

<b>DEPARTMENTAL REGULATION</b>		Number: 4300-007
SUBJECT: Processing EEO Complaints of Discrimination	DATE: March 3, 1999	
	OPI: Office of Civil Rights	

## 1 PURPOSE

The purpose of this regulation is to establish rules and guidelines pursuant to 29 CFR Part 1614 by which the United States Department of Agriculture (USDA or the Department) will process administrative complaints of employment discrimination filed by USDA employees and applicants for USDA employment.

## 2 SCOPE

This regulation extends to all informal and formal complaints of alleged discrimination in employment against USDA agencies and is applicable for all USDA employees and applicants for employment.

## 3 POLICY

a It is USDA policy to provide a work environment free from decisions based on race, color, gender, religion, national origin, age, disability, political beliefs, marital or familial status, reprisal, and sexual orientation. The Department's objective is to resolve complaints as early as possible. Complaints arising from sexual orientation and/or marital or familial status are only processed within the Department. They are not appealable to the U.S. Equal Employment Opportunity Commission (EEOC) or any other non-USDA agency or department.

### b General Policies

(1) Coverage. Any employee or applicant for employment who believes that he/she has been discriminated against in employment due to an action or decision by an official or employee of the Department, and believes that the discrimination was based on race, color, gender, religion, national origin, age, disability, political beliefs, marital or familial status, reprisal, equal pay, and/or sexual orientation may file a complaint under this departmental regulation.

(2) Posted. Agencies must conspicuously post at each work location a notice of Equal Employment Opportunity (EEO) Counselors, the EEO complaint processing procedures, the telephone number to initiate counseling, and the required timeframes, using a form approved by CR.

(3) Responsibility of the Complainant. Any person who files a complaint has a responsibility to cooperate with the processing of the complaint, including: specific responses to offers of resolution; providing requested information in a timely manner; and finishing the EEO Counselor, Office of Civil Rights (CR), or the complaint investigator with a current address and telephone number for himself or herself and any representative.

(4) Processing. The Department will process all complaints expeditiously and in accordance with EEOC Management Directive 110. All complaints will be handled in a fair and impartial manner. When a complaint is filed about a matter, all records relating to the matter will be maintained until the complaint is closed and no further avenue of appeal is available.

(5) Time Limits. Unless otherwise mentioned, all days are calendar days. Consistent with the rules, regulations, and other applicable requirements by the Equal Employment Opportunity Commission (EEOC), the Department shall extend the time for processing complaints. Factors to be weighed include a showing that the complainant (a) was not notified of the time limit and was otherwise unaware of it; (b) was prevented by circumstances outside of his or her control from meeting the time limits, and he or she exercised due diligence in attempting to exercise the right involved in a reasonably timely manner, or (c) submitted a reasonable request, in writing, prior to the expiration of the time limit, and to grant the request will not severely prejudice the Department or the rights of employees.

(6) Conflicts of Interest. All employment discrimination complaints will be resolved without exposure to conflicts of position, conflicts of interest, or the appearance of such conflicts. To ensure compliance with the requirement and to maintain the integrity of the EEO complaint program, all functions related to personnel

actions will be kept separate from the EEO complaint process.

(7) Records Counselors and investigators must be given access to original records. Where files must be sent to locations apart from *the* normal record repository, the Agency may take the usual precautions to protect and safeguard its records.

(8) Sharing Information. Information in a complaint file is protected by the Privacy Act as a record under the complainant's name. Individual statements made by others involve their right to privacy also. Any request for information from the file, or request for use, that is not already authorized in this chapter must be sent to CR for processing as a Freedom of Information Act (FOIA) request.

