



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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ARLINGTON, VIRGINIA 22202-4704

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INSPECTOR GENERAL INSTRUCTION 1020.1

PROCESSING COMPLAINTS OF DISCRIMINATION POLICY AND PROCEDURES

FOREWORD

This Instruction provides the basic instructions required for the effective and efficient processing of Equal Employment Opportunity complaints of discrimination filed with the Department of Defense Office of Inspector General. This Instruction prescribes policies, procedures, guidelines, processing, standard forms, and assigns responsibilities for the preparation, control, coordination, and disposition of Equal Employment Opportunity complaints of discrimination.

The office of primary responsibility for this Instruction is the Equal Employment Opportunity Office. This Instruction is effective immediately.

FOR THE INSPECTOR GENERAL:

A handwritten signature in black ink, appearing to read "SD Wilson".

Stephen D. Wilson
Assistant Inspector General
for Administration and Management

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**PROCESSING COMPLAINTS OF DISCRIMINATION
POLICY AND PROCEDURES**

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CHAPTER 1 GENERAL PROVISIONS AND RESPONSIBILITIES

A. Purpose. This Instruction prescribes policy, procedures, and responsibilities within the Department of Defense Office of Inspector General (DoD OIG) for counseling, filing, processing, investigating, settling, deciding, and acting on equal employment opportunity (EEO) complaints of discrimination. The processing of all complaints filed by OIG employees, former employees and applicants for employment on the grounds of race, color, religion, sex, age, national origin, physical/mental disability or retaliation shall be governed by this instruction. This instruction reflects the guidance set forth by the Equal Employment Opportunity Commission (EEOC); 29 CFR Part 1614, *Federal Sector Equal Employment Opportunity*, November 9, 1999; and the EEOC EEO Management Directive 110 (EEO MD-110), *Federal Sector Complaints Processing Manual*, November 9, 1999.

B. References. See Appendix A.

C. Cancellation. This Instruction supersedes IGDINST 1020.1, *Processing Complaints of Discrimination*, August 18, 1995.

D. Applicability. This Instruction applies to the Offices of Inspector General, the Principal Deputy Inspector General, the Deputy Inspectors General, the Assistant Inspector General for Administration and Management, the Assistant Inspector General for Office of Communications and Congressional Liaison, the General Counsel, and the Director, Equal Employment Opportunity, hereafter referred to collectively as the OIG Components, to all civilian employees assigned to the OIG, former OIG employees, and to civilian applicants seeking employment with the OIG. It does not apply to military personnel for whom equal opportunity is covered by DoD Directive 1350.2, *Department of Defense Military Equal Opportunity (MEO) Program*, August 18, 1995.

E. Acronyms. See Appendix B.

F. Definitions. See Appendix C.

G. Policy. It is the OIG policy to:

1. Provide equal opportunity in employment for all people and to prohibit discrimination based on race, color, religion, sex, age, national origin, physical/mental disability, or retaliation. Complaints of discrimination based on age shall be accepted only from current Federal employees and applicants who are at least 40 years of age at the time the alleged discriminatory action occurred. Individuals may not be subjected to retaliation for opposing any practice or for participating in any stage of the EEO administrative process under those statutes made unlawful by:

- a. Title VII of the *Civil Rights Act* (Title VII) (42 USC §2000e-16);

- b. The *Age Discrimination in Employment Act* (ADEA) (29 USC §621);
- c. The *Equal Pay Act* (29 USC §206(d));
- d. The *Rehabilitation Act* (29 USC § 791); or
- e. Title II of the *Notification and Federal Employee Antidiscrimination and Retaliation (NO FEAR) Act of 2002*.

2. Provide prompt, fair, and impartial consideration and disposition of complaints involving issues of discrimination on the grounds of race, color, religion, sex, age, national origin, physical/mental disability, and retaliation. Complaints should be resolved at the earliest stage possible; therefore, use of the Alternative Dispute Resolution (ADR) program as described in Chapter 2, is encouraged. Early resolution of complaints achieves better employee relations, cuts administrative costs, avoids protracted litigation, and is consistent with the OIG 's commitment to the Model EEO program.

H. Responsibilities

1. The **Inspector General** is the final decision authority for the agency on formal complaints of discrimination.
2. The **Director, EEO** has mission responsibility and operational oversight over the OIG EEO program and shall:
 - a. Administer a comprehensive EEO program on all matters pertaining to EEO operations to include the EEOC EEO Management Directive 715 (EEO MD-715), *Model Agency Title VII and Rehabilitation Act Programs*, October 1, 2003, affirmative employment program initiatives.
 - b. Serve as the principal advisor to the IG or equivalent official on all matters pertaining to EEO program operations.
 - c. Manage the OIG discrimination complaint system for individual and class complaints from OIG employees, former employees, applicants for employment, and certain contract employees ensuring fair, impartial, and timely investigation and resolution of all complaints of discrimination.
 - d. Ensure that the EEO complaints processing program is administered in accordance with (IAW) EEO laws, presidential executive orders, regulations, as well as the EEOC, the Office of Personnel Management (OPM), the DoD, and the OIG policies and directives.
 - e. Monitor, implement, and evaluate the progress of the EEO complaints processing program. Ensure reports are prepared and submitted in a timely manner to appropriate officials.

- f. Administer the OIG EEO ADR Program. Coordinate requests to participate in the EEO ADR program with the EEO ADR Team consisting of representatives from the Human Capital Advisory Services (HCAS), the Office of General Counsel (OGC), and the EEO office.
- g. Ensure that every reasonable effort is made to resolve complaints at the earliest possible stage.
- h. Acknowledge receipt of all formal complaints of discrimination and requests for amendments.
- i. Accept or dismiss formal complaints of discrimination in whole or in part based on guidance found in 29 CFR Sections 1614.105, 1614.106 and 1614.107. Request an investigation for all accepted complaints. Coordinate all acceptance, dismissal decisions, and requests for investigations with the OGC.
- j. Ensure all formal complaints are correctly captioned to identify the complainant versus the appropriate head of the DoD, his or her official title, and the OIG tracking number. The OIG tracking number shall be generated by the EEO office.
- k. Arrange for investigations and the appointment of investigator(s), as appropriate, to investigate all aspects of formal EEO complaints. Provide for court reporter services; ensure that court reporters provide the required number of transcripts ordered to the DoD, Civilian Personnel Management Service, Investigations and Resolutions Division (IRD).
- l. Ensure that EEO counselors and investigators are provided administrative and logistical support, including appropriate access to personnel records and copies of records or documents relative to the complaint, when needed in the performance of their official duties.
- m. Ensure that all agency employees cooperate in the EEO and investigative process.
- n. Upon notification that an EEOC hearing has been requested, ensure that the complaint file is properly prepared and submitted to the EEOC within 15 days of receipt of the notification.
- o. Where appropriate, arrange for the EEOC hearing and provide for court reporter services; ensure that court reporters provide the required number of transcripts ordered to the EEOC Administrative Judge (AJ). Ensure the AJ is advised to direct his or her decision and supporting documents, including all agency copies of the transcript, to the Director, EEO.
- p. Ensure sufficiency and availability of trained EEO counselors, appointed by the OIG, to provide effective counseling services.
- q. Supervise EEO counselors to ensure effective performance and participation in training in all phases of complaint processing. Refer or assign EEO counselors for pre-complaint counseling.

r. Monitor implementation and ensure compliance with the terms of all EEO Negotiated Settlement Agreements (NSA) initiated to resolve EEO complaints of discrimination.

s. Safeguard all EEO complaint files.

t. Ensure correct documentation is provided to the complainant, agency witnesses, investigator, and attorney(s) involved in the processing of a complaint.

u. Ensure that the names, work addresses, and telephone numbers of all EEO officials, including special emphasis program managers and the EEO counselors, are current and posted conspicuously.

v. Ensure that this Instruction is readily available to employees and their representatives.

w. Ensure that persons named as agency witnesses are informed regarding allegations made against them; that they are given a full and fair opportunity to respond for the record; and that they are kept informed as to the progress and outcome of cases.

3. The **Office of General Counsel** shall:

a. Provide legal advice and assistance in the processing of complaints of discrimination and in any other EEO program areas requiring such services to EEO, management officials and appropriate HCAS officials.

b. Act as the OIG agency representative in investigations and EEOC hearings in individual complaints and class action proceedings.

c. Coordinate with the Director, EEO on the acceptance or dismissals, in whole or in part, of individual complaints and on final agency decisions.

d. Review proposed NSA's for legal sufficiency.

e. Serve as a member of the ADR team and review requests for participation in the ADR process.

4. The **Human Capital Advisory Services** shall:

a. Ensure the EEO staff, the EEO counselors, the investigators, and the OIG representatives are given access to personnel records and copies of records or documents relative to the complaint when needed in performance of their official duties.

b. Perform regulatory reviews and provide technical support to the EEO staff, the OIG representatives, and the EEO counselors.

5. **Management Officials** shall:

- a. Promote a workplace environment that encourages members of the workforce to refrain from actions or comments that may be perceived as having a discriminatory impact.
- b. Act promptly to prevent or correct situations that may give rise to complaints of discrimination.
- c. Take corrective action against individuals who have been found to have engaged in discriminatory practices.
- d. Provide employees, assigned as collateral duty EEO counselors, reasonable time to adequately perform their EEO functions.
- e. Participate in the ADR process where it is determined to be appropriate.

6. The **EEO Alternative Dispute Resolution Mediator** shall:

- a. Act as an unbiased third party trained in ADR techniques.
- b. Facilitate open communication between the aggrieved and designated management official in a collaborative, non-adversarial manner.
- c. Advise the Director, EEO of any proposed settlement and whether or not resolution is achieved. The Director, EEO is responsible for assuring necessary coordination and completion of any settlement agreements.

7. The **DoD, Civilian Personnel Management Service, Investigations and Resolutions Division** shall:

- a. Conduct investigations on formal complaints of discrimination filed by civilian employees, applicants for employment, former employees, and certain contract employees.
- b. Prepare Report of Investigation (ROI).
- c. Encourage parties to settle a complaint as, appropriate.

8. The **EEO Counselors** shall:

- a. Conduct counseling interviews and advise employees or applicants of EEO rights under the law. Attempt to resolve complaints by talking with employees, their representatives, and agency witnesses.

b. Notify the EEO office of contact by employees, former employees or applicants for employment, seeking counseling immediately after a reportable contact. A reportable contact is any contact with an EEO counselor or EEO staff member by an employee, former employee or applicant for employment who alleges discrimination on the basis of race, color, sex, religion, age, disability, national origin, and/or retaliation.

c. Coordinate preparation of the *OIG EEO Counselor's Report* with the EEO complaints manager.

d. Prepare the *OIG EEO Counselor's Report* IAW applicable guidelines and submit it to the EEO office within 5 workdays of conducting the final interview.

e. Deliver the *Notice of Right to File a Formal Complaint of Discrimination after Completion of Traditional Equal Employment Opportunity Counseling* memorandum, (Appendix J), and IG Form 1020.1-1, *Complaint of Discrimination*, (Appendix K), to the aggrieved at the same time the final interview is conducted.

9. **EEO Counselor Training.** All collateral duty EEO counselors shall be officially appointed by the IG upon completing a minimum of 40 hours of initial EEO training. The Director, EEO shall ensure all EEO counselors receive basic EEO counselor training as the initial training course. To enhance and maintain counseling skills, EEO counselors are required to complete at least 12 hours of continuing EEO counselor training annually in EEO, civilian personnel management practices, law, and other related directives. The supplemental training shall be training that the Director, EEO deems appropriate to keep EEO counselors informed and proficient as EEO counselors. All training shall comply with guidance established in the EEOC EEO MD-110.

CHAPTER 2
THE EQUAL EMPLOYMENT OPPORTUNITY ALTERNATIVE
DISPUTE RESOLUTION PROGRAM

A. General. The OIG has an EEO ADR program available for both the pre-complaint and formal complaint process. The purpose of the EEO ADR program is to offer disputing parties an opportunity to openly discuss their positions and interest in resolving the matter in a mutually satisfactory fashion. The Director, EEO or designee is responsible for the administration and oversight of the entire EEO ADR process and shall ensure implementation in the pre-complaint and formal complaint processes. The EEO ADR process shall not exceed 90 days from the date the pre-complaint is initiated.

B. The Equal Employment Opportunity Alternative Dispute Resolution Process

1. The EEO ADR process, especially when used at the earliest stage, restores working relationships and may serve as a preventative measure against future disputes. Additionally, the non-adversarial application of ADR reduces the costs incurred with the traditional administrative or adjudicative processes and affords use of agency resources for mission related programs and activities. The preferred method of EEO ADR within the OIG is facilitated mediation with a qualified mediator.

2. The use of ADR may not be appropriate in every case. The EEO ADR Team (consisting of the Director, EEO or designee, a member of the OGC and a member of the HCAS) shall decide on a case-by-case basis whether it is appropriate to offer ADR to an aggrieved individual. For example, the OIG may wish to limit ADR geographically if extensive travel would be required, or exclude certain issues such as termination or non-selection. The EEO ADR Team may not utilize blanket exclusions of disputes from ADR based solely upon the basis involved. An agreement to “offer mediation” to the aggrieved in an attempt to resolve a claim shall be presented in writing. Likewise, an agreement to “mediate a claim” shall be presented in writing.

3. It is the OIG policy to attempt to resolve complaints of discrimination at the earliest stage; therefore, mediation may be offered by the EEO ADR Team anytime during the complaint process prior to the appointment of an EEOC AJ. The use of ADR must comply with timeframes prescribed in the 29 CFR Part 1614.

C. Core Principles of Alternative Dispute Resolution. The ADR program must fit the needs of the OIG environment and workforce, but at the same time, it must be fair and conform to the following core principles:

1. Voluntariness. Parties must enter into mediation or another offered ADR process knowingly and voluntarily. Participation in ADR is voluntary for the aggrieved. Once the EEO ADR Team has decided to offer ADR and the aggrieved elects in writing to participate in ADR, it is considered that both parties have knowingly and voluntarily entered into ADR. Management officials must be aware that they have an affirmative duty to cooperate in an ADR

process once the decision is made to offer ADR. Likewise, management officials and the aggrieved have the option to "opt out" of ADR at any point prior to resolution and for any reason. Neither the management official designated to participate in the ADR process nor the aggrieved shall be coerced into accepting the other party's offer to resolve the matter.

2. Neutrality. The EEO ADR mediator shall have no official, financial, or personal interest in the issue at controversy or in the outcome of the dispute. Since the effectiveness of ADR relies on the perception of neutrality, employees in the EEO, the HCAS and the OGC, regardless of training and skill, may not serve as ADR mediators. It is the responsibility of the Director, EEO to ensure that the potential ADR mediator is neither acquainted with nor an employee from the same Component as either the aggrieved or the management official.

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

4. Enforceability. If a resolution is achieved, the terms of the resolution shall be set forth in a written NSA that is binding upon both parties.

D. Mediation. Mediation is the OIG preferred ADR method for matters alleging discrimination and must be provided in a non-threatening environment to facilitate open communication between the disputing parties. Although focused on mediation, the procedures described in this section shall apply to any ADR process.

1. Participation in mediation is voluntary for both the aggrieved and the management official. Where mediation is requested and offered, the EEO office shall present the aggrieved with a written *Offer to Mediate* memorandum, (Appendix D), and a written *Agreement to Mediate* memorandum, (Appendix E), that must be signed by the aggrieved.

2. The appropriate Component and the EEO ADR Team shall determine which management official shall participate in the mediation. The management official selected shall be one who is authorized to engage in resolution discussions and to execute a negotiated settlement agreement.

3. Prior to the scheduled date of mediation, the Director, EEO shall arrange for the HCAS and the OGC representatives to be available for management official's consultation during the mediation.

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

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

6. If mediation is successful, the mediator shall provide the Director, EEO, in writing, all terms agreed upon. The Director, EEO, or designee shall prepare a NSA that must be signed by the aggrieved; the aggrieved's attorney or representative, and the management official with settlement authority. The EEO office shall ensure the NSA is signed and monitored for completion. A signed copy of the NSA shall be filed in the complaint file under the "Settlement" tab.

7. If mediation is unsuccessful during the pre-complaint process, the Director, EEO shall annotate the *OIG EEO Counselor's Report* to reflect that mediation was unsuccessful. The Director, EEO shall review the intake portion of the *OIG EEO Counselor's Report* with the aggrieved to ensure that all EEO related issues raised during mediation are included and issue the aggrieved a *Notice of Right to File a Formal Complaint of Discrimination after Completion of Mediation Attempt* memorandum, (Appendix L). The notice shall inform the aggrieved that in filing a formal complaint, he or she may only raise those alleged discriminatory issues addressed during mediation. The aggrieved shall also be informed that issues like or related to those addressed during mediation can be made the subject of an EEO complaint. The *OIG EEO Counselor's Report* and the *Notice of Right to File a Formal Complaint of Discrimination after Completion of Mediation Attempt* memorandum, (Appendix L), shall be filed in the complaint file under the "Pre-complaint" tab.

8. If mediation is unsuccessful during the formal stage, the Director, EEO shall prepare a Memorandum for Record (MFR) stating that mediation has been attempted during the formal stage and was unsuccessful. The MFR shall be filed in the complaint file under the "Formal" tab.

E. Offer of Alternative Dispute Resolution During Pre-complaint Processing

1. If during pre-complaint intake, the aggrieved indicates an interest in participating in ADR, the EEO complaints manager or designee, must coordinate with the EEO ADR Team to determine if ADR will be offered to the aggrieved. The aggrieved shall be advised that the decision not to offer ADR is not appealable to the EEOC.

2. When the EEO ADR Team determines that ADR is appropriate, the EEO Office shall offer the aggrieved, in writing, the opportunity to participate in ADR. If the aggrieved agrees to participate in ADR, the aggrieved shall sign an *Agreement to Mediate* memorandum, (Appendix E). If the aggrieved fails to respond in writing to the offer within 5 days, the EEO office shall proceed with the traditional counseling process.

3. The aggrieved shall be informed that election to participate in the EEO ADR process could extend the pre-complaint processing period to 90 days from the date the pre-complaint was initiated. The EEO Office shall inform the aggrieved that election to participate in the ADR process is final.

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

5. If the matter is not resolved, the EEO complaints manager, or designee, shall conduct a final interview with the aggrieved, no later than 90 days from the date the aggrieved initiated the pre-complaint process. The aggrieved shall be provided a *Notice of Right to File a Formal Complaint of Discrimination after Completion of Mediation Attempt* memorandum, (Appendix L). The aggrieved shall be informed that he or she has 15 days from the date of receipt of the notice to file a formal complaint.

CHAPTER 3 PRE-COMPLAINT PROCESSING

A. Initiating a Pre-complaint

1. Employees, former employees, and applicants for employment who believe they have been discriminated against because of race, color, religion, sex, age, national origin, physical or mental disability, or retaliation must bring the complaint to the attention of an EEO counselor within 45 days of the date of the matter giving rise to the complaint or within 45 calendar days from the effective date of a personnel action. See the *EEO Complaint Process Chart*, (Appendix S).

2. Employees, former employees, and applicants for employment who believe they have been discriminated against because of age (40 years of age or older) may elect to bypass the EEO administrative procedures for processing complaints. Instead, those complainants may go directly to the U.S. District Court to seek relief through a civil action; however, the complainant must file a notice of intent to file with the agency of his or her intent to file a civil action. If the individual elects to file an administrative complaint with the EEO office, he or she must exhaust administrative remedies before he or she may file a civil action in the U.S. District Court. Exhaustion of administrative remedies occurs when the OIG takes final action or 180 days after filing the formal complaint if no final action is taken.

B. Consolidating Pre-complaints. Two or more individual complaints of discrimination from the same employee, former employee or applicant may, at the discretion of the OIG, be joined for processing after notifying the individual that the complaints shall be processed jointly. The EEOC permits, but does not require, the consolidation of complaints filed by different complainants that consist of substantially similar allegations or allegations related to the same matter. Therefore, two or more pre-complaints of discrimination initiated by different employees, former employees, or applicants for employment consisting of substantially similar allegations of discrimination may, with written permission of the complainants, be consolidated for formal complaint processing in accordance with 29 CFR Section 1614.606.

C. Time Limitations. All days referenced in this instruction are referred to as calendar days. An individual who wishes to initiate the pre-complaint process must contact an EEO official within 45 calendar days of the date the alleged discriminatory event occurred or the effective date of the alleged discriminatory personnel action. The EEO office shall extend the 45 day time limit to permit timely contact when:

1. The aggrieved person shows that he or she was not notified of the time limits and was not otherwise aware of them; or
2. He or she did not know and reasonably should not have known that the matter or personnel action occurred; or

3. Despite due diligence, the person was prevented by circumstances beyond his or her control from contacting an EEO counselor within the time limits. **Note:** The EEO office shall conduct an informal inquiry on the matter regardless of the time the pre-complaint was initiated and the EEO counselor shall attempt to resolve the matter before a formal complaint is filed; or

4. Other reasons considered sufficient by the OIG or the EEOC are found to exist.

D. Pre-complaint Procedures

1. A person who believes he or she has been discriminated against because of race, color, religion, sex, national origin, age, physical or mental disability, and/or retaliation in an employment matter may initiate the EEO complaint process. The first phase of the EEO process is referred to as the pre-complaint process. The pre-complaint process is initiated when an individual contacts an EEO official and clearly exhibits an intent to proceed with the EEO complaint process. When an individual contacts an EEO official with the intent of proceeding with an employment matter alleging discrimination on the basis of race, color, religion, sex, national origin, age, physical or mental disability, and/or retaliation the individual is referred to as the “aggrieved.” An individual who files a formal complaint of discrimination is referred to as “the complainant.”

