



DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
1 155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155



MEMORANDUM FOR:

SUBJECT: Notice of Rights and Responsibilities in the EEO Complaint Process

If you believe you have been discriminated against because of your race, color, religion, sex, national origin, age, physical or mental disability, genetic information, and/or subjected to reprisal (for previous EEO activity) in an employment matter, you may have a choice of options to pursue your Equal Employment Opportunity (EEO) complaint. This notice is to advise you, in writing, of your rights and responsibilities as an aggrieved person under 29 Code of Federal Regulations (C.F.R.) Part 1614, and the Equal Employment Opportunity Commission's (EEOC) Management Directive (MD) 110. **PLEASE READ THIS NOTICE CAREFULLY SO THAT YOU MAY FULLY UNDERSTAND YOUR RIGHTS AND RESPONSIBILITIES.** Should you have any questions, please contact the Equal Employment Opportunity Programs (EEOP) Office for further assistance.

- a. You have the right to remain **anonymous** during EEO counseling. The counselor will refrain from revealing your identity except by your authorization. You may also elect to waive your right to remain anonymous during EEO counseling. The right to remain anonymous ends when you file a formal EEO complaint, or if you elect mediation (see below).
- b. You have the right to **representation** throughout the EEO complaint process. EEO Counselors cannot act as representatives. EEO counselors are not advocates for either the aggrieved person or the agency but act strictly as a neutral in the EEO process. If your representative is an attorney, all documents will be officially served on your attorney.
- c. You have the right to request **traditional EEO** counseling or the **Alternative Dispute Resolution (ADR)** process. The Department of Defense, Washington Headquarters Services uses **Mediation** as the ADR process to resolve EEO workplace disputes. If you are offered and choose to participate in mediation, the pre-complaint period will be 90 calendar days from the date you initiated counseling to accomplish the mediation.

- d. If you are a member of a bargaining unit, you may elect between the EEO complaint procedure and a **negotiated grievance procedure (NGP)** if the NGP permits claims of discrimination to be raised. An election is made depending on which forum you file with first. Filing a formal EEO complaint constitutes an election; participation in pre-complaint counseling is not considered an election.
- e. You have the right to elect to proceed through the EEO complaint process with a **mixed case complaint** OR to file an appeal to the **Merit Systems Protection Board (MSPB)**. A “mixed case” complaint involves claims that include personnel actions that are appealable to the MSPB which include, for example, removal or suspension for more than 14 days of a non-probationary, competitive service employee. If you are subject to a personnel action that is appealable to the MSPB, you will be notified in writing of your right to appeal to the MSPB (see attachment 4). The election is made depending on which forum you file in first.
- f. If your claims are not resolved through EEO counseling or mediation the counselor will conduct a final interview and issue you a Notice of Right to File a Formal Complaint of Discrimination. A **formal EEO complaint must be filed within 15 calendar days** of receipt of the Notice of Right to File.
- g. **Additional option for claims of age discrimination (age 40 and over) under the Age Discrimination in Employment Act of 1967 (ADEA), as amended:** In lieu of filing a complaint under this regulation, a mixed case appeal with MSPB (if applicable) or a negotiated grievance (if applicable) as described above, you may elect to bypass the administrative procedure and file a civil action in the appropriate US District Court (see attachment 4). A written notice of intent to file a civil action must be filed with the EEOC within 180 calendar days of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with the EEOC, you must wait at least 30 calendar days before filing a civil action. You must be aware that if you elect to file an administrative complaint under the ADEA rather than filing directly in U.S. District Court you must exhaust your administrative remedies before you can file a civil action. (See Attachment 4 for attorney’s fees and costs under the ADEA).
- h. 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 (EPA)** (see Attachment 4). A civil action must be filed within 2 years of the date of the occurrence, or within 3 years of the date of the alleged violation if the violation is willful. In order to present an administrative EPA claim,

the aggrieved must contact an EEO counselor within forty-five (45) days of the date the aggrieved becomes aware of or reasonably suspects a violation of the EPA. The filing of an administrative complaint does not toll the time for filing a civil action. Individuals so aggrieved may also claim a violation of sex-based discrimination under Title VII. (See Attachment 4 for attorney's fees and costs under the EPA).

