

EQUAL EMPLOYMENT OPPORTUNITY DISCRIMINATION COMPLAINTS PROCESS

1. REASON FOR ISSUE: This handbook establishes the Department of Veterans Affairs (VA) Equal Employment Opportunity (EEO) discrimination complaint procedures as described in VA Directive 5977, EEO Discrimination Complaints.

2. SUMMARY OF CONTENTS/MAJOR CHANGES:

a. This handbook introduces procedures for carrying out the VA's EEO discrimination complaint processing requirements contained in various Federal laws and regulations of the Equal Employment Opportunity Commission (EEOC) at part 1614, title 29, Code of Federal Regulations (CFR), that prohibit discrimination based on race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, and/or reprisal. This handbook will be revised to reflect changes made by the EEOC in its regulations and/or through the issuance of new or revised directives. This handbook applies to processing discrimination complaints for VA employees, applicants for employment and former employees.

b. VA regulations, guides, bulletins and memoranda published over the years and used by VA to process EEO complaints of discrimination as required by Public Law 105-114.

c. This handbook identifies responsibilities for processing Equal Employment Opportunity (EEO) complaints of discrimination filed by VA employees, former employees and applicants for employment who believe that they have been subjected to employment discrimination.

d. Procedures for insuring that complaints of discrimination are either resolved at the earliest possible stage; or processed promptly and impartially, without restraint, interference, coercion, discrimination and/or reprisal is set forth in this handbook.

3. RESPONSIBLE OFFICE: The Office of Resolution Management (ORM), Deputy Assistant Secretary (DAS) is responsible for the material contained in this Handbook.

4. RELATED DIRECTIVE: VA Directive 5977, Discrimination Complaints.

5. RESCISSIONS: Portions of VA Manual MP-7, Equal Opportunity in the Department of Veterans Affairs, Part I, Internal Equal Employment Opportunity Program, Chapter 1, EEO General Provisions and Internal EEO Program and all of Chapter 3, Discrimination Complaints, December 14, 1984.

CERTIFIED BY:
SECRET

BY

**DIRECTION OF THE
ARY OF VETERANS
AFFAIRS:**

/s/
Robert T. Howard
Assistant Secretary for
Information and Technology

/s/
R. Allen Pittman
Assistant Secretary for
Human Resources and Administration

Distribution: Electronic

DISCRIMINATION COMPLAINT PROCESSING PROCEDURES

CHAPTER	PAGE
CHAPTER 1- INTRODUCTION	
1. Purpose	7
2. Background	7
CHAPTER 2 – THE INFORMAL PRE-COMPLAINT EEO COUNSELING PROCESS	
1. Pre-Complaint Informal EEO Counseling Process	9
2. Initial Contact	9
3. Rights and Responsibilities	10
4. Notification to Under Secretaries, Assistant Secretaries, and Other Key Official	13
5. Identifying the Claim(s)	13
6. Identifying the Remedy/Corrective Action	13
7. Identifying Responding Management Officials [RMO(s)] and Witnesses	13
8. Correlation of Discrimination	14
9. Rights Specific to EEO Basis(es)	14
10. Procedures for Related Processes	14
11. Informal Interview	14
12. Resolution	15
13. Election of ADR	15
14. Extension during Counseling	16
15. Final Interview	16

16. Notice of Right to File a Discrimination Complaint	16
17. Counselor's Report and Administrative File	16
18. Subsequent Amendment of Complaints of Discrimination	16
CHAPTER 3 - THE FORMAL DISCRIMINATION COMPLAINT PROCESS	
1. The Formal Discrimination Complaint Process	19
2. Acknowledgment	19
3. Procedural Decision	19
4. Investigation	23
5. Amendment of Complaints during Investigation	24
6. Advisement of Rights	25
7. Request for Equal Employment Opportunity Commission (EEOC) Hearing or A Final Agency Decision (FAD)	25
8. Civil Court	27
9. Special Circumstances during the Formal Complaint Process	27
10. Administrative Process Case Amendment	29
11. Case Amendment after an EEOC Hearing is Requested	30
12. Case Consolidation	30
13. Access to Files	30
Chapter 4 – RESOLUTION OF COMPLAINTS	
1. Resolution of Complaints	31
2. Alternative Dispute Resolution (ADR)	31
3. Offer of Resolution	31
4. Settlement Agreement and Withdrawal of Complaint	31
CHAPTER 5 – BREACH OF SETTLEMENT AGREEMENT	

1. Settlement Agreement	35
2. Breach of Settlement Agreement	35
3. Subsequent Acts of Discrimination	35

CHAPTER 6 - REMEDIES AND COMPLIANCE

1. Remedies (Remedial Relief)	37
2. Petition for Enforcement	37
3. Compliance	37

CHAPTER 7 – OFFICIAL TIME

1. Official Time	41
2. Requesting Official Time	41
3. Denial of Official Time	41
4. Reasonable Amount of Official Time	42
5. Meetings and Hearing Time	42
6. Preparation Time	42
7. Representatives	43

CHAPTER 8 - SPIN-OFF COMPLAINTS

1. Dissatisfaction with the Processing of an EEO Complaint/Spin-off Complaint	45
2. Receipt of Allegation of Dissatisfaction	45
3. Allegations of Dissatisfaction Initially Raised with the ORM Field Office	45
4. Allegations of Dissatisfaction Initially Raised with the Deputy Assistant Secretary for Resolution Management	46
5. Allegations of Dissatisfaction Received by the Office of Policy and Compliance	46
6. Unresolved Spin-off Complaints	47

APPENDICES

A. References	A-1
B. Definitions	B-1
C. Other Grievance and Administrative Processes	C-1
D. Breach of Settlement Agreement Allegation Form	D-1
E. Diagram of the EEO Discrimination Complaint Process	E-1

CHAPTER 1 - INTRODUCTION

1. PURPOSE. This handbook establishes Department of Veterans Affairs (VA) procedures for processing Equal Employment Opportunity (EEO) complaints of discrimination. These procedures apply to all VA employees, applicants for employment and former VA employees.

2. BACKGROUND

a. Several anti-discrimination statutes prohibit workplace discrimination in the Federal government. They include Section 717 of Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination based upon race, color, national origin, gender (sex), and religion; Section 501 of the Rehabilitation Act of 1973, which prohibits discrimination based upon disability; Section 15 of the Age Discrimination in Employment Act (ADEA), which prohibits discrimination based upon age (40 years and over); and the Equal Pay Act which prohibits gender (sex) based wage discrimination. These statutes provide the basis for the implementation of EEO programs designed to eliminate prohibited discrimination and to make whole, employees who have been victimized by discrimination.

b. The Equal Employment Opportunity Commission (EEOC) under Reorganization Plan No. 1 of 1978 was given responsibility for and supervision of EEO programs within the Federal government. Through regulations found at 29 CFR §1614, and Management Directive 110, the EEOC has published policy and the framework for an EEO complaint resolution process that provides a foundation upon which Federal agency programs must be based. EEOC directives establish requirements for all aspects of a complaint resolution process including EEO counseling, complaint acceptability activities, complaint investigation and ultimately through hearings and appellate decisions, the standards by which the existence or nonexistence of discrimination may be determined. While the substantive protections for applicants and Federal employees are the same as those for all other workers, the procedures differ from the procedures that govern the private sector.

c. Within the VA, the EEO complaint resolution process was established through a combination of administrative reorganization and statutory direction. 38 USC 516 directs the Secretary to provide that the employment discrimination complaint resolution system be established and administered in a fair, objective manner that encourages timely and fair resolution. To meet these objectives, a 1997 administrative reorganization produced the Office of Resolution Management (ORM), which is managed and directed by the Deputy Assistant Secretary (DAS) for Resolution Management (RM).

d. The following chapters of this handbook provide VA procedures for processing EEO complaints of discrimination. Appendix E contains a diagram of the EEO discrimination complaint process and the time-frames associated with various stages of the process.

CHAPTER 2 – THE INFORMAL PRE-COMPLAINT EEO COUNSELING PROCESS

1. THE INFORMAL PRE-COMPLAINT EEO COUNSELING PROCESS. The discrimination complaint process is divided into two stages: the Pre-complaint (Informal EEO Counseling) Process, and the Formal Complaint Process. The purpose of the pre-complaint process is to gather information and afford both the aggrieved person and VA an opportunity to achieve an informal and mutually acceptable resolution of the matter. EEO counseling is a regulatory prerequisite to filing a formal complaint of discrimination and the employee, under any circumstances, cannot waive it.

2. INITIAL CONTACT. An aggrieved person who believes that he/she has been discriminated against on the basis of race, color, religion, gender (sex), national origin, age, disability or reprisal and intends to invoke the EEO complaint process, must consult an ORM EEO counselor prior to filing a complaint. The EEO counselor contact must be within 45 days of the date of occurrence of the alleged discriminatory event, or if a personnel action, within 45 days of the effective date of a personnel action. An aggrieved may contact an ORM EEO counselor in person at their local ORM office, or by calling ORM's toll free telephone number at: 1-888-RES-EEO1 (1-888-737-3361), or for the hearing impaired contact ORM via TTY/TDD – 1-888-626-9008. Counseling is a centralized ORM function; therefore, the aggrieved person is not allowed to select an EEO counselor of his/her choice. However, under certain circumstances, the aggrieved may request the appointment of another EEO counselor. The decision will be made at the discretion of the Regional EEO Officer/Field Manager. This usually occurs when there is, or appears to be, a conflict of interest.

a. **Waiver of 45-day contact.** EEOC regulations permit, under certain circumstances, the tolling or waiver of the 45-day contact requirement where untimely contact has occurred. Generally, forgiveness of the requirement will be granted where the VA cannot establish that it provided actual or constructive notice (e.g., via the posting of ORM posters throughout a facility) of the time limits to an individual; where the individual did not know or reasonably should not have known that discrimination occurred; where, despite due diligence, the individual was prevented from contacting a counselor due to circumstances beyond the individual's control, or for reasons considered sufficient by the agency.

b. **Obtaining General Information.** During initial contact, the following preliminary information is solicited from the aggrieved person to complete an Initial Referral Form: (a) date of contact; (b) name; (c) VA facility involved in the alleged discriminatory act and whether the caller is an employee, former employee of the facility, or an applicant for employment; (d) position title and grade; (e) telephone number where the individual can be reached; (f) home telephone number and address; (g) name, address, and telephone number of the individuals representative; (h) claim and basis(es) for the initial contact. The referral form is assigned to an EEO counselor for further processing. EEO counseling begins immediately or not later than two (2) business days from the initial contact. In emergency situations or if an EEO counselor is not available, an Intake Specialist will speak with the aggrieved person to secure the basic preliminary information. The date the aggrieved person contacts ORM, is considered the initial contact date.

3. RIGHTS AND RESPONSIBILITIES. The initial interview between an aggrieved person and the EEO counselor shall be arranged as soon as possible after initial contact. At the initial interview with the aggrieved person, the EEO counselor reviews all rights and responsibilities with the aggrieved verbally, and in writing. The EEO counselor will discuss the following information with the aggrieved:

a. **Anonymity.** The aggrieved person has a right to remain anonymous. If the aggrieved person elects to waive his/her right to anonymity, the counselor will obtain the waiver of anonymity in writing. The aggrieved person is informed that he/she can only remain anonymous during the informal counseling stage and that anonymity does not continue once a formal complaint has been filed.

b. **Representation.** The aggrieved person is entitled to representation during the EEO process. The aggrieved party may select anyone to represent them, as long as his/her representative's position with the VA does not present a conflict of interest. The EEO counselor may not be the complainant's representative. The aggrieved person must provide in writing the name, title, address and telephone number of any representative (attorney or non-attorney) he/she designates to represent him/her in this matter. If a representative or attorney is designated, all documents pertaining to the EEO complaint will be submitted directly to the representative or attorney with a copy to the aggrieved person.

c. **Alternative Dispute Resolution.** The aggrieved person is advised that the claim(s) may be addressed through the agency's Alternative Dispute Resolution (ADR) program or EEO counseling, but not both. The EEO counselor will explain that ADR is available during the informal and formal complaint process. The aggrieved person is informed that he/she, as well as the agency's participation in ADR is voluntary and if they agree to participate in mediation, the counseling period may be extended up to but not more than 90 calendar days from the initial contact date. The EEO counselor explains to the aggrieved that if they participate in ADR they will have to exercise an election option, and decide whether to continue pre-complaint resolution through the ADR process or through the traditional counseling process. The EEO counselor will explain the differences between the two options. If the aggrieved and management do not agree to ADR, the EEO counselor will assist the parties to facilitate resolution of the dispute as part of his or her counseling duties. If the aggrieved and management agree to participate in the ADR process, the EEO counselor will assist with the coordination of ADR. See item 13 for Information about the ADR process.

d. **Bargaining Unit Employee.** Bargaining unit employees have the right to file a grievance on issue(s) through a negotiated grievance procedure that accepts issues of discrimination. However, they may not file both an EEO complaint and a grievance on the same matter(s). Whichever the aggrieved person files first, a formal EEO complaint or step 1 grievance will be considered an election to proceed in that forum. A Bargaining unit employee may also seek redress through other administrative processes. Appendix C contains Other Grievance and Administrative Processes.

