administrative or judicial proceedings under those statutes made unlawful by Title VII of the Civil Rights Act (see 42 USC 2000e), the Age Discrimination in Employment Act (ADEA) (see 29 USC 621) the EPA (see 29 USC 206(d)), Title II of the Genetic Information Nondiscrimination Act (GINA) (see 42 USC 2000ff), and the Rehabilitation Act (see 29 USC 791). Discrimination complaints will be processed with due regard for the rights of persons against whom allegations have been made and complaints will be processed promptly and impartially. Complaints should be resolved as early as possible; however, resolution can occur at any stage of processing. Implementation of an EEO alternative dispute resolution (ADR) program, as described in chapter 2 is required, and its use is encouraged, when appropriate. Early resolution of complaints achieves better employee relations, cuts administrative costs, avoids protracted litigation, and is consistent with the Army's commitment to EEO. Timelines imposed on the Army through this regulation that are not mandated by EEOC are administrative requirements. They are designed to assure prompt and efficient 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.

1–2. References, forms, and explanation of abbreviations

See appendix A. The abbreviations, brevity codes, and acronyms (ABCAs) used in this electronic publication are defined when you hover over them. All ABCAs are listed in the ABCA directory located at <https://armypubs.army.mil/>.

1–3. Associated publications

This section contains no entries.

1–4. Responsibilities

See section II of this chapter.

1–5. Records management (recordkeeping) requirements

The records management requirement for all record numbers, associated forms, and reports required by this publication are addressed in the Records Retention Schedule–Army (RRS–A). Detailed information for all related record numbers, forms, and reports are located in Army Records Information Management System (ARIMS)/RRS–A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

Section II

Responsibilities

1–6. The Assistant Secretary of the Army (Manpower and Reserve Affairs)

The ASA (M&RA) is the DA Director of EEO, as designated by the Secretary of the Army (SECARMY). As the proponent of this regulation, the ASA (M&RA) establishes Army EEO policy and implements the Army EEO Compliance and Complaints Program. The ASA (M&RA) executes EEO policy, and will ensure that—

- a. Army programs conform to the aforementioned policies.
- b. Adequate resources are available to implement the Army EEO Compliance and Complaints Program.
- c. A system to process EEO complaints exists.
- d. Final Army decisions and actions on EEO complaints are rendered.

1–7. Director, Equal Employment Opportunity Compliance and Complaints Review

The Director, EEOCCR will—

- a. Develop programs in furtherance of Army policy to process discrimination complaints filed against the Army.
- b. Direct the operation and management of the Army's discrimination complaint process for individual and class complaints from Army civilian employees, former employees, and applicants for employment.
- c. Process and prepare final Army decisions and actions on individual and class complaints of discrimination for approval by the Army Director of EEO or designee. When designated by the Director of EEO or designee, 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 bona fide requests for documents, records, and information with respect to EEO complaints 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 Office of Federal Operations (OFOs) and decide, on a case-by-case basis, whether the Army will request reconsideration of an EEOC OFO appellate decision.
- g. Evaluate compliance of installations, activities, and Army commands (ACOMs), Army service component commands (ASCCs), and direct reporting units (DRUs) in executing directed corrective actions and for conformance with procedural and regulatory guidelines.
- h. Provide guidance, assistance, and training to Army EEO personnel on the EEO complaint process.
- i. Direct and manage the mandatory Army EEO automated data system that tracks complaints from the pre-complaint stage through closure.
- j. Issue interim guidance to ensure complaints continue to be processed in a timely and impartial manner in accordance with applicable laws, statutes, regulations, and policy.

1–8. Equal Employment Opportunity Directors of servicing Army commands, Army service component commands, direct reporting units, Joint bases, and combatant command support agents

The EEO Directors of ACOMs, ASCCs, DRUs, Joint bases, and combatant command support agents will—

- a. Have mission responsibility and oversight of operational EEO functions, including EEO complaint processing. The ACOM, ASCC, or DRU EEO Director or designee will ensure that servicing activity EEO offices are sufficiently resourced by the activity to provide complaint processing services for serviced commands, to ensure that serviced commanders or equivalent officials at all levels can develop and sustain positive EEO climates within their respective areas of command responsibility.
- b. The EEO Director of servicing ACOMs, ASCCs, or DRUs will also (if applicable)—
 - (1) Serve on the commander's or equivalent official's staff as the principal advisor on all matters pertaining to EEO program operations and of the effectiveness of the EEO complaint and EEO ADR programs throughout the command.

(2) Know federal EEO laws, U.S. Supreme Court decisions that affect application of federal sector EEO laws, precedential EEOC OFO decisions, Presidential Executive Orders and regulations, as well as EEOC, Office of Personnel Management (OPM), Department of Defense (DoD) and Army EEO policies and directives, and be able to communicate the commander's EEO policy to all members and appropriate officials at all levels within the work force.

(3) Advise the commander of the status of EEO discrimination complaints and results of trends analyses in complaints within the commander's area of responsibility.

(4) Exercise administrative oversight and control over command EEO programs.

(5) Prepare and ensure that requests for reports and information are submitted accurately and promptly.

(6) Make on site evaluations of activity level service effectiveness and provide staff assistance as needed.

(7) Ensure that all time limits set forth in this regulation are met.

(8) Oversee use of the Army EEO automated data system by subordinate EEO offices. Ensure that necessary equipment is available and properly maintained, that personnel are adequately trained to use the system and that complaint data is timely and accurately input and updated.

(9) Process or designate a processor for EEO complaints where processing is impractical, or a conflict of interest or position exists at the servicing activity level.

(10) Process conflict of interest EEO complaints assigned by the EEOCCR Director.

(11) Coordinate with serviced ACOMs, ASCCs, DRUs, and equivalents as needed on EEO complaints and compliance related matters.

(12) Coordinate and review interservice support agreements for EEO services provided to off-installation Army activities, if applicable.

(13) Ensure corrective action is taken when servicing activity EEO offices fail to process complaints in accordance with this regulation and the EEOC's regulation and management directive, as identified and directed by the EEOCCR Director or the EEOC.

c. Joint base services.

(1) The DoD has consolidated management and support responsibilities of some military installations in close proximity to each other which were previously managed separately by Army, Navy, and Air Force. Installation support at many of these "joint bases" is now provided by either Air Force or Navy, with Army activities residing as tenants on these installations. These Army tenants continue to receive support, including EEO complaint processing services, from the installation EEO office in accordance with established agreements. Some joint bases continue to be managed by the Army and now provide installation support to tenants from other service components in accordance with established agreements.

(2) Joint bases where installation support is provided by Air Force or Navy continue to provide EEO complaint processing services to Army tenants, in accordance with established agreements. These joint base servicing activity EEO offices continue to have access to the Army EEO automated data system to input Army EEO complaint data.

(3) ACOM, ASCC, DRU, and equivalent EEO Directors whose complaint programs are impacted by significant and unresolved compliance issues with joint base servicing EEO offices should address these issues with the EEOCCR Director.

1-9. Equal Employment Opportunity Directors of serviced Army commands, Army service component commands, direct reporting units, and equivalents

The EEO Director at ACOMs, ASCCs, DRUs, or equivalents which receive EEO services as tenant organizations will—

a. Serve on the ACOM, ASCC, or DRU commander's or equivalent official's staff as the principal advisor on all matters pertaining to EEO program operations.

b. Know federal EEO laws, U.S. Supreme Court decisions that affect application of federal sector EEO laws, precedential EEOC OFO decisions, Presidential Executive Orders, and regulations, as well as EEOC, OPM, DoD, and Army EEO policies and directives, and be able to communicate the commander's EEO policy to all members and appropriate officials at all levels within the workforce.

c. Advise the commander of the status of EEO discrimination complaints and results of trends analyses in complaints within the commander's area of responsibility.

d. Monitor the Army EEO automated data system for complaint information, status, and for complaint trends analysis data.

- e. Prepare and ensure that required reports and information are submitted accurately and promptly.
- f. Coordinate with and provide assistance to the servicing activity EEO offices and servicing ACOM, ASCC, or DRU EEO Directors as needed on complaints and compliance related matters.
- g. Coordinate and review interservice support agreements for EEO services provided for organizations not located on Army installations.
- h. Process conflict of interest EEO complaints assigned by the EEOCCR Director.

1–10. Commanders and equivalents

- a. All commanders and their equivalents will—
 - (1) Execute and enforce effective EEO programs and policies as required by laws, Presidential Executive Orders, EEOC, OPM, DoD, and Army regulations, policies, and directives.
 - (2) Be personally responsible and accountable for the EEO climate as well as EEO program compliance within their area of responsibility.
 - (3) Ensure that supervisors and managers understand and meet their responsibilities for participation in the EEO ADR and discrimination complaint processes.
 - (4) Provide collateral duty resources to support the servicing office, such as collateral duty EEO counselors and EEO ADR neutrals.
 - (5) 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:
 - (a) The name and address of the Army Director of EEO.
 - (b) The names, addresses, and telephone numbers of EEO officials, including the servicing activity EEO officer.
 - (c) A statement that an 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 (see 5 USC 7121) or under Merit Systems Protection Board (MSPB) appellate procedures.
 - (d) 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.
 - (6) Ensure employees are informed of the Army EEO complaint process, including EEO program use of ADR.
 - (7) Ensure prompt implementation of remedies directed by EEOC or Army Director of EEO or designee.
 - (8) Ensure the Army is adequately represented at all steps in the EEO complaint process for complaints under their authority.
 - (9) Promote the participation in and use of ADR to resolve EEO disputes when deemed appropriate.
 - (10) Ensure EEO office personnel maintain impartiality by avoiding creation of conflicts of interest for EEO personnel.
 - (11) Make timely decisions on complaints of discrimination under their authority as provided in this regulation. Such decisions include deciding or designating an individual to decide whether to offer ADR, determining whether to settle complaints within the command as the ultimate settlement authority or petitioning the EEOCCR Director to submit a request for reconsideration to the EEOC OFO after a decision on appeal.
 - (12) Coordinate with servicing activity EEO office personnel for timely processing of complaint actions as necessary.
- b. Commanders and their equivalents with an EEO Director or officer on staff additionally will—
 - (1) Ensure the EEO officer or Director is organizationally placed in a direct reporting relationship with the head of the organization.
 - (2) Provide sufficient resources to the EEO program to ensure efficient and successful operations.

1–11. The servicing activity Equal Employment Opportunity officer

- a. The servicing activity 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. Servicing activity EEO officers will—
 - (1) Serve on the servicing activity commander's or manager's staff as the principal advisor on all matters pertaining to EEO program operations.

(2) Know federal EEO laws, U.S. Supreme Court decisions that affect application of federal sector EEO laws, precedential EEOC OFO decisions, Presidential Executive Orders, and regulations, as well as EEOC, OPM, DoD, and Army 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.

(3) Ensure that the servicing activity EEO complaints processing program is administered in accordance with established procedures to meet the Army standard level of service and an individual's right to due process.

(4) Manage the servicing activity EEO complaint processing program. Monitor, implement, and evaluate the progress of the EEO complaint processing program. Ensure that reports are prepared and submitted in a timely manner to appropriate officials.

(5) Ensure that every reasonable effort is made to resolve complaints at the earliest possible stage.

(6) Administer an ADR program for EEO disputes in accordance with chapter 2 of this regulation.

(7) Ensure the availability of sufficient EEO counselors and ADR neutrals to provide effective counseling services.

(8) Supervise EEO counselors to ensure effective performance and participation in refresher training in all phases of complaint processing. Refer or assign EEO counselors for pre-complaint counseling.

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

(10) Upon an individual's expressed intent to initiate the EEO complaint process, notify management officials, including Civilian Human Resource Servicing Centers (CHRSCs) officials, in writing to retain all relevant documents.

(11) Coordinate with the servicing CHRSC officials, when appropriate, when the processing of a formal EEO complaint would preclude the processing of an MSPB appeal and/or grievance.

(12) After coordination with the labor counselor, make the decision to accept or dismiss, in whole or in part, individual formal complaints, subject to the final decision of the Army Director of EEO, or designee.

(13) Ensure that all formal complaints are captioned to identify the name of the complainant versus the name and official title of the appropriate department or agency head against whom the complaint is filed, and the DA docket number.

(14) Arrange for investigations and EEOC hearings; assist activities in obtaining or contracting for the services of court reporters; ensure that the court reporter provides the required digital transcript ordered to the investigator or to the EEOC administrative judge.

(15) Ensure that the EEOC administrative judge is advised to serve the decision and supporting documents, including all agency copies of the transcript (if necessary), on the EEOCCR Director.

(16) Review proposed negotiated settlement agreements (NSAs) and Offers of Resolution.

(17) Monitor implementation and ensure compliance with the terms of an executed NSAs or Offer of Resolution accepted by the complainant to resolve any complaints of discrimination.

(18) Maintain and safeguard complaint files.

(19) Send legible digital copies of the report of investigation (ROI) and complaint file, properly bookmarked, redacted, and searchable, to the EEOCCR Director within the time frames required by this regulation.

(20) Establish and maintain accurate and timely accounts, input, and update of complaint data in the Army's prescribed EEO automated data system. Retrieve data for program management and reporting purposes.

(21) Prepare and submit required reports.

b. Any EEO officer or Director processing an EEO complaint is performing in the role of a servicing activity EEO officer with respect to that EEO complaint.

1–12. The agency attorney

An agency attorney may be involved in the EEO complaint process in different roles to include—

a. As an agency attorney who serves as legal advisor to a servicing activity EEO office, which attorney will coordinate with the servicing activity EEO officer to provide timely and accurate legal advisory services, to include providing an opinion as to the legal sufficiency of the acceptance or dismissal, in whole or part, of individual formal complaints, subject to the final decision of the Army Director of EEO, or designee.

b. As an agency attorney who serves as the agency representative in an EEO matter, which attorney represents the Army in investigations, settlement negotiations, and proceedings before the EEOC in connection with individual and class complaints. An agency representative provides legal support to the serviced commander or equivalent, management officials, and civilian personnel officials in connection with an EEO complaint. The agency representative will assist with gathering and providing supporting documents and other evidence to the servicing activity EEO officer when an investigation is initiated on any EEO complaint, or to an EEOC administrative judge when a hearing has been requested, and draft and/or review proposed NSAs and Offers of Resolution.

c. Although a designated agency representative in an EEO complaint will not conduct the legal sufficiency review of the acceptance or dismissal of the formal EEO complaint, the agency attorney who provides legal advisory services in connection with the dismissal of an EEO complaint may serve as the agency representative on an appeal from that dismissal to the EEOC, without creating a conflict of interest.

1–13. The civilian personnel official

The civilian personnel official will—

a. Ensure that servicing activity EEO officers, EEO counselors, investigators, and agency representatives are given timely 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 servicing activity 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, investigators, EEO officers, and Directors.

c. Be engaged at the onset of EEO ADR/settlement discussions if any considered settlement alternatives could affect personnel actions/status, including, but not limited to those involving reassignment, Time-in-Grade, pay, benefits, classification, retirement, leave, and bargaining agreement implications.

1–14. Managers and supervisors

Managers and supervisors at all levels, both military and civilian, 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, investigate, or correct situations that may give rise to meritorious complaints of discriminatory acts or harassment, whether a complaint or grievance has been filed concerning the situation or not.

c. Take corrective action against military members and civilian employees in the supervisor's area of responsibility 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 EEO ADR process when appropriate.

f. Cooperate and ensure subordinates' full cooperation with ADR neutrals and mediators, EEO counselors, servicing activity EEO officers, investigators, and EEOC administrative judges involved in the EEO complaints process, to include timely responses to requests for relevant documents and data.

g. Throughout the administrative process of an EEO complaint, ensure that aggrieved persons, complainants, and their representatives are permitted to use a reasonable amount of official time to work on their complaints in accordance with guidance within this regulation (see para 8–7).

h. Complete supervisory EEO and Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) training.

i. Ensure civilian employees complete EEO and No FEAR Act training.

j. Adhere to the provisions of applicable collective bargaining agreements and fulfill all statutory labor relations obligations identified in 5 USC 71 in advance of implementation and administration of this regulation. Questions concerning labor relations obligations should be addressed with the servicing CHRSC.

1–15. The Equal Employment Opportunity counselor

It is the Army's policy 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 pre-complaint 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 servicing activity EEO officer upon completion of counseling.

1–16. The alternative 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 or complainant and designated management official in a collaborative, non-adversarial manner.

b. Advise the servicing activity EEO officer of the terms of any proposed settlement. The servicing activity EEO officer is responsible for assuring necessary coordination and execution of any settlement agreement.

c. Advise the servicing activity EEO officer if resolution is not achieved.

1–17. The complaint investigator

In accordance with DoD policy as prescribed in DoDI 1400.25, Volume 1614, the Army utilizes the independent investigators from the Department of Defense Investigations and Resolutions Directorate (DoD IRD) to investigate formal complaints of employment discrimination filed against the Army by civilian employees, applicants, former employees, and employees of contractors in cases involving joint employer issues or allegations. The complaint investigator will—

a. Select the method of investigation that is used, giving full consideration to the nature of the complaint and resource constraints within the activity, and consideration of any agency preference. Investigators defer to the activity's wishes and resource considerations as to funding transcriptions of verbatim testimony or fact-finding conferences. Methods of investigation include the collection of testimony through written interrogatories; interviews conducted on site, by telephone, or through video-teleconference facilities; fact-finding conferences conducted on site or through video-teleconference facilities; or any combination of these methods.

b. Prepare reports of investigation.

c. Encourage parties to resolve a complaint, as appropriate.

Section III

Special Conditions

1–18. Equal Employment Opportunity counselor training

All newly appointed EEO counselors must receive a minimum of 36 hours of initial training. Army certified EEO counselor trainers will conduct 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 EEOCCR Director to serve as Army EEO counselors. To enhance and maintain counseling skills, counselors are required to complete at least 8 hours of continuing counselor training annually in EEO, civilian personnel management practices, law, and directives. The supplemental training will be training that the servicing activity EEO officer deems appropriate to keep EEO counselors informed and proficient as EEO counselors.

1–19. Venue

EEO complaints will generally be processed by the EEO office servicing 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 servicing ACOM, ASCC, DRU EEO Director within those commands, or designated by the EEOCCR Director, if processing by the servicing activity EEO office is impractical or because a conflict of interest or position exists.

1–20. Equal Employment Opportunity 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;

Army Command, Army service component command and direct reporting unit commanders and equivalents, and heads of its staff support or field operating agencies

a. If at any time during the pre-complaint or formal complaint processes, it comes to the attention of the servicing activity EEO officer that an aggrieved or complainant appears to have named the SECARMY; an official of the Office of the SECARMY; the Chief of Staff, U.S. Army; an official of the Army Staff; an ACOM, ASCC, or DRU commander or equivalent; or a head of its staff support or field operating agencies as a responsible management official in an EEO complaint, that servicing activity EEO officer will coordinate with the servicing ACOM, ASCC, or DRU or equivalent EEO Director, if applicable, and contact the EEOCCR Director to determine if the servicing activity EEO office has a conflict of interest or position with respect to processing the complaint.

b. The contacted servicing activity EEO officer will ensure that a thorough pre-complaint intake interview has been completed. The intake will provide information as to the aggrieved reasons for naming one of the above officials. This information will be documented on DA Form 7510 (EEO Counselor's Report).

c. The EEOCCR Director will decide 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 EEOCCR Director may determine that the servicing activity EEO office will continue to process the pre-complaint.

(2) If the official was named because of an action allegedly personally taken, the EEOCCR Director will be responsible for identifying a venue for the complaint to be processed.

(3) If the complaint involves actions allegedly personally taken by an ACOM, ASCC, or DRU commander, or other official in the servicing ACOM, ASCC, or DRU EEO Director's rating chain, the EEOCCR Director may determine that the servicing activity EEO office will continue processing the complaint, or if the EEOCCR Director determines that the servicing activity EEO office cannot process due to a conflict of interest or position, the EEOCCR Director will assign complaint processing to an EEO office with no conflict of interest or position.

d. If an allegation against one of the above officials initially surfaces during the formal complaint process, the servicing activity EEO officer will coordinate with the servicing ACOM, ASCC, or DRU EEO Director to notify the EEOCCR Director, who will determine how processing of the complaint will proceed.

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

1–21. Equal Employment Opportunity complaints involving the Civilian Human Resources Agency and Civilian Human Resource Servicing Centers actions

a. When processing actions for a serviced installation or activity, Civilian Human Resources Agency (CHRA) and CHRSC personnel do not make the personnel decisions, but rather, carry them out on behalf of that installation or activity commander/Director. CHRA and CHRSC personnel process personnel actions in accordance with applicable laws and regulations.

b. When CHRA and/or CHRSC personnel are executing a personnel action on behalf of a serviced installation or activity, and an employee or applicant alleges discrimination that involved an action taken by CHRA and/or CHRSC personnel, the EEO office servicing the commander/Director of the installation or activity is responsible for counseling and complaint processing.

c. Aggrieved employees and applicants who allege discrimination by CHRA or CHRSC personnel should contact their servicing or nearest Army EEO office for guidance or to initiate an EEO pre-complaint. The contacted EEO office personnel will assist the individual in identifying the appropriate servicing activity EEO office for counseling and complaint processing and immediately refer the individual to the appropriate office. The contacted EEO office personnel will document the contact by the aggrieved for timeliness purposes and coordinate with the appropriate servicing activity EEO office personnel to verify that the referral is appropriate.

d. CHRA and CHRSC Directors will ensure that EEO counselors, EEO officers, and agency representatives are afforded direct access to CHRA and CHRSC personnel to carry out their respective responsibilities in the EEO complaint process. When CHRA or CHRSC personnel process a personnel action for a serviced commander/Director, and an employee or applicant alleges discrimination pertaining to the CHRA or CHRSC processing action, the EEO counselor must have direct access to CHRA and CHRSC personnel. Additionally, agency representatives must have direct access to CHRA and CHRSC personnel to gather information about the complaint and to interview prospective witnesses (see fig 3–5).

e. CHRA and CHRSC Directors will ensure that EEO counselors, EEO officers, and agency representatives are afforded direct access to CHRA and CHRSC records to carry out their respective responsibilities in the EEO complaint process. When CHRA personnel process an action for a serviced commander/Director and an employee, former employee or applicant alleges discrimination that involves an action processed by CHRA personnel, the EEO counselor must have direct access to CHRA records. CHRA records may be available through the servicing CHRSC; therefore, EEO counselors, servicing activity EEO officers, and agency representatives are encouraged to coordinate with personnel from their servicing CHRSC before requesting records directly from CHRA. Timely production of needed records is critical.

