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PROCESSING COMPLAINTS OF DISCRIMINATION

Number: DAO 215-9

Effective Date: 2017-10-24

SECTION 1. PURPOSE.

.01 This Order provides for the issuance of Department of Commerce procedures for the use of employees or applicants for employment in the filing and processing of discrimination complaints.

.02 The procedures for filing and processing discrimination complaints included in [Appendix A](#) to this Order comply with the regulations of the Equal Employment Opportunity Commission (EEOC) which require Federal agencies to provide for the prompt, fair, and impartial processing of complaints initiated by employees and applicants for employment and to establish or make available an Alternative Dispute Resolution program.

SECTION 2. STATUS AND APPLICABILITY.

.01 This Order is consistent with the EEOC regulations governing federal equal employment opportunity complaints at 29 Code of Federal Regulations, Sections 1614.103 through 1614.607 and incorporates those provisions of the EEOC regulations and any amendments thereto by reference. Whenever there is a conflict between the provisions and the requirements of this Order and the EEOC regulations, the EEOC regulations will prevail.

.02 This Order applies to employees and applicants for employment in the Department, except non-citizens employed or applying for employment outside the limits of the United States; and is limited to complaints of employment discrimination filed under;

- a. Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e et seq.);
- b. The Rehabilitation Act of 1973, as amended (29 U.S.C. §701 et seq.);
- c. The Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. §621 et seq.);
- d. Equal Pay Act (29 U.S.C. § 206(d)); and
- e. The Genetic Information Nondiscrimination Act of 2008 (P.L. 110-223).

SECTION 3. DISTRIBUTION.

The Office of Civil Rights will issue Appendix A to Equal Employment Opportunity (EEO) Officers for dissemination to EEO Counselors, EEO program managers, management officials, interested employees, applicants for employment and their representatives. This Order and [Appendix A](#) will also be available on the Office of Civil Rights public website in such formats as required by law, regulation, or policy. The Director, Office of Civil Rights is authorized to develop and issue subsequent changes to the Appendix in accordance with Department Administrative Order (DAO) 200-3, Department Administrative Order Series, and subject to prior review and comments by the Office of Inspector General and the Office of the General Counsel.

SECTION 4. EFFECT ON OTHER ORDERS.

This Order supersedes Department Administrative Order 215-9, dated October 19, 1992.

Signed by: Director of Civil Rights

Approved by: Chief Financial Officer and Assistant Secretary for Administration

Office of Primary Interest: Office of Civil Rights

Appendix A

PROCEDURES FOR PROCESSING DISCRIMINATION COMPLAINTS IN THE DEPARTMENT OF COMMERCE

The regulations of the Equal Employment Opportunity Commission (EEOC) require Federal agencies to promulgate procedures for complaint processing. This Appendix is in accordance with the EEOC's regulations and wherever possible uses language identical to those regulations. The effective date of this Appendix is 10-24-2017. The Director, Office of Civil Rights, shall distribute, through the operating unit Equal Employment Opportunity (EEO) Officers, EEO complaint processing and alternative dispute resolution (ADR) procedures consistent with EEOC Management Directives 110 (MD-110) and 715 (MD-715) and EEOC Enforcement Guidance Notices.

SECTION 1. PRE-COMPLAINT PROCESSING.

.01 Designation of EEO Officers:

Pursuant to Department Organization Order (DOO) 10-5, Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA), the CFO/ASA, who reports to the Secretary, is designated as the Director of Equal Employment Opportunity for the Department of Commerce. The CFO/ASA designates operating bureau and operating unit EEO Officers based on recommendations from heads of operating units and approval of affected Secretarial officers.

02. Appointment and Training of EEO Counselors:

EEO Counselors may be employees of the Office of Civil Rights or bureau EEO Offices, other Department employees serving as EEO Counselors as a collateral duty, or contractors providing services under the direction of the Office of Civil Rights or bureau EEO Offices. All EEO Counselors, including contractors, must meet the minimum mandatory training requirements established by the EEOC (thirty-two (32) hours of counselor training for new counselors and eight (8) hours per year refresher training for experienced EEO counselors).

03. EEO Counseling Procedures:

a. An employee or applicant who believes he or she has been discriminated against because of race, color, religion, sex, national origin, age or disability, and/or genetic information, or retaliated against because he or she engaged in protected activity as set forth in the Secretary's Policy on Equal Employment Opportunity, (hereinafter the complainant), must consult an EEO Counselor as a prerequisite to filing a formal complaint of discrimination. The complainant must contact an EEO Officer or EEO Counselor designated to serve the operating unit or Departmental office where the matter(s) underlying the complaint took place.

b. The complainant must initiate contact with an EEO Officer or EEO Counselor within forty-five (45) calendar days of the matter(s) alleged to be discriminatory or, if the matter concerns a personnel action, within forty-five (45) days of the effective date of the action.

c. The Director, of the Program Implementation Division, Office of Civil Rights, may extend the forty-five-day (45) time limit in subparagraph (b) of this section when the complainant shows that he or she was not notified of the time limit and was not otherwise aware of it; that the complainant did not know and reasonably should not have suspected that the discriminatory matter or personnel action occurred; that despite due diligence they were prevented by circumstances beyond his or her control from contacting the EEO Officer or EEO Counselor within the time limits; or for other good cause shown.

d. At the initial counseling session, EEO Counselor shall advise complainant, verbally and in writing, of his or her rights and responsibilities, including the right to anonymity during the informal process; to representation; to elect ADR; the right or obligation to pursue claims in other forums, including DAO 215-11, Complaint Process for Sexual Orientation Discrimination, the Merit Systems Protection Board, the Office of Special Counsel, negotiated grievance procedures, and DAO 202-771, Administrative Grievance Procedure, as applicable. The EEO Counselor shall also advise the complainant of the applicable time frames in the complaint process, including the points at which the complainant must file a formal complaint; may amend the complaint; request a hearing before the EEOC; request a Final Agency Decision; or file a civil action in a United States District Court. The EEO Counselor must also advise the complainant of his or her duty to mitigate damages; to keep the agency informed of his or her current address; to cooperate in the processing of the complaint; and that rejection of an offer of resolution made pursuant to 29 Code of Federal Regulations (C.F.R.) §1614.109(c) Section 3.06(c) may limit the complainant's recovery of attorney's fees. If the complainant indicates that he or she wishes to initiate a class complaint, the EEO Counselor shall advise the complainant of class complaint procedures, rights, and responsibilities as set forth at 29 C.F.R. § 1614.204 and Section 4 of this Order.

e. The EEO Counselor shall elicit sufficient information from the complainant to identify the bases and issues underlying the pre-complaint and to address any jurisdictional issues; if the complainant does not elect ADR, or ADR is not appropriate, the EEO Counselor shall seek informal resolution of the pre-complaint at the lowest possible organizational level. If the parties agree to resolve the pre-complaint, the EEO Counselor shall notify the EEO Officer and assist as necessary with the drafting, execution, and clearance of a resolution agreement.

f. The EEO Counselor shall not attempt in any way to restrain the complainant from filing a complaint.

The EEO Counselor shall not reveal the identity of a complainant who has consulted with the EEO Counselor unless authorized to do so by the complainant, or until the complainant files a formal complaint of discrimination involving the matter(s) discussed.

g. The EEO Counselor shall obtain the agency's response to the complainant's claims by seeking a response from the official(s) named as responsible for the matters complained of or from other sources who are able to respond knowledgeably to the complainant's claims and/or have the authority to resolve the pre-complaint. The EEO Counselor shall advise responding management officials of their rights and responsibilities, including their duty to cooperate in the processing of the pre-complaint and any subsequent formal complaint and their right to be represented by and seek advice from the servicing legal office. If the complainant has raised allegations of harassment prohibited by federal law, the EEO Counselor or EEO Officer shall also notify the responding management official or other appropriate management official of the agency's obligation to comply with the management inquiry procedures set forth in DAO 202-955, Allegations of Harassment Prohibited by Federal Law.

h. Unless the complainant and the EEO Officer mutually agree to a longer counseling period under subparagraph (i) of this section, or the complainant has elected ADR, the EEO Counselor shall conduct the final interview with the complainant within thirty (30) days of the date the complainant initiated contact with the EEO Officer or EEO Counselor. If the complaint is not resolved, the EEO Counselor shall issue the complainant written notice of his or her right to file a formal discrimination complaint within fifteen (15) calendar days. The notice shall be issued by means from which the complainant's date of receipt can be established. The notice shall be accompanied by Form CD-498, "Complaint of Employment Discrimination Against the U.S. Department of Commerce."

i. Prior to the end of the thirty-day (30) period referenced in subparagraph (h), the complainant may agree, in writing, with the EEO Officer to postpone the final interview and extend the counseling period for an additional period of no more than sixty (60) days. If the matter has not been resolved before the conclusion of the agreed-upon extension, the notice described in subparagraph (h) of this section shall be issued.

j. Where the complainant has not elected ADR, or in cases where ADR is inappropriate, the EEO Officer shall submit an EEO Counselor's Report documenting all required counseling actions to the Director of the Program Implementation Division, Office of Civil Rights, with fifteen (15) calendar days of notice that the complainant has filed a formal complaint. The types of information required are set forth in the EEOC Management Directive (MD) 110 (MD-110), Appendix H, EEO Counselor's Report, and Appendix C, Counselor's Checklist.

k. Every counseling contact must result in a settlement agreement signed by the aggrieved person or issuance of a notice as described in subparagraph d. of this section.

