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Personnel

**EQUAL EMPLOYMENT OPPORTUNITY
COMPLAINTS**

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This instruction implements Air Force Policy Directive (AFPD) 36-12, 23 September 1993, *Dispute Resolution* provisions. It explains how to file, process, investigate, and settle individual and class complaints of discrimination. It implements federal law and the regulations of the Equal Employment Opportunity Commission (alternatively EEOC or Commission) that prohibit discrimination based on race, color, religion, sex, national origin, age, disability, sexual harassment and/or reprisal for opposing unlawful discrimination or participating in the Equal Employment Opportunity (EEO) complaint process (<http://www.eeoc.gov>). Use it with the policies and guidance of the EEOC published in Title 29, Code of Federal Regulations (C.F.R.), Part 1614, Federal Sector Equal Employment Opportunity, current edition; EEOC Management Directives (MD) 110 and 715; and applicable statutes. Although Air Force policy prohibits discrimination based on sexual orientation, this instruction does not apply to such complaints that may be raised. These complaints may be raised under appropriate grievance and appeal procedures. This instruction applies to Air Force employees or former employees paid from appropriated or nonappropriated funds and to applicants for appropriated or nonappropriated fund positions, excluding persons employed in or applying for positions in the Army and Air Force Exchange Service. It applies to employees from federal agencies receiving Air Force support under a servicing agreement who allege discrimination in matters controlled by the Air Force, as well as employees aligned under the National Guard Bureau according to Title 5, United States Code (U.S.C.) Part III and Air Reserve Technicians while working in a civilian status. It does not apply to Air National Guard Technicians (administered by the National Guard Bureau under Title 32 U.S.C. Section 709), contract employees (unless authorized by law or regulation to file a federal agency complaint), active duty military members, or non-U.S. citizens employed by the Air Force outside the U.S. Direct all inquiries concerning this program to Manager Air Force EEO Complaints Program, 1040 Air Force Pentagon, Washington, DC 20330-1040.

This instruction directs collecting and maintaining information subject to the Privacy Act of 1974. The systems notice for EEOC complaints and appeal records is Equal Employment Opportunity in the Federal Government Complaint and Appeal Records (July 30, 2002, 67 Fed. Reg. 49338 (EEOC/GOVT-1) which cites as the authority for the maintenance of the system of records required by this regulation as 42 U.S.C.

Section 2000e-16(b) and (c); 29 U.S.C. Section 204(f) and 206(d); 29 U.S.C. Section 633(a); 29 U.S.C. Section 791; Reorg. Plan No. 1 of 1978, 43 Fed. Reg. 19607 (May 9, 1978); Executive Order No. 12106; 44 Fed. Reg. 1053 (Jan. 3, 1979). Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFPD 33-3, *Air Force Information Management*, and AFMAN 37-123 (to become AFMAN 33-363), *Management of Records* and disposed of in accordance with the *Air Force Records Disposition Schedule (RDS)* located at <https://afrims.amc.af.mil>

SUMMARY OF CHANGES

This issuance implements Air Force policy and EEOC’s revisions to the federal sector complaint processing regulation, 29 C.F.R. Part 1614, effective November 9, 1999, and the requirements of the Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (“No FEAR” Act), a law designed to hold federal agencies accountable for discrimination and retaliation against employees. It articulates the roles and responsibilities of the parties accountable for the implementation of EEOC guidance, and revises procedures throughout the complaint process, in order to promote fairness and efficiency. This issuance implements Commission mandates that agencies have an alternative dispute resolution program for both informal pre-complaint and formal complaint processes, revises the counseling process and procedures for requesting a hearing, modifies the grounds for dismissing complaints, implements changes to the procedures for issuing final actions, reassigns responsibilities for processing individual complaint appeals to the EEOC, and revises class complaint and appeal procedures and attorney’s fees provisions. Incorporated as well are the agency requirements to use EEONet as the official case management and complaint tracking system, and to advise complainants with sexual harassment claims that they have the right to request an investigation under the authority of Section 591 of the 1998 National Defense Authorization Act, as codified at 10 U.S.C. Section 1561. Complainants can request an investigation under 10 U.S.C. Section 1561 concurrently with other redress avenues such as a negotiated or administrative grievance, MSPB appeal, or EEO complaint. Finally, this issuance incorporates requirements for reporting allegations of misconduct and other adverse information involving Senior Officials and Colonels or equivalent as set forth in AFI 90-301, *Inspector General Complaints Resolution* (8 February 2005).

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Section A—Purpose and Policy

1. Purpose. Each Federal agency is obligated to provide for the prompt, fair, and impartial processing of EEO complaints according to 29 C.F.R. Part 1614 and the instructions contained in EEOC Management Directives.

2. Policy. It is Air Force policy to provide equal opportunity in employment for all persons and maintain a work environment free from unlawful discrimination. Resolving EEO complaints at the lowest possible organizational level is essential to Air Force mission accomplishment, employee morale and work productivity.

3. Use of Alternative Dispute Resolution (ADR) in EEO Complaint Processing. ADR processes, including mediation, facilitation, and other collaborative problem solving techniques, often produce outcomes that are more efficient and effective than traditional, adversarial methods of dispute resolution. The Administrative Dispute Resolution Act of 1996 (ADRA) requires federal agencies to adopt and promote the use of ADR in their administrative dispute resolution processes. The EEOC requires agencies to make reasonable efforts to settle EEO complaints as early as possible in, and throughout, the administrative EEO complaint process [29 C.F.R. Section 1614.603], and to establish and make available ADR programs for this purpose. [29 C.F.R. Section 1614.102(b)(2)]. In accordance with AFPD 51-12, *Alternative Dispute Resolution* (9 January 2003), and AFI 51-1201, *ADR in Workplace Disputes* (21 April 2004), the Air Force strongly encourages the voluntary use of ADR to resolve EEO complaints whenever it is practicable and appropriate to do so.

4. Construction of Terms. As used in this AFI, the following terms have the meanings described herein, unless otherwise specified: “Complaint” refers to both informal pre-complaints and individual (formal) complaints processed under the provisions of 29 C.F.R. Part 1614. “Complainant” refers both to an “aggrieved person” who initiates the informal pre-complaint process under 29 C.F.R. Section 1614.105, and an individual who files a formal complaint of discrimination under 29 C.F.R. Section 1614.106. “Installation commander” refers to the commander or other official (Wing Commander, Base Commander, or AFMC Center Commander or Civilian Director) exercising delegated appointing authority over civilian personnel assigned to the organization under his or her command or direction. “ADR Champion” refers to that individual appointed to manage or oversee the installation alternative dispute resolution (ADR) program pursuant to AFI 51-1201, *Alternative Dispute Resolution in Workplace Disputes* (21 April 2004). Additional terms used in this AFI are defined in [Attachment 1](#).

Section B—Responsibilities and Authorities

5. Air Force General Counsel (SAF/GC). The General Counsel advises the Secretary of the Air Force in all matters covered by this instruction. In carrying out this responsibility, SAF/GC provides legal advice and counsel to SAF/MR in legal matters relating to the review, analysis, decision-making, and appeals of unlawful employment discrimination complaints. SAF/GC serves as the primary legal counsel in complaints filed against personnel in the grades of Colonel, Colonel-select, GS-15, or above who are assigned to The Secretariat, and may assume the role of primary legal counsel in all other complaints against personnel who are assigned to the Secretariat. SAF/GC reviews for legal sufficiency proposed Final Actions before they are signed by SAF/MRB as provided in paragraphs [7.](#) and [20.6.](#), and coordinates on agency appeals and requests for reconsideration as provided in paragraph [26.](#) The Deputy Gen-

eral Counsel for Dispute Resolution (SAF/GCD) is the Office of Primary Responsibility (OPR) for providing GC legal support as described herein, and is the Air Force Dispute Resolution Specialist (AFDRS). As the AFDRS, SAF/GCD is responsible for the Air Force alternative dispute resolution (ADR) program, policy, procedures, guidance, training, funding, website, evaluation, and additional responsibilities outlined in AFPD 51-12 and AFI 51-1201.

6. Air Force Assistant Secretary for Manpower and Reserve Affairs (SAF/MR). The Assistant Secretary for Manpower and Reserve Affairs is designated by the Secretary of the Air Force as the Air Force EEO Director, in accordance with (IAW) 29 C.F.R. Section 1614.102(b) (4), responsible for Air Force EEO policy, to ensure Air Force programs conform to this policy, and to otherwise act for the Secretary in all EEO policy and compliance matters.

7. Director of the Air Force Review Boards Agency (SAF/MRB). The Director of the Air Force Review Boards Agency is the official designated by the Secretary of the Air Force to take final action, pursuant to 29 C.F.R. Section 1614.110, on individual complaints of discrimination.

8. Air Force Deputy Assistant Secretary for Strategic Diversity Integration (SAF/MRD). Provides direction, oversight, and guidance for defining, renewing, developing, and sustaining diversity, human capabilities and enhance mission performance across the Air Force.

9. Air Force Civilian Appellate Review Office (AFCARO). AFCARO is subordinate to SAF/MRB and is also identified as SAF/MRBA. AFCARO analyzes formal complaints, and prepares final decisions and final orders for review and SAF/MRB signature. AFCARO coordinates with the Air Force Central Labor Law Office on appeals and requests for reconsideration being processed between the Air Force and the EEOC and acts as Air Force liaison with EEOC and the Department of Defense, Civilian Personnel Management Services, Investigations and Resolutions Division (IRD). AFCARO performs quality control of IRD investigation reports. AFCARO is responsible for notifying SAF/IGS, consistent with AFI 90-301, *Inspector General Complaints Resolution* (8 February 2005), when a Senior Official (defined as a General Officer or select, Senior Executive Service [SES] member or a Presidential Appointee) is named as a responsible management official (RMO). SAF/IGQ should be notified when the named RMO is identified as a Colonel or equivalent (defined as a Colonel, Colonel-select, or GS-15). AFCARO is responsible for providing timely updates to the above referenced SAF/IG offices as the complaint status changes. AFCARO updates and queries the Air Force data system for EEO complaints (EEONet) and provides statistical reports. AFCARO is responsible for reporting of, and ensuring Air Force compliance with, final EEO orders. AFCARO provides overall direction and oversight of the formal EEO complaints processed under the Air Force "CORE" (Compressed, Orderly, Rapid, Equitable) EEO pilot program, authorized by Section 1111 of Public Law 106-398, The National Defense Authorization Act for Fiscal Year 2001.

10. Air Force Central Labor Law Office (CLLO). CLLO is a branch of the Air Force Legal Operations Agency, General Litigation Division (AFLOA/JACL). CLLO:

10.1. When designated, pursuant to AFPD 51-3, *Civil Litigation* (21 May 1993) and AFI 51-301, *Civil Litigation* (1 July 2002), represents the Air Force in all phases of the individual EEO complaint process, and represents the Air Force position with regard to class acceptance and the merits of any accepted class complaint.