- i. You have the right to **request a hearing before an EEOC Administrative Judge** after 180 calendar days from the filing of a formal complaint or within 30 days after receipt of the Report of Investigation (ROI) at the conclusion of the investigation. (See Attachment 3 for a complete overview of the EEO process).
- j. You have the right to request a **final agency decision** after an investigation by the agency.
- k. You have the right to go to **U.S. District Court** 180 calendar days after filing a formal complaint or 180 days after filing an appeal.
- l. You have a duty to **mitigate damages**; interim earnings or amounts that could be earned by the individual with reasonable diligence generally must be deducted from an award of back pay. A successful complainant claiming back pay will be paid the amount that would have been earned had it not been for discrimination, less any amount actually earned or that could have been earned, plus interest. Interest on back pay is not payable to Federal employees or applicants who prevail on employment discrimination claims brought under the ADEA or the EPA.
- m. You have a duty to keep the agency and EEOC informed of your **current mailing address** and to serve copies of any appeal with the Director, EEOP, at the address below:

Ms. Beatrice Pacheco, Director
Equal Employment Opportunity Programs Office
Washington Headquarters Services
4800 Mark Center Drive, Suite 03G19
Alexandria, Virginia 22350-3400

- n. It is your duty to pick up certified mail or any other correspondence sent to you.
- o. You are obligated to cooperate with those individuals involved in the processing of your complaint.

- p. When EEO counseling is selected, you have the right to receive, in writing, within 30 calendar days of the counseling contact (unless you agree in writing to an extension), **a notice of final interview** informing you of:
1. the outcome of informal attempts at resolution;
 2. the **right to file a formal complaint** within **15 calendar days** of receipt of the notice;
 3. the appropriate official with whom to file a formal complaint; and
 4. your duty to immediately inform the agency if you retain counsel or a representative.

The 30 day counseling period may also be extended for an additional **60 calendar days**. If you agree to an extension, the agreement must be in writing and a form will be provided to you.

- q. If you agree to participate in mediation, the informal stage is automatically extended to 90 days.
- r. As with counseling, if resolution is not achieved through mediation, a written notice will be issued advising you of your right to file a formal complaint
- s. A formal complaint must be filed within 15 calendar days of your receipt of the Notice of Right to File. Only those claims raised at the counseling stage or claims that are like or related to those that were raised may be the subject of a formal complaint.
- t. The EEOP Office will issue a letter to you accepting or dismissing your complaint. If your formal EEO complaint is dismissed, your appeal rights will be provided to you in EEOP's letter of dismissal. Appeals are made to:

Equal Employment Opportunity Commission
Office of Federal Operations
Federal Sector Programs
One NOMA Station
131 M Street, NE, Suite 5SW12G
Washington, D.C. 20507-0004

- u. If any portion of your complaint is accepted, an EEO investigation will be conducted. At the conclusion of the investigation, a Report of Investigation (ROI) will be forwarded to you with appropriate instructions. **PLEASE READ THE ROI THOROUGHLY.**

- v. The ROI contains personal data and is to be treated in a confidential manner. **You may not show your copy of the ROI, in whole or in part, to a third party except your designated representative.** Violations of privacy safeguards may result in disciplinary action, a fine of up to \$5,000, or both (Public Law 93-576).
- w. If you have not received a ROI within 180 calendar days of filing your formal EEO complaint, you have the right to request a hearing on your case before an Administrative Judge of the Equal Employment Opportunity Commission (EEOC). The 180 day period may also be extended for up to 90 additional days (270 days); a form will be provided to you.
- x. You will have 30 calendar days from receipt of the ROI to request a hearing before an EEOC Administrative Judge or an immediate final agency decision (FAD) based on the written record for non-mixed complaints. Mixed complaints, upon issuance of the ROI, will automatically be docketed for a FAD.
- y. A FAD will be issued within 60 calendar days of:
 - 1. receiving notice that you requested an immediate decision;
 - 2. the end of the 30-day period for requesting a hearing if the agency has not received a timely request; or
- z. A FAD will be issued within 30 calendar days of receiving the findings and conclusions of law of an EEOC Administrative Judge.
- aa. You may amend an EEO complaint at any time prior to the completion of the EEO investigation. Amendments may provide additional evidence in support of an existing claim or raise a new claim that is like or related to a pending complaint. To amend an existing complaint, you must submit a letter to the EEOC Office. If you received the ROI and have requested a hearing, amendment requests may be filed with the EEOC AJ.
- bb. If a partial dismissal is issued, there is no immediate right to appeal. If the agency believes that some but not all of the claims in a complaint should be dismissed for the reasons contained in 29 C.F.R. § 1614.107(a), you will be notified in writing of its determination, setting forth its rationale for that determination, and notifying you that the allegations will not be investigated. The Administrative Judge shall review this dismissal determination if you request a hearing on the remainder of the complaint,

but you may not appeal the dismissal until a final action is taken by the agency on the remainder of the complaint.

