

Discrimination Complaint Process

Office of Small Business and Civil Rights
Corenthis B. Kelley, Director



It is the policy of the U.S. Nuclear Regulatory Commission (NRC), to provide equal employment opportunity to all employees and applicants for employment, and to prohibit discrimination based on race, color, national origin, religion, gender (including sexual harassment), age (age 40 and over), mental and physical disability, and reprisal for participation in activity protected by the civil rights statutes, or reprisal for opposing practices made unlawful by these statutes.

If you believe you have been subjected to discrimination on one or more of these prohibited bases, you may pursue your claim through the agency's administrative discrimination complaint process, which is administered by the Office of Small Business and Civil Rights (SBCR), in accordance with U.S. Equal Employment Opportunity Commission (EEOC) regulations, Title 29, Part 1614, of the *Code of Federal Regulations* (10 CFR Part 1614), revised July 12, 1999, and became effective November 9, 1999. The text of these regulations can be accessed through EEOC's Web site at <http://www.eeoc.gov/federal/1614-final.html>.

These regulations also required Federal agencies to establish or make available an Alternative Dispute Resolution (ADR) Program at both the pre-complaint (EEO Counseling) stage and the formal complaint stage of the discrimination complaint process, by January 1, 2000. The ADR process will supplement existing EEO discrimination complaint procedures in an effort to resolve employment discrimination claims. The NRC is committed to using ADR as a management tool to resolve employment discrimination claims at the earliest possible stage. In compliance with EEOC regulations, the NRC has developed a confidential, informal, non-adjudicative and non-adversarial ADR Program to assist employees, managers and supervisors in reaching mutually acceptable and voluntary resolutions to employment discrimination claims. The agency's ADR Program is administered by SBCR through an ADR Coordinator, and is available to all NRC employees.

This pamphlet includes an overview of EEOC regulations, and the agency's administrative discrimination complaint process, including the ADR process. This pamphlet also provides the procedures and time frames imposed for pursuing a claim of unlawful discrimination, and your rights, responsibilities and obligations with respect to that process.

The information provided in this pamphlet is not intended to be all inclusive. Questions regarding the agency's administrative discrimination complaint process, including the ADR process, should be directed to the Office of Small Business and Civil Rights, Civil Rights Program, at 301-415-7380 (TDD 301-415-6285) or by email to EEOPROGRAMS.Resource@nrc.gov.

ANTI-DISCRIMINATION LAWS AND REGULATIONS

Title VII of the Civil Rights Act of 1964, as amended

(<http://www.eeoc.gov/policy/vii.html>)

Prohibits discrimination based on race, color, religion, sex (including sexual harassment), or national origin. It also prohibits reprisal or retaliation for participating in the discrimination complaint process or for opposing any unlawful employment practice that the individual reasonably and good faith believes violates Title VII.

Age Discrimination in Employment Act of 1967 (ADEA), as amended

(<http://www.eeoc.gov/policy/adea.html>)

Prohibits discrimination on the basis of age (age 40 and older).

Rehabilitation Act of 1973, as amended

(<http://www.eeoc.gov/policy/rehab.html>)

Prohibits discrimination on the basis of mental and physical disability. It also requires agencies to reasonably accommodate known physical or mental limitations of qualified disabled employees or applicants.

Equal Pay Act of 1963 (EPA)

(<http://www.eeoc.gov/policy/epa.html>)

Prohibits Federal agencies from paying employees of one sex a lower wage than employees of the opposite sex for performing equal work or substantially equal work under similar working conditions. Sex-based wage claims may be filed under Title VII and EPA simultaneously.

EEOC Regulations, Title 29, Code of Federal Regulations, Part 1614

(29 CFR 1614) (<http://www.eeoc.gov/federal/1614-final.html>)

These regulations, which were amended July 12, 1999 (effective November 9, 1999), govern the processing of Federal sector discrimination complaints filed under the above laws. These regulations also require Federal agencies to establish or make available an alternative dispute resolution (ADR) program to resolve claims of employment discrimination at both the pre-complaint and formal stage of the discrimination complaint process.

Executive Order 11478, EEO Opportunity in the Federal Government

(<http://www.eeoc.gov/federal/eo11478/eo11478.html>)

Amended, May 28, 1998, to include sexual orientation as a basis for prohibited discrimination. Discrimination based on sexual orientation is not covered by 29 CFR Part 1614. If you wish to pursue an allegation of discrimination based on sexual orientation, contact the Office of Small Business and Civil Rights.

THE DISCRIMINATION COMPLAINT PROCESS

PRE-COMPLAINT PROCESSING — §1614.105

Equal employment opportunity (EEO) counseling is the first step in the discrimination complaint process. If you believe that you have been subjected to discrimination based on race, color, national origin, religion, gender (including sexual harassment), age, disability or reprisal, your initial contact with an EEO counselor must be made within 45 calendar days of the date the alleged discrimination occurred, or in the case of a personnel action, within 45 calendar days of the effective date of the personnel action.

Pursuant to U.S. Equal Employment Opportunity Commission (EEOC) regulations, Title 29, Part 1614, of the *Code of Federal Regulations* (10 CFR Part 1614), revised July 12, 1999, you have a right to request to participate in alternative dispute resolution (ADR) at the pre-complaint and formal complaint stages of the process. If you would like to participate in ADR, you must follow the procedures set forth in the section herein on ADR.