10.2. Negotiates settlements of class complaints, including any awards of compensatory damages, back pay and/or attorney's fees.

10.3. Designates and provides agency counsel upon request from the Major Command (MAJCOM), installation, or other DoD agencies as permitted by manpower requirements, for individual EEO complaints. When requests for assistance are approved, the requester pays travel and per diem for the representative.

10.4. Responds to appeals from Air Force decisions on individual and class complaints and prosecutes agency appeals and requests for reconsideration, as provided in paragraphs 24. and 26. Coordinates with installation SJAs and SAF/GCD, as appropriate, to formulate and present the Air Force legal position in support of, or in opposition to, appeals and requests for reconsideration filed with the EEOC. Files all appellate pleadings with the EEOC/OFO, IAW 29 C.F.R. Section 1614.403.

11. Deputy Chief of Staff, Manpower and Personnel, Directorate of Airman Development (AF/A1D).

11.1. Develops and disseminates Air Force policy on administrative processing of EEO complaints.

11.2. Synchronizes the oversight of the EEO complaint system, evaluates its effectiveness, and takes corrective action or initiates program improvements as needed.

11.3. Ensures Air Force personnel are aware of and have access to existing EEO complaint program resources.

11.4. Provides guidance and training to subordinate Air Force activities on the EEO complaint system.

11.5. Serves as the Corporate Air Force advocate for EEO complaint program resources.

11.6. Develops metrics for the EEO complaint program

12. Air Force Personnel Center (AFPC). Provides day-to-day operational responsibility for EEO complaint processing, maintains functional expertise for assisting installations in the processing of EEO complaints, exercises operational oversight of the Air Force EEO complaint case management and data tracking system (EEO Net), and serves as a liaison between installations and Major Commands and HQ USAF/A1D for implementation of Air Force EEO complaint processing and compliance policies. Collects, updates and reports on an Air Force publicly accessible website agency data required by Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ("No FEAR" Act). Prepares for SAF/MR signature and submits to the EEOC the Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (EEOC Form 462). Collects and reports to the AFDRS ADR data as it pertains to the EEO complaint process.

13. The Major Command Director of Personnel (MAJCOM DP or A1). The MAJCOM Director of Personnel or his/her designee:

13.1. Ensures that adequate resources are available in the command to effectively execute the EEO complaint program. Supports the installation complaint programs (including the ADR component of EEO complaint programs) and ensures they operate in accordance with EEOC guidelines, Federal laws, Executive Orders, and Air Force policy and guidance.

- 13.2. Monitors installation EEO Managers' and EEO Specialists'/Counselors' training requirements, prioritizes training quotas as appropriate, ensures that EEO practitioners receive the EEO training mandated by EEOC and the EEONet training required to effectively use the EEONet case management system. Ensures the base EEO practitioners update EEONet for higher headquarters' review as new discrimination complaints are received; tallies numbers and bases/issues of cases on a quarterly basis for EEOC Form 462 preparation and "No FEAR" web-based reports.
- 13.3. Conducts data analysis and onsite evaluations of base-level effectiveness in processing EEO complaints and gives staff assistance as needed.
- 13.4. Coordinates base-level formal discrimination complaints that involve multiple bases, AFPC, non-AF agencies and EEO Managers inside and outside of the MAJCOM to ensure timely processing.
- 13.5. Monitors all MAJCOM EEO elements for Air Force policy compliance.
- 13.6. Provides assistance and guidance to base-level EEO offices.
- 13.7. Identifies problem areas by analyzing trends. Advises base-level offices of corrective and preventative actions on EEO matters.
- 13.8. Conducts compliance assessments on EEO offices within their respective MAJCOMs utilizing the Air Force Standardized EEO Program Self-Inspection Checklist.
- 13.9. Ensures through oversight that complaint and ADR data are complete, accurate and up-to-date throughout the year to support HQ USAF reporting requirements.
- 13.10. Renders advice and assistance to the installations regarding complaint processing and program management.
- 13.11. Completes and submits reports as required by Headquarters Air Force (AF/A1D).

14. The Installation Commander. The installation commander (defined as the commander or other official exercising delegated appointing authority over civilian personnel under his or her command or direction) is responsible for the EEO complaint and EEO ADR programs for all serviced and tenant organizations. The installation commander:

- 14.1. Appoints an EEO Manager and an adequate number of EEO Specialists/Counselors to cover the installation complaint workload and ensures they receive the mandated training.
- 14.2. Ensures that adequate facilities, office support equipment and financial resources are provided to the EEO manager to effectively manage and operate the EEO complaint program according to EEOC or AF regulations, directives, guidance, applicable laws and statutes.
- 14.3. Ensures prompt processing and promotes informal resolution of EEO complaints.
- 14.4. Ensures that agency employees and management provide full cooperation to EEO counselors, the EEO Manager, EEO Investigators and EEO officials at all stages of the EEO complaint process.
- 14.5. Dismisses complaints in total or in part as is warranted under the provisions of 29 C.F.R. Section 1614.107. This authority may be delegated to the installation vice commander, or to the installation EEO Manager if the EEO Manager has not otherwise counseled the complainant with respect to the complaint (see *Melton v. Peters*, EEOC Appeal No. 01991675 (August 9, 2000)). The complainant is notified in writing of all dismissals or partial dismissals. (See paragraphs [20.2.](#) and [20.3.](#))

14.6. Ensures that management representatives provide timely proposed briefs (for appeals or requests for reconsiderations) to CLLO for review and submission to the EEOC/OFO.

14.7. Ensures that Air Force and EEOC decisions or orders are fully and promptly implemented.

14.8. Advocates and ensures the availability of an ADR process as an optional avenue to resolve disputes and improve work relationships.

14.9. Ensures that the EEO Manager reports to, at a minimum, the installation Vice Commander. The EEO Manager must not be assigned to the Civilian Personnel Flight (CPF) or the Staff Judge Advocate (SJA).

15. The Installation EEO Manager (CCD). The installation EEO Manager is responsible for managing that part of the EEO complaint and EEO ADR program controlled by the installation commander and for coordinating complaint-processing activities, including entering and maintaining complete complaint data in the EEONet system. The EEO Manager:

15.1. Administers the installation commander's EEO Program IAW EEOC guidelines, Federal laws, Executive Orders and Air Force policy directives and instructions, and keeps the commander fully informed of program activity.

15.2. Immediately notifies the MAJCOM EEO Program Manager of receipt of any formal EEO complaint that requires coordination between multiple-installation EEO Managers to ensure timely processing.

15.3. Ensures that the program is in compliance with EEOC regulations and EEOC Management Directives and Air Force policies and instructions, and is effectively managed.

15.4. Advocates and makes available an ADR process as an optional avenue to resolve disputes and improve work relationships. In fulfilling this responsibility, the EEO Manager will work with the installation ADR Champion to provide ADR services, as appropriate, IAW AFI 51-1201, paragraph 16.

15.5. Selects EEO Counselors. Assists, trains, and supervises EEO counselors in their counseling and dispute resolution duties and ensures counselors maintain a position of neutrality in the performance of those duties.

15.6. When appropriate, informs complainants of class complaint and mixed complaint procedures.

15.7. Analyzes formal complaints to identify claims.

15.8. Tracks informal pre-complaint and formal complaints in the EEONet automated data system and takes action to ensure all requirements are met and complaints expeditiously processed at the installation level.

15.9. Tracks and reports through the installation ADR Champion all ADR activity in informal pre-complaints and formal complaints, as required by AFI 51-1201, paragraphs 38 and 39.

15.10. Documents complaint resolution. Advises the complainant in writing of his/her right to file a formal discrimination complaint if resolution is not achieved.

15.11. Prepares and submits required reports.

15.12. Consistently uses EEONet as a case tracking management system to provide up-to-date information and complete reports as mandated by law or regulation.

- 15.13. Maintains and safeguards complaint files as the custodian of the official record.
- 15.14. Keeps commanders, SJA, CPF, complainants and responsible management officials apprised of the status of complaints throughout the process. Maintains open lines of communication with SJA to ensure the timely preparation of briefs in appeals or requests for reconsideration.
- 15.15. Coordinates all proposed and final settlement agreements with SJA, CPF and as necessary, MAJCOM, and Air Force Personnel Center (AFPC), to include Career Program officials.
- 15.16. Ensures appropriate notification/coordination of class complaints with SJA, CPF, MAJCOM, AF/A1D, and CLLO.
- 15.17. Ensures recommendations for dismissal are coordinated with SJA, in every case, and CPF, as needed, prior to final determination and issuance. Dismissal authority is exercised by the installation commander or, through proper delegation, the vice commander or EEO Manager. The EEO Manager may not exercise delegated dismissal authority for any complaint in which s/he participated as a counselor.
- 15.18. Verifies and ensures a record of the complainant's concerns and any actions taken to resolve the concerns are included as part of the official complaint file when the complainant alleges dissatisfaction with the processing of his/her complaint.
- 15.19. Ensures that information in EEO complaint files is protected in compliance with the Privacy Act of 1974. Checks with the installation Privacy Act official for further guidance.
- 15.20. Notifies the SJA and installation commander of sexual harassment claims where the complainant invokes his/her right to request an investigation under the authority of 10 U.S.C. Section 1561.
- 15.21. Notifies AFCARO of any non-frivolous allegations of wrongdoing against any Senior Officials or Colonels or equivalent IAW AFI 90-301, paragraphs 1.30, 1.31, 1.53.7, and 3.8.3. EEONet is the principal means for reporting this information.
- 15.22. Ensures that all correspondence to the complainant and representative, if any, is sent via authorized means (e.g., regular or certified mail, facsimile).
- 15.23. Assures the workforce receives adequate information on the availability of the EEO complaint system, process requirements and assigned EEO personnel. This information must be prominently posted throughout the installation. [29 C.F.R. Section 1614.102 (b) (5) and (7)]

16. The EEO Counselor.

- 16.1. Maintains a neutral position in the performance of his/her counseling duties.
- 16.2. Advises the complainant about the EEO complaint process under 29 C.F.R. Part 1614 and the availability of ADR to resolve the complaint. Explains the ADR program as set forth in EEOC Management Directive (MD) 110, Chapter 3, Section III.B. Use the ADR program notice at [Attachment 3](#) for this purpose.
- 16.3. Refers a complaint selected for ADR to the EEO Manager, ADR Champion, or other designated official for appointment of a third-party neutral and convening the ADR process. The EEO counselor may not serve as a third-party neutral with respect to any complaint in which s/he has counseled the complainant.

