



Washington Headquarters Services

ADMINISTRATIVE INSTRUCTION

NUMBER 9
June 25, 2007

P&E

SUBJECT: Processing Complaints of Discrimination

- References:
- (a) Administrative Instruction No. 9, subject as above, January 11, 1979 (hereby canceled)
 - (b) DoD Directive 5110.4, "Washington Headquarters Services (WHS)," October 19, 2001
 - (c) Executive Order 11478, "Equal Employment Opportunity in the Federal Government," August 8, 1969, as amended
 - (d) Title 29 Code of Federal Regulations (CFR), Part 1614, "Federal Sector Equal Employment Opportunity," as amended
 - (e) through (i), see Enclosure 1

1. REISSUANCE AND PURPOSE

This Administrative Instruction (AI):

- 1.1. Reissues Reference (a) under the authority of Reference (b).
- 1.2. Implements the provisions of References (c), (d), and Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 110 (Reference (e)).
- 1.3. Provides procedures for processing complaints of discrimination in employment on the basis of race, color, religion, sex, age, national origin, physical and/or mental disability, and/or retaliation.

2. APPLICABILITY

This AI applies to:

- 2.1. All civilian employees within the organizational entities of the Office of the Secretary of Defense (OSD), the Chairman of the Joint Chiefs of Staff, the Defense Agencies, and the DoD Field Activities serviced by the Washington Headquarters Services (WHS).

2.2. Applicants seeking civilian employment within these same organizational entities.

3. DEFINITIONS

3.1 Agency. OSD, the Chairman of the Joint Chiefs of Staff, Defense Agencies, and Field Activities serviced by WHS.

3.2. Agent of the Class. A class member who acts on behalf of the class during the processing of a class complaint.

3.3. Aggrieved person. Employees or applicants for employment who believe they have been discriminated against in an employment action because of their race, color, religion, sex, national origin, age (40 years or older) or physical or mental disability.

3.4. Class. A group of agency employees, former agency employees, and/or 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, national origin, age (40 years or older), and/or disability pursuant to Reference (d).

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

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

3.5.2. There are questions of fact common to the class;

3.5.3. The claims of the agent of the class are typical of the claims of the class; and

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

3.6. Collaborative Resolution Program (CRP). The agency's alternative dispute resolution process, such as mediation, that uses a neutral third party to assist in the resolution of a dispute pursuant to section 1614.102(b)(2) of Reference (d); Chapter 3 and Appendix H of Reference (e); and Administrative Instruction 106 (Reference (f)).

3.7. Mixed Case Complaint. A complaint of employment discrimination filed with a Federal agency based on race, color, religion, sex, national origin, age (40 years or older), disability, or reprisal related to or stemming from an action that may be appealed to the Merit Systems Protection Board (MSPB).

4. 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, age (40 years and older), national origin, physical and/or mental disability, and/or retaliation for having participated in protected activity.

5. RESPONSIBILITIES

5.1. The Director of Administration and Management (DA&M) shall serve as the agency's Director, Equal Employment Opportunity (EEO).

5.2. The Director, WHS, under the authority, direction, and control of DA&M, shall:

5.2.1. Oversee the management of discrimination complaint processing.

5.2.2. Advise the DA&M on planning, reporting, and complaint processing procedures.

5.2.3. Evaluate periodically the agency's complaint processing program.

5.2.4. Report to the DA&M on needed changes, including remedial or disciplinary action.

5.2.5. Ensure that sufficient human capital and budgetary resources are allocated to operate and maintain an exemplary EEO program.

5.2.6. Issue final decisions and final actions.

5.3. The Director, Planning & Evaluation (P&E), under the authority, direction, and control of the Director, WHS, shall:

5.3.1. Provide administrative oversight for the agency's EEO and Diversity Programs.

5.3.2. Commit sufficient human resources, funding, and infrastructure to operate successful EEO programs.

5.3.3. Provide the Assistant Director, WHS, P&E, EEO Programs (EEOP), with direct access to the agency head, to ensure the greatest degree of independence in implementing this AI.

