

Civilian Personnel

Equal Employment Opportunity Discrimination Complaints

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SUMMARY of CHANGE

AR 690-600

Equal Employment Opportunity Discrimination Complaints

This revision--

- o Is for the purpose of conforming with the revisions set forth in the Equal Employment Opportunity Commission's regulation, Title 29, Code of Federal Regulation, Part 1613.

Effective 18 October 1989

Civilian Personnel

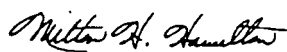
Equal Employment Opportunity Discrimination Complaints

By Order of the Secretary of the Army:

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*General, United States Army
Chief of Staff*

Official:



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Secretary of the Army*

History. This UPDATE printing publishes a revision of this publication. Because the publication has been extensively revised, the changed portions have not been highlighted.

Summary. This regulation, which sets policies and procedures on filing, processing, investigating, and settling complaints of discrimination, has been revised. It is designed for commanders, equal employment opportunity officials, U.S. Army Civilian Appellate Review Agency investigators, civilian personnel officers, labor counselors, managers, supervisors, employees, and applicants for employment. It implements Federal law

and the regulations of the Equal Employment Opportunity Commission (EEOC) at part 1613, title 29, Code of Federal Regulations (CFR), that prohibit discrimination based on race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal.

Applicability. This regulation applies to all Department of the Army appropriated or non-appropriated fund activities, their employees, and applicants for employment. This regulation also applies to the U.S. Army Reserve, except where such policies and procedures are modified by AR 140–315 and to employees from other Federal agencies receiving Army support under a servicing agreement who allege discrimination in a matter controlled by the Army. It does not apply to persons employed or applying for positions in the Army and Air Force Exchange System or to Army National Guard technicians. It also does not apply to non-U.S. citizens employed by the Army outside of the United States.

Proponent and exception authority.
Not applicable

Army management control process.
Not applicable.

Supplementation. Supplementation of this

regulation is prohibited without prior approval from the Equal Employment Opportunity Compliance and Complaints Review Agency (EEOCCRA), ATTN: SFMR–RBE, WASH DC 20310–1813.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent agency of this regulation is the EEOC–CRA. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to EEOC–CRA, ATTN: SEMR–RBE, WASH DC 20310–1813.

Distribution. Distribution of this publication is made in accordance with the requirements on DA Form 12–09–E, block number 3710, intended for command level D for Active Army, ARNG, and USAR.

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Chapter 1 General Provisions

1-1. Purpose

This regulation prescribes policies and procedures for filing, processing, investigating, and settling equal employment opportunity (EEO) complaints. The processing of all EEO complaints filed by civilian Army employees or applicants for employment will be governed by this regulation. This regulation will be revised to reflect changes made by the EEOC in its regulations and/or through the issuance of new or revised directives.

1-2. References

a. Related publication. A related publication is merely a source of additional information. The user does not have to read it to understand this regulation. AR 690-700, Chapter 771 (Department of the Army Grievance System).

b. Prescribed forms

(1) DA Form 2590-R, Formal Complaint of Discrimination. (Prescribed in para 2-3b.)

(2) DA Form 5492-R, Precomplaint Counseling Data Sheet. (Prescribed in para 2-2d.)

(3) DA Form 5495-R, Chronology of Individual EEO Complaint. (Prescribed in para 7-9.)

(4) DA Form 5496-R, Chronology of Class EEO Complaint. (Prescribed in para 7-9.)

(5) DA Form 5497-R, Disposition of Complaint of Discrimination. (Prescribed in para 7-9.)

1-3. Explanation of abbreviations and terms

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

1-4. Responsibilities

a. The Army Director of Equal Employment Opportunity, referred to in 29 CFR Section 1613.204, will be designated by the Secretary of the Army to set EEO policy. This individual will ensure that—

(1) Army programs conform to this policy.

(2) Adequate resources are available to implement the Army's EEO Program.

(3) A system to process EEO complaints exists.

(4) Final Department of the Army decisions on EEO complaints are rendered.

b. The Director, EEOCRA, will—

(1) Develop Army policy and programs to process discrimination complaints.

(2) Manage and operate the Army discrimination complaint system for individual and class complaints from Army civilian employees and applicants.

(3) Process and prepare final Army decisions on individual and class complaints of discrimination for approval by the Secretary of the Army or his or her designee.

(4) Process requests from the EEOC for case files on complaints that are appealed to EEOC.

(5) Require that requests for documents, records, and information solely in the control of one party be answered in a timely fashion.

(6) Receive and implement appellate decisions rendered by EEOC and process requests for reopening and reconsidering EEOC decisions.

(7) Provide guidance to subordinate Army activities on the discrimination complaint system.

(8) Answer inquiries from complainants, Congress, and Army activities.

c. The Administrator of the U.S. Army Civilian Appellate Review Agency (USACARA) will—

(1) Conduct investigations of civilian applicant or employee complaints of discrimination.

(2) Prepare reports that include findings on the issues of alleged

discrimination and recommendations on corrective actions to be taken by the activity.

(3) Make decisions on the occurrence of harmful regulatory and procedural errors.

(4) Direct that corrective action be taken by the activity when harmful regulatory or procedural errors are found within the scope of the issue under investigation.

(5) Encourage parties to settle a complaint as appropriate.

d. The major Army command (MACOM) EEO officer will—

(1) Advise the MACOM commander on the resources required in the command to manage the discrimination complaint program effectively.

(2) Ensure that the EEO complaint processing program is operated effectively and efficiently throughout the MACOM.

(3) Ensure that reports and files are submitted accurately and promptly.

(4) Make onsite evaluations of activity level effectiveness and give staff assistance as needed.

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

e. The activity commander responsible for the discrimination complaint program for all serviced and tenant organizations will—

(1) Ensure that sufficient resources are available to EEO program officials to manage and operate the discrimination complaints program effectively.

(2) Ensure that supervisors and managers understand and meet their responsibilities in the discrimination complaint program.

(3) Stress the need for prompt processing and informal resolution of discrimination complaints.

(4) Ensure that the agency is adequately represented at all steps in the complaint procedure.

(5) Make timely recommendations and/or decisions on complaints of discrimination and award of attorney fees.

(6) Ensure that Army and EEOC decisions are implemented promptly.

(7) Ensure that the following information is regularly publicized and permanently posted on official bulletin boards for easy access by all employees and applicants for employment:

(a) The name and address of the Army Director of EEO.

(b) The names, addresses, and telephone numbers of the activity EEO officials, including the EEO officer and EEO counselors.

(c) Where applicable, a list of the organizations each counselor services.

(d) A statement that a counselor must be consulted before a formal discrimination complaint is filed under this regulation. Where applicable, employees should also be advised that discrimination may be grieved under the negotiated grievance procedure or through Merit Systems Protection Board (MSPB) appellate procedures.

(e) The time limits to start action and to file and process a complaint under this regulation. When applicable, employees should also be advised of time limits for filing allegations of discriminations under the negotiated grievance procedure or MSPB appellate procedures.

f. The civilian personnel officer (CPO) will—

(1) Ensure that EEO officers, EEO counselors, investigators, and designated labor counselors are given appropriate access to personnel records and copies of records or documents relevant to the complaint when needed in the performance of their official duties. Retain the relevant records or documents until notified by the EEO officer that no further administrative or legal decision is pending on the complaint.

(2) Perform personnel regulatory reviews and provide technical support to labor counselors, EEO counselors, and EEO officers.

g. The activity EEO officer will—

(1) Manage the activity complaint processing program and advise the activity commander on EEO matters that require his or her attention.

(2) Advise the activity commander to ensure that adequate resources are available in the activity to manage the complaint program effectively.

(3) Recommend the availability of sufficient EEO counselors to provide effective counseling services.

(4) Supervise EEO counselors to ensure that they perform effectively and are trained in all phases of complaint processing. Refer or assign EEO counselors for precomplaint counseling.

(5) 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.

(6) Make the final decision on behalf of the Secretary of the Army to cancel or to reject, in whole or in part, individual complaints at the activity; also accept complaints provisionally subject to final decision by the Secretary of the Army or his or her designee. (See para 2-5b.)

(7) Ensure that complaints are processed promptly and that all requirements for precomplaint counseling and for processing complaints of discrimination are met.

(8) Ensure that all formal complaints are captioned so as to identify the complainant, the appropriate department or agency head with which the complaint is filed and his or her official title, and the Army docket number.

(9) Ensure that every reasonable effort is made to reach an informal resolution of the complaint. He or she will advise the activity commander on proposed dispositions.

(10) Arrange for USACARA investigations and EEOC hearings and provide for court reporters, making sure that the EEOC administrative judge is correctly advised to direct his or her report of findings and recommended decision to EEOCRA and that the correct number of transcripts are ordered.

(11) Ensure that the EEOC is instructed that the completed case file, with all copies of the transcript and the administrative judge's recommended decision, be sent to EEOCRA.

(12) Send legible, properly tabbed, indexed, and bound copies of complaint files to EEOCRA within the timeframes required by this regulation.

(13) Prepare and submit the required reports.

(14) Maintain and safeguard complaint files.

h. The EEO counselor will—

(1) Advise complainants and management officials of their rights, inquire into allegations of discrimination raised under this regulation, and try to resolve discrimination complaints at the precomplaint stage.

(2) Keep records indicating when the aggrieved person first contacted the counselor. These records will document the inquiry methods used to reach a resolution and the result of the inquiry. Such records will provide specific facts to be included in the counselor's written report to the EEO officer upon completion of counseling.

i. The servicing legal officer/Staff Judge Advocate (SJA) will—

(1) Provide legal advice on EEO matters to the serviced commander, the CPO, and EEO officials.

(2) Act as the Army's activity-level legal representative in USACARA fact-finding conferences and in EEOC hearings on individual complaints and in class action proceedings.

(3) Review for legal sufficiency proposed settlement agreements, proposed disposition letters, and final decision letters.

(4) Advise the serviced commander regarding settling claims for attorney fees or costs. The counselor will forward with analysis and recommendations to the Department of the Army (DA), through the Labor and Civilian Personnel Law Office (DAJA-LC), Office of the Judge Advocate General, to the Office of the General Counsel, for final decision, all claims for attorney fees or costs that are not settled at the activity level. (See para 5-4.)

(5) Notify the activity EEO officer when litigation is initiated or terminated on any EEO complaint.

j. Managers and supervisors will act promptly to prevent or to correct situations that may give rise to complaints of discrimination. They will ensure that all members of the workforce refrain from actions or comments that might be viewed as discriminatory. Supervisors will allow employees with collateral EEO duties enough duty time to perform their EEO functions. They will also ensure that, at

the precomplaint and the formal stages of the complaint, complainants and their representatives are allowed to use a reasonable amount of duty time to work on their complaints. Managers, supervisors, and employees must cooperate fully with counselors, EEO officers, investigators, and administrative judges.

1-5. Policy statements

a. Persons who oppose discrimination or who take part in presenting or processing discrimination complaints will be free from restraint, interference, coercion, harassment, discrimination, and reprisal.

b. A discrimination complaint will be processed with due regard for the rights of persons against whom allegations have been made.

c. Complaints will be processed promptly and impartially.

d. Complaints should be resolved at the earliest possible stage; informal resolution can occur at any stage of processing. Early resolution of complaints achieves better employee relations, cuts administrative costs, avoids protracted litigation, and is consistent with the Army's commitment to EEO.

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

(1) A discrimination complaint under this regulation.

(2) A grievance under a negotiated procedure.

(3) An appeal under the appellate provisions of the MSPB regulations.

f. Sufficient resources, in terms of personnel and funds, will be made available at all levels of command to ensure the success of the Army's EEO Program.

g. Suspenses imposed on the Army by this regulation are purely administrative. They are designed to encourage prompt processing of complaints. Failure to meet such a suspense will not nullify any administrative proceeding. All "days" referred to in this regulation are calendar days. For computation of specific time periods, see paragraph 7-7.

1-6. EEO counselor training

All EEO counselors will be given the required training as soon as possible after their appointment, within time limits set by the MACOM. Training will at least include completion of the basic EEO counseling course given by the Army, regional offices of the Office of Personnel Management or comparable courses, and courses in EEO and civilian personnel management, as appropriate. Additional and refresher training will be determined by command policy. All Army training should stress the Army policy to seek informal resolution at the earliest possible stage of a complaint.

1-7. Venue

EEO complaints will generally be processed at the activity where the alleged discrimination occurred. The complaint may be processed at a different location designated by the MACOM EEO officer if processing is impractical at the activity where the alleged discrimination occurred. (See paras 1-9 through 1-12.)

1-8. Complaints involving the Secretary of the Army or officials of the Office of the Secretary of the Army

a. Precomplaint counseling which involves officials at the Secretary of the Army level will be coordinated with the EEO Officer, Office of the Secretary of the Army (OSA), regardless of where in the Army the counseling may arise. The coordination will be accomplished at the time the activity EEO officer receives the matter causing concern and before any operating officials are contacted. The EEO Officer, OSA, will be responsible for deciding how the matter will be processed within the OSA. The EEO officer at the activity where the aggrieved person is employed or has applied for employment will be responsible for ensuring that local counseling is conducted in accordance with paragraphs 2-2 or 3-2. The coordination will be accomplished before the activity EEO counselor conducts the final interview. Coordination may be on an informal basis using the most expeditious means of communication.

b. Formal complaints that involve actions actually taken by the Secretary of the Army or an official of the OSA will be forwarded for acceptance and processing to the EEO Officer, OSA, regardless of where in the Army they arise. The activity EEO officer will issue a letter to the complainant acknowledging receipt of the complaint and informing the complainant of the referral to the OSA. The letter must state that such acknowledgment does not constitute acceptance of the complaint. The activity EEO officer must forward to the EEO Officer, OSA, the following documents:

- (1) The EEO counselor's report.
- (2) The complaint.
- (3) A copy of the acknowledgment of receipt.
- (4) A recommendation to accept or reject the complaint, along with an analysis to support the recommendation.

1-9. Complaints involving the Chief of Staff, Army; MACOM commanders; officials of the Army Staff; and heads of its staff support or field operating agencies

a. Precomplaint counseling that involves the Chief of Staff, Army; MACOM commanders; officials of headquarters, DA; or heads of its Staff support and field operating agencies will be coordinated with the EEO officer, OSA, regardless of where in the Army the counseling may have been performed. The EEO officer at the activity where the aggrieved person is employed, or has applied for employment will be responsible for ensuring that local counseling is conducted in accord with paragraphs 2-2 or 3-2, and that the required coordination is accomplished before the activity EEO counselor conducts the final interview. Coordination may be on an informal basis using the most expeditious means of communication. The activity EEO officer will modify the Notice of Right to File a Complaint, if used, and the Final Interview Notice to state that a formal complaint may be filed with the EEO officer, OSA, as well as with the officials normally listed. Those notices will be modified to contain the title and address of the EEO Officer, OSA.

b. Formal complaints that involve actions actually taken by the Chief of Staff, Army; MACOM commanders; officials of headquarters, Department of the Army; or heads of its Staff support and field operating agencies, regardless of where in the Army the counseling may have been performed, will be acknowledged by letter from the activity EEO officer where the complaint was filed. The letter must state that such acknowledgment does not constitute acceptance of the complaint and that the complaint will be forwarded to the EEO Officer, OSA, for processing. The activity EEO officer must forward to the EEO Officer, OSA, the following documents:

- (1) The complaint.
- (2) A copy of the acknowledgment of receipt.
- (3) A recommendation as to accept or reject the complaint, along with an analysis to support the recommendation.
- (4) A copy of the EEO counselor's report.

c. Precomplaint counseling and formal complaints involving an official of an Army Staff support and field operating agency, other than the head of the agency, will be the responsibility of the activity EEO officer designated to service that agency.

1-10. Complaints involving the U.S. Total Army Personnel Command (PERSCOM)

a. The Commander, PERSCOM, will render the proposed disposition if a complaint contains one of the following issues:

- (1) Failure to include complainant on a referral list prepared by PERSCOM.
- (2) The rating, ranking, or referral process at the Army-wide referral level.
- (3) Actions taken by DA Career Program administrators and/or Career Program screening panels.

b. Precomplaint counseling will be coordinated with the EEO Officer, OSA, regardless of where in the Army the counseling may arise. Formal complaints will be acknowledged by letter from the activity EEO officer where the complaint was filed. The letter must state that such acknowledgment does not constitute acceptance of

the complaint and that the complaint will be forwarded to the EEO Officer, OSA, for processing.

c. The activity commander responsible for the nonselection will render the proposed disposition in a complaint wherein the complainant was on a referral list prepared by PERSCOM but was not selected. The formal complaint will be processed by the EEO officer for the activity commander who will render the proposed disposition. Pertinent information will be requested from and provided by PERSCOM or other DA-level referral offices, as appropriate, to include in the activity commander's proposed disposition.

1-11. Conflicts of interest

When a person involved in the EEO complaint process (for example, EEO officer, activity commander, or MACOM EEO officer) is named or otherwise designated as a responding management official (RMO), the following procedures will be followed in order to avoid a possible conflict of interest:

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

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

c. SJA. If the SJA or senior legal officer of the servicing legal office is named or otherwise designated as an RMO in a discrimination complaint based on action that he or she has taken against the complainant, legal advice to the command in the processing of that complaint will be provided by the servicing legal office of the next higher level of command. If the SJA or senior legal officer is named as an RMO merely by virtue of his or her position, then he or she may continue to provide advice on the complaint.

d. CPO. If the CPO is named or otherwise designated as an RMO in a discrimination complaint based on action that he or she has taken against the complainant, the CPO at the next higher level of command will provide personnel advice to the command in the processing of that complaint. If the CPO is named or otherwise designated as an RMO merely by virtue of his or her position, then he or she may continue to provide personnel advice on the complaint.

e. MACOM EEO officer. If a MACOM EEO officer is named or otherwise designated as an RMO in a discrimination complaint based on actions that he or she has taken against the complainant, that officer's function within the processing of that complaint will be performed by a special EEO officer designated by the MACOM commander. If the MACOM EEO officer is named or otherwise designated as an RMO merely by virtue of his or her position, then he or she may continue to process the complaint.

f. MACOM commander. If a MACOM commander is named or otherwise designated as an RMO in a particular discrimination complaint based on actions that he or she has taken against the complainant, that commander's function within the processing of that complaint will be performed by the Vice Chief of Staff of the Army. If the MACOM commander is named or otherwise designated as an RMO merely by virtue of his or her position, then he or she may continue to process the complaint.

g. Secretary of the Army or Director of EEO. If the Secretary of the Army or the Director of EEO is named or otherwise designated as an RMO in a discrimination complaint based on action that he or she has taken against the complainant, the Secretary of the Army will designate a DA official to perform the functions of the official named or otherwise designated as an RMO. If the Secretary of the Army or the Director of EEO is named or otherwise designated as

an RMO merely by virtue of his or her position, then he or she may continue to process the complaint.

Chapter 2

Individual Complaints of Discrimination

2-1. Who may file a complaint

Any employee, former employee, or applicant for employment covered by this regulation, who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal in an employment matter subject to the control of the Army, may file an individual complaint of discrimination. The complaint may also be filed for the complainant by a representative designated in writing by the complainant. However, the formal complaint must be signed by the complainant. (The summarized, step-by-step complaint procedure at table 2-1 and the flowchart at fig 2-1 may be reproduced locally and given to the complainant.)

2-2. Precomplaint processing

a. Before a formal complaint can be filed, the complainant must first present the matter to an EEO counselor for inquiry within 30 calendar days from the date of the matter, or, if a personnel action, within 30 calendar days of its effective date, or the date that the aggrieved person became aware of, or reasonably should have become aware of, the discriminatory event or personnel action. Matters raised after the 30-day time limit will be counseled by the EEO counselor even though a formal complaint may later be rejected for untimeliness.

b. At the initial interview, the EEO counselor will inform the aggrieved person of the following matters:

(1) The aggrieved person may be accompanied, represented, and advised at all counseling interviews by a representative designated in writing in accord with paragraph 7-2.

(2) The aggrieved person will waive the right to file a formal complaint under this regulation if he or she files or has already filed—

(a) A grievance on the same allegations of discrimination under a negotiated grievance procedure.

(b) An appeal on the same matter with the MSPB.

(3) An employee cannot raise allegations of discrimination, which are subject to final administrative review by the EEOC, in the administrative grievance procedure. (See AR 690-700, chap 771, para 1-7b.)

(4) The counselor will give the aggrieved person a handout similar to that contained at figure 2-2 that informs the individual of the other procedures available for filing allegations of discrimination. Such handout shall also inform the individual of his or her right to file a civil action directly in an appropriate U.S. District Court, if the complaint is based on a violation of the Age Discrimination in Employment Act of 1967, as amended, after first filing a written notice of intent to file a civil action with the EEOC. If the aggrieved person elects to file a complaint under EEOC regulations based on age, a civil action may not be filed until administrative remedies are exhausted. Courts in various jurisdictions differ on what constitutes exhaustion of administrative remedies. For this purpose, the counselor should advise the age complainant to seek competent legal advice regarding his or her particular case and the jurisdiction involved before making the election of procedures.

(5) The counselor will not reveal the aggrieved person's identity to anyone unless the aggrieved person gives written permission or a formal complaint is accepted.

(6) The counselor will define and record the dates and facts of the specific incidents or personnel actions that are the basis of the discrimination complaint. The aggrieved person must cooperate with the counselor in clearly defining issues for inquiry.

(7) If the aggrieved person believes that a particular person discriminated against him or her, then that individual may be identified

as the RMO. Normally, the RMO is the person who proposed, took, or failed to take the action that gave rise to the complaint.

(8) An activity EEO officer may preclude an EEO counselor from counseling based on actual or perceived conflict of interest. For example, if an EEO counselor has filed a discrimination complaint individually or as a class agent, or is a member of a class complaint and has not opted out, then, at the discretion of the activity EEO officer, he or she may be precluded from counseling any other person concerning a complaint until that counselor's complaint is resolved by a final Army decision and all appeals have been exhausted.

c. EEO counselor's duties during inquiry are as follows:

(1) The counselor will inquire into the specific incidents and actions identified by the aggrieved person at the initial interview. The counselor should interview persons who can give direct information on the allegations. If the aggrieved person has named an RMO, or an RMO is otherwise identified, the counselor must interview that person unless the counselor has information that clears the RMO from any alleged discrimination to the satisfaction of the aggrieved person. Before any interview with an RMO, the counselor must advise that individual of his or her right to a representative and the nature of the allegations made in the complaint. (See fig 2-3.)

(2) The counselor's inquiry should be designed to obtain only that information necessary to reach an informal resolution of the aggrieved person's allegations. Usually such inquiries are to be completed within a matter of days. The inquiry should not be as extensive as an investigation under paragraph 2-9. The counselor should function as a mediator between the aggrieved person and management and should seek a reasonable informal resolution.

(3) The counselor will prepare a written report of all actions taken during the inquiry and of the advice, if any, given to the aggrieved person and to the activity.

d. EEO counselor's duties at the final interview.

(1) The counselor should conduct the final interview with the aggrieved person within 21 calendar days after the matter was first called to the counselor's attention, absent extraordinary circumstances that must be documented by the counselor. At that time, the counselor will tell the aggrieved person of the results of the inquiry and discuss proposed solutions. Upon completion of the final interview, the counselor will—

(a) Inform the aggrieved person, in writing, of the right to file a formal complaint within 15 calendar days of his or her receipt of the notice of final interview. This formal notice should be given to the aggrieved person in the form of a letter. (See fig 2-4.) The counselor must not influence the aggrieved person on whether or not to file a formal complaint and must emphasize that the decision to file rests solely with the aggrieved person.

(b) Stress that a formal complaint must give specific information on the alleged acts of discrimination and must be limited to the issues discussed with the counselor in the precomplaint procedure. A formal complaint that is not specific or does not define the issues will be returned for clarification and rejected if not properly defined.

(c) Inform the aggrieved person that he or she must inform the EEO officer immediately, in writing, if legal counsel or any other representative is retained for a formal complaint. (See para 7-2.)

(2) If counseling must be extended beyond 21 calendar days of initial contact with the EEO counselor, the counselor will inform the aggrieved person in writing, on the 21st day, of the right to file a formal complaint of discrimination. (See fig 2-5.) The counselor must not influence the aggrieved person on whether or not to file a formal complaint and must emphasize that the decision to file rests solely with the aggrieved person.

(3) Upon completion of counseling, the counselor will prepare a written report of all actions taken during the inquiry and of the advice, if any, given to the aggrieved person and to management. The counselor will provide this report to the EEO officer along with a copy of the 21-day letter, if issued, and a copy of the Notice of Final Interview. The EEO counselor will also complete DA Form 5492-R (Precomplaint Counseling Data Sheet). The DA Form 5492-R will be prepared for each reportable contact at the time the Notice of Final Interview is issued. This document will be submitted

to the EEO officer along with his or her report. DA Form 5492-R will be reproduced locally on 8½- by 11-inch paper. A copy of this form is located at the back of this regulation for reproduction purposes.

e. All Army personnel will fully cooperate with and support the EEO counselor in the performance of his or her duties under this regulation. The EEO counselor will be free from restraint, interference, harassment, coercion, discrimination, or reprisal in connection with the performance of his or her duties.

2-3. Filing in a formal complaint

a. A formal complaint must be filed within 15 calendar days after the date of receipt of the notice of final interview. The formal complaint must be filed in writing by the complainant or his or her representative, if any, and must be signed by the complainant. If vague or general allegations are contained in the complaint, the complainant will be given an opportunity to provide specific information that will clearly define the issues. If specific information is not provided, the vague or general allegations of the complaint will be rejected for failure to prosecute in accordance with procedures described in paragraph 2-5.

b. Complaints should be submitted on DA Form 2590-R (Formal Complaint of Discrimination). Complaints submitted in letter form, while not preferred, will be accepted if they meet the other requirements of this regulation. However, in this situation, the EEO officer will complete a DA Form 2590-R and attach it to the letter. DA Form 2590-R will be reproduced locally on 8½- by 11-inch paper. A copy for reproduction purposes is located at the back of this regulation.

c. Persons to whom formal complaints may be submitted are as follows:

- (1) Activity EEO officer.
- (2) Activity commander.
- (3) Director of Equal Employment Opportunity.
- (4) Secretary of the Army.

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

e. A formal complaint shall be deemed timely if it is delivered in person or postmarked before the expiration of the 15-day filing period, or if, in the absence of a legible postmark, it is received by mail within 5 days from the expiration of the 15-day filing period. The activity EEO officer will acknowledge receipt of the formal complaint in writing. (See fig 2-6.)

f. Upon receipt of the formal complaint, the EEO officer will indicate the MACOM and activity or installation against which the complaint is filed, code the matters giving rise to the complaint, ensure that DA Form 2590-R is completed, and immediately submit one copy of the completed DA Form 2590-R to EEOCRA and, before acceptance or rejection of the complaint, to the activity labor counselor.

2-4. Captioning complaint correspondence

The appropriate complaint caption will be placed on all documents and correspondence relating to the complaint. All complaints accepted by the EEO officer for processing will be captioned so as to identify the complainant, the name of the head of the department and his or her official title, and the Army docket number. (See sample notices.)

2-5. Criteria for acceptance

a. A complaint will be accepted by the EEO officer (subject to final decision by the Secretary of the Army or his or her designee) unless one or more of the following apply. The complaint—

- (1) Refers to a situation over which the Army has no jurisdiction.

(2) Is not based on the complainant's race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal. Complaints of discrimination because of age are accepted only if the complainant was at least 40 years of age when the action complained of occurred.

(3) Sets forth matters identical to those in a previous complaint filed by the same complainant and that has been, or is being, processed.

(4) Sets forth matters identical to those in a grievance filed in writing by the same complainant under a negotiated grievance procedure.

(5) Sets forth matters that also form the basis of an appeal filed before the MSPB by the same complainant.

(6) Is untimely.

(a) The matters in a complaint must have been brought to the attention of an EEO counselor within 30 calendar days after the incident, effective date of a personnel action, or the date the aggrieved person became aware or reasonably should have been aware, of the discriminatory event or personnel action.

(b) Formal complaints must be filed within 15 calendar days after receipt of the notice of final interview.

(c) The activity commander, or his or her EEO officer, will extend the time limits of this paragraph if the complainant can show that—

1. He or she was not notified of the time limits and was not otherwise aware of them, or

2. He or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits of this paragraph.

(d) The time limits of this paragraph may be extended for reasons deemed sufficient at the discretion of the activity commander or his or her designee.

(e) The letter accepting the complaint will state the specific basis for any extension of time limits.