e. **Non-Bargaining Unit Employee.** Non-Bargaining unit employees may not file a negotiated grievance, they may seek redress through other administrative processes. Appendix C contains Other Grievance and Administrative Processes.

f. **Merit Systems Protection Board (MSPB).** An aggrieved person may file an EEO complaint or an MSPB appeal, but not both on the same matter(s). Whichever is filed first (a formal EEO complaint or an MSPB appeal) will be considered an election to proceed in that forum.

g. **Termination of Counseling.** Within thirty (30) days of the aggrieved person's first contact with an EEO counselor, they have the right to receive a written notice terminating counseling and informing them of the right to file a formal complaint (unless prior written consent has extended the time period). The aggrieved person also has the right, at the conclusion of counseling, to file a formal complaint within fifteen (15) calendar days of receipt of the written Notice of Right to File a Discrimination Complaint.

h. **Age Discrimination.** An aggrieved person, who is age 40 years or older, may file an age based EEO discrimination complaint, or a civil lawsuit in Federal District Court. If the aggrieved person files a lawsuit in Federal District Court, without filing a formal EEO complaint, the lawsuit will terminate the processing of the EEO discrimination complaint. If the complainant chooses to file an EEO discrimination complaint, he/she must complete the EEO discrimination process. If the complainant chooses to file a lawsuit he/she must first notify the EEOC of the intent to sue, at least 30 calendar days before the filing of the lawsuit at: 1801 L Street, NW, Washington, DC, 20507. Lawsuits must be filed within 180 calendar days of the date of the alleged discriminatory act.

i. **Equal Pay Act/Sex-based Wage Discrimination.** If an aggrieved person is complaining about sex-based wage discrimination (being paid less than a person of the opposite sex, even though they are doing equal work), they may file a formal EEO complaint under the discrimination complaint process, and/or a lawsuit in Federal District Court, pursuant to the Equal Pay Act. The civil action must be filed within a court of competent jurisdiction within two years, or, if the violation is willful, within three years of the date of the alleged violation of the Equal Pay Act. The filing of an EEO discrimination complaint does not toll the time for filing a civil action. Recovery on back wages is limited to two years prior to the date of filing suit, or to three years if the violation is willful; liquidated damages in an amount equal to lost back wages may also be awarded. An aggrieved individual may file an EEO discrimination complaint, and may file directly in a court of competent jurisdiction without first providing notice to the EEOC or exhausting the EEO discrimination complaint process. Filing of a lawsuit will terminate processing of the EEO discrimination complaint.

j. **Right to Request Final Agency Decision (FAD) or a Hearing.** If an aggrieved person files a formal EEO complaint and it is accepted, they have the right to request an immediate FAD from VA, or a hearing before an EEOC Administrative Judge, after 180 days has passed from the date they file a formal complaint, or after completion of the investigation, whichever comes first. If a complainant requests a FAD, their request should be addressed to the ORM Regional EEO Officer. If a complainant requests an EEOC hearing, their request should be

addressed to the local EEOC District Office, with a copy to the ORM Regional EEO Officer.

k. Right to File a Lawsuit in Federal District Court. A complainant has the right to file a lawsuit in Federal District Court at any time after 180 calendar days has passed from the date the formal complaint was filed or up to ninety (90) calendar days after receipt of a FAD from VA.

l. Right to File An Appeal. A complainant has the right to file an appeal of a FAD to EEOC within thirty (30) calendar days of receipt of the FAD. Even if a complainant chooses to appeal a FAD to EEOC, they will still have the right to file a lawsuit in Federal District Court at any time after 180 calendar days has passed from the date of filing of such an appeal, or up to ninety (90) calendar days after receiving an appellate decision from EEOC Office of Federal Operations. Special circumstances regarding the right to file a lawsuit in Federal District Court exist for Age and Equal Pay Act/Sex-based Wage Discrimination. Please refer to item 3(g) and 3 (h) of this chapter.

m. Class Action Complaint. If an aggrieved person believes that other individuals, similarly situated to them, have suffered from the same kind of discrimination, they may have the right to file a class action complaint. A class action complaint must allege that an individual has been individually harmed by a VA personnel management policy or practice that has similarly harmed numerous other class members. The aggrieved person must also allege that there are questions of fact that are common to, and typical of, the claims of the class. EEOC requires that a qualified class agent represent the class. The representative must be fair and adequately protect the interest of the class.

n. Cooperation. An aggrieved individual has the responsibility to cooperate with VA during the processing of a complaint. If an aggrieved person files a formal EEO complaint, he/she must keep the VA informed of a current address; retrieve certified and over night mail associated with the complaint, and cooperate with the investigator. If an aggrieved person files an appeal with EEOC, they must provide the ORM Regional EEO office copies of the appeal.

o. Back pay. If a complaint involves back pay, the complainant has a duty to mitigate damages by actively seeking and/or retaining employment. Interim earnings or amounts, which could be earned by a complainant with reasonable diligence, generally will be deducted from back pay.

p. Consolidation of Two or More Complaints. If a person has filed two or more complaints, and the Notice of Advisement of Rights was not issued, ORM is required to consolidate them after appropriate notice. When a complaint has been consolidated with one or more earlier complaints, ORM shall complete the investigation within 180 days after the filing of the last complaint or within 360 days of the filing of the first complaint. If the complainant requested a hearing, the EEOC Administrative Judge may consolidate multiple complaints.

q. Additional Issues. An aggrieved person must limit any formal EEO complaint to the matters discussed with the EEO counselor, or to like or related matters. If an individual wishes

to amend a previously filed complaint, only matters that are like or related to the claim(s) in the pending complaint may be added. In order to protect an individual's rights, an aggrieved person should discuss all claims with the EEO counselor before they file a formal EEO complaint.

r. **Agency Offer of Resolution.** If an aggrieved person rejects an agency offer of resolution made pursuant to 29 CFR §1614.109(c), it may result in the limitation of the Agency's payment of attorney fees or costs.

s. **Claims Outside the EEO Forum.** For a complaint filed on the basis of sexual orientation, genetic information, parental status, political affiliation or any other forum falling outside of the EEO process, the aggrieved person should contact their local human resource department for guidance. Some of the alternative procedures for processing these types of complaints are as follows: an appeal to MSPB, a grievance under a negotiated grievance procedure, agency grievance procedures, a complaint filed with the Office of Special Counsel (OSC), or a complaint filed with the Office of the Inspector General (OIG). Appendix C contains Other Grievance and Administrative Processes.

4. NOTIFICATION TO UNDER SECRETARIES/FACILITY DIRECTORS. The EEO counselor forwards to the Under Secretary, Assistant Secretary, Facility Director, and Other Key Official the Notice of Counseling letter to inform him/her that an employee has contacted ORM for EEO counseling. This letter contains specific information concerning the claim(s) raised, the basis(es) of the claim(s), the organizational unit in which the complaint arose, the resolution sought, and the person named as the Responding Management Official (RMO). In cases where the aggrieved person does not waive anonymity, the information ORM will release is limited to protect this right. Under Secretaries/Facility Directors are responsible for notifying ORM if the aggrieved person has filed an MSPB appeal or a grievance through a negotiated grievance procedure on the same matter that has been brought to counseling. This information is crucial in determining acceptability should a formal complaint be filed on the matter or claim being counseled.

5. IDENTIFYING THE CLAIM(S). In an attempt to resolve the entire workplace dispute, the EEO counselor obtains relevant information regarding the claim(s), basis(es), and supporting evidence from the aggrieved person. When the claims and supporting evidence are identified, the sum total of that information may be helpful in the informal resolution of the matter by focusing the parties on the major areas of conflict or disagreement. In the event that informal resolution is not obtained, this information may be used during the formal complaint process to render a proper procedural decision to accept or dismiss the formal complaint in whole or in part.

6. IDENTIFYING THE REMEDY/CORRECTIVE ACTION. The EEO counselor identifies what remedy/corrective action the aggrieved person seeks.

7. IDENTIFYING RESPONDING MANAGEMENT OFFICIALS RMO(S) AND WITNESSES. When possible, the counselor will identify the Responding Management Official (RMO) as well as other witnesses to the events at issue.

8. CORRELATION OF DISCRIMINATION. The EEO counselor requests the aggrieved person to provide reason(s) he/she believes the action was motivated by prohibited employment discrimination.

9. RIGHTS SPECIFIC TO EEO BASIS(ES). In cases involving age and the Equal Pay Act, the EEO counselor provides the aggrieved person verbally and in writing of his/her rights related to these bases.

10. PROCEDURES FOR RELATED PROCESSES. During the EEO interview, the EEO counselor explains jurisdictional issues.

a. For claims that may also be filed through a negotiated grievance procedure or appealed to the Merit Systems Protection Board (MSPB), the counselor provides the aggrieved person verbally and in writing his/her rights related to these processes. For claims related to the various Executive Orders and other related processes, the counselor advises the aggrieved individual of the appropriate forum. Appendix C contains additional information regarding Other Grievance and Administrative Processes.

b. For claims that the agency has violated or has not performed a specific term(s) of a settlement agreement, the counselor does not initiate counseling on the breach allegation. The Regional EEO Officer or designee notifies the aggrieved person in writing, of the process to address his/her allegation that the agency breached the settlement agreement.

11. INFORMAL INTERVIEW. During the informal interview, the EEO counselor schedules interviews with the RMO, the aggrieved person, and the witnesses. This is necessary not only to develop information to aid in informal resolution or acceptability determinations, but also to provide valuable information for the investigator, if a formal complaint is filed. An EEO counselor will determine whether the case warrants an on-site interview by considering the type, number, and complexity of claims, in consultation with the ORM Regional EEO Officer or designee, after collecting the above information. If an on-site visit is appropriate, the counselor may contact the facility EEO/Diversity Program Manager/Liaison/Specialist for assistance with pertinent logistical arrangements, such as a private office with a telephone, to conduct the counseling. An EEO counselor will interview the aggrieved person, witnesses, and the RMO(s) and gather pertinent documentation and/or statistical data.

a. The counselor will interview witnesses and the RMO(s) that the aggrieved person identifies as having information about the alleged discrimination. The RMO's and witnesses are entitled to representation during the EEO process. An RMO or witness may select anyone to represent them, as long as his/her representative's position with the VA does not present a conflict of interest. Interviews will be limited to those individuals with relevant information concerning the claim(s) raised. Individuals identified by the aggrieved person and/or RMO who would provide unduly repetitious information may not be interviewed. However, the counselor will note their names in the counselor's report as having been named as witnesses and the reason(s) they were not interviewed.

b. The counselor will inform the RMO of all claims against him/her; advise him/her of their rights and responsibilities; and allow the RMO to respond to each claim, suggest witnesses and documents, offer underlying reasons the aggrieved individual filed the complaint, and suggest possible resolution of the claim(s).

c. The counselor will obtain and review copies of all pertinent documentation and/or statistical data.

12. RESOLUTION. The primary focus of EEO counseling shall be informal resolution of the dispute. In this regard, all parties to the dispute shall cooperate with the EEO counselor in reaching an acceptable solution to the problem by considering all possible alternatives. If the matter cannot be resolved at the lower levels (i.e. first or second level supervisor), the EEO counselor is authorized to bring the matter to the attention of the Under Secretaries, Assistant Secretaries, and Other Key Officials and the local ORM Field Office Manager for appropriate assistance. If settlement is likely, the aggrieved person and the facility will negotiate and prepare a written settlement agreement. All resolutions must be in the form of a written settlement agreement, signed by the aggrieved person and the Under Secretaries, Assistant Secretaries, and Other Key Officials or designee and must identify the claim(s) being settled and the EEO case number. A copy of the settlement agreement must be provided to ORM for inclusion in the administrative file. It is advised that Regional Counsels review settlement agreements prior to the agency signing the agreement. Examples of Settlement Agreements and Settlement Agreement Tips can be found on ORM's website at <http://vaww.va.gov/orm>.

13. ELECTION OF ADR. If ADR is agreed upon, the EEO counselor must obtain and complete the information needed to determine the bases, claims, and timeliness before referring the dispute to ADR. If ADR is elected the pre-complaint processing period will be extended up to 90 calendar days. Upon agreement to ADR, the EEO counselor is responsible for the following information:

a. **Mediation Agreement.** The counselor obtains an agreement to mediate which is signed by both parties. After the agreement is signed, the election to proceed through ADR becomes the final election of choice. The counselor informs the complainant that since they elected ADR they will only gather enough information on the basis(es) and claim(s) to assist the agency in making a procedural decision in the event an ADR resolution is not reached. A prototype of a mediation agreement can be found on ORM's website at <http://vaww.va.gov/orm>.

b. **ADR Extensions.** If efforts to resolve the complaint extend beyond the 90-day period allowed by EEOC regulations, the EEO counselor will issue the required Notice of Right to File a Complaint by the 90th day. While mediation continues, the aggrieved may file a formal EEO complaint within 15 days of receipt of the notice.

c. **Resolution through ADR process.** If the dispute is resolved during ADR, the EEO counselor will document the resolution by including a copy of any written settlement agreement with the EEO Counselor's Report.

d. **Conclusion of ADR Process.** If resolution is not achieved during ADR, at the conclusion of ADR or by the 90th day, the counselor will schedule a final interview. During the final interview the counselor will review the claim(s) and basis(es) and issue a Notice of Right to File a Discrimination Complaint.

e. **Counselor's Report.** If resolution is not achieved during ADR, the EEO counselor will prepare an administrative file, which includes a counselor's report, pertinent correspondence, and documents obtained during informal counseling. This must be completed within 10 calendar days after the issuance of the Notice of Right to File a Discrimination Complaint.