#### 4 AUTHORITIES

##### a Statutory and Executive Orders

- (1) Title VH of the Civil Rights Act of 1964 (Title VII) (42 U.S.C. § 2000e et seq.).
- (2) Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. § 791 et seq.).
- (3) The Equal Pay Act of 1973 (29 U.S.C., § 206(d)).
- (4) The Rehabilitation Act of 1973 ( 29 U.S.C. § 791 et seq.).
- (5) Executive Order 11478 (34 FR 12985 (1969)).
- (6) Executive Order 13087 (63 FR 30097 (1999)).
- (7) Civil Rights Act of 1991, Pub.L. 102-166.
- (8) Older Workers Act, Benefits Protection Act, Pub.L. 101-433, 29 U.S.C. 626(f)(2).

##### b Regulatory

- (1) 29 CFR Part 1614.

- (2) 5 CFR 300.102(C), 300.103(c).
- (3) 7 CFR 2.89(a)(21).
- (4) 5 CFR Part 1201 Subpart E.

c Departmental Policy

Departmental Regulation 4300-6, Civil Rights Policy for the Department of Agriculture (establishes prohibitions against discrimination against USDA employees based on political beliefs, sexual orientation, marital or familial status.

5 DEFINITIONS

- a ADR - Alternate Dispute Resolution refers to a whole range of dispute resolution approaches, other than court or EEOC adjudication, which can assist disputing parties in resolving disagreements.
- b Agency - One of the components of the Department (e.g, Foreign Agricultural Service, Risk Management Agency, Food and Nutrition Service).
- c Applicant - An individual seeking employment in any position within USDA.
- d ASA - The Assistant Secretary for Administration is delegated full authority for the performance and oversight as the Department's Director of Equal Employment Opportunity-
- e Basis - The prohibited factors of discrimination, i.e., race, color, gender, marital or familial status, age, religion, national origin, disability, sexual orientation, equal pay, political beliefs, or retaliation.
- f Complaint - A written, signed allegation that an action, failure to act, or decision by USDA that personally affected an applicant or employee was discriminatory with regard to a prohibited basis.
- g Complaint Process - The entire set of actions possible in an EEO complaint, including counseling, acceptance, rejection, investigation, resolution, hearing, decision, appeal, and civil action.
- h Counselor - An individual assigned to discuss and attempt to facilitate the resolution of informal complaints within the Department

i Director, Office of Civil Rights (CR) - Develops principles, policies, and objectives for the Department related to Federal employment discrimination. Has full responsibility for investigation, adjudication, and resolution of complaints of discrimination arising out of USDA employment activities.

j ECD - The Employment Complaint Division of the Office of Civil Rights, responsible for the operation of the Department's EEO Complaint System.

k EEOC - The Equal Employment Opportunity Commission is the Federal Agency with overall responsibility for implementing Title VII (Employment) of the Civil Rights Act of 1964 and other laws prohibiting discrimination in Federal employment.

l Employee - An individual employed or previously employed in any position with the Department.

m Family Status - An individual's family composition, including the makeup of his/her household, parental status, or other family relationships.

n Informal Complaint - An allegation concerning any issue that is presented to a Counselor.

o Issue - The action or decision (including a failure to act or decide) or a policy or practice of the Department that has affected an applicant or employee which is alleged to have been discriminatory.

p Marital Status - The state of a person being married, unmarried, or divorced.

q Mixed Case - An allegation of discrimination in a matter that is appealable to the Merit Systems Protection Board (MSPB). Mixed cases may be either a mixed case complaint (processed initially within USDA) or a mixed case appeal (processed initially at MSPB).

r OGC-CRD - Office of the General Counsel-Civil Rights Division provides the legal interpretation and assistance as necessary to the Department's EEO program.

s PPD - Policy and Planning Division of CR which is responsible for the development and implementation of civil rights policies and programs within the Department.

t Responsible Management Official - The person named by the complainant or indicated by the record as responsible, in whole or in part,

for taking or recommending the action or decision that is the issue of the complaint.

u USDA Agency EEOO - Equal Employment Opportunity Officer is the official (usually the Agency Head) responsible for the EEO program in each agency of the Department.

## 6 INDIVIDUAL COMPLAINTS

### a Informal Processing

(1) General Program. Employees will file their complaints directly with the counselor for the agency where the complainant is employed. Applicants will file their complaints with the counselor for the agency where the alleged discrimination occurred.