2. Generally, the initial contact made by an individual with an EEO official is either to seek general information concerning the EEO complaint process or to actually begin the pre-complaint process. Individuals who contact the EEO office seeking information about the EEO process shall be provided with a copy of the *Aggrieved Person’s Rights and Responsibilities* memorandum, (Appendix F), regardless of whether or not they wish to initiate an EEO complaint. When an individual contacts an EEO official merely seeking information concerning the EEO complaint process and is undecided about whether to proceed with the EEO process, this contact is referred to as an information inquiry. Information inquiries shall be conducted by the EEO complaints manager and shall be documented by the use of IG Form 1020.1-3, *OIG Information Inquiry Summary*, (Appendix G). A copy of the form shall be retained by the EEO office and a copy shall be provided to the individual. When an individual contacts an EEO official with the intent of proceeding with an employment matter alleging discrimination on the basis of race, color, religion, sex, national origin, age, physical or mental disability, and/or retaliation and intends to use the EEO process, the EEO complaints manager shall conduct a thorough pre-complaint intake. The pre-complaint intake shall be recorded as the initial portion of the *OIG EEO Counselor’s Report* and documented on IG Form 1020.1-4, *OIG EEO Counselor’s Report*, (Appendix H).

E. Pre-complaint Counseling. The 30 day counseling period begins on the date the EEO office becomes aware of the aggrieved’s intent to proceed with the EEO process; therefore, the pre-complaint intake interview shall be conducted within 2 calendar days of contact with the EEO office. When conducting the pre-complaint intake interview, the EEO complaints manager

shall explain the difference between the alternative dispute resolution process and traditional counseling. The aggrieved shall be informed of his or her right to choose participation in ADR, if deemed appropriate or traditional EEO counseling. The EEO complaints manager shall explain and provide to the aggrieved a copy of the *Aggrieved Person's Rights and Responsibilities* memorandum, (Appendix F).

F. The Equal Employment Opportunity Counselor Duties During the Pre-complaint Inquiry

1. The EEO counselor shall conduct a limited inquiry into the matter raised by the aggrieved. The limited EEO counselor's inquiry is used to obtain information to facilitate a resolution of the matters identified by the aggrieved. Usually, such inquiries are to be completed within 10 days of assignment of the pre-complaint to the EEO counselor. The inquiry is not to be as extensive as a formal investigation conducted by an investigator.

2. The EEO counselor shall inquire into the specific allegations, incidents, and actions identified by the aggrieved during the pre-complaint intake interview.

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

4. Before an interview with an agency witness alleged to have participated in a discriminatory act, the EEO complaints manager must advise, by letter, that person of his or her right to have a personal representative and the nature of the claims described in the complaint. The letter shall be issued by the EEO complaints manager prior to the EEO counselor contact and shall inform the witness about the EEO complaints process.

5. The EEO counselor shall prepare and submit a written report of all actions taken during the inquiry and of the information provided to management and the aggrieved to the EEO office within 5 days of completion of counseling. The *OIG EEO Counselor's Report* shall not contain opinions or make findings on the allegations of discrimination. The EEO counselor may not retain a copy of the report or any other pre-complaint related material. The OIG personnel shall cooperate with and support the EEO counselor in the performance of counseling duties. The EEO counselor shall be free of restraint, interference, harassment, coercion, discrimination, or retaliation in connection with the performance of assigned EEO counselor duties.

6. The completed *OIG EEO Counselor's Report* shall be placed in the complaint file under the "Pre-complaint" tab. The Director, EEO shall provide a copy of the *OIG EEO Counselor's Report* to the aggrieved within 5 days of receipt or along with the notice of acceptance or dismissal of the complaint.

G. Issuing the Notice of Right to File a Formal Complaint of Discrimination

1. The EEO counselor shall conduct the final interview with the aggrieved within 30 days from the date the aggrieved initiated the counseling process. Prior to the end of the 30 day period, the aggrieved may agree in writing to extend the counseling period for an

additional period of no more than 60 days. In that case, the aggrieved shall be issued a written memorandum, (Appendix J). While there are provisions for extension of the counseling period, the OIG policy is to resolve complaints at the earliest possible stage in the least amount of time. Extensions may be considered only when extenuating circumstances exist. In no case shall the pre-complaint process extend beyond 90 days. If the matter has not been resolved before the end of the 30 day counseling period, or before the 90 day extended period, the aggrieved shall be informed in writing of the right to file a formal complaint of discrimination. Where the OIG has an established alternative dispute resolution procedure and the aggrieved agrees to participate in the procedure, the pre-complaint processing period shall not exceed 90 days.

2. During the final interview, the EEO counselor shall advise the aggrieved of the results of the inquiry and discuss proposed solutions. The EEO counselor shall not make findings nor discuss whether discrimination has or has not occurred. The EEO counselor shall not imply to the aggrieved that the EEO counselor's interpretation of the claims in the case constitutes an official position of the agency on the issue of discrimination.

3. The EEO counselor shall inform the aggrieved, in writing, that he or she has 15 calendar days, from the date of receipt of the *Notice of Right to File a Formal Complaint of Discrimination after Completion of Traditional Counseling* memorandum, (Appendix J), to file a formal complaint. Along with the notice, the EEO counselor shall also provide the aggrieved a copy of the IG Form 1020.1-1, *OIG Formal Complaint of Discrimination*, (Appendix K). The EEO counselor shall not influence the aggrieved regarding a decision to file a formal complaint. The decision to file a formal complaint rests with the aggrieved. Formal complaints are filed against the Secretary of Defense.

4. The aggrieved shall sign and date the notice to acknowledge receipt. The notice shall provide instructions on how to file a formal complaint (including a class complaint) and specify that such a complaint must be filed within 15 calendar days of receipt of the notice. If counseling continues beyond 30 days, the EEO counselor must inform the complainant that he or she has the right to file a formal complaint after 30 days in counseling, regardless of whether counseling has been completed.

5. A *Notice of Right to File a Formal Complaint of Discrimination after Completion of Traditional Counseling* (Appendix J), memorandum shall not be provided if a settlement agreement resolving all claims has been signed by the parties.

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

H. Mailing the Notice of Right to File a Formal Complaint of Discrimination After Completion of Traditional Counseling Memorandum

1. If the *Notice of Right to File a Formal Complaint of Discrimination after Completion of Traditional Counseling* memorandum, (Appendix J), is mailed and the aggrieved is represented by an attorney, the notice shall be sent to the attorney by certified mail, return receipt requested, and a copy sent to the aggrieved by certified mail, return receipt requested. The return receipts shall be filed in the complaint file under the “Pre-complaint” tab.

2. If the aggrieved is represented by a non-attorney, the notice shall be sent to the representative by certified mail, return receipt requested, and a copy of the notice shall be sent to the aggrieved by certified mail, return receipt requested. The return receipts shall be filed in the complaint file under the “Pre-complaint” tab.

3. If the notice is delivered in person and the aggrieved refuses to acknowledge receipt of the notice, the server of the notice shall note the refusal to acknowledge receipt on the notice and sign and date the notice.

4. The EEO counselor shall stress that a formal complaint must contain specific information on the alleged acts of discrimination. Failure to provide specificity may result in a request for clarification that will delay the complaint process. Failure to respond to a request for clarification may be cause for dismissal.

I. The Role of the Aggrieved During the Equal Employment Opportunity Process

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

2. The aggrieved may request anonymity during the pre-complaint counseling period. If anonymity is requested the aggrieved’s identity shall not be revealed without written permission. **Note:** The aggrieved loses the right to anonymity in the formal process.

3. The aggrieved must cooperate by clearly defining the claim for the inquiry. Only claims raised in pre-complaint counseling or claims like or related to those raised in pre-complaint counseling may be alleged in a subsequent formal complaint filed with the OIG. A claim “like or related” to the original claim may include a claim with a different basis of discrimination based on the same facts.

4. The aggrieved shall waive the right to file a formal complaint of discrimination under 29 CFR Part 1614 if he or she has already filed a timely written grievance on the same matter under a negotiated grievance procedure that allows allegations of discrimination or an appeal on the same matter with the Merit Systems Protection Board (MSPB).

5. In a non-mixed case, the aggrieved shall have the right to request a hearing or a final agency decision (FAD) after an investigation.

6. In a mixed case, the aggrieved shall have the right to either file an appeal directly with the MSPB or a mixed case complaint under Title VII procedures.

7. The aggrieved may elect to bypass the administrative procedures when filing a claim based on a violation of the *Age Discrimination in Employment Act* (ADEA) of 1967 (USC 621a). The aggrieved may file a civil action in an appropriate U.S. District Court after first giving the EEOC a 30 day notice of intent to file a civil action. Attorney fees, costs, and compensatory damages are not recoverable in the administrative process.

8. The aggrieved may elect to file a civil action in the appropriate U.S. District Court in lieu of administrative processing under 29 CFR Part 1614 when the claims concern is in violation of the *Equal Pay Act of 1963* (Public Law 88-38) (EPA). Attorney fees, costs, and compensatory damages are not recoverable in the administrative process.

9. The aggrieved has the right to file a civil action in the appropriate U.S. District Court in a non-mixed case 180 days after filing a formal complaint and a FAD has not be rendered; within 90 days after receipt of a FAD and no appeal to the EEOC has been filed; 180 days after filing an appeal to the EEOC and no decision on the appeal has been issued; or within 90 days after receipt of the EEOC's decision on appeal.

10. The aggrieved must keep the EEO office and the EEOC informed of his or her current address. Failure to do so could result in dismissal of a formal complaint.

11. The aggrieved must elect between ADR, if offered, and traditional counseling. If ADR is offered, it shall be presented in writing and the aggrieved must respond in writing.

J. Processing Complaints for Contract Workers

1. Contract employees are civilian workers who are outside of the OIG 's "core" workforce, such as independent contractors, volunteers, employees of government contractors, individuals participating in training, work-study or fellowship programs, and all other individuals working at OIG worksites or on OIG projects without being on the OIG payroll or meeting the definition of a civil service employee under 5 U.S.C. Section 2105(a) or a non-appropriated fund employee described at 5 U.S.C., Section 2105(c).

2. The EEO contacts or inquiries from workers who are not civil service employees should be referred directly to the Director, EEO.

3. The Director, EEO shall advise the worker to also report the allegations to his or her non-Federal employer.

4. If the worker wants to file a complaint against the contractor, the Director, EEO shall provide the address and telephone number of the nearest EEOC field office.

5. If the worker wants to file a complaint against the OIG, the Director, EEO shall conduct the pre-complaint intake and assign an EEO counselor and initially process the complaint IAW 29 CFR Section 1614.105 and the EEOC EEO MD-110. The worker shall be advised that depending on the facts and circumstances surrounding the employment relationship, the OIG may not be his or her employer under Title VII or any other antidiscrimination laws.

6. Upon assignment of an EEO counselor, the Director, EEO must contact the management official to determine the working relationship between the contract worker and the OIG by using the *Joint Employer Working Relationship Questionnaire*, (Appendix M). The Director, EEO shall forward the information to the OGC for a fact-based analysis and legal opinion on whether the worker is a covered OIG “employee” under the antidiscrimination laws.

7. If the worker does not qualify as an OIG “employee” the Director, EEO shall:

a. Issue a *Notice of Right to File a Formal Complaint of Discrimination after Completion of Traditional Counseling* memorandum, (Appendix J).

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

c. Issue EEOC Form 573, *Notice of Appeal/Petition to the Equal Employment Opportunity Commission*, (Appendix N), to the EEOC, Office of Federal Operations (OFO); this form can also be found on the EEOC website at: <http://www.eeoc.gov/federal/md110/appendixk.html>.

8. If the worker qualifies as an OIG “employee” the Director, EEO shall:

a. Process the complaint IAW 29 CFR Part 1614 and the EEOC EEO MD-110.

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

9. When the worker is considered an OIG employee and the alleged discriminating official is a non-Federal employee, the Director, EEO shall:

a. Notify the appropriate OIG management official and process the complaint IAW 29 CFR Part 1614 and the EEOC EEO MD-110.

b. Coordinate complaint processing with the OGC, who will then coordinate with the third-party employer.

c. When fashioning remedies, coordinate with the OGC who shall determine what contractual rights may be affected.

d. Ensure that no negotiated settlement agreement contains an acknowledgement or admission that an individual who does not qualify as a Title V employee is an “employee” for purposes of Title VII of the *Civil Rights Act of 1964* or any other law prohibiting discrimination.

e. In conjunction with the OGC, advise the IG when discrimination is believed to be committed by a third-party employer operating at OIG worksites or on OIG projects.

f. This section does not prevent management from offering ADR in an effort to resolve the dispute. If ADR is offered and accepted, all complaint processing should continue to be coordinated with the OGC to ensure compliance with contractual requirements.

K. Processing Complaints of Discrimination Based on Age

1. Prohibited employment practices of the *Age Discrimination in Employment Act (ADEA) of 1967*, are all-encompassing and include failure to hire, discharge, denial of employment, or discrimination with respect to terms of conditions of employment because of an individual's age within the protected age group.

2. Protected Age Group. The ADEA prohibits age-based employment discrimination against individuals in the Federal Service who are 40 years of age or older. For Federal employees, there is no upper age limit.

3. Unique ADEA Provisions. Regulations regarding allegations of age discrimination are unique in Federal discrimination statutes in that an aggrieved employee or applicant may elect not to go through the OIG individual administrative process. The administrative process is intended to provide an opportunity for the agency to take appropriate action to assure the elimination of any unlawful practice. However, if the aggrieved chooses to file an administrative complaint, he or she must exhaust administrative remedies before proceeding to court. As with Title VII complaints, the administrative process is exhausted 180 days after filing an appeal with the EEOC if the EEOC has not issued a decision. The notice of intent to file a civil action must be given within 180 calendar days after the alleged unlawful practice occurred.

4. Procedures for Filing Age Complaints

a. Procedures for processing complaints of discrimination based on age are the same as existing procedures provided for individual complaints based on race, color, religion, sex, national origin, physical and mental disability, and/or retaliation.

b. Any employee or applicant for employment who believes that he or she has been discriminated against based on age and who meets the age requirements may file a complaint.

c. Effect of Civil Action. Filing of a civil action in U.S. District Court terminates OIG processing of a complaint or the EEOC processing of an appeal.

L. Processing Allegations of Sexual Harassment

1. Any individual who is sexually harassed is encouraged to make it clear to the offender that such behavior is offensive. The individual should report the incident through his or her supervisory chain. If that does not resolve the situation, the individual must bring the complaint of sexual harassment to the attention of the Director, EEO, or to an EEO counselor to begin informal counseling on the matter. Any supervisor within the OIG who permits prohibited harassment to occur without taking steps to stop it may be found to have tolerated sexual harassment in the workplace.

2. The EEOC and the DoD guidelines, as well as court decisions, have made it clear that employers are liable and responsible for acts of sexual harassment by supervisory and non-supervisory personnel. It is the supervisor's responsibility to assure the work environment is free from sexual harassment. Complaints of sexual harassment shall be processed under existing laws/regulations as a form of sex discrimination, as a violation of the agency's policy prohibiting sexual harassment or Code of Conduct provisions.

M. Processing Other Types of Complaints of Discrimination. Federal guidelines provide specific rules and procedures for processing a variety of complaints of discrimination to include class complaints of discrimination and processing complaints of deceased individuals. The OIG shall comply with such laws and procedures in its administrative processing of such complaints.

1. Deceased Individuals. Processing EEO complaints initiated by individuals who become deceased shall continue until the *Notice of Right to File a Formal Complaint of Discrimination after Completion of Traditional Counseling* memorandum, (Appendix J), is issued to the executor or administrator of the estate. The formal complaint process shall continue unless the executor or administrator withdraws on behalf of the deceased.

2. Class Complaints. A class is a group of employees, former employees or applicants for employment who allege they have been adversely affected by an OIG personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age or handicap. The class complaint, is a written complaint filed on behalf of the class by an agent of the class, alleging that the class is so numerous that a consolidated complaint by the members of the class is impractical; that there are questions of fact common to the class; that the claims of the agent of the class are typical of the claims of the class; and that the agent of the class shall fairly and adequately represent and protect the interest of the class. Class complaints shall be processed IAW 29 CFR Section 1614.204.

N. Processing Requests for Compensatory Damages

1. When a complainant requests compensatory damages, the complainant must allege a form of discrimination for which compensatory damages are recoverable. Compensatory damages are not recoverable in disparate impact cases, mixed motive cases, *Equal Pay Act* complaints, age discrimination cases (ADEA), or *Rehabilitation Act* cases in which the agency has made a good faith effort to reasonably accommodate the complainant's disability. The

agency is required to inform the complainant that he or she is required to provide substantiating evidence of pecuniary damages, non-pecuniary damages, or both, (see Appendix M). Under these guidelines, the complainant must allege that the compensatory damages were caused by the alleged discrimination.

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

a. Past pecuniary damages may be paid if the file includes objective evidence of the out of pocket costs.

b. Future pecuniary damages may be paid if the file includes objective evidence of the future costs.

c. Non-pecuniary damages may be paid if the file includes objective or other evidence of the damages. Emerging EEOC case law continues to define the value of injury. Payment may not exceed a reasonable value for the injury. The agency may not agree to pay an uncertain amount of compensatory damages. The agency may not sever or separate a compensatory damage claim from the merits of a case for the purposes of settlement.

CHAPTER 4
PROCESSING FORMAL COMPLAINTS OF DISCRIMINATION

A. Formal Complaint Processing

1. A formal complaint of discrimination must be filed within 15 calendar days of receipt of the *Notice of Right to File a Formal Complaint of Discrimination after Completion of Traditional Counseling* memorandum, (Appendix J). An aggrieved who files a formal complaint of discrimination is thereafter referred to as the “complainant” during the formal complaint process. If the aggrieved decides to proceed with a formal complaint, it must be submitted in writing, preferably on IG Form 1020.1-1, *Formal Complaint of Discrimination*, (Appendix K), and delivered in person or by mail to one of the following officials:

- a. The Director, EEO
- b. The Principal Deputy Inspector General
- c. The Inspector General

2. It is recommended that the complainant(s) submit a copy of his or her formal complaint to the Director, EEO regardless of whomever else the complaint form is submitted to. Anyone else other than the Director, EEO who receives a complaint shall immediately transmit the complaint to the EEO office, indicating the date the complaint was received if it is not postmarked.

3. The formal complaint shall be deemed timely filed if it is delivered in person, via facsimile, commercial overnight delivery or postmarked before the expiration of the 15 day filing period or if, in the absence of a legible postmark, it is received within 5 days after the expiration of the 15 day filing period. If the complaint is mailed, the date of filing is the postmark date, not the date received by the OIG. The postmarked envelope shall be attached to the formal complaint and retained in the complaint file. If commercial overnight delivery is used, the date of filing is the date it is delivered to the commercial overnight delivery service. The formal complaint must be specific with regard to the matter or matters on which the aggrieved person received EEO counseling.

4. The formal complaint must be signed by the complainant or the complainant’s attorney.

5. Upon receipt of a formal complaint of discrimination, the EEO complaints manager shall ensure the pre-complaint data is correctly reflected on the formal complaint form. The formal complaint data and all attachments shall be maintained in the complaint file under the “Formal” tab.

B. Receipt and Acknowledgement of a Formal Complaint

1. The Director, EEO shall acknowledge receipt of the complaint in writing (within 3 calendar days of receipt). The acknowledgement letter shall inform the complainant and representative of the date on which the complaint was received and considered filed. The complainant shall also be advised that a written acceptance or rejection of the formal complaint (in whole or in part) shall be provided.

2. If the formal complaint contains vague or overly general claims, the Director, EEO shall request clarification in the acknowledgement letter. The complainant and representative shall be advised that failure to provide specific information that clearly defines the claims, within 15 calendar days from the date of receipt of a request for clarification, may result in dismissal of the complaint for failure to provide relevant information.

3. Upon issuance of the Acknowledgment of Receipt, the Director, EEO shall provide a copy of the completed IG Form 1020.1-1, *Formal Complaint of Discrimination*, (Appendix K), and all other available documents to the OGC agency representative.

C. Procedures for Acceptance of a Formal Complaint

1. The Director, EEO shall review the complaint to determine whether the complaint is a mixed or a non-mixed case.

2. The complaint shall be reviewed against the criteria of 29 CFR Section 1614.107 to determine if the circumstances surrounding the claims meet the criteria for dismissal.

3. Decisions to accept or dismiss a complaint shall be coordinated with the OGC. The OGC shall respond to the EEO office within 2 work days of receiving a copy of the proposed decision and all existing complaint file documents.

4. Prior to issuing an acceptance, the Director, EEO shall determine if consolidation of the complaint with a pending complaint is appropriate in order to avoid claim fragmentation.

5. Within 20 calendar days after the formal complaint is received, the Director, EEO shall provide the complainant and representative a written decision to accept the claims in the complaint and request assignment of an investigator or dismiss the complaint. The acceptance or dismissal decision shall be sent to the complainant and representative. A copy of the acceptance or dismissal shall be maintained in the complaint file under the "Formal" tab.

D. The Acceptance Letter

1. The claims that are accepted for investigation. If a portion of the formal complaint is dismissed, the acceptance letter shall address the specific rationale for the partial dismissal.

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

3. Where compensatory damages are requested, the complainant shall be informed of the right to submit evidence substantiating the claims for compensatory damages and notice that failure to comply may limit any award if discrimination is subsequently found.

