



ADMINISTRATIVE INSTRUCTION

NUMBER 9

November 6, 2013

Incorporating Change 1, July 6, 2017

EEOD, WHS

SUBJECT: Processing Complaints of Discrimination

References: See Enclosure 1

1. PURPOSE. This administrative instruction (AI):

a. Reissues AI 9 (Reference (a)) in accordance with the authority in DoD Directive (DoDD) 5110.4 (Reference (b)) and DoD Instruction (DoDI) 5025.01 (Reference (c)).

b. Implements the provisions of References (d) through (o).

c. Provides procedures for processing complaints of discrimination in employment on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), age (40 or older), national origin, disability (physical or mental), genetic information, or retaliation for opposing discrimination or participating in the Equal Employment Opportunity (EEO) process.

2. APPLICABILITY. This AI applies to:

a. All current and former civilian employees within the organizational entities of OSD, the Defense Agencies, and the DoD Field Activities serviced by the Washington Headquarters Services (WHS) (referred to collectively in this AI as the “WHS-serviced Components”).

b. Applicants seeking civilian employment within the WHS-serviced Components.

3. POLICY. It is OSD policy to provide prompt, fair, and impartial consideration and disposition of complaints involving employment discrimination on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), age (40 and older), national origin, disability (physical or mental), genetic information, or retaliation for opposing discrimination or participating in the EEO process.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. RELEASIBILITY. **Cleared for public release**. This AI is available on the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. SUMMARY OF CHANGE 1. The changes to this issuance are administrative and update organizational titles and references for accuracy.

8. EFFECTIVE DATE. This AI is effective November 6, 2013.


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ENCLOSURE 1

REFERENCES

- (a) Administrative Instruction 9, "Processing Complaints of Discrimination," June 25, 2007 (hereby cancelled)
- (b) DoD Directive 5110.04, "Washington Headquarters Services (WHS)," March 27, 2013
- (c) DoD Instruction 5025.01, "DoD Issuances Program," August 1, 2016, as amended
- (d) DoD Directive 5105.53, "Director of Administration and Management (DA&M)," February 26, 2008
- (e) Title 29, Code of Federal Regulations
- (f) Equal Employment Opportunity Commission Management Directive 110, "Federal Sector Complaints Processing Manual," August 5, 2015
- (g) Administrative Instruction 106, "Alternative Dispute Resolution (ADR) Program" January 30, 2014, as amended
- (h) Public Law 107-174, "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," May 15, 2002
- (i) Part 1201.151 of Title 5, Code of Federal Regulations¹
- (j) Title 5, United States Code
- (k) DoD Directive 5505.06, "Investigations of Allegations Against Senior DoD Officials," June 6, 2013
- (l) DoD Instruction 1400.25, Volume 1614, "DoD Civilian Personnel Management System: Investigation of Equal Employment Opportunity (EEO) Complaints," November 5, 2015
- (m) Executive Order 11478, "Equal Employment Opportunity in the Federal Government," August 8, 1969, as amended

¹ Also known as the "Merit Systems Protection Board's Procedures for Cases Involving Allegations of Discrimination," current edition

ENCLOSURE 2

RESPONSIBILITIES

1. DIRECTOR OF ADMINISTRATION, OFFICE OF THE DEPUTY CHIEF MANAGEMENT OFFICER (DA ODCMO). Pursuant to DoDD 5105.53 (Reference (d)) and parts 1635 and 1614 of Title 29, Code of Federal Regulations (Reference (e)), the DA ODCMO serves as the Director, EEO, for WHS-serviced Components.

2. DIRECTOR, WHS. Under the authority, direction, and control of the DA ODCMO, the Director, WHS:
 - a. Oversees the management of discrimination complaints processing.
 - b. Advises the DA ODCMO on planning, reporting, and complaints processing procedures.
 - c. Annually evaluates the complaints processing program of WHS-serviced Components.
 - d. Reports needed changes, including remedial or disciplinary action, to the DA ODCMO.
 - e. Ensures that sufficient human capital and budgetary resources are allocated to operate and maintain a model EEO program .
 - f. Issues final agency actions, in the form of final decisions or final orders, pursuant to Reference (e).

3. DEPUTY DIRECTOR, WHS. Under the authority, direction, and control of the Director, WHS, the Deputy Director, WHS:
 - a. Provides administrative oversight for EEO and Diversity Programs within WHS-serviced Components.
 - b. Commits sufficient human resources, funding, and infrastructure to operate a successful EEO program.
 - c. Provides the Director, Office of Equal Employment Opportunity Programs (EEOP), with direct access to the Director, WHS, to ensure the greatest degree of independence in implementing this AI.

