

Departments of the Army and the Air Force
National Guard Bureau
Arlington, VA 22202-3231
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*NGR 600-22/ANGI 36-3

Personnel - General

NATIONAL GUARD MILITARY DISCRIMINATION COMPLAINT SYSTEM

By Order of the Secretaries of the Army and the Air Force:

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History. This printing publishes a revision of NGR (AR) 600-22/NGR (AF) 30-3, National Guard Military Discrimination Complaint System, 1 Oct 92.

Summary. This regulation establishes policies and procedures for filing, processing, investigating, settling, and adjudicating discrimination complaints in the Army National Guard (ARNG) and Air National Guard (ANG). It implements Title VI of the Civil Rights Act of 1964, as amended, DoD Directives 1350.2, and 5500.11, Army Regulation 600-20, and Air Force Instruction 36-2706, prohibiting discrimination based on race, color, religion, gender, national origin, or reprisal. It establishes a uniform Discrimination Complaint System for both the ARNG and the ANG, legal and administrative reviews, and a final decision by the National Guard Bureau (NGB).

Applicability. This regulation applies to:

a. Army National Guard (ARNG) and Air National Guard (ANG) military personnel serving in and former military personnel who served in an inactive duty for training status, during annual training, in a full-time support status, and while in Active Guard Reserve (AGR) status or ADSW status under Title 32 U.S.C.

Note: Title 32 AGR members attached for duty at ROTC units will file complaints of discrimination under the process established for other active component members at that unit if the complaint pertains to alleged discriminatory action(s) within their chain of command. However, if such AGR members allege discrimination against National Guard members within their home State, even while attached for duty in ROTC, such complaints will be processed under this regulation. In all cases, complaints of discrimination should generally be filed under the process where a remedy is available.

b. Applicants for membership in the ARNG and ANG and for duty as AGR under Title 32 U.S.C.

c. Beneficiaries of services, programs, or activities of the NG under Title VI of the Civil Rights Act of 1964, as amended.

d. This regulation does not apply to contractors or their employees.

Proponent and exception authority. The proponent of this regulation is the Chief, NGB-EO. The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation.

Management Control Process. This regulation is not subject to the requirements of AR 11-2 (Management Control). It does not contain management control provisions.

*This regulation supersedes NGR (AR) 600-22/NGR (AF) 30-3, 1 Oct 92.

Supplementation. Supplementation of this regulation/instruction and establishment of forms other than NGB forms is prohibited without prior approval from the Chief, National Guard Bureau, ATTN: NGB-EO, 1411 Jefferson Davis Hwy, Arlington, VA 22202-3231.

Suggested Improvements.. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Chief, National Guard Bureau, ATTN: NGB-EO, , Jefferson Plaza 1, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231.

Impact on New Manning System. This regulation does not contain information that affects the New Manning System.

Interim Changes. Interim changes to this regulation are not official unless authenticated by the Director, Administrative Services. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Distribution: B/F

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Chapter 1

Introduction

1-1. Purpose

This regulation sets policy and explains how to file, process, investigate, and settle complaints of discrimination. It establishes a uniform Discrimination Complaint System for the Army and Air National Guard (ARNG and ANG). It implements Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); DoD Directive 1350.2; DoD Directive 5500.11, Army Regulation 600-20; and Air Force Instruction 36-2706. This regulation does not implement Title VII of the Civil Rights Act, as amended (42 U.S.C. 2000e-16), the Age Discrimination in Employment Act, as amended (29 U.S.C. 633a), or the Rehabilitation Act, as amended (29 U.S.C. 791); these statutes do not apply to NG military personnel.

1-2. References

Required and related publications and prescribed and referenced forms are listed in Appendix A.

1-3. Explanation of Abbreviations and Terms

Abbreviations and special terms used in this regulation are explained in the glossary. Because some of the terminology is unique to the complaint process and differs from definitions used in other directives, the meanings of these terms are essential to the understanding of this regulation.

1-4. Responsibilities

- a. Chief, National Guard Bureau (NGB).
 - (1) Provides the overall direction to equal opportunity (EO) within the NG.
 - (2) Provides the final level of appeal and issues final decisions in all complaints of discrimination administratively processed under this regulation.
- b. Directors, Army and Air National Guard, NGB. Implement equal opportunity within the Army and Air National Guard respectively; review and comment on cases forwarded to NGB for final decisions.
- c. Chief, Equal Opportunity (NGB-EO).
 - (1) Provides broad guidance and overall direction of the Military Discrimination Complaint System and issues final decisions on behalf of the Chief, NGB.
 - (2) Administers EO plans, policies, and programs in the NG, to include Affirmative Action Plans and Special Emphasis Programs for women and minorities.
 - (3) Establishes and administers the Military Discrimination Complaint System and develops policies and procedures for processing, managing, and adjudicating discrimination complaints.
 - (4) Custodian of records of complaints that are elevated to NGB.
- d. Judge Advocate, NGB (NGB-JA).
 - (1) Review discrimination complaint cases for legal sufficiency and compliance with applicable laws and regulations.
 - (2) Review final decisions for legal sufficiency.
 - (3) Ensures compliance with all provisions of the Privacy Act and Freedom of Information Act with respect to discrimination complaint files and Reports of Investigation.
- e. State Adjutants General (AG).
 - (1) Implement and manage the Military Discrimination Complaint System within their State, take appropriate steps to ensure that the State NG operates in an atmosphere free of illegal discrimination.
 - (2) Ensure that the policies, procedures, and requirements of this regulation are carried out within their respective States or territories.
 - (3) Direct that an investigation be conducted when a complaint of discrimination is not resolved after having reached the AG, provided that a formal investigation which has been reviewed by the State Staff Judge Advocate and determined to be legally sufficient has not already been conducted.
 - (4) Request a final decision from NGB when the complaint cannot be resolved to the satisfaction of the complainant at the AG level.
- f. ARNG and ANG Commanders. Equal Opportunity is a leadership and a readiness issue. Commanders at all levels will:

(1) Ensure that the policies of the Director, NG, and the AG and of this regulation are adhered to in their organizations.

(2) Act promptly to prevent or correct situations that may give rise to complaints of discrimination. They will ensure that supervisors and subordinate commanders and supervisors refrain from actions or comments that might be viewed as discriminatory.

(3) Ensure that military personnel are fully aware of procedures for obtaining redress of complaints, including those against members of the chain of command. These procedures will be in writing and will be prominently displayed where all unit members will have access to them. NGB Poster, Form number 94-170, Know the Facts About Filing a Complaint of Discrimination, is available through NG publications and forms distribution.

(4) Conduct inquiries whenever an allegation of discrimination is brought to their attention. If the inquiry determines that the complaint has merit, commanders/supervisors will resolve the complaint at the lowest appropriate level.

(5) Inform individuals who are named by a complainant as responsible for discrimination of the basis and issues of the complaint.

(6) Ensure that the command climate does not encourage or condone reprisals against individuals who exercise their rights under this regulation. In cases where discrimination or sexual harassment is substantiated, the complainant should not be further victimized by involuntary transfer or reassignment. Where there might exist the threat of bodily harm to the complainant from an unidentified person(s), or when commanders/supervisors otherwise determine that a transfer is necessary, the commander/supervisor will document the reason(s) for the transfer and inform the complainant.

g. State Equal Employment Manager (SEEM).

(1) Manages the Military Discrimination Complaint System within the State on behalf of the AG.

(2) In coordination with the State ARNG HR/EO or the ANG Military EO Officer at the state or wing level, ensures that complaints are processed properly and within the time constraints outlined in this regulation.

(3) Coordinates with the State JA and advises the AG on all aspects of discrimination complaint processing and management at state level.

(4) Is the custodian of record for discrimination complaint files and related records.

h. State Staff Judge Advocate (SJA).

(1) Reviews state military discrimination complaint files and Reports of Investigation for legal sufficiency in accordance with Paragraph 2-8(g).

(2) Provides legal advice to the SEEM in all discrimination complaint matters.

(3) Ensures compliance with all provisions of the Privacy Act and Freedom of Information Act with respect to discrimination complaint files and Reports of Investigation.

i. State Human Relations/Equal Opportunity Officer, ARNG Equal Opportunity Advisors (EOA), Equal Opportunity Representatives (EOR), and ANG Military Equal Opportunity.

(1) Advise commanders regarding issues, merits, validity, and processing of discrimination complaints.

(2) Conduct informal fact finding into allegations of discrimination on behalf of the commander to facilitate informal resolution.

(3) Advise and assist complainants on the complaint process.

(4) Assist the complainant in the clarification of the issue(s) and the basis(es) of the complaint.

(5) Provide feedback to complainant on the status of his/her complaint at each step of the process and advise complainant of the next step.

(6) Coordinate the processing of all complaints of discrimination with the SEEM.

(7) Provide technical assistance to investigators of formal complaints of discrimination.

1-5. Implementation

The effective date of this regulation will be used for processing all military discrimination complaints to include those currently filed and/or being processed prior to the effective date of this regulation.

1-6. Who may File a Complaint

a. Any aggrieved individual, covered by this regulation (see the applicability paragraph), who believes that he or she has been illegally discriminated against due to race, color, national origin, religion, gender (including sexual harassment) or reprisal for having engaged in a protected equal opportunity activity, in a matter subject to the control

of the NG, may file an individual complaint of discrimination. Complaints based on age or handicap are not addressed in the case of military members due to overriding military concerns of fitness and deployability.

b. Beneficiaries of services of the ARNG or ANG who are not members of the ARNG or ANG may file complaints based on race, color, or national origin under Title VI of the Civil Rights Act (as provided under that statute); or on the basis of gender (including sexual harassment), as provided under DoD Directive 1350.2; or on the basis of handicap as provided under DoD Directive 1020.1. Such complaints will be filed with the State Adjutant General and processed in accordance with the provisions of Chapter 2 of this regulation.

c. Members of the NG who believe that they have been discriminated against while serving on active duty, to include active duty training and Active Guard Reserve (AGR) under Title 10 U.S.C., must process such complaints of discrimination under active component regulations. (See AR 600-20 and AFI 36-2706.)

d. Members of the NG who believe that they have been discriminated against while performing State missions must process such complaints of discrimination under appropriate State regulations.

e. Individuals who believe that they have been discriminated against in NG technician employment must process such complaints under NGR (AR) 690-600 [NGR (AF) 40-1614], Vol 1, The NG Civilian Discrimination Complaint System.