4. Any amendments to the complaint must be in writing and served on the Director, EEO.

E. Acceptance of a Non-Mixed Complaint. In a non-mixed complaint case, the acceptance letter shall also inform the complainant of the following:

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

2. The right to file a request for a hearing by an EEOC AJ at any time after 180 days has elapsed from the date of filing the complaint. The complainant shall be provided a copy of the *Equal Employment Opportunity Commission Request for a Hearing Form*, (Appendix R), and the address of the appropriate EEOC office.

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

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

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

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

7. The right to appeal the final action or decision of a complaint, except in partial dismissals, to the EEOC, OFO, P.O. Box 77960, Washington, D.C., 20013, within 30 days of receipt of the dismissal, final action, or final decision.

8. The right to file a civil action in Federal district court.

9. The requirement to serve a copy of all official correspondence, including any correspondence to the EEOC, on the Director, EEO.

F. Acceptance of a Mixed Case Complaint. A "mixed case complaint" is a complaint of employment discrimination filed with a Federal agency based on race, color, religion, sex, national origin, age, disability, or retaliation related to or stemming from an action that may be appealed to the MSPB. The complaint may contain only an allegation of employment discrimination, or it may contain additional nondiscrimination allegations that the MSPB has jurisdiction to address. There is no right to a hearing before an EEOC AJ on a mixed case complaint. In a mixed complaint case, the acceptance letter must inform the complainant of the following:

1. The requirement of the OIG to conduct an impartial investigation and to issue a FAD within 120 days of the filing of the complaint.
2. The right to appeal the matter to the MSPB or file a civil action, but not both, at any time if a final decision has not been issued within 120 days of filing the complaint.
3. The right to appeal the final OIG decision to the MSPB (not the EEOC) or to file a civil action, but not both within 30 days of receipt of the decision.
4. The address for the MSPB regional office.
5. The right to file a civil action in Federal district court.
6. The requirement to serve a copy of all official correspondence, including any correspondence to the MSPB, on the Director, EEO.

G. Procedures for Dismissal of a Formal Complaint. A complaint or a portion of a complaint shall be dismissed by the Director, EEO if one or more of the following apply:

1. Failure to state a claim. (See 29 CFR Section 1614.107(a)(1).) In determining whether complaint states a claim under 29 CFR Section 1614.103, the proper inquiry is whether the conduct, if true, would constitute an unlawful employment practice under the EEO statutes.
2. States the same claim. (See 29 CFR Section 1614.107(a)(1).) The complaint sets forth a matter identical to one raised in a previous complaint filed by the same complainant and that has been or is being decided. The final decision of the OIG or the EEOC proving that the matter has been processed, or documents showing that the matter is currently being processed, shall be attached to the notice of dismissal.
3. Untimely EEO counselor contact. (See 29 CFR Section 1614.107(a) (2)).
 - a. The complainant failed to contact the Director, EEO or designee, or an EEO counselor within 45 days of the date of the alleged discriminatory claim, or in the case of a personnel action, within 45 days of the effective date of the action. The complainant also must

have failed to show that the 45 day contact period should be extended pursuant to 29 CFR Section 1614.105(a)(2). The OIG has the burden to show that the complainant knew or should have known of the 45 day time limitation and the appropriate documentation should be attached to the dismissal notice.

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

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

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

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

a. Formal complaints filed later than 15 calendar days after receipt of the *Notice of Right to File a Formal Complaint of Discrimination after Completion of Traditional Counseling* memorandum, (Appendix J), shall be dismissed unless an extension of time limits has been granted.

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

c. The time limits of this paragraph may be extended by the Director, EEO when the facts indicate that waiver, estoppel or equitable tolling is appropriate.

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

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

7. Issue has been decided by a U.S. District Court. (See 29 CFR Section 1614.107(a)(3)). The same issue was the basis of a civil action decided by a U.S. District Court in which the complainant was a party. The proper inquiry to determine whether dismissal is warranted is whether the acts of alleged discrimination in the EEO complaint are identical to those contained in the civil action. Copies of court filings shall be provided as an enclosure to the notice of dismissal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The Director, EEO shall add a MFR to the complaint file of the pending complaint annotating complainant's concerns and any action taken to resolve the complainant's concerns. If no action was taken to resolve the complainant's concerns, the MFR shall explain the reasons for not taking action.

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

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

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

a. The Director, EEO may not dismiss a complaint under this provision unless there is a clear pattern of misuse of the EEO process for ends other than that which it was designed to accomplish.

b. A clear pattern of misuse of the EEO process requires evidence of multiple complaint filings and evidence of circumventing other administrative processes, retaliating against the OIG in-house administrative processes, or overburdening the EEO complaint system. Numerous filings alone are not sufficient bases for determining that there has been an abuse of the process. However, multiple filings on the same issues, lack of specificity in the allegations, and the filing of complaints on claims previously raised may be considered when deciding whether a complainant has engaged in a pattern of abuse of the EEO process.

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

H. Dismissing a Non-Mixed Complaint. When a non-mixed complaint case is dismissed in its entirety, the notice of dismissal must cite the following:

1. The appropriate section of 29 CFR Section 1614.107 and a specific explanation for the dismissal.
2. The right to appeal the dismissal decision to the EEOC within 30 days of receipt of the decision. A copy of the *Notice of Appeal/Petition to the Equal Employment Opportunity Commission*, (Appendix N), shall be attached to the notice of dismissal.
3. The right to file a civil action in a Federal district court.

I. Dismissing a Mixed Complaint. When a mixed complaint case is dismissed in its entirety, the notice of dismissal must cite the following:

1. The right to appeal the dismissal decision to the MSPB (or to the EEOC if it alleges that 29 CFR Section 1614.107(a)(4) has been applied to a non-mixed matter) within 30 days of receipt of the notice of dismissal. A copy of the MSPB Form 185, *U.S. Merit Systems Protection Board Appeal Form*, shall be attached to the notice. A copy of the form is available from the MSPB website at www.mspb.gov.
2. The right to petition the EEOC to review the MSPB's final decision on the discrimination issue.
3. The right to file a civil action in a Federal district court.

J. Dismissing a Previously Accepted Complaint. A complaint may be dismissed by the Director, EEO after acceptance and prior to a request for a hearing if it is discovered that one or more of the criteria set forth in 29 CFR Section 1614.107 is applicable. Procedures for dismissal as cited above shall be followed including coordination with the OGC. The Director, EEO reserves the right to:

1. Dismiss a complaint previously accepted by another Director, EEO or designee when making the FAD on the basis of one or more of the grounds specified in above.
2. Direct acceptance of an improperly dismissed complaint.

K. Captioning Formal Complaints of Discrimination. The appropriate complaint caption must be placed on all documents and correspondence relating to the complaint. All complaints accepted for processing by the Director, EEO shall be captioned so as to identify the complaint versus the name of the Secretary of Defense and the assigned OIG tracking number.

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

1. If it is determined that the complainant has raised a new incident that provides additional evidence offered in support of the claim raised in the pending complaint, but does not raise a new claim in and of itself, the Director, EEO or designee must acknowledge receipt of the amendment in writing and inform the complainant of the date on which the amendment was filed. The Director, EEO shall instruct the investigator, in writing, to include the new incident in the investigation. A copy of this letter should be sent to the complainant and representative IAW the service rules set forth in Chapter 8, paragraph K. The Director, EEO shall furnish the OGC with a copy of the amendment and the acknowledgement notice and place a copy in the complaint file under the "Formal" tab.

2. If it is determined that the complainant has raised a new claim of alleged discrimination that is not part of an existing complaint, but the new claim is like or related to the pending complaint, the Director, EEO shall amend the pending complaint to include the new claim. The Director, EEO shall acknowledge receipt of the amendment in writing and inform the complainant and representative of the date on which the amendment was filed. The acknowledgement notice shall inform the complainant and representative that the newly raised claim will be included for investigation with the previously filed complaint. The Director, EEO shall instruct the investigator, in writing, to include the new claim in the investigation and will provide a copy of that letter to the complainant and the complainant's representative IAW the service rules set forth in Chapter 8, paragraph K. The Director, EEO shall furnish the OGC with a copy of the amendment and the acknowledgement notice and place a copy in the complaint file under the "Formal" tab.

3. If the Director, EEO concludes that the new claim raised by the complainant is not like or related to the claim raised in the pending complaint, then the Director, EEO shall advise the complainant that an EEO counselor will be assigned to conduct the pre-complaint counseling. The postmark date of the letter (from complainant requesting that the complaint be amended) to the Director, EEO, the date of facsimile or e-mail, or the date the letter was delivered in person to the Director, EEO or designee is the date for time computation purposes used to determine if initial EEO counselor contact was timely under 29 CFR Section 1614.105(a).

4. The Director, EEO shall coordinate the draft amendment decision and notice with the OGC.

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

6. Like or related claims added after the complainant has requested a hearing shall be filed by the complainant directly with the AJ. The complainant must provide a copy of any motion filed with the AJ to the EEO office and the OGC.

M. Consolidating Formal Complaints

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

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

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

N. Serving of All Official Correspondence and Documents

1. Unless the complainant states otherwise in writing, after the OIG 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 a 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 OIG.

2. The complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has a designated a representative.

CHAPTER 5
PROCESSING MIXED CASE COMPLAINTS, APPEALS, INVESTIGATIONS,
AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
HEARINGS PROCESS

A. Processing Mixed Case Complaints. When a complainant files a mixed case complaint, the Director, EEO shall process the complaint in the same manner as it would a non-mixed discrimination complaint except:

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

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

3. Upon completion of the investigation, the Director, EEO must notify the complainant that a FAD without a hearing before an EEOC AJ shall be issued within 45 days or within 120 days from the filing of the formal complaint.

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

B. Appeal of Mixed Case Complaints

1. A "mixed case appeal" is an appeal filed directly 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, age, disability, or retaliation. This differs from an appeal to the MSPB of a FAD on a mixed case complaint.

2. There is no right to a hearing before an EEOC AJ on a mixed case complaint.

3. Procedures. The EEOC regulations provide for processing discrimination complaints on matters that are otherwise appealable to the MSPB. Two determinations must be made to decide if mixed case regulations apply. For example:

- a. The employee must have standing to file such an appeal with the MSPB; and
- b. The matter that forms the basis of the discrimination complaint must be appealable to the MSPB.

4. Standing

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

(1) Competitive service employees not serving a probationary or trial period under an initial appointment;

(2) Career appointees to the Senior Executive Service;

(3) Noncompetitive service preference eligible employees with 1 or more years of current continuous service (e.g., postal employees and attorneys with veterans preference); and

(4) Non-preference eligible excepted service employees who have completed their probationary period or with 2 or more years of current continuous service (e.g., attorneys).

b. The following employees generally do not have a right to appeal to the MSPB:

(1) Probationary employees; however, see 5 CFR Section 315.806 -- under certain circumstances, discrimination based on party affiliation, marital status, or procedural deficiencies;

(2) Certain non-appropriated fund activity employees;

(3) Employees serving under a temporary appointment limited to 1 year or less;

(4) Excepted service employees with less than 2 years of current, continuous service.

5. Appealable Actions. Most appealable actions fall into one of the following six categories:

a. Reduction in grade or removal for unacceptable performance;

b. Removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service;

c. Separation, reduction in grade, or furlough for more than 30 days, when the action was affected because of a reduction in force;

d. Reduction-in-force action affecting a career appointee in the Senior Executive Service;

e. Reconsideration decision sustaining a negative determination of competence for a general schedule employee;

f. Disqualification of an employee or applicant because of a suitability determination.

6. Election to Proceed

a. A covered individual may raise allegations of discrimination in a mixed case either as a direct appeal to the MSPB or as an EEO complaint with the agency, but not both.

b. A mixed case may be presented initially as a discrimination complaint under 29 CFR Part 1614 or under a negotiated grievance procedure, if applicable, or as part of an appeal to the MSPB IAW 5 CFR Section 1201, Subpart E. Employees must choose the system under which they wish to proceed. Whichever formal action the employee files first, in writing, is considered an election to proceed in that forum as to the alleged discrimination. Filing a formal complaint constitutes an election to proceed in the EEO forum; however, contact with an EEO counselor nor does participation in the pre-complaint process constitute an election.

C. Appeals of Mixed Case Complaints to the Merit Systems Protection Board. An appeal to the MSPB on a mixed case complaint may be submitted:

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

2. If dissatisfied with the FAD on the mixed case complaint, the complainant may appeal the matter to the MSPB (not the EEOC) within 30 days of receipt of the FAD. Appeals should be submitted to the appropriate MSPB field or regional office.

3. Although not required, complainants should be encouraged to use the MSPB Form 185, to file their appeal with the MSPB.

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

5. The complainant must serve a copy of an appeal of a mixed case complaint to the Director, EEO and the OGC.

D. Mixed Case Appeals to the Merit Systems Protection Board. A mixed case appeal is an appeal filed directly with the MSPB.

1. A mixed case appeal to the MSPB must be filed within 30 days of the effective date of the action, if any, or within 30 calendar days after the date of receipt of the FAD whichever is later.

2. Filing instructions outlined in the above paragraphs should be followed.

E. Procedures for Handling Dual Filing of Mixed Case Complaints and Mixed Case Appeals

1. When a complainant files a mixed case appeal with the MSPB before filing a mixed case complaint with the OIG and the OIG does not dispute MSPB's jurisdiction, the Director, EEO shall dismiss the mixed case complaint and advise the complainant to raise the claim of discrimination contained in the dismissed complaint to the attention of the MSPB. The notice of dismissal shall notify the complainant that any alleged misapplication of 29 CFR Section 1614.107(a)(4) must be appealed to the EEOC and not the MSPB. The Director, EEO shall attach a copy of the MSPB mixed case appeal to the notice of dismissal.

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

3. When the MSPB AJ determines that the MSPB has jurisdiction over the claim, the Director, EEO shall dismiss the mixed case complaint and advise the complainant and representative of the right to petition the EEOC to review the MSPB's final decision on the claim of discrimination.

4. When the MSPB AJ determines that MSPB does not have jurisdiction over the claim, the Director, EEO shall recommend processing of the mixed case complaint as a non-mixed EEO complaint and notify the complainant and representative.

5. When the complainant files a mixed case complaint with the OIG and then files a mixed case appeal with the MSPB, the Director, EEO shall coordinate with the OGC. The OGC shall file a motion with the MSPB to dismiss the mixed case appeal.

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

F. Processing Where the Merit Systems Protection Board Dismisses a Mixed Case Appeal or An Appeal of a Mixed Case Complaint

1. When a complainant files a mixed case appeal in lieu of using the EEO process and the MSPB dismisses the appeal for lack of jurisdiction, the OGC or official who receives MSPB final actions shall immediately contact the Director, EEO and provide a copy of the MSPB

decision. The Director, EEO must then inform the complainant that he or she has 45 days to address the alleged discriminatory issues and that the filing date of the mixed case appeal will be considered to be the date of initial contact with the EEO office.

2. If the individual filed the appeal after receiving a FAD on the mixed case complaint, or after the OIG failed to issue a final decision on the mixed case complaint within 120 days and the MSPB dismisses for lack of jurisdiction, the Director, EEO must provide the complainant with a 30 day notice of right to a hearing and decision from an EEOC AJ or an immediate FAD pursuant to 29 CFR Section 1614.108(f) and thereafter proceed as in a non-mixed case.

G. Arranging for Equal Employment Opportunity Investigations

1. For accepted complaints, within 20 days of the date a formal complaint is filed, the Director, EEO shall request the assignment of an investigator. A copy of the request, with any documents not previously provided, shall be forwarded to the complainant, the complainant's representative and to the OGC. The request must contain the following information:

- a. A clear statement of the claims accepted for investigation.
- b. Whether the formal complaint is a mixed case complaint.
- c. The complainant's mailing address, organization, work location, and telephone numbers, both Defense Switching Network (DSN) and commercial, facsimile number, and the email address.
- d. The complainant's designation of a representative, including the representative's mailing address, telephone number, facsimile number, and email address.
- e. The name, address, telephone number, facsimile number, and mailing address of the designated OGC representative.
- f. A specific point of contact within the EEO office with appropriate telephone number, facsimile number and e-mail address.
- g. Legible and un-sanitized copies of the following documents:
 - (1) IG 1020.1-1, *Formal Complaint of Discrimination*;
 - (2) The *Acceptance/Partial Acceptance* letter;
 - (3) IG Form 1020.1-4, *OIG EEO Counselor's Report*;
 - (4) The *Notice of Right to File a Formal Complaint of Discrimination after Completion of Traditional Counseling* memorandum, (Appendix J); and
 - (5) All other relevant documents.

2. The Director, EEO shall arrange for the investigator's visit or teleconferencing where appropriate. This may include the following:

- a. Providing a conference room or other similar location with appropriate teleconferencing facilities, if needed.
- b. Ensuring clerical support, court-reporting services at the location of the investigation, or any other administrative support needed to conduct an efficient investigation.
- c. Ensuring the availability of witnesses and technical advisors as required and approved by the investigator.
- d. Ensuring the availability of current employment and administrative statistics, such as promotions, hires, training, discipline, awards, and so forth, as requested by the investigator.

3. Upon receipt of the list of accepted witnesses from the investigator, the Director, EEO shall issue a written notification to the witnesses that their presence is required and provide information as to dates, time, and location of the investigation. A copy of each witness notification letter shall be provided to the OGC.

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

5. Contracts with court reporting firms must require delivery of two verbatim transcripts to the investigator within 14 days after the fact-finding conference is concluded. If the complaints investigated have two or more complainants, contracts with court reporting firms must require one additional copy of the transcript for each additional complainant.

H. Avoiding Delays

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

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

3. Under no circumstances will the investigation be cancelled, unless the complainant, by a written request, withdraws the complaint in its entirety.

I. The Assigned Investigator. The **Assigned Investigator** shall:

1. Collect and discover factual information concerning the issues in the complaint under investigation;
2. Administer oaths;
3. Require employees to furnish testimony under oath or affirmation without a promise of confidentiality; and
4. Prepare an investigative summary, which shall include a thorough review of:
 - a. The circumstances under which the alleged discrimination occurred;
 - b. The treatment of members of the complainant's group as compared with the treatment of other similarly situated employees; and
 - c. Any policies and/or practices that may constitute or appear to constitute discrimination, even though they have not been expressly cited by the complainant.
5. The investigator shall conduct a survey of the general environment from which the complaint arose in an effort to determine:
 - a. Any improper discrimination in the organizational element involved in the complaint in order to take remedial action.
 - b. Whether any allegations of discrimination are supported by facts may have the effect of exonerating the agency's principal witness(es).
6. After completion of the investigation, the investigator shall provide two copies of the ROI to the Director, EEO. The Director, EEO shall provide one each to the complainant and his or her representative.

J. The Investigative Process

1. The DoD, Civilian Personnel Management Service, IRD shall complete its investigation and issue an investigative report within 120 days of the date of receipt of the request for investigation of a non-mixed individual complaint, or within 75 days of receipt of a mixed complaint. The 120 and 75 day time frames in this paragraph are administrative guidelines.
2. By written agreement between the OIG and the complainant, the 180 day time period may be voluntarily extended for not more than an additional 90 days. The Director, EEO shall be responsible for coordinating with the complainant and representative prior to the 180 day period to obtain signatures on the agreement. The OIG may unilaterally extend the 180 day time

period, or any period of extension, for not more than 30 days when it must sanitize a complaint file which contains classified information, provided the complainant and his or her representative are informed of the extension. Title VII, 29 CFR Part 1614 contains no provision for extending the time to investigate a mixed case complaint.

3. When a complaint has been amended or consolidated with an ongoing complaint, the Director, EEO shall provide the investigative file to the complainant and his or her representative within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint or within the time period contained in an order from EEOC, OFO on an appeal from a dismissal or within any period of extension is concluded.

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

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

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

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

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

9. When a complainant raises a new claim or incident of alleged discrimination during the investigative process, the investigator shall instruct the complainant to submit his or her amendment, in writing, to the Director, EEO. The Director, EEO shall expeditiously review complainant's request for amendment and provide the complainant with a written determination. The Director, EEO shall provide the investigator a copy of the written determination and instructions whether to include the new claim or incident for investigation.

10. The investigator initiates discussion between the parties in an attempt to facilitate resolution of the complaint. The investigator determines the witnesses whose testimony is necessary to the investigation and interviews and obtains testimony or affidavits from only those witnesses. Affidavits are included in the investigative file only if the investigator deems the testimony relevant and necessary. The investigator documents for the record the reason any witness identified by the complainant or by management was not interviewed and the reason the evidence offered was not accepted. When a party fails without good cause shown to produce requested, relevant evidence, the investigator may note in the investigative record that the 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 or witness;

b. Consider the matter to which the requested information or the testimony of the requested witness pertains to be established in favor of the opposing party;

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.

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

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

h. The investigator collects information needed to review the merit of mixed case claims that are included under the investigator is independent of control by any of the parties to the complaint, but is entitled to the full cooperation of all parties and their representatives.

i. Upon completion of the investigation, the investigator shall send the original and two copies of the investigative file with all copies of the fact-finding conference transcript to the Director, EEO.

K. The Director, Equal Employment Opportunity Responsibilities After Completion of the Investigation

1. The Director, EEO shall keep the principal witness and the complainant informed of the progress of the investigation.

2. When the investigation is complete, the Director, EEO shall review the ROI to determine whether it contains information relevant to all the allegations.