The role of the EEO counselor is to:

- Advise you in writing of your rights and responsibilities in the discrimination complaint process, including your right to participate in ADR.
- Advise you of your option to bypass the administrative process under ADEA and pursue a civil action directly in an appropriate U.S. district court, and the procedures and time limits imposed for exercising that right.
- Advise you of your right under EPA to file a civil action in Federal district court whether or not an administrative action has been pursued, and the procedures and time limits imposed for exercising that right.
- Listen to and understand the viewpoints of all parties in order to facilitate a resolution.
- Ensure that the claim(s) and basis(es) to be addressed are clearly defined.
- Conduct a limited fact-finding inquiry to facilitate a resolution at the lowest possible level in the agency and to determine jurisdiction in the event that a formal complaint is filed.
- Refer you to an appropriate source if it is clear that your problem does not involve a basis(es) covered by the regulations.
- Advise and issue you a Notice of Right to File a Formal Discrimination Complaint (NRTF), and where appropriate, the right to file a formal grievance through the NRC/National Treasury Employees Union (NTEU) Negotiated Grievance Procedure, or a mixed-case appeal through the Merit Systems Protection Board (MSPB), if the dispute is not resolved during counseling.
- Prepare a report to sufficiently document the counseling activity and any jurisdictional questions that may arise.

The Counseling Inquiry

The EEO counselor must complete the inquiry and conduct the final interview with you within 30 calendar days of the date of your initial contact, unless you and the agency agree, in writing, to an extension up to an additional 60 calendar days.

If the matter is not resolved during counseling (or the ADR process), the counselor will conduct a final interview with you and issue you a Notice of Right to File a Formal Discrimination Complaint (NRTF), and where appropriate, the right to file a formal grievance through NRC/NTEU Negotiated Grievance Procedure or a mixed-case appeal through MSPB. The NRTF will advise you of the applicable procedures and the time limits imposed for exercising those rights.

If the matter is resolved during counseling, the terms and conditions may be reduced to writing and signed by the appropriate parties to the agreement. A copy of the signed agreement will be provided to you. You will also be advised of your rights and responsibilities in the event that you believe management failed to meet the terms and conditions stated in the agreement.

(See 29 CFR §1614.401, Appeals to the Commission; §1614.402, Time for Appeals to the Commission; §1614.504, Compliance with Settlement Agreements and Final Actions.)

To avoid any undue delay in processing your claim of unlawful employment discrimination, you have a responsibility to cooperate with the EEO counselor by:

- Making a request to your supervisor for use of official time in connection with your EEO matter and receiving approval prior to taking such time unless you have requested to remain anonymous
- Providing an explanation if your initial contact with the counselor is beyond the required 45 calendar-day period
- Providing written notice of designation of representative (name, address, telephone number), if applicable
- Attending scheduled meetings and responding to requests for information in a timely manner to facilitate a resolution
- Providing notice of any change in address and telephone numbers for you and your representative, if represented
- Making a timely request if you wish to participate in ADR

During the pre-complaint process, you have the following rights:

- Right to remain anonymous unless you waive your right to anonymity in writing
- Right to representation of your choice at any stage of the process as long as the individual identified does not create a conflict of interest or the appearance of a conflict of interest

- Right to a reasonable¹ amount of official time to present your complaint and to respond to the agency's request for information (**see §1614.605, Representation and Official Time**); please note that the actual number of hours to which you and your representative (if employed by the agency) will be entitled will be determined in coordination with you and your representative, your management and the Office of Small Business and Civil Rights, prior to the use of any such time
- Right to request to participate in ADR (**see the section on the agency's ADR Program, included herein**)

FORMAL DISCRIMINATION COMPLAINT PROCESSING

During the formal discrimination complaint process, you have the following rights:

- Right to representation of your choice as long as the individual identified does not create a conflict of interest or the appearance of a conflict of interest
- Right to a reasonable amount of official time to present your complaint and to respond to request for information by the agency or EEOC in order to process your complaint (**See §1614.605, Representation and Official Time.**)
- Right to request to participate in ADR at any time after you file a formal complaint but before making a request for a hearing conducted by an administrative judge appointed by the EEOC (**See the section on the agency's ADR Program included herein**)
- Right to amend your original formal complaint at any time prior to the conclusion of the investigation to include issues or claims that are like and related to those raised in the complaint
- Right to request a hearing before an EEOC administrative judge
- Right to file a motion with the EEOC administrative judge to amend your complaint at the hearing stage
- Right to request a final agency decision based on the investigative record or after a hearing before an EEOC administrative judge
- Right to bypass the administrative processing under the Age Discrimination in Employment Act (ADEA) and pursue a civil action directly in an appropriate U.S. district court after providing EEOC a 30-calendar-day notice of intent to file a civil action
- Right under the Equal Pay Act to file a civil action in Federal district court whether or not an administrative action has been pursued
- Right to appeal the agency's final action in your complaint to EEOC

¹ EEOC's Management Directive (MD) 110, defines reasonable as "... whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to agency requests for information." MD 110 reasonable time "... is generally defined in terms of hours, not in terms of days, weeks, or months."

To ensure the timely processing of your formal complaint, you have a responsibility to:

- Meet the required time frames at each stage of the formal process.
- Provide a written explanation to the SBCR Director if you fail to file your complaint within the required 15 calendar days.
- Cooperate in the conduct of the investigation.
- Provide a prompt response to requests for information required to process your complaint.
- Keep SBCR informed of the current address and telephone numbers for you and your representative.

INDIVIDUAL COMPLAINTS — §1614.106

If you elect to file an individual formal discrimination complaint, you must file the complaint within 15 calendar days of your receipt of the Notice of Right to File a Formal Discrimination Complaint (NRTF), with the Director, Office of Small Business and Civil Rights (SBCR) at the address indicated in the NRTF. Your written complaint must be signed by you or your attorney of record. Your complaint must contain sufficient information and be stated clearly so that the alleged discriminatory basis and actions or practices can be identified. Your complaint must also include a telephone number and address for you and your representative.