14. EXTENSION DURING COUNSELING. Prior to the end of the 30-day counseling period, the aggrieved person may agree in writing to postpone the final interview and extend the counseling period for an additional period of no more than 60 calendar days. Extensions require approval of the ORM Regional EEO Officer or designee.

15. FINAL INTERVIEW. The EEO counselor conducts a final interview with the aggrieved person, in which he/she reviews all of the information obtained by the counselor during the pre-complaint phase. The counselor advises the aggrieved person that he/she must limit any resulting formal complaint to those matters discussed during counseling.

16. NOTICE OF RIGHT TO FILE A DISCRIMINATION COMPLAINT. Each EEO counseling contact shall be closed by the 30th day from initial contact with ORM, except where there is a signed, written extension, settlement agreement or agreement to participate in ADR. The EEO counselor will provide the aggrieved a Notice of Right to File a Discrimination Complaint along with a VA Form 4939, Complaint of Employment Discrimination. The aggrieved person must be asked to sign an acknowledgement of receipt at the bottom of a copy of the notice. The EEO counselor must send the notice to the aggrieved person by overnight or certified mail, return receipt requested. A return receipt or other evidence of receipt must be made part of the EEO counseling record. The EEO counselor may offer to assist the aggrieved person in filling out the VA Form 4939, Complaint of Discrimination. However, such assistance must be limited to the procedural aspects of how to fill out the form. The formal complaint must be filed within 15 calendar days of receipt of the Notice of Right to File a Discrimination Complaint. VA Form 4939 can be accessed electronically at <http://vaww.va.gov/orm/4939Rev11-99.pdf>

17. COUNSELOR'S REPORT AND ADMINISTRATIVE FILE. At the end of informal counseling, the counselor must prepare an administrative file which must include a counselor's report, pertinent correspondence and documents obtained during informal counseling. This must be completed for every contact within ten (10) calendar days after the issuance of the Notice of Right to File a Discrimination Complaint.

18. SUBSEQUENT AMENDMENT OF COMPLAINTS OF DISCRIMINATION. When it is determined during the initial interview that an aggrieved person has a pending related complaint in the process and the Notice of Advise of Rights has not been issued, the EEO counselor does not initiate counseling but follows these steps:

a. Verifies the existence of an active complaint and its current status in the Web Based Tracking System.

b. Explains the process to amend an existing complaint and informs the aggrieved person that he/she will receive written guidance on how to request an amendment on an existing complaint.

c. Prepares a Subsequent Event and/or Instances letter for signature of the Regional EEO Officer. The letter instructs the aggrieved person to submit a written description of the new incident(s) and request to amend the existing complaint.

d. Upon receipt of the written description of the new incident(s), the intake specialist determines whether the new incident(s):

(1) Provide(s) additional evidence offered to support the existing claim(s), but does not raise a new claim in and of itself;

(2) Raise(s) a new claim that is *like* or related to the claim(s) raised in the pending complaint; or

(3) Raise(s) a new claim that is *not like* or related to the claim(s) raised in the pending complaint.

e. If the new claim is *like* or related to the claim(s) raised in the pending complaint, the new incident(s) will be amended into the existing complaint and EEO counseling is not required.

f. If the new claim is *not like* or related to the claim(s) raised in the pending complaint, an EEO counselor will contact the aggrieved person within two days of the intake specialist's decision and proceed with counseling the new claim. The date of the initial contact will be based on the original date the aggrieved person contacted ORM.

CHAPTER 3 - THE FORMAL DISCRIMINATION COMPLAINT PROCESS

1. THE FORMAL DISCRIMINATION COMPLAINT PROCESS. VA employees, former employees, and applicants for employment are afforded the right to file a complaint of discrimination in accordance with the provisions of EEOC regulations on claims of discrimination. If the complainant chooses to file a formal complaint, the second phase of the complaint process begins. There are two types of formal complaints of discrimination that can be filed: an individual complaint and a class complaint. When a complainant files a formal complaint of discrimination, steps are initiated to advise the complainant of his/her rights and responsibilities during the formal complaint process. The individual formal complaint process includes the following major procedures: Acknowledgment, Procedural Decision, Investigation, Hearing or FAD, and EEOC Appeal. The following is a summary of the tasks that are performed in all cases:

2. ACKNOWLEDGMENT. Upon receipt of a formal EEO complaint, the following tasks are accomplished to acknowledge receipt:

a. Establish the official filing date. If mailed, the complaint shall be deemed filed on the date it is postmarked. In the absence of a legible postmark, the complaint will be deemed timely filed if received by an ORM official within 5-calendar days of the expiration of the filing period. If delivered in person or telefaxed, the complaint shall be deemed filed on the date it is received.

b. Issue a Notice of Receipt of Discrimination Complaint to the complainant, or the complainant's representative with a copy to the complainant, within 15 calendar days of being advised that the complainant has filed a formal complaint.

c. Issue a Notice of Receipt of Discrimination Complaint to the Under Secretary, Assistant Secretary, Facility Director, and other Key Official. Appended to the acknowledgment letter is a copy of the formal complaint. When the Under Secretary, Assistant Secretary, Facility Director, and other Key Official is named as the RMO, the notice will be sent to the next higher organizational element.

3. PROCEDURAL DECISION. The designated intake specialist reviews the formal complaint to determine if it is acceptable for investigation and makes a recommended procedural decision to the ORM Regional EEO Officer. The intake specialist will either accept or dismiss the complaint in whole or in part.

a. Acceptance Review.

(1) The intake specialist applies the following criteria in accordance with EEOC regulations to determine if the complaint is acceptable for further processing. If additional information is needed to answer these questions, the intake specialist requests the information from the complainant or the Under Secretary, Assistant Secretary, Facility Director, and other Key Official, as appropriate. Upon receipt the complainant/facility has 15 calendar days to provide the information. After the intake specialist receives the response, or after the allotted time has

expired, he or she proceed with the acceptability determination. The acceptance process is not the stage to determine whether there is any merit to the complaint. If all of the following questions are answered "yes", then the complaint is acceptable for investigation.

(a) Did the complainant contact an EEO counselor within 45 calendar days of the event in dispute?

(b) Did the complainant file a formal complaint within 15 calendar days of receipt of the Notice of Right to File a Discrimination Complaint?

(c) Did the complaint specify each event in dispute and when it occurred?

(d) Does the complainant allege discrimination because of race, color, religion, gender (sex), national origin, age (40 years and over), disability, or reprisal?

(e) Does the complaint state a claim against VA for which a remedy is available?

(f) Is the complaint unique (i.e., not duplicative of another EEO complaint, an appeal to MSPB, or a negotiated grievance)?

(2) If the procedural decision results in the acceptance of the complaint, the ORM Regional EEO Officer transmits an Acceptance of EEO Complaint letter, which notifies the complainant that the complaint has been accepted for investigation and describes the specific claim(s) being accepted. This letter determines and controls what claims will be investigated. Therefore, it is critical that there be an agreement with the complainant on the formulation and statement of the accepted claims. If the complainant believes the accepted claims are improperly formulated, incomplete, or incorrect, they have 7-calendar days, after receipt of the acceptance letter, to notify the ORM Field Office in writing of the disagreement. Upon receipt of the written statement, the ORM Field Office will address the disagreement in writing and include the complainant's statement in the official record. This process is intended to reasonably assure that the proper claims are investigated to avoid the necessity of a supplemental investigation or the risk of sanctions imposed by an EEOC Administrative Judge. A copy of the acceptance letter is transmitted to the Under Secretary, Assistant Secretary, Facility Director, and Other Key Official, along with a Document List. The Document List details the evidentiary documents to be gathered and submitted for inclusion in the investigative file.

b. Dismissal resulting in a Final Agency Decision (FAD). If the procedural decision results in a FAD, dismissing the entire complaint, the complainant is notified of the reason for the dismissal and provided appeal rights. If, on appeal, the EEOC agrees with the ORM decision, there is no further processing of the complaint. If EEOC disagrees with the ORM decision to dismiss, the complaint will be accepted and processed in the same manner as other complaints. The EEOC has established a number of circumstances under which an agency may dismiss a complaint. A summary of the various reasons for dismissal follows:

(1) **Failure to State a Claim.** A complainant must demonstrate that the matter regarded as discriminatory has resulted in harm. If the complainant cannot show some harm with regard to a term, condition, or privilege of employment, the complaint may be dismissed.

(2) **Same Claim Pending or Decided by the Agency or EEOC.** A complainant may not raise the same matter over and over. If the claim has been accepted in a prior complaint that is either pending or decided, the duplicate complaint may be dismissed. In order to dismiss, the claim must not be merely similar, it must be identical.

(3) **Failure to Comply with Applicable Time Limits.** If a complainant fails to raise a claim with an EEO counselor within the 45-day limitation, the claim is untimely raised and may be dismissed unless it is part of a pattern of harassing events, or there is a satisfactory explanation for the untimely contact. When counseling has been concluded and a complainant is issued a notice of right to file a complaint, the formal complaint must be filed within 15 calendar days of receipt of the notice. If it is filed beyond 15 calendar days, the complaint shall be dismissed unless there is an acceptable reason offered for the untimely filing.

(4) **Uncounseled Matters.** If the complaint contains matters not raised with the EEO counselor, they may be dismissed, unless they are like or related to matters that were raised. The test for being "like or related" is whether the uncounseled matter adds to, clarifies, or would reasonably arise in the investigation of the counseled matters. If the test is met, the uncounseled matters will be accepted.

(5) **A Matter Raised in Civil Litigation.** If a complainant chooses to file a judicial complaint over the same matter raised in the EEO discrimination complaint and more than 180 days have passed since the EEO discrimination complaint was filed and the complaint has not been adjudicated, the EEO discrimination complaint may be dismissed. Note: Complainants alleging a violation of the Equal Pay Act (EPA), sex-based wage discrimination may file a civil action in Federal District Court at any time. Please see Chapter 4, item 16 (d) of this document for additional information on EPA complaints.

(6) **Negotiated Grievance Procedure and MSPB Appeal.** If a complainant first files a grievance under the negotiated grievance procedure or MSPB Appeal, and later files a formal complaint, the complaint may be dismissed based upon the complainant's election of another forum. The underlying public policy for both the grievance and MSPB dismissal authority is based upon the premise that a person should not be permitted to adjudicate a matter in separate forums simultaneously, because of the added cost and risk of conflicting results. The matter should only be considered and adjudicated one time, in one forum or the other, but not both. [Also applies if person files an EEO complaint first, then a grievance, but carries the grievance all the way thru to the third step. In such cases, the EEOC has held that, though the EEO complaint was filed first, the fact that the person took the grievance all the way thru to the 3rd step shows the person elected to pursue the grievance.]

(a) **Negotiated Grievance Procedure.** If a grievance under a negotiated grievance procedure, which specifically permits the consideration of discrimination claims, is filed earlier than an EEO complaint on the same matter, the EEO complaint may be dismissed because

the complainant has elected a different forum to litigate the matter. The date the first stage of a negotiated grievance is filed is considered to be the filing date. However, if the grievance is subsequently dismissed for lack of jurisdiction, the filing of the grievance cannot be the reason the EEO complaint is dismissed.

(b) **MSPB Appeal.** If a complainant first files an MSPB appeal of a matter appealable to the MSPB, a later filed EEO complaint may be dismissed based upon the complainant's election of forums.

(7) **Mootness.** If a complaint demonstrates harm when filed, it states a claim to be adjudicated, however, if intervening events or relief have completely eradicated the harm, and there is no reasonable expectation that the alleged violation will recur, the matter is moot and may be dismissed. The difference between mootness and failure to state a claim is that under failure to state a claim, there never was any harm suffered by complainant, but in mootness, there was harm suffered which was subsequently rectified and is unlikely to recur. Therefore, there is no present claim to adjudicate.

(8) **Proposal to take Personnel Action.** The EEOC has determined that a person is not harmed when advised that an adverse action is proposed. The harm occurs only when the action is actually implemented. Prior to implementation of the proposal, the matter may be dropped, settled, or in another way resolved with no further action taken on the proposal. Consequently, a complaint based merely upon a proposal to take a personnel action may be dismissed.

(9) **Failure to locate the Complainant.** The complainant has a duty to cooperate in the processing of the complaint. If the complainant fails to keep the agency apprised as to his/her whereabouts, the agency may dismiss the complaint after reasonable efforts are made to locate the complainant. However, prior to dismissal the agency must send written notice to the last known address that a dismissal is proposed. If there is no response, the complaint may be dismissed.