3. If there are allegations in the ROI against the agency's principal witness that the witness had no opportunity to confirm or deny, the Director, EEO shall require an additional investigation to complete the case.

4. For Non-Mixed Cases, the Director, EEO shall:

a. Within 3 days of receipt of the investigative file, provide a *Letter of Post-Investigative Options (non-mixed cases)* to complainant and representative advising complainant that he or she may request a hearing before an EEOC AJ or a FAD based on the record (complaint file) and that any request for a hearing must be sent directly to the EEOC District Office provided in the *Letter of Acceptance* within 30 days from the date of receipt of the *Letter of Post-Investigative Options*. The complainant will be further advised that a copy of the *Request for a Hearing* must be simultaneously served on the Director, EEO and the OGC. A copy of the investigative file, including the fact-finding conference transcript and ROI, will be attached to the *Letter of Post-Investigative Options*. The Director, EEO shall also attach the *Request for a Hearing* and *Request for a FAD without a Hearing* formats to the notice. The *Letter of Post-Investigative Options (non-mixed cases)* and the investigative file shall be sent to the complainant and representative via certified mail.

b. Provide a copy of the *Letter of Post-Investigative Options (non-mixed)*, and the investigative file, including the fact-finding conference transcript and the ROI, to the OGC.

c. Send one copy of the complete, tabbed complaint file to the appropriate EEOC Hearings within 10 days of receipt of the complainant's request for an EEOC hearing or upon notification by EEOC that the complainant has requested a hearing, whichever is earlier. The transmittal letter must include instructions to send the AJ's decision to the Office of Inspector General, Director, Equal Employment Office, 400 Army Navy Drive, Arlington, VA 22202-4704. The complainant may request a hearing by the EEOC AJ whether or not he or she has received the *Letter of Post-Investigative Options* if 180 days have elapsed from the date the formal complaint was filed.

d. If the complainant or representative fails to respond to the *Letter of Post-Investigative Options* by the 36th day after receipt of the *Letter of Post-Investigative Options*, the Director, EEO shall issue a FAD.

5. For mixed cases, the Director, EEO shall, within 3 days of receipt of the investigative file, prepare a letter advising the complainant that a FAD will be issued without a hearing. A copy of the investigative file, including the fact-finding conference transcript and ROI, shall be attached. The letter and the investigative file shall be sent via certified mail.

L. Arranging for an Equal Employment Opportunity Commission Hearing

1. Upon receipt of notification from either the EEOC or the OGC of the date and location where the hearing is to be held, the Director, EEO shall make arrangements for an appropriate room to hold the hearing and advise the OGC of the selected location.

2. The Director, EEO shall arrange for the services of a court reporter at the hearing. Contracts with court reporting firms must require delivery of two verbatim transcripts to the EEOC AJ within 10 days or less after the EEOC hearing is closed. If the complaints heard have two or more complainants, contracts with court reporting firms must require one additional copy of the hearing transcript for each additional complainant.

3. Upon receipt of the list of accepted witnesses from the OGC, the Director, EEO shall issue a written notification to the witnesses that their presence will be required and provide information as to date, time, and location. A copy of each witness notification letter shall be provided to the OGC.

M. The Equal Employment Opportunity Commission Hearing

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

- a. Administer oaths or affirmations;
- b. Regulate the course of the hearing;
- c. Rule on offers of proof and receive relevant evidence;
- d. Order the production of documents, records, comparative data, statistics, affidavits, or the attendance of witnesses;
- e. Limit the number of witnesses whose testimony would be unduly repetitious;
- f. Exclude any person from the hearing for inappropriate conduct or misbehavior that obstructs the hearing. The AJ or the EEOC may refer to the disciplinary committee of the appropriate Bar Association or the OIG OGC for information on any attorney who refuses to follow the orders of the AJ or who otherwise engages in improper conduct. Upon reasonable notice and an opportunity to be heard, the AJ or EEOC may suspend or disqualify from representing complainants or agencies in EEOC hearings any representative who refuses to follow the orders of an AJ, or who otherwise engages in improper conduct;

g. Dismiss complaints pursuant to 29 CFR Section 1614.107 after notice to both parties or upon an agency's motion to dismiss a complaint; and

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

2. The parties have the right to seek discovery prior to the hearing. Unless the parties agree in writing concerning the methods and scope of discovery, the party that is seeking discovery shall request authorization from the AJ prior to commencing discovery. Evidence may be developed through interrogatories, depositions, requests for admissions, stipulations, or requests for the production of documents. Requests for information that are overly burdensome or seek information that is irrelevant, repetitious, or privileged are objectionable. The OGC shall handle discovery requests for the agency. All OIG officials shall cooperate with the OGC by providing information and documents to the OGC to respond to discovery requests.

3. If the complainant or the OIG refuses or fails without good cause shown to fully and timely respond to an order of an AJ or any request by the AJ for documents, records, comparative data, statistics, affidavits, or the attendance of witnesses, the AJ 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 or witness;

b. Consider the matter to which the requested information or the testimony of the requested witness pertains to be established in favor of the opposing party;

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.

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

5. The hearing is recorded and transcribed verbatim. All documents accepted by the AJ at the hearing are made part of the record. If the OGC submits a document that is accepted, a copy of the document shall be furnished to the complainant or complainant's attorney, if represented. If the complainant submits a document that is accepted, the AJ shall make the document available to the OGC for reproduction.

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

7. The AJ shall send a copy of his or her decision and the hearing transcript to the complainant or his or her representative. Also, the AJ may send the Director, EEO a separate letter concerning conditions at the activity that do not have a direct bearing on the complaint which need to be addressed.

8. Subsequent to the hearing, the IG shall issue a Final Agency Action (FAA) adopting, modifying, or rejecting the recommended decision of the AJ. The FAA letter shall set forth the specific reasons for rejecting or modifying the findings of fact or conclusions of law made by the AJ. The FAA shall be accompanied by a verbatim transcript of the hearing, a copy of the recommended decision of the AJ, and notification of the complainant's appeal rights.

9. The FAA letter shall be transmitted to the complainant and his or her representative with notice that any request for attorney's fees be documented and submitted within 30 calendar days of receipt of the IG's final decision. Attorney's fees usually are payable only when the complainant prevails. Attorney's fees are not recoverable at the administrative level under the ADEA, 29 U.S.C. Section 633a, or the *Equal Pay Act*, U.S.C. Section 206(d).

10. If the agency does not, within 40 days of receipt of the recommended decision by the AJ, reject or modify the findings and conclusions or the relief, if any, ordered by such decision, then the findings and conclusions and the relief ordered shall become the FAA and the agency shall notify the complainant thereof IAW 29 CFR Section 1614.110.

11. If a complainant is dissatisfied with the FAA, he or she may file a notice of appeal with the EEOC within 30 calendar days of receipt of the notice of the final action or a civil action in the U.S. District Court within 90 days.

CHAPTER 6
FINAL AGENCY DECISIONS, FINAL AGENCY ACTIONS AND
APPEALS OF NON-MIXED AND MIXED COMPLAINTS AND CIVIL ACTIONS

A. Final Agency Decisions in Non-Mixed Complaints

1. A FAD on the merits of the complaint, including rationale for dismissal of any claim, shall be issued by the Director, EEO:

a. Within 60 days after receipt of the investigative file and notice that complainant requested a FAD, or

b. Within 60 days after receipt of the investigative file and notice from that complainant failed to request either a hearing or a FAD within 30 days of receipt of the investigative file and Notice of Post Investigative Options.

c. Within 60 days after notification that complainant has withdrawn his or her request for a hearing by an AJ.

2. The FAD shall specify the reasons for the decision and any remedial action authorized by law that is judged to be necessary or desirable to resolve alleged claims of discrimination and to promote the EEO policy, including the payment of attorney's fees and costs and compensatory damages.

3. The FAD shall inform the complainant of the right to appeal the decision to either the EEOC, OFO (include the name and address of the Agency official to be served) or to the applicable Federal district court (name the Secretary of Defense as the proper defendant and list the applicable time limits for such action). A copy of EEOC Form 573, *Notice of Appeal/Petition to the Equal Employment Opportunity Commission*, (Appendix N), shall be attached to the FAD.

4. The FAD shall be served on the complainant and designated representative IAW service rules set forth in Chapter 8, paragraph K.

B. Final Agency Decisions in Mixed Case Complaints

1. In a mixed case complaint, the Director, EEO shall issue a FAD within 45 days of notice to the complainant IAW 29 CFR Section 1614.302(d)(2).

2. The FAD in a mixed case shall include the right to appeal to the MSPB, not the EEOC, within 30 days of receipt of decision (include the name and address of the Agency official to be served) or to the applicable Federal district court (name the Secretary of Defense as the proper defendant and list the applicable time limits for such action). A copy of the MSPB Form 185, *Merit Systems Protection Board Appeal Form* shall be attached to the FAD.

3. The FAD shall be served on the complainant and designated representative IAW the service rules set forth in Chapter 8, paragraph K.

C. Final Agency Actions

1. A FAA to either fully implement or appeal an AJ's decision shall be issued by the Director, EEO within 40 days after the receipt of the decision of an EEOC AJ. An AJ's decision will become final and binding on the OIG if the agency has not issued a final action concerning the AJ's decision within 40 days of receipt.

2. Upon receipt of an AJ's decision, the OGC or the Director, EEO shall ensure that the decision and hearing transcripts were served IAW the transmittal letter.

3. If the AJ finds discrimination, the Director, EEO shall immediately coordinate with the OGC and notify the IG of the AJ's decision.

4. The Director, EEO shall notify the complainant and designated representative in writing of the decision to fully implement the AJ's decision.

5. If the FAA is to appeal the AJ's decision, the Director, EEO shall advise the complainant and designated representative in writing of the decision not to fully implement the decision of the AJ. The FAA action shall also include a decision concerning interim relief, if any, to be granted pending appeal.

a. The OGC shall simultaneously file a *Notice of Appeal* to the EEOC, OFO, within 40 days of receipt of the AJ's decision and shall advise the EEOC of the decision not to restore complainant to duty, if applicable, or delay payment of any awarded amount pending resolution of the appeal.

b. The OGC shall file an appeal brief to the EEOC, OFO within 20 days of filing the notice of appeal.

6. The FAA and/or appeal brief shall be served on the complainant and designated representative IAW the service rules set forth in Chapter 8, paragraph K. A copy of the FAA appeal brief shall be furnished to the AJ and the Director, EEO. Certification as to the date and method by which service was made on complainant and designated representative shall be included or attached to the notice of appeal filed with the EEOC, OFO.

7. The FAA shall inform the complainant of the right to appeal the decision to either the EEOC, OFO (include the name and address of the Agency official to be served) or to the applicable Federal district court (name the Secretary of Defense as the proper defendant and list the applicable time limits for such action). A copy of EEOC Form 573, (Appendix N), shall be attached to the FAA.

D. Appeals

1. A complainant or his or her attorney may appeal the following to the EEOC, OFO:
 - a. The FAD to dismiss the complaint in whole.
 - b. The FAD or FAA on the merits of the complaint.
 - c. The final decision of an AJ if the agency has not issued a final action within 40 days.
 - d. The FAA not to fully implement the AJ's decision.
 - e. The FAD on alleged noncompliance with an NSA.
 - f. The FAD on the issue of attorney's fees or costs, compensatory damages, or remedial actions.
2. The complainant, agent, or class claimant may file an appeal, by mail, personal delivery, or fax with the Director, Equal Employment Opportunity Commission, Office of Federal Operations, P.O. Box 77960, Washington, D.C. 20013. Any statement or brief in support of the appeal must be submitted to the EEOC, OFO, within 30 days of filing the notice of appeal.
3. The complainant shall serve a copy of the appeal, as well as any statement or brief in support of the appeal, to the Department of Defense, Office of Inspector General, Director, Equal Employment Opportunity Office, 400 Army Navy Drive, Arlington, VA 22202-4704, and to the OGC at the same time that he or she files the appeal with the EEOC.
4. The OIG shall request that the EEOC deny the appeal unless a copy of an appeal and any supporting statements were served on the agency at the same time as they were served on the EEOC, as required by 29 CFR Section 1614.403.
5. The OGC shall respond to all appeals.
6. The Director, EEO shall submit the complaint file to the EEOC, OFO within 30 days of receipt of the notification of appeal of the EEOC's request for the complaint file. A copy of the letter transmitting the complaint file shall be furnished to the complainant and designated representative IAW the service rules set forth in Chapter 8, paragraph K.

E. Time Limits for Administrative Appeals to the Equal Employment Opportunity Commission. A complainant in an individual complaint of discrimination may file a notice of appeal with the EEOC within 30 days after receiving the OIG's final action or final decision on his or her complaint. If the complainant is represented by an attorney of record, then the 30 day time period within which to appeal shall be calculated from the date the attorney receives the FAA or FAD.

1. Where a complainant alleges non-compliance with a negotiated settlement agreement, the complainant must file an appeal, if any to the EEOC, OFO within 30 days of receipt of the OIG's determination on the issue of non-compliance; or
2. May file an appeal to EEOC, OFO 35 days after the complainant served the allegation of non-compliance on the OIG, if the OIG has not issued a determination on the allegation of non-compliance.

F. Petitions for Review by the Equal Employment Opportunity Commission from the Merit System Protection Board Decisions on Mixed Case Appeals and Complaints

1. Individuals who have received a final decision from the MSPB on a mixed case appeal or on appeal of a final decision on a mixed case complaint may petition the EEOC to consider that decision. The EEOC will not accept appeals from MSPB without prejudice.
2. A petition must be filed with the EEOC either within 30 days of receipt of the final decision of the MSPB or within 30 days of when the decision of a MSPB field office becomes final.

G. Appellate Procedures

1. On behalf of the EEOC, OFO reviews the complaint file and all relevant written representations made by the parties, and makes a determination on any jurisdictional or procedural issues.
2. The EEOC, OFO may require additional information from one or both parties. Supplementation of the record may be made by an exchange of letters, memoranda, or investigation. If the EEOC, OFO requests information directly from the parties, the parties must cooperate fully and respond in a timely fashion.
 - a. Each party is required to provide copies of the supplemental information to the other party at the time it is submitted to the EEOC, OFO.
 - b. If the complaint is remanded to the EEOC for a hearing, the EEO office shall ensure that the complaint file is forwarded to the appropriate hearings unit.
 - c. If the record is so incomplete as to require remand to the agency in order to complete its investigation, the EEOC will designate a time period within which the investigation must be completed.
3. Upon completion of the investigation, the Director, EEO shall provide the complainant, the complainant's representative, and the OGC with a copy of the supplemental record.
4. Service of the supplemental record and findings to the complainant and representative shall be IAW the service rules set forth in Chapter 8, paragraph K.

5. When the complainant, the OIG, or its employees fail without good cause to respond fully and in a timely fashion to EEOC requests for information, the EEOC may, in appropriate circumstances:

- a. Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;
- b. Consider the matters to which the requested information pertains to be established in favor of the opposing party;
- c. Issue a decision fully or partially in favor of the opposing party; or
- d. Take such other actions, as it deems appropriate.

H. Reconsideration of Decisions on Appeal

1. A request for reconsideration may only be requested when the appellate decision involved a clearly erroneous interpretation of material fact or law, or the decision will have a substantial impact on the policies, practices, or operations of the agency.

2. Either the OIG or the complainant may request reconsideration. Requests for reconsideration must be filed with the EEOC, OFO within 30 days of receipt of a decision by the EEOC. The OIG or the complainant shall submit copies of the request and supporting documents to all other parties and their representatives at the time of the request along with proof of such submission. Any argument in opposition to the request to reconsider or cross request to reconsider shall be submitted to the EEOC, OFO and to the requesting party within 20 days of receipt of the request to reconsider along with proof of such submission. The complainant or designated representative must forward a copy of any statement or brief in support of a request to reconsider to the EEO office as well as to the OGC.

3. The OGC shall determine whether the OIG will request reconsideration. If the determination is made to request reconsideration, the OGC shall submit a brief with an explanation of how the request applies to the case at hand along with the complaint file.

4. If corrective action is ordered by the EEOC, the Director, EEO shall promptly notify the IG and provide all necessary documentation to the OGC, unless, the complainant or the OIG files a timely request to reconsider the EEOC, OFO decision or the EEOC on its own motion reconsiders the case.

5. A decision by the EEOC, OFO on a request to reconsider by either party is final and there is no further right by either party to request reconsideration of the decision for which reconsideration was sought.

I. Compliance with the Equal Employment Opportunity Commission and Final Agency Decisions. Compliance with decisions issued by the EEOC, OFO and the OIG is mandatory.

1. When corrective action or further processing is ordered by the EEOC, OFO:
 - a. The Director, EEO shall notify the IG, the OGC, and the appropriate Component of the EEOC, OFO order and the suspense date for completion of corrective actions.
 - b. A compliance report detailing the OIG's status in implementing all ordered corrective action shall be submitted by the Director, EEO to the EEOC, OFO not later than the 5th day of each month, on a monthly basis until all ordered compliance actions are completed.
2. Attached to the compliance report will be the appropriate supporting documentation that provides proof of the OIG's compliance with the EEOC, OFO order.
3. The Director, EEO shall serve copies of the compliance report, with attachments, to the complainant, the complainant's designated representative, and the OGC at the same time the report is forwarded to the EEOC, OFO.
4. When a corrective action is ordered by the IG an implementation letter addressed to the appropriate organization shall be attached to the final action/decision outlining corrective action to be taken by the organization.
 - a. Compliance reports from the Component shall be submitted to the Director, EEO not later than the 5th day of each month.
 - c. Attached to compliance reports shall be the appropriate supporting documentation that provides proof of the Component's compliance with the OIG order.
 - d. Compliance reports shall be submitted to the EEO office until notification from Director, EEO that all ordered actions are completed and closed out.
5. The Director, EEO shall serve copies of the compliance report, with supporting documentation to the complainant, and designated representative, IAW the service rules set forth in Chapter 8, paragraph K.

J. Enforcement of Final Equal Employment Opportunity Commission Decisions. A complainant may petition the EEOC to enforce a decision issued under its jurisdiction. The petition shall be submitted to the Director, Equal Employment Opportunity Commission, Office of Federal Operations, P.O. Box 77960, Washington, D.C. 20013. The EEOC, OFO's decision on a petition to enforce is final.

K. Civil Actions

1. All OIG final actions and final decisions must notify the complainant of the right to file a civil action and of the time limits for doing so. A complainant in an individual complaint or an agent or claimant in a class complaint has the right to file a civil action in a U.S. District Court:
 - a. Within 90 days after receiving the notice of the final decision on the complaint or claim if no appeal has been filed; or
 - b. After 180 days from the date of filing a complaint or claim with the OIG if no appeal has been filed and no notice of final action or final decision has been issued; or
 - c. Within 90 days after receipt of the EEOC final decision on an appeal; or
 - d. After 180 days from the date of filing an appeal with the EEOC if there has been no final decision by the EEOC.
2. If complainant has filed a mixed case complaint or appeal, the right to a civil action is as follows:
 - a. Within 30 days of receipt of a final decision on a complaint unless an appeal is filed with the MSPB; or
 - b. Within 30 days of receipt of notice of the final decision or action taken by the MSPB if the individual does not file a petition for consideration with the EEOC; or
 - c. Within 30 days of receipt of notice that the EEOC has determined not to consider the decision of the MSPB; or
 - d. Within 30 days of receipt of notice that the EEOC concurs with the decision of the MSPB; or
 - e. If the EEOC issues a decision different from the decision of the MSPB, within 30 days of receipt of notice that the MSPB concurs in and adopts in whole the decision of the EEOC; or
 - f. If the MSPB does not concur with the decision of the EEOC and reaffirms its initial decision or reaffirms its initial decision with a revision, within 30 days of the receipt of notice of the decision of the special panel; or
 - g. After 120 days from the date of filing a formal complaint if there is no final action or appeal to the MSPB; or

h. After 120 days from the date of filing an appeal with the MSPB if the MSPB has not yet made a decision; or

i. After 180 days from the date of filing a petition for consideration with the EEOC if there is no decision by the EEOC, reconsideration decision by the MSPB, or decision by the special panel.

3. If a civil action is filed arising from the *Civil Rights Act* or the *Rehabilitation Act* and the complainant does not have or is unable to obtain the services of an attorney, the complainant may request the court to appoint an attorney. In such circumstances as the court may deem just, the court may appoint an attorney to represent the complainant and may authorize the commencement of the action without the payment of fees, costs, or securities.

4. If a civil action is filed, complainant must name the Secretary of Defense as the defendant and provide his or her official title. Failure to either name the Secretary of Defense or to state his or her official title may result in the case being dismissed.

5. When the Director, EEO is notified that a civil action is filed, and the complaint is awaiting a FAD, the OIG shall terminate processing of the complaint and issue a dismissal IAW 29 CFR Section 1614.107(a)(3).

CHAPTER 7
**REMEDIAL ACTIONS, CORRECTIVE ACTIONS, ATTORNEY FEES,
DAMAGES, AND NEGOTIATED SETTLEMENTS**

A. Remedial Actions

1. If there is a finding of discrimination or retaliation in individual cases of discrimination, a complainant is entitled to a remedial action unless the evidence of record establishes by clear and convincing evidence that the action complained of would have occurred even absent the identified discrimination. The remedial action is to place the complainant in the situation he or she would have been if there had been no discrimination. Relief ordered by the EEOC or the DoD IG is mandatory and binding. Failure to fully implement ordered relief could result in EEOC enforcement.