1-7. Policy

a. The fair, equitable, and non-discriminatory treatment of all members and employees of the NG improves morale and productivity, fosters unit cohesion and readiness, and increases the combat effectiveness of the Guard. It is the policy of the NG to provide equal opportunity for NG military personnel or applicants for membership in the NG; they will not be subjected to illegal discrimination because of race, color, religion, gender (to include sexual harassment), national origin, or reprisal for having participated in a protected equal opportunity activity.

b. All NG personnel are entitled to serve in an environment free from sexual harassment. Sexual harassment is a form of gender discrimination and will not be tolerated. Allegations of sexual harassment will be given prompt attention and resolved as expeditiously as possible. Sanctions outlined in State Codes of Military Justice, and/or in military or civilian personnel regulations will be applied when it is substantiated that an individual has engaged in sexual harassment or other forms of illegal discrimination. Such instances will be documented in the individual's official personnel file and reflected on evaluations/appraisals, as appropriate.

c. The NG has established and operates a Military Discrimination Complaint System designed to reflect the policies stated herein and to provide a just and effective avenue of redress to aggrieved persons in accordance with applicable laws and regulations. Personnel who believe they have been subjected to illegal discrimination will be permitted to participate in the complaint process established by this regulation. They will not be discouraged from participation due to fear of reprisals. Any complainant who alleges reprisal for having engaged in a protected Equal Opportunity activity, i.e., for having filed a complaint of discrimination, for preparing to file a complaint of discrimination, for having testified as a witness in a discrimination complaint investigation, for informing officials within the chain of command or NGB of perceived discrimination, or any other protected communication related to equal opportunity matters must be advised that he/she may file such a complaint through Inspector General channels if he/she wishes full protection under the Whistle Blowers Act (Title 10, U.S.C. 1034). Such complaints must be filed with the DoD Inspector General in accordance with DoD Directive 7050.6, "Military Whistleblower Protection", within 60 days of the complainant becoming aware of the alleged reprisal action. If the complainant indicates a desire to file within EO channels, the official receiving the complaint will have the complainant sign and date NGB Form 335, Reprisal Complaint Advisement and Election Form shown in Figure 1-1. The original will be filed in the case file and a copy will be immediately forwarded to the State IG for information and reporting requirements through IG channels. In the case of a reprisal allegation, the complainant should also be advised that the whistleblower definition of reprisal is as follows: "Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action against a military member for making or preparing a protected disclosure." This definition does not address hostile work environments, condoned peer reprisal, or other forms of harassment which could constitute reprisal. Allegations of reprisal which do not pertain to "taking or threatening to take adverse personnel actions or withholding or threatening to withhold favorable personnel actions," will be processed under the provisions of this regulation. Furthermore, because the Military Whistleblower protection does not extend to former military members, if a former military member of the NG claims reprisal for participation in a protected equal opportunity activity, and the basis of the reprisal was the separation of the individual from the NG, such complaints will be processed under the provisions of this regulation.

d. Reprisal against an individual for having engaged in a protected Equal Opportunity activity is prohibited regardless of whether the protected activity pertained to the civilian or the military program. For example, if a military technician files a complaint through the civilian complaint process under NGR (AR) 690-600 [(AF) 40-1614] and subsequently perceives himself or herself to be the victim of reprisals while in a military status, he or she may file a complaint under this regulation. Conversely, a military technician who files a discrimination complaint arising out of his/her military status (weekend drill, annual training, etc.) and subsequently perceives himself/herself to be the victim of reprisal while in civilian status, may file a reprisal complaint under the provisions of NGR (AR) 690-600 [(AF) 40-1614], Vol 1.

e. The Department of Defense Task Force on Discrimination and Sexual Harassment concluded that a “full-time values—part-time careers” perspective is required for the NG and other reserve components, with respect to discrimination and sexual harassment prevention programs. **Therefore, it will be the policy of the NG that off-duty or non-duty behavior that affects the military workplace will be covered by this regulation.** For example, a weekend member who may live in the same community as a superior in his/her chain of command, and is subjected to sexually harassing behavior by that superior while neither are in any kind of military status, may file a complaint of discrimination against that superior under the complaint system described herein.

f. **The chain of command will be the primary channel for resolving discrimination complaints. Individuals will be encouraged to use command channels for redress of grievances.** Allegations of discrimination will be referred for processing by the lowest appropriate command level in accordance with this regulation. This provides the commander an opportunity to assist the complainant, inquire into the issues and allegations, take corrective action, and to attempt to resolve the complaint, where possible. **The sole mechanism for appealing the disposition of an informal complaint shall be to file a formal complaint.** A formal complaint will be filed by completing NGB Form 333, Discrimination Complaint in the Army and Air National Guard (See Figure 1-2.).

g. It is the goal of the NG to resolve and settle all allegations and complaints of discrimination fairly, equitably and expeditiously. Whenever possible complaints will be resolved at the unit level (Commanders may use principles of the NGB-EO Alternate Dispute Resolution Program to facilitate resolution of complaints). However, when resolution of a complaint at the lowest level is not successful, military personnel can to appeal their complaint through the chain of command to the Adjutant General. If unresolved at the Adjutant General level, the complainant can appeal the complaint to the NG Bureau. In such cases, the complete case file with the Report of Investigation will be forwarded to NGB-EO for a final decision.

h. **Anonymous complaints alleging discrimination received by State NG officials will not be processed under this regulation. However, insofar as possible, such allegations will be researched to determine their validity and merit and corrective action taken as appropriate.** Anonymous complaints received by the National Guard Bureau, whether directly from a complainant or referred from a third party, will be referred to the state for information and appropriate inquiry. An inquiry number will be assigned to such complaints.

i. **Any person who knowingly submits a false equal opportunity complaint (a complaint containing information or allegations that the complainant knew to be false) may be subject to judicial or non-judicial punishment. Commanders must recognize that there may be a thin line between the perception of the complainant and the submission of a false complaint. Commanders will use extreme caution to ensure that this provision is not used as a means of reprisal against a complainant, and that in all cases, the benefit of the doubt will go to the complainant to ensure that a “chilling effect” is not created against the filing of discrimination complaints.**

j. Requests for interpretation of policy or provisions of this regulation will be forwarded, in writing, through channels, to the National Guard Bureau, ATTN: NGB EO, Jefferson Plaza 1, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231.

1-8. Time Limits These time limits have been established to ensure that complaints are processed expeditiously and to ensure the availability of witnesses and information needed for investigation and resolution of complaints. These time limits take into consideration the limited availability of personnel on drill weekends. When participants in the complaint process are full time or AGR personnel, time limits in Para 1-9. shall apply. (See paragraph 1-9).

a. **A complaint must be filed within 180 calendar days from the date of the alleged discrimination or the date that the individual became aware or reasonably should have become aware of the discriminatory event or action.**

b. When a commander receives an informal complaint (see Para 2-1, Fig 1-2), all required actions will be completed within 30 calendar days or through the next drill period.

c. The lowest level of command will complete all required actions in accordance with paragraph 2-2c within 60 calendar days after receipt of the **formal complaint.**

- d. A formal complaint not resolved to the satisfaction of the complainant will automatically be forwarded to the next level of the chain of command.
- e. Each intermediate level of command will complete all required actions (see Chapter 2) within 30 calendar days or through the next drill period after the receipt of the complaint case from the subordinate commander.
- f. The investigation and actions required at the Adjutant General level (paragraph 2-8) should be completed within 90 calendar days after receipt of the case file from the subordinate commander. The case file will be forwarded to NGB for review and final decision within 8 months of the formal filing of a complaint.
- g. The goal of the Discrimination Complaint System is to expedite processing so that a final decision is issued not later than one year after filing of a complaint.

1-9. Time Limits for AGR (Title 32) Personnel and Other Full-Time Personnel Covered by this Regulation

- a. Time limits for complaints of discrimination filed by AGR and other full-time personnel covered by this regulation will be similar to other full-time service members.
- b. Full-time personnel will have one hundred and eighty (180) days from the date of the alleged discrimination or the date that the individual became aware or reasonably should have become aware of the discriminatory event or action in which to file a complaint.
- c. The full-time supervisory chain will process full-time personnel discrimination complaints on behalf of and in coordination with the military commander at each level of the chain of command.
- d. Each level of the supervisory chain will conduct an inquiry and attempt resolution of the complaint, or to refer the case to a higher echelon. If the complaint is unresolved to the satisfaction of the complainant, the case file will be forwarded to the next level in the supervisory chain corresponding to the next level in the chain of command. These actions should be completed in fourteen (14) days of receipt of the complaint.
- e. The supervisory chain will provide appropriate feedback to the complainant on the status of his/her complaint. If unresolved at one level, and forwarded to the next level, the complainant will be provided a copy of the inquiry and will be given 14 days to file an appeal with the next level. The next level will then conduct additional inquiry, if necessary, attempt resolution and/or forward to the next higher echelon, these actions should be completed within 14 days of receipt of the complaint from the subordinate unit. This process shall be repeated, until it reaches the Adjutant General level.

1-10 Assessment

DOD Instruction 1350.3 establishes discrimination complaints, to include sexual harassment complaints, as a category of equal opportunity assessment categories. To provide a capability to monitor and assess discrimination complaints, AGs will establish procedures within their states and territories to ensure that the following information is captured and maintained by fiscal year. SEEMs will be required to provide this data as requested by NGB and DOD.

- a. The total number of complaints filed under this regulation by grade, service, and basis (as listed in paragraph 4-5f). The data will include the complainant's group related to the basis on which the complaint is filed e.g., where a complaint is filed on the basis of race, the race of the complainant and the race of the person(s) alleged to have discriminated will be included.
 - b. The number of complaints that were resolved, referred, or dismissed.
 - c. The number of complaints that were adjudicated and whether a finding of discrimination or no discrimination was substantiated.
 - d. The categories of issues raised by the complainant; e.g., promotion, training, selection for AGR tour, etc.
- Figures 1-1., -2 appear on following pages.

| REPRISAL COMPLAINT ADVISEMENT AND ELECTION FORM | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| <p>Any military member who reasonably believes a personnel action (including the withholding of an action) was taken or threatened in reprisal for making or preparing to make a lawful communication to a Member of Congress, an Inspector General (IG), or any member of an audit, inspection, investigation or law enforcement organization within DoD, any Equal Opportunity or Military Equal Opportunity office, or to their chain of command, may file a complaint with the Air Force or Army IG, (as appropriate), or subordinate level IG, under the provisions of AFI 90-301 or AR 20-1 respectively, or with the Inspector General, Department of Defense (IG, DoD) under the provisions of Title 10, United States Code, Section 1034, and Department of Defense Directive (DoDD) 7050.6, Military Whistleblower Protection.</p> <p>You are advised that if you elect to file your complaint with the IG, DoD, upon review of your complaint, the IG, DoD can either accept the complaint or deny DoD consideration and refer your complaint to the Air Force or Army IG for consideration. If the IG, DoD grants DoD-level consideration, the IG, DoD may either investigate the complaint themselves or refer the complaint to the Army or Air Force for investigation, while maintaining oversight. The election to file with the IG, DoD is optional; however, if you elect to file the complaint with the IG, DoD, you must file the complaint within 60 days of becoming aware of the personnel action (that is the basis of the allegation). Regardless of which office conducts the investigation the same reprisal process will be used. However, acceptance of your complaint by IG, DoD entitles you to the following statutory provisions: right to appeal Air Force or Army Boards for Correction of Military Records finding to the Secretary of Defense and receive a redacted copy of the ROI and attachments.</p> <p>If you elect to file with IG, DoD, you are responsible for forwarding all documents relating to your reprisal complaint to their office. Army or Air Force IG officials will assist you upon your request. You should read DoDD 7050.6, and follow the instructions contained therein. Your</p> <p style="text-align: center;">Department of Defense Inspector General Attention: DoD Hotline 1900 Defense Pentagon Washington DC 20301-1900</p> <p>You are further advised that you may file a complaint of reprisal for having engaged in a protected Equal Opportunity activity with an Inspector General at any level. However, if the reprisal action which you allege does not pertain to "taking or threatening to take an adverse personnel action against you, or withholding or threatening to withhold a favorable personnel action from you," the reprisal action of which you complain will not meet the "acid test" used in an Inspector General investigation. That is, if the reprisal action which you allege consists of a hostile working environment or various forms of harassment, commander-condoned peer reprisal, etc., or if the personnel action which is the basis of your allegation of reprisal resulted in ending your military membership in the National Guard, and your status is now a former military member of the National Guard, then you should file your complaint within Equal Opportunity channels.</p> | |
| ACKNOWLEDGMENT | |
| <p>I have read and understand the above reprisal complaint procedures.</p> <p>I [will] or [will not] file my complaint with the IG, DoD. <i>(Circle one and initial)</i></p> <p>I [will] or [will not] file my complaint with an IG at a lower level. <i>(Circle one and initial)</i></p> <p>I [will] or [will not] file my complaint with my EO or MEO Officer. <i>(Circle one and initial)</i></p> | |
| SIGNATURE | DATE |
| PRINT: | |
| NAME | GRADE |
| ORGANIZATION ADDRESS <i>(Including Zip Code)</i> | ORGANIZATION TELEPHONE |
| | DSN <i>(If Available)</i> |
| | COMMERCIAL <i>(Include Area Code)</i> |
| HOME TELEPHONE <i>(Include Area Code)</i> | |
| NOTES/COMMENTS <i>(if any):</i> | |