5.4. The Assistant Director, EEOP, under the authority, direction, and control of the Director, P&E, shall:

5.4.1. Provide informal counseling to employees or applicants alleging discrimination.

5.4.2. Appoint and monitor collateral duty and/or contract counselors to conduct informal counseling duties.

5.4.3. Ensure that all the EEO counselors have received 32 hours of training and 8 hours of annual training as stated in Chapter 2 of Reference (e). Contract counselors must satisfy the same training requirements.

5.4.4. Provide Alternative Dispute Resolution (ADR) services to complainants during the informal and formal stages of the complaint process. The agency's CRP program offers ADR techniques such as mediation and other facilitation services to both managers and employees involved in workplace disputes.

5.4.5. Provide for receipt and processing of individual and class complaints as well as amendments to complaints made before a request for an EEOC hearing. Amendments to complaints subsequent to the hearing shall be submitted directly to the EEOC Administrative Judge with a copy provided to the Assistant Director, EEOP.

5.4.6. Ensure that complaints are properly and thoroughly investigated and final agency actions and/or decisions are issued in a timely manner pursuant to section 1614.110 of Reference (d).

5.4.7. Issue dismissals of complaints pursuant to section 1614.107 of Reference (d).

5.4.8. Recommend final agency action(s) to the EEO Director.

5.4.9. Advise managers, supervisors, and employees on EEO procedures. The Assistant Director, EEOP, shall 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 agency counsel.

5.4.10. Review periodically the complaint processing program and report program needs to the DA&M.

5.4.11. Ensure that all allegations of improper complaint processing are appropriately addressed pursuant to Chapter 5 of Reference (e).

5.4.12. Post a notice to all employees publicizing the business address and phone numbers of the EEOP. The notice shall include the time limits and procedural requirements for filing a complaint.

5.4.13. Make this AI and other written materials available to employees and applicants informing them of EEO program, administrative, and judicial remedial procedures.

5.4.14. Ensure that all personnel are informed of their responsibility to cooperate fully and in a timely fashion with the counseling process, CRP efforts, and investigation procedures.

5.5. Equal Employment Opportunity counselor(s), designated by the Assistant Director, EEOP, shall:

5.5.1. Define clearly for the aggrieved person his or her rights and responsibilities in the EEO complaint process, pursuant to section 1614.105 of Reference (d), including the option to elect to participate in the CRP.

5.5.2. Conduct an initial interview with the aggrieved person to determine the basis(es) and claim(s), the action(s) or term(s) and/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.

5.5.3. Seek a resolution of the complaint or dispute at the lowest level possible; ensure that any resolution is in writing; express the intent of the parties; and coordinate with the EEOP, the WHS Office of General Counsel (OGC), and the WHS Human Resources Directorate as required.

5.5.4. Conduct a final interview and advise the aggrieved person in writing of his or her right to file a formal complaint, within 15 calendar days, if the complaint is not resolved.

5.5.5. Prepare and submit a counselor's report within 15 calendar days, in accordance with the EEOP requirements, and submit it to the Assistant Director, EEOP.

5.5.6. Keep the identity of any aggrieved person confidential, unless the aggrieved person chooses not to remain anonymous.

5.5.7. Communicate to EEOP's Complaint Program Manager and staff members on how the informal complaint is progressing. Seek advice when necessary and report unusual developments that may occur during the counseling process.

5.6. Managers and supervisors shall:

5.6.1. Address promptly any complaints of discrimination that may surface during their day-to-day operations in consultation with their chain of command, the EEOP and, where appropriate, the WHS, OGC.

5.6.2. Cooperate fully with the EEOP staff, including counselors and investigators, throughout the informal and formal complaint process. This includes giving serious consideration to resolution attempts during the complaint process.