1–22. Conflicts of position or interest

a. A conflict of interest occurs when a competing interest exists that could adversely influence an individual's role in the EEO complaint process, including, but not limited to EEO counselor, EEO ADR neutral, EEO officer or Director, agency representative, employee or management representative, investigator, and settlement authority. The existence of the conflict of interest does not depend on whether adverse influence has in fact been exerted. It is the potential exercise of adverse influence from the competing interest that is determinative.

b. A servicing activity EEO officer may preclude an EEO counselor from counseling or an EEO ADR neutral from participating in a mediation session, facilitation, or other EEO ADR process, based on either an actual or perceived conflict of interest.

c. The EEOC requires that, in order to maintain the integrity of the EEO program, EEO functions must be kept separate from personnel functions (see Equal Employment Opportunity Commission Management Directive 110 (EEOC MD 110)). The same Army officials responsible for executing and advising on personnel actions will not be responsible for managing, advising, or overseeing the EEO pre-complaint or formal complaint processes. Complaints generally challenge the motivations and impacts of personnel actions and decisions.

d. The EEOC also requires that EEO functions must be kept separate from the Army's defensive function (see EEOC MD 110). There is a dual obligation of carrying out fair and impartial investigations of complaints, resulting in Army final determinations as to whether discrimination has occurred and defending the Army against claims of employment discrimination. Legal sufficiency reviews of the EEO process must be handled by legal counsel that are separate and apart from the Army's defensive function.

e. Commanders and their equivalents must also avoid creating conflicts of interest such as assigning EEO officials to the role of investigator in a commander's inquiry or AR 15–6 investigation; or temporarily reassigning EEO personnel to positions in human resources, CHRSC, the command section, the installation legal office, or other positions that involve making management decisions outside of the EEO office, or vice versa.

f. When a person involved in the EEO complaint process (for example, EEO officer, activity commander, or ACOM, ASCC, or DRU EEO Director) is named or otherwise designated as a responsible management official, the following procedures will be followed to avoid a possible conflict of interest:

(1) *Servicing activity equal employment opportunity officer.* If a servicing activity EEO officer appears to be named as a responsible management official or otherwise designated as a witness in a discrimination complaint by a complainant based on actions personally taken against the complainant, that EEO officer's function in processing that complaint will be performed by personnel at the EEO office at the next higher level within the servicing ACOM, ASCC, or DRU. If the servicing activity EEO officer is named by virtue of position or actions in processing a complaint, the EEO officer may continue to process the complaint.

(2) *Commander.* If a commander is named or otherwise designated as a witness in a discrimination complaint based on actions personally taken against the aggrieved or complainant, that commander's function and responsibility in the complaint process will be performed by the commander at the next higher level. If the commander is named or otherwise designated as a witness merely by virtue of position, the commander may continue to maintain the commander's role with respect to the processing of the complaint.

(3) *Staff judge advocate.* If the staff judge advocate (SJA) or senior legal officer of the servicing activity is named as a responsible management official or otherwise designated as a witness in a discrimination complaint based on actions personally taken against the aggrieved or complainant, legal advice to the command with respect to the complaint will be provided by attorney-advisors at 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 position, the SJA or senior legal officer may continue to provide advice with respect to the complaint.

(4) *Civilian Human Resource Service Center Director*. If a CHRSC Director is named as a responsible management official or otherwise designated as a witness in a discrimination complaint based on actions personally taken against the aggrieved or complainant, the CHRSC Director's function in the complaint process will be assumed by CHRA personnel at the next higher level of command. If the CHRSC Director is named or otherwise designated as a witness by virtue of position, the CHRSC Director's role in the complaint process will not be affected.

(5) *Civilian Human Resources Agency Director*. If a CHRA Director is named or otherwise designated as a witness based on actions personally taken against the aggrieved or complainant, the CHRA Director's function in the complaint process will be assumed by the Director at the next higher level. If the CHRA Director is named or otherwise designated as a witness by virtue of position, the CHRA Director's role in the complaint process will not be affected.

(6) *Army command, Army service component command, or direct reporting unit Equal Employment Opportunity Director*. If an ACOM, ASCC, or DRU EEO Director is named as a responsible management official or otherwise designated as a witness based on an action personally taken against the aggrieved or complainant, that Director's function in the processing of the complaint will be performed by a special EEO Director designated by the EEOCCR Director. If the ACOM, ASCC, or DRU EEO Director is named or otherwise designated as a witness merely by virtue of position or actions in processing a complaint, the ACOM, ASCC, or DRU EEO Director may continue that role in the complaint process. The EEO office that received the contact or complaint or is already processing the complaint will notify the EEOCCR Director of the allegation. If the servicing activity EEO office falls under the administrative oversight of the named EEO Director and the allegation involves an action the EEO Director personally took against an aggrieved or complainant, then the EEOCCR Director will reassign the complaint processing to an EEO office in another command.

(7) *Army command, Army service component command, or direct reporting unit commander or equivalent official*. If an ACOM, ASCC, or DRU commander or equivalent official is named as a responsible management official or otherwise designated as a witness in a particular discrimination complaint based on an action personally taken against the aggrieved or complainant, the commander's function in the complaint process will be performed by the Vice Chief of Staff, U.S. Army. If the ACOM, ASCC, or DRU commander is named or otherwise designated as a witness merely by virtue of position or actions related to the commander's role in processing a complaint, the ACOM, ASCC, or DRU commander or equivalent official may continue to maintain the commander's role in the processing the complaint.

(8) *Settlement authority*. The authority to propose or agree to terms of settlement on behalf of the Army at any stage in an EEO complaint must rest with the commander of the activity or equivalent where the complaint arose, or a designated management official in a position above the responsible management official.

g. Any actions or decisions taken by EEO office personnel in a complaint in which the office has a conflict of interest may be rescinded by the EEO officer later assigned to process the conflict complaint.

1–23. Service of documents

a. Unless the aggrieved or complainant states otherwise in writing, after the agency receives written notice of the name, address, and telephone number of a representative for the aggrieved or complainant, service of all documents will be with the representative with copies to the aggrieved or complainant. All official correspondence will be served on the representative and the aggrieved or complainant either by personal delivery or certified mail, return receipt requested or other means, such as FedEx 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 aggrieved or complainant, but time frames for the receipt of correspondence will be computed from the date of receipt by the attorney.

c. When the representative is not an attorney, service of all official correspondence will be made on both the non-attorney representative and the aggrieved or complainant, but time frames for the receipt of correspondence will be computed from the date of receipt by the aggrieved or complainant.

d. If aggrieved or complainant is not represented, all official correspondence will be served on the aggrieved or complainant and 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.

e. Email, facsimile, or other electronic means may be used by EEO officials as a means to transmit official correspondence to aggrieved persons, complainants, and representatives where they have agreed to accept service by these means, or in situations where timeliness is a critical issue. In such situations, the EEO official will confirm receipt of the official correspondence. A copy of the email message, facsimile, or other electronic transmittal documentation will be maintained in the complaint file. When email and facsimile are used, the record must be protected from unauthorized disclosure. The agency always bears the burden of obtaining sufficient information to support a reasoned determination to timeliness.

f. The aggrieved or complainant, or designated representative, must serve all official correspondence on the servicing activity EEO officer and the designated agency representative.

Chapter 2

Alternative Dispute Resolution

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, facilitated by a qualified ADR neutral. It is the Army's policy to use ADR procedures in appropriate cases to resolve disputes at the earliest stage feasible, by the fastest and least expensive method possible, at the lowest possible organizational level.

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 non-adversarial 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 DA EEO is facilitated mediation with a qualified ADR neutral (see para 2-4).

c. In general, ADR should be offered in the EEO complaint process unless there is a specific reason why EEO ADR may not be appropriate. The Administrative Dispute Resolution Act of 1996 identifies some circumstances where ADR may not be appropriate. The serviced activity commander or equivalent official of the activity where the alleged discrimination occurred, or designee will decide on a case-by-case basis whether to offer EEO ADR to an aggrieved individual. Blanket exclusions of disputes from EEO ADR based solely upon the bases involved are prohibited.

d. The serviced activity commander, equivalent official or designee may include issues that do not fall under the jurisdiction of EEO laws for resolution under EEO ADR during the pre-complaint stage. However, if resolution of the issue is unsuccessful, non-EEO disputes cannot be accepted for investigation, and EEO issues not brought to the attention of the servicing activity EEO official during the pre-complaint intake interview or ADR neutral may not be accepted for investigation as a part of the formal complaint unless the issue is like or related to issues raised during the pre-complaint process and otherwise does not meet criteria for dismissal under 29 CFR 1614.107.

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

2-2. Equal Employment Opportunity alternative dispute resolution program development

a. Each servicing activity EEO office will have available an EEO ADR program for both the pre-complaint and formal complaint process. All commands will have a policy supporting and encouraging the use of ADR techniques to resolve workplace disputes and requiring management official participation. Each servicing ACOM, ASCC and DRU commander or equivalent will be responsible for implementing an EEO ADR program to resolve disputes in the pre-complaint and formal complaint process. The ACOM, ASCC, DRU, or equivalent EEO Director will coordinate the implementation of such a program.

b. The servicing activity EEO officer is responsible for the administration and oversight of the entire EEO ADR process as it pertains to processing complaints of discrimination (see para 1-11a(6).)

c. EEO ADR programs will be implemented using a team approach with participation from the serviced commander or designee, servicing activity EEO officers, labor counselors, CHRSC officials, management officials, and union officials, where applicable.

d. The servicing activity EEO officer will review the information obtained in the pre-complaint intake interview or the written formal complaint and determine whether, based on the information provided, an offer of EEO ADR is appropriate. The servicing activity EEO officer will contact the EEO ADR team, provide an overview of the claims and information, inform the EEO ADR team of any proposal to offer EEO ADR to the aggrieved or complainant, and ask if anyone on the team is aware of any reason why the use of ADR techniques may not be appropriate. The EEO ADR team members will provide a response within 24 business hours. A non-response will be considered a concurrence. The commander of the activity where the alleged discrimination occurred (or designee) will take the opinions of the EEO ADR team into consideration and will make the final decision whether to offer EEO ADR. If the commander or designee has not provided a decision within three business days, the servicing activity EEO officer will make the decision on behalf of the command. The reasons for not offering EEO ADR should be identified in the Army EEO automated data system.

e. The EEO ADR program should take into consideration each activity's environment and workforce, but at the same time, it must be fair and conform to the following ADR core principles:

(1) *Voluntariness*. Parties must enter into mediation, or another offered EEO ADR process knowingly and voluntarily. Participation in EEO ADR is voluntary for the aggrieved or complainant and the commander or equivalent official of the activity where the complaint arose. Once EEO ADR has been offered in writing and the aggrieved elects in writing to participate in EEO ADR, it is considered that both parties have knowingly and voluntarily entered into an EEO ADR. Management officials then have an affirmative duty to cooperate in EEO ADR. Commanders and equivalent officials must ensure that management officials are aware of this affirmative duty. The activity commander or equivalent official (or designee) and the aggrieved or complainant have the option to "opt out" of an EEO ADR at any point prior to resolution and for any reason. Neither the management official designated to participate in the EEO ADR process on behalf of the activity commander or equivalent official, or the aggrieved/complainant, will be coerced into accepting the other party's offer to resolve the matter.

(2) *Neutrality*. The EEO ADR neutral will have no actual or perceived official, financial, or personal interest in the issue(s) raised or in the outcome of the dispute. Since the effectiveness of ADR techniques rely on the perception of neutrality, employees of the servicing activity EEO office with complaint processing duties, CHRSC, and Army attorneys, regardless of training and skill, may not serve as ADR neutrals within their serviced activities, unless the employee's relationship to the servicing activity is fully disclosed in writing to the parties, who consent to the employee serving as the EEO ADR neutral, and the activity commander, equivalent official or designee authorizes the employee to serve. Collateral duty EEO counselors not employed within the servicing activity EEO offices who possess the requisite training and skills may serve as EEO ADR neutrals if they have not counseled the pre-complaint at issue. It is the responsibility of the servicing activity EEO officer to ensure that the potential EEO ADR neutral is otherwise neither acquainted with, or is an employee of the same unit or Directorate as the aggrieved/complainant or the participating management official.

(3) *Confidentiality*. The EEO ADR process is confidential. To promote open discussions between the disputing parties, both parties and their representatives must agree, in writing, that any information disclosed during the EEO ADR process, other than discoverable documentation, will remain confidential whether or not EEO 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 EEO 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 EEO ADR process. Any notes taken by the EEO ADR neutral during the EEO ADR process must be destroyed by the neutral at the conclusion of the EEO ADR process. Information disclosed during the mediation is confidential and will 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 NSA that is binding upon both parties (see para 5-13).

f. Servicing activity EEO officers or servicing ACOM, ASCC, DRU, or equivalent EEO Directors may request to alter the EEO ADR process or use other ADR techniques in the EEO ADR program by submitting an EEO ADR program implementation plan outlining the details of the proposed use of EEO ADR.

The implementation plan will be submitted through the servicing ACOM, ASCC, or DRU EEO Director to the EEOCCR Director, who will consult with the DA ADR proponent for approval prior to implementation. The written plan must include, at a minimum, the types of ADR that will be offered, the process and procedures for determining appropriateness and use, the source of the EEO 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.

2–3. Mediation

a. Facilitative mediation is the preferred ADR method in the Army EEO ADR program 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 will apply to any ADR technique used in the EEO ADR process.

b. The decision to participate in mediation is voluntary for both the aggrieved/complainant and the commander of the activity where the complaint arose or equivalent official (or designee).

c. The activity commander, equivalent, or designee will determine which management official will participate in the mediation on behalf of the activity. The management official selected should be one who is authorized to engage in resolution discussions and execute a NSA. If the management official selected is the responsible management official, a management official with settlement authority must be available to approve any proposed terms of settlement and if resolution is reached, sign the NSA on behalf of the activity.

d. Prior to the scheduled date of EEO ADR mediation, the servicing activity EEO officer will arrange for a CHRSC civilian personnel official (if resolution could potentially involve a personnel action) and the agency representative to be available for consultation by the management official during the mediation session, and in the event of settlement, for coordination of the NSA review prior to execution.

e. Both the aggrieved or complainant and the management official have a right to personal representation during the complaint process, to include during the mediation session, provided the choice does not involve a conflict of interest or position (see paras 8–4 through 8–5). The mediator will decide to what extent personal and agency representatives will actively participate in the process.

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

g. If the mediation session is successful, the mediator will provide the servicing activity EEO officer, in writing, with all terms agreed upon so that a NSA can be prepared (see fig 5–1). The settlement agreement will be prepared in accordance with procedures set forth in chapter 5 and must be signed by the aggrieved or complainant, the aggrieved or complainant's attorney or representative (if applicable), and the management official with settlement authority. A copy of the NSA will be uploaded in the Army EEO automated data system.

h. If mediation is unsuccessful during the pre-complaint process, a servicing activity EEO official will annotate the EEO Counselor's Report to reflect that mediation was unsuccessful. The servicing activity EEO official will review the information contained in 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 After Mediation Attempt (see fig 3–4). The notice will inform the aggrieved that a formal complaint may only raise those alleged discriminatory issues raised during pre-complaint or addressed during the EEO ADR mediation session, or issues like or related to those addressed during pre-complaint or mediation. The EEO Counselor's Report will be uploaded into the Army EEO automated data system.

i. If the EEO ADR mediation session is unsuccessful during the formal stage, the servicing activity EEO officer will prepare a memorandum for record stating that EEO ADR mediation was attempted during the formal stage and was unsuccessful.

2–4. Qualifications and training requirements for neutrals

a. Any person who serves as an EEO ADR neutral in the activity EEO ADR program must be familiar with the following:

- (1) The EEO process pursuant to 29 CFR 1614, EEOC MD 110, and this regulation.
- (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) Title II of the GINA of 2008, as amended;
 - (d) The ADEA of 1967, as amended; and
 - (e) The EPA 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 32 hours of basic mediation skills training.
 - (2) Have participated as a neutral at least three times in an ADR process. If mediation is the selected ADR process, then the neutral must have participated in three mediation sessions, to include serving as a co-mediator.

Chapter 3

Pre-Complaint Processing

Section I

Introduction

3-1. Initiating the Equal Employment Opportunity complaint process

a. Employees, former employees, applicants for employment, or employees of contractors in cases involving joint employer issues or allegation covered by this regulation, who believe they have been discriminated against because of race, color, religion, sex, national origin, age, genetic information, physical or mental disability, and/or reprisal in an employment matter subject to the control of the Army, may initiate the EEO complaint process (see para 3-10).

b. This first phase of the EEO complaint process is referred to as the pre-complaint process. The pre-complaint process is set in motion when an individual contacts an EEO official and clearly expresses an intent to proceed with the EEO complaint process.

c. Processing of EEO pre-complaints 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 an EEO officer, specialist, or assistant (hereinafter referred to as EEO official) is either to seek general information concerning the EEO complaint process or to begin the pre-complaint process.

b. Because the timeliness factor is one of the critical elements in complaint processing, the EEO official will directly ask the individual the purpose of the individual's initial contact, that is, to seek information concerning the EEO complaint process or to proceed with the pre-complaint process, if the individual's intent is not already clear at the end of the contact, and to record that initial contact accurately.

3-3. Information inquiry and pre-complaint intake

a. *Information inquiry.* When an individual contacts an EEO official 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 DA Form 7509 (Information Inquiry Summary). During an information inquiry, the EEO official provides general information on the Army EEO complaint process (see para 3-5).

b. *Pre-complaint intake.* When an individual contacts an EEO official with the intent of proceeding with the EEO complaint process the individual is referred to as "aggrieved." When the aggrieved intends to use the EEO process, the EEO official will conduct a thorough pre-complaint intake interview. The pre-complaint intake interview will be recorded as the initial portion of 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—

- (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) The aggrieved was not notified of the time limits and was not otherwise aware of the time limits.
 - (2) The aggrieved did not know and reasonably should not have known that the perceived discriminatory action or practice occurred.
 - (3) Despite due diligence, the aggrieved was prevented by circumstances beyond the aggrieved's control from contacting an EEO official within the prescribed time limits.
 - (4) For other reasons considered sufficient by the Army or the EEOC (see fig 3–6).
 - c. The requirement for EEO contact is satisfied when an aggrieved initiates contact with an EEO officer, specialist, assistant, or any other official logically connected to the EEO complaint process, for the express purpose of proceeding with a matter of concern.
 - d. Any action or practice alleging discrimination within the protection of 29 CFR 1614 will be counseled by an EEO counselor even though a formal complaint may later be dismissed.

Section II

Information Inquiry and Pre-Complaint Intake Procedures

3–5. Information inquiry procedure

- a. When the EEO official determines that the purpose of the individual's initial contact is to seek information about the EEO complaint process, the EEO official will document the contact by completing DA Form 7509.
- b. During the information inquiry, the EEO official will emphasize the prescribed time limitations for initiating the EEO pre-complaint process to the individual, especially if the information inquiry is within proximity to the 45th day of the incident or effective date of the personnel action.
- c. If the individual has not expressed an intent to begin the EEO process at completion of the information inquiry, the EEO official will provide the individual with a copy of the completed DA Form 7509 after the individual's review and signature. If the information inquiry is conducted telephonically or by email, the EEO official will send a copy of the DA Form 7509 to the individual by first class mail when name and address are disclosed to the EEO official, or by email if the individual agrees and an email address is provided. If the information inquiry is conducted by email, the EEO official will document the information provided electronically and retain a copy. Whether the information inquiry is conducted personally, telephonically, or by email, the EEO official will reemphasize the importance of the 45-day time limit and explain the procedure for initiating the pre-complaint process.
 - (1) If a collateral duty EEO counselor or other official logically connected to the EEO complaint process not employed in the Army's EEO career program is contacted by an individual seeking information about the complaint process or expressing an intent to initiate the complaint process, the counselor or official will immediately obtain the name and contact information of the individual, refer the individual to and provide the name and contact information of the servicing activity EEO officer to the individual, and immediately provide the individual's name, contact information and nature of the contact to the servicing activity EEO officer.
 - (2) A servicing activity EEO official will immediately contact the individual to determine and document the purpose of the individual's contact.
 - (3) The original DA Form 7509 and documentation of receipt, if appropriate, will be retained for a period of 3 years.
- d. If the individual indicates an intent to initiate the pre-complaint process at any time during the information inquiry, the EEO official will conduct a pre-complaint intake interview and complete the pre-complaint intake portion of the DA Form 7510 (see para 3–6). DA Form 7509 is not completed when an individual contacts a servicing activity EEO official to initiate the pre-complaint process, even if it's the first EEO contact made.