(7) Is the basis of a pending civil action in a U.S. District Court in which the complainant is a party and the civil action was filed after 30 November 1987.

(8) Is based on an Army proposal to take action that may be discriminatory. For complaints involving proposals on matters appealable to MSPB, see paragraph 4-2f.

b. The Secretary of the Army or his or her designee reserves the right to reject a complaint previously accepted by an EEO officer when making the final Army decision on the basis of one or more of the grounds specified in paragraph a above.

2-6. Acceptance, rejection, and cancellation of formal complaints

a. The EEO Officer will review the complaint against the criteria of paragraph 2-5 and determine which allegations should be accepted or rejected. The EEO officer will ensure that the complaint was informally counseled on each matter accepted or rejected in the formal complaint.

(1) The EEO officer may ask the complainant, in writing, to give more information on allegations that lack specificity. The written request will include a specific and reasonable period of time during which the complainant must respond.

(2) The EEO officer may request the complainant to meet with the EEO counselor on a matter not previously discussed in the precomplaint counseling, in accord with paragraph 2-2a.

(3) The EEO officer will decide whether to accept or reject a complaint in whole or in part. When appropriate, the EEO officer will coordinate acceptance or rejection of a complaint with the labor counselor.

(4) The acceptance of any complaint shall always be conditioned upon the final decision of the Secretary of the Army, or his or her designee, in accord with paragraph 2-5b.

(5) The EEO officer will provide the complainant and his or her representative, if any, a written decision to accept or reject the complaint within 5 calendar days after the complaint is received. The decision will be either hand-delivered to the complainant and the complainant's representative or sent by certified mail. If the

decision is personally delivered, the complainant and his or her representative will acknowledge receipt by signing and dating the official file copy of the decision. If they decline to sign the copy, the server will sign it and indicate to whom and when the decision was served. The decision must specify which allegations or parts of the complaint were accepted and explain the grounds for any rejection or cancellation. The decision will inform the complainant of the right to appeal the decision to the EEOC, the time limits for filing an appeal with the EEOC, and the complainant's right to file a civil action as described in paragraph 6–5. (See fig 2–7 or 2–8.)

(6) If any part of a complaint is accepted by the EEO officer, a copy of the complaint will be sent directly to the appropriate USACARA regional office by the EEO officer requesting the assignment of an investigator and citing applicable funds for payment of travel and per diem. As indicated in paragraph 2–6, the transmittal letter will identify the part of the complaint that has been accepted for investigation.

(7) Immediately upon acceptance of a formal complaint, the activity commander will designate the activity labor counselor as the Army representative. An RMO may not serve as an Army representative. At the request of the labor counselor, the activity commander may also appoint a personnel specialist or other activity personnel to assist the labor counselor.

(8) If a complaint has been rejected in whole or in part, the EEO officer will process the closure in accord with paragraph 7–11b. A copy of the case file will be retained by EEO officer for 2 years from the date of the final Army decision, or until all administrative and judicial appeals are exhausted, whichever is longer.

b. As soon as the EEO officer accepts a formal complaint, he or she will give a copy of the EEO counselor's written report on the precomplaint counseling to the complainant. The original report will be kept in the complaint file.

c. Cancellation

(1) The EEO officer will cancel a complaint for failure of the complainant to prosecute his or her complaint if the complainant does not provide necessary information or take required action in the times specified. (See para 2–18a.)

(2) The EEO officer will cancel a complaint for failure of the complainant to accept a certified written Army offer of full relief in adjustment to the complaint. (See para 2–18b.)

(3) The EEO officer will cancel a complaint filed under this regulation if it forms the basis of a civil action in which the complainant is a party and the civil action was filed after 30 November 1987. Cancellation shall be coordinated with the labor counselor. (See para 2–18d.)

(4) The EEO officer may cancel a mixed case complaint filed under this regulation when the complainant appeals the same matter to the MSPB upon expiration of 120 calendar days after the date the mixed case complaint was filed.

2-7. Arranging for the investigation

a. Within 3 calendar days after acceptance of a formal complaint, the EEO officer will request the assignment of a USACARA investigator. (See app A.) A copy of the request letter without enclosures will be provided to the complainant and his or her representative, and a copy of the request with enclosures will be provided to the labor counselor. The request must contain the following information:

- (1) A clear statement of the issues that were accepted.
- (2) A statement of the parts of the complaint that were rejected.
- (3) The complainant's organization, work location, mailing address, and telephone numbers (both AUTOVON and commercial).
- (4) The complainant's designation of a representative, including the representative's mailing address and work telephone numbers (both AUTOVON and commercial).
- (5) A fund citation for travel and per diem.
- (6) A specific point of contact within the activity EEO office with appropriate telephone numbers.
- (7) Legible copies of the following documents:
 - (a) The formal complaint.

(b) The EEO counselor's report.

(c) Any relevant documents.

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

- (1) Arranging for quarters and transportation.
- (2) Providing a private office, clerical help, access to a telephone, and court-reporting services, when required.
- (3) Making sure that all named witnesses are readily available.
- (4) Giving the investigator any other administrative help needed to conduct an efficient investigation.
- (5) Ensuring the availability of current employment statistics (i.e., promotions, hires, training, disciplinary action, etc.).

c. The EEO officer should provide the labor counselor notice of the dates, time, and location of the USACARA investigation as soon as USACARA provides this information.

d. To avoid the appearance of impropriety, no activity personnel, to include EEO, CPO, or management, shall express an opinion regarding perceived merits of a complaint, or lack thereof, with the USACARA investigator. The labor counselor may do so only in connection with a fact-finding conference. However, activity personnel may disclose facts that would assist the USACARA investigator at any time before the completion of the investigation and receipt of the USACARA Report of Investigation (ROI).

e. Contracts with court-reporting firms must require delivery of three verbatim transcripts to the USACARA investigator within 14 calendar days or less after the fact-finding conference is closed.

2-8. Authority assigned to the USACARA investigator

By designation of the Secretary of the Army, USACARA 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 in conducting the investigation.

c. Require Army personnel who have any direct knowledge of the matter to furnish testimony under oath or affirmation without a pledge of confidence, unless this testimony would result in self-incrimination.

d. Administer oaths.

e. Issue an ROI that contains conclusions, recommendations on the allegation of discrimination, and, if applicable, harmful procedural or regulatory errors. Identified action required to correct harmful errors shall be final and binding on the activity.

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.

2-9. Conducting the investigation

USACARA will conduct the investigation and have sole discretion in determining the methodology to be used in investigating complaints. The investigation may take various forms, including a fact-finding conference, taking affidavits, or other means as appropriate. The fact-finding conference approach differs from the traditional method of investigation primarily in the area of taking testimony. Instead of conducting a series of individual interviews during the investigation, the investigator takes testimony in a formal meeting from the same participants who would have been interviewed in the traditional method. To expedite the procedure, 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. The investigator—

a. Collects facts and develops information on each accepted allegation in the complaint and reviews the circumstances under which the discrimination is alleged to have taken place. The investigator does not have the authority to expand the scope of the investigation. If complainant raises new issues or allegations at the investigative stage that were not accepted or raised with the EEO counselor, such new issues should generally not be investigated and the complainant

should be referred to an EEO counselor. However, an investigator is not restricted from finding discrimination on bases other than those originally raised by the complainant in his or her accepted complaint. Consequently, 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 and make a finding on the additional basis. The investigator should ensure that complainant and management have an opportunity to present evidence on the new basis. The obligation of the investigator to collect facts and to develop information does not lessen the responsibility of the complainant and management to prepare, present, and explain their positions as to the complaint.

b. Initiates discussion between the parties in an attempt to resolve the complaint.

c. Administers oaths and obtains statements from witnesses under oath or affirmation. The investigator determines the witnesses whose testimony is necessary to the investigation and interviews and obtains testimony or affidavits from only these 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 evidence offered was not accepted.

d. Gives the RMO, if named or identified, full opportunity to review documents that pertain to him or her and to respond to same.

e. Collects and analyzes information on how members of the complainant's group are treated compared with 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.

f. Investigates work policies and practices relevant to the accepted allegations of the complaint. Directs action required to correct harmful procedural or regulatory errors, when applicable.

g. Collects information needed to review the merit of mixed case issues that are included under paragraph 4-2.

h. 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.

i. Sends the ROI to the EEO officer and a copy of the report without attachments to the EEO officer at the next higher level of command within 45 days after assignment of the case. Failure to process a USACARA investigation within this timeframe will not prevent the administrative processing of any complaint of discrimination. Included in the file are the investigator's findings and recommendations and other relevant documents as described in paragraph 7-9.

2-10. Informal adjustment and offer of hearing

a. The EEO officer will thoroughly review the ROI to ensure that persons who proposed, took, or failed to take the action giving rise to the complaint were given an opportunity to respond to each allegation as described in paragraph 2-9c, and that the investigation adequately addresses all issues accepted in the complaint. The EEO officer may return an ROI to USACARA for further investigation if all the issues accepted in a complaint are not addressed. The EEO officer will specify the issues to be investigated or additional information or evidence to be gathered, including witness testimony and relevant records. Supplemental investigations must be conducted by USACARA.

b. If USACARA and the EEO officer disagree regarding the necessity for or extent of the supplemental investigation, the EEO officer will expeditiously submit the request to EEOCRA for decision.

c. Within 5 calendar days after receipt of the USACARA ROI, the EEO officer will send a complete copy of the USACARA ROI to the complainant or his or her representative, if any, with an offer to meet and discuss an informal adjustment of the complaint. The ROI may be sent by certified mail, return receipt requested, or be

personally delivered by an Army official. If the ROI is personally delivered, the complainant or the representative will acknowledge receipt in writing. If the complainant or the representative declines to sign a receipt, the server will sign and indicate to whom and when the ROI was served. The receipt will be filed in the complaint file.

d. If the ROI contains a harmful error decision directing corrective action, the complainant will be advised in writing of the corrective action being taken by the activity. This will be accomplished before an adjustment meeting is held or a Notice of Proposed Disposition is issued.

e. If the complainant agrees, an adjustment meeting should be held within 10 calendar days after receipt of the USACARA ROI by the EEO officer. The Activity Commander, or a designee, should consult with the EEO officer, the labor counselor, and the CPO on the proposed terms of the adjustment. The commander, or a designee, may also consult the RMO on the subject. The adjustment meeting should be accomplished by the least costly method while protecting the rights of the complainant. Adjustment meetings may be conducted by conference call or correspondence if the concerned parties are not readily available. Offers of settlement and attempts to adjust the complaint informally must be documented and included in the complaint file.

f. If a tentative settlement of a formal complaint is reached, its proposed terms are coordinated by the EEO officer with the labor counselor and the CPO before it is finalized. It is then signed by the complainant and the activity commander, or a designee, and made part of the complaint file. The agreement should set forth the specific actions to be taken by the Army and the complainant that constitute the terms for the settlement and the timeframe for completion. A copy of the settlement agreement will be given to the complainant and his or her representative, and the RMO where appropriate. (See fig 2-9.)

g. An informal adjustment may include an award of attorney fees or costs. If the parties agree on an adjustment of the complaint, but cannot agree on the issue of attorney fees or costs, that issue will be handled separately. The issue of attorney fees or costs will then be the subject of a final decision by the Secretary of the Army, or his or her designee. (See chap 5 for guidance.)

h. If the complainant does not agree to meet, or if an adjustment is not reached, the activity commander, or his or her designee, will give the complainant a Notice of Proposed Disposition. (See fig 2-10.) The notice, which must first be reviewed by the labor counselor for legal sufficiency, will—

(1) Indicate the date a meeting was held to attempt adjustment, or that the complainant refused to meet.

(2) Notify the complainant of his or her right to a final Army decision, with or without a hearing, and of the 15-calendar day time limit to make the request. Decisions regarding attorney fees or costs will be made in accord with paragraphs 5-4 and 5-5.

(3) Contain an analysis of the case and the rationale for the proposed disposition.

(4) Be issued within 20 calendar days of the date the EEO officer receives the USACARA ROI.

i. If the complainant does not respond within 15 calendar days from receipt of the Notice of Proposed Disposition, the activity commander will adopt the proposed disposition as the final Army decision and notify the complainant accordingly, advising him or her of the right to appeal to the Office of Review and Appeals, Equal Employment Opportunity Commission, and the right to file a civil action (app B). Although complaint adjustments are specifically provided for in this paragraph, the activity should continue to be alert to the possibility of adjustments at any stage of the complaint process.

2-11. MACOM review of proposed dispositions

When USACARA recommends a finding of discrimination and the activity commander proposes to reject that recommendation in favor of a proposed disposition finding no discrimination, that proposed disposition (along with the complaint file) will be forwarded to the MACOM commander of the activity against which the complaint is

filed for review and decision. The MACOM review and decision will be completed before the proposed disposition is issued to complainant.

2-12. Failure to carry out the terms of the adjustment

a. Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, will be binding on both parties. If the complainant believes that the Army has failed to comply with the terms of the settlement agreement, the complainant will notify the EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. A copy should also be sent to the activity EEO officer. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased under the terms of the settlement agreement.

b. Before the Director of EEO, or his or her designee, responds to complainant's written allegation of noncompliance, the EEOCRA 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 timely fashion, EEOCRA 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. The Director of EEO, or his or her designee, will respond to complainant's written allegations of noncompliance within 30 days from the date that the allegations of noncompliance are received. If the Director of EEO, or his or her 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 the EEOC for a determination as to whether or not the Army has complied with the terms of the settlement agreement. The complainant may file such an appeal 35 days after service of the allegations of noncompliance but no later than 20 calendar days after receipt of the Army determination.

c. Before rendering its determination, the EEOC may request that the parties submit whatever additional information or documentation it may deem necessary or it may direct that an investigation or hearing on the matter be conducted.

2-13. Request for Army decision without a hearing

When the complainant asks for an Army decision without a hearing, the EEO officer sends the original and one copy of the complaint file to EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813. (For a list of the contents of the complaint file, see para 7-9.) The EEO officer is responsible to see that all copies of the file are complete, legible, and identical.

2-14. Arranging a hearing

a. When the complainant asks for a hearing, the EEO officer requests the assignment of an administrative judge from the EEOC district office that has geographic jurisdiction over the activity where the hearing is to be held (app C). The hearing will usually be held at the activity where the complainant is permanently assigned or has applied for employment. If another location is preferred, the written request to EEOC will specify the alternate location. However, EEOC will decide where a hearing is to be held. For travel funding and other costs, see paragraph 7-12.

b. The written request to the EEOC will include the original complaint file. (See para 7-9.) In addition, one copy of the tabbed complaint file will be sent to EEOCRA.

c. The request to the EEOC will instruct the administrative judge to send the complaint file with the final report of findings and recommended decision and four copies of the hearing transcript (an original and three copies) to the Director, EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813. When there is more than one

complainant, the EEO officer will ask that an additional copy of the report and transcript be sent to EEOCRA for each additional complainant. If the administrative judge sends the report to the activity rather than to EEOCRA, as requested, the EEO officer will immediately return the file to the EEOC by certified mail, return receipt requested, with instructions to transmit it to the Director, EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813. If the activity fails to properly request that the recommended decision be sent to the EEOCRA and the administrative judge sends the report to the activity rather than to the EEOCRA, the activity EEO officer will immediately forward the file to the EEOCRA by certified mail, return receipt requested. The activity EEO officer will telephonically notify the EEOCRA should this arise.

d. The request to the EEOC will also provide the name, title, address, and telephone number of the labor counselor who will serve as the Army representative at the hearing. A copy of the request will be given to the complainant.

e. The EEO officer will arrange for the services of a court reporter at the hearing. Use of Army employees to transcribe hearings is prohibited by the EEOC except as authorized in a signed memorandum of understanding between the Army and the EEOC. However, interservice support agreements with the Navy and 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 their contracting office using the General Services Administration Federal Supply Schedule. Contracts with court-reporting firms must require delivery of the transcripts to the administrative judge within 21 calendar days or less after the close of the hearing.

2-15. The hearing

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

- (1) Administer oaths or affirmations;
- (2) Regulate the course of the hearing;
- (3) Rule on offers of proof and receive relevant evidence;
- (4) Order the production of documents, records, comparative data, statistics, affidavits, or the attendance of witnesses;
- (5) Limit the number of witnesses whose testimony would be unduly repetitious;
- (6) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. In cases of repeated or flagrant contumacious conduct or misbehavior by a representative, the administrative judge may refer the matter to the EEOC, and the EEOC may, after giving the representative an opportunity to respond to the allegations of misconduct, suspend or disqualify the representative from further representational activity and report the misconduct to other appropriate authorities; and
- (7) Issue a recommended decision without holding a hearing if he or she determines there are no issues of material fact.

b. If the complainant or the Army refuses or fails without adequate explanation to respond fully and in timely fashion to requests made or approved by the administrative judge for documents, records, comparative data, statistics, affidavits, or the attendance of witnesses, and the information is solely in the control of one party, such failure may, in appropriate circumstances, cause the administrative judge to—

- (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 matter to which the requested information pertains to be established in favor of the opposing party;
- (3) Exclude other evidence offered by the party failing to produce the requested information; and
- (4) Take such other actions as deemed appropriate.

c. Before scheduling the hearing, the administrative judge reviews the complaint file to determine the following:

- (1) The presence or absence of issues of material fact. If there are no issues of material fact, he or she may, after giving notice to the

parties and providing them with an opportunity to respond in writing within 15 calendar days, issue a recommended decision without holding a hearing.

(2) If further investigation is needed. If so, request that the activity conduct the additional investigation. If an administrative judge asks an activity to conduct further investigation, the EEO officer will promptly forward the request to the responsible USACARA regional office with an information copy of the transmittal letter furnished the complainant and the administrative judge. The administrative judge may also ask the activity to arrange for the witnesses needed to testify at the hearing. (See para 7-1.) If a prehearing adjustment of the complaint is reached, the original copy of the agreement will be forwarded immediately to the activity EEO officer who will send the necessary close-out documents to EEOCRA.

d. Attendance at the hearing is limited to persons determined by the administrative judge to have a direct connection with the complaint. The activity will make available all Army personnel called as witnesses for a hearing, unless the presence of a prospective witness is administratively impractical. The administrative judge conducts the hearing to bring out pertinent facts and to accept pertinent documents. Rules of evidence are not applied strictly, but the administrative judge will exclude irrelevant or unduly 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 his or her representative, if any, and the labor counselor 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 labor counselor submits a document that is accepted, a copy of the document shall be furnished to the complainant. If the complainant submits a document that is accepted, the administrative judge shall make the document available to the labor counselor for reproduction.

f. The administrative judge considers all documents in the complaint file, including the record of the hearing, in making his or her findings, analysis, and recommendations. The administrative judge then sends the complaint file to EEOCRA with the required number of copies of the administrative judge's report of findings and recommended decision and hearing transcript, and notifies the complainant of the date that this is done. The report of findings and recommended decision may include recommended remedial action, if proper, regarding the matter that gave rise to the complaint. Also, the administrative judge may send EEOCRA a separate letter concerning conditions in the activity that do not have a direct bearing on the complaint.

2-16. Final Army decision

a. The Director of EEO, or his or her designee, makes the final decision, in writing, for the Army. Before the Director of EEO, or his or her designee, makes the final decision, the EEOCRA may request that either party to the complaint submit additional information or documents. If without adequate explanation, the request is not answered in a timely fashion, the following apply:

(1) An adverse inference may be drawn that the requested information would have reflected unfavorably on the party refusing to provide the requested information.

(2) Other appropriate action may be taken.

b. The final decision, based on preponderance of the evidence in the complaint file, is sent to the complainant and his or her representative, if any, by certified mail, return receipt requested. Copies are sent to the MACOM, sub-MACOM if appropriate, and activity EEO officer. The decision may also be personally delivered to the complainant and the representative by an Army official. If so, the complainant and the representative acknowledge receipt by signing and dating the official copy and the server signs it and indicates on the copy to whom and when the decision was served. The receipt or the signed copy is filed in the complaint file.

c. If a hearing was not held, the decision will specify the reasons for the decision and any remedial action to be taken.

d. If a hearing was conducted, the complainant and the activity will receive a copy of the findings, analysis, and recommendations of the administrative judge with a copy of the hearing record. The final Army decision may adopt, reject, or modify the decision recommended by the administrative judge. If the administrative judge has recommended a finding of discrimination and if the final Army decision modifies or rejects the recommended decision, the decision letter will give the specific reasons for the rejection or modification. An administrative judge's recommended decision shall become final and binding on the Army if the Army has not issued a final decision concerning the recommendation within 60 calendar days after its receipt.

e. The Army decision will require any remedial action authorized by law that is judged to be necessary or desirable to resolve issues of discrimination and to promote EEO policy.

f. If discrimination or reprisal is found and there is an attorney of record, the Army decision will advise the complainant and his or her representative that attorney fees and costs may be awarded and that any request for this award must be documented and filed within 20 calendar days after receiving the decision. Where the Army determines not to award attorney fees and costs to a prevailing complainant represented by an attorney, the decision will state the specific reasons for denying the award. Attorney fees and costs are not payable in age discrimination complaints in the administrative process.

g. The Army decision will inform the complainant of the right to appeal the decision to the EEOC, of the right to file a civil action, and of the applicable time limits. (For appeal and civil action procedures, see chap 6.)

2-17. Avoiding delays

a. Complainants and management officials should process complaints without delay so that they may be resolved within 180 days of filing. This includes the time spent by administrative judges. In mixed cases covered by paragraph 4-2, the Army decision should be issued within 120 days.

b. If the activity has not issued a decision and has not asked for an administrative judge within 75 calendar days from the date a formal complaint was filed, the EEOC may require the Army to take steps to make sure the complaint is processed promptly. Alternatively, the EEOC may assume the responsibility for processing the complaint. This assumption may include an EEOC investigation that will be paid for by the activity.

2-18. Canceling a complaint

a. If a complainant fails to prosecute the complaint before the issuance of the USACARA ROI, the EEO officer will notify the complainant of the possibility of cancellation. If the complainant does not proceed within a specified time period, the written notice to the complainant must clearly set forth the following: (1) Notice of the proposed cancellation; (2) the reason or reasons relied on in support of the notice of intent to cancel; (3) the date on which the complaint will be canceled, ensuring that complainant is afforded a reasonable period of time during which to remedy the situation or to correct deficiencies; and (4) those actions that the complainant must take in order to remedy the situation and avoid cancellation on the date specified in the advance notice. If the complaint is canceled, the EEO officer will notify the complainant, in writing, of the cancellation, and of his or her right to appeal the cancellation to the EEOC or to file a civil action. The notice will also give the time limits for filing an appeal or civil action. If the complainant fails to prosecute the complaint and it has been investigated by USACARA, the EEO officer should send the file to EEOCRA and request that the Secretary of the Army, or his or her designee, issue a final decision. (See para 2-13.) If the complainant fails to respond to the proposed disposition, the activity commander will adopt the proposed disposition as the final Army decision in accordance with paragraph 2-10i.

b. If complainant refuses within 15 calendar days of receipt of a

written Army offer of full relief in adjustment to the complaint, the EEO officer will cancel the complaint, provided that the Director of EEO, or his or her designee reporting directly to the Director, has certified in writing that the written offer constitutes full relief. The proposed terms of full relief forwarded for certification will have previously been offered or simultaneously offered at the time of the request for certification in efforts to resolve the complaint. The EEOCCRA is the appropriate designee for certification. The certification of full relief must be provided along with notification to the complainant that he or she has 15 calendar days in which to accept or reject the offer (see fig 2-11). If the complainant refuses to accept a certified written offer of full relief, he or she should provide a written declination that becomes part of the complaint file. To constitute full relief, the terms of the offer must include all available relief the complainant would be entitled to had discrimination been found. (See chap 5.)

c. A request of EEOCCRA for certification of full relief will not preclude the request for an investigator. The EEO officer shall inform USACARA in the written request for the assignment of an investigator that full relief certification has been requested from EEOCCRA.

d. If a complainant is a party in a civil action involving a complaint filed under this regulation, the EEO officer will terminate processing of the complaint by canceling the complaint in accordance with paragraphs 2-6c(3) and 7-11b.

2-19. Consolidation of complaints

a. Two or more complaints of discrimination filed by different Army employees, former employees, or applicants for employment, making substantially similar allegations of discrimination, may, with the written permission of the complainants, be consolidated for processing by any of the following individuals:

(1) EEO officer.

(2) Activity commander, the USACARA investigator, or the EEOC administrative judge. When complaints are consolidated for processing, each complainant will receive a separate report of investigation.

b. Two or more complaints of discrimination from the same employee or applicant may, at the discretion of the EEO officer, activity commander, USACARA investigator, or EEOC administrative judge, be joined for processing after notifying the individual that his or her complaints will be processed jointly.

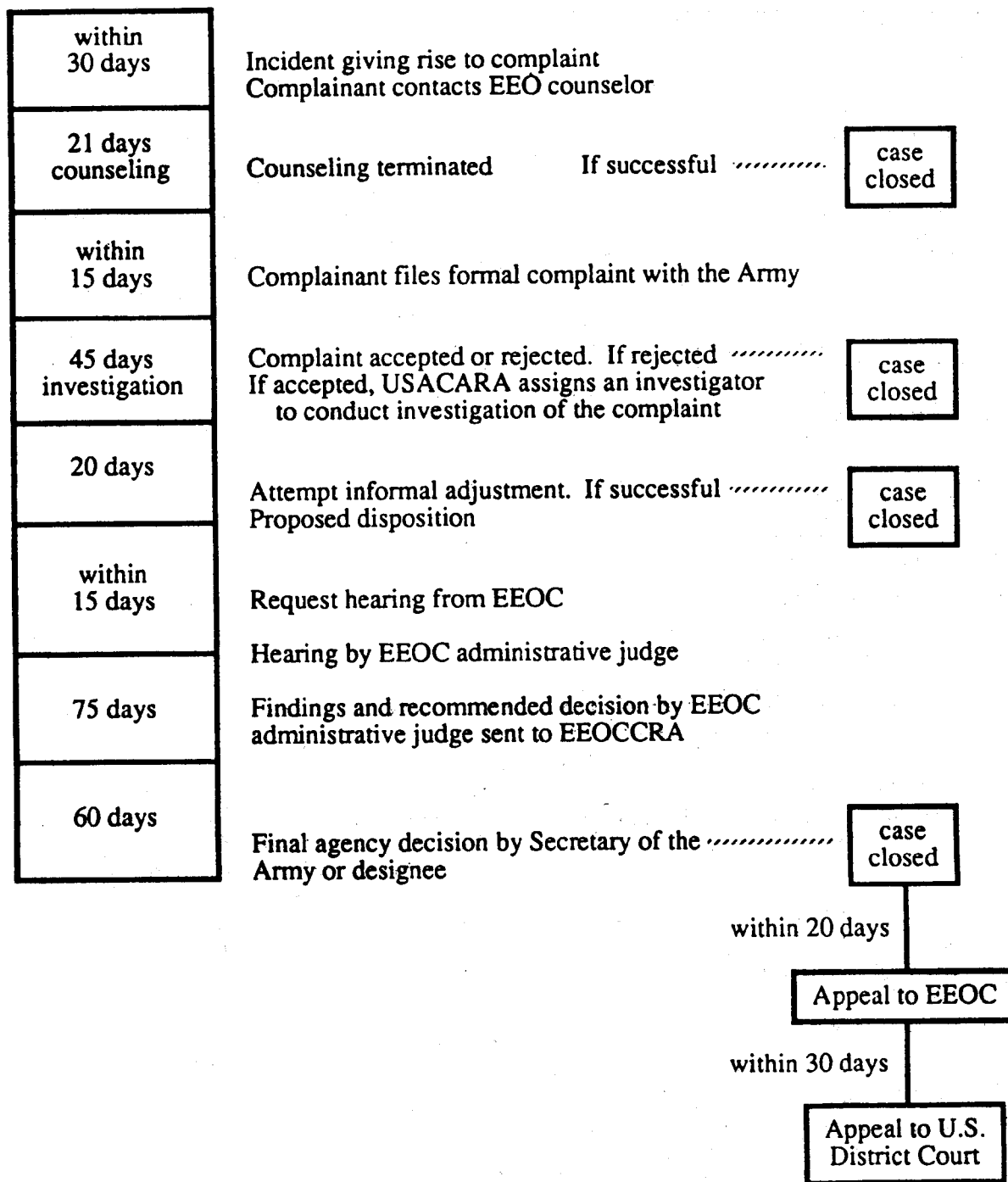
c. Allegations regarding the processing of previously filed pending complaints of discrimination shall be consolidated with the pending complaint and the complainant will be notified of the consolidation. The final Army decision on the underlying complaint will be decided on the merits of the allegation in accordance with paragraph 2-16.