SECTION 2: ALTERNATIVE DISPUTE RESOLUTION.

.01 Program Coordination :

The Director, Office of Civil Rights, through the Client Services & Resolution Division, shall, in coordination with the Office of General Counsel and the bureau EEO Offices, establish and maintain an Alternative Dispute Resolution (ADR) program. The ADR program shall be operated in accordance with EEOC MD-110 and MD-715 and any other applicable guidance or regulations issued by the EEOC.

.02 Availability:

ADR is generally available in both the informal and formal stages of the complaint process. However, the Department need not offer ADR in every case. ADR is not offered in cases involving applicants for employment, former employees, certain categories of temporary employees, alleged violence or threats, egregious harassment, adverse actions, class actions, when authoritative resolution of a matter is required in precedent-setting cases, when the matter in dispute has significant government policy implications, or when it is important to produce a full public record of the proceedings. During pre-complaint processing, the EEO Officer will decide whether ADR will be offered to the parties. If the EEO Officer determines that ADR is inappropriate in a particular case, the informal complaint will be processed as set forth in Section 1. During formal complaint processing, the Director of the Client Services and Resolution Division will determine whether ADR is appropriate and will notify the parties accordingly. Participation by the parties in the mediation process is voluntary. However, EEOC MD-715 requires agencies to ensure that managers at all appropriate levels will participate in the ADR process, and it is the policy of the Department that supervisors and managers are expected to attempt to resolve conflicts at the lowest levels in the organization and at the earliest stages, where appropriate.

.03 Pre-complaint ADR Procedures:

a. Where the parties agree to ADR in the pre-complaint stage, the pre-complaint processing period shall be up to ninety (90) days from the date of the complainant's initial contact with the EEO Officer or EEO Counselor without the requirement of the written agreement to extend the pre-complaint period described in subparagraph (i) of the preceding section. The complainant must notify the EEO Officer or EEO Counselor in writing that he or she elects ADR in lieu of EEO Counseling. Arrangements for ADR will be made through the EEO Officer or bureau ADR Coordinator, as appropriate.

1. If the parties do not achieve resolution within the ninety-day (90) period, the notice described in subparagraph (h) of the preceding section shall be issued.

2. If ADR is unsuccessful and the complainant files a formal complaint, the EEO Counselor shall prepare and submit to the EEO Officer the Counselor's Report described in subparagraph (j) of the preceding section, except that the report need not contain a summary of the informal resolution attempt, other than to indicate that the complainant elected ADR and that efforts at resolution were unsuccessful.

b. If the parties agree to resolve the complaint, the terms of the agreement shall be reduced to writing and signed by the parties and their representatives, if any, and cleared by the appropriate offices in accordance with the procedures set forth in Section 7.

.04 Formal ADR Procedures:

a. The parties may agree to ADR at any time in the formal stage prior to the issuance of a Final Agency Decision or Final Order. In cases where the complainant has requested a hearing, a request for ADR will be subject to the review and approval of the EEOC Administrative Judge. In all other cases, a request for ADR in the formal process will be subject to the review and approval of the Director of the Client Services & Resolution Division. Arrangements for ADR will be made through the Client Services & Resolution Division, in coordination with the bureau EEO Officer and/or bureau ADR Coordinator, as appropriate.

b. The processing of a formal complaint will continue during the pendency of an ADR request and ADR proceedings. As a general rule, the election of ADR will not toll or waive any of the regulatory time limits imposed on the complainant or the Department under 29 C.F. R., Part 1614, but the complainant and the Department may mutually agree to an extension of up to ninety (90) days pursuant to 29 C.F.R. § 1614.108(e)Section 3.06(a) to complete the investigation.

1. If a formal complaint has been filed but not yet accepted for investigation, action on the request for

ADR will be held in abeyance until the Compliance Program Implementation Division issues notice that all or part of the complaint has been accepted for investigation. If a complaint is dismissed in its entirety, the request for ADR will be denied.

2. Without exception, the investigation of accepted issues will continue during the pendency of an ADR request and proceedings. The investigation will only be discontinued upon notice to the Director of the Compliance Program Implementation Division or Chief Investigator that the parties have reached a resolution.

3. In any case where the complainant requests ADR after he or she has requested a hearing before the EEOC, the Director, Client Services & Resolution Division will notify the Agency Representative and the EEOC Administrative Judge, and Departmental action on the request will be subject to the direction and orders of the Administrative Judge. If an Agency Representative and/or Administrative Judge have not yet been assigned, the request will be referred to the servicing legal office and/or the Supervisory Administrative Judge of the EEOC District or Field Office having jurisdiction of the complaint.

SECTION 3: FILING AND PRESENTATION OF FORMAL COMPLAINTS.

.01 Filing Procedures:

a. Complaints of discrimination filed with the Department must allege that the Department, an operating unit, or a Departmental office discriminated against the complainant or that the Department was required to and failed to take appropriate action to prevent or stop such discrimination.

b. A complaint must be filed with the Director, Office of Civil Rights, or the EEO Officer servicing the operating unit or Departmental office within fifteen (15) days of receipt of the notice required by subparagraphs (h) of Section 1. Complaints may be filed in person, by postal or overnight delivery service, or by facsimile or by e-mail if the complaint is signed in accordance with subparagraph (c), below, such as a document in Portable Document Format (PDF). Complainants and representatives who are current Department of Commerce employees must comply with Department and bureau guidelines for protecting Personally Identifiable Information (PII).

When electronically transmitting, sensitive PII must be protected by secure methodologies, such as encryption, Public Key Infrastructure, or secure sockets layer. The following types of PII are considered sensitive when associated with an individual: Social Security Number (including truncated form), place of birth, date of birth, mother's maiden name, biometric information, medical information (excluding brief references to absences from work), personal financial information, credit card or purchase card account numbers, passport numbers, potentially sensitive employment information (e.g., performance ratings, disciplinary actions, and results of background investigations), criminal history, and any information that may stigmatize or adversely affect an individual. When in doubt, PII will be treated as sensitive.

c. A complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This statement must be sufficiently precise to identify the complainant and the operating unit or Departmental office and to describe generally the action(s) or practices(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted.

d. The Office Director or Program Implementation Compliance Division Director, Office of Civil Rights, may extend the fifteen-day (15) time limit in subparagraph (b) of this section when the complainant shows that despite due diligence, he or she was prevented by circumstances beyond his or her control from

filing the complaint within the time limits, or for other good cause shown.

.02 Acknowledgment:

The Office of Civil Rights shall acknowledge receipt of a complaint in writing and inform the complainant of the date on which the complaint was received. Such acknowledgment shall also advise the complainant that:

- a. That the Department shall conduct a complete and fair investigation of the complaint within one hundred eighty (180) days of the filing of the complaint unless the parties agree in writing to extend that period or unless the complaint is amended, in which case the investigation must be completed within one hundred eighty (180) days of the last amendment or three hundred sixty (360) days of the original complaint, whichever is sooner;
- b. That the complainant may request a hearing before an EEOC Administrative Judge any time after one hundred eighty (180) days from the filing of the original complaint;
- c. The address of the EEOC office to which a hearing request shall be sent; and
- d. That the complainant has the right to appeal the final decision or dismissal of the complaint.