4. DIRECTOR, EEOP. Under the authority, direction, and control of the Deputy Director, WHS, the Director, EEOP:

- a. Provides counseling to employees or applicants initiating a pre-complaint allegation of discrimination.
- b. Identifies and monitors EEO counselors (contractors and civilians) to conduct counseling of pre-complaints.
- c. Ensures that all individuals serving as EEO counselors have received an initial 32 hours of training and 8 hours of annual training as stated in Chapter 2 of Equal Employment Opportunity Commission Management Directive 110 (Reference (f)).
- d. Provides alternative dispute resolution (ADR) services to complainants during the pre-complaint and formal stages of the complaints process through the WHS ADR Program (ADRP) as established by AI 106 (Reference (g)).
- e. Provides for receipt and processing of individual and class complaints as well as amendments to complaints made before a request for an Equal Employment Opportunity Commission (EEOC) hearing.
- f. Ensures that complaints are properly and thoroughly investigated and final agency actions (final decisions or final orders) are issued in a timely manner pursuant to section 1614.110 of Reference (e).
- g. Issues dismissals of complaints pursuant to section 1614.107 of Reference (e).
- h. Recommends final agency action(s) for issuance by the Director, WHS.
- i. Advises managers, supervisors, and employees on EEO procedures. The Director, EEOP, will ensure that management officials directly involved in a complaint are informed of the nature of the complaint, the procedures that should be followed, and their rights and responsibilities, including their right to consult counsel of the WHS-serviced Component.
- j. Annually reviews the complaints processing program and reports program needs to the Director, WHS.
- k. Ensures that all allegations of improper complaints processing are appropriately addressed pursuant to chapter 5 of Reference (f).
- l. Posts notices to all employees publicizing the business address and phone numbers of EEOD. The notice will include the time limits and procedural requirements for filing a complaint pursuant to sections 101 through 303 of Public Law 107-174 (Reference (h)).
- m. Makes this AI and other written materials available to employees and applicants informing them of EEOP's complaints, administrative, and remedial procedures.
- n. Ensures that all personnel are informed of their responsibility to cooperate fully and in a timely fashion with the counseling process, ADR efforts, and investigation procedures.

5. GENERAL COUNSEL, WHS AND PENTAGON FORCE PROTECTION AGENCY (PFPA). Under the authority, direction, and control of the Deputy General Counsel (Personnel and Health Policy) of the Department of Defense, the General Counsel, WHS and PFPA:

- a. Reviews final agency actions, offers of resolution, and settlements for WHS-serviced Components for legal sufficiency.
- b. Provides legal advice to management officials and witnesses in WHS-serviced Components.
- c. Represents WHS-serviced Components at investigations, fact-finding conferences, EEOC hearings, and Office of Federal Operations (OFO) appeals.
- d. Assists the Department of Justice in defending civil cases alleging discrimination.
- e. Negotiates settlement agreements in coordination with relevant management officials and, where appropriate, EEOP.

ENCLOSURE 3

PROCEDURES

1. GENERAL. All allegations of discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), age (40 or older), national origin, disability (physical or mental), genetic information, or retaliation for opposing discrimination or participating in the EEO process, including complaints consistent with Part 1614 of Reference (e), are processed in accordance with the provisions of this AI with exceptions:

a. Removals, Demotions, Suspensions for More Than 14 Calendar Days, and Other Actions That May be Appealed to the Merit Systems Protection Board (MSPB). Such complaints are mixed case complaints and will be processed consistent with section 1614.302 of Reference (e). Eligible complainants will be advised of their right to appeal the WHS-serviced Component's final decision to the MSPB pursuant to section 1201.151 of Title 5, Code of Federal Regulations (Reference (i)).

b. Age Discrimination Complaints. These complaints may be filed pursuant to this AI or as a civil action in a U.S. District Court after giving the EEOC no less than 30 calendar days' notice of the intent to file such an action. The notice must be filed in writing to the EEOC pursuant to section 1614.201 of Reference (e).

c. Employees Covered by a Collective Bargaining Agreement (CBA). Employees covered by CBAs that permit allegations of discrimination to be raised in a negotiated grievance procedure must elect whether to pursue their complaints pursuant to this AI or through the negotiated grievance procedure, pursuant to section 1614.301 of Reference (e).

d. Discrimination Complaints Filed by Two or More Complainants Consisting of Substantially Similar Allegations of Discrimination or Related to the Same Matter. Such complaints may be consolidated by the WHS-serviced Component with appropriate notification to the affected parties, pursuant to section 1614.606 of Reference (e).

e. Two or More Complaints of Discrimination Filed by the Same Complainant. These complaints will be consolidated by the WHS-serviced Component for joint processing after appropriate notification is made to the individual, pursuant to section 1614.606 of Reference (e).

f. Employees Filing a Class Complaint. Employees must be counseled pursuant to section 1614.204 of Reference (e).

g. Class Certification of a Complaint. Class certification may be requested at any reasonable point in the process when it becomes apparent that there are class implications to the claim. EEOC will forward the class complaint within 30 calendar days of receipt of the complaint to EEOC for processing pursuant to section 1614.204 of Reference (e). An EEOC administrative judge (AJ) will determine whether the complaint meets all of the requirements for class certification, including whether the complainant is qualified to serve as the agent for the class.