If you file a formal complaint, you will be provided a Counselor's Report, which will include a statement of the claim(s) and basis(es) raised with the EEO counselor, any pertinent documents reviewed during the inquiry, summary of the interviews conducted by the EEO counselor, all information required to determine jurisdiction, and statements regarding attempts made to resolve the matter.

Amendments to Complaints

- You may amend your original formal complaint at any time prior to the conclusion of the investigation to include issues or claims that are **like or related** to those raised in the complaint. There is no requirement that you seek counseling on these like or related claims.
- If SBCR determines that your new claim is not like and related to your pending claim, the new claim will be processed as a separate EEO complaint, and you will be advised to seek EEO counseling on that matter. Your complaints may be consolidated for joint processing if SBCR determines that consolidation of the complaints will make better use of agency and EEOC resources. You will be notified in writing if it is determined that your complaints should be consolidated for joint processing. **(See §1614.606, Joint Processing and Consolidation of Complaints.)**
- After requesting an EEOC administrative hearing, you may amend your complaint to include like or related issues or claims, by filing a motion with the administrative judge.

Acknowledgment of Receipt of Complaint or Amendment(s)

- Upon receipt of your complaint or amendment to your complaint, SBCR will notify you in writing that your complaint or amendment has been received, inform you of the agency number (Example NRC 00-01) assigned to your complaint, and the date on which the complaint or amendment was filed.
- You will also be advised in writing regarding your rights and responsibilities in the process and the procedures and time limits imposed for exercising your rights.
- If your complaint or amendment is mailed, the date filed will be the postmark date. If your complaint or amendment is hand-delivered, the date filed will be the date it is received in SBCR.

Computation of Time

- A document is deemed timely if it is received or postmarked before the expiration of the applicable filing period, or in the absence of a legible postmark, if it is received by mail within 5 calendar days of the expiration of the applicable filing period.
- The first day counted will be the day after the event from which the time period begins to run and the last day of the period will be included, unless it falls on a Saturday, Sunday, or Federal holiday, in which case the period will be extended to include the next business day. **(See §1614.604, Filing and Computation of Time.)**

Delivery of Official Correspondence

- The notice acknowledging receipt of your complaint and all subsequent actions on your complaint will be mailed or delivered to you, and time frames for receipt of all official correspondence relating to your complaint will be computed from the time received by you.
- If you designate an attorney as your representative, the notice acknowledging receipt of your complaint and all subsequent actions on your complaint will be mailed or delivered to your attorney, with a copy to you. All official time frames for receipt of all official correspondence relating to your complaint will be computed from the time of receipt by your attorney. **(See §1614.605, Representation and Official Time.)**

Acceptance of Complaints for Investigation

- You will be notified in writing and provided an opportunity to submit a written statement regarding the claims and issues of your complaint accepted for investigation by the agency.
- If you disagree with the claims and issues as defined by the agency for investigation, efforts will be made to resolve the matter prior to forwarding the complaint for investigation.

DISMISSAL OF COMPLAINTS — §1614.107

A. Dismissal of Entire Complaint

Prior to your request for a hearing, the agency will dismiss a complaint:

- That fails to state a claim or states the same claim that is pending before or has been decided by the agency or the EEOC
- That fails to comply with the 45 calendar-day period for contacting an EEO counselor or the 15 calendar-day period for filing a complaint, unless extended by the agency
- That raises a matter that has not been raised with an EEO counselor and is not like or related to a matter that has been raised with an EEO counselor
- That is the basis of a pending civil action in a U.S. district court in which you are a party, provided that at least 180 calendar days have passed since the complaint was filed, or that was the basis of a civil action decided by a U.S. district court in which you were a party
- Where you have elected to pursue this matter through NRC/NTEU Negotiated Grievance Procedure or in an appeal to the Merit Systems Protection Board (MSPB)
- That is moot,² or that alleges that a proposal to take a personnel action, or other preliminary steps to taking a personnel action, is discriminatory
- Where you cannot be located, provided that reasonable efforts have been made to locate you and you failed to respond within 15 calendar days of your receipt of a notice of proposed dismissal sent to your last known address
- Where the agency has provided you with a written request to provide relevant information or otherwise to proceed with the processing of your complaint, you failed to respond to the request within 15 calendar days of your receipt of the request or your response fails to address the agency's request (the request must include a notice of proposed dismissal)
- That alleges dissatisfaction with the processing of a previously filed complaint
- Where the agency, strictly applying the criteria set forth in EEOC decisions, finds that your complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention of employment discrimination

² In accordance with §1614.107(a)(5), a complaint may be dismissed as moot where there is no reasonable expectation that the alleged violation will recur, and interim relief or events have completely and irrevocably eradicated the effects of the alleged violation. See Wildberger v. Small Business Administration, EEOC Request No. 05960761 (October 8, 1998), citing County of Los Angeles v. Davis, 440 U.S. 625 (1979).

B. Partial Dismissal of Complaints

- Where the agency believes that some but not all of the claims in your complaint should be dismissed for one of the reasons stated above, the agency will notify you in writing of its determination, the rationale for that determination, and that those claims will not be investigated.
- The agency's determination is subject to review by an administrative judge appointed by EEOC if a hearing is requested on the accepted portion of your complaint.
- The agency's determination regarding the dismissed claims is not appealable until final action has been taken on the accepted portion of the complaint.

INVESTIGATION OF COMPLAINTS — §1614.108

The agency may use various methods (i.e., in-person interviews, fact-finding conferences, requests for information, interrogatories, affidavits, etc.) to investigate your complaint and develop an impartial record, including assigning your complaint to an independent contract investigator. The evidence in the record must be sufficient for a reasonable fact finder to draw conclusions as to whether or not discrimination occurred. You will be provided a copy of the Letter of Authorization to Investigate, which will identify the name of the investigator, method the agency will use to develop the factual record in your complaint, and the requirements for you, the agency and witnesses during the conduct of investigation.