2-20. The complaint file

The complaint file will be indexed and tabbed on the right side only and punched with a standard three-hole punch on the left side. The file will also be tabbed in reverse chronological order and will contain legible copies of the documents listed in paragraph 7-9.

Table 2-1
Steps in individual complaints of discrimination

Action	Time limits
1. Employee or applicant must see EEO counselor or EEO officer.	Within 30 calendar days after the alleged discrimination, personnel action, or when the complainant becomes aware or reasonably should have become aware of the action.
2. EEO counselor makes inquiry, tries to resolve complaint informally, conducts final interview, and, if complaint is not resolved, gives complainant written notice of right to file formal complaint.	Within 21 calendar days after matter first called to EEO counselor's attention.
3. Complainant files formal complaint (DA Form 2590-R) in writing with EEO officer or other designated official. Must advise EEO officer if he or she obtains legal or other representation.	Within 15 calendar days after receipt of the Notice of Final Interview or if final interview not held, anytime after 21 days from initial contact with the EEO counselor.
4. EEO officer accepts or rejects the formal complaint in whole or in part.	Within 5 calendar days after receipt of complaint.
5. EEO officer sends file to USACARA requesting assignment of an investigator if any part of complaint is accepted. If complaint is rejected, EEO officer notifies complainant and representative.	Within 3 calendar days after acceptance.
6. USACARA investigator completes investigation and sends ROI to activity.	Within 45 calendar days from assignment.
7. USACARA ROI furnished to complainant and an adjustment meeting offered.	Within 5 calendar days after receipt of USACARA ROI.
8. If adjustment meeting held and adjustment reached— a. Written agreement specifying terms of proposed disposition is signed by both parties. Copy is given to complainant. b. Activity commander takes action agreed upon.	
9. If adjustment meeting is not held or no adjustment is reached.— a. Activity commander issues a proposed disposition, including finding issues of discrimination and proposed remedial action including appeal rights. b. Complainant informed of right to request EEOC hearing or Army decision without hearing. c. If complainant fails to respond, activity commander adopts proposed disposition as final Army decision and notifies complainant and representation. d. If complainant asks for decision without hearing, EEO officer sends complaint file (original and one copy) to EEOCCRA. e. If complainant requests hearing, EEO officer requests administrative judge from EEOC.	Within 20 calendar days from receipt of USACARA ROI. Within 20 calendar days from receipt of USACARA ROI. Within 15 calendar days after notice proposed disposition. Within 15 calendar days after notice proposed disposition. Within 15 calendar days after notice proposed disposition.
10. Hearing held and findings and recommendations sent by EEOC to EEOCCRA.	Administrative judge.
11. Army final decision by the Director of EEO, including appeal right.	Within 180 calendar days after the date that the formal complaint was filed or 60 days after receipt of the administrative judge's report recommending a finding of discrimination.
12. Appeal to EEOC: a. Complainant sends notice of appeal to EEOC with copy to EEOCCRA. b. Complainant sends statement or brief to support appeal of Army decision to EEOC with a copy to the EEO officer and to EEOCCRA.	Within 20 calendar days after receiving Army final decision. Within 30 calendar days after filing Notice of Appeal.
13. Civil action by complainant: a. Before final Army decision. b. Instead of appeal to EEOC after Army final decision. c. Before EEOC final decision or appeal. d. After EEOC final decision on appeal.	After 180 calendar days after filing formal complaint. Within 30 calendar days after receiving Army decision. After 180 calendar days after filing appeal to EEOC. Within 30 calendar days after receiving EEOC decision.



Note: All "days" refer to calendar days.

Figure 2-1. Procedural steps in an individual discrimination complaint

SUBJECT: Avenues of Redress for Army Employees or Applicants

FROM EEO officer

TO (Name of person counseled)

1. Grounds for discrimination complaint. If you believe you have been discriminated against because of race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal, in an employment matter subject to the control of the Army, you may have the choice of more than one route to file a complaint and to have it resolved.

2. Options for employees outside of the bargaining unit. If you are not a member of a bargaining unit covered by a union contract, you may select one of the following options:

a. The discrimination complaint procedure (covered by AR 690–600). Your first step under that procedure is to contact an EEO counselor within 30 calendar days from the date the act of discrimination took place, or the date you became aware or reasonably should have become aware of the act of discrimination. If the counselor cannot resolve your problem, you may file a formal complaint. The counselor will tell you with whom to file your complaint and will explain complaint procedures. These include an investigation by the U.S. Army Civilian Appellate Review Agency, a hearing by the Equal Employment Opportunity Commission (EEOC), and a final decision by the Army.

b. The Merit Systems Protection Board (MSPB) appeal procedure. This procedure is available to you only if the alleged discriminatory action can be appealed to the MSPB, such as a removal, a suspension for more than 14 days, or any other appealable action. Usually, you will be notified in writing of your right to appeal to the MSPB. The time limit for appeal to the MSPB is 20 days after the effective date of the personnel action that you believe was used to discriminate against you. Under an MSPB appeal, you are entitled to a hearing by the MSPB. You may petition the EEOC to review the final decision of the MSPB on the allegation 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 in that contract does not exclude discrimination issues, you may have the following options:

a. In actions under title 5 of the United States Code (USC), section 7512 (removal, suspension for more than 14 days, reduction in grade, reduction in pay, or furlough for 30 days or less) and 5 USC 4303 (removal or reduction in grade for unacceptable performance), you have the following options. First, you may follow the discrimination complaint procedure described in paragraph 2a above. Second, you may follow the MSPB procedures described in paragraph 2b above, except there shall be no hearing before the EEOC. Third, you may follow the negotiated grievance procedures. Your union contract outlines the steps involved in a negotiated grievance procedure, which include an informal and formal grievance with specific time limits for filing, and decision by Army management. The next step, arbitration, may be requested only by the union or by the Army, not by you. If you choose the negotiated grievance procedure, you have the right to appeal the final Army decision or the arbitration award to the EEOC. Note that decisions in 5 USC 7512 or 4303 cases are not appealable to the Federal Labor Relations Authority (FLRA).

b. In actions not covered by 5 USC 7512 or 4303 but otherwise appealable to MSPB, you have access to the MSPB procedures only if such actions are excluded from the grievance procedure. If they are covered by the grievance procedure, the option is between the discrimination complaint procedure under AR 690–600 or the negotiated grievance procedure. If you choose the negotiated grievance procedure, you have the right to appeal the final decision (Army decision, arbitration award, or FLRA decision) to the EEOC or MSPB, as appropriate. Note that, in actions not appealable to the MSPB but covered by the grievance procedure, you may choose between the grievance procedure or the complaint procedure under AR 690–600.

4. Election of avenues of redress.

a. Whichever formal action you file first (whether a MSPB mixed case appeal, a discrimination complaint, or a grievance under the negotiated grievance procedure) is considered an election to proceed in that forum as to the alleged discrimination.

b. Your appeal to the MSPB will not be accepted if you have filed a timely formal complaint in writing under AR 690–600, or a timely written grievance under the negotiated procedure.

c. A discrimination complaint under AR 690–600 will be rejected if you have filed a timely appeal to the MSPB, or a timely written grievance under the negotiated procedure on the same matter.

d. A grievance under the negotiated procedure will be rejected if you have filed a timely appeal to the MSPB or if you have filed a formal complaint under the discrimination complaint procedure in AR 690–600.

e. Allegations of discrimination that are subject to final administrative review by the EEOC may not be raised by an employee in the administrative grievance procedures (See AR 690–700, chap 771, para 1–7b.)

5. Options for age discrimination complainants (age 40 and over). Unlike complaints filed under title VII of the Civil Rights Act of 1964, as amended, or the Rehabilitation Act of 1973, as amended, you may select one of the following options:

a. You may file a complaint in accordance with the administrative procedure described in paragraph 2a above.

b. You may elect to bypass the administrative procedure and file a civil action directly in an appropriate U.S. District Court, after first filing a written notice of intent to file a civil action with the EEOC within 180 calendar days of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with the EEOC, you must wait at least 30 calendar days before filing a civil action.

Figure 2-2. Sample avenues of redress—Continued

6. You must be aware that if you elect to file an administrative complaint rather than filing directly in U.S. District Court as described above, you must exhaust your administrative remedies before filing a civil action. Because of the variation in case law on exactly when your administrative remedies have been exhausted, you may wish to seek competent legal advice regarding the facts of your particular case and the jurisdiction involved before making your election of procedure. Should you elect to bypass the administrative procedure and file a civil action directly, your notice of intent to sue should be dated and must contain the following information:

- a. Statement of intent to file a civil action under section 15(d) of the Age Discrimination in Employment Act of 1967 (ADEA), as amended;
- b. Your name, address, and telephone number;
- c. Name, address, and telephone number of your designated representative, if any;
- d. Name and location of the Federal agency or installation where the alleged discriminatory action occurred;
- e. Statement of the nature of the alleged discriminatory action or actions;
- f. Date or dates that the alleged discriminatory action occurred; and
- g. Your signature or the signature of your designated representative. Notices of Intent to Sue under the ADEA must be submitted to the EEOC at the following address:

Hearings Program Division
Federal Sector Programs
Equal Employment Opportunity Commission
2401 E Street, NW, Room 422
WASH DC 20507
Telephone: (202) 634-6753

7. Equal Pay Act of 1963 (EPA) complaints. If you wish to file a complaint for violation of the EPA, you may file a civil action directly in U.S. District Court, or you may file a complaint with an appropriate EEOC district office. Inquiries concerning procedures for filing an EPA complaint should be made by contacting the appropriate EEOC district office or the following office:

Director
Federal Sector Programs
Equal Employment Opportunity Commission
2401 E Street, NW, Room 422
WASH, DC 20507

(202) 634-7833

8. Burden of proof. Regardless of the forum elected, the burden of proof remains at all times with you to prove discrimination by a preponderance of the evidence. If you establish an inference that the alleged discrimination did occur, the burden of production shifts to the agency to articulate legitimate nondiscriminatory reasons for its action. If the agency is successful in doing this, the burden of production again shifts to you to prove that the agency's articulated reasons are untrue or are a mask for prohibited discrimination.

9. Additional information on avenues of redress. If you have any other questions on this matter, you may contact the management/employee relations section of the civilian personnel office, your union representative, or your activity EEO office.

Figure 2-2. Sample avenues of redress

SUBJECT: Responding Management Official (RMO)
Participation in Complaint Processing

FROM EEO officer

TO (Name of RMO)

1. The purpose of the discrimination complaint procedure is to determine whether or not the alleged discrimination has occurred so that appropriate remedial action can be taken, if warranted. Investigations and hearings in discrimination complaint cases are essentially fact-finding processes. Complaints are filed against the agency and not individuals. As a person identified or alleged to be responsible for taking, purposing to take, or failing to take the action that has given rise to a discrimination complaint, your role is significant in the complaint process.
2. The burden of proof remains at all times with the complainant to prove discrimination by the preponderance of the evidence. However, if the complainant establishes an inference that the alleged discrimination did occur, the burden of production shifts to the agency to articulate legitimate nondiscriminatory reasons for its action. Because of your involvement in the action at issue, it is important that you be informed of all allegations that include you and that you be given a full and fair opportunity to articulate your reasons for the action at issue. Then, burden of production again shifts to the complainant to prove that the agency's articulated reasons are untrue or are a mask for prohibited discrimination.
3. During the informal counseling stage, the EEO counselor will solicit your input concerning the precomplaint. You have the right to have a representative at the interview with the counselor and at any other meeting necessary to the processing of the complaint. You may be represented by a person of your own choosing, provided that the choice of a representative does not involve a conflict of interest or conflict of position. You may not be represented by the Staff Judge Advocate or labor counselor for the activity or agency. The EEO counselor will inform you of the nature of any allegations that include you. You are reminded that the counselor must not reveal the identity of the aggrieved person when the aggrieved person has not authorized him or her to do so. You should also understand that the counseling stage is an informal process with the purpose of resolving the matters at issue. Your participation in the counseling process should serve to assist in the purpose of resolution.
4. During the U.S. Army Civilian Appellate Review Agency (USACARA) investigation, the investigator will provide you with a full and fair opportunity to state the facts as you understand them. Before your testimony or the giving of an affidavit, the investigator will allow you to review all documents or portions thereof that name or implicate you in the complaint. Such documents will be sanitized of any identifying information of persons other than yourself or the complainant. You may contact the EEO office to be informed of the progress of the investigation.
5. In preparation for and during an EEOC hearing, you shall be afforded the same opportunity to review sanitized documents and to testify for the record on any allegations that involve you.
6. If discrimination is not found, you may receive a sanitized copy of the final Army decision. If discrimination is found, the activity commander will determine the culpability of those involved. If no corrective or adverse action is proposed, you may have access to a sanitized copy of the file. If you are determined to be culpable and corrective or adverse action is proposed, you may review the entire file without deletions.
7. Any questions or need for assistance during the processing of the complaint should be addressed with the EEO officer.

Figure 2-3. Sample RMO complaint processing

SUBJECT: Notice of Final Interview

FROM EEO counselor

TO (Name of person counseled)

1. This is notice that on the above date the final counseling interview was held in connection with the matter you presented to me as an EEO counselor. You initially contacted me on **(date)** and alleged that you were discriminated against because of your **(basis)** when **(brief summary of complaint)**

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

3. This complaint must be in writing, preferably on a DA Form 2590-R, which can be obtained from the Equal Employment Opportunity Office. Your complaint must be filed in person or by mail with any of the following officials authorized to receive discrimination complaints:

a. EEO officer

(Provide address)

b. Activity commander

(Provide address)

c. Director of Equal Employment Opportunity

Department of the Army

ATTN: SEMR-RBE

WASH DC 20310-1813

d. Secretary of the Army

ATTN: SFMR-RBE

WASH DC 20310-1813

4. The formal complaint must specify the issue or issues that form the basis for the complaint and the matter or matters giving rise to the complaint that were discussed with the EEO counselor. If you add issues on which you have not been counseled, the formal complaint will be returned to you for further counseling. The complaint should also state if 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 if your complaint is appropriate for processing under section 1613, title 29, Code of Federal Regulations (CFR).

5. If you retain an attorney or any other person as a representative, you must notify the EEO officer, (Name and address), in writing.

(Signature block of EEO counselor)

Notes:

1. This notice is to be given to the person counseled at the final interview.

A copy of this notice should be kept by the EEO counselor. If a complaint is filed, a copy should accompany the EEO counselor's report on his or her counseling activities and will be made a part of the complaint file.

3. Where an aggrieved person seeks EEO counseling on a matter that may give rise to a mixed case complaint as defined in paragraph 4-2, the EEO counselor shall inform the aggrieved person of the procedures for processing mixed case complaints.

4. When counseling aggrieved persons concerning allegations of age discrimination under the Age Discrimination in Employment Act (ADEA) of 1967, as amended, EEO counselors must fully inform aggrieved persons of the procedures applicable to processing age discrimination complaints. For additional information and guidance in this regard, see 29 CFR, section 1613.501 *et seq.*

5. For information concerning the procedures applicable to filing and processing complaints under the Equal Pay Act of 1963, as amended, contact the appropriate Equal Employment Opportunity Commission district office.

6. The format of this sample notice may be modified to conform with local requirements.

Figure 2-4. Sample Notice of Final Interview

SUBJECT: Notice of Right to File a Discrimination Complaint

FROM EEO counselor

TO (Name of person counseled)

1. This is to inform you that, although my inquiry into the matter you brought to my attention has not been completed, 21 calendar days have passed since you first contacted me and you are now entitled to file a discrimination complaint based on race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal. If you do not file a complaint at this time, my counseling will continue and your right to file a complaint will continue until 15 calendar days after your receipt of the Notice of Final Interview from me. I will inform you, in writing, when the final interview is conducted.

2. If you file a complaint, it must be in writing, preferably using DA Form 2590-R, and filed in person or by mail with any of the following officials authorized to receive discrimination complaints:

a. EEO officer

(Provide address)

b. Activity commander

(Provide address)

c. Director of Equal Employment Opportunity

Department of the Army

ATTN: SFMR-RBE

WASH DC 20310-1813

d. Secretary of the Army

ATTN: SFMR-RBE

WASH DC 20310-1813

3. If you file your complaint with one of the officials listed above (other than the EEO officer) it will be sent to the activity EEO officer for processing. Therefore, if you choose to file your complaint with any of the other officials listed above, be sure to provide a copy of your complaint to the EEO officer to ensure prompt processing of your complaint.

4. The complaint must be specific and must be limited to the matters discussed with me. It must also state whether or not you have filed a grievance under a negotiated grievance procedure or an appeal to the Merit Systems Protection Board on the same matters.

5. If you retain an attorney or any other person to represent you, you or your representative must immediately notify the EEO officer, in writing. You and your representative will receive a written notice of receipt of your discrimination complaint from the appropriate Army official.

(Signature block)

EEO counselor

Notes:

1. This notice is given to the person counseled 21 calendar days after the date the counselor was first contacted on this matter by the complainant.
2. A copy of this notice will be provided to the EEO officer with the counselor's report and will be made a part of the complaint file.
3. The format of this sample notice may be modified to conform with local requirements.

Figure 2-5. Sample Notice of Right to File

SUBJECT: Notice of Receipt of Discrimination Complaint in the Complaint of *(insert name)* and *(insert name)* Secretary of the Army

FROM EEO officer
(or appropriate official)

TO (Complainant)

1. This notice acknowledges receipt on **(date)**, of your discrimination complaint dated **(date)**, and provides you a written notice of your rights and the time requirements for exercising those rights. If you have further questions, contact your EEO counselor or me.
2. If your complaint is accepted, it will be investigated. Based on the information developed by the investigation, an attempt will be made to resolve your complaint informally. You will receive a copy of the investigative report and have an opportunity to discuss it with an Army official.
3. If your complaint, or any allegation contained in it, is rejected, the rejection is considered to be a final Army decision on the complaint or that part of the complaint that is rejected. You will receive a separate written notice if your complaint, or any part of it, is rejected. You will be advised at that time of your rights of appeal.
4. If an informal adjustment or settlement of the complaint is reached, the terms of the settlement will be stated in writing and you will be given a copy.
5. If an informal adjustment or settlement of the complaint is not reached, you will be notified in writing of the proposed disposition of the complaint. You will also be notified of your right to request a hearing by an Equal Employment Opportunity Commission (EEOC) administrative judge who will recommend a decision to the Army, or to a decision by the Army on the existing complaint file without a hearing. If you want a hearing, or a decision by the Army without a hearing, you must notify the Army in writing within 15 calendar days after receiving the notice of proposed disposition of your complaint. Your request for a hearing, or for an Army decision without a hearing, must be addressed to me, so that I can make the necessary arrangements. If you request a hearing and the administrative judge determines that there are no issues of material fact, the administrative judge may issue a recommended decision without holding a hearing. Should the administrative judge make such a determination, you will be notified and provided an opportunity to respond in writing within 15 calendar days.
6. If, within 15 calendar days after you receive the proposed disposition, you fail to request a hearing or to ask for a decision by the Army without a hearing, that disposition may become the final Army decision.
7. If you are dissatisfied with the final Army decision (with or without a hearing), you may file a notice of appeal to the EEOC Office of Review and Appeals (ORA) within 20 calendar days after receiving this decision. A copy of the notice should be sent to Director, Equal Employment Opportunity Compliance and Complaints Review Agency (EEOCCRA), ATTN: SFMR-RBE, WASH DC 20310-1813. Also, you may submit a brief or statement to support your appeal to ORA within 30 calendar days after filing the notice of appeal. At the same time, you must furnish a copy of the supporting brief or statement to me and to EEOCCRA.
8. Any appeal to the EEOC should be addressed to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, Post Office Box 19848, WASH, DC 20036. The appeal and any representations in its support must be filed in duplicate.
9. Instead of an appeal to the EEOC, you may file a civil action in the proper U.S. District Court within 30 calendar days after receiving the Army decision or, if the Army has not issued a final decision on your 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 a lawyer, you may request the court to appoint a lawyer to represent you. 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. Any such request must be made within the above referenced 30-day time limit for filing suit and in such form and manner as the court may require.
10. You are further notified that if you file a civil action, you must name the appropriate department head or agency head as the defendant and to 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 Secretary of the Army.
11. If you decide to appeal to the ORA, you will still have an opportunity to file a civil action in U.S. District Court within 30 calendar days after receiving EEOC's final decision, or 180 calendar days after the date of your initial appeal to the EEOC if the EEOC has not rendered a final decision.

Figure 2-6. Sample Notice of Receipt—Continued

(Signature block of EEO officer or appropriate official)

Notes:

1. The date of receipt (filing date) is the date the complaint was personally delivered or postmarked if addressed to an official designated to receive complaints.
2. The notice is sent by certified mail, return receipt requested, or personally delivered to both complainant and his or her representative. If the notice is personally delivered, the complainant and his or her representative will acknowledge receipt by signing and dating the official file copy of the notice. If he or she declines to sign the copy, the server will sign it and indicate to whom and when the notice was served. Complainant and his or her representative will acknowledge receipt by signing and dating the official file copy of the notice. If he or she declines to sign the copy, the server will sign it and indicate to whom and when the notice was served.
3. A copy of the notice given to the complainant will be filed in the complaint file.
4. In age discrimination cases, references to the right to file a civil action will specify that the complainant can file a civil action in a U.S. District Court 30 days after providing a written notice to the EEOC of his or her intent to file a civil action. Such notice must be given to the EEOC within 180 days of the occurrence of the alleged discriminatory act. If a complainant elects to pursue his or her age discrimination complaint through the administrative procedure, then he or she may not file a civil action in a U.S. District Court until all administrative remedies have been exhausted. For additional information concerning the processing of age discrimination complaints under the Age Discrimination in Employment Act (ADEA) of 1967, as amended, see 29 CFR, section 1613.501 *et seq.*
5. In mixed case complaints, certain language in the sample notice, including that concerning appeal from the final agency decision, must be modified to comport with the procedures set forth in 29 CFR, section 1613.405(e). For additional information concerning processing mixed case complaints, see 29 CFR, section 1613.401 *et seq.*
6. The format of this sample notice may be modified to conform with local requirements.

Figure 2-6. Sample Notice of Receipt

SUBJECT: Notice of Acceptance of Discrimination Complaint in the Complaint of *(insert name)* and *(insert name)* Secretary of the Army

FROM EEO officer (or appropriate official)

TO (Complainant)

1. This refers to your discrimination complaint (date) and received on (date). You alleged that you were a victim of (SPECIFY) discrimination in the following action or actions: (SPECIFY THE FACTS THAT ARE THE BASIS OF THE DISCRIMINATION COMPLAINT.) Receipt of your complaint was acknowledged by my letter to you (and/or your representative) dated (date).
2. Based on my review of your complaint and conditioned upon a final decision by the Secretary of the Army, or his or her designee, I have accepted the following issue or issues for investigation:
 - a.
 - b.
 - etc.
3. If you believe that the issue or issues in your complaint has or have not been correctly identified, please notify me, in writing, within (number of days) calendar days after you receive this letter, and specify why you believe that the issue or issues has or have not been correctly identified.
4. Your 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.

(Signature block of EEO officer or appropriate official)

Notes:

1. The notice is sent by certified mail, return receipt requested, or personally delivered to both complainant and his or her representative. If the notice is personally delivered, the complainant and his or her representative will acknowledge receipt by signing and dating the official file copy of the notice. If either party declines to sign the copy, the server will sign it and indicate to whom and when the notice was served.
2. If the complainant responds and the parties are not in agreement on the identification and scope of the issue or issues, issue another notice referencing the disagreement and setting forth the issue or issues finally accepted and/or rejected by the activity, including notice to the complainant of his or her appeal rights.
3. A copy of the notice or notices and evidence of receipt by complainant and his or her representative will be made a part of the complaint file.
4. The processing of mixed case complaints is governed by 29 CFR, section 1613.401 *et seq.* The specific procedures for processing mixed case complaints are set forth in section 1613.405(e). The notice of acceptance of a mixed case complaint for processing pursuant to 29 CFR, section 1613.405(e), should include the sample notice set forth in paragraph 5, appendix D.
5. The format of this sample notice may be modified to conform with local requirements.

Figure 2-7. Sample Notice of Acceptance

SUBJECT: Notice of Rejection of Discrimination Complaint in the Complaint of *(insert name)* and *(insert name)* Secretary of the Army

FROM EEO officer (or appropriate official)

TO (Complainant)

1. This refers to your discrimination complaint dated *(date)* and received on *(date)*. You alleged that you were a victim (SPECIFY) of discrimination in the following action or actions: (SPECIFY THE FACTS THAT ARE THE BASIS OF THE DISCRIMINATION COMPLAINT). Receipt of your complaint was acknowledged by my letter to you (and/or your representative) dated *(date)*.
2. Based on my review of your complaint, I have decided to reject your complaint for the following reason or reasons:
 - a. An authorized ground or grounds for rejection under section 1613.215, title 29, Code of Federal Regulations (CFR).
 - b. A previously filed Merit System Protection Board appeal concerning the same subject matter (29 CFR, section 1613.405(a)).
3. This is the final Army decision on your complaint. If you are dissatisfied with the decision to reject your complaint, you have the following appeal rights: (See sample appeal rights.)

(Signature block of EEO officer or appropriate official)

Notes:

1. Under 29 CFR, section 1613.405(a), whenever the Army is presented with a mixed case complaint concerning an action that has previously been appealed by the complainant to the MSPB, the Army must reject the complaint, regardless if the allegations of discrimination raised in the mixed case complaint were raised in the previous appeal to the MSPB. As part of the written decision rejecting such a complaint, the complainant must be advised that he or she must bring the allegation of discrimination contained in the rejected complaint to the attention of the MSPB pursuant to section 1201.155, title 5, Code of Federal Regulations, Army Regulation 690–600, appendix D, para D–2.
2. In age discrimination cases, references to the right to file a civil action should specify that the complainant may file a civil action in a U.S. District Court 30 days after providing a written notice to the EEOC of his or her intent to file a civil action. Such notice must be given to the EEOC within 180 calendar days of the occurrence of the alleged discriminatory act. For additional information concerning the processing of age discrimination complaints under the Age Discrimination in Employment Act (ADEA) of 1967, as amended, see 29 CFR, section 1613.501 *et seq.*
3. The format of this sample notice may be modified to conform with local requirements.

Figure 2-8. Sample Notice of Rejection

SUBJECT: Negotiated Settlement Agreement in the Matter of:

(Name) Complainant

and (Name of organization)

1. In the interest of promoting its Equal Employment Opportunity Program and to avoid protracted litigation, the Army agrees to settle the above-captioned complaint on the basis shown below.
2. By entering this settlement, the Army does not admit that it has violated title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended or the Age Discrimination in Employment Act, as amended, or any other Federal or State statute or regulation.
3. The Army agrees to (specify remedy to be provided, process by which remedy is to be provided, and timeframes for completion).
4. The complainant agrees to (specify and add timeframes for completion, if appropriate).
5. Complainant's signature on this agreement constitutes full and complete settlement of his or her complaint. In addition, the complainant agrees that he or she waives his or her right to sue over the matters raised in this complaint and that they will not be made the subject of future litigation.
6. If the complainant believes that the Army has failed to comply with the terms of this settlement agreement, the complainant shall notify the EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. A copy should also be sent to the activity EEO officer. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, the complaint be reinstated for further processing from the point processing ceased under the terms of this settlement agreement. If the EEOCRA 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 for a determination as to whether or not the Army has complied with the terms of this settlement agreement. The complainant may file such an appeal 35 days after service of the allegation of noncompliance upon EEOCRA but no later than 20 calendar days after receipt of the Army determination.
7. I have read the negotiated settlement agreement and agree to accept its provisions.

ComplainantFor the Army

(Complainant's signature)(Appropriate signature)

(Date)(Date)

(Signature of complainant's representative, if any)

(Date)

Notes:

1. If the settlement offer constitutes full relief and has been certified by EEOCRA, the certification along with the 15-day notice must be attached to the settlement offer. (See fig 2-11.)
2. Timeframes for completion should be included to ensure prompt compliance and, if the complainant later requests reinstatement, for noncompliance. In that event, complainant has 30 days from the dates specified in the timeframes.
3. To ensure that the terms of the agreement are carried out, the activity should designate an official responsible for implementation. This may be the EEO officer or the labor counselor, as appropriate.