NGB FORM 335, JUL 00, (EF) (FORMFLOW V. 2.15)

Figure 1-1. NGB Form 335, Reprisal Complaint Advise ment and Election Form.

| | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| DISCRIMINATION COMPLAINT IN THE ARMY AND AIR NATIONAL GUARD | | HR/EO, MEO USE: | |
| For use of this form see NGR AR 600-22/NGR AF 30-3, the proponent agency is NGB-EO | | NGB Case Number M- | |
| Privacy Act Statement | | <input type="checkbox"/> Informal <input type="checkbox"/> Formal | |
| Authority: 42 U.S.C. Section 2000d Principal Purpose: To document the formal filing of a military complaint of discrimination in the Army National Guard or the Air National Guard Routine Use: None Disclosure: Voluntary. However, failure to complete all portions of this form could affect the timely processing, or result in the rejection or dismissal of your complaint. | | | |
| INSTRUCTIONS | | | |
| Part I - To Be Completed by Complainant Submit to Your Unit Commander | | | |
| Any part-time military member, AGR member, former member, applicant for membership or beneficiary of the Army or Air National Guard who believes that he or she has been discriminated against because of race, color, religion, gender, or national origin (or retaliation for having participated in any way in a protected equal opportunity activity), in a matter subject to the control of the Army or Air National Guard, may file an individual complaint of discrimination. You are encouraged to discuss the complaints with and to seek assistance from your immediate supervisor, unit commander, members of the chain of command or EOA/EOT staff. Fill out Part I of this form and file the complaint within 180 days of the date of the alleged discrimination or the date that you became aware of the discriminatory event or action. The complaint should be filed with the unit commander (if the commander is not the alleged discriminating official) or with your unit EO representative. You may file with any other commander in the chain of command, the Adjutant General, the National Guard Bureau, or Inspector General Office. However, regardless of where the complaint is filed, it will be referred to the lowest applicable command level for action. | | | |
| 1. COMPLAINANT | | | |
| a. NAME | | b. RANK | c. POSITION |
| 2. GENDER | 3. RACE | 4. NATIONAL ORIGIN | |
| 5. HOME ADDRESS (Including Zip Code) | | 6. TELEPHONE NUMBERS | |
| | | a. BUSINESS: | b. HOME: |
| 7. ACTIVITY OR UNIT IN WHICH ALLEGED DISCRIMINATION OCCURRED: | | 8. ARE YOU: (CHECK ONE) | |
| | | <input type="checkbox"/> PART TIME MILITARY MEMBER <input type="checkbox"/> AGR TITLE 32/ADSW TITLE 32 <input type="checkbox"/> APPLICANT FOR NG/AGR MEMBERSHIP <input type="checkbox"/> FORMER MILITARY MEMBER <input type="checkbox"/> BENEFICIARY OF NG PROGRAMS/SERVICES | |
| 9. PERSON YOU BELIEVE DISCRIMINATED: | | | |
| a. NAME | | b. TITLE | |
| 10. REPRESENTATIVE (If any): | | | |
| a. NAME | | b. ADDRESS | |
| 11. CHECK BELOW THE BASIS (Reasons) FOR ALLEGED DISCRIMINATION: | | | |
| <input type="checkbox"/> R RACE (Check Your Race) <input type="checkbox"/> Black <input type="checkbox"/> White <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian/Pacific Islander | | | |
| <input type="checkbox"/> C COLOR (State Your Color) _____ | | | |
| <input type="checkbox"/> L RELIGION (State Your Religion) _____ | | | |
| <input type="checkbox"/> G GENDER (Not Sexual Harassment) (Check Your Gender) <input type="checkbox"/> Male <input type="checkbox"/> Female | | | |
| <input type="checkbox"/> S SEXUAL HARASSMENT (Check Your gender) <input type="checkbox"/> Male <input type="checkbox"/> Female | | | |
| <input type="checkbox"/> O REPRISAL (Based Upon EO/EEO Activity) <input type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| <input type="checkbox"/> N NATIONAL ORIGIN (State Your National Origin) <input type="checkbox"/> Hispanic <input type="checkbox"/> Other (Specify) _____ | | | |

NGB FORM 333, JUL 00 (EF)(FormFlow v. 2.15)

Figure 1-2. NGB Form 333, Discrimination Complaint in the Army and Air National Guard (Pg 1)

| | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------------------|--|
| 12. CHECK FOR SPECIFIC ALLEGATIONS AND ISSUES: | | | |
| Appointment/Enlistment | Evaluation/Appraisal | Reassignment | |
| Assingment of Duties | Harassment | Retirement | |
| Awards/Decorations | a. Non-Sexual | Time and Attendance | |
| Disciplinary Action | b. Sexual | Training/Education | |
| Duty Hours | Promotion/Non-Selection | Other | |
| <p>13. STATE ALLEGATION AND ISSUES <i>(Explanations, background, and evidence can be attached as supporting material; they are NOT issues).</i></p> <p>Issues: A. Number each issue B. Briefly list the alleged act of discrimination, the basis, and the date(s) it took place. C. Indicate the name(s) of the alleged discriminating official(s) (ADO).</p> <p>SAMPLE: I was discriminated against on (date) on the basis of (Race, Religion, or other basis) when (name the ADO) and briefly list the discriminatory event(s) or personnel action(s). Attach additional blank sheets, if necessary.</p> <p>1.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>2.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>3.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> | | | |
| <p>14. WHAT CORRECTIVE ACTION DO YOU WANT TAKEN TO RESOLVE YOU COMPLAINT?</p> <p>_____</p> <p>_____</p> <p>_____</p> | | | |
| 15a. SIGNATURE OF COMPLAINANT | | 15b. DATE | |
| 16. OFFICIAL RECEIVING COMPLAINT | | | |
| a. NAME | | b. TITLE | |
| c. SIGNATURE | | d. DATE | |

NGB FORM 333, JUL 00 (EF)(FormFlow v. 2.15)

Figure 1-2. NGB Form 333 (Pg 2)

| PART II - COMPLAINT MANAGEMENT PROCESSING | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-----|------------------------|
| TO BE COMPLETED AT THE LOWEST APPICABLE COMMAND LEVEL The above discrimination complaint was reviewed IAW NGR (AR) 600-22/NGR (AF) 30-3 | | | |
| COMPLETE AS APROPRIATE | | | |
| 1. WHEN DID YOU RECEIVE THE COMPLAINT? | | | DATE (YYYY/MM/DD) |
| 2. WAS THE COMPLAINT: | | | |
| a. | Accepted | All | In Part |
| b. | Referred | All | In Part |
| c. | Dismissed | All | In Part |
| 3. WHAT WAS THE RESULT OF THE COMMANDER'S INQUIRY? <input type="checkbox"/> Discrimination Confirmed <input type="checkbox"/> Discrimination Not Confirmed <input type="checkbox"/> Discrimination Undetermined | | | |
| 4. DID YOU ATTEMPT RESOLUTION OF THIS COMPLAINT? | | | DATE (YYYY/MM/DD) |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| 5. IF YES, WAS THE COMPLAINT | | | |
| <input type="checkbox"/> Settled <input type="checkbox"/> Withdrawn | | | |
| 6. WAS COMPLAINANT SATISFIED WITH THE RESOLUTION? | | | |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| a. SIGNATURE OF COMPLAINANT | | | b. DATE (YYYY/MM/DD) |
| 7. IF NOT SATISFIED WITH RESOLUTION OR WITHDRAWN THE COMPLAINT WILL AUTOMATICCLLY APPEAL TO NEXT COMMAND LEVEL. | | | |
| Withdraw the Complaint | SIGNATURE OF COMPLAINANT | | DATE(YYYY/MM/DD) |
| 8. THIS FORM AND ALL ATTACHMENTS, AND INQUIRIES IS FORWARDED TO THE NEXT COMMAND LEVEL ON | | | DATE(YYYY/MM/DD) |
| 9. REMARKS | | | |
| 10a. SIGNATURE OF COMMANDER | | | 10b. DATE (YYYY/MM/DD) |

NGB FORM 333, JUL 00 (EF)(FormFlow v. 2.15)

Figure 1-2. NGB Form 333 (Pg 3)

| PART III - COMPLAINT MANAGEMENT PROCESSING | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| TO BE COMPLETED AT THE INTERMEDIATE COMMAND LEVEL The above discrimination complaint was reviewed IAW NGR (AR) 600-22/NGR (AF) 30-3 | |
| COMPLETE AS APROPRIATE | |
| 1. WHEN DID YOU RECEIVE THE COMPLAINT? | DATE(YYYY/MM/DD) |
| 2. WAS AN ADDITIONAL INQUIRY CONDUCTED ? <input type="checkbox"/> Yes <input type="checkbox"/> No | DATE(YYYY/MM/DD) |
| If yes, what was the result? <input type="checkbox"/> Discrimination Confirmed <input type="checkbox"/> Discrimination Not Confirmed <input type="checkbox"/> Discrimination Undetermined | |
| 3. WAS AN INVESTIGATION CONDUCTED? <input type="checkbox"/> Yes <input type="checkbox"/> No | DATE(YYYY/MM/DD) |
| If yes, what was the result? <input type="checkbox"/> Discrimination Confirmed <input type="checkbox"/> Discrimination Not Confirmed <input type="checkbox"/> Discrimination Undetermined | |
| 4. DID YOU ATTEMPT RESOLUTION OF THIS COMPLAINT? <input type="checkbox"/> Yes <input type="checkbox"/> No | DATE(YYYY/MM/DD) |
| 5. IF YES, WAS THE COMPLAINT <input type="checkbox"/> Settled <input type="checkbox"/> Withdrawn | |
| 6. WAS COMPLAINANT SATISFIED WITH THE RESOLUTION? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| a. SIGNATURE OF COMPLAINANT | DATE(YYYY/MM/DD) |
| 7. IF NOT SATISFIED WITH RESOLUTION OR WITHDRAWN THE COMPLAINT WILL AUTOMATICCLLY APPEAL TO NEXT COMMAND LEVEL. | |
| <input type="checkbox"/> Withdraw the Complaint | SIGNATURE OF COMPLAINANT DATE(YYYY/MM/DD) |
| 8. THIS FORM AND ALL ATTACHMENTS, INQUIRIES IS FORWARDED TO THE NEXT COMMAND LEVEL ON | DATE(YYYY/MM/DD) |
| 9. REMARKS | |
| 10a. SIGNATURE OF INTERMEDIATE COMMANDER | 10b. DATE(YYYY/MM/DD) |

NGB FORM 333, JUL 00 (EF)(FormFlow v. 2.15)