3–6. Pre-complaint intake procedure

- a. The pre-complaint intake procedure involves providing and advising aggrieved persons of their rights and responsibilities, determining whether aggrieved persons are alleging prohibited discrimination

addressed in 29 CFR 1614, and determining and informing aggrieved persons about other options or avenues of redress available to address their concerns.

b. A thorough pre-complaint intake interview will then be conducted by an EEO official. The EEO official will record the date and clarify the facts of the specific incident or personnel action on the pre-complaint intake interview portion of DA Form 7510.

c. The 30-day counseling period begins on the date that the aggrieved expresses to an EEO official an intent to proceed with the EEO complaint process and the pre-complaint intake interview should begin immediately.

d. EEO officials are required to conduct a pre-complaint intake interview when contacted by an aggrieved who has expressed an intent to initiate a pre-complaint, regardless of whether the contacted EEO office services the activity the complaint is against. If the contacted EEO official believes that another servicing activity EEO office is responsible for processing, the intake interview will continue, and counseling of the complaint will begin. The contacted EEO officer will contact the servicing activity EEO office believed to be responsible for processing to verify responsibility for processing and coordinate transfer of the pre-complaint, if necessary. Any case in which the responsible servicing activity EEO office or servicing ACOM, ASCC, DRU, or equivalent EEO Director cannot be identified or confirmed in order to coordinate transfer must be reported to the EEOCCR Director for final resolution. Under no circumstances will complaint processing be halted or delayed pending determination of the appropriate servicing activity EEO office.

e. When conducting the pre-complaint intake interview, the servicing activity EEO official will explain the EEO ADR program, including the differences between EEO ADR and traditional EEO counseling, and the aggrieved's right to choose participation in EEO ADR, if offered, or traditional EEO counseling. The servicing activity EEO official will explain and provide the aggrieved a copy of the Aggrieved Person's Rights and Responsibilities notice (see fig 3-1), 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.

f. In those instances where the servicing activity EEO official, serving in the role of an EEO counselor, conducts the pre-complaint intake interview and the EEO counselor conducts the informal inquiry, the servicing activity EEO official will provide the EEO counselor with DA Form 7510 as completed to date. Even though the servicing activity 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 EEO ADR throughout the entire complaint process and the aggrieved's rights and responsibilities as follows:

(1) The aggrieved may be accompanied, represented, and advised during all counseling interviews by a representative, designated in writing that specifies whether the representative is attending the meeting as an attorney representative, a union representative or as non-union, non-attorney representative.

(2) During the pre-complaint counseling inquiry, the identity of the aggrieved will not be revealed without permission from the aggrieved.

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

(4) Only claims raised in pre-complaint counseling or claims like or related to those raised in pre-complaint 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 EEO ADR is not offered or elected, the EEO counselor will complete the inquiry within the 30-day time limit unless the aggrieved agrees in writing 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 DoDI 1400.25).

(8) The aggrieved will waive the right to file a formal complaint of discrimination under this regulation if the aggrieved 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 non-mixed case complaints, the aggrieved will have the right to request a hearing or a final Army decision after an investigation by the agency or after 180 days from the date the formal complaint was filed, whichever comes first.

(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 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 ADEA, 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 a 30-day 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 1614 when the claims concern violations of the EPA. 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 non-mixed 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 servicing activity EEO officer and the EEOC informed of current address or contact information could result in dismissal of a formal complaint.

g. The aggrieved must elect between EEO ADR, if offered, and traditional EEO counseling. The offer of EEO ADR must be presented in writing and the aggrieved will respond to the offer in writing.

h. If the aggrieved elects to participate in EEO ADR, then DA Form 7510 will be so annotated and the servicing activity EEO officer will coordinate mediation.

i. If the aggrieved elects traditional EEO counseling, then DA Form 7510 will be so annotated and the servicing activity EEO officer will assign an EEO counselor. The counselor will make appropriate entries on DA Form 7510 at the conclusion of the pre-complaint inquiry.

Section III

Procedures for Use of Alternative Dispute Resolution During the Pre-Complaint Process

3–7. Offer of Alternative Dispute Resolution during pre-complaint processing

a. If, after the pre-complaint intake interview is completed, the servicing activity EEO officer believes that EEO ADR is appropriate, the servicing activity EEO officer will consult with the EEO ADR team as provided in paragraph 2–2*d*, to determine whether to recommend that the activity offer EEO ADR to the aggrieved. The aggrieved will be advised that the activity's decision not to offer EEO ADR is not appealable to the EEOC.

b. If, after consulting with the EEO ADR team, it is determined that EEO ADR is appropriate, and the serviced activity commander, equivalent, or designee decides to offer EEO ADR, the servicing activity EEO officer will provide the aggrieved, in writing, the offer to participate in EEO ADR. If the aggrieved accepts the offer of EEO ADR, the aggrieved and the serviced activity commander or designee will sign an Agreement to Participate in Mediation prior to the EEO ADR mediation session. If the aggrieved fails to respond in writing to the offer of EEO ADR within 5 days, the counselor will continue with traditional EEO counseling.

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

(2) When an aggrieved elects participation in EEO ADR, the servicing activity EEO official or counselor will provide the DA Form 7510 as completed to date, the signed Offer to Mediate, and the signed Agreement to Participate in Mediation to the EEO ADR neutral prior to the initial session with the aggrieved (see figs 3–2 and 3–3).

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

d. If the dispute is resolved through the use of EEO ADR, the resolution will be documented in the form of a NSA. The EEO ADR neutral will provide the terms of the proposed resolution to the servicing activity 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 servicing activity EEO officer will also coordinate the action with the appropriate civilian personnel official prior to signature and execution (see fig 5–1).

e. If the dispute is not resolved, the servicing activity 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 pre-complaint process, to—

(1) Review with the aggrieved the claims raised during the pre-complaint 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 After Mediation Attempt (see fig 3–4).

(a) If the Notice of Right to File a Formal Complaint of Discrimination is mailed, it will be served in accordance with the rules of service (see para 1–23).

(b) If the Notice of Right to File a Formal Complaint of Discrimination is delivered in person, the aggrieved will sign and date the notice to acknowledge receipt. If 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.

(3) Inform the aggrieved, in writing, that the aggrieved 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 servicing activity EEO official will 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 EEO ADR was not successful.

3–8. Duties of the Equal Employment Opportunity counselor during the pre-complaint 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 pre-complaint 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 pre-complaint intake interview.

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

d. All witnesses must be advised in writing of their right to a personal representative (to include a union representative, if appropriate) and the nature of the claims described in the complaint prior to being interviewed by the EEO counselor.

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.

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 Equal Employment Opportunity counselor during the final interview

a. The EEO 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. 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 pre-complaint 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 will be informed in writing of the right to file a formal complaint of discrimination.

b. The EEO counselor will advise the aggrieved of the information gathered during the inquiry and discuss proposed solutions. The EEO 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 Army on the issue of discrimination.

c. The EEO counselor or other servicing activity EEO official will inform the aggrieved, in writing, that the aggrieved 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 EEO counselor will not influence the aggrieved regarding a decision to file a formal complaint; the decision to file a formal complaint is made by the aggrieved.

d. The EEO counselor or EEO official will provide the aggrieved with the Notice of Right to File a Formal Complaint of Discrimination After Traditional Counseling (see fig 3–7).

(1) If the notice is mailed, it will be served in accordance with the rules of service (see para 1–23).

(2) If the notice is delivered in person, the aggrieved will sign and date the notice to acknowledge receipt. If the aggrieved refuses to acknowledge receipt of the notice, the server will note the refusal to acknowledge receipt on the notice and sign and date the notice.

e. The EEO counselor or EEO official will provide the aggrieved a DA Form 2590. The EEO counselor or EEO official will stress that a formal complaint must contain specific information on the alleged acts of discrimination. Failure to provide specific information 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 EEO counselor or EEO official will advise the aggrieved that the aggrieved must inform the servicing activity 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 signed and dated written report on DA Form 7510 of all actions taken during the inquiry and of the information provided to management and the aggrieved to the servicing activity EEO officer **within five days of completion of counseling**. DA Form 7510 will not contain opinions or make findings on the allegations of discrimination. The EEO counselor will not retain a copy of DA Form 7510 or any other pre-complaint related material.

Section IV

Contingent Worker (Contract Employee) Guidance

3–10. Procedures for processing complaints filed by contingent workers

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 2105(a) or a nonappropriated fund (NAF) employee described at 5 USC 2105(c).

a. Inquiries to EEO officials from employees who are not civil service employees should be referred to the servicing activity EEO officer.

(1) The servicing activity EEO officer will advise the worker to immediately report the allegations to the non-federal employer.

(2) If the worker wants to file a complaint against the contractor, the servicing activity 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 servicing activity EEO officer should assign a counselor and process initially in accordance with 29 CFR 1614 and this regulation. The servicing activity EEO officer will advise the aggrieved that, depending on the facts and circumstances surrounding the employment relationship, the Army may not be the worker's employer under Title VII or any other anti-discrimination laws.

b. Upon assignment of a counselor, the servicing activity EEO officer must contact management officials to obtain the working relationship information, including a copy of the aggrieved's employment contract (see fig 3–8). The servicing activity EEO officer must forward the working relationship information and contract to the legal advisor 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 servicing activity 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 OFO and include EEOC Form 573 (Notice of Appeal/Petition).
- (2) If the aggrieved qualifies as an Army “employee”, the servicing activity EEO officer will—
 - (a) Process the complaint in accordance with 29 CFR 1614 and this regulation.
 - (b) If a formal complaint is filed, coordinate with the contracting officer’s representative, if applicable, to ensure compliance with any contractual responsibilities.
- c. When the aggrieved is an Army employee and the responsible management official is a non-federal employee, the servicing activity EEO officer will—
 - (1) Notify the appropriate Army management officials at the serviced activity.
 - (2) Process the complaint in accordance with 29 CFR 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 non-federal entity discrimination, are filed with the EEOC. The servicing activity EEO officer will serve as the serviced 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 NSA 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 activity when discrimination is believed to be committed by a third-party employer operating on an Army installation or supporting an Army program.
- f. Nothing in this section precludes the Army from offering EEO ADR 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. Additional avenue of redress for certain sexual harassment complaints

- a. If sexual harassment is one of the claims raised, the servicing activity EEO officer will 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 servicing activity EEO officer will continue with procedures established in 29 CFR 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 servicing activity EEO official will advise the aggrieved that there are two statutes applicable to the aggrieved (Title VII and 10 USC 1561) and that processes established under those statutes can be used simultaneously. The servicing activity EEO officer will inform the aggrieved of the point of contact designated by the commander to receive 10 USC 1561 complaints and that the aggrieved must contact this individual in order to file a complaint under 10 USC 1561. If a point of contact has not been designated or is otherwise unknown, the aggrieved will be advised to contact the commander directly to initiate this additional process. The servicing activity EEO official will then continue with procedures established under 29 CFR 1614 and Army implementing guidelines.

3–12. Basic complaint requirements

- a. Formal EEO complaints must be in writing, signed by the complainant or the complainant’s attorney, include contact information, include at a minimum the basis, claim(s), and date(s) of alleged discriminatory matters and otherwise contain sufficient information about the claims alleged to meet the requirements of 29 CFR 1614.106(c).
- 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 ACOM, ASCC, or DRU EEO office of the activity against which the allegation was made.

Date _____--'-[D_a_te---]'

DA Docket Number [Docket Number]

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, genetic information, 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 official 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, will conduct a precomplaint intake interview and assign an EEO Counselor to conduct an informal inquiry into the issues you have raised, and after proper coordination, may offer you the opportunity to participate in the EEO alternative dispute resolution (ADR) program. An EEO Counselor will be assigned to conduct an informal inquiry into the issues you raised during the precomplaint intake interview. An individual contacting an EEO official 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.

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

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

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

(b) You are obligated to cooperate with EEO officials 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 discuss proposed solutions and advise you of the information gathered during the inquiry.

(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 precomplaint counseling process, unless an extension of the counseling period is executed. The EEO counselor or other EEO official 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 or other EEO official 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 appealable to the Equal Employment Opportunity Commission (EEOC), not to the Merit Systems Protection Board (MSPB). Formal complaint procedures in nonmixed cases include an investigation by the Department of Defense Investigations and Resolutions Directorate (DOD IRD), the option to request either a hearing before an EEOC administrative judge after which the Equal Employment Opportunity Compliance and Complaints Review (EEOCCR) Director will issue a final action or you may request a final Army decision, issued by the EEOCCR Director, 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 DOD IRD, however, you do not have a right to a hearing by an EEOC administrative judge.

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

The EEOCCR Director will issue a final Army decision upon completion of the investigation by the DOD IRD 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 process without using the federal sector EEO complaint process. This process is available to you only if the alleged discriminatory 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, demotion, 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 may 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 process 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 processes covered by 29 CFR § 1614 and AR 690-600 as described in paragraph 2a above. This includes the possible option to participate in ADR during the precomplaint process.

b. You may pursue a discrimination complaint under the Merit Systems Protection Board (MSPB) appeal process 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, § 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 process and the formal EEO complaint process under 29 CFR §1614 and AR 690-600.

(3) You may not seek redress under the formal EEO complaint process and the negotiated grievance process. When you select the negotiated grievance process by

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

filing a timely written grievance, your decision is considered to be final and you cannot seek redress under the formal EEO complaint process.

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

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 process. (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 formal EEO 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 process and file a civil action directly in an appropriate US 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 in your formal EEO complaint, if no appeal has been filed; or, after 180 calendar days from the date you filed your formal EEO 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.

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

- (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.

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 77960 (if sent by mail)
Washington, DC 20013
131 M Street, N.E. (if hand delivered)
Washington, DC 20507

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 US 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 official 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 accept a written offer 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 the representative has a conflict of interest. Your right to representation is extended to the ADR process. However, the ADR neutral will decide the extent to which your representative and the Army's representative actively participate 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

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

your representative is an attorney, all documents will be officially served on your attorney.

c. If your claim(s) is not deemed appropriate for ADR, or you do not accept a written offer of ADR, traditional EEO counseling will continue. Within 30 calendar days of your initial EEO 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,

(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. Under traditional counseling, 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. If you agree to participate in ADR 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 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. A copy of the EEO Counselor's Report will be enclosed with your Notice of Acceptance/Dismissal.

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 US District court---

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

- (1) within 90 calendar days of receipt of a final Army 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 Army 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.

i. If you file a mixed EEO complaint and are dissatisfied with the final Army 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 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.

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

d. You are responsible for electing your avenue of redress. The formal action you file first (an MSPB mixed case appeal, a formal discrimination complaint under the EEO complaint process, or a written grievance under the negotiated grievance process) 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 written formal EEO complaint or a timely written grievance under the negotiated process.

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

e. If you file a formal EEO complaint, you are responsible for informing the servicing activity 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 in writing 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, such as 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 Army may result in the limitation of the Army'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, the EEOCCR Director 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 EEO complaint.

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

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

Signature block of servicing activity EEO officer or designated EEO official

IF NOTICE PRESENTED IN PERSON, INCLUDE THE FOLLOWING:

Signature _____ [Date] _____
Signature of Aggrieved Date Received by Aggrieved:

Signature _____ [Date] _____
Signature of Representative (if applicable) Date Received by Representative

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

Date [Date]

DA Docket Number [Docket Number]

MEMORANDUM FOR [aggrieved]

SUBJECT: Offer to Mediate

1. The purpose of this memorandum is for [the activity] 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 EEO Alternative Dispute Resolution (ADR)/mediation or traditional EEO counseling, and your election to proceed with traditional precomplaint counseling or EEO 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 EEO precomplaint 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 Army official with settlement authority. If resolution is not achieved, a final interview will be conducted and you will be advised, in writing, of your right to file a formal EEO 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]

Figure 3–2. Sample Offer to Mediate

AGREEMENT TO MEDIATE

This is an agreement between the parties signing below to participate in the Equal Employment Opportunity (EEO) Alternative Dispute Resolution (ADR) program in the form of 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 EEO 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 pre-complaint period, whichever comes first.

Signature


[Aggrieved signature & date]

Signature

[Management official signature & date]

[Title]

Figure 3-3. Sample Agreement to Mediate



NOTES:

1. An Agreement to mediate should be signed at anytime during the EEO process when mediation occurs.
2. When mediation occurs during the formal process, delete reference to the precomplaint process.

Figure 3–3. Sample Agreement to Mediate-continued

Date _____--[D_a_te---]'-----

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 up to 90 calendar days. As recorded during the precomplaint intake interview, and during mediation, 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 interview).

2. If you believe that you have been discriminated against on the basis of race, color, religion, sex, national origin, age, genetic information, mental/physical disability and/or reprisal for engaging in protected EEO activity such as participation in an EEO complaint as a witness or aggrieved/complainant or voiced 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 <https://armypubs.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 possible.

a Servicing activity Equal Employment Opportunity Officer
[Provide name and address]

b. Servicing activity commander
[Provide commander's name and EEO office address]

c Department of Army
Director, Equal Employment Opportunity Compliance and Complaints Review
ATTN: (SAMR-EI-CCR)
5825 21st Street, Bldg. 214, Rm. 129
Fort Belvoir, VA 22060-5921

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

d. Secretary of the Army
ATTN: SAMR-EI-CCR
5825 21st Street, Bldg. 214, Rm. 129
Fort Belvoir, VA 22060-5921

4. The formal complaint must specify the claim(s) and the basis(es) of the complaint raised during the precomplaint intake interview, EEO counselor interview (if any) and EEO 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, to include specifically identifying the individual(s) you believe discriminated against you. You may only raise those claims and incident(s) discussed, or like or related to those discussed, during EEO 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 acknowledgment of receipt of the complaint from the EEO officer.

[Signature block of servicing activity EEO officer or designated EEO official]

IF NOTICE PRESENTED IN PERSON, INCLUDE **THE** FOLLOWING:

c.S:#
[Signature of Aggrieved]

[Date]
[Date Received by Aggrieved]

St.g.n e
[Signature of Representative] (if applicable)

[Date]
[Date Received by Representative]

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

Date _____ [D_a_t_e]

MEMORANDUM FOR Witness

SUBJECT: Witness Participation in Complaint Processing

1. An informal complaint of discrimination has been initiated 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 Investigations and Resolutions Directorate (DOD IRD). 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 DOD IRD 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

Figure 3–5. Sample Witness Participation in Complaint Processing

issuance of a final Army decision. If the complaint involves a matter appealable to the Merit Systems Protection Board, the complainant will be issued a final Army decision.

7. If, after investigation by the DOD IRD, 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, Director, Equal Employment Opportunity 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 number].

[Signature block of EEO officer or designated EEO official]

[Signature of Witness]

[Date Received]

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

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 Equal Employment Opportunity (EEO) precomplaint counseling. This will extend the EEO 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.

[Name]
[Aggrieved]

[Name]
[EEO Official]

[Name]
[Aggrieved's Representative] (if applicable)

Figure 3–6. Sample Agreement to Extend Counseling

Date _____ [Date]

DA Docket Number _____ [Docket Number]

MEMORANDUM 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 the Equal Employment Opportunity (EEO) counselor, which could not be fully resolved. You initially contacted an EEO official on (insert date) to initiate the precomplaint process, the precomplaint intake interview was conducted on (insert date), and the EEO counselor's 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 during the precomplaint period).

2. If you believe that you have been discriminated against on the basis of race, color, religion, sex, national origin, age, genetic information, mental/physical disability and/or in reprisal for participation in protected EEO activity or voicing 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: <https://armypubs.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 possible.

a. Servicing activity Equal Employment Opportunity officer
[Provide name and address]

b. Servicing activity commander
[Provide name and EEO office address]

c. Department of the Army
Director, Equal Employment Opportunity Compliance and Complaints Review
ATTN: SAMR-EI-CCR
5825 21st Street, Bldg. 214, Rm. 129
Fort Belvoir, VA 22060-5921

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

d. Secretary of the Army
ATTN: SAMR-EI-CCR
5825 21st Street, Bldg. 214, Rm. 129
Fort Belvoir, VA 22060-5921

4. The formal complaint must specify the claim(s) and the basis(es) of the complaint discussed during precomplaint counseling. 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, to include specifically identifying the individual(s) you believe discriminated against you. 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. 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. Should you decide to file a formal discrimination complaint, you and/or your representative will receive a written acknowledgment of receipt of the complaint from the EEO officer.

[Signature block of servicing activity EEO officer or designated EEO official]

IF NOTICE PRESENTED IN PERSON, INCLUDE THE FOLLOWING:

<u>Signature</u>	<u>[Date]</u>
[Signature of Aggrieved]	[Date Received by Aggrieved]
<u>Signature</u>	<u>[Date]</u>
[Signature of Representative] (if applicable)	[Date Received by Representative]

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

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?
- 19) What other type of control has the Army exerted with respect to the individual's prospective, current or former employment?

Figure 3–8. Sample Equal Employment Opportunity Joint Employer Guidance Working Relationship Information

Chapter 4 Formal Complaints of Discrimination

Section I

Filing and Acknowledgment of Formal Complaints of Discrimination

4–1. Filing a formal complaint

a. A formal complaint of discrimination must be filed within 15 calendar days of receipt of the Notice of Right to File a Formal Complaint of Discrimination unless extenuating circumstances occur (see para 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 servicing activity 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 servicing activity EEO officer.
- (2) The servicing activity commander.
- (3) The Army Director of EEO.
- (4) The SECARMY.

d. All activity posters and similar publications will recommend that complainant file any formal complaint with the servicing activity EEO officer. Anyone other than the servicing activity EEO officer who receives a complaint will immediately transmit the complaint to the servicing activity EEO officer, indicating the date the complaint was received if it is not postmarked. EEO counselors and servicing activity EEO officials should encourage aggrieved persons to submit their formal complaints to the servicing activity EEO officer to ensure timely processing.

e. A formal complaint will be deemed timely if it is delivered in person, by facsimile, email, 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 original postmarked envelope will be attached to the formal complaint and retained in a hardcopy file. A scanned copy will be included with the formal complaint in the digital case file. If commercial overnight delivery is used, the date of filing is the date it is delivered to the commercial overnight delivery service. If sent by facsimile or email, the date of filing is the date the written formal complaint was transmitted by facsimile or email.

f. Upon receipt of a formal complaint, the servicing activity EEO officer will indicate the ACOM, ASCC, DRU, or equivalent 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 pre-complaint data in the Army EEO automated data system is accurate and complete, and update the data to reflect the formal complaint information.

g. 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 appropriate activity commander or a designee. A copy of the response to a general allegation will be sent to the ACOM, ASCC, DRU, or equivalent EEO officer of the activity against which the allegation was made.