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

5.7. WHS, OGC, under the authority, direction, and control of the DoD General Counsel, shall:

5.7.1. Provide legal correspondence review for the EEOP staff members.

5.7.2. Provide legal advice to management officials and agency witnesses.

5.7.3. Represent the agency at fact-finding conferences, EEOC hearings, and Office of Federal Operations (OFO) appeals.

5.7.4. Assist the Department of Justice, Executive Office of U.S. Attorneys, in defending civil cases alleging discrimination.

5.7.5. Negotiate settlement agreements in coordination with relevant management officials and the Office of the Assistant Director, EEOP.

5.8. Aggrieved person(s) shall:

5.8.1. Use the procedures detailed in this AI solely to address allegations regarding employment discrimination based on race, color, sex, national origin, religion, age (40 years or older), physical and/or mental disability, or retaliation for having participated in a protected activity.

5.8.2. Initiate contact with the EEOP 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.

5.8.3. Comply with the process set forth in this AI and seek clarification from the EEOP if needed.

5.8.4. Cooperate fully with the EEO counselors, investigators, and other officials involved in the complaint process.

5.8.5. Seek input, when necessary, from the EEOP on using official time or government equipment to process their respective complaints.

6. PROCEDURES

Procedures for this AI are detailed in Enclosure 2.

7. EFFECTIVE DATE

This AI is effective immediately.



Michael L. Rhodes
Director

Enclosures – 2

E1. References, continued

E2. Procedures

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 110, "Federal Sector Complaints Processing Manual," November 9, 1999¹
- (f) Administrative Instruction 106, "Collaborative Resolution Program," October 31, 2005
- (g) Title 5, CFR, Part 1201.151, "Procedures for Cases Involving Allegations of Discrimination," current edition
- (h) Section 552a of title 5, United States Code
- (i) DoD 1400.25-M, "Department of Defense Civilian Personnel Manual (CPM)," December 1996

¹ A copy of EEOC MD 110 is available on the EEOC website at www.eeoc.gov.

E2. ENCLOSURE 2

PROCEDURES

E2.1. General. All allegations of discrimination based on race, color, religion, sex, national origin, age (40 years or older), physical and/or mental disability, or retaliation, including complaints under the Equal Pay Act claims, are processed in accordance with the provisions of this AI with the following exceptions:

E2.1.1. Removals, Demotions, Suspensions for More Than 14 Calendar Days, and Other Actions That May be Appealed to the MSPB. Such complaints are mixed complaints and shall be processed through a final decision without a hearing pursuant to section 1614.302 of Reference (d). The complainant shall be advised of the right to appeal the agency's final decision to the MSPB pursuant to title 5, Code of Federal Regulations, Part 1201.151 (Reference (g)).

E2.1.2. 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 not 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 (d).

E2.1.3. 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 (d).

E2.1.4. 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 agency with appropriate notification to the affected parties, pursuant to section 1614.606 of Reference (d).

E2.1.5. Two or More Complaints of Discrimination Filed by the Same Complainant. These complaints shall be consolidated by the agency for joint processing after appropriate notification is made to the individual, pursuant to section 1614.606 of Reference (d).

E2.1.6. An Employee Filing a Class Complaint. Employees must seek counseling and be counseled pursuant to section 1614.204 of Reference (d).

E2.1.7. 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. The EEOC shall forward the class complaint within 30 calendar days of receipt of the complaint to EEOC for processing pursuant to section 1614.204 of Reference (d). An Administrative Judge (AJ) of the EEOC shall 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.

E2.2. Cooperation in the Complaint Process. It is essential to the integrity of the administrative complaint process that complainants' representatives and witnesses be free from restraint, interference, coercion, discrimination, and/or retaliation throughout all phases of the process. All employees and applicants involved in the complaint are required to cooperate fully with the EEO office, counselors, and investigators, including providing prompt, accurate, and truthful responses to requests for testimony and related documents.