Figure 1-2. NGB Form 333 (Pg 4)

| PART IV - COMPLAINT MANAGEMENT PROCESSING | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------------|
| TO BE COMPLETED AT THE ADJUTANT GENERAL LEVEL The above discrimination complaint was reviewed IAW NGR (AR) 600-22/NGR (AF) 30-3 | | |
| COMPLETE AS APROPRIATE | | |
| 1. DID THE ADJUTANT GENERAL (or designated representative) REVIEW THE CASE? <input type="checkbox"/> Yes <input type="checkbox"/> No | | DATE (YYYY/MM/DD) |
| a. Did the State Equal Employment Manager review the case? <input type="checkbox"/> Yes <input type="checkbox"/> No | | DATE (YYYY/MM/DD) |
| b. Did the Judge Advocate review the case? <input type="checkbox"/> Yes <input type="checkbox"/> No | | DATE (YYYY/MM/DD) |
| 2. WAS A RESOLUTION ATTEMPTED AT THIS POINT? <input type="checkbox"/> Yes <input type="checkbox"/> No | | DATE (YYYY/MM/DD) |
| a. If yes, what was the result? <input type="checkbox"/> Settled <input type="checkbox"/> Withdrawn | | |
| b. Was the complainant satisfied with the resolution? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| SIGNATURE OF COMPLAINANT | | DATE (YYYY/MM/DD) |
| c. If Not Satisfied With Resolution Or Withdrawn The Complaint Will Automatically Appeal To Next Command Level. | | |
| <input type="checkbox"/> Withdraw the Complaint | SIGNATURE OF COMPLAINANT | DATE (YYYY/MM/DD) |
| 3. WAS AN INVESTIGATION CONDUCTED? <input type="checkbox"/> Yes <input type="checkbox"/> No | | DATE (YYYY/MM/DD) |
| If yes, what was the result? <input type="checkbox"/> Discrimination Confirmed <input type="checkbox"/> Discrimination Not Confirmed <input type="checkbox"/> Discrimination Undetermined | | |
| a. Name of Investigating Officer | | Rank |
| b. Did the SEEM review the Report of Investigation (ROI)? <input type="checkbox"/> Yes <input type="checkbox"/> No | | DATE (YYYY/MM/DD) |
| c. Did the JA review the ROI? <input type="checkbox"/> Yes <input type="checkbox"/> No | | DATE (YYYY/MM/DD) |
| 4. WAS A REDACTED COPY OF ROI SENT TO THE COMPLAINANT? <input type="checkbox"/> Yes <input type="checkbox"/> No | | DATE (YYYY/MM/DD) |
| 5. DID THE ADJUTANT GENERAL ATTEMPT A RESOLUTION OF THE COMPLAINT? <input type="checkbox"/> Yes <input type="checkbox"/> No | | DATE (YYYY/MM/DD) |
| a. If yes, what was the result? <input type="checkbox"/> Settled <input type="checkbox"/> Withdrawn | | |
| b. Was the complainant satisfied with the resolution? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| SIGNATURE OF COMPLAINANT | | DATE (YYYY/MM/DD) |
| c. If Not Satisfied With Resolution Or Withdrawn The Complaint Will Automatically Appeal To Next Command Level. | | |
| <input type="checkbox"/> Withdraw the Complaint | SIGNATURE OF COMPLAINANT | DATE (YYYY/MM/DD) |
| 6. CASE FILE FORWARDED TO NGB WITH REQUEST FOR FINAL DECISION OR, IF RESOLVED OR WITHDRAWN, REQUEST FOR ADMINISTRATIVE CLOSURE. | | DATE (YYYY/MM/DD) |
| a. SIGNATURE OF ADJUTANT GENERAL | | b. DATE (YYYY/MM/DD) |

NGB FORM 333, JUL 00 (F)(FormFlow v. 2.15)

Figure 1-2. NGB Form 333 (Pg5)

Chapter 2 Processing of Title 32 Complaints

2-1. Informal Complaints

a. An informal complaint of discrimination, although it may be initially verbal, shall be put in writing on NGB Form 333 with only the "Informal" box checked and initialed by the complainant. No case number shall be assigned to an informal complaint. An informal complaint may be brought to the attention of any member of the chain of command at the lowest level of command where a remedy or resolution is possible, or to the equal opportunity representative or equal opportunity advisor at that level. For example, if a complainant who is a member of a unit at the company or squadron level brings an informal complaint of discrimination by another member or by a member of the chain of command below the commander, the complaint should remain at that level and a resolution attempted. The commander at that level shall have 30 calendar days, (or through the following drill weekend) to resolve the complaint. If the complaint is brought against the company or squadron commander, then the informal complaint will be brought to the equal opportunity representative, or to a member of the chain of command at the next higher level of command (battalion/group). Regardless of the level at which an informal complaint is filed, the commander at that level shall have 30 calendar days or through the next drill period to resolve the complaint to the satisfaction of the complainant. The only means of appeal of an informal complaint is to file a formal complaint.

b. Military members who believe they have been illegally discriminated against are encouraged to discuss their complaints with and to seek assistance from their Equal Opportunity Representative or Advisor (ARNG) or their Wing Military Equal Opportunity personnel (ANG), or any member of their unit chain of command. Such personnel will work with the complainant and others involved in the complaint to attempt to informally resolve the complaint. Figure 2-1., represents the discrimination complaint process and should be used to advise complainants on procedures for filing complaints under this regulation. EO personnel will assist the complainant in clarifying issues and allegations and reducing them to writing on the complaint form and generally assist them in completing the form. EO personnel will also counsel the complainant on what constitutes illegal discrimination. Upon the filing of an informal or formal complaint, EO personnel will keep the complainant informed of the status of his/her complaint.

c. EO personnel will advise commanders on processing a complaint, and may conduct basic fact finding into allegations of discrimination on behalf of the commander, but will not be used to conduct formal investigations of any complaints in which they may have a role in processing, so that they may continue to be a resource and assist both the complainant and the commander in attempts to resolve the matter to the satisfaction of the complainant and to provide advice and assistance on the proper processing of the complaint. If, in the course of obtaining information about a complaint, the interviewer suspects that the person being interviewed has violated the State Code of Military Justice (for example, cases of sexual harassment may be punishable under Articles 93, 117, 120, 125, 128, or 134 of the UCMJ or equivalent provisions of the state military code), or other federal, or state criminal codes, the interview will be terminated and the appropriate members of the chain of command and the SJA notified. (If such situations arise in a formal investigation of a discrimination complaint, see the NGB Investigator Procedural Manual.

d. EOAs, or other personnel involved in assisting with the resolution of a military complaint of discrimination, should be aware and should make the complainant aware that a complaint is resolved by action to make the complainant whole and to restore benefits and privileges lost because of the discrimination or harassment. However, compensatory damages and/or attorney fees are not authorized in a military complaint. Further, the state may authorize reinstatement in the NG for a complainant who was separated due to discrimination and who is otherwise qualified, but may not authorize backpay or retroactive promotion. The state may support a complainant's appeal to the Army or Air Force Boards for Correction of Military Records for backpay and/or promotion, if this would be appropriate in making the complainant whole. Also, the complainant should be made aware that disciplinary action against the individual responsible for substantiated discrimination is within the discretion of the commander and not the right of the complainant to demand as part of a resolution. While punitive action may be appropriate and should be considered by the commander as a means of maintaining good order and discipline, it does nothing in terms of restoring any benefits or privileges lost by the complainant as a result of the discrimination.

e. Even when a complaint is withdrawn – commanders will attempt to eliminate underlying causes of all complaints.

2-2. Formal Complaints

a. If an informal complaint remains unresolved after 30 days or through the drill weekend following the filing of the complaint, the complainant may:

(1) Withdraw the complaint. (Complainant will sign the NGB Form 333 indicating withdrawal of the complaint).

(2) File a formal complaint. Complainant will check and initial the "Formal" box on the complaint form.

b. A formal complaint will be filed at the next higher command level above where an informal complaint resolution attempt was unsuccessful. For example, if an informal complaint is filed at the company or squadron level, and resolution is not successful, the formal complaint, if filed, will be filed at the battalion or group level of command. If the next level of command is located outside the state, then the formal complaint would be filed with the next higher level of command that is available within the state.

c. At whatever level of command a formal complaint is filed, the commander at that level will request an NGB case number through the State Equal Employment Manager within 72 hours of receiving the complaint and initiate a Commander's Reprisal Prevention Plan (Figure 2-2.). The commander shall have 60 calendar days from the date of the filing to:

(1) Complete a procedural review of the complaint to determine whether the complaint will be:

- (a) Accepted (in whole or in part);
- (b) Dismissed (in whole or in part);
- (c) Referred (in whole or in part)

(See paragraph 2-3 below).

(2) Complete an investigation of all accepted issues in a complaint in accordance with Chapter 3 of this regulation and the NGB Investigator Procedural Manual. Commanders will appoint only impartial investigators who are not otherwise involved in the processing of the complaint and who are outside the chain of command of either the complainant or the named responsible person(s).

(3) Complete an SJA review of the investigation for legal sufficiency.

(4) Attempt resolution and take corrective action where appropriate.

d. If the complaint is resolved, the commander will forward the case file to the State Equal Employment Manager. The case file will include the formal complaint form, the Appointment of the Investigator, the Report of Investigation (ROI), the legal review of the ROI, any resolution agreement, any correspondence related to the complaint and a report of corrective action or disciplinary action taken, where appropriate.

e. If the complaint is unresolved at the end of 60 days, the case file will be automatically forwarded on appeal to the next level of command unless the complainant withdraws the complaint in writing, so indicating on NGB Form 333.

f. All successive level commanders will have 30 days to review the case and attempt resolution of the complaint.

(1) If the complaint is resolved to the satisfaction of the complainant or withdrawn at any command level, the complainant will so indicate by signing the NGB Form 333 and the entire case file will be forwarded to the State Equal Employment Manager (SEEM) for final disposition.

(2) Upon receipt of any formal complaint case file by the SEEM, wherein the formal complaint was withdrawn or resolved, the SEEM will forward to NGB-EO a copy of the NGB Form 333 for administrative closure of the case by NGB.

(3) Upon receipt of any formal complaint case file by the SEEM, wherein the formal complaint was dismissed, in whole or in part, the SEEM will review the dismissal to determine compliance with paragraph 2-3 below. If the SEEM concurs with the dismissal, he/she will forward to NGB-EO a copy of the NGB Form 333, to include the reason(s) for dismissal. NGB-EO will conduct a final review of the dismissal. If NGB concurs with a dismissal (partial or total dismissal), a letter of concurrence will be sent to the complainant and the state. If NGB does not concur, the dismissed issues will be remanded to the state for processing. In cases of partial dismissal, the chain of command will continue to process accepted issues concurrently with NGB review of dismissed issues. If the SEEM does not concur with the dismissal, he/she will remand the dismissed issue(s) back to the appropriate commander for processing of the complaint. In cases of dismissal of a complaint in whole, the same process applies. The SEEM will first review the dismissal for compliance with paragraph 2-3 below. If the SEEM does not concur, the complaint will be remanded to the appropriate commander for processing. If the SEEM concurs with the dismissal in whole, the complaint will be forwarded to NGB-EO with a memorandum explaining the reason(s) for the dismissal. If NGB concurs, NGB will provide a letter administratively closing the case. If NGB does not concur, the complaint will be remanded to the state for processing. Complaints filed at the NGB level will be assigned a case number and referred to the SEEM for processing in accordance with this chapter.

(4) If the complaint remains unresolved at the Adjutant General level after 90 days, the entire case file will be forwarded to NGB-EO with a request from the Adjutant General or his designee for a final decision.

2-3 Acceptance, Dismissal, or Referral, of Complaints

a. Formal complaints of discrimination will be accepted for processing under this regulation unless they are dismissed or referred for procedural reasons described below. Such dismissal or referral will not be based on the merit of the complaint. Determination as to whether any allegation in the complaint has validity and merit will be made only after conducting the inquiries or investigations, as prescribed in Chapter 3. Complaints that have been accepted for processing may later be dismissed or withdrawn, as described in c and d, below.

b. Any allegations of discrimination in a complaint or the complaint in its entirety will be dismissed for the following reasons: requests for waivers of dismissal can be forwarded to NGB-EO, 1411 Jefferson Davis Highway, Arlington, VA 2202-3231.

(1) Untimely. If the complaint is filed more than 180 calendar days from the date of the alleged discrimination or the date that the individual became aware or reasonably should have become aware of the discriminatory event or action.