- 16.4. Advises the complainant that in sexual harassment claims s/he has the right to request an investigation under the authority of 10 U.S.C. Section 1561, in addition to initiating an EEO complaint.
- 16.5. Determines the issue(s) and basis(es) of the potential complaint based on an analysis of the claim.
- 16.6. Attempts to clarify ambiguities of the claim by identifying basis(es) and issues.
- 16.7. Conducts a limited inquiry for the purposes of furnishing information for settlement efforts and determines jurisdictional questions if a formal complaint is later filed.
- 16.8. Seeks a reasonable resolution of the matter at the lowest possible level.
- 16.9. Prepares and provides a written counselor's report to the EEO Manager within 5 calendar days of the filing of a formal complaint. [See EEOC MD-110, Appendix F for sample format.]
- 16.10. Ensures that all required counseling actions have been taken and that any jurisdictional questions have been resolved.
- 16.11. As directed by the EEO Manager, enters and updates complaint and ADR data into EEONet and notifies the EEO Manager of any senior officials or colonels and equivalent named as responsible management officials in EEO complaints or pre-complaints.

17. The Civilian Personnel Flight (CPF) and Nonappropriated Fund (NAF) Human Resources Office (HRO).

- 17.1. Reviews the basis(es) and issues of formal complaints to ensure these claims have not also been raised as a formal complaint under the negotiated or administrative grievance or Merit Systems Protection Board procedures.
- 17.2. Provides technical expertise on personnel matters.
- 17.3. Coordinates on proposed and final EEO settlement agreements to ensure regulatory compliance and keeps MAJCOM EEO Program Manager, and Air Force Personnel Center (AFPC), to include Career Program officials, informed as necessary.
- 17.4. Provides personnel documents as requested by complaint processing officials.

18. The Installation Staff Judge Advocate (SJA).

- 18.1. Provides legal advice on employment discrimination and dispute resolution matters to the installation commander, the CPF, HRO, and EEO officials.
- 18.2. Designates the individual who will act as agency representative in litigation of individual complaints filed under 29 C.F.R. Part 1614. The SJA designates an attorney from the office of the Staff Judge Advocate, requests that the MAJCOM SJA designate an attorney from the MAJCOM JA office or, after coordinating with the MAJCOM SJA, requests the CLLO Chief to designate an attorney from CLLO to serve as the agency counsel. To the extent feasible, designate an attorney who has not previously advised the commander or other dismissal authority with respect to acceptance or dismissal of the same complaint. The designated representative obtains technical guidance on all personnel matters from personnel specialists in the CPF or NAF HRO, as appropriate.
- 18.3. Reviews, for legal compliance, all formal individual complaints, counselors' reports, resolution/settlement agreements (including agreements resulting from ADR proceedings), and dismissal letters

prepared for the signature of the installation commander or other official exercising delegated dismissal authority (the vice commander or EEO Manager).

18.4. Reviews claims for compensatory damages and attorney's fees and advises the installation commander on the amount to be paid. Negotiates fee agreements with opposing parties. When there is a finding of discrimination by an EEOC Administrative Judge (AJ) that has not been implemented by an Air Force final order, the SJA may negotiate an alternative settlement agreement.

18.5. Prepares for CLLO briefs, motions, and other appellate pleadings as appropriate, in support of the Air Force position in appeals or requests for reconsideration. Ensures that briefs and other appellate pleadings reach CLLO at least 10 calendar days before the due date to EEOC/OFO. Coordinates any changes and revisions to briefs and pleadings with CLLO as necessary.

Section C—Processing Individual Complaints

19. Pre-complaint Processing (29 C.F.R. Section 1614.105 and EEOC MD-110, Chapter 2). An aggrieved person who believes that s/he has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or who believes that s/he has been subjected to sexual harassment or retaliated against for opposing discrimination or for participating in the complaint process must consult an EEO counselor before filing a formal complaint. In order for the complaint to be processed at the formal stage, the initial contact must be 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 or when s/he becomes aware of the personnel action. The 45-day time limit may be extended for reasons outlined in 29 C.F.R. Section 1614.105(a)(2). To be deemed as initiating contact [29 C.F.R. Section 1614.105(a)(1)] the aggrieved person must state a basis of his/her claim.

19.1. When an individual alleges discrimination in a multi-service case (e.g., Navy employee alleges an Air Force management official has discriminated against him/her), the counseling and complaint processing are conducted by the owning agency of the responsible management official, unless a servicing agreement between the Air Force and the owning agency provides otherwise.

19.2. Complaints based on sexual orientation are not covered under 29 C.F.R. Section 1614.105(a) and therefore an aggrieved person who believes s/he has been discriminated on the basis of sexual orientation must be referred to the CPF for counseling on appropriate grievance and appeal procedures. If the aggrieved person insists that s/he wants to file a discrimination complaint, the Counselor should abbreviate the counseling and issue the notice of final interview. Under no circumstance should the Counselor attempt to dissuade a person from filing a complaint. Subsequent dismissal of the complaint would be initiated as stated in Para **20.2.** or **20.3.**

19.3. A determination that a claim is not suitable for processing under Part 1614 does not foreclose the use of ADR or any other informal dispute resolution procedures to resolve the claim if otherwise found to be appropriate for such alternative procedures.

19.4. EEO Counselors must:

19.4.1. Start the 30-calendar day informal pre-complaint processing period as of the first date the complainant contacts an installation EEO official (EEO Manager, Counselor, or other official designated to receive EEO allegations) with a stated claim.

19.4.2. Initiate the EEO complaint tracking process using EEONet.

19.4.3. Assign a base docket number to each informal complaint. The base docket number is automatically assigned through EEONet and is constructed as follows:

19.4.3.1. -- 2-digit servicing civilian-personnel-flight identifier,

19.4.3.2. -- 2-digit servicing MAJCOM identifier,

19.4.3.3. -- 2-digit current fiscal year,

19.4.3.4. -- 3-digit chronological sequence number starting with 001 at the beginning of each fiscal year.

[Note: The docket numbers should reflect current identifying numbers. The third digit of the base docket number is always numeric.]

19.4.4. Advise aggrieved persons in writing of their rights and responsibilities. [See **Attachment 2, Notice of Rights and Responsibilities--use is mandatory.**]

19.4.5. If the complaint alleges sexual harassment, advise aggrieved persons of their right to request investigation of allegations of sexual harassment under 10 U.S.C. Section 1561.

19.4.6. Advise complainant that s/he may choose between having his/her complaint processed under the ADR procedure or the counseling activities described in 29 C.F.R. Section 1614.105(c) and EEOC MD-110, Chapter 2. [29 C.F.R. Section 1614.105(b)(2)] Ensure the complaint has been properly screened and found appropriate for ADR before offering ADR to the complainant. [See **Attachment 3, Air Force Alternative Dispute Resolution (ADR) Program Notice--use is mandatory.**] Do not decline to offer ADR solely because of the basis(es) alleged in the complaint (i.e., race, color, religion, national origin, sex, age, disability or retaliation). [MD-110, Chapter 3, Section II.A.5] Participation in ADR by the complainant and management officials is encouraged but not mandated. If the ADR procedure is chosen, the pre-complaint processing period shall automatically extend to 90 days. [29 C.F.R. Section 1614.105(f)] The counseling and screening requirements of this subparagraph may be accomplished by the EEO Counselor, EEO Manager, ADR Champion, or other official designated for that purpose. Refer to AFI 51-1201, paragraph 21, for ADR screening requirements.

19.4.7. Process all allegations of discrimination through the informal pre-complaint process, regardless of timeliness, merit, or other considerations.

19.4.8. Seek permission to use the complainant's name during informal pre-complaint processing. If permission is denied, take appropriate measures to protect the confidentiality of the complainant's name until a formal complaint is filed.

19.4.9. Complete informal pre-complaint counseling within 30 calendar days or obtain written approval from the complainant and the EEO Manager to extend counseling for no more than 60 calendar days. If ADR is chosen, complete processing within 90 calendar days. In either case, if the matter is not resolved before the end of the authorized period, including extensions, issue the final interview letter as described in paragraph **19.4.10.** below. [29 C.F.R. Section 1614.105(d)-(f)]

19.4.10. Advise the complainant in the final interview letter that any formal complaint must be filed with the EEO Manager or local commander or designee within 15 calendar days of receipt and provide the Notice of Rights and Responsibilities (**Attachment 2**). Attach a copy of DD Form 2655, Complaint of Discrimination in the Federal Government, to the final interview letter. Do not attempt in any manner to encourage or dissuade the person from filing a complaint. If the com-

plainant does not make contact to file a formal complaint within 15 calendar days, send a letter to inform him/her that his/her case is closed. This correspondence is to be sent no earlier than the 30th day and no later than the 60th day after the issuance of the final interview letter.

19.4.11. Submit a narrative counselor's report to the EEO Manager within 5 calendar days of the date the formal complaint is filed. Document in the report any time the complainant claims compensatory damages and provide a copy of the "Broughton Notice" (**Attachment 4**) to the complainant at the time the formal complaint is filed.

20. Formal Complaint Processing (29 C.F.R. Section 1614.106). A formal complaint must be filed at the installation where the alleged discrimination occurred, and the complainant or the attorney designated to represent the complainant must sign it. It must describe the action(s) or practice(s) that form the basis of the complaint. If a complainant is dissatisfied with the processing of his/her pending complaint, whether or not it alleges prohibited discrimination as a basis for dissatisfaction, s/he should be referred to the installation commander or designee. If the attempt to resolve the dissatisfaction with the complaint processing is unsuccessful, s/he should be referred to the MAJCOM office responsible for the EEO Complaints Program, who will inform the complainant of his or her further right to present a complaint IAW MD-110, Chapter 5, Section IV.D. A record of the complainant's concerns and any actions taken to resolve the concerns must be made a part of the complaint file. If no action is taken, the file must contain an explanation for not taking any action. EEO Managers process formal complaints.

[Note: A complainant may amend a complaint at any time before the mailing of the notice required by 29 C.F.R. Section 1614.108(f) at the conclusion of the investigation to include issues or claims that are like or related to those raised in the complaint. After requesting a hearing, the complainant must ask the EEOC AJ to amend the complaint to include issues or claims like or similar to those raised in the complaint.]

20.1. To process formal complaints, EEO managers must:

20.1.1. Notify the complainant and his/her representative of the docket number and instruct them to refer to it in all future correspondence.

20.1.2. Review the complaint file, including the Counselor's Report, perfect the claims, and ensure information covered by the Privacy Act is properly protected. Questions concerning the Privacy Act and its coverage are addressed to the installation Privacy Act monitor.

20.1.3. Coordinate with the CPF to ensure the individual does not have identical issues filed under a negotiated grievance procedure or the Merit Systems Protection Board (MSPB) appeal procedure.

20.1.4. Advise the complainant, in writing, of receipt of the complaint, the date that the complaint is considered filed, and the right to appeal to EEOC/OFO any full dismissal of the complaint. An identical acknowledgment, in writing, is also required for an amendment to a complaint. [29 C.F.R. Section 1614.106 (d) and (e)] Also provide a copy of the "Broughton Notice" (**Attachment 4**) on compensatory damages.

20.1.5. Review each claim to recommend acceptance or dismissal. If it is determined that some but not all of the claims in a complaint should be dismissed for the reasons contained in 29 C.F.R. Section 1614.107(a)(1) through (9), the complainant shall be notified in writing of this determination. The complainant will also be notified of the rationale for that determination and that those claims will not be investigated; a copy of the notice shall be placed in the investigative file for later review by an AJ if a hearing is requested on the remainder of the complaint. [Note: EEOC/

OFO will not review appeals of partial dismissals until after the final agency action is taken.] See paragraphs 14.5. and 20.3. for additional information on partial dismissals.