(2) Cross-Counseling. Agencies are not prohibited from cross-counseling except where cross-counseling results in a conflict of interest or an appearance of conflict of interest.

(3) Required Use. Any employee or applicant who believes that he or she has' been harmed by a discriminatory action or decision must consult with a Counselor prior to filing a formal individual complaint under this part. Contact with a Counselor must be initiated within 45 days of an alleged discriminatory action or decision, or, in the case of an alleged discriminatory personnel action within 45 days of the effective date of the action.

(4) Counselor Responsibilities. Counselors are to facilitate the informal resolution of the complaint issues based on fact-finding. The counseling process does not extend to the investigation, verification, or substantiation of evidence or information. Upon request by CR, counselors are responsible for providing a written report of the counseling contact.

(5) Authority To Resolve . Agencies are authorized to resolve complaints raised with a counselor to the same extent and with the same relief, as appropriate, as in the formal complaint process. Relief, up to and including the maximum possible relief, may be provided by an Agency to resolve the complaint at any stage.

(6) Reports. Within 10 days of a request from CP, counselors will provide a written report of the counseling. The report will include, at a minimum, the dates of contact with the complainant, the issues presented (including dates), any bases alleged, the substance learned in an inquiry (must include reasons articulated for the action or decision with specificity), and the identities of those contacted.

(7) Management Cooperation. Managers and supervisors are responsible for cooperating with the, resolution of formal and informal complaints.

(8) Official Time for EEO CoMplaints. Agencies will afford employees reasonable time and opportunity during official business hours to pursue their EEO complaints.

b Formal Complaint Filing

(1) Time Limit. A formal complaint must be signed by the complainant, or the complainant's official representative who has been designated in writing by the complainant, and submitted in writing within 15 days of receipt of the notice of the right to file a complaint to CK. A complaint may be mailed or submitted in person. A formal complaint should include a copy of the Notice of the Right to File a Formal Complaint.

(2) Filing Location. All complaints must be filed with CR.

(3) Content. A complaint must include: (a) the complainant's name, address, and telephone numbers; (b) the name, address, and telephone number of any representative; (c) a description, including the dates, of the decision involved in any individual complaint or the policy or practice and incident of application in any individual complaint or the policy or practice and incident of application in any class complaint; (d) the Agency that made the decision or applied the policy; (e) the basis(es) on which discrimination is alleged; and (f) the name of the, EEO Counselor contacted.

(4) Acceptance. CR will notify complainants of the acceptance or dismissal of their complaints and all appeal rights to which they are entitled. If the initial material

submitted as a complaint is not complete, CR will notify the complainant of the missing material and allow 15 days for its submission.

(5) Dismissal. CR will dismiss complaints consistent with 29 CFR 1614.107.

(6) Spin-Off Complaints- Issues that arise after an initial formal complaint has been filed, even if related to matters referenced in the initial complaint, must be filed with a counselor as a new informal complaint.

c

Investigation of Complaints.

(1) Notice. CR will notify the complainant and the Agency of the accepted issues and obtain an investigation of those issues..

(2) Coverage. CR will arrange for an investigation into the issues of the complaint. The investigation may be conducted by contractor or USDA employee. The method of initial investigation may include direct examination, fact-finding or other oral conference, or an interrogatory. The investigative report will include all documentary evidence concerning the accepted issues, sworn testimony concerning the reasons for the actions included in the accepted issues, all evidence that supports or refutes testimony concerning the reasons for the actions included in the accepted issues or the stated reasons themselves, and all evidence that supports or refutes the specific evidence presented by the complainant in support of the allegations. In addition, witnesses shall be identified as belonging or not belonging to complainant's protected group. Where names of employees are removed from a statistical compilation or any supporting documents, labels or other identifiable notations will be used instead, and will be consistent throughout the investigative report.

(3) Impartiality. The investigation will be impartially conducted. The investigator will include all relevant information in the report. Any witnesses will be allowed to make corrections or additions to their sworn statements. The investigator will note for the record any substantial variations between oral and written statements from a witness.