(2) Duplicative. If the allegations are identical to the complainant's allegations that have been already filed or decided.

(3) Not in purview. Allegations by persons not covered by this regulation. (see applicability and Para 1-6, e above) Also included are situations over which neither the State NG nor NGB has jurisdiction or which neither has the authority to remedy.

(4) Failure to state a claim of discrimination. When it is determined that one or more allegations in a complaint does not affect a term, benefit, or condition of membership or is not based on illegal discrimination because of race, color, religion, gender (to include sexual harassment), national origin, or reprisal related to prior engagement in a protected EO activity, such allegations will not be processed under this regulation.

(5) Statutory or regulatory restrictions. Complaints that are based on statutory or regulatory restrictions will not be processed under this regulation; for example, restrictions on assignment of women to certain combat positions could not be accepted as a complaint of gender discrimination.

(6) The Complaint or Issue is Moot. Even if discrimination were substantiated, no actions beyond those already taken would be required. A moot issue or complaint is defined as one without legal significance, through having been previously decided or settled.

c. A complaint that has been accepted may be dismissed at any stage of processing if the complainant fails to cooperate with the inquiry, investigation, or requests for information. A complainant must be notified in writing using Notice of Proposed Dismissal of Complaint, Figure 2-3. The complaint will be dismissed in writing using Notice of Dismissal of Complaint, Figure 2-4. Proof of receipt of these notices by the complainant is required, either by signature of the complainant acknowledging receipt or by a certified mail receipt. When a complaint is dismissed on the basis of this paragraph, the case file, to include the notices to the complainant and the proofs of receipt, will be forwarded to the SEEM, who will provide a copy of the file to NGB-EO with a request for administrative closure.

d. A complaint may be withdrawn at any stage of processing by the complainant. Such withdrawal must be voluntary, and so indicated in writing, by signature of the complainant and date of withdrawal on the complaint form, NGB Form 333.

e. Dismissal or withdrawal of a complaint does not lessen responsibility of the chain of command to determine the merits and validity of the allegations that had been raised and to take corrective action as appropriate. Commanders will attempt to assist and resolve the military member's problems, take appropriate corrective action, when required, and advise the member of other proper sources of assistance, such as chaplains, legal advisors, personnel officers, or inspectors general. When appropriate, commanders will refer such allegations to these other offices. If a military member disagrees with the commander's determination that an allegation raised by him or her is not based on discrimination, he or she may appeal that determination to the next level of the chain of command.

2-4. Time Limits These time limits have been established to ensure that complaints are processed expeditiously and to ensure the availability of witnesses and information needed for investigation and resolution of complaints. These time limits take into consideration the limited availability of personnel on drill weekends. When participants in the complaint process are full time or AGR personnel, a reduction in these time limits is appropriate. The full-time supervisory chain, in coordination with the commander, will assist in resolving and processing complaints of discrimination filed by Title 32 AGR personnel, particularly in those cases where all parties involved are members of the full-time support force, to include Title 32 AGRs, Title 32 Technicians (competitive or excepted service), or State employees (see Para 1-9 for time limits for AGR (Title 32) personnel and other full time personnel covered by this regulation).

a. A complaint must be filed within 180 calendar days from the date of the alleged discrimination or the date that the individual became aware or reasonably should have become aware of the alleged discriminatory event or action.

b. The lowest level of command will complete all required actions in accordance with Para 2-1, within 30 calendar days or through the next drill weekend after receipt of an informal complaint.

c. An informal complaint not resolved to the satisfaction of the complainant will, at the election of the complainant, either be withdrawn or become formal and filed at the next level of the chain of command.

d. . The commander at the level where the informal complaint was processed will meet with the complainant to determine whether the complainant wishes to withdraw the complaint. If the complainant does not wish to withdraw the complaint, the complainant should check and initial the "Formal" box on the complaint form. An informal complaint that is not withdrawn, at the option of the complainant, and becomes a formal complaint, will be filed at the next higher level of command. The commander will immediately forward the complaint form, along with any documentation gathered during the informal process, to the next higher level commander. The next level commander will ensure that all required actions in Chapter 2 are completed within 60 calendar days after the receipt of the formal complaint from the subordinate commander.

e. A formal complaint that is unresolved at the lowest level of command after 60 days will be automatically appealed to the next command level, unless the complainant, in writing, withdraws the complaint. Each successive level of command will have 30 days to reach resolution or the complaint will be automatically appealed to the next command level.

f. A formal complaint will not be filed at the same level of command where an informal complaint resolution has failed, but will be filed at the next higher command level, with one exception. When an informal complaint is filed at the Adjutant General level, if resolution is not successful and the complainant wishes to file a formal complaint, such complaint will remain at the Adjutant General level and a formal investigation under the provisions of Chapter 3 of this regulation will be conducted.

g. The goal of the Military Discrimination Complaint System is to expedite processing so that a resolution, settlement, or final decision is issued not later than 1 year after filing of a formal complaint.

2-5. Allegations of Discrimination Received by NGB When NGB receives allegations of discrimination from a complainant or a third party on behalf of the complainant and such allegations do not constitute a formal complaint filed under provisions of Para 2-2, such allegations will be processed as specified in this paragraph. Third parties referred to above, may include inspectors general or other members of the Defense Department who refer allegations of discrimination to NGB; members of State or local governments; members of Congress or the executive branch; organizations writing on behalf of the complainant; or any other individual writing on behalf of the complainant.

a. All such allegations of discrimination will be assigned a case number by NGB (see Chapter 4, below) and referred to State NG officials for inquiry and processing.

b. If it is determined that the complainant is alleging discrimination that falls within the purview of this regulation, the complaint will be forwarded for processing as described in Paras 1-7f and 2-2b, above. The complainant will be provided assistance in informal resolution of the complaint (see Para 2-1) or formal filing of the complaint (see Para 2-2).

c. If it is determined that the allegations do not fall within the purview of this regulation (see Paras 2-3b (3) (4) (5) and 2-6), the complainant will be advised of actions taken to refer the complaint or of the proper channels to seek redress.

d. The AG or his/her designee will provide appropriate response(s) to any third party who brought the allegation of discrimination to the attention of NGB. A copy of the response will be furnished to NGB-EO.

e. NGB-EO will be advised when one of the following actions has occurred so that the inquiry may be administratively closed:

(1) The complaint has been resolved to the satisfaction of the complainant.

(2) The complainant has filed a formal complaint in accordance with Para 2-2 of this regulation. In such instance the processing of the allegations of discrimination will be discontinued under this paragraph and will be processed as a formal complaint of discrimination in accordance with Paras 2-3 and 2-4, above. A new NGB case number will be assigned whenever a complaint becomes formal. (See Para 4-6e).

(3) The allegations of discrimination have been referred for processing under another regulation or the complainant has been advised of other appropriate channels for seeking redress.

2-6. Allegations Against General Officers, General Officers Select, Colonels and Colonels Select

All allegations of discrimination made against a general officer or general officer select/Colonel promotable, personally (as opposed to those naming a general officer by virtue of his/her position), will be referred to the State Inspector General or NGB-EO for forwarding and processing through IG channels to SAF/IGS and DA-IG, as appropriate, in accordance with AFI 90-301 and AR 20-1. Allegations against Colonels (O-6), Colonels select and Lieutenant Colonels (promotable) will be processed in accordance with this regulation. However, such allegations will be reported through IG channels to SAF/IGS and DA-IG, as appropriate, in accordance with AFI 90-301 and AR 20-1. A copy of the case file will be forwarded by NGB-EO to NGB-IG, upon final decision, resolution, or withdrawal of the complaint.

2-7. Complaints Against or Outside the Chain of Command

a. When a military member believes that his or her commander was responsible for the alleged discrimination, the member will file the formal complaint with the next higher commander in the chain of command.

b. When the first person in a military member's chain of command is the AG and that member believes that the AG is personally responsible for the alleged discrimination, the complaint will be processed as required by Para 2-6 above.

c. When a military member alleges that discrimination was caused by individuals in an organization that is not commanded by that member's normal chain of command, the complaint will be filed with the AG. The AG will refer the complaint for processing by the lowest command level of the appropriate organization.

(1) If the complaint involves another State's NG organization, the AG will forward the complaint to that State for processing.

(2) If the complaint involves an active component organization, the Adjutant General will forward the complaint to the appropriate active component commander for processing.

d. Applicants for membership in the NG may file a discrimination complaint with the State Recruiting and Retention Manager or with the AG.

e. Complaints from other than members or applicants may be filed with the AG of the State involved.

2-8. Processing at the AG Level

If the complaint proceeds unresolved to the AG or if the AG is the lowest level of command in a particular complaint, it will be processed as specified in this paragraph. The SEEM will administratively process discrimination complaints

that reach the AG unresolved or that were filed with the AG. The SEEM will coordinate the processing with the State HR/EO or MEO Officer, the Judge Advocate, and other staff members, as appropriate.

a. Upon receipt of the complaint, the SEEM will immediately contact NGB-EO by phone or facsimile to obtain a case number if one has not already been assigned.

b. The SEEM will provide the complaint case file to the AG for review of the complaint, inquiry(ies) and/or investigation(s) of subordinate commander(s), resolution attempts by subordinate commander(s), and their decisions.

c. If the complainant disagreed with subordinate commanders' decision that the complaint, in whole or in part, was dismissed or did not contain allegations based on discrimination, the AG may reverse that decision or take action as specified in paragraphs 2-9, below.

d. If the AG is the first member in the chain of command for filing a complaint, the complaint will be reviewed to determine whether it should be accepted, dismissed, or referred as provided in Para 2-3. The formal complaint will be annotated to show whether the complaint was accepted or whether the complaint, in whole or in part, was dismissed or referred.

(1) If one or more allegations in a complaint are not based on illegal discrimination due to race, color, religion, gender (to include sexual harassment), national origin, or reprisal, such allegations will not be processed under this regulation. The AG will direct the appropriate processing of such allegations. The formal complaint will be annotated to show what actions were directed on the complaint, in whole or in part, which was not based on discrimination.

(2) If the complaint, in whole or in part, is dismissed, it will then be forwarded to NGB-EO for review in accordance with Para 2-9.

e. The AG may attempt to resolve the complaint or cause any additional review or inquiry to be conducted before an attempt at resolution.

f. If the AG chooses not to attempt resolution at this point or if resolution attempts are unsuccessful and an investigation has not been completed by a lower level commander, the AG will direct an investigation, as provided for in Chapter 3.

g. The Report of Investigation (ROI) and the entire case file will be reviewed for legal and administrative sufficiency. This review will be conducted by the SEEM and the State HR/EO or MEO Officer with a legal review by the State JA or his/her designated representative. The legal review of the ROI in a formal complaint of unlawful discrimination or sexual harassment will determine whether:

- (1) The investigation complies with all applicable legal and administrative requirements;
- (2) The investigation adequately addresses the matters complained of;
- (3) The evidence supports the findings of the investigating officer;
- (4) The conclusions and recommendations of the investigating officer are consistent with the findings;

and

- (5) Any errors or irregularities exist, and if so, their legal effect, if any.