2. Remedial action may include:

a. Notification to all employees in the affected facility of their right to be free of unlawful discrimination or retaliation, and assurance that the particular types of discrimination found will not recur.

b. Commitment that the OIG shall cease from engaging in the specific unlawful employment practice found in the case and that corrective, curative, or preventive action shall be taken, or measures adopted, to ensure that similar violations of the law will not recur.

c. An unconditional offer on nondiscriminatory placement in the position at issue or a substantially equivalent position, unless clear and convincing evidence contained in the record demonstrates that non-selection would have occurred even absent the discrimination.

d. Payment of back pay, computed in the same manner prescribed by 5 CFR Section 550.805, for any loss of earnings the person may have suffered as a result of the discrimination. (The back pay liability under Title VII or the *Rehabilitation Act* is limited to two years prior to the date the discrimination complaint was filed.)

e. Interest on back pay, with the exception of Federal employees or applicants who prevail on employment discrimination claims brought under the ADEA or the *Equal Pay Act*.

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

g. Elimination of any adverse materials relating to the discriminatory employment practice from agency records.

h. Full opportunity to participate in the employee benefit denied (for example, training, preferential work assignments, or overtime scheduling).

i. Attorney's fees, costs, and compensatory damages, if applicable.

j. If the record contains clear and convincing evidence that, although discrimination existed at the time the personnel action was taken, the personnel action would have been taken even absent discrimination, the OIG will nevertheless eliminate any discriminatory practice and ensure that it does not recur.

3. The OIG may also settle complaints and award back pay and other remedial relief, including attorney's fees, costs, and compensatory damages, without a finding or admission of discrimination. The agreed upon relief cannot exceed that which could be awarded if discrimination is proven.

4. The Director, EEO shall monitor and ensure timely implementation of the remedies and relief ordered by the IG, the AJ, or the EEOC, OFO.

B. Remedial Actions Involving an Applicant for Employment or Non-Selection

1. Upon a finding that discrimination was the basis for non-selection to the position at issue, or that discrimination existed at the time the applicant was considered for employment, the IG shall offer the applicant the position that he or she would have occupied absent the discrimination, or if justified by the circumstances, a substantially equivalent position unless clear and convincing evidence indicates that the applicant would not have been selected even absent the discrimination.

a. In appropriate circumstances, placement of the complainant may entail displacing an incumbent. If such displacement occurs, the incumbent shall be placed in another position without a loss of grade or pay.

b. If no position is available for the complainant through displacement or otherwise, the OIG shall make the complainant whole until placement can be accomplished.

c. If clear and convincing evidence indicates that the applicant would not have been selected even absent the discrimination, the IG, nevertheless, shall take all steps necessary to eliminate the discriminatory practice and ensure it does not recur.

2. Any offer of employment or placement in the position at issue in the complaint or to a substantially equivalent position shall be made to the complainant in writing. The offer shall be served on the complainant and representative IAW the service rules set forth in Chapter 8, paragraph K.

3. The complainant shall have 15 days from receipt of the offer to accept or decline the offer. Failure to notify the OIG of his or her decision within the 15 day period shall be considered a declination of the offer, unless the complainant can show that circumstances beyond his or her control prevented him or her from responding within the time limit.

4. If the offer of employment or nondiscriminatory placement is accepted, the appointment shall be retroactive to the date the applicant would have been hired, reassigned, or promoted.

a. Back pay computed in the same manner prescribed by 5 CFR Section 550.805 shall be awarded from the date the complainant would have entered on duty until the date the complainant actually enters on duty.

b. Interest on back pay shall be included in the back pay computation in complaints IAW applicable case law.

5. The complainant shall be deemed to have performed service for the OIG during this period of retroactivity for all purposes except for meeting service requirements for completion of a required probationary or trial period.

a. If the offer of employment or placement is declined, the OIG shall award a sum equal to the back pay the complainant would have received from the date he or she would have been appointed or selected to the date the offer was declined. The award shall be computed in the manner prescribed by 5 CFR Section 550.805 to include interest, when applicable, and offset for wages earned. The OIG shall inform the applicant, in its offer of employment, of his or her right to this award in the event the offer is declined.

b. The complainant may also be entitled to reasonable attorney's fees or costs and compensatory damages, if applicable

C. Interim Relief

1. When the OIG appeals the decision of an AJ who orders retroactive restoration in cases involving removal, separation, or suspension continuing beyond the date of appeal, the agency 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 AJ's decision pending outcome of the appeal. The complainant may decline the interim relief.

a. If the EEOC, OFO upholds the AJ's decision on appeal, any service under the temporary or conditional restoration provision shall be credited toward completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure.

b. If the EEOC, OFO reverses the decision of the AJ 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.

2. The FAA shall advise the complainant that a grant of interim relief does not insulate him or her from subsequent disciplinary action or adverse action.

3. If it is determined that the complainant's return to his or her place of employment would be unduly disruptive to the work environment, the FAA shall advise the complainant that he or she is not being returned to duty but that prospective pay and benefits will be paid. The FAA shall also advise the complainant that the determination not to return him or her to duty is not reviewable.

4. When the FAA is to appeal the decision of the AJ and the ordered remedy involves payment of money, the final OIG action shall advise complainant whether the relief provided is temporary or conditional, and whether payment of any ordered amount, other than prospective pay and benefits, will be delayed pending resolution of the appeal. Failure to provide notification may result in the dismissal of the OIG's appeal by the EEOC, OFO.

a. If payment of an ordered amount is delayed pending resolution of the appeal, the complainant shall be advised that interest will be paid from the date of the original decision to the date payment is made if the AJ's decision is upheld on appeal.

b. The FAA shall be served on the complainant and designated representative IAW the service rules set forth in Chapter 8, paragraph K.

D. Remedial Actions Pending a Reconsideration Decision by the Equal Employment Opportunity Commission

1. A corrective actions ordered by the EEOC, OFO is mandatory and binding on the OIG unless a timely request for reconsideration has been submitted to the EEOC or the EEOC reconsiders the case on its own motion. Failure to implement ordered relief shall be subject to enforcement.

2. When the OIG requests reconsideration, if the complaint involves removal, separation, or a suspension continuing beyond the date of the request for reconsideration, and if the EEOC's decision directed retroactive restoration, the activity shall comply with the decision only to the extent of the temporary or conditional restoration of the employee to duty status in the position recommended by the EEOC, pending the outcome of the request for reconsideration.

a. When the employee receives a temporary or conditional restoration, service during this period shall be credited toward the completion of a probationary or trial period, eligibility for an increase in pay, or completion of the service requirement for career tenure, provided the EEOC upholds its decision after reconsidering the case; or refuses to reconsider the case.

b. An OIG request to reconsider shall notify the EEOC that the remedial action it takes is temporary or conditional. A written notice shall also be sent to the employee.

3. When no request for reconsideration is filed or when a request for reconsideration is denied, the OIG shall provide the relief ordered and there is no further right to delay implementation of the ordered relief. The relief shall be provided in full no later than 60 days after receipt of the final decision unless otherwise ordered in the decision.

E. Corrective Actions

1. When there is a finding of discrimination, the OIG shall determine the appropriate corrective action to prevent recurrence.

2. The Director, EEO shall specify the nature of the corrective action taken in the compliance report to the EEOC, OFO.

F. Entitlement to Recovery of Attorney's Fees and Costs

1. A prevailing complainant who is represented by an attorney may be entitled to recover reasonable attorney's fees, including expert witness fees. The complainant may also be entitled to recover other costs incurred in the processing of his or her complaint as a part of the remedial relief under this regulation unless special circumstances render such an award unjust.

2. The following arguments are not sufficient to show special circumstances:

- a. The complainant did not need an attorney;
- b. The complainant's attorney worked for a public interest organization;
- c. The complainant's attorney accepted the case pro bono;
- d. The complainant's attorney was paid from some private fee agreement;
- e. The complainant was able to pay the costs of the case;
- f. The OIG acted in good faith;
- g. The OIG took prompt action in remedying the discrimination or retaliation;
- h. The financial burden of any fee would fall on the taxpayer; and
- i. The activity has limited funds.

3. The OIG, an AJ, the EEOC, OFO or a Federal court shall determine the amount of reasonable attorney's fees and costs to be awarded. However, the OIG may also pay attorney's fees and costs as part of a settlement agreement.

4. Reimbursement of attorney's fees may be made for the services performed after the complainant has notified the OIG, the AJ, or the EEOC, OFO that he or she is represented by an attorney. Written submissions to the OIG or copies of written submissions to the AJ or the EEOC, OFO, signed by an attorney, shall be deemed to constitute a notice of representation.

G. Processing Claims for Reasonable Attorney's Fees and Costs

1. The complainant and the complainant's attorney bear the burden of establishing entitlement to fees or costs. Requests for recovery of attorney's fees, including expert witness fees and other costs, as appropriate, should be submitted to the OGC within 30 days of receipt of the FAD and IAW OIG instructions implementing OFO decisions. The statement of attorney's fees and costs must be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Absent extraordinary circumstances, requests for recovery of attorney's fees may be denied if not submitted within the 30 day period of receipt of the FAD.

2. The verified statement of fees and costs should include the following:

a. A list of services rendered itemized by date, number of hours, detailed summary of the task, rate, and attorney's name;

b. Documentary evidence of reasonableness of hours, such as contemporaneous time records, billing records, or a reasonable accurate substantial reconstruction of time records;

c. Documentary evidence of reasonableness of rate, such as an affidavit stating that the requested rate is the attorney's normal billing rate, a detailed affidavit of another attorney in the community familiar with prevailing community rates for attorneys of comparable experience and expertise, a resume, a list of cases handled, or a list of comparable cases where a similar rate was accepted; and

d. Documentation of costs.

3. Documentation submitted should include the following:

a. A copy of the fee agreement between the complainant and the complainant's attorney.

b. A copy of current billing records with a key to all abbreviations.

c. Documentation of costs, such as receipts or billing statement, verifying that the costs and amounts claimed were actually incurred in the prosecution of the complainant's case. Examples include long distance telephone bills, express mailing receipts, computer legal research billing statements, food and lodging receipts, airline ticket receipts.

d. For costs for which receipts or billing statements are not normally available, an explanation of how the costs were calculated, the formula used to compute the totals claimed, and the dates incurred. Examples of these costs include: mileage (dates of travel, locations, distance traveled, mode of transportation, cost per mile, and formula used to compute amount claimed) and photocopying and faxing of documents (number of documents copied or sent by facsimile, cost per page, and formula used to compute amounts claimed).

e. All other relevant documents.

4. In FADs where discrimination or retaliation has been found and recovery of attorney's fees and costs is awarded as part of the remedial relief, the complainant's attorney must file a verified statement of attorney's fees and costs with the OGC within 30 days of receipt of the decision. The OGC shall review the request and supporting documentation and prepare a written recommended decision as to payment. The recommended decision should include a summary of the case; a statement of the relief granted to the complainant; an analysis of the number of hours, hourly rates, and costs for which payment is approved or denied; the basis for the conclusions; and the total amount recommended for payment.

5. The OIG may enter into a written settlement agreement to resolve the request of attorney fees and costs.

a. The FAD shall be served on the complainant and the attorney of record IAW the service rules set forth in Chapter 8, paragraph K.

b. The FAD shall advise the complainant of his or her right to appeal the final decision to the EEOC, OFO or file a civil action in a U.S. District Court. A copy of EEOC Form 573, (Appendix N), shall also be included.

6. Any payment of attorney fees and costs should be made payable jointly to the complainant and the attorney. The servicing Defense Finance and Accounting Service shall be instructed to address the envelope containing the payment of monies due to the complainant's attorney of record.

H. Compensatory Damages

1. Where the AJ has found discrimination or retaliation and the complainant claimed compensatory damages, the AJ shall make a determination of the amount, if any, of compensatory damages to be paid to the complainant by the OIG.

2. Where the OIG's final decision has found that discrimination or retaliation occurred and the complainant claimed compensatory damages, the complainant and his or her attorney shall be advised that any claim for past or future pecuniary losses or non-pecuniary losses must be submitted through the Director, EEO to the agency within 30 days of receipt of the final decision if not previously submitted. See the *Notice to Equal Employment Opportunity*

Complainant Seeking Compensatory Damages memorandum (Appendix O). The FAD shall further advise the complainant and his or her attorney that:

a. Such damages shall only be payable to the extent they were caused by the specific actions that formed the basis of the finding of unlawful discrimination or retaliation.

b. In claiming past or future pecuniary losses, documentary evidence of these costs, including, but not limited to, copies of bills, receipts, cancelled checks, affidavits or other proof that these losses were actually incurred must be submitted.

c. In the case of future pecuniary losses claimed, complainant must submit objective evidence that the losses claimed will occur into the future, and evidence of the anticipated duration of those losses and that these projected losses shall result from the unlawful discrimination or retaliation found in the FAD.

3. The OIG may choose to include a payment of compensatory damages, in a certain amount, in no fault settlement agreements of pre-complaints and formal complaints where the complainant has alleged a form of discrimination for which compensatory damages are recoverable, subject to the conditions as stated in the *Joint Employer Working Relationship Questionnaire*, (Appendix M).

I. Mitigation of Damages. Complainants must be made aware that they have a legal obligation to mitigate damages. Before reducing a claim for failure to mitigate, the OIG must prove by preponderance of evidence that the complainant failed to adequately mitigate his or her damages.

J. Negotiated Settlement of Equal Employment Opportunity Complaints of Discrimination

1. Title VII of the *Civil Rights Act of 1964*, as amended, encourages the settlement of employment discrimination disputes without litigation. Complaints should be resolved at the earliest opportunity. Resolution can occur at any stage of the administrative process. Settlements, where appropriate, achieve better employee relations, reduce administrative waste, avoid protracted litigation, and are consistent with the OIG's commitment to the EEO. Settlement of complaints must be reached without the OIG admitting fault, wrongdoing, or discrimination. When negotiating settlement, all of the complainant's existing workplace disputes should be considered without regard to the forum being used.

2. Unlike the *Back Pay Act*, Title VII does not require a finding of an unwarranted and unjustified personnel action to authorize the award of back pay. The connection between Title VII and the *Back Pay Act* arises only because EEOC has provided in its regulations on remedial actions that when discrimination is found, an award of back pay under Title VII is to be computed in the same manner as under the *Back Pay Act* regulations. This is significant in that there is no impediment to an award of back pay being included in a settlement even without a finding of discrimination.

3. Lump sum payments may be used to resolve complaints regardless of the inclusion of a personnel action. In these cases, the parties can agree on an overall figure in the settlement that represents back pay, attorney's fees and costs, compensatory damages, and other monetary relief to which the complainant would be entitled if a finding of discrimination had been made.

4. Although Title VII provides authority to effectuate personnel actions to settle complaints, the OIG shall exercise caution and avoid including provisions in the proposed agreements that may conflict with personnel practices and procedures contained in Title 5 U.S.C. and with the OPM regulations and guidance.

5. The relief provided by the OIG to settle an EEO dispute cannot be greater than the relief a court could order if that particular dispute went to trial.

6. After acceptance of the formal complaint, the OIG shall explore settlement. The OGC, the Director, EEO, an HCAS official, and management officials shall consult with each other as equal members of the OIG's settlement team.

7. The specific actions to be taken by the OIG and the complainant constituting the terms for settlement and time frames for completion shall be set forth in a NSA. The Director, EEO shall prepare a draft of the NSA and coordinate it with the OGC, the HCAS and the appropriate management official before execution.

8. The NSA shall be signed by the complainant and the attorney, if complainant is represented by an attorney, and the management officials with settlement authority. A copy of the NSA shall be provided to the complainant and his or her attorney, if represented.

9. Settlement discussions may not postpone the 29 CFR Section 1614.108(f) requirements of notice and delivery of the complaint file to the complainant within 180 days of the date the complaint was filed.

10. If settlement occurs after the complainant's request for a hearing, efforts to settle the complaint shall be coordinated with the EEOC AJ.

11. Settlement of a claim under the ADEA must comply with the requirements of the *Older Workers Benefit Protection Act*. Any agreement that settles an EEO complaint having age as a basis shall contain the following statement:

a. "By signing this agreement, the complainant understands that he or she is knowingly and voluntarily waiving rights and claims arising under the *Age Discrimination in Employment Act* as amended by the *Older Workers Benefit Protection Act*. The employee understands that he or she:

b. Does not waive rights or claims that may arise after the effective date of this agreement;

- c. Waives rights or claims only in exchange for consideration in addition to anything of value to which the complainant is already entitled;
- d. Is advised to consult with an attorney prior to signing this agreement;
- e. Has a reasonable time in which to consider this agreement before signing it.”

K. Failure to Carry Out the Terms of the Settlement Agreement

1. Any settlement agreement knowingly and voluntarily agreed to by the respective parties, reached at any stage of the complaint process, shall be binding on both parties. If the complainant believes that the OIG has failed to comply with the terms of the settlement agreement, the complainant must notify the Director, EEO in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point where processing ceased.

2. The Director, EEO, in coordination with the OGC, shall conduct an inquiry to determine compliance or noncompliance to the NSA, noting actions taken by the OIG to implement the terms of the NSA. The management official with settlement authority that signed the NSA shall be asked to submit information and documentation of actions taken regarding the NSA. Supporting documentation shall be attached and provided to the complainant.

3. The Director, EEO shall respond to complainant’s written allegations of noncompliance within 30 days of the date the allegations of noncompliance are received. If the Director, EEO does not respond to the complainant in writing or, if the complainant is not satisfied with the attempts to resolve the matter, the complainant may appeal to the EEOC, OFO for a determination whether the OIG has complied with the terms of the settlement agreement. The complainant may file such an appeal 35 days after he or she served the agency with the allegation of noncompliance, but no later than 30 days after receipt of the agency’s decision. Complainant must provide a copy of the appeal and any statement in support of the appeal to the Director, EEO or designee at the same time it is filed with the EEOC, OFO.

CHAPTER 8
WITNESSES, REPRESENTATION, OFFICIAL TIME,
AND OTHER GUIDELINES

A. Witness Participation in the Complaint Process. Management officials identified as principal witnesses having knowledge concerning the matters alleged in a complaint of discrimination shall be issued a *Witness Participation in the EEO Complaint Processing* memorandum, (Appendix P). The memorandum shall be issued by the EEO complaints manager prior to EEO counselor contact and shall inform the witness about the EEO complaint process and their right to have a personal representative present during the process.

B. Arranging for Witnesses. The OIG military and civilian personnel requested as witnesses by the OGC, the Director, EEO, the investigator, or the EEOC AJ shall be made available unless it is administratively impracticable.

1. If an OIG witness is not under local administrative control of the OIG and is no longer employed, the Director, EEO may request that the witness be made available for the investigation or hearing.

2. If a witness is employed by another Federal agency or has left Federal employment, the Director, EEO shall contact him or her. The Director, EEO shall make every reasonable effort to ensure the presence of the witness. If the witness refuses to appear, the Director, EEO shall refer the matter to the investigator or the AJ.

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

C. Representation. An agency witness has the right to be accompanied, represented, and/or advised by a representative of his or her own choice at any stage of the complaint process. The witness may not be represented by an attorney of the OIG or of the Washington Headquarters Services.

D. Right to Representation. A complainant, agent in a class complaint, and/or a witness has a right to representation during the EEO administrative process.

1. A complainant or agent or an agent in a class complaint has the right to be accompanied, represented, and advised by a representative of his or her own choice at any stage of the complaint process, including the pre-complaint counseling stage. No employee is obligated to serve as a representative. The EEO Director, agency representatives, civilian personnel officials, or management officials whose service as a representative would create the appearance of a conflict of interest may not serve as a representative.

2. The complainant or the class agent must designate the representative in writing. Any change shall be reported in writing to the Director, EEO, with copies to the OGC, investigator, and AJ as appropriate.

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

E. Disqualification of a Representative

1. In cases where representation of a complainant or the OIG would conflict with the official or collateral duties of the representative, the representative may be disqualified. After consulting with the OGC and after providing the representative an opportunity to respond, the Director, EEO may deny permission to an OIG employee to serve as complainant's or a witness' representative. The denial will be made in a letter to the complainant or the witness stating, with specificity, the reason for denial. The letter shall notify the requester that an appeal of the denial may be filed with the IG within 5 working days after receipt of the denial. The complainant must provide a copy of the appeal to the Director, EEO. The IG shall decide the appeal within 7 days of receipt of the appeal. There is no further right to appeal the denial of a representative.

2. If a problem with a representative arises during the investigative stage in the complaint processing, the investigator shall discuss the situation with the Director, EEO. The EEOC AJ may disqualify the complainant's representative during the hearing process.

F. Free From Restraint. It is essential to the integrity of the complaint process that complainants, their representatives, and witnesses be free from restraint, interference, coercion, discrimination, or retaliation at any phase of the complaint process. Likewise, EEO counselors shall be free from restraint, interference, coercion, discrimination, or retaliation in the performance of their counseling duties. Supervisors are expected to comply with the spirit and intent of the regulatory provisions.

G. Privacy Act Restrictions. Since complainants, representatives, and witnesses receive copies (or portions thereof) of the investigative file, hearing transcript, and other related documents, extreme discretion must be exercised with regard to their distribution and use. Privacy Act restrictions against improper disclosure are binding on all employees covered by this Instruction.

H. Use of Official Time. Under 29 CFR Section 1614.605, complainants and representatives who are OIG employees have the right to a reasonable amount of official time, if otherwise on duty, to prepare a complaint filed under this 29 CFR Part 1614 and to respond to the EEO office and EEOC requests for information.

1. The OIG is not obligated to change work schedules, incur overtime wages, or pay travel expenses in order to allow the complainant to select a specific representative or to confer with him or her.