.03 Dismissals of Complaints:

a. Prior to a request for a hearing in a case, the Office Director or Compliance Division Director, Office of Civil Rights shall dismiss an entire complaint:

1. That fails to state a claim under 29 C.F.R. § 1614.103 or 1614.106(a) or states the same claim that is pending before or has been decided by the Office of Civil Rights or the EEOC;
2. That fails to comply with the applicable time limits contained in Section 1.03(b) or Section 3.01(b), unless the Office Director or Program Implementation Division Director extends the time limits as provided in Section 1.03(c) or Section 3.01(d), or that raises a matter that has not been brought to the attention of an EEO Counselor and is not like or related to a matter that has been brought to the attention of an EEO Counselor;
3. That is the basis of a pending civil action in a United States District Court in which the complainant is a party provided that at least one hundred eighty (180) days have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a United States District Court in which the complainant was a party;
4. Where the complainant has raised the matter in a negotiated grievance procedure that permits allegations of discrimination or in appeal of the Merit Systems Protection Board (MSPB) and 29 C.F.R. § 1614.301 or 1614.302 indicates that the complainant has elected to pursue the non-EEO process;
5. That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action is discriminatory;
6. Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within fifteen (15) days to a notice of proposed dismissal sent to his or her last known address;
7. Where the Office of Civil Rights has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within fifteen (15) days of its receipt or the complainant's response does not address the Office of Civil Rights' request, provided that the request included a notice of the proposed dismissal. Instead of

dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available;

8. That alleges dissatisfaction with the processing of a previously filed complaint; or
9. Where the Office of Civil Rights, strictly applying the criteria set forth in EEOC decisions, finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. A clear pattern of misuse of the EEO process requires:
 - (a). Evidence of multiple complaint filings; and
 - (b). Allegations that are similar or identical, lack specificity or involve matters previously resolved; or
 - (c). Evidence of circumventing other administrative processes, retaliating against the Department's in-house administrative processes, or overburdening the EEO complaint system.
- b. Where the Office of Civil Rights determines that some but not all of the claims in a complaint should be dismissed for the reasons contained in subparagraphs (a) (1-9) of this section, it shall notify the complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under this paragraph is reviewable by an Administrative Judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.
- c. The Department's authority to dismiss a complaint ends when a complainant requests a hearing. The Office of Civil Rights should process dismissals expeditiously.

.04 Amendment of Complaints:

- a. A complainant may amend a complaint at any time prior to the completion of the investigation. Amendments may be filed in person, by postal or overnight delivery service, by facsimile, or by e-mail if the complaint is signed in accordance with Subparagraph 3.01 (c), such as a document in Portable Document Format (PDF). Complainants and representatives who are current Department of Commerce employees must comply with Department and bureau guidelines for protecting PII as described in Subparagraph 3.01 (b). Amendments filed during the investigation must be filed with the Office of Civil Rights. After the complainant has requested a hearing, the complainant must file a motion to amend with the EEOC Administrative Judge.
- b. Amendments must be like or related to the issues underlying the original complaint. If the Office of Civil Rights determines that the matter(s) raised in an amendment are not like or related, it will notify the complainant in writing that he or she may seek EEO counseling on the matter(s) within fifteen (15) calendar days of such notice, or within such time as directed by the Office Director or Program Implementation Division Director. If an Administrative Judge determines that an amendment is not like or related to the original complaint, the parties will proceed in accordance with the orders of the Administrative Judge.
- c. Amendments are subject to dismissal on same grounds as original complaints, as set forth in Subsection .03. (a) of this section. If the Office of Civil Rights dismisses an amendment, the case will be treated as a partial dismissal as described in Subsection .03. (b) of this section. If an Administrative Judge denies the complainant's motion to amend on any of the grounds set forth in Subsection .03. (a) of this section, processing will continue in accordance with the Administrative Judge's orders.
- d. If an amendment is accepted for investigation, the time for completion of the investigation will be extended one hundred eighty (180) calendar days from the date of the latest amendment or three hundred sixty (360) calendar days from the date the original complaint was filed, whichever is earlier. In any event,

the complainant in a non-mixed case may request a hearing before the EEOC at any time after the one hundred eightieth (180th) day from the filing of the original complaint, and a complainant in a mixed case may file an appeal with the MSPB after the one hundred twentieth (120th) calendar day from the filing of the original complaint.

.05 Investigation of Complaints:

a. Upon the acceptance of a formal complaint, the Office of Civil Rights shall conduct or arrange for an investigation of the matter.

b. The Office of Civil Rights shall develop a complete and impartial factual record upon which to make findings. Complaint investigations will be conducted in accordance with existing guidance provided by the EEOC.

c. The following procedures apply:

1. The complainant, the operating unit, Departmental office, or any Federal employee shall produce such documentary and testimonial evidence as the investigator deems necessary.

2. Investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively by written statement under penalty of perjury.

3. Witnesses, including the responding official, whether identified at the time a formal complaint is filed or during the investigation, must be given an opportunity to respond to all allegations, including amendments. The investigator shall permit the witness to review documentary evidence relevant to the allegations prior to making a response. The investigator shall redact the names and identifying information of persons other than the complainant, the responding official(s), and other named witnesses from copies of the documents shown to the witnesses.

4. When the complainant, operating unit, Departmental office, or Federal employee fails without good cause to respond fully and in a timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the investigator may note in the investigative record that the decision maker should, or the EEOC on appeal may, in appropriate circumstances:

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

(b) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

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

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

(e) Take such other actions as deemed appropriate.

5. When it becomes apparent to the investigator that a complainant may fail to respond as required, the investigator will immediately advise the complainant, in writing, that failure to respond within a specified time may result in an adverse inference.

6. When it becomes apparent to the investigator that an employee of an operating unit or Departmental office may fail to respond as required, the investigator will immediately notify the appropriate EEO Officer and the Chief Investigator, in writing, of the failure to respond and request assistance in eliciting the

response.

7. All investigations will be conducted by investigators with appropriate security clearances.

d. The Office of Civil Rights, as required by the regulations of the EEOC, shall complete an investigation within one hundred eighty (180) days of the date of filing an individual complaint or within the time period contained in an order from the Office of Federal Operations, EEOC on an appeal from a dismissal pursuant to the EEOC's regulations at 29 CFR §1614.107. However, by written agreement within those time periods, the complainant and the Department may voluntarily extend the time period for not more than an additional ninety (90) days. The Department may unilaterally extend the time period or any period of extension agreed upon for not more than an additional thirty (30) days where it must sanitize a complaint file that may contain information classified pursuant to Executive Order No. 12356, or successor orders, in the interest of national defense or foreign policy, provided the Department notifies the complainant of the extension. The time for completion of amended complaints is determined as set forth in subsection .04 of this section.

e. Within one hundred eighty (180) days from the filing of the complaint, or where a complaint was amended, within the earlier of one hundred eighty (180) days after the last amendment to the complaint, or three hundred sixty (360) days after the filing of the original complaint, or within the time period contained in an order from the EEOC Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in subparagraph d above, the Department shall notify the complainant that the investigation has been completed, shall provide the complainant with a copy of the final investigative file, and shall notify the complainant that, within thirty (30) days of receipt of the final investigative file, the complainant has the right to request a hearing before an Administrative Judge or to request an immediate final decision pursuant to Section 3.07 of this Order from Office of Civil Rights.

f. Where the complainant has received the notice required in subparagraph (e) of this section, or at any time after one hundred eighty (180) days have elapsed from the filing of the complaint, the complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the acknowledgment letter. The complainant shall send a copy of the request for a hearing to the Office of Civil Rights. Within fifteen (15) days of receipt of the request for a hearing, the Office of Civil Rights shall provide a copy of the complaint file to EEOC and, if not previously provided, to the complainant.

.06 Hearing:

a. When a complainant requests a hearing, the EEOC shall appoint an Administrative Judge to conduct a hearing in accordance with this section. Upon appointment, the Administrative Judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. Any hearing will be conducted by an Administrative Judge or hearing examiner with appropriate security clearances.

b. Dismissals: Administrative Judges may dismiss complaints pursuant to 29 C.F.R. § 1614.107, on their own initiative, after notice to the parties, or upon the Department's motion to dismiss a complaint.

c. Offers of resolution:

1. Any time after the filing of the written complaint but no later than the date an Administrative Judge is appointed to conduct a hearing, the Department may make an offer of resolution to a complainant who is represented by an attorney.

2. Any time after the parties have received notice that an Administrative Judge has been appointed to conduct a hearing, but not later than thirty (30) days prior to the hearing, the Department may make an offer

of resolution to the complainant, whether represented by an attorney or not.