Figure 2-9. Sample Negotiated Settlement Agreement

SUBJECT: Notice of Proposed Disposition in the Complaint of *(insert name)* and *(insert name)* Secretary of the Army. Docket number:

FROM Appropriate Army official

TO (Complainant)

1. This notice is to inform you of the proposed disposition of your discrimination complaint and of your rights if you are dissatisfied with the proposed disposition.

a. Proposed disposition. (State the specific proposed disposition of the complaint. In most cases, this includes a legal analysis of the complaint, discussion of the facts and evidence, a finding on the issue of discrimination, and a statement of proposed remedial action, if applicable.)

b. Right to request a hearing.

(1) If you are dissatisfied with the proposed disposition, you may request a hearing by an Equal Employment Opportunity Commission (EEOC) administrative judge and a final decision by the Army if you notify the EEO officer (provide specific mailing address), within 15 calendar days after receiving this notice, that you desire such a hearing.

(2) If you request a hearing, you are expected to proceed without delay in presenting your complaint before the assigned EEOC administrative judge. If you plan to have a representative, you should immediately obtain representation and you should also begin preparing a list of proposed witnesses with a summary of the testimony you believe each would present at the hearing. The administrative judge will request this list after being assigned to your case. If you request a hearing and the administrative judge determines that there are no issues of material fact, the administrative judge may issue a recommended decision without holding a hearing. Should the administrative judge make such a determination, you will be notified and provided an opportunity to respond in writing within 15 calendar days.

(3) The failure to prosecute your complaint in a timely manner may be grounds for the administrative judge to return your case to the Army. The Army may then issue a final decision based on the evidence present in the complaint file.

c. Right of decision without a hearing. If you are dissatisfied with the proposed disposition, you may request a decision by the Secretary of the Army, or his or her designee, without a hearing, based on the evidence present in the complaint file. This request must be made to (activity EEO officer) within 15 calendar days after receiving this notice.

d. Right of appeal. If you fail to notify the EEO officer of your intentions within the 15-day period, I or my designee may adopt as the Army final decision the proposed disposition shown above, and will so notify you in writing. Upon receiving such notification, you may file a notice of appeal to the EEOC, Office of Review and Appeals, within 20 calendar days. You may also submit a brief or statement to the EEOC in support of your appeal within 30 calendar days after filing the notice of appeal. You must furnish the Director, Equal Employment Opportunity Compliance and Complaints Review Agency (EEOCCRA), ATTN: SFMR-RBE, WASH DC 20310-1813, and the EEO officer with a copy of any such brief or statement within the 30-calendar-day period. Instead of an appeal to the EEOC, you may file a civil action in the proper U.S. District Court within 30 calendar days after you receive the final Army decision or, if the Army has not issued a final decision after 180 calendar days from the date you filed your formal complaint.

2. If you appeal to the EEOC, you may still file a civil action within 30 calendar days after receiving the EEOC decision. You may also file a civil action 180 days after your appeal to EEOC if you have not received a decision.

3. You are further notified that if you file a civil action, 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 Secretary of the Department of the Army is *(insert name)*.

(Signature block)

(Appropriate agency official)

Note:

A copy of the notice given to the complainant will be filed in the complaint file. In age discrimination cases, references to the right to file a civil action will specify that the complainant may file a civil action in Federal District Court only after all administrative remedies have been exhausted.

Figure 2-10. Sample Notice of Proposed Disposition

SUBJECT: Army Offer of Full Relief in Settlement of Complaint of *(insert name)* and *(insert name)*, Secretary of the Army Docket number: 00-00-0000

From EEO officer **Date:**

(or appropriate official)

TO (Complainant)

1. This refers to your discrimination complaint dated *(date)*, in which you allege that you were discriminated against because of your *(insert basis or bases)* when *(insert brief statement of complaint)*. As relief in that complaint you requested *(insert brief statement of requested relief)*.

2. The regulation of the U.S. Equal Employment Opportunity Commission in section 1613.215(a)(7), title 29, Code of Federal Regulations (CFR), provides as follows:

Section 1613.215, Rejection or cancellation of complaint.

(a) The agency head or designee shall reject or cancel a complaint:.

(7) If the complainant refuses within 15 calendar days of receipt of an offer of settlement to accept an agency offer of full relief in adjustment of the complaint, provided that the agency's Director of Equal Employment Opportunity, or a designee reporting directly to the Director, has certified in writing that the agency's written offer of relief constitutes full relief. The offer need not contain the decision whether disciplinary action is necessary, but the basis for the decision shall be recorded separately from the complaint file.

3. Your complaint and your request for relief have been carefully reviewed, and in order to settle your complaint, the *(insert name of agency)* is making the following offer a full relief under 29 CFR, section 1613.215(a)(7):

(Describe the elements of full relief offered by the agency and if any relief requested by the complainant cannot be granted, explain why.)

4. As required by section 1613.215(a)(7), the Director of Equal Employment Opportunity, or the designee reporting directly to the Director, has certified in writing (certification attached) that the above offer of full relief constitutes an offer of full relief in your complaint and is the appropriate relief in section 1613.271. You may accept or reject this offer.

5. You may accept this offer of full relief in settlement of your complaint within 15 calendar days of your receipt of the offer. Your written acceptance of the offer of full relief must be submitted to me at *(insert complete mailing address)* within the above time limit.

6. If you refuse to accept this offer of full relief within 15 calendar days, your complaint will be canceled. The agency's decision to cancel your complaint will be transmitted by letter to you and your representative and will inform you of your right to appeal the decision to the Equal Employment Opportunity Commission, the time limit for filing an appeal with the EEOC, and of your right to file a civil action as described in section 1613.281.

7. If you have any questions concerning this offer of full relief, you may contact me by telephone at *(phone number)*, or in writing at the above address. Please be advised, however, that any such inquiry will not serve to extend the 15-calendar-day period you have to accept the offer.

Sincerely,

(Signature block of EEO officer or appropriate official)

Enclosure: Certification of full relief

Note:

A copy will be provided to complainant's representative, if applicable.

Figure 2-11. Sample Army Offer of Full Relief Letter

Chapter 3

Class Complaints of Discrimination

3-1. General guidance

a. An employee or applicant who wishes to be an agent for a class and who believes the class has been discriminated against because of race, color, religion, sex, national origin, age, and physical or mental handicap in an employment matter controlled by the Army, may file a class complaint of discrimination. An agent must be a member of the class and must allege that he or she has been personally harmed by a personnel policy or practice.

b. EEO personnel trained in handling class complaints serve as the counselors for complaints.

3-2. Precomplaint processing

a. An employee or applicant for employment who wishes to be an agent in a class complaint must consult with the responsible activity's designated EEO counselor for class complaints. Contact must be made within 30 calendar days from one of the following dates:

(1) The date of the matter giving rise to the allegation of individual discrimination.

(2) The effective date of a personnel action.

(3) The date that the aggrieved person became aware or reasonably should have become aware of the alleged discriminatory event or personnel action.

b. The counselor shall advise all aggrieved persons orally and in writing of the following:

(1) The discrimination complaint procedures. The summarized step-by-step procedure at table 3-1, and the flowchart at figure 3-1 may be reproduced locally and used as handouts.

(2) The criteria for the acceptance of class complaints.

(3) The aggrieved person's right to be represented throughout the precomplaint and complaint process.

(4) The aggrieved person's right to anonymity during the precomplaint process unless disclosure is authorized by the aggrieved person or a formal complaint is filed.

(5) The complaint shall be terminated should the agent file a civil action in U.S. District Court based on the same allegation of discrimination.

c. EEO counselor duties. The EEO counselor will—

(1) Make whatever inquiry is necessary to clarify and define the issues.

(2) Address, in the counselor's report, each of the criteria for acceptance listed at paragraph 3-6.

(3) Counsel the aggrieved person concerning the issues involved.

(4) Inform the EEO officer, the CPO, the labor counselor, and other affected officials when corrective action is believed necessary.

(5) Attempt informal resolution through discussions with appropriate officials of the responsible activity.

(6) Keep records of all counseling activities.

(7) Summarize, in writing, actions and advice given, if any, concerning the issues in the personnel management policy or practice.

(8) Provide sufficient information to the EEO officer so that he or she may notify by FAX or electrical transmission the Director, EEOCRA (EEOCRA/SFMR-RBE/WASH DC 20310-1813) and OTJAG (DAJA/LTC/WASH DC 20310-2210), within 5 calendar days after the start of precomplaint processing. The information provided must identify precisely all matters raised in the complaint. The right of anonymity during the precomplaint process will be observed unless disclosure is authorized by the class agent. If possible, the counselor should reach a mutual agreement with the class agent and his or her representative, if any, as to the specific issues to be considered. This agreement will be in writing and signed by the parties concerned with a copy provided to the class agent and his or her representative. Information provided to the Director, EEOCRA, will identify precisely all matters raised in the complaint, except that anonymity during the precomplaint process will be observed, unless disclosure is authorized by the class agent.

(9) Conduct the final interview and terminate counseling with the class agent not later than 30 calendar days after the date on which the allegation was first called to the counselor's attention. This interview will take place whether or not the matter has been resolved. At this final interview the counselor informs the aggrieved person in writing that—

(a) Counseling is over.

(b) The class agent has the right to file a formal class complaint of discrimination within 15 calendar days of receipt of the notice to file a class complaint.

(c) The class agent must immediately inform the EEO officer if he or she obtains legal or other representation.

(d) A formal complaint must specifically describe the acts of alleged discrimination.

(e) Only matters discussed with the EEO counselor will be considered in a formal complaint.

(10) Avoid influencing the class agent in any way regarding filing or not filing a class complaint.

(11) Not reveal the identity of the class agent during the precomplaint processing stage, except when authorized to do so by the class agent.

(12) Prepare and submit a counselor's report to the activity EEO officer within 5 calendar days after the final interview.

3-3. Filing a formal class complaint

a. The complaint must be filed, in writing, by the class agent or a representative and be signed by the class agent.

b. It must describe specifically the policy or practice that gave rise to the complaint and the resultant personnel action or matter that harmed the class agent.

c. It must be filed no later than 15 calendar days after the class agent has received the notice of right to file a complaint. For that purpose, the complaint will be deemed timely if it is postmarked before the expiration of the 15-day filing period, or if no legible postmark, it is received by mail within 5 days from the expiration of the 15-day filing period.

d. Persons to whom class complaints may be submitted are as follows:

(1) Activity EEO officer.

(2) Activity commander.

(3) Director of Equal Employment Opportunity.

(4) Secretary of the Army.

e. EEO activity posters and similar publications and the EEO counselor will request the class agent to submit a copy of his or her class complaint to the responsible activity EEO officer in every case. Any of the officials listed above will immediately transmit the complaint by the fastest means possible to the responsible activity EEO officer, indicating the date of receipt of the complaint if it is not postmarked.

f. At all stages, including counseling, in the preparation and presentation of a complaint, the class agent will have the right to be represented, accompanied, and advised by a representative of his or her own choosing, provided the choice does not involve a conflict of interest or position. The designation of the representative must be made in writing and made part of the class complaint file.

g. If the agent is employed by the Army in pay status, he or she will have a reasonable amount of official time to prepare his or her complaint. If the agent is an Army employee and designates another Army employee as his or her representative, the representative will have a reasonable amount of official time, if otherwise on duty, to prepare the complaint whenever representation is not inconsistent with the performance of the representative's duties. (See para 7-6.) 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. Army employees who

represent non-Army employees in a complaint will be granted, at their request, a reasonable amount of annual leave or leave without pay for this purpose.

h. Upon receipt of the class complaint, the responsible EEO officer will immediately send a copy of the complaint to EEOCCRA, ATTN: SFMR-RBE, WASH DC 20310-1813, and OTJAG, ATTN: DAJA/LTC, WASH DC 20310-2210. Receipt of the complaint will be acknowledged, in writing, by EEOCCRA. The acknowledgment will contain a docket number assigned to the case that will be used in processing the class complaint.

3-4. Captioning class complaint correspondence

The appropriate complaint caption will be placed on all documents and correspondence relating to the complaint. All complaints accepted by the EEO officer for processing will be captioned so as to identify the class or agents, the name of the head of the department, his or her official title, and the Army docket number. (See captions on sample notices at end of chap 2.)

3-5. Designating the Army representative

The activity labor counselor should be designated by the activity commander as the Army representative. At the request of the labor counselor, the activity commander may also appoint a personnel specialist or other activity personnel to assist the labor counselor.

3-6. Criteria for acceptance

A class complaint or any part of it may be accepted unless one or more of the following applies:

- a. Refers to a situation over which the Army has no jurisdiction.
- b. Is not based on the class or agent's race, color, religion, sex, national origin, age, and/or physical or mental handicap. Complaints of discrimination because of age are accepted only if the class agent alleges that the policy or practice being complained of discriminates against class members who were at least 40 years of age when the discriminatory action occurred.
- c. Consists of allegations identical to those made in a previous class complaint, filed for the same class, that is pending or has been resolved by the Army or other proper authority.
- d. Is untimely.
- (1) Class complaints must be brought to the attention of an EEO counselor within 30 calendar days after the incident, the effective date of a personnel action, or the date that the aggrieved person became aware or reasonably should have become aware of the discriminatory event or personnel action.
- (2) Formal class complaints must be filed within 15 calendar days after the receipt of notice of right to file a formal complaint, or if, in the absence of a legible postmark, it is received by mail within 5 days from the expiration of the filing period.
- e. Lacks specificity and detail.
- f. Was not filed in writing, or was not signed by the class agent.
- g. Designates a class that is small enough that a consolidated complaint of the members of the class would be practical. (See para 2-9.)
- h. Alleges no questions of fact common to the class.
- i. Asserts claims of the class agent that are not typical of the claims of the class.
- j. Specifies a class agent or representative that will not protect the interests of the class fairly and adequately.

3-7. Acceptance, rejection, or cancellation of the formal complaint

- a. The activity EEO officer will review the class complaint, along with the EEO counselor's report and all other available evidence relevant to the acceptance of the class status of the complaint as specified in paragraph 3-6. The EEO officer will coordinate with the servicing legal office and CPO for their comments and forward the class complaint to the EEOC administrative judge in accord with b below.
- b. The EEO officer must forward the following items to the EEOC district office having geographic jurisdiction over the activity

(see app C) within 10 calendar days after receipt of the class complaint.

- (1) The class complaint.
- (2) The EEO counselor's report.
- (3) Any other information that may help the EEOC administrative judge determine if the complaint meets the criteria for acceptance specified in paragraph 3-6.
- (4) Any brief prepared by the labor counselor regarding the acceptability of the class status of the complaint. At the request of the labor counselor, a personnel specialist may be appointed to assist the labor counselor in the preparation of the brief.
- (5) A written instruction that the EEOC administrative judge send the recommended decision to accept, reject, or cancel the class complaint directly to EEOCCRA, ATTN: SFMR-RBE, WASH DC 20310-1813. If the administrative judge sends the recommended decision to the activity rather than to EEOCCRA as requested, the EEO officer will immediately return the file to the EEOC by certified mail, return receipt requested, with instructions to transmit it to the Director, EEOCCRA, ATTN: SFMR-RBE, WASH DC 20310-1813. If the activity fails to properly request that the recommended decision be sent to the EEOCCRA and the administrative judge sends the recommended decision to the activity rather than to the EEOCCRA, the activity EEO officer will immediately forward the file to the EEOCCRA by certified mail, return receipt requested. The activity EEO officer will telephonically notify the EEOCCRA should this arise.
- c. If an allegation is not included in the EEO counselor's report, the EEOC administrative judge gives the class agent 15 calendar days to explain whether or not it was discussed and, if not, the reason it was not discussed. If the explanation is not satisfactory, the administrative judge may recommend that the Army reject the allegation. If the explanation is satisfactory, the administrative judge may refer the allegation back to the EEO counselor for further counseling of the agent.
- d. If an allegation is not specific and lacks detail, the administrative judge gives the agent 15 calendar days to correct it. If the agent does not provide the required information within that time, the administrative judge may recommend that the Army reject the complaint. If the information provided raises new allegations outside the scope of the complaint, the administrative judge advises the agent on how to file an individual or class complaint based on these allegations.
- e. The administrative judge may recommend that the Army extend the time limits for filing a complaint and for consulting with an EEO counselor. This may be done when the agent or the representative establishes either of the following:
 - (1) The class agent was not notified of the prescribed time limits and was not otherwise aware of them.
 - (2) The class agent was prevented by circumstances beyond his or her control from acting within the time limits.
- f. The administrative judge may recommend that the Army cancel a complaint if the agent fails to prosecute the complaint. This action may be taken when the agent fails to respond, within 15 calendar days, to a written request from the administrative judge to give information or to proceed with the complaint. No complaint may be canceled unless the class agent is first notified, in writing, that failure to proceed within a specified time may result in cancellation of the class complaint.
- g. When requesting information under d or e above, the administrative judge informs the class agent that the complaint may be rejected if the information is not provided.
- h. The administrative judge's written recommendation to accept, reject, or cancel a class complaint is sent to the Director, EEOCCRA, the class agent, and the agent's representative.
- i. Upon receiving the administrative judge's recommendation, the EEOCCRA reviews the recommendation and the case file and recommends to the Secretary of the Army, or his or her designee, whether to accept, reject, or cancel the class complaint.
- j. The Secretary of the Army, or his or her designee, will notify the class agent, the agent's representative, and the administrative judge of the Army decision and will send a copy of the notice to the

MACOM, the sub-MACOM, if applicable, and the activity EEO officer.

k. The notice of decision to reject or cancel must inform the class agent of all of the following:

(1) The agent's right to proceed with an individual complaint of discrimination.

(2) The agent's right to appeal the Army decision to the EEOC Office of Review and Appeals.

(3) The agent's right to file a civil action. In age discrimination complaints, the agent must exhaust his or her administrative remedies before he or she may file a civil action. No firm guidance is available as to what constitutes an exhaustion of administrative remedies in an age complaint. Advise complainants to seek competent legal advice based on the facts of their particular case or cases and the jurisdiction involved. (See app B, fig B-5.)

l. The administrative judge's recommendation to accept, reject, or cancel the complaint becomes the Army decision unless it is accepted, modified, or rejected by the Secretary of the Army, or his or her designee, within 30 calendar days after its receipt.

1.. Acceptance of a class complaint by the Secretary of the Army, or his or her 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.

3-8. Notification and opting out

a. Upon notification of acceptance of a class complaint, the activity EEO officer will, within 15 calendar days, make reasonable efforts to notify all class members of the existence of a class complaint. The notice will advise class members of their right to remove themselves from the class by notifying the Army within 30 calendar days after the notice is issued. The EEO officer will determine the reasonable means of notifying the class members, such as delivery, mailing, distribution, or posting.

b. The notice will contain the following information:

(1) The name of the agency or organizational segment, its location, and the date the class complaint was accepted by the Army.

(2) A description of the issues accepted in the class complaint.

(3) A statement that class members may remove themselves from the class by notifying the activity EEO officer within 30 calendar days after the notice is issued.

(4) An explanation of the binding nature of the final decision on, or resolution of, the complaint.

3-9. Avoiding delay

A class complaint must be processed promptly. All parties will proceed with the complaint so that the complaint is processed without undue delay.

3-10. Developing evidence

a. The administrative judge gives the labor counselor and the class agent and his or her representative, if any, 60 calendar days to prepare their cases and to develop the evidence based on EEOC regulations. The administrative judge may extend this time if requested by either party.

b. During the time allowed for developing the evidence, the administrative judge may, at his or her discretion, direct that an investigator trained or certified by the EEOC, investigate facts relevant to the class complaint or to any portion of it. If this occurs, the labor counselor will immediately notify the EEO officer who will request, in writing, within 3 days of receipt of the administrative judge's directive, assignment of an investigator by the appropriate USACARA regional office citing applicable funds for travel and per diem.

c. Both parties will give the administrative judge all materials that they wish examined and other material the administrative judge may request. Otherwise, the administrative judge may—

(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) Exclude other evidence offered by the party who fails to produce the requested information.

(4) Take such other actions as is deemed appropriate.

3-11. Resolution of the complaint

a. The administrative judge gives the class agent, or his or her representative, and the labor counselor a copy of all materials obtained. Also, the administrative judge provides an opportunity for the class agent to discuss these materials with the labor counselor and 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 as long as the agreement is fair and reasonable.

c. If the complaint is settled, the terms of settlement will be put in writing and signed by the class agent and the activity commander, after coordination with the EEO officer, the labor counselor, and the CPO. A written settlement agreement may include a finding on the issue of discrimination and an award of attorney fees or costs. It must also include any corrective action agreed on. The corrective action must be consistent with the law, executive orders, negotiated agreements, and Federal regulations, rules, and instructions. A copy of the signed settlement agreement will be given to the class agent and his or her representative, if applicable.

d. Notice of the settlement will be given to all class members in the same way as the notification of the acceptance of the class complaint. This notice will state the terms of the corrective action, if any, to be granted by the Army. A settlement binds all members of the class, except in cases where the settlement agreement benefits only the class agent or is otherwise alleged to be unfair or unreasonable. In that case, any member of the class may petition the Army Director of EEO within 30 calendar days after the date of the notice of settlement to replace the class agent. The petition will be processed in accord with paragraph 3-7. If it is found that the settlement is not fair and reasonable and that the petitioner satisfied the requirements of a class complaint, the administrative judge will recommend:

(1) The petitioner replace the original class agent.

(2) The petitioner act for the class during processing of the complaint.

f. Acceptance of a petition under this subparagraph vacates any agreement between the former class agent and the Army.

g. An Army decision on such a petition will inform the agent and the petitioner of the right to appeal the decision to the EEOC Office of the Review and Appeals.

h. Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. If the agent believes that the Army has failed to comply with the terms of the settlement agreement for reasons not attributable to acts or conduct of the agent, his or her representative, or class members, the agent will notify the Director, EEOCRA, ATTN; SFMR-RBE, WASH DC 20310-1813, in writing, of the alleged noncompliance within 30 days of when the agent knew, or should have known, of the alleged noncompliance. A copy should also be sent to the activity EEO officer. The agent 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 processing ceased under the terms of the settlement agreement. The Army Director of EEO, or his or her designee, will respond in writing to the agent's written allegations of noncompliance within 30 days from the date that the allegations of noncompliance are received. If the Army Director of EEO, or his or her designee, has not responded to the agent in writing, or if the agent is not satisfied with the attempts to resolve the matter, the agent may petition the EEOC's Office of Review and Appeals for a determination as to whether or not the Army has complied with the terms of the settlement agreement. The agent may file such an appeal 35 days after service of the allegations of noncompliance but no later than 20 calendar days after receipt of the Army determination. Before rendering its determination, the EEOC may request

that the parties submit whatever additional information or documentation it may deem necessary and it may direct that an investigation or hearing on the matter be conducted. If the EEOC determines that the agreement has not been complied with, it may order such compliance or it may order that the complaint be reinstated for further processing from the point processing ceased under the terms of the settlement agreement.

3-12. Procedures for the hearing

a. At the end of the period allowed for preparing the case, the administrative judge will set a date for a hearing. The hearing will be conducted in accordance with paragraph 2-15. Witnesses and representatives at the hearing are authorized as provided for in chapter 7. Only persons directly connected to the complaint (as determined by the administrative judge) may attend the hearing.

b. The administrative judge will conduct the hearing and give the parties an opportunity to introduce evidence and cross-examine witnesses. Testimony will be under oath or affirmation. Rules of evidence are not applied strictly, but the administrative judge may exclude irrelevant or unduly repetitious evidence. The administrative judge may also exclude any person from the hearing for conduct that obstructs the hearing.

c. The hearing is recorded verbatim and the transcript is made a part of the record. The administrative judge sends to the EEOCRA the record of the hearing, the report of findings, and a recommended decision on the complaint. This decision includes corrective action where appropriate. The administrative judge notifies the class agent of the date the report of findings and recommendations was sent to the EEOCRA.

3-13. Final Army decision

a. Within 60 calendar days after the Army receives the administrative judge's report, the Secretary of the Army, or his or her designee, must issue a written decision to accept, reject, or modify the findings and recommendations. If the Army has not issued a decision with 60 calendar days after receiving the administrative judge's report, the findings and recommendations of the administrative judge will become the final Army decision.

b. If the Army decision is to reject or modify the findings and recommendations of the administrative judge, the decision must state, in detail, the specific reasons for the Army action.

c. The decision is sent by certified mail, return receipt requested, to the class agent and to his or her representative, with a copy of the transcript of the hearing and of the findings and recommendations of the administrative judge. The decision may also be personally delivered to the complainant and the representative by an Army official. If so, the complainant and the representative acknowledge receipt by signing and dating the official copy to whom and when the decision was served. The receipt of the signed copy is filed in the complaint file. A copy of the final Army decision will be sent to the MACOM, the sub-MACOM, if appropriate, and to the activity EEO officer.

d. Within 10 calendar days of the transmittal of the final Army decision to the class agent, the EEO officer will notify all members of the class of the final Army decision by the same means used to notify the class of the existence of the class complaint. (See para 3-8a.)

e. The final Army decision will direct any remedial action authorized by law determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of EEO. When discrimination is found, the notice of decision will—

(1) Advise the class agent and his or her representative, if any, that attorney fees or costs may be awarded. Attorney fees or costs are not payable in administrative complaints of age discrimination.

(2) State that a request for such award must be filed within 20 calendar days after receipt.

(3) List the documents that must be sent with the request. (See para 5-4.)

f. The notice of decision must inform the class agent and his or her representative, if any, of the right to appeal the Army decision

to the EEOC Office of Review and Appeals, of the right to file a civil action, and of the applicable time limits. (For details on appeals and civil actions, see chap 6.)

g. A final Army decision on a class complaint filed under this regulation is binding on the Army and all members of the class, except those who have properly removed themselves from the class.

3-14. Corrective action

a. If discrimination is found, the Army must eliminate or change the personnel policy or practice that gave rise to the complaint, so that the policy or practice will no longer cause such discrimination. Also, the Army must provide individual remedial action to the class agent, including an award of attorney fees or costs, as appropriate, as provided in chapter 5. (The Army must fulfill obligations to consult or negotiate, as applicable, with the unions that have exclusive recognition, before doing away with or changing personnel policies or practices.)

b. If discrimination is found and a class member believes that, but for the discrimination, he or she would have been given employment or an employment benefit, the class member may file a written claim within 30 calendar days with any of the following persons:

(1) Activity EEO officer.

(2) Director of EEOCRA.

(3) Director of Equal Employment Opportunity.

(4) Secretary of the Army. The claim will be filed within 30 calendar days after the notification.

c. The claim must include details showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice within no more than 135 calendar days before the class complaint was filed.

d. The Army will try in good faith to resolve the claim within 60 calendar days after the date the claim was postmarked, or, in the absence of a legible postmark, within 60 calendar days after the date it was received by an official with whom a claim may be filed. If the Army and the claimant do not agree that the claimant is a member of the class, or do not agree on the relief to which the claimant is entitled, the Army will refer the claim, with its recommendations, to the administrative judge.

e. The administrative judge will notify the claimant of the right to a hearing on the claim and will give the parties to the claim an opportunity to submit evidence and representations on the claim. If a hearing is requested, it will be conducted in accord with paragraph 2-15. If a hearing is not requested, the administrative judge, however, at his or her discretion, may hold a hearing to obtain the necessary evidence on the claim.

f. The administrative judge will issue a report of findings and recommendations on the claim to the Director, EEOCRA. The Army will issue a final decision within 60 calendar days of receipt of the administrative judge's report. If a decision is not issued within 60 calendar days, the administrative judge's findings and recommendations shall become the final decision.

g. If the administrative judge determines that the claimant is not a member of the class, or that the claim was not filed in a timely manner, he or she will recommend rejection of the claim and give notice of this action to the Army, the claimant, and the claimant's representative. The notice will inform the claimant of the right to appeal to the EEOC Office of Review and Appeals, or to file a civil action in accord with chapter 6.

3-15. The complaint file

The complaint file will be indexed and tabbed on the right side only and punched with a standard three-hole punch on the left side. The file will be tabbed in reverse chronological order and will contain legible copies of the documents listed in paragraph 7-9.