20.1.6. Submit a copy of the report to the CPF and SJA to review and coordinate for technical and legal compliance and possible resolution.

20.1.7. Provide the counselor's report to the complainant within 15 calendar days of the date the formal complaint is filed.

20.1.8. Upon acceptance of claims, request an investigator from the Investigations and Resolutions Division (IRD), not later than 30 calendar days after the date the formal complaint is filed, and mail/transmit a copy of the complaint file to that office. If a portion of a complaint is dismissed, the request to IRD for an investigator for the accepted portion of the complaint is still sent within the 30-calendar day time limit. For formal complaints submitted to an ADR procedure, see paragraph 20.1.11. below.

20.1.9. Obtain the fund citation for IRD investigations and EEOC hearings related to the complaint. Also refer to AFI 65-601, Volume 1, Para 10.17, *Funding Travel Related to Equal Employment Opportunity (EEO) Complaints*. The unit/organization in which the discrimination complaint arises is normally responsible for all costs associated with the complaint – to include back pay, attorney fees, compensatory damages, etc. stemming from an approved settlement agreement or decision. Exceptions are provided for organizations supported by the Air Force under DoD Directive 5100.3, *Support of the Headquarters of Combatant and Subordinate Joint Commands*, November 15, 1999. Travel of Air Force personnel required by an AJ or other authorized official is charged to the AF participant's unit of assignment. [See AFI 65-601, Vol I, Para 10.17.2.]

20.1.10. Notify and ask the SJA to appoint a management representative. On complaints filed against senior officials or colonels and equivalents assigned to the Secretariat or the Air Staff, the EEO Manager will notify SAF/GCD.

20.1.11. If ADR is offered and agreed to by the parties, the EEO Manager may request a third-party neutral from IRD, from a roster of local neutrals maintained for such purposes, or from the Air Force ADR Program Office website at www.adr.af.mil. Expenses for contract neutrals or Air Force neutrals brought in TDY may be funded locally or by the Air Force ADR Program Office upon request. Note: For ADR proceedings in formal complaints processed under the CORE EEO Pilot Program, contact AFCARO to request a third party neutral IAW with the guidelines applicable to the CORE process. Coordinate with IRD to deconflict ADR proceedings from the investigation.

20.2. Complaints Dismissed in Their Entirety (Full Dismissals).

20.2.1. The installation commander (or vice commander or EEO Manager if delegated this authority—see paragraph 14.5.) may dismiss an individual complaint in its entirety prior to a timely request for a hearing before an AJ under the provisions of 29 C.F.R. Section 1614.107 and EEOC MD-110.

20.2.2. In processing dismissals, the EEO Manager must:

20.2.2.1. Process them as promptly as possible.

20.2.2.2. Ensure that dismissals are coordinated with SJA in every case and CPF as needed. The SJA will coordinate proposed dismissals of complaints with CLLO.

20.2.2.3. Ensure that the dismissal letter advises the complainant to furnish a copy of any appeal to AFCARO. [Note: If the appeal goes to the EEO Manager, s/he immediately electronically transmits a copy to AFCARO.] The dismissal letter must give reasons for the action, citing applicable sections and subsections of 29 C.F.R. Part 1614 and a copy of an EEOC Form 573, Notice of Appeal/Petition, should be attached. [See EEOC MD-110, Appendix K for sample form; available electronically.]

20.2.2.4. Send the request for additional information that includes a notice of proposed dismissal [29 C.F.R. Section 1614.107(a)(7)] by regular or certified mail, as appropriate.

20.2.2.5. Issue a final decision as required by 29 C.F.R. Section 1614.110(b).

20.3. Partial Dismissal. A partial dismissal is defined as one or more claims in a complaint being dismissed at the same time that one or more claims are accepted for investigation.

20.3.1. The installation commander (or vice commander or EEO Manager if delegated this authority—see paragraph 14.5.) may partially dismiss claims in a complaint. Notify complainant in writing of the reason(s) for the claims being dismissed and inform him/her that those claims will not be investigated. [29 C.F.R. Section 1614.107(a)(1) through (9)]

20.3.2. Place a copy of the notice and any supporting documents in the complaint file for later review, [Note: This is the only point to document the case to support partial dismissal. Do not attach an EEOC Form 573, Notice of Appeal/Petition Form, to this notice.] The complainant has appeal rights to EEOC only after the final decision is issued. However, AJs may review and decide the propriety of partial dismissals during the hearing process. [29 C.F.R. Section 1614.107(b)]

20.3.3. Notwithstanding the partial dismissal of claim(s), the request to IRD for an investigation of the accepted portion of the complaint is still sent within the 30 calendar day time limit.

20.4. Investigation of Complaints (29 C.F.R. Section 1614.108).

20.4.1. If the formal complaint is not dismissed in its entirety, within 30 calendar days of the date of receipt of the formal complaint the EEO Manager shall request an IRD investigation. See paragraph 20.1.11. for guidance on formal complaints that are referred to an ADR procedure. The request must include the following:

20.4.1.1. Specific claims raised and which ones are accepted.

20.4.1.2. Specific claims partially dismissed, including reasons and documentary evidence to support recommended dismissal(s).

20.4.1.3. Complete, sanitized case file and any other pertinent records.

20.4.1.4. Name, office symbol, address (including e-mail address), phone and data fax number of the management representative.

20.4.2. Investigators determine the scope and methodology of the investigation; however, the installation EEO Manager has final decision authority as to whether to fund either a verbatim recording of a fact-finding conference (FFC) or verbatim transcription of witness testimony. The EEO Manager shall coordinate with the agency representative or the SJA before deciding whether a verbatim recording will be funded. IRD investigators may not unilaterally impose a requirement

for any complaint to be investigated by these methods or any other method that imposes additional costs. IRD investigators negotiate with the complainant or complainant's representative for extensions to the 180-day time limit for processing complaints. EEO Managers, at the request of investigators, may act as intermediaries in these negotiations. In accordance with 29 C.F.R. Section 1614.108(e), agreements to extend the 180-day time limit must be in writing and included in the investigative file. The EEO Manager will provide a copy to AFCARO.

20.4.3. Upon completion of the investigation, IRD makes available an electronic copy of the Report of Investigation (ROI) and the investigative file on its web site. This copy has not been sanitized to remove Privacy Act information (see unit Security Manager regarding classified material). Bases with access to the file will download it directly; for bases without access, AFCARO will download the file and provide an unsanitized copy to the base EEO Manager. EEO Managers and other base officials **should not** provide a copy of the ROI and/or the investigative file to complainants or their designated representatives, and should not create their own sanitized version of these files. IRD also provides AFCARO with one unsanitized print copy of these files which AFCARO sanitizes in a consistent manner and provides (in printed copy form) to complainants and their designated representatives, along with the notification of further rights under the provisions of 29 C.F.R. Section 1614.108(f), 29 C.F.R. Section 1614.110, and 29 C.F.R. Section 1614.302(d)(2) (mixed cases). Further, the notice must state that if the complainant desires a final Air Force decision without an EEOC hearing, s/he must request it from AFCARO, and if s/he requests an EEOC hearing (non-mixed case), s/he must request it directly from the EEOC district office AFCARO specifies. AFCARO tracks the 30-calendar day period for the complainant to elect further processing options.

20.4.4. If the complainant does not request a hearing or a final Air Force decision without a hearing within 30 calendar days after receipt of the ROI and investigative file, AFCARO will notify the complainant that a final decision will be issued within 60 calendar days from the end of the 30 calendar day request period, and that further appeal rights will be provided at that time.

20.4.5. EEO Managers will, in all formal complaints, immediately electronically transmit any request for hearing, settlement agreement, or withdrawal to AFCARO.

20.5. Hearing (29 C.F.R. Section 1614.109). EEO Managers, in coordination with the agency representative, make all needed arrangements as outlined in EEOC MD-110, Chapter 7.

20.5.1. The notice to the EEOC district office that services their area will include:

20.5.1.1. Instructions to send the AJ's final decision and two copies of the hearing transcript to AFCARO.

20.5.1.2. The name, address and telephone number of the management representative.

20.5.1.3. A tabbed and bound copy of the complaint file, including the investigative file.

20.5.2. The complainant must submit the request for a hearing directly to EEOC. [29 C.F.R. Section 1614.108(g)] When the EEO Manager receives a copy of the request for a hearing from the complainant, s/he in turn, will mail a copy of the request for a hearing to AFCARO.

20.5.3. Upon receipt of the AJ's decision, AFCARO will furnish a copy of the decision to CLLO and the installation EEO Manager and will advise the EEO Manager of the projected date on which a final agency action will have to be issued in order to meet the EEOC 40-day time limit. Any extra copies of hearing transcripts and investigative files will be returned to the custodian of

the record. Installation EEO Managers will in turn furnish copies of AJs' decisions to the appropriate parties, such as commanders, CPO and SJA.

20.6. Final Agency Actions (29 C.F.R. Section 1614.110). All final actions (whether denominated final decisions or final orders) are prepared by AFCARO for review and signature by SAF/MRB. All proposed final actions will be reviewed for legal sufficiency by an authorized Air Force attorney before they are submitted to SAF/MRB for signature. In addition, proposed final orders resulting from findings of discrimination by an EEOC AJ shall be coordinated for appeal recommendations IAW paragraph 26.2.1., before SAF/MRB issues the final order.

20.7. Notwithstanding the provisions of this paragraph, formal complaints in which the complainant has elected to proceed under the Air Force EEO pilot program (CORE) will be processed IAW with the guidelines applicable to the CORE process. If at any point prior to the issuance of a final decision by SAF/MRB the complainant "opts out" of the CORE process, further processing of the complaint will continue under Part 1614 and the provisions of this AFI will apply.

21. Settling a complaint (29 C.F.R. Section 1614.504, Section 1614.603, EEOC MD-110 Chapters 2, 3, and 12). The EEO Manager, working with the SJA, management representative, the complainant and his/her representative, may settle the complaint at any stage in the process through negotiation, ADR or other approach. In complaints filed against persons in the grades of Colonel, Colonel-select or GS-15 or above who are assigned to the Secretariat, the cognizant installation commander is the primary settlement authority, but such authority may be delegated to subordinate personnel in coordination with SAF/GCD and the management representative. Investigators and AJs may also seek to resolve a complaint with the parties during the investigation and/or hearing.

21.1. The settlement agreement may include remedial action, back pay, and attorney's fees and/or compensatory damages, if allowed by law. However, care should be taken not to stipulate that any compensatory damage amounts have been verified as claimed. Additionally, in age discrimination claims as well as reprisal claims based on prior age discrimination complaints, attorney's fees and compensatory damages are not payable. Insert statutory language as required by Older Workers Benefit Protection Act, 29 U.S.C. 626, Subsections (f)(1) and (f)(2), as appropriate, whenever settling allegations of age discrimination.