(10) **Failure to respond to request for information.** If the complaint file lacks needed information to move the process forward, the agency may request the information from the complainant. The request is made in writing and contains a warning that failure to respond to the request may result in dismissal of the complaint. If the complainant fails to respond or responds but does not provide the requested information, the complaint may be dismissed.

(11) **Allegation of dissatisfaction with processing of a complaint.** If a complainant is dissatisfied with the processing of an earlier complaint ("spin-off" complaint), a new complaint expressing that dissatisfaction may not be filed and will be dismissed. An alternative procedure is established to consider and resolve such dissatisfaction in lieu of filing a complaint. In VA, the ORM Office of Policy and Compliance considers and responds to such claims.

(12) **Abuse of Process.** Where a complainant misuses the EEO process for a purpose other than prevention and elimination of discrimination and does so in a clear pattern of

misuse, a complaint may be dismissed. While the regulatory authority to dismiss is clearly stated, the EEOC has construed such authority narrowly.

c. **Partial Acceptance.** If the complaint is dismissed in part, the intake specialist prepares the Partial Acceptance letter. The letter sets forth to the complainant the rationale for the determination and notifies him/her which claim(s) will not be investigated. A copy of the decision letter is placed in the administrative file for consideration when the case is adjudicated. If only a portion of the complaint is dismissed, there is no immediate right for the complainant to appeal that decision. The partial dismissal decision is made part of the file, and subsequent to the investigation, if the complainant requests an EEOC hearing, the Administrative Judge (AJ) will review that decision. If the AJ agrees with the decision, the matter dismissed will not be considered during the hearing phase, but at a later point can be raised in an appeal to EEOC. If the AJ disagrees with the ORM decision, the dismissed portions will be considered during the hearing process. If the complainant does not request a hearing but requests an immediate substantive decision from OEDCA, OEDCA will review the partial dismissal. If OEDCA agrees with the ORM decision, it will not substantively consider the dismissed matters. The complainant may appeal the dismissed matters to EEOC after OEDCA renders the substantive final agency decision. If OEDCA disagrees with the ORM partial dismissal, it may order the matter accepted and investigated.

4. INVESTIGATION. EEO complaints meeting acceptability requirements are assigned for investigation and generally investigated within 180 calendar days, unless the parties agree in writing to extend the time period. If the complaint is amended, the investigation shall be completed within the earlier of 180 days after the last amendment to the complaint or 360 calendar days after the original filing of the complaint. In addition, two or more accepted complaints, filed by the same complainant, must be consolidated for investigation. In cases where the complainant has requested an EEOC hearing, the Administrative Judge may decide to consolidate complaints for joint processing. Mixed cases (complaints on matters appealable to MSPB) and non-mixed cases filed by the same complainant are not consolidated for joint processing. The investigation process is as follows:

a. The ORM Regional EEO Officer/Field Manager assigns complaints for investigation, by letter, to the EEO investigator with concurrent notice to the complainant/representative and Under Secretary, Assistant Secretary, Facility Director, and Other Key Official. Investigations of EEO complaints will be conducted by full-time ORM investigators or contractors appointed by ORM. EEO investigators are required to complete their investigations within 30 or 60 days of assignment (depending on method of investigation). Extensions of that period will be granted only under extraordinary circumstances.

b. The EEO investigator reviews the administrative complaint file and completes the Pre-Investigative Planning Document to determine the appropriate theories of discrimination pertinent to the case and the most suitable method(s) of investigation. The method(s) is determined based on the complexity of the case, i.e., number and types of claims. Methods of investigations include: On-Site, Desk (by telephone), Written Affidavit, and Fact-Finding Conferences.

c. The EEO investigator will work with the EEO/Diversity Program Manager/Liaison/Specialist to schedule the investigation, schedule witnesses, acquire documents, and to make other arrangements necessary for the efficient conduct of the investigation. The investigator proceeds as follows:

(1) Determines the dates to conduct the actual investigation.

(2) Discuss with the EEO Manager/Liaison witness scheduling.

(3) Follows-up on request for evidentiary documents (Document List) transmitted to the Under Secretaries/Facility Director at the time the complaint was accepted.

(4) Obtains written affidavit, written interrogatory, or testimony related to the EEO complaint. When written affidavits are obtained the statements are made under penalty of perjury. When individuals are interviewed, the investigator obtains their testimony under oath. There are several ways to obtain testimony: by interrogatories, a court report or by transcription of the tape recording of the interview. All individuals that are interviewed are offered the opportunity to review and make corrections to their testimony. The procedures are outlined below:

(a) At the conclusion of each interview, while on the record, the investigator will obtain an affirmative or negative response whether the witness wants the opportunity to review, make minor changes, sign and be provided a copy of the transcript.

(b) If a witness requests a copy of the transcript the witness may not make any mark on the transcript itself, all revisions to the original transcript will be made on a correction sheet attached to the transcript. Witnesses may not make substantive changes to the transcript. Witnesses are required to return the signed transcript and correction sheet back to the investigator within seven (7) calendar days of receipt of the transcript. If the witness does not provide the signed transcript and correction sheet within the appropriate time limit, it will be deemed that the witness elected to waive his or her right to review, correct and sign the transcript.

(5) Upon completion of evidence gathering, the investigator develops an impartial and appropriate factual summary and analysis, which will evaluate the evidence in the investigative file but will not reach a conclusion as to whether discrimination did or did not occur. The investigator must be unbiased and objective and the investigation must be thorough.

(6) The investigator will submit the investigative summary and record to the ORM Regional EEO Officer or designee for technical review and release.

5. AMENDMENT OF COMPLAINTS DURING INVESTIGATION. When a complainant raises a new incident of alleged discrimination during the investigation, the EEO Investigator instructs the complainant to submit a letter to the ORM Regional EEO Officer describing the new incident(s) and stating that he/she requests to amend his/her complaint to include additional evidence or a claim like or related to the claim(s) accepted for investigation. If the request to amend is received during the investigation and the ORM Regional EEO Officer renders an

acceptability decision, the EEO Investigator investigates the additional evidence or claim(s). The decision to accept, dismiss or refer amended claims back to counseling is also included in the investigative file. Additional guidance regarding this may be found in this chapter in paragraphs 10 through 12.

6. ADVISEMENT OF RIGHTS. Upon completion of the technical review of the investigative file and summary report, the intake specialist completes the following:

a. Forwards a copy of the investigative file to the complainant and his/her representative, when one has been identified. The file is forwarded with the Notice of Advise ment of Rights letter. This letter notifies the complainant that within 30 calendar days of receiving the investigative file he/she has the right to request a hearing before an Administrative Judge or a FAD by OEDCA, pursuant to 29 CFR §1614.108(f). Copies of the forms to request an EEOC hearing and instructions for requesting a FAD are attached to the Notice. A Request for an EEOC Hearing form can also be obtained through EEOC's website at <http://www.eeoc.gov>.

b. The following actions will follow receipt of the investigative file:

(1) If the complainant and his/her representative examines the investigative file and observes deficiencies, the complainant and/or representative should notify ORM, in writing, of the perceived deficiencies. A copy of the complainant's notification of perceived deficiencies will be included in the investigative file.

(2) If ORM agrees with the alleged deficiencies, ORM will take immediate action to correct them.

(3) If ORM does not agree with the complainant's claimed deficiencies, ORM will prepare a statement explaining the rationale for the disagreement and include it in the investigative file.

c. Transmits a copy of the investigative summary report to the appropriate Under Secretary, Assistant Secretary, Facility Director, and Other Key Official appended to the Notice of Completion of Investigation letter.

7. REQUEST FOR EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) HEARING OR A FINAL AGENCY DECISION (FAD). The complainant has the right to request a hearing before an Administrative Judge or a FAD by OEDCA, pursuant to 29 CFR §1614.108(f). The complainant must request a hearing within 30 calendar days of receipt of the Advise ment of Rights letter, otherwise the intake specialist will send the complaint file to OEDCA for a FAD.

a. **REQUEST FOR EEOC HEARING.** EEOC regulations require that the complainant submit a hearing request directly to the EEOC District Office and a copy to the ORM Field Office having jurisdiction over the geographic area in which the complaint arose. The request for a hearing should be filed on EEOC's Request for a Hearing Form. However, if an appeal form is not available, a written request for a hearing will be acceptable. The hearing request form can be obtained through EEOC's website at <http://www.eeoc.gov>.

(1) Within 15 calendar days of receiving a copy of the complainant's request for a hearing, ORM will send a copy of the complaint file to the EEOC District Office, the Agency Representative and OEDCA. Once a hearing has been requested, all communications and/or matters related to the complaint will be conducted through the Agency Representative.

(2) The scheduling of an EEOC hearing rests with EEOC and the respondent facility. EEOC Administrative Judges are fully responsible for adjudicating the complaint, which means they may dismiss the complaint or issue a decision with or without a hearing.

(3) Where the complainant has requested an EEOC hearing, by EEOC regulation, the EEOC Administrative Judge (AJ) makes a substantive decision on the merits that is binding on the agency, unless OEDCA takes certain action within 40 days of receipt of the AJ's decision. The final action OEDCA must take within the 40-day period is to determine whether or not to implement the EEOC Administrative Judge's decision through the issuance of a final agency action. If OEDCA decides to fully implement the Administrative Judge's decision, the decision becomes the final action of the agency. If the OEDCA final order, which is the notice to complainant, does not fully implement the Administrative Judge's decision, then the agency must simultaneously appeal the matter to EEOC. Whether OEDCA renders a final agency decision or takes final agency action through a final order, the agency must advise the complainant of the right to appeal to EEOC, Office of Federal Operations (OFO) within 30 calendar days of receipt should they be dissatisfied with the decision or final action. The appeal should be filed on EEOC Form 573, Notice of Appeal/Petition to the EEOC. However, if an appeal form is not available a written request for a hearing will be acceptable. EEOC's Notice of Appeal/Petition can be obtained through EEOC's website at <http://www.eeoc.gov>.

b. **REQUEST FOR FINAL AGENCY DECISION (FAD).** OEDCA renders FADs addressing the merits of all claims in a complaint, including the rationale for their decision. A complainant can elect a FAD by submitting a written request or by failure to respond to the Advisement of Rights letter within 30 calendar days of receiving this notification. After ORM receives the complainant's election, ORM immediately transmits the investigative file to OEDCA upon receipt of the complainant's request for a FAD. In instances where the complainant does not respond to the Notice, ORM transmits the investigative file to OEDCA within 10 calendar days of the expiration of the 30-day period to make an election. OEDCA has 60 calendar days from receipt to render a decision.

(1) **Non-Mixed Complaint Procedural Decisions.** Where OEDCA issues a decision dismissing a complaint in its entirety, OEDCA will inform the complainant of his/her right to file an appeal with the EEOC. The agency informs the complainant that the appeal must be filed within 30 days of receipt of the FAD. A copy of EEOC Form 573, Notice of Appeal/Petition is attached to the FAD. EEOC's Notice of Appeal/Petition can also be obtained through EEOC's website at <http://www.eeoc.gov>.

(2) **Mixed Complaint Procedural Decisions.** Where OEDCA issues a decision dismissing a complaint in its entirety, OEDCA will inform the complainant of his/her right to file an appeal with the MSPB. Additional guidance regarding this may be found in this chapter under 16 (a).

8. CIVIL COURT. If the complainant chooses not to appeal to the EEOC, he/she may file a civil action in United States District Court within 90 calendar days of receipt of the agency decision or final action. The right to file suit in US District Court is also available to any complainant if 180 days has elapsed after the complaint was filed and no final agency decision has been rendered or final action has been taken. Special circumstances exist for filing a civil action in United States District Court for Age discrimination and Equal Pay Act complaints. See item 16 (c) and 16 (d) of this chapter.

9. SPECIAL CIRCUMSTANCES DURING THE FORMAL COMPLAINT PROCESS. There are complaints that have slightly different procedures. This section will describe those complaints and the processing rights in accordance with EEOC Regulations.

a. Mixed Case Complaints. A mixed case complaint is a complaint of employment discrimination that may contain a claim of employment discrimination stemming from an action that can be appealed to the MSPB. The complaint may contain only a claim of employment discrimination or it may contain additional claims that the MSPB has jurisdiction to address. A list of actions that can be appealed to MSPB can be found on MSPB's website at <http://www.mspb.gov>. In a mixed case complaint situation, an aggrieved person may initially file a complaint of discrimination with the VA or an appeal on the same matter with MSPB, but not both. A mixed case complaint filed with the VA is processed as an individual complaint of discrimination with the following exceptions:

(1) Complainant is advised of the acceptance of a mixed case complaint and that if a final decision is not issued within 120 calendar days of the filing date of the complaint, he/she may appeal the matter to MSPB at any time thereafter.

(2) Upon completion of the investigation, the complainant is advised that a FAD will be issued by OEDCA within 45 calendar days without a hearing.