2. COOPERATION IN THE COMPLAINTS PROCESS

a. It is essential to the integrity of the administrative complaints process that complainants, complainants' representatives, and witnesses be free from restraint, interference, coercion, discrimination, or retaliation throughout all phases of the process. All employees and applicants involved in the complaint are required to cooperate fully with EEOP, counselors, and investigators, including providing prompt, accurate, and truthful responses to requests for testimony and related documents.

b. Specifically, managers and supervisors must:

(1) Address promptly any complaints of discrimination that may surface during their day-to-day operations in consultation with their supervisory chain, EEOP, and, where appropriate, the appropriate general counsel's office.

(2) Cooperate fully with the EEOP staff, including counselors and investigators, throughout the pre-complaint and formal complaints process. This includes giving serious consideration to resolution attempts during the complaints process.

(3) Seek input when necessary from EEOP on the use of official time or government equipment for employees of their organizations who have engaged in the EEO process.

3. CONFIDENTIALITY

a. All stages of the complaints process set forth in this AI are confidential and subject to section 552a of Title 5, United States Code (Reference (j)) (also known as and referred to in this AI as "the Privacy Act"). Complainants and their representatives will receive copies of the investigative file and other related documents that have been redacted pursuant to the Privacy Act. Management witnesses and others with an official need to know may be shown relevant parts of the record only as deemed appropriate by EEOP or the appropriate general counsel's office. Others who make requests for the record pursuant to section 552 of Reference (j) (also known as and referred to in this AI as "the Freedom of Information Act (FOIA)") will be given a copy of the record except for those parts that are exempt from release under FOIA.

b. If an employee from a non-WHS-serviced organization is engaged in a WHS EEO proceeding, confidentiality and sanitization requirements of the employee's agency should be followed.

4. TIME LIMITS. Current and former employees and applicants for employment must bring complaints to the attention of EEOD within 45 calendar days of the date of the matter believed to be discriminatory. Exceptions may be made at the discretion of the Director, EEOP, pursuant to section 1614.105(a)(2) of Reference (e). Furthermore, a written formal complaint must be

submitted to EEOP within 15 calendar days of receipt of the notice required by section 1614.105 (d), (e), or (f) of Reference (e).

5. EEO COUNSELORS. EEO counselors, designated by the Director, EEOP:

a. Clearly define for the aggrieved person(s) their rights and responsibilities in the EEO complaints process, pursuant to section 1614.105 of Reference (e), including the option to request mediation under the ADRP.

b. Conduct an initial interview with the aggrieved person(s) to determine the basis(es) and claim(s); the action(s), term(s), or condition(s) of employment upon which the complaint is based; the date(s) of the action(s) or act(s); the person(s) involved; and the relief sought.

c. Seek a resolution of the complaint or dispute at the lowest possible organizational level; ensure that any resolution is in writing; express the intent of all parties involved; and coordinate with EEOP, the appropriate general counsel's office, and the WHS Human Resources Directorate as required.

d. Conduct a final interview and advise the aggrieved person(s) in writing of their right to file a formal complaint, within 15 calendar days, if the pre-complaint is not resolved.

e. Prepare and submit a counselor's report within 15 calendar days of the Notice of Right to File a Formal Complaint, in accordance with the EEOP requirements, and submit it to the Director, EEOP.

f. Keep the identity of any aggrieved person(s) confidential, unless the aggrieved person(s) waive(s) his or her right to confidentiality.

g. Communicate the status of the pre-complaint to EEOP's Complaints and Adjudication Manager. Seek advice when necessary and report unusual developments that may occur during the counseling process.

6. PRE-COMPLAINT PROCESSING

a. An aggrieved individual who believes he or she has been discriminated against on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), age (40 and older), national origin, disability (physical or mental), genetic information, or retaliation for opposing discrimination or participating in the EEO process, must contact EEOP within 45 calendar days of the date of the alleged discrimination.

b. The EEOP staff will identify a counselor who will promptly contact the aggrieved individual to carry out the procedures set forth in section 6 of this enclosure. ADRP information will be made available to all aggrieved person(s). When the aggrieved person(s) elects to participate in ADR, and the agency offers ADR, they will be referred to the EEOP ADRP Manager for further processing.

c. An aggrieved individual has the right to select a representative of his or her choice, provided the representation would not conflict with the official duties of the individual. EEO or human resources officials may not serve as representatives for aggrieved persons, supervisors, or management officials in connection with processing a discrimination complaint.