If you need additional information, please contact the EEO Office at 571-372-0832. You may also visit the EEOC's home page at www.eeoc.gov. EEOC's Management Directive (MD-110) may be referenced on-line at: <http://www.eeoc.gov/federal/md110.html>. and Title 29 CFR Part 1614 may also be referenced on-line at: <http://www.eeoc.gov/federal/1614-final.html>.

A copy of this notice will be given to you for future reference.

EEO Counselor/Intake (Signature)

I, _____ (Aggrieved Person's name),

_____ Acknowledge receipt of the Notice of Rights and Responsibilities

_____ I **want** to file an informal complaint of discrimination at this time

_____ I **do not** want to file an informal complaint of discrimination at this time

_____ I waive my right to remain anonymous during the informal stage of the complaint processing (i.e., my identity **will be** revealed)

_____ I do **not** waive my right to remain anonymous during the informal stage of the complaint processing (i.e., my identity **will not be** revealed)

_____ I do not have a representative at this time.

_____ I have a representative who is, is not, (circle the correct response.) an attorney and whose name and address is provided below.

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____ **Fax:** _____

Complainant

Date

Attachments

1. Equal Employment Opportunity Statutes And Regulations
2. Equal Employment Opportunity Bases
3. WHS/EEOP Equal Employment Opportunity Complaint Process Flowchart
4. EEO Special Procedures and Election Rights
5. Office of Special Counsel Notice

ATTACHMENT 1

EQUAL EMPLOYMENT OPPORTUNITY STATUTES, REGULATIONS, AND POLICIES

The applicable anti-discrimination laws and regulations are:

- 1. Title VII of the Civil Rights Act of 1964, as amended.** Title VII prohibits discrimination based on race, color, religion, sex, or national origin. It also prohibits reprisal or retaliation for participating in the discrimination complaint process or for opposing any unlawful employment practice under Title VII. (A person filing a complaint under Title VII is protected from an agency taking retaliatory actions because the employee alleged discrimination.)
- 2. Age Discrimination in Employment Act of 1967, as amended (ADEA).** The ADEA prohibits discrimination in employment on the basis of age (40 years or older). Unlike Title VII and the Rehabilitation Act, the ADEA allows persons claiming age discrimination to go directly to court without going through an agency's administrative complaint procedures. If, however, a complainant chooses to file an administrative complaint, (s)he must exhaust administrative remedies before proceeding to court. As with Title VII complaints, a complainant exhausts administrative remedies 180 days after filing a formal complaint or 180 days after filing an appeal with the Commission if the Commission has not issued a decision.
- 3. Rehabilitation Act of 1973, as amended.** The Rehabilitation Act prohibits discrimination on the basis of mental and physical handicaps. Under certain circumstances, it requires an agency to offer to reassign a handicapped employee to a vacant funded position. It requires that agencies make reasonable accommodations to the known physical or mental limitations of a qualified handicapped applicant or employee unless the agency can demonstrate that the accommodations would impose an undue hardship on the operation of its program.
- 4. Fair Labor Standards Act of 1938, as amended (Equal Pay Act of 1963) (EPA).** The EPA prohibits sex-based wage discrimination. It prohibits Federal agencies from paying employees of one sex lower wages than those of the opposite sex for performing substantially equal work. Substantially equal work means that the jobs require equal skills, effort, and responsibility, and that the jobs are performed under similar working conditions.
- 5. Genetic Information Discrimination Act of 2008 (GINA).** Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts employers from requesting, acquiring or purchasing genetic information, and strictly limits the disclosure of genetic information.

6. 29 C.F.R. Part 1614. The regulations governing the processing of Federal sector discrimination complaints are contained in Title 29 of the Code of Federal Regulations (CFR), Part 1614.

7. EEOC Management Directive (MD) 110. This directive provides guidance for the processing of federal sector EEO complaints under 29 CFR Part 1614.