2. When the OIG, the investigator, or an EEOC AJ authorizes or requires the presence of a representative or complainant during the investigation or hearing on the complaint, the representative or complainant shall be granted official time for the duration of such meeting or hearing regardless of the tour of duty, if otherwise in a pay status.

3. Employees must obtain supervisory approval in advance to use duty time to prepare a complaint.

4. "Reasonable duty time" includes all time actually spent in meetings and hearings required by an OIG, investigating agency, or the EEOC official plus a reasonable amount of preparation time. Time is generally defined in terms of hours rather than days, weeks, or months.

I. Computation of Time. With respect to the time periods specified in this instruction, the first day counted shall be the day after the event from which the time period begins to run. The last day of the period shall be included, unless it falls on a weekend or Federal holiday, in which case the period shall be extended to include the next business day.

1. A document shall be deemed timely if it is received or postmarked before the expiration of the applicable filing period, or if, in the absence of a legible postmark, it is received by mail within 5 days from the expiration of the applicable filing period.

2. Unless otherwise stated, all days in this instruction are calendar days.

J. Travel and Other Costs

1. For individual complaints as well as class complaints of discrimination, expenses incurred in the administrative processing of an EEO complaint shall be borne by the OIG. These expenses include travel and other costs of investigators, EEO counselors, and agency representatives and expenses for the court reporter and transcripts from the investigation and hearing.

2. Travel and related expenses of witnesses must be required or approved by the EEOC, the investigating agency, or an authorized OIG official. This includes travel of witnesses who are employed at a Federal agency other than the OIG. The OIG is not obligated to pay travel expenses of complainant's witnesses who are not Federal employees. Unless required by the AJ in the administrative process, the OIG is not responsible for paying the travel expenses of a complainant who is not an OIG employee. In the judicial process, the OIG is not responsible for any of complainant's travel expenses. Complainants who prevail in their complaints may be reimbursed for travel expenses as part of their costs.

K. Serving Equal Employment Opportunity Documents. Unless the complainant states otherwise in writing, after the agency receives written notice of the name, address, and telephone number of a representative for the complainant, service of all documents shall be with the representative with copies to the complainant.

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

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

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

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

5. The complainant, or the complainant's designated representative, must serve all official correspondence on the Director, EEO and the designated OGC official.

CHAPTER 9 THE EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT FILE

A. Disclosure of the Equal Employment Opportunity Complaint File. The EEO complaint file is a record protected from unlawful disclosure by the *Privacy Act*. The agency has the burden of determining complaint documents that may be released IAW the *Freedom of Information Act* (FOIA). The complainant and representative are entitled to a copy of the complaint file to include transcripts and exhibits entered in the record. The OIG may disclose information and documents to a witness where necessary to obtain information from the witness.

B. Access to Equal Employment Opportunity Data. Data created by the EEO office in its mission to manage the EEO Complaints Processing Program is for official use only. Release of such information shall be governed by the FOIA.

C. Equal Employment Opportunity Reporting Requirements

1. The EEOC Form 462, *Annual Federal EEO Statistical Report of Discrimination Complaints*, submission is submitted to the EEOC on the last work day of October of each year and is located on the OIG EEO web page listed under Reports.

2. The *Notification and Federal Employee Antidiscrimination and Retaliation (NO FEAR) Act of 2002*, requires the posting of certain complaint data on the OIG web site. This data must be posted no later than 30 days after the end of each quarter.

D. Disposition of Complaints of Discrimination. When action on a complaint of discrimination has been completed and the case has been closed in its entirety because of withdrawal or settlement, or issuance of a FAD or FAA, a MFR shall be included in the case file indicating the nature of closure and the date and nature of closure shall be inputted into the complaint tracking system. The EEO office shall retain the complaint files for 5 years from the final action or final decision on the complaint or until all administrative or judicial appeals are exhausted, whichever is longer.

E. The Equal Employment Opportunity Complaints Automated Tracking System. Immediately upon receipt of a pre-complaint the EEO Assistant shall establish the automated complaint record with an assigned OIG tracking number. The OIG tracking number shall be recorded and used on all documents throughout the EEO complaint process as the unique identifier of the record in the complaint file. The EEO complaints manager is responsible for ensuring that all OIG complaints are entered in the tracking system and that the system is updated as actions occur. The EEO complaints manager shall ensure the validity of information entered into the automated system. Upon closure of a complaint via the execution of a settlement agreement, the EEO complaints manager shall ensure monetary and non-monetary terms of the agreement are entered in the EEO automated system.

F. Assembly of the Equal Employment Opportunity Complaint File. The Director, EEO shall assemble a complaint file that will include all documents pertinent to the complaint. All documents in the complaint file shall be made available to the complainant and representative. The Director, EEO shall maintain a separate “working” file containing documents that should not be included in the complaint file, such as, written communication from agency representatives concerning acceptance, dismissal, or settlement of complaints, memoranda of record obtained by the EEO counselor, and so forth.

1. The complaint file shall be assembled in a suitable heavy-duty cover. The documents shall be punched with a standard three-hole punch and bound on the left side.

2. The complaint file shall have a title page which contains complainant’s name and address; name of the Secretary of Defense, OIG docket number, EEOC docket number, and name, address, phone number, facsimile number and electronic mail address of the servicing EEO office, and agency representative, (Appendix Q).

3. The complaint file shall be organized by stages or phases of the complaint process. Stages are as follows:

- a. Pre-complaint
- b. Formal
- c. Investigation (contains sub-tab)
- d. Hearing (contains sub-tab)
- e. FAA/FAD
- f. Appeal
- g. Remand
- h. Compliance
- i. Civil Action
- j. Settlement (contains sub-tab)
- k. Administration

4. The sections of the complaint file shall be tabbed with visible tabs to correspond with the phases. Tab dividers should be labeled with the stage only, that is “Pre-complaint,” “Formal,” “Administration,” and so forth, and arranged in reverse chronological order with the “Pre-complaint” tab at the bottom building upward through the appropriate tab signifying the final stage of processing. The “Administration” tab shall always be the top tab.

5. The file shall contain legible copies of the following documents with the appropriate evidence of their receipt, as applicable, in the order listed below:

a. Transmittal notice to the office of IRD or EEOC as appropriate, indicating the number of complaint files forwarded; the reason files were forwarded, i.e., request for an investigation or a hearing.

b. Title page.

c. The following information should be used as guidance to establish the file:

(1) Pre-complaint Tab. Pre-complaint documents include all documents associated with the Pre-complaint stage in reverse chronological order with the top document being the Notice of Right to File a Formal Complaint of Discrimination *after Completion of Traditional Counseling* memorandum, (Appendix J). Examples of documents under the “Pre-complaint” tab include but are not limited to:

- (a) Information Inquiry Summary
- (b) Aggrieved Person’s Rights and Responsibilities Notice
- (c) Offer to Participate in ADR
- (d) Agreement/Declination to Participate in ADR
- (e) Witness notices
- (f) Extension of Counseling Agreement
- (g) *OIG EEO Counselor’s Report*
- (h) Notice of Right to File a Formal Complaint of Discrimination

(2) Formal Tab. Include documents generated from the time a formal complaint is filed through acceptance or dismissal of the formal complaint in reverse chronological order. Requests for additional information and amendments to a formal complaint, including the acknowledgment, shall be included in the “Formal” tab as they occur in the complaint process. Examples of documents under this tab include but are not limited to:

- (a) IG Form 1020.1-1, *Formal Complaint of Discrimination*
- (b) Acknowledgement of receipt of formal complaint
- (c) Request for clarification/additional information
- (d) Offer to participate in ADR
- (e) Notice of dismissal
- (f) Notice of acceptance or partial acceptance
- (g) Amendments to formal complaints
- (h) Acknowledgement of amendments

(3) Investigation Tab. Include all documents pertaining to the investigative stage from the request for assignment of an investigator to the notice provided to complainant and representative after receipt of the investigative file in reverse chronological order. Examples of documents filed under the “Investigation” tab are:

- (a) Request for assignment of IRD investigator
- (b) Witnesses in pending investigation
- (c) Notices to complainant and OIG representative
- (d) IRD request for documents
- (e) Transmittal of amendments to IRD

(4) ROI and Notice of Post Investigative Option (PIO) Sub-tab. The ROI and PIO shall be a sub-tab of the “Investigation” tab and shall be labeled “ROI/PIO.” These documents shall be tabbed separately because of the size of reports of investigation and for easier access. Examples of documents filed under this sub-tab include:

- (a) ROI
- (b) Supplemental investigations
- (c) Notice of PIO

(5) Hearing Tab. File documents pertaining to the hearing stage from complainant’s request to an AJ decision in reverse chronological order. Examples of the “Hearing” tab documents include but are not limited to:

- (a) Complainant’s request for hearing
- (b) Transmittal memorandum forwarding complaint file to EEOC
- (c) Acceptance of Offer of Resolution
- (d) Amendments forwarded to AJ
- (e) Discovery documents
- (f) Motions filed by agency/complainant

(6) Hearing Transcript. The hearing transcript shall be filed as a Sub-tab of the “Hearing” tab. This tab shall be labeled “Hearing Transcript” and shall include the transcript and all associated exhibits.

(7) FAA or FAD Tab. Include all documents pertaining to the issuance of a “FAA” after an AJ decision, or “FAD” without an AJ decision, in reverse chronological order. Examples of documents under the “FAA” or “FAD” tab include but are not limited to:

- (a) Complainant’s request for a FAD
- (b) FAD on non-mixed or mixed complaint
- (c) FAA on AJ decision
- (d) FAD on compensatory damages
- (e) FAD on attorney fees
- (f) FAD on noncompliance with NSA

(8) Appeal Tab. Documents related to the appeal stage shall be filed in reverse chronological order and may include but not be limited to:

- (a) Notification from OFO/Appellant of Appeal
- (b) Briefs supporting or opposing appeal
- (c) Transmittal letters and correspondence to or from OFO
- (d) OFO Decision
- (e) Notification from OFO/complainant of Request for Reconsideration
- (f) Agency Request for Reconsideration
- (g) Briefs supporting/opposing Request for Reconsideration
- (h) OFO decision on reconsideration

- (i) Notification of appeal to MSPB
- (j) Appellate decision on mixed case complaints

(9) Remand Tab. Documents pertaining to an OFO remand of a complaint for further processing or OFO's decision to reverse the OIG's final decision should be included under the "Remand" tab. Documents under the "Remand" tab include, but are not limited to:

- (a) The OFO order to remand the complaint or reverse the OIG's decision
- (b) Notification from OFO/complainant of Request for Reconsideration
- (c) Agency Request for Reconsideration
- (d) Briefs supporting/opposing Request for Reconsideration
- (e) OFO decision on reconsideration

(10) Compliance Tab. Include documents pertaining to compliance with an OFO or OIG order. Documents under the "Compliance" tab include but are not limited to:

- (a) Letter to complainant acknowledging receipt of remand order
- (b) Copy of posting order
- (c) Copies of checks
- (d) DFAS vouchers
- (e) Personnel actions (SF 50, *Notification of Personnel Action*/SF 52

Request for Personnel Action)

(11) Civil Action Tab. Documents pertaining to the filing of a civil action should be included under the "Civil Action" tab. Examples of documents under the "Civil Action" tab include but are not limited to:

- (a) Civil action (actual court filing)
- (b) Notification memorandum from litigation division
- (c) Notification from activity of closure of civil action

(12) Settlement Tab. "Settlement" should be placed on top of the stage in the process in which settlement occurs. For example, if settlement occurs during the investigative stage, the "Settlement" tab should be placed on top of "Investigation" tab. This tab should contain the NSA and all documentation proving compliance with the terms of the agreement. Examples of documents under the "Settlement" tab include but are not limited to:

- (a) NSA
- (b) Personnel actions (SF 50-B/SF 52-B)
- (c) DFAS vouchers
- (d) Copies of checks

(13) Noncompliance Tab. Documents pertaining to noncompliance with an NSA shall be filed in a sub-tab of the "Settlement" tab labeled "Noncompliance." Examples of documents under the "Noncompliance" tab include but are not limited to:

- (a) Agency's response to allegations and all supporting documentation (do not include attorney work products)
- (b) Complainant's allegation of noncompliance

(14) Administration Tab. The "Administration" tab should always remain on the top of the complaint file. This tab should be limited to items such as:

- (a) Designation (or change) of representative
- (b) Designation of agency representative
- (c) Change of address for complainant
- (d) Withdrawal of formal complaint
- (e) Other miscellaneous items that pertain to administrative processing

d. Complaint files should be tabbed according to the sequence of processing. For example:

(1) When the Director, EEO dismisses a complaint, the appropriate tabs shall be "Pre-complaint," "Formal," and "Administration" with appropriate documentation under each tab.

(2) When a complaint has been investigated and the complainant requests a decision without a hearing, the appropriate tabs shall be "Pre-complaint," "Formal," "Investigation," "ROI/PIO," "FAA," and "Administration."

(3) When a complaint has been investigated and the complainant requests a hearing by an AJ, the complaint file shall be established as "Pre-complaint," "Formal," "Investigation," "ROI/PIO," "Hearing," "FAA," and "Administration" with appropriate documents under each tab.

(4) When a complaint has been dismissed in its entirety and appealed, the appropriate tabs shall be "Pre-complaint," "Formal," "Appeal," and "Administration."

(5) When a complaint has been settled during the investigation, the appropriate tabs shall be "Pre-complaint," "Formal," "Investigation," "Settlement," and "Administration."

(6) When a complaint has been dismissed in its entirety, appealed, and remanded for investigation, the appropriate tabs shall be "Pre-complaint," "Formal," "Appeal," "Remand," "Investigation," and "Administration."

**APPENDIX A
REFERENCES**

- a. 29 Code of Federal Regulations (CFR) Part 1614, *Federal Sector Equal Employment Opportunity*, November 9, 1999
- b. Title VII of the *Civil Rights Act of 1964*, as amended (Title VII, 42 U.S.C. §2000e-16)
- c. The *Age Discrimination in Employment Act* (ADEA) of 1967 (29 U.S.C. §621a)
- d. The *Equal Pay Act* (EPA) of 1963 (29 U.S.C. 206(d))
- e. The *Rehabilitation Act of 1973*, Sections 501 and 505 (29 U.S.C. §791 and 744(a))
- f. Title VII of the *Civil Rights Act* of 1991, Public Law 102-166, November 21, 1991
- g. Title II of the *Notification and Federal Employee Antidiscrimination and Retaliation (NO FEAR) Act of 2002*
- h. EEOC Management Directive 110, *Federal Sector Complaints Processing Manual*, November 9, 1999
- i. DoD Directive 1350.2, *Department of Defense Military Equal Opportunity (MEO) Program*, August 18, 1995
- j. EEOC EEO Management Directive 715, *Model Agency Title VII and Rehabilitation Act Programs*, October 1, 2003

**APPENDIX B
ACRONYMS**

ADEA	Age Discrimination in Employment Act of 1967
ADR	Alternative Dispute Resolution
AJ	Administrative Judge
CFR	Code of Federal Regulations
DOD	Department of Defense
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EPA	Equal Pay Act of 1963
FAA	Final Agency Action
FAD	Final Agency Decision
HCAS	Human Capital Advisory Services
IRD	Investigations and Resolutions Division
MD	Management Directive
MFR	Memorandum for Record
MSPB	Merit Systems Protection Board
NSA	Negotiated Settlement Agreement
NO FEAR	Notification and Federal Employee Antidiscrimination and Retaliation
OFO	Office of Federal Operations
OGC	Office of General Counsel
OIG	Office of Inspector General
PIO	Post Investigative Options
ROI	Report of Investigation

APPENDIX C DEFINITIONS

1. **Administrative Judge (AJ).** An official assigned by the EEOC to conduct hearings on formal complaints of discrimination and provide a recommended decision to the head of the agency.
2. **Aggrieved.** An employee or an applicant for employment who initiates an informal complaint of discrimination based on his or her race, color, religion, sex, national origin, age, physical/mental disability, and/or retaliation.
3. **Age Discrimination.** A claim of discrimination based on age by an individual who is at least 40 years old at the time of the alleged discriminatory act.
4. **Alternative Dispute Resolution (ADR).** A variety of techniques and methods used to resolve disputed issues, including but not limited to settlement negotiations, conciliation, facilitation, mediation, fact-finding, and mini-trials, or any combination thereof.
5. **Class.** A group of employees, former employees, or applicants for employment, who allege they have been or are being adversely affected by an OIG personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age, physical/mental disability, and/or retaliation.
6. **Complainant.** An OIG employee, former employee, or an applicant for OIG employment or certain contract employee who files a formal complaint of discrimination based on his or her race, color, religion, sex, national origin, age, physical/mental disability, and/or retaliation.
7. **Contract Worker.** All civilian employees outside of the OIG's core workforce, such as independent contractors and other individuals working in OIG facilities or on OIG projects without being on the OIG's payroll.
8. **Department of Defense, Civilian Personnel Management Service, Investigations and Resolutions Division (IRD).** The DoD organization that investigates formal complaints of discrimination filed against the OIG.
9. **Discrimination.** Any act or failure to act based in whole or in part on a person's race, color, religion, sex, national origin, age, physical/mental disability, and/or retaliation that adversely affects privileges, benefits, working conditions; results in disparate treatment; or has a disparate impact on employees, former employees or applicants for employment.
10. **Equal Employment Opportunity Commission (EEOC).** The EEOC is the Federal agency with the overall responsibility for Federal sector EEO complaints. The EEOC issues policy and regulation on the discrimination complaint system, holds hearings, makes findings on

discrimination complaints and makes final decisions on discrimination complaints that have been appealed. It also reviews, upon request, decisions of negotiated grievances and MSPB appeals if they include issues of discrimination.

11. **EEO Counselor.** An employee of the OIG, working under the direction of the Director, EEO of the EEO program, who makes informal inquiries and seeks resolution of informal complaints.

12. **Fact Finding Conference.** One of several alternative means used to investigate an EEO complaint. This procedure involves taking testimony in the presence of a court reporter, the complainant and his or her representative, and the attorney representing the OIG.

13. **Final Agency Action (FAA).** The decision by the DoD IG, or designee, to either implement or appeal the decision rendered by an EEOC AJ.

14. **Final Agency Decision (FAD).** The decision rendered by the DoD IG, or designee, on a non-mixed complaint of discrimination where no hearing was elected by the complainant.

15. **Investigator.** An individual appointed or assigned who has the authority to gather documentary evidence relevant to the allegations, take sworn statements (affidavits), and make preliminary findings of whether discrimination has occurred.

16. **Principal Witness.** The management official named by the complainant, or otherwise identified, who proposed to take, took, or failed to take the action that forms the basis of the complaint.

17. **Reasonable Time.** Defined as whatever is appropriate under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant and material information associated with the complaint (during the administrative process), with the required specificity and detail, to the agency and EEOC officials. The actual number of hours to which the complainant and his or her representative are entitled will vary, depending on the nature and complexity of the complaint, and considering the mission of the agency and the agency's need to have its employees available to perform their normal duties on a regular basis.

18. **Remedial Action.** Measures taken to put the victim of prohibited discrimination where she or he would have been absent the discrimination. May include, but is not limited to, retroactive appointment or promotion, back-pay, attorney fees and/or costs, cancellation of an unwarranted personnel action, or expunction from the OIG records.

19. **Representative.** A person selected and designated in writing by a complainant, class agent, or principal witness. The representative may accompany, represent, and advise the complainant, agent, or witness at any stage of the complaint process.

20. **Retaliation.** An employer may not fire, demote, harass or otherwise “retaliate” against an individual for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.

APPENDIX D
OFFER TO MEDIATE MEMORANDUM
[Use Letterhead Stationery]

Equal Employment Opportunity Office

Date

MEMORANDUM FOR (Aggrieved – Include EEO Complaint Tracking Number)

SUBJECT: Offer to Mediate

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

Aggrieved's Signature/Date

APPENDIX E
AGREEMENT TO MEDIATE MEMORANDUM
[Use Letterhead Stationery]

Equal Employment Opportunity Office

Date

MEMORANDUM FOR (Aggrieved – Include EEO Complaint Tracking Number)

SUBJECT: Agreement to Mediate

1. This is an agreement between the parties signing below to participate in mediation. The aggrieved understands that by agreeing to participate in mediation, the pre-complaint counseling period is extended to 90 calendar days from the date of initiating the pre-complaint process.
2. The parties understand that participation in mediation is voluntary. The aggrieved may terminate mediation at any time. The management official may terminate mediation with the Inspector General’s approval. Mediation may also be terminated at the discretion of the mediator.
3. The parties understand that the mediator has no authority to make decisions on issues raised or act as an advocate or attorney for either party. Both parties have the right to representation during the Equal Employment Opportunity process; however, the mediator shall determine a representative's participation during mediation. The aggrieved is encouraged to consult with his or her designated representative for purposes of review prior to signing a settlement agreement.
4. The parties agree that statements made during, or documents prepared for, the mediation process shall remain confidential to the fullest extent as permitted by law; except for the limited purpose of implementation and enforcement of a resulting negotiated settlement agreement.
5. Each party agrees not to request the mediator's testimony or request or use as evidence any materials prepared for, or used during the mediation, with the exception of a signed settlement agreement. The mediator shall not voluntarily serve as a witness or testify on behalf of either party.
6. The aggrieved understands that he or she has the right to pursue unresolved issues through the formal discrimination complaint process. If applicable, the aggrieved shall be provided a *Notice of Right to File a Formal Complaint of Discrimination after Completion of Mediation Attempt* upon termination of the mediation or no later than the 90th day of the pre-complaint period, whichever comes first.