(1) An aggrieved individual, or his or her representative who is assigned to an organizational entity covered by this AI, will be allowed official duty time to prepare and present his or her issues as long as the amount of time used is reasonable and does not interfere unduly with the organizational work environment or productivity.

(2) An aggrieved individual or his or her representative(s) may be allowed to use government equipment for the purposes of corresponding with EEOP staff members, counselors, and investigators relating to the complaint with the approval of the aggrieved individual's or the representative's supervisor. Such approval should be coordinated with appropriate EEOP officials if the supervisor questions the reasonableness of the proposed use.

7. OFFICIAL TIME FOR PROCESSING EEO CLAIMS. The complainant and his or her representative, if they are both employees of the WHS-serviced Component where the complaint arose and was filed, are entitled to a reasonable amount of official time to present the complaint and to respond to WHS-serviced Component requests for information, if otherwise on duty. Former employees of a WHS-serviced Component who initiate the EEO process concerning an employment matter relating to their prior employment with the WHS-serviced Component are employees in accordance with section 1614.605 of Reference (e), and their representatives, if they are current employees of the WHS-serviced Component, are entitled to official time. Witnesses who are federal employees, regardless of whether they are employed by the respondent WHS-serviced Component or some other federal agency, must be in a duty status when their presence is authorized or required by EEOC or WHS-serviced Component officials in connection with the complaint.

a. Reasonable Amount of Official Time. The complainant and the WHS-serviced Component should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time. Time spent commuting to and from home should not be included in official time computations because all employees are required to commute to and from their federal employment on their own time.

b. Meeting and Hearing Time. Most of the time spent by complainants and their representatives during the processing of a typical complaint is spent in meetings and hearings with WHS-serviced Component officials or with EEOC AJs. Whatever time is spent in meetings and hearings with WHS-serviced Component officials or with EEOC AJs is automatically deemed reasonable. Both the complainant and the representative are to be granted official time for the duration of such meetings or hearings and are in a duty status regardless of their tour of duty. If a complainant or representative has already worked a full week and must attend a hearing or meeting on an off day, that complainant or representative is entitled to official time, which may require that the WHS-serviced Component pay overtime. Witnesses who are federal

employees, regardless of their tour of duty and whether they are employed by the respondent WHS-serviced Component or another federal agency, must be in a duty status when their presence is authorized or required by EEOC or WHS-serviced Component officials in connection with a complaint.

c. Preparation Time. Since presentation of a complaint involves preparation for meetings and hearings, as well as attendance at such meetings, conferences, and hearings, complainants and their representatives are also afforded a reasonable amount of official time to prepare for meetings and hearings. They are also to be afforded a reasonable amount of official time to prepare the formal complaint and any appeals that may be filed with the EEOC.

d. Aggregate Time Spent on EEO Matters. A WHS-serviced Component may restrict the overall hours of official time afforded to a representative, for preparation purposes and for attendance at meetings and hearings, to a certain percentage of that representative's duty hours in any given month, quarter, or year.

e. Requesting Official Time. The request must be in writing and presented by the complainant to an official in the supervisory chain who can grant or deny the request. The amount of time being requested, the purpose of the request, and whether travel time is included should be noted. Official time for travel to meet with a representative must be charged to leave. WHS-serviced Component officials should be provided as much notice as possible to allow them to review and make a decision regarding the request. Supervisors may request verification of the meeting and length of time.

f. Denial of Official Time. If the WHS-serviced Component denies a request for official time, either in whole or in part, the WHS-serviced Component must include a written statement in the complaint file noting the reasons for the denial. If the WHS-serviced Component's denial of official time is made before the complaint is filed, the WHS-serviced Component must provide the complainant with a written explanation for the denial, which it will include in the complaint file if the complainant subsequently files a complaint.

8. COUNSELING AND ADR

a. The counselor will advise the aggrieved person(s) in writing of his or her rights and responsibilities pursuant to section 1614.105(b) of Reference (e), and discuss with the aggrieved the basis(es), issue(s), and claim(s) he or she wishes to raise and the relief sought by the aggrieved person.

b. The counselor will explain to the aggrieved person(s) the agency ADRP as an option to address their issue(s), if it is offered by the agency. The aggrieved person(s) may either accept or decline the offer to use the ADRP.

c. The counselor will conduct pre-complaint counseling pursuant to section 1614.105 of Reference (e) if the aggrieved person(s) declines to participate in the ADR process. The counselor must specifically identify:

(1) What alleged agency action or what term or condition of employment the individual believes to be discriminatory.

(2) How the individual was harmed.

(3) When the action was taken or when the individual learned that the term or condition of employment was believed to be discriminatory.