21.2. If the settlement binds an organization outside the authority of the relevant commander, the EEO Manager obtains written concurrence of an authorized official within that organization before the agreement is signed.

21.3. Before signing an agreement, obtain coordination of the SJA, CPF and Air Force Personnel Center (if appropriate) on personnel actions to be taken as a result of the agreement. Such coordination does not include a determination on the merits of the case or on the settlement. For settlement agreements resulting from an ADR proceeding, the agreement may be signed before formal coordination, contingent upon subsequent coordination and approval.

21.4. The EEO Manager in coordination with CPF faxes copies of signed settlement agreements requiring action by Defense Finance and Accounting Service (DFAS) (e.g., cancellation /correction of suspension actions, retroactive promotions, reinstatement of leave, etc.) to the servicing DFAS civilian payroll office immediately with copies of applicable Standard Form 50-B, Notification of Personnel Action.

21.5. An allegation of violation of a settlement agreement is processed according to [Section H](#) of this instruction.

Section D—Processing Class Complaints (29 C.F.R. Section 1614.204)

22. Class Complaints.

22.1. AF/A1D develops personnel policy and oversees the processing of all class complaints of discrimination. AF/A1D helps CLLO prepare the agency's position statements and briefs in class complaint proceedings, as appropriate.

22.2. The Civilian Personnel Officer (CPO) personally serves or designates a staff member to serve as a technical representative for class complaints. The CPO also ensures that applicable personnel records are maintained while a class complaint is pending.

22.3. CLLO provides legal advice on all administrative class complaint matters and designates the agency representative for all administrative class complaints.

23. Pre-complaint Processing.

23.1. An individual who wishes to file a class complaint, as defined in 29 C.F.R. Section 1614.204(a) must seek counseling and be counseled in accordance with 29 C.F.R. Section 1614.105. The EEO Manager notifies AF/A1D, CLLO, MAJCOM/DPC (or other MAJCOM office with EEO responsibility), the installation CPO and SJA, in writing, when an individual files a class complaint. The notification must include the complainant's name (if releasable), the name of the complainant's representative, the docket number, the date of initial contact, identification of the class and issues raised.

[Note: The complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint. If the complainant moves for class certification after completing the counseling process, according to 29 C.F.R. Section 1614.204(b), no additional counseling is required.]

23.2. When notified of a class complaint, CLLO designates an attorney to represent the Air Force. The servicing SJA designates a local attorney to assist the CLLO attorney.

23.3. The EEO Manager tries to resolve individual allegations and personal concerns of the complainant. Before attempting to resolve class-wide issues the CCD must coordinate any proposed action with CLLO, AF/A1D and the MAJCOM/DPC.

23.4. The EEO Manager must coordinate the gathering and analysis of statistics with AF/A1D and CLLO before collecting the data.

23.5. Before the final interview with the complainant, the EEO Manager prepares a draft report for coordination with the installation SJA and CPO, the MAJCOM/DPC, AF/A1D and CLLO. This report must include, at a minimum, the following: class issue(s), basis(es), definition of the proposed class, information as to potential class size (numerosity) and how agent's claim(s) reflect claims of class (commonality and typicality), and adequacy of representation of the class. [29 C.F.R. Section 1614.204]

24. Formal Class Complaints.

24.1. The complainant must file a formal class complaint with the EEO Manager no later than 15 calendar days after receipt of the final interview letter. The agent or attorney/representative must sign the class complaint. It must identify the policy or practice adversely affecting the class as well as the action or matter adversely affecting the agent.

24.2. Upon receipt of a formal class complaint, the EEO Manager forwards the original and one copy of the case file to CLLO, one copy to AF/A1D and one copy to MAJCOM/DPC. The EEO Manager also notifies the installation CPO and SJA.

24.3. Within 30 calendar days of receipt of the written formal complaint, the Air Force representative, in coordination with AF/A1D, forwards it to the EEOC district office with the counselor's final report and the Air Force recommendation to accept or dismiss based on the criteria at 29 C.F.R. Section 1614.107 and 29 C.F.R. Section 1614.204(a)(2). Copies are sent to AF/A1D, CLLO, AFCARO, and the EEO Manager. The agency submission instructs EEOC to send its recommendation to AFCARO.

24.4. The EEOC AJ decides whether to accept or dismiss a class complaint. Immediately upon receipt of the decision AFCARO will forward it to SAF/GCD and CLLO, or the division within SAF/GC designated to act on class complaints, who will issue a final order within 40 calendar days after receipt, IAW 29 C.F.R. Section 1614.204(d)(7). A complaint dismissed as a class complaint may be filed as an individual complaint and processed accordingly, or dismissed as an individual complaint if one or more grounds exist under 29 C.F.R. Section 1614.107(a). If the final order does not implement the AJ's decision to accept a class complaint, the Air Force will simultaneously appeal the decision IAW 29 C.F.R. Sections 1614.204(d)(7) and 1614.403. The agent may appeal dismissal of a class complaint to the EEOC or file a civil action.

24.5. When the EEO Manager receives an individual complaint that s/he believes is related to a pending class complaint, the EEO Manager will inform AF/A1D and CLLO of the issue(s) involved and the basis of the individual complaint, and provide a synopsis of the reasons for believing the individual complaint is related to a pending class complaint. Where appropriate, AF/A1D and CLLO will provide guidance on processing individual complaints related to pending class complaints.

24.6. The EEO Manager makes arrangements for the hearing after the EEOC has set a date for such an action. The EEOC will hold a hearing of the accepted class complaint and issue a report of findings and recommendations to AFCARO as the designated service agent for the Air Force. AFCARO will immediately notify AF/A1D and CLLO and provide copies of the report as appropriate. [29 C.F.R. Section 1614.204(h)]

24.7. AF/A1D and CLLO, who represents the agency in all phases, are responsible for managing the processing of formal class complaints. Processing will be in accordance with 29 C.F.R. Section 1614.204(e) through (k).

Section E—Processing Mixed Case Complaints (29 C.F.R. Section 1614.302 and EEO MD-110 Chapter 4)

25. An individual may file a mixed case appeal through the Merit Systems Protection Board (MSPB) process or a mixed case complaint using the EEO discrimination complaint system, but not both. Whatever action the complainant files first, in writing, is considered the election. Merely receiving informal

pre-complaint counseling does not constitute an election; a formal complaint must be filed to restrict the complaint to the mixed case complaint system.

25.1. Processing of mixed case informal pre-complaints and formal complaints will be in accordance with 29 C.F.R. Section 1614.105, Section 1614.106, Section 1614.107, and Section 1614.108 (a) through (d).

25.1.1. When a formal complaint is accepted, the EEO Manager advises the complainant that if a decision on the claims appealable to the MSPB is not issued within 120 calendar days of filing the mixed case complaint, the complainant may appeal the matter to the MSPB as specified at 5 C.F.R. Section 1201.154(b)(2) or file a civil action as specified in 29 C.F.R. Section 1614.310(g), but not both. [29 C.F.R. Section 1614.302 (d)(1)(i)]

25.1.2. Upon completion of the investigation and receipt of the investigative file, AFCARO advises the complainant that a final decision will be issued on the claims appealable to the MSPB within 45 calendar days without a hearing.

25.1.3. When a final Air Force decision is issued, AFCARO will advise the complainant of the right to appeal the matter to the MSPB (not EEOC) within 30 calendar days of receipt and the right to file a civil action as provided at 29 C.F.R. Section 1614.310. [29 C.F.R. Section 1614.302(d)(3)]

25.2. Dismissal of a mixed case complaint on the basis of prior election of a mixed case appeal is as follows:

25.2.1. If neither the MSPB nor the installation commander (or vice commander or EEO Manager exercising delegated authority) disputes MSPB jurisdiction, the claims involving actions appealable to the MSPB are dismissed IAW 29 C.F.R. Section 1614.107(a)(4). The dismissal letter will advise the complainant to notify the MSPB of the allegations of discrimination contained in the dismissed complaint. It also advises the complainant of the right to petition the EEOC to review the MSPB final decision on the discrimination issue. [29 C.F.R. Section 1614.302(c)(2)(i)]

25.2.2. If the installation commander (or vice commander or EEO Manager exercising delegated authority) or the MSPB questions the MSPB jurisdiction over the mixed case appeal, the EEO Manager will hold the mixed case complaint in abeyance until the MSPB rules on the jurisdictional issue. The EEO Manager notifies the complainant of the action being taken and instructs him or her to bring the allegation of discrimination to the attention of the MSPB.

25.2.3. If the MSPB determines it has jurisdiction over the matter, the installation commander (or vice commander or EEO Manager exercising delegated authority), shall dismiss the mixed case complaint pursuant to 29 C.F.R. Section 1614.107(a). The EEO Manager advises the complainant of the right to petition the EEOC to review the MSPB final decision on the discrimination issue.

25.2.4. If the MSPB determines it does not have jurisdiction over the mixed case appeal, the EEO Manager recommences processing of the mixed case complaint as a non-mixed case EEO complaint.

Section F—Appeals and Requests for Reconsideration

26. In accordance with AFPD 51-3, *Civil Litigation*, and AFI 51-301, *Civil Litigation*, any appearance or representation before the EEOC, or the filing of briefs, motions or other pleadings with the EEOC, will be conducted by an attorney authorized by the Judge Advocate General or the General Counsel.

26.1. Appeals.

26.1.1. Complainant Appeals. CLLO has primary responsibility as agency representative in all appeals initiated by the complainant under 29 C.F.R. Section 1614.401(a).

26.1.1.1. AFCARO is the central receipt point for all appeals. Upon receipt, AFCARO will forward the appeal to CLLO, and will concurrently send the appeal and a request for the complaint file to the installation EEO Manager responsible for processing the complaint. The installation EEO Manager will forward the complaint file to AFCARO, with a copy to CLLO. AFCARO will file the complaint file with EEOC/OFO within 30 days of initial notification of the complainant's appeal. [29 C.F.R. Section 1614.403(e)]

26.1.1.2. CLLO will establish suspense for response to the appeal and will request a proposed brief or other response from the installation SJA where the complaint arose. Briefs and other documents drafted by the installation SJA are forwarded to CLLO for review and revision, if necessary, before filing with EEOC/OFO. CLLO will coordinate the Air Force legal position with the SJA and SAF/GCD as appropriate, and will coordinate non-legal issues with AFCARO as necessary. CLLO will file all appeal briefs, motions, and other pleadings directly with EEOC/OFO, IAW 29 C.F.R. Section 1614.403, with service on the complainant or the complainant's designated representative, and provide copies of all filings to the installation SJA and AFCARO for inclusion in their respective complaint files.

26.1.1.3. An unfavorable decision on an EEOC/OFO appeal will be processed for possible Request for Reconsideration (RFR) IAW the procedures in paragraph **26.2.** below.