4–2. Receipt and acknowledgment of a formal complaint

a. Within 15 days of receipt of a formal complaint, the servicing activity EEO officer must acknowledge receipt of the complaint in writing, send the complainant a copy of a completed DA Form 7510 and either dismiss the complaint or accept the complaint and request assignment of an investigator. The servicing activity EEO officer will acknowledge receipt of the formal complaint in writing. The acknowledgment letter will inform the complainant and representative of the date on which the complaint was received and deemed filed (see fig 4–1).

b. If the formal complaint contains vague or overly general claims, the servicing activity EEO officer will request clarification in the acknowledgment 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 para 4–4a(13)).

c. Upon receipt of a formal complaint, an agency attorney will be designated to serve as the agency representative.

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

e. The acknowledgment of receipt and all subsequent actions on the complaint will be served in accordance with guidance provided in paragraph 1–23.

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 servicing activity EEO officer will review the complaint to determine whether the complaint is a mixed or a non-mixed case. The servicing activity EEO officer should consult with the EEO legal advisor to make this determination.

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

(1) The servicing activity EEO officer will coordinate with the designated EEO legal advisor for legal sufficiency review of acceptance and dismissal decisions, including the wording thereof.

(2) The EEO legal advisor will respond to the servicing activity EEO officer within 5 days of receiving a copy of the proposed decision and all existing complaint file documents. The legal advisor'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 servicing activity EEO officer must determine if consolidation of the complaint with a pending complaint is appropriate to avoid claim fragmentation (see para 4–7).

d. Within 15 days after the complaint is received, the servicing activity EEO officer will provide the complainant and the complainant's representative a copy of the completed DA Form 7510 and 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 (see para 1–23). A copy of the acceptance/dismissal decision will be uploaded in the Army's EEO automated data system.

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 servicing activity EEO officer concerning the articulation of the claims, and that any statement submitted will be included 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 fig 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 servicing activity EEO officer and the serviced activity's designated agency representative.

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

(7) The acceptance of any complaint will be conditioned upon the final decision of the SECARMY or designee.

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

(1) The requirement of the Army 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 EEOC 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 Army 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 Army's investigation has not been completed.

(6) When complaints have been consolidated for processing, the requirement of the Army 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 the 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 77960, Washington, DC 20013, 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 (see para 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 must inform the complainant of the following (see fig 4–4):

(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 (see para 5–12).

(6) The requirement to serve a copy of all official correspondence, including any correspondence to the MSPB, on the servicing activity EEO officer and the designated 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 servicing activity 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.* In determining whether a complaint states a claim under 29 CFR 1614.103, the proper inquiry is whether the conduct, if true, would constitute an unlawful employment practice under the EEO statutes (see 29 CFR 1614.107(a)(1)).

(2) *States the same claim.* 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 (see 29 CFR 1614.107(a)(1)).

(3) *Untimely Equal Employment Opportunity counselor contact.* See 29 CFR 1614.107(a)(2) and the following:

(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 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 will be attached to the dismissal notice.

(b) The servicing activity EEO officer will not dismiss a complaint under this provision if the complainant shows that the complainant was not notified of the time limits and was not otherwise aware of them, that the complainant did not know and reasonably should not have known that the discriminatory claim or

personnel action occurred, or that despite due diligence the complainant was prevented by circumstances beyond the complainant's 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 contact.

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

(4) *Untimely filing of formal complaint.* See 29 CFR 1614.107(a)(2) and the following:

(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 servicing 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 and should include copies of those documents.

(c) The time limits of this paragraph may be extended by the servicing 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 official and is not like or related to the matter addressed by the EEO counselor or mediator (see 29 CFR 1614.107(a)(2)).

(6) *Filing of a civil action.* 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 (see 29 CFR 1614.107(a)(3)).

(7) *Issue has been decided by U.S. District Court.* 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 (see 29 CFR 1614.107(a)(3)).

(8) *Allegation raised in negotiated grievance procedure.* The complaint concerns the same matter previously raised in the negotiated grievance procedure by the same complainant under a negotiated grievance procedure that does not exclude allegations of discrimination. Pursuant to 29 CFR 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 (see 29 CFR 1614.107(a)(4)) (see fig 4–8).

(9) *Appealed to the Merit Systems Protection Board.* The complainant elected to appeal the claim to the MSPB, rather than or prior to filing a mixed case complaint under 29 CFR 1614.302. A copy of the complainant's appeal to the MSPB will be attached to the notice of dismissal (see 29 CFR 1614.107(a)(4)) (see fig 4–7).

(10) *Complaint is moot.* 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, the servicing activity EEO officer will not dismiss the complaint under this provision until the issue of compensatory damages has been addressed (see 29 CFR 1614.107(a)(5)) (see fig 4–2).

(11) *Complainant alleges a preliminary step.* See 29 CFR 1614.107(a)(5) and the following:

(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 an act of reprisal for engaging in prior protected EEO activity or 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 1614.107(a)(6) and the following:

(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 of receipt of a notice of proposed dismissal sent to the complainant's 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 1614.107(a)(7) and the following:

(a) A complaint may be dismissed where the Army has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days of receipt, as evidenced by proof of receipt (or proof of refusal to accept), or the response does not address the Army'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 Equal Employment Opportunity process or "spin off" complaints.* See 29 CFR 1614.107(a)(8) and the following:

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

(b) The servicing activity EEO officer will add a memorandum for record to the complaint file of the pending complaint annotating the 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 acting.

(c) The notice of dismissal must inform the complainant that if these concerns have not been resolved informally, the complainant 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 the complainant 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 Equal Employment Opportunity process.* See 29 CFR 614.107(a)(9) and the following:

(a) The servicing activity 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 Army'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 servicing activity 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 servicing activity EEO officer will 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 non-mixed case complaint is dismissed in its entirety, the notice of dismissal must cite the following (see fig 4-5):

(1) The appropriate section of 29 CFR 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 will be attached to the notice of dismissal.

(3) The right to file a civil action in a federal district court (see para 5-12).

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

(1) The right to appeal the dismissal decision to the MSPB (or to the EEOC if it alleges that 29 CFR 1614.107(a)(4) has been applied to a non-mixed matter) within 30 days of receipt of the notice of

dismissal. A copy of MSPB Form 185 (MSPB Appeal Form) will be attached to the notice. A copy of the form is available from the MSPB website (available at <https://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 (see para 5–12).

e. A complaint may be dismissed by the servicing activity 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 of this regulation, as contained in 29 CFR 1614.107, is applicable. Procedures for dismissal cited above will be followed, including coordination with the EEO legal advisor.

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

(1) Dismiss a complaint previously accepted by a servicing activity EEO officer when making the final Army decision based on one or more of the grounds specified in paragraph 4–4a of this regulation.

(2) Direct acceptance and supplemental investigation, as appropriate, of an improperly framed and/or 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 servicing activity EEO officer will be captioned to identify the complainant versus the name of the SECARMY and the Army's assigned docket number, unless the complaint is against a serviced agency not under the control of the SECARMY, 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 1614.108(f) at the completion of the investigation. There is no requirement that the complainant seek pre-complaint counseling for any newly disclosed like or related claims or incidents. The 45-day EEO contact requirement only applies to pre-complaint contact and does not apply to amended claims or additional allegations submitted in support of an existing complaint.

(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 servicing activity EEO officer must acknowledge receipt of the amendment in writing and inform the complainant of the date on which the amendment was filed. The servicing activity 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 1–23.

(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 servicing activity EEO officer will amend the pending complaint to include the new claim. The servicing activity EEO officer will acknowledge receipt of the amendment in writing and inform the complainant and representative of the date on which the amendment was filed. The acknowledgment notice will inform the complainant and representative that the newly raised claim will be included for investigation with the previously filed complaint. The servicing activity 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 1–23. The servicing activity EEO officer will furnish the agency representative with a copy of the amendment and the acknowledgment notice and document the amendment in the Army EEO automated data system.

(3) If the servicing activity 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 servicing activity EEO officer will advise the complainant that an EEO counselor will be assigned to conduct a pre-complaint 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 servicing activity EEO officer or other EEO official, the date of facsimile or email, 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 1614.105(a).

b. The servicing activity EEO officer will coordinate the draft amendment decision and notice with the EEO legal advisor 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. If an impartial and appropriate investigation of a claim submitted as an amendment cannot be completed by the 360th day, the servicing activity EEO officer should advise the complainant to seek counseling on the newest matter and process it as a new 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 servicing activity EEO office and designated agency representative.

4-7. Consolidation of complaints

a. The servicing activity EEO officer will consolidate two or more complaints of discrimination filed by the same employee, applicant, former employee, or employees of contractors in cases involving joint employer issues or allegations 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 Army EEO automated data system using all applicable Army docket numbers.

b. The servicing activity EEO officer may consolidate complaints of discrimination filed by two or more different Army employees, former employees, applicants for employment, or employees of contractors in cases involving joint employer issues or allegations 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 Army 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.* Mixed case complaints and mixed case appeals are defined as follows:

(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, genetic information 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 affected, in whole or in part, because of discrimination based on race, color, religion, sex, national origin, age, genetic information, disability, or reprisal. This differs from an appeal to the MSPB of a FAD on a mixed case complaint.

b. *Standing.* Prior to processing a mixed case complaint, the servicing activity EEO officer must determine that the employee has standing to file a mixed case appeal on a claim 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 veteran preference eligible employees with one or more years of current continuous service, such as postal employees and attorneys with veteran preference.

(d) Non-preference 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 315.806, allowing appeals alleging discrimination based on party affiliation, marital status, procedural deficiencies).

(b) NAF employees.

(c) Employees serving under a temporary appointment limited to one year or less.

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 affected 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, constructive demotion, 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 1201. 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 official nor participation in the EEO pre-complaint process, constitutes an election.

4–9. Processing mixed case complaints

When a complainant files a mixed case complaint, the servicing activity EEO officer will process the complaint in the same manner as it would a non-mixed discrimination complaint except—

a. Upon acceptance of a mixed case complaint, the servicing activity 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 1201.154(b), or the complainant may file a civil action, but not both.

b. Upon acceptance of a mixed case complaint, the servicing activity 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 FAD if dissatisfied with the FAD on the mixed case complaint.

c. Upon completion of the investigation, the servicing activity EEO officer must notify the complainant that a FAD 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 FAD on a mixed case complaint, the servicing activity 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 Merit Systems Protection Board

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 1201.154(b)(2) or may file a civil action as specified in 29 CFR 1614.310(g), but not both.

(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 Form 185, 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 servicing activity EEO officer and agency representative.

4–11. Mixed case appeals to the Merit Systems Protection Board

a. A mixed case appeal is an appeal filed directly with the MSPB (see para 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 days after the date of receipt of the final Army decision whichever is later.

c. Filing instructions should be followed (see paras 4–10b through 4–10e).

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 Army and the activity where the alleged discrimination occurred does not dispute MSPB jurisdiction, the servicing activity EEO officer will 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 will notify the complainant that any alleged misapplication of 29 CFR 1614.107(a)(4) must be appealed to the EEOC and not the MSPB. The servicing activity 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 Army and the activity questions MSPB jurisdiction, the servicing activity EEO officer will 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 servicing activity 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 servicing activity EEO officer will 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 servicing activity EEO officer will recommence processing of the mixed case complaint as a non-mixed EEO complaint and notify the complainant and representative.

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

d. Since the servicing activity 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 servicing activity EEO officer so that timely notice of applicable appeal rights may be provided to the appellant.

4–13. Processing where Merit Systems Protection Board 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 servicing activity EEO officer and provide a copy of the MSPB decision. The servicing activity EEO officer must then inform the complainant that the complainant may contact an EEO official 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 official.

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 servicing activity EEO officer must provide the complainant with a 30-day notice of right to either a hearing and decision from an EEOC administrative judge or an immediate final Army decision pursuant to 29 CFR 1614.108(f) and thereafter proceed as in a non-mixed case.

4–14. Negotiated grievance procedure

a. A complainant who is included in a bargaining unit covered by a collective bargaining agreement may file claims of discrimination or reprisal under the negotiated grievance procedure instead of filing under this regulation (see fig 4–8). 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, a complaint may not thereafter be filed by the same individual 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, will 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 7121(d) and 29 CFR 1614.401(d). The servicing activity EEO officer's decision dismissing such a complaint will 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. An election, pursuant to this paragraph, to proceed under this regulation is indicated only by filing a formal complaint. Use of the pre-complaint process as described in chapter 3 does not constitute an election for the purpose of this paragraph (for final decision under the negotiated grievance procedure see para 5–3).

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 DoDI 1400.25).

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 DA will be processed in accordance with AR 600–7. 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 the 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 received, the servicing activity EEO officer will request the assignment of an investigator. Evidence of the request, with any documents not previously provided (such as the acknowledgment letter, EEO Counselor's Report or acceptance letter), will be forwarded to the complainant and the complainant's representative in accordance with the service rules, and to the agency representative (see para 1–23). Information and documentation that must be provided to the investigator include, but are not limited to:

- (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 and commercial, facsimile number, and email address.
- (4) The complainant's designation of a representative, including the representative's mailing address, telephone number, facsimile number, and email address.
- (5) The name, address, telephone number, facsimile number, and email address of the designated agency representative.
- (6) Appropriate fund information to ensure payment for investigative services, if required.
- (7) A specific point of contact within the servicing activity EEO office with appropriate telephone number, facsimile number, and email address.
- (8) Legible and personally identifiable information redacted copies of the following documents:

- (a) DA Form 2590.
- (b) The acknowledgment and acceptance/partial acceptance letters.
- (c) DA Form 7510.
- (d) The Notice of Right to File a Formal Discrimination Complaint.
- (e) All other relevant documents.

b. The servicing activity EEO officer, or a designee, will arrange for the investigator's visit or teleconferencing if necessary. 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 Federal Supply Schedule.
- (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 servicing activity 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 servicing activity EEO officer, civilian personnel official, or any management official, will 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 and witnesses may do so when asked by the investigator as part of 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 one digital verbatim transcript to the investigator within 14 days after the fact-finding conference is concluded. Payment for the services of the court reporter is the responsibility of the activity where the alleged discrimination occurred.

4-18. Avoiding delays

a. Complainants and management officials must cooperate to process complaints without delay so that they may be investigated within 120 days of filing a non-mixed 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.

c. If the investigation is not completed within 180 days of filing a non-mixed complaint, the servicing activity EEO officer will send the complainant and representative written notice that the investigation is not complete, provide an estimated date of when the investigation will be completed, inform the complainant that the complainant has a current right to request a hearing at the EEOC or file a lawsuit, and provide information about the hearing procedures (see figs 4-10 and 4-12).

d. Investigations will not be cancelled because a complainant requests a hearing before an EEOC administrative judge 180 days or more after the formal complaint was filed. The servicing activity EEO officer will send a copy of the complaint file to the EEOC and advise the administrative judge in the cover letter that the investigation is pending, the date on which the investigation is scheduled, and that once the investigation is completed and the ROI is received, a copy will be submitted to supplement the EEOC's copy of the complaint file.

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 servicing activity EEO officer.

4–20. The investigation

- a. The investigator should complete the investigation and issue an investigative report within 120 days of the date of receipt of the request for investigation of a non-mixed individual complaint, or within 75 days of receipt of a mixed complaint to meet the mandated 180-day and 120-day time requirements prescribed in 29 CFR 1614.106 and 29 CFR 1614.302. The 120-day 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 fig 4–9). The servicing activity 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 the complainant's representative are informed of the extension. 29 CFR 1614.302(d) 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 servicing activity EEO officer will provide the investigative file to the complainant and the complainant's 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 (see para 4–20b). If an impartial and appropriate investigation of a claim submitted as an amendment cannot be completed by the 360th day, the servicing activity EEO officer should advise the complainant to seek counseling on the newest matter and process it as a new complaint.
- d. The assignment of investigators to conduct the investigation as well as the method used to conduct the investigation, is within the purview of the investigating agency. Although the preferred method for investigating Army EEO complaints is the fact-finding conference, the investigation may take various forms, to include an exchange of letters or memoranda, interrogatories, fact-finding conferences, or any other method that thoroughly and efficiently addresses the matters at issue. The fact-finding conference, which may be accomplished through telephonic or video conferencing, differs from the traditional method of investigation primarily in 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 the 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 servicing activity EEO officer (see para 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 the 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 the new claim or incident as an amendment, in writing, to the servicing activity EEO officer. The servicing activity EEO officer will expeditiously review the complainant's request for amendment and provide the complainant with a written determination as prescribed in paragraph 4–6. The servicing activity 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 of it in the investigative record.

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 (see para 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 transmit a digital copy of the investigative file to the servicing activity EEO officer.

4–21. Servicing activity Equal Employment Opportunity officer responsibilities after completion of investigation

a. Ensure a digital complaint file is assembled in accordance with this regulation (see para 9–1).

b. For non-mixed cases, the servicing activity EEO officer will—

(1) Within 3 days of receipt of the investigative file, provide a Notice of Post-Investigative Options (non-mixed cases) to the complainant and representative advising the complainant of the option to request a hearing before an EEOC administrative judge or a final Army decision based on the record (complaint file), and remind the complainant of the option to withdraw the complaint from further processing in writing at any time (see fig 4–11). It will advise 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. The complainant will be further advised that a copy of the Request for a Hearing must be simultaneously served on the servicing activity EEO officer and the agency representative. A copy of the complete investigative file will be attached to the Notice of Post-Investigative Options. The servicing activity EEO officer will also attach the Request for a Hearing and Request for a Final Army Decision Without a Hearing format to the notice (see figs 4–12 and 4–13). The Notice of Post-Investigative Options (non-mixed cases) and the investigative file will be sent to the complainant and representative in accordance with service rules set forth in paragraph 1–23.

(2) Provide a copy of the Notice of Post-Investigative Options (non-mixed), and the complete investigative file to the agency representative.

(3) Within 3 days of receipt of a request for a hearing, submit a digital copy of the complainant's request for a hearing (if not already submitted) and digital copies of the bookmarked and Bates numbered complaint file and investigative record to the appropriate EEOC hearings unit. The servicing activity EEO office will ensure that the EEOC hearings unit and administrative judge are advised to send the decision to

the EEOCCR Director. The complainant may request a hearing by the EEOC administrative judge whether the complainant has received the Notice of Post-Investigative Options if 180 days have elapsed from the date the formal complaint was filed.

(4) Document and upload the hearing request in the Army EEO automated data system.

(5) Within 3 days of receipt of a request for a final Army decision, send a digital copy of the request along with digital copies of the bookmarked and Bates numbered complaint file and investigative record to the EEOCCR Director.

(6) If the complainant or representative fails to respond to the Notice of Post-Investigative Options by the 36th day after receipt of the Notice, contact the EEOC hearings unit office personnel identified on the Request for a Hearing form to verify if the complainant requested a hearing. If the EEOC has no record of a request for a hearing, send a Request for a Final Army Decision Without a Hearing, which includes a statement that a request has not been received from the complainant, and the EEOC has verified that no hearing has been requested, along with digital copies of the bookmarked and Bates numbered complaint file and investigative record to the EEOCCR Director.

c. For mixed cases, the servicing activity 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. A copy of the letter will be issued along with the complete bookmarked and Bates numbered investigative file (see fig 4–14). The letter and the investigative file will be sent in accordance with service rules set forth in paragraph 1–23.

(2) Send a digital copy of the complete, tabbed, or bookmarked complaint file and investigative record to the EEOCCR Director for issuance of a final Army decision.

Section VI

Hearings before the Equal Employment Opportunity Commission

4–22. Arranging for an Equal Employment Opportunity Commission hearing

a. Upon receipt of notification from either the EEOC administrative judge or the designated agency representative of the date and location where hearing is to be held, the servicing activity EEO officer will decide on an appropriate room to hold the hearing and advise the designated agency representative of the selected location.

b. The servicing activity EEO officer will coordinate with the activity to contract for the services of a court reporter at the hearing. Contracting and payment for the services of a court reported is the responsibility of the activity where the alleged discrimination occurred.

(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, inter-service support agreements may be used instead of contracting for such services.

(2) Contracts with court reporting firms must require delivery a digital verbatim transcript with a word index to the EEOC administrative judge within 10 days or less after the EEOC hearing is closed.

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 designated agency representative, the servicing activity 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 designated agency representative. The servicing activity EEO officer will assist the serviced activity in coordinating all necessary travel arrangements. For information about travel and other related expenses (see para 8–9).

4–23. The Equal Employment Opportunity Commission 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 actions. The administrative judge's authorized actions include—

(1) Administers oaths or affirmations.

(2) Regulates the course of the hearing.

(3) Rules on offers of proof and receive relevant evidence.

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

(5) Limits the number of witnesses whose testimony would be unduly repetitious.

(6) Excludes any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The administrative judge or the EEOC refers 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 suspends or disqualifies 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) Dismisses complaints pursuant to 29 CFR 1614.107 after notice to both parties or upon an agency's motion to dismiss a complaint.

(8) Issues a summary judgment if the administrative judge determines there are no genuine issues of material fact in dispute. The administrative judge may, after giving notice to the parties and providing them an opportunity to respond in writing, issue an order limiting the scope of the hearing or issue a summary judgment decision 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 will 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 designated 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 officials refuse or fail 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.

(5) Take such other actions as deemed appropriate.

d. The administrative judge limits 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 excludes 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 the complainant's attorney, if represented. If the complainant submits a document that is accepted, the administrative judge makes 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 deciding. The administrative judge issues a decision within 180 days of receipt of the request for a hearing unless the administrative judge decides that good cause exists for extending the time. The administrative judge, as requested by the servicing activity EEO office, transmits the decision in digital form to the EEOCCR Director.

g. The administrative judge serves a copy of the decision and the hearing transcript on the complainant and the complainant's representative. Also, the administrative judge may send the EEOCCR Director 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 decision to the servicing activity EEO office or to the designated agency representative, rather than to the EEOCCR Director, the servicing activity EEO officer will immediately notify EEOCCR personnel and transmit a digital copy of the decision to the EEOCCR Director.

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 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 an 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 1–23 (see fig 4–15). The notice of nonacceptance will also be attached. The Offer of Resolution and accompanying agreement will usually be drafted by the designated agency representative and reviewed by the designated agency representative and the servicing activity EEO officer. If a personnel action is part of the proposed offer, a CHRSC civilian personnel official will also review the offer.

b. An Offer of Resolution (see fig 4–16) made under the provisions of 29 CFR 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 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 made under the provisions of 29 CFR 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 (see fig 4–17).