(4) Who took the action or created the term or condition of employment that the individual believes to have been discriminatory.

(5) Who has settlement authority to correct the action or term or condition of employment including the name, title, and phone number of this individual.

(6) Whether the dispute was resolved through during EEO counseling process.

d. The counselor will complete the pre-complaint inquiry within 30 calendar days from the date the aggrieved person(s) contacted EEOP and has stated his or her intent to file with EEOP. When more time is needed to complete the inquiry or possibly reach a settlement agreement, EEOP will request written approval of the aggrieved person(s), to extend counseling for an additional period of no more than 60 calendar days pursuant to section 1614.105(e) of Reference (e).

e. The counselor will conduct a final interview with the aggrieved person(s) and issue a Notice of Right to File a Formal Complaint if the issues are not resolved at the end of the 30-day counseling period (up to 90 calendar days, if extended). The notice explains procedures for filing a formal complaint. The aggrieved person(s) has 15 calendar days from receipt of the Notice of Right to File to file a written complaint of discrimination with EEOP.

f. If an aggrieved individual initially elects to participate in the ADR process and the process is unsuccessful, the individual will be issued a Notice of Right to File a Formal Complaint at the conclusion of ADR services, pursuant to section 1614.105(d) of Reference (e).

g. The counselor will issue a written report to EEOP within 15 calendar days from the date of being advised that the individual filed a formal complaint. The counselor's report must identify the basis(es) and issue(s) of the complaint and document the pre-complaint inquiries made during counseling. The written report must contain sufficient information to enable EEOP to glean facts necessary to determine whether to fully or partially accept or dismiss the complaint for formal processing. EEOP will review the counselor's report for accuracy in content and forward a copy to the complainant within 15 calendar days from the date the complainant files a formal complaint.

h. The ADR Program may be utilized at any point of the complaint process.

9. FORMAL COMPLAINTS PROCESSING

a. If the aggrieved individual chooses to file a formal complaint, it must be in writing and delivered to EEOP either by mail service, fax, or in person not later than 15 calendar days from the date of receipt of the Notice of Right to File a Formal Complaint.

b. The formal complaint will be reviewed for acceptance or dismissal of the alleged claims described in the written complaint. The Director, EEOP, will dismiss all or any part of a complaint of discrimination as required by section 1614.107 of Reference (e). If a complaint is dismissed, the Director, EEOP, must advise the complainant in writing of that decision and provide him or her with appeal rights as described in section 1614.402(a) of Reference (e). Whenever possible, each accepted claim should contain, at a minimum, the name of the responsible management official, the action taken, the date of the action, the location of the action, and any witnesses to the action.

c. If a complaint is partially dismissed, the Director, EEOP, must notify the complainant in writing of the decision to dismiss some of the claim(s), explain the rationale for the decision, and advise the complainant that the agency will not investigate the dismissed claim(s). If the complainant elects to have a hearing before the EEOC on the accepted claim(s), the dismissed claims may then be reviewed by the EEOC AJ. However, the dismissed claim(s) cannot otherwise be appealed until a final agency action is taken on the remainder of the complaint.

d. Amendments to complaints subsequent to a hearing request must be submitted directly to the EEOC AJ with a copy provided to the Director, EEOP.

e. The complainant will be informed of the claim(s) accepted for investigation along with his or her right either to request a hearing from the EEOC or to file a civil action in a U.S. District Court no earlier than 180 calendar days from the date the formal complaint was filed. In the case of mixed complaints as described in paragraph 1a of this enclosure, the complainant will be informed of his or her right to appeal to the MSPB no earlier than 120 calendar days from the date the formal complaint is filed.

f. Notification of all complaints of discrimination made against senior officials will be provided to the Office of the Inspector General of the Department of Defense, in accordance with DoDD 5505.06 (Reference (k)).

10. INVESTIGATIONS

a. Once a formal discrimination complaint has been accepted, the Director, EEOP, will send the complaint file to the Defense Civilian Personnel Advisory Service (DCPAS), Investigations and Resolutions Directorate (IRD) or a designated investigative service to conduct an investigation pursuant to Volume 1614 of DoDI 1400.25 (Reference (l)). The EEOP staff will coordinate the administrative details with the investigators, agency witnesses, and the appropriate general counsel's office to ensure the investigation proceeds pursuant to guidelines described in section 1614.108 of Reference (e).

b. The investigator will thoroughly review the complaint using a variety of methods to develop an impartial and factual record addressing the accepted claim(s) of the complaint pursuant to chapter 6 of Reference (f).

c. Agency employees must fully cooperate during the investigative process. Employees having knowledge of matters relating to the complaint may be required by the investigator to provide evidence or testimony under oath or affirmation without a pledge of confidence.

d. After 180 calendar days have elapsed from the filing of the formal complaint, the complainant has the right to request a hearing before an EEOC AJ. The hearing request must be submitted in writing directly to the appropriate EEOC office with a copy provided to the Director, EEOP. Alternatively, the complainant has a right to file a civil action with the appropriate U.S. District Court, at which time the administrative complaint will be dismissed.

e. The investigation will be completed within 180 calendar days from the date the formal complaint was filed.