(4) Cooperation. Employees of the Department are required to cooperate with the investigator assigned to investigate an EEO complaint. This includes answering all questions asked, providing all documents requested, and expeditiously reviewing and signing an affidavit. Although investigators will provide an opportunity for representation, employees will deal directly with the investigator when requested, whether or not represented. Failure to cooperate with the investigator may be grounds for disciplinary action, up to and including removal from service. In addition, an adverse inference may be drawn in any adjudication of the matter. All witnesses will be free from any interference, restraint, coercion, or reprisal for their cooperation in the investigation.

(5) Responsible Management Officials. The responding official will provide sufficient description of the complaint issues to ensure that relevant information is placed in the record if known or available.

(6) Distribution. Upon its completion, ECD will review and distribute the initial investigative report to the Agency named in the complaint, the complainant, and the representative, if any.

(7) Supplemental Investigation. When an Agency or the complainant wishes an additional investigation, the complainant or respondent may forward the request to CR within 15 days of receipt of the initial investigation report with a copy to the other party. CR will determine: (a) whether the additional request for information is required and, if so, (b) the manner in which the information will be obtained and added to the file. CR will obtain any required supplemental investigations. CR will distribute the supplemental investigations report in the same manner as, or with, the initial investigation report.

(8) Complaint Request for Hearing. The complainant has 30 days from receipt of the investigation report to request a decision on the complaint after a hearing and recommendation or to request a decision on the record.

(9) Access to Reports. Agencies will utilize the investigative report to resolve the complaint, including mixed case complaints or appeals, or to address other problems developed in the investigation. Routine

transmittal of the report (or excerpts) to individuals or units not responsible for complaint processing (or resolution of other problems identified) is not permissible without the approval of CR.

d Attempted Dispute Resolution.

(1) Continuing Resolution Attempts. Nothing in this subchapter shall be taken to limit an Agency attempting to settle any complaint at any stage of processing. The Department encourages employees and agencies to informally resolve issues and problems of complaints.

(2) Written Settlement. Any agreed-upon settlement will be reduced to writing, be signed by an authorized Agency representative and the complainant, and be furnished to ECD for inclusion in the complaint file. Appropriate management officials will be notified that the complaint has been resolved. Specific details will be provided only to those who need to implement the agreement. Agencies are authorized, in accordance with 29 CFR Part 1614, and Section 6 below and as determined by the issues involved, to take appropriate personnel actions such as hiring and promoting, granting back pay, and granting any other appropriate relief to achieve informal settlement.

(3) Compensatory Damages. When compensatory damages are awarded, they must be consistent with current case law and administrative decisions. All proposed awards must be approved by CR.

(4) Attorney Fees. If an Agency decides to award reasonable attorney fees, they will be determined in accordance with the provisions of 29 CFR 1614.501(e) and Section 6.

(5) Compliance. If the complainant does not believe that the terms of any settlement agreement (whether reached during counseling or at any time in the formal complaint process) have been implemented by the Agency, the complainant may request compliance with the agreement, or reinstatement of the initial complaint at the stage at which it was settled. This request will be filed with ECD after submitting a request to the agency. The request must be filed within 30 days of learning of the alleged

noncompliance. An inquiry will be conducted, and the Director, Office Civil Rights, will issue a decision on whether or not the agreement has been implemented, whether either compliance is required or whether the complaint will be reinstated. The Director, Office Civil Rights, may require any action deemed necessary by an Agency to fulfill a settlement agreement. The decision will be a final Department decision.

e

### Hearing

(1) Processing. If a hearing is requested by the complainant in the request for a final decision, CR will notify the Agency or the Agency will notify CR, as appropriate. The agency will represent itself at the hearing.

No hearing before EEOC is permitted with respect to complainant alleging discrimination based on marital status, familial status, political beliefs, or sexual orientation. Complainants and agencies will be notified of this determination. CR's decisions in these matters are final.