4–27. Acceptance of Offer of Resolution

a. The 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 the complainant's 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 Agreement Offer of Resolution (see fig 4–16).

[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 of your (your client's) formal discrimination
complaint received in this office on [date] and deemed filed on [date].

I will review your (your client's) claim(s) so that I may determine the appropriate
disposition of the complaint. Upon my determination whether to accept or
dismiss your (your client's) claim(s), 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 c/aim(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 CFR.
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 a non-attorney representative
Agency representative

Figure 4-1. Sample Acknowledgment Receipt of Discrimination Complaint

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, e-mailed or 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.

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

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

Figure 4–2. Sample Notice to Equal Employment Opportunity Complainant Seeking Compensatory Damages

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, non-pecuniary 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]

NOTES:

1. This notice should be sent with the notice of acceptance via certified mail, return receipt requested, if complaint suggests compensatory damage claim, or later if a claim arises between formal complaint and case assignment to EEOC AJ.
2. Immediately provide any documentation received to agency representative.

Figure 4–2. Sample Notice to Equal Employment Opportunity Complainant Seeking Compensatory Damages—continued

[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 received in this office on [insert date] and deemed 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. [Claim 1]
- b. [Claim 2]
- c. [Claim 3]
- d. [Claim 4]

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.

[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:

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

[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 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.

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] or uploaded via EEOC's Federal Sector EEO Portal (FedSEP) at <https://publicportal.eeoc.gov/portal/>. 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

Figure 4–3. Sample Notice of Acceptance of Discrimination Complaint (Non-mixed)—continued

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 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), via FedSEP or to P.O. Box 77960, Washington, D.C. 20013, within 30 calendar days after receiving the final Army decision/action. A copy of the appeal must be provided to the Director for Equal Employment Opportunity Compliance and Complaints Review (EEOCCR), ATTN: SAMR, 5825 21st Street, Bldg. 214, Rm. 129, Fort Belvoir, Virginia 22060-5921. Also, any brief or statement in support of the appeal should be sent to OFO, with a copy to the Director 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 Director 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 US 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

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

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.

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 US 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.

[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}.

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 is enclosed.

Sincerely,

[Signature block of EEO officer or appropriate official]

Enclosure(s)

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

Copy Furnished:
Complainant, if represented by an attorney; or
Non-attorney 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 1-24.
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 or email receipts 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 (Non-mixed)—continued

[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 received by this office on [insert date] and deemed filed on [insert date]. Your (your client's) 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. [Claim 1]
- b. [Claim 2]
- c. [Claim 3]
- c. [Claim 4]

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.

[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:

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

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

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.

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], or filed electronically at <https://e-appeal.mspb.gov>. You must serve a copy of your (your client's) appeal to the MSPB simultaneously to the Director for Equal Employment Opportunity Compliance and Complaints Review, ATTN: SAMR, 5825 21st Street, Bldg. 214, Rm. 129, Fort Belvoir, VA 22060-5921.

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 or website provided above. A copy of the appeal must be served simultaneously on the Director for Equal Employment Opportunity Compliance and Complaints Review, ATTN: SAMR, 5825 21st Street, Bldg. 214, Rm. 129, Fort Belvoir, VA 22060-5921.

You (You, on behalf of your client,) may file a civil action in the proper US 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 1973, as amended, and you do not have, or are unable to obtain the services of an

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

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 (You, on behalf of your client,) may file a civil action in the proper US District Court within 30 calendar days after receiving the final Army decision if no appeal has been filed or, if the Army

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.

[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].

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 is enclosed.

Sincerely,

[Signature block of servicing activity EEO officer or designated EEO official]

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

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, and evidence that the complainant knew or should have known of the 45-day EEO contact requirement will be attached if claims are dismissed for untimeliness.
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 185 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 re-employment rights under various circumstances

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

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 -Removal -Suspensions for more than 14 days -Reduction-in-grade (demotion) -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

[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 received by this office on [insert date] and deemed 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. [Claim 1]
- b. [Claim 2]
- c. [Claim 3]

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 77960, Washington, D.C. 20013, or uploaded via EEOC's Federal Sector EEO Portal (FedSEP) at <https://publicportal.eeoc.gov/portal/> 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

Figure 4-5. Sample Dismissal Decision of Discrimination (Non-mixed)

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 Director for Equal Employment Opportunity Compliance and Complaints Review (EEOCCR), ATTN: SAMR, 5825 21st Street, Bldg. 214, Rm. 129, Fort Belvoir, VA 22060-5921, 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 Director 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 Director 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.

Figure 4–5. Sample Dismissal Decision of Discrimination (Non-mixed)—continued

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 Director 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 77960, Washington, DC 20013, or via FedSEP, 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 [Director 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 [Director 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 (Non-mixed)—continued

(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 at 202-663-7022.

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.

Figure 4-5. Sample Dismissal Decision of Discrimination (Non-mixed)—continued

Section 1614.409 Effect of filing a civil action.

Filing a civil action under § 1614.407 or § 1614.408 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. A copy of your (your client's) EEO Counselor's Report is enclosed.

Sincerely,

Signature block of servicing activity EEO officer or designated EEO official

Enclosure

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 under Tab "Formal".
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.

Figure 4-5. Sample Dismissal Decision of Discrimination (Non-mixed)—continued

[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 received by this office on [insert date] and deemed 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. [Claim 1]

b. [Claim 2]

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), or filed electronically at <https://e-appeal.mspb.gov>. A copy of MSPB Appeal Optional Form 283, is attached. You must serve a copy of the appeal simultaneously on the Director for Equal Employment Opportunity Compliance and Complaints Review (EEOCCR), ATTN: SAMR, 5825 21st Street, Bldg. 214, Rm. 129, Fort Belvoir, VA 22060-5921 and on the agency representative [insert name and address of agency representative].

Figure 4-6. Sample Dismissal Decision of Discrimination (Mixed)

In or attached to the appeal to the MSPB, you must certify the date and method by which service was made to the Director 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.

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.

Figure 4-6. Sample Dismissal Decision of Discrimination (Mixed)—continued

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. A copy of your (your client's) EEO Counselor's Report is enclosed.

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. This notice will be issued to complainant/representative in accordance with the service rules set forth in paragraph 1-24.
2. A copy of this notice and the certified return receipt or email 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.

Figure 4-6. Sample Dismissal Decision of Discrimination (Mixed)—continued

[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 received by this office on [insert date] and deemed 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. [Claim 1]
- b. [Claim 2]

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 (C.F.R.), 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 77960, Washington, DC 20013, or via EEOC's Federal Sector EEO Portal (FedSEP) at <https://publicportal.eeoc.gov/portal/> 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 Director for Equal Employment Opportunity Compliance and Complaints Review, ATTN: SAMR, 5825 21st Street, Bldg. 214, Rm. 129 Fort Belvoir,

Figure 4-7. Sample Dismissal for Prior Election of Forum to Merit Systems Protection Board

VA 22060-5921 and to the agency representative, [insert name, address, and e-mail address of agency representative], at 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. A copy of your (your client's) EEO Counselor's Report is enclosed.

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 1-24.
3. A copy of the notice and the certified return receipt or email 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.

Figure 4-7. Sample Dismissal for Prior Election of Forum to Merit Systems Protection Board—continued

[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 received by this office on [insert date] and deemed 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. [Claim 1]
- b. [Claim 2]

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

Figure 4-8. Sample Notice of Dismissal Election of Forum (Negotiated Grievance Procedure)

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 Director for Equal Employment Opportunity Compliance and Complaints Review (EEOCCR), ATTN: SAMR, 5825 21st Street, Bldg. 214, Rm. 129, Fort Belvoir, VA 22060-5921, 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 Director 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 Director 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.

Figure 4–8. Sample Notice of Dismissal (Negotiated Grievance)—continued

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 Director 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 77960, Washington, DC 20013, or uploaded via EEOC's Federal Sector EEO Portal (FedSEP) at <https://publicportal.eeoc.gov/portal/>, 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 [Director 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 [Director 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 at (202) 633-7022.

Figure 4–8. Sample Notice of Dismissal (Negotiated Grievance)—continued

(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 at (202) 633-7022.

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.

Figure 4–8. Sample Notice of Dismissal (Negotiated Grievance)—continued

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. A copy of your (your client's) EEO Counselor's Report is enclosed.

Sincerely,

[Signature block of EEO officer or appropriate official]

Enclosure

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

Figure 4-8. Sample Notice of Dismissal (Negotiated Grievance)—continued

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 1-24.
4. A copy of the notice and the certified return receipt or email receipts 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.

Figure 4–8. Sample Notice of Dismissal (Negotiated Grievance)—continued

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 deemed filed on (date) will be completed no later than (date), 270 calendar days from the filing of your formal EEO complaint.

Signature
Complainant

[Date]
Date

Signature
EEO Officer

[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. This form should be attached to the notice of acceptance (non-mixed).
3. The original copy of the agreement will be filed in the complaint file under Tab "Investigation", and a copy provided to the complainant/representative, the agency representative and the investigator.

Figure 4-9. Sample Agreement between Complainant and Equal Employment Opportunity Officer to Extend Investigation

[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 notice is to inform you that the investigation into your (your client's) formal complaint of discrimination, filed on [insert date] and amended on [insert date or dates], has not been completed within 180 days. The investigation is scheduled for [insert date]. The estimated date of completion of the investigation is [insert date].

29 CFR 1614.108(e) requires an agency to complete its investigation within 180 days of the date an individual complaint was filed or within the time period contained in an order from the Equal Employment Opportunity Commission (EEOC) Office of Federal Operations (OFO) on an appeal from a dismissal pursuant to 29 CFR 1614.107. The complainant and the agency may agree in writing to extend the time period for not more than an additional 90 days. The agency may unilaterally extend the time period or any period of extension for not more than 30 days where it must sanitize a complaint file that may contain information classified pursuant to Executive Order No. 12356, or successor orders, as secret in the interest of national defense or foreign policy, provided the investigating agency notifies the parties of the extension.

29 CFR 1614.108(f) further provides that within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the EEOC OFO on an appeal from a dismissal, or within any period of extension provided for in paragraph (e) of this section, the agency shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing and decision from an administrative judge or may request an immediate final decision pursuant to § 1614.110 from the agency with which the complaint was filed. Nevertheless, 29 CFR 1614.108(h) provides that the complainant may request a hearing "any time after 180 days have elapsed from the filing of the complaint."

In accordance with 29 CFR 1614.108(e) and (f), the Army is (was) required to complete its investigation and provide you (and your client) with a copy of the investigative file and notice of post investigative options by [insert date].

Figure 4–10. Sample Notice of Right to Request a Hearing (180 day letter)

You (your client) may continue to wait until completion of the investigation and issuance of the investigative file and post-investigative options notice to request an EEOC hearing or a final agency decision.

If you do not (your client does not) wish to wait until the agency completes the investigation, you (your client) may request a hearing in accordance with 29 CFR 1614.108(h). If you opt (your client opts) for a hearing, the enclosed Request for a Hearing form should be sent directly to [insert appropriate EEOC office] or uploaded via EEOC's Federal Sector EEO Portal (FedSEP) at <https://publicportal.eeoc.gov/portal/>. 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. After requesting a hearing, you (your client has) the right to file a motion with the EEOC administrative judge to amend the complaint to include claims like or related to those raised in the original complaint. After the agency completes the investigation of your (your client's) claims, the EEOC administrative judge will conduct a hearing and issue a decision on the merits of your (your client's) complaint, subject to final action by the Army.

You (your client) may also file a civil action in an appropriate United States District Court in accordance with 29 CFR 1614.407(b). Filing a civil action will result in termination of the administrative processing of your complaint. If you file (your client files) a civil action under Title VII of the Civil Rights Act of 1964, as amended, or the Rehabilitation Act of 1973, as amended, and do (does) not have or are (is) unable to obtain the services of a lawyer, you (your client) may request the court to appoint a lawyer to represent you (him/her). In such circumstances as the court may deem just, the court may appoint a lawyer and may authorize the commencement of the action without the payment of fees, costs, or security.

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.

Sincerely,

[Signature block of EEO officer or appropriate official]

Enclosure(s)

Copy Furnished:

Figure 4-10. Sample Notice of Right to Request a Hearing (180 day letter)—continued

Complainant, if represented by an attorney
Non-attorney representative
Agency representative

NOTES:

1. The date an agency is required to complete an investigation is extended under 29 CFR 1614.108(f) where a Complainant has submitted a new claim that is like or related to claims contained in the existing formal complaint, and the new claim has been accepted for investigation in a Notice of Amended Complaint. The date is not extended where the Complainant has raised a new incident that provides additional evidence offered in support of the claim(s) already raised in the pending complaint, but does not raise a new claim in and of itself.
2. The agency must conduct and complete an investigation even if the Complainant has requested a hearing.
3. This notice will be issued to complainant/attorney representative in accordance with the service rules set forth in AR 690-600.
4. A copy of the Request for a Hearing form should be enclosed.
5. A Request for Extension form should be included if the Complainant has not already granted a 90 day extension.
6. A copy of this notice and all certified return receipt (green) cards or email receipts will be filed in the complaint file under Tab "Formal".

Sample Notice of Right to Request a Hearing (Nonmixed)

Figure 4–10. Sample Notice of Right to Request a Hearing (180 day letter)—continued

[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] or uploaded via EEOC's Federal Sector EEO Portal (FedSEP) at <https://publicportal.eeoc.gov/portal/>. 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.

Figure 4-11. Sample Notice of Post-Investigative Options (Non-mixed Complaints)

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. You (and your client) also have the option to withdraw your (client's) complaint in writing at any time prior to the issuance of a final Army action or decision if you (your client) no longer wish(es) to pursue this matter.

Sincerely,

[Signature block of EEO officer or appropriate official]

Enclosures

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

NOTES:

1. This notice and the investigative file will be sent in accordance with the service rules set forth in paragraph 1-24.
2. A copy of this notice and the certified return receipt or email receipts 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 4-13 and 4-14) will be attached to this notice.

Figure 4–11. Sample Notice of Post-Investigative Options (Non-mixed Complaints)—continued

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 (C.F.R.), Part 1614.110(b).

My name: _____ [Name]

My 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]

NOTE:

1. This format should be attached to the Post Investigative Options Notice.

Figure 4-12. Request for a Hearing Format

[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 issuing a decision on the merits of this complaint.

In as much 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 Director, Equal Employment Opportunity Compliance and Complaints Review, ATTN SAMR-EI-CCR, 5825 2P¹ Street, Bldg. 214, Rm. 129, Fort Belvoir, Virginia 22060-5921, for issuance of a final Army decision by the Army Director of EEO, or designee. The Army will have 45 calendar days from the date of this notice to issue the final Army decision. You (and your client) also have the option to withdraw your (client's) complaint in writing at any time prior to the issuance of the final Army decision if you (your client) no longer wish(es) to pursue this matter.

Sincerely,

[Signature block of servicing activity EEO officer or designated EEO 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.

Figure 4-13. Sample Request for Final Army Decision

[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 Director for Equal Employment Opportunity Compliance and Complaints Review, ATTN: SAMR-EO-CCR, 5825 21st Street, Bldg. 214, Rm. 129, Fort Belvoir, Virginia 22060-5921, 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. You (and your client) also have the option to withdraw your (client's) complaint at any time prior to the issuance of the final Army action decision if you (your client) no longer wish(es) to pursue this matter.

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 1-24.
2. A copy of this notice and the certified return receipt or email receipts will be filed in the complaint file under the "(ROI/POI)" tab.

Figure 4-14. Sample Notice of Post Investigation (Mixed Complaint)

4. The complainant agrees to:

Stipulate terms clearly and concisely and specify time frames for completion, if appropriate.

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. This Agreement will become effective on the date it is signed by all Parties. Necessary documentation will be prepared within **30 calendar days** of signing by all Parties and execution of other actions to initiate processing in compliance with the terms will be effected **45 calendar days** from the date this Agreement is signed by all Parties. Complainant understands that any payments will be reported to the Internal Revenue Service (IRS) and that the question of tax liability, if any, as a result of such payment is a matter to be resolved solely between the Complainant and the IRS.

7. If the complainant believes that the Army has failed to comply with the terms of this Agreement, the complainant will notify the Director, Equal Employment Opportunity Compliance and Complaints Review (EEOCCR), ATTN: SAMR-EI-CCR, 5825 21st Street, Bldg. 214, Rm. 129, Fort Belvoir, Virginia 22060-5921, 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 servicing activity EEO Officer. The complainant must request that the terms of the Agreement be specifically implemented or, alternatively, the complaint(s) be reinstated for further processing from the point processing ceased. If the EEOCCR Director 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 77960, Washington, DC 20013 for a determination as to whether the Army has complied with the terms of this Agreement. 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.

8. The terms of this Agreement 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.

9. **[To be used only in complaints alleging violations of the ADEA).** The Complainant has alleged age discrimination in this matter. Pursuant to the provisions of the Older Workers' Benefit Protection Act, the Complainant acknowledges:

Figure 4–15. Sample Cover Letter for Offer of Resolution—continued

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 non-acceptance.

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.

Figure 4-16. Sample Offer of Resolution

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 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,

Signature block of sending agency EEO office, or designated EEO official

Enclosures

1. Agreement
2. Notice of Non-Acceptance

Copies Furnished:

Agency representative

Complainant, if represented by an attorney or non-attorney representative

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 Non-Acceptance 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".

Figure 4-16. Sample Offer of Resolution-continued

a. Complainant is waiving any and all rights and claims (s)he may have under the Age Discrimination in Employment Act of 1967, as amended, concerning the issues, claims, or facts contained in the subject complaint;

b. Complainant is aware that (s)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 (s)he has, in fact, read and understands it;

d. The settlement terms provide valuable consideration to the Complainant in addition to anything of value to which (s)he already is entitled;

e. The Complainant was given 21 days within which to consider this Agreement before signing it;

f. The Complainant was advised to consult with his/her attorney before executing this Agreement;

g. Execution of this Agreement by the Complainant prior to the expiration of 21 days constitutes the Complainant's agreement to waive the 21 day timeframe in e above.

h. The Complainant may revoke this Agreement within seven days following the execution of the Agreement, and the Agreement shall not become effective or enforceable until the revocation period has expired.

10. The Parties agree that in the event it is determined that a provision(s) of this Agreement is contrary to law or regulation or is otherwise unenforceable, only that provision(s) shall be considered null and void and all other provisions shall remain in full force and effect.

11 The Complainant agrees to waive any and all rights she/he may have to costs, attorney fees, interest payments and any other form of compensation except as expressly provided above.

12. I have read this Offer of Resolution and agree to accept its provisions.

Signature _____ [Date]
[Signature of Complainant] [Date signed by Complainant]

Signature _____ [Date]
[Signature of attorney] [Date signed by attorney]

St, - _____ [Date]
[Signature & Title of Army Official] [Date signed by Army Official]

Signature _____ [Date]
[Agency Representative] [Date signed by Agency Representative]

Figure 4-16. Sample Offer of Resolution—continued

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 servicing activity EEO officer and the designated agency representative.
3. The designated agency representative, the servicing activity 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 designated 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 Agreement 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. If an external entity (such as DFAS) is required to execute in order to comply with the terms, state that the Army will submit paperwork to DFAS within a period of time, but that the Army has no control over when DFAS will execute.
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 Agreement is the responsibility of the activity. To ensure compliance with the terms of the offer, the activity will designate an official to be responsible for implementation of the Agreement.
10. Monitoring compliance with the Agreement is the responsibility of the servicing activity EEO officer.

Figure 4–16. Sample Offer of Resolution—continued

NOTICE OF NON-ACCEPTANCE 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 non-acceptance 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]

Signature
[Signature of representative]

[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 non-acceptance notice.
3. The signed Notice of Non-acceptance and a copy of all documents related to the offer of resolution will be filed in the agency representative's litigation file and not the EEO complaint file.

Figure 4-17. Sample Notice of Non-Acceptance of an Offer of Resolution

Chapter 5

Final Army Decisions/Actions and Appeals of Non-mixed and Mixed Case Complaints, Civil Actions, and Settlements

Section I

Final Army Decisions and Actions

5-1. Final Army decisions in non-mixed 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 the complainant requested a final Army decision.

(2) Within 60 days after receipt of the investigative file and notice from the activity that the 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 an administrative judge has dismissed the complainant's 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 chap 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 SECARMY 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 1-23. A copy of the final Army action/decision will be furnished to the serviced ACOM, ASCC, DRU, or equivalent EEO Director, designated agency representative, and the servicing activity EEO officer.

e. Upon issuance of the final Army decision, EEOCCR personnel will update the Army EEO automated data 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 FAD within 45 days of notice being provided the complainant in accordance with 29 CFR 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 SECARMY as the proper defendant and list the applicable time limits for such action). A copy of MSPB Form 185 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 1-23. A copy will be provided to the serviced ACOM ASCC, DRU, or equivalent EEO Director, the designated agency representative, and the servicing activity EEO officer.

d. Upon issuance of the final Army decision, EEOCCR personnel will update the Army EEO automated data 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 are appealable to the EEOC OFO in a non-mixed case if the grievance includes an allegation of prohibited discrimination and the grievance procedure does not exclude discrimination claims. Final decisions 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 servicing activity EEO officer will ensure that the decision is served upon the EEOCCR Director. If the administrative judge has served the decision and hearing transcripts on the activity and not on the EEOCCR Director, the Agency representative or servicing activity EEO officer will immediately fax or email a copy of the decision to the EEOCCR Director.

b. When the administrative judge finds discrimination, EEOCCR personnel will immediately coordinate with the designated Agency representative and servicing activity EEO officer. EEOCCR personnel will ensure that the agency representative and servicing activity EEO officer have received a copy of the administrative judge's decision.

c. The EEOCCR Director 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 personnel 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) The EEOCCR Director 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, the EEOCCR Director 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 1-23. A copy of the final Army action will be furnished to the administrative judge, serviced ACOM, ASCC, DRU, or equivalent EEO Director, designated agency representative, and the servicing activity EEO officer. Certification as to the date and method by which service was made on the 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 SECARMY 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.