Table 3–1
Steps in class complaints of discrimination

Action	Time limits
1. Class agent contacts EEO counselor about class complaint.	Within 30 calendar days after alleged discriminatory matter, personnel action, or the date that the aggrieved person became aware, or reasonably should have become aware, of the discriminatory event, or personnel action.
2. EEO counselor makes inquiry, attempts informal resolution, and conducts final interview. Informs class agent, in writing, of right to file formal complaint.	Within 30 calendar days after contact by class agent.
3. Class agent files formal complaint with EEO officer. Notifies EEO officer if legal representation is obtained.	Within 15 calendar days after receiving notice of final interview.
4. EEO officer coordinates with labor counselor on class status of complaint.	
5. EEO officer sends complaint file, including a brief if deemed necessary, to EEOC district office for assignment of administrative judge.	Within 10 calendar days after receiving complaint.
6. Allegations not discussed with EEO counselor or nonspecific allegations returned or nonspecific allegations are returned by EEOC administrative judge for additional information.	Within 15 calendar days for response from activity or class agent.
7. Administrative judge recommends to the Secretary of the Army or his or her designee, to accept, reject or cancel complaint. Sends copy to agent.	
8. Secretary of the Army, or his or her designee decides to accept, reject, or cancel complaint. If decision is to reject or cancel, advises class agent of right to file individual complaint and appeal to EEOC.	EEOC recommendation becomes Army decision unless Secretary of the Army, or designee, rejects or modifies it within 30 calendar days after receipt.
9. If complaint accepted, the EEO officer notifies all class members of existence of class complaint and right to opt out. Activity commander designates Army representative.	Within 15 calendar days after acceptance.
10. Class members may opt out. (Final decision binding on all members who do not opt out.)	Within 30 calendar days after issuance of notice.
11. All parties to complaint develop evidence and send it to EEOC. Administrative judge may direct investigation.	Within 60 calendar days after notification by the EEOC administrative judge.
12. Direct informal resolution, attempted by class agent and Army.	
13. If no resolution, hearing by EEO administrative judge.	
14. EEOC administrative judge's findings and recommendations forwarded to EEOCCRA.	
15. Final Army decision. Agent informed of right to appeal to EEOC and file civil action in Federal District Court.	Within 60 calendar days after receiving administrative judge's report. If no decision within 60 calendar days, then the administrative judge's findings and recommendations become the final Army decision.
16. All class members notified of the final Army decision by EEO officer.	Within 10 calendar days.
17. Individual class members may file written claim.	Within 30 calendar days after notification of Army decision.
18. Army tries to resolve claim at activity level.	Within 60 calendar days after date claim filed.
19. Hearing held by EEO administrative judge if no resolution.	
20. Administrative judge's report of finding and recommendations forwarded to Army EEOCCRA.	
21. Final Army decision made by Secretary of the Army or his/her designee.	Time limits as in step 15.
22. Appeals and Civil Action Rights:	
a. Class agent may appeal to EEOC when—	Within 20 calendar days after the Army decision.
(1) Complaint rejected or canceled by the Army.	
(2) Army refuses to reinstate complaint for processing after agent alleges that Army has not carried out terms of resolution.	
(3) Army issues decision on merits of complaint or corrective action.	
b. Claimant may appeal to EEOC when—	
(1) Army rejects claim for individual relief.	
(2) Army decides on adjustment of claim for individual relief.	
c. Class agent and claimants may file a civil action when—	
(1) Army issues final decision on complaint or claim.	Within 30 calendar days.
(2) There has been no Army decision on complaint or claim.	After 180 calendar days from date of filing formal complaint or claim with Army.
(3) EEOC issues decision on appeal.	Within 30 calendar days.

Table 3-1
Steps in class complaints of discrimination—Continued

Action	Time limits
(4) Appeal was made to EEOC and no decision has been given.	After 180 calendar days from date of filing formal complaint or claim with EEOC.

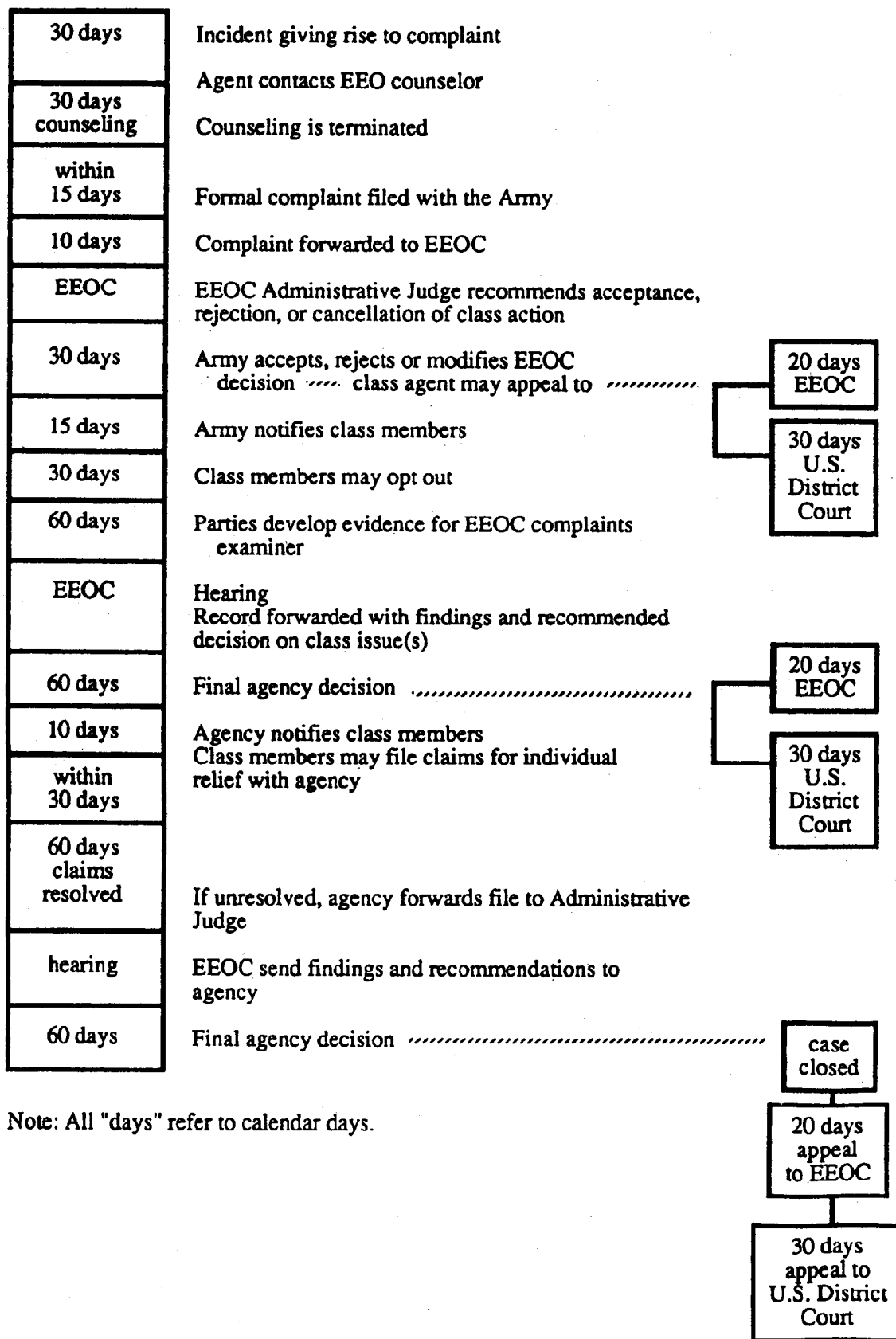


Figure 3-1. Figure 3-1. Procedural steps in a class action discrimination complaint

Chapter 4 Miscellaneous Complaints

4-1. Reprisal

A complainant, his or her representative, a witness, or an EEO official may allege restraint, interference, coercion, discrimination, reprisal at any stage in the presentation or processing of a complaint of discrimination. An allegation of reprisal may be processed under this regulation, a negotiated grievance procedure, when applicable, or the appellate provisions of the MSPB, when applicable.

4-2. Mixed cases

a. A mixed case complaint.

(1) A complaint of employment discrimination or reprisal filed under this regulation, related to or stemming from an action taken by the Army against the complainant, which action may be appealed to the MSPB pursuant to any law, rule, or regulation.

(2) A complaint of sex-based wage discrimination filed with the EEOC, related to or stemming from an action taken by the Army against a complainant, which may be appealed to the MSPB pursuant to any law, rule, or regulation.

b. Actions appealable to the MSPB. Removals, suspensions for more than 14 days, reductions in grade (demotion), reduction in force, denials of within-grade increases, and furloughs for 30 days or less are appealable to the MSPB. Also, an allegation of constructive discharge or forced retirement may be appealable to the MSPB.

c. Mixed case appeals.

(1) A mixed case appeal is an appeal filed with the MSPB that alleges that an Army action resulted, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal, or alleges that such Army action resulted in sex-based wage discrimination.

(2) If an employee files an appeal with the MSPB on a mixed case, before filing a formal complaint of discrimination with the Army, the Army activity must reject or cancel any complaint on the same matter, regardless if the allegation of discrimination is raised in the appeal to the MSPB. Upon such rejection or cancellation, the Army activity must advise the employee to raise the allegation of discrimination in connection with his or her appeal to the MSPB.

(3) Unless the employee believes that the EEOC regulations on rejecting mixed case complaints at 29 CFR, section 1613.405 have been misapplied, the decision to reject or cancel a complaint pursuant to this subparagraph is not appealable. If an employee believes that the EEO regulations on mixed cases have been misapplied, then the employee's appeal rights on the matter of the rejection only are to the EEOC.

(4) If the employee first files a formal complaint with the Army under this regulation, before filing an appeal on the same matter to the MSPB, the Army must advise the MSPB and request that it dismiss the appeal without prejudice. The Army, thereafter, will process the complaint in a manner similar to any other complaint, except that there will be no hearing before the EEOC, and the complainant's appeal rights will be to the MSPB, not to the EEOC.

d. Election. A mixed case complaint 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 as set forth in FPM Supplement 990-1, MSPB regulations, or 5 CFR 1201. Employees who wish to appeal must choose the system under which they wish to proceed. Whichever formal action the employee files first is considered an election to proceed in that forum as to the alleged discrimination. The Army will inform every employee who is the subject of an action that is appealable to the MSPB of the right to file a mixed case complaint with the Army, or to file a mixed case appeal with MSPB if the employee has raised the issue of discrimination during the processing of the personnel action but before the decision to effect that personnel action.

e. Timely processing. A mixed case complaint shall be processed in a timely manner, so that the final Army decision is issued within 120 calendar days from the date the complaint was filed.

f. Processing complaints on proposals.

(1) Any complaint filed in connection with an Army proposal to take an action that is appealable to the MSPB will be consolidated with any subsequent mixed case complaint filed in connection with the Army's decision to take such an action, either as proposed or as modified during the processing of the proposal.

(2) If, following a complaint on a proposal, the complainant files an appeal with the MSPB on the subsequent Army decision resulting from that proposal, the EEO officer will cancel the complaint on the proposal. The complainant will be advised by the EEO officer that any allegations of discrimination contained in that complaint should be raised with the MSPB in connection with the pending appeal.

(3) When a complaint concerning a proposal to take an action appealable to the MSPB is combined with a mixed case complaint concerning an Army decision appealable to the MSPB, the 120-calendar-day timeframe for processing the consolidated complaint begins as of the date the complaint concerning the Army decision is filed.

(4) When a complaint is filed on a proposal, and no appeal or complaint is filed with the MSPB or the Army on the subsequent appealable Army decision resulting from that proposal, the complaint on the proposal will include the final appealable Army decision as an issue. The 120-calendar-day timeframe will begin as of the effective date of the final appealable decision.

g. Mixed case advice. Sample language advising complainants of their rights under mixed case procedures is at appendix D.

4-3. Negotiated grievance procedure

A complainant who is covered by a collective bargaining agreement may file allegations of discrimination or reprisal under the negotiated grievance procedure instead of filing under this regulation. The complainant has this grievance option if the negotiated grievance procedure does not exclude allegations of discrimination or reprisal. When using the negotiated grievance procedure, a complainant is bound by the negotiated agreement. 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 grievance, he or she may not thereafter file a complaint on the same matter under this regulation irrespective of whether the grievance procedure. Any such formal complaints filed after a grievance has been filed on the same matter shall be rejected 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 at 29 CFR, section 1613.231(b). The activity decision letter rejecting such a complaint will advise the complainant of the right to appeal the decision to the EEOC. An election, pursuant to this paragraph, to proceed under this regulation is indicated only by filing a formal complaint, in writing. Use of the precomplaint process as described in paragraph 2-2 does not constitute an election for the purpose of this paragraph.

4-4. Election of forum

a. In a mixed case, the complainant may initially choose either the individual complaint procedure as described in chapter 2 of this regulation, appeal to the MSPB, or use the negotiated grievance procedure. The rules for choosing the procedure are not the same in all situations. An election will have been made when the following actions occur:

(1) A timely discrimination complaint or a grievance under the negotiated procedure has been filed in writing. In this case, an MSPB appeal should not be accepted.

(2) A timely grievance under the negotiated grievance procedure has been filed in writing. In this case, a discrimination complaint will not be accepted.

(3) A timely appeal to the MSPB has been filed in writing or if the complainant has initiated timely action under chapter 2 of this regulation. In this case, a grievance under the negotiated grievance procedure will not be accepted. (See para 4-5.)

b. In a matter involving discrimination covered by the negotiated grievance procedure, but not appealable to the MSPB, the complainant may choose either the complaint procedure as described in chapter 2 or use the negotiated grievance procedure.

(1) The choice is made when a timely grievance is filed in writing under a negotiated procedure or when the employee files a formal complaint under chapter 2.

(2) An employee who chooses the negotiated grievance procedure may ask the EEOC to review the final decision on the discrimination issue made under that negotiated procedure. (See para 4-5.)

4-5. Final decision under the negotiated grievance procedure

For seeking review by the EEOC or the MSPB, a final decision under the negotiated grievance procedure is defined as one of the following:

a. The final grievance decision rendered by the activity, if the union fails to invoke arbitration of the grievance. (An employee cannot individually invoke arbitration.)

b. 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 Authority) or an arbitrator's award that cannot be appealed to the FLRA.

c. The decision of the FLRA on exceptions to an arbitration award.

4-6. 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 AR 690-700, chap 771, para 1-7b.)

4-7. Spinoff complaints

If a complainant is dissatisfied with the processing of his or her pending complaint but does not allege prohibited discrimination as a basis for this dissatisfaction, he or she should be referred to the activity EEO officer. The activity EEO officer should earnestly attempt to resolve the dissatisfaction with the complaint process as early and expeditiously as possible.

a. If a complainant contacts an EEO counselor alleging discrimination or reprisal concerning the manner in which the Army is processing his or her pending complaint, the counselor will conduct precomplaint processing in accordance with paragraph 2-2 and will make every effort to resolve the matter informally including an explanation of the progress of the pending complaint or complaints and the self-correcting features of the complaint process.

b. If after counseling, a complainant files a formal discrimination complaint relating to the manner in which the Army is processing his or her pending complaint, the activity will consolidate the new allegation, with the pending complaint for processing and notify the complainant of the consolidation. If the allegation meets the definition of a "spin-off" complaint, the Army will process the allegation in accordance with these procedures. Upon issuance of the final Army decision on the underlying pending complaint or complaints, the Army will make a decision on the merits of the allegation in accordance with paragraph 2-16. The allegation or allegations of discrimination raised in the spin-off complaint must be investigated. The investigation will result in the development of a sufficient factual record on which to base a finding on the discrimination allegation raised in the spin-off complaint. If a spin-off complaint is filed after the USACARA completes its investigation into the pending complaint, but before it has forwarded it to the EEOC with a request for a hearing, the USACARA will conduct such further investigation as is necessary to address the allegation as stated above.

c. Where a hearing has been requested, the administrative judge will address the allegations raised in the spin-off complaint and make a recommended decision on the merits. In some instances, there will be sufficient evidence in the file for this purpose, whereas

in others, it will be necessary to develop additional evidence at the hearing in order to arrive at a recommended decision. The administrative judge will not entertain spin-off complaints raised for the first time at the hearing. The Army and the administrative judge maintain authority to consolidate, in appropriate circumstances, complaints of reprisal other than those raising issues of delay or bias in the processing of the pending complaint of complaints. (See para 2-19b.)

4-8. General allegations of discrimination

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 the general allegation will be sent to the MACOM EEO officer and the Director, EEOCRA.

Chapter 5 Remedial Actions

5-1. General guidance

a. Upon a finding of discrimination, a complainant is entitled to remedial action that makes him or her "whole" unless the evidence of record clearly establishes that the action complained of would have occurred even absent the identified discrimination. The aim of remedial action is to "make the complainant whole," or to place the complainant in the position that he or she would be in if there had been no discrimination. Attorney fees and/or costs may also be awarded as appropriate as outlined in paragraph 5-4.

b. Ordinarily, a successful complainant is entitled to an offer of placement in the position that was at issue in the complaint or to a substantially equivalent position. In appropriate circumstances, placement of the complainant may entail displacing an incumbent; if such displacement occurs, the incumbent shall be placed in another position without a loss of grade or pay. If no position is available for the complainant through displacement or otherwise, the agency will make complainant whole until placement can be accomplished.

c. In appropriate circumstances, remedial action may include the following:

(1) Notification to all employees in the affected facility of their right to be free of unlawful discrimination and to be ensured that the particular types of discrimination found will not recur;

(2) Commitment that corrective, curative, or preventive action will be taken, or measures adopted, to ensure that similar found violations of the law will not recur;

(3) An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position;

(4) Payment to each identified victim of discrimination on a make whole basis for any loss of earnings the person may have suffered as a result of the discrimination (citing 29 CFR, section 1613.271 as back pay authority); and

(5) Commitment that the Army will cease from engaging in the specific unlawful employment practice found in the case.

d. The Army may also resolve complaints informally and award backpay and other remedial relief including attorney fees and/or costs without a finding of discrimination. The maximum allowable backpay in any case cannot exceed the amount of backpay that the complainant would have received if he or she had been successful in proving discrimination. The requirements of paragraphs 2-10e and f and 5-5 apply to such settlements.

5-2. Remedial action involving an applicant

a. Upon a finding of discrimination, the Army will offer the applicant the position the applicant would have occupied absent discrimination or, if justified by the circumstances, a substantially equivalent position. The offer shall be made in writing. The complainant will have 15 calendar days from receipt of the offer within

which to accept or decline the offer. Failure to notify the Army of his or her decision within the 15-day period will be considered a declination of the offer, unless the complainant can show that circumstances beyond his or her control prevented him or her from responding within the time limit.

(1) If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired. Backpay computed in the same manner prescribed by 5 CFR, section 550.805, will be awarded from the date the complainant would have entered on duty until the date the complainant actually enters on duty. The complainant will be considered to have performed service for the Army during this period of retroactivity for all purposes except for meeting service requirements for completion of a probationary or trial period that is required.

(2) If the offer of employment is declined, the Army will award the complainant a sum equal to the backpay he or she would have received, computed in the same manner prescribed by 5 CFR, section 550.805, from the date he or she would have been appointed to the date the offer was made, subject to the limitation of paragraphs *d*, *e*, and *f* of this section. The Army will inform the applicant, in its offer of employment of his or her right to this award if the offer is declined.

b. The complainant will also be entitled to attorney fees and/or costs, if applicable, as set forth in paragraph 5-4 of this chapter.

c. When the Army or the EEOC finds that discrimination existed at the time the applicant was considered for employment but also finds clear and convincing evidence that the applicant would not have been hired even absent the discrimination, the Army nevertheless shall take all steps necessary to eliminate the discriminatory practice and ensure that it does not recur.

d. This paragraph will be cited as the authority under which the above-described appointments or awards of backpay will be made.

e. Backpay under this paragraph for complaints under title VII or the Rehabilitation Act may not extend from a date earlier than 2 years before the date on which the complaint was initially filed by the applicant.

f. The backpay awarded will be equal to what would have been earned by the complainant in the employment lost through discrimination (gross backpay) less what was actually earned from other employment during the period, after normal expenses in seeking and holding the interim employment have been deducted (net interim earnings). The difference between gross backpay and net interim earnings is net backpay due. Interest on backpay is not available to Federal employees under title VII.

5-3. Remedial action involving an employee

a. Upon a finding of discrimination against an employee, the Army will offer the employee the position that the employee would have occupied absent discrimination or, if justified by the circumstances, a substantially equivalent position. The offer will be made in writing. The complainant will have 15 calendar days from receipt of the offer within which to accept or decline the offer. Failure to notify the Army of his or her decision within the 15-day period will be considered a declination of the offer, unless the complainant can show that circumstances beyond his or her control prevented a response within the time limit. If the offer is accepted, appointment shall be retroactive to the date the employee would have been reassigned or promoted. If the offer is declined, the Army will award the complainant a sum equal to the backpay he or she would have received, computed in the same manner prescribed by 5 CFR, section 550.805, from the date he or she would have been selected until the date the offer was made, subject to the limitations of 5-3*b*.(1), 5-2*e.*, and 5-2*f.* The Army will inform the employee, in its offer, of his or her right to this award if the offer is declined.

b. If there is a finding of discrimination, the Army will take remedial action that will include one or more of the following, but need not be limited to, these actions:

(1) Retroactive promotion, with backpay computed in the same manner prescribed by 5 CFR, section 550.805, unless the record contains clear and convincing evidence that the employee would not

have been promoted or employed at a higher grade, even absent discrimination. The backpay liability under title VII or the Rehabilitation Act may not accrue from a date earlier than 2 years before the date the discrimination complaint was filed, but, in any event, not to exceed the date the employee would have been promoted. The backpay awarded will be equal to the amount the individual would have earned minus net interim earnings. In title VII proceedings, interest on backpay is not available to Federal employees.

(2) If the record contains clear and convincing evidence that, although discrimination existed at the time selection was made, the employee would not have been selected even absent discrimination, the Army will eliminate any discriminatory practice and ensure that it does not recur.

(3) Cancellation of an unwarranted personnel action and restoration of the employee.

(4) Expunction from the Army's records of any reference to or any record of an unwarranted disciplinary action that is not a personnel action.

(5) Full opportunity to participate in the employee benefit denied (e.g., training, preferential work assignments, or overtime scheduling).

(6) Attorney fees and/or costs, if applicable, as set forth in paragraph 5-4 of this chapter.

5-4. Award of attorney fees and/or costs

a. In complaints of discrimination, the Army, the EEOC, or a Federal court may award the applicant or employee who is represented by an attorney reasonable attorney fees and/or costs as a part of the remedial relief under this regulation. Except as provided in paragraph 5-5, Army decisions will make such awards only when a finding or admission of discrimination is made. The award of attorney fees and/or costs is not available in administrative cases based on age.

b. A finding of discrimination raises a presumption of entitlement to an award of attorney fees if the complainant has utilized the services of an attorney and meets the other requirements of this section.

c. Attorney fees are paid only for services performed after a formal complaint has been filed under this regulation and after the complainant has notified the Army that he or she is represented by an attorney. However, the attorney may be compensated for a reasonable amount of time spent to make the decision to represent the complainant. Written submissions to the Army that are signed by the attorney will be deemed to constitute notice of representation. Attorney fees are allowable only for services of members of the bar and law clerks, paralegals, or law students supervised by members of the bar. No award will be made for the services of any employee of the Federal Government. Attorney fees and/or costs are paid by the activity where the discrimination took place. Requests for attorney fees and/or costs will include all of the following:

(1) A statement of the number of hours spent and costs incurred in preparing and presenting the case. This must specify the dates that work was done on the case and detail the work performed. It must also describe the training and experience of each person who worked on the case and the number of hours spent by each.

(2) A sworn statement of the attorney's usual and customary hourly charge, and the usual fee for each person who worked on the case.

(3) A sworn statement explaining all of the following:

(a) Whether the fee for the case was fixed or contingent.

(b) Whether or not the handling of the case prevented other employment.

(c) The nature and length of the professional relationship with the client.

(d) Any other factors that might affect the amount of the award.

(4) Sworn statements by other attorneys or the local bar association in the relevant geographic area, who work in the field of employment discrimination, setting forth all of the following:

(a) The customary fee for such work.

(b) The desirability of the case.

(c) Awards in similar cases.

(d) The reputation, ability, and experience of the attorney requesting the fees.

(5) Other information in the form required by courts in the awarding of attorney fees and/or costs.

d. The complainant and his or her representative, if any, must file a verified statement of attorney fees and/or costs as described in c above with the activity EEO officer within 20 days of receipt of the decision. The EEO officer will immediately submit the request and supporting documents to the activity labor counselor for review and recommendation. The labor counselor will review and analyze, in writing, the request and supporting documents in accord with existing caselaw and using the following standards:

(1) The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate.

(2) This amount may be reduced or increased in considering the following factors, although ordinarily many of these factors are subsumed within the calculation set forth above: The time and labor required: the novelty and difficulty of the questions: the skill requisite to perform the legal service properly: the preclusion of other employment by the attorney because of acceptance of the case: the customary fee: whether the fee is fixed or contingent: time limitations imposed by the client or the circumstances: the amount involved and the results obtained: the experience, reputation, and ability of the attorney: the undesirability of the case: the nature and length of the professional relationship with the client: and the awards in similar cases. Only in some cases of exceptional success will any of these factors be used to enhance an award computed by the method set forth in paragraph 5-4c of this chapter.

(3) The costs that may be awarded are those authorized by 28 USC 1920, to include the following:

(a) Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case;

(b) Fees and disbursements for printing and witnesses; and

(c) Fees for exemplification and copies of papers necessarily obtained for use in the case. 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.

e. The decision of the amount of attorney fees and/or costs awarded shall set forth the specific reasons for determining the amount of the award.

f. If the complaint is resolved at the activity, with a finding of discrimination, the activity commander, or his or her designee, in consultation with the EEO officer and the labor counselor, is authorized to award attorney fees and/or costs provided agreement is reached on the amount of fees and/or costs and the amount is less than \$5,000. In cases where agreement cannot be reached, or where the amount is \$5,000 or more, the final award will be made by the Secretary of the Army, or his or her designee. If the parties agree that attorney fees should not be awarded, the settlement agreement should include an explicit waiver of the complainant's right to seek fees.

g. If the activity cannot reach a settlement in the fees and/or costs, or the amount requested is \$5,000 or more, the activity labor counselor will review the amount claimed and make a recommendation. This recommendation will be sent through the Labor and Civilian Personnel Law Office, Office of the Judge Advocate General, ATTN: DAJA-LC, WASH DC 20310-2209, to the Office of the General Counsel, for final decision by the Secretary of the Army, or his or her designee, as follows:

(1) If agreement is not reached at the activity within 20 calendar days after receiving the verified statement, upon receipt of the labor counselor's recommendations, the Secretary of the Army, or his or her designee, will issue a written final Army decision to the complainant on the amount of fees and/or costs.

(2) The decision should be issued within 30 calendar days after receipt of the verified statement.

(3) The decision will give specific reasons for the amount of the award and state the complainant's right to appeal the decision to EEOC or file a civil action in a U.S. District Court.

h. If the complaint of discrimination is resolved on the merits by a decision of the Secretary of the Army, or his or her designee, the award of attorney fees and/or costs must also be made by the Secretary of the Army, or his or her designee, in accord with the procedures outlined in (2) above.

i. All payment of attorney fees and/or costs will be made payable jointly to the complainant and the attorney of record.

5-5. Informal no-fault settlement

a. Informal settlement of complaints may be reached though the Army need not admit fault, wrongdoing, or discrimination.

b. The standard for informal settlement awards is stated in paragraph 5-2d.

c. The activity commander, or his or her designee, in consultation with the EEO officer and the labor counselor, has authority to award attorney fees and/or costs as part of an informal settlement if agreement is reached between the parties and the amount to be awarded is less than \$5,000. If the parties do not reach agreement, or the amount is \$5,000 or more, the final award will be made by the Secretary of the Army, or his or her designee.

Chapter 6 Appeals and Civil Actions

6-1. Appealing an Army decision

a. A complainant in an individual complaint of discrimination filed under this regulation may appeal to the EEOC Office of Review and Appeals, an Army decision—

(1) To reject or cancel the complaint in whole or in part under the provisions of paragraph 2-6 or 2-12.