(3) If the complainant is dissatisfied with the FAD he/she may appeal the matter to MSPB (not EEOC) within 30 calendar days of receipt of the FAD.

b. Complaints of Class Discrimination. A "class" by definition, is a group of employees, former employees, or applicants for employment who allege they are adversely affected by a personnel management policy or practice. A class complaint is a written complaint of discrimination filed on behalf of the class by the agent of the class, alleging that the class is so numerous that a consolidated complaint by the members of the class is impractical, that there are questions of fact common to the class, that the claims of the agent of the class are typical of the claims of the class, and that the agent of the class or the representative will fairly and adequately protect the interests of the class.

(1) 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 event affecting the class agent. The complaint must be filed with ORM no later than 15 calendar days after the agent's receipt of the Notice of the Right to File a Class Complaint.

(2) Once a formal complaint is filed on behalf of the “class,” the following actions occur:

(a) ORM notifies the Regional Counsel having jurisdiction to designate an Agency Representative.

(b) Within 30 calendar days of the receipt of a class complaint, ORM forwards the complaint, the name of the Agency Representative, a copy of the counselor’s report and other relevant information about the complaint to the EEOC District or Field Office having jurisdiction over the geographic area in which the complaint arose.

(c) The EEOC Supervisory Administrative Judge assigns an Administrative Judge to issue a decision on certification of the class. EEOC uses the following criteria in determining if the class complaint is subject to dismissal:

i. The complaint does not meet all the prerequisites of a class (i.e., numerosity, commonality, typicality, and adequacy of representation).

ii. The claim lacks specificity and detailed information.

iii. The complaint meets any of the criteria for Dismissal of Complaints under EEOC regulations (i.e., the questions posed under Procedural Decision of this Handbook).

iv. The complainant unduly delayed in moving for class certification.

(d) If it is the decision of the Administrative Judge not to certify the class complaint, within 30 calendar days of receipt of the decision, ORM will issue a letter acknowledging receipt of an individual complaint to the agent and individuals who filed formal complaints on the claim(s) and basis(es) identical to the class complaint. ORM will process each complaint as an individual complaint of discrimination. If it is the decision of the Administrative Judge to certify the class complaint, the VA’s organizational component where the complaint was filed is responsible for notifying all class members. All reasonable means will be used to notify all class members of the acceptance of the complaint within 15 calendar days of receipt of the Administrative Judge’s decision or within a time frame specified by the Administrative Judge. EEOC requires that a qualified class agent represent the class.

c. Age Discrimination Complaints. In order to pursue a formal complaint of age discrimination, the complainant must be at least 40 years of age at the time of the alleged discriminatory event at issue. Age discrimination complaints are processed in the same manner as all other complaints, with one exception. There is an alternate process that allows the age complainant to file a civil action without first filing an EEO complaint. A complainant may go directly to Federal District Court by filing a Notice of Intent to Sue with the EEOC. This notice should be filed at least 30-calendar days in advance of the civil suit. The civil suit must be filed within 180-calendar days of occurrence of the event believed to be discriminatory. The EEOC will immediately advise VA whenever such a notice is received. ORM will then have 30-calendar days to conduct an inquiry to discover whether there is any basis for believing that

age discrimination has occurred. Responsibility to conduct an inquiry is delegated to the ORM Office of Policy and Compliance. A report of the inquiry, which briefly summarizes the information discovered, must be furnished to the DAS/ORM for transmittal to EEOC, within 30-calendar days. A summary of the charges of the complainant and the responses of management, along with employment statistics that may be relevant, is required. Filing of a private suit will terminate processing of the EEO discrimination complaint.

d. Equal Pay Act Complaints. An Equal Pay Act claim is raised when a complainant alleges that he or she is receiving less pay than an individual of the opposite sex for a job requiring equal skill, effort and responsibility and performed under similar working conditions. Each day the employee continues to receive less pay for equal work is considered to be a continuing violation by EEOC. A complainant may file an EEO discrimination complaint, and may file directly in a court of competent jurisdiction without first providing notice to the EEOC or exhausting the EEO discrimination complaint process. The civil action must be filed within a court of competent jurisdiction within two years, or, if the violation is willful, within three years of the date of the alleged violation of the Equal Pay Act. The filing of an EEO discrimination complaint does not waive the time for filing a civil action. Filing of a private suit will terminate the processing of the EEO discrimination complaint.

10. ADMINISTRATIVE PROCESS CASE AMENDMENT. At the conclusion of an investigation and any time prior to the agency's mailing of the Notice of Advisement of Rights, a complainant may amend a pending EEO complaint to add claim(s) that are like or related to those claim(s) raised in the pending complaint. If the new claim is accepted as like or related, the complainant cannot later seek EEO counseling on the same claim(s) being amended with the pending complaint.

a. When a complainant raises a new incident of alleged discrimination during the processing of an EEO complaint, the complainant must provide the ORM Regional EEO Officer a letter describing the new incident(s) and stating that he/she wishes to amend his/her complaint to include the new incident(s). Upon receipt of the complainant's request to amend an existing formal complaint, an acceptability determination is made to determine if the new incident:

(1) provides additional evidence offered to support the existing claim, but does not raise a new claim in and of itself;

(2) raises a new claim that is like or related to the claim(s) raised in the pending complaint;
or

(3) raises a new claim that is not like or related to the claim(s) raised in the pending complaint.

b. If the ORM Regional EEO Officer determines that the subsequent act(s) of alleged discrimination is like or related to the claim(s) raised in the pending complaint, an Amended Acceptance of EEO Complaint letter is transmitted to the complainant. This letter notifies the complainant that the subsequent act of alleged discrimination has been accepted for investigation and describes the specific claim(s) being accepted.

c. If the ORM Regional EEO Officer determines that the subsequent acts of alleged discrimination do not add to or clarify the original claim, and/or could not have been reasonably expected to grow out of the investigation of the original claim, the later incident will be treated as a new EEO complaint of discrimination. The EEO Officer will instruct the complainant to seek EEO counseling regarding the subsequent act(s).

11. CASE AMENDMENT AFTER AN EEOC HEARING IS REQUESTED. After the complainant has requested a hearing, he/she may file a motion with the Administrative Judge to amend the complaint to include claims that are like or related to those raised in a pending complaint.

12. CASE CONSOLIDATION

a. **Consolidation of Complaints by Two or More Complainants.** Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the agency or EEOC for joint processing after appropriate notification to the parties.

b. **Consolidation of Complaints by the Same Complainant.** Agencies are required to consolidate two or more complaints filed by the same complainant after appropriate notification to the complainant. When a complaint has been consolidated with an earlier filed complaint the agency will complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint. A complainant may request a hearing from an Administrative Judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. If a complainant requests a hearing on consolidated complaints prior to the agency's completion of the investigation, the administrative judge will decide how best to insure an appropriate record. Administrative Judges may decide to place the complaint in abeyance until the agency can finish its investigation or by supplementation of the record through discovery or other methods ordered by the Administrative Judge.

c. **EEOC Case Consolidation.** When an Administrative Judge becomes aware that one or more complaints in the agency process should be consolidated with a complaint in the hearing process, the Administrative Judge may consolidate all claims at the hearing stage or hold the complaint in the hearing process until the others are ready for hearing.

13. ACCESS TO FILES. EEOC regulations and the Privacy Act govern access to EEO complaint files. Further guidance on the release of information of EEO files can be found on ORM's website at <http://vaww.va.gov/orm/ormpap.doc>.

CHAPTER 4 - RESOLUTION OF COMPLAINTS

1. RESOLUTION OF COMPLAINTS. ORM is committed to assisting aggrieved individuals and management in resolving claims of employment discrimination and EEO complaints. EEOC encourages resolution of complaints at all times in the complaint process through a variety of settlement mechanisms: Mediation, Facilitation, Fact Finding, Early Neutral Evaluation, Ombudsmen, Settlement Conferences, Mini-trials and Peer Review. For more detailed information, refer to the Definition Section, Appendix B, of this Handbook or EEOC Management Directive (MD-110).

2. ALTERNATIVE DISPUTE RESOLUTION (ADR). Mediation through Alternative Dispute Resolution (ADR) is available during the informal and formal complaint process. ADR is a process that uses specially trained neutrals (third party mediators), to help individuals resolve disputes. Forms of ADR include, but are not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials and arbitration, or any combination. VA has embraced mediation as its primary method of ADR.

3. OFFER OF RESOLUTION. EEOC regulations provide an incentive through its Offer of Resolution concept. The idea is for the facility and complainant to resolve complaints that will conserve agency resources where settlement reasonably should occur. If the complainant does not accept an Offer of Resolution made in accordance with the requirements of 29 CFR §1614.109(c) and subsequently obtains less relief than had been offered, the complainant's attorney fees will be limited.

4. SETTLEMENT AGREEMENTS AND WITHDRAWAL OF COMPLAINTS. EEOC's and VA's policy is to seek resolution of EEO disputes at the earliest opportunity; therefore, settlement on terms acceptable to both the complainant and the agency is encouraged. When agreement has been reached in principle, the terms should be incorporated into a written settlement agreement. Settlement agreements may include, where appropriate, promotions, back-pay, interest on back-pay, reasonable attorney fees, and compensatory damages as long as the terms do not violate laws, rules, or regulations. Prior to the execution of any settlement agreement, agency officials are advised to consult with the Office of General Counsel or Office of Regional Counsel as appropriate to assure that remedial relief is consistent with the nature of the claim and the terms of the agreement to assure that they are clear, unambiguous, and understandable to the parties. Withdrawal of the EEO complaint by case number and the claim being resolved should be clearly stated in the written settlement agreement. If the complaint is resolved, a copy of the settlement agreement must be provided to the ORM field office with jurisdiction over the case.

a. **Settlement Agreement.** When a complaint of discrimination is settled a written settlement agreement, signed by both parties is required. The agreement should identify the complaint(s), i.e., cases number(s), claim(s), and basis(es), and also provide that the complainant withdraws all causes of action, including all EEO complaints, grievances, unfair labor practices, civil actions, etc., arising prior to the execution of the agreement. Settlement Agreement Tips can be found on ORM's website at <http://vaww.va.gov/orm/opc/default.htm>.

(1) If both parties agree to settle a matter, ORM staff, upon request, can provide a sample format for a written settlement agreement.

(2) If the complaint is resolved, a copy of the settlement agreement must be provided to the ORM field office.

(3) All settlement agreements should include the following statement: The complainant acknowledges that if (he/she) believes VA has not complied with the terms of this Settlement Agreement, (he/she) may notify the Deputy Assistant Secretary for Resolution Management, in writing, within 30 days of the alleged violation and request the terms of this Settlement Agreement be specifically implemented. Alternatively, (he/she) may request that the EEO complaint be reinstated for further processing from the point processing ceased. Prior to asking the complainant which election he/she would like to make, the complainant should be advised that, if the complaint is reinstated, the parties will be returned to their respective status prior to the settlement and the complainant will be required to repay any money to the Agency paid to him or her as part of the vacated settlement agreement. Thereafter, the complainant may appeal to the Equal Employment Opportunity Commission pursuant to 29 CFR 1614.504 if (he/she) believes that VA has either not fully implemented the Settlement Agreement or improperly failed to reinstate the complaint. The Equal Employment Opportunity Commission states that allegations of subsequent acts of discrimination that violate a settlement agreement shall be processed as separate complaints under §1614.106 or §1614.204. If the complainant believes that (he/she) has experienced reprisal since signing the settlement agreement, (he/she) should bring the matter to the attention of an EEO counselor immediately.

(4) The Older Workers' Benefit Protection Act (OWBPA) sets out strict requirements if a settlement involves a claim of age (40 years and over), discrimination. At a minimum, an agreement to waive an ADEA claim must be clearly written from the employee's viewpoint, specifically referring to rights or claims under the ADEA, have no waivers of prospective rights under the ADEA, and give valuable consideration in exchange for the waiver. It must also specifically state that the complainant has twenty-one (21) calendar days to consider the agreement and seven (7) calendar days following the execution of the agreement to revoke it. In addition, the settlement agreement must also state, in writing, that the employee has the right to consult with an attorney prior to execution of the agreement. An example of a Settlement Agreement for ADEA claims can be found on ORM's website at <http://vawww.va.gov/orm/opc/default.htm>.

(5) The Under Secretary, Assistant Secretary, Facility Director, and Other Key Official or his/her designee must sign all settlement agreements. As it relates to Canteen Service, or the National Cemeteries, the National Canteen Director or the National Cemetery Area Directors must sign all settlement agreements, respectively.

(6) The agency representative will transmit a signed and dated copy of the settlement agreement obtained during an EEOC hearing for inclusion in the administrative file to the ORM's Regional EEO Officer.

(7) The agency EEO/Diversity Program Manager/Liaison/Specialist will monitor local compliance with settlement agreements and orders issued by the Office of Employment Discrimination Complaints and Adjudication, EEOC, and EEO related cases from the Merit Systems Protection Board, labor arbitrators, and the Federal Labor Relations Authority, as well as ADR agreements. He/she will notify management if compliance falters.

b. **Withdrawal of Complaint.** Should a complainant unilaterally decide to withdraw a claim at any point in the EEO process, the withdrawal must be in writing describing the claims withdrawn, signed, and dated by the complainant. Complaint processing will cease upon receipt of the written withdrawal. Once claims are withdrawn, they cannot be raised again through subsequent contact with an EEO counselor. If the complaint is withdrawn, a copy of the withdrawal statement must be provided to the ORM field office.