(2) Policy. Every effort to present all the facts should be made. Cooperation with requests from the Administrative Judge is expected. Complainants, representatives, and witnesses who are employees of the Department will be on official time when participating in the hearing.

(3) Copies. The request for an Administrative Judge will include a request for submission of the recommended decision to ECD.

(4) Costs. The Agency will bear all costs incidental to the hearing including, but not limited to, the costs of travel for witnesses, complainants, and representatives who are employees of the Department and the costs of the transcripts. Travel of witnesses from other government agencies who are testifying based upon previous employment with the Department will also be paid by the Agency.

(5) Timeframes. The Director of CR will issue the final decision of the Department within 60 days of receipt of the recommendation from the Administrative Judge, or the recommendation becomes the final decision. A

complainant who has filed an individual complaint, an agent who filed a class complaint, or a claimant who has filed a claim for individual relief pursuant to a class complaint is authorized under Title VH, ADEA, and the Rehabilitation Act to file a civil action in appropriate United States District Court after 180 days from the date of filing an individual or class complaint if an appeal has not been filed and a final decision has not been issued. See also 29 CFR Part 1614.408.

f Final Agency Decision

(1) Responsibility. The Director of CR will issue a final decision on the merits of complaints of discrimination in the Department. The decision will be issued within 60 days of the request for a final decision on the record or the expiration of the 30-day period for the complainant to request a hearing if no hearing or decision request is submitted, or 60 days after receipt of the recommended decision by the Administrative Judge.

(2) Content. The final decision on the merits will address all unresolved and accepted issues of a complaint. It will include the background of the complaint and an analysis of each issue as to whether or not there was discrimination. In disparate treatment cases, the analysis will include a determination of whether an inference of discrimination was shown and, if so, whether or not any stated reasons were supported or refuted by the evidence. In disparate impact cases, the analysis will include a determination of whether an adverse impact was established and, if so, whether or not business necessity or validation supported the policy or practice. Dismissals will contain a statement of the facts upon which the decision is based.

(3) Enclosures. CR will provide the final decision to the complainant (and a representative) and the Agency. If a hearing was held, the Department will provide a transcript with the final decision.

(4) Corrective Actions. The decision will include, whether or not discrimination is found, any remedial action, including attorney fees (except for complaints of familial or marital status, sexual orientation, political beliefs, compensatory damages, or age), deemed appropriate for

individual relief of the complainant. Corrective action may include any relief anticipated by 29 CFR Part 1614.

(5) Right to Review. The decision will inform the complainant of the right to appeal to EEOC and/or file a civil action in a District Court, except in the case of familial or marital status, and/or sexual orientation complaints, to which there is no right of further review.

(6) Transmittal. CR will transmit to the complainant and to the agency EEO Officer two (2) copies of the final Agency decision.

## 7 CLASS COMPLAINTS

### a Informal Complaints

Any individual who wishes to file a class complaint as an agent, alleging discrimination based on race, color, gender, national origin, religion, age, disability, equal pay, reprisal, in a personnel management policy or practice of the Department or any of its Agencies, must first discuss the EEO issue(s) with an EEO Counselor of the Agency.

### b Processing of Formal Complaints

29 CFR 1614.204 provides for the filing of a formal class complaint.

### c Recommendation to Accept or Reject

(1) Processing. Within 30 days of receiving the proposed class complaint, CR will notify the Office of the General Counsel, Civil Rights Division (OGC-CRD), of the complaint and forward the complaint and the case file to the EEOC with a letter which: (1) requests the assignment of an Administrative Judge; (2) designates OGC-CRD as the Department representative; and (3) requests that the Administrative Judge's recommendation be sent to CR. CR will provide a copy of the EEOC submission to OGC-CRD. OGC-CRD will represent the Agency during processing of the complaint

(2) Transmittal of Recommended Decision. Upon receipt of the Administrative Judge's recommended decision on whether to accept or reject the proposed class

complaint, CR must notify the class agent of the transmittal of the recommended decision. CR will forward the recommended decision to the ASA.