(Aggrieved Signature/Date)

(Management Official Signature /Date)

(Title)

APPENDIX F
AGGRIEVED PERSON'S RIGHTS AND RESPONSIBILITIES MEMORANDUM
 [Use Letterhead Stationery]

Equal Employment Opportunity Office

Date

MEMORANDUM FOR (Name of the Aggrieved Person)

SUBJECT: Aggrieved Person's Rights and Responsibilities

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

2. **Rights.** Reference your initial inquiry under 29 CFR Part 1614, *Federal Sector Equal Employment Opportunity*. In accordance with 29 CFR Section 1614.105(b), Pre-complaint Processing, you have the following rights:

a. You have the right to pursue a discrimination complaint and you may be accorded a reasonable amount of official time to prepare your complaint. (See IGDINST 1020.1, *Processing Complaints of Discrimination Policy and Procedures*, for a definition of a reasonable amount of official time). If your representative is an employee of this agency, he or she shall also have a reasonable amount of time to assist in the preparation of the complaint. Your first step under this procedure is to contact the EEO Office within 45 calendar days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 calendar days of the effective date of the action.

b. In accordance with 29 CFR Section 1614.301 and DoD 1400.25-M, *Department of Defense Civilian Personnel Manual (CPM)*, Subchapter 771, *Administrative Grievance System*, December 1996, if you wish to file a complaint or grievance on a matter of alleged employment discrimination, you must elect to raise the matter under either 29 CFR Section 1614.105(b), Pre-complaint Processing or the administrative grievance procedure, but not both. An election to proceed under this part is indication by filing a written complaint. An EEO official, such as the Director, EEO, specialist, or assistant, or an EEO counselor may offer you the opportunity to participate in the pre-complaint counseling process or, if determined appropriate, the alternative dispute resolution (ADR) method in lieu of traditional counseling. An individual contacting an EEO official or an EEO counselor at the pre-complaint stage is referred to as the "aggrieved."

(1) **ADR.** Mediation is the ADR process preferred by the OIG; however, other methods may be offered as determined by the activity. Mediation is a method by which an objective and impartial person (a trained mediator) facilitates communication between the

aggrieved and management to resolve concern(s) or disputes(s). If you are offered and choose to participate in mediation, the pre-complaint period shall be extended an additional 60 calendar days from the date you initiate the pre-complaint phase of the EEO complaint process to accomplish the mediation.

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

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

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

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

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

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

(d) Upon receipt of the *Notice of Right to File a Formal Complaint of Discrimination after Completion of Mediation Attempt* memorandum, you may file a formal complaint of discrimination within 15 calendar days of receipt. The EEO counselor shall advise you with whom to file your formal complaint and will explain the formal complaint procedures. Formal complaints of discrimination fall under two separate categories, non-mixed complaints and mixed complaints, and each are processed differently.

1 A non-mixed complaint is one in which actions identified as discriminatory are not appealable to the Merit Systems Protection Board (MSPB). Formal complaint procedures in non-mixed cases include an investigation by the Department of Defense, Civilian Personnel Management Service, Investigations and Resolutions Division (IRD), your

choice of requesting either a hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ) after which the Director, EEO or designee shall issue a final action or you may request a decision by the Director, EEO without a hearing by an EEOC AJ.

2 A mixed complaint of discrimination is a complaint that stems from an alleged discriminatory action that can be appealed to the MSPB (see paragraph c. below). In mixed complaint cases, you have the right to an investigation by the IRD, however, you do not have a right to a hearing by an EEOC AJ. The Director, EEO or designee shall issue a Final Agency Decision (FAD) upon completion of the investigation by the IRD and will provide you with appeal rights to the MSPB.

c. **Merit Systems Protection Board.** You may pursue a discrimination complaint under the MSPB appeal procedure without using the federal sector EEO complaint process. This procedure is available to you only if the alleged discriminatory action can be appealed to the MSPB. This type of matter is referred to as a mixed case. The case is “mixed” in that it contains an action that may be appealed to MSPB and also alleges the action was discriminatory. Examples of personnel actions that are appealable to the MSPB include, but are not limited to, removal or suspension for more than 14 days of a non-probationary, competitive service employee. If you are subject to a personnel action that is appealable to the MSPB, you will be notified in writing of your right to appeal to the MSPB. The time limit for appeal to the MSPB is 30 calendar days after the effective date of the personnel action that you believe to be discriminatory in nature. Under such an appeal, you are entitled to a hearing by the MSPB. In addition, you may petition the EEOC to review the final decision of the MSPB on the allegation(s) of discrimination.

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

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

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

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

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

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

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

- (1) The date prepared.
- (2) Statement of intent to file a civil action under Section 15(d) of the ADEA, as amended.
- (3) Your name, address, and telephone number.
- (4) Name, address, and telephone number(s) of your designated representative, if any.
- (5) Name and location of the Federal agency where the alleged discriminatory action occurred.
- (6) Statement of the nature of the alleged discriminatory action(s).
- (7) Date(s) the alleged discriminatory action occurred.
- (8) Your signature or the signature of your designated representative.

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

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

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 77960, Washington, D.C. 20013 (if sent by mail)
131 M Street, N.E., Washington, D.C. 20507 (if hand delivered)

5. **Option for Equal Pay Act.** If you are alleging sex-based wage discrimination under the *Equal Pay Act* (EPA), you have the right to go directly to the U.S. District Court even though such claims are also cognizable under Title VII. A civil action must be filed within 2 years of the date of the occurrence, or within 3 years of the date of the alleged violation if the violation is willful. Notwithstanding the two/three year limitations period applicable to the current action

under the EPA, in order to present an administrative EPA claim, the aggrieved must contact an EEO counselor within 45 calendar days of the date the aggrieved becomes aware of or reasonably suspects a violation of the EPA. The filing of an administrative complaint does not toll the time for filing a civil action. Attorney's fees and costs and compensatory damages are not recoverable in sex-based wage discrimination claims in the administrative process.

6. Additional Rights Under the EEO Process

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

b. You have the right to a representative of your choice throughout the complaint process including pre-complaint counseling. Your right to representation is extended to the ADR process. However, the ADR neutral shall decide the extent to which the representative actively participates in ADR. Nonetheless, you shall have sufficient time to discuss resolution and review any proposed terms with your representative prior to finalizing a settlement agreement. If your representative is an attorney, all documents will be officially served on your attorney with a copy to you.

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

- (1) The right to file a formal individual or class complaint within 15 calendar days of receipt of the notice,
- (2) The appropriate official with whom to file a formal complaint, and
- (3) Your duty to immediately inform the agency if you retain counsel or a representative.

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

e. If you file a formal complaint, you have a right to be notified in writing whether the Director, EEO shall accept or dismiss your complaint. If you do not receive written notice within 30 calendar days of filing a formal complaint, you should contact the EEO office. If your allegations are dismissed entirely or partially, you will be advised in writing of the basis and rationale for any dismissed allegations.

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

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

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

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

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

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

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

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

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

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

7. Responsibilities

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

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

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

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

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

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

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

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

g. You must also be aware that you have a legal obligation to mitigate damages, i.e. on back pay and out of pocket expenses, regardless of whether it is later determined that you were a victim of unlawful discrimination. A successful complainant claiming back pay shall be paid the amount that would have been earned had it not been for discrimination; less any amount actually

earned or could have been earned with due diligence, plus interest. Interest on back pay is not payable to Federal employees or applicants who prevail on employment discrimination claims brought under the ADEA or the EPA.

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

i. You are responsible for serving notice of appeal and a copy of the brief (if any) on the Director, EEO or designee of the OGC, should you elect to appeal an agency decision to the EEOC, Office of Federal Operations.

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

9. If you have any questions or concerns on this matter, you may contact the EEO Complaints Manager at (703) 604-9708.

Director
Equal Employment Opportunity Office

ACKNOWLEDGEMENT OF ISSUANCE:

Complaints Manager

Date

ACKNOWLEDGEMENT OF RECEIPT:

Aggrieved Signature

Date

APPENDIX G
IG FORM 1020.1-3, OFFICE OF INSPECTOR GENERAL INFORMATION INQUIRY

OFFICE OF INSPECTOR GENERAL INFORMATION INQUIRY SUMMARY		1. DATE OF INITIAL CONTACT (YYYYMMDD)
PRIVACY ACT STATEMENT (5 U.S.C. §552A)		
AUTHORITY:	Public Law 92-261	
PRINCIPAL PURPOSE:	Used for processing complaints of discrimination based on race, color, religion, sex, national origin, age, physical or mental disability, and/or retaliation by the Office of Inspector General employees, former employees, applicants for employment and some contract employees.	
ROUTINE USES:	Information will be used (a) as a data source for complaint information for production of summary descriptive statistics and analytical studies of complaints processing and resolution efforts (b) to respond to general requests for information under the Freedom of Information Act; (c) to respond to requests from legitimate outside individuals or agencies (White House, Congress, Equal Employment Opportunity Commission) regarding the status of an EEO complaint or appeal; or (d) to adjudicate complaint or appeal.	
DISCLOSURE:	Voluntary, however, failure to complete all appropriate portions of the form may lead to delay in processing and/or rejection of complaint on the basis of inadequate data on which to continue processing.	
2. NAME (last, first, middle initial)		
3. DUTY ORGANIZATION (Complete address including office symbol.)		
4. WORK TELEPHONE		5. HOME TELEPHONE
6. HOME ADDRESS		
7. EEO OFFICIAL CONTACTED MEMBER <input type="checkbox"/> EEO DIRECTOR OR STAFF <input type="checkbox"/> EEO COUNSELOR		8. TYPE OF CONTACT <input type="checkbox"/> TELEPHONIC <input type="checkbox"/> IN PERSON <input type="checkbox"/> EMAIL
9. MATTER(S) OF CONCERN IDENTIFIED (Use additional sheets, if required.)		
10. CONTACT SUMMARY <input type="checkbox"/> Provide general information regarding EEO complaint processing, emphasizing the 45 day calendar day prescribed time limitation for initiating the EEO complaint process and the right to representation during the EEO process, including the pre-complaint intake interview. <input type="checkbox"/> OTHER (explain)		
11. PRINTED NAME OF EEO OFFICIAL	12. SIGNATURE OF EEO OFFICIAL	13. DATE (YYYYMMDD)
14. PRINTED NAME OF INDIVIDUAL	15. SIGNATURE OF INDIVIDUAL (if available)	16. DATE (YYYYMMDD)

**APPENDIX H
IG FORM 1020.1-4, OFFICE OF INSPECTOR GENERAL EQUAL
EMPLOYMENT OPPORTUNITY COUNSELOR'S REPORT**

OFFICE OF INSPECTOR GENERAL EEO COUNSELOR'S REPORT		1. OIG COMPLAINT NUMBER	
PRIVACY ACT STATEMENT (5 U.S.C. §552A)			
AUTHORITY:	Public Law 92-261		
PRINCIPAL PURPOSE:	Used for processing complaints of discrimination based on race, color, religion, sex, national origin, age, physical or mental disability, and/or retaliation by the Office of Inspector General employees, former employees, applicants for employment and some contract employees.		
ROUTINE USES:	Information will be used (a) as a data source for complaint information for production of summary descriptive statistics and analytical studies of complaints processing and resolution efforts (b) to respond to general requests for information under the Freedom of Information Act; (c) to respond to requests from legitimate outside individuals or agencies (White House, Congress, Equal Employment Opportunity Commission) regarding the status of an EEO complaint or appeal; or (d) to adjudicate complaint or appeal.		
DISCLOSURE:	Voluntary, however, failure to complete all appropriate portions of the form May lead to delay in processing and/or rejection of complaint on the basis of inadequate data on which to continue processing.		
(SECTION I – PRE-COMPLAINT INTAKE INTERVIEW)			
2. NAME OF AGGRIEVED <i>(Print-Last, First, Middle Initial)</i>		3. SSN	4. JOB TITLE
5. PAY PLAN/SERIES/ GRADE	6. DUTY ORGANIZATION <i>(Complete address including office symbol.)</i>		
7. WORK TELEPHONE	8. HOME TELEPHONE	9. HOME ADDRESS	
10. DATE OF ALLEGED DISCRIMINATORY ACTION <i>(YYYYMMDD)</i>	11. 45TH CALENDAR DAY AFTER EVENT <i>(YYYYMMDD)</i>	12. REASON FOR DELAYED CONTACT BEYOND 45 DAYS, IF APPLICABLE	
13. DATE OF INITIAL CONTACT WITH EEO OFFICIAL <i>(YYYYMMDD)</i>	14. 30TH CALENDAR DAY AFTER INITIAL CONTACT WITH EEO OFFICIAL <i>(YYYYMMDD)</i>	15. 90TH CALENDAR DAY AFTER INITIAL CONTACT WITH EEO OFFICIAL <i>(YYYYMMDD)</i>	16. DATE COUNSELING EXTENSION GRANTED, IF APPLICABLE <i>(YYYYMMDD)</i>
17. DATE PRE-COMPLAINT INTAKE INTERVIEW CONDUCTED <i>(YYYYMMDD)</i>		18. PRE-COMPLAINT INTAKE INTERVIEW CONDUCTED <input type="checkbox"/> Telephonically <input type="checkbox"/> In-person <input type="checkbox"/> Other <i>(facsimile/e-mail)</i>	
SECTION II - ORGANIZATION WHERE ALLEGED DISCRIMINATION OCCURRED <i>(Complete address including office symbol.)</i>			
SECTION III - RESPONDING MANAGEMENT OFFICIAL(S) INFORMATION <i>(Include name, complete work address and phone number if known.)</i>			

APPENDIX H (cont'd)

SECTION IV - BASIS OF COMPLAINT *(Identify specific race, color, religion, national origin, disability, age, sex, or retaliation if alleged.)*

RACE _____ COLOR _____ SEX _____ MALE _____ FEMALE _____

AGE _____ DATE OF BIRTH _____ NATIONAL ORIGIN _____

RELIGION _____ DISABILITY _____ MENTAL _____ PHYSICAL _____

RETALIATION _____
(Date(s) of protected EEO activity)

SECTION V - MATTER(S) GIVING RISE TO COMPLAINT *(Specify who, what, where, and when). (Use additional sheet of paper if necessary).*

(Empty space for Section V content)

SECTION VI - RELIEF SOUGHT

(Empty space for Section VI content)

APPENDIX H (cont'd)

SECTION VII - RIGHTS AND RESPONSIBILITIES

THE AGGRIEVED WAS PROVIDED WITH THE AGGRIEVED PERSON'S RIGHTS AND RESPONSIBILITIES NOTICE AND WAS SPECIFICALLY ADVISED OF THE FOLLOWING:

- The basis(es) for filing pre-complaint, formal complaint, and/or class complaint, and of right to file a formal complaint of discrimination.
- The pre-complaint, formal and/or class complaint process.
- The 45-day calendar requirement from effective date of personnel action or of the date of the matter alleged to be discriminatory.
- The role of the EEO counselor, including that the EEO counselor is not an advocate for either the aggrieved person or the agency and acts strictly as a neutral.
- The activity's Alternate Dispute Resolution (ADR) Program and right to elect either ADR (if offered) or traditional EEO counseling.
- The right to remain anonymous during the pre-complaint process.
- The right to representation throughout the complaint process.
- Responsibility of the aggrieved to notify the EEO office in writing of any change in address and/or phone number.
- Responsibility of the aggrieved to notify the EEO office in writing of non-attorney or attorney representation, including address and phone number.
- The possible election requirement between a negotiated grievance procedure, MSPB procedure and the EEO complaint process.
- The election options in age and wage-based discrimination complaints.

SECTION VIII - ELECTION OF REPRESENTATION

- ATTORNEY NON-ATTORNEY NOT REPRESENTED

NAME OF REPRESENTATIVE _____ ADDRESS _____

TELEPHONE NUMBER _____ FAX _____ E-MAIL _____

SECTION IX - ALTERNATIVE DISPUTE RESOLUTION (ADR)

- Matter determined not appropriate for ADR _____
(Aggrieved must sign and date)
 - Matter determined appropriate for ADR _____
(EEO Officer must initial and date)
 - Wishes to participate in ADR, If offered _____
(EEO Officer must initial and date)
- Date of written offer of ADR _____
- Date of Agreement to Participate in ADR _____
- Name of assigned ADR facilitator/mediator _____
- Date ADR facilitator/mediator assigned _____

Result of ADR:

- ADR was successful. Negotiated Settlement Agreement, signed on _____ (YYYYMMDD), is attached.
- ADR was not successful. The aggrieved was issued a Notice of Right to File a Formal Complaint of Discrimination on _____ (YYYYMMDD) and notified of requirement to file a formal complaint within **15 calendar days** after receipt of Notice of Right to File. The aggrieved was provided an IG Form 1020.1-1, *Formal Complaint of Discrimination*.

SECTION X - TRADITIONAL EEO COUNSELING (EEO official to complete only those which apply.)

- Election of traditional counseling.
Name of assigned EEO counselor _____
Date EEO counselor assigned _____
- Election to remain anonymous.
- Election to waive right to remain anonymous.
- Declined to pursue matter under Title VII.
- Assigned by: _____ Date _____

APPENDIX H (cont'd)

SECTION XI - WITNESS INQUIRY

a. Witness Information *(List all witness data here. Number sequentially and include name, title, organization, phone number, and relevant basis(es) information.)*

--

b. Witness Statements

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APPENDIX H (cont'd)

SECTION XI - WITNESS INQUIRY *(Cont'd)*

b. Witness Statements (Cont'd)

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APPENDIX H (cont'd)

SECTION XII – DOCUMENTS REVIEWED/REVEALED	
a. Documents Reviewed (<i>List</i>)	
b. Reviewed Documents Revealed	
SECTION XIII- OUTCOME OF PRE-COMPLAINT INQUIRY	
<input type="checkbox"/> Resolution was not accomplished, therefore, I conducted the final interview with aggrieved on _____ (YYYYMMDD) at which time I informed the aggrieved of the full scope of my inquiry and the reason(s) articulated by management for action(s) taken. I provided the aggrieved with a <i>Notice of Right to File a Formal Complaint of Discrimination</i> and the IG Form 1020.1-1, <i>Formal Complaint of Discrimination</i> . The aggrieved is aware of the requirement to file a formal complaint within 15 calendar days of the final interview if not satisfied with the results of my inquiry.	
<input type="checkbox"/> Resolution was accomplished. Negotiated settlement agreement, signed on _____ (YYYYMMDD), is attached.	
PRINTED NAME OF EEO COUNSELOR	SIGNATURE OF EEO COUNSELOR
Attachments: 1. Extension of counseling (<i>if applicable</i>) 2. Copies of reviewed documents	DATE SUBMITTED TO EEO DIRECTOR (YYYYMMDD)

APPENDIX I
AGREEMENT TO EXTEND COUNSELING MEMORANDUM
[Use Letterhead Stationery]

Equal Employment Opportunity Office

Date

MEMORANDUM FOR (Aggrieved – Include EEO Complaint Tracking Number)

SUBJECT: Agreement to Extend Counseling

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

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

(Aggrieved Signature/Date)

(Complaints Manager Signature/Date)

(Aggrieved's Representative (if applicable)/Date)

APPENDIX J
NOTICE OF RIGHT TO FILE A FORMAL COMPLAINT OF DISCRIMINATION
AFTER COMPLETION OF TRADITIONAL COUNSELING MEMORANDUM
 [Use Letterhead Stationery]

Equal Employment Opportunity Office

Date

MEMORANDUM FOR:

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

This serves as notice that on (insert date), the final counseling interview was held in connection with the claim(s) you presented during the pre-complaint intake interview. Your initial contact with an EEO official was on (insert date), and the EEO counselor's initial interview with you was on (insert date). You alleged that you were discriminated against on (date of alleged discrimination) because of your (basis/bases) when (frame the claim(s) presented in the pre-complaint intake). This is to inform you that because the matter brought to my attention has not been resolved to your satisfaction, you are now entitled to file a formal complaint of discrimination based on race, color, religion, sex, national origin, physical or mental disability, age and/or retaliation.

If you file a formal complaint, it must be in writing, signed, and filed, in person or by mail within 15 calendar days after receipt of this notice, with any of the below officials authorized to receive formal complaints. You or your attorney, if you retain one, must file the complaint in person or by mail with any of the following officials listed below.

Director, Equal Employment Opportunity
 Department of Defense
 Office of Inspector General
 400 Army Navy Drive
 Arlington, Virginia 22202-4704

The Inspector General
 Department of Defense
 Office of Inspector General
 400 Army Navy Drive
 Arlington, Virginia 22202-4704

If you file your complaint with any agency official other than the Director, Equal Employment Opportunity (EEO) it will be sent to the Director, EEO for processing. Therefore, if you choose to file a complaint with an agency official other than the Director, EEO be sure to provide a copy of your complaint form to the Director, EEO to ensure prompt processing of your complaint.

The complaint must be specific regarding the allegations you presented to the EEO Office. It must also state whether you have filed a grievance under the administrative grievance procedure or an appeal to the Merit Systems Protection Board on the same matter.

Attached is IG Form 1020.1-1, *Formal Complaint of Discrimination*, to be used if you wish to file a formal complaint. If you retain an attorney or any other person as a representative, you must notify the Director, Equal Employment Opportunity, 400 Army Navy Drive, Arlington, Virginia, 22202-4704, in writing of the name, address, and telephone number of your attorney or representative. You are advised that unless you state otherwise in writing, after receipt of written notice of the name, address, and telephone number of your representative, service of all documents shall be with the representative, with a copy furnished to you. If your representative is an attorney, service of all official correspondence shall be made on the attorney with a copy furnished to you, however, time frames for the receipt of correspondence shall be computed from the date of receipt by the attorney.