Section II

Appeals, Reconsideration, Appellate Procedures, and Civil Actions

5-5. Appeals of final Army decisions/actions on non-mixed cases

a. *Who can appeal.* A complainant or complainant's attorney may appeal the following to EEOC OFO:

- (1) The FAD to dismiss the complaint in whole (see para 4-4).
- (2) The FAD or final agency action on the merits of the complaint (see para 5-1).
- (3) The final decision of an administrative judge if the agency has not issued a final action within 40 days (see para 5-4).
- (4) The final agency action not to fully implement the administrative judge's decision (see para 5-4).
- (5) The FAD on alleged noncompliance with a NSA (see para 5-14).
- (6) The FAD 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 digital upload to the EEOC digital portal, by mail, personal delivery, or facsimile with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, D.C. 20013. Any statement or brief in support of the appeal must be submitted to the EEOC OFO 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 EEOCCR Director and to the designated agency representative at the same time that the appeal with the EEOC is filed.

(2) The EEOCCR Director 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 1614.403. A copy of EEOCCR's request to EEOC will be furnished to the servicing 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, the EEOCCR Director will immediately forward a copy of the appeal and documents submitted with the appeal to the agency representative and servicing activity EEO officer by facsimile or email. If the complainant files a separate brief or statement in support of the appeal, the EEOCCR Director, if in receipt of the brief or statement, will immediately forward a copy of the brief or statement to the agency representative by facsimile or email. The agency representative will prepare a draft response to the appeal. The Army's response will be double-spaced without a signature block. The draft response can be transmitted to the EEOCCR Director by facsimile or email.

(1) If the 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 the EEOCCR Director within 20 days of the date the brief was received by EEOCCR personnel 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 the EEOCCR Director within 20 days of the date the brief was received by EEOCCR personnel or by the agency representative, whichever comes first.

(3) If the complainant does not submit a statement or brief supporting the appeal within 30 days of the date the notice of appeal was filed, the agency representative will submit a brief to the EEOCCR Director 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 the EEOCCR Director by facsimile or email. The agency representative will not submit comments directly to the EEOC OFO. A copy of the Army's brief will be served by the agency representative on the complainant and representative in accordance with the service rules set forth in paragraph 1–23.

(5) The EEOCCR Director will submit the complaint records to EEOC OFO within 30 days of receipt of the notification of appeal of EEOC's request for the complaint file.

d. Time limits for administrative appeals to the Equal Employment Opportunity Commission. 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 a formal 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 the EEOCCR Director 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.

(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 Equal Employment Opportunity Commission from Merit Systems Protection Board 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 EEOC 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, if the appeal is sent by mail or email, EEOC Form 573 should be used and mailed or emailed to EEOC OFO and served on all parties.

5–7. Appeals of matters brought forth under the negotiated grievance procedure

a. A grievant or their attorney of record may appeal to EEOC OFO, within 30 days of receipt of the final decision of the agency, the arbitrator, or the FLRA, on issues of employment discrimination raised in a negotiated grievance procedure (see para 4–14).

b. 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.

c. The EEOCCR Director will coordinate with the agency representative to obtain the grievance file, a copy of which will be forwarded to EEOC OFO (see para 5–5c).

5–8. Appellate procedures

a. On behalf of the EEOC, OFO personnel 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 personnel 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 personnel 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 the EEOCCR Director in digital form with a copy furnished to the complainant and designated representative in accordance with the service rules in paragraph 1–23. Upon receipt, the EEOCCR Director will forward the information to the EEOC OFO.

c. If the complaint is remanded to EEOC for a hearing, the EEOCCR Director will ensure that the complaint file is transmitted to the appropriate hearings unit.

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 servicing activity 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 1–23.

(3) Upon receipt, the servicing activity EEO officer will forward a copy of the investigative summary to the EEOCCR Director for submission to the EEOC OFO Compliance Officer. If the complaint is remanded to EEOC for a hearing, the EEOCCR Director will ensure that the complaint file is transmitted to the appropriate hearings unit.

e. When the complainant or the Army officials or Army employees fail without good cause to respond fully and in a timely fashion to EEOC requests for information, the EEOC officials 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.

(4) Take such other actions, as it deems appropriate.

f. EEOC OFO decisions are final for purposes of filing a civil action unless a timely request for reconsideration is filed by either party.

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 the EEOCCR Director 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) The EEOCCR Director or the complainant will 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 the complainant's representative must serve a copy of any statement or brief in support of a request to reconsider on EEOCCR as well as to the designated agency representative.

c. A serviced activity commander or a designee who wishes to request reconsideration will consult the agency representative to determine if the request meets the requirements set forth in this paragraph. If so, within 5 days of receipt of EEOC OFO's decision on appeal from EEOCCR, the serviced activity commander or designee will notify the EEOCCR Director by email or facsimile of the intent to request reconsideration. This notification will include an explanation of how the criteria apply (see para 5–9a). The EEOCCR Director 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 applies 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 the EEOCCR Director by facsimile or email 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 the EEOCCR Director not later than 5 days prior to the time limit for response.

e. If corrective action is ordered by the EEOC, the servicing activity EEO officer will promptly report and provide all necessary documentation to the EEOCCR Director 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 Equal Employment Opportunity Commission 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) The EEOCCR Director will notify the servicing activity EEO officer and designated agency representative, by facsimile or email, of EEOC OFO's order and Army suspense dates 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 servicing activity EEO officer to the EEOCCR Compliance Manager not later than the 5th 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 the EEOCCR Director that EEOC OFO has closed compliance.

(5) The servicing 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 the EEOCCR Director.

b. When corrective action is ordered by the Army—

(1) An implementation letter addressed to the serviced 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, the EEOCCR Director will notify the servicing activity EEO officer.

(2) Compliance reports will be submitted by the servicing activity EEO officer to the EEOCCR Compliance Manager not later than the 5th 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 the EEOCCR Director that the Army has closed compliance.

(5) The servicing 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 the EEOCCR Director.

5–11. Enforcement of final Equal Employment Opportunity Commission decisions

a. A complainant may petition the EEOC to enforce a decision issued under its jurisdiction.

b. The petition will be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013 or via digital upload in the EEOC's digital portal. 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.

(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.

(3) Within 90 days after receipt of the EEOC final decision on an appeal.

(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 the complainant has filed a mixed case complaint or appeal, they have the right to a civil action—

(1) Within 30 days of receipt of a final Army decision on a complaint unless an appeal is filed with the MSPB.

(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.

(3) Within 30 days of receipt of notice that the EEOC has determined not to consider the decision of the MSPB.

(4) Within 30 days of receipt of notice that the EEOC concurs with the decision of the MSPB.

(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.

(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.

(7) After 120 days from the date of filing a formal complaint if there is no final action or appeal to the MSPB.

(8) After 120 days from the date of filing an appeal with the MSPB if the MSPB has not yet made a decision.

(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, the complainant must name and identify the official title of the SECARMY as the defendant. Failure to either name the SECARMY or to state the 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 Chief, Civilian Personnel Branch, Litigation Division, U.S. Army Legal Services Agency (JALS–LTC), 9275 Gunston Road, Fort Belvoir, VA 22060–5546, and the servicing activity EEO officer, who, in turn, will notify the EEOCCR Director.

g. When the Chief, Civilian Personnel Branch, Litigation Division, U.S. Army Legal Services Agency is first notified of the filing of a civil action, the Branch Chief will notify the EEOCCR Director. The EEOCCR Director will then notify the servicing 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 1614.107(a)(3). The servicing activity EEO officer will notify the EEOCCR Director that the complaints have been closed and forward the appropriate complaint files in digital form. If the complaint is at EEOCCR awaiting a final Army decision/action, the EEOCCR Director 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 laws, executive orders, collective bargaining agreements, regulations, rules, and instructions, as well as personnel practices and procedures contained in 5 USC and with the OPM 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 will explore settlement. The agency representative, the servicing activity EEO officer, and civilian personnel and management officials will consult with each other as equal members of the settlement advisory team.

g. To the extent the settlement discussion meets the "formal discussion" criteria in the labor relations context, the appropriate union should be invited to attend the meeting(s) held with the bargaining unit employee to discuss such settlement. Consult the servicing CHRSC's labor relations office to assist in determining formality and advise in the method for extending an invitation, if necessary.

h. 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. The agency representative or servicing activity EEO officer will prepare a draft of the NSA. Coordination of the NSA with the servicing activity EEO officer, designated agency representative and civilian personnel official (if a personnel action is involved) is required before execution. The NSA will be signed by the complainant and the complainant's attorney, if the complainant is represented by an attorney, and the serviced activity commander, equivalent official, or designated settlement authority. A copy of the NSA will be provided to the complainant and the complainant's attorney, if represented (see fig 5–1).

i. If the settlement is accomplished before the receipt of the investigative file, the servicing activity EEO officer will send a digital copy of the complete bookmarked and Bates numbered complaint file to the EEOCCR Director within 10 days after the NSA is signed by the respective parties.

j. If settlement has not occurred prior to the conclusion of the investigation, upon receipt of the investigative file, the servicing activity EEO officer will encourage resolution, if appropriate, to the serviced

activity commander. However, settlement discussions may not postpone the 29 CFR 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.

k. If settlement occurs after the complainant's request for a hearing or final Army decision, the servicing activity EEO officer will immediately fax or email a copy of the NSA to the EEOCCR Director.

l. If the 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.

m. 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 statements (see fig 5-2):

(1) The aggrieved or the complainant is waiving any and all rights and claims under the ADEA of 1967, as amended, concerning the issues, claims, or facts contained in the subject pre-complaint or formal complaint;

(2) The aggrieved or the complainant is aware that the agreement does not result in waiving any rights or claims that may arise after the date the agreement is executed;

(3) The agreement is clearly written in a manner calculated to be understood by the aggrieved or the complainant and that the aggrieved or complainant, in fact, read and understands it;

(4) The settlement terms provide valuable consideration to the aggrieved or the complainant in addition to anything of value to which the aggrieved or complainant already is entitled;

(5) The aggrieved or the complainant was given a reasonable period of time within which to consider this agreement before signing it;

(6) The aggrieved or the complainant was advised to consult with an attorney before executing the agreement; and

(7) The aggrieved or the complainant may revoke the agreement within seven days following the execution of the agreement, and the agreement will not become effective or enforceable until the revocation period has expired.

n. 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.

o. Settlement may also include an award of reasonable attorney's fees and costs, if appropriate, in accordance with the guidance outlined in chapter 7. 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.

p. The line of authority to settle an EEO complaint involving a CHRA (the headquarters unit) or CHRSC (subordinate units to CHRA at individual locations) action is as follows:

(1) When an employee or applicant alleges discrimination that involves an action processed by CHRA personnel on behalf of a serviced command or equivalent, the authority to settle the matter rests with the serviced commander or equivalent official (not the CHRA or CHRSC Director).

(2) A serviced commander or equivalent official may not offer or agree to a remedy which impacts on CHRA's processing of personnel actions for other commands or equivalents except as reasonably necessary to implement specific relief to the individual complainant.

q. Settlement coordination involving EEO complaints pertaining to CHRA internal employment actions (within CHRA's CHRSC, regional offices, and HQ, CHRA) or allegations of discrimination other than those limited to processing personnel actions is as follows:

(1) Where the complaint involves action or inaction on the part of a CHRSC Director or management official, the agency representative, the servicing activity EEO officer, and the appropriate CHRA regional official will coordinate and consult with each other as equal members of the settlement advisory team. If a personnel issue involves an employment matter taken within a CHRA regional office, or otherwise falls within the purview of HQ, CHRA, an official at least one supervisory level higher than the settlement authority will participate on the settlement advisory team.

(2) If an activity commander or equivalent official is considering entering into a settlement agreement, the terms of which require processing a personnel action, the proposed agreement must be coordinated with the servicing CHRSC Director. The same is true when the terms of a proposed agreement would not require action by CHRA or CHRSC personnel but would have the effect of changing or overruling a CHRA or CHRSC action. If the CHRA or CHRSC Director objects to a proposed remedy or term in the settlement agreement, and the designated settlement official cannot reach agreement with the CHRA or

CHRSC Director on the proposed remedy or term of the agreement, the activity commander or equivalent official will decide the agency's position on the settlement proposal after consultation with the agency representative, servicing activity EEO officer, and CHRA or CHRSC Director. A serviced activity commander's (or equivalent) authority to settle an EEO complaint over the objections of the CHRA or CHRSC Director may be delegated no lower than the commander's or equivalent official's immediate subordinate who acts for the commander or equivalent, such as the deputy commander, deputy Director, or chief of staff.

(3) Under normal circumstances, coordination of proposed settlement agreements with the CHRA or CHRSC Director should be accomplished by the local servicing CHRSC. When time is of the essence (for example proposed settlement reached during a hearing before an EEOC administrative judge or during an investigation or during mediation), or a conflict of interest or position exists, the servicing activity EEO officer or the agency representative may directly contact the CHRA or CHRSC Director for coordination.

(4) To ensure that the terms of a settlement agreement are carried out and to facilitate any necessary arrangements with CHRA, the activity should designate an official responsible for implementation. This may be the servicing activity EEO officer, a CHRSC official, or another management official, as appropriate.

(5) Processing costs and monetary remedies related to CHRA processing actions will be carried out in accordance with paragraph 7-1d.

r. It is the responsibility of the servicing activity EEO officer to monitor implementation and ensure compliance with the terms of a NSA.

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, will be binding on both parties. If the aggrieved or complainant believes that the Army has failed to comply with the terms of the settlement agreement, the complainant will notify the EEOCCR Director (SAMR), 5825 21st Street, Building 214, Room 129, Fort Belvoir, Virginia 22060-5921, 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. The EEOCCR Director will provide a copy of the complainant's allegation of noncompliance to the agency representative and servicing activity EEO officer. The agency representative will submit a brief to the EEOCCR Director 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 designee, responds to the complainant's written allegation of noncompliance, the EEOCCR Director 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 EEOCCR Director 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 the 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 the complainant served the agency with the allegation of noncompliance, but no later than 30 days after receipt of the agency's decision. The complainant must provide a copy of the appeal and any statement in support of the appeal to the EEOCCR Director at the same time it is filed with EEOC OFO.

e. Prior to rendering its determination, EEOC personnel 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 will be processed as separate complaints, rather than as a noncompliance matter.

**NEGOTIATED SETTLEMENT AGREEMENT IN THE PRECOMPLAINT(S) OF
Or
NEGOTIATED SETTLEMENT AGREEMENT IN THE FORMAL COMPLAINT(S) OF**

[first, middle initial, last name of Aggrieved/Complainant]

Aggrieved/Complainant

v.

[insert name], Secretary of the Army
[insert name of activity]
[insert address of activity]

Activity

This Agreement arises out of the precomplaint/complaint of discrimination initiated/filed on [date], alleging [state the claim here].

1. In the interest of promoting the principles of the Equal Employment Opportunity (EEO) Program, the Parties agree to settle the following precomplaint(s)/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 Agreement, 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 Aggrieved/Complainant agrees to:

[Stipulate terms clearly and concisely and specify time frames for completion, if appropriate.]

Figure 5-1. Sample Negotiated Settlement Agreement Pre/Formal Complaint(s) (age discrimination not alleged)

5. Aggrieved's/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 precomplaint(s)/complaint(s). This includes, but is not limited to, attorney's fees and costs arising from or related to the aforementioned precomplaint(s)/complaint(s). No other agreements shall be binding unless signed by all parties. In addition, the Aggrieved/Complainant agrees to waive his/her right to pursue administrative or judicial action in any forum concerning the matters raised in this precomplaint/complaint and that they will not be made the subject of future litigation.

6. This Agreement will become effective on the date it is signed by all Parties. Necessary documentation will be prepared within **30 calendar days** of signing by all Parties and execution of other actions will be effected **45 calendar days** from the date this Agreement is signed by all Parties. Aggrieved/Complainant understands that any payments will be reported to the Internal Revenue Service (IRS) and that the question of tax liability, if any, as a result of such payment is a matter to be resolved solely between the Aggrieved/Complainant and the IRS.

7. If the Aggrieved/Complainant believes that the Army has failed to comply with the terms of this settlement agreement, the Aggrieved/Complainant shall notify the Director for Equal Employment Opportunity Compliance and Complaints Review (EEOCCR), ATTN: SAMR, 5825 21st Street, Bldg. 214, Rm. 129, Fort Belvoir, Virginia 22060-5921, 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 Aggrieved/Complainant may request that the terms of the Agreement be specifically implemented or, alternatively, the precomplaint/complaint be reinstated for further processing from the point processing ceased. If the Director for EEOCCR has not responded to the Aggrieved/Complainant in writing or if the Aggrieved/Complainant is not satisfied with the attempts to resolve the matter, the Aggrieved/Complainant may appeal to the Equal Employment Opportunity Commission (EEOC), Office of Federal Operations, P.O. Box 77960, Washington, DC 20013, or uploaded via EEOC's Federal Sector EEO Portal (FedSEP) at <https://publicportal.eeoc.gov/portal/for> a determination as to whether the Army has complied with the terms of this Agreement. The Aggrieved/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.

8. The terms of this Agreement will not establish any precedent nor will the Agreement be used as a basis by the Aggrieved/Complainant or any representative organization as justification for similar terms in any subsequent case.

9. The Parties agree that in the event it is determined that a provision(s) of this Agreement is contrary to law or regulation or is otherwise unenforceable, only that provision(s) shall be considered null and void and all other provisions shall remain in full force and effect.

**Figure 5-1. Sample Negotiated Settlement Agreement Pre/Formal Complaint(s) (age discrimination not alleged)—
continued**

10. The Aggrieved/Complainant agrees to waive any and all rights she/he may have to costs, attorney fees, interest payments and any other form of compensation except as expressly provided above.

11. I have read the Agreement and agree to accept its provisions.

Signature
Aggrieved/Complainant

Signature
For the Army

[Date]
Date signed by Aggrieved/Complainant

[Title]
Title of Army official

[Date]
Date signed by Army official

Signature
Aggrieved's/Complainant's Representative

Signature
Agency Representative

[Date]
Date signed by Aggrieved's/Complainant's Representative

[Date]
Date signed by Agency Representative

NOTES:

1. The foregoing format will be used as standard guidance for preparation of settlement of complaints of discrimination in the precomplaint or formal stage, and will include the DA docket number(s), for each complaint being resolved.
2. If the complainant is represented by an attorney, the attorney must sign the NSA prior to execution.
3. As an NSA is a binding legal document on the Army, the NSA should **never** be signed without knowledge of the servicing activity EEO officer and the designated agency representative.
4. The agency representative, the servicing activity EEO officer, and the appropriate civilian personnel official will coordinate and consult each other prior to the execution of the NSA. Any 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 execution of the NSA.

Figure 5-1. Sample Negotiated Settlement Agreement Pre/Formal Complaint(s) (age discrimination not alleged)—
continued

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5. The term(s) of the agreement 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 NSA. The NSA will not obligate another DoD activity or Federal agency without express and written consent from that activity or agency prior to the execution of the NSA. The written consent from that activity or agency will be attached as an enclosure to the NSA or the responsible activity or agency official must sign the NSA.
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, complainant has 30 calendar days from the dates specified in the NSA to notify EEOCCR of the alleged noncompliance.
7. 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 servicing activity EEO officer, the appropriate civilian personnel official, or another management official, as appropriate.
8. Monitoring compliance with the NSA is the responsibility of the servicing activity EEO officer.
9. If possible, settle all workplace disputes raised by the complainant including MSPB appeals, grievances, and Office of Special Council complaints.
10. Agency advisors and representatives do not have settlement authority without prior written delegation by an appropriate management official with settlement authority.

**Figure 5–1. Sample Negotiated Settlement Agreement Pre/Formal Complaint(s) (age discrimination not alleged)—
continued**

5. Aggrieved's/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 precomplaint(s)/complaint(s). This includes, but is not limited to, attorney's fees and costs arising from or related to the aforementioned precomplaint(s)/complaint(s). No other agreements shall be binding unless signed by all parties. In addition, the Aggrieved/Complainant agrees to waive his/her right to pursue administrative or judicial action in any forum concerning the matters raised in this precomplaint/complaint and that they will not be made the subject of future litigation.

6. The Aggrieved/Complainant has alleged age discrimination in this matter. Pursuant to the provisions of the Older Workers' Benefit Protection Act, the Aggrieved/Complainant acknowledges:

a. Aggrieved/Complainant is waiving any and all rights and claims (s)he may have under the Age Discrimination in Employment Act of 1967, as amended, concerning the issues, claims, or facts contained in the subject precomplaint/complaint;

b. Aggrieved/Complainant is aware that (s)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 Aggrieved/Complainant and that (s)he has, in fact, read and understands it;

d. The settlement terms provide valuable consideration to the Aggrieved/Complainant in addition to anything of value to which (s)he already is entitled;

e. The Aggrieved/Complainant was given 21 days within which to consider this Agreement before signing it;

f. The Aggrieved/Complainant was advised to consult with his/her attorney before executing this Agreement;

g. Execution of this Agreement by the Aggrieved/Complainant prior to the expiration of 21 days constitutes the Aggrieved's/Complainant's agreement to waive the 21 day timeframe in e above.

h. The Aggrieved/Complainant may revoke this Agreement within seven days following the execution of the Agreement, and the Agreement shall not become effective or enforceable until the revocation period has expired.

7. Necessary documentation will be prepared within **30 calendar days** of signing by all Parties and execution of other actions will be effected **45 calendar days** from the date this Agreement is signed by all Parties. Aggrieved/Complainant understands that any payments will be reported to the Internal Revenue Service (IRS) and that the question of tax liability, if any, as a result of such payment is a matter to be resolved solely between the Aggrieved/Complainant and the IRS.