(1) By written agreement, the parties may voluntarily agree to extend the investigation for no more than an additional 90 calendar days. Furthermore, the agency may extend the time by no more than 30 calendar days when the need arises to sanitize a complaint file containing classified information, pursuant to section 1614.108(e) of Reference (e).

(2) If an employee from a non-WHS-serviced organization is engaged in a WHS EEO proceeding, confidentiality and sanitization requirements of the employee's agency should be followed.

(3) If an investigation will not be completed in 180 calendar days from the date the formal complaint was filed, the agency EEO office will issue a letter notifying the complainant of the delay, providing an estimate of when the investigation will be complete, and informing the complainant that he/she can request a hearing 180 days after filing the complaint regardless of the whether the investigation has been completed.

f. At the complainant's request, the Director, EEOP, may instruct the investigator to amend the complaint to include matters like or related to the claims(s) that have been counseled. In such instances a subsequent investigation will be completed in the lesser of 180 calendar days from the filing of the amendment but no more than 360 calendar days from the filing of the original complaint, pursuant to section 1614.108(f) of Reference (e). New matters not like or related to the claim(s) under investigation will be referred to a counselor for processing in accordance with section 1e of this enclosure.

g. The investigator will prepare a report of investigation (ROI) once the investigation is completed. The ROI must include sworn testimony along with supporting correspondence and relevant information pertinent to the complaint and acquired during the investigative process. The ROI will be prepared and assembled in accordance with format and content guidelines

defined in chapter 6 of Reference (f) and IRD or investigative service internal procedural requirements. The investigator will furnish a completed ROI to the Director, EEOP.

h. The Director, EEOP, will keep interested parties informed of the progress of the investigation. Once the investigation is completed, the EEOP staff must review the ROI to assure the thoroughness of information contained in the report and its relevance to the alleged claim(s). If the Director, EEOP, finds that the ROI is deficient or lacks comprehensive analysis necessary to assess whether or not discrimination may have occurred, the ROI will be returned to IRD or the responsible designated investigative service. The investigator will review concerns identified by EEOP and amend the record to correct the deficiencies. In rare circumstances, concerns regarding the ROI may be addressed and resolved by way of verbal communication between the EEOP staff and the investigator.

i. The Director, EEOP, must provide the complainant a written notice along with a copy of the ROI describing their right to elect either a hearing before an EEOC AJ or a final decision within 30 calendar days from receipt of the investigative file. The notice will specify the EEOC District Office to which the request must be sent and the requirement to provide a copy of the hearing request to the Director, EEOP. It will also advise the complainant of his or her right to file a civil action in the appropriate U.S. District Court.

j. If the complainant does not request either an EEOC hearing or a final agency decision within 30 calendar days from receipt of the notice, a final decision on the merits of the claim(s) will be issued pursuant to section 1614.110(b) of Reference (e). The final decision must advise the complainant of his or her right to file either an appeal to the EEOC OFO or a civil action in the appropriate U.S. District Court. In any instance where discrimination is found, the agency will seek to eliminate the discrimination and provide appropriate relief for the complainant.

11. HEARINGS

a. If the complainant requests a hearing, the Director, EEOP, will provide a copy of the agency's complaint file to the EEOC within 15 calendar days of being notified of complainant's request for a hearing.

b. The EEOC will appoint an AJ to conduct a hearing pursuant to section 1614.109 of Reference (e). The AJ appointed by the EEOC will assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. The AJ will determine the necessity of the hearing, the witnesses, and what evidence must be taken, pursuant to the EEOC rules and procedures.

c. Employees approved as witnesses by the AJ will be made available as witnesses at a hearing by whatever means the AJ deems appropriate. The Director, EEOP, must notify witnesses of the time, date, place, and method designated to receive their testimony. Coordination for witness testimony may include arranging for travel or teleconferencing.

12. RECORDS OF HEARINGS

a. Witness testimony and hearing proceedings will be recorded and transcribed verbatim by a court reporter. A record will be compiled by the AJ in accordance with EEOC regulations.

b. The EEOC AJ will issue a decision on the complaint and order appropriate remedies if discrimination is found. The EEOC will forward copies of the order rendered by the EEOC AJ along with a hearing record and transcript to the appropriate parties.