The Investigative Process

- The agency is required to conduct an impartial and appropriate investigation of your complaint and provide you with a copy of the investigative file within 180 calendar days of the date your complaint was filed, unless you agree in writing to extend the time for a period up to an additional 90 calendar days.
- Under certain circumstances, the agency may unilaterally extend the period of investigation up to an additional 30 calendar-days to sanitize a file, if you are first notified of the extension.
- If your complaint is amended, the investigative file and required notice must be forwarded to you within 180 calendar days after the last amendment to the complaint or 360 calendar days after the filing of the original complaint.
- The required notice will advise you of your right to request a hearing (except in a mixed case), and decision from an administrative judge appointed by the EEOC, or to request a final decision by the agency based on the existing record, within 30 calendar days of your receipt of the investigative file and required notice. The notice will also provide you the procedures for requesting a hearing, including the EEOC office where the request should be directed. **(See §1614.109, Hearings; §1614.110, Final Actions by Agencies.)**

- Within 30 calendar days of receipt of the required notice or any time after 180 calendar days from the date your complaint was filed has elapsed, you may submit a written request for a hearing on your individual or consolidated complaints (except a mixed-case complaint) directly to the EEOC office identified in the required notice and the agency's acknowledgment of receipt of your complaint letter.
- You must provide the SBCR Director a copy of your request for a hearing. Within 15 calendar days of receipt of your request for a hearing, SBCR will forward a copy of your complaint file, including the investigative file, to EEOC, and to you, if you had not previously been provided a copy.

HEARINGS — §1614.109

A. Request for Hearing

If you request a hearing, the EEOC will appoint an administrative judge to conduct the hearing. Upon appointment, the administrative judge will assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. The administrative judge will provide you information regarding the hearing process and your rights and responsibilities during that process.

B. Dismissals by the Administrative Judge

The administrative judge may dismiss your complaint pursuant to §1614.107, on his/her own initiative, after notice to you and the agency, or upon the agency's motion to dismiss a complaint.

C. Offers of Resolution

- If you are represented by an attorney, the agency may make you an offer of resolution any time after the filing of your written complaint but not later than the date an administrative judge is appointed to conduct the hearing.
- Whether or not you are represented by an attorney, the agency may make you an offer of full relief any time after you and the agency have received notice that an administrative judge has been appointed to conduct the hearing, but not later than 30 calendar days prior to the hearing.
- The offer of resolution shall be in writing and include a notice explaining the possible consequences of failing to accept the offer within 30 calendar days from receipt of the agency's offer of resolution.

- Except where the interest of justice would not be served, you may not receive payment from the agency for attorney's fees or costs incurred if, within 30 calendar-days following your receipt of the agency's offer of resolution, you fail to accept the offer of resolution and the relief awarded in the administrative judge's decision, the agency's final decision or the EEOC's decision on appeal is not more favorable than the relief stated in the offer of resolution.
- Your acceptance of the offer of resolution must be in writing and will be considered timely if postmarked or received in SBCR within 30 calendar days of your receipt of the agency's offer of resolution.
- If you fail to accept an offer of resolution, you or the agency may negotiate a settlement of the complaint at any time.

D. Decisions by the Administrative Judge

Within 180 calendar days of the administrative judge's receipt of the complaint file from the agency, the administrative judge will issue a decision on the complaint and order appropriate remedies and relief when discrimination is found, unless the administrative judge makes a written determination that there is good cause for extending the time for issuing a decision. The administrative judge will forward a copy of the hearing record, including the transcript, and the decision to you (and your representative, if applicable) and the agency. The decision of the administrative judge will become final, unless the agency issues a final order within 40 calendar days of receipt of the hearing file and administrative judge's decision, stating that it will not fully implement the judge's decision.

FINAL ACTIONS BY AGENCY — §1614.110

A. Final Action by Agency Following a Decision by an Administrative Judge

- If you request a hearing in your complaint, the agency will take final action on your complaint by issuing a final order within 40 calendar days of receipt of the hearing file and administrative judge's decision.
- The final order will notify you whether or not the agency will fully implement the administrative judge's decision.
- The final order will also notify you of your right to appeal the final order to EEOC, the right to file a civil action in Federal district court, the name of the Chairman of the agency as the proper defendant in any such lawsuit, and the applicable time limits imposed for filing an appeal and lawsuit. A copy of EEOC Form 573, Notice of Appeal/Petition, will be attached to the agency's final order. **(See §1614.403, How to Appeal.)**
- If the agency's final order does not fully implement the administrative judge's decision, the agency must file an appeal at the same time the final order is issued.

B. Final Action by Agency in all Other Circumstances

- If your entire complaint is dismissed, the agency will take final action by issuing you a final decision.
- If you request an immediate final decision in your complaint, the agency will issue a final decision within 60 calendar days of SBCR's receipt of your request, if your request is received in SBCR within 30 calendar days of your receipt of the investigative file and required notice.
- If your request for a hearing or an immediate final agency decision is not received in SBCR within 30 calendar days, you will be issued a final agency decision within 60 calendar days of the end of the 30-calendar-day period.
- The final decision will consist of findings by the agency on the merits of each claim in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief in accordance with Subpart E, Remedies and Enforcement of the Regulations, of §1614.501, Remedies and Relief.
- The final decision will notify you of your right to appeal the final decision to EEOC, the right to file a civil action in Federal district court, the name of the Chairman of the agency as the proper defendant in any such lawsuit, and the applicable time limits imposed for filing an appeal and lawsuit. A copy of EEOC Form 573, Notice of Appeal/Petition, will be attached to the agency's final decision.