3. The offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The Department's offer, to be effective, must include attorney's fees and costs and must specify any non-monetary relief. With regard to monetary relief, the Department may make a lump sum offer covering all forms of monetary liability, or it may itemize the amounts and types of monetary relief being offered. The complainant shall have 30 days from receipt of the offer of resolution to accept it. If the complainant fails to accept an offer of resolution and the relief awarded in the Administrative Judge's decision, the Department's final decision, or the EEOC's decision on appeal is not more favorable than the offer, then, except where the interest of justice would not be served, the complainant shall not receive payment from the Department of attorney's fees or costs incurred after the expiration of the thirty-day (30) acceptance period. An acceptance of an offer must be in writing and will be timely if postmarked or received within the thirty-day (30) period. Where a complainant fails to accept an offer of resolution, the Department may make other offers of resolution and either party may seek to negotiate a settlement of the complaint at any time.

d. Discovery: The Administrative Judge shall notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate. Unless the parties agree in writing concerning the methods and scope of discovery, the party seeking discovery shall request authorization from the Administrative Judge prior to commencing discovery. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint, but the Administrative Judge may limit the quantity and timing of discovery. Evidence may be developed through interrogatories, deposition, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, over burdensome, repetitious, or privileged.

e. Conduct of hearing: The Department shall provide for the attendance at a hearing of all its employees who are approved as witnesses by an Administrative Judge. Attendance at hearings will be limited to persons determined by the Administrative Judge to have direct knowledge relating to the complaint. Hearings are part of the investigative process and are thus closed to the public. The Administrative Judge shall have the power to regulate the conduct of a hearing, limit the number of witnesses where testimony would be repetitious, and exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The Administrative Judge shall receive into evidence information or documents relevant to the complaint. Rules of evidence shall not be applied strictly, but the administrative judge shall exclude irrelevant or repetitious evidence. The Administrative Judge or the Commission may refer to the Disciplinary Committee of the appropriate Bar Association any attorney or, upon reasonable notice and an opportunity to be heard, suspend or disqualify from representing complainants or agencies in EEOC hearings any representative who refuses to follow the orders of an Administrative Judge, or who otherwise engages in improper conduct.

f. The complainant and the Department shall produce such documentary and testimonial evidence as the Administrative Judge deems necessary. The Administrative Judge shall serve all orders to produce evidence on both parties.

g. Administrative Judges are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

h. When the complainant or the Department or its employees fail without good cause shown to respond fully and in timely fashion to an order of an Administrative Judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the Administrative Judge may, in appropriate circumstances:

1. Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;
 2. Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;
 3. Exclude other evidence offered by the party failing to produce the requested information or witness;
 4. Issue a decision fully or partially in favor of the opposing party; or
 5. Take such other actions as appropriate.
- i. Decisions without hearing:
1. If a party believes that some or all material facts are not in genuine dispute and there is no genuine dispute as to credibility, the party may, at least fifteen (15) days prior to the date of the hearing or at such earlier time as required by the Administrative Judge, file a statement with the Administrative Judge prior to the hearing, setting forth the fact or facts and referring to the parts of the record relied on to support the statement. The statement must demonstrate that there is no genuine issue as to any such material fact. The party shall serve the statement on the opposing party.
 2. If the opposing party files an opposition within fifteen (15) days of receipt of the statement in paragraph i.1 of this section. The opposition may refer to the record in the case to rebut the statement that a fact is not in dispute, or may file an affidavit stating that the party cannot, for reasons stated, present facts to oppose the request. After considering the submissions, the Administrative Judge may order that discovery be permitted on the fact or facts involved, limit the hearing to the issues remaining in dispute, issue a decision without a hearing or make such other ruling as is appropriate.
 3. If the Administrative Judge determines upon his or her own initiative that some or all facts are not in genuine dispute, he or she may, after giving notice to the parties and providing them an opportunity to respond in writing within fifteen (15) calendar days, issue an order limiting the scope of the hearing or issue a decision without holding a hearing.
- j. Record of hearing: The hearing shall be recorded and the operating unit or Departmental office shall arrange and pay for verbatim transcripts. All documents submitted to, and accepted by, the Administrative Judge at the hearing shall be made part of the record of the hearing. If the Department submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, the Administrative Judge shall make the document available to the Agency Representative for reproduction.
- k. Decision and Administrative Judges: Unless the Administrative Judge makes a written determination that good cause exists for extending the time limit for issuing a decision, an Administrative Judge shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within 180 days of a receipt by the Administrative Judge of the complaint file from the agency. The Administrative Judge shall send copies of the hearing record, including the transcript, and the decision of the parties. If the Department does not issue a final order within forty (40) days of receipt of the Administrative Judge's decision in accordance with subsection .07 (a) of this section, then the decision of the Administrative Judge shall become final action of the Department.
- .07 Final Action by the Department:
- a. Final action by the Department following a decision by an Administrative Judge: When an

Administrative Judge has issued a decision under subsection .06 (a), (b), or (i) of this section, the Department shall take final action on the complaint by issuing a Final Order within forty (40) calendar days of receipt of the hearing file and the Administrative Judge's decision. The Final Order shall notify the complainant whether or not the Department will fully implement the decision of the Administrative Judge and shall contain notice of the complainant's right to appeal to the EEOC, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. If the Final Order does not fully implement the decision of the Administrative Judge, the Department shall simultaneously file an appeal in accordance with Section 8 and append a copy of the appeal to the final order. A copy of EEOC Form 573, Notice of Appeal/Petition, shall be attached to the Final Order.

b. Final action by the Department in all other circumstances: When the Department dismisses an entire complaint pursuant to Section 3.03(a), receives a request for an immediate final decision, or does not receive a reply to the notice issued under subsection .05(e) of this section, the Department shall take final action by issuing a final decision. The final decision shall consist of findings by the Department on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief. The Department shall issue the final decision within sixty (60) days of receiving notification that a complainant has requested an immediate decision from the Department, or within sixty (60) days of the end of the thirty-day (30) period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision. The final action shall contain notice of the right to appeal the final action to the EEOC, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. A copy of EEOC Form 573, Notice of Appeal/Petition, shall be attached to the final action.

SECTION 4. CLASS COMPLAINTS OF DISCRIMINATION.

.01 Definitions:

a. A **class** is a group of employees or applicants for employment who, it is alleged, have been or are being adversely affected, by an agency personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, or disability.

b. A **class complaint** is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

1. The class is so numerous that a consolidated complaint of the members of the class is impractical;
2. There are questions of fact common to the class;
3. The claims of the agent of the class are typical of the claims of the class; and
4. The agent of the class, or, if represented, the representative, will fairly and adequately protect the interests of the class.

c. An **agent** of the class is a class member who acts for the class during the processing of the class complaint.

.02 Pre-complaint processing: An employee or applicant who wishes to file a class complaint must seek counseling and be counseled in accordance with Section 1. A complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim

raised in an individual complaint. If a complainant moves for class certification after completing the counseling process contained in Section 1, no additional counseling is required. An Administrative Judge shall deny class certification when the complainant has unduly delayed in moving for certification.

.03 Filing and Presentation of a class action complaint:

- a. A class complaint must be signed by the Agent or representative and must identify the policy or practice adversely affecting the class as well as the specific action or matter adversely affecting the Agent.
- b. The complaint must be filed with the Office of Civil Rights or with the EEO Officer servicing the operating unit or Departmental office where the complaint arose no later than fifteen (15) days after the agent's receipt of the notice of right to file a class complaint.
- c. The complaint shall be processed promptly; the parties shall cooperate and shall proceed at all times without undue delay.