8. If the Aggrieved/Complainant believes that the Army has failed to comply with the terms of this settlement agreement, the Aggrieved/Complainant shall notify the Director for Equal Employment Opportunity Compliance and Complaints Review (EEOCCR), ATTN: SAMR, 5825 21st Street, Bldg. 214, Rm. 129, Fort Belvoir, Virginia 22060-5921, in writing, of the alleged noncompliance within 30 calendar days of when the

Figure 5–2. Sample Negotiated Settlement Agreement Pre/Formal Complaint(s) (age discrimination alleged)—continued

complainant knew or should have known of the alleged noncompliance. A copy should also be sent to the activity EEO Officer. The Aggrieved/Complainant may request that the terms of the Agreement be specifically implemented or, alternatively, the precomplaint/complaint be reinstated for further processing from the point processing ceased. If the Director for EEOCCR has not responded to the Aggrieved/Complainant in writing or if the Aggrieved/Complainant is not satisfied with the attempts to resolve the matter, the Aggrieved/Complainant may appeal to the Equal Employment Opportunity Commission (EEOC), Office of Federal Operations, P.O. Box 77960, Washington, DC 20013, or uploaded via EEOC's Federal Sector EEO Portal (FedSEP) at <https://publicportal.eeoc.gov/portal/> for a determination as to whether the Army has complied with the terms of this Agreement. The Aggrieved/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.

9. The terms of this Agreement will not establish any precedent nor will the Agreement be used as a basis by the Aggrieved/Complainant or any representative organization as justification for similar terms in any subsequent case.

The Parties agree that in the event it is determined that a provision(s) of this Agreement is contrary to law or regulation or is otherwise unenforceable, only that provision(s) shall be considered null and void and all other provisions shall remain in full force and effect.

The Aggrieved/Complainant agrees to waive any and all rights she/he may have to costs, attorney fees, interest payments and any other form of compensation except as expressly provided above.

10. I have read the Agreement and agree to accept its provisions.

Signature
Aggrieved/Complainant

Signature
For the Army

[Date]
Date signed by Aggrieved/Complainant

[Title]
Title of Army official

[Date]
Date signed by Army official

Signature
Aggrieved's/Complainant's Representative

Signature
Agency Representative

Figure 5–2. Sample Negotiated Settlement Agreement Pre/Formal Complaint(s) (age discrimination alleged)—continued

[Date]

Date signed by Aggrieved's/Complainant's
Representative

[Date]

Date signed by Agency Representative

NOTES:

1. The foregoing format will be used as standard guidance for preparation of settlement of complaints of discrimination in the precomplaint or formal stage, and will include the DA docket number(s), for each complaint being resolved.
2. If the complainant is represented by an attorney, the attorney must sign the NSA prior to execution.
3. As an NSA is a binding legal document on the Army, the NSA should **never** be signed without knowledge of the servicing activity EEO officer and the designated agency representative.
4. The agency representative, the servicing activity EEO officer, and the appropriate civilian personnel official will coordinate and consult each other prior to the execution of the NSA. Any 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 execution of the NSA.
5. The term(s) of the agreement 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 NSA. The NSA will not obligate another DoD activity or Federal agency without express and written consent from that activity or agency prior to the execution of the NSA. The written consent from that activity or agency will be attached as an enclosure to the NSA or the responsible activity or agency official must sign the NSA.
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, complainant has 30 calendar days from the dates specified in the NSA to notify EEOCCR of the alleged noncompliance.
7. Attorney's fees and costs are not payable in age discrimination (ADEA) or equal pay (EPA) complaints.
8. 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 servicing activity EEO officer, the appropriate civilian personnel official, or another management official, as appropriate.
9. Monitoring compliance with the NSA is the responsibility of the servicing activity EEO officer.

Figure 5–2. Sample Negotiated Settlement Agreement Pre/Formal Complaint(s) (age discrimination alleged)—continued

10. If possible, settle all workplace disputes raised by the complainant including MSPB appeals, grievances, and Office of Special Council complaints.
11. Agency advisors and representatives do not have settlement authority without prior written delegation by an appropriate management official with settlement authority.

Figure 5–2. Sample Negotiated Settlement Agreement Pre/Formal Complaint(s) (age discrimination alleged)—continued

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, disability, or genetic information. Currently, there is no provision in the law for disparate impact claims alleging genetic information discrimination.

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. Pre-complaint 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 pre-complaint processing in accordance with this regulation, including EEO counseling by the servicing activity EEO official or EEO counselor designated for class complaints (see chap 3).

(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 pre-complaint procedures, no additional counseling is required (see chap 3).

b. Contact with an EEO official 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 contact an EEO official in order to seek counseling from an EEO counselor may be extended in accordance with the provisions outlined in this regulation (see para 3–4b).

c. The servicing activity EEO official or counselor will advise the prospective class agent orally and in writing of the following:

(1) The rights and responsibilities of a class agent (see para 3–6f).

(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 issue a decision 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 pre-complaint 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 pre-complaint counseling or like or related claims, may be alleged in a subsequent complaint filed with the Army.
- (10) The duty to keep the Army 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 pre-complaint 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 this regulation (see para 3–9a). This interview will take place whether the matter has been resolved. At the final interview the EEO 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 servicing activity EEO officer in writing if legal or other representation has been retained.
 - (c) A formal EEO complaint must specifically describe the acts of alleged discrimination.
 - (d) Only matters discussed with the EEO counselor will be considered in a formal complaint. The EEO counselor will submit a completed EEO counselor's report to the servicing 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.

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 formal class 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, by facsimile, or 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) Servicing activity EEO officer.
 - (b) Servicing activity commander.
 - (c) Army Director of EEO.
 - (d) SECARMY.
 - (2) The EEO counselor will request that the class agent submit a copy of the class complaint to the servicing 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 servicing 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 the class agent's own choosing, provided the choice does not involve a conflict of interest or position (see paras 8-4 through 8-5.) The designation of the class agent representative must be made in writing and be made a part of the class complaint file.

e. If the Army employs the class agent, the class agent 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. If the agent is an Army employee and designates another Army employee as a non-attorney 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 servicing activity EEO officer will immediately send a copy of the complaint and the completed DA Form 7510 (with enclosures) annotated with the Army docket number by facsimile or email to the EEOCCR Director and the designated agency representative. A copy of DA Form 7510 will be sent to the class agent within 15 days of receipt of the formal class complaint in accordance with the service rules in paragraph 1-23.

(1) The appropriate complaint caption will be placed on all documents and correspondence relating to the complaint. All complaints will be captioned to identify the class agent versus the name and official title of the head of the DA, and the Army docket number.

(2) Within 30 days of receipt of a formal class complaint, an agency attorney will be designated to serve as the agency representative.

b. The servicing activity EEO officer will coordinate the collection of relevant information with the agency representative and personnel from the servicing CHRSC.

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 servicing activity EEO officer will forward the class complaint to the EEOC district office having geographic jurisdiction.

d. The servicing activity EEO officer must forward the following items to the EEOC:

(1) The class complaint.

(2) A copy of DA Form 7510.

(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, and email address of the agency representative.

(6) Written notification that the administrative judge sent the decision to accept or dismiss the class complaint directly to the EEOCCR Director (SAMR), 5825 21st Street, Building 214, Room 129, Fort Belvoir, Virginia 22060-5921.

(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 or class certification denied by the administrative judge if—

(1) The complaint does not meet all the prerequisites of a class complaint in accordance with 29 CFR 1614.204(a)(2), that is, numerosity, commonality, typicality, and adequacy of representation.

(2) The allegations lack specificity and detail pursuant to 29 CFR 1614.204(d)(4).

(3) The complaint meets any of the criteria for dismissal pursuant to 29 CFR 1614.107(a).

(4) The complainant unduly delayed in moving for class certification (see 29 CFR 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 servicing activity EEO officer and CHRSC prior to submission of any additional information requested by the EEOC administrative judge.

d. If an allegation is not included on the DA Form 7510, 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 will dismiss the allegation. If the explanation is satisfactory, the administrative judge will refer the allegation to the Army 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 will dismiss the allegation. If the information provided raises new allegations outside the scope of the complaint, the administrative judge will advise the agent on how to file an individual or class complaint based on the newly raised allegations.

f. The administrative judge will extend the time limits for filing a complaint and for consulting with an EEO counselor in accordance with the extension provisions (see para 3–4b).

g. When appropriate, the administrative judge may decide to divide the class into subclasses and that each subclass will be treated as a class.

h. The administrative judge's written decision to certify or dismiss a class complaint is sent to the EEOCCR Director. The administrative judge will send notification of the transmittal to the class agent. If the administrative judge sends the decision to the activity rather than to the EEOCCR Director, the servicing activity EEO officer will immediately notify the EEOCCR Director and fax or email the decision to EEOCCR.

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 1–23. A copy of the final Army action will be furnished to the administrative judge, serviced ACOM, ASCC, DRU, or equivalent EEO Director, designated agency representative, and the servicing 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.

(2) The complaint is also dismissed as an individual complaint.

(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 the 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, P.O. Box 77960, Washington, DC 20013, within 30 days of receipt of the final Army action. The

agent, or individual class claimant, will be encouraged to use EEOC Form 573 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, the EEOCCR Director will fax or email a copy of the administrative judge's decision to the servicing activity EEO Officer, the agency representative and the Chief, Labor and Employment Law Division, Office of The Judge Advocate General (DAJA-LE) upon receipt.

e. If the final Army action is to appeal the administrative judge's decision to certify the class, the EEOCCR Director 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 1–23. A copy of the final Army action will be furnished to the administrative judge, serviced ACOM, ASCC, DRU, or equivalent EEO Director, agency representative, and the servicing activity EEO officer. Certification as to the date and method by which service was made on the complainant and representative will be included or attached to the copy of the final Army action provided to the administrative judge.

(2) The EEOCCR Director 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's designated agency representative, the EEOCCR Director 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 1–23. 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 EEOC OFO.

(4) The EEOCCR Director 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 15 days of receiving notice that the administrative judge has accepted a class complaint, or a reasonable time frame specified by the administrative judge, the servicing activity EEO officer will use reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the decision to accept the class complaint.

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.

(5) A copy of the administrative judge's decision certifying the class.

h. Acceptance of the EEOC decision to certify 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 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, the EEOCCR Director will specify whether the individual complaint will be processed from the point processing ceased or is dismissed pursuant to 29 CFR 1614.107(a).

(3) If the final Army action implements the administrative judge's decision to dismiss a class complaint and accepts the individual complaint for processing, the servicing activity 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 para 4–2). The servicing activity 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 notifies the designated agency representative and the class agent and representative of the time period that allows both parties to prepare their cases. The period allows 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 may 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.

(5) To take such other actions as the administrative judge deems appropriate.

d. During the period for development of evidence, the administrative judge may 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 will 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 provides the class agent or representative, and the designated 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 (see para 6–9d).

c. If the complaint is settled, the agency representative should prepare the terms of the settlement and will have the agreement signed by the class agent, the class representative, and the activity commander or equivalent, or designated settlement authority, after coordination with the servicing activity EEO officer and the CHRSC officials. It must include any corrective action agreed upon. The corrective action must be consistent with the law, executive orders, collective bargaining agreements, 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 servicing activity EEO officer will notify all members of the class of the resolution by the same means used to notify the class that the complaint was certified. In addition, the servicing activity 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 reviews the notice of resolution and considers any petitions to vacate received.

(1) If the administrative judge finds that the proposed resolution is not fair, adequate, and reasonable to the class, the administrative judge may 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 informs 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, the resolution will 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 sets a date and place for a hearing. The hearing will be conducted in accordance with paragraph 4–22.

6–11. Administrative judge's decision

a. The administrative judge transmits to the EEOCCR Director, the class agent and representative a decision on the merits of the complaint, including findings, systemic relief for the class and any individual relief with regard to the personnel action or matter that gave rise to the complaint.

b. If the administrative judge finds no entitlement to class relief, the administrative judge determines if a finding of individual discrimination is warranted and, if so, orders appropriate relief.

c. The administrative judge notifies the agent of the date on which the decision was forwarded to the agency.

6–12. Final Army action

a. Within 60 days after the Army receives the administrative judge's decision on the merits of the class complaint, the Army Director of EEO, or designee, will issue a final action notifying the class agent whether or not the Army will fully implement the decision, and contain a notice of the right to appeal to the EEOC, the right to file a civil action, and the applicable time limits.

b. If the Army Director of EEO or designee has not issued a final action within 60 days after receiving the administrative judge's decision, the administrative judge's decision will become the final Army decision.

c. If the final action does not fully implement the decision of the administrative judge, then the EEOCCR Director will simultaneously file an appeal in accordance with 29 CFR 1614.403 and append a copy of the appeal to the final order. A copy of EEOC Form 573 will be attached to the final action.

d. The final Army action will be sent to the class agent and representative in accordance with the service rules set forth in paragraph 1–23. A copy of the final Army action will be sent to the serviced ACOM, ASCC, DRU, or equivalent EEO Director, the designated agency representative, and to the servicing activity EEO officer.

e. The final action must inform the class agent of relief awarded and the right to appeal to EEOC OFO, or file a civil action, and the applicable time limits (see para 5–5). Within 10 days after the final Army action is transmitted to the class agent and representative, the servicing activity EEO officer will notify all members of the class of the final Army action and relief awarded, if any, 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 on a class complaint will be binding on the Army and all members of the class (see chap 5).

g. When discrimination is found, the final Army action 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 action.

(3) List the documents that must be sent with the request.

6–13. Appeals of class complaints

a. The class agent or attorney representative in a class complaint may appeal to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013—

(1) An administrative judge's decision to accept or dismiss all or part of a class complaint under the provisions set forth in this regulation (para 6–5b).

(2) A final Army action on the merits of the complaint under the provisions of paragraph 6–11.

(3) An administrative judge's decision to vacate a proposed resolution of a class complaint on the grounds that it is not fair, adequate, and reasonable to the class as a whole.

(4) The Army's alleged noncompliance with an NSA (see para 5–14).

b. A class member or petitioner may appeal to the EEOC—

(1) An administrative judge's decision finding a proposed resolution fair, adequate, and reasonable to the class if the class member filed a petition to vacate the resolution or finding that the petitioner is not a member of the class and did not have standing to challenge the resolution.

(2) An administrative judge's decision that a proposed resolution is not fair, adequate, and reasonable to the class.

(3) A final Army decision or action on a claim for individual relief under a class complaint.

(4) The Army's alleged noncompliance with an NSA (see para 5–14).

c. In the case of class complaints, the final Army action or decision, which is served on an agent, attorney representative, petitioner, or an individual claimant, may be appealed to the EEOC OFO within 30 days of its receipt (see para 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 in a class complaint, the servicing activity EEO officials will, within 60 days of the issuance of the Army's final action, issue the acknowledgment 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, a class member may file a written claim within 30 days of receipt of the final Army action with the SECARMY, the Army Director of EEO, or designee to assert any claim of entitlement to individual relief. 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 class-wide discrimination was found in the final Army action. The SECARMY or EEOC personnel 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 retains 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 Director of EEO or designee will issue a final Army decision on each claim within 90 days of filing, or a final Army action on each administrative judge's decision on disputed individual claims of relief. The final decision or action will be transmitted in accordance with the service rules set forth in paragraph 1–23 and will include a notice of the right to file an appeal or file a civil action in accordance with this regulation (see chap 5). A copy of the final Army decision or action will be sent to the serviced ACOM, ASCC, DRU, or equivalent EEO Director, the designated agency representative, and the servicing 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 or action provided to the administrative judge.

6–15. Corrective action

a. If discrimination is found, the personnel policy or practice that gave rise to the complaint must be eliminated or changed, so that the policy or practice will no longer cause such discrimination. The requirements of the Federal Service Labor-Management Relations Statute in making any such change. Also, the individual remedial action to the class agent, including an award of attorney fees or costs, must be provided as appropriate (see chap 7).

b. If corrective action is ordered, the servicing activity EEO officer will follow procedures set forth in this regulation (see para 5–10).

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 the complainant 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 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 non-selection would have occurred even absent the discrimination (see para 7–2).

(4) Payment of back pay, computed in the same manner prescribed by 5 CFR 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 ADEA or the EPA.

(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 CHRA or CHRSC personnel are acting for a serviced commander or equivalent official and an employee or applicant alleges discrimination that involves an action taken by CHRA or CHRSC personnel, 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 servicing activity 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 OFO in accordance with this regulation (see para 5–10).

7–2. Remedial action involving an applicant for employment or non-selection

a. Upon a finding that discrimination was the basis for non-selection to the position at issue, or that discrimination existed at the time the applicant was considered for employment, Army officials will offer the applicant the position that the applicant 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 complainant will be made 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, Army officials will 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 1–23.

c. The complainant will have 15 days from receipt of the offer to accept or decline the offer. Failure to notify the Army of a decision on the offer within the 15-day period will be considered a declination of the offer, unless the complainant can show that circumstances beyond the complainant's control prevented the complainant from responding within the time limit.

d. If the offer of employment or nondiscriminatory placement is accepted, the appointment will 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 550.805 will 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 will 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 EEO Director or designee will award a sum equal to the back pay the complainant would have received from the date the complainant 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 550.805 to include interest, when applicable, and offset for wages earned. The Army EEO Director or designee will inform the applicant, in its offer of employment, of the 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 EEO Director or designee 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 where discrimination was found to have occurred 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 the complainant from subsequent disciplinary action or adverse action.

c. If it is determined that the complainant's return to the place of employment would be unduly disruptive to the work environment, the final Army action will advise the complainant that the complainant 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 the complainant 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 1–23. A copy of the final Army action will be furnished to the administrative judge, serviced ACOM, ASCC, DRU, or equivalent EEO Director, agency representative, and the servicing activity EEO officer. Certification as to the date and method by which service was made on the 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 Equal Employment Opportunity Commission

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 will 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 EEOC'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 EEOC, 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 Activity Commander or equivalent 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 where the discrimination occurred will determine the appropriate corrective action(s) to prevent recurrence. The determination of who should receive corrective actions, the type of corrective actions and the reasoning for the corrective actions must be documented in writing and a copy provided to the servicing activity EEO officer in compliance with the Army's implementation order.

b. The servicing activity EEO officer will include the corrective actions report as part of 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 the 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.
- (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 the complainant 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, must be submitted within 30 days of receipt of the final Army decision 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.

(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, and 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 with the agency representative within 30 days of receipt of the decision (see paras 7-7b through 7-7c).

(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 a recommended decision through the Office of The Judge Advocate General, Labor & Employment Law Division (DAJA-LE), 2200 Army Pentagon, Room 3D548, Washington DC 20310-2200, to the EEOCCR Director for decision. The attorney's fee request and supporting documentation, and a copy of the FAD, decision of the administrative judge, or EEOC decision should be included with the recommended 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 1-23.

(2) The final Army decision will advise the complainant of the right to appeal the final Army decision to the EEOC OFO or file a civil action in a U.S. District Court. A copy of EEOC Form 573 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 complainant who elects self-representation 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 pre-complaint 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 non-attorney 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 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 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 ACOM, ASCC, DRU commander or equivalent, 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) Activity commanders or designees 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 commander or designee 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 EEOCCR Director, activity commanders may not sever the issue of attorney's fees and costs from settlement of the merits of the case. The EEOCCR Director 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. During negotiations, agency representatives may request that the complainant's attorney provide the information described in paragraph 7–7 and paragraph 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 determines 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 the complainant's 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 EEOCCR Director within 30 days of receipt of the final Army decision. The final Army decision will further advise the complainant and the complainant's 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 and equivalent officials may include payment of compensatory damages, in a sum certain amount, in no fault settlement agreements of pre-complaints 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, EPA complaints, age discrimination cases (see 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, and mental anguish).

(3) The complainant must allege that the compensatory damages were caused by the alleged discrimination.

d. Compensatory damages may be paid if supported by the following objective or other evidence of the damages:

(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. Activity commanders or designees may not agree to pay an uncertain amount of compensatory damages (for example, a "reasonable amount" of compensatory damages).

f. Activity commanders or designees 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 chap 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 damages.

Chapter 8

Witnesses, Representation, and Administrative Procedures

Section I

Witnesses and Representation

8–1. Disclosure of the Equal Employment Opportunity complaint file

The EEO complaint file is a record protected from unlawful disclosure by the Privacy Act. The Army 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 investigative 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 servicing activity 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 serviced activity commander, or the servicing activity 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. The servicing activity EEO officer will contact any witness who is employed by another federal agency or has left federal employment. The servicing activity EEO officer will make every reasonable effort to ensure the presence of the witness. If the witness refuses to appear, the servicing activity EEO officer will refer the matter to the investigator or the administrative judge.

c. A federal employee is in an official duty status when the employee's 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 the complainant or agent's own choice at any stage of the complaint process, including the pre-complaint counseling stage, except as provided in this regulation (see para 8–4). No employee is obligated to serve as a representative. EEO officials, agency representatives, civilian personnel officials, management officials, and active duty military members whose service as a representative would create the appearance of a conflict of interest may not 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 servicing activity EEO officer, with copies to the agency representative, investigator, administrative judge, or the EEOCCR Director as appropriate.

c. The EEO Officer 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 the witness's 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 this regulation (see para 8–4).

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 a 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 EEOCCR Director (SAMR), 5825 21st Street, Building 214, Room 129, Fort Belvoir, Virginia 22060–5921 within 5 days after receipt of the denial.

(2) The complainant must provide a copy of the appeal to the servicing activity EEO officer.

(3) The EEOCCR Director 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 servicing activity EEO officer and ask for a decision subject to the proper procedures (see para 8–4c).

e. The complainant's representative may be disqualified during the hearing process by the EEOC administrative judge.

8–5. Representing the Army in individual complaints

a. The agency representative designated by the activity commander represents the Army in complaint proceedings (see para 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 DA.

d. The agency representative may have technical advisors, 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 activity EEO officer, the EEO counselor may seek legal advice from the servicing legal office during the pre-complaint stage of class discrimination complaints.

b. When a class complaint is filed formally, an agency attorney will be designated as agency representative.