E2.3. Confidentiality. All stages of the complaint process set forth in this AI are confidential and subject to the Privacy Act (Reference (h)). Complainants and their representatives shall receive copies of the investigative file and other related documents that have been redacted pursuant to Reference (h). Management witnesses and others with an official need to know may be shown relevant parts of the record only as deemed appropriate by the EEOP and/or WHS, OGC. Others who make requests for the record under the Freedom of Information Act pursuant to Reference (h) will be given a copy of the record except for those parts that are exempt from release under the Act.

E2.4. Time Limits. Employees and applicants for employment must bring complaints to the attention of the EEOP within 45 calendar days of the date of the matter believed to be discriminatory. Exceptions may be made at the discretion of the Assistant Director, EEOP, pursuant to section 1614.105(a)(2) of Reference (d). 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 (d).

E2.5. Pre-Complaint Processing

E2.5.1. An aggrieved person who believes he or she has been discriminated against on the basis of race, color, religion, sex, age (40 years or older), national origin, physical and/or mental disability, or retaliation must contact the EEOP within 45 calendar days of the date of the alleged discrimination.

E2.5.2. The EEOP staff shall assign a counselor to promptly contact the aggrieved person to carry out the procedures set forth below in paragraph E2.6. The CRP process shall be offered and made available to all aggrieved persons. When the aggrieved person elects to participate in the CRP, he or she will be referred to the agency ADR Specialist for further processing. Managers will be given the option of declining ADR if they, or they in coordination with EEOP or OGC, conclude that ADR would be inappropriate, futile, or harmful to the agency. If the issues cannot be resolved through the CRP, the individual may choose not to pursue his or her claim(s) or may continue with the EEO complaint process according to paragraph E2.6.6.

E2.5.3. An aggrieved person 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. The EEO or Human Resources officials may not serve as representatives for aggrieved person(s), supervisors, or management officials in connection with processing a discrimination complaint.

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

E2.6. Counseling and the CRP

E2.6.1. The counselor shall advise the aggrieved person in writing of his or her rights and responsibilities pursuant to section 1614.105(b) of Reference (d), and discuss with the complainant the basis(es), issues, and/or claims he or she wishes to raise and the relief sought.

E2.6.2. The counselor shall explain to the aggrieved person the agency CRP as an option to address his or her issues. The aggrieved person may either accept or decline the offer to use the CRP.

E2.6.3. The counselor shall conduct informal counseling pursuant to section 1614.105 of Reference (d) if the aggrieved person declines to participate in the CRP process. The counselor shall specifically identify what alleged agency action and/or what term or condition of employment the individual believes is discriminatory; how the individual was harmed; when the action was taken and/or when the individual learned that the term or condition of employment was discriminatory; who took the action or created the term or condition of employment that the individual believes to have been discriminatory; and who has authority to correct the action or term or condition of employment.

E2.6.4. The counselor shall complete the informal inquiry within 30 calendar days from the date the aggrieved person contacted the EEOP. When more time is needed to complete the inquiry or possibly reach a settlement agreement, the EEOP may grant written approval, with the agreement of the aggrieved person, to extend counseling for an additional period of no more than 60 calendar days pursuant to section 1614.105 (e) of Reference (d).

E2.6.5. The counselor shall conduct a final interview with the aggrieved person 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 must file a written complaint with the EEOP within 15 calendar days from receipt of the notice of right to file.

E2.6.6. If an aggrieved individual initially elects to participate in the CRP process and the process is unsuccessful, the individual may continue with the EEO complaint process by meeting with an EEOP staff member for a final interview. The EEOP staff member shall obtain the information listed in paragraph E2.6.3. and shall inform the individual in writing of his or her rights

and responsibilities in the EEO process, define the basis(es) and issue(s) in the complaint, and describe the relief sought. The individual shall be issued a notice of right to file a formal complaint at the conclusion of this final interview, pursuant to section 1614.105(d) of Reference (d).