(2) On the merits of the complaint under paragraph 2-10 or 2-16, the issue of attorney fees and/or costs or the remedial action.

b. A complainant may not appeal under this paragraph an agency decision to cancel or reject a mixed case complaint concerning an action a complainant previously appealed to the MSPB (see para 4-2) or a complaint in whole or in part because the issues raised in the complaint have been filed in Federal court. If complainant believes the decision to cancel or reject the complaint was in error, the agency decision to cancel or reject may be appealed. The appeal is based on the decision to cancel or reject rather than on the merits of the issues raised in the complaint.

c. A complainant may appeal to the EEOC on issues of employment discrimination raised in a negotiated grievance procedure covered by paragraph 4-3. A complainant may appeal the decision of the—

(1) Activity commander or the designee on the grievance; or

(2) Arbitrator on the grievance; or

(3) Federal Labor Relations Authority (FLRA) on exceptions to the arbitrator's award. A complainant may not appeal under this paragraph, however, when the matter initially raised in the negotiated grievance procedure is still ongoing in that process, is in arbitration, or is before the FLRA. Any appeal prematurely filed in such circumstances will be dismissed without prejudice.

d. Agent in a class complaint may appeal to the EEOC Office of Review and Appeals, an Army decision—

(1) To cancel or reject the complaint in whole or in part under the provisions of paragraph 3-7 or 3-11;

(2) On the merits of the complaint;

(3) On the issue of attorney fees and costs and corrective action; and

(4) The failure of the activity to implement the final Army decision;

e. Claimant may appeal to the EEOC Office of Review and Appeals, an Army decision—

(1) To cancel or reject a claim for individual relief in accordance with paragraphs 3-13 and 3-14; or

(2) On the merits of a claim for individual relief.

f. Except as provided in g below, a complainant in an individual complaint of discrimination may file a notice of appeal with the

EEOC any time after receiving the Army Notice of Final Decision on his or her complaint but not later than 20 calendar days after receiving the decision. A notice of appeal will be deemed filed on the date it is postmarked or, in the absence of a postmark, on the date it is received by the EEOC. Any statement or brief to support the appeal must be sent to the EEOC, with a copy to the activity EEO officer and to EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813.

g. On receiving the complainant's statement or brief, the EEO officer will inform the labor counselor and CPO of the appeal and coordinate management's comments, if any, on the appeal. Management's comments will be sent to EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813, within 5 calendar days after complainant's statement or brief is filed. The comments will be prepared in a format that will permit EEOCRA to forward them to the EEOC without editing or retyping.

h. When issues of discrimination have been raised in a negotiated grievance process, a complainant may file a notice of appeal of such issues up to 20 days after—

(1) Receipt of an activity decision on the grievance and expiration of the time during which the union and the activity may move the matter to the next stage of the grievance process;

(2) Receipt of an arbitrator's award; or

(3) Receipt of the decision of the FLRA on exceptions to the arbitrator's award.

i. Except as in *i* below, an agent or a claimant in a class complaint may file an appeal at any time after receiving a final Army decision, but not later than 20 calendar days after receiving the decision. An appeal will be deemed timely if it is delivered in person or postmarked before the expiration of the filing period, or if, in the absence of a legible postmark, it is received by the EEOC by mail within 5 days of the expiration of the filing period.

j. Usually, the time limits for filing a notice of appeal will not be extended by the EEOC. However, the EEOC, at its discretion, may extend the time limits and accept an appeal based on a written statement by the complainant. The statement must show that neither the complainant nor the complainant's representative was notified and otherwise aware of the prescribed time limits or that circumstances beyond the complainant's or his or her representative's control prevented filing a notice of appeal or an appeal within the prescribed time limits.

k. The EEOC Office of Review and Appeals reviews the complaint file and all relevant written representations made by the parties. The office may return the complaint to the Army for further investigation or for a new hearing, or may have an EEOC investigator look into the case. The office issues a written decision that sets forth its reasons for the decision and sends copies of the decision to the complainant, the designated representative, and EEOCRA. EEOCRA will send the decision to the activity. If corrective action is ordered, the activity must take the action unless the complainant or the Army files a timely request to reopen and reconsider the ORA decision or the EEOC on its own motion reopens the case. The activity will promptly report to the EEOC compliance officer, with copies to the complainant, the MACOM, and EEOCRA, that the action has been taken.

l. For purposes of an appeal to the EEOC, the Army decision is final only when all issues in the complaint, including the award of attorney fees and/or costs, have been resolved. If fees and costs are to be awarded, the decision will not be final until the procedure for determining the amount of the award has been completed.

6-2. Review by the EEOC commissioners

a. The EEOC may, in its discretion, reopen and reconsider any decision on its own motion, or when the requesting party files written arguments or evidence which tends to establish that—

(1) New and material evidence is available that was not readily available when the previous decision was issued.

(2) The previous decision involved an erroneous interpretation of law or regulation or misapplication of established policy.

(3) The decision is of such exceptional nature as to have effects beyond the actual case at hand.

b. The party requesting reopening or reconsideration must make such request within 30 days of receipt of an Office of Review and Appeals decision issued pursuant to paragraph 6-1j or within 20 days of receipt of another party's timely request to reopen. Such requests will be submitted to the Office of Review and Appeals.

(1) The party requesting reopening or reconsideration 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.

(2) Any argument in opposition to the request to reopen or cross request to reopen will be submitted to the Office of Review of Appeals and to the requesting party within 20 days of receipt of the request to reopen along with proof of such submission.

c. A decision on a request to reopen by either party is final and there is no further right by either party to request reopening.

d. A copy of any statement or brief in support of a request to reopen and reconsider must be submitted to the EEOCRA as well as to the activity EEO officer.

e. An activity commander, or a designee, who wishes to request reopening will consult the labor counselor to determine if the request meets the requirements of this paragraph. If so, the commander will send the request to EEOCRA for action. Any Army request to reopen and reconsider must be made within 30 days of the date of receipt of the EEOC decision made by the Office of Review and Appeals.

(1) The request will be fully self-contained and will explain how the criteria of paragraph 6-2a above, apply to the case. It will be prepared to show an Army position rather than a local position and will be typed on plain bond paper.

(2) The request will be sent to EEOCRA as early as possible but not later than 7 workdays before the 30 calendar day time limit for requesting reopening and reconsideration expires.

(3) The request to reopen and reconsider will be prepared in a format that will permit forwarding to EEOC without editing or retyping.

(4) EEOCRA will check the submission for consistency with the case file and, if otherwise proper, will submit it to EEOC.

(a) An Army request to reopen and reconsider may be submitted to EEOC only if approved by the Director, EEOCRA.

(b) Approval will be granted only when the Director, EEOCRA, finds that the submission is timely, meets the EEOC criteria, and is in the best interest of the Army.

6-3. Corrective action

a. Corrective action ordered by the EEOC Office of Review and Appeals or the EEOC is mandatory and binding on the Army except as provided under paragraph 6-2. Failure to implement ordered relief shall be subject to judicial review.

b. When the Army requests reopening, it will comply with an EEOC decision in a complaint involving removal, separation, suspension continuing beyond the date of the request to reopen, or retroactive restoration on a temporary or conditional basis, pending the outcome of the request for reopening.

c. 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 that the EEOC;

(1) Upholds its decision after reopening the case; or

(2) Refuses to reopen the case.

d. An Army request to reopen and 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.

e. The Army will execute the action ordered by the EEOC and there is no further right to delay implementation except when—

(1) A request for reopening is filed within 30 days of receipt of the EEOC decision.

(2) The EEOC commissioners grant the Army request to reopen.

f. The corrective action shall be completed within 60 days after the EEOC decision becomes final.

6-4. Enforcement of final decisions

A complainant may petition to the EEOC Office of Review and Appeals to enforce a decision issued under its jurisdiction. If the EEOC determines that the Army is not complying with a prior EEOC decision, or when the Army fails or refuses to submit its report of corrective action taken, the EEOC will inform the complainant of his or her right to file a civil action for enforcement of the decision. The EEOC may also issue a notice to show cause to the agency or refer the matter to the Office of Special Counsel for enforcement action.

6-5. Civil actions

a. A complainant in an individual complaint or an agent in a class complaint has the right to file a civil action in a Federal district court. Time limits for filing, except for complaints based on age (see *b* below), are as follows:

(1) Within 30 calendar days after receiving the notice of the final Army decision on the complaint or claim.

(2) After 180 calendar days from the date of filing a complaint with the Army if there has been no decision.

(3) Within 30 calendar days after receiving the notice of the final EEOC decision on the complaint.

(4) After 180 calendar days from the date of filing an appeal with the EEOC if the EEOC has not made a decision.

b. In complaints alleging age discrimination, the complainant can bypass the administrative process and file a civil action in Federal court 30 days after providing notice to the EEOC of his or her intent to file a civil action. Such notice must be given to the EEOC within 180 days of the occurrence of the alleged discriminatory act. If a complainant elects to pursue his or her age complaint through the administrative procedures outlined in chapter 2, then he or she may not file a civil action in Federal court until all administrative remedies have been exhausted.

c. 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. Further, if a civil action is filed, complainant must name the appropriate department head or agency head as the defendant and provide his or her official title. Failure to name the department head or agency head or to state his or her official title may result in the case being dismissed. (See para 2-4.)

d. All Army decisions must notify the complainant of the right to file a civil action and of the time limits for doing so. For civil action purposes, the Army decision is final only when determination has been made on all the issues in the complaint, including whether or not to award attorney fees and/or costs. If attorney fees and/or costs are to be awarded, the decision will not be final until the procedure outlined in chapter 5 for determining the amount of the award has been followed.

e. A civil action filed after 30 November 1987, by an employee or applicant involving a complaint filed under this regulation terminates processing of that complaint.

f. The activity labor counselor will inform the activity EEO officer, who, in turn, will notify the EEOCRA (ATTN: SFMR-RBE, WASH DC 20310-1813) when litigation is initiated or terminated on any EEO complaint. The notice of civil action must be forwarded to EEOCRA within 5 days of the date the labor counselor receives notice that a civil action has been filed or terminated. It is suggested that activities use the sample form at figure 6-1 when forwarding the information outlined below to EEOCRA:

- (1) EEOCRA docket number.
- (2) Federal court docket number (civil action number).
- (3) Federal court where the suit has been filed.
- (4) Date of filing.
- (5) Copy of Federal court complaint.
- (6) Date suit terminated.
- (7) Copy of court order terminating suit.

SEMR-RBE

MEMORANDUM FOR Director, Equal Employment Opportunity Compliance and Complaints Review Agency, ATTN: SEMR-RBE, WASH DC 20310-1813

SUBJECT: Notification of Civil Action in the Complaint of **(name)** and **(name)** Secretary of the Army, Docket number:

1. A civilian action has been **(filed)** or **(terminated)** on **(date)**

a. The ORA docket number is **(enter number)** .

b. The civil action number is **(enter number)** .

2. The reason or reasons for termination are as follows: (Enter reason for termination.)

FOR THE COMMANDER:

(Signature block of EEO Officer)

Note:

Attach a copy of the Federal court complaint and, when applicable, a copy of the court order terminating suit.

Figure 6-1. Sample of Notification of Civil Action

Chapter 7

Witnesses, Representation, Administrative Procedures, and Reports

7-1. Arranging for witnesses

a. Army military and civilian personnel requested as witnesses by the labor counselor, the EEO officer, the investigator, or the EEOC administrative judge will be made available unless it is administratively impractical. If a needed Army witness is not under local administrative control, the activity commander or the EEO officer may ask the witness' commander to make that person available. Denials will be promptly referred to the EEO officer of the next higher level command of the requested witness. If the denial is not justified, the next higher level command will direct the organization to make the witness available.

b. If a needed witness is employed by another Federal agency or has left Federal employment, he or she will be contacted by the EEO officer. The EEO officer will make every reasonable effort to ensure the presence of the witness. If the witness refuses to appear, the EEO officer will refer the matter to the investigator or the administrative judge.

c. A Federal employee is in an official duty status when his or her presence as a witness is authorized or required by the Army or the EEOC.

7-2. Right to representation

a. A complainant or an agent in a class complaint has the right to be accompanied, represented, and advised by a representative of his or her own choice at any stage of the complaint process, including the informal counseling stage, except as provided in paragraph 7-3. No employee or military member is obligated to serve as a representative.

b. The complainant or the class agent will designate the representative in writing. Any change will be reported in writing to the EEO officer, with copies to the counselor, investigator, or administrative judge, as appropriate.

c. The Army must be notified when an attorney is retained to represent a complainant or class agent. Written submissions to the Army that are signed by the representative are deemed to constitute notice of representation. This notice is required to establish the attorney's eligibility to claim fees and/or costs.

d. The RMO has the right to be accompanied, represented, and advised by a representative of his or her own choice at any stage of the complaint process. The RMO may not be represented by the SJA or labor counselor for the activity or agency.

7-3. Disqualification of representation

In cases where representation of a complainant or the Army would conflict (or create the appearance thereof) with the official or collateral duties of the representative, the representative may be disqualified. After consulting with the SJA or senior legal officer of the servicing legal office and the representative, the activity commander, or his or her designee, may deny permission to an Army employee or military member to serve as the complainant's or RMO's representative. This denial will be made in a letter to the complainant or the RMO stating the reasons. The letter must tell the complainant or RMO that an appeal of the denial may be filed with the Director, EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813, within 5 workdays after receipt of the denial. A copy of the appeal should be provided to the activity EEOC. The USACARA investigator may disqualify a representative during the investigation. The USACARA investigator's decision and the reasons for the decision will be made part of the investigative record. The complainant's, agent's, RMO's, or representative's expressed objections to the USACARA investigator's decision will also be made part of the investigative record. The EEOC administrative judge may disqualify the representative during the hearing. The administrative judge's decision cannot be appealed.

7-4. Representing the Army in individual complaints

a. The Army is represented in complaint proceedings by the labor counselor (SJA or civilian attorney so designated). The labor counselor's role is to ensure that the Army's position is based on a sound legal theory and supported by competent evidence at both the investigative and hearing stages. The labor counselor does not represent the RMO.

b. The labor counselor may have a CPO technical adviser at the hearing.

7-5. Representing the Army in class complaints

a. The EEO counselor may seek legal advice from the servicing legal office during the informal stage of class discrimination complaints after consulting with his or her EEO officer.

b. When a class complaint is filed formally, the activity commander shall appoint an Army judge advocate or civilian attorney as the labor counselor to represent the Army at the activity level as described in chapter 3.

7-6. Using official time

Under 29 CFR, sections 1613.214 and 1613.603, complainants, agents, and representatives who are Army employees have the right to a reasonable amount of duty time to prepare a complaint filed under this regulation. The Army is not obligated to change work schedules, incur overtime wages, or pay travel expenses in order to allow the complainant to select a specific representative or to confer with him or her. When the Army or an EEOC administrative judge requests the representative's or agent's presence in connection with a complaint, the representative or agent will be granted official time for the duration of such meeting or hearing regardless of the tour of duty if he or she otherwise is on duty status. Employees must arrange in advance with their supervisors to use this duty time. Disagreements as to what is "reasonable" time are resolved by the activity commander or a designee. Reasonable duty time includes all time actually spent in meetings and hearings required by an Army or EEOC official plus a reasonable amount of preparation time. Reasonable time is generally defined in terms of hours rather than days, weeks, or months.

7-7. 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 and the last day of the period shall be included, unless it falls on a Saturday, Sunday, or Federal holiday, in which case the period will be extended to include the next business day; and

b. A document will be deemed timely if it is delivered in person 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.

7-8. Hearing arrangements

a. Expenses incurred in the administrative processing of an EEO complaint will be borne by the activity against which the complaint is lodged.

b. The letter requesting the assignment of an administrative judge will state the name, title, address, and telephone number (including ZIP Code and area code) of the Army representative.

c. The servicing activity EEO officer will ensure that a court reporter is provided for the hearing and that the transcripts are sent directly to the EEOC administrative judge within 21 calendar days or less after the close of the hearing. The use of Army employees to transcribe hearings is prohibited by the EEOC except as may be authorized in a signed memorandum of understanding between the Army and the EEOC. However, interservice support agreements with the Navy and Air Force may be used instead of contracting for such services.

d. All requests to the EEOC for a hearing will contain instructions that the completed case file, with all copies of the transcript and the administrative judge's recommended decision, is to be sent

to the Director, EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813. If the administrative judge sends the report to the activity rather than to EEOCRA, as requested, the EEO officer will immediately return the file to the EEOC by certified mail, return receipt requested, with instructions to transmit it to the Director, EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813. If the activity fails to properly request that the recommended decision be sent to the EEOCRA and the administrative judge sends the report to the activity rather than to the EEOCRA, the activity EEO officer will immediately forward the file to the EEOCRA by certified mail, return receipt requested. The activity EEO officer will telephonically notify the EEOCRA should this arise.

7-9. Complaint file

a. An Army decision on an EEO complaint will be based on a preponderance of the evidence in a complaint file.

b. The EEO officer will compile a complaint file that will include all documents pertinent to the complaint except for the Army decision regarding action against the RMO.

c. The file will not contain any document that has not been made available to the complainant or his or her representative. Required documents may be cross-referenced.

d. The file will be indexed on the right side only and punched with a standard three-hole punch and bound on the left side. The file will also be tabbed in reverse chronological order and will contain legible copies of the following documents, when applicable, and in the order listed below:

- (1) Tab O.
 - (a) Complaint Chronology Sheet: DA Form 5495-R (Chronology of Individual EEO Complaint) or DA Form 5496-R (Chronology of Class EEO Complaint).
 - (b) DA Form 5497-R (Disposition of Complaint of Discrimination).
- (2) Tab N.
 - (a) Final Army decision.
 - (b) Return receipt or other evidence of complainant's receipt of final Army decision.
- (3) Tab M. EEOC administrative judge's report of findings, analysis, and recommendations.
- (4) Tab L. Verbatim transcript of EEOC hearing and all exhibits.
- (5) Tab K. EEO officer's letter to EEOC requesting assignment of an administrative judge.
- (6) Tab J.
 - (a) Request for Army decision without a hearing.
 - (b) Request for hearing before EEOC.
- (7) Tab I.
 - (a) Proposed disposition.
 - (b) Notice to complainant of adoption of proposed disposition as Army final decision if complainant has failed to respond within 15 days.
- (8) Tab H.
 - (a) Record of adjustment conference.
 - (b) Settlement agreement if signed by all parties and documents showing implementation.
- (c) Written withdrawal of complaint by complainant, if applicable.
- (9) Tab G.
 - (a) Record of transmittal of USACARA ROI to activity.
 - (b) Record of transmittal of USACARA ROI to complainant.
- (10) Tab F. Entire investigator's report, including exhibits tabbed as received from the investigator.
- (11) Tab E.
 - (a) EEO officer's request to USACARA for appointment of an investigator.
 - (b) USACARA response to EEO officer.
 - (c) EEO officer's notice to labor counselor of date, time, and location of USACARA investigation.
- (12) Tab D.
 - (a) Appointment letter of labor counselor as Army representative.

(b) Written designation by complainant of his or her representative.

(13) Tab C.

(a) Formal EEO complaint, DA Form 2590-R.

(b) EEO officer's acknowledgment receipt of the formal complaint.

(c) EEO officer's acceptance of the formal complaint.

(d) EEO officer's rejection or cancellation of the formal complaint.

(14) Tab B.

(a) Notice of final interview.

(b) EEO counselor's final report.

(c) 21-day letter, if applicable.

(15) Tab A. All allied papers (all documents relevant to the case but not specifically included in the above sections attached in reverse chronological order).

e. To avoid duplication, documents listed in *d*, above, may be cross-referenced.

f. All EEOC appellate documents will be tabbed in reverse chronological order with Arabic numerals.

g. All civil litigation documents will be tabbed in reverse chronological order with Roman numerals.

h. When the complainant requests a decision by the Secretary of the Army, or his or her designee, on the basis of the record as it stands, or after a hearing, the original case file will be clearly indexed and tabbed as described in paragraph *d*, above, and all pages will be clearly legible.

i. Every complaint file will contain an EEO chronology sheet completed by the activity EEO officer and the EEOCRA. See DA Form 5495-R for individual EEO complaints and DA Form 5496-R for class EEO complaints. The chronology sheet will account for the processing time from the date of the alleged discriminatory action to the final Army decision and any administrative or judicial appeal. Failure to meet any administrative suspense established by this regulation should be fully explained in the "Remarks" section of this chronology sheet. These DA Forms will be reproduced locally on 8½- by 11-inch paper. Copies for reproduction purposes are located at the back of this regulation.

7-10. Complaints reporting

a. The EEO counselor will complete DA Form 5492-R at the time of the final interview and submit it to the EEO officer in accord with paragraph 2-2*d*. The EEO officer will transmit copies of this report to EEOCRA, the MACOM, and sub-MACOM, if applicable, of the activity against which the complaint is lodged upon termination of counseling.

b. Individual formal complaint reporting

(1) Immediately upon receipt of a formal EEO complaint (DA Form 2590-R), the activity EEO officer will complete and dispatch a copy of the formal complaint to the MACOM and the sub-MACOM, if applicable, of which the complaint is lodged and to the Director, EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813. Receipt of the complaint will be acknowledged, in writing, by EEOCRA. The acknowledgment will contain a docket number assigned to the case by EEOCRA and will be used throughout the processing of the EEO complaint. This docket number does not replace the docket number assigned by USACARA, rather it is used as a control to identify the records in EEOCRA.

(2) After receiving the EEOCRA docket number, the EEO officer will use the docket number on all documents generated or submitted by the activity EEO officer in the processing of the complaint.

7-11. Disposition of complaints of discrimination

a. When action on a complaint of discrimination has been completed at the activity level, the case record will be promptly forwarded to the Director, EEOCRA, ATTN: SFMR-RBE, WASH DC 20310-1813. When the case has been closed at the activity, instructions set forth in paragraph *b*, below, will be followed. When a hearing is requested, one copy of the file, similarly compiled, will be forwarded to the EEOC district office for the administrative

judge. Additionally, one copy of the file, similarly compiled, will be forwarded to EEOCRA. In all cases, the chronology of events will be completed and included in the case file. (See para 7-9.) This will apply whether forwarded to the EEOC administrative judge for a hearing or to the EEOCRA for a decision on the record.

b. Cases closed at the activity level are as follows:

(1) Cases are closed at the activity level as a result of rejection, cancellation, withdrawal, termination, adjustment, or decision on the merits.

(2) If a formal EEO complaint is closed in whole at the activity level, the EEO officer will submit the original file and one copy to EEOCRA, compiled in accord with paragraph 7-9, and DA Form 5497-R (Disposition of Complaint of Discrimination). Submissions will be made within 10 days after the complaint is closed. If the complaint has been closed in part, then two legible copies of the file will be forwarded to EEOCRA within 10 days, compiled in accord with paragraph 7-9, along with DA Form 5497-R. Such a case file will be annotated as partial closure. A copy of DA Form 5497-R will be forwarded to the MACOM and the sub-MACOM, if applicable, in which the complaint is lodged. DA Form 5497-R will be reproduced locally on 8½- by 11-inch paper. A copy for reproduction purposes is located at the back of this regulation.

c. Activities and MACOMs will be notified of cases closed at the DA level by receipt of a copy of the final Army decision signed by the Secretary of the Army, or his or her designee.

7-12. Travel and other costs

For individual complaints as well as class complaints of discrimination, travel and other related expenses will be allocated as follows:

a. Travel and per diem expenses of USACARA investigators will be funded by the activity against which the alleged discrimination is lodged.

b. Expenses of other Army investigators, counselors, or investigators from other Federal agencies will be funded by the activity where the alleged discrimination took place.

c. Expenses of the EEOC administrative judge are paid for by the EEOC.

d. Travel expenses of Army and former Army personnel.

(1) Travel expenses of Army personnel (complainants, representative, or witnesses) whose travel is required by an administrative judge or other authorized official will be funded by the activity against which the complaint is lodged.

(2) Travel expenses of former Army personnel (excluding complainants) whose appearance as witnesses is requested by the Army or the complainant and has been approved by USACARA or the EEOC will be funded by the activity against which the complaint is lodged.

e. Travel expenses of non-Army personnel.

Note. Travel expenses of complainants who are former Army personnel or applicants will not be paid in advance by the Army. Federal employees cannot have their expenses paid by their agencies unless their role concerns the official business of their current employers. A prevailing complainant may, however, be reimbursed for such travel expenses as part of his or her costs.

f. If a complaint of discrimination is filed against a tenant organization, the tenant organization will pay the hearing costs, investigative costs, and attorney fees or costs unless otherwise provided for in a host-tenant agreement. Problems that develop between host and tenant organizations will be promptly referred for resolution to the MACOM in which the complaint arose.

g. If the complaint involves a nonappropriated fund (NAF) activity, the costs will be borne by the host activity (that is, the appropriated fund activity that heads the installation where the NAF activity is assigned).

Appendix A Address of U.S. Army Civilian Appellate Review Agency Headquarters and Addresses and Geographic Jurisdictions of U.S. Army Civilian Appellate Review Regional Offices

A-1. USACARA investigators are assigned to investigate discrimination complaints from various regional offices located throughout the United States and Europe. When an EEO officer must obtain the services of a USACARA investigator in accord with paragraph 2-7 (individual complaints) he or she should contact the USACARA regional office with jurisdiction over the activity.

A-2. The USACARA Headquarters address is as follows: USACARA 5611 Columbia Pike Room 434, Falls Church, VA 22041-5091 AUTOVON: 289-1423 (703) 756-1423.

A-3. The USACARA regional offices are as follows in figure A-1, below.

USACARA Regional Offices:

USACARA-SE
Citizens Trust Bldg.
Room 450
75 Piedmont Ave., NE
Atlanta, GA 30303
AUTOVON: 797-5801
(404) 363-5801
Geographic Jurisdiction: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Puerto Rico, Panama

USACARA-SW
Federal Bldg.
1100 Commerce Street
Room 6B25
Dallas, TX 75242
(214) 767-0287
Geographic Jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

USACARA-GC
Gorman Plaza Bldg.
Suite 100
8950 Old Annapolis Road
Columbia, MD 21045
(301) 995-0069
(202) 621-5170
Geographic Jurisdiction: Delaware, Maryland, Ohio, Virginia, District of Columbia, West Virginia

USACARA-WE
801 "I" Street
Room 498
Sacramento, CA 95814
(916) 551-3901
Geographic Jurisdiction: Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming

USACARA-EU
APO NY 09102-0007
Heidelberg Military 8968/6351

Geographic Jurisdiction: Europe, Africa, Near East, Atlantic Area, Middle East

USACARA-MW
Suite 10304
1222 Spruce Street
St. Louis, MO 63103-2820
AUTOVON: 555-4427/28/29
(314) 331-4427/28/29
Geographic Jurisdiction: Illinois, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, Tennessee, Wisconsin

USACARA-PA
Post Office Box 50041
Honolulu, HI 96850-0001
(808) 541-2640
Geographic Jurisdiction: Hawaii, Far East, Pacific Area

USACARA-NE
766 Shrewsbury Avenue
3rd Floor
Tinton Falls, NJ 07724
(201) 741-1900
Geographic Jurisdiction: Pennsylvania, New Jersey, Maine, Massachusetts, Michigan, New Hampshire, Vermont, Rhode Island, Connecticut, New York

Figure A-1. USACARA regional offices

Appendix B Sample Format for Notice of Final Army Decision

Section I Format for the Final Army Decision Letter

B-1. Use

The notice of final Army decision is to be used under the following circumstances:

- If a discrimination complaint is rejected or canceled.
- If a proposed disposition is adopted after the complainant has failed to request a hearing or a decision by the Army without a hearing.
- If a written request to reinstate a complaint for further processing is rejected.

B-2. Delivery

The notice of final Army decision is sent by certified mail, return receipt requested, or personally delivered to both complainant and representative, if any. If the notice is personally delivered, the complainant and his or her representative, if any, will acknowledge receipt by signing and dating the official file copy of the notice. If they decline to sign the copy, the server will sign it and indicate to whom and when the notice was served.

B-3. Filing

A copy of this notice will be filed in the complaint file.

B-4. Preparation of the notice of final Army decision

The notice of final Army decision should contain the notice itself (see fig B-1) and one of the three appeal rights in figures B-2, B-3, and B-4 or for mixed cases, see appendix D.

Section II Appeal Rights

B-5. Use

When a notice of final Army decision is issued by an activity, it must contain appropriate advisement of appellate rights. Except for mixed cases, use one of the following appellate rights as appropriate:

a. Use figure B-2 for complaints that allege discrimination based on any of the following:

- (1) Race.
- (2) Color.
- (3) Religion.
- (4) Sex.
- (5) National origin.
- (6) Physical or mental handicap.

(7) Reprisal.

b. Use figure B-3 for complaints that allege age discrimination as their only basis.

c. Use figure B-4 for complaints that allege age discrimination and any of the following:

- (1) Race.
- (2) Color.
- (3) Religion.
- (4) Sex.
- (5) National origin.
- (6) Physical or mental handicap.
- (7) Reprisal.

d. Use figure B-5 for class complaints.

e. Use the appropriate appellate rights of appendix D for mixed cases.