.04 Acceptance or dismissal:

- a. Within thirty (30) days of the Department's receipt of a complaint, the Department shall designate an Agency Representative and forward the complaint, along with a copy of the Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the EEOC. The EEOC shall assign the complaint to an Administrative judge or complaints examiner with a proper security clearance when necessary. The Administrative Judge may require the complainant or agency to submit additional information relevant to the complaint.
- b. The Administrative Judge may dismiss the complaint, or any portion, for any of the reasons listed in Section 3.03(a)(1-9) or because it does not meet the prerequisites of a class complaint under Paragraph .01(b) of this section.
- c. If an allegation is not included in the Counselor's Report, the Administrative Judge shall afford the agent fifteen (15) days to state whether the matter was discussed with the Counselor and, if not, explain why it was not discussed. If the explanation is not satisfactory, the Administrative Judge shall dismiss the allegation. If the explanation is satisfactory, the Administrative Judge shall refer the allegation to the Department for further counseling of the agent. After counseling, the allegation shall be consolidated with the class complaint.
- d. If an allegation lacks specificity and detail, the Administrative Judge shall afford the agent fifteen (15) days to provide specific and detailed information. The Administrative judge shall dismiss the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the Administrative Judge shall advise the agent how to proceed on an individual or class basis concerning these allegations.
- e. The Administrative Judge may extend the time limits for filing a complaint and for consulting with a Counselor in accordance with the time limit provisions contained in 29 CFR §1614.105(a)(2) and §1614.604.
- f. When appropriate, the Administrative Judge may decide that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.
- g. The Administrative Judge shall transmitted his or her decision to accept or dismiss a complaint to the Department and the agent. The Department shall take final action by issuing a Final Order within forty (40) days of receipt of the hearing record and Administrative Judge's decision. The Final Order shall notify the agent whether or not the Department will implement the decision of the Administrative Judge. If the Final

Order does not implement the decision of the Administrative Judge, the Department shall simultaneously appeal the Administrative Judge's decision in accordance with Section 3.08(a) and append a copy of the appeal to the Final Order. A dismissal of a class complaint shall inform the agent either that the complaint is being filed on that date as an individual complaint of discrimination and will be processed under Sections 2 and 3, or that the complaint is also dismissed as an individual complaint in accordance with Section 3.03(a). In addition, the decision shall inform the Agent of the right to appeal the dismissal of the class complaint to the Office of Federal Operations, EEOC or to file a civil action and include EEOC Form 573, Notice of Appeal/Petition.

.05 Notification:

a. Within 15 days of receiving notice that the Administrative Judge has accepted a class complaint, or within a reasonable time frame specified by the Administrative Judge, the Department shall use reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the acceptance of the class complaint.

b. Such notice shall contain:

1. The name of the Departmental office or operating unit, its location, and the date of acceptance of the complaint;

2. A description of the issues accepted as part of the class complaint;

3. An explanation of the binding nature of the final decision or resolution of the complaint on class members; and

4. The name, address and telephone number of the class representative.

c. Obtaining evidence concerning the complaint:

1. The Administrative Judge shall notify the agent and the Agency Representative of the time period that will be allowed both parties to prepare their cases. This time period will include at least sixty (60) days and may be extended by the Administrative Judge upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, over burdensome, repetitious, or privileged.

2. If mutual cooperation fails, either party may request the Administrative Judge to rule on a request to develop evidence. If a party fails, without good cause shown, to respond fully and in a timely fashion to a request made or approved by the Administrative Judge for documents, records, comparative data, statistics or affidavits, and the information is solely in the control of one party, such failure may, in appropriate circumstances, cause the Administrative Judge:

(a) To draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(b) To consider the matters to which the requested information pertains to be established in favor of the opposing party;

(c) To exclude other evidence offered by the party failing to produce the requested information;

(d) To recommend that a decision be entered in favor of the opposing party; or

- (e) To take such other actions as the administrative judge deems appropriate.
3. During the period for development of evidence, the Administrative Judge may, at his or her discretion, direct that an investigation of facts relevant to the complaint or any portion be conducted by the Office of Civil Rights.
4. Both parties shall furnish to the Administrative Judge copies of all materials that they wish to be examined and such other material as may be requested.
- d. Opportunities for resolution of the complaint:
1. The Administrative Judge shall furnish the agent and the Agency Representative a copy of all materials obtained concerning the complaint and provide opportunity for the agent to discuss materials with the Agency Representative and attempt resolution of the complaint.
2. The complaint may be resolved by agreement of the Department and the agent at any time pursuant to the notice and approval procedure contained in subparagraph 4.d.(4), below.
3. If the complaint is resolved, the terms of the resolution shall be reduced to writing and signed by the agent, an authorized official of the operating unit or Departmental office, and officials of the concurring Department offices designated in Section 7.01.(c).
4. Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and to the Administrative Judge. It shall state the relief, if any, to be granted by the operating unit or Departmental office and the name and address of the EEOC Administrative Judge assigned to the case. It shall state that within 30 days of the date of the notice of resolution, any member of the class may petition the Administrative Judge to vacate the resolution because it benefits only the class agent, or is otherwise not fair, adequate and reasonable to the class as a whole. The Administrative Judge shall review the notice of resolution and consider any petitions to vacate filed. If the Administrative Judge finds that the proposed resolution is not fair, adequate, and reasonable to the class as a whole, the Administrative Judge shall issue a decision vacating the agreement and may replace the original class agent with a petitioner or some other class member who is eligible to be the class agent during further processing of the class complaint. The decision shall inform the former class agent or the petitioner of the right to appeal the decision to the EEOC and include EEOC Form 573, Notice of Appeal/Petition. If the Administrative Judge finds that the resolution is fair, adequate and reasonable to the class as a whole, the resolution shall bind all members of the class.
- e. Hearing: On expiration of the period allowed for preparation of the case, the Administrative Judge shall set a date for hearing. The hearing shall be conducted in accordance with Section 3.06(a-k).
- f. Decisions:
1. The Administrative Judge shall transmit to the Department and the class agent a decision on the complaints, including findings, systemic relief for the class, and any individual relief, where appropriate, with regard to the personnel action or matter that gave rise to the complaint.
2. If the Administrative Judge finds no class relief appropriate, he or she shall determine if a finding of individual discrimination is warranted and, if so, shall recommend appropriate relief.
3. The Administrative Judge shall notify the agent of the date on which the report of finding and recommendations was forwarded to the agency.
4. Department Final Action:

- (a) Within sixty (60) days of receipt of the report of findings and recommendations issued under subparagraph f.1 of this section, the Office of Civil Rights shall take final action by issuing a Final Order.
- (b) The Final Order shall notify the class agent whether or not the Department will fully implement the decision of the Administrative Judge and shall contain notice of the class agent's right to appeal to the EEOC, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit, and the applicable time limits for appeals and lawsuits.
- (c) If the Final Order does not fully implement the decision of the Administrative Judge, then the Department shall simultaneously file an appeal in accordance with Section 8, and append a copy of the appeal to the Final Order.
- (d) If the Department does not issue the Final Order within sixty (60) days of receipt of the Administrative Judge's decision, then the decision of the Administrative Judge shall become the final action of the Department.
- (e) A Final Order on a class complaint shall, subject to 29 CFR §1614.401, be binding on all members of the class and the Department.
- (f) Notification of Final Order: The Department shall notify class members of the final action and relief awarded, if any, through the same method employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the Department within ten (10) days of the transmittal of its Final Order to the agent.
- (g) Relief for individual class members:
1. When discrimination is found, the Department must eliminate or modify the employment policy or practice out of which the complaint arose and provide individual relief, including an award of attorney's fees and costs, to the Agent in accordance with Section 6.
 2. When class-wide discrimination is not found, but it is found that the class agent is a victim of discrimination, Section 6 shall apply. The Department shall also, within sixty (60) days of the issuance of the final decision finding no class-wide discrimination, issue the acknowledgment of receipt of an individual complaint as required by Section 3.02 and process in accordance with the provisions of Section 3, each individual complaint that was subsumed into the class complaint.
 3. When discrimination is found in the Final Order and a class member believes that he or she is entitled to individual relief, the class member may file a written claim with the Director, Office of Civil Rights, within thirty (30) days of receipt of notification by the Department of its Final Order. Administrative Judges shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members. The claim must include a specific, detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which the Department found class-wide discrimination in its Final Order. Where a finding of discrimination against a class has been made, there shall be a presumption of discrimination as to each member of the class. The Department must show by clear and convincing evidence that any class member is not entitled to relief. The Administrative Judge may hold a hearing or otherwise supplement the record on a claim filed by a class member. The Department or the EEOC may find class-wide discrimination and order remedial action for any policy or practice in existence within forty-five (45) days of the agent's initial contact with the Counselor. Relief otherwise consistent with this section may be ordered for the time the policy or practice was in effect. The Department shall issue a Final Order on each such claim within ninety (90) days of filing. Such decision must include a notice of the right to file an appeal or a civil action and the applicable time limits.

SECTION 5. RELATED PROCESSES.