ATTACHMENT 2

EQUAL EMPLOYMENT OPPORTUNITY BASES

Complaints of discrimination may be filed within the Department of Defense on the following bases:

1. **RACE**: Group of people identified by their similar physical characteristics (e.g., African-American, Caucasian or European-American, Asian-American, American Indian, etc.).
2. **COLOR**: Skin pigmentation (e.g., light-skinned, dark-skinned red, tan, etc.).
3. **RELIGION**: Traditional or non-traditional beliefs or practices, or a lack thereof (e.g., Jewish, Christian, Moslem, Hindu, Buddhist, Pagan, Atheist, etc.).
4. **SEX**: Male/Female (note: sexual harassment is a type of sex discrimination).
5. **NATIONAL ORIGIN**: Individual or Ancestral place of origin which may be identified by physical, cultural, linguistic or other characteristics (e.g., Hispanic, Palestinian, Vietnamese, Ethiopian, Turkish, German, etc.).
6. **AGE**: Age 40 or over.
7. **DISABILITY**: Physical or mental impairment which substantially limits one or more major life activity.
8. **GENETIC INFORMATION**: The use of genetic information in employment when making hiring, firing, job placement, or promotion decisions.
9. **REPRISAL**: Action taken against an individual by management because of protected EEO activity such as filing an EEO complaint or participating in the EEO process, or for opposing a discriminatory practice.



Equal Employment Opportunity Programs (EEOP) Office

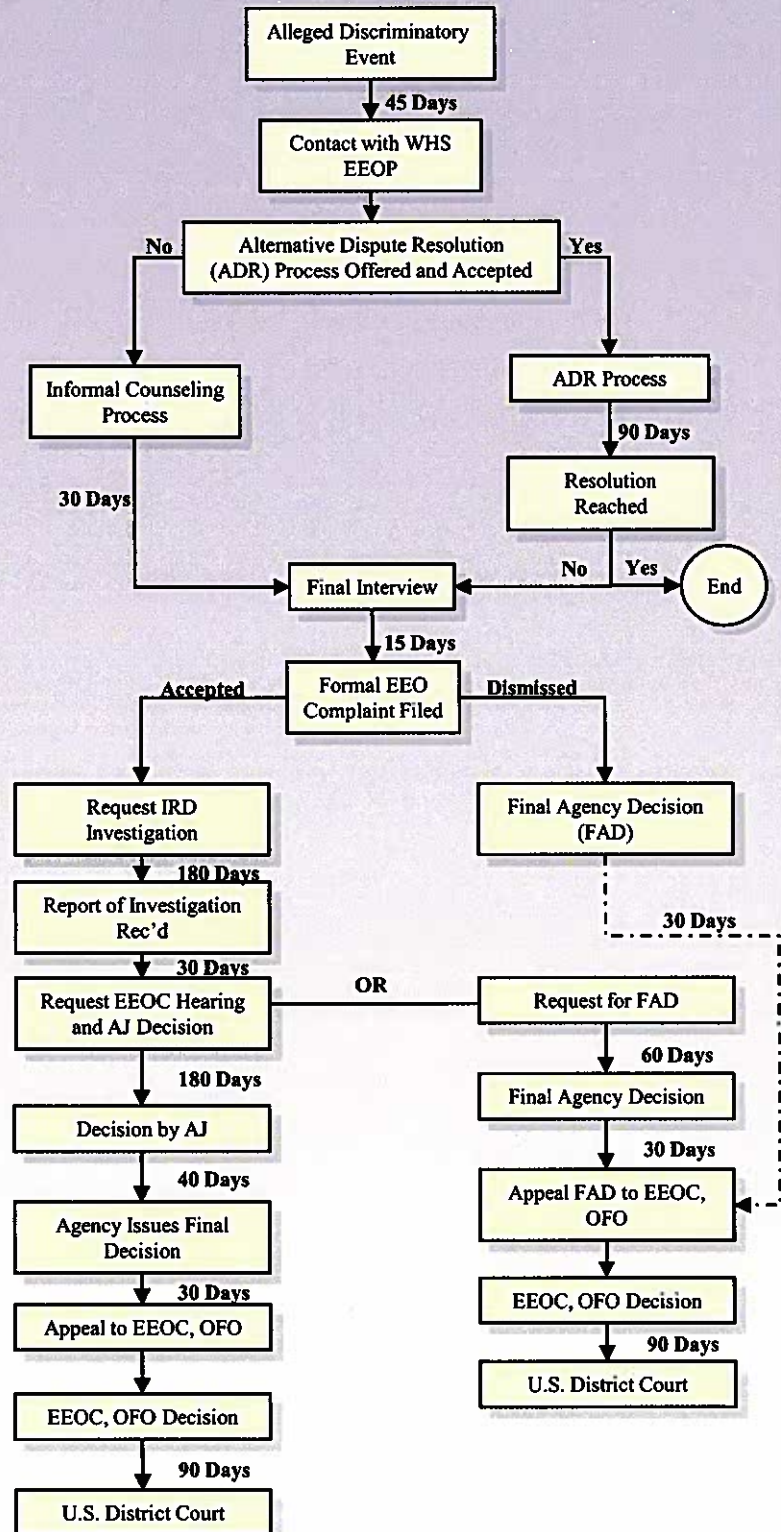
Equal Employment Opportunity Complaint Process