13. FINAL AGENCY ACTIONS

a. Final Orders

(1) The Director, EEOP, will issue a final order within 40 calendar days of receiving the EEOC AJ's decision pursuant to section 1614.110(a) of Reference (e). A final order must be issued within this timeframe indicating whether the agency will implement, partially implement, or decline to implement the decision.

(2) The agency's final order will notify the complainant whether the AJ's decision will be fully implemented and inform the complainant of his or her further appeal rights pursuant to section 1614.110 of Reference (e).

(3) When the agency does not intend to fully implement the EEOC AJ's decision, the appropriate general counsel's office will file an appeal with the EEOC OFO. The agency will append a copy of the agency appeal to the final order and provide interim relief as required by section 1614.505 of Reference (e).

(4) Pursuant to section 1614.109 of Reference (e), if the agency fails to issue a final order within 40 calendar days of receipt of the AJ's decision, the AJ's decision becomes the final action by the agency.

b. Final Decisions

(1) Pursuant to section 1614.110(b) of Reference (e), final decisions are made when an agency dismisses a claim or when a complainant fails to request a hearing before an EEOC AJ. Pursuant to section 1614.107 of Reference (e), if the agency receives a request for an immediate final decision, or does not receive a reply to the agency's 30-day notice issued pursuant to section 1614.108(f) of Reference (e), the agency will take final action by issuing a final decision. The agency must issue a final decision based on the ROI within 60 calendar days of receiving a complainant's notification requesting an immediate decision. Where a complainant fails to request a hearing or an immediate final decision, the agency must issue the final decision within 60 calendar days.

(2) Whenever the ROI or hearing record identifies a need or requirement to conduct EEO training for either specific individuals or an organization, the Director, EEOP, must advise management officials on the methods necessary to execute such training.

14. SETTLEMENT AGREEMENTS AND OFFERS OF RESOLUTION

a. The parties are encouraged to explore pre-complaint resolution throughout the complaints process. Settlement agreements will be in writing, will set forth enforcement rights and procedures, and be signed by the agency, complainant, and complainant's representative.

b. Pursuant to section 1614.109(c) of Reference (e), the agency may make an offer of resolution to a complainant who is represented by counsel at any time before an EEOC AJ is assigned. After an AJ is appointed, but not later than 30 calendar days before a hearing, an offer of resolution may be made to the complainant, whether or not the complainant is represented by an attorney. Such offer will be in writing and spell out the potential consequences of the complainant's failure to accept such an offer.

c. All settlement agreements and offers of resolution will be coordinated with the appropriate general counsel's office for legal sufficiency review.

d. If a complainant believes that the agency has not complied with the terms of a settlement agreement, the complainant must notify the Director, EEOP, in writing within 30 calendar days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request either that the agreement be implemented or that the complaint be reinstated for further processing from the point ceased. The Director, EEOP, must promptly investigate the complainant's allegation and respond to him or her in writing. If the complainant is not satisfied with the agency's response, or if the agency does not respond within 35 calendar days, he or she may appeal to the EEOC pursuant to section 1614.504(b) of Reference (e).

15. AVOIDANCE OF DELAYS. The complainant, representative, investigator, management officials, and the appropriate general counsel's office, will work cooperatively with the EEOP staff to ensure that complaints are processed within the timeframes set forth in section 1614.108(c)(3) of Reference (e).

16. APPEALS TO THE OFO

a. Entitlements

(1) The complainant has the right to appeal any final agency action or dismissal of a complaint to the EEOC, OFO, pursuant to section 1614.401(a) of Reference (e).

(2) The agency has the right to appeal the decision of an EEOC AJ, pursuant to sections 1614.110(a) and 1614.401(b) of Reference (e).

(3) An agent of the class or the agency may appeal the decision of EEOC AJ acceptance or dismissal of all or part of a class complaint pursuant to section 1614.401(c) of Reference (e). A class agent may appeal a final decision on a class complaint. A class member may appeal a final decision on a claim for individual relief under a class complaint. A class member, a class agent, or the agency may appeal the final decision of an EEOC AJ.

(4) Complainants, agent of the class, or individual class members may appeal an agency's response to an allegation of non-compliance with a settlement agreement or decision pursuant to section 1614.504 of Reference (e).

b. How to Appeal. The complainant, agency, agent, grievant, or individual class claimant must file an appeal with the Director, EEOC, OFO. The appellant should use EEOC Form 573, "Notice of Appeal/Petition," and indicate what is being appealed. (A copy of EEOC Form 573 is available on the EEOC website at www.eeoc.gov.) The appellant will furnish a copy of the appeal to the opposing party at the same time it is filed with the OFO. The appellant must certify the date and method by which service was made on the opposing party, pursuant to section 1614.403 of Reference (e).

c. Where to Appeal. Appeals must be in writing and mailed to:

EEOC
Office of Federal Operations
P.O. Box 77960
Washington, D.C. 20013-8960

d. Appeal Time Limits

(1) A complainant must file an appeal within 30 calendar days of receipt of a dismissal or final agency action, pursuant to section 1614.402 of Reference (e).