.01 Relationship to negotiated grievance procedure:

a. When a person is employed by an operating unit or Departmental office subject to 5 U.S.C. 7121(d) and is covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance procedure, an employee wishing to file a complaint or a grievance on a matter of alleged employment discrimination must elect to raise the matter under either in the EEO process as set forth in Sections 1 through 3 or the negotiated grievance procedure, but not both. An election to proceed in the EEO process is indicated only by the filing of a written formal complaint; use of the pre-complaint process as described in Section 1 does not constitute an election for purposes of this section. An employee who files an EEO complaint under Section 3 may not thereafter file a grievance on the same matter. An election to proceed under a negotiated grievance procedure is indicated by the filing of a timely written grievance. An employee who files a grievance with an operating unit or Departmental office whose negotiated agreement permits the acceptance of grievances which allege discrimination may not thereafter file an EEO complaint on the same matter, whether or not the operating unit or Departmental office has informed the individual of the need to elect or of whether the grievance has raised an issue of discrimination. Any such complaint filed after a grievance has been filed on the same matter shall be dismissed without prejudice to the complainant's right to proceed through the negotiated grievance procedure, including the right to appeal to the EEOC from a final decision as provided under Section 3.07(a)(6). The dismissal of such a complaint shall advise the complainant of the obligation to raise discrimination in the grievance process and of the right to appeal the final grievance decision to the EEOC.

b. When a person is not covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance procedure, allegations of discrimination shall be processed as complaints under Sections 1 through 3.

c. When a person is employed by an operating unit or Departmental office not subject to 5 U.S.C. 7121(d) and is covered by a negotiated grievance procedure, allegations of discrimination shall be processed as complaints under this Order, except that the time limits for processing the complaint contained in Sections 1 and 3 and for appeal to the EEOC contained in Section 8 may be held in abeyance during processing of a grievance covering the same matter as the complaint if the Department notifies the complainant in writing that the complaint will be held in abeyance pursuant to this section.

.02 Relationship to non-negotiated grievance procedure.

An employee who elects to proceed with a non-negotiated grievance under Department Administrative Order 202-771, Administrative Grievance Procedure, may not pursue the same matter as an Equal Employment Opportunity complaint under this Order.

.03 Mixed case complaints:

a. Definitions:

1. **Mixed case complaint:** A mixed case complaint is a complaint of employment discrimination filed with the Department based on race, color, religion, sex, national origin, age disability, or genetic information related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address.

2. **Mixed case appeals:** A mixed case appeal is an appeal filed with the MSPB that alleges that an

appealable agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability, or age.

b. Election: An aggrieved person may initially file a mixed case complaint with the Department pursuant to Sections 1 through 3 or an appeal on the same matter with the MSPB pursuant to 5 C.F.R. § 1201.151, but not both. The Department shall inform every employee who is the subject of an action that is appealable to the MSPB and who has either orally or in writing raised the issue of discrimination during the processing of the action of the right to file either a mixed case complaint with the Department or to file a mixed case appeal with the MSPB. The person shall be advised that he or she may not initially file both a mixed case complaint and an appeal on the same matter and that whichever is filed first shall be considered an election to proceed in that forum. If a person files a mixed case appeal with the MSPB instead of a mixed case complaint, and the MSPB dismisses the appeal for jurisdictional reasons, the Department shall promptly notify the individual in writing of the right to contact an EEO counselor within forty-five (45) days of receipt of this notice and to file an EEO complaint, subject to Sections 3.03. The date on which the person filed his or her appeal with MSPB shall be deemed to be the date of initial contact with the EEO Counselor. If a person files a timely appeal with MSPB from the Department's processing of a mixed case complaint and the MSPB dismisses it for jurisdictional reasons, the Department shall reissue a notice under Section 3.05(e) giving the individual the right to elect between a hearing before an Administrative Judge and an immediate final decision.

c. Dismissal:

1. The Department may dismiss a mixed case complaint for the reasons contained in, and under the conditions prescribed in, Section 3.03(a)(1-9).

2. A Department decision to dismiss a mixed case complaint on the basis of the complainant's prior election of the MSPB procedures shall be made as follows:

(a). Where neither the Department nor the MSPB Administrative Judge questions the MSPB's jurisdiction over the appeal on the same matter, the Department shall dismiss the mixed case complaint pursuant to Section 3.03(a)(4) and shall advise the complainant that he or she must bring the allegations of discrimination contained in the complaint to the attention of the MSPB, pursuant to 5 C.F.R. § 1201.155. The dismissal of such a complaint shall advise the complainant of the right to petition the EEOC to review the MSPB's final decision on the discrimination issue. A dismissal of a mixed case complaint is not appealable to the EEOC except where it is alleged that Section 3.03(a)(4) has been applied to a non-mixed case matter.

(b). Where the Department or the MSPB Administrative Judge questions the MSPB's jurisdiction over the appeal on the same matter, the Department shall hold the mixed case complaint in abeyance until the MSPB Administrative Judge rules on the jurisdictional issue, shall notify the complainant that it is doing so, and instruct him or her to bring the allegation of discrimination to the attention of the MSPB. During this period of time, all time limitations for processing or filing will be tolled. A Department decision to hold a mixed case complaint in abeyance is not appealable to EEOC. If the MSPB Administrative Judge finds that MSPB has jurisdiction over the matter, the Department shall dismiss the mixed case complaint pursuant to Section 3.03(a)(4) and advise the complainant of the right to petition the EEOC to review the MSPB's final decision on the discrimination issue. If the MSPB Administrative Judge finds that MSPB does not have jurisdiction over the matter, the Department shall resume processing of the mixed case complaint as a non-mixed case EEO complaint.

d. Procedures for Department processing of mixed case complaints: When a complainant elects to proceed with an EEO complaint rather than with an MSPB appeal, the procedures set forth in Sections 1 through 3 shall govern the processing of the mixed case complaint with the following exceptions:

1. At the time the Department advises a complainant of the acceptance of a mixed case complaint, it

shall also advise the complainant that:

(a). If a final decision is not issued within one hundred twenty (120) days of the date of filing of the mixed case complaint, the complainant may appeal the matter to the MSPB at any time thereafter as specified at 5 C.F.R. 1201.154(b)(2) or may file a civil action as specified in Section 8.02, but not both; and

(b). If the complainant is dissatisfied with the Department's final decision on the mixed case complaint, the complainant may appeal the matter to the MSPB (not the EEOC) within thirty (30) days of receipt of the agency's final decision;

2. Upon completion of the investigation, the notice provided the complainant in accordance with Section 3.05(e) will advise the complainant that a final decision will be issued within forty-five (45) days without a hearing; and

3. At the time that the Department issues its final decision on a mixed case complaint, it shall advise the complainant of the right to appeal the matter to the MSPB (not the EEOC) within 30 days of receipt and of the right to file a civil action as provided in Section 8.02.

.04 Other Procedures:

If an employee or applicant seeking EEO counseling raises claims outside the purview of the EEO process, but for which an administrative complaint procedure exists (e.g., whistleblowing or veterans' preference), the EEO counselor or EEO Officer shall refer the complainant to the appropriate forum.

SECTION 6. REMEDIES AND RELIEF.

.01 Relief:

a. When the Department or the EEOC, in an individual case of discrimination, finds that an applicant or an employee has been discriminated against, the operating unit or Departmental office at which the complaint arose shall provide full relief which shall include the following elements in appropriate circumstances:

1. Notification to all employees of the operating unit or the Departmental office in the affected facility of their right to be free of unlawful discrimination and assurance 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 violations of the law similar to those found 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; and

5. Commitment that the operating unit or Departmental office shall cease from engaging in the specific unlawful employment practice found in the case.

b. Relief for an applicant:

1. Back pay and offers of employment:

(a) When the Department or the EEOC finds that an applicant for employment has been discriminated against, the operating unit or Departmental office shall offer the applicant the position that the applicant would have occupied absent discrimination or, if justified by the circumstances, a substantially equivalent position unless clear and convincing evidence indicates that the applicant would not have been selected even absent the discrimination. The offer shall be made in writing. The individual shall have fifteen (15) days from receipt of the offer within which to accept or decline the offer. Failure to accept the offer within the fifteen-day (15) period will be considered a declination of the offer, unless the individual can show that circumstances beyond his or her control prevented a response within the time limit.

(b) If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired. Back pay, computed in the manner prescribed by 5 C.F.R. § 550.805, shall be awarded from the date the individual would have entered on duty until the date the individual actually enters on duty unless clear and convincing evidence indicates that the applicant would not have been selected even absent discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. Sovereign immunity has not been waived in cases brought under the Age Discrimination in Employment Act (ADEA) or in cases where the discriminatory conduct occurred prior to November 21, 1991. The individual shall be deemed to have performed service for the operating unit or Departmental office during this period for all purposes except for meeting service requirements for completion of a required probationary or trial period.

(c) If the offer of employment is declined, the operating unit or Departmental office shall award the individual a sum equal to the back pay he or she would have received, computed in the manner prescribed by 5 C.F.R. § 550.805, from the date he or she would have been appointed until the date the offer was declined, subject to the limitation of subparagraph (b)(3) of this section. Interest on back pay, if applicable, shall be included in the back pay computation. The operating unit or Departmental office shall inform the applicant, in its offer of employment, of the right to this award in the event the offer is declined.