Section II

Administrative Procedures

8–7. Using official time

a. Under 29 CFR 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. Army supervisors are 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 the representative.

c. When an Army official, 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 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 serviced activity commander, equivalent, or a designee.

g. If the activity supervisor denies a request for official time, either in whole or in part, the servicing activity EEO officer must include a written statement in the complaint file noting the reasons for the denial. If

the activity supervisor's denial of official time is made before the complaint is filed, the activity commander, equivalent, or designee will provide the complainant with a written explanation for the denial, a copy of which will be provided to the servicing activity EEO officer for inclusion in the complaint file if the complainant subsequently files a complaint. Where a request for official time is denied in whole or part while an Administrative Judge is presiding over the matter, a copy of the activity supervisor's denial of official time with the requisite explanation should be provided to the Administrative Judge when provided to the requestor.

h. 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 will 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 servicing activity 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 a 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 the complainant's travel expenses. Complainants who prevail in their complaints may be reimbursed for travel expenses as part of their costs.

d. Problems that develop between serviced activities and servicing activity EEO offices with respect to costs incurred will be promptly referred for resolution to the ACOM, ASCC, DRU, or equivalent EEO Director having jurisdiction over the serviced 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.

Chapter 9

Complaint File, Automated Data System, and Reports

Section I

Complaint File

9–1. Assembly of the complaint file

a. The servicing activity 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 servicing activity EEO officer will 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.

b. Appeals, complaint files, and other filings to the EEOC must be submitted in a digital format acceptable to the EEOC, absent a showing of good cause why an agency cannot submit digital records. 29 CFR 1614.403(g). The complaint file will be assembled in digital form, pages numbered, and should be a searchable document.

c. The complaint file will have a title page which contains the complainant's name and address, name of the SECARMY, Army docket number, EEOC docket number, name, address (including office symbol), phone number, facsimile number, and email address of the servicing activity EEO office, agency representative, and serviced ACOM, ASCC, DRU, or equivalent EEO Director (see fig 9-1).

d. The complaint file will be organized by stages or phases of the complaint process, with digital bookmarks specifically identifying the section and key documents therein, consisting of the following:

- (1) Title page.
- (2) Section 1: The bookmarked formal complaint with documents submitted by the complainant.
- (3) Section 2: The bookmarked DA Form 7510 and documents submitted by the aggrieved.
- (4) Section 3: Bookmarked documents related to claims to be investigated.
- (5) Section 4: Documented attempts at resolution.
- (6) Section 5: Bookmarked documentation of appellate activity and any decisions affecting the processing of the complaint.
- (7) Section 6: ROI summary.
- (8) Section 7: ROI evidence and documents. If inclusion of the investigative record in Section 7 would cause the case file to become too large for transmission to the EEOC or OFO, leave Section 7 blank and maintain the digital ROI file separately.
- (9) Section 8: Pre-hearing submissions, including those relevant to summary judgment, and all discovery documentation, and motions, orders, exhibits, and transcripts.
- (10) Section 9: Submissions from an administrative hearing, including motions, exhibits, and transcripts.
- (11) Section 10: Bookmarked EEOC administrative judge decision.
- (12) Section 11: Final agency action/FAD and related served documents.
- (13) Section 12: Miscellaneous documents.

9-2. Disposition of complaints of discrimination

a. When action on a complaint of discrimination has been completed at the activity level, a copy of the digital complaint file will be promptly forwarded to the EEOCCR Director. When the case has been closed by the activity, follow instructions set forth in this regulation (see para 9-4).

b. Forwarding of complaint files to the EEOCCR Director will be accomplished in accordance with the following:

- (1) If a formal EEO complaint is closed in its entirety at the activity level because of withdrawal or settlement, the servicing activity EEO officer will submit the complaint file and ROI (if applicable) to the EEOCCR Director 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 servicing activity EEO officer will submit the complete complaint file to the EEOCCR Director 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 this regulation will be followed (see paras 4-21b and 4-21c(2)).

c. Once the complaint is closed or the complaint file is forwarded to the EEOCCR Director for action, EEOCCR becomes the official custodian of the agency's record. EEOCCR personnel 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 servicing activity 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. Unless a settlement agreement was executed, pre-complaint files will not be forwarded to the EEOCCR Director, but will be maintained at the activity for 2 years after the closure of the pre-complaint.

Section II

The Army Equal Employment Opportunity Automated Data System and Reporting Requirements

9–3. Access and use of the Army Equal Employment Opportunity automated data system

a. Use of the Army's EEO automated data system is mandatory for Army EEO offices. Each Army EEO office is permitted a sufficient number of accounts for inputting and reviewing or managing complaint data. Additional accounts may be granted on a case-by-case basis, depending on the EEO office's complaint workload. Requests for new accounts must be submitted to and approved by the ACOM, ASCC, DRU, or equivalent EEO Director or designee before being forwarded to the EEOCCR Director. Only civilian personnel employed in 0260 series positions who provide EEO complaint processing services to the DA may be granted access. Exceptions are handled by the EEOCCR Director on a case-by-case basis.

b. A completed DD Form 2875 (System Authorization Access Request (SAAR)) form, as well as verification of training in the use of the Army EEO automated data system must be submitted to the EEOCCR Director to be considered for an account. Sufficient training may be established in one of two ways:

(1) Successful completion of a training course in the Army EEO automated data system, administered by an EEOCCR approved Army trainer. Courses may be in person classroom training, desk-side, by video-teleconference, or any other method approved by the EEOCCR Director.

(2) Previous account access issued by EEOCCR at another Army EEO office or access with another federal agency using a similar complaint data system. Due to the periodic changes in the system and variances in systems from one federal agency to another, some additional training may still be required. A need for additional training prior to issuance of a login account will be determined by the EEOCCR Director.

c. Access to the system is restricted to authorized EEO personnel with login accounts only. Sharing username and password information to allow unauthorized personnel to log in and access the live database or logging in for unauthorized personnel to access the live database, including other Army EEO officials, is strictly prohibited and may be in violation of AR 25–2. Confirmed instances of unauthorized access to the database will be reported to DCS, G–1 and the appropriate ACOM commander.

d. The EEOCCR Director will issue information and guidance with respect to changes in the system as necessary.

e. An EEO official will update the Army EEO automated data system at all stages of the process.

(1) Upon closure of a pre-complaint, the Army EEO 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) Upon closure of a complaint by the execution of a settlement agreement, a servicing activity EEO official will enter the monetary and nonmonetary terms of the agreement in the Army EEO automated data system.

(3) A servicing activity EEO official will close a formal complaint record after a notice of dismissal by the activity, the execution of a settlement agreement, or withdrawal of the complaint by the complainant. The EEOCCR Director will close a formal complaint record after issuance of a final agency action or FAD.

9–4. Establishing, maintaining, and closing complaint records

a. Immediately upon receipt of a pre-complaint, the servicing activity EEO officer will establish the Army EEO automated data systems record or convert a prior contact made by the aggrieved in the same matter to a pre-complaint. The Army 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 servicing activity EEO officer is responsible for ensuring that all complaints are updated in the Army EEO automated data system as actions occur. The EEOCCR Director, as the proponent for the system, will be able to access current information, when needed, on all Army complaints. The servicing activity EEO officer will ensure the validity of information entered into the Army EEO automated data system. Serviced ACOM, ASCC, DRU, and equivalent EEO Directors are responsible for monitoring the Army EEO automated data system for the current status of EEO complaints against their commands or activities and for contacting the servicing activity EEO officer if complaint data is not current. Issues with out of date or incomplete complaint data not resolved by contacting the servicing activity EEO officer should be addressed to the appropriate servicing ACOM, ASCC, DRU, or equivalent EEO Director. Continuing unresolved complaint data issues should be addressed with the Director for EEOCCR.

c. A record will be established in the Army 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 para 3–3). A docket number will be generated but will not be used on any correspondence unless the individual later expresses intent to initiate the EEO process which includes the same issue raised during the information inquiry, and the EEO office that entered the contact is also the servicing activity EEO office. When an individual makes an information inquiry with an EEO official not employed by the appropriate servicing activity EEO office, a DA Form 7509 documenting the contact will be forwarded to the servicing activity EEO office. The workable contact may still be entered by the contacted EEO office into the Army complaint database tracking system for purposes of tracking contact workload.

d. A record will be established for each reportable contact immediately following the pre-complaint intake interview. A reportable contact is any contact with an EEO official by an aggrieved who expresses an intent to initiate the discrimination complaint process on the basis of race, color, religion, sex, national origin, age, genetic information, physical or mental disability, or reprisal.

e. The docket number will be placed on all documents generated thereafter to include the Notice of Right to File a Formal Complaint of Discrimination, an executed NSA, DA Form 7510, and all other official correspondence.

f. The servicing activity EEO officer is responsible for ensuring that complaint data is timely and accurately updated in the Army EEO automated data system at all stages of the process no later than 3 business days after occurrence.

g. The servicing activity EEO officer is responsible for closing a pre-complaint record after issuance of a Notice of Right to File a Formal Complaint of Discrimination, after execution of an NSA, or after the pre-complaint time period has expired and the aggrieved has filed a formal complaint without receiving a Notice of Right to File a Formal Complaint. The servicing activity EEO officer will close a formal complaint record after issuance of a notice of dismissal, the execution of a settlement agreement, or written withdrawal by the complainant. The EEOCCR Director will close a formal complaint record after issuance of a final agency action or FAD.

9–5. Access to Equal Employment Opportunity data

The data or information created by an EEO official in its mission to manage the EEO Complaints Processing Program will be released according to AR 25–55 and AR 25–22.

9–6. Equal Employment Opportunity reporting requirements

a. The EEOC Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (EEOC 462 report) submission is submitted to the EEOC in October of each year. ACOM, ASCC, DRU, and equivalent EEO Directors will identify their 462 points of contact to the EEOCCR Director no later than 1 October of each year and will certify that all complaint records are timely and accurately updated as of 10 October of each year. The EEOCCR Director will publicize the cut-off date for data entry for each year.

b. The No FEAR Act requires the posting of certain complaint data on the Army's website. This data must be posted no later than 30 days after the end of each quarter.

c. To this end, each EEO officer 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, the EEOCCR Director 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 the EEOCCR Director to ACOM, ASCC, DRU, and equivalent EEO offices and activity EEO offices will be submitted in accordance with assigned suspense's.

DA Docket Number(s):

EEOC Docket Number(s):

Complainant's Name
Address
City, State, Zip

Name of Representative (if applicable) (Identify if attorney or non-attorney)
Mailing Address
City, State, Zip

v.

Secretary of the Army

Servicing Activity EEO Office
Mailing Address
ATTN: Office Symbol (Name of Servicing Activity EEO Officer)
City, State, Zip

Email address:
Phone Number:
Fax Number:

Servicing Legal Office
ATTN: Office Symbol (Name of Agency Representative)
Mailing Address
City, State, Zip

Email address:
Phone Number:
Fax Number:

Serviced ACOM, ASCC, DRU or equivalent EEO Office
ATTN: Office Symbol (Name of EEO Director)
Mailing Address
City, State, Zip

Email address:
Phone Number:
Fax Number:

Figure 9-1. Sample Cover Page for Complaint File

Appendix A

References

Section I

Required Publications

Unless otherwise stated, Department of the Army publications are available on the Army Publishing Directorate website at <https://armypubs.army.mil/>. United States Code is available at <https://us-code.house.gov/>. DoD publications are available at <https://www.esd.whs.mil/dd/>.

DoDI 1400.25

DoD Civilian Personnel Management System (Cited in title page.)

5 USC 7121

Grievance procedures (Cited in para 1–10a(5)(c).)

10 USC 1561

Complaints of sexual harassment: independent investigation (Cited in para 3–11b.)

28 USC 1920

Taxation of costs (Cited in para 7–9b.)

29 USC 621

Congressional statement of findings and purpose (Cited in para 1–1.)

42 USC 2000e

Definitions (Cited in para 1–1.)

42 USC 2000ff

Definitions (Cited in para 1–1.)

Section II

Prescribed Forms

Unless otherwise indicated, Department of the Army forms are available on the Army Publishing Directorate website at <https://armypubs.army.mil/>.

DA Form 2590

Formal Complaint of Discrimination (Prescribed in para 3–7e(3).)

DA Form 7509

Information Inquiry Summary (Prescribed in para 3–3a.)

DA Form 7510

Equal Employment Opportunity Counselor's Report (Prescribed in para 1–20b.)

Appendix B

Addresses and Area Office Territories for the Department of Defense Investigations and Resolutions Directorate, Equal Employment Opportunity Commission, and Merit Systems Protection Board

B–1. Addresses of the Department of Defense, Civilian Personnel Advisory Service, Investigations and Resolutions Directorate

The Army utilizes the services of the DoD IRD. DoD IRD investigators are assigned to investigate discrimination complaints from various locations throughout the United States. When a servicing activity EEO officer must obtain the services of a DoD IRD investigator, a request should be submitted electronically. The DoD IRD website (available at <https://www.dcpas.osd.mil/ird/>) contains instructions for registering and transmitting requests electronically. The DoD IRD website lists the DoD IRD office address.

B–2. Addresses and geographic jurisdictions of Equal Employment Opportunity Commission 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 website (available at <https://www.eeoc.gov/>) that lists the EEOC district, area, and local offices. Select “Contact EEOC/Field Offices.” Hearing requests and appeals may also be filed via the EEOC Federal Sector EEO Portal (FedSEP), available at <https://publicportal.eeoc.gov/portal>.

B–3. Addresses and regional and field office jurisdictions for the Merit Systems Protection Board

The MSPB processes appeals on mixed case complaints. When an EEO official must advise a complainant regarding these appeal rights, the MSPB office with jurisdiction over the respective activity should be referenced. The MSPB website (available at <https://www.mspb.gov/offices/>) also lists addresses, telephone numbers, and appellate jurisdiction. From the MSPB home page, select “Contact Us.” Appeals can also be filed via MSPB’s online portal (available at <https://e-appeal.mspb.gov>).

Appendix C

Internal Control Evaluation

C–1. Function

The function covered by this evaluation is EEO Complaints Program Compliance.

C–2. Purpose

The purpose of this evaluation is to assist ACOM and subcommand EEO Directors in evaluating the key internal controls listed. It is not intended to cover all controls.

C–3. Instructions

Answers must be based on the actual testing of key internal controls by utilizing one of four test methods which are Inquiry, Observations, Examination, or Re-performance. Inquiry regarding a control's effectiveness does not, by itself, provide sufficient evidence of whether a control is operating effectively and generally is corroborated through other types of control tests (observation or inspection). Answers that indicate deficiencies must be explained and corrective action identified in supporting documentation.

These internal controls must be evaluated at least once every 5 years. Certification that the evaluation has been conducted must be accomplished on a DA Form 11–2 (Internal Control Evaluation Certification).

C–4. Key control questions

- a. Is information about the EEO programs and administrative and judicial remedial procedures made available to all employees and prominently posted throughout the workplace in locations where employees tend to congregate?
- b. Are EEO complaints processed within timelines prescribed by 29 CFR 1614, EEOC MD 110 and AR 690–600?
- c. Are documents timely uploaded and data timely and accurately input in the Army EEO automated data system in accordance with AR 690–600?
- d. Are parts III and XII of the EEOC 462 report timely and completed accurately?
- e. Is complete and accurate information gathered during pre-complaint counseling, including witness interviews and pertinent documents, documented in DA Form 7510?
- f. Is an EEO ADR program implemented and in use at both pre-complaint and formal complaint stages, including the use of an EEO ADR team?
- g. Are cadres of EEO counselors and ADR neutrals maintained in sufficient numbers to ensure timely and completed EEO pre-complaint counseling and mediation sessions?
- h. Are claims in formal complaints accepted and dismissed in accordance with criteria set forth in 29 CFR 1614?
- i. Are complaint and investigative files digitally compiled, Bates numbered, bookmarked, and searchable in accordance with 29 CFR 1614 and AR 690–600?
- j. Are the NSA templates provided in AR 690–600 used in executed settlement agreements?
- k. Are drafts of NSAs coordinated with the EEO officer, agency representative, and if a personnel action is involved, a CHRSC representative, before execution?

C–5. Supersession

This evaluation replaces the evaluation previously published in AR 690–600, dated 1 August 2024.

C–6. Comments

Help to make this a better tool for evaluating internal controls. Submit comments to the Director, Equal Employment Opportunity Compliance and Complaints Review (EEOCCR) (SAMR), at usarmy.pentagon.hqda-asa-mra.mbx.eeoctr@army.mil.

Glossary of 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

An official assigned by the EEOC to hold hearings and render merit decisions on federal sector formal individual and class complaints of discrimination.

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.

Agency representative

An agency attorney designated to represent the Army in an EEO complaint.

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, genetic information and/or physical or mental disability.

Aggrieved

An Army employee, a former Army employee, an applicant for Army employment, or an employee of a contractor in a case involving joint employer issues or allegations, who initiates a complaint of employment discrimination based on race, color, religion, sex, national origin, age, genetic information, physical or mental disability, and/or reprisal.

Alternative dispute resolution

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.

Army Director of Equal Employment Opportunity

The official who is designated by the SECARMY to administer the Army's EEO program in accordance with 29 CFR 1614.102.

Civilian Human Resource Servicing Centers

An office staffed by multiskilled generalists primarily, and certain specialists, who provide civilian personnel advisory services to local commanders, managers, supervisors, employees, and applicants.

Civilian Human Resources Agency

The organization in the DA responsible for providing civilian human resources support.

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.

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, disability or genetic information.

Combatant command support agent

The head of a DoD component who the Secretary of Defense or the Deputy Secretary of Defense has assigned specific responsibilities, functions, and authorities to provide defined levels of support for operational missions, administrative, or other designated activities that involve two or more of the DoD components.

Commander

A senior officer with supervisory and decision-making responsibilities as head of an activity.

Complainant

An Army employee, a former Army employee, an applicant for Army employment, or an employee of a contractor in a case involving joint employer issues or allegations, who files a formal complaint of employment discrimination based on race, color, religion, sex, national origin, age, genetic information physical or mental disability, and/or reprisal for engaging in protected EEO activity.

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 Investigations and Resolutions Directorate

The DoD organization that investigates 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, genetic information, physical or mental disability, and/or reprisal, that adversely affects privileges, benefits, working conditions, results in disparate treatment, or in some cases has a disparate impact on employees, former employees, or applicants for employment.

Equal Employment Opportunity Commission

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 Commission Form 462 Report

The EEOC's annual federal EEO statistical report of discrimination complaints.

Equal Employment Opportunity Compliance and Complaints Review

The Army organization responsible for managing the Army's EEO complaints program. EEOCCR also prepares the final Army action/decision on the merits of EEO complaints for the approval and signature of the Army Director of EEO or designee.

Equal Employment Opportunity 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 pre-complaints.

Equal Employment Opportunity Director

Generally, the individual designated by the ACOM, ASCC, DRU commander, or equivalent, to administratively oversee the EEO program and advise the commander or equivalent. An EEO Director may be located in a subcommand that has administrative oversight of a portion of an ACOM, ASCC, or DRU EEO program.

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 the complainant's control.

Equivalent (commander)

A senior civilian employee who has supervisory and decision-making responsibilities as head of an activity.

Estoppel

A party is prevented by the party's 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.

Fact-finding 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 the complainant's representative, and the Army agency representative.

Federal Labor Relations Authority

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 non-mixed complaint of discrimination where no hearing was elected by the complainant, on a mixed complaint of discrimination or addressing allegations of noncompliance with NSAs. Final Army decisions may also address compensatory damages and/or attorney fee payments.

Formal discrimination complaint

A written complaint, preferably on a DA Form 2590, 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 investigator and supplemented to include the ROI summary, court reporter transcripts, and documented evidence.

Joint base

A military installation with consolidated management and support responsibilities previously managed separately by the Army, Navy, or Air Force.

Labor counselor

An Army attorney who advises or represents the Army in labor and employment law matters.

Legal advisor

The Army attorney designated to provide legal advisory services to EEO personnel.

Mediation

A method used to resolve complaints of discrimination wherein an acceptable, impartial, and neutral third-party, who has no decision-making 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

The federal agency responsible for deciding appealable personnel actions and mixed case appeals.

Mixed case appeal

An appeal filed directly with the MSPB which alleges that an appealable Army action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, age, disability or genetic information.

Mixed case complaint

A complaint of employment discrimination filed with the Army based on race, color, religion, sex, national origin, age, disability, or genetic information related to or stemming from an action that can be appealed to the MSPB. The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address.

Negotiated grievance procedure

A grievance procedure contained in a collective bargaining agreement negotiated between the Army and a recognized labor organization.

Negotiated settlement agreement

A written settlement agreement knowingly and voluntarily signed by the complainant or agent and the Army during the pre-complaint or formal complaint process which resolves an EEO complaint. The terms of agreement are binding on both parties.

Notification and Federal Employee Antidiscrimination and Retaliation Act

The No FEAR Act of 2002 as amended, which requires each federal agency to post summary statistical data with respect to complaints of employment discrimination filed against the agency under EEOC regulation 29 CFR 1614.

Office of Federal Operations

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.

Personnel action

Hiring action, change in grade, suspension, removal or separation, reassignment, or change to full or part-time work

Pre-complaint

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 victims of prohibited discrimination where they 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.

Reprisal

Retaliation for participation in Title VII activity or opposition to any practice made unlawful by Title VII, ADEA, EPA, GINA, or Rehabilitation Act.

Responsible management official

A management official alleged to have engaged in or failed to take action to stop or prevent employment discrimination based on race, color, religion, sex, national origin, age, genetic information, physical or mental disability, and/or reprisal.

Serviced activity

Any activity that receives EEO services from the servicing activity EEO officer.

Servicing activity

The installation to which an EEO officer is assigned to administer the activity's EEO program and provides EEO services, to include EEO complaint processing services.

Servicing activity Equal Employment Opportunity officer

Generally, 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.

Settlement

A resolution arrived at during the pre-complaint or formal complaint process which resolves issues raised to the satisfaction of the complainant or agent and the Army.

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 aggrieved/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.

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