Docket number:

(Date)

SUBJECT: Notice of Final Army Decision in the Complaint of (insert name) and Secretary of the Army

FROM (Activity commander)

TO (Complainant)

This is the Army's final decision in your equal employment opportunity complaint dated **(DATE)**. You alleged (specify type of discrimination) when (state the wrong complainant allegedly suffered).

Based on my evaluation of your complaint and pursuant to my authority to issue a final decision in this matter on behalf of the Secretary of the Army, I find that you **(WERE OR WERE NOT)** subjected to prohibited discrimination in the matters at issue.

(Specify the reasons for the decision and the documents or reports relied upon in reaching your decision.)

If you are dissatisfied with this final Army decision, you have the following appeal rights:

(Insert appropriate appeal rights in their entirety)

Notes:

1. This notice is to be used if a proposed disposition is adopted after the complainant has failed to request a hearing or a final agency decision without a hearing.
2. The notice is sent by certified mail, return receipt requested, or personally delivered to both the complainant and his or her representative, if any. If the notice is personally delivered, the complainant and his or her representative, if any, will acknowledge receipt by signing and dating the official file copy of the notice. If he or she declines to sign the copy, the server will sign it and indicate to whom and when the notice was served.
3. A copy of the notice to the complainant will be filed in the complaint file.
4. Appeal Rights: Use the applicable appeal rights from appendix B or D. If more than one set of appeal rights applies, each will be quoted in its entirety, to include its title. Determine whether subparagraph (a) or (b) is appropriate in paragraph 1 of the appeal rights in appendix B.
5. The format of this sample notice may be modified to conform with local requirements.

Figure B-1. Notice of Final Army Decision

Appeal Rights

1. An appeal may be filed with the Equal Employment Opportunity Commission within 20 calendar days of receipt of this decision. The 20-day period for filing an appeal begins on the date of receipt of this decision. An appeal will be deemed timely if it is delivered in person or postmarked before the expiration of the filing period or, in the absence of a legible postmark, the appeal is received by the Commission by mail within 5 days after the expiration of the filing period. Statements or briefs in support of the appeal may be submitted up to 30 calendar days from the date the appeal is filed. The regulation providing for appeal rights is contained in title 29 of the Code of Federal Regulations, a section of which is reproduced below:

Section 1613.233: Time limits.

(Use subparagraph (a) or (b) as appropriate.)

(a) Except as provided in paragraph (c) of this section, a complainant may file a Notice of Appeal at any time up to 20 calendar days after receipt of the agency's notice of final decision on his or her complaint. An appeal will be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Commission. Any statement or brief in support of the appeal must be submitted to the Commission and to the defendant agency within 30 calendar days of filing the Notice of Appeal. For purposes of this part, the decision of an agency shall be final only when the agency makes a determination on all of the issues in the complaint, including whether or not to award attorney fees or costs. If a decision to award attorney fees or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in section 1613.271(c).

(b) When issues of discrimination have been raised in a negotiated grievance process, a complainant may file a Notice of Appeal of such issues up to 20 days after receipt of an agency decision on the grievance and expiration of the time during which the union and the agency may move the matter to the next stage of the grievance process; receipt of an arbitrator's award; or receipt of the decision of the FLRA on exceptions to the arbitrator's award.

(c) The 20-day time limit within which a Notice of Appeal must be filed will not be extended by the Commission unless, based upon a written statement by the complainant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a Notice of Appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the appeal.

2. In place of an appeal to the Commission, a civil action may be filed in an appropriate U.S. District Court within 30 calendar days of receipt of the decision.

3. If an appeal to the Commission is filed, a civil action may be filed in a U.S. District Court within 30 calendar days of receipt of the Commission's final decision.

4. A civil action may also be filed any time after 180 calendar days of the date of initial appeal to the Commission if a decision has not been rendered.

5. If a civil action is filed and you do not have or are unable to obtain the services of a lawyer, you 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 you 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 30-day time limit for filing suit and in such form and manner as the court may require.

6. You are further notified that if you file a civil action, 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.

7. Appeals to the Commission should be forwarded to the Equal Employment Opportunity Commission, Office of Review and Appeals, Post Office Box 19848, WASH DC 20036. Any statement or brief in support of the appeal must be submitted to the Commission with one copy to the EEO Officer and one copy to the Director, Equal Employment Opportunity Compliance and Complaints Review Agency, Department of the Army, ATTN: SFMR-RBE, WASH DC 20310-1813, within 30 calendar days of filing the Notice of Appeal.

Docket Number

The docket number identified in the upper right-hand corner of page 1 of this letter should be used on all correspondence to the Director of Equal Employment Opportunity or the Director, Equal Employment Opportunity Compliance and Complaints Review Agency.

Figure B-2. Regular Appeal Rights

Appeal Rights

1. An appeal may be filed with the Equal Employment Opportunity Commission within 20 calendar days of receipt of this decision. The 20-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 or postmarked before the expiration of the filing period or, in the absence of a legible postmark, the appeal is received by the Commission by mail within 5 days after the expiration of the filing period. Statements or briefs in support of the appeal may be submitted up to 30 calendar days from the date the appeal is filed. The regulation providing for appeal rights is contained in title 29 of the Code of Federal Regulations, a section of which is reproduced below:

Section 1613.233: Time limits.

(Use Subparagraph (a) or (b) as appropriate.)

(a) Except as provided in paragraph (c) of this section, a complainant may file a Notice of Appeal at any time up to 20 calendar days after receipt of the agency's notice of final decision on his or her complaint. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Commission. Any statement or brief in support of the appeal must be submitted to the Commission and to the defendant agency within 30 calendar days of filing the Notice of Appeal. For purposes of this part, the decision of an agency shall be final only when the agency makes a determination on all of the issues in the complaint, including whether or not to award attorney fees or costs. If a decision to award attorney fees or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in section 1613.271(c).

(b) When issues of discrimination have been raised in a negotiated grievance process, a complainant may file a Notice of Appeal of such issues up to 20 days after receipt of an agency decision on the grievance and expiration of the time during which the union and the agency may move the matter to the next stage of the grievance process; receipt of an arbitrator's award; or receipt of the decision of the FLRA on exceptions to the arbitrator's award.

(c) The 20-day time limit within which a Notice of Appeal must be filed will not be extended by the Commission unless, based upon a written statement by the complainant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a Notice of Appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the appeal.

2. Appeals to the Commission should be forwarded to the Equal Employment Opportunity Commission, Office of Review and Appeals, Post Office Box 19848, WASH DC 20036. Any statement or brief in support of the appeal must be submitted to the Commission with one copy to the EEO officer and one copy to the Director, Equal Employment Opportunity Compliance and Complaints Review Agency, Department of the Army, ATTN: SFMR-RBE, WASH DC 20310-1813, within 30 calendar days of filing the Notice of Appeal.

Docket Number

The docket number identified in the upper right-hand corner of page 1 of this letter should be used on all correspondence to the Director of Equal Employment Opportunity or the Director, Equal Employment Opportunity Compliance and Complaints Review Agency.

Figure B-3. Age Only Appeal Rights

Appeal Rights—Age Discrimination

1. An appeal may be filed with the Equal Employment Opportunity Commission within 20 calendar days of receipt of this decision. The 20-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 or postmarked before the expiration of the filing period or, in absence of a legible postmark, the appeal is received by the Commission by mail within 5 days after the expiration of the filing period. Statements or briefs in support of the appeal may be submitted up to 30 calendar days from the date the appeal is filed. The regulation providing for appeal rights is contained in title 29 of the Code of Federal Regulations, a section of which is reproduced below:

Section 1613.233: Time limits.

(Use subparagraph (a) or (b) as appropriate.)

(a) Except as provided in paragraph (c) of this section, a complainant may file a Notice of Appeal at any time up to 20 calendar days after receipt of the agency's notice of final decision on his or her complaint. An appeal will be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Commission. Any statement or brief in support of the appeal must be submitted to the Commission and to the defendant agency within 30 calendar days of filing the Notice of Appeal. For purposes of this part, the decision of an agency will be final only when the agency makes a determination on all of the issues in the complaint, including whether or not to award attorney fees or costs. If a decision to award attorney fees or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in section 1613.271(c).

(b) When issues of discrimination have been raised in a negotiated grievance process, a complainant may file a Notice of Appeal of such issues up to 20 days after receipt of an agency decision on the grievance and expiration of the time during which the union and the agency may move the matter to the next stage of the grievance process; receipt of an arbitrator's award; or receipt of the decision of the FLRA on exceptions to the arbitrator's award.

(c) The 20-day time limit within which a Notice of Appeal must be filed will not be extended by the Commission unless, based upon a written statement by the complainant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a Notice of Appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the appeal.

2. Appeals to the Commission should be forwarded to the Equal Employment Opportunity Commission, Office of Review and Appeals, Post Office Box 19848, WASH DC 20036. Any statement or brief in support of the appeal must be submitted to the Commission with one copy to the EEO Officer and one copy to the Director, Equal Employment Opportunity Compliance and Complaints Review Agency, Department of the Army, ATTN: SFMR-RBE, WASH DC 20310-1813, within 30 calendar days of filing the Notice of Appeal.

Appeal Rights—Other

1. An appeal may be filed with the Equal Employment Opportunity Commission within 20 calendar days of receipt of this decision. The 20-day period for filing an appeal begins on the date of receipt of this decision. An appeal will be deemed timely if it is delivered in person or postmarked before the expiration of the filing period or, in the absence of a legible postmark, the appeal is received by the commission by mail within 5 days after the expiration of the filing period. Statements or briefs in support of the appeal may be submitted up to 30 calendar days from the date the appeal is filed. The regulation providing for appeal rights is contained in title 29 of the Code of Federal Regulations, a section of which is reproduced below:

Section 1613.233: Time limits.

(Use subparagraph (a) or (b) as appropriate.)

(a) Except as provided in paragraph (c) of this section, a complainant may file a Notice of Appeal at any time up to 20 calendar days after receipt of the agency's notice of final decision on his or her complaint. An appeal will be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Commission. Any statement or brief in support of the appeal must be submitted to the Commission and to the defendant agency within 30 calendar days of filing the Notice of Appeal. For purposes of this part, the decision of an agency will be final only when the agency makes a determination on all of the issues in the complaint, including whether or not to award attorney fees or costs. If a decision to award attorney fees or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in section 1613.271(c).

(b) When issues of discrimination have been raised in a negotiated grievance process, a complainant may file a Notice of Appeal of such issues up to 20 days after receipt of an agency decision on the grievance and expiration of the time during which the union and the agency may move the matter to the next stage of the grievance process; receipt of an arbitrator's award; or receipt of the decision of the FLRA on exceptions to the arbitrator's award.

(c) The 20-day time limit within which a Notice of Appeal must be filed will not be extended by the Commission unless, based upon a

Figure B-4. Combined Appeal Rights—Other—Continued

written statement by the complainant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a Notice of Appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the appeal.

2. In place of an appeal to the Commission, a civil action may be filed in an appropriate U.S. District Court within 30 calendar days of receipt of the decision.

3. If an appeal to the Commission is filed, a civil action may be filed in a U.S. District Court within 30 calendar days of receipt of the Commission's final decision.

4. A civil action may also be filed any time after 180 calendar days of the date of initial appeal to the Commission if a decision has not been rendered.

5. If a civil action is filed and you do not have or are unable to obtain the services of a lawyer, you 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 you 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 30-day time limit for filing suit and in such form and manner as the court may require.

6. You are further notified that if you file a civil action, you must name the appropriate department head or agency head as the defendant and to 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.

7. Appeals to the Commission should be forwarded to the Equal Employment Opportunity Commission, Office of Review and Appeals, Post Office Box 19848, WASH DC 20036. Any statement or brief in support of the appeal must be submitted to the Commission with one copy to the EEO Officer and one copy to the Director, Equal Employment Opportunity Compliance and Complaints Review Agency, Department of the Army, ATTN: SFMR-RBE, WASH DC 20310-1813, within 30 calendar days of filing the Notice of Appeal.

Docket Number

The docket number identified in the upper right-hand corner of page 1 of this letter should be used on all correspondence to the Director of Equal Employment Opportunity or the Director, Equal Employment Opportunity Compliance and Complaints Review Agency.

Figure B-4. Combined Appeal Rights—Other

Appeal Rights—Class Action

- a. You may appeal to the Equal Employment Opportunity Commission within 20 calendar days of receipt of this decision.
- b. In place of an appeal to the Commission, you may file a civil action in an appropriate U.S. District Court within 30 days of receipt of the decision.
- c. If you elect to appeal to the Commission, you may file a civil action in a U.S. District Court within 30 days of receipt of the Commission's final decision.
- d. A civil action may also be filed any time after 180 days of the date of initial appeal to the Commission, if a final decision has not been rendered.
- e. If you choose to file a civil action and you do not have or are unable to obtain the services of a lawyer, you may also request the court to appoint a lawyer to represent you. In such circumstances as the court may deem just, the court may appoint a lawyer for you 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 30 day time limit and in such form and manner as the court may require.

You are further notified that if you file a civil action, you must name the appropriate department head or agency head as the defendant and to 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.

Any appeal to the Commission should be forwarded to the Equal Employment Opportunity Commission, Office of Review and Appeals, Post Office Box 19848, WASH DC 20036. If you appeal, an information copy should be sent to the EEO Officer and to the Director, Equal Employment Opportunity Compliance and Complaints Review Agency, Department of the Army, ATTN: SFMR-RBE, WASH DC 20310-1813. Upon receipt of the information copy, this office will forward the complaint file in your case to the Commission.

Docket Number

The docket number identified in the upper right-hand corner of page 1 of this letter should be used on all correspondence to the Director of Equal Employment Opportunity or the Director, Equal Employment Opportunity Compliance and Complaints Review Agency.

Figure B-5. Appeal Rights—Class Action

Appendix C Addresses and Geographic Jurisdictions of EEOC District Offices

C-1. EEOC administrative judges are assigned to hear discrimination complaints from various district offices located throughout the United States and the Washington field office. When an EEO officer must obtain the services of an EEOC administrative judge to conduct a hearing in accordance with paragraph 2-14 (individual complaints) or paragraph 3-7 (class action complaints), he or she should contact the EEOC district office with jurisdiction over the activity.

C-2. The EEOC district offices are listed in figure C-1.

EEOC district offices:

Atlanta District Office

District Director

EEOC

Citizens Trust Bank Bldg., 10th Floor

75 Piedmont Ave., NE., Suite 1100

Atlanta, GA 30335

(404) 331-6093

FTS 242-6093

Geographic jurisdiction: Georgia and South Carolina.

Baltimore District Office

District Director

EEOC

109 Market Pl., Suite 4000

Baltimore, MD 21202

(301) 962-3932

FTS 922-3932

Geographic jurisdiction: States of Maryland and Virginia, except for cities and counties under the jurisdiction of the Washington field office.

Birmingham District Office

District Director

EEOC

2121 Eighth Ave., North, Suite 824

Birmingham, AL 35203

(205) 731-0082

FTS 229-0082

Geographic jurisdiction: Alabama and Mississippi.

Charlotte District Office

District Director

EEOC

5500 Central Avenue

Charlotte, NC 28212

(704) 567-7100

FTS 628-7100

Geographic jurisdiction: State of North Carolina.

Chicago District Office

District Director

EEOC

Federal Bldg., Room 930A

536 S. Clark Street

Chicago, IL 60605

(312) 353-2713
FTS 353-2713

Geographic jurisdiction: State of Illinois, except counties of Alexander, Bond, Calhoun, Clinton, Greene, Jackson, Jersey, Macoupin, Madison, Monroe, Perry, Pulaski, Randolph, St. Clair, Union, and Washington.

Cleveland District Office
District Director
EEOC
One Playhouse Square
1375 Euclid Avenue, Room 600
Cleveland, OH 44115
(216) 522-2001
FTS 942-2001

Geographic jurisdiction: State of Ohio.

Dallas District Office
District Director
EEOC
8303 Elmbrook Dr., 2nd Floor
Dallas, TX 75247
(214) 767-7015
FTS 729-7015

Geographic jurisdiction: States of Oklahoma and Texas, counties of Anderson, Archer, Baylor, Bell, Bosque, Bowie, Brown, Callahan, Camp, Cass, Cherokee, Clay, Coleman, Collin, Comanche, Cooke, Coryell, Dallas, Delta, Denton, Ellis, Erath, Fallas, Fannin, Fisher, Franklin, Freestone, Grayson, Gregg, Hamilton, Harrison, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jack, Johnson, Jones, Kaufman, Lamar, Lampass, Leon, Limestone, Madison, Marion, McLennan, Milam, Mills, Montague, Morris, Nacogdoches, Navarro, Nolan, Palo Pinto, Panola, Parker, Rains, Red River, Robertson, Rockwell, Runnels, Rusk, Shackelford, Shelby, Smith, Somervelle, Stephens, Tarrant, Taylor, Throckmorton, Titus, Upshur, Van Zandt, Wichita, Wilbarger, Wise, Wood, and Young.

Denver District Office
District Director
EEOC
1845 Sherman St., 2nd Floor
Denver, CO 80203
(303) 866-1300
FTS 564-1300

Geographic jurisdiction: Colorado, Wyoming, Montana, North Dakota, South Dakota, and Nebraska.

Detroit District Office
District Director
EEOC
McNamara Federal Building
477 Michigan Ave., Room 1540
Detroit, MI 48226
(313) 226-7636
FTS 226-7636
Geographic jurisdiction: Michigan.

Houston District Office
EEOC
405 Main Street, 6th Floor
Houston, TX 77002
(713) 653-3320
FTS 522-3320

Geographic jurisdiction: State of Texas, counties of Angelina, Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Hardin, Harris, Jasper, Jefferson, Liberty, Matagorda, Montgomery,

Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Wharton.

Indianapolis District Office
District Director
EEOC
Federal Building, U.S. Courthouse
46 E. Ohio St., Room 456
Indianapolis, IN 46204
(317) 226-7212
FTS 331-7212
Geographic jurisdiction: Indiana and Kentucky.

Los Angeles District Office
District Director
EEOC
3660 Wilshire Blvd., 5th Floor
Los Angeles, CA 90010
(213) 251-7278
FTS 983-7278
Geographic jurisdiction: States of Nevada and California, counties of Los Angeles, San Bernadino, Ventura, Santa Barbara, Orange, Riverside, Imperial, and San Diego.

Memphis District Office
District Director
EEOC
1407 Union Ave., Suite 621
Memphis, TN 38104
(901) 521-2617
FTS 222-2617
Geographic jurisdiction: Tennessee and Arkansas.

Miami District Office
District Director
EEOC
Metro-Mall Building
1 NE First Street, 6th Floor
Miami, FL 33132
(305) 536-4491
FTS 350-4491
Geographic jurisdiction: Florida and Panama Canal Zone.

New Orleans District Office
District Director
EEOC
701 Loyola Avenue, Suite 600
New Orleans, LA 70113
(504) 589-2329
FTS 682-2329
Geographic jurisdiction: State of Louisiana.

New York District Office
District Director
EEOC
90 Church Street, Room 1505
New York, NY 10007
(212) 264-7161
FTS 264-7161
Geographic jurisdiction: New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine, Puerto Rico, and Virgin Islands.

Philadelphia District Office
District Director

EEOC

1421 Cherry Street, 10th Floor
Philadelphia, PA 19102
(215) 597-7784

FTS 597-7784

Geographic jurisdiction: Pennsylvania, New Jersey, Delaware, and West Virginia.

Phoenix District Office

District Director

EEOC

4520 N. Central Ave., Suite 300

Phoenix, AZ 85012-1848

(602) 261-3882

FTS 261-3882

Geographic jurisdiction: Arizona, New Mexico, and Utah.

San Antonio District Office

District Director

EEOC

5410 Fredericksburg Rd., Suite 200

Mockingbird Plaza, Plaza II

San Antonio, TX 78229

(512) 229-4810

FTS 730-4810

Geographic jurisdiction: State of Texas, counties of Andrews, Aransas, Arkansas, Armstrong, Atascosa, Bailey, Bandera, Bastrop, Bee, Bexar, Blanco, Borden, Brazos, Brewster, Briscoe, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Carson, Castro, Childress, Cochran, Coke, Comal, Collingsworth, Concho, Cottle, Crockett, Crane, Crosby, Culberson, Dallas, Dawson, Deafsmith, De Witt, Dickens, Dimmit, Donley, Duval, Ector, Edwards, El Paso, Fayette, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Grey, Guadalupe, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hockley, Howard, Hudspeth, Hutchinson, Irion, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamb, La Salle, Lavaca, Lee, Live Oak, Lipscombe, Llano, Loving, Lubbock, Lynn, Mason, Martin, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Mitchell, Moore, Motley, Nueces, Ochiltree, Oldham, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Refugio, Roberts, San Patricio, San Saba, Schleicher, Scurry, Sherman, Starr, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Tom Green, Travis, Upton, Uvalde, Val Verde, Victoria, Ward, Washington, Webb, Wheeler, Willacy, Williamson, Wilson, Winkler, Yoakum, Zapata, and Zavala.

Milwaukee District Office

District Director

EEOC

310 West Wisconsin Ave., Suite 800

Milwaukee, WI 53203

(414) 291-1111

FTS 362-1111

Geographic jurisdiction: Wisconsin, Minnesota, and Iowa.

San Francisco District Office

District Director

EEOC

901 Market Street, Suite 500

San Francisco, CA 94103

(415) 995-5049

FTS 995-5049

Geographic jurisdiction: State of Hawaii, Pacific Far East, and California counties of Alameda, Alpine, Amador, Butte, Calaveras,

Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mendocino, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba.

Seattle District Office

District Director

EEOC

Arcade Plaza Building, 7th Floor

1321 Second Avenue

Seattle, WA 98101

(206) 442-0968

FTS 399-0968

Geographic jurisdiction: Washington, Oregon, Idaho, and Alaska.

St. Louis District Office

District Director

EEOC

Central West Plaza Bldg., 4th Floor

625 N. Euclid Street

St. Louis, Missouri 63108

(314) 425-6585

FTS 279-6585

Geographic jurisdiction: States of Missouri, Kansas, and Illinois counties of: Alexander, Bond, Calhoun, Clinton, Greene, Jackson, Jersey, Macoupin, Madison, Monroe, Perry, Pulaski, Randolph, St. Clair, Union, and Washington.

Washington Field Office

Director

EEOC

1400 L Street, N.W., Suite 200

Washington, DC 20005

(202) 275-7377

FTS 275-7377

Geographic jurisdiction: District of Columbia, Europe, and State of Virginia counties of Arlington, Clarke, Fairfax, Fauquier, Frederick, Loudon, Prince William, Stafford, and Warren and State of Virginia cities of Alexandria, Annandale, Fairfax, Falls Church, Herndon, Leesburg, Manassas, Manassas Park, Vienna, and Winchester.

Figure C-1. EEOC district offices—Continued

Appendix D Sample Advice—Mixed Cases

D-1. The notice in figure D-1 should be included verbatim to all agency decisions on personnel actions that are appealable to the Merit Systems Protection Board (MSPB), where the employee has raised the issue of discrimination, either orally or in writing, during the processing of the personnel action but before the agency decision to effectuate that personnel action.

D-2. The notice in figure D-2 should be included in final agency decisions on mixed case complaints filed after January 11, 1979, but before May 2, 1983, and where the complaint was processed pursuant to 29 CFR, section 1613.404(b) (i.e., where any issues in such mixed case complaints were also appealed to the MSPB, but where the allegations of discrimination were not raised or were not consid-

ered by the MSPB).

D-3. The notice in figure D-3 is applicable to mixed case complaints filed on or after May 2, 1983, and should be attached to all decisions where the agency has rejected the complaint pursuant to 29 CFR, section 1613.405(a) (i.e., where the complainant has previously appealed the matter that forms the basis of the complaint to MSPB).

D-4. The notice in figure D-4 should be made a part of all letters notifying the complainant of the acceptance of a mixed case complaint for processing pursuant to 29 CFR, section 1613.405(e).

D-5. The notice in figure D-5 should be made a part of the letter

notifying the complainant of the proposed disposition of a mixed case complaint.

D-6. The notice in figure D-6 should be made a part of the letter notifying the complainant of the final agency decision on a mixed case complaint.

D-7. The notice in figure D-7 should be made a part of the letter notifying complainant of a cancellation pursuant to 29 CFR, section 1613.406(a)(2) (i.e., where a complaint on a proposal to take an appealable action is canceled because the complainant has subsequently filed an appeal with the MSPB on the agency decision to effectuate that proposal).

If you believe that this personnel action discriminated against you on the basis of your race, color, religion, sex, national origin, age, or handicap, you may file a complaint of discrimination with the following person (activity EEO Officer) or you may file an appeal with the Merit Systems Protection Board, as previously described. However, you may not file both. Should you elect to file a complaint of discrimination, your complaint will be processed in accordance with Equal Employment Opportunity Commission regulations at 29 CFR, Part 1613, subpart D. Should you elect to file an appeal, your appeal will be processed in accordance with Merit Systems Protection Board regulations at title 5 CFR Part 1201, subpart D.

Figure D-1. Notice 1

You have the right to file a civil action pursuant to title 29 CFR, section 1613.421. Alternatively, 29 CFR, section 1613.404(b), provides that you may petition the Merit Systems Protection Board (MSPB) to reconsider your previous appellate decision to include the allegations of discrimination raised with this agency in your complaint that were not previously decided on appeal by the MSPB. It has been held, however, that although 5 USC 7702(e)(2) permits an employee who has filed a complaint with an agency under 5 USC 7702(a)(2) and has not received a judicially reviewable action after 120 days to appeal to the MSPB, the statute does not also provide for subsequent MSPB review after the agency reaches a final decision. See *Spears v. MSPB*, 776 F. 2d 520 (Fed. Cir. 1985). The Court held in that case that where a former Federal employee previously appealed her removal to the MSPB on nondiscrimination grounds and lost, she was barred by *res judicata* from subsequently challenging her termination on an allegation of discrimination.

Figure D-2. Notice 2

Should you wish to proceed further with this matter, you must bring the allegations of discrimination contained in this canceled complaint to the attention of the Merit Systems Protection Board as part of your appeal to them, pursuant to 5 CFR, section 1201.155.

Figure D-3. Appeal rights

Your complaint will be processed in accordance with EEOC regulations at title 29, CFR Section 1613.405(e). If you do not receive a final agency decision on this complaint within 120 calendar days of the date of the filing of this complaint, you may appeal the matter to the Merit Systems Protection Board (MSPB), or you may file a civil action, as specified at 29 CFR, section 1613.421(g). If you are dissatisfied with the agency's eventual decision on this complaint, you may appeal that decision to the MSPB (not the EEOC) within 20 calendar days of receipt of that decision.

Figure D-4. Notice 3

If you are dissatisfied with this proposed disposition, you are entitled to request a final decision (without a hearing by the EEOC) from (insert name and address of agency deciding official). If, thereafter, you should be dissatisfied with that final decision, you may appeal that decision to the Merit Systems Protection Board (MSPB) within 20 calendar days of receipt of that decision. You may, in connection with any such appeal, request a hearing before the MSPB. In addition, if you have not received such final decision within 120 calendar days of the date on which you originally filed your complaint, you may appeal directly to the MSPB (not the EEOC) at any time after the expiration of 120 calendar days after filing the complaint. (Note: Consistent with the MSPB's prior regulation, section 1613.405(e) provides that such an appeal may be filed at any time after the expiration of the 120-calendar-day period, but not later than 1 year from the filing of the complaint. The MSPB, however, has revised its regulation in 5 CFR, section 1201.154(a)(2) to delete the 1 year time limit, 51 Federal Regulation 25147, 10 July 1986. Therefore, if you have not received a final agency decision on your complaint, you may appeal to the MSPB at any time after 120 calendar days from the date the complaint was filed.) You may also file a civil action in U.S. District Court within 30 calendar days of receipt of the final agency decision, if you do not file an appeal with the MSPB.

Figure D-5. Notice 5

The record reflects that your personnel action is appealable to the Merit Systems Protection Board (MSPB). Consequently, your appeal rights in connection with this decision are properly under the jurisdiction of MSPB in accordance with 29 CFR, section 1613.405(e). Hence, your appeal rights are as follows:

Appeal Rights

If you are dissatisfied with this decision, you have the right to appeal the matter to the MSPB (not the Equal Employment Opportunity Commission) within 20 calendar days of receipt of the decision. You also have the right to file a civil action in Federal district court within 30 calendar days of receipt of this decision and as further described at 29 CFR, section 1613.421(a). You are further notified that if you file a civil action, you must name the appropriate department head or agency head as the defendant and to 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

Figure D-6. Notice 4

The allegations of discrimination contained in this canceled complaint should be raised with the Merit Systems Protection Board, in connection with your pending appeal of this agency's action, which formed the basis of this complaint.