(3) Department Decision. CR will issue the Department decision to accept, dismiss, or modify the proposed class complaint within 30 days of receipt of the recommendation, or the recommendation becomes the final decision of the Department.. This decision will be issued to the class agent, the class representative, the Administrative Judge, and the Agency.

(4) Acceptance of Class Complaint

(a) Notification to EEOC. Within 5 days of the acceptance of the class complaint CR will return the complete complaint file to the EEOC office that determined the class certification issue. CR will simultaneously notify OGC-CRD of the. acceptance of the class complaint.

(b) Notification to Class Members If the class complaint is accepted, the Agency shall notify class members within 15 days of the complaint acceptance. Agencies will finish CR copies of the notice.

(c) Individuals May Not Opt Out.  
The class members may not "opt out" of the defined class; however, they do not have to participate in the class or file a claim for individual relief. Those who wish to participate will have the opportunity to object to any proposed settlement and to file claims for individual relief if discrimination is found.

(d) Settlement Notice. The Agency must notify all class members of any class members or decision on the class complaint regardless of whether such class members participated in the action.

d Individual Complaints Filed on Bases Identical to Class Complaints

An individual complaint which is filed before or after a class complaint is filed, which comes within the definition of the class allegation(s) of a class complaint will not be dismissed but will be subsumed within the class complaint.,

(1) Processing of Individual Complaint Prior To Decision To Acceptor Dismiss the Proposed Class Comlaint. When an individual complaint is filed at or near the time a proposed class complaint is filed, CR will determine whether the allegations in the individual complaint are identical to the allegations presented in the proposed class complaint.

(a) Abeyance. If the allegations are found to be identical, CR will issue a decision notifying the individual complainant that his/her individual complaint will be held in abeyance during the pendency of the decision concerning class certification.

(b) Exceptions. Limited exceptions to this subpart may be made if there is agreement between the class representative and OGC as to the processing of individual complaints which are held in abeyance, and if the individual complaint is not filed at a time close to the filing of the proposed class complaint.

(2) Status of Individual Complaint if the Class Complaint Is Accepted.

If the proposed class complaint is accepted and certified, the individual complaint is subsumed within the class complaint. if the class complaint proceeds to a hearing, the subsumed individual complaint may be used by the class representative at the liability stage of the process, or it may be presented by the individual complainant at the remedy stage.

(3) Status of the Individual Complaint if the Class Complaint Is Dismissed.

If the proposed class complaint is dismissed and not certified, CR must, within 90 days of a Final Agency Decision dismissing the proposed class complaint, issue the acknowledgment of receipt of each individual complaint that had been held in abeyance as set forth herein Section 4(b)(4), and process each individual complaint in accordance with Section 4.

e Resolution of Class Complaint

Notice of Resolution. A resolution of the complaint may be agreed upon at any time by the Agency and the class agent. Proposed resolutions must be reviewed by CR and OGC-CRD before they are finalized. Any resolution must be reduced to writing by the Agency and furnished to: (1) all members of the class; (2) CR; and (3) the ASA.

f Final Decision of the Department

(1) Receipt of Administrative Judge's Findings and Recommended Decision. The findings and recommended decision on the issues of the class complaint, will be forwarded to CR by the Administrative Judge.

(2) Final Agency Decision. Within 60 days of CR's receipt of the Administrative Judge's findings and recommended decision, CR will issue the Final Agency Decision (FAD) on the class complaint, or the Administrative Judge's findings and recommended decision will become the FAD.

(3) Transmittals. CR will transmit the FAD, along with a copy of the Administrative Judge's findings and recommended decision, to the class, agent and class representative. The FAD will also be transmitted to the ECD, the Agency, and the OGC-CRD.

(4) Notification of Class Members. Within 10 days of CR's transmittal of the FAD to the class agent, the Agency will notify class members, in the same manner as the notice required in (4)(b) and (5)(c), of the FAD.

g Relief for Individual Class Members.

(1) Claims for Individual Relief Where Discrimination Is Found.