26.1.2. Agency Appeals. SAF/MRB is the final decision authority on all appeals to the EEOC/OFO initiated by the Air Force. CLLO has primary responsibility as agency representative before the EEOC/OFO in all agency-initiated appeals. If CLLO believes an appeal is appropriate, CLLO will notify SAF/MRB, and will provide AFCARO a draft brief or other pleading supporting the recommended appeal in sufficient time for SAF/MRB to decide whether an appeal should be filed. Although SAF/MRB makes the final decision on agency appeals, he/she will notify SAF/GCD of a proposed decision not to support a CLLO recommended agency appeal in sufficient time to elevate that decision if necessary.

26.1.2.1. A final agency order that does not fully implement the decision of an EEOC AJ must be accompanied by a simultaneous appeal to the EEOC, IAW 29 C.F.R. Section 1614.110(a). Upon receipt of an AJ decision finding of discrimination, AFCARO will immediately forward the decision to SAF/GCD, CLLO, the installation SJA, and the installation EEO Manager for recommendations to SAF/MRB whether to appeal the AJ's decision. All recommendations will be forwarded through CLLO for evaluation. CLLO will forward its recommendation, along with the others, to SAF/MRB. SAF/MRB will consider these recommendations before issuing the final order.

26.1.2.2. If SAF/MRB issues a final order that does not fully implement the decision of the AJ, AFCARO will immediately forward the order to CLLO to initiate the appeal required by 29 C.F.R. Section 1614.110(a). The appeal must be filed within 40 days of receipt of the AJ's decision. [29 C.F.R. Section 1614.402(a)] CLLO will file the Agency Notice of Appeal form (see MD-110, Appendix O), with EEOC/OFO, including a copy of the final order, IAW 29 C.F.R. Section 1614.403. CLLO will request the installation SJA with responsibility for the complaint to prepare a brief or other documentation in support of the appeal, and will coordi-

nate the Air Force legal position with the SJA and SAF/GCD as appropriate. CLLO will file the brief or other statement in support of the appeal with the EEOC/OFO, with service on the complainant or the complainant's designated representative, within 20 days of filing the notice of appeal. [29 C.F.R. Section 1614.403(d)]. AFCARO will file the complaint file with EEOC/OFO within 30 days of filing the notice of appeal. [29 C.F.R. Section 1614.403(e)]

26.1.2.3. If EEOC/OFO grants the agency appeal, AFCARO will notify SAF/GCD, CLLO, the installation SJA and the installation EEO Manager. If EEOC/OFO denies the appeal, AFCARO will create a compliance case file and send a compliance letter by electronic means to the installation EEO Manager, with a copy to SAF/GCD, CLLO, the installation SJA, the MAJCOM OPR for EEO, and AF/A1DE. The compliance letter will inform recipients of the procedures for submitting a RFR.

26.2. Requests for Reconsideration (RFRs).

26.2.1. Recommendations to file an RFR must be transmitted to CLLO and AFCARO within three business days of receipt of the decision from AFCARO, and any brief or other documentation supporting the RFR must be provided to CLLO within 15 calendar days of AFCARO receiving the decision of EEOC/OFO. CLLO will assess the propriety of an RFR and notify AFCARO of its recommendation. Recommendations to file an RFR should focus on the grounds identified by the EEOC in 29 C.F.R. Section 1614.405(b), i.e., the appellate decision involved a clearly erroneous interpretation of fact or law, or the decision will have a substantial impact on the policies, practices, or operations of the Air Force. Upon receipt of a recommendation from CLLO to file an RFR, AFCARO will forward the recommendation and the EEOC/OFO decision and request to SAF/GCD and AF/A1DE for coordination.

26.2.2. SAF/MRB will consider all recommendations in determining whether to file a RFR or not. If SAF/MRB disagrees with CLLO's recommendation on whether to file an RFR, it will notify SAF/GCD and CLLO of the disagreement in sufficient time to elevate the decision if necessary. If SAF/MRB or higher authority decides not to file the RFR, the decision is final. If SAF/MRB or higher authority decides to file an RFR, CLLO will file the RFR with EEOC/OFO within 30 days of receipt of the appellate decision by AFCARO, IAW 29 C.F.R. Section 1614.405(b), with copies of the RFR to SAF/GCD, AF/A1DE, the installation SJA, and the installation EEO Manager.

26.2.3. Upon disposition of the RFR by EEOC/OFO, AFCARO will notify SAF/GCD, CLLO, AF/A1DE, the installation SJA, and the MAJCOM OPR for EEO of the disposition for appropriate action.

Section G—Reports (29 C.F.R. Section 1614.602)

27. MAJCOM offices responsible for the EEO complaint program will ensure accurate and complete data for their command is consistently entered into EEONet so that on 1 October each year AFPC may pull the data to complete the Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (EEOC Form 462), to send to EEOC. The final report will be signed by SAF/MR as the Air Force EEO Director.

28. MAJCOMs will ensure complete and accurate EEO ADR data are entered into EEONet so that Air Force data are available to SAF/GCD at all times, but of special need is the annual report due by 30 October of each year. Elements of the report will be specified by the AFDRS.

Section H—Compliance with Settlement Agreements and Final Actions (29 C.F.R. Section 1614.504)

29. If the complainant believes that the Air Force has failed to comply with the terms of a settlement agreement, final decision, or final action, the complainant shall notify the installation commander or designee in writing within 30 calendar days of the date s/he became aware of the alleged noncompliance.

29.1. The installation commander or designee must earnestly attempt to resolve the matter of concern and respond to the complainant, in writing, of the findings within 30 calendar days of receiving the complainant's alleged breach of settlement. The letter must advise the complainant that s/he may appeal the decision to the EEOC for a determination as to whether the terms of the agreement have been breached. [29 C.F.R. Section 1614.504(b)]

29.2. ADR may be used to resolve allegations of breach or other noncompliance if the matter is determined to be appropriate for ADR.

Section I—Air Force Personnel Center and Non-Referral Cases

30. Processing Non-Referral Claims in AFPC. Because the appointing authority rests with the installation or organization that owns the position for which the complainant was not referred, the processing of EEO claims for non-referral made by both Air Force employees and non-Air Force applicants are addressed as outlined in this section.

30.1. When the alleged non-referral occurs, the aggrieved party will contact the installation EEO Complaints Office where the vacancy exists for counseling. Each installation's EEO Complaints Office is responsible for working the entire case (i.e., documenting, counseling, ADR, and processing EEO formal complaints) that involve AFPC/DPC staffing processes.

30.2. When an applicant contacts the EEO Complaints Office where the vacancy occurred, that office will verify with their CPF that:

30.2.1. The vacancy in question exists at their base.

30.2.2. A referral was made.

30.2.3. The required documentation is on hand to support the EEO Counselor's inquiry.

30.2.4. Upon receipt of an informal pre-complaint, the EEO Manager will open an inquiry (see EEOC MD-110, Chapter 2, Section VI) and provide the installation CPF with a list of documents required for the inquiry into the facts and circumstances surrounding the referral.

30.2.5. Upon notification, the CPF at the base where the vacancy exists will immediately contact AFPC/DPC to obtain the required documentation to support the inquiry.

30.2.6. AFPC/DPC will promptly (i.e., within 3 workdays) verify the applicant's allegation of non-referral, quality check the non-referral, and provide the documentation to the installation CPF where the vacancy exists. Upon receipt of the information, the CPF will immediately provide the documentation to the EEO Manager.

30.2.7. The assigned EEO counselor will complete the inquiry and contact AFPC/DPC to discuss possible resolution, including resolution using ADR. If no resolution is reached, the complainant will be provided a final interview and issued the Notice of Rights and Responsibilities ([Attachment 1](#)).

30.2.8. The formal process, if necessary, will be conducted according to 29 C.F.R. Part 1614 and EEOC MD-110. The installation EEO Complaints Office where the vacancy occurred will be responsible for ensuring the complaint is processed.

30.2.9. The IRD Investigation: Funding for the investigation will be provided by the organization where the vacancy occurred. AFPC/JA will be responsible for providing attorney/advisor support for such investigations. The installation CPF where the vacancy occurred will provide AFPC/DPC subject matter expert support.

30.2.10. Pre-hearing Conferences: AFPC/DPC will provide AFPC/JA support with assistance from the base CPF.

30.2.11. EEOC Hearings: The complaint will be heard by the local EEOC district office in the district where the vacancy occurred or other district as directed by EEOC. AFPC/JA will be responsible for providing a management representative. The installation where the vacancy occurred will be responsible for TDY costs for the complainant and witnesses. AFPC will be responsible for the court reporting fees and TDY costs for the agency witnesses and management representation.

30.2.12. AFPC/JA will designate and represent the Air Force in all phases of EEO complaint processing involving AFPC non-referral cases of employees and applicants.

30.2.13. Execution of settlements and findings of discrimination will be the responsibility of the installation that has the vacancy, with the coordination of AFPC/DPC and AFPC/JA. While AFPC is responsible for processing personnel actions, it is not responsible for settlements, awards, and remedies, which must be initiated by the installation.

Section J—Forms Referenced by this Instruction

31. Forms Adopted. Discrimination Complaint Intake, DD Form 2655 Complaint of Discrimination in the Federal Government—the form used to file a formal discrimination complaint. EEOC Form 462, Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaint—the form used to report on pre-complaint counseling, formal complaint processing, ADR, and disposition of EEO complaints. EEOC Form 573, Notice of Appeal/Petition to the Equal Employment Opportunity Commission. Request for a Hearing Form: the form requesting the appointment of an EEOC Administrative Judge pursuant to 29 C.F.R. Section 1614.108(g). [See EEO MD-110, Appendix N.]