E2.6.7. The counselor shall issue a written report to the EEOP within 15 calendar days from the date of the Notice of Right to File a Formal Complaint. The counselor's report shall identify the basis(es) and issue(s) of the complaint, document the informal inquiries made during counseling, and describe attempts made at resolution. The written report shall contain sufficient information to enable the EEOP to glean facts necessary to determine whether to fully or partially accept and/or dismiss the complaint for formal processing. The EEOP shall 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.

E2.7. Formal Complaint Processing

E2.7.1. If the aggrieved individual chooses to file a formal complaint, it must be in writing and delivered to the EEOP either by mail service or in person not later than 15 calendar days from the date of receipt of the Notice of Right to File a Formal Complaint.

E2.7.2. The formal complaint shall be reviewed for acceptance and/or dismissal of the alleged claims described in the written complaint. The Assistant Director, EEOP, shall dismiss all or any part of a complaint of discrimination as required by section 1614.107 of Reference (d). If a complaint is dismissed, the Assistant Director, EEOP, shall 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 (d).

E2.7.3. If a complaint is partially dismissed, the Assistant Director, EEOP, shall 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 shall 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 decision and/or action is taken on the remainder of the complaint.

E2.7.4. The complainant shall 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 E2.1.1., the complainant shall 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.

E2.8. Investigation

E2.8.1. Once a formal discrimination complaint has been accepted, the Assistant Director, EEOP, shall send the complaint file to the Department of Defense, Civilian Personnel

Management Service, Investigations and Resolutions Division (IRD), to conduct an investigation pursuant to subchapter 1614.4.2. of DoD 1400.25-M (Reference (i)). The EEOP staff shall coordinate the administrative details with the IRD investigators, agency witnesses, and the WHS, OGC, to ensure the investigation proceeds pursuant to guidelines described in section 1614.108 of Reference (d).

E2.8.2. The investigator shall 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 (e).

E2.8.3. Agency employees shall 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.

E2.8.4. 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 Assistant 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.

E2.8.5. The investigation shall be completed within 180 calendar days from the date the formal complaint was filed. By written agreement, the parties may voluntarily agree to extend the investigation for not 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 (d).

E2.8.6. At the complainant's request, the Assistant 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 shall be completed in the lesser of 180 calendar days from the filing of the amendment or 360 calendar days from the filing of the original complaint, pursuant to section 1614.108(f) of Reference (d). New matters not like or related to the claim(s) under investigation will be referred to a counselor for processing in accordance with section E2.6.

E2.8.7. The investigator shall prepare a Report of Investigation (ROI) once the investigation is completed. The ROI shall include sworn testimony along with supporting correspondence and relevant information pertinent to the complaint and acquired during the investigative process. The ROI shall be prepared and assembled in accordance with format and content guidelines defined in Chapter 6 of Reference (e) and IRD internal procedural requirements. The investigator shall furnish a completed ROI to the Assistant Director, EEOP.

E2.8.8. The Assistant Director, EEOP, shall keep interested parties informed of the progress of the investigation. Once the investigation is completed, the EEOP staff shall review the ROI to assure the thoroughness of information contained in the report and its relevance to the alleged claim(s). If the Assistant Director, EEOP, finds that the ROI is deficient or lacks comprehensive

analysis necessary to assess whether or not discrimination may have occurred, the ROI shall be returned to the OCI. The investigator shall review concerns identified by the 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 OCI investigator.

E2.8.9. The Assistant Director, EEOP, shall provide the complainant a written notice along with a copy of the ROI describing his or her right to elect either a hearing before an EEOC AJ or a final decision from the agency 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 Assistant 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.

E2.8.10. If the complainant fails to respond to the EEOP's request for either an EEOC hearing or a final agency decision within 30 calendar days from receipt of the notice, a final agency decision on the merits of the claim(s) will be issued. The final agency decision shall 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.

E2.9. Hearings

E2.9.1. If the complainant requests a hearing, the Assistant Director, EEOP, shall 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.