If discrimination is found, individual class members who believe that they are entitled to individual relief may file a claim with the CR Director within 30 days of the notification by the Agency of the FAD.

(a) Processing. Any individual claim for relief received by the CR Director will be forwarded to the Agency. The Agency will then process the individual claims for relief. Within 30 days from the filing of the individual claim for relief, the Agency will either grant relief to accommodate the claimant or forward the claim and the Agency's comments to CR for a FAD, with a copy to the ASA.

(b) Final Decision on Claim for Individual Relief. CR will issue a FAD on the individual claim for relief within 90 days of its filing.

(2) Where Class-Wide Discrimination Is Not Found.

Within 60 days of the issuance of the FAD finding no class-wide discrimination, CR shall acknowledge receipt of an individual complaint as required in 29 CFR 1614, and process in accordance with the provisions of 29 CFR § 1614 Subpart A, each individual complaint that was subsumed into the class complaint.

8 REMEDIES

a Policy. The policy of the Department is to make completely whole any individual who has been found to have suffered from discrimination. It is also the policy of the Department to provide relief, where the Agency deems it warranted, to resolve a complaint whether or not discrimination is explicitly found.

b Agency Discretion in Settlements. Agencies have reasonable discretion when reaching settlement with complainants within the following restrictions and guidelines.

(1) No settlement agreement, when viewed in its totality, may exceed what the

complainant could obtain if discrimination were found on all of the issues.

- (2) The Agency must document the basis of any decision to offer front pay.
- (3) The Agency must obtain objective evidence of damages whenever it agrees to pay compensatory damages. Proposed awards must be approved by CR.
- (4) Whenever the amount of compensatory damages exceeds \$25,000, the Agency will be required to take reasonable corrective actions to prevent recurrence of similar circumstances.

c Agency Discretion in Remedial Actions. Agencies have reasonable discretion in determining appropriate remedial actions concerning complainants.

d Presumptions. If discrimination is found, it is assumed that the discrimination affected the complainant unless clear and convincing evidence proves that the same action would have occurred in the absence of any discrimination.

e Relevancy. Relief provided the complainant will be relevant to the issues of the complaint. Relief will be granted in accordance with applicable law and regulations. Whether or not a finding is made, the law provides authority to grant such relief as is appropriate to make the complainant whole. The provisions of 29 CFR 1614.501 will be followed in granting remedies on complaints.

f Attorney Fees. Reasonable attorney fees will be paid by the Agency to attorneys or other qualified legal personnel (who are not Federal employees) when services have been performed on the complaint and there is a finding of discrimination on a basis other than age, marital status, familial status, political beliefs, or sexual orientation. When no finding is made, but significant relief is granted the complainant, the Agency shall pay fees to legal counsel unless it is shown that the complainant was not a prevailing party in the matter. Attorney fees are not authorized in a complaint based solely on discrimination by age, marital status, familial status, political beliefs, or sexual orientation.

- (1) Agency Processing. Upon receipt of the verified statement and affidavit itemizing attorney's fees and costs the Agency shall: (1) within 20 days agree with the complainant and representative to pay the charges, and

reduce the agreement to writing with a copy to CF, or (2) forward to CR and the ASA the verified statement, affidavit, and the Agency's reasons for not paying the charges, for a FAD.

(2) Final Agency Decision (FAD). Within 30 days of the filing of the verified statement and affidavit, the agency will issue a FAD on the question of attorney fees on any case for which no voluntary agreement is reached.

## 9 APPEALS TO THE EEOC

### a Right To File and Time Limits

(1) Complaints. Any complainant, except one who has solely alleged familial or marital status, political beliefs, or sexual orientation discrimination, but including one who has filed a notice, mixed case, or negotiated grievance herein under Section 9, may file an appeal with the EEOC within 30 days of receipt of the FAD.