Additionally, the ROI may also be coordinated with other staff offices within the State NG on matters related to their functional area.

h. The AG may direct any additional investigation or supplementation of the record to ensure legal sufficiency and compliance with laws and regulations.

i. After the ROI is determined to be administratively and legally sufficient, it will become part of the official complaint case file.

j. Thereafter, a redacted copy of the entire ROI will be promptly provided to the complainant.

k. Using the ROI, the advice of the SEEM and HR/EO or MEO Officer and of the JA, and a personal appraisal of the case, the AG or designee will meet with the complainant to attempt to resolve the complaint.

l. If the complaint cannot be resolved, the AG will request that NGB issue a final decision. Both the AG and the complainant may provide NGB with a rationale for their position regarding a final decision. Any position statement (rationale) must be submitted within 30 days of receipt of the ROI by the complainant. The position statement must be in writing and addressed to NGB-EO, Jefferson Plaza #1, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231.

m. The complete case file, prepared and assembled as described in Chapter 4, below, will be forwarded in original and two copies to NGB-EO.

n. If the complaint is resolved while at the AG level, the resolution agreement will be put in writing and signed and dated by the complainant and the AG or designee. The SEEM must notify NGB-EO that a resolution has been

achieved and provide a copy of the signed resolution agreement to NGB-EO, so that the record started with the assignment of the NGB case number may be administratively closed.

2-9. Review by NGB

- a. A review by the National Guard Bureau will be conducted--
 - (1) When a complaint is dismissed, in whole or in part.
 - (2) After a formal investigation has been conducted and the AG and the complainant have been unable to resolve the complaint.
 - (3) When a resolution of the complaint is reached.
 - (4) When a complainant withdraws his/her complaint.
- b. NGB will review complaints of discrimination for compliance with applicable laws and regulations and to determine the merits of the case. NGB will evaluate:
 - (1) The documentation in the case file to determine whether it is sufficient to determine the merits of the case.
 - (2) The procedures followed to determine if inquiries, resolution attempts and other requirements of this regulation have been adhered to.
 - (3) The investigation to determine if it is adequate to make a finding of discrimination or no discrimination.
 - (4) Conclusions of the investigator and recommendations regarding the final decision to determine if they are supported by the evidence in the case file and ROI.
 - (5) The appropriateness of the rationale for any dismissal.
- c. NGB-EO will review the entire case, to include the chain of command inquiries, narrative reports of resolution attempts, the ROI, and the dismissal and/or request for final decision, as appropriate. The case will be coordinated with the Office of the Judge Advocate, NGB and with the Army or Air Directorate, NGB.
- d. Based on this review, the AG will be advised whether:
 - (1) A dismissal was proper. If it was not, the AG will be advised what issues must be reinstated for processing and of the rationale for this action.
 - (2) The complaint case file and procedures are legally and administratively sufficient. If they are not, the AG will be advised what action is required and the rationale for that action.

2-10. Issuance of the Final Decision

After completion of NGB review and of any needed corrective actions by the State NG, NGB will issue a final decision based on a preponderance of evidence. The evidence of record will be analyzed using principles and case law developed under Title VII of the Civil Rights Act of 1964. While Title VII case law is not directly applicable to Title VI complaints, certain analytical principles are employed to determine whether or not discrimination occurred. In final agency decisions, NGB will use analytical principles of Title VII without case law citation. A copy of the final decision will be forwarded to the AG and the complainant. The AG or person designated by the AG will inform any person(s) named in the complaint as responsible for discrimination of the final NGB decision.

2-11. Administrative Closure

- a. When a complaint is administratively closed or a final decision is issued, the administrative process established by this regulation is exhausted; there are no further appeals. No other processing is required except for carrying out any terms agreed upon in a resolution or directed in the final decision.
- b. A complaint will be administratively closed when:
 - (1) NGB issues a final decision.
 - (2) A complaint is resolved to the satisfaction of the complainant and the formal complaint is so annotated.
 - (3) A complainant voluntarily and unconditionally withdraws a complaint.
 - (4) The complainant fails to pursue the complaint to the next level of the chain of command.
 - (5) NGB determines that a dismissal was proper.
- c. When the complaint is resolved to the satisfaction of the complainant and the formal complaint is so annotated, Para 2-11b(2) above, the State will provide NGB-EO a copy of the resolution signed and dated by the

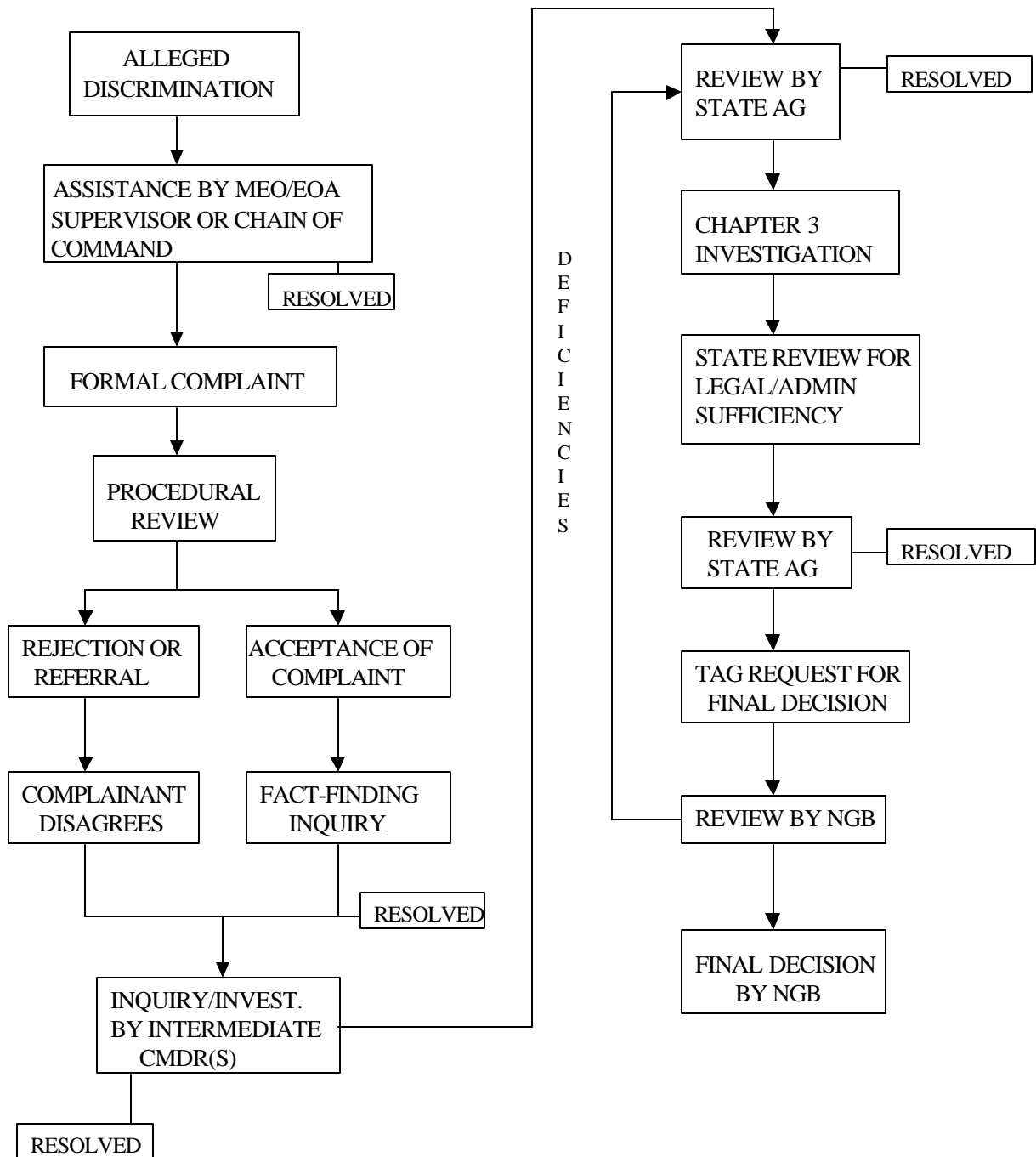
complainant and a State official, and a copy of the annotated complaint form (NGB-Form 333), so that the administrative closure may be completed.

d. When the complainant voluntarily and unconditionally withdraws a complaint, Para 2-11b(3) above, the State will provide a signed and dated copy of the withdrawal so that the administrative closure may be completed.

e. When a complainant fails to pursue a complaint by failing to provide information or to take actions required to continue processing the complaint, the state will provide a memorandum indicating such to NGB-EO, along with copies of the memoranda to the complainant (Figures 2-3. and 2-4.), and evidence that the complainant received such notices, i.e. certified return receipts, or a statement signed by the complainant that he/she does not wish to pursue the complaint.

f. NGB-EO will issue administrative closure letters, when appropriate, to the complainant, with a copy furnished to the Adjutant General.

Figures 2-1, -2, -3, and -4 appear on the following pages.



Note: The process stops if the complaint is resolved (Resolved block above).

Figure 2-1. Discrimination Complaint Process for NG Military Personnel.

COMMANDER’S REPRISAL PREVENTION PLAN

1.. Explain the following:

- a. Reprisal and provide definition to all concerned parties (See terms).
- b. Military Whistleblowers Protection.
- c. Consequences of reprisal.
- d. Possible sanctions against violators.
- e. Roles and responsibilities of leadership in the prevention of acts of reprisal.
- f. Command’s support of a thorough unbiased investigation and good faith in attempting to resolve the complaint.
- g. Need to treat all parties in a professional manner both during and following the investigation.

2. Personnel counseled.

| Name of individual counseled on reprisal | Commander’s initials | Date |
|------------------------------------------|----------------------|------|
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Notes:

- 1. All persons involved in the filing (complainant), witnesses providing testimony, or those named as a Principle Agency Witness of an EO complaint are afforded protection against reprisal.
- 2. The commander will discuss reprisal prevention with all concerned individuals and annotate their name and the commander will initial and specify the date the discussion took place.
- 3. The commander will provide this the reprisal prevention plan to the inquiry/investigating officer for inclusion in the official case file.

Figure 2-2. Commander’s Reprisal Prevention Plan.

NOTICE of PROPOSED DISMISSAL of COMPLAINT

(DATE)

MEMORANDUM FOR (Rank, Name, and Address of Complainant)

SUBJECT: Proposed Dismissal of the Discrimination Complaint of Sergeant John Doe, (State) (Army or Air) National Guard, Case Number M-(number)

1. You have filed a discrimination complaint dated (DATE). In order to continue to process this complaint, you are required to (specify the information or action required from the complainant) not later than (specify reasonable date).
2. If you fail to (provide the information or take the action) requested above, your complaint will be dismissed.

Signature Block of
Adjutant General/Unit Commander or
Appropriate Designee

Notes:

1. Use State or unit letterhead stationery and Army or Air Force military or civilian correspondence format, as appropriate.
2. This notice is sent by certified mail, return receipt requested, or personally delivered to the complainant. If the notice is personally delivered, the complainant will sign and date the official file copy of the notice. If he/she declines to sign the copy, the server will sign it and indicate to whom and when the notice was served.

Figure 2-3. Notice of Proposed Dismissal of Complaint.

NOTICE of DISMISSAL of COMPLAINT

(DATE)

MEMORANDUM FOR (Rank, Name and Address of Complainant)

SUBJECT: Dismissal of the Discrimination Complaint of Sergeant John Doe, (State) (Army or Air) National Guard, Case Number M-(number)

1. On (DATE) you were requested to (provide specified information or take specified action) not later than (DATE) in order to continue to process your discrimination complaint. You were also advised that failure to do so would result in the dismissal of your complaint.
2. Since you have failed to (provide the requested information or take the required action) your complaint is hereby dismissed.

Signature Block of
Adjutant General/Unit Commander or
Appropriate Designee

Notes:

1. Use State or unit letterhead stationery and Army or Air Force military or civilian correspondence format, as appropriate.
2. This notice is sent by certified mail, return receipt requested, or personally delivered to the complainant. If the notice is personally delivered, the complainant will sign and date the official file copy of the notice. If he/she declines to sign the copy, the server will sign it and indicate to whom and when the notice was served.

Figure 2-4. Notice of Dismissal of Complaint.

Chapter 3

Inquiry and Investigation of Complaints.