APPEALS, REQUESTS FOR RECONSIDERATION, AND CIVIL ACTIONS — §§1614.401 – 1614.409

A. Right to File an Appeal

You have a right to appeal the agency's final action in your complaint (except a mixed-case complaint) to EEOC. Partial dismissals are not appealable until the final action has been taken on the accepted portion of your complaint. Within 30 calendar days of receipt of a dismissal or final action on the merits, you may file an appeal with the EEOC by mail to:

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 19848
Washington, DC 20036

As an alternative to mailing, an appeal may be hand-delivered to:

Equal Employment Opportunity Commission
Office of Federal Operations
Appellate Review Programs
1801 L Street, NW
Washington, DC 20507

Appeals may also be forwarded by fax to: (202) 663-7022

If you do not file your appeal with EEOC within the 30 calendar-day period, your appeal may be dismissed by EEOC as untimely. If you file your appeal beyond the 30 calendar-day period, you should provide EEOC an explanation why your appeal should be accepted despite its untimeliness. You should use EEOC Form 573, Notice of Appeal and Petition, to file your appeal. You must provide the agency a copy of your appeal at the same time it is forwarded to EEOC. Additionally, any brief or statement in support of your appeal must be filed with EEOC's Office of Federal Operations (OFO) within 30 calendar days of filing your Notice of Appeal, with a copy to the agency.

B. Appeals by the Agency

If the agency determines not to fully implement an administrative judge's decision on the merits of your complaint, the agency must file an appeal at the same time the final order is issued, and provide you a copy of the final order and the appeal. You must submit your statement in opposition to the agency's appeal to OFO, with a copy to the agency, within 30 calendar days of your receipt of the agency's statement or brief in support of its appeal.

C. Appeals in Non-Compliance of Settlement Agreements

If you believe that the agency failed to comply with the terms of a written agreement and you have notified the SBCR Director, in writing, regarding the alleged non-compliance, you may file an appeal with EEOC, 35 calendar days after service of the allegation of non-compliance with the SBCR Director, but no later than 30 calendar days after receipt of the agency's determination with respect to the alleged non-compliance.

D. Requests for Reconsideration

EEOC's decision on appeal from the agency's final action is final unless you or the agency request EEOC to reconsider the case. The request must be made within 30 calendar days of receipt of a decision by EEOC on appeal. EEOC, in its discretion, may grant the request if you or the agency demonstrates that: (1) The appellate decision involved a clearly erroneous interpretation of material fact or law; or (2) The decision will have a substantial impact on the policies, practices, or operations of the agency.

E. Right to File a Civil Action

You have a right to file a civil action in Federal district court on claims raised in the administrative discrimination complaint process under Title VII, ADEA, and Rehabilitation Act:

- Within 90 calendar days of receipt of a final action on an individual or class complaint if no appeal has been filed;
- After 180 calendar days from the date of filing an individual or class complaint if an appeal has not been filed and a final action has not been taken;
- Within 90 calendar days of receipt of EEOC's final decision on appeal; or
- After 180 calendar days from the date of filing an appeal with EEOC if there has been no final decision by EEOC.

PROCEDURES FOR RELATED PROCESSES

Age Discrimination in Employment Act (ADEA) — §1614.201

- As an alternative to pursuing your claim of age discrimination through the agency's discrimination complaint process, you have a right to file a civil action directly in U.S. district court in accordance with the Age Discrimination in Employment Act (ADEA).
- If you elect to pursue your claim directly in a U.S. district court instead of filing a formal complaint through the agency's discrimination complaint process, you must give the EEOC not less than 30 calendar days notice of your intent to file a civil action.
- The notice must be in writing and filed with EEOC, by mail, hand-delivery or facsimile, within 180 calendar days of the date of the alleged discrimination.

Equal Pay Act — §1614.202 and Civil Action: Equal Pay Act — §1614.408

- As an alternative to pursuing your Equal Pay claim through the agency's discrimination complaint process, you may file a civil action directly in a U.S. district court.
- You may pursue a claim of gender-based discrimination under both Title VII and EPA simultaneously within two years of the alleged violation (three years if the violation was willful).
- If you elect to file a civil action, you are **not required** to first provide notice to EEOC or exhaust your rights under the agency's administrative discrimination complaint process. The filing of a complaint through the agency's discrimination complaint process does not toll the time for filing a civil action.

Relationship to Negotiated Grievance Procedures — §1614.301

- If you are a bargaining unit employee, as an alternative to pursuing your claim of discrimination through the agency's discrimination complaint process, you may pursue your claim of discrimination as a formal grievance through the NRC/NTEU Negotiated Grievance Procedure. **(See Article 51 of the Collective Bargaining Agreement between the NRC and the National Treasury Employees Union dated April 1, 2005.)**
- Prior to filing a formal grievance, you must raise the matter with an EEO counselor within 45 calendar days of the date the alleged discrimination occurred.
- If the matter is not resolved during EEO counseling, you have a right to elect to file either a formal complaint through the agency's discrimination complaint process or a formal grievance through the NRC/NTEU Negotiated Grievance Procedure but not both.
- An election is made by the filing of a written formal complaint or a timely written formal grievance. Use of the pre-complaint EEO counseling process or the informal stage of the NRC/NTEU Negotiated Grievance Procedure does not constitute an election.
- If you file a formal complaint, you may not thereafter file a formal grievance on the same matter.
- If you file a formal grievance, you may not thereafter file a formal complaint on the same matter irrespective of whether the agency has informed you of the need to elect or whether an allegation of discrimination was raised in the grievance.
- Any such complaint filed after a grievance has been filed on that same matter will be dismissed, and you will be advised of your obligation to raise discrimination in the grievance process and of your right to appeal the final grievance decision to the EEOC.