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

If you file a complaint, you should name the Secretary of Defense as the agency head.

Sincerely,

EEO Complaints Manager

ACKNOWLEDGEMENT OF RECEIPT:

Aggrieved

Date

APPENDIX K
IG FORM 1020.1-1, FORMAL COMPLAINT OF DISCRIMINATION

DEPARTMENT OF DEFENSE OFFICE OF INSPECTOR GENERAL FORMAL COMPLAINT OF DISCRIMINATION		
<i>(Please read the Privacy Act Statement on back before completing the form.)</i>		
1. COMPLAINANT'S FULL NAME, TITLE, GRADE	HOME ADDRESS <i>(Rte. Number or Post Office Box Number)</i>	
CITY, STATE, ZIP CODE	OFFICE TELEPHONE NO. <i>(Include Area Code)</i>	HOME TELEPHONE NO. <i>(Include Area Code)</i>
2. REPRESENTATIVE'S NAME <i>(If requested)</i>	REPRESENTATIVE'S STREET ADDRESS	
CITY, STATE, ZIP CODE	REPRESENTATIVE'S TELEPHONE NO.	REPRESENTATIVE'S FAX NO.
3. NAME AND TITLE OF PERSON(S) YOU BELIEVE DISCRIMINATED AGAINST YOU <i>(If you know)</i>	4. ARE YOU CURRENTLY WORKING FOR THE DoD OIG? <input type="checkbox"/> YES <i>(Answer A, B, C, and D below)</i> <input type="checkbox"/> NO <i>(Continue with Question 5)</i>	
a. STREET ADDRESS OF OFFICE	a. NAME OF DIRECTORATE WHERE YOU WORK	
b. CITY, STATE, ZIP CODE	b. STREET ADDRESS OF AGENCY	
b. CITY, STATE, ZIP CODE	c. CITY, STATE, ZIP CODE	
b. CITY, STATE, ZIP CODE	d. YOUR TITLE AND GRADE	
5. DATE ON WHICH MOST RECENT ALLEGED DISCRIMINATION TOOK PLACE: MONTH DAY YEAR _____		
6. CHECK WHY YOU BELIEVE YOU WERE DISCRIMINATED AGAINST:		
<input type="checkbox"/> RACE <i>(If so, State your Race)</i> _____	<input type="checkbox"/> NATIONAL ORIGIN <i>(if so, State your Nat'l Origin)</i> _____	
<input type="checkbox"/> COLOR <i>(If so, State your Color)</i> _____	<input type="checkbox"/> AGE <i>(If so, State your Age)</i> _____	
<input type="checkbox"/> RELIGION <i>(If so, State your Religion)</i> _____	<input type="checkbox"/> DISABILITY <i>(If so, State the Nature of your Disability)</i> _____	
<input type="checkbox"/> SEX <i>(If so, State your Sex)</i> _____	<input type="checkbox"/> RETALIATION <i>(Explain connection with the EEO Process)</i> _____	
7. EXPLAIN HOW YOU WERE DISCRIMINATED AGAINST (TREATED DIFFERENT FROM OTHER EMPLOYEES OR APPLICANTS) BECAUSE OF YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE OR DISABILITY, OR BECAUSE OF RETALIATION. WHAT ACTION WAS TAKEN AGAINST YOU THAT YOU BELIEVE TO BE DISCRIMINATORY? WHAT HARM, IF ANY, WERE YOU SUBJECTED TO IN YOUR WORK SITUATION AS A RESULT OF THAT ACTION? <i>(Attach extra sheet, if needed)</i>		

APPENDIX K (cont'd)

PRIVACY ACT STATEMENT	
AUTHORITY:	Title VII, United States Code.
PRINCIPAL PURPOSE(S):	To establish the case records and to assist in the processing of the complaint.
ROUTINE USE(S):	Used when needed by EEO officials, hearing examiners, investigators and arbitrators, or by representatives of the Equal Employment Opportunity Commission, and the courts concerning the complaint and appeal.
DISCLOSURE:	Disclosure is voluntary. If the individual does not furnish the information requested, there will be no adverse consequences. However, failure to furnish the information requested on the form may delay or impair processing of the complaint.
EMPLOYEE/APPLICANT RIGHTS IN THE FEDERAL DISCRIMINATION COMPLAINT PROCESS:	
<p>1. This form should be used only if you, as an applicant for Federal Employment or as a Federal Employee, think you have been discriminated against because of race, color, religion, sex, national origin, age, physical/mental disability and/or retaliation by the Department of Defense, Office of Inspector General, and you presented the matter for informal resolution to an Equal Employment Opportunity (EEO) Counselor within 45 days of the date that you knew or reasonably should have known of the discriminatory event or personnel action.</p> <p>2. Your complaint must be filed within 15 calendar days of the date of receipt of your Notice of Right to File a Formal Complaint Memorandum from the EEO counselor.</p> <p>3. If you need help in the preparation of your complaint, you should contact a member of the EEO Staff. You may have a representative of your own choosing at all stages of the processing of your complaint.</p> <p>4. Your complaint must be in writing, must be specific, and must be limited to only those matters discussed with the EEO counselor.</p> <p>5. Your complaint must be filed in person or by mail with the Director, EEO or the Inspector General, who are located at 400 Army Navy Drive, Arlington, VA 22202.</p> <p>6. A complaint is deemed filed on the date it is postmarked or on the date it is received by the EEO office.</p> <p>7. If you retain counsel or a representative, it is your duty to ensure that the Director, EEO is immediately informed in writing of counsel's/representative's name, address and telephone number. It is also your responsibility to ensure that the Director, EEO is kept informed of your correct address and telephone number.</p> <p>8. If you file a complaint alleging a violation of the Age Discrimination in Employment Act of 1967, as amended; you may file a civil action if you have not received a Final Agency Action from the DoD OIG within 180 days, however, acceptance by the court varies on the law of each Federal court of appeals; or</p> <p>9. If you elect to bypass the administrative process and file a civil action directly in the U.S. District Court, (complaints based on age), you must, within 180 calendar days of the date the alleged discrimination occurred, file a written notice of intent to file a civil action with the EEOC, addressed to: Office of Federal Operations, P.O. Box 77960, Washington, DC 20013; or</p> <p>10. If you file a complaint alleging that you were discriminated against because of age, race, color, religion, sex, national origin, physical/mental disability and/or retaliation, you may file a civil action in a U.S. District Court after 180 calendar days from the date you initially filed a formal EEO complaint if there has been no agency decision on the complaint.</p> <p>11. You are further notified that if you file a civil action, you must name the Secretary of Defense as the defendant. Failure to name the head of the Department may result in the loss of any judicial redress to which you may be entitled.</p>	
<p>8. (A) I HAVE DISCUSSED MY COMPLAINT WITH AN EEO COUNSELOR:</p> <p style="text-align: center;"> <input type="checkbox"/> YES <input type="checkbox"/> NO </p>	<p>8. (B) NAME OF COUNSELOR</p>
<p>9. HAVE YOU RAISED THIS ISSUE IN ANOTHER FORUM ? <i>(Administrative grievance, with the MSPB, etc.)</i></p> <p style="text-align: center;"> <input type="checkbox"/> YES <input type="checkbox"/> NO </p> <p style="text-align: center;">IF YES, GIVE DATE FILED</p>	
<p>10. STATE RELIEF YOU ARE SEEKING.</p>	
<p>11. COMPLAINANT'S SIGNATURE</p>	<p>12. DATE OF COMPLAINT</p>
<p>13. EEO OFFICIAL'S SIGNATURE</p>	<p>14. DATE RECEIVED BY EEO</p>

APPENDIX L
NOTICE OF RIGHT TO FILE A FORMAL COMPLAINT OF DISCRIMINATION
AFTER COMPLETION OF MEDIATION ATTEMPT MEMORANDUM

[Use Letterhead Stationery]

Equal Employment Opportunity Office

Date

MEMORANDUM FOR:

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

This serves as notice that on (date), mediation was conducted on the claim(s) raised in your pre-complaint, which could not be fully resolved. You initially contacted an Equal Employment Opportunity (EEO) official on (date) to initiate the pre-complaint process and, by agreeing to participate in mediation, the pre-complaint processing period was extended to 90 calendar days. As recorded on the pre-complaint intake, you alleged that you were discriminated against on (date of alleged discrimination) because of your (basis/bases) when (frame the claim(s) presented in the pre-complaint intake). Because the matter was not resolved to your satisfaction, you are now entitled to file a formal complaint of discrimination based on race, color, religion, sex, national origin, physical or mental disability, age and/or reprisal.

If you file a complaint, it must be in writing, signed, and filed, in person or by mail within **15 calendar days** after receipt of this notice, with any of the below officials authorized to receive formal complaints. Your complaint must be filed in person by you or your attorney, if you retain one or by mail with any of the following officials listed below.

Director, Equal Employment Opportunity
Department of Defense
Office of Inspector General
400 Army Navy Drive
Arlington, Virginia 22202-4704

The Inspector General
Department of Defense
Office of Inspector General
400 Army Navy Drive
Arlington, Virginia 22202-4704

If you file your complaint with any agency official other than the Director, Equal Employment Opportunity (EEO), it will be sent to the Director, EEO for processing. Therefore,

if you choose to file a complaint with an agency official other than the Director, EEO, be sure to provide a copy of your complaint form to the Director, EEO to ensure prompt processing of your complaint.

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

Attached is IG Form 1020.1-1, *Formal Complaint of Discrimination*, to be used if you wish to file a formal complaint. If you retain an attorney or any other person as a representative, you must notify the Director, Equal Employment Opportunity, 400 Army Navy Drive, Arlington, Virginia, 22202-4704, in writing of the name, address, and telephone number of your attorney or representative. You are advised that unless you state otherwise in writing, after receipt of written notice of the name, address, and telephone number of your representative, service of all documents shall be with the representative, with a copy furnished to you. If your representative is an attorney, service of all official correspondence shall be made on the attorney with a copy furnished to you, however, time frames for the receipt of correspondence shall be computed from the date of receipt by the attorney.

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

If you file a complaint, you should name the Secretary of Defense as the agency head.

Sincerely,

EEO Complaints Manager

APPENDIX M
JOINT EMPLOYER WORKING RELATIONSHIP QUESTIONNAIRE

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

**APPENDIX N
NOTICE OF APPEAL/PETITION TO THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF FEDERAL OPERATIONS
P.O. Box 77960
Washington, D.C. 20013

Complainant Information: (Please Print or Type)

Complainant's name (Last, First, M.I.):	
Home/mailling address:	
City, State, ZIP Code:	
Daytime Telephone # (with area code):	
E-mail address (if any):	

Attorney/Representative Information (if any):

Attorney Name:	
Non-Attorney Representative Name:	
Address:	
City, State, ZIP Code:	
Telephone number (if applicable):	
E-mail address (if any):	

General Information:

Name of the agency being charged with discrimination:	
Identify the Agency's complaint number:	
Location of the duty station or local facility in which the complaint arose:	
Has a final action been taken by the agency, an Arbitrator, FLRA, or MSPB on this complaint?	<input type="checkbox"/> Yes; Date Received _____ (Remember to attach a copy) <input type="checkbox"/> No <input type="checkbox"/> This appeal alleges a breach of settlement agreement
Has a complaint been filed on this same matter with the EEOC, <u>another</u> agency, or through any <u>other</u> administrative or collective bargaining procedures?	<input type="checkbox"/> No <input type="checkbox"/> Yes (Indicate the agency or procedure, complaint/docket number, and attach a copy, if appropriate)
Has a civil action (lawsuit) been filed in connection with this complaint?	<input type="checkbox"/> No <input type="checkbox"/> Yes (Attach a copy of the civil action filed)

NOTICE: Please attach a copy of the final decision or order from which you are appealing. If a hearing was requested, please attach a copy of the agency's final order and a copy of the EEOC AJ's decision. Any comments or brief in support of this appeal **MUST** be filed with the EEOC **and** with the agency within 30 days of the date this appeal is filed. The date the appeal is filed is the date on which it is postmarked, hand delivered, or faxed to the EEOC at the address above.

Signature of complainant or complainant's representative:	
Date:	

EEOC Form 573 REV 1/01

PRIVACY ACT STATEMENT

(This form is covered by the Privacy Act of 1974. Public Law 93-597. Authority for requesting the personal data and the use thereof are given below.)

1. **FORM NUMBER/TITLE/DATE:** EEOC Form 573, Notice of Appeal/Petition, January 2001
2. **AUTHORITY:** 42 U.S.C. § 2000e-16
3. **PRINCIPAL PURPOSE:** The purpose of this questionnaire is to solicit information to enable the Commission to properly and efficiently adjudicate appeals filed by Federal employees, former Federal employees, and applicants for Federal employment.
4. **ROUTINE USES:** Information provided on this form will be used by Commission employees to determine: (a) the appropriate agency from which to request relevant files; (b) whether the appeal is timely; (c) whether the Commission has jurisdiction over the issue(s) raised in the appeal, and (d) generally, to assist the Commission in properly processing and deciding appeals. Decisions of the Commission are final administrative decisions, and, as such, are available to the public under the provisions of the Freedom of Information Act. Some information may also be used in depersonalized form as a data base for statistical purposes.
5. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION:** Since your appeal is a voluntary action, you are not required to provide any personal information in connection with it. However, failure to supply the Commission with the requested information could hinder timely processing of your case, or even result in the rejection or dismissal of your appeal.

Send your appeal to:

The Equal Employment Opportunity Commission
 Office of Federal Operations
 P.O. Box 77960
 Washington, D.C. 20013

APPENDIX O
NOTICE TO EQUAL EMPLOYMENT OPPORTUNITY COMPLAINANT
SEEKING COMPENSATORY DAMAGES MEMORANDUM

[Use Letterhead Stationery]

Equal Employment Opportunity Office

Date

MEMORANDUM FOR (Aggrieved/Complainant, include EEO Complaint Tracking Number)

SUBJECT: Notice to Equal Employment Opportunity Complainant Seeking
 Compensatory Damages

A. Introduction

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

B. Substantiating a Claim for Damages

1. Past and Future Pecuniary Compensatory Damages

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

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

2. Non-Pecuniary Compensatory Damages

a. Non-pecuniary compensatory damages are monetary compensation for your intangible injuries experienced as a result of an employer's unlawful discriminatory action.

Consistent with the guidance from the EEOC, you are advised as follows in regard to claiming and substantiating non-pecuniary damages:

b. You must submit objective evidence, such as your statement concerning your emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health and any other intangible losses that you believe you incurred as a result of the alleged discriminatory conduct.

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

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

C. Information You Should Know About Claims for Compensatory Damages

1. Whether you are claiming pecuniary, non-pecuniary damages or both, please note the following additional requirements:

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

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

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

2. Please provide the requested documentation to this office within 15 days of your receipt of this notice. If you are unable to comply with this deadline, please request an extension in writing.

Director
Equal Employment Opportunity Office

APPENDIX P
WITNESS PARTICIPATION IN EQUAL EMPLOYMENT OPPORTUNITY
COMPLAINT PROCESSING MEMORANDUM

[Use Letterhead Stationery]

Equal Employment Opportunity Office

Date: _____

MEMORANDUM FOR (Name of Witness)

SUBJECT: Witness Participation in Equal Employment Opportunity Complaint Processing

1. This is to inform you that a complaint of discrimination has been filed against the Office of Inspector General (OIG) wherein you have been identified as having knowledge concerning the matters alleged.
2. The purpose of the discrimination complaint procedure is to determine whether or not the alleged discrimination has occurred so that appropriate remedial action can be taken, if warranted. Investigations and hearings in discrimination complaint cases are essentially fact-finding processes. Complaints are filed against the agency not individuals. As a person identified or alleged to be responsible for taking, proposing to take, or failing to take the action that has given rise to a complaint of discrimination, your role in the complaint process is significant.
3. The burden of proof remains at all times with the complainant to prove discrimination by the preponderance of the evidence. However, if the complainant establishes an inference that the alleged discrimination did occur, the burden of production shifts to the agency to articulate legitimate nondiscriminatory reasons for its action. Because of your involvement in the action at issue, it is important that you be given a full and fair opportunity to articulate your reasons for the action at issue. Then, burden of production again shifts to the complainant to prove that the agency's articulated reasons are untrue or are a mask for prohibited discrimination.
4. The discrimination complaint procedure consists of an informal (pre-complaint) and a formal complaint process. During the pre-complaint process, an Equal Employment Opportunity (EEO) counselor is assigned to make an inquiry into a matter of concern brought by an individual. The individual presenting the matter(s) of concern is referred to as the "aggrieved" during the pre-complaint process. The EEO counselor cannot reveal the identity of the aggrieved unless authorized to do so by the aggrieved. The pre-complaint counseling stage is an informal process for resolving the matter(s) at issue. During the informal counseling stage, the EEO counselor shall solicit your input concerning the complaint.

5. You have the right to have a representative at the interview with the EEO counselor and at any other meeting necessary to process this complaint. You may be represented by a person of your choosing, provided that the choice of a representative does not involve a conflict of interest or conflict of position. You may not be represented by any member of the Office of General Counsel or anyone serving in an EEO or Personnel capacity. The EEO counselor shall inform you of the nature of any allegations that include you. Your participation in the counseling process should serve to assist in resolution. If the EEO counselor is unable to achieve resolution of the matter(s) of concern, the aggrieved shall be advised of his or her right to further pursue the matter by filing a formal complaint of discrimination.
6. If the aggrieved decides to file a formal complaint of discrimination and the complaint is accepted, it will be investigated by an investigator from the Department of Defense, Civilian Personnel Management Service, Investigations and Resolutions Division (IRD). The individual filing a formal complaint of discrimination is referred to as the “complainant” during the formal process.
7. During an investigation conducted by the IRD, the investigator shall provide you with a full and fair opportunity to state the facts, as you understand them. Before your testimony or the giving of an affidavit, the investigator will allow you to review all documents or portions thereof that name or implicate you in the complaint. Such documents will be sanitized of any identifying information of persons other than you or the complainant. You may contact the EEO office to receive the status of the investigation.
8. Upon completion of the IRD, the investigator shall provide a Report of Investigation (ROI). The complainant shall be provided a copy of the ROI and advised of the right to request either a hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ) or the issuance of a Final Agency Decision (FAD).
9. If, after investigation by the IRD, the complainant requests a hearing, the EEOC shall appoint an AJ to conduct the hearing and issue a decision on the complaint, including appropriate remedies and relief if discrimination is found. At this stage, your testimony may be solicited once again. In preparation for and during the EEOC hearing, you shall be afforded the same opportunity again to review sanitized documents and to testify for the record on any allegations that involve you. Again, you have the right to have a representative present during the EEOC hearing. Upon completion of the hearing, the EEOC AJ will then forward his or her decision to the OIG.
10. If discrimination is not found, you may receive a sanitized copy of the final agency decision. If discrimination is found, the head of the agency shall determine the culpability of those involved. If you are determined to be culpable and corrective or adverse action is proposed, you may review the entire file without deletions.

11. If you have any questions or concerns on this matter, you may contact the EEO Complaints Manager at (703) 604-9708.

Director
Equal Employment Opportunity Office

ACKNOWLEDGEMENT OF ISSUANCE:

EEO Complaints Manager

Date

ACKNOWLEDGEMENT OF RECEIPT:

Witness

Date

**APPENDIX Q
COMPLAINT FILE TITLE PAGE**

OIG Complaint Tracking Number
EEOC Docket Number (where appropriate)

1. Complainant (Name)
Address
City, State, Zip
Telephone Number
Email:

2. Complainant's Representative (Name):
Address
City, State, Zip
Telephone Number
Email:

3. Agency Representative (Name):
Department of Defense, Office of Inspector General
Office of General Counsel
400 Army Navy Drive
Arlington, VA 22202-4704
(703) 604-8350; 644-8350 (DSN) / (703) 604-8359 (Fax)
Email:

4. Director, EEO (Name):
Director, Equal Employment Opportunity
400 Army Navy Drive
Arlington, VA 22202-4704
(703) 604-9710; 664-9710 (DSN) / (703) 604-0044 (Fax)
Email:

5. EEO POC (Name):
EEO Complaints Manager
(703) 604-9708; 664-9708 (DSN) / (703) 604-0044 (Fax)
Email:

6. Credit Card Holder (Name):
Department of Defense, Office of Inspector General
Procurement Technician
400 Army Navy Drive
Arlington, VA 22202-4704
(703) 604-9794; 664-9794 (DSN) / (703) 604-8994 (Fax)
Email:

**APPENDIX R
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
REQUEST FOR A HEARING FORM**

EEOC Hearings Unit

_____ District/Field Office

Dear Sir/Madam:

I am requesting the appointment of an Equal Employment Opportunity Commission Administrative Judge pursuant to 29 CFR, Section 1614.108(g). I hereby certify that either more than 180 days have passed from the date I filed my complaint or I have received a notice from the agency that I have thirty (30) days to elect a hearing or a final agency decision.

My name: _____

Agency
name &
address: _____

Agency No.: _____

In accordance with 29 CFR Section 1614.108(g), I have sent a copy of this request for a hearing to the following person at the agency:

Name: _____

Address
(if different
from above) _____

Sincerely,

[Name of Appellant]

**APPENDIX S
EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESS CHART**