(2) Mixed Cases. A complainant who has filed a mixed case under Section 9(b) or 9(c)(2) may petition to the EEOC only after first appealing through the Merit Systems Protection Board (MSPB). A petition for appeal to the MSPB must be filed: (a) within 30 days of a final agency decision or (b) within 30 days of a decision under a negotiated grievance system. Once the MSPB has issued a decision, a petition may be filed with the EEOC-

(3) Negotiated Grievances. Where the negotiated grievance system is elected to address allegations of discrimination, a complainant may appeal to the EEOC within 30 days of receipt of: (a) a FAD, (b) an arbitrator's decision or award, or (c) a Federal Labor Relations Authority (FLRA) decision on exceptions to an arbitrator's award. If the allegation of discrimination in a negotiated grievance involves a mixed case issue, the appeal will be first to the MSPB and subsequently to EEOC.

(4) Notice. The final decision of the Department under 4(f), or any decision on a negotiated grievance that covers an allegation of discrimination, will notify the complainant of the right to appeal to the EEOC or the MSPB, the proper address to send the appeal, and the timeframe applicable,

and it will include EEOC Form 57 or the required MSPB form.

b Processing.

(1) Notice. When an appeal to the EEOC is filed, a complainant must notify CR and furnish copies of any appeal submissions. A complainant must also notify OGC-CRD in cases where OGC-CRD represented the Agency prior to the final Department decision on the complaint, and it must furnish copies of any appeal submissions.

(2) Files. Upon receipt of a notice of appeal from a complainant or the EEOC, CR will prepare a copy of the complaint file to send to the EEOC. In cases in which OGC-CRD does not represent the Agency, the Agency involved in the complaint will be allowed 15 days to submit comments to CR. CR then will forward the Department's response to the complainant and to the EEOC with the complaint file.

(3) Compliance. Upon receipt of a decision from the EEOC, CR will forward a copy to the Agency. The Agency will provide a copy of the decision to any responding officials. Any corrective action required will be furnished to CR in writing and implemented within 30 days and furnished to CR. CR will notify the EEOC that corrective action has been taken, if necessary.

(4) Review. CR will initiate any request for EEOC review of a previous decision. Agencies that wish to request such a review must do so by notifying CR within 15 days of receipt of the EEOC decision. This request must include all of the reasons supporting such a review. CR will make the determination as to whether a request to the EEOC will be made, and will notify the Agency of its decision.

In cases in which OGC-CRD represented the Agency prior to the FAD on the complaint, OGC-CRD and CR, after consultation with the Agency, will determine whether to request EEOC review, and will prepare and submit to EEOC any such request.

a Right to File. Any complainant, other than one who has alleged discrimination based on familial or marital status, political beliefs, or sexual orientation, but including one who has filed a notice, mixed case, or negotiated grievance under Section 9, may file a civil action in an appropriate Federal District Court.

b Processing

(1) Files. Upon receipt of a civil action complaint containing an allegation of discrimination, OGC-CRD will notify CR. Upon request by the OGC CRD, CR and the Agency involved will provide OGC-CRD copies of the official complaint file, and any other pertinent documents. CR and the Agency will also be provided an opportunity to submit to the OGC-CRD comments and a litigation report on the matter. CR may also submit independent comments and a response to the complaint to OGC-CRD

(2) Assistance. Agencies will directly assist CR and OGC-CRD in providing witnesses, answering interrogatories, responding to document requests, and providing all necessary information relevant to the civil action.

## 11 COMPLAINT SYSTEM

a Responsibility. The EEO Complaint System of the Department is administered by CR.

b Agency Options. Agencies are encouraged to establish their own regulations and procedures for processing complaints in accordance with this subchapter. Any such regulations or policies must be forwarded to CR for review and approval prior to implementation. Agency regulations used prior to this DR must be reviewed and approved by CR to be considered valid.

c Training. Each agency specialist who is assigned complaint processing responsibilities must attend a Department-developed training course on complaint resolution or similar training from another source and be certified by the Department to work on complaints. CR will develop a training course on the resolution model addressed herein Section 4(k) to meet the requirements of this subsection.

d Further Guidance. CR will prepare personnel letters and bulletins, as appropriate, to implement Department policy or practices, or EEOC regulations concerning complaint processing.