(2) A class member, a class agent, or the agency must appeal a decision in a class complaint within 30 calendar days of receipt of the decision, pursuant to section 1614.402 of Reference (e).

(3) The agency must appeal a decision by an EEOC AJ within 40 calendar days of receipt of the hearing file and decision, pursuant to section 1614.402 of Reference (e).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ADR	alternative dispute resolution
ADRP	Alternative Dispute Resolution Program
AI	administrative instruction
AJ	administrative judge
CBA	collective bargaining agreement
DA ODCMO	Director of Administration Office of the Deputy Chief Management Officer
DoDD	DoD Directive
DoDI	DoD Instruction
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
EEOP	Office of Equal Employment Opportunity
FOIA	Freedom of Information Act
IRD	Investigations and Resolutions Directorate
MSPB	Merit Systems Protection Board
OFO	Office of Federal Operations
PFPA	Pentagon Force Protection Agency
ROI	report of investigation
WHS	Washington Headquarters Services

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this AI.

ADR. Processes of resolving disagreements that include facilitation, mediation, peer panel reviews, and climate surveys.

ADRP. WHS EEOP's ADR Program, which offers mediation and facilitation services, utilizing a neutral third party to assist in the resolution of workplace disputes pursuant to section 1614.102(b)(2) of Reference (e); Chapter 3 and Appendix H of Reference (f); and Reference (g).

agent of the class. A class member who acts on behalf of the class during the processing of a class complaint.

aggrieved person(s). Employees, former employees, or applicants for employment who believe they have been discriminated against in an employment action because of their race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age (40 years or older), disability (physical or mental), genetic information, or retaliation for opposing discrimination or participating in the EEO process.

AJ. Employee of the EEOC who conducts hearings on EEO complaints and adjudicates appeals from administrative decisions made by federal agencies on EEO complaints.

CBA. A written and legally enforceable contract for a specific period between the management and organization and its employees, represented by an independent trade union. It defines conditions of employment (wages, working hours and conditions of overtime payments, holidays, vacations, benefits, etc.) and procedures for dispute resolution.

class. A group of agency employees, former agency employees, and applicants who are alleged to have been adversely affected by an agency personnel policy or practice which discriminates against the group on the basis of their common race, color, religion, sex (including pregnancy), national origin, age (40 years or older), disability (physical or mental), genetic information, or retaliation for opposing discrimination or participating in the EEO process pursuant to Executive Order 11478 (Reference (m)).

class complaint. A written complaint of discrimination filed for a class by the agent of the class alleging that:

The class is so numerous that consolidation of all of the individual complaints would be impractical.

There are questions of fact common to the class.

The claims of the agent of the class are typical of the claims of the class.

The agent of the class or, if represented, the representative, will fairly and adequately protect the interests of the class.

Defense Civilian Personnel Advisory Service. The authoritative source for DoD civilian human resources management information.

discrimination. A showing of partiality or prejudice in the treatment of a person or group based on race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age (40 or older), disability (physical or mental), genetic information or retaliation for opposing discrimination or participating in the EEO process.

EEO. The right of all persons to work and advance on the basis of merit, ability, and potential, free from social, personal, or institutional barriers of prejudice and discrimination.

EEOC. A commission responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age (40 or older), disability (physical or mental), genetic information, or retaliation for opposing discrimination or participating in the EEO process.

final agency action. In the formal complaints process, WHS issues a final agency action to close a claim. There are two types:

final decision. Final decisions are made when an agency dismisses a claim for procedural or administrative reasons in accordance with section 1614.107 of Reference (e) or when the agency makes a decision on the merits of a complaint, based on the evidence contained in the ROI, when a hearing has not been requested.

final order. A decision by the agency regarding whether to implement the EEOC AJ's decision pursuant to 1614.110(a) of (Reference (e)).

FOIA. A provision of law stating that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

management directive. An issuance that contains the policies and procedures that govern the internal functions necessary for the agency to accomplish its regulatory mission.

mixed case complaint. A complaint of employment discrimination filed with a federal agency based on race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), age (40 and older), national origin, disability (physical and/or mental), genetic information and/or retaliation for opposing discrimination or participating in the EEO process, related to or stemming from an action that may be appealed to the MSPB.

MSPB. An independent, quasi-judicial agency in the Executive branch that serves as the guardian of federal merit systems.

reasonable amount of time. Whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to agency requests for information.

ROI. A document prepared by an EEO specialist to include sworn testimony along with supporting correspondence and relevant information pertinent to the complaint and acquired during the investigative process.