Figure D-7. Notice 6

Glossary

Section I Abbreviations

ADEA

Age Discrimination in Employment Act of 1967

CFR

Code of Federal Regulations

CPO

civilian personnel officer

DA

Department of the Army

EEO

equal employment opportunity

EEOC

Equal Employment Opportunity Commission

EEOCCRA

Equal Employment Opportunity Compliance and Complaints Review Agency

EPA

Equal Pay Act of 1963

FIRA

Federal Labor Relations Authority

MACOM

major Army command

MSPB

Merit Systems Protection Board

NAF

nonappropriated fund

ORA

Office of Review and Appeals

OSA

Office of the Secretary of the Army

PERSCOM

U.S. Total Army Personnel Command

ROI

Report of Investigation

RMO

responding management official

SJA

Staff Judge Advocate

Sub-MACOM

subordinate major Army command

USACARA

U.S. Army Civilian Appellate Review Agency

Section II Terms

activity commander

The Army commander who has delegated appointing authority for the civilian workforce and has a CPO, a labor counselor, and an EEO officer available for advice.

administrative judge

An official assigned by the EEOC to hold hearings on formal complaints of discrimination and to otherwise process individual and class complaints for the EEOC.

age discrimination

A claim of discrimination based on age by an individual who is at least 40 years of age at the time of the alleged discriminatory act.

agent of the class

A member of a class who files the complaint and acts for the class during the processing of the class complaint. This person 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, physical or mental handicap.

allegation of reprisal

A claim of restraint, interference, coercion, discrimination, or retaliation in connection with presenting or processing a complaint or because of any opposition to an employment practice unlawful under title 29, CFR part 1613, or this regulation. Reprisal claims can be brought by complainants, their representatives, witnesses, and personnel involved in the complaint process.

arbitration

The final resolution or decision of a grievance filed under a negotiated grievance procedure by an impartial person (an arbitrator) selected by labor and management. If allegations of discrimination are not excluded from a negotiated grievance procedure, they may be filed under such procedure and eventually may be decided through arbitration. Only labor and management may invoke arbitration to resolve a grievance.

civilian personnel officer

The individual who is designated by the commander to administer the civilian personnel program.

Class

A group of Army employees, former Army employees, or applicants for Army employment, who allege that they have been, are being, or may be adversely affected by an Army personnel management policy or practice. The policy or practice must allegedly discriminate against the group based on their common race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal.

Class complaint

A written discrimination complaint filed on behalf of a class by the agent of the class alleging that any Army personnel policy or

practice discriminates against the class and fulfills all of the following elements:

- a. The class is so numerous that a consolidated complaint of the class is impractical.
- b. There are questions of fact common to the class.
- c. The agent's individual claim is typical of the claims of the class.
- d. The agent of the class and his or her representative if any, will fairly and adequately protect the interests of the class.

complainant

An Army employee, a former Army employee, or an applicant for Army employment who files a formal complaint of discrimination based on his or her race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal.

Director of Equal Employment Opportunity

The official designated by the Secretary of the Army to administer the Army's EEO program in accordance with 29 CFR, section 1613.204.

Discrimination

Any act or failure to act, impermissibly based in whole or in part on a person's race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal, that adversely affects privileges, benefits, working conditions, results in disparate treatment, or has a disparate impact on employees or applicants.

Equal Employment Opportunity Commission

The Federal agency with overall responsibility for Federal sector complaints. The EEOC issues policy and regulations on the discrimination complaint system, holds hearings and makes findings and recommendations on discrimination complaints, and makes final decisions on discrimination complaints that have been appealed. It also reviews, upon request, decisions of negotiated grievances and Merit Systems Protection Board appeals if they include issues of discrimination.

Equal Employment Opportunity Compliance and Complaints Review Agency

The Army organization responsible for managing the Army's EEO complaint system. EEOCCRA also prepares the final Army decision in EEO complaints for the approval and signature of the Secretary of the Army, or his or her designee.

EEO counselor

An Army employee (or an employee of a serviced DOD activity), working under the direction of the EEO officer, who makes informal inquiries and seeks resolution of informal complaints. EEO counselors may be assigned to full-time or part-time EEO counselor positions or be given collateral EEO duties and responsibilities. (In the latter case,

the EEO counseling duties are officially added to the counselor's position description.)

EEO officer

The individual designated by the activity commander to administer the activity's EEO Program. This includes managing and operating the complaint processing system, supervising and training EEO counselors, and advising the activity commander on the proposed disposition of complaints.

factfinding conference

One of several alternative means USACARA uses to investigate an EEO complaint; this procedure involves taking testimony in the presence of a court reporter, the complainant and his or her representative, and the legal officer representing management.

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 decision

The decision, with or without a hearing, of the Army on a complaint of discrimination.

formal individual discrimination complaint

A written complaint, ordinarily a DA Form 2590-R (Formal Complaint of Discrimination), filed under this regulation, alleging that a specific act or acts of discrimination or reprisal has or have taken place that is personal to the individual.

handicapped person

a. A person who—

(1) Has a physical or mental impairment that substantially limits one or more of such person's major life activities.

(2) Has a record of such an impairment.

(3) Is regarded as having such an impairment.

b. Physical or mental impairment.

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

(a) Neurological.

(b) Musculoskeletal.

(c) Special sense organs.

(d) Cardiovascular.

(e) Reproductive.

(f) Digestive.

(g) Genito-urinary.

(h) Hemic and lymphatic.

(i) Skin

(j) Endocrine.

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. Major life activities. Functions, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. Has a record of such an impairment. Has a history of or has been classified (or

misclassified) as having a mental or physical impairment that substantially limits one or more major life activities.

e. Is regarded as having such an impairment. This term is defined as one of the following:

(1) A physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation.

(2) A physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment.

(3) None of the impairments defined in (2), above, but is treated by an employer as having such an impairment.

harmful error

An error made by the activity in applying Army (including local and command level), Office of Personnel Management, or other governing regulatory procedures that, in the absence of correction or cure, might have caused the activity to reach a conclusion different than the one reached.

informal adjustment

An adjustment arrived at during the precomplaint or formal complaint process that resolves issues raised to the satisfaction of the complainant or agent and the Army. The terms of the adjustment must be set out in a negotiated settlement agreement.

informal individual discrimination complaint

A matter of alleged discrimination that an aggrieved person brings to the attention of an EEO counselor before a formal discrimination complaint is filed. Contact with the EEO counselor may be verbal or in writing.

investigative report

In the Army, the Report of Investigation (ROI) prepared by a USACARA investigator after a formal EEO complaint is filed.

labor counselor

An attorney working in the servicing activity's legal office who advises and represents the activity commander in labor matters, including EEO complaints.

Merit Systems Protection Board

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

mixed case appeal

An appeal filed with the MSPB that alleges that an adverse Army personnel action resulted, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal, or alleges that such Army action resulted in sex-based wage discrimination.

mixed case complaint

A complaint involving an action appealable

to the MSPB that alleges that the action was taken because of discrimination. Actions appealable to the MSPB include, but are not limited to, removals, demotions, suspensions for more than 14 days, reductions-in-force, and furloughs for 30 days or less.

negotiated grievance procedure

A grievance procedure contained in a collective bargaining agreement negotiated between the Army and a recognized labor organization. An allegation of discrimination may be processed under a negotiated grievance procedure as provided for by 5 USC 7121(d). Unless specifically excluded by agreement between labor and management, an employee may file an allegation of discrimination to be processed under a negotiated grievance procedure or this regulation, but not both.

negotiated settlement agreement

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

notice of proposed disposition

The commander's notice to the complainant, after an informal adjustment attempt, of his or her findings and disposition of the complaint. The notice advises the complainant of the right to request a final Army decision, with or without a hearing, from the Department of the Army.

qualified handicapped person

With respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of himself, herself, or others and who, depending upon the type of appointing authority being used, either—

a. Meets the experience or education requirements (may include passing a written test) of the position in question.

b. Meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

remedial action

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 reference to, or any record of, an unwarranted disciplinary action that is not a personnel action.

reportable contact

A reportable contact is any contact with an EEO counselor by an aggrieved person who alleges discrimination on the bases of race, color, religion, sex, age, national origin, physical or mental handicap, and/or reprisal.

representative

A person selected and designated in writing

by a complainant, the class agent, or the responding management official (RMO). The representative may accompany, represent, and advise the complainant, the agent, or the RMO at any stage of the complaint process.

reprisal

Unlawful restraint, coercion, or discrimination against complainants, their representatives, witnesses, Directors of EEO, EEO Officers, investigators, counselors, and other agency officials with responsibility for processing EEO discrimination complaints during any stage in the presentation and processing of the complaint, including the precomplaint process, or because of opposition to any unlawful EEO employment discrimination.

responding management official

A management official, named by the complainant or otherwise identified, who proposed to take, took, or failed to take the action that forms the basis of the complaint.

served activity

Any activity on an installation that receives EEO services from the activity EEO officer.

servicing activity

The installation to which the activity EEO officer is assigned that administers the EEO program and provides EEO services as the host and/or tenant activity.

sexual harassment

Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature when one or more of the following occurs:

a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

spin-off complaints

Complaints alleging discrimination on the basis of race, color, religion, sex, national origin, age, physical or mental handicap, or reprisal, normally concerning undue delay or improper processing of pending complaints.

U.S. Army Civilian Appellate Review Agency

The Army organization that investigates and makes recommended findings on formal EEO complaints filed against the Army and issues decisions pertaining to the occurrence of harmful regulatory and procedural errors.

Section III

Special Abbreviations and Terms

There are no special terms.

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FORMAL COMPLAINT OF DISCRIMINATION

For use of this form, see AR 690-600, the proponent agency is OSA

PRIVACY ACT STATEMENT (6 USC 552a)

Authority: Public Law 92-261

Principle Purpose: Formal filing of allegation of discrimination because of race, color, religion, sex, handicap, age, national origin or reprisal.

Routine Uses: This form and the information on this form may be used: (a) as a data source for complaint information for production of summary descriptive statistics and analytical studies of complaints processing and resolution efforts and may also be used to respond to general requests for information under the Freedom of Information Act, (b) to respond to requests from legitimate outside individuals or agencies (e.g., *Members of Congress, The White House, and the Equal Employment Opportunity Commission (EEOC)*) regarding the status of the complaint or appeal, and (c) to adjudicate complaint or appeal.

Disclosure: Voluntary, however, failure to complete all appropriate portions of this form may lead to rejection of complaint on the basis of inadequate data on which to determine if complaint is acceptable.

1. NAME OF COMPLAINANT (Last, First, Middle Initial)		4. ADDRESS (Include City, State, and ZIP Code)	
2. SSN			
3b. HOME TELEPHONE NO	3a. WORK TELEPHONE NO		
5. ARE YOU BEING REPRESENTED? ☐ a. Yes (Complete 5c) ☐ b. No		5c. IF YES, NAME OF REPRESENTATIVE	
6a. NAME OF ARMY ORGANIZATION YOU BELIEVE DISCRIMINATED AGAINST YOU		6b. ADDRESS OF ALLEGED DISCRIMINATION ORGANIZATION (Include City, State, and ZIP Code)	
7. MAJOR ARMY COMMAND OF ACTIVITY YOU BELIEVE DISCRIMINATED AGAINST YOU	8. DATE ON WHICH MOST RECENT ALLEGED DISCRIMINATION OCCURRED	9. ARE YOU WORKING FOR THE FEDERAL GOVT ? ☐ a. Yes (Complete items 10, 11 and 12) ☐ b. No (Skip to item 13)	
10. NAME OF AGENCY WHERE YOU ARE CURRENTLY EMPLOYED		12a. TITLE OF YOUR CURRENT JOB	
11. ADDRESS OF YOUR CURRENT EMPLOYER (Include City, State, and ZIP Code)		12b. GRADE	
13. Reason you believe you were discriminated against (Check below).			
a. RACE (State your Race) →		e. HANDICAP ☐ Mental ☐ Physical	
b. COLOR (State your Color) →		f. SEX ☐ Female ☐ Male	
c. RELIGION (State your Religion) →		g. AGE (Specify Age) →	
d. NATIONAL ORIGIN (State Natl Origin) →		h. REPRISAL	
14. I HAVE DISCUSSED MY COMPLAINT WITH AN EEO COUNSELOR (See Reverse) ☐ a. Yes (Complete 14c) ☐ b. No		14c. IF YES, NAME OF COUNSELOR	
		15. DATE OF FINAL INTERVIEW	

16. EXPLAIN SPECIFICALLY HOW YOU WERE DISCRIMINATED AGAINST (That is, treated differently from other employees or applicants, because of your race, color, religion, sex, national origin, age, mental or physical handicap, or reprisal) (If your complaint involves more than one basis for your dissatisfaction, list and number each such allegation separately and furnish specific, factual information in support of each) (Use additional sheets, if necessary)

Allegation No. 1:

17. LIST IN ITEM 20 THE NAMES OF YOUR WITNESSES AND WHAT FACTUAL INFORMATION EACH WILL BE EXPECTED TO CONTRIBUTE THROUGH HIS/HER TESTIMONY TO THE INVESTIGATION OF YOUR COMPLAINT.

18. WHAT SPECIFIC CORRECTIVE ACTION DO YOU WANT TAKEN ON YOUR COMPLAINT? (If more than one allegation is being made, state overall corrective action desired and the specific corrective action desired for each separate allegation.)

19 HAVE THE MATTERS LISTED IN ITEM 16 BEEN APPEALED TO THE MERIT SYSTEM PROTECTION BOARD OR FILED UNDER A NEGOTIATED GRIEVANCE PROCEDURE?

☐ a Yes (Explain in item 20) ☐ b No

20 REMARKS

21 SIGNATURE OF COMPLAINANT

22 DATE THIS COMPLAINT FORM WAS SIGNED BY THE COMPLAINANT (Month, day, year)

To be Completed by the Organization's EEOO

I certify that: (1) The complainant has reaffirmed this complaint in my presence and has stated that the facts contained therein are true to the best of his/her knowledge; (2) a determined effort at informal resolution of this complaint failed to produce a solution satisfactory to the complainant; and (3) local management in the appropriate change of command has been informed concerning the complaint and its submission in the above format.

23. SIGNATURE OF EEOO

24a. TYPED NAME AND TITLE OF EEOO

24b. ADDRESS OF EEOO

25. DATE COMPLAINT FILED WITH EEOO

26. TELEPHONE NO. OF EEOO PROCESSING COMPLAINT

The matter(s) giving rise to the complaint will be coded using one or more of the following codes:

CATEGORY	CODE	CATEGORY	CODE	CATEGORY	CODE
Appointment	(1)	Training	(9)	Reprisal	(17)
Promotion	(2)	Time & Attendance	(10)	Pay, Including Overtime	(18)
Reassignment	(3)	Retirement	(11)	Conversion to Full Time/	
Separation/ Termination	(4)	Assignment of Duties	(12)	Career Conditional	(19)
Suspension	(5)	Exam/Test	(13)	Reinstatement	(20)
Reprimand	(6)	Work Conditions	(14)	Awards	(21)
Evaluation/Appraisal	(7)	Harassment	(15)	And/Or Other (Specify)	(22)
Duty Hours	(8)	Sexual Harassment	(16)		

27. Enter Code(s) for Matter(s) Giving Rise to the Complaint →

INFORMATION CONCERNING THE PROCESSING OF YOUR COMPLAINT OF DISCRIMINATION

This form will be used only if you, as an Army employee or as an applicant for Federal employment, think you have been treated unfairly because of your race, color, religion, sex, national origin, age, mental or physical handicap, or reprisal. If you have any questions concerning the completion of this form, you may contact the Equal Employment Opportunity Officer (EEOO) at your activity.

Your written, formal complaint must be filed within 15 calendar days of the date of your final interview with the EEO counselor. If the matter has not been resolved to your satisfaction within 21 calendar days of your first interview with the EEO counselor and the final counseling interview has not been completed within that time, you have a right to file a complaint at any time thereafter up to 15 days after the final interview. Your written formal complaint must be filed within 15 calendar days of the date of your final interview with the EEO counselor. This time limit may be extended if you can give a good reason for not submitting the complaint within the 15 calendar day limit.

You may have a representative at all stages of the processing of your complaint. You or your representative should personally file your complaint with the EEOO of your activity.

If your complaint is accepted, you will have an opportunity to talk with an investigator from the U. S. Army Civilian Appellate Review Agency and to give him or her all the facts you have which you believe will support your complaint. If your complaint is rejected, you will be advised in writing of the reason(s) and advised of the right to appeal. Upon completion of the investigation of your complaint, you will receive a copy of the investigator's report and an attempt will be made to resolve the complaint then.

If your complaint cannot be settled informally on the basis of the investigation, you may request a review of your record by the Department of the Army Director of Equal Employment Opportunity, or you may request a hearing at this stage. If a hearing is requested, it will be conducted by an administrative judge designated by the EEOC. The findings, analysis, and recommendations will be forwarded to the Director of EEO for decision. You will be advised by the Director of the decision and provided a copy of the case record.

If you are not satisfied with the Director's decision, you will have the right to appeal to the Office of Review and Appeals of the EEOC, P.O. Box 19848, Washington, D.C. 20036, within 20 calendar days after receipt of the decision.

Please be specific in stating the facts concerning your complaint in items 15 through 19.

PRECOMPLAINT COUNSELING DATA SHEET				1 DATE		2 MACOM	
For use of this form, see AR 690-600, the proponent agency is OSA							
3. ACTMITY PROCESSED BY				4. ACTMITY COMPLAINED AGAINST			

The EEO counselor will complete all items except those which will be completed by the EEO Officer, which are items 2 and 38.

PART A - BASIS FOR COMPLAINT (Enter the appropriate code in items 2-9)

CATEGORY	SPECIFIC	CODE	CATEGORY	SPECIFIC	CODE
Race/Color	Black	1	Religion (Religion)	Enter the Religion	X
	Hispanic	2	Sex	Female	F
	American Indian	3		Male	M
	Oriental	4	Age	Enter the Age	-
	Aleut (Alaska only)	5	Handicap	Mental	M
	Eskimo (Alaska only)	6		Physical	P
	White	7	Nat'l Origin	Enter National Origin	X
	Non-Hispanic (P.R. Only)	8	Reprisal	Reprisal	X
None of the Above	9				

5. RACE	6. COLOR	7. RELIGION	8. HANDICAP	9. SEX	10. NATIONAL ORIGIN	11. AGE	12. REPRISAL
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PART B - MATTER GIVING RISE TO THE COMPLAINT

The matter(s) giving rise to the complaint will be coded using one or more of the following codes:

CATEGORY	CODE	CATEGORY	CODE	CATEGORY	CODE
Appointment	(1)	Training	(9)	Reprisal	(17)
Promotion	(2)	Time & Attendance	(10)	Pay, Including Overtime	(18)
Reassignment	(3)	Retirement	(11)	Conversion to Full Time/	
Separation/ Termination	(4)	Assignment of Duties	(12)	Career Conditional	(19)
Suspension	(5)	Exam/Test	(13)	Reinstatement	(20)
Reprimand	(6)	Work Conditions	(14)	Awards	(21)
Evaluation/Appraisal	(7)	Harassment	(15)	And/Or Other (Specify)	(22)
Duty Hours	(8)	Sexual Harassment	(16)		

13. Enter Code(s) for Matter(s) Giving Rise to the Complaint							
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14. DATE OF ALLEGED INCIDENT	15. DATE COUNSELOR CONTACTED	16. DATE OF 21-DAY LETTER
17. DATE FINAL INTERVIEW	18. WAS COMPLAINT RESOLVED? ☐ Yes ☐ No	

PART C - CORRECTIVE ACTION TAKEN (Check Appropriate Box)

19. A-1 Performance Re-evaluated.	26. E-3 Non-Retroactive Hire.	33. H-1 Adverse Action Rescinded with Back Pay.
20. B-2 Adverse Material Removed from OPF.	27. E-4 Non-Retroactive Promotion.	34. H-2 Adverse Action Rescinded Without Back Pay.
21. C-1 Cease Complained Practice.	28. E-5 Modify Disciplinary Action.	35. J-1 Priority Consideration.
22. D-2 Agency Improvements Personnel Practices.	29. F-1 Reassignment; Same Duty Station.	36. K-1 Reinstatement With Back Pay.
23. D-3 Agency Improvement Working Cond./Pers. Practices.	30. F-2 Reassignment; Different Duty Station.	37. K-2 Reinstatement Without Back Pay.
24. E-1 Retroactive Hire with Back Pay.	31. G-1 Retroactive Promotion With Back Pay.	38. Amount of Back Pay Awarded.
25. E-2 Retroactive Hire Without Back Pay.	32. G-2 Retroactive Promotion Without Back Pay.	39. Other (Specify).

40. REMARKS (Continue on separate sheet, if necessary)

41. SIGNATURE OF EEO COUNSELOR	42. SIGNATURE OF EEO OFFICER
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CHRONOLOGY OF INDIVIDUAL EEO COMPLAINT

For use of this form, see AR 690-800, the proponent agency is OSA

A. EEOCRA DOCKET NO.

B. NAME (Last, First, Middle Initial)

E. ORGANIZATION

C. SSN

D. RANK/GRADE

INSTRUCTIONS

The days listed in parentheses are administrative suspense goals established by EEOC or the Army. Failure to meet any of the listed suspenses should be explained in the "Remarks" section of this form or on a continuation sheet, if necessary. All days referred to in this form are calendar days. In computing days between dates, disregard the first day and count the last day. The actual number of days in each month will be counted.

ACTION	F. DATE	G CUMULATIVE ELAPSED DAYS
1. Date of alleged discriminatory action.		
2. Date counselor contacted (30 days).		
3. Date of 21-day letter (21 days).		
4. Date of counselor's final interview.		
5. Date of formal complaint (15 days).		
6. Date formal complaint received.		
7. Date complaint accepted/rejected (5 days).		
8. Date investigator requested (3 days).		
9. Date investigator assigned.		
10. Date(s) of investigation.		
11. Date activity received Report of Investigation (ROI).		
12. Date complainant received ROI (5 days).		
13. Date attempt at informal adjustment (15 days).		
14. Date of proposed disposition (20 days after receipt of ROI).		
15. Date complainant requested hearing or decision without hearing (15 days).		
16. Date hearing requested.		
17. Date(s) of hearing.		
18. Date report received by Army.		
19. Date of final Army decision.		
20. Total processing days from date complaint was filed.		
21. Date appealed to EEOC Office of Review and Appeals.		
22. Date EEOC requested records.		
23. Date DA forwarded records to EEOC.		
24. Date decision by EEOC Office of Review and Appeals.		
25. Litigation: Date suit filed.		
26. Date of court decision.		

H. REMARKS (Continue on separate sheet, if necessary)

I. SIGNATURE OF EEO OFFICER

J. DATE

K. SIGNATURE OF EEOCRA OFFICIAL COMPLETING
CHRONOLOGY SHEET

L. DATE

CHRONOLOGY OF CLASS EEO COMPLAINT For use of this form, see AR 690-800; the proponent agency is OSA		A. EEOCRA DOCKET NO
B. NAME (Last, First, Middle Initial)		E. ORGANIZATION
C. SSN	D. RANK/GRADE	

INSTRUCTIONS

The days listed in parentheses are administrative suspense goals established by EEOC or the Army. Failure to meet any of the listed suspenses should be explained in the "Remarks" section of this form or on a continuation sheet, if necessary. All days referred to in this form are calendar days. In computing days between dates, disregard the first day and count the last day. The actual number of days in each month will be counted.

ACTION	F. DATE	G. CUMULATIVE ELAPSED DAYS
1. Date of alleged offense/personnel action.		
2. Date counselor contacted (30 days).		
3. Date of final interview (30 days).		
4. Date of formal complaint (15 days).		
5. Date complaint forwarded records to EEOC (10 days).		
6. Date EEOC administrative judge notifies Army of recommended acceptance or rejection of class complaint.		
7. Date of Army acceptance or rejection of class complaint (30 days).		
8. Date Army notifies class members (15 days).		
9. Date of EEOC hearing.		
10. Date EEOC administrative judge notifies Army of findings and recommendation on class issues.		
11. Date of final Army decision (60 days).		
12. Total processing days from date class complaint was filed.		
13. Date of appeal to EEOC Office of Review and Appeals.		
14. Date EEOC requested records.		
15. Date Army forwarded records to EEOC.		
16. Date decision by EEOC Office of Review and Appeals.		
17. Litigation: Date suit filed.		
18. Date of court decision.		

H. REMARKS (Continue on separate sheet, if necessary.)

I. SIGNATURE OF EEO OFFICER	J. DATE	K. SIGNATURE OF EEOCRA OFFICIAL COMPLETING CHRONOLOGY SHEET	L. DATE
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DISPOSITION OF COMPLAINT OF DISCRIMINATION

For use of this form, see AR 690-800, the proponent agency is OSA

Requirements Control
Symbol - 0288-EEO-SA

1. NAME OF COMPLAINANT (Last, First, Middle Initial)		5. ACTIVITY		6. EEOCRA DOCKET NO	
2. COMPLAINANT'S SSN					
3. COMPLAINANT'S JOB TITLE	4. GRADE			7. DATE COMPLAINT FILED	

PART A- BASIS FOR COMPLAINT (Check Appropriate Box)

8. RACE	9. COLOR	10. RELIGION	11. HANDICAP ☐ Mental ☐ Physical	12. SEX ☐ Female ☐ Male	13. NATIONAL ORIGIN	14. AGE (State)	15. REPRISAL
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16. ALLEGATION(S) OF DISCRIMINATION (Summarize) (Continue on separate sheet, if necessary)

17. IF AN INVESTIGATION WAS CONDUCTED, DID THE INVESTIGATOR FIND DISCRIMINATION?
☐ Yes ☐ No ☐ No Discrimination, but recommended corrective action.

18. CONCERNING THE USACARA RECOMMENDATION, DID THE COMMANDER, IN THE PROPOSED DISPOSITION
☐ Reject It ☐ Accept It ☐ Modify It.

19. DID THE COMPLAINANT (Check One)		21. DESCRIPTION OF ANY DISCIPLINARY ACTION TAKEN AS A RESULT OF THE COMPLAINT (Check Appropriate Box(es))	
a. Fail to respond to the notice of proposed disposition?		a. Separation	g. Involuntary downgrade
b. Request decision by the Director of EEO without hearing?		b. Suspension	h. Counseling
c. Request a hearing and subsequent review by the Director of EEO?		c. Oral reprimand	i. Training
20. IF NO HEARING WAS HELD, OR THE HEARING WAS NOT COMPLETED, DID THE AGENCY MAKE A DECISION ON THE MERITS ☐ Yes ☐ No ☐ Proposed disposition adopted as the Agency final decision.		d. Written reprimand	j. None
		e. Lateral reassignment	k. Other (Specify)
		f. Reassignment to non-supervisory position	

22. WHERE DISCRIMINATION IS FOUND, REPORT REASONS FOR TAKING OR NOT TAKING DISCIPLINARY ACTION

23. DESCRIPTION OF ANY REMEDIAL OR CORRECTIVE ACTION TAKEN INCLUDING THOSE COMPLAINTS WITHDRAWN BY THE COMPLAINANT AND THOSE CANCELED FOR FAILURE TO PROSECUTE

PART B- NATURE OF CLOSING ACTION (Check One)

24. Rejection (Untimely)	26. Settlement	28. Withdrawal	30. Decision on Merits	32. Cancellation (Failure to Accept Full Relief)
25. Rejection (Outside Purview)	27. Rejection (Identical to previous complaint)	29. Cancellation (Failure to prosecute)	31. Cancellation MSPB Litigation Decision	
33. TOTAL PROCESSING DAYS (From date of formal complaint to closure)	34a. NAME OF AGENCY OFFICIAL PREPARING REPORT		34c. TELEPHONE NO.	
	34b. TITLE			

PART C- INDICATE AMOUNT OF MONETARY RELIEF PROVIDED (Back Pay)

35. RETROACTIVE HIRE \$	36. RETROACTIVE PROMOTION \$	37. REINSTATEMENT \$
38. RESCIND DISCIPLINARY ACTION \$	39. OTHER \$	40. TOTAL ATTORNEY FEES & COSTS AWARDED \$

41. SIGNATURE OF EEO OFFICER

42. REMARKS (Continue on separate sheet, if necessary)

Unclassified

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