E2.9.2. The EEOC shall appoint an AJ to conduct a hearing pursuant to section 1614.109 of Reference (d). The AJ appointed by the EEOC shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. The AJ shall determine the necessity of the hearing, the witnesses, and what evidence shall be taken, pursuant to the EEOC rules and procedures.

E2.9.3. Employees approved as witnesses by the AJ shall be made available as witnesses at a hearing by whatever means the AJ deems appropriate. The Assistant Director, EEOP, shall notify witnesses of the time, date, place, and method designated to receive their testimony. Coordination for witness testimony may include arranging for travel and/or teleconferencing.

E2.10. Record of Hearing

E2.10.1. 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. The Assistant Director, EEOP, shall arrange for suitable hearing facilities and a court reporter as required by the EEOC AJ.

E2.10.2. The EEOC AJ shall issue a decision on the complaint and order appropriate remedies if discrimination is found. The EEOC shall forward copies of the order rendered by the EEOC AJ along with a hearing record and transcript to the appropriate parties.

E2.11. Final Agency Action or Decision

E2.11.1. The Director of EEO shall issue a final order within 40 calendar days of receiving the EEOC AJ's decision. A final order must be issued within this timeframe indicating whether the agency will implement, partially implement, or decline to implement the decision.

E2.11.2. 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 (d).

E2.11.3. When the agency does not intend to fully implement the EEOC AJ's decision, the WHS, OGC, 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 (d).

E2.11.4. Pursuant to section 1614.109 of Reference (d), 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 agency decision and/or action.

E2.11.5. Pursuant to section 1614.110(b) of Reference (d), when an agency dismisses an entire complaint pursuant to section 1614.107 of Reference (d), 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 (d), the agency shall take final action by issuing a final decision. The agency shall issue the final decision 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 shall issue the final agency decision within 60 calendar days.

E2.11.6. Whenever the ROI or hearing record identifies a need or requirement to conduct EEO training for either specific individuals or an organization, the Assistant Director, EEOP, shall advise management officials on the methods necessary to execute such training.

E2.12. Settlements and Offers of Resolution

E2.12.1. The parties are encouraged to explore informal resolution throughout the complaint process. Settlement agreements will be in writing, will set forth enforcement rights and procedures, and be signed by the agency, complainant, and his or her representative.

E2.12.2. Pursuant to section 1614.109(c) of Reference (d), 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.

E2.12.3. All settlement agreements and offers of resolution will be coordinated with the WHS, OGC, for legal sufficiency review.

E2.12.4. If a complainant believes that the agency has not complied with the terms of a settlement agreement, the complainant must notify the Assistant 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 Assistant Director, EEOP, shall 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 (d).

E2.13. Avoidance of Delay. The complainant, representative, investigator, management officials, and the WHS, OGC, shall work cooperatively with the EEOP staff to ensure that complaints are processed within the timeframes set forth in Reference (d).

E2.14. Appeal to the Office of Federal Operations

E2.14.1. Entitlements

E2.14.1.1. 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 of Reference (d).

E2.14.1.2. The agency has the right to appeal the decision of an EEOC AJ, pursuant to section 1614.110(a) of Reference (d).

E2.14.1.3. 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. 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.

E2.14.1.4. 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 final decision pursuant to section 1614.504 of Reference (d).

E2.14.2. 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,"² and indicate what is being appealed. The appellant shall furnish a copy of the appeal to the opposing party at the same time it is filed with the 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 (d).

E2.14.3. Where To Appeal. Appeals must be in writing and mailed to the EEOC, Office of Federal Operations, P.O. Box 19848, Washington, D.C. 20035.

E2.14.4. Appeal Time Limits

E2.14.4.1. A complainant must file an appeal within 30 calendar days of receipt of a dismissal, final action, or decision.

E2.14.4.2. 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.

E2.14.4.3. 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 (d).

² A copy of EEOC Form 573 is available on the EEOC website at www.eeoc.gov.