Mixed-Case Complaints and Appeals — §1614.302

- A mixed-case complaint is a complaint of employment discrimination based on race, color, gender, religion, national origin, age or a physical or mental disability related to or stemming from a personnel action that is appealable to the Merit Systems Protection Board (MSPB) (i.e., termination for cause and suspension of more than 14 calendar days). As an alternative to filing a mixed-case complaint through the agency's discrimination complaint process, you may file a mixed-case appeal through MSPB.
- A mixed-case appeal is an appeal filed with MSPB that alleges that an appealable action taken by the agency was affected, in whole or in part, by discrimination based on the prohibited bases identified above.

Election to File a Mixed-Case Complaint or a Mixed-Case Appeal

- If you are subject to an action that is appealable to MSPB, and you have either orally or in writing raised the issue of discrimination in connection with that action, the agency will advise you of your right, if you are eligible, to elect to file either a mixed-case complaint through the agency's discrimination complaint process or a mixed-case appeal through MSPB but not both.
- An election is made by formally filing either a mixed-case complaint or a mixed-case appeal. Whichever you file first constitutes an election to pursue your claim under that forum.
- To be eligible to file an MSPB appeal, you must have standing and the personnel action that forms the basis of the discrimination complaint must be appealable to MSPB (i.e., removal for cause; suspension of more than 14 calendar days). The NRC's Office of Human Resources will advise you regarding whether you have standing to file such an appeal and whether the identified personnel action(s) is appealable to MSPB.

Procedures for Processing Mixed-Case Complaints — §1614.302 – §1614.310

- If you file a mixed-case complaint, your complaint must be filed within 15 calendar days of your receipt of the Notice of Right to File a Formal Discrimination Complaint.
- You will be notified in writing when your complaint has been received and provided the agency number (e.g., NRC 00-01), assigned to your complaint, the date your complaint was filed, your rights and responsibilities in the complaint process, and the procedures and applicable time limits imposed for exercising those rights.
- If your complaint is accepted for investigation, you will be notified in writing and provided the name of the contract investigator assigned.
- Upon completion of the investigation, you will be provided a copy of the investigative file and notified that a final decision will be issued within 45 calendar days without a hearing. You are not entitled to an EEOC hearing.
- A resolution or a final decision, including applicable appeal rights, must be issued to you within 120 calendar days of the date you filed your complaint.
- If you are dissatisfied with the final decision or resolution, you may file an appeal with MSPB within 30 calendar days of receipt of the resolution or final decision. [See 5 CFR §1201.154(b)(1).]
- If the agency has not resolved the matter or issued a final decision within 120 calendar days, you may appeal the matter directly to MSPB at any time after the expiration of 120 calendar days. [See §1201.154(b)(2).]

Dismissals

- If your mixed-case complaint is dismissed, you will be notified in writing regarding the reason for the dismissal and notified of your appeal rights and the procedures and time limits for exercising those rights.

Filing a Civil Action

- You may file a civil action in a U.S. district court within 30 calendar days of your receipt of the following:
 - (1) Final agency decision (FAD) if no MSPB appeal is filed
 - (2) Final MSPB decision if you do not petition EEOC for consideration
 - (3) EEOC decision not to consider an MSPB decision
 - (4) EEOC decision to concur with the MSPB decision
 - (5) MSPB decision that concurs in and adopts, in whole, the EEOC decision, if the EEOC decision is different from the MSPB decision
- You may also file a civil action after 120 calendar days from the filing of your formal complaint if there is no final action by the agency or appeal to MSPB or, after filing an appeal with MSPB, if MSPB has not issued a decision.
- Additionally, you may file a civil action if your appeal has been pending before MSPB for 180 calendar days or, after 180 calendar days from the filing of a petition for consideration with EEOC, if there has been no EEOC decision, reconsideration by MSPB, or decision by the Special Panel, where applicable.

REHABILITATION ACT — §1614.203

The agency is required to provide reasonable accommodation to qualified individuals with a disability. The Act defines a qualified disabled individual with respect to employment as one who "... with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used: (i) meets the experience or education requirements (which may include passing a written test) of the position in question; or (ii) meets the criteria for appointment under one of the special appointing authorities for individuals with [disabilities]." This section of EEOC's regulations also defines reasonable accommodation and provides types of accommodations agencies may consider. **If you need a reasonable accommodation, you should contact your supervisor or the Disability Program Coordinator in the NRC's Office of Human Resources.**

CLASS COMPLAINTS — §1614.204

A class is defined as a group of employees, former employees, or applicants for employment who believe that they have been adversely affected by an NRC policy or practice which discriminates against the members of the group on the basis of their common race, color, religion, gender, national origin, age, or disability. A class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class.

Pre-Complaint Processing

This is the first stage in filing a class complaint. A class allegation must be brought to the attention of an EEO counselor by a class agent or representative within 45 calendar days of the date that the specific policy or practice that adversely affected the class agent or, if a personnel action, within 45 calendar days after the effective date of the action.

You may move for class certification at any reasonable point in the discrimination complaint process when it becomes apparent that there are class implications to the claim you raised. If you move for class certification after completing the counseling process, no additional counseling will be required. However, the administrative judge will deny class certification when it has been shown that you unduly delayed moving for class certification.

Filing and Presentation of a Class Complaint

- A class complaint must be signed by the agent or representative and must identify the policy or practice adversely affecting the class as well as the specific action or matter affecting the class.
- The complaint must be filed with the SBCR Director, within 15 calendar days of the agent's receipt of the notice of right to file a class complaint.