Directors, managers and supervisors are responsible for ensuring that the work environment is free from discrimination based on the following protected classes: race, color, religion, sex (including sexual harassment and pregnancy), national origin, age (40 and older), disability (mental or physical), genetic information or reprisal (for participating in protected EEO activity).

Employees, former employees, and/or applicants who believe they have been discriminated against based on the above protected classes must contact the EEOP **within 45 days** of the date the alleged discriminatory act occurred or within 45 days of the effective date of an alleged discriminatory personnel action. Prior to filing a formal complaint, aggrieved persons who believe they have been discriminated against will be assigned an EEO Counselor for informal pre-complaint counseling.

As an alternative to traditional EEO counseling, parties may choose to participate in **Alternative Dispute Resolution**, which offers informal, neutral, voluntary, and confidential methods for early dispute resolution, such as mediation.

For more information, visit EEOP online at www.whs.mil/EEOP. You may also contact EEOP at (571) 372-0832 or diversity@whs.mil. The fax number is (571) 372-0847.



THIS NOTICE IS FOR CIVILIAN EMPLOYEES AND ORGANIZATIONS SERVICED BY WHS

ATTACHMENT 4
EEO SPECIAL PROCEDURES AND ELECTION RIGHTS

Depending upon the facts and circumstances of your particular case, you may have options other than the EEO complaint process under 29 CFR 1614. In some cases, you may have to elect the process you wish to pursue. These options and associated procedures apply in **age discrimination complaints, complaints that involve personnel actions, Equal Pay Act complaints** and matters where a **negotiated grievance procedure** could apply.

AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA) COMPLAINTS

You have the right to file a notice of intent to sue when age is alleged as a basis for discrimination and you have the right to file a lawsuit under the ADEA instead of filing an Equal Employment Opportunity (EEO) complaint of age discrimination, pursuant to section 29 C.F.R. 1614.201(a).

Election of Administrative Process. Following EEO counseling, you may file a formal EEO complaint based on age discrimination with the EEOP Office. Once you elect to file a formal EEO complaint, you must first exhaust administrative remedies before filing a civil action in U.S. District Court. Exhaustion in an age discrimination case occurs: (1) 180 days after the filing of an individual or class EEO complaint if the agency has not issued a final decision and you have not filed an appeal; (2) no more than 90 days after the issuance of a final decision on an individual or class EEO complaint if you or the class agent have not filed an appeal; or (3) no more than 90 days after the issuance of a final decision by the Equal Employment Opportunity Commission (EEOC) on an appeal or 180 calendar days after the filing of an appeal if the EEOC has not issued a final decision.

Bypass Administrative Process. You may bypass the EEO complaint process and file a civil action directly in U.S. District Court provided that you first provide the EEOC with a written notice of your intent to sue under the ADEA. The notice to the EEOC must be filed within 180 calendar days of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with the EEOC, you must wait at least 30 calendar days before filing a civil action.