3-1. Fact Finding This process is not in the same scope as an inquiry. This process is designed to present basic facts to the commander at the level the complaint is raised. Basic fact finding will be used to facilitate resolution at the lowest level.

3-2. Inquiry A fact finding process used to determine the validity and merit of allegations of discrimination. It may involve the review of records and directives, examination of material evidence, and interview of persons who may have direct knowledge of the facts. This process is appropriate when the commander receiving the complaint of alleged discrimination does not have appointing authority to appoint an investigator.

3-3. Purpose and Nature of Investigations An investigation appointed under the authority of this regulation is an administrative fact-finding procedure to investigate allegations of discrimination or sexual harassment in order to determine to the maximum extent possible what actually occurred, to assess the validity of the allegations made by the complainant, to advise the command of any leadership or management concerns which might contribute to perceptions of unlawful discrimination and poor unit command climate, and to recommend appropriate corrective action.

a. Investigations into allegations of discrimination are conducted under authority of this regulation. They will be conducted as specified herein. The NGB Investigator Procedural Manual, provides procedural guidance for the Investigating Officer (IO). In the case of any conflict between the Manual and this regulation, this regulation will take precedence.

b. Investigations conducted under this regulation are informal. That is, they are not in the nature of a formal investigation or board under AR 15-6 or any other regulation or instruction that provides for a hearing for persons who may have an interest in the subject of the investigation. No respondents will be designated and no one is entitled to the rights that a respondent may receive in a proceeding under any other regulation or instruction. The IO may still make any relevant findings or recommendations, including those adverse to an individual or individuals.

c. No complainants, officials complained about, other witnesses, nor any officials other than the appointed investigator have any right to be present during interview of other witnesses.

3-4. Appointment of Investigators

a. The Equal Opportunity Investigator is appointed by a commander, the Adjutant General, or other official with the authority to authorize an investigation into allegations of discrimination under this regulation. The letter of appointment will cite this regulation as the authority for the appointment.

b. A NG officer or noncommissioned officer or any other military officer appointed as investigating officer should be senior in rank to any military member whose conduct is being investigated. Noncommissioned officers (E-6 or above) may be appointed to conduct investigations under the authority of this regulation and may administer oaths for the purpose of obtaining sworn testimony under the provisions of this regulation. In any case where the appointing authority perceives that state appointment is impracticable, he/she must coordinate with NGB-EO to explain his/her position and to request assistance in obtaining a senior person to conduct the investigation or obtain a waiver of this requirement. A waiver may be granted for contracting a civilian investigator at the State's expense.

c. EOAs or Military Equal Opportunity staff, Human Relations/Equal Opportunity officers, SEEMs, and Staff Judge Advocates provide advice and assistance regarding allegations, merits, and processing of complaints. They assist both commanders and complainants; therefore, they will not be appointed as IOs for any discrimination complaints in which they may have any other role in order to avoid any real or perceived conflict of interest. Only disinterested and impartial personnel will be appointed as IOs.

3-5. Authority and Requirement for Investigation The appointing document will specify that the investigation will be conducted in accordance with this regulation and will indicate the authority of the investigator (see Para 3-5a-f below). Copies of this regulation and the NGB Investigator Procedural Manual will be made available to the investigator.

3-6. Duties of the Investigator.

a. General. The IO is to collect facts and develop information sufficient for an objective determination of the factual merits of each allegation in the complaint. It is the duty of the investigator to:

- (1) ascertain and consider the evidence on all sides of each issue and to do so thoroughly and impartially.
- (2) make findings and recommendations that are warranted by the facts.

b. Witness Interviews. The IO will determine the witnesses whose testimony is necessary for a thorough, complete, and impartial investigation.

(1) In this pursuit, the investigator should obviously interview the complainant, the official(s) alleged to have discriminated, and persons identified as having relevant information by the complainant, and other witnesses as deemed necessary by the investigator.

(2) If the IO fails to interview any witness identified as having relevant direct first hand knowledge, the Report of Investigation (ROI) must include an explanation as to why the IO did not interview that witness, to include whatever consideration the IO gave to the type and importance of the potential evidence that the witness may have contributed. (The IO would be well advised to consult with the SEEM or MEO or EOA and also the servicing SJA before foregoing a witness identified as having relevant information).

(3) The IO is not, of course, limited to only witnesses identified by the parties and other witnesses. The IO should seek to interview persons with information establishing essential facts or corroborating, substantiating, or refuting statements about relevant events. For example, whether or not they were identified by anybody as witnesses, in an allegation about offensive sexual comments, it may be advisable to interview co-workers of the complainant and of the person alleged to have made such comments about their knowledge of the alleged incidents and about the daily working relationship between the complainant and the alleged responsible person.

(4) Should unit policies or procedures be called into question as contributing factors to perceptions of unlawful discrimination or hostile work environments, the IO should interview responsible members of the chain of command.

c. Document Collection. The IO should secure copies of any relevant documents, including those which might establish key events or substantiate, corroborate, or refute relevant statements of the complainant, officials alleged to have discriminated, or other witnesses. For example, in a given case, such documents might include copies of unit wire diagrams and personnel records, correspondence of the parties, or personal documents kept to memorialize relevant events.

d. Testimony. The IO administers oaths and obtains statements from witnesses under oath or affirmation without any promise of confidentiality. If a certified court reporter is provided, ensures that verbatim transcripts have been properly prepared. If a certified court reporter is not provided, interviews with all witnesses will be tape recorded and transcribed verbatim and signed by the IO to verify their accuracy (NGB-EO will not accept taped testimony with the ROI, all testimony that is taped must be transcribed). Although witnesses must be sworn or affirmed, there is no requirement for them to sign the verbatim transcript of their testimony. The signature of the IO is sufficient to verify its accuracy. Additionally, sworn statements and interrogations are acceptable methods of obtaining sworn testimony from persons involved in the complaint.

e. Data Collection. When appropriate because of the issues in a particular complaint, the IO will collect and analyze information on how members of the complainant's group are treated compared to other similarly situated personnel in the organization where the discrimination is alleged to have occurred. This information may include, for instance, statistical data on promotions, disciplinary actions, awards, or other personnel actions.

f. Work Policies and Practices. When appropriate, the IO will investigate work policies and practices which are relevant to the complaint and which appear to constitute discrimination whether they have been specifically cited by the complainant or not.

g. Report of Investigation (ROI). The IO will prepare a written, signed ROI. See the NGB Investigator Procedural Manual for content and format of an ROI.

(1) The investigator will provide a detailed narrative report of the investigation as part of the ROI. The report will include an analysis of the complainant's case; description of the allegations, testimony, documentation, and other exhibits and their relationship to the case and the allegation(s) that had been accepted for investigation; and appropriate conclusions, recommendations, and findings, with explicit findings on whether or not discrimination has occurred (apply the appropriate model(s) of analysis in the NGB Investigator Procedural Manual (Appendix A) to determine whether or not discrimination occurred).

(2) The investigator will include copies of all documentation relevant to the complaint. The evidence gathered will be clearly marked and placed as exhibits in the ROI.

(3) The investigator will prepare an executive summary of the narrative report to synopsise the key aspects of the case, the investigation, and the findings and conclusions of the ROI.

3-7. Resolution of Complaints

a. A complaint may be resolved at any point in time. (See Glossary for definition of resolution of a complaint). However, attempts at resolution are specifically provided for following each chain of command process.

b. If a complaint is resolved to the satisfaction of the complainant, such resolution will be documented on the formal complaint and signed and dated by the complainant and a representative of the State NG (this can include the commander or other designated representative). Specific written resolution language (settlement agreements) should be coordinated with the SEEM, SJA and NGB as appropriate.

c. If a complaint is not resolved after reaching the AG, the AG will request that NGB issue a final decision as provided in Chapter 2.

3-8. Consolidation of Complaints

Complaints filed under the provisions of this regulation are individual discrimination complaints and must be filed separately by each individual who has a complaint. However, allegations that are similar in nature and are caused by the same or similar conditions, may be consolidated for purposes of inquiry, investigation, or resolution as provided herein.

a. Two or more complaints filed by one individual may be consolidated and processed jointly at the discretion of the AG or the commanders concerned. In such cases, the consolidated inquiry(ies), investigation, resolution and final decision will address all allegations of all complaints that are being jointly processed.

b. Complaints from two or more individuals may be consolidated and processed jointly at the discretion of the AG or commanders concerned. In such cases either:

(1) All complainants must agree, in writing, to joint processing of their complaints,

(2) Any documents provided to one complainant, such as the ROI or the final decision, must be prepared in such a way as to safeguard any Privacy Act interests of the other complainant(s).

c. Withdrawal of a complaint by one complainant will not affect the processing of the remaining complaints that have been consolidated.

Chapter 4

Official Discrimination Complaint Case Files

4-1. General Guidance

a. Official discrimination complaint case files and related correspondence will be prepared, organized and assembled as provided in this regulation.

b. Case files submitted to NGB-EO must be complete and appropriately indexed, tabbed, and assembled. Case files will be submitted in original and two copies. NGB may return case files to the State NG for correction if they do not meet the requirements as explained herein.

4-2. Titling of Complaints

a. To facilitate identification and reference, the following information will be included in the subject line of any correspondence pertaining to discrimination complaints:

(1) The complainant's military rank.

(2) The complainant's full name, followed by the name of the State and Army or Air National Guard, as appropriate.

(3) The case number composed of the elements described in Para 4-5, below.

b. Complaint titles or subjects of correspondence would appear as shown in following examples:

(1) Complaint of Sergeant Joe T. Doe, (State) Army National Guard, NGB Case No. M-000-MD-A-00-96-

RL.

(2) Complaint of Captain Jane A. Rowe, (State) Air National Guard, NGB Case No. M-000-OH-F-00-96-

CGS.

4-3. The Official Discrimination Complaint Case File

a. The official discrimination complaint case file is established when a formal complaint is filed. This case file is a management document. It will be used by commanders, AGs, and NGB officials to make recommendations and decisions regarding the complaint.

b. Official discrimination complaint case files include the chain of command inquiries, resolution attempts, the ROI, and other documents listed below. Case files contain information subject to the Privacy Act. They will be maintained and safeguarded in the same manner as other sensitive, personnel files. ROIs may only be released to NG officials directly involved in the processing, management, or adjudication of complaints, such as the AG, JA, MILPO, ESSO, SEEM, HR/EO Officer, or MEO Officer. A redacted copy of the ROI will be provided to the complainant.

c. The official discrimination complaint case file will include all documents pertinent to the complaint. Some of the required documents are listed below. This is not an all encompassing list, nor will all such documents always appear in a case file; the specific documents in a case file depend on the particular case.

- (1) The formal complaint.
- (2) An explanation of the reason for the dismissal or referral of the complaint, if appropriate.
- (3) The inquiry conducted at the lowest command level.
- (4) If a resolution is not reached, a memorandum for record documenting the meeting, any offers made by the commander and the complainant's response.
- (5) The record of review and inquiries, if any, conducted by intermediate commanders.
- (6) The record of any further attempts at resolution taken at intermediate command levels.
- (7) Orders appointing the IO to conduct an investigation IAW Chapter 3 of this regulation.
- (8) A copy of the ROI.
- (9) A copy of the legal review of the ROI and case file required by Para 2-8g.
- (10) The record of any resolution attempts at the AG level.
- (11) If the complaint is withdrawn, a written, signed, and dated statement of the complainant or the representative to that effect.
- (12) If a complaint is dismissed, the letter notifying the complainant that if the complainant fails to provide information requested or take requested action, the complaint will be dismissed and the notification to the complainant of the dismissal.
- (13) Any other correspondence relating to the complaint.
- (14) A copy of all certified receipts and other documentation showing notification of delivery of material to the complainant and/or his or her representative, or other parties to the complaint.