Acceptance/Dismissal of a Class Complaint

- Within 30 calendar days of receipt of your complaint, SBCR will forward your complaint, along with the counselor's report and any relevant information, to the appropriate EEOC district office for assignment of an administrative judge to decide to accept or dismiss all or a portion of the class complaint.
- The agency will take final action by issuing a final decision within 40 calendar days of receipt of the administrative judge's decision and record.
- The agency's final order will notify the class agent of whether the administrative judge's decision will be implemented.
- If the administrative judge's decision is not implemented, the agency will file an appeal and append a copy to the final order. **(See §1614.403, Appeals.)**
- If the class complaint is dismissed, the dismissal decision will inform the agent either that the complaint is being filed on that date as an individual complaint, or that the individual complaint is being dismissed in accordance with the regulations. The dismissal decision will also advise the class agent of the appropriate appeal rights and the procedures and time limits for exercising those rights. **(See §1614.204, Class Complaints.)**

ALTERNATIVE DISPUTE RESOLUTION PROGRAM

The ADR Program is administered by the Office of Small Business and Civil Rights (SBCR) through an ADR Coordinator, and is available to all NRC employees and applicants for employment (hereinafter referred to as employees). The Civil Rights Program Manager, SBCR, will serve as the ADR Coordinator. The ADR process will not replace already existing EEO discrimination complaint procedures, but will supplement them in an effort to resolve claims of employment discrimination. Employees may request mediation at the pre-complaint and/or formal complaint stage (after filing a formal complaint but prior to an EEOC administrative hearing). The agency will use mediation as the primary form of ADR at both the pre-complaint and formal complaint stages of the discrimination complaint process.

The ADR Coordinator/Agency Official

The ADR Coordinator will coordinate all matters associated with the mediation process, to include obtaining a mediator, and identifying an Agency Official who has the authority to provide technical assistance during the mediation process and to sign the agreement in the event the matter is resolved. The Agency Official will be assigned on a case-by-case basis and will not be assigned a case within his/her chain of supervision or a case which could create a conflict of interest or the appearance of a conflict of interest. Consistent with the confidentiality of the ADR Program, the Agency Official may consult with any agency office (SBCR, Office of Human Resources (HR), Office of General Counsel (OGC), program offices), to the extent necessary to resolve the claim. The Agency Official and ADR Coordinator may not force a decision or resolution on any party.

Mediation

Mediation involves the use of a neutral third party to facilitate the resolution of a dispute (claim of employment discrimination) between two or more parties. Mediation is a confidential, informal, non-adjudicative and non-adversarial process with the objective of helping the parties to reach a mutually acceptable agreement. The parties have the right to be represented during the mediation process by an attorney or non-attorney of his/her choice unless it creates a conflict of interest or the appearance of a conflict of interest. Mediation cannot occur unless both parties voluntarily agree that it will be appropriate and useful in reaching a resolution in the particular case. Individuals do not give up statutory rights of the complaint process by participating in mediation; however, in accordance with EEOC regulations at 29 CFR Part 1614, the time requirements related to the administrative processing of an EEO complaint may be either held in abeyance or extended for a specified period, pending the outcome of the ADR process.

The mediator will assist the parties in identifying issues, fostering joint problem solving and exploring settlement opportunities. The mediator will not provide counseling or legal advice to either party during the mediation process. If, however, the mediator believes that either party does not understand how an agreement (or failure to agree) may affect legal rights or obligations, the mediator should bring this issue to the attention of the parties involved. Additionally, the mediator is not authorized to make a decision or force a decision or resolution on any party.

PRE-COMPLAINT STAGE

The EEO counselor remains the first point of contact for you to initiate a claim of employment discrimination. You must seek counseling within 45 calendar days of the alleged discriminatory decision or action. During the initial interview with you, the counselor will complete an EEO Counseling/ADR Intake Form which identifies general information regarding you (i.e., name, job title, series and grade, home and office telephone numbers, office/division/branch/section assigned and where the alleged discrimination occurred). The intake form also includes information regarding your representative (i.e., name, address, telephone number), and a statement of the issue(s) and basis(es) alleged and relief requested to resolve the matter.

The counselor will provide you a copy of the agency's Discrimination Complaint Process pamphlet, which includes your rights and responsibilities in the ADR process and obligations and responsibilities with respect to the confidential nature of mediation. The EEO counselor will advise you of the right to request to pursue your claim(s) through traditional EEO counseling or through ADR. If you elect to participate in ADR, you must complete a Request to Participate in Alternative Dispute Resolution (available at <http://www.nrc.gov/about-nrc/civil-rights/eoo/edc-process/eoo-adr-program/adrrequest.pdf>).

Making an Election

- If you elect to pursue a resolution through EEO counseling, the counselor will have 30 calendar days from the date you seek EEO counseling, to conduct the inquiry.
- You may agree, in writing, to extend EEO counseling up to an additional 60 calendar days, for a total of 90 calendar days.
- If the matter is resolved by the counselor within 30 calendar days or the agreed upon period of extension, an agreement, stating the terms and conditions, will be signed by the appropriate parties.
- If the matter is not resolved by the 30th calendar day or within the agreed upon period of extension (or if you do not agree to an extension by the 30th calendar day), the EEO counselor will conduct the final interview and provide you a written Notice of Right to File a Formal Discrimination Complaint (NRTF), or a formal grievance through the NRC/National Treasury Employees Union (NTEU) Negotiated Grievance Procedure, or a mixed-case appeal through the Merit Systems Protection Board (MSPB), if applicable.
- The NRTF will advise you of applicable procedures and time limits to exercise that right.
- If you elect to pursue a resolution through ADR, you must complete a Request to Participate in ADR, and submit it to the EEO counselor.
- If you and the other party to the dispute (hereinafter parties) agree to participate in ADR, the EEO counselor will have both of you sign an Agreement to Participate in Mediation. (Questions regarding the Agreement to Participate in Mediation may be directed to the EEO counselor, the ADR Coordinator or the Director, SBCR.)
- The Agreement to Participate in Mediation explains the mediation process, including the rights and responsibilities of all participants and the confidential nature of ADR.
- The ADR process must terminate no later than 90 calendar days from the date on which you sought EEO counseling.