Your Responsibilities Regarding Notices of Intent to Sue. Notices of intent to sue must be delivered, mailed, or faxed to the EEOC. The address for EEOC is:

Equal Employment Opportunity Commission
Office of Federal Operations
Federal Sector Programs
One NOMA Station
131 M Street, NE, Suite 5SW12G
Washington, D.C. 20507-0004

The notice of intent to sue should be dated and must contain the following information: (1) a statement of your intent to file a civil action under section 15(d) of the Age Discrimination in Employment Act of 1967, as amended; (2) your name, address, and telephone number; (3) the name, address, and telephone number of your designated representative, if any; (4) the name and location of the Federal agency or installation where the alleged discriminatory action occurred; (5) the date on which the alleged discriminatory action occurred; (6) a statement of the nature of the alleged discriminatory action(s); and (7) your signature or your representative's signature.

MIXED CASE COMPLAINTS AND APPEALS TO THE MERIT SYSTEM PROTECTION BOARD

A complaint of employment discrimination based on race, color, religion, sex, national origin, age, handicap, or reprisal related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB) is known as a "mixed case complaint." The complaint may contain only a claim of employment discrimination or it may contain additional non-discrimination claims that the MSPB has jurisdiction to address. Examples of appealable actions to MSPB include removal for misconduct or unacceptable performance; suspension for more than fourteen (14) days; furlough for thirty (30) days or less; reduction-in-force; disqualification because of a suitability determination, etc. The regulations provide that a covered individual may raise claims of discrimination in a mixed case either as a direct appeal to the MSPB or as a mixed-case EEO complaint with the agency, but not both. Filing a formal EEO complaint constitutes an election to proceed in the EEO forum. Contacting an EEO counselor or receiving EEO counseling does not constitute an election.

EQUAL PAY ACT COMPLAINTS

You have a right to go directly to U.S. District Court on claims of sex-based wage discrimination under the Equal Pay Act (EPA) even though such claims are also cognizable under Title VII of the Civil Rights Act. You may file a formal EEO complaint of sex-based wage discrimination which will be processed in accordance with 29 C.F.R. 1614 or you may go directly to U.S. District Court without first providing notice to the EEOC or exhausting administrative remedies. The statute of limitations for EPA complaints is two years, or three years for a willful violation.

NEGOTIATED GRIEVANCE PROCEDURES IN COLLECTIVE BARGAINING AGREEMENTS

If you are a member of a bargaining unit and your collective bargaining agreement contains a negotiated grievance procedure which permits you to raise allegations of discrimination, you may file an EEO complaint or a grievance under the grievance procedure, **BUT NOT BOTH**. Your election will be determined by the forum you filed in first. Filing a timely written grievance constitutes an election to proceed under a negotiated grievance procedure. Filing a formal EEO complaint under

29 C.F.R. 1614 constitutes an election to proceed in the EEO forum. Contacting an EEO counselor or receiving EEO counseling does not constitute an election. Election to use the EEO complaint procedure or the negotiated grievance procedure is final. Once you decide which forum you will use, you are precluded from raising the same matter in the other.



U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

RESULTS OF LEGAL REVIEW OF DISCRIMINATION STATUTE

FOR IMMEDIATE RELEASE - 4/8/04
CONTACT: CATHY DEEDS
(202) 254-3600

Special Counsel Scott J. Bloch today announced the results of the legal review to determine the extent of jurisdiction of the office to process claims under Title 5, Section 2302(b)(10).

"It is the policy of this Administration that discrimination in the federal workforce on the basis of sexual orientation is prohibited," Bloch stated. "The Office of Special Counsel (OSC) has been engaged in a review of its authority to process claims of sexual orientation discrimination under Title 5, Section 2302(b)(10), which prohibits discrimination on the basis of 'conduct which does not adversely affect the performance of the employee or applicant or the performance of others.' OSC has always enforced claims of sexual orientation discrimination based on actual conduct. Based on its review, OSC has concluded that such authority exists in cases other than actual conduct when reasonable grounds exist to infer that those engaging in discriminatory acts on the basis of sexual orientation have discriminated on the basis of imputed private conduct. Such inferences apply to all claims under Section 2302(b)(10), including, but not limited to, sexual orientation discrimination claims. The materials formerly on OSC's Web site were not clear about the statutory basis for OSC's authority. OSC believes that the materials currently on its Web site are consistent with the view of the law described above, but intends to review and revise those materials as necessary to ensure that employees are fully aware of the protections provided."

The Office of Special Counsel is an independent investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment by protecting federal employees and applicants from prohibited personnel practices, especially retaliation for whistleblowing. OSC also has jurisdiction over the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act.

For more information about OSC, please visit our Web site at www.osc.gov.