ROGER A. BRADY, Lt General USAF
DCS, Manpower and Personnel

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Statutes:

Title 5, United States Code (U.S.C.), Part III and Sections 552a and 571, *et seq.*

Title 10, U.S.C., Section 1561

Title 29, U.S.C., Sections 204, 206, 626, 633(a), and 791

Title 32, U.S.C. Section 709

P.L. 106-398, National Defense Authorization Act of 2001, Section 1111

P.L. 107-174, Notification and Federal Employee Antidiscrimination Act of 2002 (“No FEAR”)

Title 42, U.S.C., Section 2000e-16

Regulations:

DoD Directive 1440.1, DoD *Civilian Equal Opportunity (EE0) Program* (21 May 1987)

DoD Directive 5100.3 (November 15, 1999), *Support of the Headquarters of Combatant and Subordinate Joint Commands*

Title 29, Code of Federal Regulations (C.F.R.), Section 1201 (*MSPB Regulations*)

Title 29, C.F.R., Part 1614 (EEOC Regulations) *Federal Sector Equal Employment Opportunity*

Air Force Policy Directive (AFPD) 36-12, *Dispute Resolution* (23 Sep 93)

AFPD 33-3, *Air Force Information Management*

AFPD 51-3, *Civil Litigation* (21 May 93)

AFPD 51-12, *Alternative Dispute Resolution (ADR)* (9 Jan 03)

Air Force Instruction (AFI) 51-301, *Civil Litigation* (1 Jul 02)

AFI 51-1201, *ADR in Workplace Disputes* (21 Apr 04)

AFI 65-601, Vol. 1, *Financial Management, Budget Guidance and Procedures*

AFI 90-301, *Inspector General Complaint Resolution* (8 Feb 05)

Air Force Manual (AFMAN) 37-123, *Management of Records*

AFMAN 33-363, *Management of Records*

Miscellaneous:

EEOC (MD) 110 *Management Directives, Federal Sector Equal Employment Opportunity*

EEOC MD-715, *Management Directives, Title VII and Rehabilitation Act programs*

Executive Order No. 12106, 44 Fed. Reg. 1053 (Jan 3, 1979)

Reorganization Plan No. 1 of 1978, 43 Fed. Reg. 19607 (May 9, 1978)

Abbreviations and Acronyms

AF/A1D—Deputy Chief of Staff, Manpower and Personnel Directorate of Airman Development

ADRA—Administrative Dispute Resolution Act

AFDRS—Air Force Dispute Resolution Specialist

AFCARO—Air Force Civilian Review Office

AFI—Air Force Instruction

AFLOA/JACL—Air Force Legal Operations Agency, General Litigation Division

AFMAN—Air Force Manual

AFMC—Air Force Materiel Command

AFPC—Air Force Personnel Center

AFPD—Air Force Policy Directive

C.F.R.—Code of Federal Regulations

CLLO—Central Labor Law Office

CORE—Compressed, Orderly, Rapid, Equitable

DoD—Department of Defense

DP or A1—The Major Command Director of Personnel

EEO—Equal Employment Opportunity

EEOC—Equal Employment Opportunity Commission

EEOC/OFO—Equal Employment Opportunity Commission/ Office of Federal Operations

GC—General Counsel

GOVT—Government

IRD—Investigations and Resolutions Division

MAJCOM—Major Command

MD—Management Directives

OPR—Office of Primary Responsibility

RMO—Responsible Management Official

SAF/GC—Headquarters, United States Air Force Secretary General Counsel

SAF/GCD—Headquarters, United States Air Force Secretary General Counsel Dispute Resolution Division

SAF/IG—The Secretary of the Air Force, Inspector General

SAF/IGQ—Secretary of the Air Force of the Inspector General, Inquires Directorate

SAF/MR—Headquarters, United States Air Force Secretary Manpower and Reserve Affairs

SAF/MRB—Headquarters, United States Air Force Secretary

SAF/MRBA—Air Force Civilian Appellate Review Office (AFCARO)

SJA—Staff Judge Advocate

U.S.C.—United States Code

Terms

Administrative Judge (AJ)—Individual appointed by the Equal Employment Opportunity Commission when a hearing is requested, who assumes full responsibility for the adjudication of the complaint—including oversight of the development of the record.

Aggrieved Person—An employee, former employee, or applicant for employment who believes he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or reprisal.

Alternative Dispute Resolution (ADR)—Any procedure in which parties agree to use a third-party neutral to resolve issues in controversy, including but not limited to, facilitation, mediation, fact-finding, minitrial, or use of ombuds, or any combination thereof. [AFPD 51-12, *Alternative Dispute Resolution* (9 January 2003), Attachment 1; AFI 51-1201, *Alternative Dispute Resolution in Workplace Disputes* (21 April 2004), Attachment 1]

ADR Champion—The individual appointed to manage or oversee the installation alternative dispute resolution (ADR) program pursuant to AFI 51-1201, paragraphs 11.2 and 12.

Basis of Complaint—The statutory source (Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act (ADEA), Equal Pay Act (EPA), or Rehabilitation Act) upon which the complainant believes s/he has been discriminated against, or the alleged motivation for the employment action being challenged; i.e., race, color, religion, sex, national origin, age, disability and/or reprisal for opposing any practice made unlawful, or for participating in any stage of the complaint process under those statutes.

Civilian Personnel Flight (CPF)—The office responsible for administration of the civilian personnel program at the installation level.

Civilian Personnel Officer (CPO)—The person who manages the Civilian Personnel Flight.

Claim—See “issue of complaint.”

Class—A group of employees, former employees, and/or applicants for employment who allegedly have been or are being harmed by an agency's personnel policy or practice, based on their common race, color, religion, sex, national origin, age, or disability.

Class Agent—Class member who acts for the class during the processing of the class complaint.

Commander (CC)—The Air Force Commander who has been delegated appointing authority. In complaints filed against personnel in the grades of Colonel, Colonel-select, GS-15 or above who are assigned to the Secretariat, a senior civilian with supervisory responsibility over the responsible management official, and no conflict of interest, shall be considered the Commander for purposes of settling the complaint. AFMC Center Directors exercising delegated appointing authority over civilian employees under their direction may be considered the “Commander” for the limit purpose of EEO program oversight, including dismissal and settlement of complaints.

Compensatory Damages—Payments intended to fully compensate victims of intentional discrimination, if otherwise allowed by law, for pecuniary and nonpecuniary losses, as well as intangible injuries that result directly from the discrimination. These damages are in addition to equitable relief such as back pay, interest, reinstatement, and attorney's fees.

Complainant—An employee, former employee, or applicant for employment who files a formal complaint of discrimination.

Director of Air Force Review Boards Agency (SAF/MRB)—The position with delegated authority from the Secretary of the Air Force to make decisions under 29 C.F.R. Section 1614.110 on individual EEO complaints.

Discrimination—An unlawful employment practice that occurs when an employer fails or refuses to hire, discharges, or otherwise discriminates against any individual with respect to compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, national origin, age, reprisal, physical or mental disability; limits, segregates or classifies employees or applicants for employment in any way that deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects his/her status as an employee because of race, color, religion, sex, national origin, age, reprisal, physical or mental disability.

Equal Employment Opportunity Commission (EEOC)—The Commission is responsible for conducting hearings and issuing decisions, as well as enforcing compliance with section 717 of Title VII of the Civil Rights Act of 1964, as amended; sections 501 and 505 of the Rehabilitation Act of 1973, as amended; section 15 of the Age Discrimination in Employment Act of 1977, as amended; and the Equal Pay Act, section 6(d) of the Fair Labor Standards Act of 1938, as amended.

EEOC Office of Federal Operations (EEOC/OFO)—The Equal Employment Opportunity Commission office responsible for federal sector complaint processing.

EEO Counselor—An individual working under the supervision of and reporting to the installation EEO Manager, responsible for counseling aggrieved persons, processing formal complaints of discrimination, and seeking resolution of same under 29 C.F.R. Part 1614 and EEOC MD-110.

Equal Employment Opportunity (EEO) Manager—The person reporting directly to the installation commander to manage the EEO complaints program for which the commander is responsible.

HAF—Headquarters Air Force, consisting of the Secretariat, Air Staff and certain Field Operating Agencies and Direct Reporting Units.

Issue of Complaint [EEO Claim(s)]—The employment matter being challenged in a complaint, e.g., nonselection for promotion, performance rating, disciplinary action, discharge from employment, or other agency action(s) conferring or promising an employment benefit, or withholding or threatening to withhold an employment benefit, or otherwise substantially affecting conditions of employment.

Investigations and Resolutions Division (IRD)—Component of the Department of Defense (DoD), Civilian Personnel Management Service that is responsible for investigating discrimination complaints for DoD components.

Major Command (MAJCOM)—A major subdivision of the Air Force that is assigned a major part of the Air Force mission. Major commands report directly to Headquarters United States Air Force (Command and command level mean the same here).

Merit Systems Protection Board (MSPB)—The federal agency responsible for holding hearings and issuing decisions on complaints or appeals of adverse personnel actions, including disciplinary actions and performance based actions. Appeals to the MSPB may also contain allegations of discrimination, i.e., mixed cases.

Mixed Case Appeal—A mixed case appeal is an appeal filed with the MSPB that alleges that an agency action over which the MSPB has jurisdiction was effected, in whole or in part, because of discrimination based on race, color, religion, sex, national origin, age, disability, or reprisal.

Mixed Case Complaint—A mixed case complaint is a complaint of employment discrimination based on race, color, religion, sex, national origin, age, disability, or reprisal related to or stemming from an action that can be appealed to the MSPB.

Responsible Management Official—A term commonly used by EEOC to refer to the individual(s) who allegedly discriminated against the complainant--formerly referred to as the Alleged Discriminating Official (ADO) and Principal Agency Witness (PAW).

Report of Investigation (ROI)—The findings, analysis and conclusions issued by the investigator pursuant to the investigation of a formal complaint of discrimination under 29 C.F.R. Section 1614.108.

Staff Judge Advocate (SJA)—Installation official delegated authority to manage the legal support activity. In complaints filed against personnel in the grades of Colonel, Colonel-select, GS-15 and above who are assigned to the Secretariat or Air Staff, the term SJA refers to SAF/GC.

Secretariat (SAF)—All organizations within the Secretary of the Air Force as prescribed by 10 U.S.C. 8014 or established pursuant to the authority granted under this provision.

Attachment 2**NOTICE OF RIGHTS AND RESPONSIBILITIES**

Complainant's Name:

Installation Docket Number:

Your rights and responsibilities under the revised regulations include the following:

a. You have the right to anonymity prior to filing a formal complaint unless you grant permission to reveal your identity.

(1) I wish to remain anonymous:

Complainant's Signature/Date

(2) I waive anonymity:

Complainant's Signature/Date

b. You have the right to be accompanied, represented, and advised by a representative of your choice.

Note: The Equal Employment Opportunity (EEO) Counselor is not your representative. The counselor is not an advocate for either the aggrieved person or the agency. You are allowed reasonable official time to prepare your complaint. If your representative is an agency employee, s/he is allowed a reasonable amount of official time to prepare the complaint and respond to Agency and EEOC requests for information.

c. You have the right to choose between Alternative Dispute Resolution (ADR) and EEO counseling, where the agency agrees to offer ADR. When you agree to participate in ADR, the written notice terminating the counseling period will be issued upon completion of the ADR process or within ninety (90) calendar days of the first contact with the EEO Counselor, whichever is earlier.

d. If you select counseling, you have the right to receive in writing within 30 calendar days of the first counseling contact (unless you agree in writing to an extension) a notice terminating counseling and informing you of:

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

e. If your allegation(s) are of sexual harassment, you may choose to file your complaint under 10 U.S.C. Section 1561, 29 C.F.R. Part 1614, or both simultaneously. Filing under 10 U.S.C. Section 1561 will not serve to exhaust administrative remedies with respect to 29 C.F.R. Part 1614. Command decisions under 10 U.S.C. Section 1561 are final, with no right of appeal to court, and attorney's fees and compensatory damages are not awardable.

f. You may be required to choose between a negotiated grievance procedure and the EEO complaint procedure. Consult your EEO Counselor for clarification.

g. You may be required to choose between the EEO complaint procedure and an appeal to the Merit Systems Protection Board (MSPB). Consult your EEO Counselor for clarification.

h. You have the right to file a formal complaint within 15 calendar days of receipt of the Notice of Right to File a Formal Complaint letter.