- If you initially elect to pursue a resolution through traditional EEO counseling, you may later decide to pursue a resolution through ADR.
- The combined period for EEO counseling and ADR must not exceed 90 calendar days from the date you sought EEO counseling.
- ADR cannot occur unless the other party to the dispute voluntarily agrees to participate in ADR, and you submit the Request to Participate in ADR, to the EEO counselor in sufficient time to complete the ADR process within the required 90 calendar-day period.

Resolution During ADR

- If a mutually acceptable resolution is reached, the parties, or the mediator in coordination with the parties, the ADR Coordinator, and the Agency Official, will prepare an agreement to be signed by the appropriate parties.
- If the terms and conditions are not met, the ADR Coordinator, the Agency Official, and the SBCR Director will take appropriate action to resolve the problem.

No Resolution During ADR

- If the matter is not resolved during ADR, the mediator will notify the ADR Coordinator that a resolution was not reached.
- The ADR Coordinator will refer you back to the EEO counselor for the final interview and issuance of the NRTF.
- If a formal complaint is filed, the EEO counselor will prepare a report to be issued to you. All discussions and resolution activity that occur during the ADR process are confidential and will not be included in the report.

FORMAL DISCRIMINATION COMPLAINT STAGE

- If you wish to participate in ADR at the formal stage of the process, you must submit a Request to Participate in ADR to the ADR Coordinator (Civil Rights Program Manager).
- You must also agree to extend the period for processing the formal complaint, including the issuance of a final agency decision, for no more than 90 calendar days.
- ADR cannot occur unless the parties voluntarily agree that it is appropriate and useful in reaching a resolution in the matter and you submit a Request to Participate in ADR to the ADR Coordinator in sufficient time to complete the ADR process within the statutory deadlines or period of extension set forth in EEOC regulations, 29 CFR Part 1614.
- If the parties agree to participate in ADR, the ADR Coordinator will have the parties sign an Agreement to Participate in Mediation.
- The ADR Coordinator will also provide you the agency's pamphlet on the Discrimination Complaint Process, which includes rights and responsibilities in the ADR process.
- By electing to participate in ADR, you do not waive your regulatory right to a hearing before an EEOC administrative judge. Additionally, election of ADR does not suspend the time frame for requesting an EEOC hearing or statutory time frames for filing suit in U.S. district court.

Request for ADR Prior to Determining Acceptance/Dismissal of Complaint

- If the parties voluntarily agree that it is appropriate and useful in reaching a resolution in the matter, the ADR Coordinator will obtain a mediator and identify an Agency Official.
- If the matter is resolved, the parties or the mediator in coordination with the parties, the ADR Coordinator and the Agency Official, will prepare an agreement to be signed by the appropriate parties.
- If the terms and conditions are not met, the ADR Coordinator, the Agency Official and the SBCR Director will take appropriate action to resolve the problem.
- If the matter is not resolved, the ADR process will be terminated and formal processing of the complaint will continue from the point at which processing ceased.

Request for ADR Prior to Completion of Investigation

- The agency is required to complete the investigation and issue an investigative file within 180 calendar days from the date you filed your complaint.
- If the parties sign an Agreement to Participate in Mediation after the formal complaint is filed and prior to completion of the investigation, the investigation will be held in abeyance as necessary.
- If the matter is resolved during ADR, an agreement will be prepared for signature by the appropriate parties.
- If the terms and conditions are not met, the ADR Coordinator, the Agency Official, and the SBCR Director will take appropriate action to resolve the problem.
- If the matter is not resolved, ADR will be terminated and formal processing of the complaint will continue from the point at which processing ceased.

Request for ADR After Completion of Investigation

- If the parties agree to participate in ADR after completion of the investigation but prior to your request for a hearing, the ADR Coordinator will obtain a mediator and identify an Agency Official.
- If an agreement is reached, an agreement will be prepared for signature by the appropriate parties.
- If the terms and conditions are not met, the ADR Coordinator, the Agency Official, and the SBCR Director will take appropriate action to resolve the problem.
- If an agreement is not reached, formal processing of your complaint will continue from the point processing ceased. At the time the investigative report is forwarded to you, you will be notified of your right to request a final agency decision with or without a hearing before an administrative judge appointed by the EEOC, and the procedures and time limits for exercising those rights.

Request for ADR and a Final Agency Decision (FAD) With/Without a Hearing

- In accordance with EEOC regulations, if you request a hearing, you will not be allowed to participate in the agency's ADR process. ADR attempts may be made by the administrative judge prior to arranging a hearing.
- If you request a final agency decision without a hearing and request ADR, you must complete a Request to Participate in ADR, and agree to an extension of no more than 90 calendar days beyond the 60-calendar-day period in which the agency must issue the FAD.
- If you and the other party to the dispute agree to participate in ADR, the ADR Coordinator will have the parties sign an Agreement to Participate in Mediation. The ADR Coordinator will also obtain a mediator and identify an Agency Official.
- If the case is resolved during ADR, an agreement will be signed by the appropriate parties.
- If the terms of the agreement are not met, the ADR Coordinator, the Agency Official and the SBCR Director will take appropriate action to resolve the problem.
- If the matter is not resolved during ADR, formal processing of your complaint will continue from the point at which processing ceased.