CHAPTER 5 - BREACH OF SETTLEMENT AGREEMENT

1. SETTLEMENT AGREEMENT. A settlement agreement is a contract signed by both parties. Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties.

2. BREACH OF SETTLEMENT AGREEMENT. Should a complainant believe that VA has breached any of the terms of a settlement agreement; the complainant must file a breach of settlement claim with the Deputy Assistant Secretary for Resolution Management, 810 Vermont Avenue NW, Washington, DC 20420. The breach of settlement claim must be filed within 30-calendar days of the date when the complainant knew or reasonably should have known of the alleged noncompliance. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased.

a. The DAS/RM has delegated the Chief of Policy and Compliance authority to decide Breach of Settlement Agreement Claims. The Chief of Policy and Compliance will issue decisions on all breach allegations within 35-calendar days of receipt.

b. ORM field offices should have the complainant complete the Breach of Settlement Agreement Allegation Form, (Appendix D)

c. A copy of the employee's Breach of Settlement Agreement Allegation Form and all supporting documentation, i.e., original EEO contact sheet, settlement agreement, EEO counselor's report, or background information obtained from the employee, should be forwarded to the Office of Policy and Compliance (OPC).

d. A copy of OPC's decision will be forwarded to the respective field facility and ORM field office.

e. The complainant is entitled to appeal that decision to EEOC within 30-calendar days from receipt or after 35-calendar days from the date the allegation of noncompliance was served on the DAS/RM, if there has been no decision in that time frame.

f. EEOC regulations at 29 CFR §1614.504, only provide for a complainant to seek enforcement of a settlement agreement. If the complainant breaches the terms of the settlement agreement, then the agency will be excused from performing the remaining obligations. There is no formal process for the agency to seek such relief. The agency will simply determine that the complainant stands in breach of the agreement and then refuse to implement the remaining terms.

3. SUBSEQUENT ACTS OF DISCRIMINATION. EEOC regulations 29 CFR §1614.106 and 1614.204 states that subsequent act of discrimination that violate a settlement agreement, or acts of reprisals, shall be processed as a separate complaint of discrimination. A subsequent act is defined as any allegation made by the complainant that involves an act or action by

management that occurred and is unrelated to the original settlement agreement or an allegation that management engaged in reprisal since signing the settlement agreement.

a. ORM Employees should help aggrieved individuals distinguish claims of reprisal, or subsequent acts of discrimination from breach claims. If after discussion, the employee nevertheless wishes to pursue the breach claim, the ORM field office should have the employee complete the Breach of Settlement Agreement Allegation Form, (Appendix D).

b. A copy of the employee's Breach of Settlement Agreement Allegation Form and all supporting documentation, i.e., original EEO contact sheet, EEO counselor's report, or background information obtained from the employee, should be forwarded to the Office of Policy and Compliance (OPC).

c. The Office of Policy and Compliance will issue a decision within 35-calendar days from receipt of the breach claim. A copy of the decision will be forwarded to the respective field facility and ORM field office.

d. If the complainant files a formal complaint of discrimination regarding the subsequent act, the new claim must be reviewed to determine if it meets the procedural requirements for further processing in accordance with 29 CFR §1614.

e. If the complainant files a formal complaint of discrimination regarding a breach claim, the breach claim should be dismissed and forwarded to OPC for processing.

CHAPTER 6 - REMEDIES AND COMPLIANCE

1. REMEDIES (REMEDIAL RELIEF). When there has been a finding of discrimination, the remedies available to the complainant shall be those set forth in EEOC's regulations as 29 CFR §1614. The regulations require that when discrimination is found, the complainant is entitled to the appropriate remedy which, as nearly as possible, places him/her in the situation which he/she would have been had the discrimination not occurred, with all pay and benefits which would have accrued absent the discrimination. The following are the basic elements of remedial relief when there is a finding of discrimination.

a. Notification to all employees of the agency in the affected facility of their right to be free of unlawful discrimination and assurance that the particular types of discrimination found will not reoccur.

b. Commitment that corrective, curative or preventative action will be taken, or measures adopted, to ensure that violations of the law similar to those found will not recur.

c. A offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position.

d. Payment to each identified victim of discrimination on a "make whole basis" for any loss of earnings the person may have suffered as a result of the discrimination.

e. Commitment that the agency shall cease from engaging in the specific unlawful employment practices found in the case.

2. PETITION FOR ENFORCEMENT. A complainant may petition the EEOC for enforcement of a decision issued under the EEOC's appellate jurisdiction. The petition shall be submitted to EEOC's Office of Federal Operations (OFO) and shall set forth the basis for the complainant's assertion that the agency is not complying with the decision. EEOC affords the VA and the complainant the opportunity to submit information and/or documentation regarding the issue in dispute. VA will respond to EEOC's notice to show cause and submit evidence of compliance or specify the compelling reasons for noncompliance. EEOC will inform the complainant of the petition for enforcement decision.

3. COMPLIANCE. All officials of VA are required to comply with the final agency decisions issued by OEDCA or the appeal decisions issued by EEOC, including timely implementation of any corrective action ordered. The decisions will specify the corrective actions required and the time limits for implementing those corrective actions.

a. The Office of Policy and Compliance monitors agency compliance with OEDCA and EEOC decisions. To show compliance with the decisions, the Office of Policy and Compliance will obtain the necessary documentation for completing compliance. The following is a list of acceptable documentation required to document OEDCA and EEOC compliance:

(1) Attorney Fees. A copy of the check issued or a payroll voucher for attorney fees and/or narrative statement by an appropriate agency official, or agency payment order stating the dollar amount and date attorney fees was paid.

(2) Awards. A copy of the check issued or a payroll voucher or a narrative statement by an appropriate agency official stating the dollar amount paid, date paid, and the criteria used to calculate the award amount. If the award is non-monetary, provide a copy of the award documentation.

(3) Back Pay and Interest. Computer print-outs or payroll documents outlining gross back pay and interest, copy of any checks issued, or a narrative statement by an appropriate agency official of total monies paid, and date of payment.

(4) Compensatory Damages. The final agency decision and evidence that payment has been made.

(5) Miscellaneous Expenses. A copy of the check issued or a payroll voucher.

(6) Training. Attendance roster of the training session(s) or a narrative statement by an appropriate official that confirms attendance and date of the training.

(7) Personnel Actions (e.g., Reinstatement, Promotion, Hiring, Reassignment), copies of SF-50's or agency service record cards. Provide a copy of the agency's letter to the complainant offering position as outlined in OEDCA or EEOC decision, and a copy of the employees' response accepting or declining the positions.

(8) Expungement of Records. Narrative statement by an appropriate agency official that confirms that the specific document identified in the order has been expunged.

(9) Posting of Notice of Violation for EEOC Decisions. After the expiration of the posted notice, mail the original signed and dated notice reflecting the dates that the notice was posted to EEOC OFO Compliance Officer. For OEDCA, a copy of the notice will suffice.

(10) Supplemental Investigation will include the following: (a) A copy of the letter to the complainant acknowledging receipt from EEOC of remanded case, or a copy of the acceptance letter including language to advise that the agency is in receipt of the EEOC remand. (b) A copy of the letter to the complainant to show that the Report of Investigation (ROI) was transmitted (not the ROI itself unless specified). (c) A copy of the complainant's request for an EEOC hearing or agency final decision.

(11) Restoration of Leave. Printout or statement identifying the amount of leave restored, if applicable. If not, an explanation or statement.

(12) Civil Actions. A complete copy of the civil action complaint demonstrating same issues raised as in compliance matter.

(13) Settlement Agreements. Signed and dated agreement with specific dollar amounts, if applicable. Also appropriate documentation of relief is provided.

b. The EEO Diversity Program Manager/Liaison/Specialist will monitor local compliance with OEDCA and EEOC decisions and report compliance to the Office of Policy and Compliance. The EEO Diversity Program Manager/Liaison/Specialist will notify management of the non-compliance.

CHAPTER 7 – OFFICIAL TIME

1. OFFICIAL TIME. If the complainant and/or their representative are employees of VA, they are entitled to a reasonable amount of official time to present the complaint and to respond to VA requests for information. The complainants, representatives, and witnesses, who are federal employees, regardless of whether they are employed by VA or some other Federal agency, shall be in duty status when their presence is authorized or required by EEOC or VA officials in connection with the complaint. “Duty Status” means normal hours of work.

a. To the extent practical, meetings, conferences, and hearings should be scheduled during normal working hours.

b. If meetings, conferences or hearings are scheduled outside of the normal work hour, the work schedule should be adjusted or rearranged to coincide with such meetings or hearings. Compensatory time, or official time should be granted to allow an approximately equivalent time off during the normal hours of work.

c. If a VA employee has already worked a full week and they are required to attend a meeting, conference or hearing on an off day, they are entitled to official time and the VA may be required to pay overtime.

2. Requesting Official Time. Official time should be requested in advance. Complainants, representatives, witnesses, and supervisors should arrive at a mutual understanding regarding the official time prior to the use of official time. VA employees are not entitled to simply take official time without first asking for it and having it approved by their supervisor.

a. Employees can request official time either orally or in writing.

b. Supervisors may require proof that the employee requires official time to engage in EEO complaint activity.

c. Employees may be required to justify the amount of official preparation time requested, where the request is for a substantial number of hours. Employees of VA are afforded a reasonable amount of official time, as defined above, to prepare for meetings, conferences, and hearings.

3. Denial of Official Time. If a request for official time, either in whole or in part, is denied, the supervisor should document the denial in writing.

a. The supervisor should provide a copy of the denied official time statement to the EEO/Diversity Program Manager/Liaison/Specialist.

b. The EEO/Diversity Program Manager/Liaison/Specialist should provide the ORM Field Office with a copy of the denied official time statement.

c. The ORM Field Office will include the denied official time statement in the pending complaint file, for which the official time was denied, noting the reason(s) for the denial.

d. If the complainant requests a hearing, EEOC will determine if the complainant was improperly denied official time. If the complainant requests a final agency decision, OEDCA will determine if the complainant was improperly denied official time. Where the complainant contends that an agency improperly denied him/her official time and EEOC or OEDCA finds in the complainant's favor, EEOC or OEDCA may order VA to restore such personal leave as the complainant may have used in lieu of official time.

e. Employees can only protest the official time denied for preparation of his/her own complaint and not for the complaints of others. Witnesses or representatives, who file complaints of discrimination because they were denied official time to work on another individual's EEO complaint, do not have standing and fail to state a claim. A complainant must challenge the denial of official time for their witness(es) or representative during the processing of the complainant for which the official time was denied. The right to raise such matters lies with the complainant and not with their witness or representative.

f. If a claim of denied official time is filed, it will be dismissed in accordance with EEOC Regulation 29 C.F.R. 1614.107(a) which states that an agency may dismiss a complaint which fails to state a claim pursuant to 29 C.F.R. 1614.103. A complainant must challenge the denial of official time during the processing of the underlying complainant.

4. Reasonable Amount of Official Time. "Reasonable" is defined 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 VA requests for information. The actual number of hours a complainant and their representative are entitled will vary, depending on the nature and complexity of the complaint and considering the mission of the VA and VA's need to have the employee available to perform their normal duties on a regular basis.

a. Complainants, representatives, and supervisors should arrive at a mutual understanding as to the amount of official time to be used prior to the use of official time.

b. Time spent commuting to and from home should not be included in official time computations.

5. Meetings and Hearing Time. Time spent in meetings and hearings with VA officials or EEOC Administrative Judges is automatically deemed reasonable.

6. Preparation Time. If complainants, representatives, and witnesses, are VA employees, they are also afforded a reasonable amount of official time, as defined above, to prepare for meetings, conferences, and hearings. They should be afforded a reasonable amount of official time to prepare the formal complaint and any appeals that may be filed with EEOC. "Reasonable," with respect to preparation time, is generally defined in terms of hours, not in terms of days, weeks or months.

7. Representatives. Representatives who are employees of VA, should spend most of their time doing the work that they are employed to do. The overall hours of official time afforded to a representative, for both preparation purposes and for attendance at meetings and hearings, may be restricted to a certain percentage of the representative's duty hours in any given month, quarter, or year. The amount of official time to be afforded to a representative for representational activities will vary depending on the circumstances. The nature of the representative's position, the relationship of the position to VA's mission, and the degree the hardship imposes on VA's mission by the representative absence from his or her normal duties should be considered. The agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant, and representative to meet.

a. When a VA employee serves as an EEO representative for an applicant seeking employment, the representative is not entitled to official time. Official time only applies to representatives of VA and federal employees.

b. Whether or not a representative is entitled to official time depends on the status of the complainant at the time of the alleged discriminatory action and not the status of the complainant at the time representation services are required. Where the challenged action is the complainant's removal, the complainant is an employee at the time of the action and the representative is entitled to official time.