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

3. Back pay under subparagraphs (b)(1)(ii) and (iii) for complaints under Title VII or the Rehabilitation Act may not extend from a date earlier than two years prior to the date on which the complaint was initially filed by the applicant.

c. Relief for an employee: When the Department or the EEOC finds that an employee of the Department was discriminated against, the operating unit or Departmental office where the complaint arose shall provide relief, which shall include, but need not be limited to, one or more of the following actions:

1. Nondiscriminatory placement, with back pay computed in the manner prescribed by 5 C.F.R. § 550.805, unless clear and convincing evidence contained in the record demonstrates that the personnel action would have been taken even absent the discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The back pay liability under Title VII or the Rehabilitation Act is limited to two years prior to the date the discrimination complaint was filed.

2. If clear and convincing evidence indicates that, although discrimination existed at the time the personnel action was taken, the personnel action would have been taken even absent discrimination, the operating unit or Departmental office shall nevertheless eliminate any discriminatory practice and ensure it does not recur.

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

4. Expunction from the operating unit or Departmental office's records of any adverse materials relating to the discriminatory employment practice.
5. Full opportunity to participate in the employee benefit denied (e.g., training, preferential work assignments, overtime scheduling).
 - d. The Department has the burden of proving by a preponderance of the evidence that the complainant has failed to mitigate his or her damages.
 - e. Attorney's fees or costs:
 1. Awards of attorney's fees or costs. The provisions of this paragraph relating to the award of attorney's fees or costs shall apply to allegations of discrimination prohibited by Title VII and the Rehabilitation Act. In a decision or final action, the Department, Administrative Judge, or EEOC Office of Federal Operations may award the applicant or employee reasonable attorney's fees (including expert witness fees) and other costs incurred in the processing of the complaint.
 - (a) A finding of discrimination raises a presumption of entitlement to an award of attorney's fees.
 - (b) Any award of attorney's fees or costs shall be paid by the operating unit or Departmental office where the complaint arose.
 - (c) Attorney's fees are allowable only for the services of members of the Bar and law clerks, paralegals or law students under the supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government.
 - (d) Attorney's fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the Department, Administrative Judge or Office of Federal Operations, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. The Department is not required to pay attorney's fees for services performed during the pre-complaint process, except that fees are allowable when the EEOC affirms on appeal an Administrative Judge's decision finding discrimination after the Department takes final action by not implementing an Administrative Judge's decision. Written submissions to the Department that are signed by the representative shall be deemed to constitute notice of representation.
 2. Amount of awards:
 - (a) When the Department, Administrative Judge or the Office of Federal Operations determines an entitlement to attorney's fees or costs, the complainant's attorney shall submit a verified statement of attorney's fees (including expert witness fees) and other costs, as appropriate, to the Director, Office of Civil Rights or the Administrative Judge within thirty (30) days of receipt of the decision. Where the fee petition is submitted to the Administrative Judge, the attorney shall also submit a copy of the statement to the Department's representative and the Director, Office of Civil Rights. A statement of attorney's fees and costs shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. The Department may respond to a statement of attorney's fees and costs within thirty (30) days of its receipt. The verified statement, accompanying affidavit and any Department response shall be made a part of the complaint file.
 - (b)(i) The Department or Administrative Judge shall issue a decision determining the amount of attorney's fees or costs due within sixty (60) days of receipt of the statement and affidavit. The decision shall include a notice of right to appeal to the EEOC along with EEOC Form 573, Notice Of Appeal/Petition and shall include the specific reasons for determining the amount of the award.

(ii) The amount of attorney's fees shall be calculated using the following standards: The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate. There is a strong presumption that this amount represents the reasonable fee. In limited circumstances, this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the agency.

(iii) The costs that may be awarded are those authorized by 28 U.S.C. 1920 to include: Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case; fees and disbursements for printing and witnesses; and fees for exemplification and copies necessarily obtained for use in the case.

(c) Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821, except that no award shall be made for a Federal employee who is in a duty status when made available as a witness.

.02 Interim relief:

a. When the Department appeals and the case involves removal, separation, or suspension continuing beyond the date of the appeal, and when the Administrative Judge's decision orders retroactive restoration, the Department shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified in the decision, pending the outcome of the Department's appeal. The employee may decline the offer of interim relief.

b. Service under the temporary or conditional restoration provisions of paragraph (a) of this section shall be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure, if the EEOC upholds the decision on appeal. Such service shall not be credited toward the completion of any applicable probationary or trial period or the completion of the service requirement for career tenure if the EEOC reverses the decision on appeal.

c. When the Department appeals, it may delay the payment of any amount, other than prospective pay and benefits, ordered to be paid to the complainant until after the appeal is resolved. If the operating unit or Departmental office delays payment of any amount pending the outcome of the appeal and the resolution of the appeal requires the operating unit or Departmental office to make the payment, then the operating unit or Departmental office shall pay interest from the date of the original decision until payment is made.

d. The Department shall notify the Office of Federal Operations and the employee in writing at the same time it appeals that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (c) of this section. Failure of the Department to provide notification will result in the dismissal of the Department's appeal.

e. The Department may, by notice to the complainant, decline to return the complainant to his or her place of employment if it determines that the return or presence of the complainant will be unduly disruptive to the work environment. However, prospective pay and benefits must be provided. The determination not to return the complainant to his or her place of employment is not reviewable. A grant of interim relief does not insulate a complainant from subsequent disciplinary or adverse action.

f. If the Department files an appeal and has not provided required interim relief, the complainant may request dismissal of the Department's appeal. Any such request must be filed with the Office of Federal Operations within twenty-five (25) days of the date of service of the Department's appeal. A copy of the request must be served on the Department at the same time it is filed with EEOC. The Department may respond with evidence and argument to the complainant's request to dismiss within fifteen (15) days of the date of service of the request.

SECTION 7. RESOLUTION AGREEMENTS.

.01 Resolution Procedures:

a. A complaint may be resolved at any time before the dismissal or final action on the complaint under Sections 3.03, 3.07, or 4.05. The resolving official(s) must have authority to bind the operating unit or Departmental office to the terms agreed upon.

b. When the Department and the complainant agree upon terms of resolution, the terms shall be reduced to writing and signed by the parties and their representatives, if any. Resolution agreements achieved as the result of mediation may be executed in draft at the conclusion of mediation, but must be put in final form before taking effect. All final resolution agreements shall contain such standard provisions as approved by the Office of Civil Rights and the servicing legal office.

c. Resolution agreements must be approved by the servicing EEO Officer, the servicing legal office, and the servicing Human Resources Office, as evidenced by the signatures of authorized concurring officials on the last page of the resolution agreement. The agreement will not take effect until all concurrences are obtained.

d. Oral agreements shall not be enforceable except in cases where the complainant has requested a hearing and the agreement is made before the Administrative Judge and is memorialized in the hearing transcript.

02. Processing Claims of Noncompliance:

a. 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. Final action that has not been the subject of an appeal or civil action shall be binding on the Department. If the complainant believes that the operating unit or Departmental office has failed to comply with the terms of a settlement agreement or decision, the complainant shall notify the servicing EEO Officer or the Director, Office of Civil Rights in writing, of the alleged noncompliance within thirty (30) days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased.

b. The Office of Civil Rights or the servicing EEO Office shall conduct such inquiry or investigation as is necessary to ascertain whether one or both of the parties have violated the resolution agreement. The Office of Civil Rights shall issue a written decision as to whether the parties have complied with the settlement agreement. If the operating unit or Departmental office is found to have violated the agreement or a portion thereof and its noncompliance is not attributable to acts of the complainant, the Office of Civil Rights will order compliance with the agreement or reinstatement of the complaint(s), as appropriate.

c. If the Department has not responded to the complainant, in writing, or if the complainant is not satisfied with the Department's decision, the complainant may appeal to the EEOC for a determination as to whether the Department has complied with the terms of the settlement agreement. The complainant may file such an appeal thirty-five (35) days after he or she has served the Department with the allegations of noncompliance, but must file an appeal within thirty (30) days of his or her receipt of the Department's determination. The complainant must serve a copy of the appeal on the Department and the Department may submit a response to the EEOC within thirty (30) days of receiving notice of the appeal.

d. Prior to rendering its determination, the EEOC may request that the parties submit whatever additional information or documentation it deems necessary or may direct that an investigation or hearing on

the matter be conducted. If the EEOC determines that the Department is not in compliance and the noncompliance is not attributable to acts or conduct of the complainant, it may order such compliance or it may order that the complaint be reinstated for further processing from the point processing ceased. Allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints under Sections 1 through 3 rather than under this section.