- i. If you allege age discrimination, you have the right to file a notice of intent to sue and the right to file a lawsuit under the Age Discrimination in Employment Act (ADEA) instead of an administrative complaint of age discrimination pursuant to 29 C.F.R. Section 1614.201(a). (You must give the EEOC not less than 30 days notice of intent to file such an action. This notice must be filed, in writing, with EEOC, at P.O. Box 19848, Washington, D.C. 20036, or by personal delivery or facsimile within 180 days of the occurrence of the alleged unlawful practice.)
- j. You have the right to go directly to a court of competent jurisdiction on claims of sex-based wage discrimination under the Equal Pay Act even though such claims are also cognizable under Title VII.
- k. You have the right to request a hearing before an EEOC AJ (except in a mixed case complaint) after completion of the investigation or 180 calendar days from the filing of a formal complaint, whichever comes first. Your request should be made directly to the appropriate EEOC office, and you must notify the responding agency of your hearing request. Consult the EEO Counselor for information on where a request for a hearing and notice to the agency should be sent. The decision as to whether a hearing is held or whether a summary judgment decision on the record by the AJ will be made is determined by the AJ.
- l. You have the right to an immediate final decision after an investigation by the agency in accordance with 29 C.F.R. Section 1614.108(f).
- m. You have the right to go to U.S. District Court 180 calendar days after filing a formal complaint if no final action has been taken on the complaint, or 180 days after filing an appeal if no decision has been issued on the appeal.
- n. You have a duty to mitigate damages, i.e. you must look for other appropriate employment and you must seek treatment for any injury you claim.
- o. You have a duty to keep the agency and EEOC informed of your current mailing address and serve copies of hearing requests and appeal papers on the agency.
- p. Only claims raised at the counseling stage or claims that are like or related to them may be the subject of a formal complaint, or an amendment to a complaint after it has been filed.
- q. Your rejection of an agency's offer of resolution made pursuant to 29 C.F.R. Section 1614.109(c) may limit the amount of attorney's fees or costs you can recover.
- r. If you have filed two or more complaints, the agency must consolidate them after appropriate notice to you. [29 C.F.R. Section 1614.606] When a complaint has been consolidated with one or more, earlier complaints, the agency shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days of the filing of the first complaint.

_____ Date

EEO Manager/Counselor

I acknowledge receipt of my rights and responsibilities regarding my EEO complaint.	
_____	_____
Complainant's Signature	Date

Attachment 3

AIR FORCE ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM NOTICE

I. **Air Force ADR Program Policy.** It is the policy of the United States Air Force to voluntarily use ADR to the maximum extent practicable and appropriate to resolve disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level. Use of these techniques may resolve the entire issue in controversy or a portion of the issue in controversy. See Air Force Policy Directive 51-12 and Air Force Instruction 51-1201 at <http://www.adr.af.mil> for more details.

II. **ADR Program Availability.** The Air Force ADR Program recognizes the value in using ADR techniques toward efficient and timely resolution of workplace disputes arising from a variety of administrative dispute procedures.

III. **Types of ADR procedures.** Generally, the Air Force uses Mediation or Facilitation, although other ADR procedures may be available. The definitions of Mediation and Facilitation are:

A. **Mediation:** A structured proceeding in which disputing parties use a trained Mediator to assist the parties in arriving at a mutually agreeable resolution. Mediation conferences usually involve private confidential meetings (caucuses) with the parties.

B. **Facilitation:** A flexible proceeding in which the Neutral uses an Interest Based Negotiation approach to assist the parties in achieving a better understanding of the issue(s) and a resolution of the dispute. Facilitation usually does not involve private meetings (caucuses) with the parties, but may do so depending on the situation.

In either case, the neutral may not impose a decision on the parties. If you would like to learn more about how mediation works in the Air Force, please see the Air Force Mediation Compendium at: <http://www.adr.af.mil/compendium>.

IV. **Time frames for EEO disputes and using ADR procedures.** The EEO administrative process begins with an informal 30-day counseling procedure, involving complaint intake, counselor inquiry and fact-gathering activities. This period can be extended for not more than 60 days with the complainant's consent. If you and management agree to use ADR, this period is automatically extended to 90 days. If this process does not result in resolution, you have the right to file a formal complaint. The formal investigative procedure can take as long as 180 days before you can request a hearing before the Equal Employment Opportunity Commission (EEOC). The EEOC hearing procedure can take between 180 days and 400 days or more. In contrast, the ADR procedure may result in resolution of your issue(s) much earlier than the formal process would. Please note that if ADR is made available in your particular EEO complaint, then it can be attempted at any point during the processing of the complaint.

V. **Source(s) of Neutrals.** The Air Force has invested time, money, and extensive training to develop a cadre of internal Neutrals. At most installations, there are trained Neutrals to assist parties through either of the ADR procedures mentioned above. If there is no Neutral available locally, there are Neutrals assigned to other Air Force bases that can travel to your installation to assist the parties. In the event there are no Neutrals available within Air Force resources, there are contract Neutrals that can be assigned by the Air Force General Counsel's Office, who can assist in attempting to resolve your local dispute matters. There is no cost to the complainant for the Neutral's services.

VI. **Exceptions to ADR availability.** In some cases, ADR may not be appropriate because of the nature of the particular dispute. Accordingly, each EEO complaint is evaluated to ensure it is appropriate for resolution through the use of an ADR process. Some examples of complaints that may not be appropriate for ADR include complaints that require a formal written decision, to determine precedent in a given case, or that could affect the outcome of other similar, but unrelated cases. In addition, complaints involving potential criminal involvement, such as fraud, waste, or abuse are usually not appropriate for resolution in an ADR process. The Air Force does not, however, exclude complaints from consideration for ADR because of the type of EEO bases (e.g. race, color, religion, sex, age, national origin, disability or reprisal) alleged by a complainant.

VII. **ADR is voluntary.** The decision to use ADR for a particular complaint is completely voluntary. *Management and the complainant must both agree to use ADR.* Once the ADR proceeding has begun it can be terminated by either party. If the ADR process is terminated in this manner, the EEO complaint will then proceed into the formal complaint process. Please note that if an Air Force employee acted as the mediator then s/he will not be involved in the further processing of your complaint. A decision to use ADR does not obligate either party to settle the complaint, or to agree to any particular terms of settlement.

VIII. **Representation during ADR.** You have the right to representation of your choice unless the representation would pose a conflict with the official or collateral duties of the representative. Your right to have a representative remains in effect during your participation in ADR. The process is fair to both parties and provides an opportunity for individuals to be heard and to develop options for resolution. You cannot be forced to agree to terms or outcomes if they are not satisfactory to you.

IX. **Air Force ADR program requirements.** The Air Force is committed to providing ADR proceedings that reflect **confidentiality, neutrality, and enforceability.** Confidentiality applies to ADR proceedings with regard to joint discussions between the parties where the neutral is providing information to either party and with regard to private discussions (caucuses) held by the neutral with a respective party. Neutrality is a cornerstone of the Air Force ADR program. Neutrals used by the Air Force are required to practice the highest standards of integrity and ethics in conducting ADR proceedings. Being able to enforce a settlement reached through the ADR process is very important. When reached, resolutions are reduced to writing, and they include appropriate safeguards for individuals if they believe that the terms of a particular written agreement have not been implemented.

X. **Air Force policy on settlement authority.** If management offers ADR and you agree, an appropriate management official will participate in the proceeding. Any resulting settlement agreement will, upon approval by appropriate Air Force officials, be binding on the Air Force.

I have been advised of the availability and features of Alternative Dispute Resolution to resolve my complaint, and I have received a copy of this notice.

Complainant's Signature

Date

Attachment 4

NOTICE OF EVIDENCE REQUIRED TO ESTABLISH COMPENSATORY DAMAGES

If you prevail in your complaint of discrimination, you may be entitled to compensatory damages for the harms, injuries, or losses caused by that discrimination. Compensatory damages are only available if intentional discrimination is shown. The Civil Rights Act of 1991 authorized payment of compensatory damages in complaints against federal agencies for some types of complaints. Compensatory damages are not available in disability discrimination cases where the employer demonstrates good faith efforts at reasonable accommodation; in cases where the sole basis is age; in cases where discrimination is shown, but the employer demonstrates it would have taken the same action in the absence of the impermissible motivating factor; or in cases where the conduct or complaints occurred prior to 21 November 1991.

Consistent with the guidance of the U.S. Equal Employment Opportunity Commission in Broughton v. Department of the Navy, EEOC Appeal No. 0195199 (April 25, 1996), you are advised as follows concerning the evidence required to show entitlement to compensatory damages. Compensatory damages may include payment for past pecuniary losses, future pecuniary losses and non-pecuniary losses.

Past pecuniary losses are quantifiable monetary or out-of-pocket expenses, such as medical bills, moving expenses, or job search expenses, which you have incurred as a result of the discriminatory conduct. In order to prove past pecuniary losses, you must (1) establish the amount of the losses through objective evidence such as bills, receipts, or canceled checks, and (2) demonstrate that the need for the expenses was caused by, or directly related to, the acts of discrimination.

Future pecuniary losses are out-of-pocket expenses, such as medical care or counseling, which will be incurred in the future due to the discriminatory conduct. Evidence of such losses must establish three elements: (1) the likelihood of future expenses, (2) the expected amount of future expenses, and (3) the causal relationship between the discriminatory conduct and the future expenses. Usually, expert testimony and/or medical documentation are required to show future pecuniary losses.

Non-pecuniary losses are non-monetary harms or injuries such as emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional or credit standing, injury to character or reputation, or loss of health. In order to establish non-pecuniary losses, you must provide objective evidence of the nature, duration, severity, cause, and prognosis of the claimed injury. You must also establish a causal relationship between the discriminatory conduct and the claimed non-pecuniary losses.

Objective evidence of harms or losses may include documents that show your actual expenses, if any, related to medical treatment, counseling, and so forth, pertaining to the injuries caused by the discrimination. You should submit your own statement(s) concerning any past pecuniary losses, future pecuniary losses, or non-pecuniary losses that you believe were incurred as a result of the discriminatory conduct. You may also submit statements from family members, friends, health care providers, and other counselors (including clergy), addressing, for example, the outward manifestations or physical consequences of any losses, harms, or injuries that you claim were caused by the discriminatory conduct. You are once again reminded that you must establish a connection between the discriminatory conduct and any claimed injury.

Finally, you are advised that any claim of injury or harm may permit the agency to seek personal and sensitive information about you or those close to you. Such a detailed examination may be required to

determine whether the claimed injury or harm actually exists, and whether your claim is linked solely, partially, or not at all to the discriminatory conduct.

I have been advised of the evidentiary requirements for claims of compensatory damages, and I have received a copy of this notice.

Complainant

Date

EEO Manager/Counselor

Date