CHAPTER 8 - SPIN-OFF COMPLAINTS

1. DISSATISFACTION WITH THE PROCESSING OF AN EEO COMPLAINT/SPIN-OFF COMPLAINT. If a complainant is dissatisfied with the processing of his/her pending complaint, he/she should notify the Office of Resolution Management before EEOC's Administrative Judge issues a decision on the complaint, OEDCA issues a final agency decision, or ORM dismisses the complaint. Allegations of dissatisfaction with the processing of an EEO complaint, otherwise known as a Spin-off complaint, should not be treated as a new complaint, but should be incorporated into the pending complaint for disposition. Such complaints usually involve dissatisfaction with matters such as delays, perceived bias, or misconduct by a counselor, investigator, intake specialist, or agency representative, or other similar matters relating to the underlying complaint. Dissatisfaction may be presented at the pre-complaint, informal counseling stage, or during the formal complaint process. A complainant may articulate dissatisfaction with the processing of their complaint by alleging that:

- a. their complaint is being processed in a manner different from that used for complaints filed by members not belonging to his or her protected group, or that
- b. their complaint is being adversely affected because of a specific policy or practice having a discriminatory effect on the processing of his or her complaint.

2. RECEIPT OF THE ALLEGATIONS OF DISSATISFACTION. EEOC regulations require the complainant to first raise their dissatisfaction claims with VA. This means the respective ORM Field Office, the DAS/RM, or the Office of Policy & Compliance. A complainant may raise allegations of dissatisfaction either verbally, or in writing.

3. ALLEGATIONS OF DISSATISFACTION RAISED WITH THE ORM FIELD OFFICE.

a. When a complainant raises dissatisfaction with the process with the ORM Field Office, it should encourage the individual to put their concerns in writing.

b. The ORM Field Office must attempt to informally resolve the dissatisfaction.

c. The complainant's dissatisfaction and the ORM Field Manager's response should be made a part of the EEO administrative file.

d. If the complainant files a formal complaint alleging improper processing, the claim of dissatisfaction with the processing of the complaint should be dismissed pursuant to 29 CFR §1614.107(a)(8). After the claim of dissatisfaction is dismissed, the ORM field office must send a copy of the dismissal and a referral letter to the Chief of Policy and Compliance for further processing along with the following:

- (1) A referral letter that addresses informal attempts to resolve the dissatisfaction.
- (2) A copy of the complainant's allegations.

(3) If applicable, a copy of the ORM field office's response to the complainant addressing the allegations.

(4) Any specific documentation relating to the complainant's allegations. A copy of the administrative file is not necessary, only specific documentation pertaining to the dissatisfaction should be provided.

4. ALLEGATIONS OF DISSATISFACTION INITIALLY RAISED WITH THE DEPUTY ASSISTANT SECRETARY FOR RESOLUTION MANAGEMENT. If the dissatisfaction is initially raised with the DAS/RM, the DAS/RM will forward the dissatisfaction/spin-off complaint to the Chief of Policy and Compliance. If the dissatisfaction complaint is not in writing, the DAS will encourage the individual to put their concerns in writing and request the individual to forward their concerns to the Chief of Policy and Compliance.

5. ALLEGATIONS OF DISSATISFACTION RECEIVED BY THE OFFICE OF POLICY AND COMPLIANCE. The DAS/RM has delegated the Chief of Policy and Compliance authority to consider and resolve all claims that allege dissatisfaction with the processing of an existing EEO complaint/spin-off complaint. If the dissatisfaction complaint is not in writing, the Policy and Compliance staff will encourage the individual to put their concerns in writing.

a. The Chief of Policy and Compliance will date stamp, log and assign the dissatisfaction/Spin-off complaints to a Policy and Compliance EEO Specialist.

b. The designated EEO Specialist will review and make an inquiry into the complainant's allegations of dissatisfaction. The inquiry may include the following steps:

(1) Determine if the ORM Field Office was aware of the complainant's dissatisfaction and if so, what action(s) were taken to resolve the dissatisfaction.

(2) Determine the stage of processing of the underlying EEO complaint.

(3) Request copies of relevant documents related to the dissatisfaction such as the counselor's report, investigative file, etc., if not available in the Web-based Tracking System.

c. The Office of Policy and Compliance will make the following determinations:

(1) If the processing was not compromised or impacted in any fashion, the individual will be notified that no further action will be taken and that the explanation will be incorporated into the complaint file. If the dissatisfaction is not resolved or the complainant does not agree with ORM's remedy, the individual is advised that they may present their concerns to the EEOC at either of the following stages outlined in item 6 of this chapter.

(2) If the determination concludes that the processing has been compromised, appropriate action(s) will be prepared by the Office of Policy and Compliance and the ORM Field Office will be directed to take appropriate action.

d. A copy of the Chief of Policy and Compliance's response to the complainant's dissatisfaction/spin-off complaint will be mailed to the appropriate ORM Field Office with a cover letter instructing them to include a copy of response in the underlying complaint file.

e. The Office of Policy and Compliance will attach a copy of the response and enter all information relating to the dissatisfaction/spin-off complaint into the Web-Based Tracking System (WBTS).

6. UNRESOLVED/SPIN-OFF COMPLAINTS. If a dissatisfaction/spin-off complaint is not resolved, or the Complainant does not agree with the ORM's remedy, they may present their concerns to the EEOC at the following processing stages:

a. If the Complainant has requested a hearing and the complaint is under the jurisdiction of the EEOC, the complainant may present their dissatisfaction to the Administrative Judge (AJ) before the AJ issues a decision on that complaint.

b. If the Complainant has not requested a hearing, they may present their concerns to EEOC's Office of Federal Operations on appeal upon receiving a Final Agency Decision (FAD).

c. Where the AJ or OFO finds that ORM has improperly processed the original complaint and that such improper processing has had a material effect on the processing of the original complaint, the AJ or OFO may impose sanctions on ORM, as they deem appropriate.

d. If the AJ finds that ORM's actions were inconsistent with its requirements under the 29 CFR §1614 regulations, but had no material effect on the processing of the complaint, at the AJ's discretion, the AJ may suggest that the complainant submit a letter to EEOC's Federal Sector Programs Department for consideration regarding ORM's conduct.

REFERENCES

- a. **Age Discrimination in Employment Act of 1967**, as amended, 29 USC 621-634, protects employees and job applicants who are 40 years of age or older from discrimination based on age with respect to any term, condition, or privilege of employment – including but not limited to hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.
- b. **The Administrative Dispute Resolution Act of 1996**, (ADRA), 5 U.S.C. 571-584.
- c. **Americans with Disabilities Act of 1990**, 42 USC 12101 et seq., prohibits private and public employers, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training and other terms, conditions and privileges of employment.
- d. **Architectural Barriers Act**, 42 USC 4151 et seq. is enforced by the Architectural and Transportation Barriers Compliance Board and requires that buildings and facilities be accessible to people with disabilities if they were constructed or altered by or on behalf of the federal government or with certain federal funds, or leased to the government, after 1968.
- e. **The Civil Rights Act of 1964**, as amended, 42 USC 2000e et seq., is the major federal law prohibiting discrimination in employment. Title VII prohibits discrimination based on race, gender (sex), color, religion or national origin, and covers all areas of the employee-employer relationship, from advertising open positions through termination or retirement.
- f. **Department of Justice (DOJ), The Freedom of Information Act** 5 USC 552, as amended by Public Law No. 104-231, 110 Stat.3048.
- g. **Equal Employment Opportunity Commission (EEOC), 29 CFR Part §1614, Federal Sector Equal Employment Opportunity**, November 9, 1999. <http://www.eeoc.gov>
- h. **Equal Employment Opportunity Commission (EEOC), Equal Employment Opportunity Management Directive for 29 CFR Part §1614 (EEO-MD-110)**, November 9, 1999. <http://www.eeoc.gov>
- i. **Equal Employment Opportunity Commission (EEOC), Equal Employment Opportunity Management Directive 715**, October 1, 2003. <http://www.eeoc.gov>
- j. **Equal Employment Opportunity Commission (EEOC), Instructions to Federal Agencies for Equal Employment Opportunity Management Directive 715 (EEO-MD-715)**, March 31, 2004
- k. **Equal Employment Opportunity Commission (EEOC), Equal Pay and Compensation Discrimination**, September 20, 2001. <http://www.eeoc.gov>
- l. **Equal Employment Opportunity Commission (EEOC), Facts about Compensation Discrimination**, May 11, 2000. <http://www.eeoc.gov>

- m. **Equal Pay Act of 1963**, 29 USC 206(d), prohibits employers from discriminating on the basis of gender (sex) in the payment of wages where substantially equal work is performed under similar working conditions.
- n. **Executive Order 12067, Agency and EEOC Authority and Responsibility**, transferred the functions of the Equal Employment Opportunity Coordinating Council to the Equal Employment Opportunity Commission and delineated the EEOC's responsibility for developing uniform standards, guidelines, and policies for promoting and furthering equal employment opportunity in the government.
- o. **Executive Order 12106, Transfer of Certain Equal Employment Enforcement Functions**, amends Executive Order 11478 to include in its coverage non-discrimination based on age and disability. The Order also transferred Federal equal employment opportunity enforcement authority to the Equal Employment Opportunity Commission and made the EEOC responsible for directing and furthering the implementation of equal employment opportunity policy.
- p. **Executive Order 13087, Sexual Orientation**, provides a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation.
- q. **Executive Order 13145, To Prohibit Discrimination in Federal Employment Based on Genetic Information**, is self-descriptive.
- r. **Executive Order 13152, Addendum to E. O 11478 Equal Employment Opportunity in Federal Government, Status as a Parent**, provides a uniform policy for the Federal Government to prohibit discrimination based on status as a parent.
- s. **Executive Order 13160, Nondiscrimination on the Basis of Race, Gender (Sex), Color, National Origin, Disability, Religion, Age (40 years and over), Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs**.
- t. **Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation**, is self-descriptive.
- u. **General Accounting Office (GAO), What is GAO, Where is GAO.** <http://www.gao.gov/>
- v. **Merit Systems Protection Board (MSPB), Questions and Answers about Appeals.** www.mspb.gov
- w. **Notification and Federal Employee Antidiscrimination and Retaliation (No Fear) Act of 2002**, 5 USC 2301 note, holds agencies fiscally responsible if they lose or settle EEO discrimination and whistleblower protection cases filed in U.S. District Court; requires a comprehensive study to determine the best Executive branch practices relating to disciplinary actions for employees who violate discrimination or whistleblower protection laws; requires

yearly reporting of an analysis of discrimination and whistleblower cases; and requires that quarterly updates of this analysis be posted on the agency website.

x. **Office of Personnel Management, Position Classification Appeals**, June 1998.
<http://www.opm.gov/>

y. **Office of Special Counsel (OSC), Your Rights as a Federal Employee**.
<http://www.osc.gov>

z. **Office of Special Counsel (OSC), How to File a Complaint Alleging a Violation of the Hatch Act**. <http://www.osc.gov>

aa. **Pregnancy Discrimination Act of 1978, Public Law Number 95-955**

bb. **Rehabilitation Act of 1973**, as amended, 29 USC 791, 793, 794(a) in Section 503 and 504, prohibits discrimination against the disabled and requires institutions to take affirmative action to hire and promote qualified disabled persons. Institutions are required to recruit and consider disabled persons for vacant positions, and must make “reasonable accommodation” to the physical or mental limitations of otherwise qualified disabled employees, such as providing special equipment or modifying the job.

cc. **Whistleblowers Protection Act of 1989, Public Law 101-12, as amended by Public Law 103-424, October 29, 1994**

dd. **VA Directive 5975, Diversity Management and Equal Employment Opportunity**

ee. **VA Directive 5975.1 Processing Reasonable Accommodations by Employees and Applicants with Disabilities**

ff. **VA Handbook 5975.1, Processing Reasonable Accommodations by Employees and Applicants with Disabilities**

gg. **VA Directive 5978, Alternative Dispute Resolution**

hh. **VA FY 1998-2003 Strategic Plan, General Goal 10**.

ii. **VA, Office of Employment Discrimination Complaint Adjudication (OEDCA), A Guide to Investigating Employment Discrimination Complaints**, August 1999.

jj. **VA, Office of Resolution Management, A Plan for Transformation Guide**, September 1997.

kk. **VA, Office of Resolution Management, EEO Counselors Manual**, September 1997.

ll. **VA, Office of Resolution Management, Standard Operating Procedures**, November 2001.

mm. **VA MP-4, Part V, Chapter 1**

nn. **VA, Office of Financial Policy Bulletin 03GA1.04**, June 9, 2003

oo. **38 CFR, Part 2, Section 2.6 (h), (i), (j), and (k), Secretary's delegations of authority to certain officials**, January 9, 2002.

pp. **38 CFR, Parts 2 and 15, Delegations of Authority, Equal Employment Opportunity (EEO) Responsibilities**, January 24, 2002.

qq. **38 USC 512, Secretary's Delegations of Authority to Certain Officials**

rr. **38 USC 516, Authority and Duties of the Secretary, Equal Employment Responsibilities**, as enacted in Title I, Public Law 105-114, 105th Congress, November 21, 1997.