4-4. Organization of the Case File

The official discrimination complaint case file submitted to NGB will be assembled and organized with an index (NGB Form 690-R), tabbed index sheets, and a hard backing. All documents and index sheets will be fastened together with appropriate paper fasteners, see Figure 4-1.

a. NGB Form 690-R, Figure 4-1., will be placed as the top document on the complaint file. The index will be updated each time a document is added to the complaint file. It will contain:

- (1) Complainant's name (last name, first name, middle initial).
- (2) NGB case number, as described in Para 4-5, below.
- (3) The source and addressee of each document, entered in the "TO/FROM" column.
- (4) The date on which the document was sent to or received from (not the date of the document) entered in the "ON: DATE" column. Dates will be shown as YY/MM/DD (year/month/day).
- (5) A brief description of the document, entered in the "DESCRIPTION OF DOCUMENT" column.
- (6) The date of the document, entered in the "DOC DATE" column. In some instances, particularly in the case of outgoing documents, it may be the same as the date the document was sent or received. Dates will be shown as YY/MM/DD (year/month/day).
- (7) An alphabet character indicating under which tab the document is to be found, entered in the "TAB" column.

- b. Alphabetical tabs will be used to separate documents listed in Para 4-3. A full set of alphabetical index sheets (with tabs A through Z) will be included, even if documents existing at a point in time use only a portion of these tabs. The remaining tabs will be included to be used for the addition of future documents.
- c. Documents will be arranged in chronological order with the earliest document at the bottom and the most recent document on top. As an exception to this rule, reports such as ROIs or inquiries and enclosures to documents may contain material not chronologically organized.
- d. Index sheets with alphabetical tabs will be placed over each document, or set of documents in the file, starting with tab A at the bottom, over the first document in the file.
- e. When multiple documents are placed under one alphabetical tab (such as reports), the appendixes or other appropriate parts will be sub-tabbed using numerical tabs (i.e., 1, 2, 3, etc.) or alphanumeric tabs (e.g., C1, C2, C3, etc.). There will be an index listing the specific document to be found under each sub-tab.
- f. Tabs or sub-tabs will not be affixed to documents. They will be attached to or be a part of blank pages to form index sheets (see Figure 4-1.).
- g. More than one set of index tabs may be used if warranted by the number of documents in the case file. In such cases, the NGB Forms(s) 690-R, attached to a given set of tabbed documents, will be annotated as "Part I," "Part II," etc. (see Figure 4-1.).

4-5. Case Number

Each complaint will be assigned a case number at the time it becomes a formal complaint. The number will be entered on the formal complaint; on NGB Form 690-R, NG Official Discrimination Complaint File Index; and in the subject line of correspondence pertaining to discrimination complaints. The case number is composed of the following elements:

M- _ _ - _ - _ - _ - _ - _ - _ - _ - _
 { a } { b } { c } { d } { e } { f }

- a. The first three digits, immediately following the letter M, are provided by NGB-EO to the SEEM (see Para 2-8a).
- b. The two letter State abbreviation immediately follows the dash after number provided by NGB.
- c. An A to indicate an ARNG or F to indicate an ANG military member (or applicant for an ARNG position). The letter A or F immediately follows the dash after the State abbreviation.
- d. A two digit number is used for each military complaint filed in that State, starting with 01 for the first formal complaint filed during a fiscal year. This number immediately follows the dash after the letter A or F and is assigned by the SEEM.
- e. A two digit number representing the last two digits of the fiscal year, based on the date the formal complaint is filed. The fiscal year immediately follows the dash after the State's case number.
- f. One or more letters representing the basis of the complaint. The letter or letters immediately follow the dash after the fiscal year. The authorized bases of complaints are:
 - (1) R for Race
 - (2) C for Color
 - (3) L for Religion
 - (4) G for Gender (not involving sexual harassment).
 - (5) S for Sexual harassment.
 - (6) N for National origin.
 - (7) O for Reprisal

4-6. Case Number for Allegations Referred from NGB When NGB-EO refers an allegation of discrimination to the State for inquiry and processing (see Para 2-5), NGB-EO will assign a case number. It will be composed of the same elements as shown in Para 4-5, except that:

- a. This number will begin with an I rather than M to indicate that this is an allegation referred to the State for processing in accordance with Para 2-5.
- b. The two digit number following the dash after the letter A or F represents the number of inquiries referred to the State, starting with 01 for each fiscal year.
- c. Two digit number representing the last two digits of the fiscal year, based on the date the inquiry is received by NGB. The fiscal year immediately follows the dash after the State's inquiry number.
- d. If the inquiry is informally resolved, withdrawn, dismissed, or referred to other channels for redress, NGB-EO will be notified and provided with appropriate documentation, i.e., the written resolution, signed and dated by the

complainant and state official, or the written withdrawal, signed and dated by the complainant. The inquiry will then be administratively closed by NGB-EO.

e. If the Inquiry is not resolved or withdrawn, dismissed, etc., the complainant will be advised of his/her right to file a formal complaint on NGB Form 333. If the complainant chooses to file a formal complaint, NGB-EO will be notified. At that point, a new formal complaint case number will be assigned and the inquiry case number will be administratively closed.

Figure 4-1. appears on the following page.

**Appendix A
References**

**Section I
Required Publications**

This section contains no entries

**Section II
Related Publications**

AFI 30-2
Social Actions Program

AR 600-20
Army Command Policy

Department of Defense Directive 1350.2
Department of Defense Military Equal Opportunity (MEO) Program

**Section III
Prescribed Forms**

NGB Form 333
Discrimination Complaint in the Army and Air National Guard

NGB Form 335
Reprisal Complaint Advisement and Election Form

NGB Form 690-R
National Guard Official Discrimination Compliant File Index

Section IV, Referenced Forms
This section contains no entries

GLOSSARY

Section I

Abbreviations

AGR

Active Guard Reserve

ANG

Air National Guard

ARNG

Army National Guard

DA

Department of the Army

DoD

Department of Defense

DoDD

Department of Defense Directive

EO

Equal Opportunity

EOA

Equal Opportunity Advisor

EOB

Equal Opportunity Representative

EOT

Equal Opportunity and Treatment

FD

Final Decision

HR

Human Resources

IG

Inspector General

JA

Judge Advocate

NGB

National Guard Bureau

NGB-JA

Office of the Judge Advocate, NGB

NGB-EO

Equal Opportunity Directorate, NGB

ROI

Report of Investigation

SA-IG

Secretary of the Army-Inspector General

SAF-IG

Secretary of the Air Force-Inspector General

SEEM

State Equal Employment Manager

MEO

Military Equal Opportunity

U.S.C.

United States Code

Section II

Terms

Allegation

An assertion by a complainant that an act or personnel action has been discriminatory.

Basis

A reason, claimed by a complainant, for a discriminatory action; specifically, race, color, religion, gender (to include sexual harassment), national origin, or reprisal.

Note that reprisal, as a basis, is subsumed in the above.

Beneficiary

An individual who is not a military member of the NG, but who benefits from a program, activity or service of the NG which is funded with federal assistance, or which program, activity or service is conducted or provided in NG facilities which are built or maintained with federally funded assistance.

Case File

See official discrimination complaint case file.

Case Number

A number assigned to a formal complaint when it reaches the level of the Adjutant General or a number assigned to complaint referred to the State NG by NGB. It is used by the State NG and NGB for statistical and identification purposes.

Complainant

A current or former military member, applicant for membership, or beneficiary of services of the Army or Air National Guard authorized to file a discrimination complaint under this regulation.

Conclusion (in an ROI)

A clear and concise statement of fact that can be readily deduced from an analysis of the evidence and the record of the case.

Equal Opportunity (ARNG terminology) or Military Equal Opportunity (ANG terminology)

The condition under which the participation, consideration, treatment, and potential for success of members of the ARNG or ANG is based upon individual merit, fitness, achievement, and ability without regard to illegal considerations of race, color, religion, gender, or national origin.

Fact Finding

This process is not in the same scope as an inquiry. This process is designed to present basic facts to the commander at the level the complaint is raised. Basic fact finding will be used to facilitate resolution at the lowest level.

Final Decision

A decision on the merits of a discrimination complaint, filed under this regulation, issued by or in the name of the Chief, NGB. A final decision is not subject to further review or appeal and it exhausts the administrative process provided for under this regulation.

Finding (in an ROI)

An explicit determination of discrimination or no discrimination on each allegation and basis raised in a formal discrimination complaint.

Formal Complaint

A written complaint filed under this regulation, using NGB Form 333, that alleges illegal discrimination.

Illegal Discrimination

Any action that unlawfully results in unequal treatment of persons based on race, color, religion, gender (to include sexual harassment), or national origin.

Note that within the military, some appointments, assignments, and other personnel actions have statutory or regulatory restrictions due to gender. Actions based on these statutory or regulatory requirements do not constitute illegal discrimination.

Informal Complaint

A complaint of alleging illegal discrimination expressed verbally (or filed on NGB Form 333 with only the "Informal" block checked and initialed) to a member of the complainant's chain of command at any level, EOA or MEO staff, or other state NG officials.

Inquiry

A fact finding process used to determine the validity and merit of allegations of discrimination. It may involve the review of records and directives, examination of material evidence, and interview of persons who may have direct knowledge of the facts. This process is appropriate when the commander receiving the complaint is not authorized to appoint an investigator. This process is also appropriate at the lowest command level to help facilitate resolution of the complaint.

Investigation

A duly authorized, systematic, detailed examination to uncover facts and determine the truth. It is a formal process which must produce sufficient detail to support a finding of discrimination or no discrimination. Investigations of allegations of discrimination are conducted under the authority of this regulation. They are conducted in accordance with the provisions of the NGB Investigator Procedural Manual, and Chapter 3 of this regulation.

Mediation

Is a method of settling disputes which provides an alternative to litigation. It does not judge or blame and values equally people in dispute. This process creates a safe and non-threatening atmosphere for both complainants and respondents of complaints.

Moot

A complaint or an issue would be considered moot when, at the time the complaint is filed, all actions that would be required if discrimination were substantiated, had already been taken due to other circumstances. For example, the issue is promotion and the individual has been promoted at the time of the complaint. Or the issue is training and the individual has been trained.

Preponderance of Evidence

The standard of proof used in discrimination complaint cases. This standard requires that the findings and conclusions be supported by greater evidence than contrary findings and conclusions. That is, considering all evidence, it is more likely than not that discrimination did or did not take place. This is a lesser standard than “substantial credible evidence,” “clear and convincing evidence,” or “beyond a reasonable doubt.”

Recommendation (in an ROI)

An investigator’s proposal to the appointing authority for actions or remedies based on the facts and evidence gathered in the investigation.

Reprisal

Any act of reprisal, restraint, interference, or coercion taken against an individual, or taking (or threatening to take) an unfavorable personnel action, or withholding (or threatening to withhold) a favorable personnel action for having engaged in a protected equal opportunity activity, i.e., for having filed a complaint of discrimination, for preparing to file a complaint of discrimination, for having testified as a witness in a discrimination complaint investigation, for informing officials within the chain of command or NGB of perceived discrimination, or any other protected communication related to equal opportunity matters.

Resolution of a Complaint

A voluntary, written agreement between the complainant and a representative of the State NG which results in settlement of the complaint to the satisfaction of both parties and terminates the administrative processing of the complaint.

Sexual Harassment

A form of gender discrimination that involves unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person’s job, pay, or career; or
- (2) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or
- (3) Such conduct interferes with an individual’s performance or creates an intimidating, hostile, or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

Withdrawal of the Complaint

A voluntary, written, signed and dated statement by the complainant indicating an unconditional willingness to stop further processing and pursuit of the complaint