SECTION 8. APPEALS AND CIVIL ACTIONS.

.01 The complainant, Department, agent, grievant or individual class claimant (hereinafter appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at P.O. Box 77960, Washington, DC 20013, or electronically, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition, and should indicate what is being appealed. The appellant shall furnish a copy of the appeal to the opposing party at the same time it is filed with the EEOC. In or attached to the appeal to the EEOC, the appellant must certify the date and method by which service was made on the opposing party.

.02 Time for Filing Appeals:

- a. If an appellant does not file an appeal within the time limits of this subsection, the appeal shall be dismissed by the EEOC as untimely.
- b. Any statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within thirty (30) days of filing the notice of appeal.
- c. Any statement or brief on behalf of the Department in support of its appeal must be submitted to the Office of Federal Operations within twenty (20) days of filing the notice of appeal.
- d. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than ten (10) pages long.
- e. The Department must submit the complaint file to the Office of Federal Operations within 30 days of initial notification that the complainant has filed an appeal or within thirty (30) days of submission of an appeal by the agency.
- f. Any statement or brief in opposition to an appeal must be submitted to the EEOC and served on the opposing party within thirty (30) days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within sixty (60) days of receipt of the appeal.
- g. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than ten (10) pages long.
- h. The Department is required to submit appeals, complaint files, and other filings to the Office of Federal Operations in a digital format acceptable to the EEOC, absent a showing of good cause why the Department cannot submit digital records. Appellants are encouraged, but not required, to submit digital appeals and supporting documentation to the Office of Federal Operations in a format acceptable to the EEOC.

.03 Appellate Procedures:

- a. On behalf of the EEOC, the Office of Federal Operations shall review the complaint file and all written statements and briefs from either party. The EEOC may supplement the record by an exchange of

letters or memoranda, investigation, remand to the agency or other procedures.

b. If the Office of Federal Operations requests information from one or both of the parties to supplement the record, each party providing information shall send a copy of the information to the other party.

c. When either party to an appeal fails without good cause shown to comply with the requirements of this section or to respond fully and in timely fashion to requests for information, the Office of Federal Operations shall, in appropriate circumstances:

1. Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

2. Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

3. Issue a decision fully or partially in favor of the opposing party; or

4. Take such other actions as appropriate.

.04 Decisions on appeals:

a. The Office of Federal Operations, on behalf of the EEOC, shall issue a written decision setting forth its reasons for the decision. The EEOC shall dismiss appeals in accordance with §§ 1614.107, 1614.403(c) and 1614.409. The decision shall be based on the preponderance of the evidence. The decision on an appeal from the Department's final action shall be based on a de novo review, except that the review of the factual findings in a decision by an Administrative Judge issued pursuant to § 1614.109(i) shall be based on a substantial evidence standard of review.

b. If the decision contains a finding of discrimination, appropriate remedy(ies) shall be included and, where appropriate, the entitlement to interest, attorney's fees or costs shall be indicated.

c. The decision shall reflect the date of its issuance, inform the complainant of his or her or her civil action rights, and be transmitted to the complainant and the agency by first class mail.

d. The Office of Federal Operations, on behalf of the EEOC, shall issue decisions on appeals of decisions to accept or dismiss a class complaint issued pursuant to § 1614.204(d)(7) within ninety (90) days of receipt of the appeal.

e. A decision issued under paragraph (a) of this section is final within the meaning of 29 C.F.R. § 1614.407 unless a timely request for reconsideration is filed by a party to the case.

f. A party may request reconsideration within thirty (30) days of receipt of a decision of the EEOC, which the EEOC in its discretion may grant, if the party demonstrates that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or

2. The decision will have a substantial impact on the policies, practices or operations of the agency.

.05 Civil Actions:

a. A complainant who has filed an individual complaint, an agent who has filed a class complaint or a claimant who has filed a claim for individual relief pursuant to a class complaint is authorized under Title VII, the ADEA and the Rehabilitation Act to file a civil action in an appropriate United States District Court:

1. Within ninety (90) days of receipt of the final action on an individual or class complaint if no appeal has been filed;
 2. After one hundred eighty (180) days from the date of filing an individual or class complaint if an appeal has not been filed and final action has not been taken;
 3. Within ninety (90) days of receipt of the EEOC's final decision on an appeal; or
 4. After one hundred eighty (180) days from the date of filing an appeal with the EEOC if there has been no final decision by the EEOC.
- b. **Equal Pay Act:** A complainant is authorized under section 16(b) of the Fair Labor Standards Act (29 U.S.C. 216(b)) to file a civil action in a court of competent jurisdiction within two years or, if the violation is willful, three (3) years of the date of the alleged violation of the Equal Pay Act regardless of whether he or she pursued any administrative complaint processing. Recovery of back wages is limited to two years prior to the date of filing suit, or to three years if the violation is deemed willful; liquidated damages in an equal amount may also be awarded. The filing of a complaint or appeal under this part shall not toll the time for filing a civil action.
- c. **Effect of filing a civil action:** Filing a civil action under this subsection shall terminate processing of the administrative EEO compliant under this Order.

SECTION 9: COMPUTATION OF TIME.

- .01 All time periods in this Section that are stated in terms of days are calendar days unless otherwise stated.
- a. A document shall be deemed timely if it is received or postmarked before the expiration of the applicable filing period, or, in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period.
 - b. The time limits in this part are subject to waiver, estoppel and equitable tolling.
 - c. The first day counted shall 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 shall be extended to include the next business day.

SECTION 10: REPRESENTATION AND OFFICIAL TIME.

- .01 At any stage in the processing of a complaint, including the counseling stage (Section 1) the complainant shall have the right to be accompanied, represented, and advised by a representative of complainant's choice.
- a. If the complainant is an employee of the Department, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to agency and EEOC requests for information. If the complainant is an employee of the agency and he designates another employee of the Department as his or her representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to agency and EEOC requests for information.

- b. The Department is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. The complainant and representative, if employed by the agency and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the Department or the EEOC during the investigation, informal adjustment, or hearing on the complaint.
- c. In cases where the representation of a complainant or the Department would conflict with the official or collateral duties of the representative, the EEOC or the Department may, after giving the representative an opportunity to respond, disqualify the representative.
- d. Unless the complainant states otherwise in writing, after the Department has received written notice of the name, address and telephone number of a representative for the complainant, all official correspondence shall be with the representative with copies to the complainant. When the complainant designates an attorney as representative, service of all official correspondence shall be made on the attorney and the complainant, but time frames for receipt of materials shall be computed from the time of receipt by the attorney. The complainant must serve all official correspondence on the designated representative of the agency.
- e. The complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has designated a representative.
- f. Witnesses who are Federal employees, regardless of their tour of duty and regardless of whether they are employed by the respondent agency or some other Federal agency, shall be in a duty status when their presence is authorized or required by the EEOC or Department officials in connection with a complaint.

SECTION 11. JOINT PROCESSING AND CONSOLIDATION OF COMPLAINTS.

.01 Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the Office of Civil Rights or the EEOC for joint processing after appropriate notification to the parties.

.02 Two or more complaints of discrimination filed by the same complainant shall be consolidated by the Office of Civil Rights for joint processing after appropriate notification to the complainant. When a complaint has been consolidated with one or more earlier filed complaints, the Office of Civil Rights shall complete its investigation within the earlier of one hundred eighty (180) days after the filing of the last complaint or three hundred sixty (360) days after the filing of the original complaint, except that the complainant may request a hearing from an Administrative Judge on the consolidated complaints any time after one hundred eighty (180) days from the date of the first filed complaint. Administrative Judges or the EEOC, in their discretion, consolidate two or more complaints of discrimination filed by the same complainant.

SECTION 12. RELATED ORDERS AND REFERENCES.

[DOO 20-10](#), Office of Civil Rights

[DAO 215-11](#), Complaint Process for Sexual Orientation Discrimination

[DAO 202-955](#), Allegations of Harassment Prohibited by Federal Law

[DAO 202-771](#), Administrative Grievance Procedure

OCR EEO Mediation Guide

29 C.F.R. Part 1614

EEOC MD-110
EEOC MD-715

Questions and Comments

Send Questions or Comments on the Commerce Directives Management program to Directives@doc.gov.

Office of Privacy and Open Government
Office of the Chief Financial Officer and Assistant Secretary for Administration
U.S. Department of Commerce

October 24, 2017