DEFINITIONS

a. **Aggrieved.** An aggrieved is a Federal employee, a former employee, or an applicant for employment who requests resolution of a matter through the pre-complaint informal EEO counseling process. The aggrieved person must allege discrimination based on his or her race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, and/or reprisal. Sexual and non-sexual harassment based on the above categories is also prohibited.

b. **Allegation of Breach of Settlement Agreement.** A claim that the agency has violated or has not performed a specific term(s) of a settlement agreement.

c. **Alternative Dispute Resolution (ADR).** ADR refers to a process and approach designed to resolve disputes in a manner that avoids the cost, delay, and unpredictability of more traditional adversarial and adjudicatory processes, such as, litigation, hearings, and appeals. Numerous types of ADR techniques exist, including mediation, facilitation, fact-finding, early neutral evaluation, the use of an Ombudsman, settlement conferences, mini-trials, and peer review. Mediation is the preferred type of technique for resolving workplace disputes in VA.

d. **Basis.** Discrimination is prohibited because of race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, and/or reprisal. Sexual and non-sexual harassment based on the above categories is also prohibited.

e. **Claim.** A claim is the action(s) the agency has taken, is taking or has not taken that causes the aggrieved person to believe he/she is a victim of discrimination.

f. **Class Complaint.** A class complaint is a complaint brought forth by a group of employees, former employees, or applicants for employment who allege they are adversely affected by a personnel management policy or practice which discriminates against the group on the basis of their common race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, and/or reprisal.

g. **Complaint.** A complaint is an allegation of illegal discrimination that is handled through the EEO discrimination complaint process. A complaint may result when an employee believes he/she has been unfairly treated because of a protected class, i.e., race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, and/or reprisal. The allegation itself is not proof that illegal discrimination has taken place. The investigation that follows the filing of a formal complaint will determine if illegal discrimination has, in fact, occurred. A person who files a complaint is called a complainant.

h. **Complainant.** A complainant is a Federal employee, a former employee, or an applicant for employment who requests resolution of a matter through the EEO discrimination complaint process. The complainant must allege discrimination based on

his/her race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, and/or reprisal.

i. **Discrimination.** The word discrimination is often used to mean illegal discriminatory acts. Discrimination simply means noticing the differences between things or people that are otherwise alike, and making decisions based on those differences. Illegal discrimination is unfair treatment of a person by category, class, or group rather than objective treatment on the basis of merit. Under EEO law, it is illegal to discriminate on the basis of race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, and/or reprisal or to engage in sexual or non-sexual harassment based on the above categories. Discrimination can be intentional or unintentional.

j. **Equal Employment Opportunity Commission (EEOC).** Within its headquarters in Washington, D.C., and through the operations of several offices nationwide, the EEOC coordinates all Federal equal employment opportunity regulations, practices, and policies. The Commission interprets employment discrimination laws, monitors the Federal sector employment discrimination program and oversees the development and implementation of Federal agencies' affirmative employment programs. The EEOC issues policy and regulations on the discrimination complaint system, holds hearings and makes findings on discrimination complaints, and makes final decisions on complaints that have been appealed. It also reviews, upon request, decisions of negotiated grievances and Merit Systems Protection Board appeals if they include issues of discrimination.

k. **Equal Employment Opportunity Commission (EEOC) Hearing.** A hearing is an adjudicatory proceeding that completes the process of developing a full and appropriate record. A hearing provides the parties with a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses. Hearings are governed by 29 CFR §1614.109. An Administrative Judge from the EEOC conducts hearings to adjudicate claims of discrimination and issues decisions.

l. **Early Neutral Evaluation.** A process which involves the use of a neutral or impartial third party to provide an objective evaluation, sometimes in writing, of the strengths and weaknesses of a case. Under this method, the parties will usually make informal presentations to the neutral party to highlight their respective cases or positions.

m. **Facilitation.** A process that involves the use of techniques to improve the flow of information in a meeting between parties to a dispute. The techniques may also be applied to decision-making meetings where a specific outcome is desired (e.g., resolution of a conflict or dispute).

n. **Fact-Finding.** A process that uses an impartial expert, in order to determine what the "facts" are in a dispute. The fact finder may be authorized only to investigate or evaluate the matter presented and file a report establishing the facts in the matter.

o. **Final Agency Decision (FAD) to Dismiss.** The agency decision to dismiss an entire EEO complaint or a substantive decision without a hearing on a formal complaint of discrimination.

p. **Mediation.** A form of ADR in which a specially trained neutral third party (mediator) assists individuals to find a mutually acceptable solution to their dispute. Mediation is a problem solving process; it is voluntary, unbiased, and confidential. Employees and management using mediation must agree to participate and agree to any solution that is generated through mediation. Mediation has comprehensive applicability for VA components seeking creative, mutually acceptable, and early resolution of conflicts, and it is the preferred type of ADR for resolving workplace disputes.

q. **Mini-trials.** A process which involves a structured settlement process in which each side to a dispute presents abbreviated summaries of their case before the parties and/or their representatives who have authority to settle the dispute. The summaries contain explicit data about the legal bases and the merits of a case.

r. **Ombudsmen.** An individual who rely on a number of techniques including counseling, mediating, conciliating, and fact finding in an effort to informally resolve disputes. Usually, when an ombudsman receives a complaint, he/she interviews parties, reviews files, and makes recommendations to the disputants. Typically, an ombudsman does not impose solutions.

s. **Peer Review.** A problem-solving process where an employee takes a dispute to a group or panel of fellow employees and managers for a decision. The decision is usually not binding on the employee, and he/she would be able to seek relief in traditional forums for dispute resolution if dissatisfied with the decision.

t. **Representative.** A person who is selected and designated by the aggrieved or the agency to accompany, represent, and advise the complainant, agency or witness during any stage of the complaint process. This individual may also serve as the class agent for class action complaints.

u. **Reprisal.** Actions taken against employees that include restraint, interference, or coercion because of their involvement in filing a charge of discrimination, participating in an investigation, or having opposed prohibited discrimination.

v. **Responding Management Official (RMO).** A management official who is alleged to have acted in a discriminatory manner while acting as an agent of the agency.

w. **Settlement Agreement.** A written contract knowingly and voluntarily signed by the complainant or agent and the VA during the pre-complaint or formal complaint process that resolves an EEO complaint. The terms of the agreement are binding on both parties.

x. **Settlement Conferences.** A pre-hearing conference conducted by a settlement judge (for example an EEOC Administrative Judge) or referee and attended by representatives for the opposing parties and/or the parties themselves in order to reach a mutually acceptable settlement of the disputed matter.

y. **Spin-off Complaint.** A spin-off complaint is a complaint about the processing of an existing complaint.

z. **Whistleblowing.** Whistleblowing means disclosing information that you reasonably believe is evidence of a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Other Grievance and Administrative Processes

1. Merit Systems Protection Board (MSPB). The MSPB is the proper appeal forum for a Title 5 employee if the employee has been the subject of an adverse action such as a suspension for more than 14 days, a demotion, or a removal. It is also the proper forum if the employee alleges an employment action was based on his/her whistle-blowing or other protected activity. Call 1-800-653-7200 to seek advice or visit MSPB's website at www.mspb.gov.

2. Office of Special Counsel (OSC). The OSC is the proper forum if a personnel action (appointment, promotion, adverse action, disciplinary or corrective action, detail, transfer, reassignment, reinstatement, restoration, reemployment, some performance evaluations, decision concerning pay or benefits, decision to order examination, or any other significant change in duties, responsibilities or working conditions) has been threatened, proposed, taken, or not taken allegedly because of the employee's whistle-blowing or other protected activity. Call 1-800-872-9855 to seek advice or visit OSC's website at <http://www.osc.gov/>.

3. Office of the Inspector General (OIG). This office deals with possible violation(s) of law, rules or regulations; mismanagement; gross waste of funds; abuse of authority; or danger to the public health and safety. The OIG normally does not act on matters for which there is another complaint process that handles the issue; however, investigations may be conducted on the basis of matters referred by OSC or MSPB. You may contact VA's OIG at 1-800-488-8244 or visit their website at <http://www.va.gov/oig>

4. The United States Government Accountability Office (GAO). The U.S. General Accounting Office (GAO) is an agency that works for Congress and the American people. Congress asks GAO to study the programs and expenditures of the Federal government. It studies how the Federal government spends taxpayer dollars. GAO evaluates Federal programs, audits Federal expenditures, and issues legal opinions. The GAO's Office of Special Investigations may be contacted at 202 512-7470, 1 800 424-5454 or visit their website at <http://www.gao.gov>

5. Negotiated Grievance. A bargaining unit employee may elect to pursue the union grievance procedure for any grievance covered by 5 U.S.C. 7103 (a) (9) in accordance with the process set forth in the collective bargaining agreement.



6. Administrative Grievance. The Administrative Grievance process covers matters of employee concerns or dissatisfaction for which personal relief is possible and which is subject to the control of VA management, that are not expressly excluded by the VA grievance policy. This includes any matter in which an employee alleges that coercion, reprisal, or retaliation occurred against him/her for using the grievance procedure.

7. Office of Workers' Compensation Programs Claim. Work-related traumatic injury: Must be filed within three years of date of injury. (20 C.F.R. 10.100) Occupational disease caused by exposure to injurious work factors: Must be filed within three years of onset of illness. (20 C.F.R. 10.101)

8. Position Classification Appeal. Employees who are dissatisfied with the classification or grading of their positions have the right to appeal the decision. An appeal may be filed at any time and may involve the grade, series, title, or pay system coverage for the position. Employees under the General Schedule (5 U.S.C., chapter 51 and 5 CFR 511) have the option of (1) appealing to VA; (2) appealing to OPM through VA; or, (3) appealing directly to OPM. Employees covered under the Federal Wage System must first appeal to VA (unless the grading of their job has been certified by OPM; in that case, they must appeal to OPM). If they are dissatisfied with the VA's decision, they may appeal to OPM. For more information contact your local Human Resource Department or visit OPM's website at <http://www.opm.gov/fedclass>.

9. Veterans Alleging Service or Benefit Discrimination. Veterans alleging discrimination in service or benefits should contact in writing the Deputy Assistant Secretary for Resolution Management (08), 810 Vermont Avenue, NW, Washington, DC 20420.

10. Veteran Information. Veterans who want more information on VA Benefits can call 1-800 827-1000 or visit the VA's web site at <http://www.va.gov>.

 Department of Veterans Affairs		BREACH OF SETTLEMENT AGREEMENT ALLEGATION	
NOTE: Attach a copy of the settlement agreement. If additional space is needed continue on page 2, which is provided solely for extra space.		RETURN TO	Department of Veterans Affairs Office of Resolution Management Office of Policy and Compliance (08B) 810 Vermont Avenue, NW Washington, DC 20420
NAME OF EMPLOYEE John Doe		NAME OF VA FACILITY Any VA Facility	
HOME MAILING ADDRESS 123 Any Road Any Town, Any State 12345-1234		MAILING ADDRESS OF VA FACILITY 345 Any Road Any Town, Any State 12345-1234	
HOME TELEPHONE NUMBER (123) 123-1234		BUSINESS TELEPHONE NUMBER (345) 345-3456	
WHAT CLAIM(S) AND BASIS(ES) DID THE AGREEMENT SETTLE? The agreement settled my EEO complaint, case number 123-456-78910. My claim was that I was not selected for the GS-3030-05-06, Administrative Support Assistant position, Vacancy Announcement XX555-5555-XX, because of my sex (Male).			
DID YOU CONTACT THE EEO PROGRAM MANAGER WHEN YOU FIRST BECAME AWARE THAT A BREACH OCCURRED? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES (If "YES," provide approximate date and case number assigned.)		APPROXIMATE DATE N/A	NAME OF PERSON CONTACTED N/A
WHAT SPECIFIC PROVISION(S) OF THE SETTLEMENT AGREEMENT DO YOU BELIEVE WAS BREACHED? I believe that provision 3 (a) was breached. Provision 3 (a) states that I, John Doe, will be afforded the opportunity to attend Excel training conducted by Learning Resources on July 15, 2222.			
HOW WAS THE SETTLEMENT AGREEMENT BREACHED? (Reference any actions that occurred that made you believe the settlement agreement was breached. Provide the names of the individuals you believe breached the settlement agreement. Please be specific, and if available, provide supporting documentation.) I believe that provision 3 (a) was breached by Ms. Jane Smith, my supervisor. Ms. Smith breached the agreement on July 15, 2222, when she failed to allow me to attend the Excel training in accordance with provision 3 (a) of the July 1, 2222, settlement agreement. On July 13, 2222, Ms. Smith notified me that she would not allow me to attend the training and that she would not reschedule me for the training. I asked Ms. Smith if I could attend Excel training at a later date and she said "no".			
PROVIDE DATE(S) AS TO WHEN YOU BELIEVE THE SETTLEMENT WAS BREACHED (Regulations require submission of breach claims to be submitted within 30 days of when you became aware, or should have been aware of the noncompliance with the agreement.) July 15, 2222			
IF YOU DO NOT MEET THE 30 DAY TIMEFRAME, EXPLAIN WHY THE DELAY N/A			
SIGNATURE OF EMPLOYEE  Mr. John Doe		DATE 08/01/2222	

